



LOCAL MUNICIPALITY OF MADIBENG – SUPPLEMENTARY REPORT

*Draft Discussion Document for Comment
1 March 2005, updated 26 May 05*



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Comments received on the 1 March 2005 draft so far: Agri-NW delivered written comments in Afrikaans on 14 March 2005.

1 EXECUTIVE SUMMARY

The supplementary report is divided into three sections as set out below:

- A. Human Rights inside Madibeng Farms (Provided for Parliament)
- B. Balancing HIV/AIDS Treatment and Prevention with Care
- C. Participation in the Madibeng Local Municipality

The main focus of this research, and hence the report, was to investigate human rights violations on farms in the Local Municipality of Madibeng. The latter two sections of the report is follow-up research to the initial research that was conducted in September 2004.¹

A. Human Rights inside Madibeng Farms

Background

In order to to give effect to the labour rights (s13, s18 and s23²) and economic and social rights (land, water, housing, environment, health etc.) in the Constituion, important shifts have taken place in the sphere of agriculture over the past couple of years, most notably the promulgation and implementation of the Sectoral Determination 8: Farm Workers Sector.

The present study grew out of the need to verify an allegation by a councillor that human rights violations were taking place on farms in the Local Municipality of Madibeng. This allegation emerged during a prior visit to the municipality in September 2004. Pursuant to these allegations the objectives of the study were to determine:

- the extent of human rights violations on farms;
- the extent and effectiveness of measures to respect, protect, promote and fulfil economic and social rights by the state;
- the extent and effectiveness of measures to respect, protect, promote and fulfil economic and social rights by private actors.

Approach

In order to realise these objectives it was decided that a qualitative research process would be appropriate, alongside the accumulation of quantitative data from the Department of Labour and the South African Police Service.

¹See SAHRC, *Local Municipality of Madibeng – Prosperity through Unity and Toil?*, unpublished draft discussion document for comment, February 2005.

²Section 13 states “No one may be subjected to slavery, servitude or forced labour”. Section 18 states that “everyone has the right to freedom of association”. While s23 provides for the right to fair labour practices.

Meetings

As a result of wanting to establish a balanced view on the conditions on farms, meetings were held with the Department of Labour, Transvaal Agricultural Union, Agri-NW, the Food and Allied Workers Union³ and National African Farmers Union.

Visits to Farms and an Informal Settlement

The research team conducted a total of four visits to farms. Two of the farms were visited alongside the inspectorate of the Brits Department of Labour, whilst another two farms were visited through the assistance of the Transvaal Agricultural Union, who were requested to identify good farms from the perspective of the labour environment. The research team also visited one informal settlement located amidst farms, in order to compare conditions there with those of workers living on farms.

Field Visit Findings on the Sectoral Determination for Farm Workers

The three-day visit has revealed that even though there appears to be a *bona fide* effort on the part of all the relevant stakeholders to stabilise the labour relations environment within the sector, huge problems still remain. Some of the main findings are:

1. The condition of farm worker housing was in violation of the requirements set out in s3 of the Sectoral Determination in two out of four cases;
2. In two cases out of four, it was found that more than 10% was deducted from the salary of the farm worker for sub-standard accomodation;
3. In one case out of four, it was found that considerably more than 10% was deducted from the salary of the farm worker for loans;
4. In one of two cases, employment contracts were incomplete and certain clauses contained in the contracts should be brought in line with the law;
5. In one of the four cases, there was a deliberate attempt by farmers to replace local workers with illegal immigrants through an application for corporate permits.

This means that labour relations is far from ideal and the findings suggest not only a violation of s23 of the Constitution, but also violation of s10 (the right to human dignity).

³This meeting took place after the 1 March 2005 draft was available at a mud house just outside Mafikeng.

Interaction with the Department of Labour

The findings from the meeting held with Department of Labour revealed the following concerns:

1. Inspectors continue to have problems in respect of access to farms even if when prior appointments were made with farmers;
2. The inspection process can be a very tedious and long process and represents a problem in terms of resources and time constraints;
3. Co-operative governmental relations do not exist between key department's that are relevant to the monitoring of farm work conditions.

Meeting with Organised Agriculture and Written Comments Received

The findings from the meeting held with organised agriculture revealed the following:

1. The Extension of the Security Act of 1997 emerged as one of the central problems for farmers as they fear that it overly protects farm workers' rights to reside on the farm;
2. There was agreement that the right to dignity should be respected in the development and upgrading of farm workers housing, but there was concern that the sole responsibility for housing of farm workers should not be left to farmers;
3. There was a request by farmers for health education as a result of the HIV/AIDS pandemic on farms;
4. Safety and security of farmers is a serious matter of concern due to farm attacks.
5. The inequity involved in poor farm school education and the lack of progress from the provincial Department of Education with regard to farmers who have signed s14 agreements in terms of the South African Schools Act.
6. Agri-NW raised concern about labour conditions on one of the emerging farmer schemes supported by government and recommended that the SAHRC also visit emergent farms to check on labour conditions.

The written submission from AgriNW⁴ further revealed:

⁴AGRI NW Kommentaar op Menseregte Verslag Rakende Toestande op Plase in die Madibeng Plaaslike Regerings-Gebied, Opgestel deur W.P. Auret Agri NW Uitvoerende Hoofbestuurder, 14 Maart 2005.

1. Agri-NW has taken actions to operate within the framework of existing labour law including: information sessions for farmers, internal training, the NORAD funded training course, partnerships with NGOs like *Skills for All*, as well as the Department of Labour on healthy labour practices on farms.
2. Agri-NW has serious worries that findings from the Madibeng area, which consists of very labour intensive irrigation farms and an uncharacteristically high use of undocumented immigrants, will be used to generalise about labour conditions on farms more generally.
3. Agri-NW categorically states that not every farmer is a member of the organisation and therefore they do not have control over all farmers in the province. For individuals who transgress labour law Agri-NW would like the law to be implemented by the authorities with full effect.
4. While Agri-NW states that sub-standard farm worker housing is not acceptable, the Extension of Security of Tenure Act is cited as a stumbling block to farmers developing farm worker housing.
5. Agri-NW is in favour of its members applying the nationally approved Protocol for Access to Farms and makes reference to the right of corporate businesses to reserve rights of access to their properties. Furthermore, Agri-NW suggests that trade union's not gaining access to farms is a result of trade union's leaving too much to chance.
6. Agri-NW sees alcohol use as worryingly high and the NW province does not lend itself to practicing the "dop-system". They see, without question, the minimum wage as contributing to an increase in alcohol use by farm workers.
7. Agri-NW reiterates its concern about the cost impact of HIV/AIDS on producers and also expresses concerns about the poor state of health facilities in rural areas for farm workers. Agri-NW states that they are the first provincial union to act in partnership with different Departments and the private sector (like Standard Bank's Philani Project) to address this problem, but acknowledges that they have only touched on the tip of the iceberg and require further support.
8. In summary Agri-NW states: "AgriNW has great concern for human treatment and actions towards farm workers considering that labour is the biggest cost factor in commercial agriculture. There should be an urgent initiative towards expanding co-operation between commercial agriculture and other roleplayers

to avoid a situation whereby accusations lead to further polarisation.”

Findings relating to farm attacks

Statistics from the SAPS show that 31 farm attacks occurred in 2004. Of these, one was an attempted murder, 4 were armed robberies involving rape and 20 were armed robberies. There were also four robberies and one attempted robbery. Twenty four of the attacks were on farm workers or tenants living on small holdings and seven attacks were on farmers. Most attacks took place inside the dwelling (24) and most of the robberies involved household appliances, cash and cell phones.

Captain J.J. Oelofse of the SAPS⁵ reports that:

“Presently farm attacks are not threatening the commercial farming activities in the Brits Area or the North West Province. There are also no indications that farm attacks are being organised by any group or gang with the aim to drive the farmers off their farms. The indication is that all the attacks occurred because of economic gain.”

It is also important to be aware that in collecting statistics, the SAPS makes a distinction between acts which constitute violence against farms and small holdings (murder, attempted murder, rape, assault grievous body harm, robbery, and armed robbery incl. hijackings) and indirects acts⁶ (intimidation, arson, and malicious damage to property). No information could be gathered by the SAPS on indirect threats.

Meeting with Organised Labour

The findings from the meeting held with organised labour revealed the following:

1. Although specific incidents of violence against farm workers could be cited in North West and Brits specifically, it was now time to focus on processes to achieve collective action towards meeting the conditions of the sectoral determination wherever this is reasonably possible.
2. In this regard reference was made to an example of awareness raising and stakeholder engagement that led to improved compliance, in the local area of concern, with the Sectoral Determination for farm workers and its housing deduction provisions. It was believed that the Groot Marico example successfully involved farm owners and the Department of Labour

⁵As contained in a report signed off by C.J. Duminy, Provincial commander, Crime Information Management Centre, Crime Intelligence, North West Province. 24 February 2005.

⁶It is stated by SAPS that “Cases related to domestic violence, drunkenness or common place social interaction between people on farms and small holdings are excluded from this definition.”

and could be successfully practiced elsewhere. The discussions arising from the process described above also led to the identification of other pressing issues that required urgent attention (e.g. health of workers and the type of service provision available / provided to farm workers).

3. It was recommended that the Brits area needed, and could sustain, a similar process because some of the preconditions for a successful 1/2 day workshop were present there already e.g. an influential farmer capable of approaching other farmers, a good level of organisation amongst workers, confidence on the part of the Department of Labour in the format of the process, a venue etc. etc.
4. Whilst the extent of the practice is not well known, it is a fact that farm workers, have built, and do build, houses on farms. In these cases, farm workers have made a contribution to their right to housing in terms of their own labour and sourcing of materials.
5. The logistics involved in the development of agri-villages could be onerous and there is no example of a successful agri-village in North West.
6. The trade union and workers have been involved in considering applications for variation from the sectoral determination, as is required, and does understand that immediate implementation on specific farms is not viable. In other instances however, the trade union has experienced problems with considering applications for variation because farmers do not provide sufficient (financial) proof that variation is absolutely necessary.

Meeting with National African Farmers Union (NAFU NW)

NAFU has 2500 members and 21 branches in the province. Key issues cited by NAFU include:

1. The duration and terms of land allocation in communal areas (e.g. 1-2 years) is a stumbling block for investment and longer term planning (e.g. the game farming understanding with NW Parks Board);
2. Government grants are available, but farmers can only access them once they get information;
3. Co-operatives are being formed. Credit and buying power is improving.

Preliminary Recommendations

Good Farm A - That Turned out Bad (HPN.P)

The Commission recommends that the Department of Labour follow all the legal avenues available in order to effect the necessary changes and bring this large farm in line with the minimum standard as soon as possible. Failing which, the DoL or farm workers could bring a complaint to the attention of the SAHRC's legal department.

With due regard for human and financial resource allocation, the SAHRC recommends that the Department of Labour should find a way to work with the environmental health officers from the local municipality in order to ensure workers live in a healthy environment.

Good Farm B – (C&S.H)

The SAHRC should maintain telephonic contact with the farmers with a view towards understanding how the sharecropping initiative proceeds.

Good Farm C (G.vR) – Assisted by Transvaal Agricultural Union

To complete its understanding of the water chain, the SAHRC maintain telephonic contact with the farm owner on the price paid for irrigation water and its quality.

Good Farm D - That Turned Out Bad (O.W) – Assisted by Transvaal Agricultural Union

The SAHRC recommends that the the farm be inspected by the Department of Labour and that the necessary steps are taken to bring the farm employment practices in line with the Basic Conditions of Employment Act - Sectoral Determination. The SAHRC is to be informed by the local municipality why refuse services are not being made available to workers.

Wawiel Informal Settlement Unassisted Visit

The SAHRC brings the case of inequality between male and female farm workers and unpaid retrenchment packages to the attention of relevant parties in order for the matter to be discussed with HADECO management and trade union representatives.

The SAHRC recommends that the regional office of the Department of Water Affairs and Forestry test the irrigation water in order to trace major polluters. The SAHRC is to be informed of the outcome of the tests, and follow-up action, if any, that will be taken as a result thereof.

The SAHRC recommends an informal settlement upgrade at a nearby, larger, site as planned by the municipality.

General Recommendations

In addition to specific recommendations for each farm, it is recommended that:

1. The Proudly South African Campaign be approached to encourage farmers, especially labour intensive farmers, to become Proudly South African, even though they may not be exporting.
2. Giving consideration to the Groot Maricho example, and due consideration to the fact that farm workers still lack information in respect of labour and human rights, workshops be conducted by the SAHRC's Advocacy, Education and Training Department on labour and economic and social rights in farms.
3. The Department of Housing urgently establish a comprehensive farm worker housing policy and implementation plan.
4. Farmers to sign outstanding section 14 agreements for farm schools and to work with the Department of Education to ensure the right to basic education is improved as expeditiously as possible.
5. Interdepartmental and intergovernmental relations need to be promoted between state departments that bear specific relevance to the improving the lives and capabilities of farm workers.
6. Given the low number of local Department of Labour inspectorate staff with legal (or other relevant backgrounds) and experience for ensuring effective compliance with the sectoral determination on farms, inspectors and the inspectorate's functioning could benefit from skills development within the Department.
7. That the Department of Home Affairs ensure that regulations in respect of corporate permits be tightened in order to minimise the employment of illegal immigrants at the expense of local labour.