



- ♦ **ensuring labour inspectors' neutrality** with the accompaniment of a trade union or advice office representative.

Farmers

- ♦ **Positive reward** for farmer compliance
- ♦ Employer and worker be required to attend **health and safety training**.

Strategic response by civil society through

- ♦ Support COSATU's campaign for a **living wage** across all sectors of **R1200**.
- ♦ The **scrapping of the existing demarcated areas** which state a different minimum wage per geographical area.
- ♦ Addressing the issues of **gender discrimination** in the workplace by providing women with information and skills to defend their rights to equal labour practices
- ♦ Lobby for **extended service** to farm workers through advice office rights to represent workers at CCMA
- ♦ Lobby for **amendment of Health and Safety Act**

to allow for the appointment of a health and safety representative in workplaces of five or more people

- ♦ **Train workers on all aspects of sectoral determination** and labour legislation such as grievance procedures, information required on a pay slip, prescribed hours of work, overtime and leave entitlements etc.
- ♦ **Lobby for amendment** to compel farm owners to **comply with current housing requirements** irrespective of whether farm workers live for free or pay rental.
- ♦ With farmers and trade unions lobby **the department of health to provide accessible health care and HIV AIDS prevention** to workers on farms
- ♦ Intervention to **ensure SETAS establish a grading system based on skills and years of experience** for the farm sector
- ♦ Lobby government to **provide free transport** to all farms where **schools and child care facilities are inaccessible**.

'My life has improved because I now have the same rights as men, except pay, I earn R30 less than the men. I stay for free in a farm house with my five children. My wages are the only income I have.'

Female farmworker, Swellendam

Background to the sectoral determination

The Sectoral Determination for Agriculture 2002, seeks to ensure a basic minimum wage and working conditions for South African farm workers. This legislation aims to improve the lives of the most vulnerable – the 78% of the rural population that is black and chronically poor.

Furthermore the situation of women on farms is particularly acute - women are paid less and because of the gender division of labour, their tasks are seen to be less skilled resulting in lower wages.

Unfortunately, less than 5% of farm workers in South Africa are unionised. This means that legislation passed is not necessarily implemented without the back up of strong awareness raising and training programmes, mobilizing group solidarity, lobbying for specific monitoring of compliance and legal support.

Farmers' response to the sectoral determination

By the end of 2003, the Department of Labour had over 1300 applications from farmers seeking exemption from certain conditions of employment. The main reasons stated for exemption was based on the economic status of the sector, high input prices, drought, floods, the strong Rand, start-up of new farmers, unfavourable farming conditions and non-profitability of businesses.

However it was noted by Consultants employed by the Department of Labour that the above could also be the result of farmers who were "generally in process of establishing new ventures at high capital cost, living beyond their means or who had taken ill-judged risky decisions, insufficient capital or knowledge or incurred losses because did they not take precautionary measures (insurance) to protect themselves from disasters"

Centre for Rural Legal Studies

3rd Floor Eikestad Mall
43 Andringa Street
Stellenbosch
Tel: (021) 883 8032
Fax: (021) 886 5076
E-mail: postmaster@crls.org.za

Why a study?

The Law Clinic of the Centre for Rural Legal Studies (CRLS) received a disturbingly high number of complaints of non-compliance with the legislation. This prompted the CRLS to research:

- ♦ The extent of compliance of the Sectoral Determination (SD)
- ♦ The impact of the SD on the livelihoods of farm workers
- ♦ To what extent the SD is being monitored and enforced by the labour inspectorate

This participative study was conducted on 45 farms in the Bo-Karoo region of the Northern Cape province and the Southern Cape/Karoo region of the Western Cape province. In 15 different areas, trained advice officers, trade union organizers and shop stewards interviewed more than 400 farm workers. Of the 250 questionnaires sent to additional farmers, only twenty were returned. Questionnaires sent to both the North and Western Cape Department of Labour offices, dealt with the number of farm inspections, the problems they encountered and issues of enforcement – no response was received.

Has the situation improved for farm workers?

Employment patterns

Casual workers are defined as workers who work less than 27 hours per week. Casual workers do not enjoy the same benefits as permanent workers and are often unaware that they are covered by the legislation.

In the farming sector the majority of casual or seasonal workers are females, while males are mostly permanent. Women are also located in the unskilled and lesser paid positions.

There has been a rapid shift to seasonalisation and casualisation and this can be attributed to farmers who have retrenched workers to avoid complying with the Sectoral Determination.

Minimum wage

The sectoral determination legislates on a minimum wage for farm workers. However, **80% of farm workers in this study receive less than the prescribed monthly wage** with approximately

- ♦ 34% of that number receiving between R100 – R200,
- ♦ 26% between R200 and R300
- ♦ 12% between R300 and R400.
- ♦ 8% up to R700

The majority of female workers fell within the first two ranges. **It would appear that there are no significant gains in achieving the minimum wage.**

Working conditions

Method of payment

The findings show that there are varying degrees of compliance with regard to information on pay. The majority of farm workers do not receive all the information reflected on their pay slips that is required by legislation. These details are necessary, especially in claiming UIF or reporting disputes to the CCMA.

This continued lack of compliance on issuing legal pay slips by the employer makes it difficult for farm workers to pursue their basic labour rights.

Hours of work

The findings show of farm workers interviewed
45% work a 45-hour week

36% work more than the prescribed weekly hours

Workers should not be forced to work overtime, except in cases of emergency, but approximately 22% of those responding to this question claim they were forced to do so.

Overtime pay

The range of cash varied between R1-R10, some received 1½ times their hourly rate, 7% of farm workers interviewed were unsure what they had received and one farm worker had been given a cool drink.

This indicates a clear lack of awareness of worker rights and is linked to the pay slip non-compliance.

Sundays and public holidays

Only a small proportion of those who replied to this question were forced to work on a Sunday. However a larger group, **16% say they are forced to work on public holidays.**

Night shift work

All workers should be warned of the dangers of working night shift, receive 10% extra of their daily rate and be provided with transport.

For all three provisions more workers said they were not aware of this information, than those who indicated awareness.

Leave

Leave is divided into eight categories, annual leave, sick leave, maternity leave, paternity leave, child sickness, compassionate leave, additional leave and any other.

The majority of farm workers' annual leave in the study falls within the regulation, although there is a lack of awareness in relation to paid sick leave. A number of women received much less maternity leave than the prescribed four-month entitlement.

Health and safety

More than half the workers interviewed suffered from some form of illness. The most common illnesses were asthma, tuberculosis, back and kidney problems, rheumatism, colds and flu. **27% of the respondents said their workplace was not safe** citing reasons of unsafe equipment, no safe clothing, animals can hurt you, working in the rain without protection and no protection from pesticides and chemicals. **It is unlikely from the awareness levels of health and safety legislation that workers would know how to claim worker's compensation in the event of a death or injury.**

Housing

In trying to improve the condition of housing for farm workers the state has compelled farmers to provide

adequate housing. The housing must: be waterproof, have glass windows that can be opened, have electricity inside the house, have tap water inside the house have a flush toilet or pit latrine in or near the house. Only if the requirements are met are deductions for rental allowed which should not exceed 10% of the wages.

None of the respondents had access to all the criteria inside their house.

Since the legislation made deductions for accommodation legal, **many farm workers now find themselves having to pay for accommodation where in the past they lived for free.** They also find themselves being illegally charged for water and electricity.

There has been an overall improvement with regard to women's rights to housing

Education and training

Just over 11% of workers had access to formal training, while less than 3% had access to Adult Basic Education and Training. Training was mainly determined by job classification, gender or kind of training e.g. HIV/AIDS.

It is evident that the SETAS have not made an impact on the majority of workers interviewed

Farm workers views' on Sectoral Determination

It is important to note that livelihoods have improved in this group of farm workers but it is for less than half of those interviewed.

Disturbingly, over 60% of farm workers interviewed believe that Sectoral Determination has negatively impacted their lives

However, many of the respondents believe that the Sectoral Determination can be effective if properly enforced.

In recognition that the Sectoral Determination is the only piece of legislation that can improve conditions in the agricultural sector in gaining immediate short term benefits to farm workers CRLS recommends:

Department of Labour

Effective enforcement of legislation through:

- ♦ **sourcing additional personnel** as labour inspectors from the large pool of experienced trade unions and advice offices