



Briefing Paper - November 2006

Background to the Sectoral Determination for Agriculture:

The Sectoral Determination for Agriculture, which prescribes the minimum wages, terms and conditions of employment for the farming sector, was first promulgated on 2 December 2002 and came into effect on the 16 December 2002. The provisions related to the minimum wages came into effect on 1 March 2003 and was reviewed in 2004/5.

The Sectoral Determination for Agriculture seeks to ensure a basic minimum wage and basic working conditions for South African farm workers. The legislation ultimately aims to improve the lives of the most vulnerable in our society, farm workers.

In March 2006, a new regulation on the minimum wage became effective and it marked the beginning of the phasing out of the two-tier wage system. Currently, the minimum wage prescribed for Area A (urban areas) is R994,00 per month and Area B (rural areas) R885,00 per month. Increases for the second year is R1041,00 per month and R989,00 per month for Area A and B respectively. The intention is to have one minimum wage by 2009 and by then, there will be no area demarcations.

Another change to the legislation was the scrapping of the 27 hour provision. The determination previously stipulated that a farm worker who works more than 27 ordinary hours of work per week should be paid at least the monthly wage and a farm worker who works 27 or less ordinary hours of work per week should be paid at least the hourly rate for hours worked. All workers are now paid in terms of the number of hours worked per week.

Why a research study?

The nature of the problem currently is the ineffective implementation and enforcement of the Sectoral Determination that leads to a low level of compliance:

- There is inadequate implementation policy framework securing the socio-independence of farm workers despite the current legislative context, compliance and enforcement of this legislation still seems to be weak.
- There is little capacity on the part of government to educate rural workers and dwellers and to enforce labour and land laws in the agricultural sector and in rural employment situations despite a display of some limited rights based knowledge amongst farm workers, there is still insufficient rights based information being disseminated to farm workers.

- Through the Bill of Rights farm workers also have the rights to: freedom of association (s18), to fair labour practices (s23), access to adequate housing (s26), health care, food, water and social security (s27) and access to information (s32). Despite these guaranteed rights, farm workers still do not enjoy the full benefit of the Constitution.

The research therefore sought to explore some of the challenges still facing farm workers in the Ceres region.

Why Ceres?

This mini research study was conducted on 5 farms in the Ceres region. The region was chosen as a site for this study due to it containing mainly fruit farms. Focus groups were conducted with approximately 8 to 12 farm workers on each farm and 4 farms were situated in the centre of town with one farm situated approximately

20 kilometres outside of town in the warmbokkeveld region, which is a largely rural area

Fruit farming forms the backbone of agriculture in the Western Cape and there are about 1200 citrus growers in South Africa. The Western Cape produces 15-20% of the total citrus crop and the fruit juice industry is a strong growth sector. The biggest producer of fruit juice is Ceres Fruit Processors, which produces large quantities of apple and pear concentrates. Major export markets are Europe and the Far East. The Western Cape alone produces between 55 and 60% of South African's agricultural exports, valued at more than 7 billion per annum. Agriculture in the Western Cape accounts for 13% of formal job opportunities in the province.

The methodology that was employed consisted of an interview schedule with farm workers in focus groups on 5 farms in the Ceres region. In addition, one on one interviews were conducted with advice offices, trade unions, relevant civil society organizations, an employer's union and the Department of Labour specifically located and working in the Ceres region.

Key Findings:

All of the farm workers who were interviewed had knowledge of the Sectoral Determination for Agriculture legislation and indicated that they had received this knowledge either from the farmer or from one another. Their knowledge in respect of labour rights is limited to certain aspects thereof and not to the legislative framework in its entirety. Hence, there is still much room for improved dissemination of rights information to farm workers.

Biographical Data:

- 43% of farm workers interviewed were women and 57% were men.
- 36% of men and women had worked on the farm for a period of 11 years or longer.
- 77% were permanent workers, 23% were seasonal workers
- 60% of seasonal workers were women, 65% of permanent workers were men

Women are still mainly employed as seasonal workers hence they receive fewer benefits than their male and permanent worker counterparts.

Minimum Wage:

- 88% earn more than R949.58 per month
- 18% earn less than R949.58 per month

Generally, it appears as though farmers are complying with the minimum wage allocations on farms in the region. However, farmer's compliance with the minimum wage amount is to abide by the legislation and pay the minimum amount as prescribed. In cases where more than the minimum wage was being paid, the amount over and above the wage did not exceed an additional amount of R5.00 per month.

However, workers are not happy with the amount of the minimum wage which they receive. Workers are of the view that they work really hard for an amount of money that barely covers their cost of living.

Overtime:

Working hours applicable to agriculture are as follows:

- Weekly maximum: 45 hours
- Daily maximum: 9 hours (5 day week)

All interviewees worked 9-hour days and indicated that they generally did not have problems regarding overtime work. If they were required to work overtime, they were always paid accordingly and there was prior negotiation between the farm worker and farmer.

Leave:

Annual leave: 3 weeks per year with full pay
Farm Workers were mainly allowed to take their annual leave during the June / July period.

Sick Leave: In a cycle of 36 months, the worker is entitled to paid sick leave equal to the number of days he would normally have worked in 6 weeks. During the first 6 months of service, the worker has 1 day for every 26 days worked. A medical certificate must be submitted if the worker is absent for more than 2 consecutive days or if he is sick for a day more than twice within eight weeks. All the farm workers interviewed stated that farmers requested a medical certificate after one day's absence from work. If they fail to furnish a medical certificate, one day's wages is deducted from their weekly wages.

Maternity Leave: A worker is entitled to at least four consecutive month's maternity leave.

Women farm workers generally do receive four months maternity leave, but in 3 cases, women were required to return to work before the expiry of the four month maternity leave period.

Housing and Accommodation:

54% of interviewees had accommodation on the farm, whereas 46% did not have accommodation on the farm. 46% of women and 54% of men had accommodation on the farm.

Women who did not have accommodation indicated that they either did not wish to live on the farms or that farmers were still reluctant to award houses to single women on the farms.

A 10% deduction for accommodation may only be made if the house meets the following requirements:

- The house has a roof that is durable and waterproof
- The house has glass windows that can be opened
- Electricity is available inside the house, if the infrastructure exists on the farm
- Safe water is available inside the house or in close proximity, which is not more than 100m from the house
- A flush toilet or pit latrine is available in, or in close proximity to the house; and
- The house is not less than 30 square meters in size

Most of the interviewees stated that their houses complied with these requirements. Some workers indicated that waterproofing was a problem and that their houses leaked when it rained. Workers on another farm complained that the water in the dam running into the tap contained chemicals and that the water was not being filtered by the farmer. All interviewees were not paying for their accommodation, but monies were deducted for electricity for usage that exceeds 200 units per month.

Education and Training:

68% of interviewees received one form of training or another and 32% did not. Most of the interviewees indicated that they received training in respect of health and safety, first aid and some received tractor driving courses. When asked if they received any formal training or whether workshops were conducted with them regarding their labour rights, all of them responded that they had not received such training, as farmers were not often willing to allow organizations to train farm workers on this. The information that they do have on their rights, is mainly as a result of what they hear when they go into town and what they learn from one another or the farmer.

Women's Rights on Farms

Most of the women interviewed indicated that there are differences that still exist on farms in respect to the division of labour. Men cut, trim and pick fruit whereas women are responsible for packing the fruit. There are still differences in the salaries of men and women and men generally receive increases in wages and promotions more easily and quicker than women. In some cases, men are allowed to work when it rains whereas women are sent home. Women would prefer to work with the men and to be treated equally, despite the rain or any other conditions. Most seasonal workers are still women. Seasonal workers do not receive the same benefits as permanent workers.

In respect of childcare, most of the farms interviewed have built crèches on the farm to accommodate farm worker's children.

Impact of Sectoral Determination and the Role of the Department of labour:

- All the farm workers indicated that the Department of Labour has not been to inspect or visit their farms in the last year.
- As regards the impact of Sectoral Determination, most workers felt that living conditions on farms has improved as a result of the pressure put on farmers by export companies, not as a result of the current legislative framework. According to them, export companies inspect the living conditions of farm workers and conduct audits on farms to ensure that farm workers are treated respectfully, hence the improvement in the conditions on the farms in the Ceres area.
- Some farm workers were of the view that the legislation improved relations between workers and farmers insofar as workers find it easier to voice their grievances to farmers now and feel that on some level they are being heard.
- Some farm workers were however of the view that the legislation has impacted negatively on their lives and that as a result of the legislation, farmers now deny certain things to farm workers and use the legislation to substantiate such denial. The very things which farmers allowed farm workers in the past have been taken away as a result of the strict adherence to legal provisions. An example: if farmers provided transport or mielie meal to farm workers prior to the promulgation of the legislation, such benefits would be withdrawn from the farm worker due to the legislation no longer allowing for it. In this way farm workers have lost out as a result of the promulgation of the legislation.
- All workers felt that inasmuch as the legislation has sought to standardize wages and provide a minimum wage that the minimum wage is still insufficient, given the current cost of living. They are dissatisfied with the wages and feel that they should be receiving substantially more.

What farmers, trade unions, advice office workers and the Department of Labour said:

Farmers:

- Agree with farm workers that the legislation has improved communication between farmers and farm workers

- They generally feel that the Department of Labour needs to conduct regular inspections and be more involved in creating change and shifting negatives to positives on farms.
- One farmer highlighted a positive change that will be taking place on the farm in respect of accommodation. The farmer and the Department of Land Affairs have entered into a partnership to enable farm workers to acquire land on the farm. A section of land has been cordoned off and the Department of Land Affairs is currently engaged in providing subsidized housing on the farm for farm workers. In addition to a decent house, the farm worker will receive a piece of land upon which he/she may farm animals and livestock for their own benefit.

Advice Office Workers:

- The law is not worker friendly and accommodates the farmers' needs more than the worker's.
- They also agree with farm workers views that the minimum wage is insufficient for farm workers to have a decent quality of life.
- Discrimination on farms particularly between men and women needs to be addressed
- The Department of Labour needs to be more visible and accessible

Trade Unions:

- Problems on farms include illegal deductions, poor housing and accommodation and the replacement of permanent workers with seasonal workers
- Wages should be increased regularly
- Women should receive equal treatment in respect of wages and should not be employed mainly as seasonal workers on farms

Farmer's Unions:

- Workers have lost some benefits as a result of the legislation
- Export companies set high standards which also improves living conditions of farm workers
- Communication has improved between workers and employers

Department of Labour:

- Accommodation and working conditions remains the biggest problems on farms
- Disparities between the treatment of men and women remains a critical concern
- Export companies have had a positive impact on living conditions of farm workers

Key Recommendations:

The above views highlight some of the challenges encountered by the role players who have been consulted in this study. It is clear that some of the key recommendations include:

- The Department of Labour should acquire additional capacity to ensure appropriate enforcement and compliance
- More inspections need to be conducted on a regular basis on farms and not merely at the impetus of organizations sounding alarm bells a more pro active approach on the part of the Department of Labour is required
- Review of the minimum wage should take place soon to ensure an appropriate living wage for farm workers. An understanding of the role of export companies and the criteria which they employ in ensuring that the living conditions of farm workers are improved is required
- Women's rights needs to be prioritized and unequal gender relations needs to be addressed. Rights based knowledge needs to be shared with farm workers and appropriate legal assistance needs to be provided to farm workers in the area
- An attempt to address power imbalances between the farm worker and farmer could ensure equity in the agricultural sector
- Trade Unions need to play a more fundamental role in ensuring the protection of the rights of farm workers in rural areas

Conclusion:

The study illustrates that there has been an improvement in the living and working conditions of farm workers in the Ceres region. However, certain obstacles and challenges still inhibit the aforementioned conditions of farm workers and needs to be addressed. In addition, it is clear that compliance and enforcement of the Sectoral Determination legislation remains a hurdle to be overcome.

Some remaining challenges include; the amount of the minimum wage, unequal power relations between the farmer and farm worker, security of tenure, lack of rights knowledge, imbalances in gender relations coupled with power relations and limited access to socio economic rights. On the other hand some positive improvements include adherence by farmers to the legislation, albeit sometimes to the disadvantage of farm workers, improved living conditions and a move on one farm to secure tenure by working with the Department of Land Affairs.

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