



Final Report on the

**Inquiry
into
Human Rights
Violations
in
Farming
Communities**

August 2003

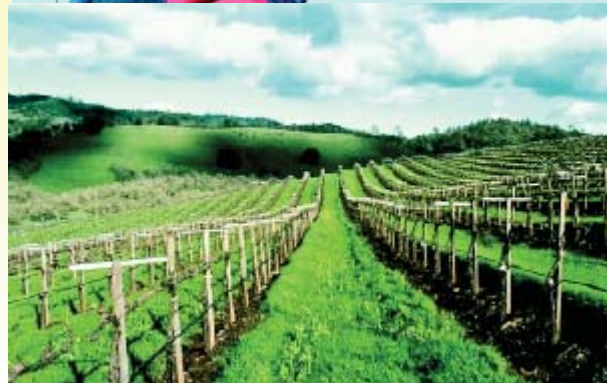


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FOREWORD

One of the defining features of the South African Constitution is its commitment to equality and the promise that the various rights enshrined within it will endure for the benefit of all South Africans. In practice however we have seen how those with more resources and influence have been able to use the Constitution to advance themselves while the poor and the marginalized find it difficult to access the various benefits and rights that the new dispensation offers. In many respects the disparities that existed in 1994 continue to do so now and present a formidable challenge to the fragile democracy that we have put in place. It is critical that groups who may be regarded as marginalized and vulnerable are able to see and experience the Constitution working for them. Included in this latter category are the many millions who live and work in farming communities.

The South African Human Rights Commission, being 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, has received many complaints on human rights violations that occur in our farming communities. The Commission's hearing in Messina in 1999 is an example of the Commission's interventions in this regard. The Commission is also aware of incidents of human rights violations in these communities reported by the media. Examples of some of these incidents are crime including farm attacks, unlawful evictions, racism, gender discrimination, child abuse, denial of access to socio-economic rights such as access to education, health, and water, social security and many other abuses that have an impact on the right to human dignity of the members of these communities.

In view of the human rights situation in the farming communities and in line with its constitutional mandate to promote and protect human rights in South Africa, the Commission decided to conduct an inquiry into human rights violations in these communities in order to:

- Determine, in a systematic manner, the nature and causes of these violations
- Investigate what has been done to address human rights violations in farming communities, and
- Determine what could and should be done to deal with these violations in such a way that the human rights of members of this community can best be protected and promoted.

The inquiry was launched on 11 June 2001 and was followed by background research conducted on behalf of the Commission in order to inform the inquiry. This was followed by a nationwide awareness campaign in order to obtain submissions and complaints on the human rights situation in the farming communities from relevant stakeholders. The information gathered in through research and submission formed the basis of the public hearings, which were conducted in 2002 and 2003. The advocacy and legal services departments, in collaboration with Commissioners, played a major role in the planning and implementation of these hearings. This report is the outcome of the above processes.

The project was executed in an integrated manner and the following individuals and departments are acknowledged for their contribution:

- The office of the Chairperson (past and present) and CEO for their leadership, commitment and fundraising efforts.
- The project committee under the direction of Commissioner McClain and the Deputy CEO, Bongani Khumalo for steering the initiative and overcoming a multitude of challenges.
- The Commissioners for participating in and contributing to the various stages of the project.

- The research and documentation department for developing the concept paper and conducting background research that informed the inquiry.
- The legal services department for spearheading the public hearing stage of the project.
- The advocacy department for their public awareness initiatives and setting up of the various events relating to the project.
- The provincial offices for their contribution to all stages of the project.
- Judith Cohen for her assistance in compiling and editing the report.

In addition, the contribution of a number of individuals and organisations outside of the Commission justify acknowledgement:

- NGO's, CBO's, advice offices, local councillors, trade unions, farmers unions and government departments for submissions made and presentations delivered at the public hearings.
- The interpreters from the magistrates' courts for services rendered and town council officials for providing venues and assistance in preparations for the hearings.
- The NGO's for logistical support and public awareness initiatives.
- The service providers that dealt with transcribing, recording, catering and cultural performances.

In particular, a thank you is extended to the panel members who gave of their expertise and time during the hearings and also provided critical comments on the draft chapters of the report and the recommendations. They are Ms S Mabusela, Mr. A Mohamed, Mr. A du Toit, Ms T. Mhlungu, Mr. N. Cloete, Mr. F Hendricks, Mr. N Jack, Mr. L Matsuang, Mr. J Mushasha, Mr. Mbau, Ms J Piliso-Seroke, Mr. W Ellis, Mr. P Helepi, Mr. P Misselhorn, Ms A Gabriel, Mr. P Manzini, Ms A Dominy, Mr. W de Klerk, Ms K Mamba, and Ms D Gilfillan-Weidama.

Most importantly, we are extending a sincere thank you to those living in farming communities who bravely made individual submissions and shared with the panelists the human rights infringements and violations they are experiencing.

We hope that this report and project will contribute to a better understanding of the reality of life in farming communities in our country and will become a tool that will assist in the taking of measures and the implementation of programs to alleviate the numerous problems that beset that community. Ultimately the success of our democracy depends on our ability to ensure that the promise of the Constitution is able to reach all who need it.

Jody Kollapen
Chairperson
South African Human Rights Commission

EXECUTIVE SUMMARY

In recent years reports of farmers brutality towards their workers, shocking employment and living conditions on farms, child labour and the ongoing murders of farmers have dominated our newspapers and radio, giving a clear message that all is not well in the farming and agricultural sector. Some of the reports were confirmed during the SAHRC's visits to farms during Human Rights Week in 2001. In addition, numerous complaints were received from people living and working in farming communities, including farmers. It was therefore imperative that the SAHRC conduct an Inquiry into Human Rights in Farming Communities. The nature of complaints have ranged from evictions, lack of social services, lack of access to education, health care, lack of social security grants and the safety and security of people working and owning the farms.

The Inquiry was launched on 11 June 2001. It consisted of three phases: research; public education awareness; and participation by individuals at public hearings, both provincially and nationally. The Inquiry considered and investigated land rights and tenancy, labour, safety and security and economic and social rights. The Inquiry sought to determine the extent of human rights violations in farming communities, publicise conditions on farms, raise awareness, improve the living conditions of farming communities and improve respect for human rights in farming communities.

The Inquiry looked at complex problems around relationships, capacity, and in many cases, the fragility of our democracy that is almost ten years old. The purpose of the Inquiry was to address those people who feel that the benefits of the Constitution are yet to reach them. The Inquiry does not aim to find anybody culpable, in a sense of guilt or innocence, but rather to try to understand how human rights have been advanced, if they have been advanced, and what the obstacles are to human rights being advanced.

The Inquiry also tried to determine whether the obstacles that lie in the face of realisation of rights are of policy, or in the area of enforcement.

As a national institution supporting democracy, the SAHRC aims to contribute toward alleviating the situation.

The Inquiry sought to identify broad trends and the underlying causes of human rights violations at various levels in farming communities. Therefore individual names of alleged perpetrators were not mentioned.

The evidence and information presented to the Inquiry has shaped the Final Report. It is anticipated that read as a whole, the Report will provide an accurate reflection of the broad trends of the human rights situation in farming communities and the underlying causes of human rights abuses that occur. The Final Report is set out in three parts: Part A reflecting the National Hearings; Part B reflecting the Provincial Hearings; and Part C stating the Findings and Recommendations.

The Inquiry

The prevailing themes of the Inquiry were the lack of access to farms, long distances that must be travelled to access services, a lack of awareness of rights, particularly socio-economic rights, and the lack of service from State service providers. The indignity and suffering of many who shared their experiences with the panel is alarming and highlights the necessity for all role-players to address the issues in a co-operative manner, within a human rights framework based on dignity and the achievement of equality. Many are already doing this and there are many examples of co-operation that need to be supported and encouraged.

Land Rights

Despite constitutional provisions and the promulgation of legislation such as ESTA and LTA to protect those whose tenure on land is legally insecure, evictions and the rights of those

who dwell on the farm owners' land dominated the Inquiry. There is a clear lack of support for the legislation from organised agriculture and a failure to ensure legal representation for those whose rights are violated.

Patterns of land ownership remain, for the most part, unchanged from the Apartheid era and the pace of land redistribution has been slow. The expectations of many people are unrealistic and there is a limited understanding of the complexity of the land reform processes.

Labour

There is general and widespread lack of compliance with labour legislation despite many efforts undertaken by organised agriculture to train their members. Farm workers, for the most part, remain un-unionised and the farming workplace remains non-conducive to the organisation of labour due to lack of access and the environment of intolerance and hostility towards unions. Farm workers' wages on the whole are low, with many regional differences.

Women workers, seasonal workers and illegal foreign workers are more vulnerable and are greatly discriminated against in the farming workplace. There are still incidents of child labour occurring and the CLIG structures that are in place have much work to do to eradicate this practice.

Safety and Security

Unacceptable levels of violence and crime are experienced in farming communities. Violence is perpetrated against farm dwellers by a range of actors, including those in the private and public sector. There is a general lack of confidence in the criminal justice system being able to assist farm dwellers, which is perceived as biased in favour of farm owners.

Farm attacks continue at an unacceptable rate although a number of measures have been put in place to address this issue.

These challenges must be addressed to ensure a safe and stable farming community.

Economic and Social Rights

There is a general lack of access to service delivery from the State and lack of knowledge of economic and social rights. The specific challenges of farming communities are sometimes recognised by government Departments but there is still much that needs to be done.

Little has been done to promote access to housing in farming communities. This can be attributed to the challenges of providing housing to farm dwellers on private property and the Departments of Land Affairs and Housing passing responsibility to each other with little delivery taking place.

The challenges facing the delivery of health services are enormous, given the financial and human resource constraints of the Department. The practicalities of providing an accessible health service in a comprehensive manner in farming communities is one which service providers will continue to grapple with.

The lack of information on HIV/AIDS is of great concern and indicative that the challenges the pandemic presents in farming communities are not being confronted.

The realisation of access to food is negatively impacted upon due to the high levels of poverty experienced in farming communities. The PSNP programme is not operating at optimal levels in farming communities to assist children in accessing food. Access to water also poses challenges in terms of service delivery while many reports were received of access to water being terminated to force farm workers to leave the land.

Social security is not always accessed because farm dwellers do not have ID documents, are unaware of these rights, do not know how to go about accessing them or do not have the resources to access them.

The great distances that children must travel to attend school and the lack of adequate infrastructure impacts upon access to education in farming communities. ABET and education for children with special needs are also not adequately realised in farming communities.

Findings and Recommendations

The Inquiry dealt with issues relating to relationships, power and access. These issues are the key to unlocking the enjoyment of rights that are currently denied. They are complex concepts and some parties may find it difficult to come to terms with and unpack the findings that have been made. The general recommendation is that a Farming Community Forum be formed at a national level where farm dwellers, farm owners and government can interact on a level playing field and holistically address the many difficult challenges that are recognised as facing farming communities. The Inquiry is of the view that due to the seriousness of the issues that need to be confronted and dealt with, this initiative should receive the highest possible support from the State and that it should be based in the Office of the State President.

The panel made numerous findings and recommendations to the various role-players on specific issues that were raised during the Inquiry. Many of these recommendations relate to training to address the lack of knowledge and the many perceptions and realities that stand in the way of people accessing their rights. Although the panellists found that there was general adequacy in the laws that protect people and assist them in claiming their rights, the major challenge confronting farming communities is the barriers that stand in the way of realisation. These barriers include a lack of will power, a lack of service, a lack of access and a lack of resources and knowledge.

ACRONYMS

ABET	Adult Basic Education & Training
ACOC	Area Operational Co-ordinating Committee
AnCRA	Association for Community and Rural Advancement
Agri EC	Agri Eastern Cape
Agri NC	Agri Northern Cape
Agri SA	Agri South Africa
ATR	Army Territorial Reserve
BCEA	Basic Conditions of Employment Act
CBO	Community Based Organisation
CCMA	Commission for Conciliation, Mediation & Arbitration
CFPEO	Cape Fruit Producers Employers Organisation
CLIG	Child Labour Intersectoral Group
COIDA	Compensation for Occupational Injuries & Diseases Act
COSATU	Congress of South African Trade Unions
CRLR	Commission on the Restitution of Land Rights (also know informally as the Land Claims Commission)
ETI	Ethical Trade Initiative
IDT	Independent Development Trust
DLA	Department of Land Affairs
DoA	Department of Agriculture
DoE	Department of Education
DoH	Department of Housing
DoHA	Department of Home Affairs
DoHealth	Department of Health
DoJ	Department of Justice
DSD	Department of Social Development
DWAF	Department of Water Affairs and Forestry
ECARP	Eastern Cape Agricultural Research Group
ECDLA	Eastern Cape Department of Land Affairs
ECDoH	Eastern Cape Department of Housing
ECDoL	Eastern Cape Department of Labour
ECDPP	Eastern Cape Department of Public Prosecutions
ECSAPS	Eastern Cape South African Police Services
EEA	Employment Equity Act
ESTA	Extension of Security of Tenure Act
FAS	Foetal Alcohol Syndrome
FLAC	Franschhoek Legal Advice Centre
FSA	Free State Agriculture
FSDLA	Free State Department of Land Affairs
FSDoE	Free State Department of Education
FSDoH	Free State Department of Housing
FSDoL	Free State Department of Labour
FSDPP	Free State Director of Public Prosecutions
FSSAPS	Free State South African Police Services
GDLA	Gauteng Department of Land Affairs
GDoE	Gauteng Department of Education
GDoH	Gauteng Department of Housing
GDoL	Gauteng Department of Labour
GOCOC	Ground Operational Co-ordinating Committee

GSAPS	Gauteng South African Police Services
ICD	Independent Complaints Directorate
ILO	International Labour Organisation
IMSSA	Independent Mediation Services of South Africa
KZN	KwaZulu-Natal
KZNDLA	KwaZulu-Natal Department of Land Affairs
KZNDoe	KwaZulu-Natal Department of Education
KZNDOL	KwaZulu-Natal Department of Labour
KZNDPP	KwaZulu-Natal Director of Public Prosecutions
KZNLLC	KwaZulu-Natal Land Legal Cluster
KZNSAPS	KwaZulu-Natal South African Police Services
LAB	Legal Aid Board
LCC	Land Claims Court
LDLA	Limpopo Department of Land Affairs
LDoH	Limpopo Department of Housing
LDoL	Limpopo Department of Labour
LRA	Labour Relations Act
LRAD	Land Redistribution for Agricultural Development
LRC	Legal Resources Centre
LSAPS	Limpopo South African Police Services
LTA	Labour Tenants Act
MEC	Member of the Executive Council
MKMVA	Mkhonthe we Sizwe (Western Cape)
MDLA	Mpumalanga Department of Land Affairs
MDoL	Mpumalanga Department of Labour
MDPP	Mpumalanga Director of Public Prosecutions
MDSS	Mpumalanga Department of Safety and Security
MSAPS	Mpumalanga South African Police Services
NAFU	National African Farmers Union
NERPO	National Emerging Red Meat Producers Organisation
NGO	Non Governmental Organisation
NCDLA	Northern Cape Department of Land Affairs
NCDoe	Northern Cape Department of Education
NCDoH	Northern Cape Department of Housing
NCDOL	Northern Cape Department of Labour
NCDPP	Northern Cape Directorate of Public Prosecutions
NCSAPS	Northern Cape South African Police Services
NKUZI	Nkuzi Development Association
NLC	National Land Committee
NOCOC	National Operational Co-ordinating Committee
NORAD	Norwegian Agency for Development
NWDLA	North West Department of Land Affairs
NWDoE	North West Department of Education
NWDoH	North West Department of Housing
NWDoHealth	North West Department of Health
NWDoL	North West Department of Labour
NWSAPS	North West South African Police Services
OHSa	Occupational Health & Safety Act
PSETA	Public Sector Education Training Authority

PEPUDA	Promotion of Equality & Prevention of Unfair Discrimination Act
PIE	Prevention of Illegal Occupation of and Unlawful Eviction from Land Act
POCOC	Provincial Operational Co-ordinating Committee
PSNP	Primary School Nutrition Programme
RDP	Reconstruction and Development Programme
REIP	Rural Education Information Programme
RLT	Rural Legal Trust
RPP	Rural Protection Plan, also referred to as Rural Safety Plan
SAAPAWU	South African Agricultural, Plantation, and Allied Workers' Union
SAHRC	South African Human Rights Commission
SANDF	South African National Defence Force
SAPS	South African Police Services
SDA	Skills Development Act
SDP	Social Discount Product
SETA	Sector Education and Training Authority
SGB	School Governing Body
TAU	Transvaal Agricultural Union
TRAC	Tenure Reform Agriculture Committee
UIF	Unemployment Insurance Fund
WCDLA	Western Cape Department of Land Affairs
WCD _o E	Western Cape Department of Education
WCD _o Health	Western Cape Department of Health
WCD _o Housing	Western Cape Department of Housing
WCD _o L	Western Cape Department of Labour
WCDPP	Western Cape Directorate of Public Prosecutions
WCSAPS	Western Cape South African Police Services

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NATIONAL



CHAPTER 1

Introduction

Introduction

South Africa, it is said, has one of the most progressive constitutions in the world. It is also regarded as having a Bill of Rights that is considered to be one of the most advanced. However, the test of the Bill of Rights cannot be in how strongly the document is worded, but in how it works for the people for whom it is intended. In the short life span of the South African Human Rights Commission (SAHRC), it has dealt with critical issues such as racism in the media, prison conditions and the treatment of migrants and those who are regarded as illegal in the country. The mandate of the Commission is a wide and comprehensive one. One aspect that has always been of concern to the Commission is the ability of the Constitution and the Bill of Rights to provide real and meaningful protection to those who are the most vulnerable in our society.

Very often, those who live within rural and farming communities are vulnerable. There is a sense that the Constitution and the Bill of Rights have yet to impact on the day-to-day lives of people living in these communities. Over the years, the SAHRC has received numerous complaints from people living and working on farms, as well as from those who own farms.

The nature of the complaints ranges from evictions, lack of social services, lack of access to education, health care, social security grants and the safety and security of people working on and owning the farms.

“The Inquiry seeks to try and understand and unpack the human rights challenges that face us in our rural communities.”¹
Jody Kollapen

While the Commission is committed to dealing with individual complaints that are received and will continue to do so, the role of a national institution such as the SAHRC is also to provide a basis for understanding the systemic problems that exist in farming communities. The SAHRC therefore decided to conduct a National Inquiry into Human Rights Violations in Farming Communities. The Inquiry was launched on 11 June 2001 by the then Chairperson of the SAHRC, Dr. N. Barney Pitso. ¹

"We launch this project today as part of our continuous effort to ensure that all human rights are enjoyed by all, irrespective of who they are, where they are, what they do and where they come from. It is our expectation that with the collaboration of all stakeholders, at the conclusion of the project, the phrase 'human rights in farming communities' would mean something to all parties, reflected not only in their conversation, but in their action and way of life."² Barney Pityana.

These include the power to conduct an investigation into any alleged violation of human rights, to call any person to appear before it and produce to it all articles or documents in his or her possession or under his or her control and which may be necessary in connection with such investigation, and to ask any person who appears before it to give evidence under oath or affirmation.

The Mandate, Powers, and Functions of the South African Human Rights Commission

The South African Human Rights Commission (SAHRC) is one of the independent constitutional bodies supporting democracy established in terms of chapter 9 of the Constitution of the Republic of South Africa.³ It derives its mandate from the Constitution and from the Human Rights Commission Act.⁴ The SAHRC is mandated by section 184 of the Constitution to:

- Promote respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and assess the observance of human rights in South Africa.

In order to fulfil its mandate, the SAHRC is empowered by section 184(2) of the Constitution:

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

The Human Rights Commission Act confers further powers, duties and functions on the SAHRC.

Purpose of Inquiry

The purpose of the Inquiry is not to find anybody culpable in a sense of guilt or innocence, but rather to try to understand how human rights have been advanced, if they have been advanced, and what the obstacles are to such human rights being advanced. The Inquiry also sought to determine whether the obstacles that lie in the face of realisation are of policy, or in the area of enforcement. As a national institution supporting democracy, the SAHRC aims to contribute to alleviating the situation.

The Inquiry seeks to

- Determine the extent of human rights violations in farming communities
- Publicise conditions on farms
- Raise awareness
- Improve the living conditions of farming communities
- Improve respect for human rights in farming communities.

The Inquiry is not a performance evaluation, it is not seeking to embarrass, but rather to explore how we can ensure that the law works for people living in farming communities. The Inquiry sought to create a platform for the different role-players to understand each other. The purpose of the Inquiry is to address those people who feel that the Constitution is yet to reach them.

This Inquiry attempted to describe the living conditions of farm dwellers and how they perceive the reality in which they live. It also

focused on the relationships that exist on farms, between farm owners and farm dwellers, and how they interact with government officials. In attempting to describe these realities, farmers perceive themselves as being victimised. These realities need to be accepted in order to change perceptions. Conditions will not improve unless they are made transparent and all relevant role-players collaborate to determine the programmes and resources that are available in order to address these problems.

The Inquiry decided that individual names of alleged perpetrators would not be mentioned at the hearings as the Inquiry sought to identify broad trends and the underlying causes of human rights violations at various levels in farming communities. Should the Inquiry have proceeded to publicise the names of alleged perpetrators, then these people would have had the right of responding to the allegations. This would have lengthened the proceedings substantially. In all likelihood, little information would have been obtained and a great many resources and much time would have had to be allocated to the process.

There were people who felt threatened by the Inquiry, angered by the manner in which the Commission decided to conduct the Inquiry, or viewed the Inquiry as an opportunity to express their feelings.

In the Free State Province proceedings were delayed due to a bomb scare in the venue where the hearings were to be conducted. After a thorough search by the SAPS, no bomb was located and the hearings proceeded. Clearly there were those members of the farming community who did not want the proceedings to take place.

In KwaZulu-Natal, both days of the hearings were disrupted. On the first day one of the organisations that had been invited to present evidence at the Inquiry walked out after expressing dissatisfaction that they were not allowed to state the names of alleged perpetrators. A disruption and toyi-toying followed the walk-out.

On the second day, there were further disruptions after the panellists initially refused to succumb to demands to halt proceedings due to the alleged dismissal of workers who had attended the hearings the day before. The situation was peacefully diffused with the crowd being assured that a SAHRC Commissioner would visit the farm immediately to investigate and to try and resolve the issue. This was duly done.

Whilst the SAHRC acknowledges the intense feelings of frustration and anger of farm dwellers over the slow pace of land reform, it condemns the disruption of the hearings. Rather than the Inquiry providing a forum in which the human rights of farm dwellers could be addressed as part of a national process, the disruption removed this opportunity. As a result, important information may not have been placed before the Inquiry in this province.

The Inquiry and the Final Report presents the beginning of a new process, one in which relevant role-players can reflect on how they interact with other role-players to achieve the realisation of human rights for all who live in our farming communities. The Report strives to create a reflection of what the panellists heard from people living in farming communities across the country. This is their reality, which all role-players need to accept in order to meaningfully participate in supporting and entrenching human rights.

Terms of Reference for the Inquiry
The Terms of Reference for the Inquiry are set out in the Government Gazette⁵ as follows:

1. To investigate the incidence of human rights violations within the farming communities from 1 June 1998.
2. The Inquiry will, amongst others, look at the following sectors:
 - 2.1 Land rights and tenancy;
 - 2.2 Safety and security
 - 2.3 Economic and social rights.

Continued on page 4

3. The SAHRC reserves the right to extend the Inquiry to other sectors, which in its view warrant investigation.
4. The Inquiry will strive to establish, as far as it is possible:
 - 4.1 The underlying causes of violations of human rights in farming communities.
 - 4.2 To make findings and recommendations.

The three phases of the Inquiry

First phase - research

The first phase included commissioning research by independent persons in each of the provinces. The research reflected the issues of land and tenancy rights, safety and security and economic and social rights. The research methodology looked at the kinds of patterns that existed within the various provinces, what structures existed and which ones were effective.

Second phase - participation

The second phase included provincial visits by members of the Commission to publicise the Inquiry and to encourage people to engage with the Inquiry by way of making submissions.

Third phase - public hearings

The third phase of the Inquiry included hearings in all nine provinces. The SAHRC chose to conduct the hearings in rural settings such as Malmesbury, Thabazimbi and Ventersdorp, in order to encourage local people to attend and participate in the hearings.

During the course of these hearings, the Commission received evidence from a range of players and stakeholders, including those who represented organised agriculture such as Agri SA, those that represented farm dwellers, NGOs, trade unions, constituency offices, local councillors and government departments. In particular, the Departments of Land Affairs, Agriculture and Labour attended

the hearings and in some cases, the Departments of Education, Health and Housing also participated.

Methodology and Rules of Process

- ❑ The Rules and Procedures for the investigation and Inquiry are those set out in section 9(6) of the Human Rights Commission Act 54/96.⁶
- ❑ In terms of these rules of procedure the SAHRC called for submissions on any matter referred to in the terms of reference from interested parties, including institutions, organisations and associations, government parties and individuals.
- ❑ The Submissions deadline was 16 December 2001.⁷
- ❑ The SAHRC commissioned research to assist in providing information or data, social analysis or methodology for the investigations.⁸
- ❑ The SAHRC then invited individuals, institutions, organisations, and government departments to attend the hearings and make oral submissions.⁹
- ❑ Public Hearings were conducted which were presided over by a panel that comprised at least 3 members of the Commission and one or two persons with expertise on any matters referred to in the terms of reference for the investigations and inquiry.¹⁰
- ❑ After the hearings the Chairperson and panel members prepared a Final Report on the Inquiry.
- ❑ The Final Report will take due notice of all submissions, allegations, responses and points of law and fact.
- ❑ Following an analysis of the evidence submitted, the panel would make findings and recommendations.¹¹
- ❑ The Final Report of the Inquiry and the Findings and Recommendations will be made public at meetings to be convened by the SAHRC.¹²

Scope of the Report

All aspects of human rights could not be given direct attention in each province, or in relation to the different vulnerable groups within the farming communities. Where sufficient information was obtained about a particular aspect of the human rights situation within

the province, it is highlighted and discussed. It does not imply that the experience of the province or the vulnerable groups is necessarily confined to the experience as described in this Report. The evidence and information provided to the panellists has shaped the Final Report. It is anticipated that read as a whole, the Report will provide an accurate reflection of the broad trends of the human rights situation in farming communities and the underlying causes of human rights abuses that occur.

The voices of farm dwellers

The Inquiry received criticism from representatives of farm dwellers and farm owners that no space was given for farm dwellers to speak directly to the Inquiry about their daily human rights realities. Since provincial visits were undertaken and individual submissions obtained from people living on farms and their representatives, the panellists were satisfied that the voices of farm dwellers had been heard and are reflected in this Report.

Former homelands

It was never the intention of the Inquiry to exclude the former homelands from the scope of the Inquiry. However, insufficient information was obtained to do justice to the issues that were raised in these specific areas. The DLA state that they are waiting on national comprehensive legislation that will replace the Interim Protection of Land Rights Act 31/96 to attend to the issues of land rights in the former homelands.

Terminology

The Final Report refers to owners as farm owners, farmers and employers, depending on the context. In respect of those who are not owners, the terms dwellers, tenants and workers are used in context. Farming communities refer to all who live on farms.

Definition of farming communities
Refers to any owner, dweller, worker and labour tenant, on any farm, included but not limited to commercial and corporate farming, the SANDF, the Parks Board, game lodges/tourist operated initiatives in farming communities.

The Inquiry recognises the many difficulties with the definition and use of the term “farm attack”. The Chapter on Safety and Security spells out some of the problems with the term and specific Findings and Recommendations are made in this regard.

Statistics

The Inquiry began with an assumption that there are many statistics that have been compiled relating to the focus groups of the Inquiry. As the Inquiry set about gathering data, it became increasingly apparent that these statistics, in many cases, do not exist. Furthermore, most government data does not make distinctions between urban and rural communities or distinctions within rural communities as to who lives on farms and who does not. In addition, it was consistently reported to the Inquiry and confirmed by Agri SA that to obtain access to farms is problematic. This accounts for the lack of independent research being conducted by NGOs and other institutions. It is therefore difficult to quantify the nature and the scale of human rights violations that occur in farming communities.

Without statistics it is easy for some to deny that human rights violations in farming communities occur. The Inquiry is confident, however, that based on the repetition of claims of violations throughout the country, that these violations do occur. Even where these violations may not occur on a widespread basis, the fact that they may occur in isolated incidences does not detract from the seriousness of the violation or the fact that it is an unacceptable violation that must be addressed.

South Africa has a continuing legacy of many farm dwellers having an apparent lack of faith in the service the police provide in enforcing the law and protecting people. There is continued under-reporting of violations in this area. The view of the Inquiry is that the statistics that have been provided are not necessarily an accurate reflection of a particular situation.

Structure of the Final Report

The Final Report seeks to reflect the information that was provided to the Inquiry and which formed the basis of the Findings and Recommendations that were arrived at.

The national hearings

The national hearings were held in December 2002 after the provincial hearings. During the course of the provincial public hearings, some of the information received was not always conclusive. Provincial departments would refer to the national department as having the competency to respond. This created the need to invite national government departments to respond to these issues and other general trends that fall within their competencies. Civil society role-players were also invited to participate in the hearings.

The Report of the national hearings is placed at the beginning of the Report as it provides an overall framework of some of the major issues that were raised in the provinces. The chapters cover the areas of Land Rights, Labour, Safety and Security and Economic and Social Rights.

A separate chapter on labour has been included in the Report although this was not identified as a major focus area of the Inquiry in its Terms of Reference. It became apparent that labour issues impact greatly on many rights of those who live in farming communities and that they cannot be ignored.

The provincial hearings

The provincial hearings were held from July to November 2002. The provincial chapters begin with the Western Cape and end with Gauteng, in the order in which they took place.

The provincial chapters follow a standard format so that readers with a particular area of interest can access the information that is of relevance to them.

The purpose of setting out separate provincial chapters is to draw attention to the different nuances within the realities experienced by members of farming communities around the country. These chapters also provide the opportunity to draw attention to those areas in the province that need particular attention by role-players. Finally, the report highlights the initiatives taken by government departments and other role-players, that have set about addressing the complex and difficult challenges that are faced when attempting to realise human rights in farming communities.

Findings and Recommendations

This sets out the Findings and where necessary, the corresponding Recommendations of the Inquiry.

CHAPTER 2



Land Rights

Introduction

One of the major challenges facing the new democratic dispensation in South Africa was the denial of access to and ownership of land by the majority of South Africans. In negotiating the new Constitution, obligations were placed on the new government to address the injustices of the past and the imbalances that had been created concerning land ownership and use in South Africa. The property imbalances that exist have resulted in 87% of land remaining in the hands of 13% of the population and 13% of the land being in the hands of 78% of the population. Rights in rural land still predominantly reflect the past patterns of land ownership in South Africa. White farmers own the land whilst poor Black people obtain tenure on the land as farm workers. The Extension of Security of Tenure Act 62/97 (ESTA) is the most relevant piece of legislation that affects the rights of both farm dwellers and farm owners.

A host of issues needed to be explored at the national hearings. In respect of tenure security, the issues of amendments to the legislation and access to legal representation dominated the national hearings. A substantial part of the hearing was spent on exploring the government's land redistribution programme that has received criticism from civil society role-players as not assisting current farm dwellers.

Since 1994, the government has developed a three-pronged approach to land reform in South Africa, which is set out in the 1997 White Paper on South African Land Policy. The three legs of land reform are: restitution, redistribution and land tenure reform.

Tenure Security

Tenure security refers to the degree of security that a person has in order to reside on and enjoy rights in land, other than ownership rights. In South Africa, examples of people who are in need of their tenure security rights being strengthened are labour tenants, farm workers and persons living in the former homelands. Strengthening tenure security comprises the third leg of the government's land reform programme.

A scourge of evictions has plagued South African farms since the colonial era. The inequality in power between farm worker and farm owner and the lack of effective legal mechanisms to protect farm dwellers creates a power imbalance that contributes towards evictions occurring. It is estimated that during a thirty-year period (1950 – 1980) between 1,29 and 1,4 million people were evicted from predominantly White-owned farms in South Africa.¹

Legislation to promote and protect land tenure in South Africa

Land Reform (Labour Tenants) Act 3/96 (LTA)

- ❑ Aims to protect the rights in land of labour tenants and provides a mechanism whereby they may gain ownership of land that they have occupied.

Communal Property Association Act 28/96

- ❑ Provides a new mechanism whereby groups of people may acquire rights in land and own land collectively.

Interim Protection of Informal Land Rights Act 31/96

- ❑ Provides for the temporary protection of rights in land of persons living in the former homeland territories. The Act is extended annually.

The Extension of Security of Tenure Act 62/97

- ❑ Aims to protect occupants of land other than township land from arbitrary evictions, sets out the rights and duties of occupants and landowners, provides for mechanisms to ensure long-term tenure security.

Transformation of Certain Rural Areas Act 94/98

- ❑ Deals with the land tenure patterns in the 23 so-called Coloured reserves in the Western, Northern and Eastern Cape and the Free State provinces.

The Extension of Security of Tenure Act 62/97 (ESTA)

In terms of section 25(6) of the Constitution, Parliament passed ESTA and it came into effect on 28 November 1997. Certain provisions were retrospective to 4 February 1997.² The primary purpose of the Act is to protect farm dwellers, referred to as occupiers in ESTA, from eviction and to ensure that evictions occur in a lawful and constitutional manner.

Persons protected in terms of ESTA are those who

- ❑ live on land that is not township land;
- ❑ who have permission to live on the land;
- ❑ who are not labour tenants; and
- ❑ whose income is less than R5 000 per month.³

The Act seeks to

- ❑ Provide for measures with State assistance to facilitate long term security of land tenure;
- ❑ To regulate the conditions of residence on certain land;
- ❑ To regulate the conditions and circumstances under which the right of persons to reside on land may be terminated; and
- ❑ To regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land.

The ESTA is a largely procedural piece of legislation. It sets out the rights and duties of landowners and farm dwellers and the procedures that must be followed in order to lawfully evict a person from the land. It is a complicated and technical piece of legislation. The high number of eviction orders that have been overturned by the Land Claims Court when they were sent on automatic review is evidence of this.⁴

In short, the procedure to evict a person is as follows:

- ❑ There must be lawful termination of an occupier's right to residence on the land;
- ❑ The occupier must fail to vacate the land despite due demand by the landowner;
- ❑ A section 9(2)(d) Notice must be issued and served on the occupier, the local municipality and the head of the relevant provincial office of the DLA. This Notice informs the occupier that in two months' time the landowner will approach the court and request an eviction order;
- ❑ Court proceedings must request the eviction of the occupier from the land;

- ❑ In making a determination whether to evict an occupier a section 9(3) report must be placed before the court;
- ❑ At court, depending on when the occupier came to reside on the land (the legislation makes a difference between occupiers who occupied the land prior to and post-4 February 1997), the court will take into account different sets of considerations before granting an eviction order;
- ❑ Any eviction order that is granted in terms of ESTA must be sent on automatic review to the Land Claims Court before the eviction may be carried out; and
- ❑ Only the sheriff of the court and persons specified by the court may assist in the actual eviction.

Section 4 of ESTA makes provision for the granting of subsidies that will promote tenure security.

Disputes in terms of ESTA can be settled in court or referred to arbitration and mediation at the request of one of the parties.⁵

It is a criminal offence to evict a person other than with an order of a competent court. The penalty is a fine or imprisonment (maximum 2 years) or both.⁶

Prevalence of evictions

There are no recorded and accurate statistics on the number of evictions that take place. Reports from rural NGOs and service providers indicate that many evictions still occur and that the provisions of ESTA are generally not applied. The eviction orders referred to in the Land Claims Court represent only a small percentage of evictions that take place where the landowner has followed the procedures set out in ESTA and has successfully been granted an eviction order by the magistrate's court.

Multi-fold impact on human rights of an eviction

Unlawful evictions impact upon the human rights of farm dwellers. Not only is the right to tenure security violated but so too is the right not to be arbitrarily evicted. In some instances, the right to access to water, housing, education for children, family life (eviction often leads to the separation of families) and dignity can also be violated.

Review of legislation

The national Department of Land Affairs is responsible for formulation of policy, legislation, and systems and procedures, which is informed by information and feedback received from provinces.⁷ The Department is currently in discussions to merge ESTA and LTA to further rationalise legislation with a view to having one Act for occupiers on land. It is unreasonable to have two pieces of legislation that set out different procedures and rights for people living on farms. Also, the LTA has become legally irrelevant in part, as the application deadline has passed. There is a need to consolidate legislation to ensure that people's rights are protected, and the Department is currently working on a draft Bill and a draft policy document that will be presented to the Minister in 2003.⁸

Most role-players raised issues with ESTA and LTA legislation during the provincial hearings and there is agreement that amendments are necessary. However, there are vast differences in terms of the amendments that role-players seek. For example, some argue for the recognition of user rights in land to prevent landowners from removing these rights (e.g. grazing rights for livestock);⁹ legislating the provision of legal representation for farm dwellers faced with eviction; and legislating that the magistrate should inquire if ESTA is applicable.¹⁰ Agri SA supports the concept of security of tenure while stating that in its present form ESTA has many unintended consequences. Agri SA is waiting for the results of research being conducted by the

University of Stellenbosch that aims to establish the impact of the legislation on housing and job creation.¹¹ It is unclear which provisions in ESTA are not supported by Agri SA; but the redrafting of the legislation is viewed as an opportunity to renegotiate the legislation.¹²

Perceptions of lack of integration and co-operation between land reform stakeholders

The DLA states that in their policy and legislative drafting they have systematically attempted to encourage stakeholder participation. The Department hosted an ESTA Review in 1999, to which a broad range of stakeholders from the NGO community, the agricultural sector, other government departments and provincial implementers were invited. A second large stakeholder meeting was the Land Tenure Conference in 2001 in Durban. Recommendations on amendments to ESTA were discussed at this gathering.¹³ The DLA participates in other government department initiatives such as NOCOC meetings convened by the Department of Safety and Security.¹⁴ The DLA also calls meetings with other government departments to discuss issues, such as recent attempts to bring together the DDGs from the Departments of Safety and Security, Defence, Agriculture, Justice and Labour to discuss the concerns of the Landless People's Movement. However, the relevant officials did not attend the meeting.¹⁵ At a provincial level there are various fora where stakeholders are brought together to discuss farm dweller issues. The DLA has also provided training programmes on ESTA and LTA to hundreds of magistrates nationally, prosecutors, lawyers, police and DLA officials. The DLA is participating in a Department of Justice initiative to set up a national task group around the implementation of ESTA.¹⁶

The DLA has participated in various task groups with the DoL and has been involved in discussions around the use of illegal labour. The DoL has conducted discussions with the DoH about the provision of rural housing. It

is, however, difficult to ensure that other government departments prioritise land issues, and this is cited by the DLA as one of the major problems with the implementation of ESTA and LTA. For example, responsibility continues to shift as farm dweller housing is not a priority for the DoH and the provision of housing is not the work of the DLA.¹⁷

The DLA will be commissioning research projects to establish the reasons for the proliferation of informal settlements outside of rural towns.¹⁸

Legal representation for farm dwellers

A recurring issue in all the provinces was the lack of access to legal representation by farm dwellers faced with ESTA legal proceedings. In instances where legal representation was provided, the perception was that lawyers provided at State expense were sometimes incompetent or not as skilled as the lawyers that were instructed by farm owners. A further issue was the apparent lack of enforcement of the Nkuzi judgment that provides farm workers with legal representation in land matters.¹⁹ For many farm dwellers the lengthy court proceedings can have the effect of justice delayed being justice denied.

Agri SA, as in the provinces, was defensive in its approach and clearly felt victimised by the process. Information placed before the Inquiry was referred to as untested allegations that aim to tarnish the image of farmers,²⁰ cruel generalisations,²¹ broad allegations²² and misinformed generalisations. Where violations do occur, they can be attributed to the lack of law enforcement. Those who are responsible for violations are not necessarily farm owners or farmers, as there is a lack of clarity on this definition. Farmers that do commit violations are "bad apples"²³ and a complete picture has not been provided as the farm worker was not represented at the Inquiry.²⁴

Delivery of legal services

The majority of farm dwellers are unable to afford the services of a private lawyer and are reliant on the provision of legal services through the Legal Aid Board (LAB) or an independent legal service, provided by a university law clinic or NGO. Persons who qualify in terms of the means test of the LAB can apply for legal aid for representation in both criminal and civil matters. In respect of criminal matters, the LAB considers the seriousness of the matter as well as the income of the person. In civil matters, the income of the person and the prospect of success is considered. Currently the income after a person's basic deductions is R850,00 per month.²⁵ Given the general wage level reports received during the Inquiry, most farm dwellers would qualify in terms of the means test.

"In all the above cases it is clear that human rights have been violated and the State has not done anything to address the issues. Instead it is up to NGOs, constituency offices, advice offices and other community structures to champion people's rights."²⁶ NLC

The LAB states that there is no impediment in the policies or rules to the provision of legal aid to farm dwellers. There are practical problems as regards service delivery. The LAB is currently engaged in an active programme to provide legal services in terms of its constitutional obligations. Practically, this is done through three mechanisms. Firstly, the provision of traditional judicare, where legal practitioners in private practice are instructed and paid by the LAB to provide legal services. Many legal practitioners are unwilling to take on matters at the current LAB tariff rates. Secondly, salaried lawyers at Justice Centres are also employed. There are currently 28 Justice Centres throughout the country. The LAB is in the process of establishing a further 29 offices. The LRC stated that Justice Centres are not being established quickly enough and are not

providing for the needs of the farming communities.²⁷ Thirdly, the LAB contracts with a legal provider, including universities, to provide services to people who cannot afford them. The co-operation agreements are intended as an interim measure to provide legal services in areas where the LAB does not have a presence or only provides particular kinds of services.²⁸

Currently, the provision of legal services by the LAB concentrates mainly on criminal and family law matters.²⁹ Most staff in Justice Centres are fully occupied with criminal matters. The LAB acknowledges that there is a need for further training and improvement with regard to negotiation skills of lawyers that are based in Justice Centres.³⁰ The LAB has identified that they need to improve on the quality and variety of legal services offered. The LAB informed the Inquiry that the problems identified will be addressed at a strategic workshop in January 2003.³¹

Justice Centres tend to be concentrated in urban areas, as this is where the need for legal services is greatest. It is anticipated that through reducing costs in urban areas those funds could be used to establish Justice Centres in other areas. Justice Centres are already establishing satellite offices in some of the rural areas. The LAB has a programme of establishing further Justice Centres during 2003, with the aim of creating a national grid of 60 centres from which legal aid services are provided.³²

The criteria for deciding to establish these centres are population density, existing demand for services, poverty and existing provision of services by NGOs.³³

In respect of referral work related to economic and social rights, such as accessing social grants, the LAB states that this is also an area identified for improvement. The LAB is beginning to work more with paralegal associations which are often best placed and experienced to work on economic and social rights issues.³⁴

Perceptions of incompetence of LAB attorneys Where the LAB is placed in a position that demonstrates that the lawyer is in fact incompetent, the LAB will no longer instruct the person. With regard to salaried lawyers, there is a need for practical legal education in civil matters.³⁵

Finally, with regard to the perceptions and often realities that many cases drag on and are too protracted, the LAB indicated that these are issues for the rules of the court and active case management by judicial officers.³⁶

Rural Legal Trust (RLT)

The RLT was established in 2001 with donor funding to disburse large sums of money to centres to assist with legal representation of farm dwellers. The RLT began its roll out in KZN, Mpumalanga, Gauteng, Southern Cape and Eastern Cape. Investigations are still under way for Northern Cape.³⁷ There is concern from NGOs that while interim donor funding exists, there is little impetus to seriously address the need for legal representation of farm dwellers.

DLA response

Following the collapse of IMSSA (Independent Mediation Services of South Africa), which administered a Land Reform Mediation Panel, the responsibility for mediation rests with the provincial offices. Either officials from the provincial DLA should mediate, or where there is money in the provincial budget, then panellists should be used.³⁸

In order to address the Nkuzi judgment, the DLA set up a workshop to discuss the implications of the judgment. The DoJ did not send a representative. The DLA are presently using their own budget to obtain legal representation for farm dwellers threatened with eviction.³⁹ The LAB has assured the DLA that while Justice Centres are being established, the LAB will continue to issue instruction to attorneys. Where there are difficulties in the granting of instructions, an attorney who is willing to take on a case can contact the DLA

who will take up the matter at a national level with the LAB. The DLA has provided the LAB with a list of 'hot spots' where there is a need for specialised land dispute centres.⁴⁰

The DLA sits on the Board of the Rural Legal Trust (RLT) in an advisory capacity and was involved in raising funds for the establishment of the RLT. The DLA also recognises that legal services are expensive and time consuming and that by the time the matter reaches court, the relationship between the parties breaks down. The Department is in the process of designing an alternative dispute resolution system, which will be piloted in 2 provinces, to look at methods of resolving land disputes outside of the court process.⁴¹

"Government unfortunately did not, inasmuch as it enacted the legislation, recognise that it had to lend a serious helping hand to the farming community, by way of representation. Rather than simply pass the laws and leave it in the hands of NGOs like ourselves to take up the cudgels on behalf of farming communities, it is our view that government itself should have recognised the vulnerability of these communities and should have lent a helping hand right at the outset."⁴² LRC Spokesperson

Legal evictions - automatic follow up

Where an occupier is legally evicted there is no automatic follow up process with a development and settlement programme as this depends on the capacity within the provincial department. Many planners lose track of these cases as they continue with courtroom business.⁴³

DLA programmes are currently demand-driven, which has been identified as problematic. In order to address the issue the DLA is considering a number of ways in which tasks can be devolved to district level.⁴⁴

Section 4 subsidies

The DLA was asked to respond to the information received from provinces that section 4 subsidies, in terms of ESTA, are not being fully utilised in appropriate circumstances as the procedure is lengthy and requires direct approval from the Minister.

The DLA reported that the final approval of the Minister slows down these projects. Provincial directors approve LTA projects. According to the DLA, frustrations develop in provinces such as Mpumalanga and KZN where there are combined LTA and ESTA projects. The difficulty arises in that the Minister must approve the ESTA project and the provincial director the LTA project. As a result, the LTA project may be approved prior to the ESTA project which in turn slows down the labour tenants project.⁴⁵ There are plans within the Department that are being considered to rationalise the delegation for approval of projects and to bring approvals onto the same level.⁴⁶

The statistics for successful section 4 projects that have been completed nationally were promised by the DLA in the final written submission, but were not forthcoming.

Programmes for secure tenure for the elderly
The Inquiry wanted to know from the DLA if there were any programmes that created security of tenure, specifically for the elderly who did not qualify as long-term occupiers in terms of ESTA. This question was posed as a result of reports from the provinces of the elderly being evicted from farms. The DLA responded that the Department has no pro-active programmes specifically for the elderly. However, the prioritisation of projects lies at a provincial level.⁴⁷ The DLA's policy is to prioritise on-site developments for long-term occupiers.⁴⁸

Long-term occupiers are people who have lived on the land for 10 years and have reached 60 years in age or may no longer work due to disability or ill-health.

Labour tenants

Due to historical land tenure patterns of the colonialists, labour tenants are found predominantly in KwaZulu-Natal and Mpumalanga. It is estimated that there are up to 250 000 labour tenants in South Africa.⁴⁹

The Land Reform (Labour Tenants) Act 3/1996

This Act seeks

- To provide security of tenure to labour tenants and those persons occupying or using land as a result of their association with labour tenants;
- To provide for the acquisition of land and rights in land by labour tenants;
- To protect labour tenants from eviction; and
- To make provision for the labour tenant to apply to acquire ownership of land that he or she occupies.

Labour tenants are persons who live on another person's land and in exchange for their tenure they provide labour.⁵⁰ In order to claim ownership of the land occupied by the labour tenant, an application must be lodged with the Director-General of Land Affairs. The cut-off date for applications to be lodged was extended to 31 March 2001 as very few claims were received by the DLA. By March 2001 only 2 197 claims were lodged in KwaZulu-Natal and 2 086 in Mpumalanga.

The process provided for in the Act to process these applications favours the resolution of claims by agreement with the landowner. The landowner may give rights in land to the labour tenant, provide rights in land to the labour tenant for another piece of land, or pay compensation to the labour tenant. If the matter is not resolved, it may be referred to the Land Claims Court for arbitration.

The Court will appoint an arbitrator who will draw up a Report and present it to the Court, which will then decide the matter. The owner of the land is entitled to just and suitable compensation.

Factors that have contributed to claims being processed too slowly:

- ❑ Limited capacity within the DLA to deal with the process.
- ❑ Changes in Legal Aid Board tariffs that result in attorneys being unwilling to assist due to the low tariffs being paid for their services.
- ❑ Dissolution of the Independent Mediation Services of South Africa (IMSSA), which co-ordinated a panel of arbitrators.
- ❑ Proposals to resolve claims at district level with the co-operation of municipalities has been slow due to changes in municipal structures and capacity constraints.⁵¹
- ❑ Insufficient steps taken by the DLA to make people aware of their rights in terms of the legislation and to assist them in completing the necessary application forms.

Farm dwellers in the former homelands

"In the communal areas of the former homelands, constituting approximately 13% of the national territory and home to close on one-third of the population, the system of land administration created under apartheid is generally in chaos."⁵²

The Interim Protection of Informal Land Rights Act 31/96 provides for the temporary protection of certain rights to and interests in land, which are not otherwise adequately protected by law. It was intended as an interim measure as the title of the legislation suggests. However, to date the government is yet to produce legislation that effectively gives recognition to rights in land and tenure security of these persons.

"There is widespread uncertainty around the validity of "Permission to Occupy" certificates and around who may be considered the real owners of the land – the rural people themselves who use and occupy the land, the traditional leaders who allocate land, the elected local councils who oversee development or the Minister of Land Affairs who holds the title deeds. This has created insurmountable obstacles for both locals and outsiders wishing to invest in communal land, and leaves ordinary occupiers at the mercy of sometimes unscrupulous traditional leaders."⁵³

Land Redistribution

From 1994 to 1999 the land redistribution programme of government targeted the rural poor. The DLA's White Paper on South African Land Policy, April 1997, favoured a land reform approach that looked at the interests of the rural poor based on the willing buyer-willingseller principle.

"The purpose of the Land Redistribution Programme is to provide the poor with access to land for residential and productive uses in order to improve their income and quality of life. The Programme aims to assist the poor, labour tenants, farm workers, women, as well as emergent farmers. Redistributive land reform will be largely based on willing buyer-willing seller arrangements."⁵⁴

The principal method of effecting this purpose was through the Settlement/Land Acquisition Grant (SLAG). In terms thereof, an applicant was awarded R15 000,00⁵⁵ towards the purchase of land, and related farm capital expenditure such as the enhancement of tenure rights, investments in internal infrastructure, top structure and fencing.

By March 1999, 60 000 households had been awarded SLAG grants. The majority of these awards were made to groups who purchased the land collectively or under share equity schemes, as small pockets of land are not

readily available. Furthermore, land that is available tends to be expensive.

With the appointment of the Minister of Land Affairs in June 1999, a major policy analysis was undertaken by the Department of Agriculture and Land Affairs. This was accompanied by a moratorium being placed on new projects in the Department for most of 2000, even though it was officially lifted in February 2000. The new policy shift has been viewed as a move away from focussing on land redistribution for the poorest of the poor, to concentrating on creating a middle class of Black commercial farm owners.

To enact this policy shift, the DLA developed a new redistribution programme entitled Land Redistribution for Agricultural Development: A sub-programme of the Land Redistribution Programme (LRAD). The other two sub-programmes of the Land Redistribution Programme are programmes dealing with land for residential settlement and land for non-agricultural enterprise such as ecotourism.

Previously the SLAG Programme comprised all the funds for the redistribution projects within the DLA. However, in the 2001/2002 financial year it comprised only 24,5% of the budget.⁵⁶

The LRAD was finally launched on 13 August 2001. Its purpose is to transfer 30% of all agricultural land over a period of 15 years.⁵⁷

Challenges facing land redistribution
Share equity schemes that were established in terms of the SLAG Programme have taken a long time to be established. Often, the farm workers who become landowners are not sufficiently equipped with the skills and necessary resources to create a viable commercial farm.

“While LRAD may be able to meet the needs of a small minority of emergent Black farmers, it is unlikely to come close to meeting the needs of the mass of poor and landless households or to transforming the racially skewed pattern of land ownership.”⁵⁸

A number of practical limitations to the LRAD have also been identified. These include:

- ❑ No mechanisms to ensure that women, the unemployed and the very poor can participate in the Programme.
- ❑ The design of the projects still remains in the hands of private consultants.
- ❑ Major responsibilities have been given to provincial government without the necessary financial commitments to ensure that these responsibilities can be carried through.
- ❑ Commercial production has been stressed over the recognition of the fact that there is a need for part-time farming by millions of households for survival purposes.
- ❑ Local government’s role is unclear and it fails to address the link between land reform and wider aspects of rural development.⁵⁹

The LRAD does not deal with the traditional commonage issues and with the land issues in the former homelands.

The LRAD does not enjoy the support of organisations such as the National Land Committee (NLC) which represent landless people. According to the NLC, LRAD is “...a narrow and piecemeal approach to land and agrarian reform...” in this country. The programme fails to put the question of land into perspective; it places too much responsibility on the farm worker, and does not guarantee participation of women, the youth, the disabled and the aged. It also does not address a broader rural and agrarian reform.⁶⁰

The NLC is of the view that the programme has moved from one that was intended for poor people to one that is elitist.⁶¹

Delivery of land redistribution

The DLA still has a long way to go in terms of redistribution. The aim of government was to have 15 million hectares of land distributed by the year 2005, while 30% of rural fertile land would be distributed over 15 years.⁶² However, the process of land redistribution has been very slow. From 1994 to the end of 2000, only 684 914 hectares of land were transferred in terms of the government's land redistribution programme. During this period the DLA approved 5 606 projects, of which land was transferred in only 2 729 projects. In 1998 and 1999 the DLA transferred land in just over 1 000 projects for each of the years. However, in the year 2000, land was transferred in only 89 projects.⁶³ To date, less than 2% of agricultural land in the country has been redistributed.⁶⁴

"The key constraints to delivery are:

- ❑ The inadequate government capacity for land reform.
- ❑ Scarcity of human resources at government level.
- ❑ Lack of co-ordination and integration with other spheres of government and departments.
- ❑ Lack of effective organisational, technical and managerial support to new farmers and land reform beneficiaries beyond the point of land acquisition."⁶⁵

The Minister of the Department of Land Affairs admits that the slow pace of the land reform programme can be attributed to the lack of human resources and capacity within the DLA at provincial and national government level.⁶⁶ The DLA continues to under-spend its annual land reform allocation due to limited administrative capacity.

Steps by government to speed up land redistribution

In order to speed up land redistribution the Minister of Land Affairs has called for the expropriation laws to be revised. This is because the market price of land soars as soon as it becomes known that land will be expropriated for redistribution purposes. Thereafter the expropriation becomes legally contested. This does not appear to happen when land is being expropriated for other public purposes, such as the building of roads and railways.⁶⁷

The Minister has also promised that State land will be distributed in an attempt to speed up the land redistribution process. This policy is also a response to the fact that private land is expensive to acquire. It is unknown at this stage how many hectares of State land have been distributed in terms of the government's land redistribution programme.

Government has also recognised the link between land redistribution and rural development. In order to address this issue the Minister, in a Parliamentary media briefing held in February 2001, stated that:

"The Integrated Rural Development Policy of the government as a whole is intended to concentrate public investment and service delivery improvements in areas within the poorest provinces, which have the best prospect for significantly increasing production and employment among the disadvantaged. This requires much closer co-ordination between government departments and the strengthening of district and municipal level planning, and this will be one of our priorities in land reform delivery. A White Paper on Development and Planning will be produced in the course of the year."

Commitments have also been given by the Minister to reduce the time it takes for land redistribution projects to be finalised. It has been stated that the Director-General and the Chief Financial Officer in the Department

are addressing the time lag between approval of projects and actual spending. The aim is to ensure that there is only a nine-month period between approval and spending on a project.⁶⁸

It is unclear to what extent these commitments by the Minister have been followed through by the Department.

The national hearings

A major criticism of the government's redistribution programme (LRAD) by role-players in the provinces was that it does not cater for the poor. Coupled with this were the criticisms that the Department of Agriculture (DOA) fails to provide the necessary support to beneficiaries of redistribution programmes and that the Land Bank does not cater for poor farmers. The Inquiry invited the DLA, DoA and the Land Bank to explore these issues.

Agri SA also criticised the land reform process, stating that it does not enhance food production. They are currently putting together a database of land reform projects that have failed.⁶⁹

"Land reform has brought uncertainty and disrupts many farmers' lives. However, the majority of farmers realise that land reform is necessary and Agri SA encourages its members to co-operate with the land reform programme."⁷⁰

Response from DLA and DoA

Both the DoA and the DLA do not believe that the LRAD does not cater for farm dwellers because they cannot afford the contribution.

A review of the LRAD Programme addressed the criticisms that poor people would be unable to participate. A number of steps have been taken to address the issue:

- ❑ The LRAD Programme is now decentralised and run by provinces

through Provincial Grant Committees that discuss business proposals from beneficiaries.

- ❑ The Provincial Grants Committee that processes LRAD grants has a check-list to ensure that a programme is viable.
- ❑ The business plans include support programmes.⁷¹
- ❑ Beneficiaries can make a contribution in kind.
- ❑ To address illiteracy, up to 15% of the grant can be allocated to land planning. This is designed to facilitate the land reform beneficiary in getting a business plan drawn up by the officials in the province, or by a consultant that the beneficiary chooses.
- ❑ The Department has a policy to place two department officials at the disposal of beneficiaries. These officials can assist them through the process.⁷²
- ❑ National department officials went out to provinces and communicated with beneficiaries about how the programme can assist.⁷³

The DoA are of the view that most LRAD Programmes launched have been successful.⁷⁴ A first year review indicates that the programme has benefited the lower end of the agriculture sector.⁷⁵ The Programme is reaching its target in terms of the people who have been targeted as participants and funds allocated have been spent.⁷⁶

The DLA does not agree that the LRAD excludes poor people. Examples of how the LRAD Project is working are seen in the Western Cape where, 3 436 people have benefited of which 977 were women and 786 were persons below 35 years of age. From August 2001 to October 2002, 12 073 hectares were transferred. In Mpumalanga, 2 656 people have benefited from LRAD projects in which 10 011 hectares have been transferred. These figures do not indicate the number of projects that have been established but rather the number of people who have benefited.⁷⁷

"While people who cannot read, write or draw up business plans are not specifically targeted, the LRAD policy does not exclude these categories of beneficiaries."⁷⁸

The DoA has not done enough to help small-scale emerging farmers from disadvantaged communities.

The DoA had a five-year departmental review, after which a consultative process commenced that culminated in 2001 with a vision for the sector. A social contract was drawn up which became a booklet, *The Strategic Vision for Agriculture*, that identifies a vision for the agricultural sector based on the premise that the backbone for development in rural areas is the agricultural sector.⁷⁹

Agriculture is a concurrent competency between national and provincial government. It was identified that there is a lack of coherence and synergy. Two structures have been established to promote principles of cooperative government. These are MinMec, consisting of the MECs for Agriculture and Land, DGs and Heads of Department. This structure meets every 2nd month to review the problems facing the sector. The Department has encouraged DGs and Deputy DGs to engage provincial departments of agriculture to try to identify gaps in order for the DoA to effectively deliver products and services within the sector.⁸⁰

Share equity schemes

Statistics on the number of share equity schemes implemented nationally, and on the success of these projects were not provided at the national hearing as the DLA's Redistribution Directorate was not able to provide such information.⁸¹

Share equity schemes are a coming together of unequal parties, with some farmers using these as a vehicle to attempt to resolve financial difficulties. Farmers often retain their

hold over the management of the farm. These schemes are recognised as problematic and the DoA is investigating them.⁸²

Criticism about the pace of land reform

Less than 2% of agricultural land in the country has been redistributed. The DLA attributes the slowness of land reform to people not being willing to make land available. The Department is still in the process of policy formulation and state that it is a complex issue that moves slowly.⁸³

Government expects 15% of agricultural land to be transferred by 2004. This translates into transferring 1,5 million hectares per year. In the year 2001, 800 000 hectares were transferred.⁸⁴

The Land Bank

The Land Bank (the Bank) was invited to the national hearings to address the perception that the Inquiry had encountered in some provinces that the Bank is not doing enough to give financial assistance to people from previously disadvantaged communities. The Land Bank addressed these perceptions by informing the Inquiry of the types of financial assistance provided by the Bank and what the Bank is doing around access to finance.

The Land Bank

The Land Bank is a statutory body created in terms of the Land Agricultural Development Bank Act.⁸⁵ Its only shareholder is the State. The Bank's vision is to be a world-class provider of financial services to the agricultural and related rural sectors. Its mandate is to have a developmental role within the rural agricultural sector with emphasis placed on making access to finance available to those who were previously marginalised in terms of race and gender. It also provides support to commercial farmers, which still accounts for the majority of its work. The focus of the Bank is to remove the legacy of racial discrimination in the sector.⁸⁶

To this end, the Bank has set a target growth rate of 50% per annum for its development, compared to the 3-5% growth rate for the sector in general.⁸⁷ In its commitment to equality, the Bank pointed out that any person who has violated the Promotion of Equality and Prevention of Unfair Discrimination Act⁸⁸ (PEPUDA) will not be eligible to sit on the Board of the Bank,⁸⁹ and that the Bank will not employ or do business with such persons.⁹⁰

Financial Assistance provided

- Step-up loans

Step-up loans are a micro-finance product which includes a loan and a small savings component. The smallest loan amount is R250,00 to a maximum of R18 000,00. The Bank currently has 108 000 clients, 65% of which are women, accessing these loans to the sum of R246M, with a repayment rate of 88%.⁹¹

- Retail loans

These loans are for people who have moved beyond step-up loans and are aimed primarily at emerging Black commercial farmers. The Bank has loaned in excess of R100M in this category.⁹²

- LRAD grants

The Bank entered into an agency agreement with the DLA to distribute LRAD grants. By December 2002, the Bank had approved a sum of R194M in grants to 1 753 clients.⁹³

- Development projects

These are projects for groups of people. The Bank has currently provided finance in the amount of R259M to 329 projects.⁹⁴

- Participation in land claims settlements

The Bank has signed an agreement with the Land Claims Commission to provide finance to assist in making awarded land productive.⁹⁵

Access to finance

- Establishment of Black commercial farmers

From time to time the Land Bank acquires ownership of farms and used this as an opportunity to assist Black commercial farmers onto properties. During 2002, the Bank dispensed 73 of the 120 farms brought into its possession to emerging Black farmers.⁹⁶

- Skills and capacity-building

The Bank has approached this in two ways. First, the Bank has created a Mentorship Programme where current Land Bank clients mentor emerging Black farmers and are awarded 50% of the costs of doing this by the Bank. The Land Bank has had discussions with Agri SA concerning participation of its members in this programme. The Bank estimates that less than 2% of their clients who have participated in the Mentorship Programme have been farm workers.⁹⁷

Second, the Bank has developed a Social Discount Product (SDP) which provides incentives to farmers to enter into mentorship programmes, and to become engaged in social upliftment programmes with the workers on their farms.⁹⁸ The incentive-based products have not been as successful as the Bank anticipated. Reasons cited for this are that a tri-partite agreement between farmer, workers and the bank must be obtained, which creates challenges in terms of how the parties understand the product and what they hope to achieve from it. Some farmers are deterred by the list of minimum social and employment conditions that must exist on the farm as a prerequisite to participating in the Programme.⁹⁹

The Bank has also established a development fund of R5 million, which is dedicated to skills- and capacity-building, with support going to the National African Farmers Union (NAFU) and the National Emerging Red Meat Producers Organisation (NERPO).¹⁰⁰

"We would not lend money to somebody who is doing something that was unconstitutional; ... we have clients of the Land Bank who have been clients of the Bank for 30, 40 plus years, so I cannot sit here and say on oath, that every one of these members meets the conditions of the SDP, but I think they understand that is the basis on which we do business. And there is an understanding that we will refuse to advance monies to people who do not meet those criteria."¹⁰¹

- Youth

The Bank has provided a number of bursaries available to youth to study agriculture. The Bank has also entered into agreements with the National Youth Commission where they are establishing four development farms.¹⁰²

- Monitoring the Bank's impact

The Land Bank commissioned an external Social Impact Study during 2002 to evaluate its effectiveness in reaching its target audience and whether its current methods are working. In particular the study will look at the 'step up programme' and determine its effectiveness.¹⁰³

- Outreach

During 2002, the Bank introduced 44 satellite branches in addition to its existing 27 satellite branches. It is experimenting with mobile banking in the Eastern Cape and conducted a media campaign through radio and television and various publications. The Bank's product information has recently become available in seven of the official languages.¹⁰⁴

Restitution

The Interim Constitution (sections 121 – 123) created the legal basis to develop a land restitution process in South Africa. The legislature was instructed to draft a law to provide for restitution. Restitution is intended to restore land to people who were dispossessed through racially discriminatory laws and prac-

tices after 19 June 1913. The process is not aimed at farm dwellers per se but rather any person who was dispossessed of land and who is entitled to claim in terms of the legislation and the Constitution. In order to facilitate restitution the government passed the Restitution of Land Rights Act in 1994.

Land Claims

In terms of the legislation, the Commission on the Restitution of Land Rights (CRLR, also known as the Land Claims Commission) and the Land Claims Court were created to facilitate the restitution process.

In order to lodge a land claim, the claimant must have been dispossessed of a right to land after 19 June 1913 as a result of past racially discriminatory laws or practices, not paid just and equitable compensation and the claims must have been lodged before 31 December 1998.

The CRLR was formally established on 1 March 1995. It is headed by the Chief Land Claims Commissioner and has six offices with Regional Land Claims Commissioners throughout South Africa.

The legislation promotes the amicable solution of land claims. Only where claims cannot be mediated or negotiated are they referred to the Land Claims Court for determination.

The legislation provides for restitution to be awarded in various forms. This includes restoration of the original land from which the claimant was dispossessed, being provided with alternative land or the payment of monetary compensation. If none of these options are suitable, a combination of these types of awards, which may also include sharing of land and priority access to State resources such as housing and land development programmes, may be awarded.

The CRLR has received 67 531 land claims, of which 80% are urban.

As at 31 January 2002, a total of 29 422 claims had been settled, involving 59 498 households, 329 141 beneficiaries and 406 120 hectares of land. The CRLR has been criticised for processing these claims too slowly. In order to address this problem, a number of steps have been adopted. These include:

- ❑ The use of project teams focussing on specific areas.
- ❑ The handling of claims in batches.
- ❑ Outsourcing while at the same time retaining control.
- ❑ The settling of a large number of claims through negotiations as opposed to the lengthy process of litigation.
- ❑ Referring only disputed cases to court.
- ❑ Direct access reviews and appeals.
- ❑ The use of alternative dispute resolution mechanisms to fast track the process.¹⁰⁵

In addition to these steps, the CRLR embarked on a massive validation of claims process. Its aim was to validate all claims by 31 December 2001 in order that the number of valid claims lodged could be ascertained and the CRLR would more accurately be able to track its progress.

Problems and successes encountered with the restitution process

The National Land Committee (NLC) has listed the following obstacles as contributing to the failure of land restitution:

- ❑ The legal and bureaucratic approach, and the extreme slowness of the process.
- ❑ Lack of communication and information to explain the rights of beneficiaries of restitution.
- ❑ Land redistribution that was based on market mechanisms which could not facilitate equal distribution of land in the country.

- ❑ The property clause in the Constitution inhibited the government from having a thorough land reform strategy.
- ❑ Communal Property Associations (CPAs) have not been formed and registered quickly enough.¹⁰⁶

Restitution is proving to be an extremely slow process. Many of the beneficiaries of the process are in dire economic and social need.

Farm dwellers who have benefited from land restitution

At the national hearings the DLA was requested to provide further information on the number of farm dwellers who have benefited from the land claims process. The Inquiry was informed that the Commission on Restitution of Land Rights (CRLR) does not discriminate against farm dwellers and collects information on farm dwellers who are benefiting from the restitution process. The CRLR distinguishes between urban and rural claims. By 31 October 2002, 30,84% of rural claims had been settled.¹⁰⁷

Of these claims, 27,9% had been settled by way of land restoration. It is not apparent from the information provided how many farm dwellers have benefited from the process.

Restitution in the provinces¹⁰⁸

The table below provides an overview of land claims that have been settled in the provinces as at 31 January 2002.

Province	Number of claims settled	Households involved	Beneficiaries	Land restored (hectares)
Eastern Cape	9 193	16 201	81 751	16 115
Free State	866	914	2 926	5 339
Gauteng	5 496	5 444	28 204	0
KwaZulu-Natal	7 226	11 517	66 913	51 460
Mpumalanga	253	3 409	15 054	18 504
North West	1 050	5 628	44 614	58 814
Northern Cape	409	3 783	19 156	221 759
Limpopo	501	7 660	34 408	28 874
Western Cape	4 427	4 942	36 115	5 225

International Human Rights Instruments¹⁰⁹

- UN Declaration of Human Rights 1948
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979
- The Social Policy (Basic Aims and Standards) Convention (ILO), 1962
- Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO), 1989
- Declaration on the Right to Development, 1986
- UN Declaration on Social Progress and Development, 1969
- The Peasants Charter (UN Food and Agricultural Organisation)
- African Charter on Human and Peoples' Rights (AfCHPR), 1981
- American Convention on Human Rights, 1969

The South African Constitution

The Interim Constitution laid the basis for many of the land reform initiatives that were embarked upon by the government since 1994. In the Final Constitution, section 25 is of relevance to the present Inquiry into land rights of farming communities:

Property

- 25 (1) No-one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application
- (a) for a public purpose or in the public interest, and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided and approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-
- (a) the current use of the property;
 - (b) the history of the acquisition of the property;
 - (c) the market value of the property;

- (d) the extent of direct State investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.
- (4) For the purpose of this section –
 - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past 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.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the State from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact legislation referred to in subsection (6).

CHAPTER 3



Labour

Introduction

Despite the extension of basic labour right protection to farm workers during the past decade, the non-compliance with labour laws and poor working conditions in farming communities dominated the Inquiry.

The national hearings of the Inquiry confirmed what had been reported to the Inquiry in the provinces; namely, that there is widespread non-compliance with labour legislation in respect of farm workers, low wages are being paid, there is a lack of organisation of workers and the Department of Labour (DoL) inspectors and trade union organisers experience difficulties in accessing farms. Other issues addressed at the national hearings included child labour, illegal foreign workers, access to assistance to enforce labour rights by workers, training of stakeholders in labour laws and the abuse of alcohol. The Inquiry was also informed of steps that have been taken to improve the position of farm workers. These include the drafting of a Vision for Labour Relations in Agriculture and a Sectoral Determination that sets out inter alia a minimum wage.

Agri SA's response to the information received about general trends in labour conditions made in the provinces was that they

were generalisations. Agri SA reiterated that it has clear policies on child labour, the use of illegal immigrants and compliance with labour laws. Agri SA suspects that the cases referred to the Inquiry do not occur on commercial farms where their members are, but on smallholdings or on land that is not utilised for farming purposes.¹ As was reported in the provinces, Agri SA has conducted training with more than 10 000 of their members in labour and land laws. This training, which will continue until 2003, was made possible through funding by the ILO and NORAD (Norwegian Agency for Development).² Agri SA supplements its training courses through information placed on its website, weekly electronic newsletters, Agri SA's monthly newspaper, radio talks, information sessions and farmers' days.³

Research conducted by the DoL for the Farm Worker Sectoral Determination Process sets out working conditions on commercial farms in South Africa. The research conducted for the Sectoral Determinations was the first investigation of its kind and provides a clear picture of the social and labour conditions and issues within the agricultural sector.⁴

Some of the conclusions arrived at in respect of labour issues by the Department included:

- ❑ 70% of all agricultural workers are male.
- ❑ In 2000 the average cash wage of farm workers was R544,00 per month.
- ❑ Female farm workers are paid less than male workers and are more likely not to be registered for UIF and do not receive training, medical services and pension and provident fund benefits.
- ❑ A lack of clarity amongst workers about payments in kind and benefits.
- ❑ 54% of workers sometimes work longer hours than the legal limit and generally do not receive compensation for overtime.
- ❑ 27% of farm workers do not get annual leave.
- ❑ 92% of males do not get paid annual leave.
- ❑ Pregnant females do not get paid any maternity benefits.⁵

It was alleged that the abuse of these provisions is acute during harvest time. According to COSATU violations are the norm rather than the exception.⁸

Non-compliance with labour legislation

The DoL, COSATU and SAAPAWU reaffirmed the contention that there is widespread non-compliance with labour legislation in the agricultural sector.

"The problem is that the Act (BCEA) is not being adhered to, deliberately, by employers in agriculture."⁶ COSATU spokesperson

"But the impression is created that this is the rule rather than the exception and we believe this is definitely not the case."⁷ Agri SA spokesperson

The most common occurrences of non-compliance with the BCEA included:

- ❑ Non-adherence to working hours.
- ❑ Overtime work.
- ❑ Working on Sundays and public holidays.
- ❑ Annual leave and maternity leave provisions.

Relevant Provisions of the Basic Conditions of Employment Act (BCEA) 1997

<p>Ordinary hours of work</p> <p>Section 9</p>	<p><input type="checkbox"/> No employer shall require or permit an employee to work more than a</p> <p>a) 45 hour week</p> <p>b) 9 hours in any day if an employee works for 5 days or less in a week or</p> <p>c) 8 hours in any day if an employee works for 6 days or less in a week.</p>
<p>Overtime</p> <p>Section 10</p>	<p><input type="checkbox"/> An employer may not require or permit an employee-</p> <p>a) To work overtime except by an agreement</p> <p>b) To work more than 10 hours overtime a week.</p>
<p>Pay for work on Sundays</p> <p>Section 16</p>	<p><input type="checkbox"/> An employee who occasionally works on a Sunday must receive double pay.</p> <p><input type="checkbox"/> An employee who ordinarily works on a Sunday must be paid at 1.5 times the normal wage.</p> <p><input type="checkbox"/> Paid time off in return for working on Sunday may be agreed to.</p>
<p>Public holidays</p> <p>Section 18</p>	<p><input type="checkbox"/> Employees must be paid their ordinary pay for any public holiday that falls on a working day.</p> <p><input type="checkbox"/> Work on a public holiday is by agreement and paid at double rate.</p> <p><input type="checkbox"/> A public holiday may be exchanged with another day by agreement.</p>
<p>Annual leave</p> <p>Sections 20 & 21</p>	<p><input type="checkbox"/> Employees are entitled to 21 consecutive days' annual leave or by agreement, one day for every 17 days worked.</p>
<p>Sick leave</p> <p>Sections 22 - 24</p>	<p><input type="checkbox"/> An employee is entitled to six weeks' paid sick leave in a period of 36 months.</p>
<p>Maternity leave</p> <p>Sections 25 - 26</p>	<p><input type="checkbox"/> A pregnant employee is entitled to 4 consecutive months' maternity leave.</p>
<p>Family responsibility leave</p> <p>Section 27</p>	<p><input type="checkbox"/> Full time employees are entitled to 3 days paid family responsibility leave per year.</p>
<p>Written particulars of employment</p> <p>Section 29</p>	<p><input type="checkbox"/> An employer must supply an employee when the employee commences employment with particulars in writing.</p>
<p>Information about remuneration</p> <p>Section 33</p>	<p><input type="checkbox"/> Sets out the information that must be provided to an employee when paid.</p>
<p>Prohibition of child labour and forced labour</p> <p>Section 43 - 48</p>	<p><input type="checkbox"/> It is a criminal offence to employ a child under 15 years of age.</p> <p><input type="checkbox"/> Children under 18 may not be employed to do work inappropriate for their age or that places them at risk.</p> <p><input type="checkbox"/> Causing, demanding or requiring forced labour is a criminal offence.</p>

More than 60% of farm workers are registered for UIF (Unemployment Insurance Fund). It is more likely that a male worker will be registered than a female worker.⁹

Unemployment Insurance Act 63/2001

This legislation provides for the payment of unemployment benefits to workers. The legislation sets out a scale of benefits that will be paid, with lower income contributors receiving a maximum of 60% of their remuneration for a period of 4 months. It also provides for payment of benefits to certain employees in the event of illness, maternity, adoption and certain dependants of workers.

The Act does not apply to employees who work less than 24 hours a month. The Act was extended to farm workers in 1994.

The legislative provisions contained in the Occupational Health and Safety Act (OHSA) for the establishment of committees and appointment of health and safety representatives are rarely implemented on farms. There are weak enforcement mechanisms for the OHSA, with too few labour inspectors who are inadequately trained to carry out the inspections in terms of the legislation.¹⁰

Other violations of the OHSA occurring on farms include:

- Employers who allow their workers to work with banned chemicals and pesticides.
- Employers who fail to provide protective clothing and where protective clothing is provided, deduct monies for the clothing from the workers' wages.
- Very little education and training being provided to workers on the risks associated with the use of these pesticides.¹¹

Occupational Health and Safety Act 85/1993

This Act provides for:

- The health and safety of persons at work.
- The health and safety of persons in connection with the use of plant and machinery.
- The protection of persons against hazards to health and safety related to activities in the work place.
- The establishment of an advisory council for occupational health and safety.

Other basic health issues such as providing adequate sanitation to workers in the workplace are not always adhered to. The lack of toilet facilities for farm workers in the fields is common.¹²

The Inquiry was informed that the provisions of the Employment Equity Act are not adhered to, with gender and race discrimination occurring on farms in respect of employment conditions and benefits.¹³

Employment Equity Act 55/1998

The purpose of the Act is to achieve equity in the workplace by:

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination.
- Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups to ensure their equitable representation in all occupational categories and levels in the workforce.

Other trends

COSATU highlighted other trends in employment practices that impact upon the effectiveness and application of labour laws intended to protect the rights of workers, for example, the replacement of formal and permanent workers with casual workers.

This is viewed as a deliberate strategy to disempower workers and prevent them from enforcing their rights.¹⁴ Despite job-shedding and further increase in workloads, wages have not increased.¹⁵ Vulnerable workers, such as migrants, seasonal workers, women and children experience a higher degree of exploitation.¹⁶

Labour consultants

In some provinces the Inquiry received complaints about labour consultants who give farmers incorrect information on land and labour laws. In some instances, labour consultants were accused of giving advice to employers on how to circumvent the laws. The DoL states that labour consultants pose a specific problem in the agricultural sector. They function for their own financial benefit and sometimes advise farmers incorrectly. The approach by the DoL in incidences where this is found to have occurred, is to impart the correct information to the employer.¹⁷

Joining trade unions

There is a low rate of trade union membership amongst farm workers. COSATU and SAAPAWU put this figure at approximately 6%¹⁸ whereas the DoL indicated that the figure may be as high as 7% in certain areas, and that a national average would be closer to 4%.¹⁹ This low rate of membership is attributed to restricted access to farms, employers preventing workers from joining, workers not joining due to fear of victimisation and the fact that organising casual and temporary workers is generally more difficult for unions owing to their temporary status.²⁰

Trade unions assert that through the organisation of workers there is the potential to significantly alter the power imbalances in the work place.²¹

General trends that they have identified in farming communities include:

- ❑ Workers being dismissed and evicted when they join a union.²²

- ❑ Workers being intimidated by the employer to not join the union.²³
- ❑ Access to farms being restricted, making it difficult for the union to deliver an effective service and to protect workers.²⁴

"This is also indicative of the huge power relations that exist on the farm, because if you go to any government department, you think that you are talking to the authorities who are able to enforce the laws of this country. But they tell you we cannot go there. The police say we cannot go there. The inspectors of the Department of Labour say, we cannot go there."²⁵

The DoL points to further difficulties that unions have in gaining access to farm workers. These include:

- ❑ The large geographic areas to cover.
- ❑ Lack of transport.
- ❑ Lack of funds.
- ❑ Levels of literacy in agricultural sector being low.
- ❑ Leadership issues due to many trade union leaders leaving the movement since 1994.

Due to the great power disparities that exist between worker and employer and where the consequences of being unemployed are so dire, many farm workers will do nothing to harm their relationships with the farmer. It is therefore difficult to address and unionise these workers.²⁶

The Vision for Farm Labour recognises that all employers should respect the right of freedom of association and the effective recognition of the right to organise and bargain collectively. Trade unions should have reasonable access to farms and workers should have the freedom to associate with and the right to join trade unions.²⁷

SAAPAWU states that the greatest obstacle to organising farm workers is gaining access to the farms. Therefore legislation to protect workers is not able to assist farm workers.²⁸ SAAPAWU has approached the Minister on this issue.²⁹ The union advocates that the property clause in the Constitution ought to be changed to remedy the situation.³⁰

In response to SAAPAWU, Agri SA argues that access to farms is not freely available to everyone. Besides having to comply with the Access Protocol to Farms, the access of trade unions is stipulated in the LRA.

"Access for labour unions, if they do not have 50% or more, they cannot just walk into a shop or any other private property and go and canvass people. That is laid down in the Labour Relations Act."³¹

"The trade unions are not the problem. We do not really have big problems with the trade unions and it is part of the rules and regulations on how labour legislation is written. Our situation is very much more complex as far as the access is concerned, it is more the safety and security risk that is running so high at the moment."³²

Inspectors and access to farms

At the national hearings, labour inspectors were criticised for being ineffective in ensuring compliance with labour legislation on farms due to their inability to gain access to farms.³³

The DoL carries out three types of inspections. These are unannounced blitz inspections, unannounced inspections in reaction to complaints that are received and announced routine inspections. In those instances where inspections are announced, the Protocol for Access to Farms is applicable.³⁴ The experience of the DoL is that where inspections are pre-announced more often than not inspectors do not experience difficulties in accessing farms. In instances of unannounced inspections, the inspectors usually

contact the police and request them to accompany them to the farm.³⁵ Currently, there are approximately 800 labour inspectors employed by the DoL for all workplaces in South Africa. There are plans to employ a further 300 inspectors.³⁶ The Department estimates that there are 70 000 farms.

The DoL recognises that there is scope for improved inspection services and has mooted the idea of creating an integrated inspection service with other government agencies that also have inspection functions. A challenge to initiating such a structure is that different government departments have different agendas - what may be important to one agency may not necessarily be as important to another.³⁷

Poor conditions of employment

Wage levels are generally low in the agricultural sector with Limpopo, KZN and Eastern Cape being the lowest according to COSATU.³⁸

Child labour

Despite the practice of child labour being a violation of the constitutional rights of the child and being criminalised in terms of the BCEA, the research conducted by the DoL for the purposes of the Sectoral Determination showed that whilst it had been reported that child labour was occurring in seven of the nine provinces, 23% of employees confirmed to researchers that child labour is used at some time during the year.³⁹ The exact prevalence and numbers of children who are working on farms is unclear.

In terms of general trends, COSATU pointed to a higher prevalence of child labour in provinces such as Limpopo and Mpumalanga, where children from Zimbabwe and Mozambique are used. Farmers also recruit the children of their permanent labourers, particularly during the harvest season, after school hours and on weekends.⁴⁰

While some children are forced to work, others have to work due to poverty and reject the advice given to them by trade union officials.⁴¹ The SAPS did not have specific statistical information relating to child labour as these cases fall under the SAPS child neglect crime code on their statistical database.⁴² The DoL also could not provide statistics as this is the responsibility of provincial DoL offices.⁴³

The Inquiry only heard of one successful prosecution of child labour. The DoL cited a much-publicised case from Ceres in January 2002, as the first case of child labour from the agricultural sector to reach the magistrates courts and be successfully prosecuted.⁴⁴ The DoL pointed out that there have been incidences of child labour reported in the press and upon investigation the DoL has found that there is no basis for the allegations and no evidence of child labour was found in the investigations.⁴⁵

Despite the introduction of the Child Labour Intersectoral Group (CLIG) structures at national and provincial level (the structures in Free State, Limpopo and Western Cape are not functioning and need resuscitation),⁴⁶ the DoL has become aware that combating child labour demands an inter-departmental approach. To address this, the DoL is in the process of developing a discussion document on how to deal with child labour with the view to developing a White Paper and legislation.⁴⁷

Illegal foreign workers

The DoHA states that it is their responsibility to apply the immigration law and in those instances where illegal foreign workers are found, they will be repatriated to their country of origin.⁴⁸ All labour legislation applies to all who work in South Africa.

The DoL says that there have been incidences of illegal foreign workers who have worked for exploitative wages and in extreme cases have not received wages but accommodation only. Such cases, that have been reported in the media and have been investigated by the Department, are not always accurate.⁴⁹

Access to assistance

The CCMA was established to be a less intricate and streamlined system to provide workers with a mechanism to resolve labour disputes with employers. The DoL recognises the great power differentials that exist between farm workers and their employers. In order to address this the Department is embarking on a process of creating an accreditation system where advice officers and union officials can represent farm workers in disputes at the CCMA.⁵⁰

The CCMA also performs dispute prevention work in the provinces. In the agricultural community this includes holding information sessions, education and relationship-building interventions.⁵¹

The DoL is currently developing a Training Discussion Document to address the interface between labour and ESTA legislation, that will increase the knowledge amongst their officials of ESTA legislation.⁵²

Training

The training of farm workers is facilitated through the SETAs (Sector Education and Training Authority) and PSETA (Public Sector Education and Training Authority) established in terms of the Skills Development Act. The SETA for the agricultural sector is, according to the DoL, probably one of the best-performing SETAs.⁵³ The DoL also has a national fund in the region of R25 – 30 million per year, which is made available to organisations to train farmers and farm workers about labour legislation and labour rights and to help build the trade unions.⁵⁴

Skills Development Act 97/1998
This legislation was passed to develop and improve the skills of people in the workplace. The Act makes provision for the following:

- ❑ Provides a framework for the development of skills of people at work.
- ❑ Builds these development plans into the National Qualifications Framework.
- ❑ Provides for learnerships that lead to recognised occupational qualifications.
- ❑ Provides for the financing of skills development through a levy that is placed in a National Skills Fund.

The tot system and alcoholism

In order to address the problem of tot system in the Western Cape, the DoL has formed an alliance with Dop Stop, trade unions and advice offices. Through this alliance, where incidences of the dop (tot) system are pointed out to the Department, compliance is sought.⁵⁵ The Inquiry was not informed of this alliance by trade unions and government department officials in the Western Cape when the issue was discussed.

The Future

Vision for Labour Relations in Agriculture

The Vision for Labour Relations in Agriculture, signed at the end of 2000, is a document that was drafted by all stakeholders. The Vision addresses labour matters within a human rights framework, setting out essentially what is already law or will become so with the passing of the Sectoral Determination, and some issues falling outside of the mandate of the DoL e.g. HIV/AIDS and ABET for farm workers. Agri SA states that not much has happened with the implementation of the Vision and that they are aware of only one workshop on implementation which was held.⁵⁶ The responsibility for implementation of the Vision lies with government and it is currently in its implementation phase. Issues that impede implementation are institutional

between the government departments.⁵⁷ Role-players who committed themselves to the Vision have a responsibility to communicate it to their members.⁵⁸

SAAPAWU states that implementation on the part of Agri SA is not necessarily effective at a farm and provincial level. Agri SA has informed SAAPAWU that the Vision will be sent to the provinces to decide if they wish to adhere to it as Agri SA cannot force its' provincial structures to adhere to the Vision.⁵⁹

"The whole structure and the whole organisation as far as we are concerned, is like a bulldog that does not have teeth to bite."⁶⁰

Agri SA responds that this is not the case. There is an Implementation Committee at national level and the policy statements of Agri SA binds provincial Agri SA affiliates at provincial level who have had an input into such policies.

"So the allegation that the provincial unions do not adhere to or do not honour those agreements is definitely not true.... We do not agree with this statement that was made by SAAPAWU."⁶¹ Agri SA spokesperson

Sectoral Determination

In December 2002, the Minister of Labour announced a Sectoral Determination for the Farm Workers Sector. The determination regulates issues such as minimum wages, particulars of employment, hours of work, leave and the prohibition of child labour and forced labour.

The Sectoral Determination sets out a minimum wage to be paid depending on the geographic area in which the farm worker works. Depending on the geographic area, a worker is to be paid R650,00 or R800,00 per month

as from 1 March 2003. This minimum wage has been determined by the employer's ability to pay, the effect of the minimum wage on job creation and retention, the alleviation of poverty and the cost of living. In balancing these considerations, the DoL states that they are mindful that there is no transference of skills in the agricultural market and where a farm worker loses employment there is little likelihood of employment elsewhere in the labour market.⁶²

The only permissible deductions from a worker's wage are for housing and food, of which only a maximum of 10% in respect of each employee may be deducted from the gross wage. Housing that is provided must comply with certain criteria in order for it to be a permissible deduction.⁶³

COSATU and SAAPAWU question the ability of the DoL to ensure that the Sectoral Determination is complied with.⁶⁴ The DoL states that it has embarked on a specific campaign to ensure that farm workers and farmers are aware of their rights in terms of the Sectoral Determination and other legislation.⁶⁵ Also, the Department is in the process of appointing a further 300 inspectors to assist the current 800 inspectors who will all be trained in the provisions of the Sectoral Determination and will assist in its implementation.⁶⁶

Relevant constitutional provisions

South African Constitution

- Section 18 Freedom of Association
- Section 22 Freedom of Trade, Occupation and Profession
- Section 23 Labour Relations

Relevant legislation

- Basic Conditions of Employment Act extended to farm workers 1 May 1993
- Agricultural Labour Act 147/1993 provides right to organise to farm workers
- Unemployment Insurance Fund Act 63/2001, was extended to farm workers in 1994
- Occupational Health and Safety Act 85/1993
- Labour Relations Act (LRA) 66/1995
- LRA establishes the CCMA
- Skills Development Act 97/1998
- Employment Equity Act 55/1998
- Promotion of Equality and Prevention of Unfair Discrimination Act 2/2000

CHAPTER 4



Safety and Security

Introduction

The increase in crime generally in the country has also been experienced in farming communities. Numerous steps have been taken at various government levels to address this challenge with particular attention being given to farm attacks. Reports of farm dwellers being the victims of violence perpetrated by farm owners, commandos and private security continue to be reported to various agencies. The South African Police Services who are responsible for protecting farming communities are still addressing the legacies of a negative stigma from the past and dealing with transformation issues.

A number of safety and security issues were raised in the provinces. The most common issues from representatives of farm dwellers were the continuing incidences of violence perpetrated against farm dwellers by farm owners, commandos and private security establishments, the lack of service from the police and perceptions of bias against farm dwellers when these matters are reported to the police. Farm owners highlighted incidences of farm attacks and the seeming inability of the State to effectively protect those who live in farming communities. The national hearings provided the Inquiry with the opportunity to invite representatives of the

South African Police Services (SAPS) and the South African National Defence Force (SANDF) to provide clarity, explanations and input on actions that are being taken at a national level to address these issues.

Violent crime perpetrated against farm dwellers

Perception that SAPS are biased

The SAPS responded to this issue by reaffirming that the value systems, policies and training programmes emphasise that there must be no discrimination against anyone.¹ In their experience they have found that many allegations made against police are vague and are difficult to respond to. Where allegations can be responded to, the police will investigate. For example, allegations of bias contained in the Human Rights Watch Report have been thoroughly investigated by the SAPS and appropriate steps, where necessary, have been taken.²

Since July 2002, the SAPS began participating in initiatives by the DLA and DoJ to address issues of perceptions and bias about rural government service providers. There are proposals that there should be an intensive programme to train the chain of service providers, such as magistrates, police and field workers, at a local level.³

In terms of a pro-active approach to dealing with negative perceptions and bias, the SAPS have sent a generic list of complaints against the police to their station commissioners and have instructed them to deal with these issues and report back.⁴ Since July 2002, the SAPS began participating in initiatives of DLA and DoJ to address issues of perceptions and bias about rural government service providers. There are proposals that there should be intensive training of service providers at the local level.⁵

Where cases of bias come to the attention of the SAPS at a national level, they are tracked at that level to ensure that they are appropriately dealt with.⁶

"The perception that justice in our country supports the land owners and the rich does lead to frustrations amongst the farm dweller community and furthers the belief that violence is a legitimate means to further one's interests and protect one's rights."⁷ NLC spokesperson

One source of the perceptions of bias held by farm dwellers is that despite continued reports of illegal evictions occurring there have been no successful prosecutions in terms of s23 of ESTA in most provinces. The Act does make provision for the private prosecution of a person who illegally evicts.

"Now I would submit that it is ludicrous in the extreme to suggest that a poor farm worker would understand the complexities or be able to appreciate the complexities of a private prosecution."⁸ LRC spokesperson

Under-resourced police stations serving farming communities

The SAPS provided the Inquiry with statistics as at June 2002 on human and physical resources at a local level. Shortages in resources are determined through a

programme called the Resource Establishment Plan. In order to address shortages there are a number of initiatives that are being currently embarked on. These include the recruitment of 25 000 constables and 2 400 civilians and staff adjustments in the next three years. By the end of the 2004/5 financial year 70% of all staff will be placed at local level. There are also a number of strategic initiatives to increase the effectiveness of staff at a local level. This includes further training of police officials, introduction of performance charts, continued development and implementation of the Sector Policing concept and introduction of Mobile Community Service Centres in rural areas.⁹

SAPS - Human and Physical Resource Shortages

Province	Human	Vehicles	Computers
Eastern Cape	-8%	-10%	-45%
Free State	10%	7.5%	- 28%
Gauteng	-17%	4%	-54%
KwaZulu-Natal	-14%	-1%	-42%
Limpopo	2%	-8%	-50%
Mpumalanga	-16%	11%	-28%
North West	-12%	4%	-40%
Northern Cape	-27%	-8%	-31%
Western Cape	-33%	0.8%	-29%

Training in respect of ESTA, LTA and PIE
SAPS states that training about ESTA was given by their Legal Services on a decentralised basis.¹⁰ In respect of PIE and illegal invasions of land, explanatory documents were sent out to police stations in 1998, in May 2000 and again in July 2001.¹¹ There has also been internal human rights training within the Department to try to create a more focused human rights culture.¹²

Reservists

Reservists assist the SAPS on a voluntary basis and work without remuneration.¹³ Since May 2001, the SAPS have been in the process of recruiting a further 30 000 reservists.¹⁴ The different categories of reservists have been recently updated to provide the opportunity to those previously excluded from becoming reservists. In terms of these exclusions, commandos are excluded from becoming reservists due to a potential conflict of interest.¹⁵

Private security

The SAPS do not have any specific relationships with private security organisations and companies. Where these bodies use illegal methods, the SAPS state that they will react

accordingly.¹⁶ Agri SA does not have any formal relationships with private security organisations. Whilst they cannot control who their members enter into security relationships with, they do warn members of the potential legal implications of using those organisations.¹⁷ There is a new regulatory body that will manage all private security companies in the future.¹⁸

Commandos

The SANDF was invited to the national hearings to address general perceptions and complaints that commandos (collectively known as the Army Territorial Reserve - ATR) perpetrate human rights abuses against farm dwellers. The role of the commandos and their control and command structures were also explored by the Inquiry.

Role, function, chain of command

The primary role of the commandos is to defend the homeland and the rear in times of war. The secondary function of the SANDF is to assist the civil authorities, such as the SAPS and other government agencies, during natural disasters.¹⁹

There are 183 commando units located around the country. They fall under the command of the Regional Joint Task Force Headquarters for all operational tasks and the Chief of the Army for purposes of staff training and equipping.²⁰ The direct chain of command for commandos resides solely within the SANDF. The moment commandos are deployed they fall under the Chief for Joint Operations. There are currently five regional task forces situated through the country.²¹

In terms of a Presidential Minute in 1996, the SANDF was deployed to assist the SAPS. This deployment fits in with the 25-year National Crime Prevention Strategy. The deployment could thus last until 2021. However, it has recently been decided that commandos will withdraw from the rural areas within the next 6 years.²² In terms of the Minute, a joint operational co-ordination mechanism was developed to co-ordinate all joint SAPS and SANDF actions. In practice the SAPS must approve all SANDF deployments and an SAPS member must accompany the deployment. SANDF personnel do not have police powers (they do have, like all citizens, the power of citizen's arrest)²³ and thus SAPS members must execute the primary police functions during a deployment.²⁴ There are exceptions to this general rule such as the contingency plans that have been formed for cases of farm attacks that allows for commandos to react as they can be on the scene first.

In rural areas the role of the ATR is to support the SAPS to implement the RPP. Tasks executed include patrols; vehicle control points; the provision of safeguarding during roadblocks; and a first reaction force in response to farm attack incidents.²⁵

In terms of organisation structures for joint operations, there is a NOCOC (National Operational Co-ordinating Committee), based at national level with POCOCs in the provinces, ACOCs in the areas and GOCOCs on the ground. Deputy Directors-General from five departments, including the SAPS,

SANDF and the Departments of Justice, Welfare and Correctional Services, sit on NOCOC.

This command and control remains with the relevant SAPS or SANDF structures, and personnel only operate on instructions jointly issued.²⁶

Composition

From being almost exclusively White in 1994, the ATR personnel, currently at 60 000, now comprises 42% Black members.²⁷ An acceptable level of representivity still needs to be attained in the leadership of the ATR.²⁸ One of the reasons attributed to the current lack of representivity is the many years it takes in the army to progress through the ranks to a senior position and the current lack of resources to equip and train people.²⁹ The SANDF has directed recruitment drives at farm workers and is willing to consider a person who can read and write.³⁰ However, they have met with little success as many farm workers do not meet the entry requirements in terms of medical fitness levels and academic qualifications. It has already been decided that the SANDF will withdraw from the rural areas and therefore does not intend addressing the issue.³¹

Perceptions

For historical reasons the commando system is perceived as White and as serving the interests of White farmers. The changes in ATR composition is gradually changing this perception, with 24% of commandos comprising farmers and 42% of commandos being Black.³² The SANDF acknowledges that there has been much negative media coverage about commandos. However, in their experience, upon investigation these allegations are not sustained.³³ For example, serious allegations of assault were made against the commandos in Mpumalanga. Upon investigation the SANDF discovered that the perpetrators were security company employees wearing uniforms similar to the SANDF, clearing squatters from the land.³⁴ If persons pose

as SANDF officials, they can be charged with a criminal offence. However, the SANDF has run into constitutional difficulties with drafting legislation that will make wearing camouflage uniform a criminal offence.³⁵

The SANDF redrafted their Code of Conduct in February 2000 and all its members have signed a pledge to adhere to it. All reported incidents of violations of the Code are thoroughly investigated. Public opinion surveys conducted in 1999 and 2001 indicate that communities view the ATR positively.³⁶

"The commandos played a very strong role in the apartheid era in stabilising the country and from that retained a stigma of an organisation only catering for the Whites and only catering for the farmers. The stigma is going along with the commandos for many years and it is very difficult to get rid of this specific issue."³⁷

"Unfortunately, and we do not deny it, there are people within the system that try to utilise the system for their own aims and wishes and they try to defy the realities of our day, but we know who they are and we keep them under control. And we are working very hard to change their specific perceptions and ideas about it. And where possible we weed them out as well if they do not want to change specifically."³⁸

The NLC again brought the attention of the Inquiry to the fact that commandos accused of assault and torture of farm dwellers are afforded legal representation at State expense.³⁹ In response, the SANDF says that the State Attorney decides whether a commando who is charged with a criminal offence would be assigned legal representation at State expense. Where legal representation is assigned and it later transpires that the member transgressed the SANDF regulations, then the legal costs will be recouped.⁴⁰

In response to the allegation that there is a lack of knowledge in farming communities on how to lodge complaints against unlawful activities of the commandos, the SANDF state that pamphlets are distributed when they conduct major operations.⁴¹

Rural Safety Programme

The SAPS has recognised that issues of safety in rural areas are different from those in urban areas. To address this a process has been embarked upon which commenced in 2000 with the development of a discussion paper. Thereafter a National Conference on Rural Safety was held in 2001. In 2003 a Rural Victims Survey will be conducted to obtain a more accurate picture of the nature and extent of crime in rural areas. Once this process is completed, it will inform the development of policy and guidelines.⁴²

Farm Attacks

Farm attacks are of serious concern to Agri SA and they stated that one of the criteria for their participation in the Inquiry was that this issue would be addressed. In their view, the SAHRC has an obligation to investigate the issue.⁴³ Agri SA question why the rights of legitimate landowners are being undermined through intimidation and violence.⁴⁴ They attribute the underlying causes of farm attacks to crime with strong undertones of racism and general poverty. Issues of poverty and racism on farms are deflected by drawing comparisons with squatter camps.⁴⁵ Agri SA holds the belief that farmers are being targeted.

The Rural Protection Plan (RPP), sets out the definition of a farm attack as follows:

“Attacks on farms and small-holdings refer to acts aimed at the person(s) of residents, workers and visitors to farms and smallholdings, whether with the intent to murder, rape, rob or to 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. (Cases related to domestic violence, drunkenness, or resulting from commonplace social interaction between people – often where victims and offenders are known to one another – are excluded from this definition)”⁴⁶

The definition is a working definition and it is immediately acknowledged that there are a number of deficiencies and flaws in it. For example, there is a lack of consensus over what constitutes a farm and whether smallholdings are incorporated. Attempts have been made to amend the definition to the satisfaction of all role-players, but to date these have all been unsuccessful.⁴⁷ There is no such thing as a farm attack but a number of crimes that are committed. In order to identify what crimes are farm attacks, incidences are discussed each week at the Thursday committee meeting which the SAPS, SANDF, DLA, DoA, Agri SA, TAU and Action Stop Farm Attacks attend.⁴⁸

“NAFU and trade union representatives have also been encouraged to attend these meetings. However, they have stopped coming citing a lack of human and financial resources to attend the meetings.”⁴⁹

Human Rights Watch argues that the continued use of the term ‘farm attack’ reinforces the idea that there is a military or terrorist basis for the crimes and this affects the analysis of possible solutions.⁵⁰

Statistics

Although much public attention has been given to farm attacks, and a number of steps have been taken to combat the occurrence, they still continue. Statistics supplied by Agri SA indicate that during the period of the Inquiry; namely from 1 June 1998 onwards, there were more attacks as compared to years prior to this date.

Attacks and Murders on Farms (Agri SA)⁵¹

Year	Farm Attacks	Murders
1998	769	142
1999	813	144
2000	902	142
Jun 01	461	67

According to the SAPS, although recent statistics indicate that there has been an increase in farm attacks, there has also been a decrease in the number of murders occurring during these farm attacks.⁵²

Accusations of bias and favouritism towards farm owners by the SAPS were made in the provinces due to the fact that separate statistics are kept on farm attacks, yet there are no separate statistics recorded on acts of violence perpetrated against farm dwellers.

The SAPS explained that the request to keep separate statistics on farm attacks originated at a political level. The original request came because of the role that farmers play as food producers and that attacks against this group can impact negatively on the economy of the country. Also, farmers saw this as a deliberate attack against them and believed that there is a plan behind it. This makes it a sensitive issue and thus it becomes a high-risk security issue.⁵³ Initially the request was made in 1997 by the State President and again in April 2001 by the late Minister Tshwete for his Committee of Inquiry into Farm Attacks. The SAPS keep two other separate statistical databases and these are for attacks on police officers, and, escapes from police custody. Keeping these separate databases is extremely labour-intensive as they require

greater human resource allocation and the checks on the accuracy of the information are not as good as the computerised CAS (crime administration statistics) system which the SAPS uses for all other crimes.⁵⁴

Underlying causes

Despite the many initiatives to determine the underlying causes of farm attacks, the role-players are yet to reach consensus. Agri SA and their provincial affiliates repeatedly told the Inquiry that farm attacks are based on hate speech perpetrated by the media and that politicians motivate people, not farm workers, to attack farms. Agri SA does concede that there is also a huge criminal element and that poverty as a whole contributes to farm attacks.⁵⁵

"Agri SA believes that hate speech, with a strong racial undertone directed against farmers, is one of the major factors contributing to the high incidences of attacks on farms and the murdering of farmers and even their workers. Farmers are too often depicted as cruel racists who assault and evict their workers at random. This is simply not true...Agri SA is very concerned about the negative image of farmers portrayed by certain sectors of the media as well as NGOs and public officials. We believe that this may have motivated people to attack and murder farmers and their families."⁵⁶ Agri SA spokesperson

The National Land Committee disputes that there are possible political motives for farm attacks.

"...there are criminals who target White farmers for robbery and this often involves murder or violent assault and in some cases farm dwellers may have been involved in these farm attacks or supplied information to the criminals but so far we have not come across any cases where the attackers have claimed to have acted because they need land or want to drive the farmers from the land."⁵⁷ NLC spokesperson

The SAPS attributes the underlying cause of farm attacks to crime. They cannot deduce from their statistics whether it is a valid perception that the number of attacks on farmers is disproportionately higher than other sectors of the community. In their experience, farmers are perceived as soft targets because they live far apart and are naïve about their security arrangements. There are also perceptions that farmers have many firearms, and have cash on the farms. This makes them popular targets. It is therefore difficult to say that farmers are attacked more.⁵⁸

"So that is maybe why they are popular targets, but it is very difficult to say in proportion there are more robberies of farms than in our residential areas, because let us face it, armed robberies on residential premises are on the increase. ... So I would say that I think it is very much on the same level that specific kind of crime (armed robberies)." SAPS Spokesperson

Rural Protection Plan (RPP)⁵⁹

The RPP was referred to in most provinces but with differing reports as to whether it was operating successfully or not. Whilst some cited a lack of resources to carry out the RPP effectively, others cited a lack of cooperation, or rather commitment from farmers to ensure that the Plan was effective. Concerns were also raised about the lack of involvement of farm workers in the implementation of the Plan.

In 1997, the organised agricultural community approached the SAPS and SANDF regarding concerns about farm safety. From these exchanges a concept was created for combating crime on farms.⁶⁰ In October 1998, following a Presidential Summit, the RPP was formalised. The focus of the RPP is "To improve the safety and security of farmers, their families, their workers and visitors to farms and, where attacks are carried out, to track down and arrest the perpetrators."

The RPP has two basic components, that is home and hearth protection, which is intended to assist farming communities themselves to put in place a number of safety measures including area-bound reaction forces which includes the commandos supported by the SAPS.⁶¹ The RPP has been criticised that it does not provide for the inclusion of farm workers.

"The concentration on a specific programme for farm attacks such as the RPP and no specific programmes to deal with security concerns of farm workers is viewed by COSATU as a non-acknowledgment of workers' problems."⁶² COSATU

The SANDF are confident that the RPP has contributed towards lowering the number of farm attacks in rural areas. However, in terms of rural policing, farm workers need to become involved in the RPP through the implementation of sector policing.⁶³ Agri SA supports the inclusion of farm workers in the RPP.⁶⁴

Perception that government is not doing enough

"We find it worrying that government does not seem to have the ability to protect the rights of legitimate landowners and to act effectively against those who infringe upon these rights."⁶⁵

This statement, which was made by Agri SA to the Inquiry, was put to the SAPS to respond to. In response, the SAPS points to the many high level initiatives there have been to address the issue and say that these speak for themselves. There is a Presidential Committee addressing the issue, the Minister has regular meetings with Agri SA and the late Minister Tshwete appointed a Committee of Inquiry to investigate farm attacks. As a result of all of these initiatives that have come from a political level, the SAPS are now criticised that they are biased in favour of farm owners.⁶⁶

South African Constitution
Section 12 Freedom and Security of the Person

12(1) Everyone has the right to freedom and security of the person, which includes the right-

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) to be free from all forms of violence from either public or private sources;

Section 14 Privacy

14. Everyone has the right to privacy, which includes the right not to have -

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized;

Section 35 Arrested, detained and accused persons

Section 205 Police Service

205 (3) The objects of the police services are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the republic and their property, and to uphold and enforce the law.

CHAPTER 5



Economic and Social Rights

Introduction

The Inquiry received information on various economic and social rights such as housing, health care, food, water, social security and education. However, issues relating to land, tenure security, labour rights and safety and security took precedence over a full ventilation of all the economic and social rights that are protected in terms of the Constitution. There was a clear interface between the different economic and social rights and often a violation of one of these rights impacted upon the enjoyment and realisation of other rights.

“What we have picked up though... is the mutually reinforcing violations of rights. So, for example with the labour rights, the difficulties that workers have in terms of trying to organise or trying to join unions is the fear of not just losing a job, but losing access to things like their accommodation, access to electricity, schooling, and that kind of thing.”¹
COSATU spokesperson

Housing

At a provincial level it was apparent that government has done little to provide housing specifically for farm dwellers. Reasons attributed to this by various role-players was a lack of co-ordination between government de-

partments and a lack of clarity as to which department, DLA or DoH, is responsible for the provision of housing. There is also a conflict between the DoH, insisting that farm dwellers must own the land upon which the house is situated and farm owners having various problems with this requirement.

Alongside the challenge of providing housing to farm dwellers, trade unions highlighted the plight of some farm workers who live in deplorable conditions, including those who live in pig sties and those who live in shacks that leak, with no access to sanitation or water.² A general trend highlighted by the trade unions was that it is almost impossible for single women to obtain employment and housing on farms, with housing being reserved for men who are still regarded as the traditional head of the household.³

“Farmers cannot be expected to carry the responsibility of housing the rural poor as we believe that housing of the poor is primarily the responsibility of government.”⁴
Agri SA

The national Department of Housing (DoH) is responsible for the creation of policy frameworks and the subsidy mechanisms that are to be implemented at a provincial level. The administration of the subsidy instruments is left to the provincial departments of housing and more recently, the responsibility has been given to the local authorities. Provincial housing departments are responsible for determining the subsidies that are given to developers and the areas that need to be prioritised.⁵

In response to the criticism that there is a lack of co-ordination between government departments when it comes to the realisation of access to housing for farm dwellers, the DoH responded by pointing out that security of tenure and shelter are multi-faceted and the responsibilities span the Departments of Housing and Land Affairs. The main implementation problem is the issue of temporary/emergency accommodation for evicted farm dwellers. Another issue is that the DLA is under-capacitated to enforce all aspects of ESTA, while differing development priorities, coupled with budgetary constraints, place municipalities in the position of having to make difficult decisions in respect of settlement programmes.

It was also pointed out that the various departments have different priorities and that at an implementation level these result in challenges as each wishes to implement its own approach to the issues at hand.⁶

Housing subsidies

The DoH has three different subsidy mechanisms that could be utilised in respect of farm workers housing. These are: the project-linked subsidies, the individual subsidy and the institutional subsidy. The project-linked subsidy is a mechanism made available generally to developers who undertake approved projects on behalf of groups or individuals in the community. The properties are then sold to individuals who are approved beneficiaries. The individual subsidy is a subsidy made

available to an individual to purchase an existing property or a property which is to be developed in a project that the Provincial Housing Board has not yet approved. The institutional subsidy is a mechanism whereby institutions such as s21 companies and non-profit organisations undertake approved housing projects. These subsidies enable the institutions to offer affordable rental or instalment sale housing units to beneficiaries.⁷

The project-linked subsidy could be used in those instances where the farm owner gives a piece of land to the farm workers who then acquire ownership of the land. The DoH points out that in this scenario the farm owner would be relieved of all obligations to provide services to these houses.⁸

The DoH appears cautious in its approach to the provision of housing for farm workers and implies that the farm owner is responsible for providing housing, as it is part of a commercial operation in the market place.

"The market takes care of itself, while government takes care of the poor. If this is true, ... government should be careful, that in addressing the problem of farm workers housing, not to be absolving farmers and landowners of their responsibility to their farm workers and farm occupiers."⁹

In response to the issue raised that farm dwellers cannot upgrade their houses, the DoH was confident that through their subsidy mechanisms it was possible. The institutional subsidy was cited as being capable of being used for this purpose. In urban areas, the Department has used this mechanism successfully to upgrade hostel accommodation.¹⁰ However, housing programmes are predicated on complete co-operation of all role-players. This includes the co-operation of the farm owner.¹¹ It was not spelt out by the Department what co-operation from the farm owner means. By implication though,

from what was stated, the farm owner has to transfer ownership of a piece of land for the housing subsidies to be accessed. This goes to the heart of the issue that was raised by Agri SA.

Agri SA stated that the previous government provided subsidies to farm owners for houses to be built for farm workers.¹² The current government does not give loans to farm owners for farm worker housing. The criterion of the DoH that the farm worker must acquire ownership of the piece of land upon which the house is situated, is not acceptable to most farm owners. This creates, in their view, a huge obstacle to the provision of farm workers housing. However, they are of the view that role-players can address the issue creatively to resolve the present difficulties that farm owners have.¹³

Despite these differences in approach to the provision of housing, the DoH is of the view that it cannot be said that farm workers have no resources in acquiring shelter.¹⁴

The DoH intends developing a policy strategy specifically for farm workers housing in 2003.¹⁵ At the Inquiry it was also explained that the Department intends developing an emergency housing policy to deal with disasters, which will also address the plight of farm workers who are legally evicted.¹⁶

The DoH admits that not much has been implemented on the ground in respect of farm worker housing.¹⁷ Issues raised by COSATU such as gender discrimination being practiced in the provision of housing, do not appear to have had the opportunity to be addressed yet in the Department.¹⁸ It is difficult to establish how much housing has been provided to farm workers as the Department's database does not indicate how many beneficiaries are farm workers.¹⁹ The DoH is of the view that the institutional subsidy may be the best option to explore for farm dwellers as ownership of land does not have to be transferred.²⁰

"We believe that the majority of farm worker beneficiaries and institutions intending to develop projects for farm workers will, however, not be able to obtain access to ownership or long-term register tenure options."²¹

Grootboom Decision

In the Grootboom decision the Constitutional Court demonstrated that it is the parents' primary responsibility to provide shelter for their children. If they are unable to do so, this responsibility is imposed upon the State.²²

Agri-Villages

The Department's attitude towards agri-villages is that they support the concept, providing that this takes place within a sustainable environment. To this end, aspects such as the economic base of the settlement, the locality and links to other settlements, the size of the population, the environmental capacity and the development priorities of municipalities and landowners were cited as some of the issues that need to be considered when assessing the sustainability of agri-villages.²³

Housing Consumer Framework

A Housing Consumer Framework has been developed at national level, with plans to roll it out in 2003. In terms of this Framework, much work will have to be done at a local level and municipalities will have to become involved. The Framework indicates a shift in policy from providing housing as a supply developer-led initiative, to a demand-led initiative. In line with this policy shift, the procurement processes of the Department have been structured where the focus is placed on municipalities to determine where housing will be located in their constituencies.²⁴

International Human Rights Instruments²⁵

- ❑ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ❑ General Comment No. 4 (Sixth Session, 1991), UN doc. E/1992/23/ The Right to Adequate Housing
- ❑ General Comment No. 7 (Sixteenth Session, 1997), UN doc. E/C.12/1997/4, Forced Evictions
- ❑ Habitat Agenda, Habitat 11, Istanbul, June 1996

South African Constitution Housing

- 26 (1) Everyone has the right to have access to adequate housing.
- (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No-one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
- 28 (1)(c) Every child has the right to have access to basic nutrition, shelter, basic health care services and social services.

Legislation and Policy

- ❑ Housing Act 107/1997
- ❑ Housing Consumers Protection Measures Act 95/1998
- ❑ National Norms and Standards in Respect of Permanent Residential Structures (came into effect on 1 April 1999) contained in the Implementation Manual Housing Subsidy Scheme and Other Housing Assistance Measures, 1995

Health care

The National Department of Health (DoHealth) was requested to address issues pertaining to the lack of access to adequate primary health care, the lack of health education and the lack of health facilities.

Access to health care services

Access to primary health care is recognised as a major challenge to government and it is acknowledged that the “golden standard” of every person having a health facility within five kilometres is not currently realised in all areas. Further obstacles to the realisation of the right is the lack of affordable transport in the rural areas and the operation times of clinics, which generally operate between 08h00 to 17h00, Mondays to Fridays. These facilities are not sensitive to the needs of farming communities, which need them during weekends in order that people could attend the clinics during non-working hours.²⁶

Challenges faced by farming communities in the provision of health care²⁷

- ❑ Distances farm dwellers must travel to the nearest primary health care service.
- ❑ Financial constraints and lack of transport.
- ❑ Lack of access to health care services after hours or during weekends and holidays.
- ❑ Employers not allowing workers to access services during working hours and some facilities being closed after hours for security reasons.
- ❑ Telecommunications not being readily available.
- ❑ Lack of information to access the necessary grants.
- ❑ Little or no health education on reproductive and other health-related matters.

The Department faces challenges with the staffing of rural clinics due to an exodus of staff out of rural areas to urban areas and

overseas. The Department has also felt the impact of losing health care professionals to HIV/AIDS.²⁸ Furthermore, rural areas are perceived as unattractive options for most health care workers. The DoH is currently addressing the issue and is looking at options such as creating incentives for these workers.²⁹ Health professionals leaving universities are in need of rural health orientation as they are trained in contemporary high technology procedures, which sometimes cannot be conducted at rural clinics.³⁰ It is also reconsidering its policy approach of professionalisation of medical care in South Africa which excludes many dedicated and often highly-skilled health workers. The Department is considering training people to provide certain basic medical services.³¹

- Health sector challenges in providing care to farming communities³²
- Few health care workers want to work in rural areas.
 - Lack of transport services to facilitate access to health care services, especially in emergency situations.
 - Mobile clinic services often do not provide a comprehensive package of health care services.
 - Not all communities nearby having health care services.
 - Provision of home-based care for the terminally ill is difficult.

The DoHealth's approach of strengthening the district health care system is viewed as the best manner to address the health issues of farming communities.³³ Within the approach, the move away from the mobile clinic system in some provinces is an issue that is determined according to needs at a provincial level.³⁴

"The ideal would be to have a very good transport system and you have health facilities that are adequately staffed at various intervals and with a very good referral system."³⁵

The Department highlighted a number of challenges for the delivery of reproductive health services:

- Lack of knowledge and lack of prompt medical care contributes to high maternal mortality rates.
- Termination of pregnancy services are mostly urban-based.
- Lack of cervical cancer screening in some areas.
- Lack of information on awareness of genetic services, especially in relation to FAS.³⁶

The Department is acutely aware of the need to provide health education and acknowledges that it has not been a priority area.³⁷

International Human Rights Instruments³⁸

- International Covenant on Economic, Social and Cultural Rights (ICESR), Article 12
- General Comment No 14 (Twenty Second Session, 2000), UN doc E/C.12/2000/4, The Right to the Highest Attainable Standard of Health
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)

- South African Constitution
- 27 (1) Everyone has the right to have access to –
- (a) health care services, including reproductive health care.
 - (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.
 - (3) no-one may be refused emergency medical treatment.
- 28 (1) (c) Every child has the right to have access to basic nutrition, shelter, basic health care services and social services.

Food

The right of access to adequate food was not raised specifically at the national hearings. It was touched on by the DoE, which discussed the Primary School Nutrition Programme (PSNP) and the DSD in relation to the fast-tracking of child support grants.

After the national hearings the Department of Health informed the Inquiry in written correspondence, that it has a Vitamin A Supplementation Programme and that a National Food Fortification Programme was launched in October 2002.³⁹

"Children living on commercial farms are more likely to be stunted and underweight than any other children. Almost one in three children on commercial farms is stunted. One in five are underweight and one in 25 displays the symptoms of wasting."⁴⁰

International Human Rights Instruments⁴¹

- ❑ Universal Declaration of Human Rights, 1948, Article 25
- ❑ International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), Article 11
- ❑ General Comment No 12 (2000), UN doc. E/C.12/1999/5, The Right to Adequate Food
- ❑ Convention on the Rights of the Child, 1989
- ❑ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979
- ❑ International Conference on Nutrition: World Declaration on Nutrition, 1992
- ❑ Copenhagen Declaration on Social Development (1995)
- ❑ Rome Declaration on World Food Security 1996
- ❑ International Code of Conduct on the Human Right to Adequate Food 1997

South African Constitution

- 27 (1) Everyone has the right to have access to –
 - (b) sufficient food and water.
 - (4) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.
 - (5) no one may be refused emergency medical treatment.
- 28 (1) (c) Every child has the right to have access to basic nutrition, shelter, basic health care services and social services.

Legislation and Policy

- ❑ Green Paper on Food Security, 1999

Water

During the provincial hearings the main issues raised regarding the right to access to sufficient water was the termination of water supplies to farm dwellers in an attempt to force them to leave the farm, and various complaints about the lack of access to clean water and adequate sanitation.

The Department of Water Affairs and Forestry (DWA) is responsible for the development of policy, setting of national targets, monitoring, support and regulation of the water sector at a national level. The Department is currently developing a new water services White Paper that will guide the South African Water Sector for the next eight to ten years. They are engaged in consultation with, amongst others, the Department of Agriculture and Agri SA, in the development of this White Paper.⁴² During the consultation process the Department extends invitations to relevant role-players, looks at attendance registers and where parties are identified as not being represented, the Department will invite them for bilateral processes.⁴³

Municipalities are the relevant spheres of government responsible for water services delivery. Since the new municipal boundaries were effected in December 2000, all commercial farms now fall within these boundaries. Thus municipalities who are responsible for ensuring access to water for all who live in their boundaries, are also responsible for addressing the issue of access to water for farm dwellers.⁴⁴

In responding to the issue of the termination of water supplies by farm owners, the DWAF informed the Inquiry of the challenges it faces in securing an independent water supply to farm dwellers. A major policy obstacle for the DWAF that must be addressed is that in order to supply water services to farm dwellers, the Department may be investing State resources on private land. The landowner would ultimately benefit from this investment should the beneficiaries leave the land.⁴⁵ To address this issue the Department has, in various pilot projects, drawn up agreements with farm owners to regulate the provision of water services to farm dwellers. This issue will be addressed further in the White Paper. The Department suggests that agreements be entered into with landowners to provide water to those people who reside on their land.⁴⁶ The following comment by DWAF indicates that the Department may not be aware of Agri SA's approach that it is government's responsibility to provide services to farm dwellers:

"Farmers are employers and are responsible for housing and related services of their employees living on farms. Farmers are therefore responsible for the provision of basic water services to farm workers and their families living on farms, a policy supported by Agri SA."⁴⁷

Many farm dwellers do not currently benefit from the free water service policy of the DWAF who referred the issue to local municipalities, which must implement the policy through arrangements with local farm owners.⁴⁸

Dirty water

COSATU raised the issue again that some workers are provided with dirty water to drink and that this can lead to health problems.⁴⁹ According to DWAF, there is currently no inter-departmental structure to look at the quality of water that is provided to farm dwellers. The supply of water by municipalities is regulated by the Water Services Act and Regulations pursuant thereto, which specifies the water quality that must be provided. There is a Water Quality Institute situated within the Department.⁵⁰

Emergency water

The responsibility to provide water in an emergency lies with the local authority in whose jurisdiction the farm is situated. DWAF has a role to ensure that local authorities are empowered in terms of legislation to intervene, ensure that they do make interventions and make interventions in cases where the province cannot intervene, or for some reason, is unable to assist. DWAF has intervened in the past in desperate situations and provided tankers of water.⁵¹

The White Paper will address the issue and recommends that every municipality must have a rudimentary service in place in order to provide water in these emergency situations.⁵² Currently, there is no programme to address this issue.⁵³

International Human Rights Instruments

- ❑ Universal Declaration of Human Rights (1948), Article 25
- ❑ International Covenant on Economic Social and Cultural Rights (1966), Article 11
- ❑ Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)
- ❑ Convention on the Rights of the Child, 1989
- ❑ Copenhagen Declaration on Social Development, 1992, Commitment 2

South African Constitution
 27 (1) Everyone has the right to have access to –
 (b) sufficient food and water.
 (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.

Legislation and Policy

- Water Services Act 108/ 1997
- National Water Act 36/1998
- White Paper on Water Supply and Sanitation, 1994
- Draft White Paper on Water Services, 2002

Social Security

The main trends identified in the provincial hearings were that some members of farming communities are denied access to social security and assistance as they are unable to obtain the prerequisite birth certificates and identity documents from the Department of Home Affairs (DoHA) and are unable to access the grants and services provided by the Department of Social Development (DSD). COSATU made a call for the introduction of a Basic Income Grant to alleviate poverty in farming communities.⁵⁴

Birth certificates and identity documents

Some farm dwellers are denied access to social security services and assistance because they do not have the prerequisite birth certificates and identity documents to apply for the various grants provided by the DSD. In responding to this trend, the DoHA stated broadly that there are budgetary constraints that impede them in providing services more widely. The Department appears to have a general reactive approach to providing their services to communities and individuals that live in outlying areas and on farms. The onus seems to be on the individual or the community to lodge a request to provide a service for consideration by the Department.

The request will then be considered within the Department's available budget and resources.⁵⁵

The DoHA has 10 regional directorates which each have a number of regional district offices, service points and mobile units. There are 132 mobile units spread through Provinces as follows:

<input type="checkbox"/> Western Cape	9
<input type="checkbox"/> Eastern Cape	22
<input type="checkbox"/> KwaZulu-Natal	12
<input type="checkbox"/> Limpopo	20
<input type="checkbox"/> Mpumalanga	25
<input type="checkbox"/> Free State	8
<input type="checkbox"/> Gauteng	5
<input type="checkbox"/> North West	26
<input type="checkbox"/> Northern Cape	3 ⁵⁶

These mobile units are the only current effective means that the Department has to access remote rural areas.⁵⁷ In 1997, the agency service agreement between the DoHA and the DoJ was withdrawn due to policy considerations. According to the DoHA this has had an impact on their capacity to render services.⁵⁸

During 2002, the DoHA, in conjunction with the Department of Social Services, was involved in a presidential-directed registration campaign for social services. This is a general campaign and the Department reports that it has no special campaigns, past and present, for providing its services to farm dwellers.⁵⁹

The DoHA conceded that there does appear to be a need for their services in farming communities and undertook to take the issue up at a senior management level.⁶⁰

Despite the Inquiry having heard on a number of occasions about the lack of transport in rural areas, farm dwellers being unable to afford transport, being unable to obtain a day off work, not being paid on leave days and farmers moving away from playing a social services role, the DoHA made this comment at the Inquiry:

"I would imagine that there is also transport from the farming communities to their local, call it, a municipal area to do their normal day-to-day stock up on groceries and stuff like that. And I know that many farmers would assist their personnel to bring them to the offices where there are offices. So in that sense our services also reach farming communities to as reasonable extent."⁶¹ Department of Home Affairs representative

Access to Department of Social Development
In addressing issues of access and the lack of access to social services and assistance, the Department recognises that some of the issues which pertain to rural areas are not the same as those in urban areas.⁶²

The DSD has concurrent functions with their respective provincial departments. The national department is responsible for policy, norms, standards and legislation and provinces are responsible for the actual rendering of services. The Department has 4 focal areas in terms of its mandates:

- Social security;
- Social welfare;
- Poverty relief; and
- HIV/AIDS.

General major challenges that are faced by the Department in rendering its services include:

- Lack of knowledge by citizens of their rights.
- Equity in service provision.
- Infrastructure backlogs, particularly in with technology and in rural areas.
- Staff capacity problems.
- Financial resource constraints.

In order to address these issues, the Department has amongst others:

- Increased its mobile unit service points.
- Set up a toll-free line.
- Drafted approved norms and standards.

- Reviewed policies.
- Set up a system of responding to queries that are sent to the national Department.
- Increased collaboration with NGOs, CBOs and the Departments of Home Affairs and Health.⁶³

"We have put up as a norm that 99% of those (the toll-free line) queries must be resolved within 48 hours because we know that social assistance touches the very poor and clearly, if there is not an immediate response, that has clearly disadvantaged that person, and the consequences which we are aware of are too ghastly..."⁶⁴ DSD spokesperson

In order to increase access to social security, the Department has embarked on a Social Grant Awareness Campaign which has the support of the President and Deputy President. This has included a door-to-door campaign, publishing booklets in all eleven official languages and widespread use of the media including national television, radio stations and newspapers.⁶⁵

In order to increase access to social welfare services, the Department has embarked on a policy and legislation review (currently looking at children and the elderly), entered into funding agreements with NGOs and service providers that render services to farming communities and appointed development workers to assist with the delivery of services to farming communities. Specific progress made in respect of farming communities includes extending foster care placements to farming communities and creating probation services programmes that include children who are living on farms and who are in conflict with the law. In order to redirect further resources to address the needs of farming communities the Department has created additional posts and is currently looking into incentives for social service workers deployed in rural communities, creating development

centres and forming partnerships with suitable farmers to act as referral persons for their employees in need of welfare services.⁶⁶

"We have got a coverage of around 73% of total eligible people into the grant system sitting at around 5.1 million citizens."⁶⁷

Despite all the developments that have occurred in the Department since 1994 to transform the social security and assistance system and make it more equitable. The Department acknowledges that there are still many challenges that need to be addressed in respect of farming communities. Firstly, there is still legislation and policy, such as legislation dealing with children and the elderly, which must be reviewed in light of the constitutional dispensation. Secondly, the capacity levels of development workers vary from province to province and this affects the delivery of services.

Home-based care for those infected with HIV/AIDS and living on farms still needs to be addressed. The Department is currently conducting a pilot project to establish a suitable model for home-based care.⁶⁸

Accessing social grants

In response to the issue that some farm dwellers cannot personally visit the offices to submit their application forms for social grants and are therefore denied access, the DSD stated that in terms of their policy the Department has the right to go and visit the applicant where he or she is unable to come to the service point. Where this policy is not being implemented at a provincial level, individuals can report the matter on the Department's toll-free line.⁶⁹

The fast-tracking of applications on behalf of children who are eligible for grants has been prioritised. There has been liaison with the Departments of Home Affairs and Health

regarding this priority to ensure that children who are brought to their attention are not sent away without being guided and advised on applying for a grant.⁷⁰

"What has been happening in terms of social assistance is that we found that it is accessed mainly by those who are in urban areas."⁷¹

Access to farms

There have been incidences where farmers have prevented Department officials from accessing farms and the police were called to assist.⁷² The DSD recognises the security concerns of farm owners but say that the issue ought to be addressed. They propose forming partnerships with farm owners, NGOs and advice offices, who could inform the Department of those people who are not receiving social security assistance.

Implementation

In order to address implementation levels at a provincial level and exercise an oversight function over the provinces, the Department has set up a MinMec structure, comprising Ministers and MECs. It is the highest policy-making structure in the Department. There are various other structures found at provincial levels that meet on a regular basis to look at issues of compliance with national policy.⁷³ The Department also makes use of task teams to investigate specific incidents.⁷⁴

The DSD acknowledges that it still has much work ahead to fully realise the right of access to social security. The amalgamation of racially segregated departments and former homeland departments in 1996 has created enormous challenges and has impeded achieving equity.⁷⁵

In early 2003, a Compliance Unit and Fraud Unit will be established in the Department to address the lack of compliance by staff with departmental regulations, and incidences of fraud being committed within the Department.⁷⁶

The Department is of the view that a Basic Income Grant (BIG) is not the only measure to resolve issues of poverty and that the country needs to consider a range of measures. Government at cabinet level is still to take a final decision on its approach to BIG.

The Department aims to have trained 1 000 of its officials by the end of 2004 to address staff capacity issues and in particular the lack of understanding of the basic social security regulations.⁷⁷

International Human Rights Instruments

- ❑ Universal Declaration of Human Rights (1948),
- ❑ International Covenant on Economic Social and Cultural Rights (1966), Article 9,10, and 11
- ❑ Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)
- ❑ Convention on the Rights of the Child, 1989
- ❑ Copenhagen Declaration on Social Development, 1992
- ❑ African Charter on Human and People's Rights (1981), Article 18
- ❑ International Labour Organisation Convention (No. 102) (ILO) Concerning Minimum Standards of Social Security, 1952

South African Constitution
 27 (1) Everyone has the right to have access to –
 (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.
 (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.
 28 (1) (c) Every child has the right to have access to basic nutrition, shelter, basic health care services and social services.

Legislation and Policy

- ❑ Social Assistance Act 59/1992 and Regulations pursuant thereto
- ❑ Child Care Act 74/1983 & Amendment Act 96/1996
- ❑ White Paper for Social Welfare 1997

Education

The National Department of Education was requested to provide the Inquiry with further information on section 14 agreements, children with special needs, adult basic education (ABET), language policy and the shortage of buildings and long distances to and from public schools on farms (farm schools).

Section 14 agreements

Some provincial DoEs reported that the process of signing a section 14 agreement with farm owners was progressing slowly. These agreements regulate the relationship between the private landowner upon whose land a public school is situated and the provincial DoE's.

Thus it is not a national competency of the DoE to administer these agreements. The DoE has supplied a pro forma section 14 agreement to provinces should they wish to use it. Any agreement that is concluded must comply with the Regulations pursuant to the Act.⁷⁸

The DoE is aware that some farm owners have resisted signing the agreements. Under the previous regime farm owners had agreements that were more favourable towards them. Some farmers now view the new agreements as an opportunity to benefit and want to charge exorbitant amounts. Some farm owners object to concluding the agreements by pointing out that one farm school may service the education needs of three farms in the area. As only the farm owner of the land on which the school is situated can conclude the agreement and thereby incur various obligations, this is viewed as unfair in that the neighbouring farm owners are not equally burdened with these obligations.

These farm owners argue that the other farm owners should also sign the agreements. The DoE has met with the agricultural unions about these issues.

South African Schools Act (SASA), 1996⁷⁹

Section 14 agreements are contracts between the MEC (Member of Executive Council), the political head of a provincial education department and the owner of the private property where a public school is, or is to be situated. The owner of the private property may be a church, company or a farmer. The agreement is contemplated to regulate the relationship between the provincial education department and the owner of the private property.

In terms of section 16 of the SASA, the principal under the authority of the Head of Department manages a public school, whereas its governance is vested in its governing body.

The underlying principle of SASA is partnership. Where consensus cannot be reached, the MEC has no other option but to consider the expropriation of the land on which the school is situated or to expropriate the right to use the property for a specific time.

Regulations pursuant to section 14 set out the minimum requirements that must be addressed in such an agreement.⁸⁰ These include, amongst others, the provision of education and the performance of normal functions for a public school, governance of the school, including the relationship between the governing body of the school and the owner of the property, access by all interested parties to the property, security of occupation and use of the property by the school, maintenance and

improvement of school buildings and property and the supply of necessary services, protection of the owner's rights in respect of the property occupied, affected or used by the school.

Special needs

The lack of services for children with special needs was raised most acutely in the Western Cape where the provincial department indicated that there were no special programmes to cater for children who are born with Foetal Alcohol Syndrome (FAS). This raised the issue of whether children with special needs are catered for within the farm school environment.

The Department is currently managing the implementation of Education White Paper 6 that sets out an inclusive framework for the education of children with special needs. The Department is doing this in collaboration with the provincial departments of education, the South African Council on Disability, teachers unions and the Disability Desk of the President's Office.⁸¹ A number of pilot projects are currently being conducted. The Department did not indicate whether any of the pilot projects relate to children with special needs on farm schools. However, an undertaking was given by the Department that it will look into the situation of children with special needs who attend farm schools, with a view to addressing the issue.⁸²

Adult Basic Education (ABET)

The Inquiry was informed of high levels of illiteracy in most provinces. There appeared to be a lack of ABET programmes for farm dwellers in most provinces. In response to this the DoE stated that there are some ABET programmes in farming communities. Although the Department is addressing the needs of farming communities, the current subject matter of the ABET programmes is not useful to persons living on farms. To address this situation, the Department is currently running ABET pilot projects in the Limpopo and Eastern Cape Provinces.⁸³

Language policy in farm schools

The issue of education in a learner's mother tongue was raised in some provinces. The DoE was thus requested to provide input on how this issue is dealt with from a national perspective. The Department referred to its language policy contained in the Norms and Standards for Language Policy in Public Schools.⁸⁴ In essence, while the school governing bodies are vested with the power to choose the language of teaching in a school, this should be done within the context of promoting multilingualism. A learner can request the desired language as a medium of instruction on application to a particular school. Where the language is not available at a particular school then the request can be forwarded to the provincial education department to deal with.⁸⁵

Shortage of buildings and distances to and from schools

Provincial departments are in the process of merging and closing under-utilised public schools on farms and are investigating the possibility of providing hostel accommodation to those children who must travel long distances. The DoE states that this consolidation of schools will improve the quality of education, as these larger class groups will receive more resources. In order to assist learners with their transport needs, some provinces use scholar transport and the Department of Transport is also in the process of providing learners in rural areas with bicycles.⁸⁶

In response to information received by the Inquiry of other government departments experiencing building shortages in servicing farming communities, the DoE stated that they would be willing to discuss arrangements whereby their buildings could be shared.

The Department referred issues of non-attendance of children at school, unannounced inspections of schools, under-educated teachers and the location of schools next to chemical storage plants to the provincial departments as the issues fall within the provincial sphere of competency.

International Human Rights Instruments

- ❑ Universal Declaration of Human Rights (1948),
- ❑ International Covenant on Economic, Social and Cultural Rights (1966), Article 13 and 14
- ❑ General Comment No 11 (20th Session, 1999), UN doc. E/C.12/1999/4, Plans of Action for Primary Education
- ❑ General Comment No 13 (21st Session, 1999), UN doc. E/C.12/1999/10, The Right to Education
- ❑ Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)
- ❑ Convention on the Rights of the Child, 1989

South African Constitution

Section 29 (1) Everyone has the right –

- (a) to a basic education, including adult basic education; and
- (b) to further education, which the State, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where the education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the State must consider all reasonable education alternatives, including single medium schools, taking into account –

- (a) equity;
- (b) practicability; and
- (c) the need to redress the results of past racially discriminatory laws and practices.

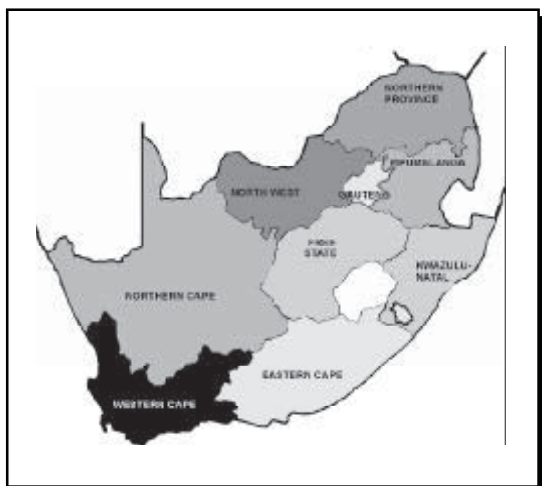
- (3) Everyone has the right to establish and maintain, at their own expense, independent institutions that –
- (a) do not discriminate on the basis of race;
 - (b) are registered with the State; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) subsection (3) does not preclude State subsidies for independent educational institutions.

Legislation and Policy Documents

- South African Schools Act 84/1996
- Employment of Educators Act
- National Education Policy Act 27/1996
- Norms and Standards regarding Language Policy, Government Notice No 383, vol. 17977, 14 July 1997

PROVINCIAL

CHAPTER 6



Western Cape

Introduction

The most common human rights violations that were reported to the Inquiry included incidents of threatened or actual eviction, the lack of compliance with and violation of labour laws, the continued and resultant social impact of the tot system and violence perpetrated against farm dwellers in the form of vicious dog attacks.

The Western Cape is geographically the third largest province in South Africa and constitutes 10,6% of the total land surface of the country. Approximately 11,1% of the estimated 4,1 million people in the province live in non-urban areas.¹

The underlying causes of human rights abuses appear to be rooted in the paternalistic rela-

dweller. This relationship has developed over many years and is characterised by stark

It is acknowledged that in the Western Cape initiatives have been taken by representative

ever, there are still those farmers who continue to perpetrate human rights violations

The tot system and alcoholism

In order to be complete, a discussion of the human rights situation in the Western Cape must be addressed against the backdrop of the tot system and current high levels of alcohol abuse made possible by easily available and cheap alcohol. The legacy of the tot system and the resultant effects of alcoholism on people's lives pervade all aspects of life in the farming communities of this province.

The tot system, or dop system as it is also known, was once widely practiced in this region, and involves paying the labour force with alcohol rather than cash. Organised farm owners, NGOs and trade unions agree that the practice still continues but is less common. Agri Wes-Cape acknowledges that a very small group of farm owners continue to use liquor as remuneration.² According to the organisation, a 1995 survey conducted by the now defunct Rural Foundation, indicated that the tot system still operates on 1% of farms as compared to 54% in 1987 and 14% in 1989.³ NGOs agree that the system is still implemented on some farms.⁴ Unions too, have encountered the tot system and maintain that it does still exist on some farms.⁵ The system perhaps does not exist in its most blatant form where workers are literally given alcohol to drink during the

day. Rather, an example of its present form would be where workers are supplied with a bottle of wine each evening and the cost of the alcohol is deducted from their Friday wages, whether the worker takes the bottle or not.⁶

Although parties agree that the tot system still occurs in isolated cases, there is the resultant widespread abuse of alcohol in the farming communities in the Western Cape. The use of alcohol in acts of violence resulting in trauma is estimated at 60% and contributes towards child abuse, spousal abuse, malnutrition, poor hygiene, high rates of tuberculosis, unemployment, absenteeism and low education.⁷

Whether the system has been eradicated or not, the manifestation of alcoholism is continued through the proliferation of illegal mobile shebeens that provide people with cheap liquor on farms. The WCSAPS are unable to police this issue through lack of resources. Widespread access to alcohol is made available through vehicles that drive to the farms to sell liquor to workers on credit. A 5-litre container of wine, known locally as a "papsak", is sold for as little as R14,00 to farm workers. These travelling shebeens sell these "papsakke" for as much as R60,00 and even as much as R75,00 over weekends.⁸ These shebeens are also viewed as contributing towards an increase of crime on farms. Farm property is stolen to sell or barter for liquor or drugs from these shebeens.⁹

"The issue is the access to cheap liquor because whether you phase out the dop system, I can assure you we have had an explosion of shebeens, we have had an explosion of mobile shebeens provisioning people with liquor on farms..."¹⁰

The effects of alcohol abuse on children manifest in foetal alcohol syndrome (FAS). Studies in 1996/7 indicate that in the Wellington

area of the Western Cape, the incidence was 45 per 1 000 live births. When the research was repeated three years later, it had gone up to 67 per 1 000. In the De Aar area, research has indicated that the incidence is closer to 80 per 1 000. This is compared to an incidence rate of less than 1 per 1000 live births in the developed world. It is unclear whether there is a difference between rural and urban communities in the region.¹¹ But whatever the outcome of that research may be, the syndrome is clearly prevalent at unacceptably high levels within the rural communities.

Children, who suffer from FAS, show a reduced intellect and do not cope at school. In turn, people with lower education levels have a higher incidence of FAS. Research also indicates distinct patterns in families with alcoholism, with both the FAS and the alcoholism being passed from one generation to the next.¹²

Foetal Alcohol Syndrome – Clinical features:¹³

- ❑ Pre- and post-natal growth deficiencies.
- ❑ Central nervous system dysfunction: decreased intelligence, language and phonation difficulties and inappropriate behaviours (e.g. hyperactivity, short attention span).
- ❑ Characteristic facial appearances e.g. long smooth upper lip; short and upturned nose and small chin.
- ❑ Organ system abnormalities including cardiac, neural tube, renal, brain and skeletal defects.

In an effort to alleviate alcoholism in the work force, some farmers have embarked on successful rehabilitation programmes. However, some of these attempts include forcing workers to insert implants under the skin as a rehabilitation mechanism. If the worker does not have the implant, he/she is dismissed.¹⁴

All parties agree that the tot system is abhorrent and is to be rooted out and discontinued. They further agree that if there is still one farmer practicing the system, it is one farmer too many. Active steps have been taken by some wine co-operatives to seek out any farmers who may practice the system and these co-operatives have stated that they will not accept grapes from farmers who are found to allow the system to operate on the farm.¹⁵

Farmer organisations and trade unions, whilst committed to the complete eradication of the tot system, find it difficult to confront the issue of alcoholism, as there is a silence on the side of farm workers, who are addicted to alcohol.¹⁶ Alcoholism remains a serious social problem within the farming community in the Western Cape.

"And then we address the issue of the dop system. The people say if we do not get a bottle of wine every day, we cannot go to work tomorrow, because we are going to be shaken. So that thing is in their blood. It was created to be a poison. So we need to get that bottle."¹⁷

Land rights

Despite the promulgation of the ESTA, NGOs claim that evictions continue at an alarming rate in this province. Agri Wes Cape state that they do not support the ESTA and that they will therefore circumvent the provisions within the boundaries of the law.

In response to the continuing evictions, the Western Cape Department of Land Affairs (WCDLA) has created an innovative inter-departmental ESTA Forum to deal with this problem.

Tenure security

The extent of the number of evictions is difficult to ascertain, as there are few sources of statistics available. Those that are available are not complete and comprehensive.

The WCDLA provided the Inquiry with some statistics that they collected in respect of legal evictions where landowners follow the procedures set out in the ESTA. These statistics provide some insight into the extent of the eviction problem in the Western Cape.

For the period 1 April 2001 to 31 March 2002, the WCDLA received 515 section 9(2)(d) Notices. This indicates that in 515 cases during that period, landowners gave official notice to the occupier, the local municipality and the WCDLA that in two months' time the court would be approached for an eviction order.

Most of the eviction notices come from the Paarl (54), Wellington (53), Stellenbosch (40) and Ceres (39) area. The WCDLA concludes that most legal evictions are taking place within the wine and deciduous fruit sectors.¹⁸

During the same period, 156 requests were received by the WCDLA for s9 (3) reports. This indicates that there were 156 cases where the matter had reached the courts. A magistrate or judge, as the case may be, requests a s9 (3) report in order to consider the effect that the eviction order will have on the rights of the respective parties and the availability of alternative accommodation. This report is a peremptory requirement of the ESTA. In addition, during this period the WCDLA was made aware of 15 illegal evictions and acknowledges that in all likelihood this figure may be higher.

The WCDLA were informed of three s 4 applications being awarded by a court during this period. These are applications where the terms and conditions of residence on land are altered and/or amended by an order of court.¹⁹

Non-compliance with ESTA

Due to the pattern of land tenure in the Western Cape, the right to reside in a house on a farm is generally linked to the contract of labour between farm worker and farm

owner. Where this contract of labour is terminated, the right to reside in the house is, in most cases, also terminated. Human rights violations linked to the ESTA include circumvention of the provisions of ESTA by landowners, landowners not complying with the right to family life provisions of the ESTA, demolition of farm worker housing and women being discriminated against in terms of accessing housing on farms.

Circumvention of ESTA

Typical examples provided to the Inquiry of how landowners attempt to circumvent the provisions of ESTA are to:

- ❑ Intimidate and victimise occupiers in order to force them to leave the land.
- ❑ Cut the electricity supply in order to make the conditions of residence intolerable.
- ❑ Make workers sign agreements at the CCMA stating that they will leave the farm.

The Right to Family Life

The ESTA specifically protects the right to family life of occupiers. Despite this, many of the complaints received concerning the ESTA in the Western Cape related to violations of this right. An example of such a violation would be the practice of landowners insisting that once children complete their schooling, or reach the age of 18 years, they can no longer live with their parents on the farm if they do not work on the farm. Alternatively, these children must pay rent to the landowner to continue staying with their parents or are merely told that they must vacate the farm.²⁰ These practices are perceived by farm workers as farmers trying to break up the family life of their household.²¹

There were reports of money being deducted from a workers' wages where a family member had visited an occupier on the farm and stayed over. There were also unreasonable demands being placed on family member who visit occupiers, such as each visitor having to request written permission to visit the occupiers.²²

Lack of criminal prosecutions

In extreme examples, farm owners have demolished houses in order to force occupiers to leave the land.²³ Although the ESTA provides for the criminal prosecution of the landowner in such a case,²⁴ and for illegal evictions generally, this provision of the ESTA has not been successfully implemented and there have been few prosecutions. The Inquiry was not informed of any private criminal prosecutions for evictions that are also provided for in the ESTA.

Women

Women were singled out as being discriminated against in terms of access to housing. The right to reside on a farm is traditionally placed with the husband who is considered the head of the household. As men are offered full-time employment contracts, whereas women do seasonal work, the women's right to reside is often dependent and linked to that of the husband. The subsequent loss of employment by the husband results in the eviction of the entire family from the farm. Men are regarded as the head of the household and "the house is normally put on the man's name".²⁵ Therefore the farmer considers himself entitled to evict the entire family even if the woman works on the farm.²⁶

Occupiers unaware and unable to enforce their rights

It was reported that many farm dwellers are unaware of their rights in terms of the ESTA or are too intimidated or afraid to enforce their rights.²⁷ This occurs despite the DLA having reported that they conducted a number of information sessions about the ESTA during the 1998/9 reporting year. In total 2 562 farm workers and 325 landowners benefited from these sessions at a total cost of R1 039 785,00 to the Department. An accompanying radio and print media campaign was undertaken. A series of information workshops on the ESTA was subsequently held with advice offices, NGOs, political party constituency offices, SAPS, public prosecutors, legal practitioners and farm workers.²⁸

Agri Wes Cape has also educated 3 209 people (both landowners and occupiers) about their rights through the NORAD courses.²⁹ Advice offices and NGOs also report that one of their functions is to train people in rural areas about their rights. Despite all these efforts, it would appear that many farm dwellers still remain ignorant about the provisions of the ESTA.

Response by organised farmers to the ESTA

Agri Wes Cape's response to a discussion about the human rights situation in farming communities is somewhat defensive. In an opening address to the Inquiry, Agri-Wes Cape, the mouthpiece of the commercial farmers in the Western Cape, stated that they hoped they would not be victimised and stereotyped as an entire community of human rights transgressors.³⁰

As a defence to any allegations, they rely on the "bad apple theory". Agri Wes Cape prefers to speak about the positive initiatives that they have embarked upon and the implementation of Codes of Conduct. They are convinced that those who expose human rights violations are "hell bent" on destabilising the agriculture sector but do not provide any motives for this assertion. They insist that any discussion about human rights violations should be conducted in a framework where facts are presented and proved and that in the absence of such debate, these allegations can be dismissed as vague and unsubstantiated.

"Although we fully accept that a small minority of our members may from time to time commit human rights transgressions and that the appropriate corrective action should be taken to punish those transgressors, we refuse to accept that the entire agriculture community should be repeatedly subjected to vague and unsubstantiated claims that are not subject to proper legal scrutiny."³¹

The ESTA is perceived as draconian, punitive and unduly onerous. Due to their lack of support for the legislation, they consider it justifiable to circumvent the law, as far as is legally allowed.

"... (We) think it is right where there is a law that is hampering your operation and there is a way around it which is legal, you can legally handle it that way."³²

This is despite stating in their Code of Conduct that their farmers will comply with legislation on land reform and security of tenure. Because they perceive the ESTA as negative to the development of the rural areas, they intend to find ways around it.³³ When questioned more closely on this aspect, they state that the problem with ESTA is that farm workers now think that they are "untouchable" and that their productivity drops. When farm workers are dismissed, the farmer must continue to provide them with the house and services pending the eviction order. They feel that they have been singled out as no other industry has similar legislation that must be complied with.³⁴ Organised farmers, when asked what they do not agree with about the ESTA, fail to give any clear answers.

This response from organised agriculture is confirmed by trade unions and NGOs' experiences of dealing with ESTA matters. Trade unions blame Agri South Africa for spreading misperceptions about ESTA, thereby misleading farmers and encouraging them to think negatively about ESTA.³⁵ In their experience, farmers are convinced that either you cannot evict people or that you can evict people, but that you have to go through expensive court proceedings. Farm workers on the other hand often think that they are entitled to stay in the house for the rest of their lives.

"(T) here is so much confusion about that legislation. Everyone, thinks... you cannot evict people from your farm anymore, and people are doing stupid things to avoid that legislation."³⁶

A response to the promulgation of ESTA is that farmers are moving away from permanent workers living on the farm to employing contract workers. Farm owners do not want people to stay on the farms and prefer an employee to have accommodation off the farm.³⁷ Farmers are not employing more workers who will live on the farm and are turning the workers' cottages into tourist accommodation cottages.³⁸ Workers' houses are also being destroyed once they become vacant. A survey amongst members of Cape Fruit Producers Employers Organisation (CFPEO) indicated that 51% of farmers intend reducing the number of houses they have for workers on their farms.³⁹

"They have come to the conclusion that you must not, a farmer should not house his people on the farm."⁴⁰

Organised farmers clearly prefer the off-the-farm solution to tenure security issues. In this manner, what is a rural land issue becomes a rural town housing issue. Farmers who are members of CFPEO are reported to have already built houses for their workers in local towns.⁴¹

"Our plea is that farm labourers should also have the same rights as other labourers and have also got recourse to housing in the nearest town where they can have a place to go to."⁴²

Lack of alternative accommodation
In the Western Cape agricultural land is expensive and is farmed intensively. There is little affordable land available for government to use to provide housing for farm workers. This contributes to the eviction crisis with people unwilling to leave the land, as they have nowhere else to go.

"There is no alternative accommodation in Franschhoek. If a farmer will evict a person, there must be alternative accommodation and we suffer, we have contacted the municipality and there is just no land available."⁴³

Response from WCDLA

The WCDLA has limited internal capacity to deal with the implementation of ESTA. There are three ESTA officers based in Cape Town, George and Worcester who are responsible for dealing with the rights of occupiers facing eviction procedures. Much of their time is spent compiling the section 9(3) Notices for the courts. The Redistribution and Settlement Programme has 12 planning staff members who are responsible for projects established in terms of section 4 of ESTA.⁴⁴

ESTA Forum

In response to the continued evictions in the Western Cape, the WCDLA has established an ESTA Forum. This Forum has representatives from WCDLA, WCSAPS, WCDoL, WCDoJ, WCDPP, WCDoHousing, CCMA, NGOs, advice offices, trade unions, and farmer organisations. The purpose of the Forum is to address the limited human capacity of the WCDLA to deal with the implementation of ESTA. The Forum deals with ESTA matters strategically and assists in strengthening partnerships between the various role-players.

The WCDLA views the Forum as a positive development that contributes towards the effective implementation of the ESTA. Some of the results from the work of the Forum include improved awareness amongst WCSAPS members of the existence and provisions of the ESTA, increased awareness amongst public prosecutors of the criminal provisions of s23 and training programmes being conducted for WCSAPS, CCMA officials and public prosecutors.⁴⁵

Land redistribution

Land redistribution continues at a slow pace in the Western Cape. Since 1994, the WCDLA has embarked on 102 housing/settlement projects, which are in various stages of implementation. Of these projects, 100 are aimed at upgrading the rights of ESTA occupiers in 3 959 rural households. The total value of the capital grant of these projects is R156 171 693,00 of which R42 972 698,00 has been spent. Of the 102 projects, 22 are either completed or in the construction phase. The remaining 80 projects are still at the feasibility stage.⁴⁶

Agri Wes Cape states that they are committed to meaningful land redistribution. They have recently been involved in a process of developing a framework for land redistribution with New Farmers, Friends of Agriculture Club, Mkhonthe we Sizwe (MKMVA), Western Cape DLA and Enroute. They concentrate on assisting new commercial farmers, as this is where they believe they are best able to participate.⁴⁷

Despite all that has been stated, all parties indicated a willingness to engage each other on the issues and the debates that flow from the existence of the ESTA. The parties acknowledge that there is still a vast gulf of misunderstanding and that only through dialogue can there be a better understanding that will lay the basis for a solution.

Labour laws

The poor conditions of employment and non-compliance with labour legislation were raised at the Inquiry as the key violations of farm workers' labour rights. The Western Cape Inquiry was characterised by attention being brought to the unequal treatment of women in the workplace and obligations being placed on male employees to ensure that other family members would work on the farm. Trade unions complained that they are not allowed to organise freely and that union members are discriminated against in the workplace. Organised farmers reported on

a number of initiatives that have been embarked upon in order to facilitate compliance with the labour laws. Reports were received of the use of the tot system in the Western Cape; however, this issue has been addressed separately at the beginning of this chapter.

Non-compliance with labour legislation and poor working conditions

Trade unions and NGOs informed the Inquiry of non-compliance with the Basic Conditions of Employment Act (BCEA). Such non-compliance included workers working more than 50 hours per week, not being paid overtime and deductions being made from employees' wages. In one instance, an employer has the policy of deducting 2 days wages if the employee is absent for one day and disallows an employee to work for an entire week if he is late or absent on a Monday.⁴⁸

In March 2002, during a "blitz" conducted on 16 farms by the WCDoL in the Piketberg area, 103 complaints of labour law non-compliance by employers were received from workers. Contraventions that were encountered by the WCDoL included matters relating to:

- overtime;
- leave;
- information about remuneration;
- illegal deductions;
- notice pay;
- child labour;
- contraventions with regard to hazardous chemical substances regulations;
- driven machinery; and
- unfair dismissals.⁴⁹

Trade unions reported that employers do not comply with the provisions of the Occupational Health and Safety Act (OHSA). Examples given included employers not providing protective clothing to employees who were working with pesticides, and exposing workers to the harmful effects of the pesticides whilst spraying close to where they are working.⁵⁰ Employer's organisations attributed such reported cases to a lack of super-

vision by the employers of their employees when they were working with the pesticides.⁵¹ The WCDoHealth was of the view that these situations arise due to the lack of adequate provision regarding the storage of these pesticides. The Department is responsible for issuing licenses to retailers to purchase stock and sell pesticides. Once the pesticide arrives on the farm it is unclear which government agency is responsible for ensuring that safe storage of these substances occurs.⁵²

In recent years the emergence of an increase in labour brokers who bring labour in from outside of the Western Cape was viewed by trade unions as a response by employers to circumvent new labour and land laws. This results in further non-compliance with labour laws. Workers are in extremely vulnerable situations as they are far from home and do not have the means to return home. They are susceptible to being exploited by these brokers and employers.⁵³

The introduction of a minimum wage was viewed as a positive step in improving workers' employment conditions.⁵⁴

The unequal treatment of women
The conditions of work and wages that are received differ for female and male workers in farming communities. In the Franschhoek area it is estimated that male workers receive an average wage between R120,00 and R170,00 per week, whereas women workers receive between R80,00 and R150,00 per week. Some women have indicated that although they do the same work as the men on the farm, they are still paid less.⁵⁵

Men are employed as permanent workers whereas women are perceived as casual workers. The effect of this often inaccurate perception by the employer is that the employee is not entitled to sick leave, holiday leave, or family responsibility leave, and that the woman need not be registered for UIF or with the Compensation Commissioner.⁵⁶

When women go on maternity leave, they are consequently denied UIF maternity benefits, as they have not been registered. Returning to work is difficult as there is a lack of childcare facilities for farm workers' children.⁵⁷ Trade unions claim that the Employment Equity Act is clearly not complied with on many farms and there is a lack of employment equity plans to address this discrimination in the workplace.⁵⁸

Obligations to work placed on family members

In the Franschhoek area there are farmers who make their workers sign contracts that state:

"I hereby declare that my family will work on the farm as well".⁵⁹

"When we look at the recruitment of farm workers, there is a big difference between their recruitment of male and female workers. Especially when accommodation will be involved on the farm, then the farm worker will usually employ the male farm workers and as a consequence his wife can then work on the farm as well, but she will not be employed in her own right. The farmer will expect that the wife will work during the harvesting season, so she must be available every time the farm needs her."⁶⁰

Women are expected to be available during the harvest season and are thereby prevented from seeking permanent employment elsewhere.

Child labour

Most parties who participated in the Inquiry reported knowledge of isolated incidences of child labour in the Western Cape. Recently much attention has been paid to a 14-year-old girl from Ceres whose leg had to be amputated after an accident involving a tractor, while she was working. Isolated cases were also reported, occurring in the Piketberg and George areas in the Western Cape.⁶¹

The underlying reason for these children working is attributed to their parents' low incomes and the need to supplement the household income.⁶²

Trade union activities

Trade unions find it difficult to obtain access to farms in order to have access to their members and potential members. Workers do not speak about their labour problems for fear of intimidation by their employers and the subsequent loss of their jobs. The WCDoL also commented that when they conduct inspections on farms that workers do not appear free to speak and respond to questions posed to them by labour inspectors.⁶³ One of the reasons given for the non-unionisation of farm workers was that they were unable to afford union fees due to their low wages.⁶⁴ Trade unions also came under criticism for approaching employers aggressively and thereby destroying the relationship between farmer and farm worker.⁶⁵

Trade union officials informed the Inquiry of discrimination by employers against workers who are trade union members.

"What happened is that the people joined the union and when they joined the union the farmer told them that they are going to be dismissed if they do not resign from the union. But the people refused, there and then the farmer told them all privileges that they were getting prior in joining the union they are going to forfeit and then the union organiser official is not allowed on the farm."⁶⁶

It was also reported that farm workers who join trade unions are threatened with dismissal. Because farm workers are so dependent on their employment as their source of income for their families and for housing, they are more susceptible to this kind of intimidation from their employer.⁶⁷

"Where farm workers are unionised, the non-union workers, those persons who do not belong to a union, they can tell you beforehand who is the union member who is going to be dismissed next time."⁶⁸

The WCDoL and the CCMA

Many parties agreed that the WCDoL could provide a better and speedier service, as effective service delivery is a key to improving labour conditions. The types of issues raised concerning the Department included lack of feedback, officials not being available, delays in follow-up of cases, receiving confusing information and different responses on the same inquiry from different officials.⁶⁹ When trade unions challenge the Department of Labour as to why they are not implementing the labour legislation for which they are responsible, the response received is that they do not have adequate resources.⁷⁰

The CCMA often fails farm workers, as the cases take very long to process. Regular follow-up is needed on behalf of the worker in order for these cases to proceed.⁷¹ Trade unionists perceive that CCMA commissioners are biased against farm workers. This bias was felt to exist because commissioners are not people who have an understanding or experience of the agricultural setting. The commissioners tend to be part-time persons who are lawyers, lecturers and/or consultants. Despite having had meetings with senior commissioners and management at the CCMA about this issue, nothing appears to have changed.⁷² Trade unions continue to hold these perceptions about CCMA commissioners.

Advice office workers from Ceres report that they receive good service and co-operation from the WCDoL.⁷³

The WCDoL attributes its lack of effectiveness to the fact that they have many new and inexperienced inspectors who are still receiving training. The Department is in a process of filling vacancies for inspectors.⁷⁴

Employers

Agri Wes Cape regards certain aspects of labour laws as punitive and believes that those punitive elements that are embodied in the law ought to be removed.⁷⁵ NGOs report that they sometimes encounter non-co-operation and rudeness from employers when attempting to resolve labour disputes.⁷⁶ The WCDoL reports that although there is willingness by some farmers to comply with the labour legislation, there is a constant need for education and advice from the Department.⁷⁷

“... human rights abuses on farms. We have to inform you that such instances are not common amongst our membership, or for that matter the larger fruit industry in the Western Cape ... we would rather... bring to your commission's attention the practice, tradition and in fact proud record and history of sound and fair labour relations and respect for human rights amongst our members and the industry.”⁷⁸

Besides non-compliance with labour laws, there is also circumvention of labour laws. For example, cases were reported of employers that make a worker sign a form upon dismissal, stating that they have resigned voluntarily and that all outstanding disputes have been settled. This document is then produced and used against the farm worker at any subsequent CCMA proceedings.⁷⁹ The increasing casualisation of the labour force in the rural areas is another method whereby employers circumvent labour laws.⁸⁰

Initiatives to facilitate compliance with labour laws

In the Western Cape there are a number of initiatives that encourage compliance with labour laws in farming communities. These include the formulation of Codes of Conduct, labour law training courses and Ethical Trade Initiatives.

Employer organisations such as CFPEO and Agri Wes Cape have introduced Codes of Conduct for their members. By adopting these Codes, employers have committed to complying with labour, health, and safety legislation. To date, no employer has been sanctioned through these codes of conduct. Rather, the organisations have resolved the matter internally through visits and discussions with the employer.⁸¹

NGOs and trade unions raised two criticisms of these Codes. Firstly, organisations are refused access to the membership lists of the farmer organisations. This makes it extremely difficult to know whom to approach for assistance in resolving a dispute that involves a violation of the Code.⁸² Secondly, the implementation and enforcement of the Code of Conduct is lacking as the enforcement mechanisms are ineffective and are not utilised.⁸³

Agri Wes Cape has presented training courses to 3 209 people, including farmers and farm workers. The courses are part of a national initiative and are funded by NORAD. The training courses include information on labour laws.⁸⁴

In 1998 at the Winelands Conference, the British-based Ethical Trade Initiative (ETI) began working in South Africa. This initiative works closely with British supermarkets, trade unions and farmers in South Africa, on the concept of social auditing on the farm where the goods are produced. Six farms volunteered to participate in the initial Pilot Project, providing that they remain anonymous. It was indicated that there were numerous human rights violations occurring on these farms.⁸⁵ Unions in the Western Cape are currently entering into discussions with South African supermarket retailers to begin a similar South African initiative.⁸⁶

“... labour rights are human rights We will not allow any farmer to assault people, kill people and still do exports because those conditions on the farm that happened, those crime issues in the workplace are produced in that apple or in that bottle of wine and is spread around the country and we, as users, as the public, as consumers, use that and so it is a form of ... crime that started in the workplace.”⁸⁷

Despite these initiatives, there remains much distrust amongst Agri Wes Cape to encourage their members to expose themselves to scrutiny. By refusing to allow research to be conducted on human rights in farming communities and refusing entry to trade unionists to enter the farms and organise workers, they can continue to state that all allegations are vague and unsubstantiated.

“First and foremost we have been open in the past and we have been seriously hurt by the openness that we have had. If we can get the assurance that the information will be used to create a better society and not be used to bully the farming community, we can open it up and I can talk with my people. But we will not put any information on the table that will be used against us to actually destroy the commercial farming sector.”⁸⁸

The CFPEO was transparent with the Inquiry and stated that there is no room for complacency in the area of lack of compliance with labour laws and that their organisation had a role to play in monitoring compliance.⁸⁹ They viewed participating in the Inquiry as an opportunity to get a better understanding of the divisions that exists between employers and employees.⁹⁰

“It is only by meeting each other on a regular basis, exchanging views, trying to influence each other, I believe that we are going to get somewhere.”⁹¹

Safety and security

There were many reports of violence perpetrated against farm workers by their employers and farm owners. In particular, the issue of vicious dogs that attack farm workers was highlighted during the hearings. Both farm workers and farm owners agreed that the response by the South African Police Services to violence and crime in the farming community was insufficient and/or lacking. In the Western Cape there would appear to be a low prevalence of farm attacks compared to other provinces.

Vicious dogs

In the Philippi farming area of the Western Cape there were reports of dog attacks being perpetrated against farm workers. In the period 1996 to October 1999 there were 9 such incidences, in which people were seriously wounded, maimed, had a leg amputated, face disfigured and in one case, killed by the dogs.

“...A 16-year-old girl was walking on a road alongside a farm when the farmer’s dogs charged at her. She ran away but the dogs caught up with her and started biting her. A male person who was standing on the premises of the farm where the dogs allegedly came from did not come to her assistance until another member of the community who knew the dogs chased the dogs away.

As a result of the extent of injuries to her leg, it had to be amputated. Although the police in the area were informed of this, they did nothing. When inquiries were made a year later the police said that they were still waiting for medical records....”⁹²

Impact upon the victim

Some of the victims of these dog attacks are injured to the extent that they are physically disabled. Being unskilled, they are unable to perform manual labour for their employer and are consequently dismissed to join the ranks of the unemployed. They often fail to

access the State disability grants unless they are informed and assisted. Those who are not permanently disabled may be unable to work and earn an income for a period. Victims tend to be unaware of their civil rights and fail to seek legal assistance in order to institute claims for damages against the owners of the dogs.⁹³

The Inquiry was informed of an incident where victims experienced racial verbal abuse. For example, in one case it was insinuated that a dog attack is not a serious matter when perpetrated against a Black person.

"Ja, Moenie worry dat die honde gebyt het nie, dis maar net 'n hotnot (sic)."⁹⁴ (Yes, do not worry that the dogs have bitten, it is only a hotnot(sic)).

Others in the community are too afraid to speak out about these dog attacks for fear that they too will lose their jobs.⁹⁵

WCSAPS response

The response by the SAPS to these cases illustrates what others who testified at the hearings reported, namely that there were allegations of police corruption with the farmers, that farm workers were treated with a lack of respect when they arrived at the police station to report cases, of dockets disappearing and the lack of progress in the cases that were laid by farm workers.⁹⁶ In fact, only when a local councillor took up the issue and embarked on a major media campaign, did the Director of Public Prosecutions in the Western Cape contact the councillor and request further information on the cases in order that his office could take them further.⁹⁷ SAPS agree that many farm workers lay criminal complaints against farm owners and insist that they do act against perpetrators and arrest farmers in certain instances.⁹⁸

Response from farm owners

The response by farm owners to these dog attacks is that, considering themselves to be one of the most vulnerable groups in South Africa, they are compelled to resort to all forms of security to protect themselves.

"Dogs are but one of the elements in the security equations they have had to develop to compensate for the inability of the SAPS to afford them the necessary protection. Vicious dogs are kept as a deterrent, not as a murder weapon."⁹⁹

Organised farmers also complained that the WCSAPS is either unable or unwilling to act against perpetrators of acts of violence and blame this on human resource and logistical constraints. The rise in farm attacks and the increase in stock theft are cited as examples of how farmers do not receive the protection of the SAPS.¹⁰⁰ Organised farmers believe that more properly equipped and trained police are needed to resolve crime in farming communities.¹⁰¹

As pointed out by Agri Wes Cape, not every farmer perpetrates acts of violence against farm workers. They do admit, however, that the following types of violence occur on farms in the Western Cape; acts perpetrated by farm owners against farm workers; gender violence in the employment and home situation; economic violence committed by farm owners in terms of remuneration levels and working conditions. So too are farm workers perpetrators of violence against other farm workers, against women farm workers and damaging plants and property of the farm owners.¹⁰²

Farm attacks

With regard to violence perpetrated against farm owners, the WCSAPS reported that in the Boland region in May 2002 and June 2002 there was one incident each month. The motive for the attacks appeared to be robbery. Nobody was killed in these incidents.¹⁰³

Because the SAPS are 42% understaffed in the region, they rely on reservists and commandos. In terms of the Rural Protection Plan, farmers are taught how to protect themselves through farm patrols and farm watches, education around social crime prevention and lectures by the SANDF. According to the WCSAPS, both farm workers and farm owners are included in these projects.¹⁰⁴

Economic and social rights

Access to health care and education were issues that were discussed before the Inquiry as the Departments were represented. Health issues in the province are also inextricably linked to abuse of alcohol, which was discussed in the introduction to this chapter.

Housing

Access to housing is inextricably linked to security of tenure. While farm dwellers face difficulties in obtaining access to ownership of their own homes, their security of tenure remains weak. While the patriarchal system continues of making the man the head of the household and consequently placing the right to reside in a house solely with him, security of tenure remains insecure and even inaccessible for women.

There is still a large need for RDP housing and many people have remained on the housing list for years. Friction is thus created where the WCDLA creates housing for farm dwellers.

Agri-villages

Most parties in the Western Cape appear to support the idea of the development of agri-villages to resolve the issues of tenure security. The WCDLA, in principle, prefers on-farm options.¹⁰⁵ Most farming is of an intensive nature in the Western Cape and the distances between rural towns and the farms are not as great as in some of the more remote provinces of South Africa. Thus the concept of agri-villages may embody a solution to the serious conflict that has developed over tenure security in the Western Cape.

However, there are many considerations and the parties mentioned a few of them. For example, there is little or no land in some areas for these agri-villages to be built. People can not merely be “dumped” in housing villages without all the necessary infrastructure being provided, such as transport, health services, schooling, etc. In order to realise this, the parties need to meet and talk, yet there is a deep mistrust of each other.

Living conditions on farms

Conditions of houses for farm dwellers came under criticism from NGOs and trade unions. Some houses were reported as being infested with cockroaches and fleas, with roofs leaking, windows broken, insufficient lighting and no running water, toilets or electricity inside the house. Farm workers are unable to improve the conditions of houses due to their low incomes. There was a call for strict legislation that will compel landlords to ensure that houses are kept in a proper condition.¹⁰⁶

Health care

The delivery of health care in the Western Cape has been fundamentally altered in recent years to bring it in line with the District Health System concept, an international concept proposed by the World Health Organisation. In terms of national policy guidelines, the province is divided into Health Districts, which are determined by the boundaries of the new local government boundaries. In terms of this District Health System a single authority should deliver a comprehensive primary health care service; this is not, however, the current situation in the province. For historical reasons the delivery of services has been split between provincial and local government, which has resulted in a situation where it is unclear who is responsible for providing which services in the province. The WCDoHealth informed the Inquiry that it is anticipated that this situation will be rectified within two years.

In the past five years the WCDoHealth has also made a concerted effort to phase out mobile clinics and to establish fixed clinics that are close to the communities they service. These fixed clinics are positioned on the basis that no person should have to walk more than 5 kilometres to their nearest primary health provider. The Department, wanting to ensure that all citizens have equitable access to health care services, motivates the move towards fixed clinics. The Department believes that health care centres provide a service of quality in a dignified environment. Mobile clinics are thus limited to remote rural areas.

Primary health care services are provided by primary health care nurses who are trained as clinical nurse practitioners. Due to the high workloads and the demands of patients needing curative interventions, the nurse has limited time to spend on education. The Department employs a few dedicated health educators to provide health promotion services, who are based in Stellenbosch, Ceres and the Boland Region.¹⁰⁷

Since 1996, the Department has lost 9 200 staff members because of inter-governmental equity formulas and has closed 33 200 beds, yet it has increased its allocation to primary health care services. The Western Cape spends R220,00 per annum on each person for primary health care, while the national norm is R174,00.¹⁰⁸

Those outside of government agree that the new health system is not adequate and does not meet the needs of rural areas. It is felt that the lack of mobile clinic services results in the denial of access to health care. The Department, however, argues that it in fact increases access to primary health care. Mobile clinics are effective for providing preventative health services that are needed on a regular basis, e.g. family planning and chronic medication for diabetes.¹⁰⁹ For many health needs it is not feasible that a person should wait a month for the mobile clinic to visit.

Therefore, by focusing on providing accessible services within a reasonable distance, the health needs of the community can be far better met.

However, farm workers indicate that they are unwilling to take a half-day off as they will lose much-needed wages and are systematically denied access to health care. Women workers are often too embarrassed to ask the farmer for transport to the clinic to access family planning. In some cases emergency health care services are up to 25 kilometres away.¹¹⁰

Agri Wes Cape is of the opinion that HIV/AIDS is becoming a serious problem in rural areas. Information on the disease is lacking and is desperately needed, according to NGOs. The WCDoHealth response is that there is not a single area in the province that is not currently covered by AIDS counsellors. The Department contracts NGOs to provide counselling. According to the Department, health education about AIDS takes place on an ad hoc basis on the farm.¹¹¹

Food and water

High levels of poverty in rural areas have the resultant effect of people being unable to buy the necessary food to feed their families. The majority of farm workers' salaries are spent on purchasing food.¹¹² In the Western Cape, the situation is aggravated in many instances by the household's income also being spent on purchasing alcohol.¹¹³ Children, in particular, suffer due to the lack of adequate nutrition and this results in poor performance at school. The lowering of the child welfare grants has had a serious impact upon destitute families who were dependent on these grants to purchase food.¹¹⁴

Due to poverty and lack of transport, farm dwellers, in some instances, have no alternative but to purchase food at farm shops. Some farm dwellers complain that the prices at these farm shops are inflated. Alternatively, the farm worker is not told the price of the

goods being purchased and has a lump sum deducted from the pay slip at the end of the week.¹¹⁵ The worker thus becomes caught up in a cycle of debt and poverty.

Access to water is not always provided in a manner satisfactory farm workers. In some instances, families must make use of communal taps provided by the farm owner, thereby further increasing dependence on the employer. The disconnection of water is used as a means by landowners to force farm workers to leave the farm, in order to circumvent the provisions of the ESTA.

Social security

No direct evidence was placed before the Inquiry.

Education

The Western Cape Department of Education (WCDoE) is aware that not all children who ought to be attending school are doing so in the Western Cape. The Department relies on school principals to encourage parents to send their children to school.¹¹⁶

In terms of the South African Schools Act, learners may not be denied access to education due to non-payment of school fees. The Department reports that this provision is applied strictly in the province.¹¹⁷

In order to promote access to basic education in the farming communities, the WCDoE has learner transport schemes available to learners who live more than five kilometres from the school. R65M has been budgeted for rural areas for the 2002/3 financial year. Secondly, the Department has upgraded its hostel bursaries and extended them to private and church hostels in those areas where there are great distances and school hostels are unavailable. Thirdly, transport bursaries are extended to those learners where learner transport systems are not viable in remote places. Fourthly, boarding bursaries have been made available to subsidise learners who, of necessity, have to board privately.¹¹⁸

Despite these measures being reported to the Inquiry, it would appear that not all parents are made aware of them. Information was received indicating that there is a lack of hostels for farm children. Private accommodation that is sourced for these children in the town is often obtained at great expense to the parents. Often this accommodation is not suitable for children.¹¹⁹

In some areas transport arrangements available to transport children to school are inadequate. Reports were received of the bus service not being reliable and children not being collected. In some instances, the children walk home rather than ride on the bus, as the driver is drunk. Due to illiteracy and a lack of knowledge of rights amongst the parents, these cases are not reported to the WCDoE.¹²⁰ Where no transport is provided, one example indicated that children walk 18km per day to attend school. Where the principal is aware of the situation, very little appears to happen.¹²¹ The Department acknowledges that in some cases things do go wrong. They report that the Department acts as quickly as possible to remedy these situations once they are aware of them.¹²²

In order to minimise the school drop-out rate caused by children having to travel great distances once they reach secondary school level, the WCDoE is encouraging the larger rural primary schools to extend their curriculum to Grade 9.¹²³

Further challenges to access to education : staff, infrastructure, and SGBs

In many small primary schools in the rural areas of the Western Cape, there is more than one grade in a classroom, with only one educator. The WCDoE maintains that this system of multi-grade teaching need not be detrimental to the quality and standard of education received by the learners. The Department intends training all educators who are teaching in such classrooms in multi-grade teaching methodologies.¹²⁴

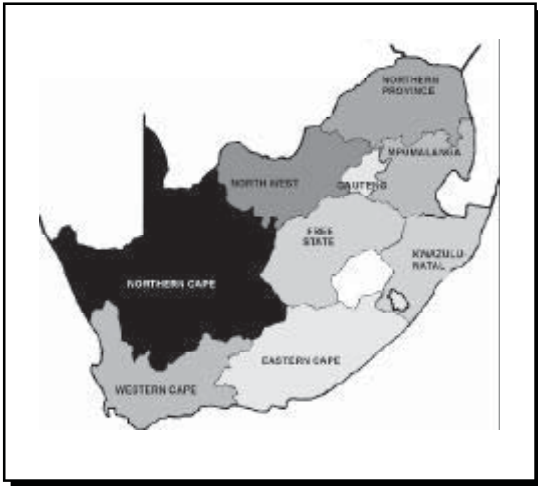
Despite reports that staff do not discharge their duties adequately, the WCDoE reports that they are constrained in this matter, as staff provisioning is a national competency. The province has its own learner–teacher ratios that are lower than the national ratios. While the national ratio for primary schools is 39 learners to one post, the WCDoE allocates a second post at 35 learners.¹²⁵

In terms of providing education to children with special needs, the WCDoE is yet to address the problem of Foetal Alcohol Syndrome and the challenge of how to integrate these children into the education system.¹²⁶

In response to allegations that farm schools lack adequate infrastructure, the WCDoE stated that a minimum of R10 000,00 per year is allocated per school for the provision of learning and support materials. 441 school buildings are leased from private owners, many being farmers and churches. The owner is responsible for the maintenance of the building on the outside and to provide water, electricity and sanitation. The WCDoE currently has an audio-visual project that aims to provide schools with a basic minimum of audio visual equipment such as television sets, video recorders, music centres, overhead projectors and projection screens.¹²⁷

Low levels of education amongst parents in rural areas impacts upon their ability to actively participate in School Governing Body (SGB) structures. In order to address this issue, the Department provides training to SGBs on the different aspects of their roles and responsibilities.¹²⁸

CHAPTER 7



Northern Cape

Introduction

The distinguishing factors of the Northern Cape are its large geographic size and small population. These factors present even greater challenges to service providers and government role-players in rural areas. The province similar to the Western Cape in that the legacy of the “tot system” and the negative impact of the effects of alcoholism still plague the social fabric of the farming community.

The Northern Cape is geographically the largest province in South Africa and covers almost 30% of the total land surface of the country. It has the smallest population with approximately 30% of the population of 875 000 living in rural areas.¹

The relationships between the role-players
Clearly there is a lack of communication between all the role-players in the province. Many report that they have unsuccessfully attempted to or have fruitlessly engaged in establishing relationships with other role-players. Negative perceptions of each other and the inability to meet due to a lack of resources and the great distances that must be covered to attend meetings, appear to be an underlying cause for why parties are yet to engage optimally in order to realise and en-

force human rights for everyone within the farming communities.

Farm dwellers have little access to information concerning their rights and thus lack a great deal of knowledge in this regard. NGOs are often denied access to farms and are branded as troublemakers or agitators. In this way, farm dwellers are further denied access to knowledge about their constitutional rights, which consequently remain elusive.²

“Sometimes we are branded as troublemakers or agitators or there is this perception that we are coming there to stir the farm workers up to do something wrong and that is not the case.”³

SAAPAWU states that they decided not to have formal relationships with Agri NC, as they do not have mechanisms in place to deal with farm owners who transgress labour laws. Despite this decision, the union is of the view that there is a lot more that can still be done in order for stakeholders to interact in the province.⁴

Agri NC represents approximately 4 000 farmers in the province.⁵ They acknowledge that there are problems because people do

not talk with each other enough.⁶ For example, they report that the NCDLA has never taken up an opportunity to inform Agri NC of evictions that have occurred in order that the union may assist in resolving the dispute. They further object to advertisements that are placed by the NCDLA in newspapers concerning evictions and informing people about their rights. Agri NC argues that these actions by the NCDLA creates the perception that evictions are rife. They view this as an attack on farmers by the Department, which creates unfounded negative perceptions of farmers within the farming community. The Department denies these allegations.⁷

Agri NC also objects to a local NGO, AnCRA, advising farm dwellers not to leave farms when they are told to go by a landowner, and of interfering where arrangements and agreements concerning accommodation have been reached between farmers and farm dwellers.⁸

AnCRA indicated that they have not had much success when they have spoken with Agri NC about land restitution cases. Furthermore, AnCRA states that they were informed that Agri NC did not want to work with them.⁹ AnCRA have thus attempted to deal with farmers through the offices of the MEC. They were, however, informed that when the MEC approaches Agri NC about an eviction case they are told that the farmer is not a member of the union. When the MEC requests the membership list, the union refuses.¹⁰

"They show very little sympathy or empathy when there is violence towards farm workers. Yet, they want the farming community to show empathy when a farmer is assaulted. It has to be a two-way street. There has to be mutual respect."¹¹

Agri NC state that they are more than willing to discuss problems concerning the farming community. However, this does not ap-

pear to be happening. The underlying obstacles that prevent interaction are the great distances that must be covered and the unavailability of funds for the various role-players to attend the meetings.¹²

"We are a little bit frustrated because many of the plans and submissions we make to State Departments, as you will see in our submissions, are not met with equal enthusiasm. ... We can prove that we are struggling for the past four, five years to get a working plan on the road with our government and with the provincial government. We are a little frustrated."¹³

Finally, despite a willingness to discuss matters, there does not appear to be an appreciation from Agri NC that the conditions which many farm dwellers live in are constitutionally intolerable. Instead of acknowledging this reality, Agri NC makes comparisons with other poor and marginalised groups in South Africa.

"But I have a problem. Because I do not think poverty is actually a farm thing. It is a rural thing and then we will have to include the shanties and the very poor people, because I think there is the impoverished and the disadvantaged people and what can we do to get them out of these shacks and to get them into jobs again"¹⁴

The Departments of Agriculture and Housing did not arrive at the hearings, citing that they had been given insufficient notice to attend.

Alcoholism in farming communities
Although no statistics were placed before the Inquiry about the effects and impact of alcoholism, all role-players agreed that it is a pervasive social problem, which creates an enormous challenge for the Northern Cape. It contributes to the crime rate, with many

perpetrators of violent crime being under the influence of alcohol when committing crimes.

As with the Western Cape, there may be isolated incidences of the “dop system” being used in the province. The Inquiry did receive one report of farm workers being paid R60, 00 per week and a litre of wine.¹⁵ No police station could provide information on the prevalence of the tot system.¹⁶ However, new systems of alcohol distribution have replaced the tot system, such as the selling of alcohol at farm shops.¹⁷ The NCSAPS reports that there has been a proliferation of shebeens and liquor outlets which contributes to making alcohol more freely available to people. Alcohol continues to be provided in ways other than actual payment for labour with alcohol.¹⁸

“We have some farm workers that are still being paid that way. They talk about getting a pap sack at the end of the month along with their meat sack. In other cases, the farmer owns bottle stores as well as a store that sells groceries and farm workers are allowed to get alcohol on credit during the month. We see this as problematic and something that should be stopped.”¹⁹

The abuse of alcohol is a major problem in the province and the NCSAPS states that all crimes, especially murders and assaults, involve the use of liquor.²⁰ A priest who testified before the Inquiry made a telling statement regarding the burial of murder victims:

“At times I will bury people who have been killed by a relative.”²¹

Alcohol is often involved in family violence incidents.²² It contributes towards unstable relationships and the break-up of families. In some instances parents neglect their children by not caring for and feeding them.²³ The high incidence of child abuse, rape and inde-

cent assault in the province is attributed to alcohol abuse as one of the underlying factors.²⁴

The NCSAPS have concentrated their crime prevention operations on illegal shebeens in order to address the issue. The Catholic Church has embarked on establishing an organisation called the Pioneer Association whose members abstain from alcohol. They report, however, that it is very difficult to recruit members.²⁵

“The abuse of alcohol is very evident in our communities and maybe because of the level of education of our people, but also the conditions in which they find themselves. My experience as a priest is that our people are mostly down and out and you will find that the workers on the farms, they do not get a just wage and you will find that most of them then will abuse alcohol and when people abuse alcohol you have crime and you have rape and you have all other things which are not in line with who we are or who we try to be.”²⁶

Land rights

The great geographical distances that must be covered in the Northern Cape impact seriously on farm dwellers’ ability to access information about their land rights. There is also a clear lack of access to legal representation in the province for farm dwellers who wish to enforce their rights. The lack of mechanisms to address this situation leaves some civil society role-players with the perception that ESTA fails to secure tenure for farm dwellers and that the only solution is to ensure the transfer of land ownership.

Tenure security

As in other provinces, there are no reliable statistics on the number of evictions that occur in the Northern Cape. The extent of the problem can only be assessed from information that was placed before the Inquiry.

AnCRA stated that they have experienced an increase in evictions in recent years. During January to June 2002, the organisation assisted in 103 eviction-related matters of which 39 were, in their opinion, illegal evictions under ESTA. Certain areas, such as Keimoes, were mentioned as being worse than others.²⁷ Ironically, in the Northern Cape there is yet to be a single successful prosecution of a landowner who has illegally evicted a farm dweller.²⁸ The NCSAPS have one s23 ESTA criminal eviction case that is currently with the NCDPP office for a decision on whether to proceed with a prosecution.²⁹

A local town councillor gave evidence that the local municipalities have inquiries on a daily basis from people about the availability of land because they have been told to leave the farm.³⁰ The NCDLA reports that 53 eviction cases, both legal and illegal, have been brought to their attention since the office was established in 1995.³¹

Reports were received that verbal and physical assaults are used to intimidate farm dwellers into leaving the farm. When they refuse to leave, commandos are used to intimidate the family into leaving.³² When farm workers become elderly and can no longer work, they are told to leave the farm.³³

"We even had a case in the Keimoes area where a farm dweller had her house bulldozed to the ground with all her possessions inside, because she refused to be illegally evicted from the farm. She is still living in a tent with her children. The prosecutor initially refused to prosecute the case, but we were able to get the case reinstated at the court and are awaiting judgment in the case. By the way, this case was reported to the Department of Land Affairs with no action that we are aware of. The other thing worth mentioning in this case is that the farmer who bulldozed the house is African. Some people have the impression that we only go after White farmers. That is not the case, we go after anyone violating the human rights of the farming community."³⁴

"We have had cases that have come in where a man of 64, I think, came to us and in fact, had been working for 44 years on the farm. He said the farmer told him it is time for him to go because he is no longer useful."³⁵

Illegal evictions and the NCSAPS

Despite many illegal evictions being reported to the Inquiry it would appear that landowners are not being criminally prosecuted in terms of s23 of ESTA.³⁶ NGOs argue that this results in a situation where a farmer's contravention of the law happens with impunity, as there are no consequences.³⁷ In their experience, police are sometimes unwilling to open cases against farmers, or local prosecutors refuse to prosecute farmers.³⁸

The NCSAPS believes that the underlying reason for the lack of cases is that the farming community does not report eviction cases to the police. However, the NCSAPS informed the Inquiry that they only began training their members on ESTA in 2002. Training in ESTA has not been budgeted for, nor does it form part of the formal police training. To date, most of the station commissioners have been trained in the Act and at least 2 senior members in each police station have been trained. In July 2002, during the provincial ESTA launch, the NCSAPS agreed to train more members. To date only 30% of NCSAPS members have been trained. In future, training will include sessions on intercultural communication. The NCSAPS report that there is one criminal case of eviction that has been reported in Postmasburg. However, the decision on whether to prosecute is still with the NCDPP.³⁹ In another case referred to in the Inquiry, the key witness died before the matter proceeded to trial.⁴⁰

The NCDPP places the responsibility for a lack of prosecutions on the NCSAPS and argue that if cases are not brought to their attention, then there is nothing that they can do.⁴¹

The lack of prosecutions is also attributed to members of the farming communities not always being aware of their rights; the subservient position of farm dwellers which is not conducive for criminal proceedings against a farm owner;⁴² and a lack of transformation of the criminal justice system.⁴³

Burial rights on farms

The NCDLA reports that despite the amendments to the burial rights provisions of ESTA, there are still problems. Farmers do not want people buried on their land.⁴⁴ A priest who stated that people have problems in arranging burial sites on farms for their dead, confirmed these types of problems to the Inquiry.⁴⁵ Agri NC informed the Inquiry that they advise their members to assist their workers in arranging to have their dead buried off the farm.⁴⁶

Lack of access to assistance to enforce rights

There is a lack of access to legal representation in the Northern Cape when farm dwellers are faced with evictions. This has led to some decisions being reversed by the Land Claims Court on review in terms of ESTA.⁴⁷

To address this situation, AnCRA has entered into a Co-operation Agreement with the Rural Legal Trust (RLT) and the Legal Aid Board (LAB). Attorneys are made available to farm dwellers threatened with eviction. AnCRA argues that eviction cases are protracted and complicated matters that call for dedicated and specialised lawyers.⁴⁸

"Access to justice is not something you buy."⁴⁹

"With all these human rights violations against farm dwellers taking place on a regular basis, one thing that has become blatantly obvious is the lack of legal representation for farm dwellers. When your rights are being abused and this includes even the most basic right to 'sufficient food, water and adequate housing' and your monthly pay amounts to no more than a bag of mielie meal and R90,00, how then is one to pay for a lawyer to represent you against these constitutional and human rights violations? There is no way and you remain caught in this cycle of poverty and abuse."⁵⁰

Response from Agri NC

Since 1999, Agri NC has provided training courses to its members on labour and ESTA matters. Approximately 1 300 farmers have completed these courses.⁵¹ They also have newsletters to keep members abreast of the law and developments. They do not train farm dwellers directly.

Agri NC has a clear dislike for the provisions of ESTA and informed the Inquiry of its intentions to launch a constitutional challenge to the Act.⁵² Agri NC was transparent about the advice that they give to their members in order to 'minimise' the effects of ESTA.

This includes:

- ❑ Advising farmers not to employ farm workers nor to provide accommodation where it is unnecessary for the person to remain on the farm.
- ❑ To employ a minimum number of permanent workers on the farm by moving to mechanisation of work on farms and using seasonal workers, where necessary, to supplement their worker requirements.
- ❑ Not allowing seasonal workers to live permanently on the farm.
- ❑ Discouraging farmers from upgrading their farm workers' houses in order that the provisions of ESTA, which

provide for alternative suitable accommodation by the courts in certain eviction disputes, will be minimised due to the inferior standard of the workers' houses.

- ❑ Ensuring that unused housing is used for other purposes in order that no claims can be made to this housing.
- ❑ Assisting farm workers to bury their dead off the farm.
- ❑ Having clear farm rules where farm workers are informed of their rights and duties in terms of ESTA.⁵³

This advice is a clear attempt at either circumventing the provisions of ESTA, or reducing its impact. The union claims that a negative unintended consequence of ESTA is that it inhibits job creation.⁵⁴

The ESTA Network Forum

An ESTA Network Forum was launched on 1 June 2002 in the province. The local farmers' union was invited, but failed to attend.⁵⁵ It is through this Forum and the involvement of various role-players that the NCSAPS is receiving training in ESTA.⁵⁶

Land redistribution and land restitution
Land redistribution and restitution continues at a slow pace in the province. Since 1995, the NCDLA has invested approximately R100 million in land redistribution.⁵⁷ There are two share equity schemes in the province.⁵⁸ The San people have received 25 000 hectares of land in restitution, and are negotiating with the Kalahari Gemsbok Park for a further 50 000 hectares for business, economic and tourism purposes.⁵⁹

Specific provincial challenges to land redistribution include insufficient suitable land being available for redistribution⁶⁰ and access to water presenting challenges to emerging farmers.⁶¹

There are only 16 000 hectares of State agricultural land in the province, and the Department of Agriculture is responsible for redis-

tributing this land.⁶² To date, none of this State land has been redistributed. However, it is intended that this land will be redistributed by the end of the 2003 financial year.⁶³ No land has been expropriated in the province for land reform purposes.

Labour laws

It is difficult to assess the labour rights situation in respect of farm workers in this province as the provincial Department of Labour (NCDOL) failed to arrive at the Public Hearings and present evidence despite confirming that they would attend. The Inquiry did not receive any written submissions from the Department in response to the invitation that was sent.⁶⁴ SAAPAWU attended the hearings, and along with other role-players provided an insight into the labour rights situations of farm workers in the province. The Inquiry was informed of instances of non-compliance with labour laws, poor working conditions and the practice of child labour. The plight of seasonal labourers was also highlighted.

Agri NC reported that since 1999, 1 300 farmers in the province have received training in labour law and related matters.⁶⁵ The union does this through newsletters, providing farmers with pro forma labour documents such as pay time schedules, specimen contracts and manuals for labour management.⁶⁶

Non-compliance with labour laws

Civil society role-players report that they receive many complaints that indicate a lack of compliance with the labour laws. These complaints included unfair dismissals, long work hours, no pay for overtime, no pay for overtime on Sundays, having to work for another farmer without signing a written consent, mistreatment by the foreman,⁶⁷ deductions made without the written consent or agreement of the employee⁶⁸ and no sick pay.⁶⁹

Complaints were also received of workers not being registered for UIF or Workers' Compensation. Some of these employees do

not have ID documents and thus the employer cannot register them.⁷⁰ The human rights consequences of this would include being denied access to various social security grants, including the right to vote, amongst others. AnCRA also reported that farm workers are discouraged from participating in political activities and joining political parties.⁷¹ Some workers are not allowed to wear t-shirts that have messages or logos of political parties.⁷² It was also reported that some employers discourage the enjoyment of trade union and organisational rights of workers. There is resistance from employers to allow workers to join unions.⁷³

The Inquiry was informed of non-compliance with Occupational Health and Safety legislation. Some workers are not provided with adequate protective clothing when working with poisonous chemicals, such as Dormax.⁷⁴ The Department of Health has conducted training at a local level with farm workers on occupational safety.⁷⁵ Agri NC was surprised to be informed of these cases of non-compliance as the control and use of poisonous substances is tightly controlled in terms of legislation and there are hefty fines for non-compliance.

Since the beginning of 2001, the NCDPP has received 16 cases for prosecution in terms of labour legislation, none of which emanate from the farming communities.⁷⁶

CCMA inaccessible

Reports indicate that some illiterate farm workers, who are aware of the CCMA and its procedures, are denied the opportunity to utilise the procedures as officials fail to assist them to complete the necessary forms.⁷⁷

"Many times just handing a farm worker a form to fill in so that it can be submitted to the CCMA is as good as not helping at all because the person cannot fill out the form."⁷⁸

Child labour

Various reports from NGOs and a local councillor confirm that child labour does occur in the province, particularly during the harvest season. The underlying reason for this is that due to poverty, parents allow their children to work to supplement the family income.⁷⁹

The NCSAPS have not had any complaints of child labour reported to them.⁸⁰ The NCDPP confirm that they too are not aware of any criminal investigations, police dockets, or representations being made in respect of child labour.⁸¹ Pamphlets of the BCEA, which contains information on the law relating to child labour, are distributed at all police stations in the province.⁸²

Agri NC has a clear policy stating that child labour will not be tolerated. This policy has been communicated to all members.⁸³ They advise employers to request ID documents from all prospective workers.⁸⁴ They also suggested to members that in the employment contract they must state that the children of adult workers may not work on the farm.⁸⁵

Poor conditions of employment

Although no specific amounts were provided to the Inquiry, NGOs asserted that farm worker wages are low in the province. A practice on farms is that of farmers running a farm shop where workers can purchase food. Employees who make use of these shops can sometimes owe the farmer more than the wages earned.⁸⁶

A report was received of an employer failing to adhere to the recommendation of a medical doctor, that a worker be assigned light duties. Instead, the worker was told to either continue with his regular duties or leave.⁸⁷ Reports were also received of mistreatment of workers by supervisors.⁸⁸

Seasonal workers

During the export harvest season in December and January labour issues concerning seasonal workers become most prevalent.⁸⁹ Many of the issues that arise are due to part verbal and part written contracts of employment being entered into. Workers are left with uncertain expectations and claim that promises, for example payment of a bonus, are made and not upheld. Seasonal workers are mostly Setswana speaking and their contracts are in Afrikaans, which they do not understand. If they question the contract they are told "gaan na Mandela en soek vir jou ander blyplek daar." (Go to Mandela and look for another place to stay there).⁹⁰

Workers are transported into the area by employers and must complete the contract before they are taken back to their homes.⁹¹ They are therefore in a vulnerable position where their bargaining powers to negotiate their terms and conditions of employment are reduced. Many complain about the amounts that are deducted from their wages for accommodation and electricity. Others complain of the overcrowded living conditions in which they are placed. This situation invariably leads to a number of social problems.⁹²

The use of seasonal labour has led to a number of perceptions developing in the province. These perceptions, which need to be addressed, include notions that local workers do not want to work and that locals do not want people of other race groups in the area. In some instances local workers do not wish to work due to the atrocious conditions on the farms.⁹³

NCSAPS has placed Setswana-speaking members in certain police stations to deal with the language and cultural differences of the mainly Setswana-speaking seasonal workers.⁹⁴ Police report that most criminal cases laid by seasonal workers are later withdrawn because the worker is not available to testify when the matter comes to trial.⁹⁵

Agri NC advises their members to make use of seasonal labourers as one mechanism for avoiding the provisions of ESTA. The union assured the Inquiry that applicable labour laws are adhered to in respect of seasonal workers. They are of the view that seasonal workers are well looked after and that they are happy because they return to work for the same employer each year. It was also stated that seasonal work is the sole source of employment for many workers.⁹⁶

Safety and security

Safety and security issues that were highlighted in this province included violence perpetrated against farm workers by farm owners, violence against women and vicious dog attacks.

The NCSAPS report that their members have received human rights training. Since 1999, 2 015 police officers and 245 reservists have been trained. There are 48 workshops planned for the year 2002/2003 that will train 656 police members. Thus far, 90% of police members have received human rights training.⁹⁷

Violent crime perpetrated against farm dwellers

Civil society role-players claim that there are many physical and verbal assaults perpetrated against farm dwellers by farm owners. This situation creates an atmosphere where people feel intimidated and are therefore willing to comply with the wishes of the farm owner. For example, many farm workers will voluntarily leave a farm when told to go, due to the intimidating atmosphere.⁹⁸

The NCDPP does not keep statistics of human rights violations in farming communities and were not in a position to supply the Inquiry with such information. They did, however, go through their records and produce a number of cases that came from farming communities. The NCDPP pointed out that, in their opinion, many cases go unreported in rural areas due to 'negotiations' with the

farmer, or seasonal workers become unavailable at a later stage to testify.⁹⁹ There have been some successful prosecutions of farm owners for assault and murder of farm dwellers.

"The incident took place on the 5th March 1999 at a wine farm in the Keimoes District. The accused apparently assaulted the complainant, a worker on the farm, by hitting him repeatedly with a sjambok over his entire body. The reason being that the accused thought that the complainant had stabbed the tractor's tire with a knife. The complainant vehemently denied this allegation. Both were tried for assault with the intent to inflict grievous bodily harm. They were found guilty and sentenced to a fine or imprisonment."¹⁰⁰

"The deceased and the state witness sold potatoes on behalf of the accused, but subsequently used the money generated by the sale for themselves. Upon discovering this, the accused (father and son) assaulted the deceased within a short period of time on two different occasions at his home to such an extent that the deceased could barely stand on his feet. The state witness was also assaulted and tied to the bars of the bakkie in which the accused were travelling. The deceased was also later thrown on the bakkie.

Both were then transported to a remote area where they were tied by means of chains and locks to a tree. They were tied to each other by means of wire and rags were placed in both their mouths. They were assaulted once again and left tied to the tree throughout the night. Both accused arrived again at the scene during the night to ensure that they did not escape. At that stage, the deceased had already died because of the injuries sustained during the assault. Members of the SAPS eventually released them.

Both accused were sentenced to imprisonment."¹⁰¹

Further examples of crimes perpetrated by farm owners against farm workers included a farmer who had assaulted a woman with a

spade. The accused was sentenced to a period of imprisonment that was suspended for 5 years.¹⁰² In addition, a farm owner was prosecuted for allegedly assaulting a farm worker for reporting drunk to work.¹⁰³

The NCDPP highlighted some of the challenges they have encountered in prosecuting these cases that result in matters being delayed. These have included:

- ❑ Witnesses not being found, resulting in the matter being struck from the court roll.
- ❑ Witnesses having to be traced.
- ❑ Having the case reinstated on the court roll.
- ❑ Withdrawal of charges.
- ❑ Representations being made by defense attorneys on behalf of the accused.
- ❑ Defense attorneys withdrawing.

This can result in a straightforward matter taking up to five years to finalise.¹⁰⁴

The NCSAPS were only aware of one dog attack case in the province, in Jan Kempdorp, where a woman was mauled to death.¹⁰⁵ AnCRA, however, is aware of at least five recent dog attacks in the province. In these incidents, three farm dwellers have died due to the injuries that were sustained and two farm dwellers were injured.¹⁰⁶

Reports were received of commandos being used by farmers to police their farm dwellers and conducting raids on homes. These searches are done without any search warrant.

"Often in the middle of the night farmers, along with commandos, come pounding at doors demanding to be let in. If one refuses to open the door, they threaten to break down the door and once the door is open you are beaten for not opening immediately."¹⁰⁷

NCSAPS respond that it has never been brought to their attention that farmers use commandos to do police work.¹⁰⁸ Police do use commandos in their crime prevention operations for non-police functions such as patrols and cordoning off areas.¹⁰⁹ Where commandos do work on their own, they do not form part of any police operation.¹¹⁰

The NCSAPS state that they are under-resourced. In some areas, there is only one member in the community centre and one in the patrol van. Other police stations cannot function 24 hours a day. There are approximately 280 vehicles in the province that have been boarded and not replaced.¹¹¹ Hence, there is a reliance on reservists, who are, according to the NCSAPS, doing a very good job.¹¹² There are community policing forums in every police station in the Northern Cape.¹¹³

Violence against women

AnCRA informed the Inquiry about the plight of women victims of violent crime. Some women are in coercive sexual relationships that are difficult to escape due to their poor socio-economic conditions. Women who are raped do not always report the crime as the distance to the police station is too far.¹¹⁴ Those who do report that they have been raped, in many cases, are met with an insensitive response from the NCSAPS. There are allegations of women being ridiculed and discouraged by the police to lay charges.¹¹⁵

While civil society role-players criticised the service provided to rape victims by the NCSAPS, the police informed the Inquiry that 50% of police officers have received training in domestic violence. To the best of the NCSAPS's availability regarding available human resources, they try to deploy a female member on every shift or at least place a female member on standby to take statements from women.¹¹⁶

Since 1998, the NCDPP has embarked on social responsibility training by convening meetings with communities. Areas where serious violations take place are targeted for these training sessions.¹¹⁷ The NCDPP also issue pamphlets regarding certain crimes e.g. domestic violence. Despite these efforts, the NCSAPS are unaware of any domestic violence cases being reported from the farming communities. The NCDPP informed the Inquiry of one unsuccessful prosecution for rape.¹¹⁸

Farm attacks

The Inquiry did not receive specific statistics on the number of farm attacks that have occurred in the province. However, it is clearly a matter of great concern to commercial farmers. Agri NC is of the view that the underlying cause of these attacks is hate speech.¹¹⁹ The Rural Protection Plan was reported as being operational in the province¹²⁰ and Agri NC participates in the community policing forums.¹²¹

Economic and social rights

Although a number of issues affecting economic and social rights were brought to the attention of the Inquiry, most information concentrated on land, labour and safety and security issues. This overshadowed a more in-depth analysis of the human rights situation pertaining to socio-economic rights.

Housing

Reports were received of inadequate housing being provided to some farm dwellers with people living in overcrowded and unhealthy living circumstances. In some instances houses leak, there is no electricity or electric cables have exposed wires and some farm dwellers do not have access to clean water and/or sanitation facilities.¹²²

A local councillor informed the Inquiry that there is very little State land available for housing. This places enormous pressure on municipalities to respond to the housing needs in the province.¹²³

Agri NC supports the creation of agri-villages to house farm workers. However, they point out that due to the great geographical distances it would be impractical in certain areas.¹²⁴

It was unfortunate that the NCDoH did not attend the Inquiry. The Department was given insufficient notice to prepare and be available to attend the Public Hearings.¹²⁵

Health care

Access to health care is frustrated by the great distances that farm dwellers must travel in order to access medical care. This results in cases of people not having health care as they do not have the financial means to travel, or are unable to obtain transport to visit their local health care provider.¹²⁶ A local councillor reported that municipalities have difficulties in accessing farms. Emergency vehicles such as ambulances have, in some cases, been denied access to farms due to the gates being locked.¹²⁷

In order to address health issues, REIP (an NGO) is setting up health centres at rural schools where children are taught about health issues and the importance of a healthy, clean environment.¹²⁸ AnCRA has conducted some HIV/AIDS awareness training in the province. However they report that there is a great need for further training.¹²⁹

Food and water

Farm dwellers live in poverty on farms and many children from farming communities in the province suffer from stunted growth due to the lack of adequate nutritious food.¹³⁰ Various reports indicated that some farm dwellers do not have access to clean water.¹³¹

Social security

Issues pertaining to social security were not brought to the Inquiry's attention directly. However, in relation to registration for UIF, it was reported that some farm workers do not have ID documents. This would prevent them from accessing grants for which they or their children may be eligible.

Education

Many schools in the rural areas are situated on farm and church property. The NCDoE has experienced problems in getting farm owners to enter into agreements in terms of s14 of the Schools Act which allows farmers to be paid for the use of the school structure. This has not been the case where schools are situated on church land.¹³² The underlying reason to which the Department attributes this difficulty is that landowners view the agreements as an opportunity to make money.¹³³ The Department can only pay rental based on calculations per learner attending the school, whereas farm owners wish to charge rental based on the size of the buildings and the property.¹³⁴

State funding to farm schools is based on broad principles of redress and equity. The poorer the school, the more money it receives.¹³⁵ More than 90% of farm schools in the province fall within the poorest range of schools. The financial allocation to these schools is above the provincial average of R328,00 per learner, and is between R450,00 and R500,00 per learner.¹³⁶

There is no separate policy for farm schools. The Department arranges campaigns to deal with issues such as human resources, labour relations and infrastructure.¹³⁷

The NCDoE has recently created a rural task team that will oversee the merger, closure and transformation of farm schools. The task team will also be responsible for overseeing the conclusion of section 14 agreements with farm owners and will assist with developing models to further improve provisioning at farm and rural schools.¹³⁸

Obstacles experienced by farm children in accessing education include:

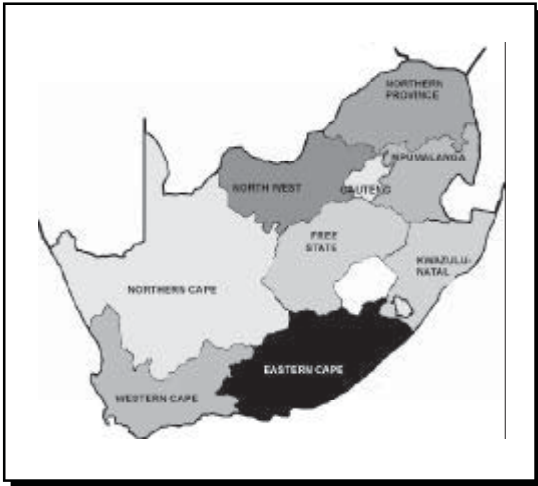
- Overcrowded schools.¹³⁹
- Lack of adequate infrastructure.
- Teachers not being able to speak and understand Setswana.¹⁴⁰

- ❑ A lack of libraries and basic teaching materials.¹⁴¹
- ❑ Some farms have no schools and children must travel to another farm or to a town in order to attend school. Children travel anywhere between 6 and 35 kilometres to attend school.¹⁴²
- ❑ Farm schools generally go up to Grade 7. Thereafter children must travel great distances to attend school in the nearest town.

There are no special educational services for children with disabilities on farms in the province.¹⁴³ The Department responds to this by stating that there is a move towards an inclusive education system where children with special needs will not be confined to special needs schools.¹⁴⁴

The Department says that it is very difficult to offer adult basic education, due to the seasonal nature of work on the farms.¹⁴⁵ NGOs report that they are not aware of any facilities for ABET on farms.¹⁴⁶ They assert that this lack of education on ABET leads to a lack of understanding amongst farm workers of their rights.¹⁴⁷ It also contributes to the vicious cycle of farm dwellers remaining farm workers and being unable to have the choice to improve their qualifications to create a better life for themselves and their families.¹⁴⁸

CHAPTER 8



Eastern Cape

Introduction

The Eastern Cape Inquiry was dominated by labour and tenancy issues. The underlying causes attributed to these issues were that farm workers and farm dwellers remain relatively unaware and uneducated about their rights and that government departments fail to act positively to assist them to realise these rights. There was a dire lack of information forthcoming on other socio-economic rights.

The Eastern Cape is geographically the second-largest province and covers 13,9% of the total land surface in South Africa. The province is the third-largest in South Africa in terms of population. Approximately 63,4% of the population of 6,6 million live in rural areas.¹

The relationships between the role-players

The province is characterised by a lack of interaction and co-operation between government departments responsible for realising and enforcing the human rights of farming communities. Many government departments do not acknowledge their role in promoting human rights in farming communities. The standard response to many issues raised with the ECSAPS and ECDPP was that the matter had not been brought to their attention or that they were unaware of the prob-

lem. Due to this failure by government to even be aware of the issues, there appears to be a corresponding lack of processes to inform people about their rights and to take positive steps to enforce rights. In this environment, the impact that NGOs and other civil society role-players have is limited.

Many farm workers remain dependent on farmers, not only for employment, but also for delivering of other socio-economic rights services. While government policies and laws do not appear to have particularly affected farming communities, farm owners remain largely unthreatened. Therefore they appear to be amiable and supportive of change.

There is a clear lack of information on the human rights situation in farming communities in the province. The province therefore poses a challenge in truly assessing the situation. It is clear from the contradictory information provided to the Inquiry, that a complete picture of what happens within farming communities was not forthcoming.

"The necessary conditions and environment for the implementation and enforcement of progressive legislation is not present in the rural areas and on farms."²

"The majority of farmers are not doing what Agri Eastern Cape have said."³

"The DLA have found it increasingly difficult to ensure that there is a continued co-operation between land reform practitioners and other stakeholders like the Department of Justice, the Department of Safety and Security through the South African Police Services and to a much lesser degree the Department of Agriculture and Department of Labour."⁴

"In terms of having Black managers – I don't think so. I think that will be a dream or a vision for the next generation to come."⁵

Agri EC, like Agris in other provinces, would prefer to concentrate on the good that is being done rather than confronting the human rights violations that do occur.⁶ Disciplinary procedures contained in their Code of Conduct remain unknown to other role-players⁷ and have never been used against any farmer in the province.⁸ While some NGOs report that farmers respond positively⁹ when they are approached about problems, others report that farmers remain negative towards them.¹⁰ Some NGOs complain that they are tired of engaging farmers as things never seem to change for the better.¹¹

Land rights

Limited information is available from the Eastern Cape on the nature and frequency of violations that occur regarding land and tenure rights. This is largely attributable to a lack of knowledge of the law by farm dwellers and the resultant lack of enforcement by relevant role-players. From the information received, it would appear that there are instances of non-compliance with the ESTA. The ECDLA appears to be one of the more active government departments in the province. They state that they are hampered in their work by other government departments that fail to do their work. Agri EC did not comment much about the ESTA. Rather, they commented more generally on the land reform process.

Tenure security

Reported instances of violations of ESTA were similar to those received in many of the other provinces. Issues concerning ESTA rights that were raised as specific issues in this province related to the effects of the sale of land for the creation of game parks and the use of consultants to draw up contracts of residence which violate the provisions of ESTA.

ECARP, a non-profit organisation working in the Makana region, reported to the Inquiry that they currently have 25 ESTA cases. The majority of these cases relate to unfair evictions, with most beginning as labour disputes, followed by farmers refusing grazing rights to farm dwellers and the refusal by landowners to allow farm dwellers to receive visitors and family members.¹² Other violations of ESTA include demanding that workers pay rent for poor and less than satisfactory housing, killing of occupiers' livestock and pets, not granting access to grazing and ploughing land and compelling occupiers to reduce livestock.¹³

Reports were also received of women being evicted from the farm along with their husbands, despite being legally entitled to reside on the farm in their own right.¹⁴ In some cases, when children are old enough to be self-supporting, they are told to leave the farm.¹⁵

Sale of land to game parks and national parks
There is a recent trend in the Eastern Cape to sell farmland for conversion into game parks and national parks. The ECDLA noted that the effect of the sale of land for the establishment of game parks has a negative effect on farm dwellers who are often dismissed and evicted from the land, or forced to relocate due to a change in the operational requirements of the establishment.¹⁶ Farm workers are not always accommodated when these sales take place and are often forced to vacate the farm and relocate to other areas. Some CBOs were of the opinion that the sale of land often included missed oppor-

tunities for the workers, whose skills were not upgraded in order that they may continue to be employed on the game farm.¹⁷

Agri EC told the Inquiry that they advise their members that when land subject to the ESTA is sold, the change in land ownership does not affect the rights and duties enjoyed by the farm dwellers.¹⁸ Where it has come to Agri EC's attention that former farm workers have been evicted subsequent to the sale of land to the EC Parks Board, they have intervened. In these cases, they report that the situation has been rectified.¹⁹

Those workers who remain on the game farms with secure employment often do so at the price of relinquishing some of the rights in land which they enjoyed as farm workers. An example provided to the Inquiry was of farm workers giving up their grazing rights for their livestock in order to remain employed.²⁰

There was a call for this issue of sale of land to parks to be more closely monitored to establish what effect this has on government's ability to deliver in terms of land reform and the impact that it has on job creation and skills transfer in the province.²¹ NGOs say that at present it would appear that business and monetary objectives appear to be prioritised over rights of workers.²²

Contracts drawn up by consultants

In the Eastern Cape, consultants are used to draw up contracts of residence for farm workers. NGOs report that it is clear from a reading of the contracts that many of these consultants are unaware of the purpose and provisions of ESTA. The contracts contain numerous violations of ESTA.²³ An example would be a clause stating that the worker has available alternative accommodation upon expiration of the contract. This clause would assist a farm owner to bypass the provisions of ESTA that require that suitable alternative accommodation must be considered by the court prior to the granting of an eviction order.²⁴

Effectiveness of ESTA

From the information received, the ESTA has clearly had little impact upon farming communities in the Eastern Cape. Information on the number of evictions that are taking place within the province remains scant, with different role players providing different experiences. Whilst ECARP reported that they were dealing with 25 cases of eviction in the Makana region, which has 47 farms, the Paterson Advice Office reported having 19 eviction cases (17 related to one incident of eviction) from an area of 50 farms.²⁵ The ANC Constituency Office in Humansdorp has 3 eviction cases.²⁶ During the period January to June 2002, the ECDLA opened 63 ESTA files, dealt with 182 threatened evictions, received reports of 7 actual unlawful evictions and 2 lawful evictions, received 2 s9 (2)(d) notices, received 5 requests for s9 (3) reports to be drafted and convened 126 ESTA-related mediation meetings.²⁷

There appears to be no co-ordinated method of monitoring the exact number of evictions that are occurring in the province. This may imply that either few evictions are occurring in the province or alternatively that there is a lack of reporting of eviction cases due to farm dwellers being failed by the lack of access to assistance to enforce their rights by key government role-players. Government role-players placed the underlying cause for the lack of enforcement of ESTA rights on farm dwellers' lack of knowledge and ignorance of ESTA.

Compared to other provinces, Agri EC was relatively silent regarding ESTA and their attitude towards it. The only problem mentioned by Agri EC pertained to long-term occupiers. They are concerned that the legislation places duties on them to provide housing for long-term occupiers that would mean that they would have to build housing on the farm.²⁸ It is unclear whether there is an acceptance of the ESTA or a lack of having to engage with the legislation on a day-to-day basis. NGOs report that the attitude they encounter on the ground from farmers

is that the ESTA is not constitutional and places an unfair burden on farmers to comply with the responsibilities expected of them in terms of the Act.²⁹

No information was received of any formal inter-departmental grouping or ESTA working group comprising various role-players to address the issue of the lack of knowledge of ESTA in the province and the consequent non-implementation of the law. NGOs did report that they held meetings with the ECDLA and ECDOL to discuss problems with the implementation of ESTA.³⁰

This lack of effectiveness of the ESTA leaves NGOs with the perception that the ESTA favours landowners and makes it easier for them to evict farm dwellers.

"It seems to us that it (the ESTA) is favouring the landowner rather than the occupier. Because the fact is that the eviction may happen and the person may be left out there in the street. However, it will take a long time to bring solutions. I think something must be done so that the Act should work properly and concretely. Because now, ... it seems that it favours the side of the landowner."³¹

Reports were received of resistance from farmers to allow NGOs onto farms to educate farm dwellers about their rights in terms of land and labour legislation. NGOs are labelled as problematic by some farm owners who perceive them as creating problems in the relationship between owner and dwellers. This contributes further to the under-reporting of ESTA cases as farm dwellers are not informed of their rights.³²

According to NGOs, this general lack of knowledge about ESTA and the general failure to enforce the legislation retards the land reform process in South Africa .

"... (W)e are at present involved in crisis fighting and dispute resolution with respect to ESTA, as opposed to charting a long-term developmental strategy for landless farm workers and dwellers."³³

Underlying causes

Lack of access to legal assistance to enforce rights

The ECDLA reports that there is a lack of access to legal assistance for farm dwellers faced with eviction. This has been exacerbated since 1 November 1999 when the Legal Aid Board (LAB) drastically reduced the rates it pays to attorneys for civil matters, which would include ESTA matters. Many attorneys are not prepared to work for LAB tariffs. There has been a decrease in the number of attorneys willing to represent farm dwellers in ESTA matters. This can result in farm dwellers not being represented in court and a failure of justice occurring as farm dwellers are often illiterate and ill-equipped to represent themselves in an intricate and complicated civil eviction matter. Some attorneys who accept LAB instructions hand these cases to their candidate attorneys who do not always have the necessary expertise to deal with the complicated land legislation, which has become a specialised area of law.³⁴

This lack of legal support for farm dwellers faced with eviction is problematic. The ECDLA highlighted it as one of the underlying causes for the slow delivery of land reform. The ECDLA has noted a trend in the province that when landowners became aware that there was no access to legal representation for farm dwellers there was a marked decline in adherence to the law.³⁵

The Paterson Advice Office reported that they obtain legal assistance for farm dwellers from a number of sources such as the Rhodes University Legal Aid Clinic, the Legal Aid Board through its Justice Centres and a few progressive lawyers whose services they call upon from time to time when needed.³⁶

However, the advice offices statistics provided to the Inquiry indicate that they do not handle many cases that require the services of a lawyer.³⁷

Magistrates in the province have consistently failed to apply the requirements of ESTA and continue to issue default judgments when an occupier/labour tenant fails to be present in court. In addition, magistrates have failed to ensure that the automatic review provisions are complied with.³⁸ This can result in a failure of justice for farm workers who are evicted via court proceedings. The automatic review provisions contained in ESTA³⁹ provide protection against eviction where a magistrate's court has erred in granting an eviction order. However, where the farm dweller is evicted before the automatic review process is completed, there is a lack of enforcement mechanisms to ensure that orders of the Land Claims Court are given effect.⁴⁰ There is no enforcement mechanism to persuade a sheriff to return workers to the land, if the magistrate's court decision is overturned by the LCC.⁴¹

SAPS collusion and assistance with evictions

There appears to be little knowledge of the ESTA by police, particularly at the station level. ECDLA reported that the ECSAPS are assisting farmers to harass people they wish to evict from their land⁴². It was reported that at a station commissioner level the attitude is that the farmer is entitled to decide who may stay on the farm. The ECSAPS are thus accused of failing to assist farm workers threatened with eviction by visiting the scene where there have been breaches of the ESTA.⁴³

Where the deputy sheriff requests assistance to carry out an eviction, the ECSAPS stated that it is their duty to assist.⁴⁴ This is despite provisions of the ESTA that state specifically that the police may only accompany the sheriff where it is specifically ordered by the court. This statement by the ECSAPS indicates a lack of knowledge of the provisions of the ESTA.

Directorate of Public Prosecutions (DPP)

The ECDLA state that where farm owners perpetrate unlawful evictions, the ECDPP fails to prosecute those responsible.⁴⁵ In response to this allegation, the ECDPP from Bisho stated that they have not had any unlawful eviction cases and are unaware that this is a problem.⁴⁶

"If we can be aware of these problems we can immediately do something, like making people aware that if they are evicted unlawfully, they are supposed to report that, maybe to the police or to our office. But unfortunately, this aspect has never been brought to our attention."⁴⁷

CCMA commissioners

The ECDLA has also encountered problems with CCMA commissioners in conciliation settlement agreement terms, where the farm worker has to vacate the farm. This circumvents the provisions of the ESTA where the farm worker is not fully aware of his/her ESTA rights, and this consequently denies the person the protection and enjoyment of these rights.⁴⁸ The ECDLA are thus of the view that there is a need for training of CCMA officials and commissioners on the links between labour and land laws.⁴⁹

Response from provincial DLA

The ECDLA has 4 district offices situated in Port Elizabeth, Umtata, East London and Queenstown. Each office has an ESTA Unit with one officer responsible for dealing with ESTA matters.⁵⁰ The purpose of these district offices is to localise land reform.⁵¹ The ECDLA has 30 field staff to cover the entire province. They have 250 land reform projects currently in progress and to date have completed 75 projects.⁵² Obstacles in rolling out the land reform projects and implementation of land legislation in the province included not having a communications officer. The ECDLA have applied to their national department for a communications officer but have not obtained the necessary approval to fill the post.⁵³

The ECDLA informed the Inquiry that other relevant government departments were not carrying out their duties and that their officials find themselves doing the work of other departments, including handling labour issues.⁵⁴

The ECDLA report that they have been busy with training and advocacy activities. These include providing training to NGOs CBOs, municipal councillors, other government departments and constituency offices in land reform so that they understand what the government policies are.⁵⁵ During the period January to June 2002, 45 information workshops were conducted by the ECDLA.⁵⁶ In addition, the ECDLA participate in radio stations talk shows to communicate land rights to people.⁵⁷

The ECDLA has held ESTA training workshops for the ECSAPS. They admit that the wrong audience, namely senior police officials and not officials at station level who interact with the legislation on a regular basis, attended the trainings. Thus, there is still a problem with implementation, as junior officials need to be targeted for training. The ECDLA intend having follow-up workshops.⁵⁸

Despite all of these training activities, some civil society role-players reported that they were not aware of any ECDLA campaign to make people aware of their ESTA rights.⁵⁹ Others stated that they were aware of one training workshop held in 2000.⁶⁰

Labour tenants

In response to an instruction from Parliament for all provincial DLAs to have a labour tenant claims drive, the ECDLA received 173 labour tenant claims during its labour tenant registration campaign. The Department intends appointing a service provider to process the claims.⁶¹ However, at this stage it is already estimated that there are only thirteen potentially valid claims.⁶²

Land redistribution

All parties, except government, appear to agree that land reform in the province must be accelerated. The ECDLA is spending 98% of its annual budget of R40M and does not foresee the work going any faster as the budget is decreasing on a yearly basis.⁶³ The ECDLA reports that the Department of Agriculture and Environmental Affairs hampers their land reform projects. They do not receive sufficient resources and personnel to carry out the necessary viability studies and after-care aspects of land reform projects.⁶⁴

The willing buyer-willing seller principle has been blamed in some quarters for impeding land reform as landowners refuse to sell their land and tend to over-inflate the land price. This does not appear to be the case in the Eastern Cape. According to the ECDLA, there is currently more land available to purchase on the willing buyer-willing seller principle in the province than the department can cope with.⁶⁵ The ECDLA also says that land prices are not artificially inflated in the province. Market-related prices are paid for land and the ECDLA consider that they are well-informed as to what these prices are.⁶⁶

NGOs, however, still maintain that the willing buyer-willing seller principle has little incentive for the average commercial White farmer to meaningfully engage in addressing the socio-economic results of the past.⁶⁷

Agri EC stated that they support the willing buyer-willing seller principle.⁶⁸ However, they say that State land should first be used for land reform before government invokes the willing buyer-willing seller principle.⁶⁹ Agri EC works with the ECDLA to assist emerging Black farmers in the province and 10% of their current membership comprises Black farmers.⁷⁰ Agri EC is of the view that there is a great need for land for housing in the province.⁷¹

Labour laws

As with the land reform laws, lack of knowledge and non-implementation of and adherence to labour laws was cited as the major problem in the Eastern Cape by many role-players. Complaints concerning provident fund payments on behalf of farm workers and criticisms of labour consultants were specific complaints received.

There were calls for both employers and employees to be educated and trained about labour laws.⁷² NGOs were of the opinion that employers were not aware of the provisions of the BCEA⁷³ and that in their experience, 90% of employers appeared unaware of labour legislation that governed the workplace.⁷⁴ Agri EC painted a very different picture to the Inquiry. They reported that they have compiled a countrywide manual for labour relations, which includes good practices, disciplinary processes and grievance procedures, and that farmers at a grassroots level are using this manual.⁷⁵ Since 1999, 1 767 of their members in the Eastern Cape had attended the NORAD training courses which includes labour law modules.⁷⁶ Through Agri SA, they have assisted and co-drafted the Vision for Labour to which they are committed.⁷⁷ There is practical information on Agri SA's website for their members, which includes standard contracts and summaries of labour and tenure laws. Members are also kept up to date on legislation through newsletters, circulars, information brochures and presentations at regional and annual conferences and agricultural associations.⁷⁸

From the information received, it is difficult to ascertain the extent of labour rights violations, as there are few statistics, and if those that do exist are conflicting. During the period January to May 2002, the ECDOL received 181 complaints concerning non-compliance with labour laws from farm workers. The total number of complaints received by the Department for this period was 1 880, of which 1 001 came from small businesses; 538 from security workers and 104 from cleaning workers.⁷⁹

The Paterson Advice Centre, which assists farm workers on approximately 50 farms in their area, reported dealing with an average of 56 labour matters per year.⁸⁰ ECARP is currently dealing with 10 labour cases.⁸¹ At the opposite end of the scale, the Humansdorp constituency office reported that they receive an average of 5 complaints of unfair dismissal each day.⁸²

Non-compliance with labour laws

The ECDOL and NGOs reported similar violations of the BCEA. For example, some employers do not provide written particulars of employment to workers. Where this is adhered to, the written particulars are not always explained to illiterate workers. In addition, changes to working conditions are not always explained to the worker. This results in uncertainty for farm workers about their terms and conditions of employment.

Reports were also received of farm workers not being paid for sick leave. Often this is because the farm worker is unable to visit a doctor and obtain a sick certificate due to a lack of transport. In some instances this can even result in the dismissal of the worker on grounds of absconding. The ECDOL has found that some employers do not comply with leave provisions.

Other violations included deduction of monies from wages without the consent of the worker, failing to register employees for UIF and COIDA, failure to inform relevant authorities of the closure of businesses or change of trading name, accidents and injuries at work not being reported and failing to provide workers with protective clothing.⁸³

Unfair dismissals also occur in the sector as this example indicates:

"He was paying me a sum of R600,00 per month but R300,00 was always deducted from my wages. I inquired about this situation and he told me that the deductions were for rental, electricity, water and wood. I objected saying to him that we had no water and electricity that he supplied us with, and for the wood we hewed it ourselves from the bushes. He then said the money is being paid to the Government for unemployment purposes. We also queried this saying we do not believe it because it was too much for the government to deduct. He said he would not do otherwise as he was merely obeying the law. We could not agree on this matter and he dismissed me in October 2000 because of our disagreement."⁸⁴

Women are often regarded as casual labour and receive fewer employment benefits than their male counterparts. Some employers fail to register women employees in terms of UIF and OHS legislation.⁸⁵

"I got injured at work whilst peeling potatoes. One of my right-hand fingers had to be amputated. When I approached the farmer and his wife for them to assist me in my problem, they told me I was just a casual labourer so I cannot benefit from the Compensation Fund."⁸⁶

Reports were also received of workers being verbally insulted by employers in the workplace.⁸⁷

Provident fund

In this province, many complaints were received from farm workers about deductions from their wages for a provident fund. These workers did not understand what the deductions were for. The complaints also indicated that farm workers experienced difficulties accessing the money that was due to them.

Agri EC provided some clarity on the issue. A provident fund for farm workers was established in the province on 1 December 1995, with family cover, life cover and retirement provisions for farm workers. The board of trustees is made up equally of farmers and farm workers.⁸⁸ In the opinion of Agri EC, farm workers and farmers are well-informed about the fund. Members get their necessary certificates and when payment of funds is due, these are made speedily within 24 hours to the recipient.⁸⁹

Labour consultants

Complaints were received about the manner in which some labour consultants deal with labour relations. These consultants draw up employment contracts for the farm workers. The contracts are presented to the workers in English and are often not translated in a satisfactory manner. Workers often feel that they are forced into signing these contracts.⁹⁰ In order to persuade the workers to sign these contracts they are told that the government made a law that said they must sign or that Mandela has ordered people to sign the contracts.⁹¹

Child labour

The ECDOL confirmed that there are incidences of child labour occurring in the province.⁹² One of the underlying causes attributed to this phenomenon is the piecework system of payment to workers. It encourages parents to take their children to work with them to assist, in order that they earn more money for the family.

The Eastern Cape has CLIG (Child Labour Intersectoral Group) structures in all 15 labour centres.⁹³ These structures are reported to be operating with all relevant stakeholders such as social workers, the child protection unit and the Departments of Welfare and Justice.⁹⁴ The purpose of the CLIG is to combat child labour and to conduct awareness training on the issue. All inspectors in the province are trained in child labour legislation.⁹⁵

Obstacles that stand in the way of the ECDoL clamping down on child labour include having to obtain permission and adhere to the safety protocols in order to gain access to farms.⁹⁶ There are also hidden forms of child labour occurring in homes or in the fields, which are not always easy for inspectors to access and uncover.⁹⁷ Bisho DPP report that they are yet to prosecute any child labour cases.⁹⁸

Agri EC states that they are “not in favour of child labour” and if any perpetrators are identified, they must be prosecuted.⁹⁹

Non-unionisation of farm workers

A major underlying cause cited by NGOs and the ECDoL for workers being unaware of their labour rights is their non-unionisation.¹⁰⁰ Obstacles to the unionisation of farm workers include a lack of access to farms due to the security protocols and the lack of transport available in rural areas for farm workers to attend meetings. Reports were received that where farm workers do join unions, employers make their lives unbearable and remove privileges.¹⁰¹

The ECDoL cites this lack of unionisation as the reason why the Department has difficulties in accessing farm workers and extending their services to these workers. In order to address this issue the Department is holding discussions with COSATU in the Eastern Cape.¹⁰²

Agri EC says that: “(F) arm workers don’t tend to want or have the ability to organise themselves into unions”.¹⁰³ They state that they would have no problem with the unionisation of their labour force¹⁰⁴ and that one of their affiliates, the South African Mohair Growers’ Association, has recently assisted in establishing the very first farm workers association.¹⁰⁵

However, the experience of role-players on the ground who wish to educate farm workers about their rights does not reflect this official statement.

“Some farmers have blindly told us that they would never allow unions, or union members on their farms. At some point when we wanted to visit a farm... the farmer told us that we have germs and that his chickens would die if any person from ECARP goes to the farm. So that is the treatment, the attitude that the farmers have towards the organisation and towards the union.”¹⁰⁶

Lack of service delivery by ECDoL

Civil society role-players agreed that there is a lack of service delivery by the ECDoL in the rural areas. Reports indicate that the Department rarely conducts inspections in rural areas. When the Department is requested to conduct an inspection, much effort and pressurising is needed.¹⁰⁷

Reasons given by the ECDoL for their lack of service delivery include the vast distances to be travelled between farms, the non-availability of employers during working hours for inspections to be carried out, the non-availability of workers during working hours for inspections and farms being difficult to access due to the security situation in the province.¹⁰⁸

The ECDoL informed the Inquiry that their inspectors encounter problems stemming from employers’ negative perceptions of them. The inspectors are perceived as biased in favour of employees. They are sometimes refused access to premises or obtaining access is made difficult, despite carrying inspector identification cards.¹⁰⁹ Unlike other provinces, neither the ECDoL nor ECSAPS mentioned anything about co-operation between their officials and inspectors gaining access to farms.

Within this environment the ECDoL is aware of the many obstacles that stand in the way of farm employees asserting their rights. These include employees not being mobile in order to lodge complaints at labour centres, the high rates of illiteracy amongst work-

ers and the fear of job loss by workers, should they report their employer to the Department.¹¹⁰

The ECDoL has also openly admitted to Agri EC that they do not have the capacity to actively monitor and enforce labour laws on farms. Agri EC stated at the hearings:

"... We have in actual fact advised them to visit farms and to pass on knowledge rather than prosecute, but they admit that they don't have the personnel to visit all the farms"¹¹¹

NGOs that have had meetings with individual farmers to explain the provisions of the BCEA and non-compliance in the workplace report that little improvement takes place.¹¹² In their view, this voluntary method of engaging farmers does not really help, as nothing seems to change.¹¹³

Whereas ECDLA officials indicated that they were in need of training on labour laws due to the links between labour and tenure issues, the ECDoL made no similar mention regarding land laws.¹¹⁴ NGOs reported that they had had meetings with the ECDoL about their Skills Development Plan but it appeared that they had no plans at this stage.¹¹⁵

In response to these challenges and criticisms, the ECDoL reported that they have conducted awareness campaigns around the BCEA in which they specifically targeted the farming community.¹¹⁶ They reported that they intended conducting an inspection blitz on farms in November 2002. The Department conducted advocacy programmes and they participate in radio shows.¹¹⁷ ECDoL attends Agri EC meetings and shares labour problems with them. There is a positive relationship between the parties. ECDoL is piloting inter-organisational desks to address problems in rural areas such as the contracts of employment that are drawn up by consultants.¹¹⁸

Safety and security

Whilst in other provinces, the SAPS readily admit that there are some problems relating to service delivery in rural areas, in the Eastern Cape the ECSAPS approach to any possible inadequacies in their service delivery is defensive. Rather than assisting the SAHRC in identifying broad trends, they responded by saying that they were presented with vague allegations that bordered on an insult to the integrity of the SAPS.¹¹⁹ The ECSAPS refused to comment on any general trend and instead stated that they would only respond to individual cases in which details were provided.

"It is impossible to comment on these allegations as no mention was made with regard to which cases at which police stations."¹²⁰

When asked about some of the general trends reported to the SAHRC about the ECSAPS, they stated that they did not know about them. They were thus unaware of any of their members not informing complainants of the outcomes of their cases, of SAPS officials assisting farmers to evict farm dwellers¹²¹ or that reservists cause any problems.¹²² Unlike other provinces that are experiencing problems with the implementation of the Rural Protection Plan, the ECSAPS report that it is in place and is working well.¹²³ The Plan is available in English, Afrikaans and Xhosa and operatives who work on it explain it to all people. In response to the fact that some NGOs had never heard of the RPP, the ECSAPS official replied:

"However, we are going to make a follow-up, I will take it down to our managers on the ground to go deeper into the rural communities to make more effort in order to have this Rural Protection Plan understood by all men and women on the ground."¹²⁴

The most common crimes committed in rural areas, other than stock theft are murder, rapes and assaults on employees. The ECSAPS knew of only one incident where vicious dogs had attacked a farm worker.¹²⁵ According to the ECSAPS the only obstacle that prevents them from reacting as quickly as they should is a shortage of motor vehicles.¹²⁶

The ECSAPS report that transformation has occurred in the Service in the province, with more balanced representivity in senior management than in middle management. In many rural areas that are historically White, they place Black officials in top management positions.¹²⁷ They report that farmers are getting used to Black police officers in these areas.¹²⁸ The police at station level receive human rights training from the ECSAPS human resources department.

Violence perpetrated against farm dwellers

During 2001, 13 cases of assault allegedly perpetrated by farmers against farm dwellers were reported to the ECSAPS. Of these 13 cases, 5 cases are still under investigation, 2 cases were withdrawn by the complainant, 1 case was withdrawn by the prosecutor, in 1 case the DPP refused to prosecute, in 2 cases admission of guilt fines of R100,00 and R200,00 were paid respectively and it is unclear what became of 2 cases.¹²⁹ The underlying cause that triggered most of these assaults appeared to be work-related incidents where the victim challenged the farmer or failed to carry out a task. The DPP in Bisho reported that they have not had any assault cases where farmers are the alleged perpetrators against farm workers.¹³⁰

The experience of the constituency office in Humansdorp of the handling of these cases by the ECSAPS is that the farm worker is usually referred to their office without the police providing the farm worker with an opportunity to lay a complaint. Only when the constituency office intervenes by contacting

a senior official at the police station, are these cases attended to in the correct manner.¹³¹ NGOs experience of community policing forums where these types of issues could be addressed, is that they are not well-represented, especially by farm workers. The community does not seem to be interested in becoming involved in such structures and they have very few members.¹³²

Farm attacks

The ECSAPS reported a decline in violent crime on farms and smallholdings in the Eastern Cape for the period January to July 2002. Whereas in 2001 for the same period there were 31 case dockets opened, in the 2002 period 23 case dockets were opened.¹³³ In both periods 5 victims were murdered. Agri EC, like other provincial Agris, have a Safety and Security sub-committee that meets regularly with the SANDF and the SAPS¹³⁴ to coordinate the Rural Protection Plan. They attribute the decline in violent crime on farms to the implementation of the Plan. Agri EC states that the barrier to further implementation of the RPP is the lack of funding.¹³⁵ NGOs, on the other hand, remain unaware and consequently uninvolved in the RPP.¹³⁶

The ECSAPS are of the opinion that violent crime committed against farm owners is criminally related. The motive for the crime is for these criminals to obtain weapons.¹³⁷ However, in some cases, it may be an ex-employee who perpetrates the murder against the farm owner.¹³⁸ The CIAC Eastern Cape compiled a report entitled "Attacks on the Farming Community: Eastern Cape Perspective 1994 – 2001". A number of interesting observations were made in the Report:

- ❑ Violent crimes on farms cannot be divorced from general crime trends.
- ❑ The underlying motive for these crimes is self-enrichment and greed.¹³⁹
- ❑ A political motivation for the attacks could not be proved.¹⁴⁰
- ❑ Farmers are soft targets as they are relatively unprepared for attacks.

- ❑ Farmers are known to have cash and weapons on the premises.
- ❑ Areas where there are high numbers of attacks, such as Port Elizabeth, are on the fringe of informal settlements.¹⁴¹
- ❑ The area where most of this violent crime takes place is East London.¹⁴²
- ❑ From 1994 to 2001, 74 people have been killed in farm attacks in the Eastern Cape.¹⁴³

Agri EC states that they are concerned about violent crime on farms. They believe that hate speech leads to these farm attacks. The organisation tries to keep this type of crime out of the media, as in their experience, this has triggered further incidences.¹⁴⁴

Farmers are also concerned about land invasions or the threat of land invasions. However, none have been reported in the province to date.¹⁴⁵

Stock theft

Stock theft is a major crime problem in farming communities in the Eastern Cape. It pervades all farming areas, including traditional non-market-oriented farming on communal land in the former homelands and commercial farming.¹⁴⁶ The province carries the largest quantity of livestock in the country (23.1%) and 25,8% of all livestock cases emanate from this province.¹⁴⁷ Although the estimated value of these cases reported to the ECSAPS is R37M, studies indicate that cases are under-reported and that the impact upon the province is far greater. Studies also indicate that 90% of the burden of stock theft cases is carried by stockowners in traditional communal farming areas.¹⁴⁸ Stock theft is high on farms close to towns or other settlements.¹⁴⁹

The ECSAPS report that stock theft is the main complaint from farming communities.¹⁵⁰ They have a stock theft unit that is reactive to complaints.¹⁵¹ The ECDPP state that it is a very difficult crime to prosecute as

the stock may be slaughtered before they are recovered and witnesses are difficult to find.¹⁵²

Economic and social rights

There was a serious lack of information provided to the Inquiry about the status of socio-economic rights in farming communities in the Eastern Cape.

Housing

During 1994 – 1999, the Paterson Advice Centre reported that it has referred approximately 3 000 housing matters to local government.¹⁵³ Vague reports were received of farm workers' housing being in an unsatisfactory condition. Agri EC reported that through the Rural Foundation, a project had been established to upgrade farm workers' houses¹⁵⁴ and that through their initiatives they had the Eskom subsidy for electricity for farm workers' houses increased from R1 000,00 to R2 600,00 per house per year.¹⁵⁵

The ECD Housing informed the Inquiry that housing is a national competency and that functionally much has been taken over by local authorities.¹⁵⁶ As this response was not anticipated and these role-players were not invited to participate in the public hearings there was little information placed before the Inquiry about access to housing for farm dwellers.

The ECDLA repeated what had been heard in other provinces, namely that agri-villages can be a practical solution to providing access to housing for farm dwellers where farms are situated close to urban areas. Agri-villages are not a practical option in remote areas where employees have to travel great distances to their places of employment. Where on-site developments are a more feasible option, there are difficulties in granting subsidies where the farm worker does not obtain ownership of the land upon which the house is situated.¹⁵⁷

Health care

Those organisations and persons who provided information to the Inquiry did not directly address the issue of access to health. Agri EC mentioned to the Inquiry that it is no use phoning an ambulance to transport a farm worker to the hospital. The farmer must take the farm worker to the hospital.¹⁵⁸ This statement contradicts an earlier statement by Agri EC, that they have advised their members not to give lifts or transport to any of their workers following an incident in which a farmer was sued after a motor vehicle accident in which a worker was injured. The Road Accident Fund (RAF) paid out a limited claim of R25 000,00 and the farmer was sued for the balance of the damages suffered. Agri EC advises their members to only transport workers who have signed an indemnity.¹⁵⁹

Food and water

No direct information was placed before the Inquiry regarding the right of access to food. Reports were received of farm dwellers having to use dirty water from a river that is also used by livestock and that in some instances no toilets are available for farm dwellers who must use the bush for their ablutions.¹⁶⁰ During 1994 – 1999, the Paterson Advice Centre referred approximately 3 000 water matters to local government.¹⁶¹

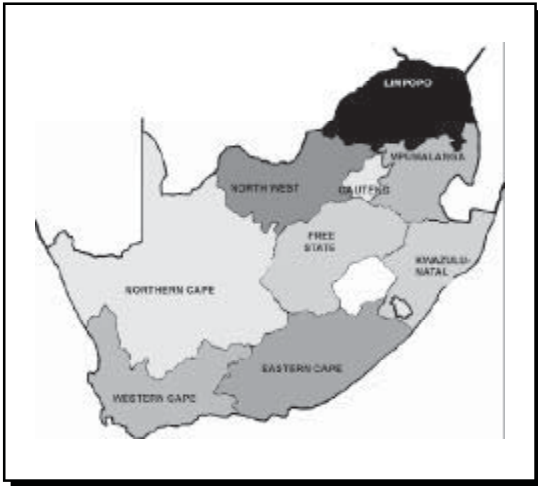
Social security

Reports were received of social security grants being stopped with no explanation forthcoming from government.¹⁶² During the period 1994 – 1999, the Paterson Advice Centre referred approximately 500 social security grant matters to the Department of Welfare.¹⁶³ The Humansdorp constituency office reported that they encourage employers to take their workers to the closest Home Affairs office to get IDs in order that farm dwellers may apply for social security grants to which they may be entitled.¹⁶⁴

Education

Isolated reports were received regarding access to education. These included farm schools being closed by farmers because the ECDoE failed to pay the services,¹⁶⁵ a farmer closing the road that children used to go to school,¹⁶⁶ and children having to walk distances of between 5 and 14 kilometres each day in order to attend school.¹⁶⁷

CHAPTER 9



Limpopo

Introduction

Limpopo Province was characterised by farm dwellers and farmers' general lack of knowledge of relevant legislation protecting their rights. Where rights have been violated, farming communities have little confidence in the relevant State authorities to intervene in a decisive manner. On the other hand, State role-players are clearly trying to address the human rights situation despite formidable challenges. A picture was created at the Inquiry of this province being the backwater of South Africa, where there has been little transformation and where racism is still rife. Violence perpetrated against farm dwellers was reported as being a common occurrence. Limpopo is the poorest province in the country and the prevalence of cheap foreign labour has had a significant impact in disempowering local farm workers further.

Obtaining a true picture of human rights conditions in farming communities in this province is hampered by access to farms being limited, being strictly controlled or denied.

The Limpopo Province is geographically the fourth-largest province in South Africa and covers 10,2% of the total land surface of South Africa. Approximately 89% of the population of 5,3 million live in rural areas.²

It is situated in the far north of the country and is bordered by Zimbabwe, Botswana and Mozambique in the north and the North West Province, Gauteng and Mpumalanga in the south.

The relationships between the role-players in this province there are few civil society role-players available to assist farm dwellers. Communities appear to be reliant on the Nkuzi Development Association (Nkuzi), to assist farm dwellers. There does not appear to be relationships between advice offices and farmers' unions or the necessary exchange of information and interaction between civil society role-players and government.³ NGOs operate within a relatively hostile environment when interacting with farmers.

"We still have a problem with the attitude of the farm owners towards our organisation and the government of the day, but some farm owners are co-operating, but it is a small percentage."⁴ Messina Legal Advice Centre

According to NGOs there are few police officials who assist farm dwellers.⁵ This is attributed to the fact that White people who have an outdated mindset, hold many top

leadership positions in the province. Many top police officials, SANDF officials and magistrates are still White.⁶ Government officials lack information on the importance of human rights and how this interfaces with their work.

"Individuals need to transform, within whatever structure, to align with the Constitution of the country."⁷ LSAPS

Farmer's unions are defensive when discussing the human rights situation in the province. They make appeals not to generalise⁸ and state that actions that amount to human rights abuses are not condoned.⁹ They point out, however, that they run businesses and that they are not there to serve the social needs of the farming communities.¹⁰ Where human rights abuses are brought to their attention, the union is willing to intervene by talking and persuading the perpetrator to change the situation.¹¹

"The majority, if not all of us, are people who fundamentally respect human rights and we have respect for human dignity."¹² Agri South Africa in Limpopo

Farm dwellers are generally not educated about their human rights. If they are aware of their rights, they are not confident that State officials will do anything to assist them to enforce or realise their rights. NGOs claim that the State shows a systematic bias against farm dwellers in favour of farm owners who are still largely White by excluding farm dwellers from many important processes, such as land reform and safety and security processes that affect their lives.¹³

"Farm workers do not have rights and therefore we just left and settled here"¹⁴ Limpopo farm worker

Land rights

There is a great need in the province to address landlessness, with many poor rural people wanting a piece of land where they can live and keep their cattle. The land reform process continues at a slow pace. It must be noted that Limpopo includes three former homelands and legislation to bring about land reform in these areas is yet to be passed. NGOs question whether any farm dwellers have directly benefited from land reform projects in the province.¹⁵

Tenure continues to be insecure with ESTA not being implemented effectively and evictions continuing. There were indications that police officials collude with farmers in the eviction of farm dwellers. The creation of game farms has contributed to increasing the eviction rate as people are removed from farms to make way for game parks.

Tenure security

ESTA remains largely ignored in the province. Illegal evictions are common and where these cases are reported to the police and go to the criminal courts, they result in acquittals.¹⁶ People are being evicted but the law is not being implemented.¹⁷

"As soon as there is a problem between farmer and farm workers, the farmer evicts the farm worker."¹⁸

The extent of the eviction rate can be understood from Nkuzi, whose Farm Residents Support Programme handled 252 land rights cases during 2000. The nature of the eviction cases handled include workers being forced to leave the farm when they get to pensionable age, new farm owners evicting the workers, farm workers being evicted due to ill health and disability, evictions due to the creation of game parks and evictions caused by disputes over the owning of livestock.¹⁹ The nature of the human rights violations that accompanied these land rights

disputes included cutting the water and electricity supply, locking the farm gates to prevent access, retrenchments and in some instances, violent assaults and even murder.²⁰

The most frequent complaints received by the Limpopo Department of Land Affairs (LDLA) include farmers forcing or coercing farm workers to sign documents that compromise their rights, restrictive measures being placed on farm workers with regard to access to water and obtaining firewood, threatened evictions, actual evictions including the demolition of buildings, problems with new landowners who are not fully apprised of their obligations in terms of the ESTA and evictions in order to avoid persons becoming long-term occupiers.²¹

Creation of game farms in the province

The Inquiry was informed of many cases where farm dwellers who were born on the farm and whose parents had been born on the land, were forced to vacate the land due to the establishment of game parks in the province. Many of these people know no other place as home and face an uncertain future.

NGOs criticised government for not adequately providing for or consulting with these people when planning and authorising the establishment of the game parks.²²

"I was born on the farm in 1949. The farm was sold in 2001. The new owner told me to put up a fence with electricity. I am afraid that my children will be in danger because of the wild animals and the electric fence. What worries me, the landowner keeps telling me to go away, he even removed my fence and promised to bring his lawyers."²³

"I was born in 1951 at the farm. My parents were staying at the same farm. My parents were buried on the farm. The ownership of the farm changed in 1999. The new landowner was to change the business from farming to gaming. This new owner re-employed some of the workers. Myself, together with some others were not. On 3 January 2001, the owner evicted us. He destroyed our property and houses and we were never compensated for the damages."²⁴

"My younger brother had been staying at the farm since he was born in 1957. Sometime in July 2000 he was forcefully removed by the Parks' people."²⁵

"I have been working at that farm since 1961. In February 2001, we were asked to move, as the Park people want to make a park. We are still on the farm. The Park people come every day."²⁶

Those who remain on the land do so in changed circumstances. Often they are told to get rid of their livestock, as keeping of livestock is not compatible with game farming. The threat of attack by wild animals is used in some instances as a mechanism to force people to leave the land.

"Children often have to walk through areas where there are dangerous animals and we find these animals are being used as a threat against people where fences are taken down and people are told that if they insist on staying there, they will have to live with wild animals."²⁷

This displacement of people also affects the communities at other levels. For example, small traders that trade in rural communities reported that the establishment of game parks has had a negative impact on their livelihoods.²⁸

The elderly

The Inquiry received many complaints of the elderly being evicted from farms. In many of these cases, these people would be potential long-term occupiers in terms of the ESTA and thereby receive special protection from eviction. Reasons given for these evictions included that the person was too old to work productively, the farm changing ownership and the establishment of game farms in which there is a need for less and differently skilled labour.

Thus the Inquiry was informed of the 65-year-old person who had lived and worked on the farm for 35 years and was told to leave,²⁹ the 67-year-old person who was illegally evicted after living and working on a farm for 31 years,³⁰ the 71-year-old person who was born on the farm and is being threatened with eviction due to his grandson being dismissed by the landowner³¹ and the 80-year-old person who was moved from a 5-roomed house to a 1-roomed abode without due consultation.³²

Burial rights and the right to visit and attend graves

A recurring issue brought to the attention of the Inquiry in this province was the refusal by landowners to allow farm dwellers to be buried on their land. The underlying cause of this problem appears to be the perception of landowners that if they allow farm workers to be buried on their land then the family will be entitled to make a claim of ownership to the land. The LDLA reports that in their experience, when they intervene in such matters, and address these perceptions and fears, that there is usually a positive outcome.³³

"The deceased stayed in the mortuary for a long time while the family and the farmer discussed the burial. The owner of the mortuary even took out the corpse and put it in front of the farmer's gate."³⁴

The LDLA reported that they received complaints from family members of deceased persons who were denied access to visit the grave of a relative.³⁵ NGOs stated that it is often impractical to intervene in such cases as farm owners refuse to answer telephone calls and reply to letters.³⁶ These delays result in the opportunity to visit the graves being prevented, as the visitors needed to return to their homes.

The Messina Advice Office informed the Inquiry that they are dealing with a number of matters concerning the burial rights of farm workers. Other related matters include farmers ploughing the land where the relatives are buried³⁷ and new landowners destroying graves.³⁸ Illegal foreign workers are possibly afforded the least dignity, should they die while in South Africa. Often there is no attempt to contact the family and they are buried anonymously in paupers' graves.³⁹

Many role-players are unaware of the recent legislative amendments to the ESTA that affords greater protection of the burial rights of farm workers.⁴⁰ NGOs stated that they are unaware of the LDLA embarking on any campaigns to educate people about these amendments.

"We work throughout the province with farm workers and other structures. We are not aware of any leaflet, radio programme or other information programme or other campaign or workshop to inform workers of the amendments to ESTA and so we do not believe that there has been any effort to publicise that."⁴¹

LSAPS collusion and assistance with evictions

Reports were received of the LSAPS visiting farms and assisting with evicting farm dwellers where there was no court order to do so,⁴² and of police attending at farms and threatening to arrest farm dwellers because they refused to leave the farm.⁴³

“... (t)he SAPS were sent by him. They told me that they are giving me only a week to leave. I was told that I would be prosecuted if I do not leave by the end of the week. I did the wise thing and left the place.”⁴⁴

Where farm dwellers are aware of their rights and approach the police to lay a charge of illegal eviction,⁴⁵ reports indicate that they are often met with an unco-operative attitude and the police claim to have no knowledge of such provisions in the law.⁴⁶

Lack of access to assistance to enforce rights
Communities in this province rely on the Nkuzi Development Association, which assists farm dwellers when threatened with eviction.⁴⁷

Farm dwellers complained that they do not get assistance quickly from the LDLA and that they do not know what is happening to their matters. Where the LDLA does assist, the farm dwellers sometimes do not fully understand what is happening. The resulting perceptions by farm dwellers are that the LDLA is doing little to assist them. In some instances, farm dwellers believe that the LDLA acts in the interest of the farm owner.⁴⁸

Information was received of illegal prosecutions being reported to the LSAPS. However, when these cases reach the criminal courts for prosecution, they are often withdrawn.

The LDLA admits that law enforcement officials and magistrates have received either no training or minimal training on the ESTA legislation.⁴⁹ The Department says that law enforcement officials are reluctant to implement ESTA.⁵⁰

Response from LDLA

The LDLA has its main offices in Polokwane and a further six satellite offices are situated in each district municipality. The LDLA officials visit these offices every Tuesday and

Wednesday. The Department has provided some training to local officials on the relevant land legislation in order that the communities may obtain assistance when the LDLA officials are absent.⁵¹ The LDLA consider 3 of the 6 offices to be ESTA hot spots, namely the Waterberg, Capricorn and Venda districts. The LDLA report that they work with district and local municipalities, Nkuzi Development Trust, Rural Legal Trust, law enforcement officials and other government departments when carrying out their work.⁵²

To date, the LDLA has dealt with 35 ESTA cases.⁵³ There have been no section 4 ESTA settlement programmes in the province.⁵⁴

Like other provinces, the LDLA held a labour tenants land claims registration drive at the instruction of the Land Affairs Portfolio Committee of the National Assembly of Parliament. Through this campaign, the Department received approximately 400 claims. Already it is estimated that many of these are not valid claims in terms of the Labour Tenants legislation and that only about 40 of these are potentially valid claims.

Challenges to implementing ESTA in the province

The LDLA cited a number of challenges that it faces in carrying out its work in the province:

- ❑ The Department does not have adequate human resources to deal with cases from farm dwellers.
- ❑ There is a lack of co-operation from farmers, who are sometimes unwilling to communicate when an issue arises and the Department approaches them. Farm dwellers' access to the Department is hampered by the lack of infrastructure in the province and the long distances that they must travel in order to obtain assistance from the Department or other relevant role-players.

- ❑ Farm dwellers themselves have a lack of information and knowledge about their land rights. This is further exacerbated by the fact that they do not have access to telephones, nor do they have the necessary literacy skills to access the telephone numbers to contact the LDLA when there is a problem and emergency intervention is needed in order to avert an eviction.
- ❑ The LSAPS have proved to be lacking in effectiveness, either due to limited knowledge of the tenure legislation, or an unwillingness to assist farm dwellers to protect and enforce their rights.
- ❑ Access to farms is controlled by the Rural Protection Plan and this inhibits access to LDLA officials and hampers them from carrying out their duties.⁵⁵

Land Reform Forums

A Land Reform Forum was established to assist the LDLA in implementing land reform and tenure legislation. This Forum is to be established at district level to assist with monitoring and intervening in farm dweller and labour tenant disputes. The LDLA intends training heads of district police stations, local municipality officials tasked with dealing with land and agricultural matters, NGOs and local magistrates. This group will become a co-ordinated team that will respond to land conflicts.⁵⁶

Land redistribution

Land redistribution continues at a slow pace in the province. The LDLA reported that, to date, there have been no share equity schemes.⁵⁷ In their experience, most of the farmers who are interested in entering share equity schemes are those whose farms are not doing well.⁵⁸ Land has not been expropriated for the purposes of redistribution. At this stage, the LDLA reports that they are still concentrating on redistributing State-owned land. Simultaneously, they are encour-

aging and requesting private landowners to make their land available.⁵⁹ It is interesting that expropriation has occurred in the province for the purposes of creating game farms. These expropriations have been criticised for failing to provide for the needs of the farm workers as no new jobs were created for them.⁶⁰ There are also no programmes in place for these farm workers to be retrained and reskilled in order that they may work elsewhere.⁶¹ The LDLA did not report having encountered any major problems with the willing buyer-willing seller principle when purchasing land from farmers for purposes of redistribution.⁶²

The experience of the LDLA in implementing LRAD redistribution projects is that often the people who enter the project with a R20 000,00 grant and make their contribution in kind are successful, as they do not begin with any debt. In some cases, people's income has risen from R350,00 to R800,00 per month.⁶³ It has been identified as a necessity that people who apply for and obtain land must have training that does not require them to be able to read and write.⁶⁴

Land restitution

The land restitution process in the province is slow. Since 1994 11 land claims involving 22 000 hectares of land have been settled. Of these 11 claims, 7 were settled during 2002.⁶⁵ None of the communities have physically gone back to their land⁶⁶ and all claims, except one, were settled without having to use the land claims court process.⁶⁷ Despite the fact that there are approximately 6 000 outstanding land claims in the province, the LDLA reports that it is satisfied with the pace of restitution.⁶⁸ The Department is confident that the process will improve with the appointment of a new regional Land Claims Commissioner.

The delays in the land restitution process in the province are attributed to the claims not being validated due to limited human resources.⁶⁹

This problem has been addressed by the appointment of three private service providers who have been contracted by the LDLA to assist with the validation of land claims.⁷⁰ It is anticipated that this process will be completed by September 2002.⁷¹

Labour laws

A general lack of knowledge by farm workers and farmers of labour legislation and the rights contained therein, were cited as being the major challenge to the realisation of labour rights in this province. Widespread illiteracy and a lack of organisation of farm workers compound the challenge. A characteristic of this province was the effect that cheap and illegal foreign workers have had on the agricultural labour market.

It is difficult to ascertain the extent of denial of labour rights due to a lack of information and research on the issue. However, the Messina Advice Office reports that they handle 60 to 70 complaints from farm workers each fortnight.⁷² The Nkuzi Farm Residents Support Programme handled 103 labour-related cases during 2000.⁷³

Non-compliance with labour laws

Examples of non-compliance with labour laws that were brought to the Inquiry's attention included arbitrary dismissals, dismissals for joining labour unions, long working hours, child labour, deportation of immigrants from Zimbabwe, assaults occurring within the workplace, non-payment for work on weekends, working without pay, non-payment of workers' compensation for injuries sustained at work⁷⁴ and non-registration of workers for UIF.⁷⁵ Women are generally paid less than men for the same work.⁷⁶

The underlying cause cited by the LDoL for the lack of compliance with labour laws was a lack of knowledge of labour laws by both farmers and farm workers. Accessing farm workers is made difficult by the security situation in the province and the need to make appointments to visit farms. The Department

makes information available to workers through booklets and pamphlets. Due to the high illiteracy levels of farm workers, they often fail to report violations of their labour rights. Other contributing factors, cited by the Department, included farm workers fearing their employer and the possible repercussions should they report violations and feelings of loyalty to a farmer to the extent that reporting a violation would amount to betrayal of the farmer. Finally, farm workers are not organised and therefore do not have trade union structures and assistance available to report violations.⁷⁷

The LDoL acknowledges a need for greater interaction and co-operation between the relevant role-players.⁷⁸

The Inquiry's attention was drawn to a number of alleged unfair dismissals of farm workers. Examples of these dismissals included being accused of theft,⁷⁹ refusing to sign documents presented by the employer for signature⁸⁰ and dismissals due to pregnancy.⁸¹

Farm workers in this province are, in many instances, unaware of their rights. A report was received of workers going on an unprotected strike in response to intolerable working conditions. This merely intensified the conflict between the employees and the employer and resulted in their summary dismissal and consequent eviction from the farm.⁸²

LDoL inaccessible

Complaints were received from NGOs assisting farm workers that they encounter difficulties in obtaining a response to their communication with the LDoL. This even occurs when they contact senior officials within the Department. In many instances, despite numerous telephone calls and faxes and promises of attending to a matter, nothing appears to happen.⁸³ The LDoL admits that they do not always provide feedback to role-players once they have resolved a complaint. They acknowledged that this is an area where service delivery could be improved.⁸⁴

Foreign labour

In this province, there is a ready pool of illegal, foreign workers from neighbouring countries who tolerate unfavourable and abusive conditions, mainly because of their desperate circumstances back home. In addition, because they are illegal they do not have recourse to enforcement mechanisms for fear of being deported. This in turn affects local workers who are afraid of losing their jobs if they challenge their working conditions, as they know that there is a ready pool of cheap and exploitable labour in the province.⁸⁵ This results in little, and at times, no job security for these workers.⁸⁶

The foreign workers come mainly from Mozambique and Zimbabwe. Work permits are often not obtained for them and some reports indicated that at the end of the month they are either sent back to their country of origin or handed over to the LSAPS for deportation.⁸⁷ The foreign workers know that if they protest about their working conditions, they might be sent home or deported.⁸⁸

The LDoL often takes Department of Home Affairs (DoHA) officials with them when they conduct their inspection blitzes of farms. Where illegal foreigners are found to be working, Home Affairs arrests and deports them. The LDoL state that they do follow up with the employer to secure these worker's wages. However, due to the speed with which they are deported and the lack of contact information for them once they have been returned to their country of origin, it is almost impossible to pay these monies over to them.⁸⁹

Child labour

Child labour was not reported as being a particular problem in this province. The Messina Advice Office reported that although there have been incidences of child labour in the past, they have not had any such cases brought to their attention in recent years.⁹⁰ The LDoL also reports that child labour is not prevalent. Child labour does occur in the

province, but it is difficult to quantify the nature and the extent of the problem.⁹¹

The LDoL considers it a possibility that due to access to farms being strictly controlled, this provides the opportunity to those farmers who are using child labour to conceal it on the day that the Department inspects the farm. The Department must arrange appointments with farm owners to inspect a farm. However, where the Department receives specific complaints of child labour occurring, they do not announce the visit and rather liaise with the LSAPS to gain access to the farm.⁹²

The LDoL is frustrated with the handling of the prosecution of child labour cases. There is often a failure to prosecute and cases are withdrawn by the DPP.⁹³ The LDoL did not indicate to what extent the relevant authorities liaise to ensure the successful prosecution of these cases.

The underlying cause of the occurrence of child labour is poverty. In some cases, both parents work and engage themselves in child labour by leaving a child to care for younger children. Some parents take their children with them to help in the fields.⁹⁴ It was claimed that pregnant women are particularly vulnerable to engaging in these practices as they are sometimes dismissed due to their pregnancy, and thus feel pressurised to ensure that they perform adequately in the workplace.⁹⁵

Poor conditions of employment

A number of farm workers complained that no pension provision was made for them despite their long years of service on the farm. In some cases, these farm workers have worked for the same employer for 20 or even 30 years.⁹⁶ Many of these farm workers have a strong belief that they are entitled to long service bonuses and pensions as they have worked all, or most of their lives for the same employer.⁹⁷

The average cash wage for farm workers is estimated to be in the region of R200,00 per month.⁹⁸ This wage is often accompanied by payments in kind, which can include rations of food and accommodation.⁹⁹

Response from the State

The LDoL has eleven labour centres in the province. Like other provincial DoLs they have four business units. The Integrated Inspections and Enforcement Services Unit attended the Inquiry hearings. This Unit is responsible for advocacy, inspections, investigations and enforcement of labour laws.¹⁰⁰

The Department reports that in terms of their advocacy work, they conduct information sessions with stakeholders, participate in radio talk shows and conduct public awareness campaigns. The LDLA invited the LDoL to their land law training to conduct sessions on relevant labour law provisions.¹⁰¹

The Department conducts between 40 and 60 information sessions each year. However, no specific breakdown for farm worker information sessions was provided to the Inquiry.¹⁰²

The LDoL says that in terms of prosecuting non-compliance with labour laws, the new system of referring most matters to the Labour Court rather than the criminal courts, as in the past, is a lengthier and more time-consuming process. This frustrates the implementation of labour laws in the Province.¹⁰³

Inspectors

As in all other provinces, access to farms is restricted for security reasons, and inspectors must make appointments to visit farms. The LDoL believes that by restricting access to farms, farmers are provided with an opportunity to hide labour rights violations.¹⁰⁴

The Department indicates that it is standard practice to give notice to the farms that they intend inspecting during a blitz. This notice includes providing the employer with a check-

list of those things that will be examined. This is done in order to ensure that the information is readily available for inspection.¹⁰⁵ Upon arrival at the farm, the inspector, not the employer, chooses which workers will be interviewed.¹⁰⁶

Within this context, an indication of the extent of non-compliance with labour laws on farms in the province can be gleaned from an inspection blitz that was conducted by the LDoL in June 2002. Of the 24 farms, results indicate that 67% did not comply with the Occupational Health and Safety Act, 58% did not comply with the Basic Conditions of Employment Act, 37% did not complying with the Unemployment Insurance Fund and 21% did not comply with COIDA.¹⁰⁷

The LDoL admits that they have capacity problems and that it is difficult to follow up on issues uncovered during inspections.¹⁰⁸ The LDoL has 72 inspectors and approximately 10 000 farms to inspect.¹⁰⁹ During a 6-month period from January to June 2002, the LDoL conducted 470 inspections. NGOs regard inspections as 'a pretty worthless exercise', given the constraints under which they are conducted.¹¹⁰

Response from Agri Limpopo

"I will be foolish not to admit that there is a large number of farmers who are not adhering to the law as far as all the labour requirements are concerned. In mitigation, I would venture to say that it is not as a case of deliberately not wanting to do it as it is a case of just pure neglect. There is no excuse. We expect our members to comply with the law of the land."¹¹¹

Agri South Africa and TAU maintain that their organisations are not of a punitive nature. Rather, they work on a co-operative basis with their members. In terms of educating their members about labour laws, they supply them with information on a continuous

basis, inform them about the latest changes in the law and conduct information sessions. They categorically state that they will not police their members and can only persuade them to comply.¹¹²

They also report that most of their members are also members of an organisation called the Labour Relations Organisation, which educates farmers about labour laws.¹¹³

Safety and security

Many reports were received of assaults allegedly being perpetrated by farm owners against farm dwellers. Civil society role-players criticised an apparent lack of effective service from some police officials and other criminal justice role-players in bringing the perpetrators to justice. The underlying cause of this was attributed to a lack of transformation amongst police officials. The LSAPS were open to discussing these issues in an objective and self-critical manner, when informing the Inquiry of the steps that have been taken to address these issues. A further issue that was highlighted in this province were the human rights abuses committed by private security company officials.

Violence perpetrated against farm dwellers

Assaults are alleged to be common occurrences and not isolated incidents on farms in the Limpopo Province.¹¹⁴ The Messina Advice Office indicated that in their 15 years of existence, they would estimate that approximately 10% of cases of violence perpetrated against farm workers by farmers have led to convictions of the farmers. They have not seen any improvement in the conviction rate in the past 4 to 5 years.¹¹⁵ As in other provinces, there were also reports of farm dwellers being mauled and attacked by vicious dogs belonging to farm owners.¹¹⁶

Of particular concern were reports of farm dwellers being murdered through the use of extreme violence and torture. For example, a farm manager dismissed a farm worker who

had lived and worked on the farm for 40 years. That night, a group of approximately twenty men went to the farm worker's house and threatened to burn it down. The farm worker was assaulted and shot twice. He died the following day in hospital. The family fled the farm and sought refuge with family in the town. Despite being able to identify some of the attackers, only one of the attackers was charged and this only occurred after much intervention by an NGO and the matter being reported to the ICD. One further suspect has subsequently been arrested.¹¹⁷

Foreign labourers are often targets of the worst physical abuse from farmers as they are the most vulnerable. Should they complain about their conditions, they are reported to the authorities and deported back to their countries of origin.¹¹⁸

"Another Mozambican was forced to stand on a red-hot spade after he was accused of kissing a White girl. He was screaming with agony whilst the farmers were laughing. The farmers were always hurling insults at us and calling us "kaffirs".¹¹⁹

Disillusionment with LSAPS

Farm dwellers are generally disillusioned with the effectiveness of the LSAPS. Some do not report crimes to the police as they believe that this is futile.¹²⁰ Therefore, many incidents of assaults against farm dwellers are not reported. Another reason for not reporting these cases is the belief held by farm dwellers that they will be dismissed when the farmer becomes aware that a charge has been laid. This may even render the farm worker unemployable, as the farmer may inform other employers of the reason for the dismissal.¹²¹

Lack of service from LSAPS officials

Farm dwellers maintain that when they do attempt to report a matter to the police, they experience a hostile and unco-operative attitude with many obstacles being placed in their path.

"When Nkuzi related the story to the person on duty they were told that farm workers are liars, they are unreliable and that they are wasting their time and the police's time. The attitude displayed by the police was hostile and un-cooperative ... no charge was laid against the farmer except a report that indicated that X was not hit by a car but fell."¹²²

Other reports of bad service by the LSAPS included:

- ❑ Case dockets not being opened.
- ❑ Cases not being investigated thoroughly.¹²³
- ❑ Case numbers not being given to the complainant, making it difficult for them to follow up on their matters.¹²⁴
- ❑ Statements being lost when farm dwellers inquire what is happening with their cases.¹²⁵
- ❑ Police failing to follow up and obtain the necessary medical reports when needed for the prosecution of a case.

An example provided to the Inquiry was of a farm worker who was shot at by a farmer and the bullet grazed his head. He went to the police station and they refused to assist him in obtaining medical care. After having obtained medical assistance on his own, the police did nothing to obtain the medical statement. The prosecution refused to prosecute the case due to a lack of this evidence.¹²⁶

Another example provided was of farm workers who went to the police station because the farmer allegedly broke into their houses, resulting in damage and theft of money. Initially, the police were unwilling to take on the case and only after much persuasion was a case docket opened. Meanwhile, the workers were forced to leave the farm due to threats. The case was submitted to the prosecutor with no statement and the prosecutor declined to prosecute saying that it was a labour matter, even though the charges were stated as breaking and entering, theft and illegal eviction.¹²⁷

NGOs asserted that some Black police officers are afraid of the farm owners and are therefore unwilling to go to the farm and investigate a complaint against a White farmer.¹²⁸

Failure to arrest culprits

Complaints were received of the LSAPS failing to arrest farmers who had perpetrated acts of violence against farm dwellers. It was alleged that in some cases, the police go out to the farmer, listen to the farmer's version of events and then proceed to accept a charge against the farm dweller from the farmer, leading to the farm dweller's immediate arrest.¹²⁹

"The following day L went back to M to demand his wages. A fight broke out between him and the farm manager and it was alleged that the farm manager took out a knife and attempted to stab L who overpowered him. M reported the case to the police and L was arrested but was only given a warning and released."¹³⁰

"In 1998, my employer's son shot my son. The shooting incident was reported at the police station. I was never informed of the progress."¹³¹

At the other end of the spectrum, the LSAPS do not appear to have problems in arresting farm dwellers when farmers lay complaints against them. In fact, cases where farm workers are the accused often result in arrests and successful prosecutions, whereas where a farm worker is the victim, there is no arrest or successful prosecution.¹³²

The following is an illustration:

"I am 65 years old. I have worked for him since the early 1950s. His son took over and requested me to stay on. Sometime in May 2001, I took his bull and sold it while he was away. I told him of that upon his arrival and suggested that he take one of my cows as a replacement. He did not have a problem with that and the good relationship we had seemed to be intact. A while later the police came. The charge was I stole the bull. I have been released on bail. I cannot go back to the farm and I was informed not to go back."¹³³

Response from LSAPS

The LSAPS acknowledged that they have problems with their officials in certain areas of the province such as Messina. Incidents of police collusion with the farm owners when matters are reported were admitted by the LSAPS.¹³⁴ Racism is also still alive within the police service itself.¹³⁵ During the past year, various officials have been internally charged and disciplined. Through this process two station commissioners were removed.¹³⁶ They attribute the underlying cause of these problems to individuals in the LSAPS who retain a mindset from the past and are unwilling to change. In order to address these challenges, the LSAPS holds regular workshops with their staff.¹³⁷

In those cases where the police officials refuse to investigate matters and it comes to the attention of the senior management in the province, the police officials are removed from a particular police station and redeployed elsewhere in the province.¹³⁸ The LSAPS acknowledge that they have received a number of complaints from Nkuzi Development Association that they are dealing with.

A lack of resources also impacts upon the ability of LSAPS to resolve cases and provide a service to the community. For example, they do not have enough vehicles to carry

out all of their duties. However, they report that this matter is presently being resolved.¹³⁹

Justice system

The judicial system is not perceived by some farm dwellers as being impartial.¹⁴⁰ The LSAPS also reported problems with the criminal justice system, due to it not being transformed and that this impede their work.¹⁴¹ The Inquiry received complaints that the Directorate of Public Prosecutions (DPP) does not bring about successful prosecutions.¹⁴²

Farm dwellers have a perception there is little equality before the law. For example, a farm dweller can be arrested on a minor offence of theft and be locked up for months, as he/she is unable to afford the bail, whereas a farmer who is arrested for murder will be released on bail.¹⁴³

Private security and commandos

Information placed before the Inquiry indicated that private security officials and members of the commandos in the province are responsible for some of the assaults that take place against farm dwellers.¹⁴⁴ In particular, elements of Mapogo a Mathamaga and private security companies, composed of members of the ex-Rhodesian army and Koevoet, were mentioned.¹⁴⁵ The LSAPS maintain that these elements of Mapogo a Mathamaga have been brought under control in the province since a special task team was established to deal with them. Since then, action has been taken against various individuals.¹⁴⁶

The violence used by these private security companies is extreme in some cases. The Inquiry was informed of a farm worker who had allegedly burgled his employer's house. The private security company took him away and he was found dead the next day.¹⁴⁷

Another incident placed before the Inquiry was that of a farm worker who was taken away by the farmer's private security officials and beaten up at an undisclosed venue by the security officials and the farmer.

"A private security force hired by the farmer took the farm worker who happened to be an illegal immigrant to a private house. The owner of the farm alleged that there was something wrong on his farm. The security force as well as the farmer himself seriously beat up the farm worker. To make matters more complicated the farmer summoned his blood brother who was also staying on the same farm, When he arrived he was forced to contribute towards beating up his brother, failing which, he himself will also face the same fate as his brother. He, under duress, contributed by only slapping him across the face once. He was released, leaving behind his brother who was heavily bruised but still alive. The following day he went back to the scene where he had left his brother. It was at this stage where he was informed that his brother had been fetched by the police in the early hours of the morning after he allegedly committed suicide."¹⁴⁸

Allegations of abuse of power and the use of physical violence against farm dwellers were also levelled at the commandos who operate in the province. NGOs asserted that many cases of abuse by the commandos are not investigated, as they are perceived to be curtailing crime in the province. In addition to acts of violence, the commandos also carry out activities such as staging illegal roadblocks and taking the law into their own hands.¹⁴⁹ Accountability for the actions of the commandos rests with the police who ought to be briefed before any activities are carried out.¹⁵⁰

Farm attacks

Agri Limpopo and TAU, who attended the hearings, did not provide a written submission as was obtained in other provinces. During their testimony the issue of farm attacks did not arise directly; instead all parties concentrated on the human rights situation as it relates to farm dwellers and issues that had been raised during the hearings. The LSAPS provided some information on farm attacks in the province.

The LSAPS has not been able to link any political motive to violent crime committed against farm owners in the province. In most cases, money and firearms are stolen. They thus attribute criminal motives to these crimes.¹⁵¹

"The perception that prevails in the province is that this has something to do with politics. All these years when we investigate these cases we have not come across a situation where we have facts that prove that this is politically directed. It is pure criminal activities."¹⁵²

The Rural Protection Plan (RPP) is in operation in the province. However, the LSAPS report that they have problems with its' implementation as some farmers do not co-operate with the police. This lack of co-operation is based on the racist attitude of not wanting to cooperate with "Black structures". In the far north of the province there have been cases where Black police officers are refused entry to farms when responding to a complaint laid by a farmer.¹⁵³ Another challenge in combating violent crime against farmers reported by the LSAPS, is that farmers are generally not conscious about security. This makes them easy targets for crime.¹⁵⁴

Economic and social rights

Little information was obtained regarding the economic and social rights situation of the farming community, despite this being the poorest province in the country.

Housing

Reports were received of farm dwellers living in poor housing conditions. Advice office workers state that when they confront farmers about the housing conditions, they respond by stating that the government is responsible for providing housing and therefore it is not their responsibility.

"They said no, the farm workers have voted for the municipality, they are qualifying for RDP housing."¹⁵⁵

Instances of farm workers living in pigsties, sleeping in toilets and cattle sheds, women and men being mixed in the same accommodation with little or no privacy and no sanitation facilities being provided, were all reported to the Inquiry.¹⁵⁶

Agri Limpopo supports the idea of agri-villages and is critical of government for failing to establish such villages for farm dwellers.¹⁵⁷

Health care

Obstacles that impede farm dwellers' access to health care include the great distances that must be travelled and the lack of affordable transportation. Women in need of antenatal care were mentioned in particular, as being denied access to health care due to these circumstances.¹⁵⁸

Food and water

In this province, many farm workers are paid with a cash wage and food rations. Reports were received of these rations being insufficient.

"The farmer accused us of eating too much when our ration is finished before time. He did not give us more food."¹⁵⁹

NGOs stated that the right of access to food is negatively impacted upon through the conversion of agricultural farms into game farms. In this process, many farm workers lose the opportunity to cultivate their own food and keep livestock.¹⁶⁰

The province is largely rural with many people who are food-insecure. Programme 3 of the DLA's LRAD project is specifically aimed at poverty alleviation through providing opportunities for land to be accessed for

the purposes of food security. This can be done on an individual or group basis. The LDLA recognises that the poorest people will access this programme. This will be made possible for them as they can provide their own contribution in cash, labour or materials.¹⁶¹ No information was provided to the Inquiry by the LDLA of the number of successful food safety net projects that have been established in the province.

The denial of access to water was reported in relation to evictions and the manner in which landowners attempt to make the conditions of residence intolerable when they want farm dwellers to leave the farm.

Social security

NGOs have observed that few farm dwellers' children benefit from Child Support Grants and that there is little proactive work done by the relevant government departments to ensure that these grants are accessed.¹⁶² This low take up rate is attributed to the great distances that must be travelled to lodge the application. There is also a lack of information about social security rights, the role of social workers and how to access grants.¹⁶³ The Inquiry also heard reports of officials being unhelpful when farm dwellers do attempt to access these grants. An example given was of a farm dweller going two or three times to see the social workers and not seeing progress with the grant application. The farm dweller was unable to afford another trip to town and gave up on the process.¹⁶⁴

Education

In some cases education is being hampered, by children having to walk long distances of up to 20 and 30 km each day.¹⁶⁵ Reports were also received of schools being situated close to chemical storage units, which detrimentally affects the health of the children.¹⁶⁶

CHAPTER 10



North West

Introduction

The Inquiry in the North West Province was dominated by complaints about labour issues and evictions pursuant to dismissals of farm workers. Despite a fair amount of interaction taking place between all the various role-players, and encouraging reports that farmers generally co-operate in this province when they are approached about human rights issues, many complaints were still brought to the attention of the Inquiry. Access to farms is restricted due to the security situation in the province. It was thus extremely difficult to truly assess the human rights situation of farming communities on the ground.

The North West Province is geographically the fourth-smallest province in South Africa and covers 9,5% of the total land surface of South Africa. Approximately 65% of the population of 3,5 million live in rural areas.¹ The farming industry employs 70% of all workers in the province.²

The relationships between the role-players

Both civil society and government department role-players stated that there were many farmers in this province who were co-operative when they were approached about human rights issues. Many of these farmers

displayed a willingness to interact with these role-players in order to resolve disputes. This was confirmed by the number of reports received from the various role-players about interactions that occur between farmer union structures, government departments and civil society organisations. There are enormous disparities in power and resources of farm dwellers and owners.

At the same time, however, it was reported that there are still many human rights abuses occurring in the province. Farm workers are so dependent on their employers that they are too afraid to speak out about many of the human rights abuses that occur, for fear of losing their jobs and being evicted from the farms. Access to the farms in the province is strictly controlled due to the levels of violent crime being experienced by farming communities. This makes it difficult for organisations to access farms to educate farm dwellers about their human rights. It also results in government role-players having restricted access to farms.

Agri North West was defensive when discussing the human rights situation in farming communities in the province. They were willing to admit that there are isolated incidents of human rights abuses and that these are not representative of all farmers in the province.

They say that allegations about human rights abuses made against farmers are slanderous and are a malicious attempt to discredit the agriculture sector. They blame a biased media as creating the perception that all farmers are human rights transgressors. In their opinion, these perceptions and various inflammatory statements by politicians are the underlying causes of farm attacks. Whilst stating unequivocally that they support the Constitution, human rights and the rule of law, they also state simultaneously that the laws that promote and enforce land and employment rights for farm workers are regrettable, due to their punitive nature. Against this backdrop they become involved in processes with other role-players to realise human rights in the province.³

"We are proud of our (human rights) track record and it speaks for itself."⁴ Agri North West spokesperson

Land rights

In the North West Province, issues pertaining to ESTA dominated the hearings when land rights were raised. There were claims of SAPS collusion with landowners and assistance being given by them to carry out evictions against farm dwellers. Although most cases of evictions stem from labour disputes, burial rights on farms, the right to own and keep stock on farms and evictions of farm workers by new owners who have purchased the farm were the type of land rights issues that were also raised. Landowners in the province clearly do not support the ESTA and there is non-compliance and circumvention of the law. Farm dwellers lack adequate access to legal assistance in the province in order to enforce their rights. In response to these problems, the Anti-Illegal Eviction Forum was recently formed in the province.

Tenure security

The NWDLA informed the Inquiry of seven potentially illegal evictions that had been re-

ported to police stations in the province during 2001/2. Save for one case in which the complainant had subsequently died, the Director of Public Prosecutions withdrew all these cases.⁵ It is unclear why these cases were withdrawn.

NWSAPS collusion and assistance with evictions

Reports were received from civil society of the NWSAPS colluding with farm owners to carry out illegal evictions of farm dwellers. This included assisting the sheriff in carrying out lawful evictions without the authorisation of the court,⁶ police reservists carrying out evictions and of a general reluctance on the part of the NWSAPS to take the necessary steps to intervene in cases of illegal evictions.⁷ Cases of illegal evictions that are reported to the NWSAPS never seem to progress and result in prosecution of the alleged perpetrator.⁸ These reports were confirmed by the NWDLA which stated that the response from NWSAPS in ESTA related matters was either very ineffective or very poor and that cases are handled too slowly.⁹

"Last year we had the case of X. Ja, he was evicted and we lodged a complaint with the police. And then the police came out. They came to the farm and then they took the belongings of X. Ja, and when they took those belongings of X, immediately when they entered the tar road that lead to the direction of Klerksdorp. I think the residence of X where his parents stay is about 7 kilometres from there. Instead of taking him direct to the parents home they have loaded all the belongings there and then they left him just alongside the road."¹⁰

"We had instances where the farm workers furniture and other belongings were put outside and when they do report it, the police would say, just collect your stuff and go away."¹¹

"When we report the farmer to the SAPS they tell us to go to work."¹²

The underlying causes that were provided to the Inquiry by a local councillor as to why the NWSAPS do not operate effectively when it comes to evictions, is that they are not up to-date and familiar with the legislation, that they do not understand the legislation and that they do not like the legislation. Due to this lack of information and unwillingness to learn about the ESTA and how to implement it, the NWSAPS are reluctant to intervene in illegal eviction cases. Rather, at a station level they appear to see nothing wrong with a person being evicted from their home without any due process of law.¹³

NWSAPS senior officials stated in response to these claims that they are unaware of police applying pressure on farm dwellers to leave the farm and of reservists carrying out illegal evictions.¹⁴ Despite this lack of knowledge through reported cases, allegations that there is SAPS collusion and assistance in carrying out evictions has been taken seriously within the province at a senior level. These allegations were one of the reasons behind the formation of the Anti-Illegal Eviction Forum in the province. The Forum provides a venue where different role-players can come together in order to address these issues and is discussed in more detail later in the chapter.

Despite a clear problem with the enforcement of the ESTA in respect of farm dwellers rights, the NWSAPS are willing to accompany the sheriff when there is an eviction order that must be carried out. They do not attend to carry out the eviction but are “merely present to ensure that no crime is committed during the eviction”.¹⁵

Burial rights on farms

Reports were received of farmers refusing to allow workers to bury their dead on farms in situations potentially contrary to ESTA.¹⁶ In response, Agri North West states that they advise their members to work within the ambit of the law.¹⁷

Evictions by new landowners

It was reported that problems have been encountered in the province when farms are sold and the new landowners do not want the farm workers to remain on the land. In order to circumvent the provisions of the ESTA and to avoid approaching the court for an eviction order, the old and new owner collude to make life intolerable for the farm dwellers. An example of such collusion is the old owner terminating the electricity supply to the farm and the new owner failing to have it reconnected. The farm workers are thereby denied access to electricity and their living conditions are made difficult. The new owner often does not reside on the actual farm and therefore the absence of an electricity supply does not affect him.¹⁸ The problem is often exacerbated by the fact that local municipalities are, in most cases, reluctant to intervene and provide basic services by stating that they do not have access to the farm as it is on private land.¹⁹

Lack of access to assistance to enforce rights

In 2002, the Centre for Community Law and Development at the University of Potchefstroom began to specifically provide legal assistance to farm dwellers who are threatened with eviction, under the umbrella of the Rural Legal Trust. Prior to this development there was little, if any, legal assistance for farm workers faced with eviction in the province. Without legal assistance being provided to farm dwellers to enforce their rights through the ESTA, the legislation cannot be effectively implemented. There is still a reported need for farm dwellers to be educated about their rights and how to go about enforcing them.²⁰

Farm dwellers' human rights issues are multi-dimensional and there is a need for co-ordination between the different role-players who are responsible for realising these rights. For example, where the water supply is terminated to farm dwellers, there is a need for the various role-players to assist them.

Accessing the courts to have the water supply reconnected by the farm owner can be lengthy. In the interim, it is necessary that the farm dwellers obtain water or they will be forced to vacate the land. The local municipality in whose boundaries the farm falls, has a duty to step in and provide basic water services. This type of support was reported to have occurred in isolated cases in the province, but there is still the need for greater coordination at this level in the province.²¹

The keeping of livestock

Farm workers are sometimes denied permission to keep livestock on the farm on which they work. Should they obtain livestock then they are told to sell them. The reason given by the farmers to the farm workers is that only the owner of the farm is entitled to keep livestock. Should the worker insist on keeping the livestock, then the farmer charges an exorbitant amount of money that the farm worker cannot afford for the livestock to remain on the farm.²² Reports were received of employers charging R40,00 per month per cow²³ and R340,00 per month to keep livestock on the farm.²⁴

Response from Agri North West

There is currently no system in the province for collecting statistics on the number of evictions.²⁵ This places Agri North West in a position where they can respond to allegations of illegal evictions by stating that they are officially unaware of any such evictions occurring²⁶ and that they are not aware of police reservists being involved in any evictions.²⁷ Agri North West farmers clearly do not support the ESTA and claim that they are currently challenging the Constitutionality of the law in court.²⁸ They have also embarked on a policy of employing as few labourers as possible in an attempt to avoid the application of the ESTA.²⁹

While Agri North West does not support the ESTA, they do advise their members to adhere to the law. Reports indicate that farmers resort to various actions to evict farm

dwellers from their farm to circumvent the ESTA. These tactics are resorted to when they realise that they will have to use the ESTA and approach the courts for an eviction order. An example of such actions includes depriving farm dwellers of access to water (this being a constructive eviction in terms of the definition of an eviction in the ESTA). Gates to the farm are also blocked in order to prevent children from attending school or forcing them to walk long distances to school and setting vicious dogs on farm dwellers to scare and intimidate them into leaving the farm.³⁰ Reports were also received of farmers charging unrealistic rentals for the period after the workers have been dismissed pending their vacating the farm.³¹ Another action invoked to make court proceedings to evict a farm dweller potentially easier, is where the farmer allows the dismissed worker to remain on the farm for 30 days after the dismissal. Should the worker fail to report the alleged unfair dismissal to the CCMA in the 30-day period and at a later stage wishes to challenge the eviction on the basis that the dismissal was unfair (and thus the prerequisite of a valid termination has not been met), he will not be allowed to do so as the termination of residence will be deemed to be valid in terms of ESTA.³²

Agri North West has a code of conduct procedures to discipline and sanction members by suspension, should they violate the rights of farm workers.³³ To date, no member has been disciplined and suspended.³⁴

Response from NWDLA

There are three district NWDLA offices in the North West Province. These offices are situated in Brits, Klerksdorp and Vryburg. Each office has an ESTA Officer responsible for investigating cases of eviction. The NWDLA approach to ESTA cases is to assist the parties within the confines of the law as the ESTA sets out a process to be followed where the landowner is legally entitled to evict the farm dweller. In these cases, the NWDLA states that they are there to assist

the parties in order that the farm workers do not remain on the landowner's land.³⁵ Those persons threatened with eviction are referred to the relevant structures, such as the RLT, for legal assistance.³⁶

The NWDLA has no land for emergencies when people are legally evicted.³⁷ In these cases, the ESTA Officers liaise with local municipalities to ensure that these people have access to emergency help and access to water.³⁸

The NWDLA reports that they find it difficult to use the ESTA section 4 grants for on-site developments. As there is a need for co-operation and sometimes even a donation of land from the side of the farmer for these grants to work, section 4 becomes difficult to utilise as the relationship between the parties has broken down.³⁹

In terms of making the various role-players in the province aware of the provisions contained in the ESTA, the Department has conducted workshops with farm workers, police and magistrates. The NWDLA admits that the training provided to the police does not appear to have had an impact at station level.⁴⁰

The Anti-Illegal Eviction Forum

In 2001, an Anti-Illegal Eviction Forum was established in the Province. The purpose of the Forum is to intervene where illegal evictions occur.⁴¹ It is comprised of various provincial government department representatives, including the NWSAPS. The police provide statistics of the number of illegal evictions that are reported to them. The majority of these eviction cases tend to be withdrawn by the complainant before the matter reaches the court. The police attribute this to farmers making deals with the farm dweller in these cases. Typically, the farm worker will be paid some money as compensation for being evicted, on condition that the matter is withdrawn.⁴² NGOs attribute the high rate of withdrawals to lack of evidence being cited

by the Prosecutors as the reason for not proceeding with the prosecution.⁴³ Parties expressed the need for the Forum to be extended to include other relevant government departments.

Land redistribution

Agri North West agrees that land redistribution is happening at a slow pace and needs to be accelerated.⁴⁴ They are of the opinion that there is enough State land for redistribution in the province and that land does not have to be expropriated from White farmers. They do not support the option of expropriation as a method of land redistribution.⁴⁵ The NWDLA, on the other hand, is satisfied with their progress and say that they have transferred a sizeable quantity of land in terms of their redistribution programme. According to the Department, "it is just a question of keeping up the pace".⁴⁶ The NWDLA does report that it is experiencing problems with implementing its land redistribution programmes. For example, when the NWDLA wishes to purchase land on the willing buyer-willing seller principle, farmers tend to overprice their farms. There have also been cases of collusion between valuator-assessors and the farmer to increase the price of the farm.⁴⁷

Labour laws

Many reports were received of unfair labour practices, non-compliance with labour laws, poor conditions of employment and unfair dismissals occurring in the North West Province. There were also reports indicating that child labour is a problem in the province. The underlying reasons for these reports were attributed to the lack of enforcement of labour laws, the CCMA being an inaccessible institution to enforce rights, labour inspectors experiencing difficulties in accessing farms due to the security situation in the province and the NWDoL's lack of vehicles to transport inspectors to the farms. Agri North West admits that there is still work that must be done in this area.

During 2001, of the 12 336 complaints received by the NWDOL, 1 650 came from the farming sector. For the same period the Department received 42 309 inquiries, 4 754 of which came from the farming community.⁴⁸

Non-compliance with labour laws

The types of non-compliance with labour laws that were reported included farm workers being forced to work on public holidays,⁴⁹ not being paid overtime⁵⁰ and being refused leave.⁵¹ Some workers are not registered for UIF⁵² whilst others have UIF contributions deducted from their wages but not forwarded to the NWDOL.⁵³ This was confirmed by the NWDOL, which reported that in those cases where an unemployed farm worker has had UIF claims deducted from his/her wages, the farm worker is paid and the outstanding contributions are claimed from the employer-farmer. Reports were also received of farm workers being denied the right to join a trade union by employers who threaten to evict them if they do so.⁵⁴

The NWDOL attributes the lack of convictions regarding lack of compliance with labour legislation to intimidation. Should an employee continue pursuing action against the employer that would result in the prosecution of an employer for unfair labour practice, then the employee is threatened with eviction from the farm.⁵⁵ The NWDOL is also of the view that employers capitalise on the ignorance and illiteracy of farm workers about their labour rights.⁵⁶

In some cases there is non-compliance with Occupational Health and Safety legislation. Some injuries sustained at work are not reported to the Compensation Commissioner.⁵⁷ There is also a clear lack of understanding on the side of farm workers of this legislation and the duties and obligation of their employer when they are injured at work. Many farm workers appear to be under the impression that it is the employer who must compensate them when they are injured at work. This misperception, which can be

attributed to a lack of knowledge, can lead to feelings of resentment and anger towards the employer.

"Mr. X is permanently blind since 2000. He said that the employer instructed him and his colleagues to clean the poison tank. The poison is used for killing weeds and pests. They said that the poison is strong. Mr. Y was affected on the skin, he is having grey skin, the tractor they are working with has also changed colour."⁵⁸

"In April 2000, I was being driven together with other employees at the back of the tractor. I fell and the trailer drove on top of me. I sustained serious injuries on both my legs. I also sustained injuries in my abdomen. I was taken to the hospital at 18h30. I had waited for the ambulance since 13h00. I was in the hospital for three months. After that I stayed at home for one month before going back to work. My employer informed me that he had lodged the claim with the Workmen's Compensation. Until today, nothing has happened."⁵⁹

The Inquiry received many reports about unfair dismissals. There were reports of farm workers being dismissed due to their HIV-positive status,⁶⁰ for attending a Human Rights Day event,⁶¹ asking for a bonus⁶² and as the examples below demonstrate, arriving late for work and being unable to perform duties due to bad weather conditions.

"... the owner of the farm accused the farm worker of arriving late at work. An argument ensued. As a result of that allegation, the owner told the farm worker to vacate his place without following the proper dispute procedures... when the worker raised the issue of dispute resolution the son pulled out a gun and threatened to shoot him. We were also told that the same person took a shot at him, but missed and in the process shot a dog. Subsequently, the farm owner closed down the school located within the very same farm."⁶³

"A farmer who employs 10 to 15 lady workers, women. ... were ordered to go and pick up the carrots. The soil was muddy, their boots got stuck and they could not proceed with the task and as a result no work could be done for that particular period. They then advised the farmer of this particular situation, but he said he could not find that acceptable. He accused them of going on an illegal strike and subsequently ordered them to leave his premises within 4 hours."⁶⁴

CCMA inaccessible

The CCMA has offices at Klerksdorp and Mafikeng in the North West Province. The NWDOL has 12 regional offices and also has a visiting office to various towns in the province.⁶⁵ Due to the distances that must be travelled and the cost of travelling, many farm workers are denied access to the CCMA.

"In most cases they are not earning enough money and would find out that the nearest CCMA is about more than 50 kilometres away and they do not have money you see to get there."⁶⁶

Child labour

According to the NWDOL incidences of child labour are a prevalent problem.⁶⁷ There is an aggressive response from government to eradicate it. Some farmers recruit children through traditional leaders to work on their farms.⁶⁸ Other reports indicate that child labour occurs after school hours,⁶⁹ while other reports indicate that some children do not attend school. A school principal exposed child labour when he complained that teaching was made difficult due to the seasonal attendance of pupils at school. This seasonal attendance was directly related to when there was a need for cheap labour to harvest crops. Vehicles would arrive at the school in the morning and transport these children to the farms. The children are paid an average of R30,00 per month for their labour. They are kept in unsatisfactory conditions, and are

being placed together in a compound at night, irrespective of gender. Adult farm workers sexually abuse some of these children.⁷⁰

As in other provinces, an inter-sectoral CLIG structure has been established to address child labour. The NWDOL report that they get the full support of the SAPS Child Labour Unit, which is based in Mafikeng, when they need to respond to a report of child labour. From their experience, the prosecution of child labour cases is difficult for a number of reasons, the main difficulty being the number of sources from which evidence must be obtained in order to obtain a successful conviction. For example, affidavits are needed from the child, the school and a doctor certifying that the child is below 16 years of age. In their experience, by the time all of these affidavits have been collected the child has often been removed from the farm.⁷¹ The NWDOL also cite the fragmented judicial system in the province as creating confusion as to which court has jurisdiction in these cases.⁷²

The NWDOL has also experienced White police officers tipping off farmers that they are about to be raided. When the NWDOL arrives, the children have been removed.⁷³

Poor conditions of employment

Farm workers complained about poor working conditions. Furthermore, when they try to improve their working conditions and approach their employers to discuss the matter, they are disciplined and punished.⁷⁴ At other times the employer will respond to these approaches by passing remarks such as "go to Mandela for help".⁷⁵

"We work under poor conditions. It's a tobacco farm and we plant tobacco. If it's raining he expects us to work in the rain and continue planting without raincoats. We do not have sufficient breaks. We only get R270,00 per month. If we complain he refers us to Mandela or SAAPAWU."⁷⁶

"... We will have to appeal to the moral aspect of the farmers themselves to handle these people as human beings, because the way we see the situation right now, you do not see the humanitarian element."⁷⁷

Response from NWDOL

Inspectors

The NWDOL reports that enforcing the labour laws in farming communities is difficult. This is due to access to farms being difficult to obtain and a lack of human resources. The Department has 77 inspectors in the province who are spread out according to the size of the regional office to which they are allocated.⁷⁸ During 2001, the Department's Inspection and Enforcement Services Unit carried out 5 000 inspections, of which 530 were on farms.⁷⁹

Labour inspectors must adhere to the safety protocol to obtain access to any farm. This includes having to make prior arrangements to access the farm or obtaining the assistance of the NWSAPS.⁸⁰ Sometimes the inspectors have met with resistance and reluctance from police officers to accompany them to the farms.⁸¹ The NWDOL believes that this frustrates the work of the labour inspectors.⁸² Another obstacle to carrying out more inspections on farms is that there are too few inspectors and too few motor vehicles in the regional offices. Each regional office only has two vehicles. The lack of vehicles currently keeps many inspectors confined to their offices.⁸³

Agri North West farmers, whilst viewing these labour inspections as punitive and advocating that inspectors should rather visit farms to give information to employers,⁸⁴ insist that it is due to farm attacks that access to farms must be strictly controlled.⁸⁵

Training initiatives by the Department of Labour

The NWDOL conducts information workshops with farm workers to educate them about their labour rights. These workshops occur mostly over weekends when the workers are not working.⁸⁶ There are farmers who co-operate with the Department in allowing them access to the farms in order to conduct the workshops. The NWDOL also has a slot on Radio Motsweding with a question and answer session in which labour laws and labour rights are discussed.

Response from organised farmers

Organised farmers have been involved in a number of initiatives to educate themselves and their workers about labour legislation. They are part of the Joint Vision for Labour, have run the NORAD training courses in the province and compiled their own labour manual for their members. The NWDOL attends Agri North West meetings regularly, and their Manpower Committee has had discussions with a senior CCMA commissioner. Agri North West has attempted to enter into dialogue with SAAPAWU, and admit that there is still work to be done in this area.⁸⁷

Safety and security

From the reports received from farm workers and NGOs there appears to be a number of incidences of assault taking place against farm dwellers in the province. In fact, a third of the complaints received from farm dwellers in this province made allegations of violence being perpetrated by farmers against them. The NWSAPS came under criticism from both farm dwellers and farmers, the former because the NWSAPS do not provide the necessary assistance when complaints are laid and the latter for failing to do their duty of protecting citizens and preventing farm attacks.

Violence perpetrated against farm dwellers

There were many complaints received by the Inquiry concerning violence perpetrated

against farm dwellers by farmers. However, it would appear that many of these cases are neither reported nor successfully prosecuted. NGOs believe that the underlying causes for this under-reporting are that although farm dwellers know their rights, they are threatened by the farmers into not reporting the case. They therefore do not enforce their rights. Also, due to their lack of education in many cases, they do not express themselves clearly and eloquently when they go to report the case at the police station and that the police officials do not take their cases seriously.⁸⁸

Agri North West's response to these allegations is that the NWSAPS statistics indicate that farmers are responsible for a small (0.14%) percentage of assault cases. Thus, "it is a gross injustice to the farming community to be singled out and depicted as being guilty of farm worker assaults as if it is common practice".⁸⁹ They question a possible hidden agenda, without giving any explanation as to what this may be, as to why these cases are reported to the Inquiry and not to the appropriate authorities for prosecution.⁹⁰

"He was forcing me to sign forms that I did not understand. Those forms were from his lawyer. When I refused to sign he started to beat me and said that I am a "kaffir"(sic). I get the chance to run away and he followed me and catch me and beat me again."⁹¹

"I was at work when he complained that the sheep has lice on its hoofs. He then took me to the fields, where it was only the two of us, he then beat me up and injured my shoulder which is still paining and said if I report it to the police, he will kill me by gun."⁹²

The North West Province also has incidents of vicious dogs attacking farm dwellers. Some of these cases have resulted in the criminal prosecution of the dog owner. Many are settled by way of an admission of guilt fine.⁹³

The NWSAPS report that they have had difficulties based on racism with some of their members who have not assisted farm workers to report their cases. In these cases, farm workers have not received the necessary cooperation from a White police officer. The NWSAPS deal with these cases by removing the officer from the case and taking disciplinary steps against the officer.⁹⁴

Farm attacks

Agri North West claim that from 1997 to August 2001, there have been 374 farm attacks in the province.⁹⁵ Farmers constitute the majority of those who are killed in these incidents, and they deduce that the motive for these is racism against White farm owners.⁹⁶ They back up this claim by citing that 90% of perpetrators are unknown to the farmer.⁹⁷ Farmer unions contracted a private company called Crime Intelligence to conduct research for them. This research was written up into a document entitled Motives for Farm Attacks.

The effects of this violent crime have had an impact on everyone in the farming communities. It can take up to 18 months before the farm is back in production after the owner has been killed. This has a negative impact on the farm workers as well. Either they must obtain employment elsewhere or wait with no income until the farm is taken over by a new owner.⁹⁸

This crime is also the direct reason for the safety protocols in the province that inhibit State officials and NGOs from accessing farms in order to assist and provide services to farm dwellers. Consequently, farm dwellers are largely isolated from external role-players who can inform them of their human rights and how to go about enforcing them. The police must also make appointments to go onto farms. The reason for this is that perpetrators have impersonated police officers.⁹⁹ The Inquiry received reports of farmers imposing curfews on their farms where Black people are not allowed to walk around after dark.¹⁰⁰

The NWSAPS maintains that criminality is the underlying cause of farm attacks. They do not agree with Agri North West that there are any racist or political motives behind these acts of violence. They say that criminals want firearms to commit crimes. It is known that most farmers have firearms and are therefore targeted.¹⁰¹ The Serious and Violent Crimes Unit investigates all violent crimes perpetrated against farm owners.

The NWSAPS also disputes Agri North West's statistics saying that on closer investigation, not all so-called farm attacks are in fact farm attacks.¹⁰² Also, they believe that farmers could better protect themselves if they implemented the Rural Protection Plan properly. The NWSAPS have experienced problems with the Plan's implementation, such as a lack of interest by some farmers to get involved and become reservists; farm areas being scattered and difficult to reach; some farmers failing to take the necessary security precautions to protect themselves; differences of opinion between the farmer organisations on how to approach farm security which makes it difficult for the police to assist the farmers; and farm workers not always being involved in farm security.¹⁰³

Economic and social rights

It would appear that due to labour and eviction issues dominating the information placed before the Inquiry, many issues pertaining to economic and social rights were not raised. This does not necessarily indicate that these rights do not have implementation and realisation challenges that need addressing. Rather, it is an indication of people's daily living experiences, how they perceive rights and consequently shape the dialogue.

Housing

Very little information was received concerning the right of access to adequate housing. There were reports of some farmers building houses for their workers, and of houses being in a bad condition and falling apart.¹⁰⁴

Health care

Farm workers tend to be highly dependent on their employers. When they or their family are taken ill, this dependence can be heightened. For example, if there is a lack of transport in the area and the nearest health service is far away, then workers, in some cases, rely on their employer to transport them to the doctor.¹⁰⁵ Where the farmer refuses to transport the farm worker and where the State fails to ensure that an ambulance is available, or that the nearest health care service is within 4-5 kilometres of every person, then these people are being denied access to health services. Many farm workers do not have access to telephones in order to access the State services that are available in the province.

Reports were received of farmers refusing to allow workers to go to the doctor when they are ill, and not allowing them to take their children to the doctor for necessary medical care.

"This person was a farm worker and he asked the employer to take him to the doctor because he was sick. Instead of being taken to the doctor he was locked up in the storeroom the whole day. There was no water and food for him so that he can have some meals."¹⁰⁶

"I have a 9-year-old child who has a head problem she was born with. She attends the doctor for observation and treatment at least once a month. I also collect her monthly grant from the Department of Social Welfare. My employer does not want me to take the day off to attend to that even if I bring a letter from the doctor confirming the next appointment. He has threatened to dismiss me."¹⁰⁷

In response to the issues raised, the NWDoHealth informed the Inquiry that access to health care in rural areas is provided through 24 hour community health service clinics, daily clinics and mobile clinics. There is a total of 350 clinics including mobile clin-

ics in the province. The NWDoHealth aims to provide everyone in the province with a health care service within 4 –5 kilometres of his or her home. In the Province there are currently 3 000 mobile unit points that are serviced every 90 days. The NWDoHealth reports that there are those farmers who are concerned about their workers' health and take them to the mobile clinic points.¹⁰⁸

In addition to the more traditional health care services, these mobile clinics can provide necessary mental health care services. The NWDoHealth has 18 mobile oral health services and there are community service dentists in every health district.¹⁰⁹ The Department has taken over the ambulance service from the local municipalities in the province and consequently this service has become part of the provincial health service.¹¹⁰

The NWDoHealth reports that they do not have adequate human resources for the mobile clinics. They intend addressing this problem by appointing new mobile clinic teams as well as replacing and purchasing new mobile clinics. They plan to purchase a further 26 mobile clinics in the 2002/3 financial year.¹¹¹

Other interesting initiatives that the NWDoHealth has undertaken in order to promote access to health services include providing the elderly with flu vaccines and entering into discussions with the NWDoE, as well as farm owners, regarding the proper provisioning of school health services for children in farm schools.¹¹²

HIV/AIDS

The NWDoHealth has established a community-structured provincial council on AIDS with branches in each of the health districts in the province. The Department's HIV/AIDS programme includes visiting those infected with and affected by HIV/AIDS and conducting voluntary counselling and testing. Many people have been trained as counsellors and they are spread throughout the health districts. The Department has a home-based

care unit that works with those already affected by HIV/AIDS. The Department ran a recent advertising campaign entitled "Knowledge Liberates" in order to encourage people to know their HIV status. The Department reports that they plan to roll out a Nevirapine programme and that there are 2 Nevirapine sites in the province. The programme has not yet been rolled out because the Department still needs to train nurses and additional counsellors.¹¹³

Issues which inhibit the spread of knowledge about the disease include the fact that parents on farms do not discuss issues about sex with their children and that White farm owners perceive HIV/AIDS as a Black disease.¹¹⁴ Reports were received of farm workers being stigmatised and dismissed once their HIV positive status became known.¹¹⁵ The NWDoHealth says there is interaction between it and Agri North West to resolve issues such as unfair dismissals due to HIV status.¹¹⁶ Agri North West reported that they have been involved in formulating an Anti HIV/AIDS strategy.¹¹⁷

Access to farms

While some farmers do allow field workers access to farms to educate people about HIV/AIDS, NGO field workers report that they have difficulty accessing farms in order to carry out their education and training workshops. They report that either access to the farm is denied, or access to the workers on the farm is denied. This also occurs when the field workers accompany the NWDoHealth mobile clinics onto the farms. Even making arrangements to conduct their workshops on a Saturday have been unsuccessful in some cases.¹¹⁸

"Our employer has said that you must go away. Now because our people are afraid to be chased away from the place, from the farms or to lose their employment and then they will always listen to their employer."¹¹⁹

There have been discussions with Agri North West to resolve these problems and the NGOs are confident that a solution can be reached at these discussions.¹²⁰ However, not all farmers are not members of Agri North West.

Food and water

It would appear that many farmers in this province pay their workers with food rations and cash wages. Incidents of this food not being fit for human consumption¹²¹ and making the workers ill, as well as food provided being past its expiry date, were the types of complaints that the Inquiry received.¹²²

Information received by the Inquiry relating to evictions indicates that there have been some incidents in which farmers deny access to water to farm dwellers to make conditions intolerable and force people to vacate the farm.

Social security

Social security is difficult for many farm dwellers to access as they cannot reach the Department of Home Affairs (DoHA) offices to obtain birth certificates and ID books in order to apply for social grants. It was reported that several attempts to get the DoHA to visit a central point, such as a school, in order for farm dwellers to apply for their IDs, has failed.¹²³

Education

Little information was reported to the Inquiry about the current education situation in rural farm schools and the extent to which access to education is realised. Reports indicate that the delivery of basic education to farm children is in need of attention and that there is a need to clarify the roles and responsibilities of farm owners, upon whose properties these schools are situated, and the provincial Department of Education (NWDoE).

Specific reports relating to access to education being denied were received via com-

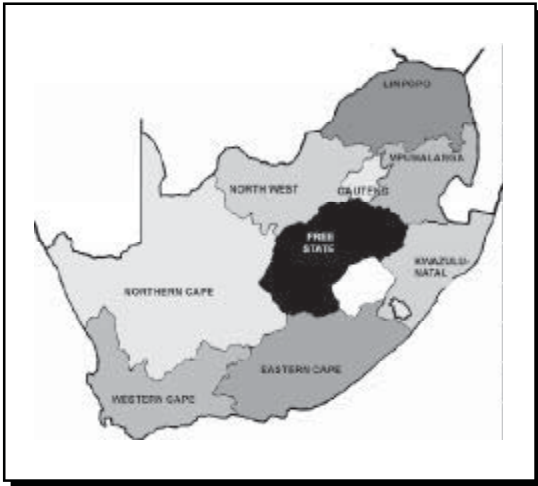
plaints from farm workers who were threatened with eviction. These reports indicated that in some cases farmers will deny children access to the farm school by preventing them from using farm roads, physically locking the gates used by children to exit the farm and setting vicious dogs loose.¹²⁴ In one extreme case, the farmer closed down the school located on the farm property as part of an attempt to force workers to leave.¹²⁵ The eviction of farm workers and their children from a farm invariably results in the denial of access to education due to the parents having to relocate.¹²⁶

The NWDoE reported that they are currently in the process of drafting a policy for farm schools. They are also in the process of merging small farm schools with bigger schools. This process is being hampered through the lack of transport to take farm children to the schools. To address this issue, the NWDoE has embarked on a programme to identify empty hostels that can be used to accommodate learners. There is a total of 30 022 learners currently enrolled in farm schools in the province. The teacher-learner ratio is 1:25.¹²⁷

Agri North West reported that generally the situation on farm schools was bad and that responsibility fell on the farmer to ensure that education continued in these schools.¹²⁸ Since January 1998, the NWDoE have been attempting to finalise section 14 agreements with farm owners upon whose land school buildings are situated.¹²⁹ There also appears to be uncertainty between educators from NWDoE and farmer-landlords as to the nature of their relationship. For example, the Inquiry received a complaint about a farm owner who refuses to send a person to mow the school lawn. He also refused to assist transporting learners off the farm to participate in extra-mural activities or to assist an educator whose car was stuck in the mud, by providing a tractor to pull the vehicle out.¹³⁰ This example pertinently raises the need for clarity about the parties' respective

responsibilities and demonstrates how the present lack of clarity creates expectations that may not necessarily be correct.

CHAPTER 11



Free State

Introduction

Labour conditions dominated the Inquiry in the Free State with farm workers complaining about working long hours for very low wages. Women were highlighted as being particularly vulnerable members of this farming community, who are often reliant on their male partners for their tenure security. Domestic violence and abuse within these communities further disempowers women.

The impact of the ESTA legislation came through clearly in this province with farmers refusing to provide housing to farm workers, as a reaction to the promulgation of ESTA. Evictions continue to occur and there is a lack of access to legal representation for farm dwellers to enforce their human rights. Many government role-players were failing to assist farm dwellers in realising their rights as guaranteed in the Constitution.

The Free State Province is geographically the third-largest province and covers 10,6% of the total land surface of South Africa.¹ In terms of population numbers, it is the second-smallest province. Approximately 31% of the population of 2,7 million live in the rural areas.²

There are approximately 8 000 commercial farms in the province, employing 52 000

workers with a further 260 000 persons estimated to be dependents of these workers.³ Crop-farming accounts for 56% of farming in the province. The predominant crop is maize, followed by wheat, sunflower, peanuts and soybeans. Stock farming accounts for 34% of farming in the province.⁴

The relationships between the role-players Information received from the different role-players who attended the Inquiry indicates that parties are far apart when it comes to assessing the human rights situation in the province. At times, direct contradictions were made about particular situations. It is thus difficult to properly assess what is happening on the ground. As in other provinces, there is a lack of empirical research on issues pertaining to the Inquiry. Proceedings at the Inquiry were delayed due to a bomb scare. It has not been ascertained who the responsible parties were.

Government departments indicated that there are farmers in the province who cooperate with them on matters that promote the realisation of rights for farm workers.⁵ However, there are still those farmers who do not cooperate. In these instances, they will often call upon the farmers' union to intervene and assist. In many of these cases,

the outcome is positive. Constituency offices reported good relationships with relevant government departments except Justice and SAPS.⁶

The provincial Departments of Land Affairs, Labour, Health and Education sent representatives to testify at the Inquiry. The Department of Housing failed to attend despite confirming their attendance. The DPP declined to attend citing that they only wished to respond to specific cases.

Trade unions and constituency offices that attended the Inquiry reported that they do not have specific relationships with the farmers unions.⁷ Labour consultants however reported that they have frequent interaction with these role-players in dealing with specific cases.⁸ There appeared to be a degree of hostility toward consultants who are perceived as providing incorrect information to farm workers in the province, thereby creating greater problems.

"The problem with these unions is that they concentrate on trying to create disputes, they do not deal with the substantive issues that is necessary, instead of them assisting, they are actually helping these guys lose their jobs..."⁹

Free State Agriculture (FSA), an affiliate of Agri SA which represents approximately 80% of the 8 000 commercial farmers in the province,¹⁰ believes that they are being victimised and that a witch-hunt is being conducted against them. To back up the claim they refer to a similar Inquiry the Premier conducted in the province in 1999, which has produced no report, despite requests.¹¹

FSA reports that sometimes members of parliament who have received complaints from constituency offices or advice offices contact them. They then deal with these matters by talking to the farmer concerned with a view to resolving the matter.¹²

"Free State Agriculture condemns all illegal evictions, abuse of farm workers and other trespasses of labour laws, but at the same time, we condemn the many false and unverified accusations and generalisations by so many uninformed people of the society."¹³

Land rights

Land reform continues at a slow pace in the province and the implementation of land legislation is clearly not occurring optimally. Landowners state that they support the land reform process but are opposed to the ESTA legislation. They are critical of land reform processes that are yet to affect them in any substantive manner. Government officials who are supposed to assist in the enforcement of the ESTA fail in their task. Many farm dwellers are illiterate and unaware of their rights.

Tenure security

Reports were received of the elderly, women and children being evicted; of farmers refusing permission to farm workers to keep livestock and of farm workers being refused permission to bury their dead on the farm. The Inquiry received no indication of the number of evictions, both lawful and illegal, that have taken place in the Free State in recent years. As in other provinces, it was reported that most eviction cases emanate from labour disputes.¹⁴

The constituency offices reported a trend that farmers appear to evict farm workers who are old and no longer able to work on the farm.¹⁵ This contradicts statements made by FSA that they support the provisions in the ESTA that protect long-term occupiers.¹⁶ The constituency offices also reported that women and children are particularly vulnerable and that their tenure is often more insecure than that of men. In many cases, the women's tenure is dependent on the husband's right to reside on the farm. Where he loses this right, then the woman and the

children lose their right to reside. Where the husband dies, the woman is faced with the prospect of having to leave the farm and find another place to live.¹⁷

“There was one eviction case where we had a four-month old baby. It was cold and snowing that year. Most of the children who were amongst the people who were evicted were under the age of 12.”¹⁸

The FSDLA informed the Inquiry of a general trend by farmers of forcing farm workers to reduce the number of livestock they keep.¹⁹ Individual complaints received from the province indicated that farmers do not want farm workers to keep livestock.²⁰

The constituency offices reported that they handle many burial rights cases where permission to bury the deceased is denied by the landowner.²¹ It is unclear from these reports if the farm dwellers fall within the provisions of ESTA that entitle them to bury their dead on the farm.

SAPS collusion and assistance with evictions

The FSDLA report that there is a general lack of willingness from junior police officials to assist with enforcing the criminal provisions contained in the ESTA. They do not investigate cases or they threaten the complainants themselves with charges of trespassing being laid against them if they refuse to leave the land.²²

The FSDLA gave a number of examples of this lack of service from the FSSAPS, including:

- ❑ Refusing to accept a criminal complaint of eviction from farm dwellers who have been evicted and informing them to bring a civil case against the landowner.
- ❑ The FSSAPS do not take adequate preventative steps to stop the use of vigilante groups who are used to evict farm dwellers.

- ❑ FSSAPS have been known to assist farmers directly to illegally evict farm workers.
- ❑ Police officers display an indifferent attitude towards farm workers when they attempt to lay a charge of eviction.
- ❑ Farm dwellers have been removed from farms by the FSSAPS for ‘their own safety’ where they have been threatened by a farm owner with eviction. In effect, this results in eviction.
- ❑ Finally, an example was given of a farm worker being arrested and made to pay a fine of R300 for trespassing after the farm worker had requested the FSSAPS to come to the farm after he was assaulted and had a firearm pointed at him by the farm owner.²³

“An occupier who had a civil case pending in the court was visited by police officers who told him that his lawyer wants him to pay legal costs in the amount of R18 000 and that if he does not have money he should settle with the farmer out of court. The case was withdrawn without his lawyer’s knowledge. Needless to say, the occupier was not responsible for his legal costs.”²⁴

The FSDLA report that they receive positive responses from the provincial office of the FSSAPS when they take these matters up at this higher level.

Justice Department

The FSDLA are of the opinion that Department of Justice officials work with the incorrect perception that all land matters are civil matters. This results in cases of illegal eviction being withdrawn and these matters not being prosecuted. There also appears to be a general lack of willingness to proceed with criminal matters against farm owners and matters are sometimes withdrawn due to a lack of evidence without the complainant

being first informed thereof or requested to provide further evidence.²⁵ The FSDPP declined the invitation to attend the Inquiry hearings and thus their opportunity to respond to these issues was not exercised.

Lack of access to assistance to enforce rights

In 1999, the DLA provided ESTA training to Free State lawyers with the anticipation that they would represent farm workers in eviction court matters. This project was short lived, as by the end of 2000 the lawyers were unwilling to provide their services due to the cuts in the Legal Aid Board (LAB) tariffs and the delay in payments from the LAB.²⁶ These LAB changes also resulted in farm dwellers being denied access to LAB lawyers as the LAB officials in the province interpreted the new legal aid provisions as denying legal aid for eviction cases.²⁷ Currently, farm dwellers faced with eviction in the province are sent from pillar to post with the various role-players (advice offices, parliamentary offices, SAHRC, SAPS, LAB, trade unions) being unable to assist them by providing the services of an attorney. The FSDLA is only in a position to perform a mediating role in these eviction conflicts.²⁸

The FSDLA and the labour consultants who are accredited to FSA reported that some of the role-players who assist farm dwellers, such as paralegals and advice office workers, are often misinformed on the content of the ESTA. Farm dwellers are, in some instances, given incorrect advice which does not contribute positively towards resolving the eviction conflict. However, these role-players also play a crucial link between the farm dwellers and the FSDLA, as they are often the first port of call for assistance by those who are faced with eviction.²⁹ The FSDLA also reported that some labour consultants who are not experts in the law provide incorrect advice to farm owners and this can result in the farmer not following the ESTA procedures correctly.³⁰

Response from farmers

Farmers in the Free State are open in their dislike of the ESTA legislation. They feel victimised and targeted by the fact that they may have to pay legal fees to have farm dwellers evicted from their land. By having to comply with the ESTA, they say that they cannot easily employ another worker to replace a dismissed worker who refuses to leave and thus occupies the available accommodation intended for the new worker.³¹ They view the ESTA as having "unintended consequences" such as increasing urbanisation, declining employment opportunities for farm workers and deteriorating relationships between the employers and employees on farms.³² They openly advise their members not to provide employment to prospective farm workers unless they can prove that they alternative accommodation.

"ESTA is shocking. It discriminates against the Constitutional rights of farmers who do not have a say who resides on their land."³³

Response from provincial DLA

The FSDLA report that they have conducted annual workshops on the ESTA and LTA for farmers, farm dwellers, lawyers, SAPS officers, municipalities and the public at large. The Departments of Labour and Land Affairs in the province invite each other to relevant workshops when they address the link between land and labour legislation.³⁴

In terms of responding to actual evictions, the FSDLA experiences frustration in accessing the services of other government departments which ought to be best-placed to assist these farm workers.

"The procedure is too long. You cannot look for procedures when people are staying on the streets and have nothing to eat. When you say: " Okay let us be fast to help the people", the Welfare Department is too slow. I will say they are too slow. They are reluctant. That is my opinion. And as I say, the people do not have shelter, they do not have food, they have nothing."³⁵

The ESTA Networks

There are ESTA networks that have been established to assist with the implementation of the Act. However, it is unclear from the information provided to the Inquiry how the networks go about doing their work and who is represented in these networks. One role-player mentioned that those organisations that represent farm dwellers do not participate in the networks.³⁶

Labour tenants

The FSDLA received 331 labour tenants claims during the national Parliament-initiated communications campaign to inform people of their right to lodge a claim before the cut-off date of 31 March 2001. Of these claims, the Department estimates that only 11 are valid.³⁷

FSA does not support the labour tenants process. They are of the view that what was a benefit of being employed on a farm, has now become an enforceable right.³⁸

Land redistribution

The FSDLA acknowledges that land redistribution was happening at a slow pace in the province. However, it is anticipated that the process will now speed up with the new system, whereby provinces have more control over the running of the projects. In the past, everything had to go to Pretoria for approval and this caused delays.³⁹ Expropriation is yet to be used in the province to provide land to the landless, despite the fact that most State-owned land in the province is non-agricultural land.⁴⁰ The FSDLA has not had success-

ful experiences with share equity schemes and will not encourage them in the future.⁴¹

FSA report that they have approximately 300 Black farmers in their membership ranks. They assist emerging Black farmers and participate in a number of forums where land reform projects are discussed.⁴²

Land restitution

Of the 2 867 restitution claims lodged in this province, only 2 have been settled to date. Although FSA claims to support the land reform process, they also state that land claims lead to uncertainty for the farmer and the farmer having to incur high legal costs to defend invalid claims.⁴³

Labour laws

Farm workers and organisations that represent them highlighted the long hours worked and low wages received by employees in the farming community. FSA reported that their members are well-trained in labour law and the FSDoL agreed with this. It is, however, difficult to ascertain the number of labour law violations that are occurring in the province. There are high levels of illiteracy and workers tend not to sufficient information about their rights. SAAPAWU is of the opinion that there has not been an improvement in compliance with labour laws in recent years.⁴⁴ They say farms are difficult to access and trade union officials have, on occasion, been refused entry to farms.⁴⁵ Due to job insecurity, even workers who are aware of their rights are too afraid to approach the CCMA or FSDoL when their rights are violated.⁴⁶ The FSDoL reports that 587 (13,94%) of complaints received during 2001 came from the agricultural sector.⁴⁷

Response from organised farmers

FSA reports that they provide labour law training to their members. More than 3 000 members have attended the NORAD training courses that include training on labour laws. Farmers also received information and training through their website, weekly elec-

tronic newsletters, Agri SA's monthly newsletter, radio talks and information sessions. FSA has created a standard service contract, which complies with the labour laws for their members. They also have a code of good practice, which includes disciplinary and grievance procedures.⁴⁸

The labour consultants who are accredited to FSA report that in their experience, employers do comply with all aspects of the labour laws.⁴⁹ They claim that in recent years, reported contraventions of the labour laws are not of such a serious nature as in the past.⁵⁰

Non-compliance with labour laws

The most common complaint in this province related to working long hours and not being paid overtime. Workers reported that they are told they can leave the farm if they do not like the hours. Accounts were received of workers working from 06h00 to 18h00 Mondays to Saturdays⁵¹ and from 07h00 to 18h00, Mondays to Fridays.⁵² Another complaint was that the worker was forced to work Saturdays and was not paid overtime and received R300,00 per month.⁵³ The constituency offices reported that they also receive many complaints of this nature.⁵⁴

"We start work from 05h30 to 18h30 and are paid R350,00 per month."⁵⁵

Other complaints received related to:

- No pay slips being given.⁵⁶
- Workers not being registered for UIF.⁵⁷
- Workers not being registered with the Compensation Commissioner.
- Injuries not being reported.⁵⁸
- Lack of compliance with COIDA.
- Failure to provide protective clothing.⁵⁹

Some complaints were received about a lack of service from the CCMA and FSDoL when

violations of these laws were reported to them.⁶⁰

Child labour

Role-players were unable to give any direct examples of child labour that may be occurring in the Free State. Constituency offices reported generally that they have had experiences of child labour occurring.⁶¹ SAAPAWU also could not give any direct examples.⁶² The FSDoL reported that it is very difficult to ascertain the prevalence of child labour.⁶³ The FSDoE was of the view that child labour is no longer happening in the province.⁶⁴

As with other provinces, the FSDoL co-ordinates the CLIG (Child Labour Intersectoral Group) structures that have been established to combat child labour. Various role-players are represented in this structure.

Response from the FSDoL

The Free State has 84 labour inspectors for the entire province.⁶⁵ During September 2001, the Department conducted an inspection blitz on 28 farms. It was found that farmers, in general, are aware of labour legislation and their responsibilities to comply. No serious violations of any labour legislation were uncovered. Non-compliance with labour laws that were found related to administrative issues such as written particulars of employment not being provided to workers, payslips not being issued and attendance registers not being kept. In these cases, improvement notices in terms of the BCEA were served on the employer. Contravention notices were also issued during the blitz for non-compliance with the OHSA. The type of contraventions that were found included first aid boxes not being kept, general administration regulations not being adhered to, health and safety representatives not being appointed by employers, machinery not being serviced regularly and copies of the OHSA not being made available to workers in the workplace.⁶⁶

The FSDoL report that in terms of training initiatives in the province, they participate in radio talk shows, publish newspaper articles, conduct information sessions and distribute pamphlets during inspections.⁶⁷

Poor conditions of employment

Many complaints were received about the low wages that are paid to workers in this province. One government official referred to these wages as “non-living wages”. SAAPAWU reported wages of as low as R60,00 per month being paid, with wages of up to R800,00 per month at the other end of the scale.⁶⁸

“I also feel that I am being underpaid for I work for R200,00 per month.”⁶⁹

“I have worked there for a period of 35 years. I earn R280,00 per month plus mealiemeal. The money is little to support our children.”⁷⁰

Complaints were also received of infringements of human dignity in the work place though verbal abuse. Workers reported being called “kaffirs”, “bobbejane”, and “skeysels”.⁷¹ Workers are also insulted through political statements such as “... Mr. Mandela won politics not land...”.⁷² Infringements of dignity are also experienced through the general manner in which workers are treated such as the example given of a domestic worker on a farm who is paid R180,00 per month and is not offered lunch or tea to drink except for being allowed to make tea with the used teabags of the farm owner.⁷³

There is a misperception amongst farm workers who have worked for an employer for many years that they are entitled to pension and various lump sum payments from their employer upon retirement. The constituency office told the Inquiry of how these elderly workers arrive at their offices expecting to be assisted to access these monies.⁷⁴

Safety and security

Not much information was placed before the Inquiry regarding safety and security issues in the province. There was some information that indicates that private security vigilante groups such as Mapogo a Mathamaga have operated in the province and that violent crime against farm owners occurs.

Violence perpetrated against farm dwellers

The Inquiry was informed of a blind man who was allegedly evicted from a farm by Mapogo a Mathamaga. He was dumped with his belongings in the middle of a nearby township and left to fend for himself.⁷⁵ There were also reports of Mapogo a Mathamaga having assaulted people and the FSSAPS failing to take appropriate action in these cases.⁷⁶ It is unclear whether Mapogo a Mathamaga is still currently operating in the province. There was also information indicating that vigilante groups from KZN are used by farm owners to evict people from farms.⁷⁷

SAAPAWU stated that they are aware of a farm where assaults have been perpetrated by farm owners against farm dwellers.⁷⁸ Representatives from constituency offices in the province complained that the FSSAPS do not investigate these assault cases properly.⁷⁹

Farm attacks

FSA informed the Inquiry that in 1999 there were 53 farm attacks and 3 murders in the province. In 2000 there were 38 farm attacks and 9 murders and in January to September 2001 there were 24 farm attacks and 5 murders.⁸⁰ In some instances, farm workers are intimidated and threatened by the attackers.⁸¹ The FSSAPS did not attend the Inquiry to provide further information. FSA estimates that in 70 - 75% of these cases, the alleged perpetrators have been brought to court. They report that they are satisfied with the police’s performance in this area of crime control.⁸²

A lot of information about potential farm attacks is received through the commando system in the province.⁸³ FSA say that the commando structures, which fall under SANDF control, include farm workers.⁸⁴ However, SAAPAWU disputes this, saying that they have not heard of any farm workers being part of these structures.⁸⁵

FSA attribute the underlying causes of farm attacks to generalised accusations of farmers violating human rights of farm dwellers.⁸⁶ In their opinion, this can sometimes amount to hate speech with contains strong racial undertones. On the other hand, they also agree that violent crime perpetrated against farm workers is caused by criminal elements.⁸⁷ Nevertheless, they maintain that a small percentage of this crime is politically motivated.⁸⁸

"Farmers are too often depicted as cruel racists who assault and evict their workers at random. This is simply not true. Even if there are some individuals who may fit this stereotype, it is wrong to create the impression that all farmers are like this."⁸⁹

Economic and social rights

Housing

In their response to ESTA, FSA is open about their policy not to provide housing to farm workers who cannot prove alternative accommodation. They cite the lengthy and expensive ESTA legal process that must be followed in order to evict a person as a reason for embarking on this policy. Farm owners are also reluctant to improve housing conditions on farms and prefer to destroy houses that become vacant and employ people who live off the farm.⁹⁰ Complaints were received of dilapidated houses that leak in the rain and appear as if they are about to collapse,⁹¹ of a farmer refusing to repair a farm dweller's house⁹² and families living in shacks on farms.⁹³ The FSDoL stated that during their inspection blitz they came across hazardous accommodation.⁹⁴

According to the constituency office, there is also some good housing provided for farm workers in the province.⁹⁵

Health care

Assistant managers from the FSDoHealth who work in the northern Free State attended the Inquiry hearings and provided insight into the provisioning of access to primary health care in the province.

Mobile clinics provide primary health care services in the rural areas. Each mobile point covers 2 to 6 farms which are visited every 2, 4 or 6 weeks.⁹⁶ Mobile clinic services include mother and child services, immunisation and nutrition services. Epilepsy and other chronic conditions are also provided for. Flu vaccines for the elderly remain excluded from the primary health care service in the province.⁹⁷ The mobile clinics also assist people living with disabilities in obtaining wheelchairs or walking aids.⁹⁸

Where the FSDoHealth has encountered difficulties in obtaining access to farms in the province, FSA has assisted them.⁹⁹ In emergencies, patients must visit the nearest hospital, clinic, or community centre in an urban area or rural town.¹⁰⁰

The most common health problems encountered by the mobile clinics are women abuse, domestic violence and rape. In many cases, mobile clinic nurses act as social workers and providing counselling and support. In rape cases, particularly where children are involved, the mobile clinic must transport the rape survivor to the nearest police station to report the matter.¹⁰¹

The mobile clinic staff also encounter cases of alcohol and dagga abuse, with women reporting that this abuse contributes towards domestic violence. Mobile clinic staff can refer people to Kroonstad for specialist treatment. However, they are unaware of any programmes in the province that can assist people in rural areas who suffer through substance abuse.¹⁰²

Male farm workers are often not allowed to take time off from work to attend the mobile clinics and are thus denied access to primary health care. They usually work in the fields and the roads to get to them are inaccessible for the mobile clinic vehicles.¹⁰³

Access to health care in the province is hampered by a number of factors that stem from poverty. In many cases, people are so poor that they cannot afford the transport to get to the nearest clinic or hospital that the mobile clinic refers them to.¹⁰⁴ Many people do not have telephones or access to use a telephone and are unable to call for an ambulance in emergencies.¹⁰⁵

"The non-living wages that farm workers receive impacts on the availability or the affordability of them to afford medical care...."¹⁰⁶

Food and water

No direct information was placed before the Inquiry regarding the right of access to adequate food. Given the reports of low wages that were received in the province, it can be stated that this right is negatively impacted upon.

The FSDoHealth reports that the policy of the MEC is that all farm school children must belong to the Primary School Nutrition Programme (PSNP). However, the implementation of this policy is lacking in that teachers fail to fill in the application forms for the Programme. There are currently 144 farm schools representing 447 learners who benefit from the Programme.¹⁰⁷ There are approximately 50 000 learners attending farm schools in the province.

The Inquiry received individual complaints of people having to walk long distances to fetch water for domestic consumption.¹⁰⁸ In addition, complaints were received of dirty water being provided to farm dwellers. Examples included accounts of water being

stored in tanks that had been previously used to store diesel. These containers were not properly cleaned before being used to store water.¹⁰⁹

"There is no water. The water is fetched from a tap in the cemetery and the taps are seemingly on top of the corpse. The water is also dirty and sometimes fatty and stinking. It smells bad."¹¹⁰

Social security

In some instances, access to social security is denied through bureaucratic procedures that are difficult for poor rural farm dwellers to comply with. The Constituency Offices reported that people travel great distances to the nearest Home Affairs office only to be informed that they have not brought the necessary documents to apply for an ID document. In many instances, these people do not have the documents (e.g. baptismal certificates and school certificates) that Home Affairs requests in order to issue them with an ID.¹¹¹ An example was given of a minor child who went to live with her grandmother in the nearby township as her parents had died. The child did not have an ID document and the grandmother was unable to access a Child Support Grant to assist her in looking after her grandchild. The grandmother is unable to comply with the administrative requests of the local Home Affairs office and the child is being denied access to social security.¹¹²

Elderly farm dwellers also find it difficult to access their pensions. The constituency office workers report that they advise or assist the elderly by going with them to apply for their pensions.¹¹³

Education

In the Free State, farm schools make up 60% of all schools in the province. These farm schools are only attended by 7% of the learner population in the province. In 2002 there were 1 380 farm schools, with 50 168 learners and 2 257 educators. The FSDoE has

embarked on a programme of creating Green Patches that will cut down the number of farm schools in the province and provide a better standard of education at more centralised schools. Since 1996, the Department has been closing down approximately 100 farm schools per year in the province.¹¹⁴ While FSA report that farm schools are racially integrated,¹¹⁵ the FSDoE maintains there are no integrated farm schools.¹¹⁶

The Department identified a number of challenges that result in lack of access to education. These include:

- ❑ Poor management of schools by farm managers.
- ❑ School buildings not being conducive to learning (e.g. collapsing walls).
- ❑ Inadequate water supplies.
- ❑ Learners walking unacceptably long distances.
- ❑ Underdeveloped sports ground which result in a lack of activity for physical growth.
- ❑ Farm managers failing to give permission for adult education programmes to be conducted on farms.¹¹⁷

In some cases, there is also a lack of adequate teaching staff at farm schools. Some teachers have taught for a long time at these schools without improving their qualifications. The Department finds it difficult to attract qualified educators to teach at the farm schools, as there is no accommodation available for them on some farms.¹¹⁸

Due to a lack of proper control over farm schoolteachers, the Department has encountered some discipline problems such as teachers arriving late on Mondays and leaving on Thursday afternoons.¹¹⁹ This has been addressed at a number of levels including the placement and training of labour relations officials at District Office level and the MEC for Education placing advertisements in local newspapers inviting people to report irregularities. There has also been the introduction of a toll-free telephone number to report poor service delivery and corruption.¹²⁰

Some farm schools lack adequate teaching resources such as flip charts and overhead projectors. These facilities either do not exist on the farms or, if they were available, could not be used due to a lack of available electricity supply. The Department is currently liaising with ESKOM to resolve this problem.¹²¹

Green Patches

To address the needs of education in the province the FSDoE is establishing "Green Patches". These are centralised schools to which farm children are transported. The programme for creating Green Patches includes the rationalisation and centralisation of education, the development of teachers, upgrading of schools and the creation of informal hostel accommodation.

The programme began in 1996 and in July 2002 a further two pilot projects began. It is anticipated that through this centralisation there will be greater opportunities for other government departments to deliver their services to rural areas by using the Green Patch as a central point. For example, the Department of Health will be better placed to implement their feeding scheme and immunisation programmes, community meetings could be held and it could provide a venue for parents to attend ABET classes.¹²²

It is anticipated that these Green Patches will also address issues of child abuse. The FSDoE reported instances of children being abused when travelling long distances to attend schools.¹²³ Another issue to be addressed is the provision of hostel accommodation. There is a need for children to be provided with more appropriate living circumstances, other than the informal township shacks that some are placed in.¹²⁴

Children with special needs and disabilities FSDoE admit that they are lacking in providing educational opportunities to these children. It is anticipated that the Department's new policy on Inclusive Education will address this area of education.¹²⁵

CHAPTER 12



KwaZulu-Natal

Introduction

KwaZulu-Natal (KZN) can be distinguished from most other provinces by the presence of labour tenants living in the rural areas. At present, these labour tenants are waiting on the Department of Land Affairs to process their applications of awards of land in terms of the Labour Tenants Act.¹ There are also many farm dwellers living and working on farms in the province who would fall under the protection of ESTA. The distinction between the legal status of the two is not always clear from the information that was placed before the Inquiry. However, one thing is apparent, and that is that there has been a major change in approach towards Black people living on farms by White farm owners in recent years. Numerous complaints were received about the changing relationship that is characterised by the White farm owner withdrawing and removing rights and benefits that farm dwellers and labour tenants previously enjoyed. The most common complaints related to the refusal to allow families to bury their deceased relatives on the farm or to keep livestock on farms. Other complaints that were received from this province included non-compliance with labour laws, particularly regarding working hour provisions, and the failure to register workers for UIF and COIDA. Many government

departments came under criticism for failing to carry out their duties and to assist the poor and disadvantaged from enforcing their rights that are guaranteed in terms of the Constitution.

KwaZulu-Natal is geographically the third-smallest province in South Africa and covers 7,6% of the total land surface in South Africa. In terms of population it is the largest province in the country with approximately 57% of the population of 8,9 million living in rural areas.² KZN is recognized as being at the centre of the HIV/AIDS pandemic with the highest infection rates in the country being reported from this province.³

The relationships between the role-players Frustration with the slow pace of change, a lack of sufficient interaction between the parties and expectations based on morality and decency, yet perceived as rights, characterise the relationships between the parties.

The Inquiry was confronted with furious and frustrated role-players who accused the Commission of being yet another "talkshop". They claim that much has been written about the human rights situation in the province and were also insistent that people should be able to individually present their

cases to the Inquiry. Because names were not allowed to be mentioned at the Public Hearings, they were of the opinion that the process was structured with the intention to exclude the people whose human rights are most adversely affected in the farming communities.⁴

At one point in the proceedings, after a local councillor had remonstrated about farm workers being dismissed, the hearings were disrupted.

Against this backdrop, it was also apparent that different role-players were not aware of each other. NGOs stated that there is a lack of interaction and co-operation between relevant government departments such as the DLA and DoL.⁵ Where NGOs and government do work together, this relationship can be fraught with difficulties that further inhibit progress being made.

"There have been difficulties where the objectives of government and the NGOs have from time to time been clashing and therefore we have not seen eye to eye on some issues but I think there are many other stakeholders that we want to engage."⁶ KZNDLA spokesperson

There is also a clear lack of knowledge of rights amongst farm dwellers with morality and decency based on paternalistic patterns of relationships sometimes being perceived as enforceable rights. For example, there were high expectations of farmers to financially assist families living on their land with funerals of their next-of-kin, or by paying them a pension or long-term service bonus.⁷ One role-player even commented that where an employee was injured at work, the farm owner ought to have taken the person to a doctor of their choice and paid the medical bill.⁸

In between this maze of complex conflicting needs of the parties, there is a clear lack of access to justice in order for farm dwellers to enforce and realise their rights. People are sent from pillar to post in their search for assistance and are often relegated to inexperienced lawyers and law students for assistance.⁹ After November 1999, with the reduction in tariffs paid by the Legal Aid Board (LAB), attorneys stopped representing farm dwellers in civil land disputes. The KwaZulu-Natal Land Legal Cluster (KZNLLC), which attempts to fill this gap, only became operational in November 2001.

Land rights

KZN can be compared with Mpumalanga in terms of land rights in that there are labour tenants who reside in these provinces. However, from the information provided to the Inquiry it was difficult to distinguish between persons protected in terms of ESTA and those who are labour tenants.

Tenure security

There are no accurate statistics available on the number of land rights violations that occur in the province. However, an indication of the number of evictions and related occurrences, and statistics on the number of matters that are referred to them can be obtained from the KZNDLA and KZNLLC.

During the period 1 July 1998 to 30 April 2000, the KZNDLA received 583 matters relating to tenure security. Of these cases 305 involved constructive eviction cases, 35 actual evictions without a court order and 24 were the statutory s9 (2)(d) notices of intention to commence eviction proceedings. No court orders were received in terms of the ESTA. They also received 14 matters where charges were laid against the occupier and 2 cases where charges were laid against the evictor.¹⁰

The KZNLLC received 151 matters during the nine-month period ending in June 2002. Of these cases, 77 were threatened eviction

cases, 12 actual evictions, 18 cases were where judicial proceedings had been instituted and were defended and 6 applications were made to the LCC for an order to be recognised as a labour tenant.¹¹ The remaining 35 cases concerned interference with the rights of people living on farms, such as cutting water supplies, obstructing access to cross properties, unilaterally closing farm schools and denying grazing rights.¹² The KZNLLC expected to be flooded with matters when they opened their doors and then for the rate to taper. The opposite has been their experience with the number of matters increasing each month.¹³

Unlawful evictions

From the individual submissions received, it appears that some farm dwellers are threatened with eviction and pressurised into leaving the farm 'voluntarily'. Alternatively, they leave due to a lack of knowledge of their rights. The Inquiry received information indicating that in a number of evictions, farm owners take direct action to remove people from the farm.

"In 1999 I was evicted from the farm. He accused me of having been drunk, since he knows that on payday we collect money and buy some beers to cool us. However, we did not do anything wrong. It is just that he wanted a scapegoat to justify himself. ... the farmer destroyed my house and took away my belongings. My ID got lost there. Until now, I do not have an ID book. I cannot even process issues pertaining to my wife who passed away last year."¹⁴

"In September 1998, my granddaughter happened to cause a veld fire. The farmer claimed a sum of R10 000,00 as a repayment for the grass that burnt. I refused because I did not have that money and I felt that the amount was too much to pay for the grass. The farmer then evicted me. I took the case to Land Affairs, as I was not even given any notice. They never took any steps until today."¹⁵

SAPS collusion and assistance with evictions

NGOs report that their general experience of the police is that they have a lack of understanding of the relevant land legislation. This results in these provisions of the law not being applied.¹⁶

KZNLLC informed the Inquiry that in their experience evictions are usually preceded by the farm worker being assaulted by the farm owner. The police are called to the scene and they assist with the demolition of the house and the eviction of the farm worker who is then taken to the police station and assaulted further.¹⁷

It was further alleged that the criminal justice system is being abused by landowners to expedite evictions. Baseless charges are laid against farm dwellers, such as assault and trespassing. These charges result in the farm dwellers being arrested and detained. The person is often unable to raise money to post bail. An eviction order becomes more easily attainable for the landowner as the farm dweller no longer resides on the farm and must attempt to defend eviction proceedings from prison.¹⁸

In response to these allegations, the KZNSAPS stated that they were not aware of evictions occurring with the use of violence by farmers.¹⁹ They do, however, also concede that they are not sufficiently aware of relevant land legislation and that training of police officials is necessary.²⁰

"He evicted me. I reported the case at the police station in September 1988. Nothing has been done so far."²¹

Similarly, the KZNDPP concede that prosecutors may not have a reasonable knowledge of ESTA and that training is necessary.²² A refusal to prosecute an eviction matter may be taken at a district court level and thus not

brought to the attention of the regional office of the DPP. Reasons for refusal to prosecute are only given when the complainant makes a request for such reasons.²³

Burial rights on farms

Interference with and refusal to allow burials of relatives appeared to be a common complaint that was received from this province.²⁴ However, it was unclear from the information provided whether all of these matters fall within the ambit of ESTA.

"Previously people knew that they would bury their next-of-kin on the farms and there was no problem. Later everything changed; they were refused to bury their next-of-kin. They were told that there is a law which says they are not supposed to bury their next-of-kin on the farm."²⁵

Reports were received that in some cases the farm owner calls the police to the farm to prevent the farm workers from burying their relatives on the farm.²⁶ When the police arrive, they appear biased and favour the farmer. They are not willing to listen to what the farm workers have to say and inform them that they may not proceed with the burial.²⁷

Some farm owners will even go to court in order to obtain an urgent interdict preventing the burial from going ahead. In one example provided to the Inquiry, it was clear that the farm worker did not understand the legal process that was being followed by the farm owner, and did not obtain legal representation to challenge the court proceeding. Rather, the farm worker desisted from burying his next-of-kin on the farm only to be sued at a later stage for the legal costs of the farmer and have his cattle attached by the sheriff.²⁸

Lack of access to assistance to enforce rights

Due to the difficulties confronting the LAB in recent years, there is effectively little access

to legal representation provided by the Board to indigent farm dwellers and labour tenants who are faced with civil land rights court proceedings. The KZNLLC was formed in response to this need. It is a forum of various NGOs which operate in the sector of land legal assistance.²⁹ Cases are referred to the cluster mostly from the KZNDLA.³⁰ Some clients have been sent from pillar to post and those who have had access to an attorney have generally had bad experiences. The KZNLLC states that attorneys provided by the LAB are often not specialists in land law and they are not equipped to provide an effective and competent legal service.³¹

"We reported the case at the constituency office, then to the police station. Thereafter we were referred to an attorney who took action and we were told that there is no magistrate to act or to deal with the case. After we came back to the constituency office, a magistrate prosecuted the case. He never came back to give us the next hearings for the case and we were told that there is no magistrate to deal with the case. Of late, our mud and stick houses were destroyed and we are left with only one room where the family of 12 has to live. We need this to be prosecuted again as we do not understand why after 30 years residing on this farm we are treated like this."³²

In addition to access to legal assistance being limited, it was reported that other State institutions fail farm dwellers in the protection of their rights. The CCMA is known for conciliating labour disputes and making settlement agreements where the farm worker agrees to vacate the property by a certain date, without the ESTA rights being explained.³³

The lack of access to legal assistance can have serious consequences for farm dwellers, such as the experience of this farm worker indicates:

"Soldiers, police, the station commander, the court messenger and the farmer ordered me to take all my belongings from my huts. After that, he bulldozed whatever was said to be buildings and some household items were destroyed. I was let down as a human being, having to sleep outside with infants with nowhere to go."³⁴

Response from provincial DLA

The KZNDLA report that they have had an enormous staff turnover in recent years and that this has affected the Department's capacity to deliver.³⁵ In order to address these challenges the Department has identified that they need to develop partnerships with other relevant role-players.³⁶

An ESTA Monitoring Project has been established in the province. The purpose of the project is to monitor the number of evictions that are occurring and the Department engages with various NGOs in this task.³⁷

Labour tenants

There are 6 798 labour tenant applications that have been submitted in KZN. It is anticipated that these claims will be finalised in the next 3 to 4 years.³⁸ The Department has worked closely with local NGOs to raise awareness about labour tenants and their respective rights.³⁹ In the near future, the KZNDLA intend setting up forums in each municipality to deal with all of the labour tenant claims.⁴⁰

Removal of the right to use grazing land

There were a number of complaints relating to the ownership of livestock by farm dwellers and labour tenants on farms. From these complaints, it would appear that in recent years farmers have made a concerted effort to limit previously held rights of their farm dwellers and tenants to own and keep livestock. Thus reports were received of farm dwellers being told to decrease their livestock numbers,⁴¹ being charged for keeping live-

stock whereas previously they were not,⁴² being denied previously held grazing rights,⁴³ not granting people permission to keep livestock⁴⁴ and demanding rent for livestock in an attempt to pressurise people to vacate the land.⁴⁵

Land redistribution

The KZNDLA say that they believe that they have been very successful in their land redistribution programme to date even though it has not moved as fast as some people anticipated.⁴⁶ During questioning by panellists, the DLA representative conceded that land redistribution is moving very slowly and that the Department has not done enough in this area.⁴⁷ There is currently approximately 49 000 hectares of State land that the KZNDLA is in the process of transferring to communities.⁴⁸

There has been no expropriation of land for purposes of redistribution.⁴⁹ The Department intends targeting land owned by large companies in the province for its redistribution projects.⁵⁰

The Department has only received 120 applications for the LRAD Programme that was launched in August 2001. The KZNDLA had expected to receive more applications. Thus far they have had an ad hoc communication campaign about the programme. There has been no sustained programme of action.⁵¹

In the opinion of the KZNDLA, contributions to the LRAD programme can be in kind. Therefore poor people are not prevented from participating in LRAD.⁵² In their experience, no-one is yet to complain that the contribution that they must make is preventing them from accessing the programme.⁵³ The Department stated that if there were people who are being excluded from the programme due to poverty, they would be willing to attend to these cases.⁵⁴

NGOs continued in their criticisms of the LRAD Programme stating that there is a lack of a proactive approach to land reform. Beneficiaries of the programme are identified in response to a threat being made to their tenure security or when they are actually evicted. This demand-driven approach comes late in the day for some beneficiaries, who must first have many of their socio-economic rights violated through the eviction procedure before they can become beneficiaries in a programme.⁵⁵

The Department has adopted a cautious and slow approach to share equity schemes. Currently the Department is working on 4 share equity schemes,⁵⁶ none of which are completed.

Labour laws

Widespread non-compliance with labour laws and poor conditions of employment were brought to the attention of the Inquiry in this province. Changes in the terms of conditions of employment such as the employer withdrawing payments in kind and other benefits, were another trend that has begun in recent years and was reported to the Inquiry.

It is difficult to ascertain the extent of labour rights violations. Non-governmental role-players who gave evidence before the Inquiry tended to specialise more in the protection and enforcement of land rights. SAAPAWU spoke about their experiences and their member's experiences in the agricultural sector but did not provide the Inquiry with any statistical information. However, the individual submissions received by the Inquiry provide a number of examples of the type and nature of labour rights violations that occur in the province. In addition, the KZNDOL reported that the agricultural sector is the third-largest sector from which they receive complaints. For example, during the 6-month period from January to June 2002, they received 823 complaints from this sector.⁵⁷

Non-compliance with labour laws

The KZNDOL informed the Inquiry that during inspections the worst forms of violations that they have encountered included general non-compliance with working hours, no overtime payment for Sunday and public holiday work, denial of annual leave and employers failing to keep the necessary records.⁵⁸ This was confirmed by some of the written submissions that the Inquiry received from individual farm workers.

"He is working from 06h00 to 17h00 with no overtime being paid. He has to work most Sundays from 06h00 to 14h30 with no double time."⁵⁹

SAAPAWU brought further issues of non-compliance with labour laws to the attention of the Inquiry. These included the lack of compliance with health and safety legislation and farm workers not being provided with protective clothing,⁶⁰ corporal punishment being used in some instances instead of disciplinary procedures⁶¹ and workers not being paid when they are unable to work due to bad weather conditions.⁶²

"When there is a fire at night, a farmer will wake up all the workers to go and extinguish that fire with no payment at all because to extinguish the fire the farmer will benefit, but when it rains, even if the farmer will benefit, the farm workers will not be paid."⁶³

NGOs complained that some employers make deductions from farm workers' wages and that they do not explain these deductions. Alternatively, deductions are made unilaterally without consultation with the workers who are told that these deductions are for rent, electricity, water, or the keeping of cattle and sheep.⁶⁴

The KZNDOL, SAAPAWU and NGOs reported that many farm workers are not reg-

istered for UIF. The KZNDOL stated that one of the underlying causes for this non-registration is that the workers themselves do not have ID documents and hence the employer is unable to register them.⁶⁵ SAAPAWU state that very few workers are registered for UIF⁶⁶ and NGOs reported that the majority of farm workers are not registered.⁶⁷ Workers who are not registered and are aware of their rights are sometimes afraid to raise the matter with their employer, as they fear that they will be evicted for doing so.⁶⁸

Women

Reports were received of women being discriminated against in the workplace. Examples provided to the Inquiry included women being paid less than men, not receiving maternity benefits and not being allowed to take maternity or family responsibility leave.⁶⁹ The underlying reason in many cases for why these women farm workers do not receive their maternity benefits is that they are not registered for UIF and are thus not provided with the necessary UIF cards and documents in order to claim their maternity benefits.⁷⁰ SAAPAWU told the Inquiry that sexual harassment of women is rife in the agricultural sector.⁷¹ On one farm in the province sexual harassment by the farm owner of his female employees is seen at a condition of employment.⁷²

In response to this, the KZNDOL stated that they are unaware of these problems of women workers in the province and that they have not not been brought to their attention.⁷³ Regarding non-compliance with the BCEA maternity leave provisions, the KZNDOL admitted that the information placed before the Inquiry may be correct. They stated, however, that they could only address the issue if individual complaints are received.⁷⁴ The KZNDOL rather attributes the “maternity leave non-compliance issue” to women not wanting to wait for their benefits that are payable during the statutory four months maternity leave, and opting to return to work as soon as possible.⁷⁵

Trade unions

SAAPAWU informed the Inquiry that it is difficult to gain access to farms in the province. This is despite Agri SA giving the unions a document to produce to farmers that would assist them in obtaining access.⁷⁶ Where workers are organised and go on strike, SAAPAWU states that the farm owner merely contacts the commandos who arrive and assault the workers.⁷⁷ The KZNDOL confirmed that employers in the agricultural sector do not “take kindly” to unions.⁷⁸

“Most farmers do not want to see SAAPAWU organisers next to their farms. They will demand ID cards and lots of documentary proof in a very aggressive manner. They will even threaten to physically abuse SAAPAWU officials. Even when you produce the documents the farmer may still refuse access.”⁷⁹

SAAPAWU alleges that in some cases it is difficult to organise farm workers because they have had bad experiences with ‘fly by night’ trade unions in the past. These unions abuse farm workers by charging very high union subscriptions and fail to deliver an effective service.⁸⁰

Child labour

SAAPAWU reported that they are aware of at least one farm in KZN where child labour is used.⁸¹ The KZNDOL reported that they are unaware of child labour occurring⁸² and the KZNSAPS told the Inquiry that they have not received any child labour cases.⁸³ Consequently, the KZNDPP reported that there have been no prosecutions for child labour in the province.⁸⁴

In accordance with the national efforts to combat child labour, there is a CLIG structure (Child Labour Intersectoral Group) in the province, which includes various role-players such as the departments of education and welfare.⁸⁵ The KZNDOL have conducted information sessions to educate

people on the issues around child labour. They have found that there is a lack of understanding and confusion as to what constitutes child labour.⁸⁶

Poor conditions of employment

The KZNDOL estimate that the average cash wage for a farm worker is R450,00 per month.⁸⁷ SAAPAWU puts this figure at R400,00 per month.⁸⁸ The KZNDOL are aware of wages as low as R216,00 being paid to farm workers. There is the practice in the province to pay wages in both cash and kind. Thus, it is not always clear from the cash wage what the total payment to the worker is. Payments in kind most commonly include food rations of mielie meal.⁸⁹ The KZNDOL emphasised the need for the Sectoral Determination process to be completed and minimum wages to be set for the sector.⁹⁰

"We are getting R20,00 per day. I started in 1998. Up until today, we are not getting a bonus at the end of the year. We are 5 in a room."⁹¹

"I started working for him in 1982. Then, I was paid R1,00 per day. But now we are getting R20,00 per day which we feel we are still exploited."⁹²

"I am complaining about money. We are getting too little. I am working for R20 per day. We have to pay for food and electricity out of this R100 per week that we are getting. I started in 1998 and until today I am still getting the same amount of money."⁹³

"The farmer does not allow them to keep chickens, he deducts money from their salary for doctor's appointments, and he earns R200,00 per month. He works from 06h00 to 17h00, Monday to Saturday."⁹⁴

Response from the State

There are currently 139 labour inspectors in the province with a further 107 posts currently being vacant.⁹⁵ Where inspections take place on farms and violations are found, then written undertakings are issued. According

to the KZNDOL only a few cases result in compliance orders being issued, as most are resolved through the issuing of a written undertaking.⁹⁶ Unlike most other provinces, the KZNDOL has not had a recent inspection blitz in the agricultural sector, although the one is planned before the end of 2002.⁹⁷ In terms of training, the KZNDOL report that they have held information sessions with groups of employers. These sessions are organised through the Farmers' Associations.⁹⁸ The Department admits that there is a need for more interaction between the role-players concerning the enforcement of labour rights in the province.⁹⁹

Safety and security

A repeated complaint in KZN was the violence perpetrated against farm workers by farm owners, commandos and private security groups. There were also many complaints about the manner in which these cases were handled by the KZNSAPS. Little information was received about farm attacks.

Violence perpetrated against farm dwellers

NGOs reported that there is physical abuse and threatened violence, including the pointing of firearms, being perpetrated against farm dwellers in the province.¹⁰⁰ A range of role-players is identified as being responsible for perpetrating this abuse. These role-players include farmers,¹⁰¹ commandos¹⁰² and private security.¹⁰³ The trigger for this violence, in many instances, is the alleged theft of the farm owner's property by the farm dweller.

Reports also indicated that some of this violence is well organised,¹⁰⁴ in that the farmer will arrive with family, friends or other unknown persons who then proceed to assault the worker and break down doors in order to search the home.¹⁰⁵ In some cases, the person is abducted and taken to another destination and beaten.¹⁰⁶

Whether perceived or real, farm dwellers are not of the opinion that the KZNSAPS is effective in addressing this crime. They indicate that the KZNSAPS appear more sympathetic towards farm owners than farm dwellers when crimes are reported.¹⁰⁷ Complaints indicate that the police refuse to accept complaints and where charges are laid, little or nothing seems to happen.¹⁰⁸ In one example, an old man who was beaten by a farmer was left unable to speak. The police told those who took him to the police station that they would assist him when he can speak again. This is despite the fact that other farm workers witnessed the event.¹⁰⁹

"The owner hits us and points his gun at us, he abuses us. He shouts at us. He also destroyed one of my houses. We called the police. The police say we have to move."¹¹⁰

"I was born on this farm... One day the security guards came. They said they have come to search the households. The farmer was with them. I asked the reason why they are searching, but they refused to give reasons. They broke the doors to get into some of the huts that were closed. They scattered all our private belongings. We tried to stop them from breaking our huts. He pointed a gun at me. I managed to grab the bullet. I reported the case at the police station but they said I must go back to work and that I can only come back if the boss fires me from work."¹¹¹

"In May 1996, a farmer assaulted two of his farm workers. They did not report that incident of assault to the police. In 1997, the same farmer left his farm for Balito. When he came back, he discovered that his farming equipment had been lost and he was informed that someone who was driving a vehicle had visited one of the farm workers working there. He then suspected that his equipment was stolen by the said farm worker. He then started assaulting the farm worker with an iron rod, sjambokked him, tied him around his neck with a rope, and dragged the farm worker for about 300 metres with his Land Cruiser.

He further assaulted him with the assistance of a colleague. He then took the deceased, the person who had been assaulted later died, and they took him away to a remote area. The body of the deceased was discovered seven days later yet this happened in the presence of the farm workers and the farm workers did not report the incident to the police. The reason is that the farm workers were threatened to be killed if they did report the matter. It was in August 1999 when the police received the information about the death of the deceased then they traced the farm workers and found them. The farm workers were still reluctant to give statements to the police because they still feared to be killed by the farmer ..."¹¹²

Response from the KZNSAPS and KZNDPP

In response to the information that was placed before the Inquiry, the KZNSAPS stated that they believe that the underlying cause was the failure of farm dwellers to report crimes perpetrated by farm owners. The reason for this failure is that the farm dwellers are afraid of the farm owners and the possible consequences should they report the farm owner to the police. In some instances, the farm dwellers are threatened with death if they report the farm owner to the police.¹¹³

The KZNSAPS have not heard of any reports of private security companies taking the law into their own hands. Their position is that if it is not reported, they cannot do anything.¹¹⁴

Where a matter is reported and it comes before a prosecutor, there appears to be some discretion in the hands of junior prosecutors on whether to proceed with the matter or not. Where matters are referred to a more senior level and the decision is taken not to prosecute, the docket is returned to the police who are responsible for informing the complainant. Reasons in writing for failure to prosecute are not always given and it is up to the complainant to request such reasons.¹¹⁵

The KZNSAPS maintain that farm dwellers can address their complaints through their long-term programme of creating community policing forums in the province. Part of the community policing forum is a Service Delivery Improvement Programme or ESTA Forum where problems can be addressed.¹¹⁶ The responsibility for creating awareness about these forums and how particular police processes work in order to ensure that cases are investigated properly lies at station level.¹¹⁷ The KZNSAPS do not know how many farm dwellers are included in these structures and are actively participating.¹¹⁸ There does not appear to be any short-term plan on how to address problems that were raised at the Inquiry, but then again, the police claim not to be aware of these problems.

NGOs reported that they have heard of these community policing forums. However, they say that farm dwellers are excluded through lack of transport to attend the meetings, and that farm dwellers believe that farmers would not allow them to take part. They are thus unable to participate.¹¹⁹

The KZNSAPS also say that farm dwellers are not excluded from becoming reservists. However, in order to qualify as reservists there are certain formalities that must be complied with, such as qualifying in shooting practice.¹²⁰ The KZNSAPS could not give any estimated figures on the number of farm workers that are currently police reservists.

Farm attacks

No statistics were presented to the Inquiry on the number of farm attacks that have occurred in this province. The KZNDPP reported that they have a number of cases they are prosecuting in which farmers are the victims of farm attacks. They are of the opinion that the underlying motive behind these crimes is robbery.¹²¹ In their experience, the perpetrators come from outside the farms and are not farm dwellers.¹²² NGOs say that farm dwellers believe that high levels of poverty in and around the farms cause these attacks.¹²³

Economic and social economic rights
The provincial Departments of Housing, Health, Social Services and Education did not present evidence to the Inquiry. Therefore the focus of the hearings was dominated by land and labour rights. Criticism was made to the Inquiry that socio economic rights have not received the same degree of focus and attention by government as land rights. Farm dwellers continue to live in poor circumstances that amount to infringements of their human rights.

"While the land reform programme attempts to address the need for security of tenure by people living on farms, attempts by government appear to lag very far behind those initiatives with regard to providing for the socio-economic needs of those people including access to adequate shelter, education, or health and social welfare needs. The unfortunate result of this is that in many instances, although the security of tenure needs of the communities are met, very little visible difference is seen on the ground with regard to their circumstances."¹²⁴

Housing

The KZNDH did not attend the hearings because the relevant official was engaged in another activity and the invitation to participate was extended at a late stage.¹²⁵

Many complaints were received of farmers not allowing their farm workers to build new houses or extend their houses as their families became bigger.¹²⁶ There appears to be a trend of farmers not allowing labour tenants to upgrade their houses while they await the outcome of the labour tenant claims that have been lodged against the land. Farmers explain to the tenants that if they improve the housing, then they will be expected to maintain this standard of housing or provide similar accommodation when a decision is made in respect of their labour tenant's application.¹²⁷

There were many complaints of farm workers living in deplorable conditions with the worst reports indicating that workers live in plastic shacks with no access to running water or sanitation.¹²⁸

Health care

Reports were received of clinics being too far away for people to access, and mobile clinics no longer coming to the farms in certain areas.¹²⁹ Clinics are inaccessible to many working farm dwellers as the opening hours of the clinic are from 08h00 to 15h00.¹³⁰ Farm workers remain reliant in many instances on the farmer to telephone for an ambulance or to transport the person to the hospital in emergencies.¹³¹

No direct information concerning HIV/AIDS was placed before the Inquiry. However, the refusal of burial rights on farms was a recurrent and common problem that was placed before the Inquiry. Whether there was any connection between the two issues, was not pursued.

Food and water

Because of low wages, farm dwellers complained that they do not have access to adequate food for themselves and their families.

NGOs reported that few farm worker houses have toilets and running water inside.¹³² Individual submissions complained of water that is not clean.¹³³ It was also reported that farm dwellers are constructively evicted by their water supply being cut off.¹³⁴

"He does not want us to plant our own crops. He does not want us to do anything. I do not know what we will eat. He says he will shut off our water and we must not gather wood in his farm. I do not know how I will live if he continues talking like this."¹³⁵

Social security

No direct information was placed before the Inquiry.

Education

Issues presented to the Inquiry were similar to other provinces. This included farmers closing farm schools,¹³⁶ children having to walk long distances to attend school, no transport being available to transport children to schools, children not attending high school due to the school being too far away, under-qualified teachers teaching at farm schools, schools being poorly resourced and not having access to basic services such as water, electricity and ablution facilities.¹³⁷

NGOs reported that farm owners are closing farm schools and that generally the conditions in farm schools are poor.¹³⁸ An extreme consequence of children having to travel long distances to attend school was at least one incident of rape of a girl child. This issue has been brought to the attention of the Inquiry in other provinces as well.¹³⁹

"A young boy who lives on the farm will wake up in the morning around 04h00; he will go out to fetch water to wash himself. Without anything to eat, barefooted as he is, he will travel to school. You will understand that during that time it will be very cold and this child, because his parents do not get a living wage, therefore he will not have clothes to protect him from the cold. He travels a very long distance until he reaches the school. The school that he reaches does not have windows, and therefore it continues to be cold for him. In this school he finds an unqualified teacher waiting for him to give him the little education that he has.

In the afternoon around 14h00 this child is supposed to travel back barefooted as he was when he came to the school. When he reaches home and if he is fortunate, he will find a little food to eat. After eating that food he is supposed to go to the farm and join his parents and continue to work with his parents after coming back from school."¹⁴⁰

CHAPTER 13



Mpumalanga

Introduction

This province has gained notoriety in recent years from the attention that has been focused on the activities of the commandos, in particular, the Wakkerstroom Commandos. There have been interventions at a national level in order to bring the situation under control. Despite this, safety and security issues dominated the Hearings. A prevailing sense of fear instilled in communities by the commandos and private security guards was evident during the Inquiry, as was a prevailing sense of farm owners living under constant threat of being targets for violent criminal acts.

Land issues were also a predominant topic at the Inquiry. Mpumalanga, like KZN, has a number of labour tenants whose land applications are still to be processed by government. NGOs, such as TRAC and the constituency offices in the province believe that resolving land issues is the key to resolving all other human rights issues.¹

Mpumalanga is geographically the second-smallest province in South Africa and covers 6,5% of the total land surface in South Africa. The Kruger National Park accounts for almost a quarter of the province's surface area.² In terms of population size, it is the

third-smallest province in the country with approximately 61% of the 3 million population living in rural areas.³

The relationships between the role-players In this province, there have been a number of initiatives led by government and civil society to address human rights issues in the rural communities. Despite this, civil society organisations still report that human rights abuses continue to occur. They remain critical of government and argue that either not enough is being done, or criticise the manner in which things are done. Agri Mpumalanga denies most allegations of human rights abuses whilst government is willing to acknowledge that there are problems and demonstrates a willingness to deal with the issues. This situation of debate and challenge, which creates an impression of activity and volatility, is what distinguishes this Province from many of the others. It would appear that there is some degree of awareness by people at a grassroots level of their human rights. This leads to a situation of rising expectations by people where the more awareness there is, coupled with some responsiveness from government, the greater the expectations are from people and civil society for the realisation of their human rights.

A frequently heard complaint during the Inquiry was that government departments themselves fail to uphold the laws of the land and thereby committed human rights abuses. With reference to the land laws, this comment was made by an NGO:

"However what we do not have is a department dedicated to enforcing and upholding these rights in the face of other State institutions who do not respect these rights or adhere to the laws."⁴

Even the MDLA expressed frustration with other government departments which, in their view, do not uphold the land laws of the country. The MDLA also complained of a lack of co-operation from certain quarters in government.⁵

During 2000, Mpumalanga had a provincial government inquiry that reviewed human rights violations on farms.⁶ Despite having 8 constituency offices in the province, politicians admit that they have not succeeded in their oversight work as most people in rural areas live without access to clean water, access to health facilities and some of the elderly are not receiving their State pensions.⁷ Government has failed to deliver to many people living in rural areas.⁸ However, there is a need for government to work with all relevant role-players. In particular, government acknowledges that they need to work closely with those farmers who respect and promote the human rights of all who live on their farms.⁹

Agri Mpumalanga represents organised farmers in the province. The union has approximately 2 500 direct members and a further 2 500 indirect members.¹⁰ The union has approximately 400 Black members.¹¹ Their response to reports of human rights abuses is that these matters must be referred to the appropriate bodies to be dealt with¹² and that whilst they will not protect any of their members, they are also not police informers.¹³

Where they are made aware of a human rights abuse and they intervene, they do not keep any records of such intervention.¹⁴

Agri Mpumalanga fails to acknowledge many of the problems and issues that are raised by those who represent and assist farm dwellers.

"But we cannot understand why people would ... go to the problem of coming to this hearing over many kilometres, to come and complain here, where they have so much easier access to their local police station which is on the doorstep."¹⁵

Constituency offices say that they have tried to speak with Agri Mpumalanga. However, a meeting that was set up between the parties did not go ahead as Agri Mpumalanga failed to attend despite previously confirming their attendance.¹⁶ The constituency offices report that they have working relationships with various NGOs and government departments.¹⁷ In most cases, the constituency offices mediate with the various parties in order to find solutions. It is only in a few cases that there is a need to refer the matter to an attorney.¹⁸

"Our mental capacity is full of hatred and apartheid. It will take time to go completely out of our minds from all sides. It is a psychological problem that needs education."¹⁹

The Transvaal Agricultural Union (TAU) was invited to participate in the Inquiry and attend the public hearings in order to present their response to the human rights issues that were raised in the province, but TAU chose to boycott the hearings.

Land rights
Unlawful evictions and tenure rights violations continue to occur in the province. Farmers unions dispute that this is the case and pro-

fess support for land reform processes but not the legislation, such as ESTA, that facilitates the process. Land reform and transfer of ownership of land to previously dispossessed persons continues at a slow pace, drawing criticism from civil society organisations.

In terms of tenure security, this appears to be the busiest province for the DLA. The MDLA has opened 2 420 ESTA files and has had 2 495 threatened evictions reported to them during the financial year 2001/2002. The Department was made aware of 43 actual evictions and received 364 of the statutory s9 (2)(d) eviction notices informing identified parties of the landowner's intention of approaching the court for an eviction order.²⁰

Tenure security

A variety of tenure rights violations were reported to the Inquiry. These included inducements to get workers off the land by promising to buy alternative land and once the worker has moved, reneging on the promise,²¹ refusing family members access to the farm for purposes of visiting²² and changing past arrangements regarding the keeping of livestock. Examples of the latter include forcing farm workers to reduce the number of livestock that they keep, demanding payment to keep livestock, or denying access to water and grazing land for the livestock.²³

Burial rights of family relatives are sometimes not respected, especially where there was a change in land ownership:

"... Soon they started refusing us to visit our family's gravesites. This has culminated in some gunshots that were fired at one stage when I visited the graveside. The matter has been reported to the police. Threats have continued, sometimes in the presence of the police where the farmer in question attempted to assault me."²⁴

Change in ownership of the farm can lead to the tenure security of the farm dwellers being threatened and in some cases, being unlawfully evicted.

"I am 64 years old and have been staying on the farm since the 1970s. The late Mr. X who passed away in 1996 employed me. Immediately after his death and since then his children have been harassing me. They want me to leave the farm. I refused because their father told me not to leave the farm after his death because I had been looking after him when he was bedridden. Recently while I was in hospital I was told that they have destroyed my house that I built on the farm."²⁵

Farm dwellers state that the MSAPS do not provide them with a satisfactory service when they report matters of eviction.

"I used to work for X on his farm until he bought a plot and instructed me to go there. Y confronted me and asked me to vacate the premises and when I refused he destroyed my houses. He later burned it. I reported the matter to the police. The police officer told me to call them as soon as I identify Y., although I told them where he stays. I have nowhere to stay due to the actions of these men. I am receiving no joy from the police."²⁶

Agri Mpumalanga provides the standard Agri South Africa response to land reform. They state that they support land reform, despite it bringing uncertainty and disruption to farmers' lives. They co-operate with and participate in land reform programmes. They are concerned about the "negative unintended consequences of the ESTA", which is having a negative impact on the provision of housing for farmworkers, market values of farms, employment opportunities and relationships.²⁷

"ESTA is actually confiscating a piece of land or a house which was built by the farmer and given to an occupier."²⁸

Agri Mpumalanga say that the number of evictions quoted is out of proportion in order to stir emotions, and quote the number of actual evictions recorded by the MDLA, namely 37 actual evictions during a 14-month period, as evidence thereof.

"So the size of the evictions that is portrayed in the media and other people are not really what it is."²⁹

Lack of access to assistance to enforce rights

Civil society contends that government lacks the capacity to enforce legislation that was enacted to protect rights.³⁰ This was echoed a recurring theme in this province, namely, the lack of access to legal assistance for farm dwellers and labour tenants. As NGOs in the province advocate that the realisation of land rights and delivery of land is the key to resolving all other human rights violations in farming communities, the lack of access to legal representation thus becomes a major concern to these role-players. A perception exists amongst civil society role-players that justice belongs to land owners and the rich, and not to the farm dwellers and the poor.

NGOs report that legal aid is not provided to farm dwellers for land issues.³¹ This is despite a court order that affirms the right to legal representation for farm dwellers faced with eviction.³² The court order is thus not being adhered to in the province. This strikes NGOs as ironic given that commandos charged with criminal acts, such as murder of farm dwellers, are provided with legal representation at State expense.³³ The MDLA responds that they have made provision from the professional and special services budget to deal with the judgment. They are also making use of the Justice Centres, yet point out that not all the staff in these Centres have the necessary skills to deal with land issues. The staff in the Centres are in need of training.³⁴

The Nelspruit Justice Centre

This Justice Centre was formed in January 2001 in terms of a co-operation agreement between the Legal Aid Board (LAB) and Potchefstroom University. The Centre has a Director, 3 professional assistants and 6 candidate attorneys who provide legal services to indigent clients. In the first 20 months of its operation, approximately 1 500 files were opened and the attorneys made 80-120 court appearances per month. Of the files that were opened, 64 were civil land matters, of which 20 have been litigated in court.³⁵ Staff also travel to nearby towns due to a need being identified for the Centre's services.³⁶

Criticism that LAB attorneys are not as good as attorneys instructed by landowners is refuted. The Centre has dedicated attorneys, backed by the university and positive feedback about staff is received from magistrates and prosecutors.³⁷ It is, however, acknowledged that land-related matters are specialised and that staff have attended workshops to better equip themselves to deal with these matters. There are also moves towards forming a specialised rural legal cluster with various other role-players in the province.³⁸

State officials not educated about land laws

NGOs cite another underlying reason for the non-realisation of land rights as the lack of training that state officials have received. In their experience, police, magistrates and prosecutors have not received adequate or sufficient training to understand and apply land rights legislation.³⁹ Magistrates do not seem to understand the law, interpret it incorrectly and are unaware of the relevant case law and precedents from the Land Claims Court.⁴⁰ This results in magistrates bypassing the ESTA legislation through applying the common law to grant eviction orders. In this manner, the MDLA is not notified of the ESTA matter through the statutory s9 (2)(d) ESTA notice and remains unaware of the case. Where an eviction order is granted, it is not referred to the Land Claims Court for automatic review.⁴¹

Response from MDLA

The MDLA has a provincial office situated in Nelspruit, with 3 regional offices in Witbank, Ermelo and Nelspruit.⁴² The Department has conducted training for other government departments, constituency offices, advice offices and agricultural unions. NGOs report an awareness of these various training and awareness initiatives that have been conducted by the MDLA.⁴³ Despite this training, the MDLA is aware of some magistrates and prosecutors who continue to fail to apply the land legislation. This results in people being evicted, contrary to the current land legislation.⁴⁴ Police training was conducted at management level. The MDLA acknowledges that all police officials need to be trained.⁴⁵

In order to address the high incidence of labour tenant and farm dweller issues in the East Vaal area, the MDLA set up a Land Facilitation Unit in 1997. This has led to a steady decline in the number of illegal evictions in the area.⁴⁶ Reports of illegal evictions continue to be presented to the MDLA from other areas in the province. The refusal by the MSAPS to adequately deal with these criminal matters results in cases not being prosecuted due to a lack of evidence.⁴⁷ The lack of co-operation by certain MSAPS is being addressed at a national level by the MDLA.⁴⁸

The MDLA says that their reliance on other government role-players for the enforcement of the ESTA, creates difficulties. This reliance extends to the police, magistrates, prosecutors and sheriffs. The Department is also reliant on other government departments to facilitate the implementation of the ESTA. These other state role-players include the Department of Labour, local municipalities and the Department of Housing. Within this context, the MDLA also says that they are constrained by resources in that they currently spend 95% of their budget.⁴⁹

The MDLA came under criticism from civil society for failing to deliver due to inadequate resources, too few skilled staff and an insufficient budget.⁵⁰

Response where assistance is received

Where farm dwellers do receive assistance with their land problems, the response from the landowner can be serious, as this example demonstrates:

"I was dismissed at work following my visit to Land Affairs to lay a claim concerning my refusal to sign the employment contract. He deducted R100,00 from my salary for house rental, toilets and water. In November and December 1999 I did not receive wages. On 11 January 2000, he dismissed me. He said I would get my wages for November and December 1999 after I have vacated the farm. He took my livestock to be auctioned on 19 April 2000 because I was refusing to leave the farm. He then removed the fence surrounding the fountain where we get clean water. He also prohibited my family from ploughing in the nearby veld. He does not want to see me on the farm because I am busy with Land Affairs."⁵¹

Labour tenants

While labour tenants and landowners await the finalisation of labour tenant applications, they experience an increasing withdrawal and infringement of rights. The Inquiry was told of labour tenants being told to reduce their livestock, remove their livestock, being prohibited from ploughing fields and farm gates being locked in order to frustrate their access to the farm. In addition, members of the commando are sent to harass labour tenants and in some instances, dwellings have been shot at during the night. In one incident it is alleged that men in camouflage attire took cattle from a kraal to a donga and shot them.⁵²

The MDLA has drawn up a strategy to deal with labour tenant applications. The applications will be grouped per district and the

Department will embark on a consultation process with identified stakeholders.⁵³ The Department also reports an increase in delivery of land to labour tenants. In the 2001/2002 financial year, 29 new labour tenant projects amounting to 19 000 hectares of land and 1 550 households were approved.⁵⁴

TRAC claims that not all labour tenants in the province were informed about their rights and therefore failed to lodge applications.⁵⁵

Land redistribution

The land redistribution process continues slowly. NGOs claim that only 120 communities have benefited from the process and that it has not led to an improvement in the quality of life for these people. In a number of cases, unsustainable land use patterns have led to environmental degradation, due to poor planning and lack of support from local and provincial government.⁵⁶ The current LRAD programme diverts resources away from the other DLA programmes such as farm dweller communities, restitution claimants and occupiers of state land.⁵⁷ The MDLA remain confident that they have the necessary plans to roll out their land reform projects and their statistics provided to the Inquiry indicate that in the past 3 years 9 902 households have benefited.⁵⁸

Land restitution

It is acknowledged that the land restitution process has been slow in the province. An underlying reason for this is that Mpumalanga shared a Pretoria-based Land Claims Commissioner with Limpopo. The Commission for the Restitution of Land Rights (CRLR) has now established an office in the province. The validation of claims process is almost completed in the province and it is anticipated that there will be an increase in delivery during the 2002/2003 financial year.⁵⁹ Only 5 of 3 000 claims have been settled by the CRLR.⁶⁰

Labour laws

Farm workers in Mpumalanga experience similar labour law violations to workers in

other provinces. The Inquiry was informed of a number of labour legislation violations, poor wages being paid, incidents of child labour and the use of illegal foreign workers.

There are no accurate records available of all the labour violations that occur in the province. However, an indication of the nature and extent of labour violations can be obtained from the official statistics that are kept by the MDoL. For example, during a 14-month period ending June 2002, the MDoL received 4 105 complaints from the agricultural and forestry sector. The most frequent complaints were UIF blue cards (737), wages (606), notice (575) and annual leave (412). There were 58 complaints concerning injury on duty and 22 occupational health and safety complaints. For the same period, the Department received 17 477 inquiries in total. The highest number of inquiries concerned blue cards (5 823), annual leave (1 541), notice (1 352) and wages (1 466).⁶¹

Non-compliance with labour laws

The most frequently reported matters to the Inquiry of non-compliance with labour legislation concerned working hours, wages, leave, occupational health and safety issues and unfair dismissals.

Reports were received of farm workers having to work excessive hours,⁶² from 06h00 to 16h00, Mondays to Saturdays.⁶³ The following was an alarming report that was received from COSATU:

" In one of the farms that we visited we found that there is a tractor driver who is working 18 hours a day starting from 03h00 in the morning until about 21h00 or 22h00 in the evening. The driver complained to the employer indicating that he is not comfortable about the conditions that have been set for him, but unfortunately upon complaining the driver was threatened and ultimately gunshots were fired. Then he ran away and reported the case at the police station and the case was dismissed."⁶⁴

A number of complaints were received about wages, unilateral changes in wages,⁶⁵ non-payment for Sunday work,⁶⁶ non-payment for sick days,⁶⁷ unexplained deductions being made by employers⁶⁸ and employers failing to register employees for UIF and making the necessary deductions.⁶⁹

"We sometimes are required to work the whole day without pay if we did not finish the place allocated to us."⁷⁰

Maternity leave came under the spotlight in this province with reports being received of employers not granting maternity leave⁷¹ or dismissing women for absconding when they go on maternity leave.⁷²

There were reports of non-compliance with Occupational Health and Safety legislation. This included employers failing to provide safety clothing when workers work with poison⁷³ and failing to register workers and comply with the legislation when workers are injured on duty.

"I fell down from the tractor and sustained a head injury while on duty. This happened in 1999. I also sustained injuries to my neck and arm. The employer does not care about me. Instead, he needs me to work – heavy work. I have not received compensation and believe I am permanently disabled."⁷⁴

Unfair dismissals for assisting workers to join a union,⁷⁵ or due to political affiliations were also reported.

"I was dismissed without any hearing on the allegation that I used a farm truck, unauthorised and that I brought ANC people onto the farm."⁷⁶

Trade unions

Trade unions find it difficult to obtain access to farm workers in order to organise them. Union officials report that there have been instances where officials have been criminally charged with trespassing when they have attempted to gain access to workers. Where access is obtained and workers are unionised, some report that they are victimised. There have also been instances where unionised workers have been dismissed because they have joined a trade union.⁷⁷

NGOs confirm that many workers do not join trade unions because they fear that they will be dismissed if they do. Some farm workers have a negative perception towards union officials, who they believe do not adequately assist them.⁷⁸

Child labour

A number of sources confirmed that there are incidents of child labour that occur in the province.⁷⁹ The MDOL states that some seasonal farmers in search of cheap labour may practice child labour.⁸⁰ Other reports indicate that children of foreigners are employed.⁸¹ Civil society claims that one of the underlying reasons for the continuance of the use of child labour is the police, who are perceived as difficult to deal with by the community. They fail to approach the police when they are aware of child labour being used.⁸²

A CLIG structure operates in the province to address the issue of child labour.⁸³ Through the CLIG structure, workshops are held to address the issue.⁸⁴ In the past year, the MDOL have discovered 3 child labour cases during their inspections.⁸⁵

Foreign labour

A number of reports were received of illegal immigrants being employed in the province.⁸⁶ However, little information was received on their conditions of employment that would indicate that they are treated differently from South African workers. Therefore this aspect cannot be fully reported on. One report did,

however, indicate that foreign workers are paid less and are handed over to the police or sent back to their country without being paid.⁸⁷

Poor conditions of employment

Low salaries are paid to many farm workers in the province. Reports indicate that the average cash salary is R250,00 per month whilst some workers receive as little as R160,00 per month.⁸⁸ It is uncertain whether these figures exclude or include payment in kind. Some workers complained that they do not receive December bonuses.⁸⁹

The Inquiry was informed of verbal abuse that farm workers are subjected to, such as being called “bobbejane” and “kaffirs” (sic). Due to the levels of fear and intimidation that are felt on those farms where this type of verbal abuse occurs, farm workers fail to lay criminal charges because their co-workers refuse to be witnesses.⁹⁰ Due to poor conditions of employment, farm labour is regarded as inferior and low class employment in certain sectors.⁹¹

Response from the State

The Inspection and Enforcement Services Unit of the MDOL has identified that the agriculture and forestry industry has the most vulnerable workers. This is one of the focus sectors of the Department. Recently a number of inspection blitzes were conducted on farms. On 10 June 2002, a blitz was conducted in the Piet Retief area on 8 farms. In the past 14 months they have conducted 85 blitz inspections and 47 employers were issued with compliance orders.⁹²

The labour inspectors have confronted a number of obstacles when carrying out inspection blitzes. Some inspectors have been assaulted and had dogs set on them when they attempt to enter farms. After these incidences, the Department consulted with Agri Mpumalanga and this has led to an improvement in the situation. However, due to the security situation in the province, the in-

spectors must make appointments before going to a farm. This removes the element of surprise and provides the employer with an opportunity to rectify matters to ensure compliance with basic labour legislation.⁹³ A further obstacle is the unavailability of employment records on the farm, with the employer stating that they are with his attorney.⁹⁴

The Department has also observed the general conditions of employment during these inspection blitzes. They report that there are employers who improve the living conditions and skills of their workers through providing the necessary training, protective equipment, housing and sanitation to employees. However, there are still employers who assault farm workers, make them work long hours with no overtime payment, pay very low wages, provide no written particulars of employment, provide un-roadworthy transport, fail to inform or educate farm workers about their employment rights and fail to provide a safe working environment.⁹⁵

The MDOL indicate they do not have sufficient capacity to carry out their inspection and enforcement duties and that if social partners assisted with monitoring, they could focus on ensuring compliance with labour laws.⁹⁶ NGOs and constituency offices stated that the MDOL is not visible enough in the farming communities.⁹⁷ However, Agri Mpumalanga states that all workers know where the closest labour office is and make use of its services.⁹⁸

Safety and security

Mpumalanga has gained notoriety in recent years due to the numerous reports of human rights violations being committed by Commandos. The situation was highlighted recently in an international human rights report, prepared by Human Rights Watch, entitled “Unequal Protection: The State Response to Violent Crime on South African Farms”. In response to this report, government set up a number of initiatives to address the situation.

The MSAPS actively participated in the Inquiry and were clearly keen to demonstrate that they are an effective organisation. However, it would appear that there are still concerns about the conduct of the commandos in this province. One NGO claims to be aware of at least 2 farm workers that have been killed and a third seriously maimed by the commandos during 2002.⁹⁹ The MDLA also reported that they continue to receive reports of human rights violations perpetrated by commandos in the Wakkerstroom/Piet Retief area.¹⁰⁰ The SAHRC conducted an Investigation of Alleged Violation of Farmworkers' Rights in the Messina/Tshiphe District in August and November of 1998, which demonstrated widespread mistrust and cynicism about the criminal justice system.

"Generally there is a threat or pervasive condition here that people feel that if they try and pursue their rights, if they try and unionise themselves, if they try and register themselves as labour tenants, if they stand up for their rights, the farmers are going to bring commandos to bear on them and intimidate them."¹⁰¹

Commandos

Commandos are organised under the auspices of the SANDF. They comprise civilians, including farm owners, farm workers and indunas who wear formal army uniform whilst on duty. Their purpose is to assist the SAPS. Commandos are not entitled to operate by themselves and must always be under the supervision of the police.¹⁰² Allegations were made that the commandos do not always operate officially and are not being monitored.¹⁰³

"But there seems to be a situation where the commandos are mobilised on request by farmers to directly deal with their issues. We find commandos being represented in mediation meetings between labour tenants and farm owners and we have to ask why are the commandos here. This is not a security issue - but they have been invited by the farmer."¹⁰⁴

Agri Mpumalanga states that commandos are there to protect everyone in the farming communities. They deny the allegations made against commandos.¹⁰⁵

The Mpumalanga Department of Safety and Security (MDSS) report that the issue of commandos has been dealt with at a political level. In 2000, the Minister was brought to Wakkerstroom to address the situation, where commandos were accused of perpetrating human rights violations.¹⁰⁶ According to the Department, since the Minister's visit, there have only been isolated instances.¹⁰⁷

In order to deal with the allegations of human rights abuses by the commandos and private security and police, the Department created a 20-member special task team that re-examined old cases.¹⁰⁸

Prosecution of commando perpetrators has raised a number of challenges for the MDPP. The accused enjoys legal representation at state cost because the alleged crimes were perpetrated whilst on official duty of the SANDF. Civil society finds this ironic as victims who wish to sue the SANDF must find private legal representation.¹⁰⁹ It is not uncommon for senior legal counsel to be appointed to represent the commandos. It is extremely difficult for the MDPP to get the support and co-operation of senior members of the SANDF as they support their members. The accused often enjoys a close relationship with the local MSAPS with whom they work. It is thus difficult to get the police to investigate their colleagues properly. No proper record of commando activities is kept. Crimes are executed in secrecy with military precision under cover of night, thus making it difficult to identify perpetrators.¹¹⁰

Many of the cases that were prosecuted by the Special Unit did not result in convictions. This is attributed to poor witnesses, contradictory evidence and solid alibis being given.¹¹¹

Inadequate service from MSAPS

The Inquiry was informed of inadequate service provided by the MSAPS to members of the farming communities. Constituency offices attribute this to a lack of sensitivity to the position of farm dwellers as poor and often illiterate, and the absence of a service culture amongst the police.¹¹² Examples were given of the police not accepting a complaint where a child was assaulted by the farm owner.¹¹³ When the constituency office intervenes in such matters, the police tell them that they are troublemakers.¹¹⁴ Reports were received of dockets being lost,¹¹⁵ Black police officers being too afraid to arrest White farmers and White police officers are sometimes being related to the farm owners and thus unwilling to arrest them.¹¹⁶

The MDSS confirmed that they receive numerous complaints from farm dwellers concerning the manner in which their cases are handled.¹¹⁷ Complaints submitted to the Department are sent to the Provincial Commissioner of Police to deal with.¹¹⁸ In appropriate circumstances, matters are handed over to the ICD to investigate.¹¹⁹

Against this background of criticism of the MSAPS, the police informed the Inquiry that there is a tendency by some parties to abuse the police system by laying charges and counter-charges against each other.¹²⁰

During the Inquiry, the police did agree that they ought to communicate more with victims as to what is happening with their matters.¹²¹

Transformation

The MSAPS is open about the fact that there are organisational transformation issues that still need to be dealt with. There are police officers who resist transformation.¹²² In response to the perception that police operate in favour of farm owners against farm dwellers, the MSAPS state that they are a large organisation with pockets of individuals who are racist. These are, however, an isolated minority whose actions are not condoned.¹²³

The MSAPS does provide training to its members in human rights and criminal procedure to ensure that the investigation has been completed in compliance thereof, before it is handed over to the prosecutor.¹²⁴ Despite this, the MDPP expressed dissatisfaction with some of the dockets that are forwarded to them with the witness statements not being up to standard.¹²⁵

Transformation is also still an issue within the criminal justice system as a whole and issues of racism have been noted by the MDSS where the prosecutor, magistrate and perpetrator are all White.¹²⁶

Judicial system – magistrates and prosecutors

The province is also confronted with a number of other challenges when it comes to prosecuting cases that involve farm dwellers who are victims. Where there is a farmer who is an accused, there is invariably a long history between the parties that is drawn out to discredit the witnesses. This results in cases being dragged out for days, clogging up the local court system and using many resources. In some instances, magistrates must even be brought in from other areas to hear a case. Simple criminal matters become protracted affairs.¹²⁷

The MDPP head office is situated in Pretoria and people are not always aware that this higher authority can be to have approached a decision that is taken at a local level reviewed.¹²⁸

Response from the MSAPS and MDPP

There are 92 police stations in Mpumalanga with 5 990 police officers. The province ought to have 7 000 police officers and this shortage places constraints on the system. In some cases, police stations have to close at 16h00 due to the lack of staff.¹²⁹

In order to address issues, such as those raised during the Inquiry, there is an integrated justice cluster in the province.¹³⁰

The police expressed frustration about their interactions with other government departments.¹³¹

The community policing forum structures are reportedly difficult to establish in the farming communities because employers do not allow workers to attend meetings when police attempt to establish the structures.¹³² COSATU reported that they participate in some of these structures and that this does result in some issues being resolved.¹³³

Farm attacks

As in other provinces, Mpumalanga has also experienced violent crime against farm owners. According to statistics provided by MSAPS, during 2000 there were 166 farm attacks recorded that resulted in 79 victims being killed. In 2001, 181 farm attacks were recorded with 69 victims being killed.¹³⁴ Agri Mpumalanga cites the negative portrayal of farmers in the media, which in their view can sometimes amount to hate speech as the contributing factor in these farm attacks.¹³⁵ The MSAPS responded by dismissing the "hate speech" motivation and blamed simple greed by criminal elements as the underlying motive.¹³⁶ In quite a number of incidents the police have found that the alleged perpetrator is a family member of one of the farm dwellers and has visited the farm on occasion.¹³⁷ The perpetrators of these crimes tend to come from outside the particular farming area where the crime is committed.¹³⁸ MSAPS are confident that they have brought the situation of farm attacks in the province under control.¹³⁹

Economic and social rights

Due to land and security issues dominating the Inquiry, little information was obtained about the economic and social rights situation in the province. Information that was received indicates that the issues are similar to many of the other provinces. A distinguishing characteristic of this province was the information provided by the provincial Department of Housing, which indicates that they are involved in some innovative projects to deliver housing to the rural poor.

Housing

Reports were received of overcrowded and unsuitable housing being provided to farm dwellers. One report claimed that farm workers were living in a pigsty on the farm.¹⁴⁰ As in other provinces, Agri Mpumalanga were open about the fact that it is their policy to destroy houses when they become vacant so that they do not have to accommodate people on the farm and can thereby circumvent ESTA. At the public hearings, they contradicted these statements by complaining that there is no system for new houses to be built on the farms.¹⁴¹

The MDoH recognises that rural housing for farm dwellers must be addressed. In order to do this, the Department has become involved with the municipal-based land reform committees. It is investigating state properties that could be made available for off-farm settlements and is also investigating on-farm settlements through LRAD. The underlying reasons for the current lack of delivery are attributed to the Department being unable to obtain land for housing, as it is privately owned. The Department says that an extensive land release programme is necessary to address this. Currently the Department relies on good will and donations in order to access land for housing purposes in the province. Information provided by the Department indicates that housing issues are addressed in a reactive manner where farm workers have been either threatened with eviction or actually evicted. The Department has a tenure-upgrading programme that was initiated in January 2000.¹⁴²

There have been 2 successful housing projects in the province where a farmer has donated a piece of land to farm workers. As security of tenure was achieved for the families, the MDoH could then assist with housing subsidies.¹⁴³

Health care

The Inquiry was informed of how access to health care is inhibited due to the long distances that people must travel in order to attend a clinic. In some instances, farm dwellers have to walk 6 –7 kilometres to reach a public road. NGOs reported that they were aware of instances where parents did not take their children to the clinic for fear of being dismissed or not being paid.¹⁴⁴ Differing reports were given as to the availability of health services through mobile clinics. Some reports indicated that mobile clinics do visit farms in the province,¹⁴⁵ whereas other reports indicated that they do not.¹⁴⁶

Food and water

Reports indicate that access to water on some farms is not realised, as the water that is provided is not clean. Water is obtained from dams used for irrigation, as there are no taps in the houses. Along with this lack of access to water, reports were also received of inadequate sanitation and farm dwellers having to use the bushes or unhygienic pit toilets for ablution purposes.¹⁴⁷

Social security

Beneficiaries are not always able to access child grants and old age pensions. The underlying reasons provided included the elderly being unable to complete their own forms due to illiteracy and employers and ex-employers failing to fill in the necessary sections of the forms.¹⁴⁸ Child grants are not always applied for because parents cannot get time off from work to go into the town to make the necessary application, or parents do not have money to get to the town to reach the social security offices.¹⁴⁹

Education

Obstacles to access to basic education included reports of teachers not attending school,¹⁵⁰ children being prevented from walking through private property in order to attend school¹⁵¹ and children being relocated on the farms forcing them to walk long distances to attend school.¹⁵²

CHAPTER 14



Gauteng

Introduction

Better known as the business and national government epicentre of the country, this province is not usually thought of as a farming area. There are, however, rural areas within this geographically small province, although the exact number of farms in the province is unclear. The Gauteng Department of Labour (GDoL) is currently working on a report that will identify the number of farms, the type of farming conducted and the number of persons employed on farms in the province.¹ Agri Gauteng estimates that there are 1 000 farmers in Gauteng, which includes those on smallholdings and farmers who work in the city during the day.² A characteristic of the province was the phenomenon of absentee farmers, which creates specific challenges. Issues that characterised the hearings included recent isolated incidences of land grabs and non-compliance with labour laws.

Gauteng is geographically the smallest province in South Africa and covers 1,4% of the total land surface in South Africa. Approximately 3% of the population of 7,8 million live in non-urban areas.³

The relationships between the role-players The hearings were attended by SAAPAWU, which represents approximately 3 000 farm workers in the province and Agri Gauteng, which represented civil society. On the side of government, the Departments of Land, Labour and Education and the GSAPS also participated. Relationships between these parties appear to be fairly good. However, they all state that there is a need for greater co-operation to jointly to address issues. Parties appear willing and committed to work together in order to deal with the challenges facing farming communities.

In terms of inter-departmental government co-operation, the Gauteng Department of Land Affairs (GDLA) reports that they have a very good working relationship with the GDoL,⁴ whereas the GDoL says that it is often a struggle to get government departments to sit down together and speak a common language.⁵

Government relations with Agri Gauteng also appear positive, and the GDLA reported that they have a fairly positive level of co-operation with Agri Gauteng. However, they point out that not all farmers are members of the organisation.⁶ Agri Gauteng in turn reports that they have an excellent working relationship with the GDLA.⁷

Agri Gauteng is a young organisation, established in April 2001. As of November 2002 the organisation had 134 members,⁸ of whom 15 were Black⁹ and 2 were women.¹⁰ They are still a fledgling organisation and participated by mainly restating what Agri SA and other provincial Agris had previously said to the Inquiry.

Agri Gauteng pointed out that most of the trends that they were asked to comment on occurred, in their view, before 2001 and lacked specific details. Thus, they were unable to comment thereon. However, they did state:

"Agri Gauteng regrets the fact that a small number of individuals still contribute towards the image of farmers as being gross violators of human rights."¹¹

Agri Gauteng claims that there are good relationships between farmers and workers.¹² The GDoL response to this claim is that it is a false perception that fails to acknowledge the power dynamics and hierarchies that operate on farms. More often than not, it is a case of "not good relationships rather than good relationships".¹³

Agri Gauteng states that they are willing to work together with role-players to find solutions.¹⁴ SAAPAWU commented on Agri Gauteng's general open and constructive approach in the following way:

"...We also note that they are still a small emerging organisation. They are not speaking on behalf of the majority of farmers in Gauteng, but we do appreciate what they said here, that they are open for us to come and participate in their forums and stuff like that. We appreciate that and we will embrace that."¹⁵

Land rights

The GDLA provided little information to the Inquiry on the status of land rights in the province.

Tenure security

The GDLA did not provide the Inquiry with any specific statistics on the number of evictions that have occurred recently in the province or the number of persons that have received, and/or benefited from their efforts to inform people about land reform legislation. Information placed before the Inquiry was limited and indicated that various training and media campaigns have been undertaken in respect of ESTA and the LTA. The Department did not provide any indication of when the LTA application validation process will be completed. The Department acknowledges that during the period 1997 to 1999, the new land reform legislation was unknown by various role-players, including farm dwellers and farm owners. The Department is confident that since then, due to various communication campaigns to educate and inform the farming community, farm dwellers and owners have come to understand their rights and duties in terms of the legislation.¹⁶

In order to address the implementation of ESTA in the province, there is an ESTA Provincial Co-ordination Committee that is supported by the MEC.¹⁷ This forum is still in the process of being initiated and various government departments, agricultural unions and other stakeholders are being invited to participate.¹⁸ Agri Gauteng reports that they attend the forum's meetings frequently.¹⁹

Land redistribution

The GDLA acknowledges that few LRAD applications have been received from poor rural people. Rather, urban township dwellers appear to be taking advantage of this grant. The GDLA attributes this phenomenon to a possible oversight in their communications campaigns about LRAD.²⁰ Other provinces, according to the GDLA, are experi-

encing similar problems and are addressing them. The GDLA²¹ did not provide information to the Inquiry on the number of LRAD grants that have been approved.²²

Labour tenants

Following the national parliament-instructed labour tenants campaign, the GDLA received 460 labour tenant claims. The Department was previously of the view that there were no labour tenants in the province. Most applications came from the north-eastern part of the province.

Labour laws

Information received from the GDoL and SAAPAWU indicates that there is general non-compliance with labour laws in this province. Agri Gauteng told the Inquiry that, as in other provinces, many of their members have attended the NORAD training courses that cover, amongst other topics, labour law. Their members are also provided with information to assist them in adhering to the labour laws via the Agri website, newsletters, circulars and various meetings.²³

Non-compliance with labour laws

During 2002 inspections in the Vanderbijlpark area, it was identified that farm workers work long hours, in excess of those prescribed in the BCEA. Some workers work from 7h00 to 17h00 Mondays to Fridays and 07h00 to 12h00 on Saturdays. Workers earn on average between R200,00 and R600,00 per month and were generally unaware if this pay included overtime pay. During harvest season, workers were expected to work from 06h00 to 19h00 without extra pay or night shift allowance. It was alleged that during harvest season children are employed.²⁴

SAAPAWU claimed that on most farms there is lack of compliance with the BCEA. Violations include long hours of work, failure to pay overtime, Sunday and public holiday rates, non-compliance with leave provisions, no written contracts of employment and non-registration of workers with the UIF.²⁵

The union admitted weaknesses in their ability to take these matters up with the relevant authorities and were not in a position to comment on the effectiveness of the GDoL.²⁶ At a later stage, the union stated that they felt that the GDoL should intervene more where there are violations of labour laws.²⁷ The union is excited about the impending Sectoral Determination for farm workers.

The GDoL has not had any successful prosecutions for non-compliance with labour laws in the past 2 years. They attribute this to workers being unwilling to come forward and testify for fear that they will be dismissed and evicted from the farm. GDOL officials are of the view that some workers are fearful of their employers and believe that acts of revenge will be taken against them, should they report their employer to the relevant authorities.²⁸

The GDoL informed the Inquiry that there are farmers who employ illegal immigrants. They are often brought into the country on false promises. The moment these workers are discovered, the employer denies knowledge that they are illegal and hands them over to the police.²⁹

Child labour

Only since 1992, according to the GDoL, has agricultural work by children been prohibited by law. This accounts for its prevalence on farms, as it was the norm rather than the exception until recently.³⁰ Challenges to prosecuting perpetrators that were highlighted included difficulties in getting witnesses to testify, families needing the income earned by the child, the children themselves wanting to work to earn money and the children being placed in a far more vulnerable situation should the prosecution proceed, as well as there being no adequate back-up services and support for the children.³¹

"We have actually withheld prosecutions on child labour until we are reasonably sure that the children will be protected once we begin to prosecute the employer, and that is still a major problem at this time, ... I do not think we want to see children evicted and left on the streets hundreds of miles from their families ..."³²

In February 2002 an inspection in the Heidelberg area revealed that children were brought from the North West Province to work on farms. This arrangement was organised through the tribal authorities. Some of the children were as young as 10 years of age. They were forced to sleep in a storeroom or a pigsty and were not provided with any toilet facilities or access to running water. The children were employed to eradicate weeds in bean and maize fields and were paid R15,00 per day.³³

In July 2002, farms in the Eikenhof area were inspected and no incidences of child labour were found. At one farm, the inspectors were informed that the farmer no longer employs child labour since the much-publicised case that occurred in the Western Cape. At another farm, employees informed inspectors that the employer used child labour during school holidays. However, recently this had not occurred.³⁴ An inspection of 46 farms in the Germiston area in September 2002 did not detect any cases of child labour.³⁵

SAAPAWU believes that child labour is still prevalent in the province³⁶ whereas the Gauteng Department of Education (GDoE) is of the view that it is not.³⁷ As in all other provinces, Gauteng also has a CLIG structure (Child Labour Intersectoral Group), which operates in order to combat the practice of child labour.

Access to farms

Inspectors sometimes have trouble in accessing farms, with employers refusing to see them or being unavailable unless they make an appointment.³⁸

"As inspectors entered the farm they were met by 3 vicious dogs. One of the inspectors tried to produce his inspector's card to the farmer's wife but she could not stop the dogs from approaching the inspectors. In the meantime, the inspectors sat calmly in the car. One of the dogs then attacked the front right hand side wheel of the car and the car sustained a puncture. It was then that the employer decided to lock the dogs away to enable inspectors to replace the wheel."³⁹

"There very definitely is a racist problem as well. The majority of the inspectors are Black and the majority of farmers are White. Okay, so yes, we get called "kaffirs" and we have guns pointed at us and this kind of thing, so it is still a very difficult situation."⁴⁰

This issue of access to farms has been addressed with the agricultural unions in the province, but not all farmers are members and not all farm owners are on the farm regularly.

"But they tell you they are not commercial farmers, they tell you that the owner is never on the farm because he works in the city and has left the farm in the care of other people."⁴¹

SAAPAWU also reported having difficulties in accessing farms. On occasion, the police have been called to arrest their organisers for trespassing. These difficulties impede their ability to recruit new members.⁴² SAAPAWU has had instances where payments in kind have been withdrawn from a worker due to the person joining the union.⁴³ The GDoL confirmed that farm workers are difficult to unionise due to their fear that they will be dismissed if they join the union.⁴⁴

Poor conditions of employment

The GDoL considers the employment conditions of farm workers in the province as 'appalling' with many working long hours,

being paid low salaries and accommodated in dilapidated houses. In the experience of the GDoL, the average cash wage for farm workers is R200,00 per month.⁴⁵

The Department had no fixed view on payments in kind and pointed out that in some instances, where there are vast distances to be travelled, it can be in the workers interest to have the employer provide food. This should be done at a reasonable price and the food should be of an acceptable quality and standard. However, these payments in kind should, remain only a small portion of the workers wage.⁴⁶

The GDoL acknowledges that poor conditions of employment are not the case on all farms and that there is the potential to foster good working relations with employers in order to address some of these labour issues.⁴⁷ They admit that they will be unable to police the enforcement of a minimum wage. However, the Department does have plans to empower unions and workers in order that they may educate people about the new minimum wage.⁴⁸

Safety and security

Issues that were canvassed at the Inquiry included land invasions, the lack of service from police officials in ESTA disputes and farm attacks.

Land invasions

Following the Bredell incident, the Gauteng SAPS (GSAPS) resent a directive to their stations on how to deal with land invasions. This directive spells out the procedures to be followed in the event of a land grab which is based on the police experience that the quicker they get involved, the fewer people there are to deal with and that this lessens the possibility of violence and people being injured.⁴⁹ The police attempt to respond to these situations within one hour and bring the situation under control.⁵⁰ Should the people fail to vacate the land, once the landowner has laid a complaint of trespassing and

after consulting with the public prosecutor, the police will exercise their powers of arrest.⁵¹ It was noted that no similar directive dealing with the unlawful evictions of farm dwellers exists.⁵²

Lack of service from GSAPS officials in ESTA disputes

In response to allegations that the police are not familiar with the ESTA legislation and that they consequently fail to act to enforce these rights, the GSAPS acknowledges that the land legislation is intricate and difficult to understand. This is despite training being provided to their officials. In order to deal with this issue, an instruction has been issued that in any land matter, the commissioner's office must be contacted in order that police legal officials can be involved on the scene to give guidance to the local police.⁵³ Subsequent to the institution of this policy, a number of prosecutions for illegal evictions have been initiated in the province.⁵⁴

GSAPS are clear that they attend at lawful evictions to protect the sheriff and not to participate in the actual eviction. They are of the view that their presence creates a negative bias towards them and that evictees fail to understand that they are bound by law to protect the sheriff.⁵⁵ The GSAPS report that they are presently being litigated against for refusing to assist a landowner to carry out an eviction order.⁵⁶

Other obstacles that prevent the police from responding more effectively in farming communities include a lack of vehicles and cars,⁵⁷ farm dwellers being unable to attend at police stations due to long distances, a lack of transport⁵⁸ and having to obtain prior permission to enter a farm, unless they are investigating a crime.⁵⁹

Farm attacks

Statistics provided by Agri Gauteng indicate that in 1999, there were 229 farm attacks and 40 murders; in 2000 there were 217 farm attacks and 25 murders; and in 2001 there were 279 farm attacks and 26 murders in the province.

Agri Gauteng cites hate speech, with a strong racial undertone directed against farmers, as one of the major underlying causes for farm attacks that motivates people to attack and murder farmers and their families.⁶⁰ Who these perpetrators are is unclear, as Agri Gauteng also says that a “very, very minute minority” of farm workers are involved in these crimes.⁶¹ GSAPS states that the motive for these attacks is crime. For example, a perpetrator wishes to obtain firearms and farmers are perceived as keeping many firearms, farmers are also regarded as soft targets and the security arrangements at some farms is vulnerable.⁶²

The GSAPS report that they have a good relationship with the commandos, who complement the work of the police in the province. The police investigate any complaints against commandos and are currently dealing with one complaint.⁶³

The GSAPS acknowledge that farm workers were excluded from the Rural Protection Plan in the past, but that there are now efforts to include farm workers and to recruit them as reservists into the police services.⁶⁴ Steps are also being taken to extend the focus of the RPP to include crimes perpetrated against farm dwellers⁶⁵ and to get other relevant role-players involved, such as the Departments of Land and Agriculture.⁶⁶

Economic and social rights

The Gauteng Department of Education participated in the Inquiry and thus most information regarding economic and social rights is related to education.

Housing

No direct evidence was received by the Inquiry regarding the condition of housing on farms. In terms of access to housing, the GDLA has identified the provision of emergency housing as a matter that needs to be addressed in the province. The GDLA has begun engaging local authorities regarding the provision of emergency shelter where people are lawfully evicted.

“But in terms of dealing with the case as in immediately, I think we still have a problem. Everybody is saying it is not my responsibility...”⁶⁷

Health care

No direct evidence was received from farm dwellers about their experiences of access to health care in the province and the provincial Department of Health did not attend the Inquiry. Agri Gauteng stated that their members take their farm workers and family members to the doctor when they are ill, and in most cases pay for the treatment.⁶⁸

Food and water

“Because of the very poor socio-economic conditions of families in this area, you find that hunger is also a major problem that we contend with, and we do deal with this through the primary school nutrition programme.”⁶⁹

The GDoHealth is responsible for the budget of the Primary School Nutrition Programme (PSNP), which is currently in the region of R40M per annum. The GDoE is currently responsible for identifying schools that need the programme. The entire responsibility for this programme will be transferred to the GDoE in April 2004. The GDoE wants to extend the programme to secondary schools as they have identified a need for it in these schools.⁷⁰

Agri Gauteng is not of the view that the right to access to food is an issue on their member's farms.

“You will not find an underfed or abused kid on one of the farms of a member of Agri Gauteng, because we subscribe to a certain code of conduct, to certain ethics.”⁷¹

The Inquiry received isolated reports of workers being provided with dirty water⁷² and of farm dwellers' water supply being terminated by farm owners as a means to force an eviction.

Social security

In this province, no information was placed before the Inquiry in respect of the right to access to social security.

Education

The GDoE have identified a comprehensive list of challenges to access to education in rural communities. The Department has recently drawn up a 3-year programme of action to address these challenges. A lack of partnerships between various role-players is cited as an impediment to fully realising access to education in the province.

The GDoE has also identified a number of infrastructure challenges that impede access to education in the province. These include a lack of adequate classrooms and toilets, a lack of access to sports facilities, equipment and attire, a lack of adequate facilities such as libraries and laboratories for secondary education purposes, a lack of access to predominantly White public schools within or bordering rural farm communities, a lack of hostel facilities for learners travelling more than 15km per single trip daily and a lack of access to pre-school education.⁷³

Challenges in terms of curriculum delivery included multi-grade teaching, over-age and under-age learners, shortage of institutions for learners with special education needs and an absence of skills training. The Department has also encountered challenges to effective school governance. With reference to farm schools, the Department mentioned the lack of involvement of the communities in schools⁷⁴ and the interference and manipulation of resources by some farmers.⁷⁵

In August 2001 there were 127 729 learners and 3 474 teachers, of whom 415 are under-qualified in the rural/farm school sector of the province.

The transport of learners raises particular challenges in that many learners come from neighbouring provinces. There is also a lack of adequate subsidies for deserving learners and an absence of a national policy framework regarding learner transport.⁷⁶ There is a high learner drop-out rate in secondary schools as most rural farm schools are junior primary schools.⁷⁷ The Department is aware of learners who travel great distances past historically White schools in the province. The Department has conducted audits of bus routes to establish where this is occurring. They also admit that further communication is necessary with parents and that perceptions need to be addressed in order that children attend the school that is closest to their home.⁷⁸

The GDoE reported having good relationships with farmers. In some instances, farmers have offered free land in order that the Department can extend the schools and improve them. The process of entering into the section 14 agreements with farmers where schools are situated on private land is going well, with approximately 60% of agreements signed. Some farmers have agreed that the school may remain on the property free of charge.⁷⁹ However, the Department intends transferring all schools onto state land in the future.⁸⁰ Department officials have not experienced problems accessing farms in the province.⁸¹

Agri Gauteng informed the Inquiry about a farm where, in consultation with the community, the farm school has become a community centre for learning. Here school holiday programmes are run, adult basic education takes place, life skills training is offered and weekend recreational and sporting programmes are arranged. Agri Gauteng views themselves as assisting in and not run-

ning these projects in a paternalistic fashion. In the future, they are looking at establishing committees within the community to replicate what has been done.⁸²

The Department is yet to implement ABET programmes in the rural areas. However, they also stated that part of their future plans is to turn disused farm schools into ABET centres.⁸³

To address the education challenges in rural areas, the GDoE has developed a 3-year Rural Farm Schools Strategy (2002-2005) and have appointed a dedicated project manager. The key focus areas include closure and merger of schools, transfer of all schools onto private land, reorganisation of scholar transport, phasing out of multi-grade teaching, provision of hostel accommodation, school governance and school safety and HIV/Aids programmes.⁸⁴

Introduction

The Findings and Recommendations of the Inquiry highlights the broad trends and underlying causes of the human rights situation experienced in farming communities since June 1998. There is one set of findings for the Inquiry. However, provincial-specific issues are incorporated within the broad subject areas. There are no specific provincial findings and recommendations as the report reflects general trends. No one provincial chapter necessarily reflects all the trends in that province. The subject matter of the Inquiry was so great and there was neither the time nor available resources to cover the issues in all nine provinces in complete depth. Specific provincial nuances that were highlighted in the Inquiry will be dealt with in the broad subject areas of Findings and Recommendations.

The Findings and Recommendations are recorded according to the different subject areas that were covered during the course of the Inquiry. There are broad General Findings and Recommendations that address issues of approaches to human rights by the various role-players. Findings on the issues of Land Rights, Labour, Safety and Security and Economic and Social Rights follow this.

The Recommendations are placed directly beneath the Findings. The Recommendations are addressed to categories of role-players in farming communities. These categories may include the executive, national and provincial government departments, local government, State Institutions Supporting Constitutional Democracy (Chapter 9s), NGOs, trade unions and farmers' unions, such as Agri SA and their various provincial affiliates.

Approaches to human rights

Findings

Role-players approach each other from different human rights perspectives and understandings. This impacts upon the manner in which rights are interpreted, protected, respected and realised.

Within this paradigm, the approach is frequently adversarial and highly contested.

The approach is often legal, and one which complies with the letter and not the spirit of the Constitution. This approach does not always work to the benefit of the people whose rights are in need of protection and realisation. Those who are most vulnerable are often excluded.

Agri SA's approach to negotiate rights in an environment of great power disparities is not conducive to realising and respecting rights. This approach does not always foster continued relationships between the parties, nor does it strengthen the relationships in order to create a stable, sustainable rural environment. Approaches of gentle persuasion towards those who violate rights by Agri SA can be perceived as silent complicity in maintaining the status quo.

It is encouraging that there is a fair amount of interaction and co-operation between the role-players. However, there is a conundrum because allegations of rights violations are still prevalent. This can be attributed to the different understanding and approaches to rights by the role-players.

Characteristics of farming communities

Findings

Farming communities are characterised by:

- ❑ An acute lack of awareness of human rights.
- ❑ A lack of training and education about rights.
- ❑ A lack of mechanisms to enforce rights.
- ❑ A lack of access to farms by service providers.
- ❑ Skewed power dynamics between farm dwellers and farm owners.

Statistics

Finding

There are very few statistics available to assess the advancement and protection of human rights in farming communities.

Recommendation

To all government role-players:
Urged to consider keeping statistics on farming communities when determining their reporting and statistic-keeping formats.

Adequacy of Laws

Findings

There is general adequacy with regard to the laws that have been passed. However, those laws have not manifested themselves in substantial change in the lives of people within farming communities due to:

- ❑ The implementation of legislation and policy not occurring at sufficient speed to ensure that all the rights enshrined in the Constitution become a reality in people's daily lives in farming communities.

- ❑ A lack of administrative capacity to discharge the laws.
- ❑ A lack of co-operation and integration between government departments.
- ❑ The principles of co-operative government as set out in Chapter 3 of the Constitution not being utilised optimally to ensure the realisation of human rights.
- ❑ In particular, a lack of co-operation at various government levels whereby parties are not assisting, supporting, informing and consulting one another on matters of common interest, and co-ordinating their actions accordingly.
- ❑ A bureaucratic approach to dealing with the issue of land rights and security in rural areas. This stifles creativity in seeking solutions and operates to the benefit of those who are powerful.

The Eastern Cape
Finding
The Eastern Cape State role-players are particularly lacking in their approach to promoting and realising the human rights of farming communities. State officials demonstrated an apathetic approach and lack of appreciation that there is a positive obligation on government to take proactive steps to ensure that human rights (particularly, socio-economic rights) are realised.

Due to the lack of implementation, the law is not always being upheld or enforced, with some instances of people acting outside of the scope of the law with impunity.

The achievement of equality and dignity for all who live in farming communities is negatively impacted upon by the factors set out above. Women are more adversely affected than men.

Farming Community Forum General Recommendation

A forum for dialogue should be created between the three major social partners from farming communities: namely, farm dwellers, farm owners and government. This forum will create a platform where parties can confront each other on an equal basis to resolve issues that impede the enjoyment of rights in rural communities. The impetus for the establishment of the forum needs to be initiated by the Office of the State President.

A bold initiative from the highest political level is needed as the current approach is bureaucratic and stifling. There is a multiplicity of structures and interactions taking place between government and organised agriculture. All efforts need to be consolidated into a holistic approach in which issues relating to farming communities are addressed in a forum which promotes human rights for all in a co-operative manner. The current structures largely exclude farm dwellers and this needs to be addressed.

A common understanding of a rights-based approach needs to be promoted in this forum. All approaches to addressing human rights issues in farming communities must stand the test of constitutional scrutiny that seeks to achieve equality and dignity. Parties must comply with the letter and the spirit of the Constitution in giving effect to the rights contained therein, including economic and social rights.

A further spiralling of bureaucratic approaches to dealing with issues should be avoided. The Farming Communities Forum would provide an opportunity to address this.

Farm workers and their families who live off the farm

Findings

There is a growing tendency towards employing workers who live off the farm. This has resulted in many farm workers relocating to rural towns. The living conditions of workers in rural towns was not considered by the Inquiry as they do not fall within the Inquiry's scope and definitions.

Recommendation

To the DLA and other relevant role-players:

The Inquiry notes that the DLA has begun addressing the land rights of this group by commissioning a research project. Further research on the human rights of this category of rural dwellers is encouraged.

- ❑ There is no forum in which parties can address issues holistically on an equal footing in an effort towards creating a stable and safe farming community environment.

Power imbalances are exacerbated by:

- Poverty
- Lack of access to justice
- Lack of access to farms
- People not communicating due to cultural and language differences
- A lack of civil society role-players
- A lack of trust between the role-players
- The social and economic effects of alcohol abuse by farm dwellers in the Western and Northern Cape.

Power and relationships

Findings

- ❑ The concept of inherent power relationships dominated the Inquiry.
- ❑ The power of farm owners extends to ownership of land, employment and access to economic and social needs.
- ❑ Farm dwellers are dependent on employers for employment and tenure security, and in some cases, their basic economic and social rights. This pervades all aspects of life resulting in gross power imbalances between parties.
- ❑ There is a fair amount of interaction between the parties occurring in a structured manner between representatives of the various farming community role-players. However, what is decided at these levels does not always filter down to individual relationships on farms and thus the reports of human rights violations continue.
- ❑ Parties appear willing to talk to the Commission but do not always demonstrate sufficient commitment to speak to one another.

Recommendations

To all role-players

Continue to encourage and take proactive steps to ensure that decisions taken at a national or organisational level must be implemented on the ground.

Other relevant recommendations

General recommendation on the creation of Farming Community Forum

Access to justice

Access to farms

Land ownership

Power and land

Findings

- ❑ The enormous power of the rights of landownership in rural areas currently impedes the ability of farm dwellers to access and enjoy their rights enshrined in the Constitution.
- ❑ The concept of land ownership, held by some as an absolute stand-alone right, is not supported by the Inquiry, as it needs to be balanced in the context of all human rights.
- ❑ Concerns about land reform are verbalised through safety and security issues by landowners.

Recommendations

To the DLA

- ❑ The power of ownership needs to reside in concepts of democracy based on dignity and a fundamental respect for the rights of others.
- ❑ The power of land ownership must be exercised in a socially responsible manner and if necessary, be legally regulated.
- ❑ The bundle of rights contained in ownership needs to be unpacked and understood within a social context in which the dignity of others is respected, protected and promoted.
- ❑ The notion that the right of land ownership is absolute, must be challenged. It has to be reconciled with the right to access and the realisation of economic and social rights.
- ❑ Practical solutions need to be found to balance and protect the rights of the landowner and those who dwell on the land.

Access to the realisation of rights in farming communities

Access to justice and service providers

Findings

- ❑ There is a lack of access to legal assistance provided by the state in farming communities.
- ❑ Many farm dwellers cannot access the service providers, both state and civil society, who can assist them to realise their economic and social rights.
- ❑ This lack of access impacts negatively upon the inherent right to dignity, the achievement of equality and human rights generally.
- ❑ There are adequate laws that are even-handed. Those who have resources use the law as a tool.

Many role-players do not enforce ESTA:

- ❑ Not all magistrates are applying the provisions of ESTA in eviction disputes in farming communities.
- ❑ Magistrates lack training in land laws as there are still reports of farm dwellers being evicted in terms of the common law and of many eviction orders being overturned by the LCC as the procedures followed by the magistrate do not comply with ESTA.
- ❑ SAPS lack knowledge of ESTA and fail to enforce s23.

- ❑ The DoJ recently established a task team to deal with the implementation of ESTA. This step is welcomed; however, it is not acceptable that the task team is being established five years after the promulgation of the legislation.
- ❑ It is of concern that in fulfilling constitutional obligations to ensure tenure security, a system was created that relies on access to justice to enforce ESTA rights and that very little has been done to assist farm dwellers to enjoy the constitutional protections enshrined in the legislation.
- ❑ The Nkuzi judgment is not being adhered to in most instances and farm dwellers faced with legal proceedings, in which an eviction order is sought, are not being afforded the necessary legal representation.
- ❑ The policy decisions of the LAB taken at a national level in terms of farm dwellers faced with eviction being afforded legal representation, are clearly not implemented in all areas.
- ❑ There was little mention of the LCC being utilised by members of farming communities to access and enforce their rights due to a lack of legal representation.

- ❑ There are still pockets of the justice system that are in need of transformation in farming communities.
- ❑ The involvement of civil society role-players in the promotion of access to justice is favourably acknowledged as contributing towards the realisation of rights and in particular, access to justice.
- ❑ Organs of civil society also have a responsibility to ensure access to justice as it is not only the responsibility of the state.
- ❑ The current reliance by government on NGOs for the realisation of rights is not acceptable.
- ❑ Litigation is not the only method of resolving disputes in farming communities, particularly those disputes involving land and relationships between people. There is a lack of use of arbitration and mediation as processes to resolve disputes and strengthen relationships between parties.

Recommendations

To the LAB

- ❑ There is a clear need for the LAB to extend its services into the rural areas and to provide legal representation to farm dwellers faced with eviction.
- ❑ The LAB is urged to continue to extend its services into the rural areas.
- ❑ The LAB is urged to take immediate steps to communicate its policies regarding access to legal representation for farm dwellers to rural LAB officers.
- ❑ The LAB needs to train its attorneys in land law and alternative dispute resolution (ADR) mechanisms.
- ❑ Specialist legal services are needed in rural areas to deal with land disputes. The LAB should link with existing service providers, such as the Rural Legal Trust (RLT) and other NGOs, in order to strengthen those that are currently providing an effective service.

- ❑ Justice Centres should have mobile units to reach people in farming communities. This would enable existing centres to service communities.
- ❑ The LAB should be represented on provincial ESTA forums.

To the DLA and DoJ

- ❑ An adjudication system of dealing with land disputes needs to be considered and developed to replace the costly and adversarial manner in which these disputes are currently dealt with. The current litigious approach antagonises parties and reinforces the existing power relationships.
- ❑ Adjudicators should be trained in human rights principles and land law.
- ❑ The adjudication system should include mediation, adjudication and internal appeals. Once these processes are exhausted, resolving the dispute in court can be pursued.

To the LAB, DoJ and DLA

- ❑ A mechanism must be implemented where access to legal representation is available from the earliest possible opportunity so that legal proceedings are implemented in order to promote the amicable resolution of matters; this means either at the 2-month notice stage provided for in terms of ESTA or the issuing of summons, whichever occurs first.

To the DLA

- ❑ The use of ADR is encouraged in land disputes. The DLA is urged to roll out its programmes in this regard as a matter of urgency.

To the DoJ

- ❑ Magistrates need training in land laws in which the constitutional and human rights framework is conceptualised.

- ❑ The Rules of the Magistrates Court Act should be amended (similar to the Criminal Procedure Act) whereby the magistrate is obliged to inform the indigent farmworker of his or her rights to legal representation.

To civil society

- ❑ Those organs of civil society which have the capacity to discharge access to justice and educate and train parties as to their rights, are encouraged to continue with these activities.

To government

- ❑ Multi Purpose Community Centres (MPCC) in rural areas should be rolled out and used to assist with access to information and assistance to ensure the realisation of economic and social rights.

Other relevant recommendations:

Tenure security, consolidation of ESTA/LTA
Labour tenancy, consolidation of ESTA/LTA

Access to farms

Findings

Access to farms is strictly controlled by farm owners who cite the high levels of crime in farming communities as the reason for controlling access. This results in many role-players being restricted in their access to farms. There have been incidents of farm attacks in which past visitors of farm dwellers have been the perpetrators of these crimes.

The control of access is important as it determines the ability of people to access and enjoy rights in respect of their residence, employment and social and economic rights. This ultimately impacts upon one's ability to live in dignity and fulfil him/herself as a human being.

The lack of access to farms has negative implications such as:

- ❑ Lack of access to service delivery by the State.

- ❑ Labour and land laws are capable of being flouted with impunity.
- ❑ Rights of farm dwellers become accessed through the farm owner.
- ❑ Impedes scrutiny of the human rights situation within farming communities and allows for a lack of empirical evidence that will contribute and assist the State in realising the socio economic rights of communities.
- ❑ The lack of transparency on farms as a result of lack of access creates a situation in which farm owners can continue to be criticised as human rights violators.

The rights of ownership must be respected and protected when discussing the concept of access. However, there are legitimate reasons where the State may interfere with the right to private property. Non-accessibility to farm dwellers cannot be accepted within a democracy based on fundamental respect for human rights.

Recommendations

To all role-players

The Farming Community Forum, as recommended in the General Recommendations, needs to address the issue of access to farms within a human rights framework. It is imperative that the issue of access is resolved and all parties are urged to co-operate.

The rights enshrined in ESTA, of occupiers being entitled to receive visitors, must be dealt with in a practical and amicable manner.

Possible ways of addressing the access issues raised during the Inquiry include:

- ❑ A government policy on access to farms.
- ❑ An accreditation system for role-players.
- ❑ Public servitudes.
- ❑ Systems for prior authorisation being requested.
- ❑ Legal channels in a court of law.

- ❑ Local municipalities must address the issue of access to farms within a developmental proactive framework. Thorough planning and management of the matter can be dealt with on a long-term basis by the provision of access roads on farms where there are farm dwellers. Such planning must include the farm dwellers as well as all other relevant role-players.

CHAPTER 17

Land Rights

Tenure security

Findings

There is widespread non-compliance with ESTA due to:

- ❑ A disturbing lack of knowledge of ESTA by all role-players.
- ❑ ESTA is a principal piece of legislation in terms of land reform; however it is contested between the role-players. Agri SA claim that aspects of ESTA are unconstitutional and expressed open dislike for the legislation. Farm dwellers argue that it does not protect them enough. This conflict results in an environment that is not conducive to the legislative intention of ESTA being realised.
- ❑ There is a lack of acknowledgment and support for the human rights that ESTA strives to protect and realise.

In a number of provinces there are structures such as ESTA Forums, co-ordinated by the provincial DLAs, to address the implementation of ESTA.

Recommendations

To all role-players

Role-players are encouraged to continue with training and education programmes on ESTA with emphasis on understanding and acknowledging the constitutional framework of the legislation.

To the DLA

Provincial DLAs that have ESTA Forums are encouraged to share their successes and failures with other provincial departments.

Northern Cape

Finding

The DLA in the Northern Cape is weak and is not sufficiently active in realising the land rights of farming communities. There is a lack of interaction amongst role-players in the Northern Cape.

Recommendation

DLA is urged to take steps to address these findings as a matter of urgency and report to the SAHRC on its plans and progress.

Non-compliance with ESTA procedures & common law evictions

Findings

- ❑ There is a lack of compliance with ESTA provisions that regulate eviction proceedings.
- ❑ There is complete lack of compliance with the legislative provisions of ESTA in some court proceedings, resulting in farm dwellers being denied their ESTA rights and being evicted in terms of common law.

Recommendations

To DoJ

Magistrates and prosecutors should receive training on the provisions of ESTA.

ESTA Section 19 - review proceedings

Finding

- ❑ The high number of eviction orders overturned during review proceedings in the Land Claims Court indicates a lack of compliance with the legislation by magistrates and attorneys.

Other relevant Recommendations

Non-compliance with ESTA procedures

Burial rights

Findings

- ❑ There is a lack of education and knowledge of the amendments to ESTA that seek to protect and clarify burial rights of farm dwellers on land on which they reside, but do not own.
- ❑ In some instances this lack of knowledge about ESTA among role-players leads to unnecessary conflict between the parties.
- ❑ There is a perception amongst many landowners that the burial of farm dwellers on their property may result in claims of ownership to the land by the descendants.
- ❑ The amendments still make it difficult for people to qualify to be buried on farms.

Recommendations

To all role-players

Parties need to be educated about burial rights on farms in order to proactively avoid conflict and situations where human dignity is compromised.

Visitors

Findings

- ❑ The rights of farm dwellers to receive visitors are not always respected. Farm owners attribute this to the security situation that prevails in farming communities.

Recommendations

To all relevant role-players

- ❑ The issue should be addressed at the Farming Community Forum and solutions found that are acceptable to all parties.
- ❑ The issue should be considered by the DLA team that is responsible for the consolidation of ESTA and LTA legislation.

New farm owners

Findings

- ❑ Despite adequate provisions in ESTA that protect the interests of farm dwellers in circumstances where there is a change of ownership, these provisions are not being applied.
- ❑ A number of evictions have occurred as a result of change in land ownership.

Recommendations

To the DLA

The DLA should consider how to ensure that the change of ownership provisions contained in ESTA can be implemented.

To Agri SA

Members should be educated about the provisions of ESTA relating to change of ownership.

Sale of land for the creation of game farms

Findings

- ❑ The sale of farmland for the creation of national and game parks has a potential adverse impact on the socio-economic rights of farm dwellers.
- ❑ Not all relevant stakeholders are engaged in the process of the sale of the land in order to ensure that there is a minimum impact on the lives of farm dwellers. Thus the sale is not used as an opportunity for the further development and realisation of the socio-economic rights of farm dwellers.

Recommendations

To DLA and relevant government departments
There is a need for a co-ordinated inter-departmental approach to dealing with the issue of the creation of game farms.

Keeping of livestock

Findings

- ❑ The denial and removal of livestock grazing rights and tending of crops rights impacts negatively on the right to sufficient food and many other related socio-economic rights.
- ❑ It also affects the right of farm dwellers to practice their culture and may even affect their right to family life.

Recommendations

To all role-players

The keeping of livestock needs to be addressed in a human rights framework that takes cognisance of all the affected rights of the parties involved.

ESTA Section 4 subsidies

Findings

- ❑ The DLA failed to provide sufficient information to the Inquiry to determine the effectiveness of the section 4 subsidies.
- ❑ Very little information was received in the provinces of section 4 subsidy projects occurring.

Recommendations

To the DLA

The DLA needs to supply statistics to the Commission on the number of section 4 subsidies approved and granted, and the status of the current projects.

ESTA Section 23 illegal evictions

Findings

- ❑ The general lack of knowledge and enforcement of section 23 of ESTA by the SAPS is unacceptable given that this legislation was promulgated over 5 years ago.
- ❑ The failure by the State to adequately train its officials to implement legislation promulgated in terms of the constitution amounts to a disregard of the importance of such legislation. It also indirectly contributes towards the denial of the rights of farm dwellers, as perpetrators know that they can evict farm dwellers with impunity.

- ❑ There is a high rate of illegal evictions with a lack of law enforcement and prosecution of offenders.

Recommendations

To the DLA

Mechanisms and training to deal with the implementation of section 23 of ESTA should be co-ordinated with the assistance of other role-players through forum structures similar to those that exist in some provinces.

To the SAPS

- ❑ A quick-response mechanism is needed at a high level within the SAPS to respond to evictions.
- ❑ SAPS are encouraged to pursue preventative policing strategies and to attend at the scene of threatened evictions and advise farm owners about the criminal provisions of ESTA.
- ❑ Police should set up a hotline for eviction cases to their legal department.

KwaZulu-Natal SAPS

Finding

KZNSAPS informed the Inquiry that due to preparations for the Inquiry it was the first time they had heard of ESTA. This submission by a senior SAPS member indicates that there is little commitment to or enforcement of the legislation in the province.

Recommendation

To KZNSAPS

To inform the SAHRC of immediate steps that will be taken to address the lack of knowledge and enforcement of ESTA amongst their members.

Women

Findings

- ❑ Women are discriminated against in achieving tenure security, due to the rights of tenure being traditionally vested with men.
- ❑ Men receive greater access to employment with corresponding tenure rights than women.

Recommendations

To all role-players

Role-players are encouraged to address the effects of discrimination against women in acquiring tenure security.

Emergency accommodation after an eviction

Findings

There is a lack of a systematic integrated approach for people living in crisis situations after an eviction. This results in multi-fold deprivation of rights. In particular, it results in a failure by the State to ensure that the rights of the child to basic nutrition, shelter, health care services, social services and education are upheld.

Recommendations

To government departments and local government structures

Relevant government departments must submit a reasonable plan to the SAHRC that addresses the plight of people in crisis situations after an eviction. This must deal with the socio-economic rights that need addressing in a just and equitable manner. Municipalities should develop a Framework Guiding Document for these emergency situations.

To civil society

Civil society is encouraged to participate and assist in these crisis situations.

Other relevant recommendations

Visitors – access to farms

Land Tenancy

Finding

Labour tenants currently residing on land and awaiting the outcome of their application process to obtain land ownership are in a vulnerable position. With the possibility that the landowner will lose rights in land, albeit compensated therefore, privileges and rights are being withdrawn from labour tenants.

Recommendations

To the DLA

- ❑ To take necessary steps to ensure that the processing of land applications of labour tenants are processed as expeditiously as possible.
- ❑ To address the abuse of rights arising out of the lodging of land applications in the revision and consolidation process of ESTA and LTA legislation.

Redistribution

Findings

The land reform process is critical in the unfolding of our democracy. Different constituencies view the process differently. It is important that a common understanding be developed. Land reform is a highly emotional issue for parties, the effects of which are not to be underestimated.

There is currently a lack of:

- ❑ Communication between the parties

There is no common understanding of the process. Therefore, different expectations exist. This results in the delivery expectations of people on the ground not matching the delivery rate of land reform by the DLA.

- ❑ Synergy between expectations and what has been delivered

The enormity of the challenges is not sufficiently communicated to the people on the ground in order that they understand that effective land reform is a complicated process. There is a general lack of understanding of the redistribution process and the expectations of government are not always realistic.

- ❑ Delivery

Delivery of land redistribution has been slow. There are high levels of frustration on the ground, as was experienced first hand by the Inquiry in KZN when proceedings were disrupted.

Recommendations

To the DLA

- ❑ The DLA must undertake a programme of effective consultation at a local level to ensure that people understand the land reform process, what it entails and what realistic time frames will be put in place.
- ❑ There is a need for greater encouragement of small-scale farming and the involvement of young people in productive and sustainable ventures on farmland. Educational higher institutions and agricultural institutions should be encouraged to promote programmes to refocus attention on opportunities in the agricultural sector for young people.
- ❑ The role of the DTI must be explored in terms of creation of opportunities and skills and the creation of small and medium enterprises.

LRAD Programme

Findings

- ❑ It is difficult to scrutinise LRAD and its effectiveness in terms of the criticism received at a provincial level, and in terms of who the beneficiaries are, as the DLA failed to provide the statistics.
- ❑ Anecdotal evidence provided to the Inquiry indicates that the willing buyer-willing seller principle is not working, as the land that is obtained is of poor quality for agricultural purposes.

Recommendations

To the DLA

- ❑ The DLA is requested to provide statistics to the SAHRC on the number of LRAD grants accessed by farm dwellers.
- ❑ Where provinces do exhaust their land redistribution budgets, they should be provided with incentives and the budget should be increased.

Land prices

Finding

Only in the North West Province was information received about collusion and inflating of prices of land earmarked for redistribution.

Recommendation

To the NWDLA

This issue should be resolved through interacting and liaising with other DLA provincial departments.

Land Bank

Findings

- ❑ There is a perception that the Land Bank is not accessible to farm dwellers.
- ❑ The Bank has many innovative programmes to assist with the delivery of land reform in the country.

Recommendations

To the Land Bank

- ❑ The Bank is urged to continue in its communication efforts to address the perceptions that became evident during the Inquiry in the provinces.
- ❑ The Bank is encouraged to continue providing products to farm dwellers that will enable them to access land and to continue supporting the realisation of the land reform process.
- ❑ The Bank is encouraged to run more awareness campaigns directed specifically at farm dwellers about the services that it provides and products that it offers.

Restitution

Finding

Due to the lack of information provided to the Inquiry on the number of farm dwellers who have benefited from the land restitution process, the Inquiry is not in a position to make specific findings on the issue.

Non-compliance with labour legislation Findings

There is widespread non-compliance with labour legislation in farming communities. This can be attributed to:

- ❑ A lack of knowledge of the laws by both farm workers and farm owners.
- ❑ A lack of enforcement mechanisms.
- ❑ Non-unionisation of workers.
- ❑ Lack of willingness by employers to comply.

Legislation

Findings

- ❑ Many aspects of the BCEA are not complied with.
- ❑ Some farm workers are not registered for UIF or COIDA. The failure to register these workers for this social insurance amounts to a violation of their constitutional right to social security.
- ❑ The provisions of the OHSA are not applied.
- ❑ There is lack of compliance with EEA and SDA. It is favourably noted that the SETA established in terms of the SDA is operating effectively.
- ❑ The failure to comply with labour legislation amounts to a violation of the right to fair labour practices.

Farmers' unions have undertaken many training programmes and initiatives to ensure compliance with legislation. However, the impact of this training is not being filtered down to all workplaces.

The 'Vision for Farm Labour' is not being implemented or adequately adhered to by the role-players.

Recommendations

To farm owners, farmers' unions, Agri SA

- ❑ Are encouraged to continue with their programmes to educate farm owners to comply with labour legislation.
- ❑ To publicly condemn non-compliance with legislation.
- ❑ To develop proactive strategies to ensure compliance.
- ❑ Liaise with other civil society role-players and develop mechanisms to report non-compliance and methods of dealing with it.

To trade unions, advice offices and NGOs

- ❑ Continue with programmes to educate farm workers about their labour rights.
- ❑ Assist farm workers to enforce compliance with legislation.
- ❑ Liaise with farmers' unions and develop mechanisms to report non-compliance and methods of dealing with it.

To DoL

- ❑ Parties are encouraged to enskill and develop farm workers through the SDA by providing a grading and certification process for different categories of skilled workers, thereby creating a career path for such workers.

Inspectors

Findings

- ❑ There are insufficient numbers of inspectors to carry out the inspection needs of farming communities.
- ❑ Inspectors experience difficulties in accessing some farms. It is not acceptable that inspectors cannot access farms due to these difficulties.

- ❑ Inspectors are not familiar with the links between labour and ESTA legislation.

Recommendations

To the DoL

- ❑ Vacant inspector posts should be filled as soon as possible.
- ❑ The DoL must create internal reporting mechanisms and strategies to deal with instances where inspectors cannot access a farm.
- ❑ Inspectors should receive training on the links between labour and ESTA legislation.

Other relevant recommendations

Access to farms

Trade unions

Findings

Few farm workers are members of trade unions. Factors that inhibit membership include:

- ❑ Lack of access to farms by organisers.
- ❑ Organisers not having the necessary transport to access workers or resources to provide an effective service.
- ❑ Workers being intimidated not to join and threatened with dismissal in some instances.
- ❑ Access to farms being restricted.

A work place environment that is conducive for farm workers to enjoy their right to form and join a trade union and to participate in the activities and programmes of trade unions, does not currently exist on many farms.

Recommendation

To trade unions and Agri SA

Parties are encouraged to engage in dialogue with a view to creating a conducive environment in which workers are given the opportunity to exercise their constitutional labour relations rights.

Labour consultants

Finding

There are some labour consultants who give incorrect advice to employers or advice that promotes the circumvention of labour laws and which is contrary to the values of dignity and the achievement of equality.

Recommendation

To Agri SA and farm owners

The choice of labour consultants should be exercised with caution.

CCMA

Findings

Many farm workers who are unfairly dismissed, do not access the CCMA because:

- ❑ They are unaware of their rights and the existence of the CCMA.
- ❑ The CCMA is inaccessible due to great distances that must be travelled and a lack of transport.
- ❑ Some CCMA officials are unhelpful.
- ❑ The process is often lengthy and where relief is granted, it is too late.

Recommendation

To CCMA

Education and publicity programmes are necessary to educate farming communities about their rights and how to access the CCMA.

Child labour

Findings

Child labour does occur within the farming communities. The forms that it takes includes:

- ❑ Children being employed by farm owners.
- ❑ Children assisting parents in the workplace, particularly where piece-work payment is prevalent.
- ❑ Children working in the home and caring for siblings and other children while their parents work.
- ❑ Children working during school holidays.

There is a lack of empirical research and statistics to establish the current prevalence of child labour.

There is a lack of knowledge in farming communities about what constitutes child labour and that it is a criminal act.

The occurrence of child labour constitutes a violation of South Africa's international and domestic human rights obligations.

Child labour constitutes a violation of a child's right to be protected from exploitative labour practices and not to be required or permitted to perform work. There are further rights that are being violated, such as the right to basic nutrition, shelter, health care services, social services, family and parental care and education.

The CLIG structures are not operating at an optimal level generally, and more particularly, do not impact on the lives of children in rural areas.

The Inquiry was informed of only one successful prosecution for child labour in the farming community. It is acknowledged that the prosecution and eradication of child labour raises many challenges that cut across government departments and calls for strong collaboration between role-players, such as taking care of the accommodation, social care and education needs of children who are removed from workplaces.

Recommendations

To the Office on the Status of the Child in the Presidency, the DoL and CLIG structures

- Studies and research on the prevalence of child labour in farming communities is needed urgently.
- The current initiatives within the DoL to develop legislation to deal with child labour are encouraged and it is urged that this be prioritised. These initiatives should look at strengthening legislative measures to ensure

greater accountability of employers who use child labour.

- The DoL is urged to continue in its prosecution efforts in a responsible manner and to use these prosecutions as a mechanism to highlight the seriousness of exploiting child labour and to promote the rights of a child where these are being violated.
- In the provinces where CLIG structures are no longer operating, it is urged that the structures be reinstated with immediate effect. The DoL is to report to the SAHRC in this regard.
- CLIG structures need to address child labour in farming communities.

Other relevant recommendations

Social Security - DoHA

Women

Findings

There is widespread discrimination practiced against women in the workplace.

The forms of this discrimination include being:

- Denied equal access to employment.
- Paid less than men for similar or the same work.
- Denied maternity benefits.
- Prevented from seeking employment due to a lack of childcare facilities.

Recommendations

To the CGE

The CGE is urged to address issues raised in this Inquiry pertaining to gender issues and to take the necessary steps within its constitutional mandate to achieve the protection, development and attainment of gender equality within farming communities.

To DoL, Agri SA, trade unions and other civil society role-players

There is an urgent need for the provisions of the EEA to be promoted within farming communities.

Illegal foreign workers

Findings

- ❑ There is abuse of non-nationals who are illegally employed in South Africa. They are extremely vulnerable and in a weak position to challenge the conditions of their employment.
- ❑ Employers who employ non-nationals report such persons when they challenge their conditions of employment or when the employer no longer wishes to employ them.
- ❑ There is an apparent lack of mechanisms to hold such employers accountable and to ensure that non-nationals receive equitable treatment in relation to their labour rights when arrested and/or deported.
- ❑ The Inquiry condemns in the strongest terms the physical assaults and incidences of torture committed against non-nationals.

Recommendations

To DoL and DoHA

- ❑ The departments are urged to address the enforcement of labour legislation in respect of non-nationals.
- ❑ The DoHA is further urged to take steps to hold employers accountable.

Seasonal labourers

Findings

- ❑ There is a trend towards the use of seasonal labour in farming communities.
- ❑ The temporary nature of the work places seasonal labourers in a vulnerable position.

Recommendations

To the DoL

Research is needed to determine how seasonal workers' rights in farming communities can be strengthened.

Tot System

Findings

- ❑ There are still isolated incidences of the tot system being used in the Western and Northern Cape.
- ❑ Alcohol abuse and its economic and social effects are widespread within farming communities in the Western and Northern Cape.
- ❑ Alcohol abuse is perpetuated by cheap alcohol being easily available through the proliferation of mobile shebeens.

Recommendations

To Western and Northern Cape provincial government:

A report is to be submitted to the SAHRC that outlines current and future programmes that are being implemented by government departments to address this serious challenge.

Poor conditions of employment

Findings

- ❑ The Inquiry found instances of deplorable and shocking conditions of employment that are recorded in the Report.
- ❑ The most common forms of poor conditions of employment were payment of low wages and verbal and physical abuse of workers by employers.
- ❑ The payment of low wages impacts negatively on the ability of workers and their families to improve the quality of their lives, and live with dignity and in an environment in which there is basic achievement of their social and economic rights.
- ❑ The continued infringement of workers' rights constitutes a serious infringement of dignity.

Recommendations

To farm owners and Agri SA

All instances of poor conditions of employment should be publicly condemned and steps taken to rectify the practice.

Sectoral Determination

Findings

Based on information received by the Inquiry regarding payment of low wages, the Sectoral Determination that will set a minimum wage in the agricultural sector is supported.

Recommendations

To DoL

DoL is to inform the Commission of steps taken to enforce compliance with the Sectoral Determination.

To Agri SA

Agri SA is called upon to support the Sectoral Determination.

To Civil society

Civil society is encouraged to educate farm dwellers about the provisions of the Sectoral Determination.

CHAPTER 19

Safety and Security

General

Findings

All forms of violence and crime perpetrated against members of farming communities constitute a violation of human rights and are to be abhorred and strongly condemned.

There are unacceptable levels of violent crime in farming communities with both farm dwellers and farm owners being the victims of such crime.

Recommendation

To all role-players

- ❑ All role-players should consistently condemn all acts of violence perpetrated against members of farming communities.

Violent crime against farm dwellers

Findings

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.

In some provinces, such as North West, Limpopo and Mpumalanga, the incidences are of such a nature and frequency as to indicate that there is a culture of violence in which acts are perpetrated in an environment of impunity.

The incidents of violence accompanied by torture and attacks by vicious dogs in Limpopo, and in which allegations are made of the involvement of private security persons and commandos are regarded with the gravest concern.

In the North West Province, a third of the individual submissions received by the Inquiry were of violent crime being perpetrated against farm dwellers by farm owners.

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.

The underlying causes for this lack of protection can be attributed to farm dwellers' past and present experiences and perceptions. These perceptions are held and created within farming communities from their interactions with the criminal justice system.

Experiences

Farm dwellers do not always experience their interactions with the SAPS as a service that is there to protect and service their needs.

Perceptions are fuelled by farm dwellers' realities of interacting with the criminal justice system, including:

- ❑ Not being treated with the necessary dignity and respect by police officials.
- ❑ Police being unhelpful, e.g. refusing to register cases.
- ❑ Police not reacting quickly enough when their assistance is requested.
- ❑ Police being unwilling to accept charges laid against a farm owner.
- ❑ A lack of follow-up and informing victims of the progress of their cases.
- ❑ Matters not being investigated properly.
- ❑ Not receiving feedback on what is happening with their matters.
- ❑ Cases being unsuccessful due to a lack of evidence.

The Inquiry found the approach of the KZN and EC SAPS to crime perpetrated against farm dwellers in farming communities apathetic and lacking in any proactive vision to deal with the challenges.

The Inquiry expresses concern that reports were received in the Free State of White police officers being unwilling to arrest White farm owners.

The Limpopo, North West and Mpumalanga SAPS demonstrated an openness and frankness with the Inquiry, both in their approach and enthusiasm to deal with the difficult challenges that they are faced with in the farming communities. In particular, the Inquiry commends the very open and frank manner in which they discussed the challenges of transformation.

Recommendations

To the SAPS

- ❑ The challenges faced and perceptions held by farm dwellers that lead to under-reporting of crime needs to be addressed. In this regard, the Rural Victim Survey, which is part of the Rural Protection Programme, is welcomed. It is recommended that further initiatives of this nature continue and that the SAHRC is kept informed of developments and progress.
- ❑ The SAPS should hold a summit under the auspices of the Farming Community Forum in which all relevant role-players participate in order to address the current lack of representivity in terms of RPP participants, forge a representative reflection of all rural protection issues that need addressing and take measures to address the experiences and perceptions of the SAPS in rural areas.

Perceptions

Findings

There are perceptions that the criminal justice system is biased against farm dwellers and that the reporting and prosecuting of cases, in which farm dwellers are victims, will be unsuccessful.

These perceptions are also created by the disproportionate amount of attention given by the SAPS to provisions of legislation such as PIE which protects landowners' interests and the lack of attention and training given in respect of ESTA provisions that protect farm dwellers.

This results in under-reporting and a lack of confidence in the criminal justice system.

Recommendations

To the SAPS

- ❑ Proactive and practical strategies are necessary through which the SAPS creates greater accountability amongst its members to handle complaints and cases of farm dwellers.
- ❑ SAPS should engage with civil society to determine the root causes within communities of these perceptions and work with communities to address the perceptions.

To civil society

- ❑ Civil society should support the SAPS in uncovering the basis of the perceptions and assist with developing strategies that will deal with these realities.

Other relevant recommendations

ESTA Recommendations - Training of SAPS Experiences Recommendations

Vicious dogs

Findings

Vicious dogs are used as a method to preclude or prohibit access to farms. In some instances they are used as a weapon or instrument of assault.

In the cases of dog attacks reported to the Inquiry, it is disturbing that the dog owners whose dogs attacked and mauled farm dwellers were not properly prosecuted and that the victims were not properly assisted in obtaining legal civil recourse.

The law does not appear to adequately deal with the legal liability both in civil and criminal cases of owners of vicious dogs. This issue is thus not confined only to farming communities.

Recommendations

To the South African Law Commission (SALC)

- ❑ It is recommended that the SALC undertakes research into the criminal and civil aspects of the legal liability of owning a vicious dog with a view to determining the inadequacies of the law and proposing legislation to deal with the issue.

To the LAB

- ❑ It is recommended that the LAB devise a strategy to provide access to legal representation for victims of vicious dog attacks to enforce their civil claims for damages.

Women and crime

Findings

Violent crime against women in farming communities was not brought significantly to the attention of the Inquiry. However, there are unacceptable levels of violence being perpetrated against women on farms.

The lack of domestic violence prosecutions in the Northern Cape and only one unsuccessful rape prosecution, compared with general crime statistics indicating the prevalence of these crimes in society, indicates that these crime forms are not being reported to the SAPS and those that are, are not being investigated and prosecuted. The experiences of women victims of crime in the Northern Cape indicate that the SAPS in farming communities are not responsive enough to crimes against women.

Recommendations

To the SAPS

- ❑ It is recommended that the SAPS compare the prevalence of crimes perpetrated against women in farming communities to other communities. Should the trend of under-reporting be confirmed, the SAPS are urged to take special steps through its Rural Safety Programme to address this crime form.

To the CGE and relevant role-players

- ❑ Further strategies and roles should be considered within the constitutional mandate of the CGE to address crimes perpetrated against women in farming communities.
- ❑ Research should be undertaken to determine whether the trends that were observed in the Northern Cape exist throughout the country and the underlying reasons for this.

The court system, magistrates and DPP Findings

Farm dwellers perceive the criminal justice system as not being impartial.

These perceptions are based on:

- ❑ A lack of understanding of how the criminal justice system works.
- ❑ Cases being dismissed due to a lack of evidence.
- ❑ Cases being withdrawn after the accused was given many opportunities to secure legal representation.

Recommendations

To actors within the criminal justice system

- ❑ The perceptions held by farm dwellers need to be addressed through education and systems that ensure that the victim is adequately informed on the progress of the case.

- ❑ Instances of cases being dismissed due to a lack of evidence which indicates that the SAPS have failed to investigate the matter properly must be pursued between the DPP and SAPS at a senior level and corrective steps taken.

Community Policing Forums

Findings

These forums are not reflective of the concerns of, or address the issues pertaining to, farm dwellers.

There is a lack of participation in these forums by farm dwellers.

Recommendations

To the SAPS

- ❑ Issues around access and participation in community policing forums need to be addressed.

To civil society

- ❑ Role-players should encourage and assist in facilitating the involvement of farm dwellers in community policing forums.

Private security

Findings

There is a growing use of private security firms within farming communities.

The Inquiry finds that there are instances where private security persons have perpetrated acts of assault and violence against farm dwellers and entered farm dwellers' homes without the necessary search warrants or valid reasons in law. These private security officials violate the rights of farm dwellers to be free from all forms of violence and the right to privacy in the home.

In many instances, private security firms are carrying out the work of the SAPS, yet there is a lack of mechanisms to ensure their accountability to the constitution in the same manner as the State.

There is a lack of adequate protection for persons who suffer violations at the hands of private security firms.

Recommendations

To Private Security Regulatory Authority

- ❑ Should look into the issues raised by the Findings regarding private security in farming communities. In particular, the Authority should seek to address issues relating to the arrest and detention of persons and ensure that this is done within the confines of the Constitution. Further, it should address the issues of whether the civil rights of victims of private security violations are afforded adequate protection by the industry to enforce their civil rights.

Commandos

Findings

It is not in keeping with the principles of a constitutional democracy that the army is deployed on a permanent or semi-permanent basis to assist the police in crime prevention.

There are many allegations of abuse of power levelled at commandos within farming communities.

Commandos are perceived as protecting the interests of White farm owners and at times are perceived as being accountable to White farm owners.

The number of allegations leveled against commandos leaves no room other than to find that there are some commandos who abuse their positions and perpetrate crimes against farm dwellers.

Recommendations

To the SANDF

- ❑ The Inquiry endorses the decision announced by the State President to withdraw commandos from the rural areas.
- ❑ Whilst endorsing this decision, the Inquiry notes that the Minister of Defence has publicly stated that this withdrawal shall be gradual, that the SAPS will first be capacitated to deal with the policing challenges of the rural areas and that in this process there will be consultations with all relevant parties.
- ❑ The SANDF is urged to continue in its approach of investigating all complaints laid against commandos.

Reservists

Findings

- ❑ The current composition within farming communities is not representative of the South African population.
- ❑ The SAPS have failed to take the necessary steps within rural areas to ensure that reservists are adequately representative of the communities that they serve.

Recommendations

To the SAPS

- ❑ Sector policing and establishment of new categories of reservists are encouraged.
- ❑ Further initiatives to recruit reservists from farming communities are encouraged.
- ❑ The role of traditional leaders should be explored.

Farm attacks

Findings

Although the term “farm attack” was used in this Report for the purposes that all parties understand the term, there is no such crime in law (common and statutory) as a farm attack. Rather the term refers to a number of crimes that fit within a definition. The Inquiry

finds the definition of the term “farm attack” problematic as it perpetuates notions of racism and sexism. The term perpetuates notions that White farm owners, who are victims of crime are more important and receive preferential treatment regarding their crime problems. Farm dwellers are also subjected to severe forms of crime during farm attacks. The term excludes many forms of violence such as domestic violence, child abuse and assaults perpetrated against farm dwellers, women and children living in farming communities.

The Inquiry finds that the underlying cause of farm attacks is attributed to criminal motives. The underlying motive does not detract from the seriousness of the crime.

The Inquiry can find no evidence that hate speech contributes to farm attacks. Hate speech is the subject of a current SAHRC complaint and findings in respect thereof will deal with this issue.

By failing to agree on the underlying cause and motives for farm attacks, role-players cannot come up with an effective strategy to deal with crime on farms.

Recommendations

To all State and civil society role-players

- ❑ Role-players are urged to agree on the underlying causes of farm attacks in order that the strategies devised address these causes.
- ❑ The RPP should be revisited and the term “farm attacks” removed from it.
- ❑ The RPP should address all forms of crime in farming communities. There should be no hierarchy of crimes in terms of who the victim is. Perceptions in this regard must be addressed.

Perceptions

Findings

There is a perception that farm attacks are perpetrated against White farm owners only and that they receive preferential treatment from the State in combating and addressing this particular crime form. These perceptions are perpetuated by a number of systems, plans and protocols. The mobilisation of forces, composition of reservists, commandos and resources allocated to addressing farm attacks, all contribute to the perceptions.

The perception that the SAPS are biased in favour of farm owners will also continue while they continue to put resources and energy into training and informing their staff about dealing with land invasions, yet fail to give similar treatment to protecting the rights of farm dwellers in terms of LTA and ESTA.

There are also perceptions that the security forces protect their own in providing legal representation, yet those who are victims do not receive legal representation.

On the other hand, there is a perception held by farm owners that government is not doing enough to protect the interests of landowners and that there is a reason for this, which Agri SA fails to express.

Recommendations

To all role-players

- ❑ Violent crime in farming communities must be addressed in an inclusive and holistic manner.
- ❑ Farm dwellers and their representatives need to be included at all levels to combat this crime.
- ❑ The current structures to address crime need to extend the focus to include all forms of crime and ensure that there is equity in the resources allocated to the various crime forms.

To the SAPS and DoJ

- ❑ Successful litigants should have all their legal costs paid by the State.

To Agri SA

- ❑ While the SAPS may be urged to combat crime on farms, there is no basis to hold the perception that the SAPS are not doing enough, for reasons unknown.

Rural Protection Plan

Findings

The RPP fails to be inclusive of all who live in farming communities in terms of the crime forms it addresses and the lack of involvement by farm dwellers.

Recommendations

To SAPS, Agri SA

- ❑ Further efforts are necessary to address the challenges of creating representivity in the RPP and the structures that are created.

Other relevant recommendations

See commandos, reservists, community policing forums

Land invasions

Findings

Land invasions are unreservedly condemned as a tool to take ownership of land in farming communities. It is a violation of the landowner's property rights.

Recommendation

To all role-players

- ❑ Land invasions must be publicly and consistently condemned as human rights violations when they occur.

Stock theft

Findings

Stock theft is a major crime problem in the Eastern Cape. It has many negative economic and social impacts.

Recommendation

To SAPS

- ❑ Steps to control this crime and prosecute those responsible are encouraged.

Economic and Social Rights

General

Findings

The legislative and policy frameworks presented to the Inquiry at a national level do not correspond with the reality of the enjoyment of these rights in farming communities.

Many farm dwellers are unaware of their socio-economic rights and of the necessary steps to access these rights.

Many farm dwellers are so poor that they do not have the financial resources to access these rights e.g. money for transport.

The Inquiry was not given as much information on socio-economic rights, as other focus areas. This can be attributed to:

- ❑ How people perceive rights and their corresponding realities.
- ❑ The attitude and approach of some government departments towards the Inquiry. In some instances, junior officials were sent to the Inquiry and were unable to provide the necessary information. Some departments failed to participate in the Inquiry.

The failure to realise that economic and social rights pervades all aspects of life and impacts significantly on the right to dignity and the achievement of equality for people in farming communities.

Recommendations

To government

- ❑ At a local level the implementation of economic and social rights must continue to be prioritised.

- ❑ Information and education programmes are needed for farming communities that are backed up with plans to ensure that the communities are accessed, and obstacles to realising rights are removed.
- ❑ Government needs to remove barriers that prevent people from accessing their socio-economic rights.
- ❑ Government should create more programmes and methods of engaging people in farming communities to assist them in realising their economic and social rights.
- ❑ Farm dwellers are a vulnerable group and government must adopt special measures to assist them to gain access to their economic and social rights.

To civil society

- ❑ Civil society should assist in the promotion of rights through educating farming communities about their social and economic rights and how to access these rights.
- ❑ Where possible, civil society should assist in removing barriers for people in order that they may access these rights.

Alcohol abuse

Findings

The Inquiry finds that there are still isolated incidents in which the tot system and payment in alcohol is occurring in the Western and Northern Cape Provinces.

The Inquiry is greatly concerned by the proliferation of mobile shebeens and cheap and freely available alcohol for farm dwellers. The proliferation of mobile shebeens indicates that there are many more role-players that are indirectly participating in contributing to the problem.

The prevalence of Foetal Alcohol Syndrome (FAS) in some rural areas is increasing.

Dependence on alcohol is an enormous and difficult social problem, which impacts negatively on the enjoyment of human rights and the creation of a human rights culture.

Alcoholism fundamentally contributes to an environment in which human rights are systematically undermined and violated. Alcoholism locks farm dwellers into cycles of dependence on the farm owner.

The practice of placing implants under a worker's skin to prevent alcohol dependence, without that person's permission, is a serious violation of the rights of workers, and in particular, the right to bodily and physical integrity.

Recommendations

To all role-players

- Government is called upon to provide more resources and to take an integrated governmental approach together with civil society role-players to address the issue of alcoholism and the prevalence of FAS in farming communities in the Western and Northern Cape. Government must report back to the SAHRC on these steps and programmes.
- Persons who have had implants placed under their skin without their permission are encouraged to lay criminal charges. Criminal prosecution of those persons responsible for placing implants under the skin of workers is recommended.
- The granting of liquor licenses in farming communities needs careful attention.

Other relevant recommendations

Labour – tot system

Power

Health

Food

Housing

Findings

The right of access to adequate housing remains unrealised for many farm dwellers.

This can be attributed to the DoH:

- Demonstrating little understanding of the rural context.
- Clearly not grappling with the issues of farming communities.
- Not resolving the issue of provision of housing to individuals residing on private land.
- Insufficient steps being taken to address housing for farm dwellers.
- Unwillingness by DoH and DLA to clearly determine where the responsibilities lie at a departmental level.

The Inquiry heard too little evidence on the establishment of agri-villages to make a definitive finding on the appropriateness of this concept as a vehicle to realise the right to adequate housing for farm dwellers.

There are undoubtedly positive aspects to the establishment of agri-villages that will assist to address the power imbalances that exist in rural communities. However, it must be guarded against that the model is not used to perpetuate the status quo of land ownership patterns in rural areas, and the creation of ghettos in which poor rural people may be forced to live.

It is commendable that some farm owners do provide adequate accommodation for their farm workers.

Poor housing conditions constitute an infringement of dignity and a violation of the right to adequate housing.

Women are discriminated against in terms of the provision of housing on farms. Men are still regarded as the only possible head of the household, thus excluding women from access to housing.

Relevant government departments are not adequately addressing the housing needs of the elderly in farming communities. There is a need for a proactive approach in this regard.

There is a lack of government planning at all levels for the provision of emergency accommodation, pending a lawful or unlawful eviction. This may result in the violation of a child's rights to shelter.

Recommendations

To DoH and DLA

- An initiative is needed at national level to address the provision of housing in farming communities. The Departments should come together and create a policy document on the provision of housing, which clearly states where the responsibilities lie. This needs to be taken down to the provincial and local level for implementation. The policy and implementation plan must be submitted to the SAHRC.
- The provision of housing subsidies to farm dwellers who do not own the land upon which they live must be addressed and a legal solution found.
- Special measures to promote home ownership by women in farming communities should be developed and promoted.
- The legislative drafters of the Status of Older Persons Bill should consider the provision of housing to the elderly in farming communities.

To provincial governments and local authorities

- The concept of agri-villages should be explored within a framework of creating sustainable environments that are properly serviced.

- Farm dwellers' participation in the establishment of agri-villages must be ensured.
- Emergency plans for the provision of temporary shelter to evicted farm dwellers should be developed with all relevant role-players.

To farm owners and Agri SA

- Both should become involved in initiatives to resolve the provision of housing and accessing of subsidies for farm dweller accommodation on farms.
- Agri SA should encourage farm owners to provide habitable accommodation that promotes the dignity and well-being of farm dwellers.

Other relevant recommendations

Tenure Security – Recommendations

Health

Findings

Access to health care services in farming communities is inadequate.

Underlying causes that inhibit the realisation of access to health care are

- Great distances that people must travel to health care services.
- Lack of affordable transport.
- Lack of access to farms by health service providers.
- Lack of access to telephones to contact emergency health services.
- Emergency vehicles being unable to access farms.
- Working hours of farm dwellers being the same as opening hours of health centres.
- Farm workers not being allowed time off work to attend to their health care needs.
- Little or no health education on health-related matters.
- Few health care workers want to work in rural areas.

Women in need of reproductive health care are particularly vulnerable as access to many services is limited.

There is a conflict of needs and interests between communities and government service providers pertaining to the provision and quality of health care:

- ❑ Communities want mobile clinics.
- ❑ Mobile clinics do not service all health needs of farming communities.
- ❑ Mobile clinics do not service emergency health needs.
- ❑ Health centres can be inaccessible to farm dwellers.

It is a matter of grave concern that issues related to and information received on HIV/AIDS was scant. This is attributed to:

- ❑ A lack of knowledge about HIV/AIDS.
- ❑ A flawed perception that the prevalence of HIV/AIDS is not as high amongst farming communities.

HIV/AIDS is affecting farming communities in the following ways:

- ❑ Infected persons return to rural areas to die.
- ❑ This places enormous economic and social burdens on farming communities.
- ❑ Farm dwellers are performing caregiver functions to those dying of HIV/AIDS, despite their own reduced circumstances.

There is a lack of health care services and programmes for people with alcohol and drug problems in farming communities. This is exacerbated by the unacceptably high prevalence of FAS, particularly in the Western and Northern Cape.

It is commendable that there are farm owners who assist farm workers to access health care, and in some instances pay for their health care.

Recommendations

To the DoHealth

- ❑ The DoHealth is called upon to continue addressing the formidable challenges experienced by farming communities in accessing health care services and to report regularly in this regard to the SAHRC.
- ❑ Content-relevant and accessible information campaigns on HIV/AIDS prevention targeted at farming communities are urgently recommended.
- ❑ The issue of home-based care in farming communities demands attention.
- ❑ The effective delivery of medical services in respect of the reproductive health care needs of women in farming communities is in need of special attention.
- ❑ The Departments of Education and Health should come together to explore the sharing of buildings for the provision of health services in farming communities.

To National DoHealth and relevant government role-players in the Western and Northern Cape

- ❑ Urgent steps to address the health issues of persons living in farming communities who abuse alcohol and drugs should be devised.
- ❑ The SAHRC is to be informed of specific initiatives and programmes to address FAS.

To SAPS

- ❑ The proliferation of illegal mobile shebeens and illegal dispensing of cheap alcohol within farming communities should be prioritised in crime prevention strategies.

To civil society

- ❑ Civil society is urged to become involved in educating members of farming communities about HIV/AIDS and to provide counselling and support services.

- ❑ Civil society is encouraged to become involved in information campaigns, counselling and training on the harmful effects of alcohol abuse and FAS.

To farm owners and Agri SA

- ❑ Farm owners who assist farm dwellers to access health care, particularly in emergency situations, are encouraged to continue within their available resources.
- ❑ Farm owners are called upon to become involved in and co-operate with all initiatives to educate farm dwellers about HIV/AIDS.

Food

Findings

Many farm dwellers do not have access to sufficient food.

The underlying causes can be attributed to:

- ❑ Low wages.
- ❑ High food prices.
- ❑ High cycles of debt.
- ❑ Inflated food prices at some farm shops.
- ❑ Abuse of alcohol that diverts money from being spent on purchasing food, particularly in the Western and Northern Cape.

There are further factors where children are particularly affected by the lack of access to sufficient food and many suffer from stunted growth and exhibit signs of wasting due to:

- ❑ PSNP not being implemented optimally and accessed by children in farm schools.
- ❑ Failure to access Child Support Grants and social security.
- ❑ Parents spending money on alcohol.

The manner in which some farm shops are run is problematic because:

- ❑ Farm dwellers do not know the prices of the goods being purchased.
- ❑ Prices are inflated.

The creation of game farms and removal of rights and permission to grow crops and tend livestock has a negative impact on the right of access to sufficient food.

Eastern Cape

Finding

Given the reports of lack of food and children dying of starvation in the Eastern Cape, it is of concern that no information regarding the right to food was placed before the Inquiry in this province.

Recommendation

- ❑ The relevant government departments in the Eastern Cape must submit information and statistics to the SAHRC on the number of children benefiting from PSNP in farming communities and statistics on malnutrition in the province, and what steps have been taken to address this.

Recommendations

To DoE

- ❑ Implementation of the PSNP should receive attention in rural areas and the SAHRC must be informed of steps that will be taken in this regard, the time framework, and the results thereof.

To farm owners and Agri SA

- ❑ The negative perceptions of exploitation of farm dwellers by farm shop owners should be addressed through promoting transparency in the pricing of goods.
- ❑ Any incidents of financial abuse of farm dwellers by farm shop owners should be condemned.
- ❑ The provisions in the Sectoral Determination for farm workers relating to payment of wages in kind are welcomed. Parties are called upon to immediately abide by and implement these provisions.

To civil society

- ❑ Information and training programmes on budgeting of household income and providing nutritious cost-effective meals are encouraged.

To Limpopo provincial government

- ❑ The Limpopo Food Security Committee, which was not brought to the attention of the Inquiry should be instated.

Other relevant recommendations

Labour – minimum wage

Land – keeping of livestock and tending of crops

Land – creation of game farms

Health – abuse of alcohol

Social Security – child support grants, disability grant and social security

Water

Findings

Access to sufficient water is not enjoyed by all farm dwellers, as they do not receive an adequate water supply for their daily living needs.

Some farm dwellers are denied access to water for food production purposes and this constitutes a violation of the right of access to sufficient water and food.

Some farm dwellers do not have access to adequate sanitation and this can potentially violate the right of access to water and health.

Farm schools that do not provide adequate access to water and sanitation also violate a child's right to access to education and to be educated in an institution that does not have inferior standards to comparable public educational institutions.

Despite many reports of termination of water supplies to force eviction, the Inquiry received no information indicating that the provision of ESTA which criminalises such action is being complied with.

The right to access to sufficient water is violated in farming communities in the following manner:

- ❑ Unsanitised water.
- ❑ Having to walk long distances to access water.
- ❑ Inadequate or no sanitation being provided in farm dweller houses and farm schools.
- ❑ Water supply being cut to force an eviction.
- ❑ No water supply is provided to household subsistence to tend crops and keep livestock for basic nutrition purposes.

The DWAF is to be commended for its acceptance of its constitutional responsibility to provide water in desperate circumstances. It is a matter of concern that there is no specific programme for the provision of water in emergency situations.

There is an apparent misconception within the DWAF about the constitutional role and responsibilities of farm owners to supply water to farm dwellers.

Recommendations

To DWAF

- ❑ The process of drafting a White Paper with a view to legislation that will deal with providing independent access to water by farm dwellers is welcomed. The DWAF is encouraged to explore various legal options such as the creation of servitudes to realise independent access.
- ❑ The DWAF is encouraged to engage with Agri SA and farm owners about the provision of water to farm dwellers and for the respective parties to reach a common understanding on their roles and responsibilities within the constitutional framework.
- ❑ The DWAF should report in further detail to the SAHRC and concerned stakeholders regarding practical steps that can be taken by farm dwellers to address the supply of unsanitised water.

- ❑ The DWAF and DLA should develop policy and guidelines that address the provision of water where water supplies to farm dwellers have been cut.

To SAPS

- ❑ Police officers should receive training on the provision of ESTA that make it unlawful to terminate the water supply to farm dwellers.

To Agri SA and farm owners

- ❑ Farm owners should be reminded of the seriousness of terminating the water supply to farm dwellers. Such acts should be strongly and publicly condemned by Agri SA.
- ❑ Farm owners are called upon to recognise the indignity and human suffering caused to farm dwellers by the various ways in which the right to sufficient water is violated. They should take reasonable measures to discourage these violations by contributing towards creating a community in which everyone lives with dignity and respect.

Social security

Findings

Many people in farming communities do not enjoy access to social security services, which is in violation of their constitutional rights.

Underlying reasons that contribute towards people not accessing social security include:

- ❑ Lack of knowledge.
- ❑ Great distances to travel to access the Departments of Social Development and Home Affairs.
- ❑ Inability to afford transport.
- ❑ Being denied time off work to make grant applications.
- ❑ No ID documents and birth certificates.
- ❑ Lack of efficient service and bureaucratic technicalities delaying the procedures.
- ❑ Infrastructure backlogs, particularly IT in rural areas.

- ❑ DSD staff capacity problems.
- ❑ DSD financial resource constraints.
- ❑ Inability of farm dwellers with disabilities to gain access to the Department of Social Development and the delayed bureaucratic procedures to gain access to medical personnel.
- ❑ Literacy levels.

DSD policies in relation to service delivery, such as the fast tracking of child support grants, is not being implemented at a local level.

Vulnerable groups, including children, women, people with disabilities, the elderly and those providing home-based care for HIV/AIDS sufferers are most severely affected by the failure to realise this right.

The lack of an ID leads to the violation of many human rights. The inability to access the social security system results in a loss of potential income that negatively impacts on the person's quality of life and may potentially result in people living in deplorable circumstances that violate multiple rights.

The DOHA approach to supplying ID documents to persons in farming communities is unacceptable. The Department lacks a proactive approach, coupled with a complete lack of planning to provide its services to farming communities and demonstrates a fundamental lack of understanding and empathy to the challenges faced by those in farming communities, in accessing their services.

Recommendations

To the DOHA and IEC

- ❑ The forthcoming election should be used as an opportunity to prioritise an ID campaign drive in farming communities.
- ❑ A comprehensive plan in providing ID to rural communities is to be submitted to the SAHRC.

To the DOHA

- ❑ The Departments must take further steps to ensure that all births are registered in order that those children eligible for Child Support Grants can access these grants.

To DSD

- ❑ A social grant awareness programme should be run in farming communities. All relevant role-players should be encouraged to be involved in this drive including Agri SA, local councillors, municipalities, NGOs and trade unions.
- ❑ The DSD must address the non-implementation of their policies at a local level in farming communities.
- ❑ The issue of provision of social assistance to migrant workers living in South Africa should be resolved, preferably without resorting to lengthy and expensive litigation.

To civil society

- ❑ All organisations and persons, where possible, should as part of their civic duty assist fellow South Africans to obtain birth certificates, ID books and access social grants.

Education

Findings

The realisation of access to basic education in farming communities is impeded by a number of challenges and obstacles. These include:

- ❑ Great distances that must be travelled.
- ❑ Under-qualified teachers.
- ❑ Lack of adequate infrastructure.
- ❑ Non-attendance at school by learners and teachers.
- ❑ Non-finalisation and lack of understanding of S14 agreements.
- ❑ Multi-grade teaching in farm schools.
- ❑ Evictions.
- ❑ Lack of participation by parents in SGBs.

- ❑ Lack of libraries and basic teaching materials.
- ❑ Overcrowded schools.
- ❑ Farm owners unilaterally closing schools.
- ❑ Poor implementation of the school feeding schemes.

Transport and hostel provision programmes are not communicated to people on the ground.

The Gauteng model of dealing with farm schools and access to education appears to be an innovative one. The concept of "Green Patches" in the Free State is a further innovative model of providing access to education.

The DoE approach to education in farming communities does not take proactive steps to equip children with a vision or sense that there are career options other than becoming a farm labourer. There is no sense of equity that seeks to correct the imbalances of the past.

ABET does not take place or where it is in place, the curriculum is generally not suited to the needs of farming communities.

The education of children with special needs in farming communities is not being adequately addressed.

There are no programmes to address the education needs of children with FAS.

Not all children receive education in a language of their choice. Parents are unaware of their right to mother tongue education and the constitutional obligations placed on education authorities. Parents thus fail to claim this right for their children.

Recommendations

To DoE

- ❑ Provincial governments are encouraged to share information on models of providing education that are successful.
- ❑ Under-qualified teachers should be encouraged to receive the necessary training.
- ❑ Section 14 agreements should be concluded with all farm owners where farm schools are situated.
- ❑ School principals must be compelled to inform learners and the SGB of the constitutional obligation to provide mother tongue education.
- ❑ The DoE must report back to the SAHRC on steps taken to address the undertaking given that the Department will address the needs of children with special needs who are attending farm schools.
- ❑ The DoE must report to the SAHRC on steps that are being taken to develop content-relevant ABET programmes and the roll-out of such programmes in farming communities.
- ❑ An evaluation and report should be provided on DoE plans on school feeding schemes at farm schools.

To Agri SA and farm owners

- ❑ Co-operation with the DoE should be encouraged with the conclusion of s14 agreements.

ANNEXURE

Details of Provincial and National Public Hearings

Province & Venue	Date	Panellists
Western Cape, Malmesbury	3 - 4 July 2002	Mabusela, S (Chair); Wessels, L; Majodina, Z; Mahomed, A; du Toit, A
Northern Cape, Keimoes	15 - 16 July 2002	Wessels, L (Chair); Majodina, Z; Mhlungu, T; Cloete, N
Eastern Cape, Port Elizabeth	18 - 19 July 2002	Majodina, Z (Chair); Wessels, L; Hendricks, F; Jack, N
Limpopo, Thabazimbi	22 - 23 July 2002	McClain, C (Chair); Kollapen, J; Matsaung, L; Mushasha, J
North West, Ventersdorp	29 - 30 July 2003	McClain, C (Chair); Manthata, T; Mbaob; Piliso-Seroke, J
Free State, Viljoenskroon	1 - 2 August 2002	McClain, C (Chair); Manthata, T; Ellis, W; Helepi, P
KwaZulu-Natal, Cool Air	5 - 6 August 2002	Wessels, L (Chair); Govender, K; Misselhorn, P; Gabriel, A
Mpumalanga, Ermelo	14 - 15 August 2002	Wessels, L (Chair); Manthata, T; Manzini, P; Dominy, A
Gauteng, Johannesburg	8 November 2002	Kollapen, J (Chair); McClain, C; De Klerk, W
National, Pretoria	4 - 6 December 2002	Kollapen, J (Chair); Wessels, L; Manthata, T; McClain, C; Mamba, K; Gilfillan-Weidama, D

Participants who gave evidence at Public Hearings

Western Cape

De Vlieger, I, Franschoek Legal Advice Centre (FLAC)
Thomas, N, Ceres Advice Office
Opperman, C B, Agri Wes Cape
Thabata, B, Independent Service Agriculture and Food Workers Organisation (ISAFWU)
Seymour, V, ANC, Pelican Park, Ward Councillor
Angebach, W A, Houtbaai Familie Trust
Huffke, T, SAAPAWU
Van Dyk, J G, Cape Fruit Producers Organisation (CFPEO)
Beaton, VP, South African Police Services, WC
Middleton, S, Department of Land Affairs, WC
Zondeki, S, Department of Labour, WC
Chamberlain, H, Department of Education, WC
Cupido, JRS, Department of Health, WC

Northern Cape

Mvula, O, Department of Land Affairs, NC
Ranayeke, A, REIP
Kluge, M, Agri Northern Cape
Manong, M, AnCRA
Majara, M, SAAPAWU
Swanepoel, SAPS, NC
Cloete, G, Kei Gariap Municipality, NC
Mahlali, W, NCDPP
Basson, Fr., Justice & Peace, Catholic Church
Motingwe, P, & Abrahams, Department of Education, NC

Eastern Cape

Manene, Paterson Advice Centre
Petersen, C, Agri Eastern Cape
Swebu, Z, ANC Constituency Office, Humansdorp
Moody, B, Eastern Cape Agriculture Research Project (ECARP)
Mavuka, P, South African Police Services, EC
Satenga, M, Directorate Public Prosecutions, EC
Khosa, M, & Coleman, Department of Land Affairs, EC
Somtato, S, Department of Labour, EC
Watson, N, Department of Housing, Local Government and Traditional Affairs, EC

Limpopo

Mataakanye, J, Messina Legal Advice Centre
Tladi, P J, Department of Labour, Limpopo
Sengani, W C, South African Police Services, Limpopo
Gioring, F, Land and Farm Committee
Manaka, M & Thobane, J, Department of Land Affairs, Limpopo
Wegerif, M C A & Nephale, M, Nkuzi Development Association
Jansen, J H, Botha, A, Agri SA in the Limpopo province & Transvaal Agricultural Union

North West

Matsitsi, Centre for Community Law and Development, University of Potchestroom
National Association for People Affected With HIV/AIDS (NAPWA)
Du Toit, P, Faure, J, Auret, W, Agri North West

Patu V, Morule, C M, Banda, R G, Ventersdorp Council
Van der Westhuizen, S, Centre for Justice
Mahuda B, & Malebe, M, Department of Land Affairs, NW
Molefe, M & Doule, K, Department of Health, NW
Beta, L E, South African Police Services, NW
Kubheka, S, Department of Labour, NW

Free State

Moller, P, Vrystaat Landbou
Monapuri, P, Department of Labour, FS
Mashinini, SAAPAWU
Radebe, M & Ishmael, Kroonstad & Viljoenskroon Parliamentary Constituency Office
Moasa, S, Department of Land Affairs, FS
Nthombeni, HB & Malundi, A, Department of Education, FS
Malinga, M, Department of Housing, FS
Cilliers, B, Labour Consultant

KwaZulu-Natal

Hlatswayo, T & Ndlovu, S, Nkosinathi Development Organization
Shabane, N, Mngwengwe, W, Department of Land Affairs, KZN
Kambule, E, Langa, Aden, Maharaj, Department of Labour, KZN
Kubheka, M, Tenure Security Co-ordinating Committee (TSCC)
Terblanche & Neethling, SAPS, KZN
Genu, V, DPP, KZN
Howard, G and Mhlungu, T, KZN Land Legal Cluster Project (KZNLLCP)
Mdluli, A, Zuma, S, Khubisa, Z SAAPAWU & COSATU

Mpumalanga

Williams, C, TRAC
Mwale, R, Middelburg Constituency Office
Malan, A, Nelspruit Justice Centre
Mokoena, N, COSATU
Sibanyoni, HF, KwaNdebele Human Rights Centre
Mtembu, J, MPC Mpumalanga
Bosman, L, Agri Mpumalanga
Kabini, J, African Farmers Union
Lefifi, SS, Department of Safety and Security, Mpumalanga
Nkabinde, E, South African Police Services, Mpumalanga
Mosing, A, Directorate of Public Prosecutions, Mpumalanga
Mothiba, P, Department of Labour, Mpumalanga
Archary, L & Motswege, Department of Land Affairs, Mpumalanga
Sebeko, Department of Housing, Mpumalanga

Gauteng

Van Wyk, R, Botha, A & Visser, K, Agri South Africa
Hlatswayo, B, SAAPAWU
Landu & Welthagen, South African Police Services
Davids, L & Visser, Department of Education, Gauteng
Marina, R & Mphela, G, Department of Land Affairs, Gauteng
Fick, K, Department of Labour, Gauteng

National Hearings, Pretoria
Mabokela, T B, National Land Committee
Govender, P & Khumalo, S, COSATU & SAAPAWU
Pillay, C, Legal Resources Centre
Crosby A, Bosman, L & Ferreira, K, Agri SA
Seafield, V A, Department of Labour
Mneadi, N; Pienaar, S; De Kock, C; Groenewald, B & Van der Westhuizen, W, South African Police Services (SAPS)
Mr Lithole, Ms Naidoo, National Department of Housing
T Yeates & Mr Malaka, National Department of Land Affairs
M Fandesio, Land Bank
Khambule, T & Mathipa, K, National Department of Water Affairs and Forestry
Trainer, M, Ngwebe, D, Verniston, B, & Schoeman, B J, South African National Defence Force
Kritzinger, E, National Department of Home Affairs
Nawa, S, Meintjies, S, National Department of Education
Mr Mabombo, Malatji, S, Mbongwa, M, National Department of Agriculture
Makiwane, F, Theron, A, National Department of Social Development
Brits, P, Legal Aid Board
Mhlanga, R E, National Department of Health

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- ³ Constitution of the Republic of South Africa Act 108 of 1996.
- ⁴ Act 54 of 1994
- ⁵ Government Gazette Notice 2085/2001, GG No 22711, 5 October 2001
- ⁶ Ibid s5
- ⁷ Ibid s 8
- ⁸ Ibid s9
- ⁹ Ibid s14 - 15
- ¹⁰ Ibid s16
- ¹¹ Ibid s19
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- ¹ S Turner and H Ibsen, "Land and agrarian reform in South Africa: A status report," Norwegian Institute of Human Rights, University of Oslo and the Centre for International Environment and Development Studies (Norgic), Agricultural University of Norway, November 2000, 3.
- ² Persons who were evicted during the period 4 February 1997 to 28 November 1997 could claim protection of the Act and approach the Court to be reinstated and or compensated before 28 November 1998. The provisions were hardly utilised as most farm dwellers were unaware of these provisions and there were no mechanisms in place to assist these people.
- ³ A definition of an occupier is contained in the definitions section of the ESTA
- ⁴ Section 19(3) of the ESTA provides for automatic review, to the Land Claims Court of eviction orders granted in the Magistrates Court in terms of the ESTA.
- ⁵ Sections 21 & 22 ESTA
- ⁶ Section 23 ESTA
- ⁷ Yeates, T & Malaka, Department of Land Affairs, SAHRC Transcription, National Public Hearings, 264-5
- ⁸ Ibid 266
- ⁹ Pillay, C, Legal Resources Centre, SAHRC Transcription, National Public Hearings, 95
- ¹⁰ Ibid 96. This is to prevent those instances where landowners manage to obtain eviction orders in accordance with the common law
- ¹¹ Crosby, A & Others, Agri South Africa, SAHRC Transcription, National Public Hearings, 135
- ¹² Ibid 137
- ¹³ See note 7, 268-9
- ¹⁴ Ibid 269
- ¹⁵ Ibid 270
- ¹⁶ Ibid 271
- ¹⁷ Ibid 278
- ¹⁸ Ibid 295
- ¹⁹ National Land Committee, "Submissions to the National Public Hearings on Human Rights Violations in Farming Communities in South Africa, 4 - 6 December 2002", written submission.
- ²⁰ See note 7, 105
- ²¹ Ibid 107
- ²² Ibid 134
- ²³ Ibid 135
- ²⁴ Ibid 142
- ²⁵ Brits, P, Legal Aid Board, SAHRC Transcription, National Public Hearings, 482
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- ⁴⁹ Samson Mulenga, "The Land Problem: Zimbabwe and South Africa – Comparative Analysis, 27 April 2000 [http://www.glob.co.zw/economic/Comparative_Analysis_Of_Land_Issue.htm] These figures vary widely in different sources.
- ⁵⁰ The definition set out in the Act defines labour tenants as follows: "Labour tenants means a person
(a) Who is residing or has the right to reside on a farm;
(b) Who has or had the right to use cropping or grazing land on the farm or another farm of the owner and in consideration of such right provides or has provided labour to the owner or lessees 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 the labour tenant in accordance with the provisions of section 3(4) and (5), but excluding a farm worker.
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⁷² Ibid 422-423
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⁷⁴ Ibid, 424
⁷⁵ Ibid 425
⁷⁶ Ibid 425
⁷⁷ See note 7, 273
⁷⁸ Ibid 273
⁷⁹ Mabombo & Others, Department of Agriculture, SAHRC Transcription, National Public Hearings, 429
⁸⁰ Ibid 430
⁸¹ See note 7, 272
⁸² See note 71, 435
⁸³ See note 7, 291-293
⁸⁴ See note 71, 437-8
⁸⁵ Act 15 of 2002
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⁸⁷ Ibid 300 The bank achieved a 35% development book growth rate in the 2001 financial year.
⁸⁸ Act 4 of 2000
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⁹¹ Ibid 301-2
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⁹³ Ibid 303
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¹⁰ See note 8, 20
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¹⁷ See note 5, 170
¹⁸ See note 6, 63
¹⁹ See note 5, 176
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²¹ Ibid 18
²² See note 6, 48
²³ Ibid 50
²⁴ Ibid 49
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²⁷ Vision for Farm Labour
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²⁵ Thomas, Ceres Advice Office, SAHRC Inquiry Transcription, Western Cape, 50
²⁶ This could be potentially contrary to the Land Claims Court decision in *Conradie v Hanekom*, 1999 (LCC8R99), which established the principle that even though a husband were dismissed, a woman may be an occupier in her own right and arising out of her right to family life, neither her or her husband may be evicted if there is no lawful termination of her right to reside.
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⁴¹ Ibid 206
⁴² See note 3, 95
⁴³ See note 7, 30
⁴⁴ See note 18,
⁴⁵ Ibid
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⁴⁷ See note 2
⁴⁸ See note 23
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⁵⁰ See note 14
⁵¹ See note 15, 200
⁵² See note 10, 273-274
⁵³ See note 14, 176 and at 182-3
⁵⁴ See note 23
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⁵⁸ See note 14, 175
⁵⁹ See note 7, 18
⁶⁰ Ibid 18
⁶¹ See note 14, 168
⁶² See note 25, 46
⁶³ See note 49, 225
⁶⁴ See note 23
⁶⁵ Ibid
⁶⁶ See note 5, 108
⁶⁷ See note 14, 161
⁶⁸ Ibid 176
⁶⁹ See note 7, 24 - 25
⁷⁰ See note 5, 101
⁷¹ See note 7, 24-25
⁷² See note 5, 102. See note 14, 177
⁷³ See note 25, 59
⁷⁴ See note 49, 220
⁷⁵ See note 3, 10
⁷⁶ See note 23, 21 See note 25, 48
⁷⁷ See note 49, 223
⁷⁸ See note 15, 189
⁷⁹ See note 23
⁸⁰ Ibid
⁸¹ See note 3, 79.
⁸² See note 5, 100
⁸³ See note 14, 164. Similar statements were made in the FLAC written submission. See note 23
⁸⁴ See note 3, 9
⁸⁵ See note 14, 168
⁸⁶ Ibid 167
⁸⁷ Ibid 164
⁸⁸ See note 3, 92-93
⁸⁹ See note 15, 191
⁹⁰ Ibid 188
⁹¹ Ibid 194
⁹² ANC, Pelican Branch, Councillor V Seymour, Written submission dated, 25 January 2001
⁹³ Seymour V, SAHRC Inquiry Transcription, Western Cape, 141
⁹⁴ Ibid 144. Claims of verbal abuse were also received from FLAC. See note 23
⁹⁵ See note 92
⁹⁶ See note 93, 137. Boetie Thabata of ISAFWU also reported that cases of assault referred to the police in the Boland region also result in no action being taken to resolve the case and arrest the perpetrator and that generally it is difficult to deal with the SAPS. See note 5, 104
⁹⁷ See note 93, 138 - 139
⁹⁸ Beaton VP, WC SAPS, SAHRC Inquiry Transcription, Western Cape, 252
⁹⁹ See note 3, 11
¹⁰⁰ Ibid 9 - 10
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¹¹⁰ Ibid
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¹¹² See note 7, 41
¹¹³ See note 14, 172

¹¹⁴ See note 2
¹¹⁵ See note 5, 105
¹¹⁶ Chamberlain H, WCDoE, SAHRC Inquiry Transcription. Western Cape, 239
¹¹⁷ Ibid 259
¹¹⁸ Ibid 228 - 230
¹¹⁹ Aggenbach, W A, "Ondersoek na Menseregte in Landbou Sektor", written submission 20 August 2001
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¹²¹ Ibid
¹²² See note 116, 230
¹²³ Ibid 238
¹²⁴ Ibid 235-236
¹²⁵ Ibid 230 - 232
¹²⁶ Ibid 236
¹²⁷ Ibid 233 – 235
¹²⁸ Ibid 241

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⁴ Majara, M, SAAPAWU, SAHRC Transcription Inquiry, Northern Cape, 204
⁵ SAHRC Inquiry into Human Rights in Farming Communities Submission, S4NC
⁶ Kluge, M, Agri NC, SAHRC Transcription Inquiry, Northern Cape, 163
⁷ See note 5, S4NC
⁸ Ibid
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¹⁰ Ibid, 173
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¹³ Ibid 160
¹⁴ Ibid 161
¹⁵ Basson, Fr., Dir. For Justice and Peace, SAHRC Transcription Inquiry, Northern Cape, 68
¹⁶ Swanepoel, Comm., NCSAPS, SAHRC Transcription Inquiry, Northern Cape, 11
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¹⁸ Cloete, G, Keimoes Municipality, SAHRC Transcription Inquiry, Northern Cape, 37
¹⁹ See note 3, 185
²⁰ See note 16, 22
²¹ See note 15, 73
²² See note 16, 23
²³ See note 5, 69
²⁴ See note 6, 156
²⁵ See note 15, 72
²⁶ Ibid 68
²⁷ Mvula, A, NCDLA, SAHRC Transcription Inquiry, Northern Cape, 109
²⁸ See note 2
²⁹ SAHRC Inquiry into Human Rights in Farming Communities Submission, S20NC
³⁰ See note 18, 42
³¹ See note 27, 94
³² See note 2
³³ Ibid
³⁴ Ibid
³⁵ See note 3, 182
³⁶ Ibid 171
³⁷ Ibid
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⁴⁰ SAHRC Inquiry into Human Rights in Farming Communities Submission, S22NC
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⁴² Ibid 58
⁴³ Ibid 59
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⁴⁵ See note 15, 76
⁴⁶ See note 5
⁴⁷ See note 2
⁴⁸ Ibid
⁴⁹ Ibid
⁵⁰ Ibid
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⁵³ See note 5
⁵⁴ Ibid
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⁵⁶ Ibid 31
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⁵⁹ Ibid 107
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⁶³ Ibid 98
⁶⁴ Ibid 100
⁶⁵ See note 6, 126
⁶⁶ Ibid 127
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⁶⁸ See note 4, 198
⁶⁹ See note 67, 187
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⁷⁹ See note 2 and See note 18, 33
⁸⁰ See note 16, 12
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⁸² See note 16, 12
⁸³ See note 5
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⁹¹ Ibid 32
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⁹⁵ Ibid
⁹⁶ See note 6, 150-1
⁹⁷ See note 16
⁹⁸ See note 3, 174
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¹⁰² Ibid
¹⁰³ Ibid
¹⁰⁴ See note 41, 63
¹⁰⁵ See note 16, 6
¹⁰⁶ See note 3, 188
¹⁰⁷ See note 2
¹⁰⁸ See note 16, 13
¹⁰⁹ See note 16, S 20NC
¹¹⁰ Ibid
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¹¹⁴ See note 3, 194
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¹¹⁶ See note 16
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¹¹⁹ See note 6, 158
¹²⁰ Ibid 144
¹²¹ See note 5
¹²² See note 2
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¹²⁹ See note 3, 190
¹³⁰ See note 2
¹³¹ See note 4, 197 & Radebe, A, REIP, SAHRC Transcription Inquiry, Northern Cape, 117
¹³² Montingwe, P & Abrahams, K, NCDoe, SAHRC Transcription Inquiry, Northern Cape, 80
¹³³ Ibid 79
¹³⁴ Ibid 80
¹³⁵ Ibid 89
¹³⁶ Ibid 90
¹³⁷ Ibid 88
¹³⁸ Ibid 91
¹³⁹ Radebe, A, REIP, SAHRC Transcription Inquiry, Northern Cape, 112
¹⁴⁰ Ibid 113
¹⁴¹ Ibid 114
¹⁴² Ibid 112
¹⁴³ See note 15, 70
¹⁴⁴ See note 132, 88
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⁹ Manene, Paterson Advice Office, SAHRC Transcription, Eastern Cape Province, 10
¹⁰ See note 3, 48-49
¹¹ See note 5, 73
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¹³ See note 2, 4
¹⁴ See note 9, 11
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¹⁸ See note 6, 26
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²⁰ See note 2, 5
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²³ Ibid 4
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²⁶ See note 3, 42

- ²⁷ See note 4, 6
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- ⁹⁹ See note 6, 22
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- ¹⁵⁶ See note 93, 135
- ¹⁵⁷ See note 41, 137
- ¹⁵⁸ See note 6, 27
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- ¹⁶² See note 3, 47
¹⁶³ See note 37
¹⁶⁴ See note 3, 55
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¹⁶⁶ SAHRC Inquiry into Human Rights in Farming Communities Submission, S14EC
¹⁶⁷ SAHRC Inquiry into Human Rights in Farming Communities Submission, S7EC

CHAPTER 9 - Limpopo

¹ Limpopo is the poorest province in South Africa, with the highest official unemployment rates (34%. The expanded definition of unemployment would place this figure at 50,2%). It scores lowest on other poverty indicators, such as: number of households using electricity for cooking (19,5%); percentage of households with piped water inside (12,1%) and households with telephone (7,4%), Health and Related Indicators, 2001 Report, Health Systems Trust

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¹² *Ibid* 138

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¹⁴ Nefale, M, "An Inquiry into Human Rights Violation on Farms in the Northern Province", Nkuzi Development Association, September 2001, 12

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¹⁷ Nephale, M, Nkuzi Development Association, SAHRC Transcription, Limpopo Province, 115

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²⁰ *Ibid* 3

²¹ Limpopo Department of Land Affairs, "Human Rights Commission Submission by the Limpopo Provincial Land Reform Office in Thabazimbi"

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²³ SAHRC Inquiry into Human Rights in Farming Communities Submission, S42L

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³⁹ See note 5, 122

⁴⁰ See note 3, 15

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⁴² See note 3, 13

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⁴⁴ SAHRC Inquiry into Human Rights in Farming Communities Submission, S14L

⁴⁵ s23 of ESTA

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⁴⁷ See note 33, 101

⁴⁸ SAHRC Inquiry into Human Rights in Farming Communities Submission S25L

⁴⁹ See note 33, 97

⁵⁰ *Ibid* 98

⁵¹ *Ibid* 113

⁵² See note 21

⁵³ *Ibid*

⁵⁴ See note 5, 127

⁵⁵ See note 21

⁵⁶ *Ibid*

⁵⁷ See note 33, 89

⁵⁸ *Ibid*

⁵⁹ *Ibid*

⁶⁰ See note 5, 127

⁶¹ *Ibid* 128

⁶² See note 33, 92

⁶³ *Ibid* 86

⁶⁴ *Ibid* 84

⁶⁵ *Ibid* 83 and 93

⁶⁶ *Ibid* 102

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⁶⁹ *Ibid* 106

⁷⁰ *Ibid* 111

⁷¹ *Ibid* 112

⁷² See note 3, 16

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⁷⁴ *Ibid*

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⁷⁷ Department of Labour, Limpopo Province, "Submission to the SAHRC inquiry into Human Rights Violations in the Farming Community"

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⁸² SAHRC Inquiry into Human Rights in Farming Communities Submission, S15L

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⁹⁰ See note 3, 21

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⁹³ See note 77

⁹⁴ See note 5, 126

⁹⁵ *Ibid* 123

⁹⁶ SAHRC Inquiry into Human Rights in Farming Communities Submission, S8L

⁹⁷ SAHRC Inquiry into Human Rights in Farming Communities Submission, S36L

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⁹⁹ Thladi, JP, Limpopo Department Of Labor, SAHRC Transcription, Limpopo Province, 43
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¹⁰¹ See note 84, 29
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¹⁰³ See note 84, 33-34
¹⁰⁴ See note 77
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¹⁰⁶ Ibid
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¹⁰⁸ Ibid 36
¹⁰⁹ Ibid 44
¹¹⁰ See note 5, 124
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¹³² See note 5, 122
¹³³ SAHRC Inquiry into Human Rights in Farming Communities Submission, S34L
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¹⁴⁸ See note 3, 10
¹⁴⁹ See note 14, 17
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¹⁵⁹ See note 14, 10
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⁸ Lepato, W & Others, Venterdorp Councillor, SAHRC Transcription, North West Province, 54
⁹ Malebe, M & Mahuda, B, NWDLA, SAHRC Transcription, North West Province, 86
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¹⁴ Beta LE, NWSAPS, SAHRC Transcription, North West Province, 118/9
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⁵¹ SAHRC Inquiry into Human Rights in Farming Communities Submission, S5NW
⁵² See note 7, 13
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⁵⁴ SAHRC Inquiry into Human Rights in Farming Communities Submission, S10NW
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⁴⁵ Ibid 102
⁴⁶ Ibid 108
⁴⁷ See note 24
⁴⁸ See note 115
⁴⁹ Landu & Welthagen, GSAPS, SAHRC Transcription, Gauteng Province, 40
⁵⁰ Ibid 41
⁵¹ Ibid 42
⁵² Ibid 49
⁵³ Ibid 45
⁵⁴ Ibid 46
⁵⁵ Ibid 48
⁵⁶ Ibid 48
⁵⁷ Ibid 52
⁵⁸ Ibid 53
⁵⁹ Ibid 54
⁶⁰ See note 8
⁶¹ See note 2, 28
⁶² See note 49, 50

- ⁶³ Ibid 43
- ⁶⁴ Ibid 54-5
- ⁶⁵ Ibid 44
- ⁶⁶ Ibid 46
- ⁶⁷ See note 4, 93
- ⁶⁸ See note 2, 32
- ⁶⁹ See note 37, 60
- ⁷⁰ Ibid 70
- ⁷¹ See note 2, 31
- ⁷² See note 24
- ⁷³ See note 29
- ⁷⁴ See note 37, 60
- ⁷⁵ See note 29
- ⁷⁶ Ibid
- ⁷⁷ See note 37, 66
- ⁷⁸ See note 15, 73
- ⁷⁹ Ibid 75
- ⁸⁰ Ibid 75
- ⁸¹ See note 37, 65
- ⁸² See note 2, 22
- ⁸³ See note 37, 67
- ⁸⁴ See note 29