# Land News: Weeks 39 - 42

South Africa Southern, Central and Eastern Africa 21<sup>st</sup> September – 18<sup>th</sup> October 2020

News curated via knowledgebase.land



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### 1 SOUTH AFRICAN LAND NEWS

### 1.1 THE CHANGING COVID CONTEXT

As of 18<sup>th</sup> October 2020, the cumulative number of detected Covd-19 cases was 703,793, with the officially reported numbers of deaths standing at 18,471. The South African National Treasury is due to expend an additional R6 billion to extend the special relief grant for a further three months. However, the Minister of Finance is on the record as saying that South Africa could not afford to permanently pay the special allowance of R350 a month that was announced in April as part of a R500 billion Covid-19 relief package. A wide range of organisations, including the main trade union federations COSATU and SAFTU have argued that the time is right to extend a basic income grant to all South Africans. Given the impacts of the pandemic, on unemployment and food security, the special grant is a lifeline for 13 million South Africans at present. Numerous commentators have warned of extreme hardship and massive social unrest in a context of joblessness and hunger if the grants are withdrawn.

Prof Mark Tomlinson from the Faculty of Medicine at Stellenbosch University, writing in the Daily Maverick (12 October 2020) notes however that we have a problem with data.

It's a near certainty that the official figure of 17,248 Covid-19 deaths (as of 8 October 2020) is the tip of the iceberg. Our excess mortality rate (33,000 as of the beginning of August) suggests that close to 50,000 people have died from Covid-19.

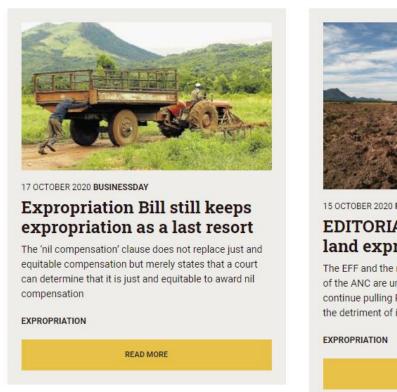
He presciently observes that "what we are experiencing now is a mild dress rehearsal for the future horrors of climate breakdown". Tomlinson highlights the differential impacts of the pandemic and how the weight of it has fallen on poor black South Africans - particularly children.

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Senior Research Associate at Phuhlisani NPC

We have a hunger pandemic in South Africa. The future of any country begins with its ability to ensure its citizens, and especially its children, have enough to eat. Children experiencing prolonged under-nutrition will become stunted, with profound implications for their functioning in school, and later in their capacity to become productive members of society. If we cannot do better in this regard, perhaps we should simply switch off the lights.

### 1.2 EXPROPRIATION

There seems to be mounting public confusion about the relationship between the new Expropriation Bill, the renewed process to amend Section 25 of the Constitution and the function of the Land Court Bill.





Advocate Tembeka Ngcukaitobi provided a succinct and scathing critique of the process in a Tweet dated 11 October:

So far so confusing about the new Expropriation Bill: what is the link to the Section 25 process? How does it fit into land restitution? How far with the Land Court Bill? Looks like we are back to the land of policy confusion, lack of coordination, action without strategy.

A <u>statement</u> released by the Interministerial Committee on Land Reform tried to clarify the process and the current status of the <u>Expropriation Bill, 2020</u> which is set to replace the current Expropriation Act of 1975. The new Bill has been certified as constitutional by the Chief State Law Adviser and was gazetted on 9 October 2020. A useful summary of key features of the Bill appears in Businesstech (12 October 2020)

The Interministerial Committee has stated that:

We must emphasise that the drafting of the Expropriation Bill was separate from the work of Parliament in reviewing Section 25 of the Constitution. The Bill has been drafted to be consistent with Section 25 of the Constitution as it currently stands.

This means that should Section 25 of the Constitution be amended, then the Expropriation Bill of 2020 would also need to be amended to be consistent with the Constitution as the supreme law of the land. The Expropriation Bill in its current form has been mostly positively received by a range of commentators, particularly those who argue that the Constitution, as it currently stands requires that compensation must be just and equitable, a formulation which allows for circumstances in which it could be just and equitable for zero compensation to be paid. Such a determination however can only be made by a competent court.

Meanwhile the Parliamentary committee first established on 25 July 2019 to consider the expropriation issue has confirmed that public hearings on the <u>Constitution 18<sup>th</sup> Amendment Bill</u> to allow for land expropriation without compensation will resume later in October. It will be interesting to see how the severe economic downturn linked to the pandemic will impact on the continued appetite of policymakers to prioritise land expropriation going forward.

### 1.3 FARMS AND FARMWORKERS

Farm murders have had a high profile in recent months, particularly following the cruel murder of 21 year old Brendin Horner, a farm manager in Senekal on 1<sup>st</sup> October. The murder has received widespread local coverage and made international news, including reportage in the New York Times (16 Oct 2020).





The murder prompted a response from <u>President Ramaphosa</u> writing in his weekly newsletter on 12<sup>th</sup> October.

No matter who we are, no matter what community we live in, no matter our race, creed or language, we should be as deeply affected by the death of Brendin Horner as we are by the many other South Africans who die violent deaths each year.

### Ramaphosa continued:

Contrary to the irresponsible claims of some lobby groups, killings on farms are not ethnic cleansing. They are not genocidal. They are acts of criminality and must be treated as such.

The Citizen (<u>13 October 2020</u>) reports that one of the two men arrested for his murder has 16 previous arrests and four convictions.

The provocations of the EFF and the spectacle of supporters singing *Kill the Boer, Kill the Farmer* in demonstrations outside the courtroom (<u>Daily Maverick 16 October 2020</u>) where two men appear on charges of murdering a farmer seem calculated to ignite what Ramapahosa referred as "the tinderbox of racial hatred" and to fan these flames for media coverage and attempted political gain.

In the words of the President "we must resist any attempts to...mobilise communities on racial lines.

We must not be blinded by our own prejudices to the suffering and pain of others. It should not matter to us if the victim of violent crime is black or white.

To do so would be a betrayal not just of this country's founding principles, but of our own humanity.

As Adam Habib observed late last year, (<u>Daily Maverick 18 December 2019</u>) the accelerating creep of crude racism and authoritarian fascist thinking infecting and polarising political discourse in South Africa "must be firmly responded to and must be treated as a violation of the values of our liberation movement and of our Constitution itself".

There is a context to these events which contributes to the systemic violence in South Africa – a country which has the world's fifth highest murder rate. In 2019/20 some 58 people were murdered every day, at a rate of 36,3 murders per 100,000 people. (<u>Africa Check 4 August 2020</u>). According to police statistics in the 2019/20 financial year there were 21,325 murders in South Africa, of which 49 were on farms and smallholdings. (<u>News 24 31 July</u> 2020).

Prior to the onset of the pandemic, the combination of intergenerational rural poverty, food insecurity and casualisation of much work in the agricultural sector had resulted in deep rural poverty traps constraining millions of citizens with precarious livelihoods. People are going <a href="https://example.com/hungry:100">hungry:100</a>.

'In October 2020, the average cost to feed a child a basic nutritious diet cost R693,05. The Child Support Grant of R440 a month is 25% below the food poverty line of R585 per capita and a further 37% below the October cost of R693,05 to feed a child a basic nutritious diet'. Pietermaritzburg Economic Justice and Dignity

The ongoing capture and asset stripping within state institutions by the corrupt, including within the police, closes the exits to prevent the poor from escaping these desperate situations. Greg Nicholson and Bheki Simelane (<u>Business Maverick 15 October 2020</u>) provide the essential backstory to Brendin Horner's murder in which "both black and white farmers dismissed race when it came to crime on

farms". Farmers in the area point to the prevalence of stock theft and accuse members of local police of <u>colluding with stock thieves</u>.

Official statistics indicate that farm murders have increased since the end of the hard lockdown in South Africa, which imposed tight restrictions on freedom of movement. In July of this year Dr Johan Burger of the Institute for Security studies (News 24 20 July, 2020) forecast that:

In the months ahead with the weakening economy, there are going to be many more people jobless and there are going to be higher levels of poverty which creates a whole host of social problems. As people start looking for food, crime will likely increase across the board including farm murders and attacks in the rural areas which are soft targets, and there is a belief that farmers are rich which means they might be targeted.

In other news and on the other side of the coin, GroundUp (28 September 2020) reported on a webinar organised by the Women on Farms Project at which the Director-General for the National Department of Rural Development and Land Reform was reported as stating that a better relationship was needed between government and civil society organisations to fix the problems facing farmworkers. According to the DG:

We need to go back to the element of tenure security which has been abandoned. Since 2010 there has been little budget expenditure set aside for this purpose. As much as there was money set aside, there has been very little land acquired for farmworkers generally.

The DG highlighted the lack of state capacity to monitor land and tenure rights infringements on the ground and pointed to the need for a social compact with civil society to drive land reform.

GroundUp also reports on the case of <u>Antony Koopman</u> who was allegedly assaulted by two farmers in Murraysberg in the Western Cape in February who accused him of stealing livestock. According to Koopman he was looking for a job. However, the incident is reported to have taken place at 9.00 pm. The farmer's attorney told GroundUp that "it does not make sense that Koopman went looking for work so late in the evening. He said that one of the farmers had woken up and went outside when he heard his dogs barking. The farmer allegedly saw Koopman chasing some of his livestock".

### **1.4** FOOD SECURITY

Dennis Webster writing in New Frame (<u>2 October 2020</u>) highlights how the grant top-ups in the new social relief of distress grant have been crucial for keeping food on the table in impoverished homes during lockdown. He also argues that these grants are likely to play an important role in "the long restart of South Africa's economy".



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02 OCTOBER 2020 NEW FRAME

# South Africa's continuing economic pandemic

Grant top-ups and the new social relief of stress grant must be extended beyond October as crucial indicators show that the country's economic prospects remain grim.

FOOD SECURITY

Leila Patel writing in the Conversation and reproduced in Bizcommunity (15 October 2020) highlights how "hunger hurts more than just individuals and families that struggle to buy food: its effects ripple broadly into society with long-term consequences". Research findings indicate that the temporary employee/employer relief scheme has been vital to lifting many households out of food insecurity, coupled with the reintroduction of the National Schools Nutrition Programme in July. She cautions:

"The Covid 19 pandemic isn't even nearly over. Some countries and regions are instituting new lockdown's and reporting or bracing for new waves of the virus. While the government is facing a tough budget situation, the country faces a serious hunger crisis. South Africa simply cannot let up on the provision of the additional social grants and emergency relief".

Estelle Ellis (Maverick Citizen 17 October 2020) takes us to the poverty stricken Eastern Cape Karoo dorp of Klipplaat, a small town, 80 km south of Aberdeen. The MEC for Social Development in the province has recently reported an increase in infant mortality due to child malnutrition. Of the 1.8 million households in the province, approximately one quarter suffer from food insecurity due to poverty. Klipplaat was a railway town and when the station closed so did local livelihood opportunities. The town also lacks water which must be trucked in from Graaf Reinet 175km away.

A disturbing story in Groundup by Sarah Wild (7 October 2020) reports that funding to South Africa's Centres of Excellence has been cut by the National Research Foundation in a context of Covid-19 related fiscal austerity. These include the Centre for Invasion Biology and the Fitzpatrick Institute of African Ornithology. With the impacts of climate change due to bite deep in the South African landscape, such funding cuts are particularly worrisome.

The closure of the Centre for Invasion Biology would have global repercussions, says <u>Piero Genovesi</u>, Chair of the Invasive Species Specialist Group for the International Union for Conservation of Nature.

It "would have disastrous effects on our global efforts to prevent and mitigate the impacts of invasive species," he says. "Not only would it significantly reduce the research on invasion biology, but it would also deprive the decision makers of an important source of scientific knowledge to base their decision on".

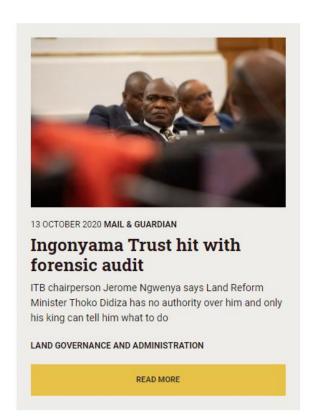
### 1.5 LAND GOVERNANCE AND ADMINISTRATION

An important <u>series of videos</u> have been produced through an inter-institutional collaboration between the University of Cape Town and the University of the Western Cape, with input from civil society.

The video series was an initiative of the Land Network National Engagement Strategy (LandNNES) in South Africa, which approached Dr Simon Hull, a senior lecturer in UCT School of Architecture, Planning and Geomatics to help conceptualise and produce the videos. Dr Rosalie Kingwill, a leading tenure researcher in South Africa and Tshepo Fokane, principal researcher for the Alliance for Rural Democracy also contributed to the design of the series. The video content unpacks everything from land policy and land management, to land administration, land tenure, land rights and land development, as well as the overarching concepts of land governance and land information.

Professors Kirsten and Vink writing in Business Day (<u>5 October 2020</u>) pick up on a judgement in the Gauteng High Court on 20 August, which could have important implications for South Africa's land reform programme. This follows a 22 year delay in the promulgation of the Subdivision of Agricultural Land Act Repeal Act (Act 64 of 1998). The South African President never signed the Repeal Act into law, which means that agricultural land can only be subdivided with the approval of the relevant minister. The authors argue:

Without these restrictions on subdivision, there could be many opportunities for commercial farming operators to contribute to or donate land for the land reform programme... Getting rid of the restrictions on subdivision, but finding a sensible mechanism to protect high potential agricultural land, could facilitate access to land for many disenfranchised and disempowered communities in South Africa.





The contestation around the Ingonyama Trust continues with the most recent development being the Minister's authorisation of a forensic investigation into the finances of the Trust and to investigate allegations that the chairperson Jerome Ngwenya used the public entity to enrich himself. Specialist writer on land issues for the Mail and Guardian, Paddy Harper (13 October 2020) reports however that the chairman has refused to accept the Minister's authority to appoint the investigation, saying that he is only accountable to King Goodwill Zwelethini. The ITB receives around R22 million a year from the government, but takes in around 90 million Rand in revenue from commercial and residential leases and mining rights. The ITB is facing court proceedings challenging its rights to levy residential leases to people living on communal land managed by the Trust.

Harper reports that the Trust chairperson has extensive business interests and that one of his companies runs a service station on land leased from the ITB. According to the 2017/ 18 ITB Annual Report, Ngwenya owed R280,000 in unpaid rentals for the property which it occupied since 2015.

Athandiwa Saba, also writing for the Mail and Guardian (<u>9 October 2020</u>) reports how a local municipality in the Free State sold land worth R60 million in 2018, but has yet to receive a cent from the sales. All indications point to the irregular use of state land and the allocation of valuable municipal resources to connected individuals.

### 1.6 LAND POLICY

All those active in the land policy space were shocked to hear of the untimely death of the Chairperson of the African Farmers Association of South Africa, Dr Vuyo Mahlati. Dr Mahlati acted as the Chairperson of President Ramaphosa's Land Reform and Agriculture Advisory Panel. She had also previously contributed to the work of the National Planning Commission and was President of the International Women's Forum SA. A government spokesperson paid tribute to Dr Mahlati saying:

"The country has lost a great visionary leader who impacted many lives, embraced challenges and has had a profound effect on the future direction of South Africa, particularly on agriculture as land issues".

In other developments the Minister of Agriculture Rural Development and Land Reform announced the release of 700 000 ha of state land for land redistribution. However no sooner than this announcement had been made than the questions started to be asked. Were there really 900 state owned farms which were vacant, idle and underutilised? Where was this land and did in fact the land already have people who occupied and made use of it? Prof Ruth Hall at the Institute for Poverty, Land and Agrarian Studies has questioned whether all the land set aside by government is in fact vacant. You can listen to an <u>interview</u> with her which appeared on TimesLive (<u>6 October 2020</u>). PLAAS also held a <u>webinar</u> hosted by Katlego Ramantsima with Ruth Hall and Tshepo Fokane on 8 October interrogating the release of the state land. Many more stories appear on our website linked to this topic in both the land policy and the land redistribution sections.

Dr Roland Ngam, programme manager for climate justice and agroecological transformation at the Rosa Luxemburg Foundation, Southern Africa has questioned whether the release of the 700,000 ha was driven by political expediency with another round of elections just around the corner. He argues that going forward land reform needs to do things very differently, proposing that government adopts "a 'big bang' approach to transfer land to hundreds of thousands of previously disadvantaged people quickly". Central to this strategy should be a process of "capping transferred farmland to 10 ha to 20 ha per plot, with a one off cash payment that beneficiaries can use from for a variety of things from building farmhouses, to buying inputs or farm implements".

While this looks like an interesting proposal and consistent with research findings which suggest that people want small pieces of land, the key issue is where the land is located, in what agro-ecological zone, whether it has access to sufficient water, what can be produced on it, how will produce find access to informal and formal markets and so on. Another key question is what is the state of the infrastructure on state land which will be redistributed through a leasehold scheme?

Busisiwe Mgangxela from the Eastern Cape has written an important piece providing a view from the ground on just how difficult it is to access state land, and the likelihood that once the land is transferred, key assets would have been stripped. She reflects on the implications of the recent government decision to release thousands of hectares of state land for land reform in the light of her own experience. She provides a detailed first-hand account of her family's struggle to access and lease state land through the land reform programme and the corruption and kickbacks entailed in the process.

Busisiwe's account provides a treatise on how not to do land reform. Her argument is summarised on <u>Twitter</u> and available in <u>full</u> on our repository of open access resources. It also makes clear that land redistribution involves much more than the simple redistribution of land.

### 1.7 LAND RIGHTS AND MINING

Tim Wegenast, a senior research fellow at the University of Konstanz in Germany writing in <u>African Arguments</u> reviews the received wisdom which says that the state should stay out of the resource extraction sector. However, he says that for some time various governments in Africa have been questioning this premise, observing the siphoning off of natural resources to international investors. Mining companies are frequently accused of tax evasion and corruption.

Research involving geospatial econometric analysis using novel data on control rights over gold, copper and diamond production within African states south of the Sahara, analysed the well-being of individuals living close to internationally-controlled mines, as compared to those living in the proximity of domestically-controlled mining projects. The research revealed that state-controlled extraction is associated with better access to clean water and medical services, higher educational attainment, greater food security and more nutritional diversity. The research found that state-run resource companies are more likely to improve socio-economic well-being than private firms. A key proviso is that there must be good governance, secure property rights and low corruption – clearly a challenge for contemporary South Africa.

At home, investigations into the viability of rehabilitating mined land for agricultural purposes are underway (Creamer Medias Mining Weekly 25 September 2020). JSC listed coal miner, Exxaro Resources says it is in search of proactive solutions to challenges facing mining affected communities. The company is exploring the development of a 'minerals succession process' which maps potential agri-economy opportunities in communities. The company's land management goals for 2026 including transfer 90% post-mining land to emerging farmers in local communities, while creating strategic partnerships with farmers to advance these agri-economies. The article explores possibilities for the mining industry to become a catalyst for increased agricultural development in South Africa which impacts beneficially on the livelihoods of those in mining affected communities. Given the predominantly negative experiences of mining impacts on rural communities, this will be an interesting initiative to monitor. Its potential for success will no doubt depend significantly on its willingness to actively engage with mining affected communities.

Finally in a feelgood piece from GroundUp (<u>6 October 2020</u>) controversial Aussie mining executive, Mark Caruso is reportedly facing criminal charges of assault and burglary in Australia. In South Africa his company Mineral Commodities (commonly referred to as MRC) is involved in what promises to be a major legal battle over the expansion of mining operations along the West Coast. The company has sought to expand operations along 120 km of the West Coast on the basis of its existing limited mining right, rather than having to apply for new mining rights. This action is being opposed by the Centre for Environmental Rights, which has lodged a legal challenge to this expansion plan, which would have enormous environmental impacts.

### 1.8 REDISTRIBUTION

Much of our coverage in the redistribution section over the past four weeks has focused on the release of state land and the processes individuals have to undergo to apply to access one of the released land portions. Questions have been raised about the leasehold provision, with some critics arguing that the land should be transferred in full ownership.

Overall there is scepticism about this move, with land analysts speculating that it is likely that much of the land for redistribution was land that was bought historically by the apartheid state as part of the process of consolidating the homelands, back in the 1970s and the 1980s. As Carol Paton has pointed out in Business Day (13 October 2020):

The catch is that much of this land is already occupied by communities and black farmers who have been there for many years... The big question is who will get the farms?...

Paton concludes that:

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Senior Research Associate at Phuhlisani NPC

It will be robbery of the rural poor and a danger to future prosperity if South Africa continues along the path it is laid, leasing land to the well-off and ignoring the real land hunger out there.

While agribusiness declares itself to be in support of the release of state land, they have expressed concern about the potential state of the infrastructure on these farms, which in its view required an assessment and an upgrade where necessary, before new beneficiaries take over the farms (IOL 6 October 2020). Agbiz expressed concern with government proposals that that the farms would be issued with a non-tradable 30-year lease, which would prevent them using the land as collateral to access production finance.

### 1.9 RESTITUTION

In restitution news, a restitution claim in Simon's town is reported to have been settled. (<u>The South African 3 October 2020</u>) People from the Luyolo community in Simon's town were forcibly removed in the 1960s. The Dido Valley housing development in Cape Town's Southern Peninsula is reportedly reserving 100 of its 600 subsidised units for verified land claimants.

Meanwhile former Minister of Land Reform with responsibility for land restitution, Nkoana-Mashabane failed again in her bid to have the personal costs order set aside by the Land Claims Court. Acting Judge Tembeka Ngcukaitobi SC of the Land Claims Court quashed her appeal. (<u>Daily Maverick 6 October 2020</u>)

"The court granted a personal costs order against her – making this the third personal costs order in favour of the District Six Working Committee following her reckless and negligent behaviour while she was Minister of Land Affairs," said Nicki van't Riet, a lawyer from Norton Rose Fulbright, who took on the case pro bono for the committee.

### 1.10 URBAN LAND

As usual our <u>urban land pages</u> are filled with numerous stories – too many of them to mention in detail here. We briefly select a few highlights from the past four weeks.

As reported in previous reviews the City of Cape Town has not been doing well in the courts when it comes to its evictions policy. The City has opted to petition the Supreme Court of Appeal over the earlier land invasion eviction judgement which prevents the City from clearing illegally built unoccupied shacks without a court order.

At the same time a High Court judge says the City tried to use bylaws as a quick fix to evict a group of people living on the pavements in Observatory, Cape Town. The group had previously occupied the vacant Arcadia Place Old Age Home from which they had been evicted in October 2019 (Ground up 8 October 2020). The Judge found that the group should have been deemed as occupiers, recognised in terms of the Prevention of Illegal Eviction and Occupation of Land Act (PIE) which required a High Court process to be initiated in order to evict them.

IOL, (14 October 2020) reports that the city has allocated R16 million for private security to prevent land invasions. The same article reported that since July 2020, the City has overseen the clearing of 27,000 illegally occupied plots. It has demolished nearly 60,000 structures during anti-land invasion actions since 11 July. Mayco member for Human Settlements Malusi Booi said that "Cape Town had experienced hundreds of organised, well funded and orchestrated unlawful occupations in 2020 already".

The shack dwellers movement Abahlali baseMjondolo celebrated its 15<sup>th</sup> anniversary. The movement reports an audited membership of just over 80,000 members in five provinces and is backed by large network of sympathetic lawyers, clerics and academics which makes the movement a powerful force in the urban land sector. (<u>Daily Maverick 12 October 2020</u>)

## 2 LAND News from Southern, Central and Eastern Africa

There is a wide variety of news items covered on our Africa land news pages.

- In **Angola**, the Viana administration is reported to be delivering plots of land for self-construction to some 18,000 families living in high-risk areas, or in very degraded houses. This represents a renewed focus on urban land needs.
- In **Botswana**, the Ministry of Environment, Natural Resources Conservation and Tourism is reported to have embarked on a project to restore degraded land and soil in order to achieve land degradation neutrality in Botswana.
- Both **Botswana** and **Namibia** are taking steps to encourage the growth of small stock production as a livestock farming option.
- In **Lesotho** we report on an IFAD joint project with the government designed to improve the livelihoods of small farmers. A key feature of this project is that women are required to make up 50% of the project participants.
- In Namibia, a review of the progress of land reform has found that the Namibian government has spent about 2, 3 billion Namibian dollars or about hundred and US\$55 million to buy 558 farms covering 3,4 million ha since independence in 1990, as part of its land reform programme (Southern Times 2 October 2020). The Windhoek Express (8 October 2020) cites researchers and analysts who emphasise that land still remains "a hot potato" in the country where "almost 5000 predominantly white commercial farmers own 48% of the land in Namibia, while 35% is reserved for communal use and the state holds another 17% of the land. Although land has been redistributed, it is arguably not enough and it also hasn't reached enough of its intended target audience, the poor and the landless".
- Fair Planet (<u>16 October 2020</u>) runs a story about concerns over fracking plans on the Namibia Botswana border, where a Canadian oil and gas firm is planning to start hydraulic fracturing in one of Africa's most sensitive environmental areas.
- In Zimbabwe, the editor of the Chipinge Time has reportedly received threats, following
  exposure of land grab stories in the newspaper (MISA 28 Sept 2020).
- The website How We Made It in Africa carries reports on the development of a <u>Land Hunters</u> <u>mobile phone App</u> which matches **Zimbabwe's** farmers with vacant plots. Umojalands cofounder Agatha Mandovha said the app helps simplify the process of finding available land whether state-owned or from a private landowner.

Much of the other news reported relates to World Food Day and mounting food insecurity due to the impact of Covid-19 on people's livelihoods, health and food systems (<u>Africanews 16 October 2020</u>).