

FEATURE

'Counting in' Farm Dwellers: Using Record-Keeping to Realise the Rights of People Living on Commercial Farms

Dr Donna Hornby and Laurel Oettle

Farm dwellers – that is, people who live on commercial farms owned by someone other than themselves – are a heterogeneous social group whose socio-economic rights, including those to land, continue to be violated and neglected. Little progress has been made in realising the constitutional rights farm dwellers have to housing, water, sanitation and security of tenure. A key reason for this is that farm dwellers are not 'legible' to the state: there is no data available that enables the state to plan and implement programmes targeting them.

To address this, the Association for Rural Advancement (AFRA), a land rights NGO, implemented a pilot project in 2018 to record the rights of 850 farm dweller households in the Umgungundlovu District in KwaZulu-Natal province. Each household was issued a record with a GPS location, property description, household members, and land and service rights. This 'put farm dwellers on the map', allowing them to be 'counted in'. It facilitated progress on a farm dweller programme to address their legal rights and inclusion in the district IDP.

The pilot shows the importance of basic geo-referenced records with demographic data in realising a range of socio-economic rights for people who live in off-register contexts, such as commercial farms and urban shack settlements. It also points to a possible role for civil society organisations in spaces where state authority has little traction.

Invisible and marginalised

Farm dwellers are among the most invisible and marginalised groups in South Africa. They live on other people's property and experience high levels of poverty and insecurity, which are historical conditions perpetuated today by state failure and the power dynamics on farms.

Most farm dwellers know no other place that they regard as home. They fight to hold on to the security and cultural rootedness their homes provide in spite of the long-term decline of farm employment and increased post-apartheid evictions (Presidential Advisory Panel on Land Reform and Agriculture (PAP) 2019: 4; Wegerif et al. 2010). Their history, poverty, insecurity and invisibility make farm dwellers a specific category of rural dweller with specific needs.



We suggest that an interim measure is to ‘count farm dwellers in’ by providing them with records of residential rights

Despite this, the state has made little progress in implementing their constitutional rights to equitable access to land, housing, water and sanitation, and decent labour conditions.

We argue that the persistence of this situation today is partly a legacy of South Africa’s dual system of property rights. The property system that evolved historically to give whites registered ownership of land is tightly integrated with state planning, spatial development, and private-sector professionals and banking. It is a land management ‘edifice’ which leaves people who do not have title deeds ‘invisible’ to the system (Kingwill et al., 2017).

Historically, Africans were forced into land administration systems which were managed by localised authorities – the chief, the magistrate, the farmer – and disconnected from white South Africa’s overarching land management system. The effect of their consequent invisibility is that they cannot be systematically organised and planned for as groups that have rights to state services. The PAP argues that a coherent, comprehensive land management system thus requires a new approach to ‘recognising and recording the diverse range of tenure rights that exist within South Africa’ (2019: 87) as a first step to supporting land reform.

We suggest that an interim measure is to ‘count farm dwellers in’ by providing them with records of residential rights and to collect and use demographic and socio-economic data in municipal planning. AFRA, which has worked for 40 years to redress the land and

livelihood rights of Africans living on white-owned commercial farms, has piloted such an approach in the Umgungundlovu District in KwaZulu-Natal, and it is this approach which the article considers.

Who are farm dwellers?

Farm dwellers are a heterogeneous social group who live on commercial farms owned or managed by someone other than themselves. They include people (and their families) who live on the farm where they work as well as people who no longer work on the farm where they live and their families. The mean income of farm dwellers in the Umgungundlovu District in 2017 – R4,400 per month per household or R611 per individual – was below the lower-bound poverty line (of R810) that the government uses as the preferred threshold for policy-making and monitoring (AFRA 2017). As a result, farm dwellers must sacrifice either basic needs or sufficient food since they cannot afford both.

Currently, 2.7 million people, comprising more than 750,000 households, live on farms in South Africa. Visser and Ferrer (2015) report that in 2014 only 51 per cent of farm workers had permanent employment, while 25 per cent were seasonal and part-time workers (mainly women). They also report low wages, the increasing use of labour brokers, and the fact that 58 per cent of dweller families live on commercial farms but no longer work on them.

According to Visser and Ferrer, the main causes of labour restructuring on farms are intermittent but persistent drought, the poor implementation of land reform, and agricultural profitability pressures resulting in mechanisation. Farm-dweller ‘migration’ (through eviction or in search of employment) into peri-urban informal settlements has contributed to the rapid growth of these areas, resulting in a shift of poverty to towns and cities (Hornby et al. 2018; Murray 1995).

It is widely acknowledged that land reform has been largely unsuccessful in addressing farm dwellers’ needs, leading to deepening rural poverty and marginalisation. Among the reasons for this are that legislation has not achieved intended outcomes to

protect farm dwellers; that the current approach of providing tenure security on a project-by-project basis is slow and inefficient; and that systems to monitor rights violations – including evictions – on commercial farms do not exist (DRDLR 2018).

The status quo is unsustainable and keeps farm dwellers overly dependent on farmers for the enjoyment of their rights to homes and basic services.

Constitutional rights-holders whom the state cannot ‘see’

Section 25 of the Bill of Rights provides that a person whose land tenure is legally insecure as a result of historical racially discriminatory laws or practices is entitled to secure tenure or comparable redress. As a result of apartheid’s legacy of legal, spatial and bureaucratic fragmentation, this provision applies to approximately 60 per cent of South Africa’s total population (Hornby et al. 2017).

The extent of this right has been defined in a number of laws that provide statutory protection for off-register holders of land rights. The latter include farm dwellers (in terms of the Extension of Security of Tenure Act, 1997) and labour tenants (in terms of the Land Reform (Labour Tenants) Act, 1996), as well as customary land rights-holders, occupiers of urban land and city buildings, and members of communal property associations.

Despite these laws, however deprivation of rights to land persists across all categories of non-registered land rights holders. How is this possible? Kingwill (2019a: 7) argues that South Africa’s history of land dispossession led to a ‘disproportionate corrective focus on “rights”’ and the neglect of the legal and bureaucratic infrastructure necessary to manage and enforce these rights – a critical element given South Africa’s legal dualism and the fragmentation of land administration under apartheid. The statutory definition of rights and the juridical institutions to support them are only one component of the architecture necessary to realise secure tenure.

The absence of land administration institutions for managing off-register rights isolates these rights-holders from public and private services and benefits. The consequence is that only registered rights are ‘fully legally recognised rights’ that are capable of fitting into ‘the spatial planning, land use management and revenue frameworks, which makes them eligible for servicing’ (Kingwill 2019a: 6). The government has not explored alternative methods for recording and administering statutory but non-registered rights.

A multiplicity of informational factors also place farm dwellers in the state’s blind spot. Local practices of measurement and landholding – which include the complex overlapping rights found on farms – are ‘illegible to the state in their raw form’ (Scott 1998: 24). Governments can ‘see’ only regular, numerical data that creates big patterns, and thus they require simplified, aggregated statistics for ease of comparison and planning (ibid: 27). However, in South Africa, government information systems are fragmented, with varied, and often incompatible, systems and data sources.

In addition, farm dweller mobility, together with the private ownership of the properties where they live, contributes to the complexity of collecting and maintaining accurate data on farm dwellers. This makes it difficult for the state to secure the information it needs to plan effectively for farm dwellers and other categories of off-register rights-holders.

Records: Enumeration as a ‘promising practice’

Enumeration provides informational links between population, rights and space. It is an incremental process that maps households to statutory rights (such as ESTA and labour tenancy) and to a set of numerical values (such as GPS co-ordinates). The data set that the enumeration creates thus links particular households with identified rights to specific spatial locations and can be used in multiple ways:

- It provides evidence of residence as an interim measure for securing tenure, and has been used in this way in urban shack settlements where

settlement upgrading is planned for the future (Royston 2013; Barry and Kingwill forthcoming).

- It documents provisional evidence of rights where such evidence does not exist officially. It is provisional because it can be challenged in court by the property owner.
- It can be used in municipal planning processes. Because it links particular populations to particular spaces, municipalities and government departments responsible for housing and services can identify who needs them and where those services are necessary.

Royston (2013) describes enumeration as one of a set of 'promising practices' for building a body of alternative practice that challenges the status quo and that can fill the gap where the state is failing to implement constitutional rights.

Piloting records for farm dwellers

In 2017, AFRA surveyed 843 farm-dweller households in the Umgungundlovu District. The survey covered 81 farms and constituted 15.3 per cent of the district's farm-dweller population. It doubled up as an enumeration of existing occupiers in the sample area, providing an information baseline and data bank. It also generated evidence of individuals' residential status, and mapped them using spatial identifiers for each household. This information was used to create records of residential occupation.

The extent of poverty and unemployment found among farm dwellers is of such a scale and gravity that their tenure must be seen a priority social and political issue. Hornby et al. (2018: 9) argue that, by Stats SA's definition, farm dwellers are one of the poorest, albeit socially differentiated, social categories in the country, and that their poverty levels and the inequalities may be obscured in national data sets.

Farm-dweller households are larger than the national mean, at 7.2 members, with 55.8 per cent with six or more members as opposed to the national mean of

3.5 members, indicating the national importance of 'the farm' as an occupied, lived-in space and not merely the site of commodity production.

The data shows farm dwellers and labour tenants should not be confused (at least in this regional context) with straightforward 'employees'. More than half of the households have graves on the farms where they live, which forges a link between identity, place and belonging and possibly explains why 'the entanglement of graves, land, family, and community ... hold such potential for conflict between farmers and farm dwellers' (Hornby et al. 2019: 15). Apart from actual eviction or attempts to evict, some owners threaten farm-dweller security by constricting 'the space and normative activities' of farm dwellers by targeting those aspects 'that underpin "home" for farm dwellers' (ibid).

It was in recognition of this complex layering of a social tenure over the formal registered ownership of the farm, together with the state's failure to implement land reform, that prompted AFRA to document farm-dweller rights and give interviewees records of that documentation.

The resulting 'record' is an A4 sheet. The front page records the (sur)name of the household; the name of the person interviewed; the name of the municipal ward councillor; farm property details including ownership, title deed reference and location of the farm; a list of members of the family and when they were born; a map and photograph of the respondent's house with a GPS location that makes exact location of the house and farm possible; and a photograph of the identity document of the respondent. In other words, the records show the relationship between the rights-holders and the underlying registered rights.

On the back of the record is a summary of the household's land use and access to services, and space for an affidavit verifying the truth of the oral information provided to AFRA to be witnessed and signed by a councillor (or Commissioner of Oaths such as accredited police officers).

The records were produced and distributed after the survey was complete, nearly a year after data collection had begun. While AFRA hoped that the records would provide legal evidence in the event of

an eviction and a verified address that would give farm dwellers some autonomy from the farm owner to negotiate public spaces (such as voter registration and access to school), the responses from farm dwellers indicate how important the fact of a record is to a sense of citizenship.

One elderly woman, after receiving her record from AFRA staff, said: 'I thank you, my children. I can now see my home, and my children are also visible. I am no longer afraid of anything. I am at home here.' Perhaps even more surprising has been the response of councillors and the police, even amongst those who initially questioned whether they had the authority to serve as commissioners of oaths. Both expressed support for the records, which would allow them to locate particular houses if they needed to do so in the course of their duties, and which they have struggled with to date.

Two critical issues have emerged. The first has been the use of the records as 'proof of address' (or PoR). The physical address, together with the underlying data set, helps to put people 'on the map' for the purposes of linking them up with the state, especially local government for service provision, but also private services such as subscriptions and accounts. Thus, apart from land tenure issues, these documents potentially and actually make people visible for a whole range of state and private functions, which is one of the roles of titles.

Secondly, AFRA emulated the emerging urban practice of including the signatures of local government officers (in this case municipal councillors) and police who have powers as commissioner of oaths to formally witness documents of residence. The official affidavits on AFRA's records has made a significant impact on their local legitimacy and usefulness, and has increased their chances of being taken seriously by state officials as well as landowners and the private sector.

Conclusion

The AFRA pilot project highlights farm dwellers as a category of marginalised people with insecure



Post-apartheid South Africa has yet to grasp the full implications of focusing on rights while neglecting the institutional architecture required to realise these rights

tenure despite statutory rights and the urgent need to develop an inclusive land governance system.

Farm dwellers and other statutory rights-holders continue to experience insecure tenure and essential-services marginalisation because they live in the shadows of a land management 'edifice' that is based on registered land rights, the consequence of South Africa's historical legal dualism. The integration of property with demographic and spatial information, spatial planning, service delivery, and finance renders off-register rights-holders, despite their statutory protections, invisible to the state. Post-apartheid South Africa has yet to grasp the full implications of focusing on rights while neglecting the institutional architecture required to realise these rights and link rights-holders to the state as the bearer of duties.

The approach taken by AFRA, like those in some urban shack-dweller settlements, is an interim measure that contributes to the long-term goal of incorporating off-register rights in a larger integrated land administration system. Although it is interim, it goes beyond the idea that statutory rights are merely protection *from* a threat to rights that can be positively recognised. Such approaches help to break down the binary opposition between 'formal' and 'informal', and demonstrate how bottom-up interventions can inform a staged process of top-down institutional changes.

Moreover, the approach demonstrates a possible

role for civil society in spaces where the state is functionally absent. Weak public authority can be appropriated by non-state authorities that have local legitimacy, particularly when there is co-operation with local-level public authority, creating the prospect of hybrid governance involving a combination of state and non-state actors, such as NGOs and community-based organisations. The involvement of civil society in bottom-up land administration initiatives could see the organic development of local practices that challenge the status quo and lead the way for national policy.

Dr Donna Hornby is a post-doctoral student at the Institute of Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape and a researcher with the Association for Rural Advancement (AFRA) in Pietermaritzburg.

Laurel Oettle is the Director of the Association for Rural Advancement, a land rights NGO in Pietermaritzburg.

The Pathways Project research was funded by the European Union.

References

Barry M and Kingwill R (forthcoming) 'Local record systems as a going concern in Monwabisi Park Informal Settlement'

Department of Rural Development and Land Reform (31 August 2018) PowerPoint presentation: 'Towards a farm dweller implementation plan'

Hornby D, Nel A, Chademana S and Khanyile N (2018) 'A slipping hold? Farm dweller precarity in the changing agrarian economy and climate of KwaZulu-Natal, South Africa' *Land*, 23 March.

Hornby D, Royston L, Kingwill R and Cousins B (2017) 'Introduction: Tenure concepts, practices and theories in South Africa' in Hornby D, Kingwill R, Royston L and Cousins R (eds) *Untitled: Securing Land Tenure in Urban and Rural South Africa*. Pietermaritzburg: University of

KwaZulu-Natal Press, 1-43

Kingwill R (2019a) 'Inclusive land administration in the context of people-centred land governance. Discussion document prepared for LandNNES' (January 2019). Available at <https://landnnes.org/discussions-documents/>

Kingwill R (2019b) *AFRA Pathways Project: Tenure Review*. Available <https://bit.ly/2YzrRLA>

Kingwill R, Hornby D, Royston L and Cousins B (2017) 'Conclusion: Beyond "the edifice"' in Hornby D, Kingwill R, Royston L and Cousins R (eds) *Untitled: Securing Land Tenure in Urban and Rural South Africa*. Pietermaritzburg: University of KwaZulu-Natal Press, 388-430

Murray C (1995) 'Structural unemployment, small towns and agrarian change in South Africa' *African Affairs* 94(374)

Presidential Advisory Panel on Land Reform and Agriculture (2019) *Final Report of the Presidential Advisory Panel on Land Reform and Agriculture for his Excellency the President of South Africa*

Royston L (2013) *Promising Practices: A Guide on Incrementally Securing Tenure in Southern Africa*. Available at <https://bit.ly/30DITLf>

Scott JC (1998) *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. Yale University Press

Visser M and Ferrer S (2015) *Farm Workers' Living and Working Conditions in South Africa: Key Trends, Emergent Issues, and Underlying and Structural Problems*. International Labour Organisation (ILO) Research Report

Wegerif M, Russell B and Grundling I (2005) *Still Searching for Security: The Reality of Farm Dweller Evictions in South Africa*. Nkuzi Development Association and Social Surveys