

# Agrarian Reform and the Right to Adequate Food in South Africa

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Edited by FIAN International  
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*Fact-finding Report*



## **FIAN - FoodFirst Information and Action Network**

### ***FoodFirst***

promotes the fundamental human right to food. This human right is enshrined in the International Covenant on Economic, Social and Cultural Rights of the United Nations.

### ***Information***

FIAN informs victims about their right to feed themselves and alerts the general public about violations of this right.

### ***Action***

This is the centre piece of FIAN's work. Through its activities, FIAN supports the struggle of victims' groups against violations of their right to feed themselves and a lot of interventions were successful. With the help of FIAN, the victims' situation got better.

### ***Network***

FIAN is a network of members, sections and co-ordinations in more than 60 countries of the world joining hands for the realisation of the right to feed oneself.

**FIAN:** The international Human Rights Organisation working internationally for the realisation of the right to feed oneself

**FIAN:** Independent of governments, political parties, ideologies and without religious affiliation.

**FIAN:** Has consultative status with the United Nations, the Council of Europe, the African Commission of Human Rights

**FIAN:** Is active in all continents against hunger and malnutrition. Its work is unique

### **Impressum**

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## Summary

Between August, 16<sup>th</sup> and 23<sup>rd</sup> 2002 a team composed of representatives of Foodfirst Information & Action Network (FIAN International), La Vía Campesina, União Nacional de Camponeses de Moçambique (UNAC), the South African land reform support organisation NKUZI and the South African Plantation and Allied Workers Union (SAPAWU) carried out a fact-finding mission on *violations of the right to food* in the Limpopo Province of South Africa. The objective of the mission was to *investigate* and *document* cases of violations resulting from problems associated with the *design and/or implementation of the South Africa's land reform programme*, and to support communities, whose right to food was being violated.

In 1994, a land reform programme was launched in South Africa aimed at changing the enormous imbalance between white and black South Africans in land possession and rebuilding the rural economy. It consists of three pillars: *restitution*, *redistribution* and *tenure reform*. After ten years in operation, the land reform programme has, however, come under heavy fire for its failure to alter the unequal pattern of land ownership. Restitution has been very slow and the percentage of land redistributed to landless black farmers is far behind the set target. The legislative provisions of tenure reform have not managed to protect rural workers on commercial farms from eviction and harassment.

The cases documented by the fact-finding mission exemplify the problematic aspects of the three pillars of land reform in South Africa. The community of Gumbu-Mutele lodged a claim for the *restitution* of its land in the Madimbo Corridor in 1996. The land claimed is idle-lying State land. In spite of the recognised validity of the claim, the Ministry of Defence, which is in charge of the territory has flatly refused to return the land or seek compromise. Hunger and malnutrition are wide-spread in the community, which is desperate for the good quality agricultural land in the Corridor. The Community of Tshivhuyuni has since 1995 been trying to acquire a grant for the purchase of farming land through one of the financing schemes of the *redistribution* pillar of land reform in order to improve their precarious food and economic situation. Weaknesses in the organisation of the schemes and the inappropriateness of the "willing buyer – willing seller" principle for the situation of rural communities have, however, colluded to frustrate the community's efforts to receive the grants. The orange farms of André Fourier are the scene of illegal actions of repression and evictions of farm workers that *tenure reform* legislation has not managed to prevent. The dire food situation on these farms is a consequence of the constant violation of the right to food and existing legal provisions that are not enforced.

It has crystallised that the land reform programme is not performing well and that the lack of a proper agrarian reform programme amounts to a *violation of the obligation* of the South African State *to fulfil the right to food*. It is recommended that the South African Government completely *overhaul* its land reform programme in consultation with civil society in order to address the pressing needs of the urban and rural poor and work towards the *realisation of the right to food*.

## **1. Introduction**

### **1.1 Nature and Objectives of the Mission**

Between August, 16<sup>th</sup> and 23<sup>rd</sup> 2002 a team composed of representatives of Foodfirst Information & Action Network (FIAN International), La Vía Campesina, União Nacional de Camponeses de Moçambique (UNAC), the South African land reform support organisation NKUZI and the South African Plantation and Allied Workers Union (SAPAWU) carried out a fact-finding mission on violations of the right to food in South Africa. The mission was carried out in the Limpopo Province of South Africa within FIAN and La Vía Campesina's *Global Campaign for Agrarian Reform*. The logistics were organised by NKUZI. The objective of the mission was to investigate and document cases of violations resulting from problems associated with the design and/or implementation of the South Africa's land reform programme, and to support communities, whose right to food was being violated.

*Foodfirst Information & Action Network* (FIAN International) promotes the fundamental human right to food which is enshrined in the International Covenant on Economic, Social and Cultural Rights of the United Nations. FIAN informs victims about their rights, alerts the general public about violations of this right and campaigns for the termination of such violations. FIAN also provides training and advocates for the advancement of the right to food in national and international law.

*NKUZI* is a South African non-governmental organisation that provides support services to historically disadvantaged communities. The core purpose of NKUZI is to enable and support marginalised rural and peri-urban communities in exercising their land and related rights and to facilitate the acquisition of land and its productive and sustainable use. Through this NKUZI wants to contribute to redressing the present racially skewed patterns of land use and control in South Africa and developing and promoting pro-poor agrarian reform policies.

*La Vía Campesina* is an international movement which coordinates peasant organisations of small and middle-scale producers, agricultural workers, rural women, and indigenous communities from Asia, Africa, America, Australia and the Pacific, and Europe. It is a pluralistic movement, integrated by national and regional organisations whose autonomy is respected. Achieving redistributive and equitable agrarian reform in the countries of its member organisations is one of the main areas of La Vía Campesina's activity.

*União Nacional de Camponeses* (UNAC) is a Mozambican non-profit association of small farmers that represents and defends the economic and social interests of members before State and private institutions. UNAC is primarily engaged in advocacy on land issues. UNAC has 625 member organisations located throughout Mozambique, which include small-scale farmers, cooperatives associations, regional and district unions, local unions and provincial unions.

The *South African Plantation and Allied Workers Union* (SAAPAWU) was formed in 1995 and is an affiliate of COSATU, the Congress of South African Trade Unions. SAAPAWU represents some 25,000

members and has, since its founding, sought to organise farm and plantation workers. The union mobilises and offers legal support to its members, lobbies for legislation and policies that protect the rights of farm workers and monitors their application on commercial farms.

## **1.2. The Right to Food in South Africa**

The right to food is entrenched in international law. It is part of the right to an adequate standard of living laid down in the *Universal Declaration of Human Rights* (Article 25) and in treaties, such as the *United Nations (UN) Convention on the Rights of the Child* (Article 27) and the *African Charter on the Rights and Welfare of the Child* (Articles 14 and 20). The key international provision on the right to food is Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>1</sup>. Article 11(1) stipulates that States Parties recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing, and to the continuous improvement of living conditions. States shall furthermore take appropriate steps to ensure the realisation of this right. Article 11(2) provides that States Parties recognise the fundamental right of everyone to be free from hunger. It also provides that States take measures to improve methods of food production, conservation and distribution, "[...] by developing or reforming agrarian systems [...]".

The first UN Special Rapporteur on the Right to Food has given substance and meaning to the Article 11 ICESCR treaty standard by identifying the nature of States' obligations – the positive and negative obligations to *respect*, to *protect* and to *fulfil*.<sup>2</sup> The present UN Special Rapporteur on the Right to Food has stressed the key role of agrarian reform and equitable access to land in fulfilment of these States' obligations: "[...] policy options such as agrarian reform must play a key part in countries' food security strategies, in which access to land is fundamental."<sup>3</sup> In addition, the UN Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR by States Parties, has given an authoritative interpretation of Article 11 in its General Comment No. 12 on the right to adequate food.<sup>4</sup> According to the Committee, "*the right to food is realised when every man, woman and child, alone or in community with others, has physical and economic access to adequate food or means for its procurement*".<sup>5</sup> Art. 2 of the ICESCR requires signatory States of the Covenant to "*undertake steps [...], to the maximum of its available resources, with a view to achieving progressively the full realization [...]*" of the right to food.

South Africa has only signed but not yet ratified the ICESCR. Nonetheless, the right to food has a strong basis in the country's constitutional law which closely follows the wording of the Covenant. Section 27(1) entrenches the right to food as an individual entitlement: "*everyone has the right to have access to*

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, entered into force 3 January 1976, 993 UNTS 3. 145 States have ratified or acceded to this treaty (status as at 1<sup>st</sup> February 2003). Although South Africa has signed but not yet ratified the ICESCR.

<sup>2</sup> Eide, Asbjørn: *The Right to Adequate Food as a Human Right*, UN Doc. E/CN.4/Sub.2/1987/23, and an Update Study on the right to food, UN Doc. E/CN.4/Sub.2/1999/12.

<sup>3</sup> Ziegler, Jean: *Report of the Special Rapporteur of the Commission on Human Rights on the right to food 2002*, UN Doc. A/57/356, par. 22

<sup>4</sup> General Comment no. 12 on the right to adequate food, UN Doc. E/C.12/1999/5.

<sup>5</sup> General Comment no. 12 par. 6.

*sufficient food*". Other rights are indirectly linked to this right: s 25(5) fosters equitable access to land and is of particular relevance in the South African context, where the realisation of the right to food is inextricably linked to an equitable distribution of land. S27 is however limited by s27(2): realisation of this right is subject to reasonable legislative and other measures within available resources. S28 (1) gives children direct legal protection: "*every child has the right to basic nutrition*". Therefore the right to food is qualified for everyone and unqualified for children. The South African constitutional text has a wording on the obligation of progressive realisation, which is nearly identical to that contained in the Covenant: "*The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*"<sup>6</sup> Until now, there has however been no court case to test the justiciability of the right to food, although the famous Grootboom case on the right to housing, in which the Court demanded reasonable measures to progressively realise such rights, has wider implications for the realisation of socio-economic rights in general.

Notwithstanding the strong legal position of the right to food, its implementation leaves much to be desired. In fact, the extent of poverty, malnutrition and hunger has reached alarming proportions in South Africa.<sup>7</sup> In particular, the South African State has so far not succeeded in the daunting task of rectifying through its three-pillared land reform programme the massive dispossession of Africans during a century of forced removals. Less than 1,2% of farm land currently used for commercial agriculture were redistributed or restituted to black South Africans from 1994 to 2001.<sup>8</sup> Some 14 million rural Africans are still crowded into the infertile badlands of South Africa, the former homelands, while some 60.000 white commercial farmers own over 80% of the prime agricultural land.<sup>9</sup>

### **1.3. Land Reform in South Africa**

When the African National Congress won the first democratic elections in South Africa in 1994 with over 60% of the vote, the new Government introduced its programme of *Reconstruction and Development (RDP)* – aimed at bettering the livelihoods of the poor, black majority that a century of discriminatory policies had systematically impoverished. Part of the RDP is the land reform programme, of which implementation begun shortly afterwards. It is composed of three policy areas: *restitution, redistribution and tenure reform*.

The legal basis for *restitution* is the *Restitution of Land Rights Act 1994*. Under the act, persons or communities dispossessed of property after 1913 as a result of past racially discriminatory laws and practices could lodge claims for the return of their land/property or obtaining equitable compensation for such land until 31<sup>st</sup> December 1998. The *Commission on Restitution of Land Rights* was constituted in

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<sup>6</sup> South African Constitution, s 27(2).

<sup>7</sup> Between 45 and 55% of South Africans are estimated to be poor. See Aliber 'Chronic Poverty in South Africa' (2003) 31(3) *World Development* while 70% of rural South Africans live in poverty (ibid.). Additionally, ethnic inequality has risen since the end of *Apartheid*: the average income of white South Africans has grown from four times in 1995 to six times that of black South Africans in 2000. Within the same period, the number of people below the poverty line also grew substantially (Dept. of Statistics South Africa, 2002). In 1994, 39% of the population could not meet the daily energy requirement of 2000 calories per day (Project for Statistics on Living Standards and Development, South African Labour and Development Research Unit).

<sup>8</sup> South African Department of Land Affairs (2002).

<sup>9</sup> Sustainable Livelihoods in Southern Africa, (2001) *Research Briefing 1* 'The Politics of Land Reform in Southern Africa'.

1995 under the umbrella of the *Department of Land Affairs* (DLA) and has the primary function to investigate the merits of claims and mediate and settle disputes arising from such claims. The rate of settlement of the total of 68,878 restitution claims was initially very slow - 31 cases by 1998 - but accelerated and reached 46,727, with a total of 590,880 beneficiaries by the end of 2003.<sup>10</sup> The great majority (86%) of these claims are urban and have been lodged primarily by individual families. Restitution has therefore not effectively addressed the large-scale dispossession of entire rural communities. Again, both urban and rural claims have largely been settled through financial compensation (59%) and not the return of land. Restitution has not managed to fundamentally alter the skewed distribution of land inherited from Apartheid.

The purpose of the *redistribution* pillar of land reform is the "*redistribution of land to the landless poor, labour tenants, farm workers and emerging farmers, [...] to improve their livelihoods and quality of life*".<sup>11</sup> When the programme was initiated, the objective was to redistribute 30% of the country's agricultural land over the following 15 years. For that purpose, the Government created a grant facility that qualifying individuals and groups could access for capital to buy land on the free market. Between 1995 and March 1999 roughly 60,000 households were allocated grants for land acquisition under the first redistribution scheme called *Settlement/Land Acquisition Grant* (SLAG).

In 2000, SLAG was replaced by the *Land Redistribution for Agricultural Development* scheme, known as LRAD. LRAD drew heavily on *World Bank inspired land reform programmes* operating in Columbia and Brazil.<sup>12</sup> The central element of these policies is the "*willing buyer, willing seller*" principle. It operates on the premise that market-driven supply and demand bolstered by the disbursement of credits and raising of own capital, rather than state-administered expropriation and redistribution should allocate land to landless peasants. The World Bank model also aims at transforming subsistence farmers into peasant entrepreneurs oriented towards production for the world market. Under LRAD, grants are now awarded to individuals rather than to households and range from Rand 20,000 to 100,000. The grant level rises disproportionately to the grant level, depending on the beneficiaries contribution in a range from 5,000 to Rand 400,000. The redistribution programme has been criticised for its failure to achieve its set goals and is beset with structural problems, which are exemplified in the case studies. With a paltry Rand 500 million (~ Euro 70 million) allocated annually to the programme, the budget is very modest compared to the magnitude of the rural economic problems of landlessness and unemployment.

*Tenure reform* is based on a number of acts, divisible into such that protect the rights of labour tenants and farm workers and such that aim at structuring the management, control and conveyancing of communal land, in particular that of the former "homelands". The *Land Reform (Labour Tenants) Act 1996* specifies the rights of farm workers and farm residents on privately-owned farms, and the *Extension of Security of Tenure Act 1997* (commonly known as ESTA), as well as the *Prevention of Illegal Eviction and Occupation Land Act 1998* aim at protecting occupants of privately-owned farms from arbitrary evictions. *The Communal Land Rights Bill*, which is to be enacted in 2004, will be the first comprehensive act on the administration of communal lands.

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<sup>10</sup> All figures Department of Land Affairs.

<sup>11</sup> DLA White Paper on Land Policy 1997:36

<sup>12</sup> Barros et al. (2003): "Market Assisted Land Reform – The Illusion of a Future", in: *The Negative Impacts of World Bank Market Assisted Land Reform*. Rede Brasil, p 26.

The implementation of tenure reform, however, also leaves much to be desired. Living and working conditions on commercial farms have barely changed since 1994. The five million strong army of agricultural workers is arguably the poorest and most deprived segment of the South African working class. The owners of the large commercial farms of the country are notorious for their total disregard for workers' rights and their use of oppression, intimidation, violence and illegal evictions in subduing the workforce and preventing unionisation – regardless of the existence of laws destined to protect farm workers against such human rights abuses.<sup>13</sup> Evictions of farm workers without court orders and in contravention of the law are frequent, often with the connivance of local police.<sup>14</sup> According to critiques, ESTA, the heart-piece of the anti-eviction legislation of tenure reform does not offer sufficient protection. Beyond that, it is disquieting that *"not a single case of unlawful eviction had come before the courts by the end of 2000."*<sup>15</sup>

The *Communal Land Rights Bill 2002* which is likely to be enacted in the course of 2004, has also come under heavy criticism for the conveyancing and administration procedures it establishes and other weaknesses. According to the Bill, title deeds to land would be vested in the community which, in turn, establishes a *land administration committee* that decides who to allocate land to.<sup>16</sup> This function can also be carried out by an existing *traditional council*.<sup>17</sup> Following a so called land rights enquiry, the Minister of Lands would determine which land should be transferred to the community. Land can be registered in the name of a community, household, family or an individual.<sup>18</sup> Criticism is levelled at the bill on several levels: The process through which the department of land affairs developed the bill was perceived as *"profoundly anti-democratic"* for its lack of transparency.<sup>19</sup> With regards to the contents, the devolution of land administration powers from central and local state authorities to unelected "traditional authorities" that were created under Apartheid's "homeland" policy, is seen to mirror Apartheid land legislation. Likewise, the unfettered discretionary powers of the Minister for Land Affairs to make decisions that impact on people's land rights are criticised.<sup>20</sup> The Bill is also seen to aggravate the existing inequality of women with regards to land rights in that *"key administrative powers are handed over to "traditional" bodies, in which women are in a permanent minority and which, in the past, have been agents of discrimination in relation to land administration and allocation."*<sup>21</sup>

Disenchantment about the little progress made so far in redistributing South Africa's agricultural land exists in many quarters of civil society and within the administration itself. Most significantly, landless people and farm workers have themselves begun organising and channelling their demands for fast and efficient agrarian reform through the *Landless People's Movement* (LPM), which was founded in 2001 and is organised nation-wide. The LPM moved into the limelight during the August 2002 *World Summit*

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<sup>13</sup> The *Inquiry into Human Rights Violations in Farming Communities* (2003) by the South African Human Rights Commission ([www.sahrc.org.za](http://www.sahrc.org.za)) documents the extent of these practices.

<sup>14</sup> Kgwadi, Elizabeth & Michael Nefale (2003): "A South African Case Study", in: *The Negative Impacts of World Bank Market Assisted Land Reform*, Rede Brasil, p 306.

<sup>15</sup> *ibid.*

<sup>16</sup> CLR s 23(1)

<sup>17</sup> CLR s 1(i)

<sup>18</sup> CLR s 16(1)

<sup>19</sup> [www.irinnews.org](http://www.irinnews.org) (11/11/2003): *Land Bill: Old Law, New Lingo*.

<sup>20</sup> See CLR s 16 - 22, for some of the powers conferred to the Minister.

<sup>21</sup> [www.ipsnews.net](http://www.ipsnews.net) (28/01/2004): *New Land Bill Unconstitutional Say Campaigners*.

on *Sustainable Development* in Johannesburg, when it held a march of landless people through the city in order to draw the attention of the global public on land reform in the country. Frustration within its ranks with the failings of the land reform programme had led the LPM to challenging the programme more vociferously. The Government has since then steered on a course of confrontation and developed a tough stance, which has resulted in an increasing criminalisation of LPM activists.<sup>22</sup> It remains to be seen how long the tide of South African civil society demands for effective agrarian reform can be stemmed back.

The following documentation portrays three cases of right to food violations in the context of the South African land reform programme. Three representative cases were chosen from each of the land reform policy areas of *restitution* (case 2.1.), *redistribution* (case 2.2.) and *tenure reform* (case 2.3). The cases exemplify how the weaknesses of the land reform programme and/or its non-implementation translate into human rights violations of the right to food.

## **2. Documentation of Three Cases of Right to Food Violations**

### **2.1. Gumbu-Mutele and the Madimbo Corridor**

#### **2.1.1. Background**

##### **Community history**

The community designated here as Gumbu-Mutele numbers some 1200 people and consists of the villages of Gumbu, Masisi, Band-Mutele, Sigonde and Tshenzhelani along the so called Madimbo Corridor, a strip of land on the Limpopo river in the far North of the Limpopo Province of South Africa. The Corridor is a rectangular stretch of land, approximately 50 km long and a few kilometres deep. It is demarcated by the Zimbabwe/South African border fence on the Limpopo river and the Tshipise-Pafuri road. On the three remaining sides simpler fences serve for the purpose of demarcation as well as preventing cattle from venturing into the Corridor. The territory is South African state land, formally administered by the Department of Public Works but currently in use by the Ministry of Defence.

The Madimbo Corridor is currently uninhabited. The original inhabitants of the territory were forcibly removed in successive waves by the Apartheid Government and allocated land just beyond the tarred road that runs alongside the southern flank of the territory. The oral accounts of the Gumbu-Mutele people who have memory of life before eviction paint the picture of a self-sustained agricultural community. In the past, water from the Limpopo river served for irrigation and as a source of fish. Owing to the proximity of the river, soil quality is by far better than that of land further afield. Artisanal mining in graphite provided additional resources and income to the community. The community's ties to the land

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<sup>22</sup> The criminalisation of the LPM has found expression in a spate of arbitrary arrests and repression of marches and demonstrations.

were cemented by religious and social practice. Until today, numerous graves and sites of symbolic significance to the community can be found within the Corridor.

### **Current state of affairs**

In 1996, the Gumbu-Mutele Community lodged a **restitution** claim with the Department for Land Affairs (DLA) under the *Restitution Act 1994*. The claim has been duly validated, yet actual restitution has been dragging along since then, in spite of the administration's awareness of the plight of the community and the Ministry of Agriculture's direct involvement - in 1999, Ms Thoko Didiza, the South African Minister of Agriculture personally assured the Gumbu-Mutele people that their claim would have been settled by March 2000. The stalling of the restitution process is directly linked to the Ministry of Defence's inflexible position which, being the actual user of the Madimbo Corridor, has flatly refused handing over the land on defence related grounds. According to Ministry of Defence sources, the entire Madimbo Corridor is currently under use for "special forces training" involving exercises, which have not been disclosed, as the exact nature of the activities has been termed as "classified information".

### **Towards a solution?**

The Gumbu-Mutele claim features prominently on the agenda of the Limpopo Province *Commission on Resitution of Land Rights* (CRLR), a body of the *Department of Land Affairs* charged with administering resitution claims in the province. Also, the non-governmental land reform support organisation NKUZI, which had initially validated the claim on behalf of the CRLR, has been lending administrative support to the Gumbu claimants by negotiating with the authorities, handling paper work, and lobbying for a resolution of the case.

In August 2002, a meeting was facilitated by the CRLR bringing together the involved parties and a member of the fact-finding mission in a new round of negotiations with Ministry of Defence officials. The persistent unwillingness of the Ministry to return the land had made a last effort necessary before the CRLR would forward a final decision on the case to the national Land Claims Court. Once more, the Defence officials present insisted that the land could not be restituted due to "special forces training" and "borderline protection". The only concrete result produced was a concession by the Ministry of Defence to allow a joint inspection of the Corridor, which eventually took place in September 2002 with the participation of NKUZI, members of the Gumbu community, and Ministry of Defence officials. The inspection led the CRLR to the conclusion that a large portion of the land was not being used and could be restituted immediately, and that in fact much of the argument that the land was vital for national defence was all but tenuous.

In January 2003, FIAN International and La Vía Campesina launched an international protest letter campaign addressed to the *Minister of Defence* and the *President of South Africa*. The campaign demanded the return of the land by the South African State in fulfilment of the State's obligation to respect the right to food. Shortly afterwards, the Ministry of Defence signalled its willingness to at least partially restitute some of the land to the community. However, no concrete action has since then followed in spite of repeated queries by the victims, the CRLR and FIAN International. It must therefore be assumed that the Ministry's conciliatory stance was a means of dragging the case until public attention wanes. Until presently, there has been no movement in the case. It is therefore unlikely that the

claim will be settled amicably without a referral to the Land Claims Court. Given that litigation could take years, an improvement of the situation of the Gumbu-Mutele Community and an end to the violation of their right to food is not in sight in the short or medium term – and there is no guarantee that a court decision would be in favour of the Gumbu-Mutele claimants.

### **2.1.2. The Right to Food and Agrarian Reform**

#### **The food situation**

The fact-finding mission remained in the Gumbu-Mutele area from August 18<sup>th</sup>-20<sup>th</sup> 2003. During that time the members of the mission were accommodated by the Gumbu community - they slept in the homes of community members and shared their food, all of which gave a good impression of the living conditions in the area. For two days, hearings were conducted with the inhabitants of the communities in assemblies open to all. Within that time the accounts of the Gumbu-Mutele people painted a very vivid picture of the extent of hardship and deprivation that the continuing state of dispossession is causing. Those interviewed complained about barely being able to afford two meals a day. The diet mostly consists of dry maize porridge, exceptionally with vegetables and very rarely, if at all, meat. The soil is of very low quality and littered with stones. Soil quality and the lack of water – the water reserves in wells are usually just about enough to cover the need in drinking water – make the planting of food crops very difficult. As a consequence the harvest is meagre and cattle often die due to the lack of grazing possibilities. At the same time, there are hardly any employment opportunities in the area. At the meetings, barely 10% of those present were in some kind of remunerated employment. In all the settlements that the fact-finding mission visited, hunger due to the scarcity of home-grown food or the lack of money to buy provisions was a strong recurrent theme. The precarious food situation is aggravated by the dearth of firewood, and the partitioning of the little land suitable for agriculture due to natural population increase.

Accounts of members of the community who had lived on the land within the Corridor as well as a recent inspection of the land have confirmed that the natural conditions within the Madimbo Corridor are in stark contrast to those in the present area of settlement. Before the Apartheid era eviction of the population, the Limpopo river was the life blood of the Gumbu community. The river water was used for irrigation of the fields, and supplied fresh fish. The reeds and mud on the river banks provided excellent building materials, while the prime agricultural land of the Limpopo alluvial plain guaranteed sufficient produce and grass for grazing. The Corridor also abounds with wild game, which served as a supplement to the diet of the inhabitants.

Given these conditions, members of the Gumbu-Mutele community have repeatedly ignored the absolute prohibition of entry into the Corridor and have ventured into the territory in places where the fence has come down in search of loose cattle, game and firewood. The immediate proximity of the Corridor - the various settlements are only separated from it by the tarred Tshipise-Pafuri road - is a strong and constant lure for individuals to trespass into the land, which they consider theirs anyway. As a consequence, seven men of Gumbu-Mutele were temporarily held for trespassing. The arrests are part of a longer history of conflict between two unequal opponents - the authorities and members of the

Gumbu-Mutele community. Already in 1999, the chief and two members of the Gumbu Land Claims Committee, the elected body charged with representing the community vis-à-vis the involved parties, were arrested because they had led a group of community members into the Corridor in protest against the non-realisation of the restitution.

## **2.2. Faranani-Tshitale**

### **2.2.1 Background**

#### **The facts**

The rural community of Tshivhuyuni is located in the north-east of the Limpopo Province, approximately a 30 minute drive from the town of Elim. Tshivhuyuni formed part of the Venda "homeland" during the Apartheid era with the consequences of neglect and deliberate underdevelopment being felt until today. In 1995, some enterprising members of the community wanted to use the new opportunities that were offered to rural people desperate for land under the land **redistribution** policy within the agrarian reform programme. At their own initiative, they applied for a grant under the now defunct SLAG (*Settlement/Land Acquisition Grant*) scheme, in order to purchase better quality agricultural land on the market. The scheme consisted in providing Rand 16,000 to each household that qualified. What followed were seven years of frustrated efforts by the community, which numbers some 450 people represented by a nine member Project Committee, to obtain whatever kind of financial support through the Department of Land Affairs. The objective of the community's project was to purchase farm land from a commercial farmer at a site in the area under the name of Faranani Tshitale.

The project committee was led by an energetic and enterprising man, who had a good command of English and experience with administrative procedures. Likewise, the community's dynamism could be seen in the many smaller projects that individuals or groups had begun in order to improve their situation, amongst them animal husbandry, planting of small quantities of commercial crops and irrigation of fields. However, the project committee identified problems with the SLAG application procedure on several levels:

- The community had to look for suitable land to buy from large land-owners through its own initiative and was not sufficiently supported or given information by the Department for Land Affairs. The latter apparently did not have a central data base on lands for sale, and the use of agents proved to be too costly for the community.
- Cumbersome administrative procedures involving approval by the Provincial Approval Committee of the DLA made the process drag along.
- The quest for suitable land involved considerable expenses in transportation and communication and put a strain on the meagre resources of the grant applicants,
- The power gap between community members and commercial farmers willing to sell was considerable: educational differences, the degree of acquaintance with capitalist market principles and language barriers made negotiations and the assessment of the overall condition of land for sale difficult.

In 1997, NKUZI began supporting the Faranani Tshitale application by handling correspondence with the DLA and other Government agencies, enquiring about progress made, and training some of the applicants in those skills required for approval of the grant. All these efforts were, however, to no avail. The apparent lack of experience of DLA officials themselves in handling the administrative procedures was exemplified by the lack of a proactive information policy on the availability of grants via SLAG and on the details of the application process. The efforts of the community were continuously frustrated by numerous administrative hurdles and requirements that had to be fulfilled. Eventually, the applicants never received a grant under the SLAG scheme and in early 2000, the new Minister of Agriculture and Land Affairs, Ms Thoko Didiza pronounced a moratorium on the approval of new projects under the redistribution programme because of the many problems that had been identified.

### **Current state of affairs**

In 2001, SLAG was replaced by the *Land Redistribution for Agricultural Development* programme, itself part of the new *Land Redistribution Programme* (LRAD), which was intended to remedy the shortcomings of SLAG. The LRAD introduced a new set of requirements for its potential beneficiaries. Instead of the old system, in which disbursement was based on means-testing (a monthly income not higher than Rand 1500), LRAD requires a minimum contribution of Rand 5000 (~ Euro 700) per person in order to qualify for the disbursement of a grant of Rand 20,000 (~Euro 2800). The amount of the grant rises on a sliding scale in proportion to the applicants input from a minimum contribution of Rand 5000 and a grant equivalent of Rand 20,000 to a contribution of Rand 400,000 and a grant equivalent of Rand 100,000.

With the inception of the new programme, the Faranani Tshitale applicants once more had to make themselves knowledgeable about the formalities of the new application process. The Ministry of Land Affairs did not offer any straightforward procedure of converting an application filed under the old SLAG scheme into one under the new LRAD. For all but a handful of applicants, the change from an income determined assessment of grant qualification to an input determined one proved to be an insurmountable barrier. A fact none to surprising since it is barely possible for most small-farmers of the community to eke out a meagre living off the low quality lands of the former "homelands". Equally difficult to fulfil for the community members, unaccustomed to the language and techniques of formal business culture, was the condition that applicants had to demonstrate the future viability of the project by presenting a business plan – a condition that had already rendered the SLAG application process inaccessible to many potential applicants. The entire grant application process has ground to a standstill since the introduction of LRAD. For the individual applicants, the single most formidable barrier to accessing the grants is the lack of Rand 5000 per head.

### **2.2.2. The Right to Food and Agrarian Reform**

The area, in which Tshivuyuni is located is densely populated as a consequence of Apartheid policies through which the African population was forcibly moved into the two former "homelands" Venda and Gazankulu. In spite of efforts of the present Government to develop the area, many infrastructures are still insufficient – for example the national electricity grid has not yet been extended to Tshivuyuni. The

most pressing problem, though, is the lack of farming land, largely due to over-crowding and the dearth of capital that would allow for more intensive agriculture, in particular irrigation. Since the area is drought-prone and the land of low quality, irrigation is necessary in order to grow food crops to supplement the diet. Therefore, reliance on rain-fed agriculture regularly leads to crop failures. All the community members interviewed complained about the lack of sufficient food and stated that they ate one to two meals per day – usually maize pap - and that children were sent to school without lunch boxes. The lack of variety of diet is one of the consequences of the lack of land and the low soil quality. If the community had better quality agricultural land, the diet could be supplemented with vegetables, tubers and fruit that community members are eager to plant but find difficult to do so under the given conditions.

The situation of the community shows how the redistribution policy of land reform has been unable to address the acute need for good quality agricultural land of in the rural areas of of the former "homelands". The non-implementation of the redistribution programme and its deficits directly lead to violations of the right to food.

## **2.3. Maswiri**

### **2.3.1. Background**

#### **The facts**

40 km to the south of Messina, the border town with Zimbabwe lies the fashionable "Aventura" resort at Tshipise, whose mineral springs attract holiday-goers from all over the region – mainly wealthy South Africans and Zimbabweans. A few kilometres beyond the heavily protected precinct begin the orange farms of André Fourier, one of the largest and most powerful commercial farmers of the Limpopo Province, locally known as "Maswiri". In 1998, 373 farm workers were dismissed from the "Maswiri Boerdery", one of Mr. Fourier's farms, for going on strike and ordered to leave the farm, their home, after a number of their colleagues had been arrested on what proved to be false charges by the farm owner.

The order was a contravention of the provisions of the *Extension of the Security of Tenure Act* (ESTA) of 1997. Sections 6, 10 and 11 of ESTA lay down that farm evictions may *legally* take place in the event of specific circumstances - such as farm residents causing material or physical harm to others or engaging in threatening behaviour - and after a set of procedural requirements has been fulfilled by the farm owner and the authorities. According to ESTA, it is up to the courts to determine whether one of these facts holds and a subsequent eviction order must be issued by the court and carried out by the authorities in compliance with the procedures laid down in the act. The farm workers and their families, numbering altogether some 700 people, refused to comply with the illegal and arbitrary order to leave the farm. The farm owner then undertook a further series of steps that were again in contravention of legal provisions – and this in cooperation with the jurisdiction and the local police. In 1999, the High Court issued an order that restricted the movements of the dismissed workers. When the workers made use of their right to free movement on the farm, 192 of them were arrested by the police and charged

with trespass. The charges later had to be dropped for lack of evidence. In late September 2002, the dismissed farm workers were still holding out, but living conditions had become very harsh for them due to repressive measures by the farm owner and his security personnel.

### **Current state of affairs**

The situation of the farm workers and residents on the farm visited by the fact-finding mission is characteristic for that of much of the province. Violations of farm workers' human rights abound and the impunity of such abuses strongly suggests that **tenure reform** has failed in securing and protecting the rights of farm workers and their families.

The members of the mission sneaked onto the farm premises a kilometre or so away from the main gate so as not to be seen by farm security in view of long standing systematic harassment of the farm residents by the latter, and were shown around by a farm workers. On the farm, the miserable living conditions of those dismissed immediately became manifest. The families concerned are cramped together on the small portion of land that has been left to them and due to the lack of space live in tiny wattle huts with thatched roofs. However, housing and sanitary conditions are extremely bad even for those still employment. In one instance, Zimbabwean farmhands and their families – altogether some 30 people – were accommodated in a corrugated-iron barrack measuring some fifteen by three metres.

The farm owner has devised a set of repressive measures in order to illegally drive the dismissed farm workers out. Dismissed farm workers and their family members are neither allowed to plant crops to supplement their scarce diet, nor are they allowed to collect firewood within the precincts of the farm. Likewise, the construction of latrines has been strictly forbidden. The ever-present stench of human faeces scattered alongside paths, bushes and trees bears testimony to the inhumane and degrading treatment of the workers and their families. Compounded by the lack of pipe-borne water and electricity, a picture of abject misery emerges, which is but a poignant example of how farm workers live and work on commercial farms in the Limpopo Province. At the moment, the situation of the dismissed farm workers is still insecure. Though they have not been forced to leave the farm yet, many of them find themselves searching for work on neighbouring farms or leaving the area altogether – with no other place to go than the over-crowded former homelands or the squatter settlements on the outskirts of towns and cities.

### **2.3.2. The Right to Food and Agrarian Reform**

During the hearing conducted by members of the fact-finding just outside the farm premises with representatives of the dismissed farm workers and employed farm workers, it emerged that the food situation on the farm is very precarious. The dismissed farm workers interviewed generally eat one meal per day, usually a portion of maize pap, mostly without any vegetables or meat. All of those interviewed complained about insufficient food. The situation is aggravated by the farm owner's arbitrary measure aimed at driving away the dismissed: there is a total prohibition of planting food for subsistence within the farm precincts. However, even employed farm workers, who have a regular income and, who unlike those dismissed, need not count solely on support networks or petty jobs for their food, complained about being unable to feed themselves adequately. In fact, the salaries paid on the farm – and in the region as a whole make it barely possible to survive on wage labour alone. Workers are usually paid by

the crate of oranges plucked and with an average of 20 crates a day and obtain an approximate monthly salary of Rand 260 (Euro 30). Many workers however complained about irregularities such as crates not being properly counted, leading to lower pay. The position of Zimbabwean farmhands is particularly precarious. Due to agreements with the neighbouring country, there is a controlled influx of immigrant labour onto the farms of Limpopo province. The dire economic situation of Zimbabwe allows farm owners to pay them even less than their South African counterparts, which contributes to the generally low level of salaries on farms.

The workers interviewed mentioned that pregnant women worked regularly until childbirth, after which their contracts were usually terminated with them having to reapply for a new contract when able to work again. Given the intensive use of pesticides on the plantations to which workers are continually exposed, this is a disturbing fact – particularly because cases of intoxication through pesticides seem to be fairly common. Workers complained that the doctors in charge usually diagnosed those suffering from intoxication symptoms with a "headache" in order to cover up the hazardous way in which pesticides are used. It was also mentioned that sick leave and hospital fees are generally deducted from pay.

Placed in the wider context of agrarian reform, the importance of ESTA in aiming at an improved security of tenure for farm workers cannot be overestimated. However, members of the fact-finding mission found themselves confronted with a barely describable level of poverty and deprivation on the farms, where violations of the provisions of ESTA and the right to food abound. It is clear that beyond the shortcomings of ESTA itself, which many critics point out, the lack of its implementation on the farms is the major impediment to improving the livelihoods of farm workers and achieving effective agrarian reform in this area.

### **3. Conclusion**

The cases presented illustrate the problematic aspects of the South African land reform programme. In these cases, the programme has been unable to provide access to land to rural communities and has not managed to effectively secure and protect the tenure and land usage rights of farm workers and farm residents. It has crystallised that the land reform programme has not performed sufficiently well in other parts of the country either. The dismal performance of the programme has direct human rights implications for the South African State. Under international and South African law, the State has the obligations to *respect*, *protect*, and *fulfil* the right to food.<sup>23</sup> The obligation to *respect* access to adequate food requires State organs not to prevent such access either actively or by neglect, as has happened in the Gumbu-Mutele and Faranani Tshitale cases. The obligation to *protect* requires measures by the State to ensure that individual or business interests do not deprive persons of their access to adequate food. The situation on the Maswiri farms is such an instance of the violation of the *protect* obligation. The obligation to *fulfil* entails that the State proactively engage in activities aimed at strengthening people's access to food-producing resources and the means to acquire adequate food.

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<sup>23</sup> See General Comment no 12, paragraph 15 for a reiteration of these State obligations under international human rights law. The South African Constitution 1996, s 7(2) also imposes obligations on the State with regards to its Bill of rights, which includes the right to food: "*The State must respect, protect, promote and fulfil the rights in the Bill of Rights.*"

In countries with an extreme inequality of land distribution, a properly implemented redistributive agrarian reform is central to giving socially vulnerable groups such as landless rural people, or other particularly impoverished strata of the population such as farm workers access to adequate food by providing land – which is "*the means for its procurement*".<sup>24</sup> In fact, in countries such as South Africa, the effective implementation of a redistributive agrarian reform is part and parcel of the obligation to *fulfil* the right to food. International law sees "*special programmes*" for such groups as essential in realising economic access to food.<sup>25</sup> The absence of a functioning agrarian reform programme – which is all too obvious in view of the figures on the redistribution of land after 10 years of land reform – therefore constitutes a violation of the right to food. This is even more so the case, as a very low percentage of those qualifying for coverage by the South African social security system actually receive payments that would allow them to purchase food. The majority of those that do not receive payments are the poorest of the poor, particularly those residing in the rural areas and who suffer most from hunger and malnutrition.<sup>26</sup> The underfunding of the South African land reform programme constitutes an additional breach of both international human rights law and South African constitutional law in the light of the provisions on *progressive realisation* contained in international law and the South African constitutional text. It is to be doubted whether the South African State has harnessed its "*available resources*" for the realisation of the right to food, let alone the implementation of its land reform programme in view of current budgetary priorities.<sup>27</sup>

#### **4. Recommendations**

It is recommended that the South African State take immediate measures to end its violation of the right to food of the three communities above by:

- entering into negotiations with the Gumbu-Mutele claimants in view of a final restitution to the community of the land in the Madimbo Corridor.
- finding an unbureaucratic way of converting the application of the Faranani-Tshitale applicants for funds under the SLAG scheme into one under LRAD. Given that most applicants cannot pay the required Rand 5000 contribution, creative options must be developed for the applicants to access LRAD in spite of their lack of funds.
- enforcing the application of the relevant provisions of ESTA and thereby preventing the eviction of farm workers and residents from the Maswiri farms; enforcing long-term security of tenure on the Maswiri farms; enforcing legislation on minimum wages, health and other relevant social legislation;

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<sup>24</sup> General Comment no. 12, paragraph 6

<sup>25</sup> General Comment no. 12, paragraph 13

<sup>26</sup> See the final report of the *Committee of Inquiry into a Comprehensive Social System for South Africa* (2002), the so called 'Taylor Committee', which outlines some of the inadequacies of the social security system.

<sup>27</sup> In order to achieve a redistribution of only 30% of agricultural land over 15 years as targeted by the South African Government, an expenditure of approximately Rand 1.7 billion per annum is needed over the next fifteen years. The Government has however budgeted around Rand 500 million per annum for the next three years for redistribution *and* restitution (source: NKUZI Development Association, [www.nkuzi.org.za](http://www.nkuzi.org.za)).

efficiently monitoring the application of all relevant legislation and obliging local administration to cooperate.

The documented cases are part of the wider complex of problems associated with the land reform programme in South Africa. Many of these problems have been analysed since some time now and are continuously being discussed within South African civil society and Government. Some of the policy recommendations that have come out of these analyses for making the land reform programme effective are the following:

- review systematically land restitution and redistribution projects implemented during the last decade as well as the assumptions on which these models have been based.
- ensure the large-scale redistribution of land and resources, accompanied by the securing of tenure rights in practice as well as in law.
- provide the necessary budget for a comprehensive agrarian reform programme.
- increase direct access to the resources for basic household food production through the distribution of idle State land.
- make use of the provisions of the South African Constitution for "just and equitable" land expropriation for land reform purposes, in which compensation would not simply be based on market value.
- replace the "willing buyer – willing seller" principle of land redistribution by a systematic assessment and designation of land for redistribution.
- fully involve women into agrarian reform and enforce women's land rights.
- put land reform into the centre of a rural development strategy as envisaged by the "Reconstruction and Development Programme" of the ANC and understand land reform as a basis for creating sustainable rural livelihoods beyond "redressing past injustice".
- ensure the provision of support services, such as credit schemes, farm-inputs, marketing and transport, and extension services.
- take the socio-economic differentiation of the rural population into account in policy design.
- acknowledge that land reform is not only of relevance to the rural world but equally so to peri-urban communities and work towards securing land rights for such communities.
- recognise the intrinsic value of land for disadvantaged South Africans beyond its productive and commercial value and give subsistence production a significant place in land and development policy.
- account for the linkage between land reform, the radical liberalisation of the agricultural sector in South Africa, and economic transformation in general.