

# FARM WORKERS AND HUMAN RIGHTS



south african  
**human  
rights**  
commission



## BACKGROUND

The South African Human Rights Commission (SAHRC) is an independent institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, (the Constitution) to support constitutional democracy. The mandate of the SAHRC is to promote, protect and monitor the observance of human rights in the Republic. In line with its promotional mandate, the SAHRC must educate and raise awareness to promote respect for human rights and a culture of human rights. The SAHRC has developed this information sheet to provide the general public and organisations that have an interest on the issues of farm workers, with basic information on the rights of farm workers.

In its 2011 Census, Statistics South Africa points out that in South Africa, 2.88 million households or 19.9% of the population are involved in agriculture as farm workers; 5.1 % had employment of a permanent nature; 25.2% had employment of limited duration; 23.6% had employment of an unspecified duration and women were less likely than men to have employment of a permanent nature. The report further notes that only 46.4% were entitled to paid vacation leave; 35% were entitled to paid leave; 5.6% were entitled to maternity leave; 1.5% to paternity leave and approximately 67% had deductions for Unemployment Insurance Fund.

## RIGHTS OF FARM WORKERS

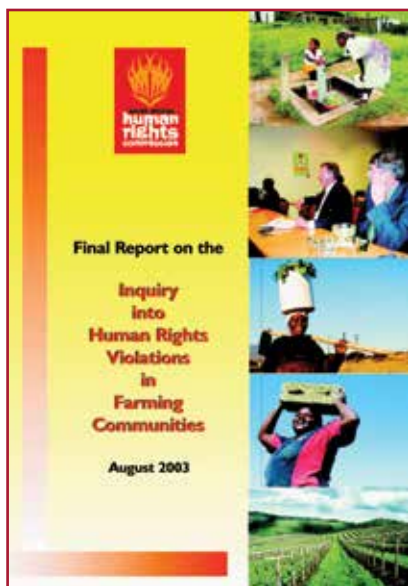
The Constitution of the Republic of South Africa, 1996 is the supreme law of the country and it protects the rights of all people in South Africa. Human rights are applicable to all people, by virtue of being human and everyone is born with these rights. Chapter 2 of the Constitution contains the 27 rights that are

collectively called the Bill of Rights and are inherent to all human beings. Farm workers and their families are entitled to the human rights in the Bill of Rights, including all rights that are applicable to workers.



The Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law. No person, including the State or private companies, may unfairly discriminate, directly or indirectly against any person on any ground. In addition, everyone has the right to have their dignity respected and protected.

## CHALLENGES FACED BY FARM WORKERS



The term farm workers generally refers to those workers who plant, tend and harvest crops and care for livestock on farms; but also includes anyone involved in farming activities on a farm and being compensated. Farm workers, in general, form a vulnerable and marginalised group due to a number of social and economic conditions. Farm workers are predominantly of low income, low skills, and low educational levels; and in some instances may comprise of immigrants without the necessary authorisation to reside or work in the Republic. Farm workers face a number of challenges and *the 2003 SAHRC Inquiry into Human Rights Violations on Farming*

*Communities Report* highlighted a number of issues of concern. Among the leading concerns are issues related to employment conditions and housing.



## Labour relations and conditions of employment

The State has the primary responsibility to ensure that the rights of everyone are promoted and protected. In addition, the Constitution provides that everyone has a right to fair labour practices. This right extends to all farm workers, whether they are permanent, temporal or seasonal workers. The State has, therefore, intervened to improve the livelihoods of farm workers in the agricultural sector by passing laws governing the relationship between employers as producers or farm owners and farm workers as the labour force.

### Sectoral Determination 13: Farm Worker Sector

To protect vulnerable employees in a specific sector, the government makes sectoral determinations to provide for minimum conditions for the employment of farm workers. Since 2003, the government through the Minister of Labour has been making Sectoral Determination 13 for Agriculture which establishes and regulates the conditions of employment for employees in the Farm Worker Sector. This Determination is binding and applies to the employment of farm workers in all farming activities in the Republic, and include the following:

#### a) Minimum wages



According to the Determination, with effect from 1 March 2006, all employers must pay their farm workers the minimum wage, which wage rates are adjusted each year. The minimum wage for the period 1 March 2018 to 28 February 2019 is Monthly: R3 169; Weekly: R 731.41; Daily: R146.28 and Hourly: R16.25



**b) Payment of remuneration**

An employer must pay a farm worker in South African Rand. Such payment can be daily, weekly, fortnightly or monthly. The payment can be in cash or it can be deposited directly into a bank account chosen by the farm worker. As compensation is confidential, if payment is in cash, this must be given at the workplace during the farm worker's working hours and in a sealed envelope which becomes the property of the farm worker. Farm workers are also entitled to a payslip on every pay day.

**c) Prohibited Acts Concerning Pay**

An employer may not withhold any payment from a farm worker or require a farm worker to pay them in respect of the employment of training of that farm worker, the supply of any work equipment or tools or the supply of any clothing. This means employment, training, equipment or tools should be provided to the farm worker for free. An employer may not require a farm worker to purchase any goods from the employer or from any person, shop or other business nominated by the employer.

**d) Deductions**

An employer may not make any deduction from a farm worker's wages without the farm worker's written permission. There can be a deduction of no more than 10% for food and 10% for accommodation, where the food and accommodation are provided on a regular and consistent basis. Employers may not deduct wages for training, provision of tools, equipment or uniforms. Employers may only deduct money from wages if this is for payment to a funeral policy, pension fund, financial institution or trade union fees.

**e) Ordinary Hours of Work**

An employer may not require or permit a farm worker to work more than 45 hours a week, 9 hours if the farm worker works for five days or less in a week or 8 hours if the farm worker works for more than 5 days in any week.



Overtime is any work done that exceeds the above limits. An employer must pay a farm worker at least one and a half times the farm worker's wage for overtime worked.

**f) Work on Sundays**

An employer must pay a farm worker who works on a Sunday at the double rate.

**g) Night work**

Night work means work performed after 8 pm and before 4 am the next day, which a farm worker must agree to. The farm worker must be compensated for night work with an allowance of at least 10% of the ordinary daily wage and transportation made available between the farm worker's place of residence and the workplace at the start and end of the shift.

**h) Meal Intervals**

A worker must have a meal interval of one hour after 5 hours' work, but the meal interval can be reduced to not less than 30 minutes, through a written agreement. The farm worker who works for less than 6 hours in total per day can do away with the meal interval altogether through a written agreement with the employer.

**i) Rest period**

A farm worker is entitled to a daily rest period of 12 hours in a row, and a weekly rest period of at least 36 hours in a row which must include a Sunday unless both the employer and the farm worker agree otherwise.



**j) Public holiday**

An employer may not require a farm worker to work on a public holiday except in accordance with a written agreement.

**k) Leave**

An employer must grant a farm worker at least three weeks leave on full pay in respect of each twelve months of employment. For sick leave, a farm worker is entitled to one day's paid sick leave for every 26 days worked.

A farm worker is entitled to four months in a row as maternity leave, which can start at any time from four weeks before the expected date of birth. The employer does not have to pay the farm worker for the period that she is away due to her pregnancy or the parties could agree on the amount to be paid as wages, on condition she is able to claim maternity benefits from the Unemployment Insurance Fund. A farm worker may not work for six weeks after giving birth unless a medical practitioner or midwife certifies that she is fit to do so.

A farm worker who has been employed for longer than 4 months and for at least 4 days a week is entitled to 3 days paid family responsibility leave during every 12 months' cycle. This type of leave applies when the farm worker's child is born, or sick or in the event of the death of the farm worker's spouse, life partner, parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.

**l) Prohibition of forced and child labour**

No one, including any farm worker, should be expected to perform slavery work or forced labour. No one under the age of 15 is required or permitted to work. Every parent is expected to make sure that a child under 15 attends school and no person may employ in farming activities a child who is under the age of 15.





Children older than 15 but younger than 18 cannot work more than 35 hours a week and cannot work with chemicals. An employer must for 3 years, maintain a record of the name, date of birth and address of every farm worker under the age of 18 years employed by them.

**m) Freedom of association and political rights**



Every farm worker has a right to associate themselves with any organisation that they feel will serve their interest. Employers cannot dictate to the farm worker which association or organisation they can join or not join.

Farm workers have a right to form or join a trade union and to participate in the activities and programmes of a trade union and to strike.

Every farm worker who is a South African citizen is allowed to participate in the national, provincial and municipal general elections as conducted by the Independent Electoral Commission. The day of the election is declared a public holiday by the government, to ensure that every citizen is afforded the necessary time off in order to exercise their rights to vote. No employer should prevent farm workers from exercising their right to vote.



**n) Termination of employment**

A contract of employment may be terminated or ended only on written notice by any of the parties unless one is illiterate. The employer must verbally explain the notice to the farm worker if one is not able to understand it in written form.

The notice period is one week in advance if the farm worker has been employed for six months or less, and four weeks in advance if the farm worker has been employed for more than six months.

On termination of employment, the employer must pay a farm worker all money that is due to the farm worker such as wages, allowances and leave not taken before the farm worker leaves.

A contract of employment may not be terminated unless there is a fair and valid reason and a fair procedure is followed. If a farm worker is dismissed without a valid reason or without a fair procedure the farm worker can take the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA).

### **The right to housing**

The Constitution provides that everyone has a right to have access to adequate housing. The government passed the Extension of Security of Tenure Act, 62 of 1997 (also known as ESTA) with the aim of providing security of tenure to farm workers living on farms. This Act gives people who since 4 February 1997 have lived on someone else's land with permission from the owner a secure legal right to continue living on that land. ESTA covers people who live in rural areas, on farms and on undeveloped land and also protects people living on land that is encircled by a township or land within a township that is marked for agricultural purposes.



The Act provides for the rights of farm workers to have their families live with them and receive visitors; access to water, health and education and receive mail or other communication. The Act also provides for the right to visit and maintain family graves, although the owner can set reasonable conditions on how this right is exercised.

The Act also provides for special rights to those who are 60 years and older and have lived on the land for 10 years or more; and should they become sick or develop a disability whilst employed by the owner, they can stay on the land for the rest of their lives. The Act also sets out how disputes over land can be resolved through mediation, arbitration or the courts.

To assist with housing, the government introduced the Farm Worker Housing Assistance Program to provide subsidies for housing on farms for permanent farm workers, on condition employers agree to provide security of tenure.

The SAHRC has developed separate educational material on the right to housing as well as an information sheet on evictions. To learn more about these rights one can access the materials on the SAHRC's website at [www.sahrc.org.za](http://www.sahrc.org.za)

## MECHANISMS TO ENFORCE FARM WORKERS' RIGHTS



### Commission for Conciliation for Mediation and Arbitration (CCMA)

The Commission for Conciliation for Mediation and Arbitration (CCMA) is a body established in terms of the Labour Relations Act 66 of 1995 to settle and resolve disputes that arise from work places in employer-employee relationships. The CCMA is an independent body, does not belong to and is not controlled by any political party, trade union or business. The CCMA is mandated to conciliate work place disputes; arbitrate certain categories of disputes that remain unresolved during conciliation; facilitate consultations regarding large-scale dismissals due to operational requirements; establish picketing rules; facilitate the establishment of workplace forums and statutory councils and advise a party to a dispute about the procedure to follow.

The CCMA is located in each of the provincial capitals and in select towns, and the head office can be contacted at Tel: 011 377 6600 / 6650; Email: [info@ccma.org.za](mailto:info@ccma.org.za); Website: [www.ccma.org.za](http://www.ccma.org.za)

## Department of Labour

The Department of Labour is the key state department with the responsibility to regulate the South African labour market, ensure enforcement and monitor compliance of laws, regulations and policies. The department is further responsible for creating conducive working environments, working conditions, basic conditions, minimum wages, compensation for occupational injuries, employment equity, labour relations and unemployment insurance.



labour

Department:  
Labour  
REPUBLIC OF SOUTH AFRICA

For any labour related issue, the nearest Department of Labour office can be contacted or through the head office at Tel: 012 309 4000; Email: [dol.customercare@labour.gov.za](mailto:dol.customercare@labour.gov.za); Website: [www.labour.gov.za](http://www.labour.gov.za)

## Legal Aid South Africa

**Legal Aid South Africa (Legal Aid SA)** is a state-funded institution that provides free legal advice, assistance and representation to those who cannot afford it, particularly the poor and vulnerable. Anyone who requires the services of a lawyer but does not have the necessary funds can approach Legal Aid SA for assistance. Legal Aid SA uses a means test to determine whether one qualifies for assistance. In addition to their own officials, Legal Aid SA can make use of other lawyers to assist members of the public free of charge.



Legal Aid SA can be contacted on the national toll-free number **0800 110 110**; sending a Please-Call-Me to **079 835 7179**; visiting the nearest branch or through its website [www.legal-aid.co.za](http://www.legal-aid.co.za)

## South African Human Rights Commission (SAHRC)

The SAHRC engages directly with members of the public, State Departments and civil society organisations in order to raise awareness and protect the rights of all people, including farm workers. Public education, outreach interventions, publication of educational material and disseminating information to enable the affected group to assert and enforce their rights, are some of the methods the SAHRC uses to improve awareness levels of human rights.

The SAHRC has the power to conduct an investigation into any alleged violation of any human right. A human rights violation is an abuse or violation of any of the rights found in the Constitution. Anyone either acting on their own interest, that of someone else or that of an organisation can lodge a complaint with the SAHRC. This is particularly important for farm workers, as paralegal advice offices and other organisations serving rural or communities in far places can assist in this regard. A complaint may be lodged at any of the provincial offices of the SAHRC where the alleged violation of a right took place. A complaint can be lodged in person, by telephone, in writing or by completing the online complaint form and the Commission's services are free.

Where the SAHRC is unable to deal with a complaint, it will explain why. If after a preliminary investigation, the SAHRC is of the opinion that there is substance in any complaint, it will in so far as it is able to do so, assist the complainant and other persons adversely affected to secure redress.

The SAHRC has produced and publicised its Complaints Handling Procedures, which detail the procedure to be followed in conducting an investigation of any alleged violation of human rights. Further, the SAHRC has adopted special measures and guidelines to cater for complaints specific to the violation of children's rights, through the Child Friendly Complaints Handling Procedure. Both procedures are available on the SAHRC website.

## Other entities

There are also other entities with a national presence such as non-governmental or faith-based organisations, community advice offices and law clinics at universities that may assist with matters affecting farm workers. Examples of such organisations include, but are not limited to, Lawyers for Human Rights, Legal Resources Centre, the Black Sash and Women on Farms. If you require assistance with any matter related to farm workers, you can contact their offices.

## PROVINCIAL OFFICES

### Eastern Cape

Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London

Tel: 043 722 7828/21/25 | Fax: 043 722 7830

#### **Provincial Manager**

**Mr Abongile Sipondo**

Contact: Yolokazi Mvovo

E-mail: ymvovo@sahrc.org.za

### Gauteng Office

2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein

Tel: 011 877 3750 | Fax 011 403 0668

#### **Provincial Manager**

**Mr Buang Jones**

Contact: Nthabiseng Kwaza

E-mail: nvkwaza@sahrc.org.za

### Free State

18 Keller Street, Bloemfontein

Tel: 051 447 1130 | Fax: 051 447 1128

#### **Provincial Manager**

**Mr Thabang Kheswa**

Contact: Alinah Khompeli

E-mail: akhompeli@sahrc.org.za

### KwaZulu-Natal

First Floor, 136 Margaret Mncadi, Durban

Tel: 031 304 7323/4/5 | Fax: 031 304 7323

#### **Provincial Manager**

**Mr Lloyd Lotz**

Contact: Kathleen Boyce

E-mail: kboyce@sahrc.org.za

### Limpopo

29A Biccard Street, Polokwane

Tel: 015 291 3500 | Fax: 015 291 3505

#### **Provincial Manager**

**Mr Victor Mavhidula**

Contact: Mahlatse Ngobeni

E-mail: mngobeni@sahrc.org.za

### Mpumalanga

First Floor, Allied Building, 34 Brown Street, Nelspruit

Tel: 013 752 8292 | Fax: 013 752 6890

#### **Provincial Manager**

**Mr Eric Mokonyama**

Contact: Carol Ngwenyama

E-mail: cngwenyama@sahrc.org.za

### Northern Cape

45 Mark and Scot Road, Ancorley Building, Upington

Tel: 054 332 3993/4 | Fax: 054 332 7750

#### **Provincial Manager**

**Ms Chantelle Williams**

Contact: Zukiswa Louw

E-mail: zlouw@sahrc.org.za

### North West

25 Heystek Street, Rustenburg

Tel: 014 592 0694 | Fax: 014 594 1069

#### **Acting Provincial Manager**

**Mr Osmond Mngomezulu**

Contact: Poppy Mochadibane

E-mail: pmochadibane@sahrc.org.za

### Western Cape

7th Floor ABSA building, 132 Adderley Street, Cape Town

Tel: 021 426 2277 | Fax: 021 426 2875

#### **Provincial Manager**

Contact: Shafeeqah Salie

E-mail: ssalie@sahrc.org.za

**How to contact the SAHRC:**

Forum 3, Braampark, Braamfontein, Johannesburg

Tel: 011 877 3600

Website: [www.sahrc.org.za](http://www.sahrc.org.za)

E-mail: [info@sahrc.org.za](mailto:info@sahrc.org.za) / [complaints@sahrc.org.za](mailto:complaints@sahrc.org.za)

Twitter: @SAHRCommission

Facebook: SA Human Rights Commission

