

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 OHS Act 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 upskill 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.*

CHAPTER 20

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.*