
CONTENTS • INHOUD

No.

*Page
No. Gazette
 No.*

GENERAL NOTICE

South African Human Rights Commission

General Notice

952	Terms of Reference: Public hearings to assess the progress made in terms of land tenure security, safety and labour relations in farming communities since 2003.....	3	30133
-----	--	---	-------

GENERAL NOTICE

NOTICE 952 OF 2007



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

TERMS OF REFERENCE

PUBLIC HEARINGS TO ASSESS THE PROGRESS MADE IN TERMS OF LAND TENURE SECURITY, SAFETY AND LABOUR RELATIONS IN FARMING COMMUNITIES SINCE 2003.

1. INTRODUCTION AND RATIONALE

Labour relations between farmers and farm workers in the agricultural sector have changed since the dawn of democracy in South Africa. The South African Human Rights Commission (hereinafter referred to as "the SAHRC") took cognisance of this reality and in 2003 it initiated and conducted an inquiry into human rights violations in farming communities.

The terms of reference of the aforementioned Inquiry was broad and focused on the following:

- To investigate the incidence of human rights violations within the farming communities.
- Land rights and tenancy; safety and security and economic and social rights.
- Establish the underlying causes of violations of human rights in farming communities.
- To make findings and recommendations.

The SAHRC produced a comprehensive report after the inquiry with separate chapters of recommendations dealing with land rights; labour; safety and security; economic and social rights as well as a chapter dealing with general recommendations.¹

However, from patterns of complaints that continue to be received by the SAHRC and constant media reports highlighting the issue, it is clear that many of these problems still persist and that conditions on farms and relations in and amongst farming communities have not changed since the inquiry. Various organisations and institutions have in recent years also highlighted, through research, the plight of farm workers in South Africa.

This is not to suggest that policy changes did not occur in the agricultural sector. On the contrary, the inclusion of farm workers into the *Labour Relations Act of 1995*, and the promulgation of legislation such as the *Sectoral Determination for Farm Workers, Extension of Security of Tenure Act of 1997* and *Labour Tenants Act of 1996* are laudable efforts to create equity and protect the interests of both farm workers and farmers. The lacuna however is that many, if not all, of these policies and pieces of legislation have been difficult to implement and enforce in the agricultural sector.

This has prompted the SAHRC to conduct a follow-up to the initial Inquiry of 2003 with three foci:

- Land tenure security: s 25 (1), s25 (6) and s 26 of the Constitution.
- Labour Relations: s23 of the Constitution.
- Safety on farms

2. HUMAN RIGHTS FRAMEWORK

2.1 Introduction

Several international and regional human rights treaties provide for rights related to conditions on farms and farming communities. The right to own land is guaranteed by

¹ SAHRC Final Report on the "Inquiry into Human Rights Violations in Farming Communities" August 2003

both international and regional human rights instruments. The Universal Declaration of Human Rights (UDHR)² and the African Charter on Human and Peoples' Rights (ACHPR)³ give everyone the right to own property, either alone or in association with others.

The UDHR⁴ and the ACHPR⁵, along with the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁶ also guarantee the right to work under just and favourable conditions, including the right to equitable and favourable remuneration. Article 24 of the UDHR and article 7 of the ICESCR ensure the right to rest and leisure, including vacation time and paid public holidays. The UDHR (article 23), ICESCR (article 8), and the International Covenant on Civil and Political Rights (ICCPR) (article 22) all guarantee the right to form and join trade unions.

The right to life, liberty, and security of the person is guaranteed by article 3 of the UDHR and article 6 of the ACHPR, while the right to safe and healthy working conditions is enshrined in article 7 of the ICESCR.

International human rights treaties accord special protections to women and children. The Convention on the Elimination of All Forms of Discrimination against Women

² Article 17 of the UDHR states that:

- (1) Everyone has the right to own property, alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

³ Article 14 of the ACHPR states that "[t]he right to property shall be guaranteed."

⁴ Article 23 of the UDHR states that:

- (1) Everyone has the right . . . to just and favourable conditions of work
- (2) Everyone . . . has the right to equal pay for equal work
- (3) Everyone who works has the right to just and favourable remuneration

⁵ Article 15 of the ACHPR states that "[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

⁶ Article 7 of the ICESCR recognizes "the right of everyone to the enjoyment of just and favourable conditions of work."

(CEDAW) requires that states parties undertake appropriate measures to ensure that women have equal access to career and vocational guidance and education.⁷ It also guarantees that women have an equal right to employment opportunities, remuneration, and healthy and safe working conditions,⁸ and provides special protections for pregnant women and women who have recently given birth.⁹ Article 12 provides for equal access to healthcare, while Article 14 recognizes the particular problems faced by rural women and the significant roles they play in the economic survival of their families, and calls on states parties to take specific measures to eliminate discrimination against rural women.

The Convention on the Rights of the Child (CRC) provides protections applicable to children who live and work in farming communities. Article 19 obliges states parties to protect children from physical and emotional violence and sexual abuse, and Article 24 gives children the right to the highest attainable standard of health. The CRC also calls on states parties to assure that children have a standard of living adequate for their development,¹⁰ and gives children the right to education¹¹ and leisure time.¹² Finally, Article 32 requires states parties to protect children from economic exploitation and hazardous work and working conditions.

The African Charter on the Rights and Welfare of the Child (ACRWC) states that the best interests of the child shall be the primary consideration in all actions concerning the child and Article 16 of specifically deals with the issue of child labour.

2.2 Constitutional provisions

Conditions on farms and in farming communities implicate a number of constitutional rights. Broadly speaking, the Constitution provides for the equality of all people under the law and the respect for and protection of the inherent dignity of every person.¹³ It also guarantees the rights of children to basic care and protection from mistreatment and

⁷ CEDAW at Art. 10.

⁸ Id. at Art. 11(1).

⁹ Id. at Art. 11(2).

¹⁰ CRC at Art. 27.

¹¹ Id. at Art. 28.

¹² Id. at Art. 31.

¹³ S 9 and s 10 of the Constitution of the Republic of South Africa, Act 108 of 1996.

exploitative labour practices,¹⁴ and states that both adults and children have a right to education. Section 25 guarantees that no one may be arbitrarily deprived of property, while section 26 provides for the right to access adequate housing. The Constitution provides in section 23 for the right to fair labour practices and the right of every worker to form and join a trade union, and sections 17 and 18 guarantee freedom of assembly and freedom of association. Finally, section 12 guarantees the right to freedom and security of the person, and section 27 provides for universal access to health care and sufficient food and water.

2.3 National jurisprudence

While most cases relating to land tenure, labour relations, and safety on farms do not reach the Constitutional Court, a number of cases have been decided that bear on the issues at hand, including: *President of RSA and Another v. Modderklip Boerdery (Pty) Ltd. and Others*, 2005 (8) BCLR 786 (CC)¹⁵; *Nkuzi Development Association v. Government of the Republic of South Africa*, (2) SA 733¹⁶; and *Zondi v Member of the Executive Council for Traditional and Local Government Affairs and Others*, 2005 (4) BCLR 347 (CC)¹⁷ the Court.¹⁸

¹⁴ S 28 of the *Constitution of the Republic of South Africa, Act 108 of 1996*.

¹⁵ *President of RSA and Another v. Modderklip Boerdery (Pty) Ltd. And Others*, 2005 (8) BCLR 786 (CC) (holding that the State's failure to take reasonable steps to evict illegal occupiers from a farm breached the owner's Constitutional right to an effective remedy and as such the owner was entitled to compensation from the State; occupiers continued to have accommodation until a suitable alternative was found).

¹⁶ *Nkuzi Development Association v. Government of the Republic of South Africa* (2) SA 733 (holding that those whose security and tenure is threatened or infringed under the Extension of Security of Tenure Act 62 of 1997 have a right to legal representation at the State's expense if they are not able to reasonably afford it on their own and substantial injustice would otherwise result and that in rural communities, farm workers often do not have access to representation from the Legal Aid Board because of the small number of attorneys and the close personal relationship attorneys often have with farm owners).

¹⁷ *Zondi v Member of the Executive Council for Traditional and Local Government Affairs and Others*, 2005 (4) BCLR 347 (CC), (declaring sections of the POUND Ordinance 32 of 1947 (Natal) which gave landowners the power to seize and impound livestock found trespassing on their land to be inconsistent with the constitution on the grounds that it excluded the judicial process, did not provide for notice to livestock owners, and in one instance discriminated against black landless people, violating the constitutional guarantee of equality).

2.4 National legislation

National legislation includes: *Land Reform (Labour Tenants) Act 3 of 1996 (LTA)*; *Extension of Security of Tenure Act 62 of 1997 (ESTA)*; *Labour Relations Act 66 of 1997*; *Basic Conditions of Employment Act 75 of 1997*; *Employment Equity Act 55 of 1998*; *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998*; and *Domestic Violence Act 116 of 1998*.

2.5 National safety plans

The Rural Protection Plan has been integrated with *Operation Akantus II* and both now form part of the National Rural Safety Plan of the National Crime Prevention Strategy of the SAPS.¹⁹ The Department of Agriculture has also released a Strategic Plan for South African Agriculture that deals with safety and security on farms.

3. MANDATE OF THE SAHRC

In terms of section 184 (1) of the Constitution, the SAHRC is mandated to:

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

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

- “(a) investigate and to report on the observance of human rights; and
- (b) take steps to secure appropriate redress where human rights have been violated;”.

The *South African Human Rights Commission Act 54 of 1994* also provides for investigations by the SAHRC and section 9 (6) thereof states that the procedure to be followed in conducting an investigation shall be determined by the SAHRC with due regard to the circumstances of each case.

¹⁹ Safety, Security and Defence, South Africa Yearbook 2002/03, p. 443

Section 9(7) provides that the Commission “shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection 9(6).”

4. TERMS OF REFERENCE

The Hearings will examine the efficacy, suitability, implementation and enforcement of legislative and policy changes *inter alia* by:

1. Assessing progress made with reference to the three focal areas of land tenure security, safety on farms, and labour relations since 2003 including:
 - the social relations on farms;
 - evictions;
 - land reform;
 - child labour;
 - health and safety;
 - skills development;
 - employment equity;
 - crime and violence.
2. Determining the legislative and policy obstacles that inhibit progress in the agricultural sector in respect of land tenure security, safety on farms and labour relations.
3. Making recommendations to ensure that the constitutional rights of farming communities are respected and protected.

5. RULES AND PROCEDURES

5.1 The investigations and inquiries will be conducted in terms of the rules of procedure promulgated in terms of section 9(6) of the *South African Human Rights Commission Act, No 54 of 1994*, as published in Notice 817 of 2007 of GG No. 30022, 6 July 2007.

5.2. The SAHRC will call for submissions from the public and interested parties including institutions, organisations, Government Departments and individuals on any matters referred to in the Terms of Reference of this investigation and inquiry.

5.3 The submissions must be lodged with or posted to the offices of the SAHRC at the addresses mentioned below in paragraph 7.

5.4 The Legal Services Programme of the SAHRC may assist persons in formulating their submissions. The submissions shall be **in writing** and must disclose the name, addresses and other contact details of the person making the submission.

5.5 Anonymous submissions will not be entertained.

5.6 The SAHRC may publish all submissions. However, if a deponent does not wish to have his or her name published, the SAHRC will respect such a wish together with disclosures made under the cover of the *Protected Disclosures Act, No 26 of 2000*. Such confidential submissions will be considered but they will not form the basis of the findings against individuals or institutions.

5.7 The **closing date** for submissions is **31 August 2007** and no late submissions will be considered.

5.8 The SAHRC will furnish any person or institutions that have been implicated or likely to be implicated in the submission, with a copy thereof. Such a copy may be accompanied by a written notice requiring such person to:

- a) Submit a written response to the allegations/ submission to the Legal Services Programme of the SAHRC within 14 days of the delivery of such written notice;
and

b) Appear before a panel of the SAHRC at a public hearing to be held on a date and place to be announced in the Government Gazette or a national newspaper, in order to respond to the allegations against him/her.

5.9 The SAHRC may invite specific individuals, organisations and institutions and any other parties to make documentary and/or oral submissions and testimony to the public hearing. Such testimony may be given under oath or affirmation.

5.10 A panel nominated by the Chairperson of the SAHRC will preside over the hearing. The Chairperson of the SAHRC or a person designated by the Chairperson will chair the panel.

5.11 The panel may subpoena any person in possession of any information relevant to the hearing to appear before the panel and give testimony.

5.12 Only a person or institutions referred to in paragraph 5.8 and 5.11 may be entitled to legal representation when giving evidence under oath.

5.13 At the conclusion of the hearing, the panel will publish a report with findings and recommendations.

5.14 Such findings and recommendations will be made public.

6. DEFINITIONS

6.1 “Act” refers to the *South African Human Rights Commission Act, No. 54 of 1994*

6.2 “Constitution” refers to the *Constitution of the Republic of South Africa, Act 108 of 1996* as amended

6.3 “Chairperson” refers to the Chairperson of the South African Human Rights Commission or any person duly authorised.

6.4 “Commission” refers to the South African Human Rights Commission as established by section 181 of the Constitution.

6.5 “Farming Communities” refers to any owner, dweller, worker and labour tenants, on any farm, including but not limited to commercial and corporate farming, the SANDEF, the Parks Board, Game Lodges/Tourist operated initiatives in farming communities.

7. CONTACT DETAILS

Submissions should be addressed for the attention of Miss Danaline Franzman and may be posted, emailed, faxed or hand-delivered to the SAHRC as follows:

Postal Address

**Private Bag X2700
Houghton
2041**

Physical Address

**The Human Rights House
Princess of Wales Terrace
Cnr St. Andrews and York Street
Parktown
Johannesburg, 2198**

For further information regarding submissions and /or the hearings, kindly contact **Ms Danaline Franzman or Ms Nomusa Twala** on:

Tel: 011 – 484 8300

Fax: 011 – 484 1360

Email: DFranzman@sahrc.org.za or NTwala@sahrc.org.za

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531