

# USING THE JUSTICE SYSTEM TO PROMOTE INTERNATIONAL BEST PRACTICE

ILC'S DATABASE OF GOOD PRACTICES

AFRA

ASSOCIATION  
FOR RURAL  
ADVANCEMENT

## LEARN, SHARE AND BE INSPIRED!

Country: **South Africa** - Principal Organisation: **AFRA**

### ABSTRACT

The Association for Rural Advancement (AFRA) partnered with the Legal Resources Centre (LRC), a South African human rights organisation, to launch a class action lawsuit against the Government of South Africa on behalf of a class of farm dwellers known as labour tenants. Under the 1996 Land Reform (Labour Tenants) Act, labour tenants were granted rights to apply for ownership of the land they

occupied. However, the government has failed to implement this law, and 19,000 labour tenant claims remain pending. AFRA and LRC sought to use international best practices to create a new legal mechanism, through the appointment of a "Special Master" to oversee the implementation of this legal provision by the Department of Rural Development and Land Reform.

### ILC COMMITMENTS



**SECURE  
TENURE RIGHTS**



**TRANSPARENT AND  
ACCESSIBLE INFORMATION**

# COMPETENCIES

## AREAS

**COMMUNITIES,  
INDIGENOUS AND  
RELIGIOUS INSTITU-  
TIONS, AND RIGHTS  
RURAL LAND  
GOVERNANCE  
PROTECTION OF  
HUMAN RIGHTS**

## SKILLS

**USE OF MEDIA AND  
COMMUNICATION  
ADVOCACY AND  
CAMPAIGNING  
LEGAL ASSISTANCE,  
LEGAL EMPOWERMENT,  
AND ACCESS TO JUSTICE  
APPLICATION OF LAWS,  
GUIDELINES, AND  
STANDARDS**

2

## BACKGROUND

On 22 March 1996, the Land Reform (Labour Tenants Act) was signed into law. The law was designed to redress historical injustices in South Africa, and to secure tenure and land ownership for a small group of previously disadvantaged people. According to the Act, labour tenants who worked on a farm without pay, in exchange for the right to live on and use a portion of that farmland for their sustenance, would qualify for redress by acquiring land title over that portion of land.

By 31 March 2001, the cut-off date for applications, around 22,000 labour tenants had lodged claims with the Department of Rural Develop-

ment and Land Reform. In 2011, a large group of labour tenants who were facing eviction from their homes approached AFRA for assistance. These labour tenants, living in abject poverty on a farm belonging to one of South Africa's richest schools, had applied for land title under the Act. However, the government had failed to process their applications and they faced being evicted by a financially powerful institution.

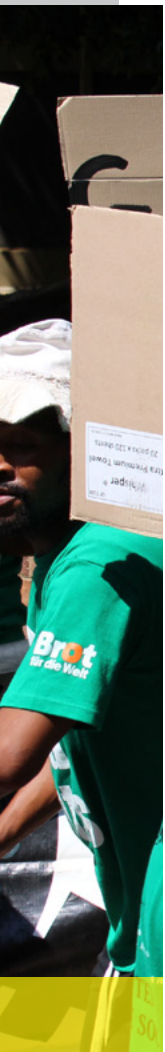
Having assessed the root causes of landlessness faced by the labour tenants, AFRA realised that their plight was not unique: around 19,000 labour tenant applications remained unprocessed ten years after the Act became law.

## THE CHALLENGE

On the surface, the key challenge appeared to be a lack of will by the Department to process labour tenant claims. The second challenge appeared to be its lack of capacity to manage 19,000 unprocessed applications. As the court process unfolded, it became apparent that the government was plagued by deeper problems. The court supported the applicants' requests for access to detailed information about the tenants' applications for title, but the Department failed to justify its failure to process them.

The overarching challenge that emerged was bringing about a shift in thinking within government. This was evidenced by instructions from

the Minister suspending all land redistribution processes; this meant that land was no longer being transferred to claimants but rather to the State, which would in turn lease it out to the labour tenants on condition that they were agriculturally productive. There were no announcements of a formal policy shift, nor any legislative changes to the Labour Tenants Act. Instead, a series of internal memos was circulated, barring land redistribution to labour tenants. Furthermore, it emerged that the Department had no proper record of land claims and lacked the necessary budget, capacity, and resources to process them.



## OVERCOMING THE CHALLENGE

In July 2013 AFRA, with the assistance of the human rights organisation Legal Resources Centre (LRC), filed a successful class action lawsuit at the Land Claims Court on behalf of all outstanding labour tenant claimants against the Department of Rural Development and Land Reform, compelling it to fully implement the Land Reform (Labour Tenant) Act. LRC and AFRA applied for a structural interdict or supervisory order to be overseen by the Court, for systemic relief in respect of all outstanding labour tenant applications.

The Department's continuing failure to meet court deadlines over many years proved that ordinary court supervision was ineffective. After researching international best practices to assist ineffective government departments,

AFRA and LRC proposed an innovative legal mechanism never before used in South African courts: the appointment of an independent "Special Master". The Special Master's role included assisting the court and the Department to ensure speedy resolution of the claims.

The Department opposed the appointment of a Special Master because this new concept could potentially be used in other cases where government had systematically failed to implement legislation. Instead, it offered to negotiate with AFRA. However, instead of engaging in negotiations in good faith, the Minister made unilateral decisions and tried to dictate unreasonable and prejudicial terms. As negotiations failed, the case was referred back to the court to argue for the appointment of a Special Master.

## MOVING TOWARDS PEOPLE-CENTRED LAND GOVERNANCE

The application by LRC and AFRA was successful, resulting in a ground-breaking judgement on 8 December 2016. This stated:

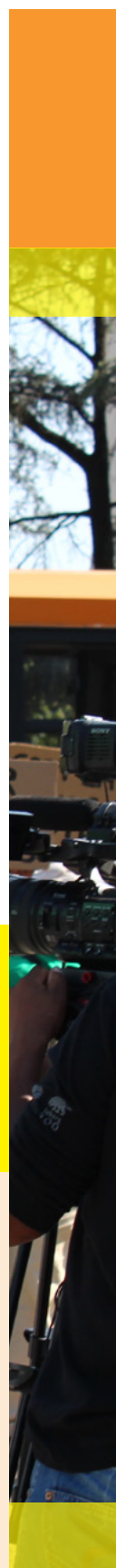
"[1] The First Respondent's failure to process or refer to the Court applications brought under Section 16 of the Land Reform Labour Tenants Act, No 3 of 1996 ('the Act'), is declared to be inconsistent with Sections 10, 25(6), 33, 195 and 238 of the Constitution of the Republic of South Africa, 1996.

[2] A Special Master of Labour Tenants ('Special Master') shall be appointed as set forth hereunder."

Following this success, the Department established a dedicated Labour Tenant Project, and a Project Manager was appointed in March 2017. The Department has also es-

tablished national and district labour tenant forums in the province of KwaZulu Natal, which has the highest number of labour tenants. For the first time, labour tenants have a chance to directly engage in decision-making. The Department has undertaken extensive desk and field research to create a database of claimants, and will release a claims implementation plan.

Although the Department is appealing the Special Master judgement, the case has set a legal precedent in South Africa and has been quoted in other critical social justice and land governance cases. The appointment of a Special Master has proved to be an innovative tool to address critical challenges in the country's land restitution processes. The South African justice system now has a powerful tool to hold government accountable.



# THE GOOD PRACTICE IN FIVE SIMPLE STEPS

1

**Research on labour tenant land claims:** AFRA undertook research to establish the extent to which labour tenant claims had been neglected. This included desk research of information published by the Department relating to labour tenant claims, and intensive field visits to two identified locations to hold workshops with farm tenants and to gather details of all labour tenant claimants in the area. This also involved engagement with the Department, the referral of cases, and requests for information.

2

**Working in partnership:** As AFRA did not have the internal legal capacity or funding for a class action, it established a partnership with a strong national human rights organisation, LRC. While AFRA was able to do all the fieldwork, including the collection of data and affidavits from labour tenants, and to engage in advocacy to build national interest, solidarity, and media coverage around the case, LRC was able to provide the legal expertise and funding needed for litigation. The dynamic partnership between AFRA and LRC was critical to the success of the case.

3

**New legal mechanism:** Instead of accepting the shortcomings of the South African court supervision process and the Department's failure to comply with court orders, AFRA and LRC researched international best practices and sought new solutions. They proposed a "Special Master" tool, which had been used in the United States and in India to compel government compliance with court orders.

4

**Media coverage and solidarity with other stakeholders:** This case had received little attention or interest for many years. However, in January 2016, when it returned to the Land Claims Court, AFRA embarked on an extensive media campaign and ensured the attendance of labour tenants and NGOs from around the country. The media campaign resulted in coverage on a number of national television channels and attracted attention from a wide range of stakeholders, including parliamentarians, who exerted pressure on the Department to provide redress.

5

**Evidence-based case:** It took many years of careful research, infinite patience, extensive consultations, and strong legal arguments to have the Special Master court order granted. The legal team grew from a handful of people at the beginning of the trial to a team including five senior and junior counsels for the final arguments. It took years of continuous research to produce the necessary evidence for trial. This included conversations with labour tenants to capture their realities, statistics, and evidence of the government's failure to implement the law.



## 3 THREE FACTORS OF SUCCESS AND REPLICABILITY

1

The first key factor was the ability to establish the case as a class action. This meant that labour tenants were recognised as a particular class of people who shared rights and interests. This immediately elevated the status of the case and enabled broad measures to be put in place at a national level. This is a key legal tool that can be adapted to different classes of people.

2

The second factor was research on international best practice around similar issues. This identified the concept of the Special Master and enabled it to be tailored to the South African context.

3

The third element was building strong partnerships with experts in different fields and with different resources. These included media, human rights organisations, and influential individuals across the country.

5

## LESSONS LEARNED

Of the numerous lessons learned, one that stands out is the importance of using information gained from engaging with local communities as a foundation for a case. When

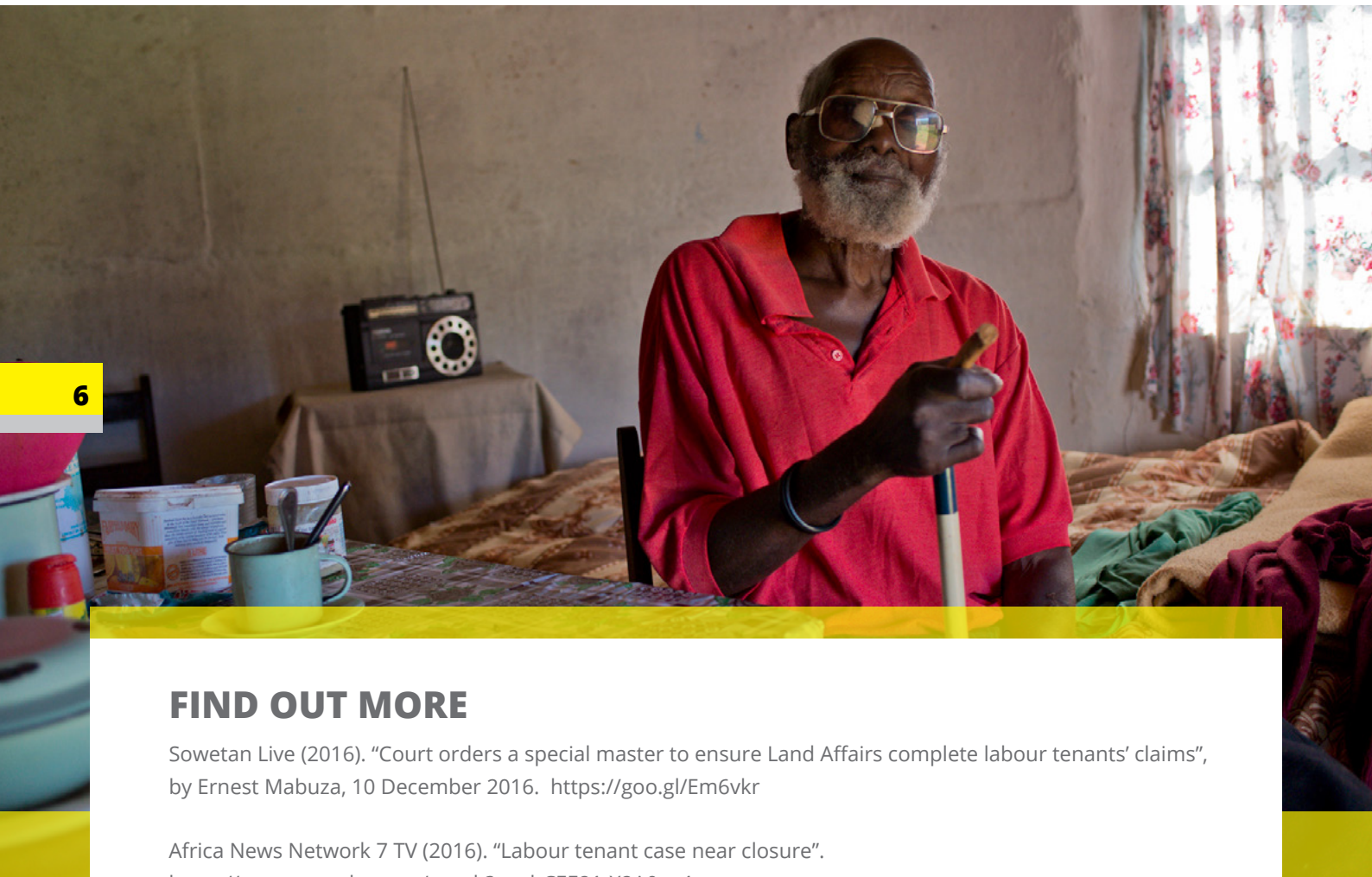
AFRA went through a period of reduced funding, it had to be resourceful, and created labour tenant consultation forums. Through these forums, the labour tenants organised them-

selves in communities to attend court hearings. The resilience of the labour tenants has inspired debate and engagement at a national level.

## FIND OUT MORE

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