



Progress made in terms of Land Tenure
Security, Safety and Labour Relations in
Farming Communities since 2003

table of contents

| | |
|---|-----------|
| Foreword | 6 |
| Executive Summary | 8 |
| Introduction | 11 |
| Mandate of the South African Human Rights Commission | 12 |
| Introduction | 12 |
| Chapter 1: A brief review of social relations on farms and key trends in the agricultural sector | 14 |
| Deregulation and restructuring of agricultural sector | 17 |
| Bringing agriculture in line with labour legislation | 18 |
| AgriBEE | 18 |
| Food sufficiency and food insecurity | 19 |
| Environmental and economic constraints | 19 |
| Reflections on the context | 19 |
| Chapter 2: Assessing progress towards land tenure security | 23 |
| Recognising diverse rights | 24 |
| Findings of 2003 SAHRC hearings with respect to tenure security | 27 |
| Submissions by National and Provincial Government Departments | 29 |
| Farm dweller submissions | 31 |
| Academic and legal submissions | 32 |
| NGO, Union and civil society submissions | 35 |
| Organised agriculture submissions | 39 |
| Key issues summarised | 40 |
| Key findings | 45 |
| Recommendations | 46 |

| | |
|--|-----------|
| Chapter 3: Safety on farms | 50 |
| Background | 51 |
| Government submissions | 53 |
| NGO submissions | 54 |
| Organised agriculture submissions | 56 |
| Key issues | 58 |
| Key findings | 62 |
| Recommendations | 63 |
| Chapter 4: Labour relations | 64 |
| Issues relating to farm labour | 65 |
| Government submissions | 65 |
| NGO and Union submissions | 67 |
| Organised agriculture submissions | 67 |
| SAHRC Special programme on HIV/AIDS | 68 |
| Key issues | 69 |
| Findings | 69 |
| Provisional recommendations | 70 |
| Conclusion | 70 |
| Bibliography | 71 |
| Appendices | 75 |
| Appendix 1: Assessing progress on 2003 recommendations | 76 |

list of acronyms

| | |
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| ANCRA | Association for Community and Rural Advancement |
| BAWSI | Black Association of the Wine and Spirits Industry |
| CCMA | Commission for Conciliation, Mediation and Arbitration |
| CEO | Chief Executive Officer |
| CIAC | Crime Intelligence Analysis Centre |
| CPA | Communal Property Association |
| CPI | Communal Property Institution |
| DDG | Deputy Director-General |
| DFID | Department for International Development (UK) |
| DLA | Department of Land Affairs |
| DoL | Department of Labour |
| ESTA | Extension of Security of Tenure Act |
| FAWU | Food and Allied Workers Union |
| HSRC | Human Sciences Research Council |
| IDP | Integrated Development Plan |
| IPILRA | Interim Protection of Informal Land Rights Act |
| LAB | Legal Aid Board |
| LAMOSASA | Land Access Movement of South Africa |
| LRA | Labour Relations Act |
| LRC | Legal Resources Centre |
| LRAD | Land Reform for Agricultural Development Programme |
| LTA | Labour Tenants Act |
| NAFU | National Agricultural Farmers Union |
| NOCOC | National Operational Co-ordinating Committee |
| OECD | Organisation for Economic Co-operation and Development |
| PEDUDA | Promotion of Equality and Prevention of Unfair Discrimination Act |
| PIE | Prevention of Illegal Eviction Act |
| PLAAS | Programme for Land and Agrarian Studies |
| PLLTBM | Parliamentary Liaison, Legislation and Treaty Body Monitoring Programme |



| | |
|-------|--|
| PSE | Producer Support Estimate |
| RDP | Reconstruction and Development Programme |
| RDP | Rural Discrimination Prevention |
| RLT | Rural Legal Trust |
| SABC | South African Broadcasting Corporation |
| SAHRC | South African Human Rights Commission |
| SANDF | South African National Defence Force |
| SAPS | South African Police Service |
| SPP | The Surplus People Project |
| STI | Sexually Transmitted Infection |
| TLAC | Tshwaraganang Legal Advocacy Centre |
| TRAC | The Rural Action Committee |
| UFS | University of the Free State |
| UWC | University of the Western Cape |
| WFP | Women on Farms Project |
| WTO | World Trade Organisation |

foreword

THE CONSTITUTION AND THE BILL OF RIGHTS PROVIDE THE FRAMEWORK BY WHICH WE ARE REQUIRED TO DEVELOP AND BUILD OUR SOCIETY. THERE HAS BEEN AND WILL CONTINUE TO BE MANY BATTLES THAT MUST BE FOUGHT AROUND THE CONSTITUTION'S PROVISIONS, HOW THEY ARE INTERPRETED AND GIVEN EFFECT TO, HOW THEY ARE BALANCED AGAINST EACH OTHER AND ULTIMATELY HOW WE ARE TO MAKE CHOICES IN MATTERS THAT AFFECT OUR LIVES NOTWITHSTANDING THE FACT THAT IT IS HELD IN HIGH ESTEEM AS BEING VISIONARY AND PROGRESSIVE. THAT IS PERHAPS THE NATURE OF LIVING IN A CONSTITUTIONAL DEMOCRACY.

The South African Human Rights Commission (SAHRC) is a constitutional body charged with the task of promoting respect for human rights and a culture of human rights, promoting the protection, development and attainment of human rights and the monitoring and assessment of the observance of human rights in the Republic.

As a means of an explanation as to the genesis of this Report, over several years, the Commission has monitored the observance of human rights in farming communities. The SAHRC, in addition to being charged with broadening public understanding of the systemic problems that impact land owners, workers and farm dwellers in the agricultural sector, also has a duty to respond to individual complaints.

In June 2001, and following receipt of complaints over reports of human rights abuses in the farming sector, the SAHRC instituted a comprehensive National Inquiry into Human Rights Violations in Farming Communities which culminated in a final report published in August 2003.

In addition to tabling numerous recommendations relating to land rights, labour, safety and security, economic and social rights, the principal recommendation of the report was the formation of a Farming Community Forum under the auspices of President's Office where farm dwellers, farm owners and government could interact to holistically address the many issues facing people within farming communities.

The SAHRC subsequently undertook an internal review of the lack of progress concerning the many recommendations in 2004 and noted that the failure to establish the proposed

Farming Community Forum meant that many other recommendations had not been implemented.

The present Report representing the Commission's sincere and earnest endeavour to assess the progress which has been made with respect to rights associated with tenure security, safety and labour since the abovementioned Reports were released. It is important to note that the overwhelming majority of submissions the SAHRC received focused on tenure security, followed by a more limited focus on safety and labour relations matters.

The Public Hearing is an important mechanism available to the SAHRC. It is essentially a forum that creates opportunities for dialogues between stakeholders and also allows for public accountability as envisaged by the Constitution. The Public Hearing also acts as an assessment tool for critically evaluating the progress we are making in the agricultural sector identified, namely, with respect to the rights associated with tenure security, safety and labour. While it allows for robust, frank and open debate, it is not intended to be adversarial.

The views that were expressed during the Public Hearing are synthesised in the Report. It provides findings and recommendations that seek to assist role-players to grapple further with the issues that impede the full enjoyment of the rights associated with tenure security, safety and labour.

A thank you is extended to everyone who participated in and contributed to the Public Hearing. In particular I wish to thank our colleague, Tseliso Thipanyane, and also my

fellow panellist, Dr Marjorie Jobson, a Commissioner at the Commission for the Rights of Cultural, Religious and Linguistic Communities, who gave of her time and expertise. In addition, a special word of thanks has to go out to Cameron Jacobs, Pandelis Gregoriou and Danaline Franzman as well as to all staff of the SAHRC who contributed in a variety of ways.

Most importantly, we are extending a sincere thank you to those individuals who contributed to the submissions and

shared with the panellists the challenges and human rights infringements and violations they are experiencing.

While acknowledging that the SAHRC has a duty to critically examine the extent to which its efforts have met with success and to find ways to improve its performance to more effectively fulfil its mandate, we hope that this Report will particularly become a tool that will assist in finding sustainable solutions which shall promote a human rights culture and a more just and equitable dispensation, consistent with the values enshrined in the Constitution.





Executive Summary

Following complaints over reports of human rights abuses in the farming sector, the South African Human Rights Commission (SAHRC) instituted a comprehensive National Inquiry into Human Rights Violations in Farming Communities in June 2001 which culminated in a final report published in August 2003.

This report highlighted:

- ◆ Ongoing evictions from farms despite the promulgation of legislation to protect tenure security.
- ◆ General and widespread lack of compliance with labour legislation.
- ◆ The vulnerability of women and seasonal workers on farms.
- ◆ Unacceptable levels of crime and violence experienced in farming communities.
- ◆ A lack of confidence in the ability of the legal system to address the needs of farm dwellers.
- ◆ Limited access to services and housing on farms.
- ◆ A lack of information on HIV/AIDS and associated challenges in extending health care services within farming areas.

The principal recommendation of the report was the formation of a Farming Community Forum in the Office of the Presidency where farm dwellers, farm owners and government interact and address the many issues facing people within farming communities. The report also tabled numerous recommendations relating to land rights, labour, safety and security, economic and social rights.

In 2004 the SAHRC undertook an internal review, which noted that the failure to establish the proposed Farming Community Forum meant that many other recommendations had not been implemented.

The SAHRC followed up with public hearings in September 2007 to assess progress with respect to tenure security, safety and labour. While the hearings were designed to focus on all three issues, the overwhelming majority of submissions focused on tenure security, followed by a more limited focus on safety and labour relations matters. The content of this report is reflective of the focus on tenure security.

With respect to **tenure security** the principle findings of the SAHRC are that:

- ◆ There has been very little progress towards achieving security of tenure for farm dwellers and labour tenants.
- ◆ ESTA has had unintended and undesirable consequences. Its promulgation contributed to large numbers of pre-emptive evictions. Attempting to privilege tenure security in isolation from a larger development programme to address living and working conditions on farms, has practically extinguished many of the other rights of farm dwellers and their families – such as the rights to adequate housing, health and education. It has led to employers withdrawing rights of access and use of land and limiting occupational rights through employment contracts. It provides a disincentive to land owners and employers to improve on farm housing and facilities.
- ◆ There has been under-prioritisation and very slow progress made towards the settlement of Labour Tenant claims which are compromising the rights of people who lodged claims in terms of the Labour Tenants Act.
- ◆ The current approach to tenure security with its narrow focus on securing occupational rights has not succeeded in creating an enabling environment for men, women and children living on farms whose rights, freedoms and future work opportunities, remain severely constrained in most instances.
- ◆ The deregulation of the agricultural economy has exerted major pressures on farmers, particularly on the majority of farming enterprises with a turnover of R300 000 a year or less, and has contributed to job shedding and displacement of farm workers and dwellers.
- ◆ The objectives of government policy with respect to farm workers and dwellers in the current context appear unclear. This is a fundamental problem currently preventing the emergence of practical solutions with the majority support of all role-players.
- ◆ Relationships between government, organised agriculture, unions and NGOs relating to ESTA (and tenure security policy more broadly) remain unproductively and unnecessarily contested.
- ◆ Overall ESTA remains poorly implemented and illegal evictions continue although there is evidence that land owners are increasingly securing evictions through the courts.

With respect to **safety on farms** the SAHRC finds that:

- There continues to be unacceptably high levels of violent crime which persist in farming areas, with serious consequences for farm owners and dwellers.
- After a steady decline in reported crime figures between 2001 and 2006, crime levels on farms have increased by 25% over the last year for which statistics are available. There is no commonly agreed explanation for the recent spike in crime figures.
- Concerns have been expressed about the capacity of sector policing to adequately deal with the safety and security in farming areas, which requires further investigation.
- There remain pockets of serious human rights abuse where employers and persons in charge infringe on the rights of workers and farm dwellers.
- Effective communication between government, Chapter 9 institutions, NGOs, unions, farm dwellers, land owners and organised agriculture appear to be ineffective in certain provinces and districts.
- At the same time there are positive examples of joint work between government, organised agriculture, NGOs, Unions and other stakeholders. This has resulted in the negotiation of self-regulatory codes of conduct together with mechanisms for transparent monitoring and implementation.
- Domestic violence, workplace sexual harassment and sexual abuse of women and children remain under-reported and poorly prioritised by many employers, law enforcement and government agencies.
- The continual lowering of the age thresholds for the sexual abuse of young people and children represents a highly disturbing trend in certain farming communities.
- On their own admission the South African Police Service (SAPS) has to improve their service delivery, credibility and trustworthiness to secure the confidence of farm owners and dwellers in many farming communities.
- Improved co-ordination and joint programmes are required between Chapter 9 institutions and farming communities to improve human rights monitoring and provide support for local initiatives.

With regard to **labour relations** in farming communities the SAHRC finds that:

- Steady progress is being made in improving adherence to labour and occupational health and safety legislation on farms.
- Despite these improvements the SAHRC notes that there is still evidence of substantial non-compliance, given the extent of the improvement and compliance orders issued by the Department of Labour annually in its inspection of

15 000 farms nationally.

- The implications of the increasing casualisation of labour and the need for the regulation of labour bureaux does not seem to have been given sufficient priority by the Department of Labour (DOL) and the Unions.
- On the whole the majority of agricultural workers remain uninformed about fundamental rights in relation to the labour legislation and health and safety standards.
- The apparent failure of the Department of Health to stage a dedicated farm worker and farm dweller HIV/AIDS awareness and support programme constitutes a major threat to the agricultural sector and has major implications for the health and well-being of farm workers and dwellers who are a high risk population.
- The incidence of child labour appears to be increasingly under control although isolated occurrences still plague the commercial sector.
- Occupational health and safety regulations with respect to the handling and storage of pesticides represents a major hazard for workers in input and pesticide intensive agricultural sectors.

The above findings elicited the following recommendations:

- The DLA to enter into an urgent dialogue with its social partners to review, clarify and reform its policy on tenure security for farm workers and occupiers.
- The SAHRC to monitor, assess and publish such progress within reasonable timeframes.
- The SAHRC recommends that an independent review be undertaken to examine the effectiveness of sector policing in farming communities, and recommend practical and affordable ways in which it could be improved. This review would, in part, examine the factual basis of arguments that there are possible correlations between rising crime figures and the implementation of the sector policing approach.
- A national programme led by the DOL involving all communication media to alert agricultural workers to their rights in terms of the law.
- A review by the DOL on the conduct of the labour bureaux within the agricultural sector with a view to effectively regulating them.
- The SAPS has to improve its service delivery in farming areas and improve their credibility and trustworthiness to secure the confidence of farm owners and dwellers in farming communities.
- The Department of Health should proceed to mount a dedicated farm worker and farm dweller HIV/AIDS awareness and support programme.



Introduction

Mandate of the South African Human Rights Commission (SAHRC)

The legal mandate of the SAHRC derives from section 184 (1) of the Constitution of the Republic of South Africa Act 108 of 1996 [Constitution]. This states that the Commission is required to:

- a) promote respect for human rights and a culture of human rights;
- b) promote the protection, development and attainment of human rights; and
- c) monitor and assess the observance of human rights in the Republic of South Africa.

The SAHRC has the following powers, in terms of section 184 (2) of the Constitution read together with section 9 of the South African Human Rights Commission Act 54 of 1994 [South African Human Rights Commission Act] to:

- a) investigate and to report on the observance of human rights;
- b) take steps to secure appropriate redress where human rights have been violated;
- c) carry out research; and
- d) educate.

The South African Human Rights Commission Act confers further powers, duties and functions on the SAHRC. These include the power to conduct investigations into alleged violations of human rights, to call any person to appear before it and produce to it all articles and documents required in terms of the investigation.

The SAHRC has monitored the observance of human rights in farming communities over several years. While it has a duty to respond to individual complaints it is also charged with broadening public understanding of the systemic problems that impact land owners, workers and farm dwellers in the agricultural sector. The SAHRC has involved itself with a view to finding sustainable solutions which promote a human rights culture and a more just and equitable dispensation consistent with the values enshrined in the Constitution. At the same time the SAHRC recognises that it has a duty to critically examine the extent to which its efforts have met with success and to find ways to improve its performance to more effectively fulfil its mandate.

National Inquiry into Human Rights Violations in Farming Communities: 2001 – 2003

Following public concern over reports of human rights abuses in the farming sector the SAHRC instituted a comprehensive National Inquiry into Human Rights Violations in Farming Communities in June 2001 which culminated in a final report published in August 2003.

The terms of reference for the initial enquiry restricted it to investigating the incidence of human rights violations within farming communities since 1 June 1998. The inquiry involved national and provincial hearings which focused on:

- ◆ land rights and tenancy;
- ◆ safety and security; and
- ◆ economic and social rights.

In the process the inquiry set out to “publicise conditions on farms, improve the living conditions of farming communities and improve respect for human rights in farming areas.”¹

The key findings of the 2003 report are set out in Appendix 1 and are summarised in each of the three chapters below dealing with tenure security, safety on farms and labour relations.

Following up on the 2003 report recommendations

After the publication of the 2003 inquiry the SAHRC commissioned an internal report in 2004 to evaluate progress made with respect to its recommendations. This report comprehensively reviewed progress made against each recommendation.

In activities related to the original inquiry, the SAHRC also briefed the Parliamentary Select Committee on Agriculture and Land Affairs on the findings of the 2003 inquiry on 1 June 2005. The SAHRC also made a further submission² to the select committee which focused on the eviction of farm dwellers on 27 February 2007.

1 South African Human Rights Commission, 2003, p.2

2 Ibid. 2007b

This submission summarised the findings of the Nkuzi and Social Surveys research report on evictions and highlighted three service delivery areas which needed to be addressed:

- the lack of legal services for farm dwellers to claim and enforce their rights;
- the lack of emergency services and programmes for farm dwellers who had been evicted; and
- the lack of a dedicated land reform programme for farm dwellers.

The SAHRC submission argued that the Select Committee was “strategically placed to play an important oversight role and to engage with the Department of Land Affairs and other relevant role players to ensure that the plight of farm workers is addressed.”³

Follow-up inquiry 2007

Four years after the publication of the 2003 report the SAHRC organised a follow-up inquiry, the findings of which are the subject of this report. The 2007 inquiry was designed to assess progress made in three key areas, namely:

- tenure security;
- safety on farms; and
- labour relations in farming communities;

The two-and-a-half day inquiry was presided over by the Chairperson of the SAHRC, Mr Jody Kollapen, Adv Tseliso Thipanyane [CEO of the SAHRC] and Dr Marjorie Jobson [Commissioner, Cultural, Religious and Linguistic Rights Commission].

The structure of the report on the 2007 hearings

This report is structured into four chapters:

Chapter 1 provides a background to social relations and key trends in the agricultural sector. It sets out to contextualise the issues explored in subsequent chapters and examines how issues in the wider socio-economic environment have impacted the farming sector and affected the lives and livelihoods of those within it.

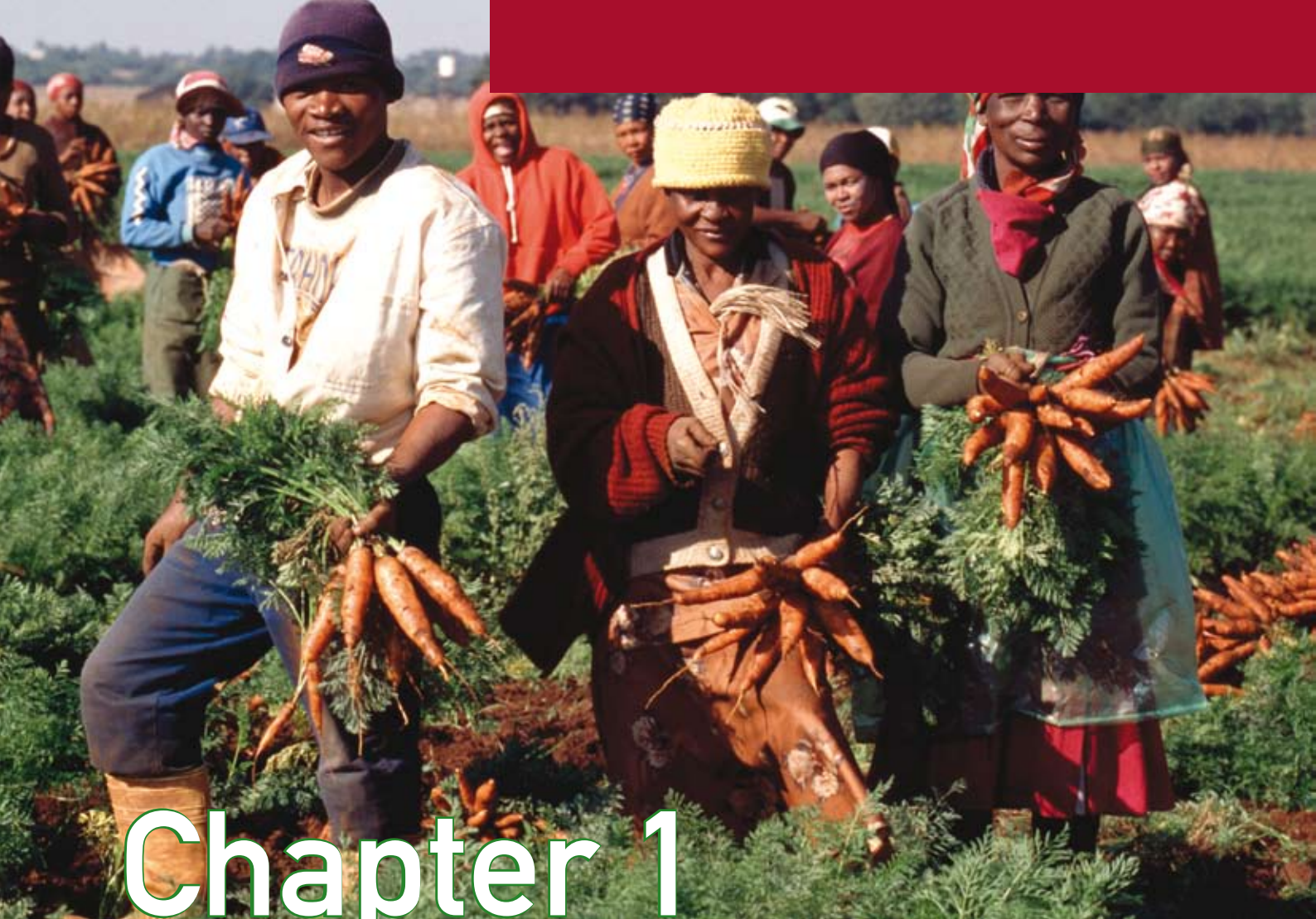
Chapter 2 examines the progress made towards achieving tenure security for farm workers and occupiers on privately owned land. It reviews the extent to which key legislation designed to promote security of tenure and regulate evictions has been implemented and whether it is effective. The chapter examines the evidence and recommendations contained in both the oral and written submissions made by Chapter 9 institutions, government departments, NGOs, community-based formations and individuals, academic and legal institutions and organised agriculture. The content of these submissions are summarised and reviewed. The chapter extracts key issues to arrive at findings and recommendations.

Chapter 3 deals with safety on farms. It reviews the trends and the effectiveness of the measures adopted to curb the surge of violent crime on farms which affects farm owners and farm dwellers alike.

Chapter 4 examines the progress made with respect to labour relations in farming communities. It reviews findings from research and government reports on living and working conditions in the sector and the progress made towards achieving improved living environments and workplaces that are compliant with the labour, health and safety legislation.

Appendix 1 to the report contains the summarised findings and recommendations of the 2003 report together with a review of progress extracted from SAHRC internal follow up report written in 2004. A full listing of written and oral submissions is also appended.

3 Ibid. p11



Chapter 1

A brief review of social relations on farms
and key trends in the agricultural sector

Social relations, living and working conditions can vary widely between different agricultural sub-sectors and from farm to farm. Conditions on farms are mediated by both geography and history.

In provinces like KwaZulu-Natal and Mpumalanga, with a history of labour tenancy, thousands of families have been attached to the same piece of land for generations. In this context relationships between legal owners and historical occupiers are shadowed by historical contestations over the land itself. The rights of labour tenants have been well captured by the recent Popela judgment of the Constitutional Court where Justice Moseneke found that:

“These rights were not merely economic rights to graze and cultivate a particular area. They were rights of family connection with certain pieces of land, where the aged were buried and children were born and where modest homesteads passed from generation to generation. And they were not simply there by grace and favour. The paternalistic and feudal type relationship involved contributions by the family who worked the lands of the farmer. However unfair the relationship was, as a relic of past conquests of land dispossession, it formalised a minimal degree of respect by the farm owners for the connection of the indigenous families to the land. It had a cultural and spiritual dimension that rendered the destruction of the rights more than just economic loss.”¹

In these areas where there have been systematic attempts over many years to transform tenants into wage labourers, farm dwellers may contest their subaltern status by means of multiple, mostly small and often hidden ‘transcripts of resistance’.² In certain areas such as parts of the KwaZulu-Natal Midlands where this contestation is particularly acute, these transcripts can contain violent confrontation.

In other areas of the country where tenancy relations do not exist and where workers and farm occupiers may be more removed from their historical rights in the land they live on, labour and tenure relations take on a different character.

“Numerous studies have shown that those who work on the farm are not only in an employment relationship with the farmer. Instead they live

together in a ‘community’, but it is a community in which the farmer has extensive control over virtually every aspect of the farm worker’s life.”³

Whatever the particularities of the situation, social and labour relations on farms exhibit factors that set them apart from urban employer-employee relationships. For many farm workers, their employment is what provides access to a house, enables family life and secures social development opportunities. For many, these rights remain unrealised or insecure. While farm workers generally receive low wages, these are often augmented by private welfare contributions of farmers.⁴

High levels of dependency may exist. Some farming populations in the Western and Northern Cape still battle with the legacy of the “tot system”⁵ that helped institutionalise alcohol abuse on certain farms. The combination of poverty, powerlessness and substance abuse can result in domestic violence and sexual abuse of women and children within farming communities.

In 2000, 41% of male farm workers were reported to have no education at all.⁶ Job losses within the sector through legal and illegal evictions have resulted in displaced farm workers and farm dwellers swelling peri-urban informal settlements, where their plight remains largely invisible to local authorities and other spheres of government.

If we are to properly understand the issues facing people on farms (both owners and occupiers) and respond effectively to their problems we require a framework that allows us to distinguish the different socio-economic situations and relationships which have developed on the land in different parts of the country. This approach requires us to combine and compare different theoretical lenses⁷ to make sense of the dynamic and complex situation in the countryside. This demands a more fine-grained analysis that is grounded in the conditions in sub-sectors of the agricultural economy and within different districts in the countryside. At the same time, we must not lose sight of the fact that, overall, farm workers remain amongst the most marginalised groupings in South African society.

3 South African Human Rights Commission, 2007a, pp. 2-3.

4 Atkinson, 2007a, p. 37.

5 “Payment of farm workers with alcohol, the “tot system” can be traced back to the colonial and slavery era of the 1600’s and was still pervasive, especially on wine farms, well into the 1990’s. Alcohol consumption by farm workers is said to be twice that of the urban poor.” Shabodien, 2006, p. 2.

6 Simbi & Aliber, 2000, p. 3.

7 Atkinson, 2007a, pp. 16 - 18.

1 “Case CCT 69/06. The Department of Land Affairs and the Popela Community v. Goedgelegen Tropical Fruits Pty Ltd,” 2007, p. 45.

2 Scott, 1985.

While there are often deeply-rooted paternalistic relationships between owners, workers and occupiers, these relationships can take different forms. Social relations are mainly, but not completely, defined by the significant discrepancies

in the relative power of the parties which contribute to the vulnerability of people living and working on farms.

Social and employment relations on farms span a continuum that includes a number of factors seen in the table below.

| 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
|---|---|---|--|---|---|---|---|---|---|
| Optimal social and labour relationships | | | Mixed social and labour relationships | | | | Poor social and labour relationships | | |
| Mutually respectful social relations/ partnerships | | | | | | | Patronising, abusive, violent and racist social relations | | |
| Workers have equity share in business | | | | | | | No equity share | | |
| Workers have rights to join a union, due process followed in labour disputes | | | | | | | Hostility to union organisers, non-compliance with labour relations legislation | | |
| Safe working conditions, priority given to occupational health and safety | | | | | | | Dangerous and unhealthy conditions, high accident rates, poor safety awareness | | |
| Pay and employment benefits exceed sectoral determination minima | | | | | | | Workers paid less than sectoral determination, utilisation of poorly paid undocumented migrants, child labour | | |
| Policies and measures to address domestic violence, sexual harassment and alcohol abuse | | | | | | | Social problems, violence and abuse of women and children | | |
| Investment training and skills development | | | | | | | No systematic training or skills development | | |
| Good quality housing and access to services | | | | | | | Shacks, no sanitation, electricity, unsafe water sources | | |
| Access to land for cultivation and grazing, household food security | | | | | | | Household food insecurity, stunting of children, households lack assets or alternative livelihood sources | | |
| On or off farm tenure security | | | | | | | Arbitrary evictions, no alternative accommodation, no awareness of rights | | |
| Access by visitors | | | | | | | Social isolation | | |
| Burial rights | | | | | | | No burial rights | | |
| Access to education and health facilities, HIV/AIDS mitigation | | | | | | | Schools and health facilities inaccessible, poor health status, lower than average life expectancy, high rates of HIV infections with lack of support | | |

Although such a continuum can be conceptualised as in the example above, currently there are no commonly agreed indicators or monitoring processes that can be used to assess social and labour relationships and conditions on farms and rank different elements within the continuum.

Deregulation and restructuring of agricultural sector

The diverse social relationships on farms are mirrored by the rapidly changing nature of the farming sector itself which has created both problems and opportunities for owners and workers alike.

The farming sector is varied; spanning intensive fruit production, horticulture, viticulture and mixed farming in the higher winter and summer rainfall areas through to cattle in the bushveld and sheep farming on extensive arid rangelands. Key crops include grain and oilseeds, sugar, deciduous and subtropical fruits, tobacco, cotton, tea, and cut flowers. Livestock production includes dairy, beef, sheep and goats, poultry and pigs. Each of these sub sectors has an associated labour and skills regime which needs to be understood if policies to secure tenure, enhance safety and improve labour relations are to be targeted, realistic and effective.

Over the last 20 years, there has been accelerating deregulation and liberalisation of the agricultural sector. While in South Africa government support for agriculture has been substantially reduced, farmers in the European Union and the United States have benefited from increased state support. There has been a 15% rise in agricultural subsidies to producers in the developed world between the late 1980s and 2004, while South Africa's general economic tariffs were reduced from 28% to 7.1%.⁸ The average import tariff level was lowered by one-third between 1994 and 1999.⁹ In 2005, the chairman of the South African Agricultural Machinery Association noted that South Africa was able to impose a 72% import tariff on wheat and 50% on maize in terms of prevailing World Trade Organisation (WTO) tariff and trade agreements. However, South African tariffs for these crops were pitched at 2% and 13% respectively.¹⁰ The value of policy transfers to South African agricultural producers, as measured by the OECD Producer Support Estimate (PSE), equalled 5% of gross farm receipts on average in 2000–03 compared to 31% in the European Union.¹¹ In 2001, state

spending on agriculture amounted to R2.5 billion – a decline of 45% from 1998.¹²

Overall the sector has undergone rapid restructuring. Between 1988 and 1998, employment on farms declined by 20% - a loss of 140 000 regular jobs.¹³ It has been argued that during this period the shedding of permanent workers was “in large measure being driven by ‘non-economic considerations.’ Retrenchments and evictions were driven more by concerns in the agricultural sector about land reform and impacts of future legislation”.¹⁴ However, it appears that market conditions and a mounting cost/price squeeze have contributed to further job shedding. In provinces sharing a border with Zimbabwe and Mozambique there are many desperate undocumented migrants who will work for very little which inevitably impacts on local agricultural employment practices.

Despite the steady decline in agricultural employment, the sector remains a major employer. Currently, commercial farmers employ 740 000 farm workers in South Africa. The exact number of people living on farms varies according to different sources. In their oral submission to the 2007 hearings, AgriSA stated that there are about four million people living on farms who are not employed by the farmers. The DLA submission to the same hearings indicates that there are currently in the region of 3 million farm dwellers. Changes in land use from agriculture to game farming and private reserves have also contributed to job shedding while overall casualisation of the labour force has increased from 33%–49% between 1996–2002.

In 2002, StatsSA reported that there were 45 818 active commercial farming units in South Africa reflecting a decrease of 12 162 farming units since the 1993 census. Distribution of income is highly skewed between these units. Currently, 20 % of commercial farms produce 80% of the total value of production. Of the total of 45 818 farming units only 2 330 had an annual income of more than R4 million, while 23 428 had an annual income of less than R300 000. Within the 2 330 high earning units there are eight agribusiness companies with a turnover of more than a billion rand a year.¹⁵ The number of paid workers employed by the formal agricultural sector decreased by 152 445 (13.9 %) between 1993 (1 093 265) and 2002 (940 820). The commercial agricultural sector paid R6 216 million in salaries and wages for the year to February 2002. This represents 11.7 % of the

8 Ambert & Hornby, 2006.

9 Organisation for Economic Co-operation and Development, 2006.

10 South African Agricultural Machinery Association, 2005.

11 Organisation for Economic Co-operation and Development, 2006.

12 Vink & Kirsten, 2003, p. 18.

13 Simbi & Aliber, 2000, p. 3.

14 Simbi & Aliber, 2000, p. 4.

15 Hall, 2007, p. 30.

gross farming income generated by the agricultural sector in that financial year, and 13.8 % of total expenditure for the same period.¹⁶

High input farming systems, rapidly escalating fuel and fertiliser prices, exacerbated by dramatically reduced state support for agriculture, have combined to force out many smaller producers and narrow the margins for those who remain. These factors also make life very difficult for new entrants to agriculture.

At the same time access to lucrative Fair Trade markets for producers of certain commodities creates opportunities for both owners and workers. The rigorous social and environmental auditing associated with Fair Trade certification ensures improved working and living conditions and greater access to social development benefits.

Bringing agriculture in line with labour legislation

The Agricultural Labour Act 147 of 1996 extended the provisions of the Basic Conditions of Employment Act 3 of 1983 (BCEA), and the Labour Relations Act 42 of 1996 (LRA) to the agricultural sector. Sectoral determinations first declared a minimum wage in 2003. Sectoral Determination 13 currently applies to the farming sector.

The Sectoral Determination prescribes the following minimum wages:

| Area A | | |
|---------------------------|---------------------------|---------------------------|
| Minimum as from 1/03/2006 | Minimum as from 1/03/2007 | Minimum as from 1/03/2008 |
| Per hour R5,10 | Per hour R5,34 | Per hour R5,59 |
| Per month R994 | Per month R1 041 | Per month R1 090 |
| Area B | | |
| Minimum as from 1/03/2006 | Minimum as from 1/03/2007 | Minimum as from 1/03/2008 |
| Per hour R4,54 | Per hour R5,07 | Per hour R5,59 |
| Per month R885 | Per month R989 | Per month R1 090 |

Note: From 1 March 2008 the minimum wage levels for Areas A and B are the demarcation then falls away for all practical purpose

AgriBEE

Government released a Broad-Based-Black Economic Empowerment framework for agriculture in July 2004. This set out to achieve the economic empowerment of all black people living in rural areas through a range of strategies including:

- increasing the number of black people that manage, own, and control enterprises and productive assets;
- facilitating ownership and management of enterprises and productive assets by black communities, workers, cooperatives and other collective enterprises;
- human resource and skills development of black people;
- achieving equitable representation in all agricultural professions, occupational categories and levels in the workforce;
- preferential procurement;
- investment in enterprises that are owned or managed by black people.

Its principle objectives are to:

- help ensure that 30 % of agricultural land is transferred to black South Africans by 2014;
- make available an additional 20 % of 'high potential agricultural land' for lease by black South Africans by 2014;
- make available 15 % of 'high-potential' agricultural land for acquisition or lease by 2010 within the framework of the above global targets; and
- make available 10 % of 'own' agricultural land to farm workers for their own farming activities.

This was followed by the draft AgriBEE Draft Transformation Charter published in November 2005 which, in addition to the above, commits established farming enterprises to contribute to social development and industry specific initiatives including:

- good quality housing, and access to clean water, sanitation and electricity;
- recreational facilities as well as running costs in this regard;
- health care and related services;
- meeting the transport requirements of workers and their dependants, such as transport to clinics and hospitals, transportation of workers' products to the market, etc;
- implementation of retirement and funeral schemes;
- investing in and supporting farm schools;

¹⁶ Statistics South Africa, 2005.

- engaging in collective contributions to social development and industry specific initiatives; and
- making agricultural land available to farm workers.¹⁷

Given the recent introduction of BEE into agriculture – 2007 was planned as the first year of compliance when all indicators would be fully measured. It is too early to determine the uptake of this initiative.

Food sufficiency and food insecurity

Food sufficiency is achieved when the food production of a country can meet its domestic food demand from production. Currently South Africa is self-sufficient in field crops and horticulture and is 97% sufficient in livestock. Nationally 91% of arable land is considered to be fully utilised although there are major provincial variations.¹⁸

Food security on the other hand is achieved when a nation “can assure both physical and economic access to food for all citizens over both the short and long term. In its broader perspective, food security should address the question of poverty within the households.”¹⁹ Although South Africa is largely sufficient in food, many poorer rural households remain food insecure because they lack the resources to produce or purchase sufficient food to meet their family needs. The HSRC found in 2004 that “more than 14 million people, or about 35 % of the population in South Africa, are estimated to be vulnerable to food insecurity, while the development of as many as 1.5 million, or about one quarter of children under the age of six is reckoned to have been stunted by malnutrition.”²⁰

However, the HSRC study noted that:

“It is not automatically the case that the poorest households are also the most food insecure – a household’s total income may be low, but be composed largely of food crops produced for own consumption or, for example, of farm workers’ rations, thereby making it less food insecure but leaving it with very little disposable income to service its other cash needs.”²¹

This has particular relevance within farming communities where with the introduction of the sectoral determination many employers are reported to pay cash wages making deductions for rent, electricity and transport while no longer directly supplying rations.

At the same time, South Africa plays a pivotal role in regional food security where many Southern African countries continue to experience acute food insecurity aggravated by HIV/AIDS, inappropriate policy choices and, in certain instances, a collapse of governance. The importance of food security for South Africa with its high rate of HIV/AIDS infections is crucial. “Food security must therefore be seen as an essential component towards preventing the spread of AIDS, and of mitigating its impact at national and household levels.”²²

On a global scale, current projections are that the world’s population will increase to over 9 billion by 2050. To meet the Millennium Development Goal on hunger, a doubling of global food production will be required. Doubling of agricultural production will require doubling of water use for crops by 2050.²³

Environmental and economic constraints

The forecasting of medium to long term trend with respect to agricultural output must consider a growing number of risk factors which could have substantial implications for the sector as a whole. These factors include increasingly stressed ecosystems and catchments, combined with increased water demand; land degradation, rising temperatures and extreme weather events associated with climate change. At the same time the impact of peak oil (the point at which the maximum global petroleum production rate is reached after which production output can only fall) will inflate the costs of agricultural inputs and require changes to farming systems.

Reflections on the context

Even on a cursory assessment of the context framing, the 2007 SAHRC inquiry indicates the complexity of the issues which it must address. Although the inquiry did not set out to provide an exhaustive account of the conditions on farms,

17 AgriBEE Steering Committee, 2005, p. 7.

18 Hall, 2007, p. 31.

19 Kalibwani, 2005.

20 Human Sciences Research Council, 2004, p. 3.

21 Ibid p. 5.

22 Ibid, p. 17.

23 United Nations Environment Programme, 2007.

it is clear that there are historically embedded issues which relate to rights, social relations, working conditions, eviction and displacement of farm workers and dwellers which are the primary focus of the inquiry. An aspect of the social relations, which the SAHRC has on many occasions dealt with, is the way people on farms communicate with one another.

The SAHRC has received numerous complaints from farmers about the use of hate speech in the media and what it construes as malicious and unmotivated allegations against the farming community. AgriSA has also averred that a causal nexus exists between such allegations and farm attacks and that those allegations constitute hate speech. Similarly, farm workers have alleged that many farmers are guilty of verbal abuse and hate speech. However, regard must be had to the applicable legislation and the test to determine hate speech. This is essential as statements may be offensive but not constituent of hate speech. It is therefore important to reconcile freedom of speech as provided in section 16 (1) of the Constitution and the prohibition of the advocacy of hatred as provided in section 16 (2) (c) of the Constitution. In resolving complaints over hate speech, the SAHRC has interpreted section 16 of the Constitution and its enabling provision in section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). One must keep in mind that PEPUDA widens the cover of hate speech beyond the area explicitly left open for regulation under section 16 (2) of the Constitution and the test for determining whether conduct shall be able to be classified as hate speech therefore differs.²⁴

What follows below is a synopsis of the SAHRC's interpretation of hate speech in South Africa. Although not part of the terms of reference to the inquiry, it was noted by the SAHRC at the hearing that confusion existed over what constitutes hate speech. The analysis of complaints also revealed a lack of understanding of hate speech and what is constitutionally permissible. This synopsis is certainly not a comprehensive legal analysis but an attempt to guide the reader and to resolve some of the confusion.

24 Albertyn, Cathi, Golblatt, Beth & Roederer, Chris (ed), *Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000*, Witwatersrand University Press, Johannesburg, (2001), p. 93.

Section 16 of the Constitution provides that:

- (1) Everyone has the right to freedom of expression, which includes
 - (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to
 - (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Section 16 is carefully worded and enumerates specific instances of the freedom which is then followed by a number of material limitations in section 16 (2).

Section 10 of PEPUDA, however, provides:

- (1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to –
 - (a) be hurtful;
 - (b) be harmful or to incite harm; and
 - (c) promote or propagate hatred.

In *Freedom Front v South African Human Rights Commission*²⁵, the importance of freedom of expression was expressed as follows:

Freedom of expression constitutes one of the essential foundations of any democratic society.²⁶ It has been universally recognised in all democracies as pivotal to the growth and enhancement of the

25 *Freedom Front v South African Human Rights Commission and Another* 2003 (11) BCLR 1283 at para 16.

26 *Handyside v United Kingdom* A.24 (1976) 1 EHRR 737 at para 49.

constitutional state and vital to the progress and development of human kind.²⁷

It is, however, important to give due consideration to the founding provisions of the Constitution as it proclaims the three reciprocal values of human dignity, equality and freedom. The importance thereof lies in the fact that the freedom of expression is not a pre-eminent right and therefore the right to dignity is as worthy of protection as is the right to freedom of expression and the trick is one of balancing the two rights in any particular circumstance. Therefore, the necessity to protect the freedom of expression and the rights of the media is imperative for a healthy and flourishing democracy. As such the robust debate of ideas, the lifeblood of any constitutional democracy, must be safeguarded. Thus any reflection on the right to freedom of expression must have regard to its importance to the constitutional state. In respect of hate speech it is important to recognise that hate speech prohibits the advocacy of hatred based on race, ethnicity, gender or religion and that constitutes incitement to cause harm. This means that expression that simply offends segments of the community does not amount to hate speech as defined in section 16 (2) (c) of the Constitution and therefore it becomes imperative to distinguish between expression that offends and expression that harms or is likely to harm in the manner described above.

The test as to whether the expression is hate speech in terms of section 16 of the Constitution is an objective one and the focus must be on whether the expression itself causes or is likely to cause harm and not on the subjective intention of the person articulating it. In other words, there must be an adequate nexus between the advocacy of hatred based on race, ethnicity, gender or religion and the harm that is caused as a consequence.

27 Professor Lawrence Tribe argues that freedom of expression is important as a means to some further end like successful self-government or social stability or the establishment of a functioning democracy. Freedom of expression is thus "instrumental" in attaining other societal goals. It is also an important end in itself and allows the development of scientific, artistic and cultural endeavours and creativity. The former function is described as instrumental and the latter as purposive. See L Tribe *American Constitutional Law* [1988] at 785.

The Canadian Supreme Court in *R v Keegstra*²⁸ further analysed the concept of hatred in the context of hate speech thus:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.

These comments provide an appropriate basis to determine when expression degenerates to such a level that it can be classified as the advocacy of hatred. This analysis is important because the consequence of classifying expression as hate speech is that it can be prohibited in our society. If the expression amounts to the advocacy of hatred then the other requirements of the section will have to be considered before an assessment is made as to whether the advocacy of hatred amounts to hate speech as defined in section 16 (2) of the Constitution. If, on the other hand, the expression does not amount to the advocacy of hatred then the expression would be protected expression under section 16 (1) of the Constitution.

In terms of section 10 of PEPUDA a private communication of words against anyone based on any of the prohibited grounds that may cause hurt or harm may contravene the provision. Further in order to be captured by section 10 of PEPUDA the medium of the activities, whether one is publishing, propagating, advocating, or merely communicating, must be through 'words'. All that PEPUDA requires is that the communication of words could reasonably be construed to demonstrate a clear intention to be hurtful or harmful, or to incite harm. The test is whether a reasonable person *could* interpret the conduct as demonstrating a clear intention and is therefore not strictly one of intention. It does not require

28 *R v Keegstra* [1990] 3 S.C.R. 697.

that a reasonable person **would** interpret the conduct in such a way, only that it is possible that they might construe it in this way.²⁹

The requirements for what is considered as hate speech is justifiably high in law and it is imperative that expression meets the exacting requirements set out in our law before it can be adjudged as hate speech.

The concept of hate speech is a constitutional and legal one which has been interpreted and analysed. To accuse a person of engaging in hate speech is a serious charge as it is tantamount to suggesting that the person is undermining and subverting core values of the Constitution. Expression cannot be classified as hate speech on the basis of subjective revulsion at what is being said. As stated many times, the test of commitment to the freedom of expression is the extent to which society countenances speech that is unpalatable.

While there are constitutional and legal requirements which regulate the issue of speech and its protection, it is also important that we have regard to the spirit and values of the Constitution which include human dignity and the achievement of equality. In that spirit we must internalise these fundamental values and communicate and engage with each other in a language that is consistent with those values.

29 Albertyn, Cathi, Golblatt, Beth & Roederer, Chris (ed), op cit, p.92 – 3.

In addition to the way people on farms communicate with one another there are powerful global economic forces changing the face of the agricultural sector, casualising labour, progressively marginalising smaller producers and concentrating agricultural assets in the hands of fewer large producers. These forces are about to be amplified by an accelerating cost price squeeze as we enter the era of peak oil which are likely to have major impacts on the whole agricultural input and supply chain. Simultaneously, South Africa has embarked on a land reform programme which aims to restore the dispossessed, redistribute 30% of agricultural land and provide security of tenure or alternative redress to those whose tenure is insecure.

This all takes place against a backdrop of larger uncertainties associated with climate change, increasing pressure on ecosystem services and their likely impacts within the Southern African region which is already experiencing significant food insecurity aggravated by an acute HIV/AIDS pandemic and other factors.

The farmers, farm workers and dwellers which comprise the South African farming community make a vital contribution to national and regional food sufficiency. The sector directly employs nearly a million workers and supports at least another two million people. The national challenge is to simultaneously ensure the transformation and growth of the sector, while progressively reversing the inequalities of the past and ensuring the safety, rights and dignity of all.

The findings and recommendations of the SAHRC inquiry set out to take this context into account.





Chapter 2

Assessing progress towards
land tenure security

Tenure security is arguably the most complex element within the land reform programme. It has resulted in a range of legislation to give effect to Section 25(6) and (7) of the Constitution. Various laws set out to protect the rights of people living on land legally owned by someone else – either as workers, occupiers or labour tenants.

These include the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA), the Extension of Security of Tenure Act 62 of 1997 (ESTA), the Land Reform Labour Tenants Act 3 of 1996 (LTA) and the Communal Property Associations Act 28 of 1996 (CPAA).

Recognising diverse rights

Broadly speaking, these laws recognise a rights continuum which spans the relatively weak rights of workers and occupiers or farm dwellers, the slightly stronger rights of long term occupiers and the rights of labour tenants which once proven can result in restoration of land ownership or alternative land. The CPAA was designed to regulate the rights of people who have acquired land through the land reform programme as a group.

Farm workers

A farm worker is defined in the LTA as:

“A person who is employed on a farm in terms of a contract of employment which provides that-

(a) in return for the labour which he or she provides to the owner or lessee of the farm, he or she shall be paid predominantly in cash or in some other form of remuneration, and not predominantly in the right to occupy and use land; and

(b) he or she is obliged to perform his or her services personally.”

Occupiers

The ESTA defines an occupier as:

“A person residing on land which belongs to another person and who has or on 4 February 1997 or thereafter had consent or another right in law to do so.”

Long term occupiers

The ESTA attempts to create stronger rights for long time occupiers, the infirm and the disabled.

It protects the right of residence of:

“An occupier who has resided on the land in question or any other land belonging to the owner for 10 years and—

(a) has reached the age of 60 years; or

(b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge”.

Labour tenants

The LTA defines a ‘labour tenant’ as

“A person:

(a) who is residing or has the right to reside on a farm;

(b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and

(c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm, including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3 (4) and (5), but excluding a farm worker.”

The Extension of Security of Tenure Act

The ESTA was promulgated to give effect to Sections 25(6) and (7) of the Constitution. This states that a person or community whose tenure is legally insecure as a result of racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. The ESTA regulates evictions and requires that people cannot be evicted without a court order and legal representation.

The Act provides for nested rights giving people who were living on the property prior to 4 February 1997 (the effective date of the legislation) stronger rights than those who employed after this date. Effective date occupiers may only be evicted in cases where they have done harm, caused damage or where there is a “fundamental breach in the relationship.” It is up to the courts to determine whether the alleged harm, damage or fundamental breach is sufficient cause to grant an eviction order.

The Act also requires that alternative accommodation should be provided to those evicted of an equivalent standard to that which they occupy on the farm.

The ESTA allows owners to limit residence rights of people employed after the effective date by means of a contract. AgriSA has developed a standard employment contract which states in Clause 6.4 that:

“The farm worker acknowledges and undertakes that his occupation of the premises on the farm is conditional on his employment with the employer and that he has acquired no other right to occupy or live on the farm. In particular, the farm worker acknowledges that he is not a labour tenant or that he has any right to use cropping or grazing land on the farm.”¹

Section 4 of the ESTA empowers the Minister of Agriculture and Land Affairs to create long term security for occupiers defined in the Act. To date this provision has been little used. Only 36 projects utilising Section 4 subsidies were implemented in the first 8 years that ESTA was in operation.²

The Labour Tenants Act

The LTA was promulgated to provide for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants and to provide for the acquisition of land and rights in land by labour tenants.

The effectiveness of the ESTA

The content of this legislation was contested from the outset both by commercial agriculture and by land rights activists. From the owner's perspective “tenure security means the inability to shed unwanted unproductive labourers who may even constitute a security threat.”³ It creates “competing rights on the same piece of land which is a recipe for conflict”.⁴

Land rights advocates criticise the Act for not going far enough and serving to regulate farm evictions rather than extending substantive statutory tenure rights to long term occupiers and expanding the rights of farm dwellers to keep livestock or access land for their own use. “It does not specify the process by which farm dwellers can upgrade their tenure in situ to become freehold owners on the portion of the farm on which they live”.⁵

Concerns have been raised relating to the current emphasis on the eviction aspect of the ESTA rather than on the upgrading of the rights of occupiers to full ownership either on or off farm. It has been argued that the ESTA precipitated large numbers of pre-emptive evictions designed to prevent workers acquiring the stronger tenure rights associated with 10 years of occupancy. Since the Act was promulgated, available evidence indicates that it has largely failed to secure tenure. It rather regulates the eviction of farm workers through the courts. Evidence indicates that an increasing number of legal evictions are being obtained although it can be argued with reasonable certainty that many more people are evicted and displaced from farms without any legal protection. Even where people are legally evicted there is substantial evidence that magistrates failed to apply their minds in at least 25% of cases, which were overturned on automatic review by the Land Claims Court.⁶

Even in the cases where legal evictions have been obtained it appears that many farm dwellers fail to access legal representation in eviction cases. This is despite the Nkuzi judgement (2001) which obliged the DLA and Ministry of Justice to extend legal services to the farming communities under the auspices of the Legal Aid Board.

The DLA has lacked capacity, and some would argue the political will to effectively implement the ESTA from the outset. The previous Agriculture and Land Affairs Minister – Thoko Didiza publicly expressed concerns on several occasions that both the ESTA and the LTA could not be effectively implemented. During a formal visit to the Programme for Land and Agrarian Studies in November 2005, the Minister stated that in her view both Acts were “not implementable.” She further questioned the basis of the ESTA stating that “If we accept that farming is a business, the relation between owner and worker should not be tied to tenure.”⁷ This is consistent with positions she articulated at the National Land Tenure Conference in 2001 where she argued in favour of off-farm tenure solutions stating that, “there is a need to move beyond ESTA and LTA. We must start to think about how good land can be made available to farm dwellers and how they can be provided with support [credit, subsidies, extension services, transport, etc.] that will ensure that they use the land productively.”⁸

One of the unforeseen consequences of the ESTA was that established agricultural enterprises in several sub-sectors of the agricultural economy increasingly chose to appoint

1 Agriculture South Africa, 2006.

2 Wegerif, Russell, & Grundling, 2005, p. 36.

3 Atkinson, 2007a, p. 71.

4 AgriSA, 2007b.

5 Lahiff, 2007, p. 32.

6 Lahiff, 2007, p. 20.

7 Meeting minutes. (2005) PLAAS, UWC.

8 South African Government Information, 2001.

workers on a contract basis and opted not to provide housing to workers.

In the Western Cape research indicates that “farmers would rather let a significant investment go to waste than use it to house a permanent worker who may acquire strong labour and ESTA rights.”⁹

It should also be noted that the sectoral determination for the agricultural sector regulates deductions for housing and establishes housing standards which must be met before the employer can make lawful deductions. A study by Human Rights Watch in Limpopo reported that farmers found that the relationship between maximum deductions allowed for accommodation and the high prescribed standards for housing have created a disincentive for farm owners to provide housing for workers.¹⁰

It is clear that large numbers of people have been displaced from farms by various means. In this regard illegal evictions outstrip evictions legally obtained through the courts. A study by Nkuzi and Social Surveys estimated that between 1994 and 2004:

- ◆ 942 000 people have been evicted from farms;
- ◆ 77% of whom were women and children;
- ◆ approximately 1% of evictions went through the legal process;
- ◆ 2003 was the third worst year for evictions since 1984.¹¹

However, at the same time it is important to distinguish between workers and farm dwellers displaced from farms and those evicted. It has been argued that it is not possible to simply equate loss of jobs, loss of on farm residence and urban migration with evictions. Many farm workers no longer reside on farms but commute to work from towns where they can access social services. In a 2003 HSRC survey, 50% of the workers interviewed indicated that they would prefer to live in town but work on the farm.¹²

Currently, it seems clear that employers regard the ESTA as a disincentive to improve housing and the level of services on farms. The Act requires that in case of eviction farm dwellers must be found alternative accommodation of an equivalent standard to that enjoyed on the farm.

Overall, evicted farm workers are largely invisible within municipal IDPs. Once people working and living on farms have been evicted or displaced they have to find alternative accommodation. Eviction and displacement increase the vulnerability of farm workers whose urban social networks are either weak or non-existent. This forces them to inhabit the peripheries of informal settlements without grazing or security for their livestock.

The effectiveness of the LTA

The LTA set 31 March 2001 as deadline for labour tenant claims. In 2000 the ESTA and the LTA were amended to ensure that labour tenants had protection of the ESTA. A total of 20,400 claims were received. By December 2005, 8 342 households had received 126 519 ha of land through the settlement of labour tenant claims.¹³

The 2003 SAHRC report highlighted the vulnerability of labour tenants once they had lodged claims on the land on which they resided but which was owned by somebody else.

Tenure security on land reform projects

Ironically, tenure is not only insecure where people live on land owned by others. Individual rights, benefits and entitlements are often poorly defined where land has been acquired for groups of people through the land reform programme.

At least 2 000 Communal Property Institutions (CPIs) have been established under the programme to date. Recent reviews of CPIs¹⁴ indicate that:

- ◆ there has been a major failure with respect to the allocation of rights and benefits to individuals acquiring land under the land reform programme;
- ◆ the CPI establishment process is not methodically implemented in many projects, leaving membership, rights, benefits and obligations poorly defined and implemented;
- ◆ there is a narrow focus on procedural rather than substantive rights;
- ◆ there is little or no land rights management support provided by the DLA.

The majority of labour tenant claims settled to date have utilised grants under the redistribution programme.¹⁵ However, to be able to afford land many labour tenants have been forced to group together and purchase a property which

9 Du Toit & Ally, 2003, p. 21.

10 Human Rights Watch, 2007.

11 Lahiff, 2007, p. 19.

12 Atkinson, 2007a, p. 217.

13 Department of Land Affairs, 2006.

14 CASE, 2005; CSIR, 2005; Sustainable Development Consortium, 2007.

15 Lahiff, 2007.

is then held by a Communal Property Association (CPA) or a Trust. In the process their individual rights have often not been defined which renders their tenure potentially insecure even though they are recognised members of the land holding entity.

Planned initiatives of government

Agriculture and Land Affairs Minister – Lulu Xingwana observed in her speech on the 2007/2008 budget vote in Parliament that:

Despite various measures put in place by the government to improve the working conditions and tenure security of farm dwellers, we are still witnessing an increasing number of reported land rights infringements and legal evictions in some parts of the country.

We have also witnessed some violence, including the murder of farm owners.

It is quite apparent to us that a lot still needs to be done to improve law enforcement and the closing of loopholes in our legislation. In this regard, a comprehensive report is being compiled which will reflect and provide an objective perspective on the living conditions of farm dwellers in South Africa.

In the short to medium term, the Department will establish a land rights management facility that will serve as a “one-stop-shop” for all land rights related support services for farm dwellers. These services will include law enforcement and compliance, mediation and facilitation services, evictions monitoring including a toll free number, and an ongoing awareness campaign.

In order to provide long term security, we will also acquire land for the settlement of farm dwellers to provide long term tenure security.¹⁶

Findings of 2003 SAHRC hearings with respect to tenure security

The 2003 hearings found “widespread non-compliance with ESTA.” They noted that implementation of laws was inadequate and bureaucratic. They highlighted a “disturbing lack of

knowledge” of the provisions of the ESTA by all role players five years after promulgation of the Act.¹⁷ They recorded an increasing tendency for farm workers to live off farm and be employed via labour brokers in certain sub sectors.

It was found that many evictions were associated with change of land ownership. Likewise, people who lodged applications in terms of the LTA became vulnerable while their applications were being processed. The hearings highlighted the limited opportunities for farm dwellers to acquire land through LRAD or Section 4 subsidies.

Importantly, the hearings cautioned that the legal paradigm was inherently adversarial and that court-ordered solutions were unlikely to translate into sustainable social relations.

Key recommendations

The hearings recommended the establishment of a Farming Community Forum under the auspices of the Office of the President to bring together government, organised agriculture and farm workers. Recommendations on tenure security focused on trying to make the ESTA work and practically extend legal representation to farm workers. They included:

- ◆ providing training for all role-players – farm owners, dwellers, magistrates, prosecutors and SAPS;
- ◆ extending the services of the Legal Aid Board (LAB) to into the rural areas to provide legal representation to farm dwellers faced with eviction;
- ◆ developing an adjudication system of dealing with land disputes administered by the DLA in partnership with the Dept of Justice; and
- ◆ giving consideration to amending ESTA to ensure that no eviction proceedings are initiated in court unless the matter has been through a mediation process.

Monitoring progress - 2004

The SAHRC’s internal review of progress since the 2003 report noted that with respect to tenure security:

- ◆ the proposed Farming Community Forum had never materialised;
- ◆ some progress had been made towards extending legal representation by LAB;
- ◆ some training had been undertaken for employers, magistrates and prosecutors; and

¹⁶ Ministry of Agriculture and Land Affairs, 2007.

¹⁷ South African Human Rights Commission, 2003, p. 177.

- ◆ statistics on Section 4 subsidies had been provided by DLA – (18 projects concluded supporting 273 beneficiaries).

A detailed analysis of progress against these and other recommendations of the 2003 report are contained in Appendix 1.

Monitoring progress 2007

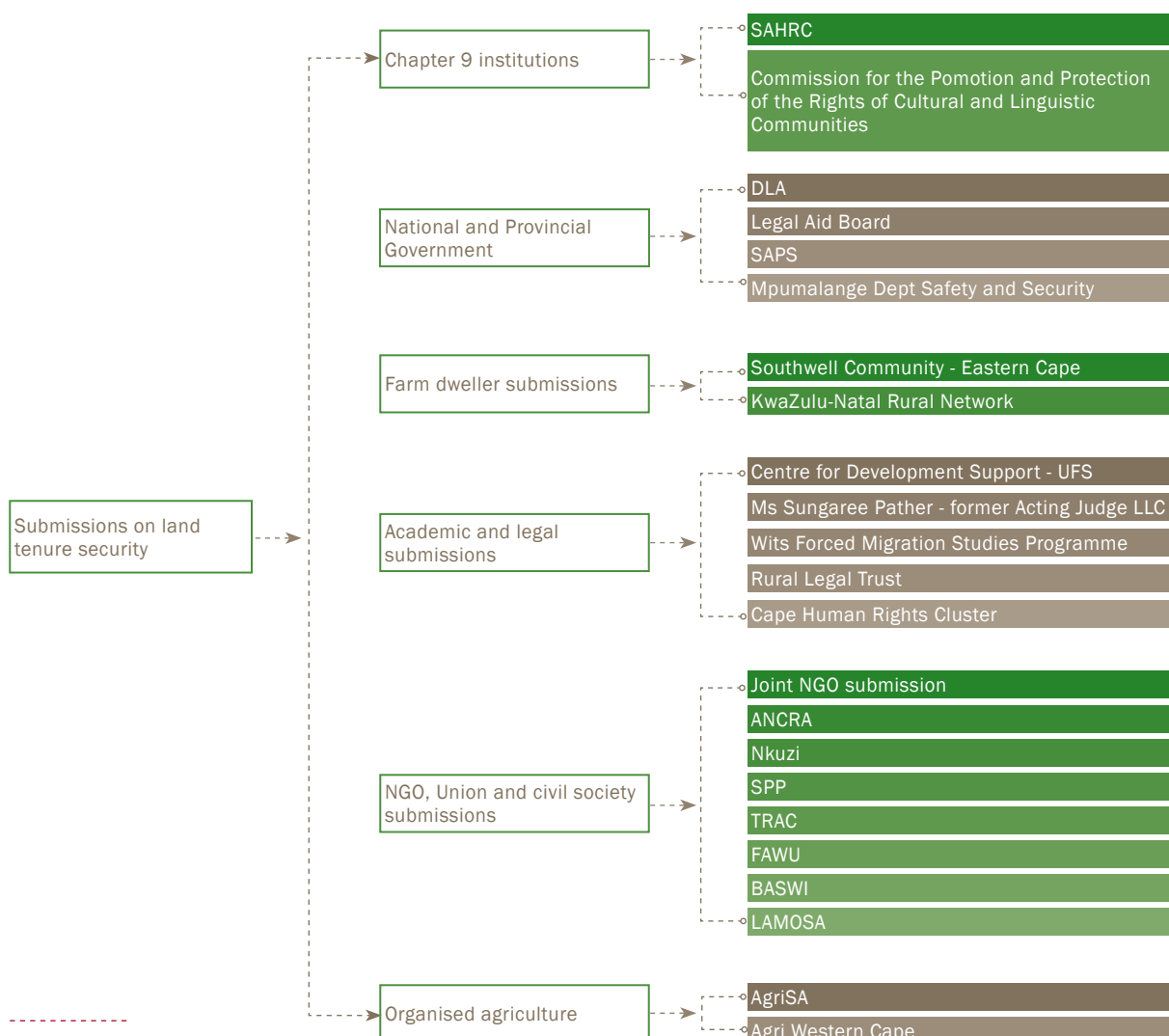
The September 2007 hearings which are the subject of this report represent the latest attempt to review progress towards securing tenure of farm dwellers and labour tenants. The NGO submissions to the 2007 hearings expressed concerns about the failure of the SAHRC to effectively monitor progress in the implementation of the 2003 recommendations.¹⁸ These submissions also criticise certain recommendations within the 2003 SAHRC report as being vague and impossible to implement. This challenges the 2007 Hearings to ensure that the findings and recommendations are specific, practicable and can be effectively monitored.

The 2007 hearings set out to review progress made in terms of land tenure security, safety and labour relations in farming communities since 2003. Approximately thirty written submissions were made by various parties together with a variety of oral submissions by the DLA, DoL, SAPS, Provincial Safety and Security, LAB, AgriSA, land sector and human rights NGOs, gender advocacy groups and community representatives.

The hearings were characterised by continued polarisation between the parties. It is clear that meaningful dialogue between the parties and practical solutions remain elusive:

- ◆ The NGOs assert that their recommendations on tenure security issues have consistently been ignored by the Government.
- ◆ The Government asserts that land sector NGOs are in decline and implies that they are difficult to work with.
- ◆ AgriSA reiterates concerns about ESTA and disputes NGO research findings on the scale of illegal evictions.

A map of relevant submissions relating to tenure security



18 Nkuzi Development Association et al., 2007.

Commission for the Promotion and Protection of the Rights of Cultural and Linguistic Communities

In his submission, Advocate Philander, on behalf of the Commission, reported on two cases concerning the rights of farm occupiers to bury their dead in terms of section 6 (2) (d) of ESTA. He argued that the issues contained in the cases which highlighted “the disregard of farm dwellers cultural and religious right (sic) by the farm owners ... were experienced in the farming communities throughout the country.”¹⁹ The submission argued that an appraisal was necessary to ascertain whether the laws protecting tenure security, cultural and religious rights were being upheld on farms. The submission asserted that the Chapter 9 institutions must work together to promote the rights of land occupiers, and that the human rights community should develop a monitoring and evaluation strategy to assess the progress of government departments in the implementation of rights based legislation.

Submissions by National and Provincial Government Departments

Oral submission by the Special Adviser to the Minister of Agriculture and Land Affairs

The Special Adviser acknowledged that “after the 2003 study that was done by the SAHRC, a number of interventions were recommended or suggested. Some of those have been implemented, some of them have not.”²⁰

He noted that “despite a number of legislative interventions we still have problems ... maybe we need to review our policies and legislative framework, but we cannot do that without a hearing of this nature which can help in terms of pointing us to the right direction.”²¹

Oral submission by the Deputy Director-General in the Department of Land Affairs

In an oral submission to the hearings, the Deputy Director General (DDG) of the Department of Land Affairs, Mdu Shabane, stated that the Department had commissioned a research study to establish the current number of people

living on commercial farms. The study indicated there were nearly 3 million farm dwellers in South Africa.

| Province | Farm dwellers |
|---------------|------------------|
| KwaZulu-Natal | 495 000 |
| Mpumalanga | 482 000 |
| Western Cape | 400 000 |
| Free State | 379 000 |
| North West | 303 000 |
| Limpopo | 386 000 |
| Eastern Cape | 207 000 |
| Gauteng | 160 000 |
| Northern Cape | 138 000 |
| Total | 2 950 000 |

The DDG noted that to date the Department had inadequate capacity to enforce tenure related legislation and monitor evictions at this scale. He also noted that the NGOs in the land sector which had played an important role in monitoring and contesting illegal evictions in the past were in decline and lacked the capacity to play this role adequately. In the interim, the Department had entered into a “stopgap measure” with the Rural Legal Trust and the LAB to monitor evictions and extend legal aid to farm workers.²²

The DDG confirmed that some aspects of tenure legislation were not being effectively implemented. These included:

- ◆ Section 4 of ESTA which enables the Minister to grant subsidies to enable on and off-site development and farm occupiers to acquire land or rights in land and develop the land that they acquire.
- ◆ Section 23(1) of ESTA which makes it an offence for a person to evict an occupier except on the authority of an order of a competent court.

The DDG reported that to date there had been “no convictions for illegal eviction in terms of ESTA”²³ that he was aware of. However, he reported that there had been relative success in relation to the Labour Tenants Act where in some cases evicted tenants had been reinstated. In one instance the land owner had ordered to rebuild housing that was destroyed through an illegal eviction process. However, reports commissioned by the Department also indicate that certain aspects of the LTA had also not been implemented.

¹⁹ Philander, 2007, p. 6.

²⁰ Ibid. p. 22.

²¹ Ibid. p. 23.

²² Ibid. p. 27.

²³ Ibid. p. 31.

These included the provisions of section 16 (2) which requires that where labour tenants reach an agreement which waives their rights in terms of the Act, the Director-General must certify that he or she is satisfied that the labour tenant had full knowledge of the nature and extent of his or her rights, as well as the consequences of the waiver of such rights; or that such terms are incorporated in an order of the Court or an arbitrator appointed in terms of section 19 of the Act.

The DDG disclosed that the Department of Land Affairs was “in the process of establishing a Land Rights Management Facility to offer a basket of options to farm dwellers, to occupiers, and labour tenants, offering mediation services and establishing an evictions monitoring system throughout the country.”²⁴ He said these measures would be accompanied by a land rights awareness campaign and a toll free call centre which people could call when threatened with eviction.

The DDG told the hearings that DLA had mapped the information gained from the research survey down to magisterial district level to determine how many farm dwellers live under conditions of insecure tenure in each magisterial district across the country. The DDG explained the function of recently introduced Land Reform Area Based Plans which he described as “a vital land reform sector planning tool which is an attempt by the Department of Land Affairs to integrate land reform into the integrated development plans of local municipalities.”²⁵

In this respect he observed that “inasmuch as providing security of tenure is critically important, people do not ‘eat’ security of tenure at the end of the day.”²⁶ Farm dwellers needed to get access to other basic services. Linked to this the DDG informed the hearings that the DLA would establish land and agrarian reform stakeholder forums across the country at a district, provincial and national levels. These would provide platforms on which various players in the sector could engage to address tenure security and other issues.

With respect to land acquisition for tenure security, the DDG stated that “one of the priorities of this government in the next two years would be to accelerate land acquisition targeting farm dwellers specifically to provide long term security of tenure.”²⁷

Turning to the Land Summit resolution calling for a moratorium on evictions, he stated that the Department had obtained legal opinion that this was unconstitutional. The DDG reported

on measures to consolidate eviction legislation (PIE, LTA and ESTA) and bring a Bill before Parliament stating: “I want to submit that there is a Bill in front of Parliament today which is a consolidation of the evictions procedures of ESTA, the Labour Tenant Act and PIE.”²⁸

This referred to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill which is being driven by the Department of Housing, with DLA input on issues relating to the ESTA, the LTA and IPILRA.²⁹ This Bill was under review by the State Law Adviser and was thought unlikely to go before Parliament in 2007.³⁰

The DDG stated that the DLA had completely overhauled obsolete land acquisition models which had made land unaffordable and had begun to acquire land proactively. In conclusion he stated that “we also believe that land acquisition is the long term solution through which we can provide long term tenure security for farm dwellers.”³¹

Legal Aid Board

The submission of the Legal Aid Board (LAB) reviewed the progress it had made in providing legal representation to labour tenants and farm dwellers. The submission noted that the Nkuzi judgment found that people with claims under either ESTA or the LTA had the right to legal representation at state expense if substantial injustice would otherwise result and could not reasonably afford the cost of legal representation using their own resources.

In line with this judgment the LAB reported that it had taken a number of steps to render legal support to farm dwellers and labour tenants with the proviso that:

- ◆ They are indigent.
- ◆ They pass the LAB’s means test.
- ◆ The LAB has the capacity to represent them.
- ◆ The case has a reasonable prospect of success.

In October 2005 the LAB entered into a partnership with the Rural Legal Trust and the Department of Land Affairs to provide legal assistance for ESTA and LTA cases and labour disputes. In 18 months of its life the project has dealt with 3 333 clients providing 2 528 with legal representation.³²

24 Ibid. p. 32.

25 Ibid. p. 29.

26 Ibid. p. 29.

27 Ibid. p. 29.

28 Ibid. p. 32.

29 Pers comm. Mr Colin Brocker DLA Legal Services, 5th November 2007.

30 Pers comm. Mr Richard Thatcher, Department of Housing 5th November 2007.

31 South African Human Rights Commission, 2007c, p. 34.

32 Legal Aid Board, 2007, p. 5.

During the first five months of the current financial year the LAB provided legal assistance in 225 ESTA and 61 LTA cases.³³ The LAB has implemented an Advice Office project for the 58 Justice Centres and opened 41 satellite offices to improve its rural services. The key concern expressed by the LAB is that rural legal services must be provided on a more sustainable basis which requires the implementation of legislation to be properly costed to “ensure the progress and sustainable realisation of farm dwellers rights to legal representation”.³⁴

SAPS

The oral submission made by the South African Police Service (SAPS) did not address the role of the police in the implementation of ESTA. The extent of police awareness and training in relation to land rights and eviction legislation was raised in a question by a panellist following the submission.

Director Le Roux of the SAPS responded: “With regard to ESTA training, I unfortunately am not in a position to answer you. I know I have seen guidelines that were distributed around 2000/2002. I will definitely take this up with my divisional commissioner and make sure that we address this with urgency because I have identified it as a huge problem in several of the presentations that were made.”³⁵

Department of Safety and Security, Mpumalanga

The Department of Safety and Security reported in both their written and oral submissions on the findings from a rural safety summit which had been held in the province in March 2006.³⁶ Annexure A of their written submission detailed complaints received at various police stations in the province. In a summary of 13 rural safety complaints recorded between 1999 and 2006 which were presented to the summit only one related to an alleged illegal eviction. In this instance according to the prosecutor there was no illegal eviction that took place and therefore the case was withdrawn. The report recorded that prosecutors often declined to prosecute cases without giving reasons.

Working groups at the summit which reviewed issues related to rural safety highlighted the problem of legal and illegal farm evictions. They also observed that there were cases

where farm dwellers were denied burial rights. However, the report from the summit relies chiefly on anecdotal evidence concerning the scale of the problem. It seems clear that little hard data is available in this respect.

Given that Mpumalanga is predominantly rural and has the second highest number of farm workers and labour tenants in the country, there appear to be significant lack of data relating to the tenure security of farm dwellers and the scale and monitoring of legal and illegal evictions within the province. The summit resolved to institute an integrated special investigation project which in part would focus on outstanding case dockets relating to eviction and safety and security on farms. It was not clear from the oral submission whether this investigation had been instituted, and if so what its findings were.

Farm dweller submissions

Southwell community – Eastern Cape

Mr Mzikayise Madyo made both a written and oral submission to the hearings on behalf of the Southwell community in the Eastern Cape. Before presenting his submission, Mr Madyo was instructed not to mention the names of the alleged perpetrators and received an undertaking that the SAHRC would launch an independent investigation into the allegations made by the Southwell community.

His submission described the impacts on the lives, livelihoods and tenure security of farm dwellers as a result of converting agricultural land into game farming for conservation purposes. The submission described a process where a land owner allegedly undertook the forced eviction of long-term occupiers from a farm which had been sold. It was alleged that the sale of the property was subject to the provision that workers and occupiers living on the land be removed.

“The farmer, he only told the people ... I haven’t got money to run the farm anymore now ... I have sold the farm to my neighbour, so he doesn’t want you here and I have to get rid of you ... When the people ask what you going to do with us, he said, he will see later what he is going to do ... about them, and the people ask about their livestock ... everything ... and he said they must make a plan.

... Eventually the farmer... hired a truck from his neighbour, and that truck was busy working during working hours. He could only get it after working

33 Ibid. p. 4.

34 Ibid. p. 6.

35 South African Human Rights Commission, 2007e, p. 28.

36 Department of Safety and Security Mpumalanga Provincial Government, 2006.

hours, so the after working hours on the farms is about seven and eight p.m. ... He brought the truck next to the mud house door and he will start to load the belongings inside by himself if you are not helping him, because he is just grabbing it and throwing it on the truck ... and he will load about four families in that big truck. By the time he gets finished, it is almost midnight. Our nearby township it is called Nkwenkwezi, it is a township of Port Alfred. There is an open land between the township and the school. At that time of the night, he went to dump those families there, and just stop the truck wherever the truck can stop and offload everything on the truck, and go back to fetch others. But he was trying to be finished before the dawn, because he never wanted the police or municipality members to see him and what he is doing".³⁷

The submission also provided a detailed account of the alleged bulldozing of the graves of former farm dwellers on two properties bought by the new owner. It was alleged that a driver who was forced to bulldoze graves subsequently suffered a nervous breakdown.

In responding to questions from the panellists, Mr Madyo noted that "It is not that every farmer is like them. There are some farmers who are the very good farmers who take good care of their workers. It is only few farmers like him are doing that."³⁸

KwaZulu-Natal Rural network

Ms. Florence Zondi made an oral submission providing a farm dwellers' perspective on life on farms in the Howick area in KwaZulu-Natal. The submission highlighted poor living conditions and tenure insecurity and demonstrated the relative powerlessness of farm dwellers vis-à-vis their employers and the courts. Ms Zondi requested that the SAHRC come and see their living situation for themselves.

She criticised the lack of responsiveness of state institutions to the plight of farm workers. "There are many cases, many reported cases, that we report daily, day in and day out, but nothing happens."³⁹

Academic and legal submissions

37 South African Human Rights Commission, 2007d, pp. 87-88.

38 Ibid. p. 92.

39 Ibid. p. 127.

Centre for Development Support UFS

In her written submission to the hearings, Professor Doreen Atkinson, visiting professor from the Centre for Development Support at the University of the Free State, proposed the abolition of ESTA and the promotion of the claims of second-generation rights of farm workers as claims against the State.⁴⁰

The submission arrived at these conclusions on the basis of four overarching arguments:

- 1) Farm workers are not a special category *per se* and abuses of farm workers such as rape and assault can be dealt with as part of national legislation prescribing the abuse of any person in society.

Although national legislation should provide sufficient legal remedy to deal with abuse the submission acknowledges that there is a need for specific measures to be taken by the State to protect farm workers.

- 2) The farm worker question is primarily one of social and economic development.

With respect to rights of residence and rights to housing, the submission argues that "any attempt to secure the rights of farm workers to reside on a specific farm are misguided".⁴¹ The submission asserts that resolving the farm worker question is better addressed by social policy and programmes rather than framing it as a question of human rights. Government is obliged to ensure that all poor people (including farm dwellers) should have access to housing. The obligation to house farm workers must be addressed as part of the National Housing programme.

In the case of farm workers, this house could be in one of several places such as:

- ♦ on the farm or place of work where the land is owned by the farmer;
- ♦ in a town away from the place of work where the land will be owned by the beneficiary;
- ♦ in a special agricultural village, where land will also be owned by the beneficiary.

The submission argues that "municipalities have an obligation to investigate and promote housing services for farm workers - an obligation which they have avoided thus far."⁴² It highlights the unintended consequences of the sectoral determination

40 Atkinson, 2007b.

41 Ibid. p. 2.

42 Ibid. p. 2.

and related legislation. The submission argues that currently farmers are “increasingly sticking to the letter of the law” when it comes to wages and benefits. Since farmers are “not obliged to provide housing they are increasingly refusing to provide housing”⁴³ and recruiting labour from town dwellers where feasible.

- 3) To the extent that the situation facing farm workers is a rights question, it is a question of “second-generation rights, i.e. social and economic rights claimable against the State - not against the employer.” In this regard the key focus of government policy “should not be to enforce farm workers rights *vis-à-vis* farmers, but to enforce farm workers rights *vis-à-vis* municipalities”.⁴⁴

The submission argues that ESTA has had counterproductive results. Many farmers pre-emptively evicted farm workers before the legislation came into force. Alternatively farmers have resorted to developing clear legal contracts with farm workers where they sign away any future claims to residence. Farmers have responded to ESTA by relying increasingly on casual farm labour, using labour brokers and recruiting from towns.

The submission argues that “ESTA should be abolished as it is not only wrong in its consequences (leading to evictions and -- or unemployment); it is also wrong in its principal (no one should have the right to live in a specific place)”.⁴⁵ The submission asserts that by abolishing ESTA, the government would take away farmers’ fears of compromising their property ownership which would in turn encourage farmers to hire more labour and to house people on-farm. Further by offering incentives such as tax breaks or housing subsidies, the government could make on-farm residence more attractive and affordable to farmers.

- 4) The quality of life farm for farm workers can be best improved by promoting socio-economic rights together with increasing professionalisation and skills development.

The submission argues that the most critical question is how to develop the skilled farm workers and managers required to operate within a globalising agricultural economy. The submission proposes that function of the SAHRC should be to inform government of their obligation to provide services for farm workers, and to monitor progress in this regard.

Overall the submission sets out to frame the farm worker question as a developmental challenge requiring a co-ordinated government response to ensure that farm workers are recognised as citizens entitled to housing, services, education and health care together with a working environment where working conditions are regulated by the State.

The submission is silent on the issue of long term occupiers who are currently protected under ESTA and labour tenants with prior rights in land.

Ms Sungaree Pather Former Acting Judge in the Land Claims Court

Ms. Pather made both a written and an oral submission to the public hearings. The submission examined the linkages between labour disputes, dismissals and subsequent evictions of farm workers and labour tenants.

Often employers moved to apply for eviction orders after having dismissed an employee as a result of a labour dispute. In terms of the LRA workers have a right to contest the fairness of their dismissal. Notification of such a dispute has to be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) within 30 days of dismissal in terms of the LRA. In several instances where such disputes had been lodged workers claimed not to have received notification to attend disciplinary hearings. This was often because workers shared the same address as their employers with whom they were in dispute, and who did not pass on the notification letter. These factors were not always taken into account by CCMA Commissioners if workers subsequently applied for a condonation for having failed to comply with rule 35 of the rules of conduct of the proceedings before the CCMA. This had the effect of prejudicing the workers rights as the employer could now move to secure an eviction order as the period required by the LRA for the referral of the alleged unfair dismissal had already expired.

The submission proposed that all documents relating to disciplinary action and matters of court be served personally on the employee concerned, and in their mother tongue, supported by an affidavit from the employer. In addition the submission recommended that the LRA be amended to provide for a period of 90 days during which farm workers could lodge their appeals against unfair dismissal.

43 Ibid. p. 3.

44 Ibid. p. 1.

45 Ibid. p. 4.

Wits Forced Migration Studies Programme

The Forced Migration Studies Programme of the University of Witwatersrand made a written submission appending a report published by Human Rights Watch examining the role of the undocumented migrant labour in the agricultural sector. Much of the report deals with labour and related human rights issues which will be dealt with further in chapter 3 below.

The report highlights how undocumented migrants remain largely invisible to government oversight on farms. It notes that foreign farm workers are concentrated on the commercial farms in the border areas of Limpopo and Mpumalanga. In terms of the Immigration Act it is an offence for an employer to hire a foreigner whose immigration status is illegal. The report notes that the employment of undocumented workers is largely confined to small and less financially successful farmers, both black and white. “Most of the undocumented workers interviewed as part of the study work for either for Trust land farmers who farm 10 to 15 ha or for farmers on small privately owned farms”.⁴⁶

The Human Rights Watch report is silent on the relationship between the illegal hiring of undocumented migrants, and the use of local labour on farms. Further research may be required to examine how the availability of super cheap, desperate and undocumented labour in certain provinces has impacted on the hiring of local labour, or the eviction of farm dwellers.

Rural Legal Trust

The Rural Legal Trust (RLT) was established to protect farm workers/dwellers against unfair evictions and human rights abuses. It has entered into cooperation agreements with various stakeholders in all nine provinces. The written submission by Isaac Matshitse of the RLT focuses on the state of evictions in North-West Province. The submission does not contain any statistics on the number of cases handled by the RLT within the province. It notes that since the sectoral determination for farm workers was passed most of the farm owners concluded written employment agreements in which the occupiers’ right to accommodation is conditional on their remaining in employment. It confirms that in many instances evictions follow on the heels of an earlier labour dispute.

The submission argues that since the RLT project commenced in 2001 “the situation has changed to the better.”⁴⁷ Attorneys have successfully defended farm occupiers against unlawful eviction and succeeded in reinstating their right of residence.

In other cases they have successfully assisted occupiers to reinstate their right of access to water and electricity where this was illegally terminated. They have also intervened in burial rights cases.

The submission identifies key challenges faced in defending farm occupier’s rights. These include:

- ◆ the lack of willingness by the SAPS to implement ESTA;
- ◆ the fact that local municipalities make no effort to provide alternative accommodation; and
- ◆ the lack of understanding by certain magistrates in the lower courts to interpret and apply ESTA.

It notes that many farm occupiers are illiterate and, once dismissed from work, they do not lodge their unfair labour case at the CCMA “which makes it very easy for the farm owner to institute eviction proceedings.”⁴⁸ The submission argues that the Department of Land Affairs must prioritise the tenure security component of land reform in order to address these issues. The submission also proposes that laws dealing with tenure security should be reviewed with a view to closing loopholes.

Cape Human Rights Cluster

The Cape Human Rights Cluster represents legal aid clinics at the University of the Western Cape and the University of Stellenbosch which work in association with a network of the advice offices. The submission notes an increasing trend for evictions to be secured through the courts and observes that it has become increasingly difficult to oppose evictions in terms of ESTA as the attorneys who represented land owners now fully understand the legislation and related procedural provisions. In this context the human rights cluster has had to prepare more substantive defences which requires lawyers with specialist expertise in land matters.

The report also highlights the increasing prevalence of out-of-court settlements negotiated between employers and employees/occupiers threatened with eviction. This involves making cash payments to occupiers to induce them to leave the property.

These submission notes that despite the expanded presence of the Legal Aid Board farm workers can incur huge costs just travelling to the Justice Centre. It also observes that “in most instances clients are turned away due to capacity problems at the Justice Centre”.⁴⁹ The submission does not present

46 Human Rights Watch, 2007, p. 55.

47 Rural Legal Trust, 2007, p. 4.

48 Ibid. p. 5.

49 Cape Human Rights Cluster, 2007, p. 5.

evidence to quantify this assertion. It should be noted that the LAB submission does not highlight this as a problem. The extent to which farm workers are turned away by the LAB needs further investigation.

The submission sounds a note of caution highlighting the adversarial nature of court proceedings. The Cluster notes that currently there is no real legal mechanism for the lower courts to direct that mediation/arbitration should be pursued. Further it is also unclear who must pay for mediation and arbitration services.

The submission highlights the complex process required to access section 4 subsidies. It observes that the provision on and off site tenure security needs to be addressed as part of the municipality's integrated development plan (IDP). The submission notes that "many farming unions have started to access the housing subsidy and have developed agri-villages away from the affluent farm areas."⁵⁰ It further states that there is very little control over these developments which are often established on the periphery of towns creating rural poverty traps. The submission argues that "promoting long-term security of tenure through section 4 is a crucial aspect in making ESTA work for the rural poor especially in the light of the new trend of "fair evictions" which are hounding the rural areas".⁵¹

The submission recommends that:

- the DLA must set up a mediation/arbitration panel;
- regulations must be drafted to clarify who pays the cost of mediation and arbitration services; and
- ESTA must be amended to make provision for compulsory mediation prior to approaching the court.

Legal Resources Centre (LRC)

The LRC is an independent client based non profit public interest law centre. Their submission focuses on the implementation of ESTA with particular attention to "the failure of the DLA to implement the all important measures provided for in section 4 (grants) and section 26 (expropriation)."⁵²

The LRC observes that in 2003 the SAHRC report noted the under-utilisation of Section 4 grants – a situation which persists in 2008. The submission highlights the dependence of farm workers on state housing subsidies and section 4 of ESTA for the provision of housing and security of tenure.

It emphasises the need for a co-ordinated programme of government to address the needs of farm dwellers and develop creative on and off farm solutions.

The submission notes that section 26 of ESTA authorises the Minister to expropriate land for redistribution and tenure reform. It highlights the potential redistributive potential of ESTA and urges the Minister and the DLA to make better use of these aspects of the legislation.

NGO, Union and civil society submissions

Joint NGO submissions (8 NGO signatories)

Nkuzi Development Association, Women on Farms, Association for Community and Rural Advancement, the Rural Action Committee, the Programme for Land and Agrarian Studies, Association for Rural Advancement, Trust for Community Outreach and Education and the Rural Legal Trust made a joint submission.

Their submission noted that a large part of the SAHRC's 2003 recommendations have not been implemented. The submission is also critical of the content of many of the recommendations from the 2003 report. The submission asserted that the 2007 hearings "would be more productive if the SAHRC could report to us any findings from ongoing monitoring of progress since 2003."⁵³

The submission points to the failure of the Department of Land Affairs to honour its commitments to make policy and legislative changes. It reviews how in November 1999 the DLA convened a workshop to review progress on the implementation of ESTA. At the close of the workshop the Department undertook to strengthen the rights of farm dwellers by consolidating ESTA and the LTA. In 2001 at a Land Tenure Conference convened by the DLA further recommendations were made to speed up the consolidation process. "However nearly, 8 years after the initial promise of a consolidated act was made, there has been neither actual nor proposed law reform in this important area."⁵⁴

⁵⁰ Ibid. p. 11.

⁵¹ Ibid. p. 10.

⁵² Legal Resources Centre, 2007, p. 3.

⁵³ Nkuzi Development Association et al., 2007, p. 2.

⁵⁴ Ibid. p. 3.

The joint NGO's submission "respectfully declines to reiterate recommendations that have been consistently submitted and consistently dismissed".⁵⁵ The submission is also critical of the process followed by the SAHRC in organising the follow-up hearings in 2007 where just over a month was given for the preparation of submissions. The submission argues that this has resulted in the silencing of the voices of the landless and their substitution via third parties.

Association for Community and Rural Advancement (ANCRA)

ANCRA is a non-profit land service and rural development organisation operating in the North-West and Northern Cape Provinces. ANCRA presented figures for illegal and threatened evictions in its area of operation between December 2003 and August 2007.⁵⁶

| Year | Illegal evictions | Threatened evictions |
|---------------|-------------------|----------------------|
| December 2003 | 59 | 74 |
| December 2004 | 23 | 45 |
| December 2005 | 60 | 52 |
| December 2006 | 171 | 22 |
| August 2007 | 11 | 14 |
| Total | 324 | 207 |

The submission did not however provide data on the number of legal evictions secured through the courts. In responding to questions from the panel ANCRA stated that within the definition of illegal evictions they included those cases whereby the farmer had paid evicted workers to leave the property and establish a dwelling in an informal settlement.

ANCRA highlighted the tendency to evict long-term occupiers and workers approaching their 60th birthday. The submission observed that "both legal and illegal evictions continue without proper, if any monitoring mechanisms in place to ensure the well being of evictees."⁵⁷ ANCRA highlighted certain areas in the Northern Cape which are becoming dumping grounds for evicted farm dwellers. This submission highlighted the gender dimensions of ESTA where the legislation originally intended that women would have equal rights to men with respect to their tenure status. However, the ANCRA submission noted that subsequently the Land Claims Court has set precedents that women have to prove that they are occupiers in their own right. In the event of a spouse dying on the farm a woman will

have a maximum of 12 months before she must vacate the property.

ANCRA proposed that there should be stronger enforcement of current laws even though they are flawed and that this would go a long way in preventing ongoing violations. In particular, ANCRA singled out the need to arrest land owners who illegally evict farm dwellers. They argued that a few arrests would communicate the government was serious about enforcing the law.

ANCRA brought two individuals to make submissions to the SAHRC. The submission of Ms Mongwe was labour related and is dealt with in Chapter 3.

A submission was made by Mr Seodigeng who stated that he had lived on a certain farm for 27 years and had built up his own herd of livestock which he grazed alongside that of the owner. The owner subsequently decided to sell the farm and buy another farm in the maze growing area in the north-west. The farmer offered to relocate the workers but Mr Seodigeng refused because the farm could not support his livestock. The owner was then alleged to tell Mr Seodigeng that if he would not relocate to the new property he must leave the farm and sell his livestock. Mr Seodigeng refused whereupon the farmer is alleged to have cut off the water supply which in terms of ESTA represents an attempt at constructive eviction. The case was about to go to court.

Nkuzi Development Association

In their submission, Nkuzi noted that they had made a comprehensive submission to the 2002 inquiry into human rights violations in farming communities. They had further submitted comments on the SAHRC final report that was published in 2003 indicating that they felt the recommendations were inadequate. "As we reflect on what progress has been made since the publication of the 2003 report we first note the failure of the government to implement most of the previous recommendations."⁵⁸

The submission highlights a range of failures including that evictions are continuing apace, no training programme has been put in place on ESTA for magistrates and prosecutors, no accurate statistics are available on the number of section 4 subsidies approved and granted; no long-term policies in place to ensure that farm dwellers have access to legal representation and long overdue policy and law reform have not been implemented in particular the consolidated ESTA/LTA legislation.

⁵⁵ Nkuzi Development Association et al., 2007, p. 3.

⁵⁶ Association for Community and Rural Advancement, 2007, p. 2.

⁵⁷ South African Human Rights Commission, 2007d, p. 7.

⁵⁸ Nkuzi Development Association, 2007, p. 1.

Together with Social Surveys, Nkuzi undertook a survey to measure the scale and impact of evictions from farms in South Africa. The findings of the survey feature in many submissions made to the public hearings and have been summarised in the introduction to this chapter. In essence the survey found that nearly one million people were evicted between 1994 and 2004 with only 1% of these evictions following any legal process.

Nkuzi expressed reluctance in their submission to “suggest a long list of steps that should be taken to combat ongoing evictions, as our recommendations to government in particular seem always to fall into some vacuum – and never considered.”⁵⁹ Notwithstanding, Nkuzi’s submission contains two sets of recommendations. In the short-term they proposed that measures need to be put in place to:

- ensure that farm dwellers know their rights through a well resourced information dissemination programme;
- ensure that farm dwellers threatened with eviction have access to legal assistance;
- prosecute owners who evict farm workers and dwellers without following the due process set out in law;
- declare a moratorium on all evictions until adequate policy and legislative measures have been put in place which would need to include a rigorous monitoring and enforcement mechanism.

In the longer term Nkuzi recommended:

- creating tenure options that delink employment and land tenure rights;
- creating a real rights to on-farm settlements for long-term occupiers; and
- prioritising farm dwellers and farm evictees for sustainable settlements within commercial farming areas that go beyond the provision of IDP houses and offer opportunities for production on land and other activities.

The submission concluded by noting that “far more needs to be done within the land reform programme to target farm dwellers”⁶⁰ and it observes that given the interest that many farm dwellers have in land they are ideal candidates for land reform.

TRAC

The submission by TRAC argues that ESTA and the LTA do not provide strong enough rights for farm dwellers and labour tenants or harsh enough sanctions when the provisions of

the Act are ignored by land owners. TRAC recommends the delinking of occupational rights from labour rights so that a family’s security of tenure is not dependent on the provision of labour to a farm owner.

The submission notes that tenure security for farm workers has never enjoyed any priority within DLA. There is no dedicated farm dweller support programme. Rather, resources have been directed at Restitution and Redistribution. The submission cites cases where it is alleged that the failure of the DLA to respond timeously led to farm dweller evictions. The submission expresses concerns that DLA officials are often uncertain about the legislative procedures and take short cuts which can prejudice farm dwellers rights in their investigations.

The submission expresses concerns about the failure of the DLA to consult with organisations working in support of farm dwellers rights. While it is known that the DLA is in the process of revising tenure legislation this is apparently happening behind closed doors.

The submission critiques the role of the Department of Justice in its response to the Nkuzi judgment which it characterises as piecemeal. In the view of TRAC the department has not provided sufficient material and human resources to enable the justice centres to take up cases of eviction. This they argue has led to default judgments being issued against farm dwellers throughout South Africa. The submission also notes that many magistrates in Mpumalanga do not understand the provisions of ESTA and the Labour Tenants Act. The submission cites a case where a magistrate issued an eviction order using PIE despite the fact that the family concerned had lived on the property for 33 years and qualified as long-term occupiers in terms of ESTA.

The submission also singles out municipalities for failing to assist evicted farm dwellers to secure alternative land and housing and points to “a complete lack of support from the provincial SAHRC office which TRAC approached to assist in addressing specific cases including *Phumlani v Mbombela* and *Opperman v Augustine*.”⁶¹

Surplus People Project (SPP)

The submission by SPP, a non-governmental organisation that facilitates land and agrarian reform in the Western and Northern Cape highlights the “structural or systemic problems facing farming communities” which it argues originate in the

59 Nkuzi Development Association, 2007, p. 3.

60 Ibid. p. 4.

61 The Rural Action Committee TRAC Mpumalanga, 2007, p. 4.

neo-liberal economic framework and agricultural restructuring which is creating new forms of dispossession and associated human rights violations. SPP's contention is that most of the human rights violations in farming communities are linked to the neo-liberal restructuring within agriculture. It argues that wage rates in the agricultural sector are falling while the composition and the agricultural workforce is shifting towards casual or part-time work in high value-added commodities. It is these forces which are driving the wave of evictions and displacement of farm dwellers.

SPP's research suggests "that the human rights violations, oppression and exploitation of farm dwellers and workers are not, as often suggested, as a result of brutal farmers or weak policy or legislation only, but related to the neo-liberal agrarian structure." SPP argues that land reform has failed farm dwellers who have been dislocated from the process. SPP proposed that the public hearings "need to shift away from a restricted notion of human rights and address the core problem of South African farming communities."

SPP recommendations include the adoption of a programme of agrarian reform as distinct from the current market-driven approach. It proposes a moratorium on the eviction of farm workers until effective legislation has been developed in a participatory manner.

Food and Allied Workers Union (FAWU)

The FAWU submission⁶² notes a perception "that several government departments continue to forget about reporting on their policies, or policy cycles for farm workers and their families as they should do for this vulnerable group." The submission challenges whether in fact there is a coherent government policy on farm workers, farm dwellers and rural development more generally. The submission suggests that the SAHRC should consider bringing a case to the Constitutional Court in an effort to encourage relevant government departments to clarify whether they have coherent policies in this respect.

Black Association of the Wine and Spirits Industry (BAWSI)

BAWSI is a registered non-profit organisation whose objective is to transform the wine and spirit industry in the Western Cape. BAWSI made a written and oral submission to the hearings. While BAWSI acknowledged that the majority of evictions were now being secured through the courts, it argued that in "most

cases no consideration is given for the families in terms of their right to accommodation, human dignity, alternative housing, health care, food, water, social security and all the other rights."⁶³

The written submission describes four eviction cases where the land owner was alleged to have acted outside law through cutting access to water and demolishing housing of evicted occupiers when no alternative accommodation was available. The BAWSI submission alleged there had been inadequate attention paid to key provisions of ESTA in cases which had gone before the courts.

BAWSI recommendations include:

- ◆ an immediate negotiated moratorium on evictions;
- ◆ a review of ESTA;
- ◆ an educational programme for the police and magistrates on ESTA, PIE and related tenure reform legislation;
- ◆ a review of all evictions that have taken place over the last 10 years;
- ◆ a 'know your rights' campaign for farm workers funded by the SAHRC.⁶⁴

Land Access Movement of South Africa (LAMOSA)

In their submission, LAMOSA stated they had observed an increase in post-apartheid illegal evictions in North-West and Gauteng provinces. LAMOSA provided figures on the evictions cases they had handled between July 2005 and July 2007.

| Areas | Number of evictions stopped | Number of illegal evictions that occurred |
|--------------|-----------------------------|---|
| Rustenberg | 60 | 23 |
| Ventersdorp | 64 | 120 |
| Klerksdorp | 45 | 98 |
| Randfontein | 43 | 19 |
| Mogale City | 68 | 45 |
| Total | 280 | 305 |

LAMOSA submitted that "where we managed to stop evictions, all farmer owners and all landowners resort to all sorts of atrocities to pressurise farm dwellers leave their place of resident." (sic) "These included cutting off electricity and water, charging exorbitant rates for water and electricity,

62 Food and Allied Workers Union, 2007.

63 South African Human Rights Commission, 2007d.

64 Black Association of the Wine and Spirits Industry, 2007, p. 4.

demolishing houses of residents, and putting up electrical fences and gates without providing keys to the residents.”⁶⁵

LAMOSAs highlighted the consequences of the failure to provide alternative accommodation to evicted farm dwellers. In the North-West large numbers of evicted households are reported to have settled on state land which is under a land claim which makes the process of resolving the claim more complex. LAMOSAs recommended that a moratorium on evictions should be implemented until one piece of legislation is put in place. It also proposed that the resolution on establishing land and agrarian reform forums at local level should be implemented.

Organised agriculture submissions

Agri South Africa

In a covering letter to the chairperson of the SAHRC prior to the public hearings the president of AgriSA recorded the outcomes of the meeting held between AgriSA and the SAHRC. This noted undertakings that:

“Caution will be taken not to generalise with findings with regard to isolated incidents of cases” and “that it is important to hear ‘both sides of the story’ which may require from the SAHRC to invite other organisations after the initial hearings to comment on complaints and preliminary findings in that regard.”⁶⁶

In the section of its written submission dealing with land tenure AgriSA noted that it was part of the negotiations which led to the promulgation of ESTA in 1997. In the view of AgriSA the act was “problematic from the outset as land owners felt prejudiced by it and eviction processes are drawn out and expensive.” AgriSA further notes that “giving people competing rights on the same piece of land is problematic and has an inherent potential for conflict.”⁶⁷

The submission records that AgriSA favours the off farm option which enables farm dwellers to secure property rights of their own. However, in this regard it records its concerns over the capability of government to provide the required infrastructure and services particularly with respect to the recently announced proposals to redistribute 5 million hectares of land to farm dwellers.

With respect to the statistics on evictions presented at the hearings AgriSA recorded its scepticism about the findings of the Nkuzi research arguing that Statistics South Africa would provide more reliable independent research. However, at the same time “AgriSA does not dispute that large numbers of people have moved off farms over the last decade or more.”⁶⁸ The agricultural union argues that this has been a consequence of economic factors including the liberalisation of agriculture which resulted in job shedding in the sector.

AgriSA disputes allegations that thousands of people are still being forced off farms stating that “even the Minister of Agriculture and Land Affairs has been unable to back up claims of large-scale illegal evictions.”⁶⁹ The submission argues that eviction should always be possible and the requirements for legal eviction should not be so strict or so expensive. AgriSA notes that the principle problem with ESTA has been with its implementation. It observed that “a CCMA process for dealing with evictions may be preferable to the current court process.”⁷⁰

The submission questioned why if there are so many illegal evictions taking place have there not been any successful prosecutions of landowners?

Although the AgriSA submission voiced the complaints of its members concerning ESTA, it is important to note that the union did not call for its abolition or put forward any concrete proposals as to how it might be amended.

Agri Western Cape

The submission noted that it was “extremely disconcerting that the government and organisations, despite promises to the contrary, continued to grab at every unsubstantiated accusation of human rights violations to fuel negative perceptions of farm owners ... Try as we may, it is no longer possible to believe that the frequent denunciations of farm owners, without affording agriculture of the opportunity to investigate and take disciplinary action against specific perpetrators, is not motivated by a shrouded agenda to deliberately destabilise agriculture.”⁷¹

65 Land Access Movement of South Africa, 2007, pp. 2-3.

66 AgriSA, 2007a.

67 AgriSA, 2007b, p. 1.

68 AgriSA, 2007b, p. 2.

69 Ibid. p. 2.

70 Ibid.

71 Agri Western Cape, 2007, p. 1.

The submission makes similar points to those contained in the national AgriSA submission reported above. However, with respect to evictions in the Western Cape, the submission argues that although farmers initially resented ESTA it has not resulted in large-scale illegal evictions. The submission notes that “between January 2004 and July 2007 farm owners in the Western Cape issued 387 section 9(2)(d) notices.” At the same time “the courts issued 362 section 9(3) notices requesting information on how potential evictees would cope with eviction.”⁷²

Section 9 of ESTA requires that the owner or person in charge has, after the termination of the right of residence, given—

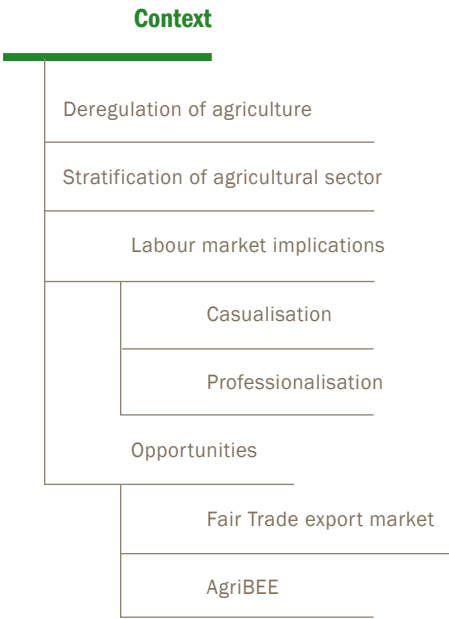
- (i) the occupier;
- (ii) the municipality in whose area of jurisdiction the land in question is situated; and
- (iii) the head of the relevant provincial office of the DLA, for information purposes, not less than two calendar months’ written notice of the intention to obtain an order for eviction.

The submission states that there is a need to find a non-adversarial approach to land reform which is long overdue.

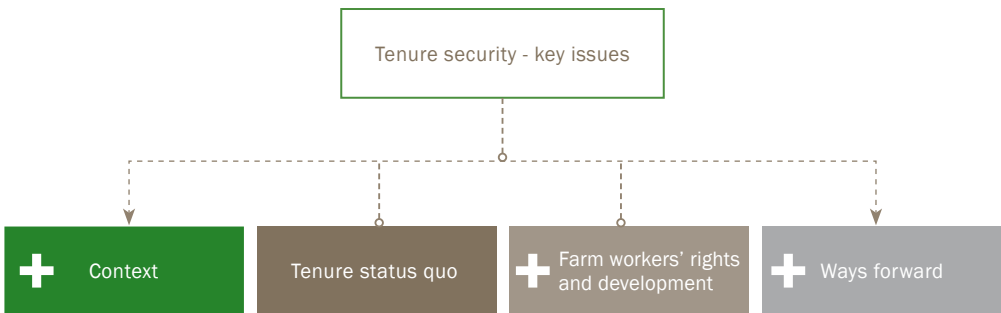
The submission concludes by stating that the “protection of human rights is a cause to which we unreservedly subscribe providing all actions in this regard are even-handed... our future cooperation with the Human Rights Commission will be dependent on whether future actions of the HRC are convincingly fair and even-handed”.

The inquiry has highlighted the ongoing changes in agricultural economic context, reviewed what is known about the tenure status quo and the progress made against 2003 recommendations, questioned the best approaches to secure farm workers rights and development and offered different proposals and policy choices to guide the way forward.

The changing context



Key issues summarised



⁷² Agri Western Cape, 2007, p. 5.

An analysis of the context makes it clear that the agricultural economy is undergoing a process of rapid change which has major implications for tenure security and labour issues. Accelerated deregulation has accentuated the divide between a few large agribusinesses and producers who account for 80% of production and a much larger number of smaller, struggling enterprises with low rates of return.

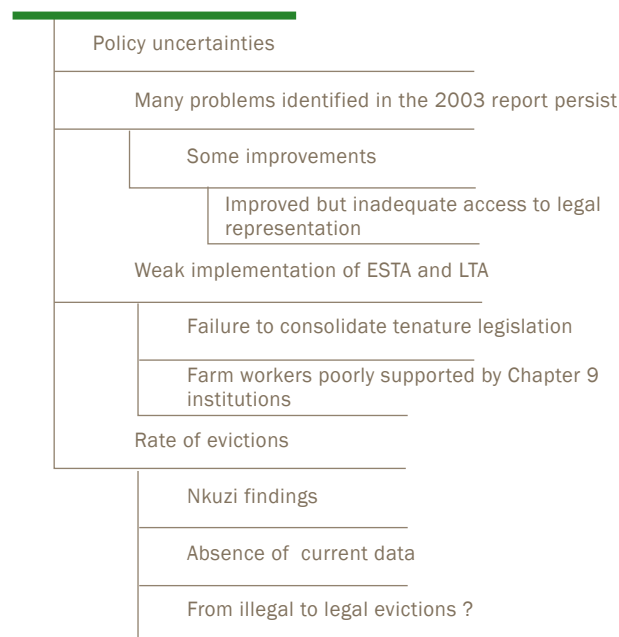
Deregulation has major implications for the agricultural labour market. It has contributed to overall job shedding and the casualisation of agricultural labour in certain sub sectors which in turn can be inferred to have a 'knock on' effect on that rate of eviction and displacement from farms. The highly uneven distribution of income amongst farmers has implications for the quality of housing, services and other benefits which small producers can realistically afford.

As South African producers are forced to compete in global markets against producers from other countries (who enjoy much higher levels of government support) it can be assumed that they will increasingly require a professional permanent workforce, which will be supplemented by part time and casual workers at peak periods. This permanent workforce should be able to command better wages and working conditions. However, this is unlikely to have consequences for the living and working conditions of part-time and casual workers. These will need much closer monitoring from a labour relations and occupational health and safety perspective.

There are pressures on farmers from without and within to improve conditions on farms. The introduction of AgriBEE places increased emphasis on corporate social investment and improved labour and living conditions. However these factors are more likely to apply to large producers and will still leave the conditions on the majority of smaller less economically viable farms untouched. For some specialised export producers there are economic benefits from accessing Fair Trade markets. However to gain market access they will have to demonstrate that they meet required standards which will require improved wages, gender equity, the right to join trade unions and the provision of housing and social benefits.

Assessing the tenure status quo

Tenure status quo



Overall it appears that ESTA and the LTA remain poorly prioritised and badly implemented by the DLA. The DLA has argued that lack of capacity is to blame. While this is clearly a factor, the more pressing problems appears to be a lack of political direction. It is unclear what the State's policy objectives are with respect to farm workers and dwellers.

- ◆ Is it to keep as many people on farms as possible and support them to claim their rights and to secure services from employers and land owners?
- ◆ Is it to keep as many people on farms as possible but support employers to improve living conditions and working conditions of workers and farm dwellers?
- ◆ Is it to secure the rights of long term occupiers and labour tenants on farms while simultaneously promoting off farm security of tenure for other workers and farm dwellers?
- ◆ Are they to strengthen municipalities to provide housing, services and local economic development opportunities as part of providing on and off farm solutions?

In the period under review it is clear that that State has done little or nothing proactive. This has had the effect of letting 'market forces' reshape rural demographics which is putting further pressure on local municipalities whose already limited ability to plan is being undermined by people displaced from farms and rural areas.

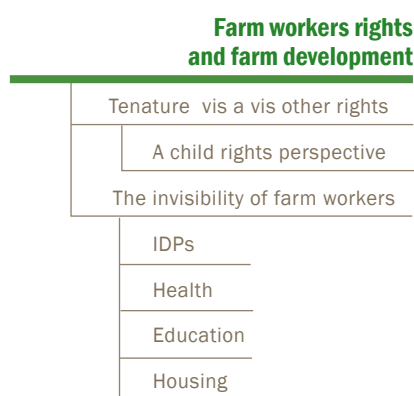
From the hearings it is clear that the majority of problems raised in the 2003 report remain unchanged and have been inadequately addressed – if indeed they have been addressed at all.

| Problems cited | Progress/shifts | Statements of intent |
|--|---|--|
| Eight years have passed without the proposed consolidation of ESTA, LTA and PIE. | DLA has made inputs to ensure that provisions relating to ESTA, LTA and IPILRA have been integrated into the PIE Amendment Bill which was released for public comment in 2006 and has since been amended in 2007. However the Bill is currently being reviewed by the State Law Advisors and is unlikely to make it to Parliament in 2007. There is an argument that the emphasis on consolidating legislation is misplaced providing a smokescreen for government inactivity. ⁷³ | DLA has announced plans to establish a land rights management facility, a land rights awareness campaign, a toll free evictions help line and an evictions monitoring facility. |
| Training has not been institutionalised for DLA officials, magistrates, prosecutors and the SAPS with respect to the implementation and enforcement of ESTA. | There has been a programme put in place to improve farm dweller access to legal representation via the Legal Aid Board, however submissions argue that it is inadequate to meet needs on the ground. | |
| No owner has been successfully prosecuted for having illegally evicted a work or farm occupier | | Land owners have recently been threatened with expropriation if they illegally evict farm dwellers. |
| Very few Section 4 subsidies have been made available for farm dwellers to secure independent land rights. | | DLA announced on September 13 2007 that 5 million ha would be acquired for farm workers and that this programme would be a presidential priority. Discussions had already taken place with the Treasury with respect to funding and an initial amount has been set aside to commence with the programme in five provinces. |
| The settlement of Labour Tenant claims appears to lack clear time frames and deadlines. Labour tenancy issues have been under resourced. Slow progress is being made to settle outstanding claims. | | |
| Poor practical support for farm dweller rights by Chapter 9 institutions and inadequate alignment between them. | | |

⁷³ Lahiff, 2007, p.32

There does not appear to be effective monitoring of evictions – either legal or illegal. While AgriSA professes scepticism about Nkuzi's figures both agree that large numbers of farm workers and dwellers have been displaced from farms over the last decade. What remains less certain is what the trends are now. Evidence presented at the hearings from both NGOs and organised agriculture seems to indicate that land owners are increasingly securing evictions through the courts. This is not to suggest that illegal evictions have ceased – there is plenty of evidence that these continue – but perhaps the balance is shifting in favour of the legal process.

Tenure and development



There is an argument that attempting to privilege tenure security may have had the unintended consequence of practically extinguishing many of the other rights of farm dwellers and their families – such as the rights to adequate housing, health and education. Research published in the Journal of Public Health Nutrition in 2006, which was undertaken in 2002 and 2003, found that amongst farm dweller households “household food security is compromised due to a lack of financial resources, infrastructure and also household resource allocation. This impacts negatively especially on children, with half of them being underweight, stunted or wasted.”⁷⁴ This amplifies the findings of a study commissioned by the Department of Health in 1999 which found that one out of every three children who grow up on a farm is stunted from malnutrition.⁷⁵

A child centred critique of current tenure policy

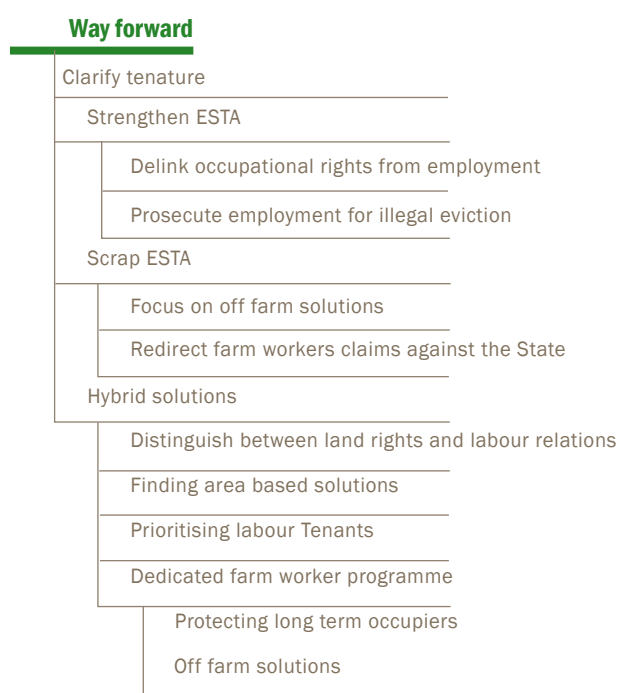
In the light of the above there are strong arguments for a child centred critique of current tenure security policy. Present

policy effectively confines children of farm dwellers to living in predominantly poor conditions on land owned by other people, often with limited access to education and health care. This predestines many of them to fill their parents' shoes as the next generation of poorly educated occasional labourers because they are left with no meaningful alternative.

It urges us to consider the opportunities presented by comparable redress in Section 25(6) of the Constitution and suggests that the whole approach to on farm tenure security be fundamentally rethought. It should be noted that only 27% of evictees now living off farm indicated a preference for living on a farm⁷⁶, despite it being clear that the needs of evicted and displaced farm dwellers are invisible within most municipal, provincial and national development planning.

Developing a coherent government wide policy on farm dwellers

The FAWU submission suggested the SAHRC approach the Constitutional Court to require that Departments develop coherent policies for supporting farm workers and dwellers. Most municipal IDPs which are supposed to act as a window on government priorities and spending within Districts are currently silent on farm worker related issues. Provincial departments do not appear to have clear programmes with targets, budgets and timeframes which show how they will render health, education and training support to farm dweller populations.



⁷⁴ Kruger et al., 2006.

⁷⁵ Department of Health, 1999.

⁷⁶ Wegerif et al., 2005, p. 100.

Determining options for the future

Clearly the first step towards a different dispensation is to clearly define exactly what Government policy is with respect to farm workers. It is not for the SAHRC to recommend what that policy should be. That needs to be determined through a rigorous dialogue between the DLA, organised agriculture, unions, farm dweller representatives and NGOs. However, given the polarisation and apparent break down of trust in the relations between the parties which was evident from the hearings there may be a role for the SAHRC or a similar independent body to assist in facilitating the policy development process. It seems clear that “an urgent debate is needed to negotiate a new discourse of moral responsibility or social roles based on current economic and demographic realities.”⁷⁷ This needs to resolve:

- what people employed and living on farms can legitimately expect of an employer /owner;
- what an owner can legitimately expect of government and of the people employed and living on their farm;
- how the State will assist farm workers and dwellers, employers and municipalities to ensure that the socio-economic status of farm dwellers is dramatically improved.

There seem to be four broad routes open, which emerge through the submissions, that must be further analysed and assessed:

Strengthen ESTA

Submissions emphasising the strengthening of the ESTA place a lot of emphasis on developing the regulatory capacity of the State. Proposals include:

- providing substantive statutory tenure rights to long-term occupiers which effectively make them non-evictable;
- offering additional protection to women and children who are often dependent on men for their occupier status;
- protecting and expanding the rights of farm workers to have livestock and land for their own use.

Since the SAHRC hearings, there have been engagements between AgriSA and the Ministry of Agriculture and Land Affairs. The Deputy Minister reportedly warned employers who illegally evicted farm workers that they could be expropriated. According to SABC 3, farmers' unions and the Agriculture Minister, Lulu Xingwana, have agreed on getting a ministerial council to look at problems affecting farmers and farm workers.⁷⁸

⁷⁷ Atkinson, 2007a, p. 99.

⁷⁸ SABC News, 16 October 2007.

Scrap ESTA

Some submissions argue that ESTA is fatally flawed and should be scrapped in its entirety. This approach argues that farm dwellers have claims against municipalities rather than owners and favours incentives by the State either to support land owners to improve housing and access to schools and health care on farm or to promote off-farm options. The recent announcement by the DLA that it intends to secure 5 million ha for farm workers may imply a shift towards finding off-farm solutions, but this needs to be clearly articulated as a policy objective.

Develop hybrid solutions

This approach would make a clear distinction between rights associated with employment of workers and the related rights of their families and Labour Tenant cases. The latter represents contestations between tenants and owners over land rights, occupation and use which may go back generations. Rather than conflating ESTA and the LTA it would seek to draw clear distinctions between them and prioritise the settlement of Labour Tenant claims with the same urgency that has been given to Restitution.

It would involve the design and implementation of a dedicated farm dweller support programme. While retaining an emphasis on securing rights of long term occupiers under ESTA it would place much greater emphasis on finding off farm tenure, housing and development solutions through ensuring that these issues were addressed through area based planning and integration into municipal IDPs. In case of labour and tenure security disputes, it would place more emphasis on compulsory mediation through the development of local and district mediation capability.

This approach would encourage state incentives to farm owners to improve living standards on farm rather than reliance on poorly enforced punitive regulation. It would seek to tie parties into local and district social compacts which are independently monitored. Such an initiative could also be linked to AgriBEE scorecards.

At the same time it would closely examine the implications of a deregulated agricultural economy for the future of farm labour and the implications for land reform, spatial planning, housing and service provision, encouraging joint research by academics, unions and organised agriculture.

This approach would also examine how best to mainstream tenure issues within land reform as a whole, inclusive of LRAD and Restitution.

Key findings

For ease of reference the findings have been categorised in the following categories:

- i. Progress since 2003
- ii. Consequences of ESTA
- iii. Government Policy
- iv. Evictions

Progress since 2003

- ◆ Progress against the recommendations of the 2003 report have not been effectively monitored and communicated.
- ◆ There has been very little progress towards achieving security of tenure for farm dwellers and labour tenants.
- ◆ There has been under prioritisation and very slow progress made towards the settlement of Labour Tenant claims⁷⁹ which is compromising the rights of people who lodged claims in terms of the LTA.

Tenure Security

- ◆ The current approach to tenure security with its narrow focus on securing land rights does not pay sufficient attention to the needs of women and children living on farms whose rights, freedoms and future work opportunities are frequently constrained by their living situations.
- ◆ Tenure security and the clarification of rights are also important issues on land redistributed or restored through the land reform programme which requires dedicated support from the DLA.

Government Policy

- ◆ Government has not used section 4 of ESTA to enable farm workers to secure land and tenure security.
- ◆ The deregulation of the agricultural economy has exerted major pressures on farmers, particularly on the majority of farming enterprises with a turnover of R300 000/annum or less, and has contributed to job shedding and the displacement of farm workers and dwellers.

79 The DLA's latest annual report notes that of 200 disputed labour tenant cases referred to court none have been settled and that 589 undisputed cases were settled out of a targeted 6271 for the year (Department of Land Affairs, 2007, p. 60). The KwaZulu-Natal Provincial Land Reform Office records the transfer of 15 properties totalling 8225ha at a cost of 8.8 million rand for 760 labour tenant households during the 2006/07 financial year. (Ibid. p. 84) The Mpumalanga Provincial Land Reform Office report for the same period makes no reference to settling labour tenant claims, although it is possible that these have been attributed to LRAD.

- ◆ The objectives of government policy with respect to farm workers and dwellers in the current context are either unclear or not communicated.⁸⁰ This is a fundamental problem currently preventing the emergence of practical solutions with the majority support of all role-players.
- ◆ The social development needs of farm dwellers and evicted persons remain largely invisible within municipal IDPs. Government initiatives to address the needs of this vulnerable group remain fragmented and lacking in coherence. This is despite a recommendation in the 2003 report requiring relevant government departments to submit a reasonable plan to the SAHRC that addresses the plight of people in crisis situations after an eviction and a requirement that municipalities should develop a framework guiding document for such emergency situations.

Consequences of ESTA

- ◆ ESTA has had unintended and undesirable consequences. Its promulgation contributed to large numbers of pre-emptive evictions. Attempting to privilege tenure security in isolation from a larger development programme to address living and working conditions on farms, has practically extinguished many of the other rights of farm dwellers and their families – such as the rights to adequate housing, health and education. It has led to employers withdrawing rights of access and use of land and limiting occupational rights through employment contracts. It provides a disincentive to land owners and employers to improve on farm housing and facilities.
- ◆ Relationships between government, organised agriculture, unions and NGOs relating to ESTA (and tenure security policy more broadly) remain unproductively and unnecessarily contested.
- ◆ Overall ESTA remains poorly implemented and illegal evictions continue.

Evictions

- ◆ Once under threat of eviction farm occupiers frequently lack support. Although the LAB has made significant progress in improving farm dweller's access to legal representation this remains inadequate. The SAHRC acknowledges criticism that certain of its provincial offices have not responded

80 The DLA Annual report notes that a policy framework document separating management of evictions from tenure security for people living and working on commercial farms has been developed and in place since October 2006. Department of Land Affairs, 2007, p. 35.

appropriately when requested for assistance in alleged eviction cases and undertakes to investigate.

- There is evidence that landowners are increasingly securing legal evictions through the courts in certain provinces.
- There is inadequate collection and reporting of data on legal and illegal evictions. Despite the legal requirement of section 9 of ESTA which requires owners to inform the DLA when they terminate the right of residence of an occupier no such information has been presented to the hearings or in DLA annual reports. The availability of this information [or the lack of it] would have provided an indicator of compliance with the law, the scale of legal evictions and the possible ratio between legal and illegal evictions in any district.
- The SAPS remain largely uninformed about the legal requirements of ESTA and the offences set out in section 23 of the Act. This has contributed to allegations that they favour land owners in the event of a tenure dispute.

Recommendations

It is clear from the evidence that current policy and approaches to enhance tenure security for farm occupiers and labour tenants are not working. All parties appear to be in agreement on this matter, although they differ with respect to what should be done.

The SAHRC noting that:

- the Adviser to the Minister of Agriculture and Land Affairs stated in his submission that there was a need to review DLA policies and legislative framework, and acknowledged that a hearing of this nature could help point us in the right direction;
- the DLA is already publicly committed to develop a strategy for improve tenure security for people living on commercial farms;⁸¹

Recommends that:

Review and Reform of policy on tenure security by the DLA

- The DLA to enter into an urgent dialogue with its social partners to review, clarify and reform its policy on tenure security for farm workers and occupiers.

- The SAHRC to assess, monitor and publish such progress within reasonable timeframes.
- This should result in clearly articulated policy objectives supported by a coherent strategy and a detailed farm dweller development programme specifying on and off farm tenure and development options, enforcement and monitoring measures together with plans to improve housing, access to education, health care, HIV/AIDS mitigation and other matters agreed to be of relevance.
- The policy, programme and implementation plan complete with budgets, human resources, targets and an implementation schedule should be completed within six months of the launch of this Report, or another reasonable date agreed to by the parties which can be implemented at district level and provide a framework for District area based plans.
- The programme should be accompanied by a comprehensive communication and monitoring strategy to ensure its effective implementation.

Monitoring and Enforcement

- In the interim the DLA should ensure that all notices to terminate rights of occupation in terms of section 9(2)(d) of ESTA are properly recorded and collated by district and province and reported quarterly on the Department's website together with an analysis of trends.
- To ensure respect for the law the Department in partnership with the SAPS and NGOs should ensure that anyone alleged to have evicted farm dwellers without a court order is prosecuted in terms of Section 23(1) of ESTA
- Recommendations made in the 2003 report relating to the training of magistrates, prosecutors and the SAPS still stand and should be addressed by the DLA in conjunction with the Department of Justice. Both Departments should report to the SAHRC within six months of the launch of this Report on progress in this respect.
- The Department of Provincial and Local Government should put in place a mechanism in regulations requiring municipalities to address the provision of emergency shelter and services to people displaced were evicted from farms.

⁸¹ Department of Land Affairs, 2007, p. 61.

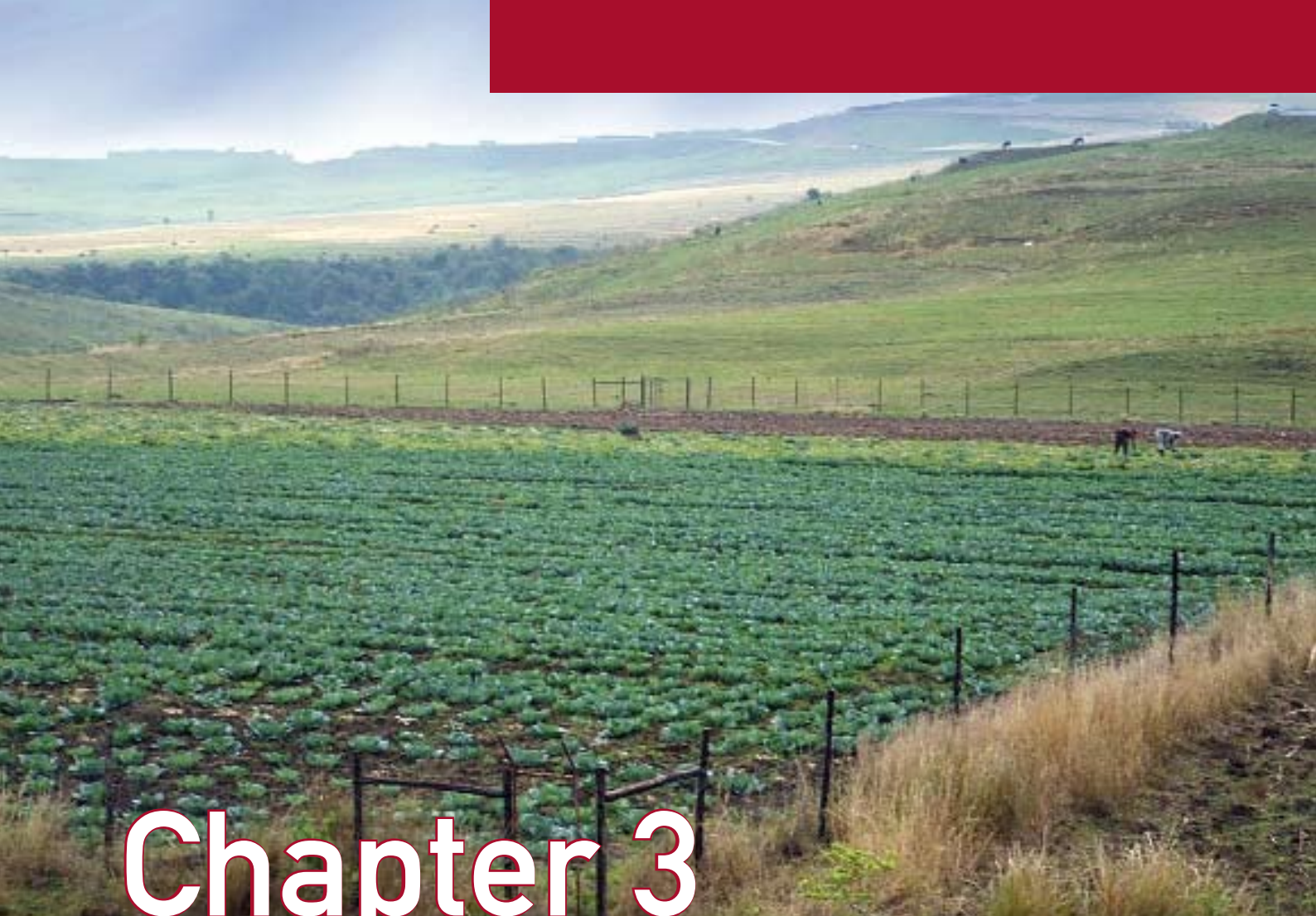
Access to land and Justice

- ◆ The Department of Housing should examine ring fencing a portion of the housing budget to allocate it to the development of well located off farm settlement options which combined settlement with access to land for food security and grazing.
- ◆ DLA should urgently review its progress towards the settlement of Labour Tenant claims and together with its social partners develop a workable plan to settle these claims in the relevant provinces within a reasonable period.
- ◆ The proposed land rights management facility put forward by DLA should also address land rights management on land redistributed or restored through the land reform programme to ensure just and equitable access.

For its part the SAHRC undertakes to:

- ◆ Review the proposed reform of tenure security policy and to assess monitor and publish such progress within reasonable timeframes.
- ◆ Review and improve its performance in monitoring and intervening to prevent and rectify alleged human rights abuses on farms;
- ◆ Endeavour to develop a joint programme with other relevant Chapter 9 institutions to protect, defend and monitor human rights in farming communities and remind all relevant government departments and municipalities of their obligations to provide services and social development support to people on farms;
- ◆ Investigate approaching the Constitutional Court for a ruling to clarify the responsibilities of all relevant government departments to develop policies and programmes which specifically address the needs of people on farms;
- ◆ Hold further public hearings to review progress and to publish progress reviews within reasonable timeframes.





Chapter 3

Safety on farms

Background

In 2001 two independent processes began examining the security and human rights situations on farms. These were:

- the Special Committee of Inquiry into Farm Attacks which was appointed by the National Commissioner of Police in terms of section 34(1)(l) of the South African Police Service Act 68 of 1995 which published its report in July 2003;
- the National SAHRC Inquiry into Human Rights Violations in Farming Communities was initiated in June 2001 which culminated in a final report published in August 2003.

We briefly review their key findings below with respect to safety and security on farms.

Special Committee of Inquiry into Farm Attacks

Although the term “farm attack” was not defined in the Committee’s Terms of Reference the Committee adopted the definition developed by the Crime Information Analysis Centre (CIAC) of the SAPS.

“Attacks on farms and smallholdings refer to acts aimed at the person of residents, workers and visitors to farms and smallholdings, whether with the intent to murder, rape, rob or inflict bodily harm. In addition, all actions aimed at disrupting farming activities as a commercial concern, whether for motives related to ideology, labour disputes, land issues, revenge, grievances, racist concerns or intimidation, should be included.”¹

This definition specifically excluded cases relating to domestic violence, and assaults where the victims and offenders are usually known to one another. It can be argued that this definition effectively excludes acts of violence perpetrated by owners, employers and persons in charge on workers and farm dwellers, on the grounds that they are known to one another.

The Committee reviewed the perceptions that farm attacks predominantly targeted white people and that they were politically motivated. The Committee profiled the 1 398 recorded victims of farm attacks in 2001 of whom 61.6% were white, 33.3% black, 4.4% Asian and only 0.7% coloured. It found that overall the proportion of black victims was increasing. However the report noted that there was a “considerably higher risk of a white victim of farm attacks

being killed or injured than a black victim.”² The report found that 12.3% of the female victims of farm attacks were raped of whom 71% were black.

With respect to the motive for the attacks the Committee analysed some 2 644 cases on the NOCOC database for 1998 to 2001. It found that the motive in “89.3% cases was clearly robbery, in 7.1% it was some form of intimidation (such as crops or buildings being burnt down), in 2.0% some political or racial motive could be discerned, and in 1.6% it was labour related, such as a dispute over wages.”³

The committee concluded that the vast majority of farm attacks were carried out by criminals living off farms and that farm workers were involved in just 2,8% of all the attacks between 1998 and 2001.

Key issues identified in the SAHRC 2003 report

The 2003 report found that there were “unacceptable levels of violent crime in farming communities with both farm dwellers and farm owners being the victims of such crime.”⁴ The SAHRC enquiry defined violent crime to include assaults and forms of violence perpetrated against farm dwellers by farm owners, and the various security structures, both state and private together with attacks by criminals on both farm owners and farm dwellers.

The SAHRC found that “the number of alleged assaults and forms of violence perpetrated against farm dwellers by farm owners and the various security structures, both state and private, indicates that there is an unacceptable level of violence occurring within farming communities.” It noted that “the lack of prosecutions compared to the high number of reports of assaults, indicates that the criminal justice system is not operating effectively to protect victims in farming communities and to ensure that the rule of law is upheld.”⁵

The hearings focused on the contentious role of the commandos in the rural security apparatus with the SAHRC finding that “the number of allegations levelled against commandos leaves no room other than to find that there are some commandos who abuse their positions and perpetrate

1 The Special Committee of Inquiry into Farm Attacks, 2003, p. 417.

2 Ibid. p. 446.

3 Ibid. p. 419.

4 South African Human Rights Commission, 2003, p. 187.

5 Ibid.

crimes against farm dwellers.”⁶ The hearings heard about the introduction of sector policing and the gradual replacement of the commandos by the SAPS. However, the inquiry found that the Rural Protection Plan “fails to be inclusive of all who live in farming communities”⁷ citing a lack of involvement by farm dwellers.

The report noted that violent crime against women in farming communities was not brought significantly to the attention of the inquiry. However, the report records that there are unacceptable levels of violence being perpetrated against women on farms and urged the SAPS to take special steps to address this problem through its rural safety programme.

The report recommended that the Commission for Gender Equality address crimes perpetrated against women in farming communities and that further research should be undertaken to establish the trends in this respect throughout the country.

The SAHRC noted that there was a perception that farm attacks are perpetrated against white farm owners only and recommended that the term “farm attacks” be removed from the Rural Protection Plan which should rather address all forms of crime in farming communities. The report also reviewed the different perceptions about the causes of violent crime on farms and found that there was “no evidence that hate speech contributes to farm attacks”⁸ as had been alleged by organised agriculture.

Trends since 2003

While crime on farms is reported to have fallen between 2001 and 2005 both AgriSA and SAPS submissions to the hearings note a resurgence of 25% in 2005/2006. However, neither provided an explanation for the sudden reversal of a declining trend. In 2005 the Institute for Security Studies (ISS) published a report which assessed the implications for rural policing of the closure of the Commandos announced by President Mbeki in 2003 in his State of the Nation Address.

The President stated that “in order to ensure security for all in the rural areas, including the farmers, government will start in the near future to phase out the SANDF Commandos, at the same time as we create in their place a new system whose composition and ethos accord with the requirements of all rural communities”.

The ISS study examined the functions of different rural security agencies in their attempts to reduce crime in rural areas and reviewed the work of the Commandos through this lens. The report acknowledged that certain Commandos had been associated with serious human rights abuses but set out to review the larger implications of the dissolution of the Commando system as a whole, and the absorption of their functions into the SAPS for rural policing.

It recorded that between the beginning of April 2004 and the end of March 2005 Commando members were involved in 79 004 operations which included 29 351 farm visits. The report concluded that “their contribution to rural safety is far more limited than their supporters allow, but far more valuable than their detractors are prepared to acknowledge.”⁹ The study noted that with the dissolution of the Commandos and the introduction of sector policing the police faced tough decisions as to where to place their limited resources. Given the objective of the SAPS to reduce contact crime and its preferred approach of saturating crime hot spots with uniformed police, the study argued that:

“A combined reading of the SAPS national instruction on the police reserve, together with its crime reduction and police action targets, tells us that, for better or for worse, the closing of the Commandos will see a transfer of policing resources from rural to urban sectors of police stations throughout the country. The result will be a deterioration in the policing of rural sectors, and in particular of agricultural crime. The potential gain is that residents of rural town centres will be better policed.”¹⁰

6 Ibid. p. 190.

7 Ibid. p. 192.

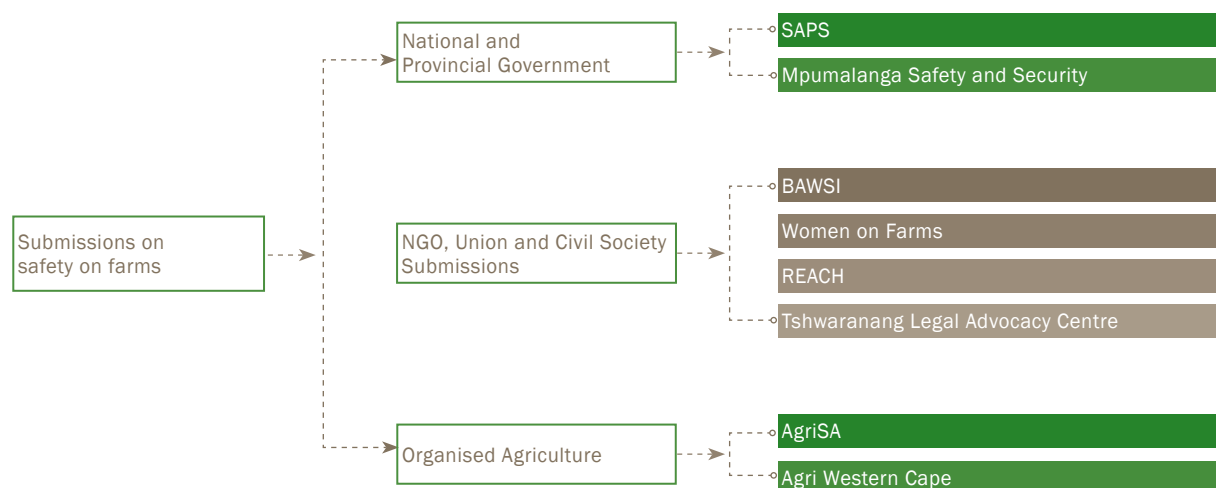
8 Ibid. p. 191.

9 Steinberg, 2005, p. 2.

10 Ibid. p. 58.

A map of relevant submissions to the 2007 hearings

During the 2007 hearings the issue of safety on farms had a much lower profile than in 2003. As the hearings did not systematically set out to examine progress against recommendations made in 2003, it is difficult to accurately track progress in this regard. However, submissions shed light on key issues which are examined below.



Government submissions

SAPS

In their verbal submission the SAPS reported on initiatives to enhance access to policing in the rural community. These initiatives included:

- increasing the number of police officials and rural stations;
- putting in place a sector policing strategy;
- increasing the number of police reservists and strengthening crime combat capacity at station level.

With respect to the phasing out of the SANDF Commando system from 2003 a total of 172 out of a total of 180 Commandos have been closed down. The remainder will be closed between 2008 and 2009. The Rural Protection Plan which was first drawn up in 1998 has been revisited and realigned with SAPS structures. The SAPS noted that the adoption of a sector policing approach in rural areas requires the involvement of all stakeholders. They highlighted the active role of organised agriculture together with various government departments which have been involved in this process.

The SAPS reported that rural safety plans have been developed in all nine provinces. A National Rural Safety Committee meets on a bimonthly basis and monitors crime statistics on rural crime in the farming communities. Information on trends is shared at this meeting which informs the development crime-fighting strategy in identified high risk areas.

The SAPS submitted that between 2001/02 and 2005/06 there was a substantial decline in crimes reported on farms and small holdings. However, the incidence of crime had increased again in the 2006/07 financial year. Questioned by the panel on the reasons for this, the SAPS argued that the rise was consistent with figures for crimes in the urban areas and was not unique to farms. The SAPS highlighted with concern certain findings from the Rural Victim Crime Survey which reported its findings in 2005 and which highlighted that respondents were “very evasive regarding the quality of performance that was given by the South African Police Service.”¹¹

The SAPS submitted that overall 75% of police reservists are African. The SAPS has introduced new category D police

11 South African Human Rights Commission, 2007e, p. 13.

reservists – who are responsible for rural (and urban) safety. In rural areas reservists do patrols and make visits to farms, schools and villages visits to the traditional leaders to identify problems. Category D reservists have limited powers compared to Category A who have equivalent powers to permanent force members.

The SAPS representatives were questioned by the panel on whether there are specific records kept of crimes by and against farm workers and what steps have been taken to enable farm workers to become police reservists. In response to the first question the SAPS noted that “if a crime has been committed by a person who is coming from outside that farm, whether the victim of that crime was a farm worker or a farm owner, we classify that as a crime against a member of the farming community. In the past it used to be called ‘farm attack’ but we felt that it was not a proper concept to address this issue”.¹² These are distinguished from “social crimes” committed by people who stay together on farms. According to the SAPS, these crimes frequently happen on weekends and are associated with alcohol abuse.

As far as could be obtained there is currently no system to distinguish crimes committed by workers and farm dwellers and crimes against farm workers and dwellers committed by owners or persons in charge. This could only be deduced from an analysis of dockets across the country.

With respect to the second question, the SAPS responded that they did not have figures on the number of farm workers recruited as reservists but that this was taking place particularly in the Western Cape. The SAPS representative noted that “our applicants that we recruit as reservists must be able to read, write and speak at least English because they will work at a police station and they will have to actually deliver a service to the community that they serve.”¹³ The rationale for this strict language stipulation was questioned by members of the panel.

12 Ibid. p. 17.

13 Ibid. p. 20.

Mpumalanga Department of Safety and Security

The Provincial Rural Safety Summit report of 2006, which formed in the background to the department’s submission to the 2007 hearings, reviewed security challenges and recommended:

- ◆ commandos be replaced by sector policing;
- ◆ former commandos be encouraged to join the SAPS reserve;
- ◆ rural safety plans be aligned to the integrated development plans municipalities;
- ◆ multi agency teams be appointed to the research police conduct as concerns had been expressed about their efficiency and the alleged partiality towards land owners.

NGO submissions

BAWSI

The BAWSI submission documents alleged abuses on farms in the Western Cape involving alleged rape, assaults, attempts at constructive eviction and illegal eviction. Several of the cases are also documented in the Women on Farms submission below.

Women on farms

Women on Farms (WFP) submitted that in the course of their work with farm workers in the Western Cape they were regularly confronted by instances of human rights violations perpetrated by farmers. WFP farms submitted that:

“The range and extent of these violations clearly demonstrate that they are not “isolated anecdotes” committed by a few “rotten apples.” On the contrary they are indicative of systematic and deeply entrenched norms and practices pervasive in the commercial agricultural sector in the Western Cape.”¹⁴

14 Women on Farms Project, 2007, p. 2.

WFP submitted 30 cases of alleged human rights abuses on farms.¹⁵ Subsequent analysis of these cases shows that:

| Category | Number | percentage of sample | Notes |
|------------------------------|--------|----------------------|---|
| Unfair dismissal Eviction | 7 | 24% | As noted in Chapter 1 eviction cases included are usually preceded by a labour dispute or dismissal from employment. Several of the cases in the sample involved long term occupiers. Cases of legal eviction were also included with a focus on the subsequent hardship experienced by the evicted workers and their families. |
| Harassment | 5 | 17% | These cases included alleged threatening behaviour by farmers against NGO employees investigating abuses on farms together with allegations of harassment of workers who were members of agricultural unions. |
| Assault | 4 | 14% | Four cases of assault were recorded. In two cases workers sustained serious injuries. In one case the police were allegedly involved. |
| Pesticides/ injuries | 4 | 13% | Two cases of pesticide poisoning were recorded with one fatality. The other two cases describe how people injured at work struggled to obtain proper medical attention. |
| Rape | 3 | 10% | Three rape cases were recorded. |
| Poor housing/ health | 3 | 10% | Two cases related to unhealthy living conditions. One case related to the death of a baby because the mother was unable to get to a hospital due to the alleged failure of her employer to call an ambulance. |
| Rape/Murder | 1 | 3% | One case involved the alleged rape and murder of a child. The case is currently before the courts. |
| No compensation | 1 | 3% | This case records how a tree fell on a farm workers dwelling, damaging their property for which they allegedly received no compensation. |
| Discrimination | 1 | 3% | This case highlights discrimination experienced by an HIV positive woman. |
| Off farm stabbing | 1 | 3% | This case records the stabbing of a migrant worker from the Eastern Cape and problems experienced in sending his body home. |

It was observed that cases of rape, assault and intimidation feature highly in the Rawsonville area. The Western Cape Commissioner of Police has reportedly started an investigation into the alleged failure of the Rawsonville police in one of the above cases to deal with the alleged rape of a young woman and the assault of her friend. The situation in this District requires further investigation to identify.

REACH

Rural Education, Awareness and Community Health (REACH) is a non-profit organisation working in the Overberg region of the Western Cape which addresses sexual harassment and sexual violence on farms in the area.

The submission cited findings from research it conducted in 2003 and 2006 which examined the incidence of domestic

¹⁵ It is unclear how many properties were involved as one farm name/location appears 8 times although it is recorded in three areas.

violence, alcohol abuse and sexual harassment on farms in the area. The study indicated that domestic violence is often triggered by a combination of stressful living conditions and alcohol abuse with the latter factor cited as the most significant evidential link. The 2003 study indicated that alcohol was a problem predominantly amongst men, whereas the 2006 study found alcohol abuse affected men and women equally. Respondents in the study characterised domestic violence as “normal,” but exacerbated by the unequal relations between men and women who were often dependent on their partners in permanent employment for rights to live on the farm. The study highlighted the vulnerability of women and children in this regard.

The research found that increasingly “young female children under the age of 13 were predominantly the main victims of sexual harassment and abuse on farms, followed by teenagers between the ages 13 and 19.”¹⁶ The submission presented evidence of an increase in personal experience of sexual harassment between 2003 and 2006 of both female and male respondents. It observes that in many instances rape cases in farming communities could have been prevented, as often months before the actual rape took place the victim had been sexually harassed by the perpetrator.

The study concludes that despite legislation such as the Employment Equity Act, South African law is failing to protect victims of sexual harassment. It recommends the need for compulsory policies and procedures that allow for reporting and managing incidents of sexual harassment coupled with a need to communicate with employees and employers that sexual harassment is a form of unfair discrimination.

Tshwaranang Legal Advocacy Centre (TLAC)

The TLAC submitted that a key weakness in the 2003 SAHRC hearings was the lack of focus on women’s experience of violence in relation to sexual offences and domestic violence on farms. They recommended that the 2007 public hearing should specifically inquire into the problems relating to violence against women.

They recommended that police officers operating in farming communities be trained on the National Police Instructions on Domestic Violence to enable them to be more proactive in addressing this problem. They identified the need for the Independent Complaints Directorate to have a schedule of

visits to farming communities to inform them of how to lodge complaints where there were alleged cases of misconduct by the police.

TLAC noted that it was important for the police “to understand the social problems underlying alcohol abuse in farming communities so that victims are not dealt with prejudicially when they had been raped or abused whilst they were drunk.”¹⁷

TLAC also identified the need for the Department of Justice and Constitutional development to ensure that women on farms are made aware of the provisions of the Domestic Violence Act 116 of 1998. They proposed the establishment of places of safety and shelters in rural areas to cater for abused women and their families supported by the Department of Social Development.

Organised agriculture submissions

AgriSA

The Chairman of AgriSA opened their submission by noting that:

“It’s too easy to accuse the sector as a whole instead of focusing on the facts of specific incidents or allegations and I think that’s an issue that we really would like you to look into. I think we therefore expect the Human Rights Commission to use this enquiry and hearing to make a contribution to objective dialogue on the problems and challenges that need to be addressed”.¹⁸

The submission made by AgriSA records that since 1991 more than 9 400 farm attacks have been recorded which have resulted in the murder of 1 890 people. AgriSA noted with concern that farm attacks have increased since statistics were released for 2005/06 by 25%. There were 636 reported attacks in 2005/06 while 794 were reported in 2006/07. It noted that the motive in 90% of farm attacks was robbery. The submission noted that the level of brutality perpetrated during farm attacks was very high and “increasing.”

16 Rural Education Awareness and Community Health (REACH), 2007, p. 5.

17 Tshwaranang Legal Advocacy Centre, 2007, p. 2.

18 South African Human Rights Commission, 2007c, p. 54.

In response to questions on what might be contributing to this recent increase AgriSA identified two main factors – the slow pace of land reform and the phasing out of the Commandos which “was an area based solution to community safety that has played a major role to slow down the crime in the rural areas.”¹⁹

AgriSA presented figures which it argued represented the economic consequences of crime in the farming communities. According to the Forest Owners’ Association, crime led to the loss of 5 258 job opportunities as the sector had shelved all new expansion plans due to crime and violence in the country. The submission recorded that in 1996 crime had cost the industry R579 million. AgriSA also presented figures from Stats SA’s 2002 agricultural census on economic losses to agriculture from crime.

| Category of loss | Value |
|----------------------------------|----------------|
| Stock theft | R4 836 million |
| Equipment, implements | R2 048 million |
| Damage to buildings and vehicles | R995 million |
| Theft of products | R4 437 million |

The submission argued that the cost of crime was likely to be much higher in 2007.

Turning to examine the effectiveness of policing in farming areas, AgriSA argued that currently sector policing was not able to effectively take over the rural safety functions previously carried out by the Commandos, which were due to finally close in 2009. The submission argued that it takes too long to appoint reservists and a number of logistical problems are being faced in this regard.

Agri-Western Cape

The written submission notes that Agri-Western Cape had negotiated and committed itself to a wide ranging code of conduct in 2001 which was attached as an addendum. This code of conduct, which was revised in 2002 is worth quoting from at some length. It commits members of Agri-Western Cape to comply with all relevant labour and tenure legislation, acknowledges the rights of workers to organise unions and undertakes to fight against all forms of discrimination. Perhaps more important than the undertakings themselves is the provision of a framework to monitor its implementation.

The code of conduct states in clause 5.1 to 5.4 that:

“Agri-Western Cape will take responsibility for the transparent monitoring and implementation of the code of conduct. The design of the monitoring and implementation system will be negotiated with other stakeholders, including NGOs and farm worker organisations.

Monitoring will make provision for a complaints or whistle blower procedure. Complaints will be followed up by an audit or inspection, and complainants or whistle blowers will not be victimised.

Role players in the Western Cape recognise that the Department of Labour has an important role to play in the inspection of labour conditions. Monitoring can, however, also be done by independent inspectors or auditors. Inspectors and auditors should have appropriate technical and social research skills and should be unbiased. Agri-Western Cape will negotiate with the stakeholders in the development of the framework for the use and accreditation of auditors and inspectors.

Agri-Western Cape and other role players in the Western Cape will encourage compliance through the development of incentives and sanctions. Continual and serious violation of the code of conduct cannot be reconciled with membership of the Agri-Western Cape.”²⁰

This last point is echoed in their 2007 submission which provides an undertaking that, “where proven human rights violations are committed by our members, we will act decisively, expelling such members from our organisation and affording the police and judiciary our full co-operation to bring them to book”.²¹

Unfortunately, Agri-Western Cape did not frame its submission to the 2007 hearings in relation to the code of conduct or report on how it had been implemented. (Neither did Women on Farms or SPP which were among the organisations that are acknowledged as having contributed to its drafting). This seems to indicate that the proposed monitoring framework has yet to be put in place or that relations between the parties have become strained subsequently thereby hampering joint implementation.

19 Ibid. p. 71.

20 Agri-Western Cape, 2002, p. 18.

21 Ibid. p. 3.

The Agri-Western Cape 2007 submission challenges the SAHRC's impartiality asking “why the Human Rights Commission and the Government consistently refuse to condemn violence against land owners with the same fervour that they condemn other similar violations.”²²

It notes with concern the recent rise in farm attacks stating that these are “without doubt the most pervasive and debilitating problem farm communities face.” It argues that the 1 890 murders on farms since 1991 “are deliberately ignored or grossly underplayed, whilst all other violations whether substantiated or not, are afforded priority attention.”²³

The submission acknowledges that the “replacement for the Commandos, sector policing... is effective in certain instances” However it also highlights “distinct weaknesses that require very urgent attention.”²⁴ Weaknesses cited include inadequate manpower, equipment and infrastructure. In addition, the submission notes that the level of trust between SAPS and communities has eroded in certain areas.

The submission argues for a holistic approach to achieving farm security.

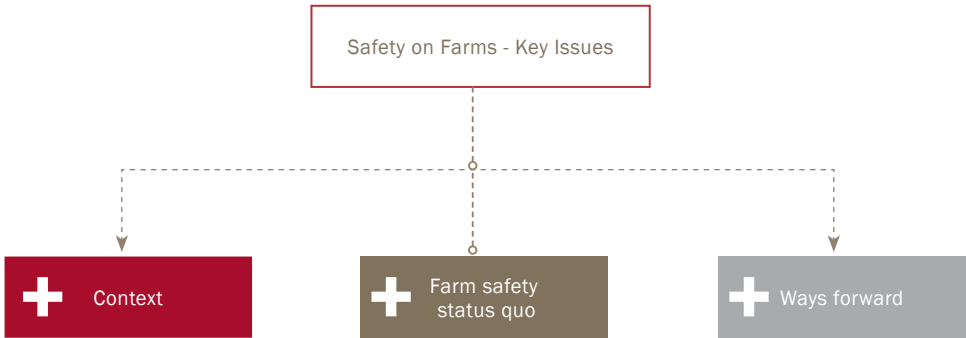
The inquiry has highlighted the ongoing changes in the safety and security context and reviewed what is known about the farm safety status quo. Various submissions have shed light on possible ways forward. These are briefly reviewed below.

Context

As noted above the previous inquiry highlighted concerns

| Context | |
|---------|--|
| | Human rights abuses associated with certain Commandos |
| | Concerns about Commando representativity |
| | Disbandment of Commandos since 2003 |
| | Introduction of sector policing |
| | Concerns about effectiveness of sector policing in rural context |
| | Concerns about credibility and effectiveness of police |

Key issues



22 Ibid.
 23 Ibid.
 24 Agri-Western Cape, 2007, p. 6.

about human rights abuses associated with certain Commandos in rural areas. These concerns contributed to the decision by the President to progressively phase out the Commando system between 2003 and 2009. The Commandos have been replaced by a sector policing approach and commandos were encouraged to apply as police reservists. An independent study conducted by the Institute for Security Studies raised concerns about the implications of sector policing for the incidence of agricultural crime. At the same time the rural crime victim's survey indicated that many members of the public lacked confidence in the effectiveness and impartiality of the police.

Safety status quo

Farm safety status quo

| | |
|---|------------------------------|
| Decline in violent crimes on farms 2001 – 2005/06 | |
| | 25% rise in crime in 2006/07 |
| | No clear explanation |
| No accurate figures distinguishing crimes by farm workers and farm owners against farm dwellers | |
| Concerns about effectiveness of sector policing in rural context | |
| Concerns about credibility and effectiveness of police | |

The chapter shows that crimes recorded on farms fell between 2001 and 2005/06. However the most recent crime statistics show a 25% increase including a rise in the number of people killed on farms. There is currently no commonly agreed upon explanation as to what has contributed to the recent rise. There is speculation that the disbandment of the Commandos has left a rural security vacuum in certain areas which sector policing has yet to effectively fill.

At the same time, the recording of farm related offences does not appear to enable analysts to easily distinguish between assaults perpetrated by criminals associated with robberies on farms, assaults by farmers on workers and farm dwellers and people assaulting each other from within the home or amongst the farm dweller community. Evidence presented

by NGOs highlights unacceptably high levels of domestic violence and sexual abuse of women and girls and men and boys with a disturbing increase in the number of children raped and abused. This seems to be a particular problem in the Western and Northern Cape and is closely linked to a history of socially condoned alcohol abuse.

Ways forward

Towards evidence based human rights auditing

Way forward

| | |
|--|---|
| Towards rigorous evidence based human rights auditing | |
| | Addressing polarisation |
| Self regulation by organised agriculture | |
| | Develop/implement provincial codes of conduct and localised strategies linked to ABPs |
| | Transparent monitoring in partnership with NGOs |
| | Agreed systems for handling complaints |
| Countering social problems on farms | |
| | Local strategies to counter alcohol abuse, domestic violence and sexual abuse |
| Improving crime fighting capability and police credibility | |
| | Review effectiveness of sector policing |
| | Improved data collection and analysis |
| | Identify problem districts |
| | Develop multi agency solutions |
| Improved access to ICD | |

It is clear that a bold and fresh approach is required to address the human rights abuses in farming communities. This requires a shift to a practical preventative approach which builds strong collaborative relationships between key stakeholders and the possible creation of a Rural Discrimination Prevention (RDP) team which draws on the resources of the different Chapter 9 institutions.

This will require changing the status quo. As has been observed more than once in this report the various parties

– government, the SAHRC and other Chapter 9 institutions, organised agricultural formations, individual farm owners, NGOs which advocate on behalf of farm workers and dwellers and unions, which try to organise and directly represent worker interests, remain polarised and mistrustful of each other. Farm dwellers themselves remain fundamentally unorganised and voiceless but are ‘spoken for’ by all. Overall the situation contributes to an environment in which the content of the SAHRC inquiry - issues of tenure security, safety and labour relations remain contested and often characterised by levels of defensiveness, bitterness and anger which are inimical to the finding of sustainable solutions.

While it is absolutely clear that fundamental human rights abuses take place on an unacceptable scale in farming communities in South Africa – violent crimes are committed, people are brutally murdered on their farms, people are assaulted and sometimes sexually abused in the workplace and their homes, people are humiliated and have their dignity and fundamental rights trampled - this is not the full story.

Social relations are far more complex than the dominant narratives allow. There are caring and ethical employers, just as there are those who abuse the rights of workers and farm dwellers. Farm workers and farm dwellers do not form a homogenous group, uniformly oppressed and victimised. Within certain provinces there is evidence of significant social problems and prejudice between coloured and black workers. Gender and age perspectives add new dimensions to this picture. NGOs and those who speak for the voiceless do not always act ethically or in good faith. Social relations in the rural landscape in provinces bordering Zimbabwe and Mozambique are increasingly complicated by the presence of highly vulnerable undocumented migrants. Evidence presented at the hearings indicates that some of these migrants are working on farms and communal areas for both white and black employers, often under highly exploitative circumstances. For many South Africans, it appears that the rights enshrined in the South African Constitution somehow do not apply to people in the country, who are without papers fleeing hardships from elsewhere in the region.

Many of the submissions made to the hearings reflect experiences in particular parts of the countryside, each with their own deeply rooted and complex history. In certain instances far-reaching allegations have been made but which are poorly supported by rigorous research and evidence. The oversimplifications and short hands which parties from very different perspectives can adopt only serve to lock us in to circular processes with little potential to creatively address

the many and deeply complex issues resurfaced by the Public Hearings. It is clear that the antidote to this lies in the combination of a preventative approach combining codes for self regulation and transparent evidence based human rights compliance auditing which has the capability to sift truths from generalisations.

Creating partnerships for self regulation

The submission by Agri-Western Cape discussed briefly above appends a detailed 18 page code of conduct binding on members of the agricultural union and which actively involves government, NGOs and unions in its formulation. This code of conduct and the process which led to its adoption makes an important and practical contribution to identifying provincial and district solutions going forward. The code of conduct proposes a transparent monitoring process in partnership with unions and NGOs and an agreed system for handling complaints. It would seem however that this process has not materialised for reasons which require further analysis.

Clearly the challenge is how to provide sufficient support and incentives to make such arrangements work in practice and tackle infringements and resolve disputes as they arise. Codes of conduct need not be restricted to organised agriculture. In principle there is nothing to prevent them from being extended to other key players as well. If the process demonstrated in the development of the Agri-Western Cape code of conduct can be made to work at district and local municipal scale and replicated in other parts of the country, future hearings organised by the SAHRC will have a much more robust evidentiary base. When the key players have entered into partnerships for self regulation this can only serve to strengthen the rule of law and create opportunities for further developmental partnerships which will add further value.

Of course, it cannot be assumed that such an approach will be supported everywhere. Where land owners do not enter actively into self regulation Government departments, Chapter 9 institutions, NGOs, Unions and others will have to step up their oversight role and sanctions will need to be developed to ensure universal respect for human rights.

Countering social problems on farms – contributing to social development

In the process of countering certain problems such as domestic violence, sexual abuse and misuse of alcohol, development solutions will be required. Again, these are

best conceptualised at a local level with the involvement of people who have intimate knowledge of local conditions and contributing social issues. Encouragement of peer learning and district exchanges could contribute greatly to development of good practice. While combating social problems, key social development needs will be identified and addressed as social problems cannot be resolved in a vacuum. This has the potential to connect to land reform area based planning processes and municipal integrated development plans.

Improving rural crime fighting capability and policy credibility

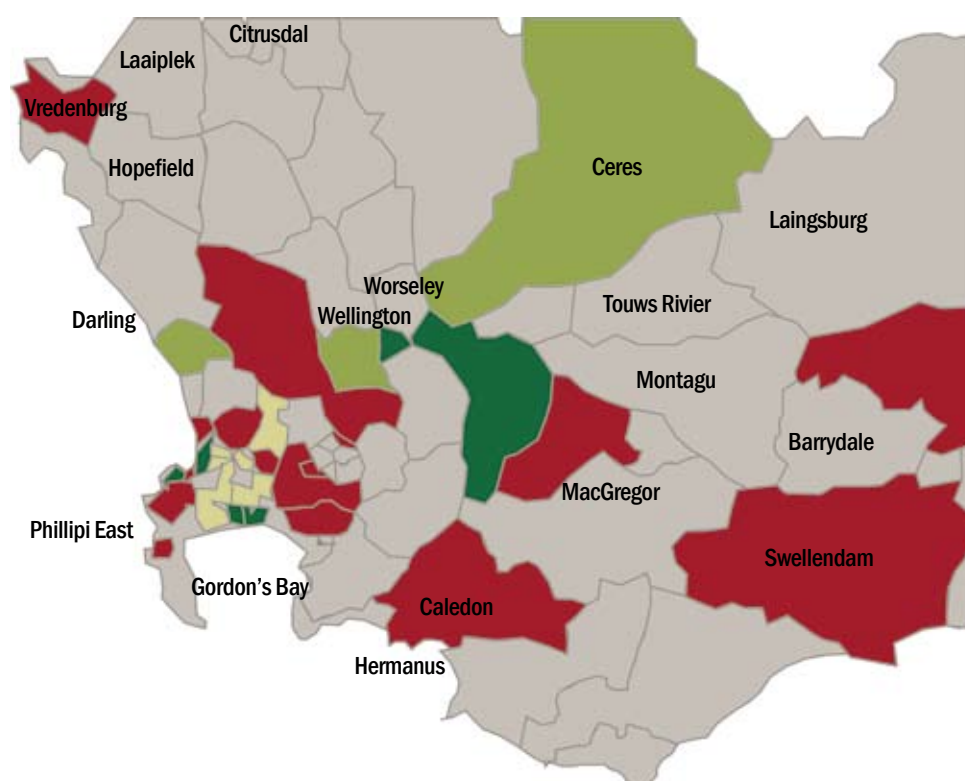
Combating rural crime must be given a high priority. Land owners, farmers and farm dwellers are entitled to a safe living environment and other fundamental freedoms, just as any other citizen. Rural security depends to a considerable extent on the effectiveness of sector policing and the factors driving up crime risk in particular areas. Much of this depends on the availability of resources to undertake this task. Evidence from IDP forums in rural Districts indicates how resource and capacity strapped provincial government departments and municipalities are to fulfil their basic mandates.

The Inquiry has surfaced a number of concerns about the effectiveness of sector policing in a farming environment. This will require further analysis particularly in the context of the recent escalation in crime on farms.

Reliable information on crime trends and human rights concerns in particular areas depends on improved data collection and analysis. This will help highlight problem districts and multi agency analysis to find practical solutions. For example, evidence was presented highlighting the Rawsonville area as an alleged hotspot for human rights abuse. Combining this with other sources of evidence recording reported assaults or robbery from SAPS crime which are available as GIS maps, may highlight what needs to be investigated to highlight causes, identify strategies and solutions

CRIME STATISTICS LEGEND 20% Percentile Groups Station Counts/Group

| | | |
|--|-----------------------------------|--------------|
| | Highest 20% Stations Contributing | (34) |
| | Higher 20% Stations Contributing | (64) |
| | Middle 20% Stations Contributing | (103) |
| | Lower 20% Stations Contributing | (182) |
| | Lowest 20% Stations Contributing | (722) |



The section of the map and legend above record incidents of common assault reported by police stations in part of the Western Cape. The red zone in the centre of the map intersects with the Rawsonville area indicating that it is in the highest %ile of reported assaults. Rawsonville is also in the red zone when it comes to reported burglaries. Although it is clear that there are problems in the area, by themselves the statistics provide no explanation of the factors that contribute to this situation and no clue as to who is assaulting who and under what circumstances. This requires local analysis involving all the key role players to determine the key factors driving crime and violence in the area. Disentangling the different elements will allow for targeted and integrated strategies that address problems on several fronts simultaneously. These include appraising stakeholder perceptions of the role and partiality of the police and taking practical verifiable actions to improve this where required. This may include extending the reach of the Independent Complaints Directorate to strengthen external oversight in areas where particular problems have been recorded.

Key findings

In the light of the above the SAHRC finds that:

Progress since 2003

- ◆ There continues to be unacceptably high levels of violent crime which persist in farming areas which has serious impacts on the lives of farm owners and dwellers alike.
- ◆ After a steady decline in reported crime figures between 2001 and 2006 crime levels on farms increased by 25% over the last year for which statistics are available. At present there is no commonly agreed explanation for the recent spike in crime figures.
- ◆ There remain incidences and pockets of serious human rights abuse where employers and persons in charge infringe the rights of workers and farm dwellers.
- ◆ Domestic violence, workplace sexual harassment and sexual abuse of women and children remain under reported and poorly prioritised by many employers, law enforcement and government agencies.
- ◆ The continual lowering of the age thresholds for the sexual abuse of young people and children represents a highly disturbing trend in certain farming communities.

Social Relations

- ◆ In order for there to be a common crime fighting strategy, farm owners and their representatives are going to have to acknowledge and adopt strategies to combat violence against farm residents and to offer up to the criminal justice system those among themselves who perpetrate such assaults.
- ◆ At the same time there is widespread oversimplification and generalisation by parties across the spectrum of the complex social relations and multi dimensional problems contributing to the incidence of crime and human rights abuse in the farming communities. This requires a shift toward transparent evidence based human rights auditing.
- ◆ In this context relationships of trust and communication between government, Chapter 9 institutions, NGOs, unions, farm dwellers, land owners and organised agriculture appear to have eroded in certain provinces and districts. This has contributed to an adversarial environment which is not conducive to finding sustainable solutions. This has also contributed to allegations that the staff of the SAHRC are not meeting their obligations in terms of section 4(1) of the Human Rights Commission Act to “serve impartially and independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.”
- ◆ Simultaneously there are positive examples of joint work between government, organised agriculture, NGOs, Unions and other stakeholders which have resulted in the negotiation of self regulatory codes of conduct together with mechanisms for their transparent monitoring and implementation. The SAHRC commends Agri-Western Cape, government departments and NGOs on their initiative to negotiate and agree on a wide ranging and progressive code of conduct. This requires further investigation to identify and overcome obstacles to successful implementation.

Policing

- ◆ Legitimate concerns have been expressed concerning the capacity of sector policing to adequately deal with the safety and security in farming areas which require further investigation

- ◆ On their own admission, the SAPS has to improve their service delivery in farming areas and improve their credibility and trustworthiness to secure the confidence of farm owners and dwellers in many farming communities
- ◆ While the SAPS has created new category D police reservists there is little evidence that farm dwellers have been included in this force. The requirement that reservists must be able to speak read and write English places a major obstacle in the way of creating a more representative police reserve that understands the situation in the farming communities and is able to effectively communicate with farm workers and dwellers.
- ◆ Crime statistics do not currently adequately distinguish between crimes perpetrated by criminals living off farm, assaults and abuses by employers, and 'social crimes' which included assaults and abuses amongst and between farm dwellers. This makes accurate assessment of the causes and drivers of crime and human right abuse in particular areas very difficult and prevents effective assessment of trends.

Recommendations

In the light of the above the SAHRC proposes:

Sector Policing

- ◆ Recommends that an independent review be undertaken to examine the effectiveness of sector policing in farming communities and proposes practical and affordable ways in which could be improved. This review would in part examine the factual basis of arguments that exist as possible correlations between rising crime figures and the implementation of the sector policing approach.

Code of Conduct

- ◆ Recommends that the process adopted by Agri-Western Cape together with government departments, municipalities, NGOs and Unions to develop a code of conduct for agriculture be independently reviewed with a view:
 - to learn how the process was undertaken;
 - review how it has been implemented;

- examine how dispute resolution has been managed subsequently between signatories;
- suggest a strategy for extending the code nationally as a basis for provincial negotiation;
- to identify ways to strengthen independent monitoring of the code to make this the basis for annual provincial reports produced by agricultural unions in partnership with NGOs and stakeholders.

SAPS

- ◆ Requests that the SAPS report to the SAHRC on how the recording of crime statistics in farming areas within Districts can be adjusted to distinguish between crimes perpetrated by criminals living off farm, reports of assault and abuse by employers, and 'social crimes' which include assaults and abuses amongst and between farm dwellers and on how District level quarterly reports can be produced for monitoring purposes.
- ◆ Requests the SAPS to take reasonable steps to ensure that all police officers are familiar with the National Police Instructions on Domestic violence and to examine ways to improve the handling of domestic violence cases in farming areas.
- ◆ Requests the SAPS develop a strategy and set targets to significantly increase representation of farm dwellers within the police reserve and to ensure that reservists receive training on the Bill of Rights as part of their induction process.

Department of Labour

- ◆ Recommends that the Department of Labour examine ways to improve the monitoring of policies on sexual harassment in farming work places which ensure that there are clear procedures which are understood by all to be followed in the event of an alleged incident
- ◆ Notes the linkage between alcohol abuse, domestic violence, assaults and sexual abuse on farms particularly, but not exclusively in the Western and Northern Cape, and urges provincial governments, organised agriculture, Unions, NGOs and the SAPS to develop joint programmes with specific targets and verifiable indicators to address this complex problem.



Chapter 4

Labour relations

The exploration of improvements in labour relations and compliance with key labour legislation on farms did not form a prominent part of the hearings or written submissions which is reflected in the limited scope of this Chapter. Verbal submissions were made by the Department of Labour and the Food and Allied Workers Union while organised agriculture also alluded to labour matters as part of their submissions. Various submissions by NGOs alluded to alleged cases of unfair dismissal or victimisation of union organisers. However, with the exception of the presentation by the Department of Labour there was no systematic assessment of the challenges faced in implementing labour legislation and improving occupational health and safety on farms.

Issues relating to farm labour

As noted in the introduction there have been wide ranging changes impacting agriculture labour markets in South African and globally. Historically, farm workers in South Africa were the most vulnerable workers in the economy regulated by a succession of Masters and Servants Acts. It was only during the 1990s that they were accorded the same rights as workers in other sectors of the economy.

The introduction of the BCEA and the Sectoral Determination for Agriculture gave farm workers rights and protection under the law. The law regulates working hours, overtime and work on public holidays. It provides for paid leave and sick leave. Despite these rights being extended, claiming and enforcing them has been difficult.

In reviewing the implementation of the Sectoral Determination for the Agricultural Sector in 2003, the Minister of Labour observed that:

“Farm workers are isolated and often are at the mercy of their employers. Most farmers are fair in their dealings with workers and employ best labour practices. Unfortunately this is not universal and on some farms conditions are still those of our lamentable past - where workers are subjected to appalling wages and enjoy no rights ... The sectoral determination has been promulgated to deal with those recalcitrant employers but also to provide guidance to those employers who wish to embrace the decent work philosophy.”¹

Farms are very difficult environments in which to organise workers. At the same time a worldwide push towards agricultural trade liberalisation has accelerated casualisation and feminisation of farm labour and contributed to the eviction and displacement of farm workers and dwellers. As has been examined above there has been a major fall in employment on farms. However, this is not uniform across the country. Agricultural census figures for 1996 showed an increase in agricultural employment in the Western Cape and Mpumalanga.²

In certain sectors of the agricultural economy workers are increasingly employed by labour bureaus and work on a piece rate system – where they are paid per unit of work completed. But again these trends are not uniform.

Paternalist arrangements are not being entirely abandoned, it is true – but they are being re-evaluated and restructured in unprecedented ways. Old arrangements and assumptions are being questioned, and new strategies for securing and managing labour are coming into being. These changes present those concerned with the living and working conditions of South African farm workers and farm dwellers with new challenges ... Experience on the ground suggests that many farm workers work on farms as ‘on-farm temporary workers’, who continue to have long-term associations with particular farms but with a much greater degree of insecurity ...³

This poses key questions about “what can be done to ensure that labour justice obtains in a labour market characterised by high degrees of casualisation and externalisation?”⁴

Government submissions

The Department of Labour

In their submission⁵ the Department reported that they have ten provincial offices, [two in Gauteng because of the scale of economic activity in the province] supported by 129 regional offices, or labour centres spread across the country. The Department has employed over 1 046 inspectors in the regional offices to implement and enforce labour legislation.

² Du Toit & Ally, 2003.

³ Ibid. pp. 3-6.

⁴ Ibid.

⁵ Department of Labour, 2007.

¹ Department of Labour, 2003.

The DoL representative stated that:

“I need to acknowledge upfront that the agricultural sector is one of the most critical sectors and difficult sectors in which to implement and enforce legislation. I think it's second to the domestic sector, both in terms of numbers of farms that we have to inspect, secondly in terms of access to the farms”.⁶

The representative explained that when labour inspectors visit farms, the Department's procedures require that both the representatives of the owners and the workers are present and participate in the inspection process. Given the lack of unionisation of the vast majority of farm workers it is often difficult to find someone willing to be identified as a worker's representative. According to the official, workers fear possible recrimination if the inspection turns up problems which require remedial action by the farmer.

The submission noted that agriculture had been listed as a high risk industry in terms of the Occupational Health and Safety Act 83 of 1993 (OCSA). Currently, it is one of just four sectors contributing over 40% of the National occupational health and safety incidents. Key safety issues in the sector relate to the operation of machinery and the handling, storage and use of pesticides. This represents a serious challenge to the Department of Labour.

The Department presented statistics illustrating the number of labour inspections carried out on farming enterprises nationally. In 2003/04 it visited 15 140 farms. In 2004/05 it visited 15 000 farms while in 2006/07 the number fell to just over 12 000 farms. It highlighted that they time inspections to coincide with periods in the agricultural calendar when there is most economic activity taking place on the land.

The Department of Labour indicated that they were still finding high levels of violation of the legislation. In an average year, the inspections result in the issuing of 4 500 undertakings. These represent a first time violation of the law where the owner undertakes to rectify problems identified during the inspection within a specified period. Currently the Department has achieved a 70% level of compliance within 90 days of issuing an undertaking or an improvement order. It issues in the region of 400 improvement notices every year. DoL still finds large numbers of violations of the OHSA – an average of 900 a year. In some instances threats to the health and safety of workers are deemed so severe that the Department is forced to close down production until improvements have been made. On average, the Department temporarily closes down about 80 operations annually.

Certain provinces feature highly as offenders in this respect. The top four offenders include Mpumalanga, KwaZulu-Natal, Limpopo, and North West provinces. The Department still finds isolated cases of child labour and in 2006/07 a total of 20 cases were identified. Of these, nine cases were recommended for prosecution and three convictions were secured.

This submission also highlighted the challenges the Department faced in compensating workers in terms of the Unemployment Insurance Fund and workers compensation. Firstly, employers had to register workers and pay contributions in terms of the legislation. In the event of an accident, the incident has to be reported which requires the farmer to complete a report. The DoL recognises that a number of incidents go unreported and that workers may fail to receive compensation for which they are due.

It also reported challenges in securing the trust of farmers and gaining access to properties to conduct inspections. On the basis of protocols agreed with organised agriculture inspectors need to give notice of their intention to visit a property. The submission noted that AgriSA had assisted in facilitating access to farms in various regions of the country. Where farmers were not members of AgriSA, the Department had utilised the services of the SAPS to obtain access for inspection purposes.

The submission noted that the Department had introduced 20 mobile labour centres to serve different farming areas. However, they noted that many workers were reluctant to come forward and lodge complaints. With respect to the sectoral determination setting out minimum wages, the Department noted that it was its intention to rationalise the two regions for which currently two different wage levels are set. It noted that to date it had signed five co-operation agreements with AgriSA in Mpumalanga, Limpopo, the Western Cape, Northern Cape and KwaZulu-Natal.

In response to the presentation, members of the panel highlighted the high number of offences recorded in Mpumalanga Province resulting from Labour inspections. In response the Department of Labour noted that there are usually higher numbers of offences in the provinces which border with Mozambique and Zimbabwe as it is these provinces which contain the largest numbers of undocumented migrants. The Department noted the proactive response from Mpumalanga Province which had established an interdepartmental committee including representatives of home affairs to do blitz inspections on farms.

Members of the panel asked whether Department of labour inspectors had been familiarised with the provisions of the

6 South African Human Rights Commission, 2007e, p. 39.

ESTA which had been a recommendation of the 2003 hearings. There were also questions on the requirements of farming enterprises to report on employment equity and provide gender disaggregated data on the composition of permanent and casual work forces. These questions were not responded to in the time available.

In their comments the panel also recorded that significance progress appeared to have been made by the Department of Labour since the 2003 hearings.

NGO and Union submissions

ANCRA

As noted in chapter 1 Ms Mongwe appeared at the hearing under the auspices of the ANCRA delegation. She made a verbal submission to the hearings concerning the death of her son who was killed operating machinery on a farm in the Northern Cape. At the time of the hearings the farmer had been charged with culpable homicide or alternatively for contravening section 8(1) of the OHSA and the case was before the courts.

Subsequent to the hearings, the SAHRC received a letter from AgriSA which stated that the court had accepted evidence that the accused was 17 and not 14 as had been stated in court papers and in Ms Mongwe's submission to the public hearings. The letter stated that the accused was acquitted on the charge of culpable homicide and on the count under the OHSA. The magistrate in her judgment found the labour inspector who testified to be biased and accepted arguments led by the defence that the machine was properly guarded and that it was marked with warning signs which an illiterate person could interpret. The defence further submitted that the farmer had trained his workforce on the correct use of the machine which was accepted by the court.

The Food and Allied workers union (FAWU)

The Food and Allied workers union (FAWU) made a brief written submission which was amplified by a verbal submission to the public hearings. FAWU has a membership of 15 000 workers and 54 organisers across the country and organises primarily in the sugar and forestry sectors. Certain aspects of their submission have already been summarised in chapter 1.

With respect to labour issues the FAWU submission highlighted the problems of accessing farms in order to organise workers. They noted that this required the education of both farmers and farm workers on basic rights and entitlements enshrined

in the Constitution. The submission acknowledged that agriculture was going through a squeeze – that prices went up and down which in turn affected the Labour market. They noted that this was a “critical problem which is not being acknowledged sufficiently.”⁷

FAWU reported that after making a demand for a minimum wage package of R1 400 a month in Mpumalanga, which was R400 above the sectoral determination, certain farmers responded by evicting workers and replacing them with immigrants.

FAWU argued that deaths and illnesses from pesticide poisoning, which were prevalent in the agricultural sector and often went unreported, should be included in the category of serious human rights violations. FAWU also criticised the coherence of policy on farm workers and development implementation in general. It argued that the absence of a rural development programme further increased the vulnerability of farm dwellers and workers. It noted that a rural development programme would provide government with much more influence over living and working conditions on farms than it currently had.

Organised agriculture submissions

Agri-SA

With respect to labour issues AgriSA reported that they had been instrumental in extending labour legislation to agricultural workers as early as 1987. By 1994 agricultural workers were covered by all labour legislation with the exception of the Wage Act 5 of 1957. AgriSA reported that the instances of malpractice in terms of labour legislation were steadily declining year-on-year which could be verified from the Department of Labour. An initiative of AgriSA resulted in the signing of the Vision and Code of Conduct for Agricultural Labour Relations in 2001 which represented a joint agreement between COSATU, government, NAFU and AgriSA.

AgriSA submitted that they had made a major investment into training initiatives for farm workers and farmers particular emphasis on labour management and good labour practices. Between 1998 and 2003, AgriSA trained a total of 24 861 participants including farmers, farm workers and agricultural students. The agricultural union has published a series of articles dealing with labour matters concentrating on the most frequently asked questions. It also includes information on

⁷ South African Human Rights Commission, 2007d, p. 56.

labour law on its web site. These include standard contracts of employment drafted by Labour lawyers which fully comply with labour laws and the ESTA. They also provide guidance on grievance and disciplinary procedures.

The submission reported that AgriSA has been actively involved in combating child labour and that a survey conducted by HSRC in 2006 and 2007 found that only a small percentage of children working in agriculture were employed on commercial farms. The majority of children working were to be found in the subsistence sector and communally owned commercial farming who worked largely within the family unit.

AgriSA noted that “because 51% of farming units have a turnover of less than 300 000 and only 3% of farmers employed more than 50 workers,”⁸ the Employment Equity Act does not apply to most farming operations.

AgriAids

The submission by AgriAids notes that “with the majority of HIV infections occurring within the age group 25 to 39, the AIDS epidemic has severe impacts on agricultural/farm productivity. Simultaneously, employers in the agricultural industry are also faced with rapidly increasing costs as increased morbidity and mortality among the productive agricultural workforce force farmers to recruit and train new workers.”⁹

The submission highlights the lack of comprehensive service delivery including STI/HIV and AIDS education, condom provision and medical services within farming communities. The submission notes that farm workers are disproportionately vulnerable to HIV and AIDS due to increasing migration within the Southern African region and the casualisation of labour within the farming sector more generally.

The submission makes the important finding that “no large-scale HIV AIDS prevalence study has ever been conducted amongst farm workers in South Africa.”¹⁰ Limited data from the AgriAids farm project study suggests that prevalence on some farms is as high as 21–35%. The rollout of ARVs to farm workers appears restricted to a small pilot project in Mpumalanga.

Currently Agri-Aids is working to conduct a feasibility study for establishing a long-term commerce sector wide multi

stakeholder programme to respond to HIV/AIDS in the south African agricultural sector with the British Department for International development (DFID) support.

Agri Wes Cape

The submission reiterated many of the points made in the main AgriSA submission summarised above. It noted that flash surveys recently conducted by the Department of Labour on farms in their southern Cape returned “a clean bill of health.”¹¹

SAHRC special programme on HIV/AIDS

The submission notes that people who migrate to work on farms, whether from within South Africa or elsewhere in the region can become exposed to HIV/AIDS infection because of the effect of ‘split households’. This is further exacerbated by the growing casualisation of labour within the agricultural sector.

“HIV AIDS appears to be a distant threat when one’s daily life is a struggle in so many respects. Many farm workers feel disempowered, leading them to believe that they have few choices and little possibility to improve, or alter the course of their lives. They see no hope for the future, which suggests that workers may have little incentive to act in a manner which will safeguard their health in the long term, or seek help when their health and well-being is threatened.”¹²

The vulnerability of farm workers to HIV and AIDS is exacerbated by the lack of government and non-government HIV/AIDS interventions which target farm workers specifically. This results in many farm workers remaining uninformed about the causes and consequences of the pandemic. Social relations on farms often place women and girls in positions of relative powerlessness with respect to sexual relations. This in turn aggravates their exposure to infection.

The report highlights the need for:

- ◆ expanded HIV/AIDS awareness campaigns among farm workers, farm owner’s, traditional healers and traditional leaders;

8 AgriSA, 2007b, p. 18.

9 AgriAids, 2007, p. 1.

10 Ibid. p. 4.

11 Agri Western Cape, 2007, p. 8.

12 South African Human Rights Commission, 2007h, p. 2.

- ◆ prevention and care projects prioritising HIV/AIDS peer education among farm workers;
- ◆ access to voluntary counselling and testing facilities;
- ◆ the development of HIV and AIDS policies in the agricultural sector linked to improved working and living conditions, support and care on farms; and
- ◆ further research into the impact of HIV and Aids on farms and migration patterns in the region and their connection to the spread of the disease.¹³

Key issues

Clearly casualisation and feminisation of agricultural labour are key trends impacting the sector. There are concerns about the extent to which labour bureaus are effectively regulated and monitored with regard to the conditions under which temporary farm workers are recruited, transported to and from work, trained, provided with adequate protective clothing, provided with access to medical attention and compensation in the event of injury at work and the manner in which pay and deductions are made. From the information available at the hearings it is clear that there is still a significant degree of non-compliance with labour and occupational health and safety legislation. However, it is also evident that much progress has been made since 2003 in this regard. The Department of Labour has managed to extend its footprint significantly, but still only manages to inspect 15 000 farms a year given the resources at its disposal. Key problem areas remain getting access to certain farms and the low level of unionisation amongst isolated and geographically dispersed farming communities. Currently there are five major unions which organise farm workers. Most have their primary membership based in food processing and retail but are trying to expand to organise workers on farms in certain sectors. Currently only two of these unions have any significant research capacity.¹⁴

Union organisers have particular problems in accessing farms. In terms of the protocol regulating access to farms negotiated in the wake of the escalation of farm attacks trade union organisers are described as private persons without statutory rights. To make contact with farm workers they either have to make an appointment to meet at an appropriate public place away from the farm. In terms of the protocol the farm owner is supposed to assist by providing transport to enable the workers to attend the meeting.

This indicates that there is a linkage between the security

situation in the countryside and the likelihood that union organisers and NGOs will obtain access to farms. With the current rise in crime statistics after a period of relative improvement, the chances of relaxing the protocol further recede. The more that farmers and farm dwellers experience the effects of crime on farms the more they are likely to fall back into protective isolation. This implies that effective crime fighting could have beneficial effects in terms of the progressive opening up of access to farms and the growth of worker organisation to improve living and working conditions within the sector.

The improvement of working and living conditions on farms could perhaps best be achieved in the short-term through transparent self-regulation by farmers with independent monitoring and evaluation involving NGOs and other role players.

Findings

In light of the above, the SAHRC finds:

- ◆ Steady progress is being made in the increased adherence to labour and occupational health and safety legislation on farms.
- ◆ Despite these improvements, the SAHRC notes that there is still evidence of substantial non-compliance, given the extent of the improvement and compliance orders issued by the Department of Labour annually in its inspection of 15 000 farms nationally.
- ◆ The implications of the increasing casualisation of labour and the need for the regulation of labour bureaus does not seem to have been given sufficient priority by the Department of Labour and the Unions.
- ◆ On the whole, the majority of agricultural workers remain uninformed about fundamental rights in relation to the labour legislation and health and safety.
- ◆ The apparent failure of the Department of Health to mount a dedicated farm worker and farm dweller HIV/AIDS awareness and support programme constitutes a major threat to the agricultural sector and has major implications for the health and well-being of farm workers and dwellers who are a high risk population.
- ◆ The incidence of child labour appears to be increasingly under control although isolated occurrences still occur in the commercial sector
- ◆ Occupational health and safety with respect to the handling and storage of pesticides represents a major hazard for workers in input and pesticide intensive agricultural sectors. Evidence indicates that there is still a fundamental lack of education on pesticide handling and ensuring that workers both have and use appropriate protective clothing.

¹³ Ibid. p. 5–6.

¹⁴ Atkinson, Pienaar, & Zingle, 2004.

The Department of Labour, Agriculture and the Health need to improve co-operation in this regard.

- ◆ The Department of Labour and the trade union federations with the support of international donors need to examine ways in which to facilitate expanded union organisation within the agricultural sector.

Provisional recommendations

While noting that adherence to labour legislation and labour relations were relatively scantily covered within the public hearings and that consequently the base of evidence for recommendations is somewhat thin the SAHRC makes the following recommendations on the basis of the information available to it. The SAHRC recognises that the feasibility and appropriateness of the recommendations below will need to be further investigated with the parties concerned.

Awareness Campaign

- ◆ A national programme led by the Department of Labour involving all communication media to alert agricultural workers to their rights in terms of the law.
- ◆ A joint intervention involving the Department of Labour, the Department of Agriculture and the Department of Health in partnership with AgriSA to put in place an effective pesticides education and poisoning prevention programme.

Unionisation

- ◆ A programme led by the Department of Labour in partnership with trade unions organising in the agricultural sector to build their research and organisational capacity and to develop ways to accelerate unionisation of agricultural workers in targeted sectors within the agricultural industry.
- ◆ A review by the Department of Labour of the operation of labour bureaus within the agricultural sector with a view to effective regulation of these entities.

HIV/AIDS

- ◆ A rapid appraisal followed by a comprehensive survey led by the Department of Health in partnership with AgriSA to determine the prevalence of HIV and AIDS on farms within different provinces of the country.
- ◆ The development of a comprehensive strategy to improve HIV and AIDS preventative services and access to anti-retrovirals within high risk areas.

Conclusion

In a variety of submissions, parties from across the spectrum expressed some scepticism about the value of the 2007 hearings. Several parties expressed the concern that the hearings would achieve little more than a 'going through of the motions'. Nevertheless some organisations took considerable trouble to produce detailed submissions which the SAHRC gratefully acknowledges. While acknowledging the limitations inherent in any process involving "once-off" public hearings the SAHRC has endeavoured to produce a practical, balanced and forward-looking report.

The issues addressed in this report are of grave national concern. They are complex and interlinked. Piecemeal measures developed in isolation from one another will have little impact on the problems and challenges described above. It is clear that all spheres of government have a responsibility to articulate clear policies and develop integrated programmes to address the needs and concerns of farming communities. It is also clear the solutions must be derived in partnership and with the participation of all the key role players. This will require coherent and sustained measures to end the polarisation, hostility and mutual stereotyping that characterises much of the current discourse in the agricultural sector. This may require external support and facilitation by neutral parties at different levels. The SAHRC commits itself to playing a positive role in finding practical solutions, ensuring that human rights and safety are available and strengthened for all.

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Appendix 1: Assessing progress on 2003 recommendations

Appendix 1 summarises the key findings and recommendations from the 2003 SAHRC report relating to tenure security, safety on farms and labour relations. It reviews the progress made in implementing the various recommendations on the basis of an internal review conducted by the SAHRC in 2004.

General findings

The table below provides a condensed synopsis of key findings and recommendations from Chapter 16 of the 2003 report.

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|------------------------------|--|---|--|
| Overall context | Lack of awareness of human rights Lack of mechanisms to enforce rights Lack of access to farms Skewed power dynamics between farm dwellers and owners | | |
| Statistics | Very few statistics available to assess advancement and protection of human rights in farming communities | Government departments to include statistics on farming communities within reporting and statistics keeping formats | This recommendation was not specifically targeted and was not followed up on |
| Legal framework and dialogue | The laws which have been passed adequately protect rights Legal paradigm often adversarial and can undermine social relations Implementation of laws inadequate and bureaucratic Poor co-operative governance | A forum for dialogue initiated by the Office of the President to bring together the three social partners – farm dwellers, farm owners and government “A bold initiative is required at the highest level.” ¹ | This recommendation failed to take off. Follow up report noted a need to consolidate the multiplicity of structures and interactions taking place between government and organised agriculture |
| Employment | Increasing tendency for farm workers to live off farm and be employed via labour brokers | Workers who lived off farm fell outside the scope of the original enquiry. Research needs to be carried out into their living conditions | No research identified in follow up report |
| Land ownership | Ongoing disparities in ownership and power between farm owners, workers and dwellers | Practical solutions need to be found to balance the rights of the owner with those who dwell on the land | SAHRC proposed a conference or seminar on the matter which the DLA said it would participate in. No conference organised. |

¹ South African Human Rights Commission, 2003, p. 171.

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|-----------------------|--|---|--|
| Access to the justice | Many farm dwellers cannot access state and civil society service providers to realise their social and economic rights | <p>Legal Aid Board (LAB) needs to extend services to rural areas and train attorneys in land law</p> <p>Department of Justice to extend training to magistrates</p> <p>Rules of the magistrate's court should be amended to oblige magistrates to inform indigent farm workers of their rights to legal representation</p> <p>An adjudication system needs to be developed for land disputes as an alternative to approaching the courts</p> <p>A mechanism be implemented where access to legal representation is available from the earliest possible opportunity</p> | <p>LAB submitted that they had established 27 satellite stations in addition to 57 established Justice centres</p> <p>LAB attempted to establish civil units to deal with matters relating to for example ESTA and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 (PIE) but lacked funding. Funding sought from donors</p> <p>The DoJ&CD submit that it was investigating amending Magistrates' Court Act No. 32 of 1944 and the Magistrates' Rules of Court</p> <p>Suggested that ESTA should be amended to ensure that no eviction proceedings are initiated in court unless the matter has been through a mediation process.</p> <p>DoJ&CD propose that at the phase when the occupier is required to give notice two months in advance of the intended eviction proceedings to the occupier and provincial Land Affairs structure the provincial Land Affairs structure should be obliged to do a preliminary assessment of the matter and then either inform the LAB thereof or, alternatively, inform the occupier of the importance of making contact with the LAB</p> <p>The DLA submitted that it had commissioned the design of a dispute resolution system and that a final system would be presented to the DLA's top management in due course</p> |
| Access to farms | Rights of ownership must be respected and protected when discussing the concept of access. However non-accessibility to farm workers cannot be accepted within a democracy based on respect for fundamental human rights | <p>Develop government policy on access to farms</p> <p>Develop systems for accrediting and providing prior authorisation to service providers</p> <p>Address access issues with the proposed Farming Community Forum</p> | The failure to establish the proposed farming community forum meant that the issue of access to farms had not been directly raised |

Land rights

Chapter 17 contains specific findings and recommendations relating to tenure security, provisions of the Extension of Security of Tenure Act (ESTA) and land redistribution.

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|--|---|---|--|
| Knowledge of ESTA and ESTA compliance | <p>Disturbing lack of knowledge of ESTA by all role players</p> <p>Legislation contested by key role players</p> <p>Lack of compliance with ESTA provisions regulating evictions</p> <p>In some provinces ESTA forums have been established</p> | <p>Continue with training and education programmes on ESTA</p> <p>Target magistrates, prosecutors and SAPS for training on the Act</p> <p>ESTA forums to share experiences with one another</p> | <p>The DoJ&CD submitted that the Justice College had undertaken training in 2002 conducted for magistrates around the country regarding ESTA</p> <p>The Justice College submitted that further training for magistrates on ESTA was included in its work programme for 2005/2006</p> |
| Burial rights and visitors | <p>Lack of education and knowledge about the provisions of ESTA in this regard</p> <p>Peoples rights to receive visitors not always respected</p> | <p>Continuing education and discussion within the proposed Farming Community Forum</p> | <p>Agri SA submitted that it communicates to farmers through Agri SA's publications as well as on an individual basis when approached by members for advice in this regard information on burials on farms</p> <p>Issue of visitors not addressed due to lack of proposed Community Farming Forum</p> |
| Rights of farm dwellers when there is a change in land ownership | <p>ESTA provisions frequently not applied in this regard and a number of evictions have been associated with change of ownership</p> | <p>DLA should consider how to ensure that change of ownership provisions within ESTA can be implemented</p> <p>AgriSA members to be educated about change of ownership provisions</p> | <p>The DLA submitted that it had initiated programmes to educate all interested parties about the provisions of ESTA including the change of ownership provisions contained therein</p> <p>AgriSA submitted that a section on ESTA was included in the NORAD training programme in which thousands of farmers were trained in labour and land reform laws. Information on ESTA, and many other laws was available on Agri SA's website</p> |
| Changing land uses | <p>Changes in land use from agriculture to game farming displacing farm dwellers</p> | <p>A need for a co-ordinated inter-departmental approach to dealing with the issue of the creation of game farms.</p> | <p>No progress reported</p> |
| Use rights on farming land for grazing and cropping | <p>Denial of these rights impacts on livelihoods and practice of cultural beliefs</p> | <p>Keeping of livestock to be approached "within a human rights framework" that recognises the rights of affected parties</p> | <p>No progress reported – SAHRC undertook this issue through its day to day file handling policy</p> |
| ESTA Section 4 subsidies | <p>Very little information available to assess effectiveness of Section 4 subsidies</p> | <p>DLA to supply SAHRC with statistics on the number of section 4 subsidies approved and granted and the status of current projects</p> | <p>DLA submitted that there has been 18 projects catering for 273 beneficiaries costing 3.25 million rand</p> |

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|--|--|---|---|
| ESTA Section 23 illegal evictions | General lack of knowledge and enforcement of Section 23 five years after the promulgation of ESTA A high rate of illegal evictions | DLA to develop mechanisms to deal with section 23 implementation SAPS to develop a quick response mechanism at a high level to deal with evictions | No co-ordination structure in place – no progress SAPS submits that this quick response mechanism was already established at local level in community service centres Operational guidelines for members of the SAPS have also been compiled by the Head of Operational Co-ordination stationed in Pretoria. The guidelines provide members with all the applicable legislation including ESTA, PIE and LTA as well as possible actions to be taken in each case. |
| Women and tenure security | Women are discriminated against in achieving tenure security | All role-players encouraged to address this discrimination | No evidence available on progress |
| Emergency accommodation post eviction | Lack of an integrated approach to deal with this problem which results in deprivation of rights | The Final Report recommended that all relevant government departments must submit a reasonable plan to the SAHRC that addresses the plight of people in crisis situations after an eviction. Municipalities to submit a reasonable plan to the SAHRC to address the needs of people in crisis situations post eviction | The Department of Housing (DoH) submitted that it had instituted a programme in terms of section 3 (4) (g) of the Housing Act No 107 of 1997 referred to as the National Housing Programme for Housing Assistance in Emergency Housing Circumstances. |
| Vulnerability of labour tenants | People who have lodged applications to the Labour Tenants Act are placed in a vulnerable position while their applications are being finalised | DLA to expedite the processing of labour tenant claims and to limit this vulnerability through subsequent amendments to the LTA and ESTA | In 2002 a task team put in place to develop a country plan of action. However finalisation of the plan hampered due to outstanding inputs from key government departments. DLA submitted that the process was to be concluded by 2005 |
| The effectiveness of the Redistribution and Land Reform for Agricultural Development (LRAD) programmes and the extent to which it addresses the needs of farm dwellers | No common understanding of the programmes Slow delivery Lack of information on benefits for farm dwellers | Improved local consultations to enable greater understanding of the programmes and the procedures involved DLA to provide statistics to SAHRC on number of LRAD grants accessed by farm dwellers | DLA submitted that it had done 'road shows' and appointed dedicated community liaison officers DLA submitted a spreadsheet on LRAD grants. However no analysis was reported on the number of farm dwellers benefiting from LRAD |

Labour

Chapter 18 details issues and recommendations relating to the implementation of labour legislation, unionisation of farm workers and various labour related matters

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|------------------------------------|--|--|---|
| Compliance with labour legislation | Many aspects of relevant legislation not complied with (BCEA, OHSA, UIF, COIDA provisions relevant to farm workers) Most farm workers do not have access to CCMA in cases of alleged unfair dismissal | Continue with training of farm unions and owners Increase number of DoL inspectors and improve training Outreach by CCMA to enable farm workers to access its services | AgriSA reported on NORAD training programme and the documentation on its website together with publication of articles on labour issues Problems in gaining access to farm workers cited |
| Unionisation of farm labour | Few farm workers are members of trade unions Difficult to access farms to organise workers | Unions and AgriSA to engage in dialogue to create a more conducive environment for farm workers to exercise their constitutional rights | No contact between Unions and AgriSA had taken place |
| Increasing effectiveness of DoL | Inadequate connection between ESTA and enforcement of labour legislation Department of Labour short of inspectors | Vacant inspectors posts should be filled as soon as possible; The Department of Labour (DoL) must create internal reporting mechanisms and strategies to deal with instances where inspectors cannot access a farm; and Inspectors should receive training on the links between labour and ESTA legislation. | No submission was obtained from DoL |
| Child labour on farms | Child labour does occur but there is limited information on how prevalent this is Child Labour Intersectoral Groups (CLIGs) not working in several provinces | Studies and research on child labour are needed urgently Initiatives to pass legislation on child labour within DoL should be prioritised CLIGs to be reinstated with immediate effect and DoL to report to SAHRC on this matter | Child Labour Action Programme (CLAP) was finalised in September 2003 after an extensive period of consultations with key stakeholders such as government departments, employers and employees, organisations, civil society and children affected by child labour. AgriSA submitted that recent surveys by the DoL, the ILO and Statistics SA clearly showed remarkable progress with the elimination of child labour in the commercial agriculture sector |

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|-------------------------------|--|--|--|
| Women on farms | Women discriminated against on several fronts – access to employment, wages and benefits | Commission for Gender Equality (CGE) to take this up | CGE submitted that it had just concluded an Exploratory Study into Gendered Nature of Poverty Among the Elderly throughout the country |
| Illegal foreign workers | Abuse of non nationals who are illegally employed | DoL and Dept Home Affairs to address enforcement of labour legislation with respect to non National | Despite numerous attempts by the SAHRC to obtain a submission from Home Affair regarding the recommendation none could be obtained. |
| Seasonal labour | Lack of clarity about rights and conditions | Research need on how to strengthen seasonal farm workers rights in farming communities | No research reported on |
| The Tot system | Still isolated incidences of tot system being practiced Alcohol abuse on farms a serious problem in Western and Northern Cape | The governments of the Western and Northern Cape to submit a report to the SAHRC outlining current and future programmes to address this problem | No submission was obtained from either province |
| Poor conditions of employment | These remain widespread in the industry | Public condemnation and steps to rectify the practice | AgriSA submitted that it was working with DoL and through pilot projects to improve occupational health and safety. It acknowledged that much was still to be done |
| Low pay | Put in place measures to enforce compliance with sectoral determination | DoL was to inform the SAHRC of steps taken to enforce compliance with the Sectoral Determination. | A Ministerial Task Team was formed with representatives from Organised Business and Organised Business and Organised Labour to deal with the various constituencies' concerns regarding the implementation practicalities as well as broader issues such as education and training, access to farms and the transformation of the sector. 981 applications for Ministerial determination were received from the Agricultural Sector regarding minimum wages and other conditions of employment. |

Safety and security

Chapter 19 deals with measures recommended to curb crime and violence which impact on both farm dwellers and farm owners

| Issue | Findings | Recommendations | 2004 Internal Progress Review |
|---------------------------|--|--|--|
| Role of SAPS | Perception of under reporting of crime | SAPS were encouraged to hold a summit under the auspices of the farming community forum to improve representivity of Rural Protection Plan SAPS encouraged to improve responsiveness to farm dweller issues and complaints | No forum set up – no progress in this regard SAPS noted that the SAHRC report and the report from the Committee of enquiry into farm attacks would be used to improve effectiveness and communication |
| Vicious dogs | Vicious dogs used as a mechanism to prevent access to farms and in some cases as instruments of assault | South African Law Commission to research the criminal and civil liabilities of owning a vicious dog | No submission obtained on progress |
| Women and crime | Unacceptable levels of violence perpetrated against women on farms | SAPS to undertake a comparative analysis of crime statistics against women on farming communities and other communities Commission for Gender Equality to consider further strategies to support women on farms Further research | SAPS states request is impossible without individual docket analysis The CGE submits that it had monitored the implementation of laws that address gender based violence and how the relevant government departments are addressing these in the past few years. |
| The justice system | Farm dwellers perceive justice system not to be impartial | Farm dwellers need to be informed on progress in cases before the courts Case dismissed through lack of evidence must be investigated | The SAPS submits that the matter has been brought to the attention of the Justice, Crime Prevention and Security Services (JCPS) Cluster and the Department of Justice and Constitutional Development (DoJ&CD) submits that the recommendation has been brought to the attention of the Acting National Director of Public Prosecutions and a response was awaited in this regard |
| Community policing forums | These are not reflective of the issues and concerns facing farm dwellers | Role players to encourage involvement of farm dwellers in forums | SAPS submitted that communities have a responsibility to participate in or be represented at CPF forum – and that it was the responsibility of the chairperson to ensure representivity |
| Private security | Instances where private security companies have infringed rights of farm dwellers – assaults, arbitrary search etc | Private Security Regulatory Authority to investigate issues raised during hearings and ensure that arrest and detention of persons conforms to prescriptions in Bill of Rights | PSIRA acknowledged that it was required to investigate the violations which are contained in the Final SAHRC report and if any evidence of exploitation or abuse of security officers and other employees by security service providers was found, improper conduct enquiries would be instituted. No evidence presented that this had actually taken place and what the outcome was. |
| Commandos | The Inquiry endorses the decision announced by the State President to withdraw commandos from the rural areas, but acknowledges that this would be a gradual process | | SAPS reports that steady progress was being made to phase out commandos |

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