South Africa

Ripe with Abuse

Human Rights Conditions in South Africa's Fruit and Wine Industries

HUMAN RIGHTS WATCH

HUMAN RIGHTS WATCH

Ripe with Abuse

Human Rights Conditions in South Africa's Fruit and Wine Industries

Copyright © 2011 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-801-5
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

51, Avenue Blanc
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1st Fl, Wilds View
Isle of Houghton, Boundary Road
Parktown, 2198 South Africa

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: http://www.hrw.org

AUGUST 2011

ISBN: 1-56432-801-5

Ripe with Abuse

Human Rights Conditions in South Africa's Fruit and Wine Industries

Summary and Key Recommendations 1

Methodology 22

I. Understanding South African and Western Cape Agriculture 25

1.1. Farming in South Africa and the Western Cape 25

1.2. Farmworkers 26

Box 1: Increased Vulnerability of Female Farmworkers and Farm Dwellers 29

1.3. Farm Dwellers and On-Farm Housing 30

1.4. Farmers, Management, and the Supply Chain 32

1.5. Previous Scrutiny of Farm Work in South Africa 33

II. Governmental and Business Responsibilities 36

2.1. The South African Government's Constitutional and International Legal Obligations and Relevant Domestic Law that Applies to Employers and Farm Owners 36

Evictions and Housing Conditions 37

Occupational Health and Safety 39

Freedom of Association 41

Conditions of Employment 42

Racial and Gender Discrimination 43

2.2. International Human Rights Responsibilities of Private Actors 44

III. Poor Housing and Evictions from Farms 46

3.1. Poor Housing Conditions on Farms 46

3.2. Evictions 50

3.3. Related Impact on Right to Family Life 55

IV. Occupational and Other Health and Safety Issues 57

4.1. Pesticide Exposure 57

Failure to Provide Proper Safety Equipment to Workers Working Directly With Pesticides 59

Failure to Mitigate Pesticide Exposure for People Not Working Directly With Pesticides 61

4.2. Sanitation and Access to Drinking Water While Working 62

Toilets and Hand Washing Facilities 63

Drinking Water 64

4.3. Injuries While Working 64

4.4. Legacy of the *Dop* System 65

Box 2: Remnants of the *Dop* System 67

4.5. Failure to Provide Sick Leave or Maternity Leave 68
Box 3: Challenges Faced by Foreign Migrant Workers in the Western Cape 71

V. Lack of Freedom of Association and Obstacles to Union Formation 72
5.1. Obstacles to Union Formation 72
5.2. Farmers' Efforts to Force or Persuade People to Resign from Unions 74
5.3. Poor Treatment of Union Members 76
5.4. Impact of Union Formation 76

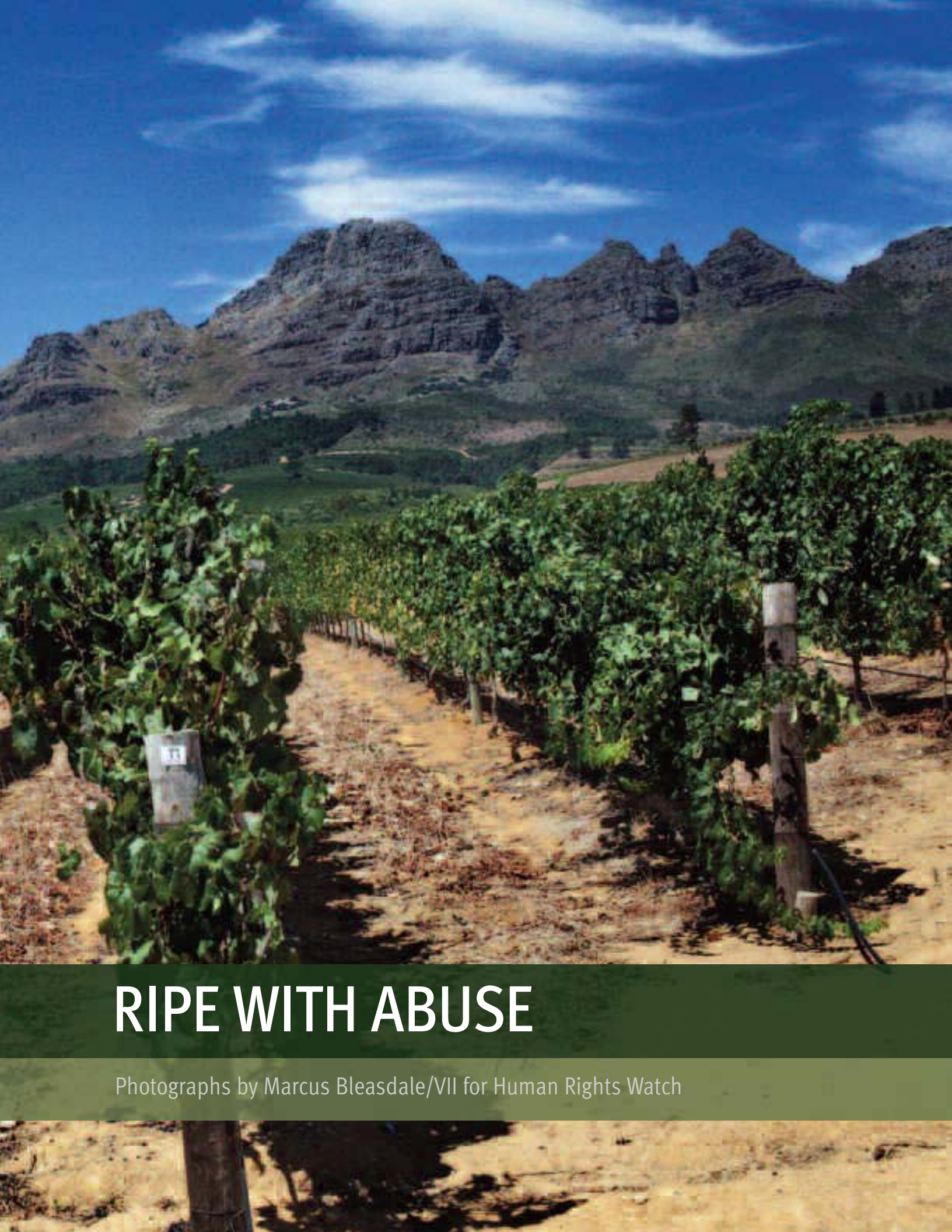
VI. Protection and Redress 78
Box 4: The Government's Failure to Protect Beneficiaries in Farm Equity Schemes 78
6.1. Lack of Effective Government Monitoring of Labor Conditions and Enforcement of Labor Laws 80
Labor Inspector Capacity 80
Labor Inspections and the Agreement Between the Department of Labour and Agri SA 81
6.2. Failure of the Government to Protect People Evicted from Farms 85
6.3. Limited Private Efforts to Address Conditions for Farmworkers and Farm Dwellers 88
Box 5: Better Practices on Farms 88
Farmers' Associations 90
Wine Industry 91
Fruit Industry 92
Fairtrade Certification 93
International and Domestic Retailers 95
6.4. Conclusion 98

VII. Detailed Recommendations 99

Acknowledgements 104

Summary and Key Recommendations

A vineyard in Stellenbosch, Western Cape.



RIPE WITH ABUSE

Photographs by Marcus Bleasdale/VII for Human Rights Watch

Every year, millions of consumers around the world enjoy South African fruits and the renowned wines that come from its vineyards. Yet the farmworkers who produce these goods for domestic consumption and international export are among the most vulnerable people in South African society: working long hours in harsh weather conditions, often without access to toilets or drinking water, they are exposed to toxic pesticides that are sprayed on crops. For this physically grueling work, they earn among the lowest wages in South Africa, and are often denied benefits to which they are legally entitled. Many farmworkers confront obstacles to union formation, which remains at negligible levels in the Western Cape agricultural sector. Farmworkers and others who live on farms often have insecure land tenure rights, rendering them and their families vulnerable to evictions or displacement—in some cases, from the land on which they were born.

Out of South Africa's nine provinces, the greatest number of farmworkers—121,000—live in the wealthy and fertile Western Cape. Despite their critical role in the success of the country's valuable fruit, wine, and tourism industries, farmworkers benefit very little, in large part because they are subject to exploitative conditions and human rights abuses without sufficient protection of their rights. These abusive practices, which occur to varying degrees on a wide array of farms, are

Farmworkers in Stellenbosch collect grapes during harvest time.

An informal settlement near a farming area. Many farmworkers do not live on farms, but in nearby townships or informal settlements. When workers live on farms, they and their families are vulnerable to eviction or displacement without adequate compensation or suitable alternative accommodations. With no savings and little assistance from farmers or the government, evicted farm dwellers often end up in worse housing conditions.

perpetrated by farm owners or farm managers who are subject to regulation by the South African government. Yet the government has failed to protect the rights of farmworkers and farm dwellers, or to ensure that farmers throughout the province comply with national law.

This report—based on interviews in 2010 and 2011 with over 260 people, including 117 current or former farmworkers and an additional 16 farm dwellers—illustrates the precarious position in which many workers and farm dwellers continue to find themselves. The problems that farmworkers and farm dwellers face are not unknown to the South African government, farmers, or retailers who purchase their products. In 2003 and 2008, for example, the South African Human Rights Commission documented the same types of abuses, and civil society campaigns regarding South African products have led to some private sector efforts to improve farm conditions. Human Rights Watch also spoke with farm owners; this report presents their perspectives, and discusses some of the better practices found on some farms. However, the steps taken to date, whether by the government or by private actors, have not been sufficient to bring overall conditions in the Western Cape agricultural sector in line with the basic standards set forth in South African law and industry codes of conduct.

South Africa's Constitution guarantees a range of rights for every person in the country, as well as several rights that apply only to citizens. Under international law, South Africa is obligated to respect, protect, and fulfill human rights, particularly those contained in international covenants it has ratified. In addition, farmworkers and dwellers are legally protected by specific domestic legislation, as well as by codes of conduct embraced by farmers' associations, industry bodies, and retailers.

A resident of Stofland township returns home.

This former farmworker lives in a “Wendy” house in a squatter camp in Citrusdal. The structure was given to her by the farmer who forced her, her husband, and her small children to leave the on-farm home where they had lived for years. Her Wendy house is a one-room wooden structure where her family of five lives. Wendy houses are sometimes sold as children’s play houses or tool sheds. Because they are made out of wood, they can often present fire risks; they are not meant to be permanent homes.

This elderly couple has been forced to live for years in this former outhouse (toilet) on a farm near Rawsonville. The husband worked on the farm for approximately 20 years until 2010, when he stopped working due to ill health.

Nevertheless, severe problems persist on Western Cape farms. Farmworkers and others who live on farms, including family members and former farmworkers, routinely confront substandard housing conditions. Although farm owners are not required to provide housing for workers, many have done so historically. Human Rights Watch viewed a range of housing, some of which was clearly uninhabitable. For example, Isaak S., a farmworker, has lived with his wife and children for 10 years in a former pig stall with no electricity, water, or ability to provide adequate shelter from the elements. When he complained to the farmer and manager about these conditions, they said they first must "get rid of" other people living on the farm, and would then provide him with a proper house. Yet, a decade later, the other family has not left the farm, and Isaak and his family remain in the pig stall.

Evictions from farms are commonplace. A 2005 study estimated that over 930,000 people were evicted from South African farms between 1994 and 2004. Farm dwellers in the Western Cape are no exception. Under current law, farmers must follow the procedure laid out in the Extension of Security of Tenure Act (ESTA) to evict a farm dweller. However, given the expense and time involved, farmers sometimes resort to other eviction tactics, including cutting electricity or water and harassing farm dwellers. For example, Sinah B. explained how farm management severed electricity for more than a year, resulting in terrible cold in winter that her two children found especially hard to bear. She also said that security guards from the farm harassed families in the middle of the night with dogs and guns, presumably to force them off the land. Although it is a crime for owners to illegally evict occupiers from land, the authorities rarely initiate criminal proceedings.

Even when farmers follow the correct legal procedures to evict farm dwellers, the process does not guarantee that

A resident of Stofland township fixes the roof of his home.

evicted persons have proper alternative housing: often, they have no place to go. In the worst cases, they end up homeless. Although farmers sometimes offer them limited financial compensation to leave, it is usually inadequate to purchase or rent a suitable alternative house. Some farmers give farmworkers "Wendy" houses, wooden structures that are not meant to be permanent houses, but that often end up being used as permanent homes. Municipal governments are generally unprepared to assist evicted farm dwellers, and there is no clear agreement on which government entities are responsible for doing so.

Occupational health and safety conditions on many farms also imperil the health of workers. Around the world, agriculture is one of the most dangerous sectors for workers. In the course of this hazardous work, the majority of farmworkers interviewed by Human Rights Watch about health conditions said they are exposed to pesticides without adequate safety equipment. For example, Dino M., who works with pesticides year round, said he only received overalls and rubber gloves, neither of which adequately protected him from pesticides, in contravention of health and safety regulations. After pleading for a mask, he was given a dust mask, which was not appropriate, as it does not offer protection against chemicals. As a result, he and other workers cover their faces with their caps in an attempt to block the spray of chemicals.

Also, workers often have no access to drinking water, hand washing facilities, or toilets, as required by labor regulations. Labor inspectors have failed to ensure that farmers comply with these health and safety regulations. When farmworkers are ill or injured, as is fairly common, they are often refused legally-required sick leave; they also struggle to obtain timely or affordable health care, given their remote locations and low income.

To remedy these conditions, some farmworkers have attempted to form unions, but they routinely encounter obstacles to union formation and in some cases are denied their right to freedom of association. Farmworkers are some of the most poorly organized workers in the country, with estimates of union "density"—the percentage of workers represented by trade unions—in the Western Cape agricultural sector as low as three percent (compared to 30 percent in the country's formal sector as a whole). Although this is partly because it is difficult to organize in the agricultural sector, Human Rights Watch found that some farmers try to prevent union formation, despite its protection under constitutional and international law. As a result, some farmworkers explained that they did not join unions because they were afraid of facing discrimination or being fired.

However, not all farmworkers interviewed by Human Rights Watch had encountered rights abuses. In a small number of cases, farms fully complied with the requirements of South African law, and workers and others residing on those farms enjoyed at least the basic protections afforded under national law. Indeed, on a handful of farms, farmworkers and farm owners described full compliance with the law as well as a variety of positive practices by employers that went beyond the minimum that is legally required. In general, however, most farmworkers and farm dwellers interviewed for this report had encountered abuses of their rights to housing, health, or adequate labor conditions.

Despite efforts to regulate conditions on farms, the South African government has largely failed to monitor and enforce legal protections guaranteeing wages, benefits, and safe working and housing conditions for workers and other dwellers. At the time of the research, in March 2011, the Western Cape had 107 labor inspectors, who were responsible for over 6,000 farms and all other workplaces in the province. An agreement between the Department of Labour; Agri South Africa (Agri SA), the main farmers' association; and other parties, which requires, among other things, that labor inspectors give farmers prior notice of inspections, applies only to farms. This further undermines the inspectors' capacity to identify violations. The government has also failed to improve substandard on-farm housing or assist evicted farm dwellers. These gaps in protection are exacerbated by farmers' attempts to block union formation on farms, as well as a lack of agreement between the government and farmers over who is responsible for ensuring the well-being of farmworkers and farm dwellers on certain issues, such as providing decent housing.

Over the past decade, various private actors, such as farmers' associations, industry bodies, and retailers, have worked to improve conditions on farms. For example, in 2001, Agri Wes-Cape, the largest farmers' association in the province and the provincial affiliate of Agri SA, adopted a comprehensive Code of Conduct for its members; in 2002, the wine industry created the Wine Industry Ethical Trade Association, a multi-stakeholder initiative that audits members; in 2008, the fruit industry began an ethical trade program; and some international retailers have imposed their

Neighbors of two former farmworkers complain about their living conditions. To make the former workers and their family leave, the farmer occasionally cuts off water supply to all the farmworkers who live on the farm. He has told the other workers that he will restore supply if they succeed in harassing the family to the point that they leave.

This 38-year-old woman works in the vineyards on a Fairtrade-certified farm near Rawsonville. She once was beaten by a foreman. She explained that she also has been treated poorly because she joined a union: "[The farmer] doesn't like unions. He treats union and non-union members different: for non-members, he gives loans [and] paints houses, but he will never help union members."

own audit requirements and supported other programs within their supply chains. These initiatives have had varying degrees of reach and impact, but have so far failed to dramatically alter conditions across all farms in the Western Cape.

Human Rights Watch's research did not identify the supply chain for the products from each farm visited, and this report does not identify individual farms in order to reduce the risk of retaliation against those who told their story, so it was not possible to match stories of abuse to particular suppliers or retailers. Yet the findings indicate that abuses are common across farms in the Western Cape and that decent conditions that comply with all labor and tenure security laws are the exception rather than the rule.

South Africa's existing legislation and private actors' codes of conduct afford workers much greater labor and housing rights protections than they currently receive. If fully implemented, these rules would drastically improve the situation of farmworkers and farm dwellers. The South African government and other stakeholders should undertake immediate efforts to remedy the denial of farmworkers' rights to adequate labor and housing conditions and protect them from the mistreatment that is prevalent on fruit and wine farms in the Western Cape. The government must greatly improve the enforcement of its applicable labor and land tenure laws, while farmers' associations and other actors need to undertake sustained efforts to ensure that farmers abide by the law and promote best practices throughout the agricultural sector. Their current failure to do so neglects their international and constitutional obligations and responsibilities, and traps farmworkers and farm dwellers in exploitative conditions with little hope of redress.

Farmworkers add fertilizer to the soil on an orange farm in Citrusdal. Occupational health and safety conditions on many farms imperil the health of workers. Farmers often fail to provide the proper safety equipment to mitigate farmworkers' exposure to chemicals, sometimes explicitly denying workers' requests for safer conditions.

This accountant from Zimbabwe now labors as a farmworker and lives in Stofland township near De Doorns. He described going hungry in order to send even a little money back home to his family. He said that when he is treated unfairly by a farmer, he has no means of redress. Migrant workers who fear losing their job or being deported often do not complain about their working conditions. They are thus particularly vulnerable to abuse.

A dismantled home in Stofland township. Many residents are Zimbabweans who work on nearby vineyards that produce table grapes for export. Conditions in the township are poor, and water and sanitation limited. In 2009, xenophobic violence forced thousands of Zimbabwean farmworkers in the area to flee their homes.

WESTERN CAPE, SOUTH AFRICA
NAMIBIA
BOTSWANA
SOUTH AFRICA
WESTERN CAPE
NORTHERN CAPE
EASTERN CAPE
WESTERN CAPE
Vredendal
Citrusdal
Vredenburg
Beaufort West
Ceres
Wolseley/Tulbagh
Wellington
De Doorns (Stofland)
Worcester
Paarl
Rawsonville
Franschhoek
Robertson
Ladismith
Oudtshoorn
Little Karoo
Cape Town
Stellenbosch
Villiesdorp
George
Knysna
Constantia
Somerset West
Grabouw
Mossel Bay
LEGEND
Fruit Farming Areas
Wine Farming Areas
© 2011 Human Rights Watch

KEY RECOMMENDATIONS

TO THE DEPARTMENT OF LABOUR

- Take immediate action to enforce compliance with existing labor and health protections, including by filling all labor inspector vacancies and ensuring that labor inspectors always speak with workers when conducting inspections.
- Rigorously enforce the rights of foreign and other migrant farmworkers to benefits to which they are entitled.
- Revise the Protocol for Access to Farms, which was agreed upon by the Department, Agri SA, and others, to ensure that labor inspectors will not set up advance appointments with farm owners.

TO THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

- Take immediate action to ensure the protection of farm dwellers' rights under existing law, including by prioritizing work by Department employees to support persons facing evictions from farms.
- Create a system to track evictions from farms.

TO THE NATIONAL GOVERNMENT AND MUNICIPALITIES THAT COVER RURAL AREAS

- Ensure that farmworkers and farm dwellers are included in government housing plans.
- Devise plans that address the short-term shelter needs of evicted farm dwellers.

TO FARMERS' ASSOCIATIONS

- Create a system to implement and monitor the Agri Wes-Cape Code of Conduct.
- Negotiate an agreement with unions to expand their organizers' access to members' farms before recognition agreements are in place.

TO RELEVANT INDUSTRY BODIES AND ETHICAL TRADE BODIES

- Promote free access of unions onto members' farms and better working conditions across all farms.

TO RETAILERS SOURCING FROM WESTERN CAPE FARMS

- Continue to put pressure on suppliers to comply with the law and to improve labor, health, and housing conditions.
- Retailers that adhere to the ETI Base Code should ensure that the standards contained therein are respected on supplying farms.

TO INTERNATIONAL CONSUMERS

- Inquire into the human rights and labor rights conditions on farms that grow the products they purchase.

Methodology

This report is based on research conducted between September 2010 and May 2011, including field visits to South Africa in November-December 2010 and February-March 2011 that totaled nine-and-a-half weeks.

Human Rights Watch interviewed over 260 people for this report. This includes 85 current farmworkers and 32 former farmworkers. In addition, we interviewed 16 farm dwellers who are not current or former farmworkers, and 14 farm owners or farmers' association representatives. We also interviewed trade union representatives; labor brokers; civil society members; legal services providers; representatives from the fruit, wine, and alcohol industries; academics; and third-party auditors, among others. We spoke to labor inspectors, government employees, and politicians. Nearly all of the interviews were conducted in person with the exception of a few telephone interviews. In addition, Human Rights Watch exchanged correspondence with some private actors, including retailers and farmers' associations.

This report focuses on the situation of agricultural workers in the Western Cape province of South Africa because the greatest number of farmworkers—121,000—live in this wealthy province, where multiple initiatives already have been created by domestic and international actors to address the working conditions of farmworkers. The vast majority of interviews took place in the Western Cape; interviews were conducted in Bonnievale, Cape Town, Ceres, Citrusdal, De Doorns, Franschoek, Grabouw, Ladismith, Lutzville, Paarl, Rawsonville, Robertson, Stellenbosch, Touws River, Worcester, and Vredendal. Some interviews were also conducted in Johannesburg and Pretoria. Citations in this report list the general location of the interview, which, in most cases, is also where the interviewee worked or lived. In some cases, however, the interview was in a different area than where the interviewee worked or lived, so the location listed does not always reflect where the discussed issues occurred. Some of the interviews with farmworkers and farm dwellers were conducted in English; many were conducted in Afrikaans or isiXhosa with the use of an interpreter between those languages and English. A few were conducted in isiXhosa by a Human Rights Watch representative.

With only a few exceptions, almost all of the farmworkers and farm dwellers worked or lived on farms that produced fruit or grapes for wine. These workers worked in the fields, in on-farm pack houses, or in both. We also spoke to workers who worked in other capacities on farms—for example in hotels, restaurants, or shops on wine farms; in crèches or as

security guards on farms; or in an abattoir on a farm. Although many of these workers would be considered "farmworkers" under South African law, we did not count them as "farmworkers" for the purpose of this research given their distinct circumstances.[1] Thus if they lived on a farm they would be considered farm dwellers; otherwise information from our discussions with them was only used to provide background or context.

Interviewees were identified through a variety of methods. In many cases interviews with farmworkers or farm dwellers were arranged with the assistance of organizations that work with or provide services to those populations. Trade unions facilitated interviews with some of their members. Other farmworkers were identified through spending time in communities where they lived. Some farmworkers or farm dwellers whom we approached declined to be interviewed; a few stated that they wanted to tell Human Rights Watch their story but were too afraid that their employer would punish them if they spoke to us. Farm owners were primarily identified through employers' associations and civil society organizations. Given the precautions that we took to ensure that no negative repercussions arose for interviewees, in almost all cases we interviewed either the farm owners/supervisors, or the farmworkers/dwellers, from a farm, but not both.

This report covered over 60 farms, 21 of which were visited by Human Rights Watch researchers. On about one-half of these farms either farmers or workers said that the products were produced for the export market. Most of the farms produce fruit; approximately one-third are wine farms or wine and fruit farms, while a few produced vegetables or flowers. These farms were selected to cover a range of geographical locations throughout the province. To avoid the risk of retaliation against farmworkers and farm dwellers this report does not identify any of the farms, including the small number of farms where workers' descriptions showed full compliance with the law or better practices that went beyond what is legally required. The research did not identify the supply chain for the products from each farm, and we told interviewees that we would not identify individual farms in order to reduce the risk of retaliation against them, so it is not possible in this report to match stories of abuses to particular suppliers or retailers.

Interviews took place in a variety of locations, including homes, offices of local organizations, and semi-private locations such as restaurants. When possible we conducted individual interviews in private with only the interviewee, interviewer(s), and

---

[1] Sectoral Determination 13: Farm Worker Sector, *Department of Labor, Republic of South Africa*, No. 75 of 1997, February 17, 2006, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector (accessed August 12, 2011), art. 13 (1).

interpreter present. In many circumstances, however, this was not possible and interviews were conducted semi-privately with family members or others present. In some instances small group interviews were conducted with multiple farmworkers or farm dwellers. In addition, some shorter interviews were conducted near sidewalks, parking lots, or other public spaces.

In this report "farmworkers" denote paid laborers on farms, while "farmers" means farm owners. "Farm dweller" is used to refer to any non-owner who lives on a farm, regardless of whether or not that person works on the farm. In many cases, farmworkers are also farm dwellers.

No one was offered an incentive for speaking with us. Human Rights Watch made no promises to assist anyone interviewed for this report. All interviewees were informed of the purpose of the interview, that it was voluntary, and that the interviewee could stop the interview at any time.

Any names used for current and former farmworkers and farm dwellers are pseudonyms to protect their privacy and to prevent potential retaliation, with the exception of one former farm dweller who is a named plaintiff in litigation. In addition, because some farm owners requested that their identity also be withheld, we have not included the names of any of the farm owners interviewed in order to remain consistent. Some service providers and government employees also requested anonymity.

The terms "migrant worker," "seasonal worker," "casual worker," and "permanent worker" can have various meanings. In this report, we use "foreign migrant workers" for workers who travel from other countries to South Africa for seasonal agricultural work; most return to their home countries for part of the year, although others may stay in South Africa for more than a year at a time depending in part on job opportunities. Other migrant workers in the Western Cape are South Africans who travel from nearby provinces to undertake seasonal agricultural work. In this report, Human Rights Watch generally refers to such workers as "seasonal workers." Seasonal workers can also be locals who only work during certain seasons. "Permanent workers" is a term that is frequently used to describe workers who are employed full-time throughout the year for an indefinite period of time; many also live permanently on a farm. Unless noted differently this report refers to workers as they describe themselves or as the farm owners describe their work status. The term "casual worker," which is often used interchangeably with "seasonal worker," although they connote slightly different meanings, is used only when workers have self-identified as such.

I. Understanding South African and Western Cape Agriculture

1.1. Farming in South Africa and the Western Cape

Agriculture is a diminishing but still significant sector of the South African economy, employing 603,000 people[2] and constituting the country's most labor-intensive export sector.[3] The government has identified the agricultural value chain as one of the six key "job drivers" that are expected to lead to the creation of five million new jobs by 2020.[4]

Western Cape agriculture contributes considerably to South Africa's economy. The province, which has the greatest number of farmworkers[5] and the second-highest number of farming units in the country after Free State,[6] produces a range of agricultural products, including fruit and wine which are key exports.[7] The Western Cape wine industry is particularly valuable to the South African and provincial economies. The province hosts six of South Africa's nine wine-growing regions and most of the country's vineyards.[8] In 2009 the export value of wine from the Western Cape alone was about 5.91 billion rand (US$700 million).[9] The same year the wine industry contributed an estimated 26,223 million rand (US$3,105 million) to South Africa's gross domestic product, with over half of that sum remaining in the Western Cape.[10] The industry also directly and indirectly supports an

---

[2] This number is out of a total of 13,118,000 workers in all sectors. Statistics South Africa, "Quarterly Labour Force Survey: Quarter 1, 2011," July 2011, http://www.statssa.gov.za/publications/P0211/P02111stQuarter2011.pdf (accessed August 12, 2011), table B.

[3] "The New Growth Path: what is expected from the agricultural sector, address by Minister Ebrahim Patel to the Agri SA Conference, 22February 2011," Draft,http://www.agrisa.co.za/konferensie/Agrisa/Session%204%20-%20Economic%20growth%20and%20job%20creation/01%20-%20Minister%20Patel.pdf (accessed August 12, 2011), p. 6.

[4] Ibid, pp. 4-5.

[5] Statistics South Africa, "Quarterly Labour Force Survey," http://www.statssa.gov.za/publications/P0211/P02111stQuarter2011.pdf, table 3.2.

[6] As of 2007, the province had 6,653 of the country's 39,966 farming units, second only to Free State province. Department of Agriculture, Forestry and Fisheries, Republic of South Africa, "Abstracts of Agricultural Statistics," 2011, http://www.nda.agric.za/docs/statsinfo/Abstract_2011.pdf (accessed August 12, 2011), p. 6.

[7] Provincial Development Council, "The Agriculture and Agri-Business Sector of the Western Cape: A Consensus on the Desired Intervention Strategies for the Agriculture and Agri-Business Sector," June 2005.

[8] Human Rights Watch discussion with a representative of VinPro, November 29, 2010; *Wine.co.za*, "Wine Growing Regions," undated, http://www.wine.co.za/Misc/Page_Detail.aspx?PAGEID=323 (accessed August 12, 2011).

[9] The Western Cape Investment and Trade Promotion Agency – South Africa, "Western Cape Trade Fact Sheet," 2009, http://www.wesgro.co.za/exporter/files/useruploads/user_anon/files/WC_Trade_FS.pdf (accessed August 12, 2011).

[10] This number, which includes direct and indirect impacts, amounts to 2.2 percent of the country's total GDP in 2008 and 7.3 percent of the total provincial GDP of the Western Cape. It also includes an estimated 4,263 million rand generated indirectly by the industry through wine tourism. Conningarth Economists, "South African Wine Industry Information and Systems

estimated 275,606 jobs in South Africa, including in the trade, catering, accommodation, and transport sectors.[11] The importance of the wine industry to tourism renders it even more valuable given that the government has identified productive services such as tourism as key to employment creation.[12] Tourism, in turn, is helpful for the wine industry and particularly wine farmers who can generate money by selling to tourists and creating long-term customers.[13]

Farms in the Western Cape are of different sizes: although the average is approximately 1,000 hectares,[14] many wine and fruit farms are smaller, and it is not uncommon for wine farms to be less than 100 hectares. Most of the workers or owners interviewed by Human Rights Watch work on or own farms that employed between 4 and 70 permanent workers. The number of seasonal workers employed on fruit and wine farms varies, with some hiring no seasonal workers to others taking on well over 1,000 additional seasonal workers.

1.2. Farmworkers

Farmworkers in the Western Cape province of South Africa provide labor that is critical to the success of South Africa's wine and fruit industries. There are 121,000 agricultural workers in the Western Cape, more than in any other province.[15] Nearly half of all farmworkers in the Western Cape work throughout the year.[16] These permanent workers sometimes live full-time on the farms where they work; some of their families have lived on farms in the region for generations. Permanent farmworkers are more often men; on some farms workers interviewed by Human Rights Watch explained that women who worked year round were not considered "permanent."[17]

(SAWIS): Macro-economic Impact of the Wine Industry on the South African Economy," Final Report, December 9, 2009, http://www.sawis.co.za/info/download/Macro_study_2009, pp. 8-9, 29 (accessed August 12, 2011), with reference to the impacts on the Western Cape.

[11] Over half of those jobs are in the Western Cape. Ibid, pp. 7-9.

[12] See Francis Hweshe, "Zuma Mobilises Campaign for SA Tourism," *BuaNews (Tshwane)*, May 4, 2011, http://allafrica.com/stories/201105040766.html (accessed August 12, 2011).

[13] Human Rights Watch interview with a farmer, New York, April 27, 2011.

[14] "Agricultural Statistics in Brief," *Wesgro*, undated, http://www.elsenburg.com/economics/statistics/start.htm (accessed August 12, 2011). A hectare is a unit of land equal to 10,000 square meters and slightly under 2.5 acres.

[15] Statistics South Africa, "Quarterly Labour Force Survey," http://www.statssa.gov.za/publications/P0211/P02111stQuarter2011.pdf, table 3.2.

[16] Statistics South Africa, "Census of Commercial Agriculture, 2007: Financial and production statistics," (Preliminary), February 17, 2009, p. 5.

[17] Many farmworkers interviewed by Human Rights Watch explained that men were often permanent workers while women were not considered permanent. For example, one farmworker explained to Human Rights Watch that all the permanent workers on the farm where he worked were men; all the women were "seasonal" workers, although during harvesting time, actual seasonal workers, both male and female, are brought in. Human Rights Watch interview with farmworker, Lutzville, November 30, 2010. On another farm, one female worker who works year round said that the farmer does not consider her

Agricultural work is inherently seasonal, and the vast majority of farms in the Western Cape require additional workers during certain periods.[18] More than half of all farmworkers in the province are casual or seasonal workers.[19] Although farmers have varying hiring practices for non-permanent labor, a majority of these farmworkers are women.[20] Some are women who live on the farm but only work during certain periods.[21] Others are women and men from nearby townships who are unable to find permanent year-round work.[22] Still others are migrant workers, either from other provinces of South Africa, particularly the Eastern Cape and Northern Cape, or other countries, including Zimbabwe and Lesotho. Some migrant workers arrive for certain seasons and then return home for the rest of the year, struggling to survive on their meager savings.[23] Others move between provinces to work during harvest seasons that occur at different times.[24] Some of these seasonal workers live in townships and are transported to the farm each working day, while others live in hostels on farms.

Seasonal farmworkers are employed through a variety of methods: some directly approach the farm, some work under labor brokers, and others are fetched from different locations specifically to work as seasonal workers. As a result, of the seasonal nature of their work they confront a range of problems, including uncertain earnings, uneven educational

---

permanent, although two male workers interviewed who also worked year round stated that they were permanent. Human Rights Watch interview with Kleintjie S., Citrusdal, November 30, 2010; Human Rights Watch interview with Isaak S., Citrusdal, November 30, 2010; Human Rights Watch interview with farmworker, Citrusdal, November 30, 2010. See also Andries du Toit and Fadeela Ally, "The Externalisation and Casualisation of Farm Labour in Western Cape Horticulture," Programme for Land and Agrarian Studies Research Report, no. 16 (December 2003), p. 23, which notes that "For the most part, the remaining permanent jobs are reserved for coloured men." In contrast, see B.I. Conradie, "What Do We Mean When We Say Casualisation of Farm Work is Rising? Evidence From Fruit Farms in the Western Cape," Agrekon, vol. 46, no. 2 (June 2007), p. 192, which argues that "The most important shift in farm labour [in the period studied] is that women were upgraded from seasonal to permanent jobs."

[18] Although seasonal labor is used in the agricultural sector around the world, some farms with hired labor are able to operate without taking on seasonal farmworkers. For example, one wine-farm owner said that he is able to forgo hiring additional seasonal workers due to a long harvest season, the number of varietals the farm produces, and the production techniques used. Human Rights Watch interview with a farmer, New York, April 27, 2011.

[19] Statistics South Africa, "Census of Commercial Agriculture," 2007, p. 5.

[20] See du Toit and Ally, "The externalization and casualisation of farm labour in Western Cape horticulture," Programme for Land and Agrarian Studies Research Report, p. 15, which notes that in their study, "only 21% of permanent jobs were held by women, [but] almost two-thirds of the harvesting labour force was female."

[21] This does not necessarily mean they are working during peak seasons; some on-farm women who are not considered permanent also work during the off-season. See, Conradie, "What do we mean when we say casualisation of farm work is rising?" Agrekon.

[22] Human Rights Watch interview with a farmer, Stellenbosch, December 6, 2010.

[23] Human Rights Watch interview with Vuyelwa G., November 27, 2010.

[24] Human Rights Watch interview with a farmer, De Doorns, February 28, 2011. He explained that he has hired many of the same seasonal workers for the past 19 years to work for eight weeks each year, and that they then return to the Northern Cape to work during a different harvest season there.

opportunities for children, and unequal status on the farms. Most seasonal workers are not organized in unions and are thus unable to reap benefits that membership can sometimes provide.

Human Rights Watch found that a large majority of seasonal farmworkers and some permanent workers do not receive contracts or copies of their contracts stipulating the conditions of their employment or residence. This makes it difficult for them to understand and demand the wages and benefits to which they are entitled. This illustrates a system that is still in transition from paternalistic arrangements between owners and workers to relationships between employers and employees that are regulated by the government. The government's failure to ensure that farmers adhere to labor legislation, coupled with the low levels of union formation among farmworkers, mean that farmworkers remain in vulnerable situations.

The precarious situation of farmworkers is exacerbated by the low wages that they earn. The minimum wage for farmworkers, which is set by the Minister of Labour through a sectoral determination,[25] is one of the lowest in South Africa's formal employment sector: 7.04 rand per hour (US$1.03), 317.51 rand per week (US$46.61), and 1375.94 rand per month (US$201.98).[26] This wage is lower than the minimum wages for domestic workers—the other lowest wage earners—in most municipalities in the Western Cape.[27] The difference in wages for farmworkers versus other workers is drastic: in 2010 the median pay for farmworkers was 1,213 rand per month, compared to 3,683 rand per month for workers in the formal sector.[28]

Female farmworkers are paid even less than male farmworkers with respective median incomes of 1,192 rand per month versus 1,300 rand per month. Among highest earners the

---

[25] The Employment Conditions Commission (ECC) makes recommendations to the Minister on Sectoral Determinations. Basic Conditions of Employment Act, 1997, amended by the BCE Amendment Act, sections 51-59. The ECC comprises three government appointees, two organized business representatives, and two organized labor representatives.

[26] The minimum wage increased to this amount on March 1, 2011. Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector.

[27] In most Western Cape municipalities, the minimum wage for domestic workers is 7.72 rand perhour, 347.79 rand per week, and 1,506.34 rand per month; in six of the more rural municipalities, their minimum wage is 6.44 rand per hour, 290 rand per week, and 1,256.14 rand per month. Sectoral Determination 7: Domestic Workers, Amendment—Domestic Worker Wages, *Department of Labor, Republic of South Africa*, 2011-2012, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-7-domestic-workers (accessed August 12, 2011).

[28] Statistics South Africa, "Monthly earnings of South Africans, 2010," November 30, 2010, http://www.statssa.gov.za/publications/P02112/P021122010.pdf (accessed August 12, 2011), table I. Note that South Africa breaks down earnings information by formal and informal sectors; the informal sector includes workers who work in small establishments or household businesses and who do not have income tax deducted from salaries or wages. Ibid, p. xx.

discrepancy is even greater with the top five percent of female farmworkers earning 3,467 rand per month compared to the top five percent of male farmworkers earning 5,522 rand per month.[29] Moreover, among all occupations, the "biggest gap between women and men is among skilled agriculture employees."[30]

Box 1: Increased Vulnerability of Female Farmworkers and Farm Dwellers

Female farmworkers can face discrimination and greater levels of insecurity. In general, women are less likely to be deemed permanent workers rendering their job security more precarious. Women workers, even permanent ones, might not receive employment contracts in their own right, even though their husbands receive them.[31] Some farmers discriminate against women by providing fewer of the protections that are required by law, such as pesticide testing or safety equipment. In other cases, farmers refuse to employ pregnant workers or approve maternity leave for them, contrary to the law. Pregnant seasonal workers thus sometimes resort to hiding their pregnancies so that they can continue to earn a living. Despite the potential for women to face even more problems than male workers, labor inspectors are not provided specific training on gender awareness.[32]

Women who live on farms also face unique problems. Farmers are less likely to provide them with residence rights leading to less secure tenure and leaving them dependent on their husbands. Domestic violence is prevalent on farms; as one lawyer said, the problem of domestic violence on farms "is enormous, huge, it's huge."[33] Although women were reluctant to discuss it in interviews, service providers working with farm dwelling communities explained that many women tell them "they continue to stay in terrible situations because they've got nowhere to go."[34]

---

[29] Statistics South Africa, "Monthly earnings of South Africans, 2010," http://www.statssa.gov.za/publications/P02112/P021122010.pdf, table 5.

[30] Statistics South Africa noted that this gap "should be interpreted with caution because of the small numbers involved." Ibid, p. xiii.

[31] See, Human Rights Watch interview with Gerald S. and Betty S., Lutzville, November 30, 2010.

[32] Human Rights Watch Email Exchange with a Department of Labour employee, July 5, 2011.

[33] Human Rights Watch interview with a lawyer at Women's Legal Centre, Cape Town, November 22, 2010.

[34] Human Rights Watch interview with REACH, March 10, 2011.

1.3. Farm Dwellers and On-Farm Housing

An estimated 3 to 4 million farm dwellers live on farms in South Africa, including on many farms in the Western Cape.[35] Farm dwellers may or may not work on the farm.[36] Non-working farm dwellers are often family members of farmworkers, pensioners who used to work on the farm, or former farmworkers who no longer work on the farm for a variety of reasons. Because on-farm housing is generally tied to employment status, farmworkers who have stopped working are often expected to leave the farm. Farmers sometimes offer incentives such as payments or temporary housing structures to entice farm dwellers to leave, or they may commence eviction proceedings under the Extension of Security of Tenure Act (ESTA). Other farmers resort to non-legal tactics to force farm dwellers to leave.

Farmers assert that it is inherently unsustainable to house farmworkers and their families indefinitely on farms, and the practice of providing on-farm housing is diminishing, in part due to farmers' concerns that farmworkers will gain land tenure rights.[37] But, while the workers are active, on-farm employee housing benefits farmers by ensuring that workers are nearby and reducing transportation costs for the farmers. For example, one farmer explained that he allowed new workers to live on his farm when a house was available because he "can't afford to go to town every day to collect one to two workers."[38] Once a worker stops working, however, it is no longer profitable for farmers to allow him or her to remain on the farm, and the farmer faces a difficult choice as to whether to evict that non-productive person to make room for a different worker.

Farmers' obligations towards farm dwellers vary, depending in part on why a resident is on the farm. When farmworkers live in employer-provided housing for which they have wages deducted the farmer must ensure that the house meets the basic standards set forth in

---

[35] The exact number of non-owners who live on farms without working is unclear. During the South African Human Rights Commission's 2007 hearings on farmworkers and dwellers, Agri SA stated that approximately 4 million people live on farms who are not employed by the farmers. At the same time, the Department of Land Affairs submitted that around 3 million non-owners live on farms; this figure presumably includes people who also work on farms. South African Human Rights Commission, "Progress made in terms of Land Tenure Security, Safety and Labour Relations in Farming Communities since 2003," 2008, p. 17.

[36] Social Surveys and Nkuzi Development Association, which authored a study on evictions from farms, define farm dweller as "[a]ny person, other than the owner, who is living on a farm.... [Q]uestions have been raised about whether 'farm dweller' is an appropriate term ... [because it] does not fully capture the strength of their connection to the land." Social Surveys and Nkuzi Development Association, "Still Searching for Security: The reality of farm dweller evictions in South Africa," December 2005.

[37] For example, one farmer explained that he has 18 houses on his farm, but only about six of them accommodate someone working on the farm. Because all the houses are occupied, he cannot use them for farmworkers on his farm. He noted that "the question is, where is the next generation of farmworkers going to stay?" Human Rights Watch interview with a farmer, Paarl, March 16, 2011.

[38] Human Rights Watch interview with a farmer, Citrusdal, March 2, 2011.

Sectoral Determination 13, which regulates conditions of employment for farmworkers. When farmworkers live in employer-provided housing but do not pay for it farmers are not specifically obligated to ensure that the housing meets those conditions, although if the dwelling was built or altered after 1977, it should comply with standards set by the National Building Regulations.[39] Farmworkers and farm dwellers have the right to receive visitors and the right to "family life in accordance with the culture of that family."[40]

Except in limited cases, farmers cannot terminate the residence rights of a person who has lived on the land for at least 10 years and either reaches the age of 60 or is the farmer's employee or former employee and can no longer work due to ill health, injury, or disability.[41] By law, these farm dwellers' housing rights must be respected. When a farmworker not in that category stops working on the farm, the farmer can terminate the worker's right of residence, thus starting the legal eviction process. The termination of rights must be fair: for a worker whose right of residence arises solely from employment, the farmer may terminate it if the worker resigns or is dismissed in accordance with the Labour Relations Act.[42] Farmers must provide notice and apply to the court for an eviction order. Although farmers are not obligated to allow former workers who do not fall into the protected class to remain on the land indefinitely, it is a crime to evict farm dwellers without a court order, including undertaking acts that amount to evictions, such as cutting off the water supply.[43]

Depending on a farm owner for housing, while helpful to the worker, also makes the worker vulnerable to the possibility of eviction and homelessness. As one labor inspector pointed out, "If I lose my job here today, I still have a place to stay and so does my wife. If a farmworker loses his job today, he loses his place to stay and so does his family." Of the farm dwellers facing eviction, some would prefer to stay on the farm because they feel deep ties to the land on which they, and sometimes their ancestors have lived, while others would prefer to relocate if they can acquire suitable housing or are provided with the resources to obtain it.

---

[39] Codes of Practice and National Building Regulations cover the construction of new buildings and alteration of existing ones since 1977, when the National Building Standards Act was enacted. Some on-farm housing is too old to be covered by the Act and regulations.

[40] Extension of Tenure Act (ESTA), *Republic of South Africa Government Gazette*, No. 62 of 1997, November 28, 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808 (accessed August 12, 2011), art. 6(2)(b), (d).

[41] Ibid, 8(4). Owners may only terminate the residence rights of an occupier who falls into this group in exceptional cases.

[42] Ibid, 8(1), (2).

[43] Ibid, 23.

The cycle of tenure insecurity, low wages, and lack of housing options for former farmworkers has created a broken system that neither the government nor the private sector has taken responsibility to repair. Some farmers argue that the solution is off-farm housing for people who retire from farm work, preferably in agrivillages that are serviced by municipalities.[44] The government points to a similar solution: at the end of 2010, the Department of Rural Development and Land Reform released a draft Land Tenure Security Bill, which would replace the ESTA and which focuses on agrivillages as a way to address the rural land and housing crisis.[45] This proposal has elicited varied responses. While agrivillages could potentially support farmworker communities, the government has not provided sufficient information on its plans to implement them. Without careful planning and a commitment to prioritizing the interests of former farm dwellers, the government's efforts could lead to disastrous consequences, creating essentially shanty towns that lack municipal services or viable transportation options and are far from employment opportunities.

1.4. Farmers, Management, and the Supply Chain

Farmers in the Western Cape are increasingly diverse—with emerging small-scale farmers, black economic empowerment beneficiaries, and new foreign owners—but the majority of commercial farms in the province are still owned by white South Africans. Farmers' associations, including Agri South Africa and its affiliate Agri Wes-Cape, represent and lobby on behalf of commercial agriculture.

A number of farmers turn to labor brokers to supply or manage workers, particularly seasonal workers. These brokers can range from individuals—often former farmworkers themselves—whose sole job is to supply laborers, to companies that provide workers along with management services, equipment, and transportation. Under Sectoral Determination 13 brokers are considered the employer of farmworkers that they procure.[46] Labor brokers, who often enter into seasonal or multi-year contracts with farmers, typically are responsible for paying the workers that they have supplied; depending on the contract, they sometimes supervise their workers in the field as well.

---

[44] See, Human Rights Watch interview with a farmer, Paarl, November 29, 2010; Human Rights Watch interview with farmers, Paarl, March 16, 2010.

[45] Department of Rural Development and Land Reform, Republic of South Africa, Draft Land Tenure Security Bill.

[46] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. (33)(2). Temporary employment services, defined as "any person who, for reward, procures for or provides farm workers to a client if that person remunerates the farm workers" and farmers (clients) are "jointly and severally liable to comply with this determination in respect of its farm workers." Ibid, (33)(1), (3).

In recent years, the Congress of South African Trade Unions (COSATU) has called for the banning of labor brokers in all sectors of the economy based on its belief that the practices of such brokers perpetuate worker exploitation.[47] Although some labor brokers may be complying fully with labor legislation, other brokers, particularly those who are unregistered, employ workers without giving them all the benefits to which they are entitled. For example, Gerald G., an unregistered labor broker who supplies seasonal labor, said that he never gives contracts or safety equipment to his farmworkers; he was not worried about the Department of Labour learning of his practices, however, "because I have friends at the Department and they know what I do."[48]

The supply chain for South African wine and fruit varies. Wine producers can be estate wineries, which grow their own grapes; co-operatives, which process grapes from farmer member shareholders; or independent cellars or wholesalers, which purchase grapes from farmers who do not make their own wine.[49] Farmers who produce fruit sometimes pack fruit on their premises and sometimes pay external pack houses to do so. Farmers who export their products generally go through exporters that sell to importers or retailers.[50] Exporting farmers, who receive almost no agricultural subsidies, must compete on the international market against heavily subsidized farmers from Western countries. Some retailers purchasing South African products require audits of supplier farms, which are generally paid for by farmers, sometimes with the support of exporters.[51]

1.5. Previous Scrutiny of Farm Work in South Africa

The problems that farmworkers and farm dwellers face are not new, nor are they unknown to the South African government, farmers, or retailers who purchase their products. The agriculture sector has been the subject of recurring domestic and international attention, including civil society campaigns targeting export markets. While the South African

---

[47] Patrick Craven, "COSATU maintains proposal to completely ban labour brokers," Congress of South African Trade Unions, August 26, 2009, http://www.labournet.net/world/0908/labroker4.html (accessed August 12, 2011); Alistair Anderson, "COSATU remains steadfast against labour brokers," *BusinessDay*, January 28, 2011, http://www.businessday.co.za/articles/Content.aspx?id=132811 (accessed August 12, 2011).

[48] Human Rights Watch interview with Gerald G., Vredendal, December 1, 2010.

[49] Wines of South Africa, "Wine producers," 2009, http://www.wosa.co.za/sa/overview_producers.php (accessed August 2011).

[50] This is not always true, however. For example, in the fruit industry, some pack houses sell to exporters, while others export fruit directly. Although exporters generally purchase fruit, some produce the fruit as well. See Doug Cahn, "Tesco Fruit Supply Chain in South Africa: Pilot Project to Test Principles of Effective Grievance Mechanisms," *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*, p. 64.

[51] Human Rights Watch interview with Tesco, Stellenbosch, March 15, 2011; Human Rights Watch interview with Third-Party Auditor, Cape Town, March 18, 2011.

government and private actors have taken some steps to improve conditions, the history of these efforts shows that they have not been sufficient to bring overall conditions in line with the basic standards outlined in South African law and industry codes of conduct.

In June 2001, the South African Human Rights Commission (SAHRC) undertook a national inquiry into human rights violations in farming communities. Although this inquiry and the resulting report released in August 2003 drew attention to a range of abuses on farms and identified recommendations, a 2004 SAHRC internal review determined that many of the recommendations had not been implemented.

Meanwhile, interest in the plight of farmworkers led various stakeholders, including civil society groups, government representatives, unions, and producers' organizations, to come together to address conditions on farms. However, South Africa's agricultural industry continued to attract negative publicity. In 2005 South African and European civil society groups targeted UK retailers over the conditions of South African farmworkers.[52] In connection with these campaigns, in 2006 a South Africa farmworker spoke at the annual general meeting of shareholders of the British retailer Tesco regarding the low wages she received on a farm that supplied fruit to the company.[53] The attention she garnered helped to serve as a catalyst for new ethical trade initiatives by the company and the wider fruit industry, which are described further below.

The South African Human Rights Commission in September 2007 again held public hearings on farm conditions; in 2008 it released a report documenting the continuance of a number of problems on farms and noting that the government and industry response, while achieving some improvements, had been insufficient.[54] Among its findings, the SAHRC noted that: "[t]here has been very little progress towards achieving security of tenure for farm dwellers and labour tenants;" despite "[s]teady progress" towards improving adherence to labor and occupational health and safety legislation on farms,

---

[52] ActionAid, "South African Poverty Campaigner Speaks Out," October 14, 2005, http://www.actionaid.org.uk/100166/press_release.html (accessed August 12, 2011); ActionAid, "Rotten fruit: Tesco profits as women workers pay a high price," June 2005, http://www.actionaid.org.uk/doc_lib/14_1_rotten_fruit.pdf (accessed August 12, 2011). Some of the civil society groups that have been involved in campaigns involving international retailers, based on their sourcing of South African agricultural products, include ActionAid, Friends of the Earth, Oxfam, Sikhula Sonke, War on Want, and Women on Farms Project.

[53] Julia Finch, "Fruit picker wins Tesco's support," *The Guardian*, July 8, 2006, http://www.guardian.co.uk/business/2006/jul/08/supermarkets.tesco (August 12, 2011).

[54] South African Human Rights Commission, "Progress made in terms of Land Tenure Security, Safety and Labour Relations in Farming Communities since 2003," 2008.

"there is still evidence of substantial non-compliance;" and inadequate controls on "handling and storage of pesticides represents a major hazard for workers."[55]

Since then the plight of farmworkers has remained in the spotlight.[56] At the National Farmworker Summit in the Western Cape in July 2010 President Zuma noted that "[i]t is a fact that working conditions for many farm workers still remain far from ideal" and that, "[w]hile the farm worker and the farm dweller are the most vulnerable member of our community; within this group, women and the aged are worse off."[57] Industry has also remained engaged. For example, the National Agricultural Marketing Council is exploring the feasibility of setting up a new multi-stakeholder body to help promote ethical trade in the agricultural sector.[58] If it does it will join several other such bodies formed over the years to respond to demand for better practices on farms. It is not clear, however, what impact newer initiatives might have on conditions faced by farmworkers and farm dwellers, given the persistent problems they have continued to confront even after intense scrutiny and promised reforms.

---

[55] Ibid, pp. 9-10.

[56] See War on Want, "Sour Grapes: South African wine workers and British supermarket power," February 2009.

[57] "Address by His Excellency, President Jacob Zuma, at the National Farm Workers Summit," Somerset West, Western Cape, July 30, 2010, http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=11840&tid=13731 (accessed August 12, 2011).

[58] Fresh Produce Exporters' Forum, "Ethical Trade," 2010, http://fpef.co.za/2010110918/ethical-trade.html (accessed August 12, 2011).

II. Governmental and Business Responsibilities

2.1. The South African Government's Constitutional and International Legal Obligations and Relevant Domestic Law that Applies to Employers and Farm Owners

The Constitution of the Republic of South Africa, 1996, which is the supreme law of the country,[59] notes that the Bill of Rights "enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."[60] Furthermore, "[t]he state must respect, protect, promote and fulfill the rights in the Bill of Rights."[61] The Bill of Rights guarantees a range of rights for every person in South Africa, as well as certain rights that are restricted to citizens.[62] In respect of some of those rights the government must take reasonable measures to achieve their progressive realization.[63]

The South African government has enacted legislation and regulations that are relevant to the rights of farmworkers and farm dwellers. This includes Sectoral Determination 13, which was promulgated by the Minister of Labour to establish basic conditions of employment for farmworkers.[64]

The Government of South Africa is obligated to respect, protect, and fulfill the rights enshrined in international and regional instruments it has ratified.[65] A number of such instruments are relevant in respect of rights abuses faced by farmworkers and farm

---

[59] Constitution of the Republic of South Africa, *Republic of South Africa Government Gazette,* No. 108 of 1996, chapter 1, art. 2.

[60] Ibid, chapter 2, art. 7(1).

[61] Ibid, chapter 2, art. 7(2). These rights may be limited only in certain circumstances. Ibid, chapter 2, art. 7(3); Ibid, chapter 2, art. 36.

[62] Rights limited to citizens include political rights, rights to reside in the country, and rights to choose freely their trade, occupation, or profession. Ibid, chapter 2, arts. 19, 20, 21(3)-(4), 22.

[63] Ibid, chapter 2, arts. 26(2), 27(2).

[64] The Basic Conditions of Employment Act (BCEA), *Parliament of the Republic of South Africa*, No. 75 of 1997, http://www.labour.gov.za/downloads/legislation/acts/basic-conditions-of-employment/Act%20-%20Basic%20Conditions%20of%20Employment.pdf (accessed August 12, 2011), enables the Minister of Labour to promulgate Sectoral Determinations to establish basic conditions of employment for workers in a sector and area, excepting sectors in which a collective agreement concluded by a bargaining council or statutory council already exists. BCEA, art. 51-55. If a matter is regulated in both the BCEA and the Sectoral Determination, the provision in the Sectoral Determination prevails, BCEA, art. 57. Inspectors from the Department of Labour are tasked with monitoring the implementation of Sectoral Determinations and ensuring that employers follow all requirements.

[65] The government also undertakes not to undermine the object and purpose of treaties to which it is a signatory. Vienna Convention on the Law of Treaties 1969, United Nations, Treaty Series, vol. 1155, p. 331, entered into force on January 27, 1980, art. 18.

dwellers in the Western Cape. In addition, the South African Constitution requires that international law be considered in interpreting the Bill of Rights and legislation.[66]

Evictions and Housing Conditions

The right to housing is enshrined in the South African Constitution,[67] as well as international law. In 2000 the Constitutional Court of South Africa stated that the government had to provide shelter for those "who have no access to land, no roof over their heads,… people who are living in intolerable conditions and … people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition."[68] The court thus found that a government housing policy that did not address the emergency housing needs for communities in crisis and particularly vulnerable people was flawed.

The constitution prohibits evictions without a court order,[69] while the Extension of Security of Tenure Act (ESTA) regulates evictions.[70] The ESTA creates a protected class of occupiers who have resided on the land for at least 10 years and either reached the age of 60 or are employees or former employees of the owner and due to ill health, injury, or disability can no longer work. Owners may not terminate the residence rights of such occupiers except in certain limited cases.[71] The ESTA also protects other occupiers who do not fall into that category, and creates a legal procedure that must be followed for evictions.[72] Before issuing the order the court must determine "whether it is just and equitable" to do so, considering, inter alia, the amount of the time the person has resided on the land and the

---

[66] Constitution of the Republic of South Africa, chapter 2, section 39(1)(b); chapter 14, art. 233.

[67] Ibid, chapter 6 (Bill of Rights), art. 27(1)(b).

[68] Government of the Republic of South Africa and Others v Grootboom and Others, 2001 (1) SA 46 (CC),h ttp://www.lrc.org.za/Docs/Judgments/grootboom_cc.pdf (accessed August 12, 2011).

[69] Constitution of the Republic of South Africa, art. 26(3).

[70] ESTA defines eviction as depriving "a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of this Act." ESTA, No. 62 of 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808, art. 1(1)(vi). This definition is more expansive than that of the Committee on Economic, Social and Cultural Rights' definition of "forced evictions": "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7, Forced evictions, and the right to adequate housing, U.N. Doc. E/1998/22 (1997), http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument (accessed August 12, 2011), annex IC, p. 113, para. 3.

[71] ESTA, No. 62 of 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808, art. 8(4). Owners may only terminate the residence rights of an occupier who falls into this group in limited cases, for example, if the occupier intentionally and unlawfully harmed any other person occupying the land or intentionally damaged property of the farmer.

[72] Ibid.

availability of suitable alternative accommodation.[73] It is a crime to illegally evict any occupiers.[74]

Regional and international instruments also require the South African government to provide a level of housing protection. For example, the African Women's Charter, which South Africa has ratified, states that women have "the right to equal access to housing and to acceptable living conditions in a healthy environment."[75] In addition, women "have the right to live in a healthy and sustainable environment."[76]

As a state party to the International Covenant on Civil and Political Rights (ICCPR), the South African government is obligated to respect and ensure protection of the family, whose integrity is sometimes compromised by evictions of farm dwellers.[77] Similarly, under the African Charter for Human and Peoples' Rights (ACHPR), South Africa must recognize and promote protection of the family unit.[78]

The International Covenant on Economic, Social and Cultural Rights (ICESCR) also enumerates a right to adequate housing.[79] South Africa has signed but not ratified the ICESCR. There are no clear reasons for why it has not done so, although the president has pointed to concerns over possible conflicts between the ICESCR and the constitution, as well as the difficulty of identifying a department to oversee implementation,[80] without explaining how the ICESCR would conflict with the constitution. Indeed, the South African Constitution provides a wide array of protections in respect of economic, social, and cultural rights. Further, because the ICESCR enumerates basic international human rights, if there are sections of the constitution that actively conflict with the ICESCR, these sections should be amended.

---

[73] Ibid, (11)(3). This is the requirement that applies to people facing eviction who occupied their houses after February 4, 1997. There are slightly different requirements to evict persons who were occupiers before or on February 4, 1997.

[74] Ibid, 23. The Department of Rural Development and Land Reform has released a draft Land Tenure Security Bill, which would replace ESTA.

[75] Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa (the Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/Leg/66.6, entered into force November 25, 2005, art. 16. The Maputo Protocol was ratified by South Africa December 17, 2004.

[76] Ibid, art. 18.

[77] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 23.

[78] The Maputo Protocol, art. 18.

[79] International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 11(1).

[80] Kristin Palitza, "CSOs Urge Binding Commitment on Socio-Economic Rights," *Inter Press Service News Agency,* September 16, 2010, http://ipsnews.net/africa/nota.asp?idnews=52848 (accessed August 12, 2011).

Instead of conflicts, ratification of the ICESCR would provide stronger protection for certain rights set forth in the constitution. Moreover, the Committee on Economic, Social and Cultural Rights (the Committee), the treaty's monitoring body, has held that for each right there are certain minimum core obligations that are so fundamental that states must fulfill them.[81] For example, in respect of the right to adequate housing, the Committee explains that "[e]victions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights."[82] The Committee further identifies what constitutes "adequate" housing, including a degree of legal security of tenure; availability of services, materials, facilities, and infrastructure, which includes safe drinking water and sanitation facilities; affordability; habitability that protects from the elements or other threats to health; accessibility; location that allows access to services; and cultural adequacy.[83] The Committee has noted that one minimum core obligation of the right to health is to "ensure access to basic shelter, housing and sanitation."[84]

The Constitutional Court of South Africa has found that there is no core minimum obligation that attaches to constitutional rights, but rather that the government must take reasonable steps to realize enshrined rights.[85] That interpretation fails to protect the aspects of rights that are so fundamental that the international community has recognized that they must be fulfilled. Ratification of the ICESCR would help protect the core minimum aspects of economic, social and cultural rights. This could make a difference regarding on-farm housing, some of which does not meet the minimum core obligations for the right to health or the definitions of adequate housing set by the Committee.

Occupational Health and Safety

The South African Constitution guarantees everyone the right "to an environment that is not harmful to their health or well-being"[86] and "the right to have access to health care

---

[81] CESCR, General Comment No. 3, The Nature of States parties obligations, U.N. Doc. E/1991/23 (1990), http://www.unhcr.org/refworld/docid/4538838e10.html (accessed August 12, 2011), para. 10. CESCR notes that "for example, a State party in which any significant number of individuals is deprived of … basic shelter and housing … is, prima facie, failing to discharge its obligations under the Covenant."

[82] CESCR, General Comment No. 7, U.N. Doc. E/1998/22 (1997), http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument.

[83] CESCR, General Comment No. 4, The Right to Adequate Housing, U.N. Doc. E/1992/23 (1991), http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument (accessed August 12, 2011).

[84] CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (2000), http://www.unhcr.org/refworld/docid/4538838d0.html (accessed August 12, 2011), para. 43(c).

[85] See Mazibuko v. City of Johannesburg (2009), which noted that there was no minimum core obligation in respect of the right to water.

[86] Constitution of the Republic of South Africa, art. 24.

services," which the government must take reasonable measures to achieve.[87] The Occupational Health and Safety Act (OHSA), 1993 (Act No. 85 of 1993), regulates workplace health and safety for workers in all sectors. The OHSA requires employers to provide and maintain a safe workplace.[88] Labor inspectors are tasked with ensuring that employers comply with health and safety regulations.[89] Employers who fail to comply with occupational health and safety regulations may be subject to penalties.[90]

Under the OHSA, the Department of Labour has promulgated the Regulations for Hazardous Chemical Substances, 1995, and the Hazardous Biological Agents Regulations, 2001, which apply respectively to employers at workplaces where persons may be exposed to hazardous chemical substances or hazardous biological agents. Both sets of regulations require that employers provide employees with information and training, medical surveillance and attention in certain cases, and respiratory protective equipment and protective clothing.[91] The Facilities Regulations, 1990, also promulgated under OSHA, require that employers provide sanitary facilities and an adequate supply of drinking water.[92]

The Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993, covers workers' compensation and disability benefits for injuries occurring on the job. Under the

---

[87] Ibid, art. 27(1)-(2).

[88] Occupational Health and Safety Act (OHSA), *Republic of South Africa Government Gazette*, Act No. 85 of 1993, arts. (8), (43).

[89] Ibid. In addition, inspectors from the Department of Health may become involved when pesticides are classified as hazardous substances under regulations promulgated pursuant to the Hazardous Substances Act, *Republic of South Africa Government Gazette,* No. 15 of 1973. In that case, health inspectors are tasked with ensuring that requirements for the use, storage, and disposal of the chemical have been complied with, and may investigate in the case of pesticide poisonings, which should be reported to the Department of Health. Health Act, *Republic of South Africa Government Gazette,* No. 63 of 1977, http://www.nda.agric.za/doaDev/fisheries/03_areasofwork/Aquaculture/AquaPolGuidLeg/Legislation/HealthActNo63of1977.pdf (accessed August 12, 2011); Declaration of Medical Conditions to be Notifiable Medical Conditions in Terms of the Health Act.

[90] OHSA, Act No. 85 of 1993, art. 43(4).

[91] Department of Labour, Regulations for Hazardous Chemical Substances, *Republic of South Africa Government Gazette*, 1995; Department of Labour, Hazardous Biological Agents Regulations, *Republic of South Africa Government Gazette*, 2001. Note that the general use of pesticides on farms is also governed by the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, *Republic of South Africa Government Gazette*, 36 of 1947, http://www.nda.agric.za/doaDev/sideMenu/ActNo36_1947/Act%2036%20of%201947.pdf (accessed August 12, 2011), which addresses the conditions for sale and use of pesticides. The Act authorizes the Department of Agriculture, Forestry, and Fisheries to promulgate regulations.

[92] On premises where less than 11 persons are employed, employers may make written arrangements for employees to use sanitary facilities on adjoining premises within certain constraints. Facilities Regulations, *Republic of South Africa Government Gazette,* 1990, art. (2)(2), (7).

Act, employers must either pay into the workers' compensation fund or obtain insurance to fully cover any and all costs due a worker.[93]

The Committee on Economic, Social and Cultural Rights has interpreted the ICESCR to include "preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health [and] … the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment."[94]

Freedom of Association

The South African Constitution guarantees the right to freedom of association,[95] and all workers have the right "to form and join a trade union; to participate in the activities and programmes of a trade union; and to strike."[96]

In addition, under the ICCPR and ACHPR, the South African government is obligated to respect the right to freedom of association.[97] Having ratified International Labour Organization (ILO) Conventions 87 and 98, South Africa has committed to ensure that workers have the right to establish and join organizations of their own choosing and that workers are protected against discrimination based on union activity.[98] The ILO has

---

[93] Compensation for Occupational Injuries and Diseases Act, *Republic of South Africa Government Gazette*, No. 130 of 1993, arts. 83-84.

[94] CESCR, General Comment No. 14, U.N. Doc. E/C.12/2000/4 (2000), http://www.unhcr.org/refworld/docid/4538838do.html, para. 15.

[95] Constitution of the Republic of South Africa, art. 18.

[96] Ibid, art. 23(2). The Constitution also provides employers with the "right to form and join an employers' organisation" and provides rights to trade unions and employers' organizations regarding organizing and engaging in collective bargaining. Art. 23(3)-(5).

[97] ICCPR, art. 22; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG?67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 10.

[98] ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted July 9, 1948, 68 U.N.T.S. 17, entered into force July 4, 1950, art. 2; ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining, adopted July 1, 1949, 96 U.N.T.S. 257, entered into force July 18, 1951, art. 1. ILO Convention No. 98, 96 U.N.T.S. 257, notes that protection against anti-union discrimination applies particularly "in respect of acts calculated to … [c]ause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities."

determined that freedom of association and the right to collective bargaining are fundamental labor principles and rights.[99]

The Labour Relations Act, No. 66 of 1995, a South African statute that formally adopts ILO provisions, prohibits discrimination against employees for exercising their rights of freedom of association.[100] In addition, the Labour Relations Act stipulates that employers may not dismiss an employee for attempting to join a union, nor may they penalize female workers who are pregnant.

Conditions of Employment

Under the South African Constitution, "everyone has the right to fair labour practices."[101] Under the Basic Conditions of Employment Act (BCEA), which governs basic conditions of employment in South Africa, the Minister of Labour has established Sectoral Determination 13.

Among other things, Sectoral Determination 13 requires that employers pay at least the minimum wage[102] and limits the amount of deductions that employers can make from wages, including no more than 10 percent for food and no more than 10 percent for accommodation.[103] It requires employers to provide written particulars of employment[104] and paid annual leave, sick leave, and maternity leave;[105] regulates the hours of work, including payments for overtime work or work on Sundays and public holidays;[106] prohibits child labor and forced labor;[107] and regulates the termination of employment.[108]

---

[99] International Labor Organization, Declaration on Fundamental Principles and Rights at Work, 1998, https://www.ilo.org/declaration/thedeclaration/lang--eng/index.htm (accessed August 12, 2011).

[100] Under the BCEA, No. 75 of 1997, no person may do or threaten to do the following: require an employee or person seeking employment to not be or become a member of a trade union; prevent such person from exercising rights conferred by the Act; or prejudice such person because of past, present, or anticipated trade union membership or participation. Labour Relations Act, art. 2(1)-(2).

[101] Constitution of the Republic of South Africa, art. 23(1).

[102] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. (5)1-3.

[103] Ibid, art. 8(1)(a)-(b). If the employer deducts for food or accommodation, they must meet certain conditions. Ibid, art. 8(2)-(6).

[104] Ibid, art. 9.

[105] Ibid, arts. 21, 22, 24.

[106] Ibid, arts. 10-20.

[107] Ibid, art. 13(25).

[108] Ibid, arts. 26-31. In addition, it states that, when temporary employment services procure or provide farmworkers to a client, the temporary employment service is considered the employer of the worker, although it and the client are "jointly and severally liable to comply" with the determination. Ibid, art. 33.

The Unemployment Insurance Act, No. 63 of 2001, establishes the Unemployment Insurance Fund (UIF) and provides for the government's payment from the fund of unemployment benefits, maternity benefits, and other benefits.[109]

As State Party to the Banjul Charter, South Africa must recognize and promote work under equitable and satisfactory conditions.[110] This encompasses fair remuneration, a minimum living wage for labor, and equal remuneration for work of equal value; equitable and satisfactory conditions of work; and the right to rest and leisure.[111] Article 7 of the ICESCR, which recognizes the right to just and favorable conditions of work, is similar to the South African Constitution's guarantee of fair labor practices. It requires fair remuneration, safe and healthy working conditions, equal opportunity for promotions, and rest and leisure.[112] The ILO has also adopted conventions specific to farmworkers, such as ILO Convention 129, Labour Inspection (Agriculture), 1969, which covers labor inspections in the agricultural sector. Although South Africa has not ratified these conventions, they provide guidance on international norms regarding hired farm labor.[113]

Racial and Gender Discrimination

The South African Constitution guarantees the right to equality before the law.[114] The Employment Equity Act, No. 55 of 1998, prohibits employers and others from discriminating against employees, in either practice or policy, on a number of grounds, including race, gender, sex, pregnancy, marital status, and ethnic or social origin.[115]

South Africa must ensure that it protects the labor and employment rights of non-citizens. Under the ICCPR, for example, South Africa commits to guaranteeing equality before the

---

[109] Unemployment Insurance Act, *Republic of South Africa Government Gazette*, No. 63 of 2001, arts. 24-26. Farmworkers may claim maternity benefits in terms of this Act. Sectoral Determination, n. 5.

[110] Unemployment Insurance Act, 2001, art. 15

[111] Declaration of the Pretoria Seminar on Economic, Social and Cultural Rights in Africa, art. 6, which was incorporated into the Resolution on Economic, Social and Cultural Rights in Africa adopted in December 2004 by the Banjul Charter.

[112] ICESCR, art. 7. The ICESCR also requires that working mothers receive paid leave or leave with adequate social security benefits before and after childbirth, and recognizes the right to social security and adequate housing. ICESCR, arts. 9, 10, 11.

[113] ILO Convention No. 129 concerning Labour Inspection in Agriculture, adopted June 25, 1969, entered into force January 19, 1972, http://www.ilo.org/ilolex/cgi-lex/convde.pl?C129 (accessed August 12, 2011), discusses labor inspections in the agricultural sector. ILO Convention 11 concerning the Right of Association and Combination of Agricultural Workers, adopted November 12, 1921, entered into force May 11, 1923, http://www.ilo.org/ilolex/cgi-lex/convde.pl?C011 (accessed August 12, 2011), provides that members are "to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers."

[114] Constitution of the Republic of South Africa, art. 9.

[115] This is not a definitive list. Employment Equity Act, *Republic of South Africa Government Gazette*, No. 55 of 1998, October 19, 1998, art. 6.

law and freedom from discrimination.[116] Having ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), South Africa is obliged to ensure that, once an employment relationship has been initiated and until it is terminated, all individuals, regardless of whether they have work permits, are entitled to the enjoyment of labor and employment rights.[117]

Under the ACHPR, South Africa must promote the rights to equality[118] and the elimination of discrimination against women.[119] As state party to the African Women's Charter, the South African government must, among other things, "promote the right to equal remuneration for jobs of equal value for women and men" and guarantee adequate, paid maternity leave.[120] The government is also obligated to "combat all forms of discrimination against women through appropriate legislative, institutional and other measures."[121] Similarly, as state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), South Africa must take measures to eliminate discrimination against women in rural areas and ensure to such women a number of rights, including the rights to have equal treatment in land and agrarian reform and to enjoy adequate living conditions.[122]

2.2. International Human Rights Responsibilities of Private Actors

Although governments have the primary responsibility to respect, protect, and fulfill human rights, private entities such as business enterprises also have responsibilities regarding human rights. The basic principle that businesses of all sizes have a responsibility to respect human rights, including workers' rights, has achieved wide international recognition.[123]

---

[116] ICCPR, art. 26. A few rights are reserved for citizens, see ICCPR, art. 25.

[117] UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation 30, Discrimination against Non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004), para. 11.

[118] Banjul Charter, art. 3.

[119] Ibid, art. 18.

[120] The Maputo Protocol, art. 13(b), (d), (i).

[121] Ibid, art. 2(1).

[122] Convention on the Elimination of All forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, art. 14(2)(g), (h).

[123] The preambles to key human rights treaties recognize that ensuring respect for human rights is a shared responsibility that extends to "every organ of society," not only to states. In addition, the preambles of both the ICCPR and ICESCR recognize that "individuals" have human rights responsibilities, a term that can incorporate juridical persons (including businesses) as well as natural persons. The broad consensus that businesses have human rights responsibilities is also reflected in the decisions of the UN Human Rights Council on business and human rights, discussed further below, as well as in the International Labor Organization's Tripartite Declaration of Principles, the UN Global Compact, and elsewhere.

This approach is reflected in various norms and guidelines, including in the work of the United Nations Special Representative on business and human rights, Professor John Ruggie, who held the post until June 2011. During his mandate the longstanding concept that businesses have a responsibility to respect all human rights secured additional support, including from the UN Human Rights Council and from business organizations.[124] In particular, the "Protect, Respect and Remedy" framework and the "Guiding Principles on Business and Human Rights" for their implementation, which were developed by Ruggie and endorsed by the UN Human Rights Council in 2008 and 2011,[125] respectively, reflect the expectation that businesses should respect human rights, avoid complicity in abuses, and adequately remedy them if they occur. Among other elements they outline basic steps that businesses should adopt consistent with their responsibilities. This includes undertaking adequate due diligence that encompasses risk assessments and monitoring in order to identify and effectively mitigate human rights problems.[126] Moreover, although not specified in the Guiding Principles, it is a best practice among companies, as well as in multi-stakeholder initiatives designed to address business and human rights problems, to require independent third-party audits; some also communicate the results publicly.[127]

---

[124] For example, the International Chamber of Commerce issued a policy statement that reads in part: "Respect for human rights constitutes a baseline expectation for companies operating in any country. All companies, regardless of their size or home country, are expected to obey applicable laws and regulations, including those aimed at protecting human rights. Where national law is absent, or not enforced, companies are expected to respect the principles of relevant international instruments." International Chamber of Commerce, "Policy statement: ICC views on business and human rights," December 10, 2008. This statement expanded on a joint statement ICC issued with two other business groupings in May 2008. See "Joint initial views of the International Organisation of Employers (IOE), the International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee to the OECD (BIAC) to the Eight Session of the Human Rights Council on the Third report of the Special Representative of the UN Secretary-General on Business and Human Rights," May 2008, http://www.biac.org/statements/investment/08-05_IOE-ICC-BIAC_letter_on_Human_Rights.pdf (accessed August 12, 2011).

[125] See UN Human Rights Council, "Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises," Resolution 8/7, A/HRC/RES/8/7; and "Human rights and transnational corporations and other business enterprises," Resolution 17/4, A/HRC/17/L.17/Rev.1.

[126] UN Human Rights Council, report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, "Protect, Respect and Remedy: a Framework for Business and Human Rights," U.N. Doc. A/HRC/8/5, April 7, 2008; and report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," U.N. Doc. A/HRC/17/31, March 21, 2011.

[127] Two examples related to supply-chain issues are the Fair Labor Association and the Worker Rights Consortium's Designated Supplier Program. See Fair Labour Association, "What We Do," 2011, http://www.fairlabor.org/fla/go.asp?u=/pub/mp&Page=WWD (accessed August 12, 2011), and Worker Rights Consortium, "Designated Suppliers Program (DSP)," 2007, http://www.workersrights.org/dsp/ (accessed August 12, 2011). In some cases, local independent organizations established by civil society carry out such monitoring.

III. Poor Housing and Evictions from Farms

> I am staying in such a piece of rubbish on this farm, [so I] requested for a proper house. The farmer and manager said [they] first must get rid of other people who live on [the] farm and don't work, and then we will give you a house. But [you] can't evict [a] family with kids!
>
> —Isaak S., farmworker who has been living with his family for 10 years in a former pig stall with no electricity or water, Citrusdal, November 30, 2010.

Many farmworkers and farm dwellers occupy shelters on farms that are not fit for living and, as defined by the Committee on Economic, Social and Cultural Rights, do not constitute "adequate housing."[128] Workers who live on farms and other farm dwellers are also vulnerable to eviction without due process or compensation. In some cases, evictions can violate farm dwellers' right to family life.

3.1. Poor Housing Conditions on Farms

> Housing conditions are dire, appalling.
>
> —Third-party auditor who inspects labor and other conditions on export farms, Cape Town, March 18, 2011.

Farmworkers who live on farms, as well as other farm dwellers, are often relegated to substandard, unsafe housing that lacks adequate sanitation and fails to provide protection from the elements or other threats to health. In the most extreme cases, farmworkers live in places not designed to shelter humans.

Isaak S., a 40-year-old farmworker who has worked as a permanent worker on an exporting farm for 10 years, has lived in a former pig stall with his wife and children since he started working on the farm. Their housing has no toilet and no electricity, and does not provide adequate protection from the elements, often flooding when it rains. His wife, who used to work on the farm as well, said that she is very unhappy because of the housing conditions, which can pose health risks for her children:

---

[128] CESCR, General Comment No. 4, U.N. Doc. E/1992/23 (1991), http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument.

> I want to set [an] example for my kids, [but] now [the] kids must go to [the] toilet in bushes [where there are] dangerous snakes. It makes me very unhappy because I can't guarantee [the] safety of [my] children and can't provide for [my] children.... For 10 years I must stay in a pig stall.[129]

Sol C., a former farmworker who worked on a farm for approximately 20 years until he was declared disabled in 2010, lives with his wife in a former outhouse (also referred to as a toilet). He moved into the two-room structure three or four years ago while he was still working on the farm, after requesting an on-site home. He had previously stayed with other workers on the farm. Because there were no empty houses, the farmer told him to live in the outhouse, simply covering over the holes inside where people used to relieve themselves. When Sol was declared disabled, the farmer told him he could remain there without paying rent.[130]

The rights to adequate housing and to an environment that is not harmful to health are enshrined in the South African Constitution,[131] as well as international law.[132] Yet the government fails to ensure that all employer-provided housing on farms is adequate, safe, and does not pose health risks. Sectoral Determination 13 requires that when employers deduct wages for accommodations on farms, the housing must meet certain basic conditions.[133] It also prohibits deducting from the wages of more than one worker for shared accommodations.[134] A minority of employers, however, profit off of farmworkers by deducting wages for inadequate housing or making multiple deductions for the same house.[135] Although this is illegal, labor inspectors who assess working conditions generally

---

[129] Human Rights Watch interview with Isaak S. and his wife, Citrusdal, November 30, 2010.

[130] Human Rights Watch interview with Sol C., Rawsonville, December 5, 2010.

[131] Constitution of the Republic of South Africa, chapter 6 (Bill of Rights), art. 27(1)(b).

[132] The Maputo Protocol, arts. 16, 18; ICESCR, arts. 11(1), 12.

[133] If employers deduct farmworkers' wages for accommodation the housing must be at least 30 square meters in size and have a durable, waterproof roof; glass windows that can be opened; electricity, if it exists on the farm; safe water inside or in close proximity; and a flush toilet or pit latrine inside or in close proximity. Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. (8).

[134] Ibid, art. (8)(5). In the case of communal—not family—accommodation, where more than two farmworkers live together, "the maximum deduction that the employer may make in total in respect of all the farm workers who reside in that accommodation is 25% of the applicable minimum wage payable to an individual farm worker," and the employer must deduct equally from each of the farmworkers. Ibid, art. 8(4)-(6).

[135] For example, Human Rights Watch visited a farm where farmworkers had wages deducted to live in houses that clearly did not meet the Sectoral Determination's minimum conditions and were not maintained. One worker on the farm paid 30 rand per week to live with his wife in a small one-room "house" with a broken door, no electricity, and no water or toilet inside. He had twice found large snakes inside because of the broken door; although he asked the farmer to fix the door for over a year, the farmer refused to do so. Human Rights Watch interview with a farmworker, Citrusdal, March 1, 2011. On the same farm, another farmworker said that, every week, the employer deducted 10 percent of her wages and 10 percent of her

do not look at houses for which wages are deducted unless they are specifically told by workers that they do not meet the required standards.[136]

Even when deductions from workers are not made, the state has a responsibility to ensure that its citizens have access to decent shelter. Uninhabitable housing on South African farms has persisted in part because of a lack of clarity as to who is responsible for providing housing for farmworkers and other dwellers. Moreover, there are few legal remedies for workers who do not pay for their own housing, and no specific regulations govern conditions of on-farm housing for which farmworkers do not expressly pay. This gap in legislation means that housing for farmworkers and farm dwellers often is substandard.[137]

Farm dwellers endure this housing because they do not have the means to move into suitable alternative housing, or because they have a strong emotional attachment to the land. For those who work on the farm, moving elsewhere is often not financially feasible due to transportation costs of getting to work.

For their part, farm owners generally do not want to build new houses for workers aside from what currently exists. Some farmers also believe that there is no incentive to maintain houses in good condition, particularly when the person living in the house is not a current worker. This can lead to contrasting housing conditions on the same farm, including poor or overcrowded housing that can facilitate or contribute to the spread of disease. Overcrowding and a lack of sanitary facilities can be linked to health problems, such as asthma, increased incidence of tuberculosis, or gastroenteritis.

---

grandfather's wages for a decrepit house that they shared with two other people. Human Rights Watch interview with a farmworker, Citrusdal, March 1, 2011. Subsequent to these interviews, a local civil society group began working with the farmworkers, and the farmer has (1) paid back the money that was deducted for accommodations and (2) agreed to restore the houses and install electricity. Human Rights Watch email correspondence with a civil society organization, April 29, 2011.

[136] One labor inspector explained that it was "not necessary to look at houses." Rather, inspectors learn about deductions during the document audit process, and then will confirm with employees how much is deducted and whether the housing conditions meet standards. If they find there is a problem, then the inspector will go look at the house. However, the inspector is only authorized to stop the deduction and cannot require upgrades. Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011. Because employers are often warned before an inspection—as discussed in the protection and redress section below—this opens the possibility that they could pressure workers beforehand to say there are no problems.

[137] There are codes of practice and national building regulations that cover the construction of new buildings and alteration of existing ones since 1977. Building control officers are authorized to enter buildings to determine compliance. Department of Trade and Industry, National Building Regulations and Building Standards Act, 103 of 1977, *Republic of South Africa Government Gazette*, art. 15(1). Yet those officers do not appear to enforce employer compliance with such regulations in providing housing to farmworkers. Moreover, some housing is too old to be covered by the Act and regulations.

Farida C. lives in a house without a toilet, although other workers' homes on the farm have indoor toilets.[138] Other farmworkers on the same farm, however, live in metal shipping containers: they had arrived on the farm when no houses were available. Franscina K. explained that she had been living with her family in a metal shipping container on that same farm for five years. The containers often leak and most people staying in them have asthma and tuberculosis, which may be linked to the poor and overcrowded conditions. She said that "[the farmer] always says he is going to give us houses, but never does."[139]

On a different farm many of the farmworkers' houses were well-maintained, relatively spacious, and sturdily built. Yet Antjie G., a former farmworker who was declared disabled but continues to live on the farm without working, has had many problems with her home. This includes a broken sewage pipe in front of her house for a month and a leaking ceiling, causing dampness to which she attributes the health problems in her family. She has been unable to get the farmer to maintain her house, and believes it is partly because the farmer wants her to move.[140]

Seasonal workers who live on farms are often relegated to worse housing than permanent workers. Dino M., a permanent worker, explained that when seasonal workers arrive they stay in poor houses with no water or toilet, relieving themselves in the bushes and walking to get water from the neighbors or elsewhere.[141] Seasonal workers are generally placed in cramped hostels, which can offer little privacy. One foreign worker noted,

> The biggest problem is housing because we all live in one big place and [have] just a little curtain to separate … no privacy and can't have private life.… In January they bring more people because it is season so may be five people in one little room.[142]

Not all on-farm housing is poor. Some permanent farmworkers said they lived in decent houses with no complaints, and on some farms Human Rights Watch saw workers' houses that were kept in good condition with glass windows, electricity, running water, and toilets.[143]

---

[138] Human Rights Watch interview with Farida C., Vredendal, December 1, 2010.

[139] Human Rights Watch interview with Franscina K., Vredendal, December 1, 2010.

[140] Human Rights Watch interview with Antjie G., Stellenbosch, December 7, 2010; Human Rights Watch interview with Antjie G. (second interview), Ceres, March 12, 2011.

[141] Human Rights Watch interview with Dino M., Grabouw, November 27, 2010.

[142] Human Rights Watch interview with a farmworker from Lesotho, Ceres, December 4, 2010.

[143] Human Rights Watch interview with Naomi A., Grabouw, November 27, 2010.

3.2. Evictions

> We had nowhere else to go or to sleep that night. We were forced to camp on the side of a road on the outskirts of Stellenbosch. We slept there in the freezing cold with only plastic tarpaulins to use as some form of shelter from the elements. We did not have enough food to eat and were forced to endure the indignity of using the bushes to relieve ourselves.
>
> —Affidavit of Gert Pieterson, a former farm dweller who was legally evicted along with his wife and two children, ages 8 and 15, despite having no alternative shelter.[144]

> The municipality has never been concerned about farm evictions. They are concerned about urban evictions.
>
> —Magistrate, Worcester, November 26, 2010.

Workers who live on farms and other farm dwellers are vulnerable to eviction or displacement without due process, adequate compensation, or suitable alternative accommodations. Farmers and government officials violate the rights of farm dwellers by undertaking or allowing illegal evictions or those that will render farm dwellers homeless; the government also fails to protect the right to adequate housing by not addressing comprehensively the problem of farm dweller evictions. Farmers who try to avoid the legal procedure for evictions may offer temporary structures, such as Wendy houses,[145] or money to entice farm dwellers to leave, but these resources are usually insufficient and a poor substitute for more permanent housing. In the worst cases, farmers will threaten or otherwise harass farm dwellers to make them leave.

It is estimated that millions of farm dwellers have been displaced from South African farms in the past several decades, and farm dwellers in the Western Cape are no exception.[146] In

---

[144] In the Matter Between Gert Pieterson et al. and Stellenbosch Local Municipality et al., Founding Affidavit.

[145] Wendy houses can vary in size, layout, and sturdiness. Because they are made out of wood, they can often present fire risks; they are not suitable long-term housing. They are sometimes sold as children's play houses or tool sheds; one website that sells Wendy houses explains that "In South Africa, Wendy Houses are normally pre-fabricated timber sheds which are delivered by a small truck and erected in the back garden as either a play area for children or for the storage of garden tools." Homemakersonline, "Wendy Houses, August 22, 2008, http://www.homemakersonline.co.za/features/161/wendy-houses, (accessed August 12, 2011).

[146] In 2005 a study by Social Surveys and Nkuzi Development Association estimated that, between 1984 and 2004, nearly 1.7 million people were evicted from South African farms, including 21,159 households (which each include multiple persons) in the Western Cape. During the same time period, nearly 4.2 million people were displaced from farms; this number includes those who were evicted and those who left based on their own choice, although often due to difficult circumstances on the farm. Social Surveys and Nkuzi Development Association, "Still Searching for Security: The reality of farm dweller evictions in South Africa," December 2005, pp. 41, 42, 46, 59. Agri SA has disputed the findings of the Nkuzi report, noting that there are no reliable statistics on evictions but acknowledging "there has been a big movement of people from rural to urban areas for

addition, more people were evicted from farms in the decade after 1994 than were evicted from farms in the prior decade.[147] The constitution prohibits evictions without a court order,[148] and the Extension of Security of Tenure Act (ESTA) creates a legal procedure for evictions. Under the ESTA, it is a crime for owners to illegally evict farm dwellers, including undertaking acts that amount to evictions, such as cutting off access to water.[149] Agri SA has noted to Human Rights Watch that it encourages its members to comply with the law when evicting farm dwellers, and states that there is no evidence that shows that farmers fail to do so.[150] Yet Human Rights Watch research found that some farm dwellers continue to face illegal evictions. Criminal proceedings for illegal evictions are rarely commenced: although police officers are supposed to assist persons to lay criminal charges, which is a first step towards prosecutions, officers often are not trained on rights under the ESTA and thus are unaware that illegal evictions constitute an offense.[151] The government is thus failing to protect evicted farm dwellers' right to adequate housing.

Even when farmers follow the proper legal procedure, magistrate courts generally fail to ensure that suitable alternative accommodations exist before issuing an eviction order,[152] and the vast majority of court-ordered evictions that are appealed to the Land Claims Court are affirmed.[153] The Department of Rural Development and Land Reform and municipal governments often fail to assist farm dwellers during the eviction process and fail to ensure that evicted farm dwellers have adequate short-term shelter.

---

a variety of reasons." "Agri SA's Presentation to the Portfolio Committee on Agriculture and Land Affairs on Farm Evictions," Cape Town, March 4, 2008, http://www.pmg.org.za/files/docs/080304agrisa.htm (accessed August 12, 2011).

[147] Social Surveys and Nkuzi Development Association, "Still Searching for Security: The reality of farm dweller evictions in South Africa," December 2005, p. 46, table 4.

[148] Constitution of the Republic of South Africa, art. 26(3).

[149] ESTA, No. 62 of 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808, art. 23. Although illegal evictions are a crime, it was estimated in 2005 that only one percent of evictions from farms involved a legal process. Social Surveys and Nkuzi Development Association, "Still Searching for Security: The reality of farm dweller evictions in South Africa," December 2005.

[150] Human Rights Watch correspondence with Agri SA, August 12, 2011.

[151] See, Human Rights Watch email correspondence with Sheldon Margardie, Lawyers for Human Rights, June 15, 2011.

[152] The eviction of farm dwellers without a place to stay is in contrast to the internationally recognized right to housing, which prohibits evictions that would render people homeless or vulnerable to other human rights violations. CESCR, General Comment No. 7, U.N. Doc. E/1998/22 (1997), http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument, art. 17.

[153] For example, in the Cape Winelands District Municipality, approximately 90 percent of eviction orders appealed to the Land Claims Court between 2005 and March 2010 were affirmed in favor of the farm owner. Janet Annandale, "What do we know about legal evictions?" *Phuhlisani*, June 2010, http://www.phuhlisani.com/oid%5Cdownloads%5C20100621CWDMCourtReviewSubmitted.pdf (accessed August 12, 2011), p. 15.

Because the legal process for evicting farm dwellers can be lengthy and expensive, farmers often try to avoid it if possible. One farmer explained:

> The only way to get someone out is to find a place where someone can go and they must agree. I wouldn't personally go that route of ESTA because I'm not a lawyer and I don't want to spend three to four years [following the legal eviction procedure]. I'm a farmer.[154]

While asking former workers to leave is not inherently problematic, some farmers resort to extralegal mechanisms to evict farm dwellers or pressure them to leave. Farm dwellers described a range of tactics used by farmers, including threatening them, cutting off electricity, and limiting water supplies.[155] This can have severe impacts on farm dwellers and their families, who live on land where the farmer provides electricity and water. It is sometimes impossible for farm dwellers to purchase electricity on their own, either because it cannot be provided on the farm without the farmer's consent or because they cannot afford to pay for it. Kobus B., who has been threatened with eviction although no legal proceeding has commenced, explained that having his electricity cut off "is like torture."[156]

Sinah B., who has been living on a farm for 15 years and working on the farm for part of that time, recounted how the farm has tried to get her and her family to leave. The farm first gave papers to her father to try to evict him, but he resisted because he had worked on the farm for 13 years until he was injured. The farm then severed electricity for more than a year without allowing her father to pay for it himself, resulting in terrible cold in winter that her two children found especially hard to bear. Around the same time, security guards on the farm began harassing them, presumably to force them off the farm:

> They came at night at 1 or 2 in the morning; slammed on doors, took children over 18 who didn't work here to the police station.... Security would come with dogs and guns at night. It happened a lot of times ... [about] three times a week for two to three years.

---

[154] Human Rights Watch interview with a farmer, Paarl, March 16, 2011.

[155] Under ESTA, cutting off access to water is tantamount to eviction, and it is unlawful for farmers to cut off access to services such as electricity that had previously been agreed upon either expressly or tacitly. ESTA, No. 62 of 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808, arts. 1(vi), 6(1).

[156] Human Rights Watch interview with Kobus B., Bonnievale, December 12, 2010.

The farm management eventually offered people living on the farm 40,000 rand (US$5,889) per house to leave. The farm offered the money to Sinah and her husband rather than to her father; they refused both because they were living in her father's home and it was not sufficient to purchase a house. Eventually in 2010 the farm gave eviction papers to all the on-farm houses, even though she and her husband were still working on the farm.[157]

Farmers' threats of violence can intimidate farm dwellers into moving from the farm. Sara V. explained how she was forced to move off a farm at the end of 2010 after living on it for 33 years. She had worked long hours for little pay on the farm as a housekeeper and in the fields; her husband had worked in the fields for 21 years until the farmer stopped farming. Sara said that the farmer told her in 2009 that he wanted to develop the farm houses into guesthouses, but that he would assist her to build a house on land that he provided. He denied this in a subsequent meeting at which she was accompanied by a civil society organization, instead offering 10,000 rand (US$1,473) to vacate. The next week, the farmer died, and she was forced to leave without compensation after being threatened with violence by the owner's son.[158]

Farmers sometimes try to intensify pressure on farm dwellers to leave by undertaking efforts that also negatively affect others living on the farm. For example, Sindi M. and her husband, who currently live with their children on a farm where they worked for six to seven years, were both dismissed and then told to leave. Rather than waiting to go through the legal eviction procedure, the farmer has undertaken a range of actions to force them out, including occasionally shutting off the water that Sindi and other farm dwellers use. She explained that "[o]ther farmworkers told me that the farmer said he would frustrate them until they chase my family away. If they do that, then he will make everything right for the farmworkers."[159]

Farmers also try to force farm dwellers off the farm by telling new workers to live in the farm dweller's home. On one farm a farmer told new workers on three separate occasions to live in the home of a former farmworker who worked for years before being injured.[160] Alida M., a former farmworker on another farm, explained that she, her husband, and her small children were forced to move out of their on-farm home when the farmer put foreign

---

[157] Human Rights Watch interview with Sinah B., Stellenbosch, December 8, 2010.

[158] Human Rights Watch interview with Sara V., Citrusdal, March 2, 2011.

[159] Human Rights Watch interview with Sindi M., Rawsonville, December 5, 2010.

[160] Human Rights Watch conversation with former farmworker/current farm dweller, Vredendal, December 1, 2010; Human Rights Watch interview with Gerald G., Citrusdal, December 1, 2010.

workers in their house overnight without their permission, even though she and her family were still in the house. Alida and her husband subsequently agreed to leave in return for a Wendy house, which they placed in a squatter camp; it has no toilet and no water.[161]

Other farmers simply force farmworkers to move off the farm at short notice. For example, one group of farmworkers described how they were pushed off of a farm seven years ago, although they continue to this day to be employed by the same farmer. The farmer told them on a Friday that they had to move on Monday, warning that if they did not move, a bulldozer would destroy their houses. With no support from their local councilor and no money to pay a lawyer, the farmworkers were forced to accept Wendy houses from the farmer, which they placed in a township.[162]

Farm dwellers confronting these aggressive and illegal efforts often have nowhere to turn for assistance. Municipalities often decline to assist displaced or evicted farmworkers, and have no comprehensive plans to ensure that evicted farm dwellers are not rendered homeless.[163] When municipalities do become involved it is generally at the insistence of a civil society group; their contribution does not always ensure optimal outcomes.[164]

Evicted and displaced farm dwellers generally are also unable to find support through the Department of Human Settlements, which has a range of programs and subsidies designed to alleviate housing concerns. The Department endeavors to provide houses to people who meet certain requirements, but the large number of houses that the government has provided is dwarfed by the number of names on housing waiting lists.[165] Many current and

---

[161] Human Rights Watch interview with Alida M., Citrusdal, March 5, 2011.

[162] Human Rights Watch interview with farmworkers, Franschoek, December 8, 2010.

[163] Indeed, the Stellenbosch local municipality and the Cape Winelands District municipality are currently being sued for failing to provide suitable relief for evicted farm dwellers as required by the Constitution and the Emergency Housing Programme. The plaintiffs in the case, along with their minor children, were forcibly evicted from their home on a farm, where they had lived for 21 years. As one plaintiff explained in an affidavit, the court-ordered eviction "rendered us homeless with literally no roof over our heads. … Our possessions, furniture and clothes were simply hauled out from the house, loaded on a van and dumped on the side of the N2 freeway next to the farm." In the Matter Between Gert Pieterson et al. and Stellenbosch Local Municipality et al., Founding Affidavit.

[164] Human Rights Watch interview with Seun B. and Anna B., Ceres, December 3, 2010. When a new owner took over, Seun and Anna were forced to move off the farm on which Anna was born and they both had worked. The local advice center eventually convinced the municipality to build communal toilets on municipal land and then allow Seun and Anna to place a Wendy house next to the toilets. There are many flies and pigs near this location.

[165] In the 2010-2011 financial year the government completed 63,546 serviced sites and 121,879 houses; in the Western Cape it completed 11,628 serviced sites and 12,908 houses. Department of Human Settlements, "Housing Delivery (Serviced sites completed and houses completed), 2010/11 Financial Year, (1 April 2010 to 31 March 2011)," http://www.dhs.gov.za/Content/Stats/2010%2011%20Financial%20Year.htm (accessed August 12, 2011). Yet the number of people on housing waiting lists is much greater. For example, a ward councilor who works on the housing portfolio for the Witzenberg local municipality, which in 2007 had a population of approximately 75,000 people, estimated that in her area

former farmworkers and farm dwellers told Human Rights Watch that they had put their names on housing waiting lists years ago—some more than 10 or 15 years ago.[166] The government has not allocated enough money or land to provide houses for everyone on the waiting list; in addition, corruption and the need to repair poorly constructed houses have diverted allocated funds that should have been used to build houses, as acknowledged by the national government.[167] As a result, farmworkers who are evicted without compensation are not able to rely on short- or long-term housing support from the government. With no savings and little assistance from farmers or the government, farm dwellers often have no suitable options for other places to move and end up without habitable housing.

3.3. Related Impact on Right to Family Life

Although farmers' associations profess the importance of a "happy family life" for farmworkers on farms,[168] farmers sometimes take actions that are disruptive to the family life of farm dwellers. In the most extreme examples, farmers try to prohibit adult children who do not work on the farm from living with their parents, as is the norm for many South African families. Although farmers have legitimate concerns about overcrowding that can occur if non-working adult children remain on the farm, this must be balanced against the protection of the right to family life, which is found in multiple international and regional instruments, as well as a robust understanding of what family means in this context.

Some farmers who do not allow non-working adult children to live on the farm begin eviction procedures against them. For example, two adult daughters who grew up on a farm but never worked on it explained that they had received an eviction letter and were told by the farmer's consultant to leave. The letter said that the farm's rules prohibit children over the age of 18 who do not work on the farm from living there, although the

---

there were about 4,000 people on the housing waiting list and noted that, including backyard occupiers and people who qualify for gap housing, "we are short of 10,000 houses to build per year for Witzenberg area, which we don't have. It's a problem." Human Rights Watch interview with ward councilor, Ceres, March 12, 2011. Statistics South Africa, "Community Survey 2007: Basic Results: Municipalities," March 11, 2008, http://www.statssa.gov.za/Publications/P03011/P030112007.pdf, (accessed August 12, 2011), p. 17.

[166] See, Human Rights Watch interview with a former farmworker, De Doorns, March 8, 2011.

[167] See Department of Human Settlements, "Anti-corruption update," August 16, 2010, http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=12258&tid=15399 (accessed August 12, 2011), which explains that the government was "intensifying its crackdown on dodgy housing contractors and has drawn up a shortlist of 20 problematic housing projects with a total value of R2 billion which are currently under investigation." In the 2009/2010 financial year, the government spent 927 million rand on repairing or rebuilding sub-standard government houses; this constituted nearly 10 percent of the Department of Human Settlements' budget. See "Nearly R1bn Spent on Fixing Faulty Houses: Sexwale," *SAPA*, December 15, 2010.

[168] See, Human Rights Watch interview with Agri Wes-Cape, Paarl, December 10, 2010.

sisters had never heard of that policy; non-working adult children in other houses on the farm had not received a similar letter. The sisters had grown up on the farm, and did not know where they would go if forced to move.[169]

In a few cases, Human Rights Watch found that farmers had tried to restrict farmworkers' use of their accommodations, thereby infringing on benefits provided based on the employment relationship and violating rights guaranteed by ESTA. For example, Greta P. explained that after the farm on which she used to work implemented a policy that non-working adult children may not stay on the farm, the farmer would harass children who had moved off the farm when they came back to visit their families. He also deducted from wages for visitors, including family members. When her sister visited, the farmer deducted 30 rand from Greta and 30 rand from her brother.[170] Farmers' actions, combined with insecure land tenure, undermine family unity and make farm dwellers and their families particularly vulnerable.

---

[169] Human Rights Watch interview with adult children farm dwellers, Bonnievale, December 12, 2010.

[170] Human Rights Watch interview with Greta P., Stellenbosch, December 10, 2010.

IV. Occupational and Other Health and Safety Issues

Farmworkers suffer from a variety of health and safety abuses. Farmers often fail to provide the proper safety equipment or take other steps to mitigate farmworkers' exposure to pesticides, sometimes explicitly denying farmworkers' requests for safer conditions. The majority of farmers do not provide toilets or drinking water near the fields, particularly on farms that do not export. Agricultural work is dangerous, and injuries are not uncommon, yet it can be difficult for farmworkers to access health care. High levels of alcohol abuse are rampant, leading to a number of health and safety problems. Moreover, farmers routinely refuse to provide legally-required sick leave to workers without first receiving a medical certificate, contrary to Sectoral Determination 13. The state thus far has failed to protect the health and safety of farmworkers.

4.1. Pesticide Exposure

> The tractor sprays pesticides when people are in the field. So the spray touches you and your skin. If your skin is exposed, then [you] get a rash. The wind will carry pesticides to people.... The tractor driver gets mask, but not people in the field.... It's not fair to spray ... when [the] wind [is] blowing [on] all other peoples.
>
> —Duduza C., De Doorns, November 28, 2010.

Throughout the Western Cape, farmworkers and farm dwellers are exposed to pesticides, which can have severe health impacts. Exposure to pesticides may be the cause of a range of different health problems, from rashes and non-specific symptoms such as burning eyes, dizziness, nausea, vomiting and headaches, to acute intoxications, particularly with organophosphate pesticides, which may result in fatal poisonings. Aside from acute poisonings that can occur, persistent pesticide exposure can increase the risk of developmental problems in children born to exposed mothers or in children exposed as they grow up; reproductive disorders in both men and women; disruption of the immune and endocrine systems; nervous system toxicity manifesting in damage to nerves, brain injury, or impaired function; and increased risk for certain cancers.[171] It can also cause chronic illness involving the lungs or skin.[172] Moreover, pesticide exposure can "aggravate

---

[171] World Health Organization (WHO), "Toxic hazards," 2011 http://www.who.int/heli/risks/toxics/chemicals/en/index.html (accessed August 12, 2011).

[172] Surplus People Project, "Pesticide Health Risks for South African Emerging Farmers," undated http://www.spp.org.za/booklets/pesticide_booklet.pdf (accessed August 12, 2011), p. 3.

and be aggravated by high rates of psychological illness, under-nutrition, infectious diseases and alcohol- and tobacco-related diseases."[173] Many farmworkers said that they knew that pesticides can cause health problems, and most simply referred to pesticides as "poison."

Farmworkers said that they had contact with pesticides in multiple ways: when working to apply them, working in the same field while pesticides were sprayed, working in nearby fields and being exposed to pesticide drift, or through residue on crops. Farmworkers and farm dwellers are also exposed to pesticides at home, through contact with residue on workers and their clothing.

Although all farmworkers on non-organic farms are exposed to pesticides to some extent, their exposure can vary depending on their job, the farm's health and safety practices, the amount applied, and the use of protective equipment and clothing, as well as washing and other factors. Farmworkers' problems related to pesticides can be increased by the difficulty that some of them face in accessing health care, and the requirements of some farmers that they continue to work even after health problems arise.

Pesticides can enter the body through the skin, mouth, lungs, or eyes.[174] Certain procedures can minimize farmworkers' exposure to such toxins, including the use of proper safety equipment and guidelines regarding when farmworkers can re-enter sprayed fields, but they are not practiced on all farms. Conversely, improper equipment may actually increase exposure: for example, improper dust masks provided in lieu of respirators do not protect from pesticides and could potentially exacerbate pesticide exposure.[175]

Multiple former farmworkers described developing asthma or chest pains, which is consistent with pesticide exposure. Many of them were told by doctors that they were sick due to pesticides. Although farmworkers sometimes stop working in the fields after this diagnosis,[176] other workers continue to work after developing asthma. For example, Greta P.

---

[173] Leslie London, "Human rights and health: Opportunities to advance rural occupational health," *International Journal of Occupational and Environmental Health*, vol. 17, no. 1 (2011).

[174] Surplus People Project, "Pesticide Health Risks for South African Emerging Farmers," http://www.spp.org.za/booklets/pesticide_booklet.pdf, page 3.

[175] Surplus People Project, "Pesticide Health Risks for South African Emerging Farmers," http://www.spp.org.za/booklets/pesticide_booklet.pdf, p. 5; also Human Rights Watch interview with Leslie London, University of Cape Town, Cape Town, November 22, 2010. He notes that surgical-type masks do not help at best and might actually make a worker's exposure to pesticides worse.

[176] Human Rights Watch interview with former farmworker/current union organizer, Rawsonville, December 5, 2010; Human Rights Watch interview with former farmworker, De Doorns, March 8, 2011.

explained that when she stopped working as a farmworker, she had a "problem inside my chest"; her uncle continues to spray pesticides on the same farm even though he has asthma.[177]

Although a number of laws and regulations govern aspects of the use of pesticides in South Africa,[178] the government has acknowledged that the legislative framework regarding pesticides must be improved.[179] In respect of farmworkers, the government has failed to protect them adequately or enforce applicable laws sufficiently. Labor inspectors, who are supposed to ensure that farmers comply with regulations regarding pesticide exposure, do not have the capacity to enforce compliance on all farms in the Western Cape. And, although the Occupational Health and Safety Act and relevant regulations governing pesticides include penalties for non-compliance, they are rarely imposed.[180]

Failure to Provide Proper Safety Equipment to Workers Working Directly With Pesticides

> I work with spraying.... We only get gloves to work with poison. The guys with tractors get a mask. We complained but the farmer didn't give [us a] mask. When you breathe, you can taste it. Now sometimes we have a mask, but it only covers the nose and mouth.
>
> —Kiersten H., Grabouw, November 27, 2010.

Although South Africa's Occupational Health and Safety Act requires that employers provide workers with training, medical monitoring in certain cases, and "suitable respiratory protective equipment and protective clothing,"[181] some farmers fail to do so for farmworkers working directly with pesticides.

---

[177] Human Rights Watch interview with Greta P., Stellenbosch, December 10, 2010.

[178] OHSA Act, No. 85 of 1993, regulates workplace health and safety for workers in all sectors. The Regulations for Hazardous Chemical Substances, 1995, which were promulgated by the Department of Labour under the OHSA, apply to employers at workplaces where persons may be exposed to hazardous chemical substances. Under these regulations, employers must, among other things, ensure that employees are informed and trained, provided with medical surveillance in certain cases, and provided with "suitable respiratory protective equipment and protective clothing."

[179] In December 2010 the Minister of Agriculture, Forestry and Fisheries published the Pesticide Management Policy for South Africa, which notes the need to improve the legislative framework regarding pesticides and lays out a number of concerns regarding the current system. Department of Agriculture, Forestry and Fisheries, Pesticide Management Policy for South Africa, December 2010; Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, No. 36 of 1947, Adoption of Pesticide Management Policy for South Africa, http://www.info.gov.za/view/DownloadFileAction?id=137862 (accessed August 12, 2011), p. 6.

[180] Human Rights Watch email correspondence with Leslie London, University of Cape Town, June 18, 2010.

[181] Department of Labour, Regulations for Hazardous Chemical Substances, 1995. The Hazardous Biological Agents Regulations, also promulgated by the Department of Labour, require similar training, medical attention, and protective equipment.

On some farms, farmers refused to provide proper safety equipment to farmworkers who work directly with pesticides. Dino M., who works as a spray operator year-round, told Human Rights Watch that the farmer gave him only overalls and rubber gloves. After pleading for a mask to wear, he was given a dust mask, which is not designed to protect from chemicals. As a result, he and other workers put their caps on their face to cover and block the spray. Because the farmer refused to provide boots, Dino must wear his own shoes, which get wet from the spray. As he cannot wash his hands at work, he must clean off the pesticides inside his house, exposing his three children to the chemicals, in violation of regulations that require employers to provide employees with adequate washing facilities where reasonably practicable.[182]

Anton B., a tractor-driver working with pesticides, said he was not given a mask or gloves to work with pesticides. In addition, he was given only one set of clothes, which he has had to wear every year for the three years that he has worked on the farm. He has asked the farmer many times for new clothes and a mask, but the farmer refuses to provide them. He also has never been given pesticide training on this farm, contrary to law: "If you say you want training, [the farmer] sends [you] home without money. He did that with one person who works on the farm."[183] On a different farm, two workers who both work with pesticides said the farmer had never provided any safety equipment, not even a mask or gloves. They asked the farmer for equipment, but were told that there was no money to purchase it. One of the workers wears his own sunglasses to protect his eyes.[184]

Greta P., a former farmworker who worked on a farm for six years until she stopped two years ago, had to fight with the farmer to receive proper safety equipment for pesticides. The farmer eventually provided uniforms, but refused to give safety glasses or proper masks. Greta noted that the farmer also denied health care to female farmworkers working with pesticides:

> [T]hey must test if there are pesticides in your blood. If there are, then they can't make you work with pesticides. Only the white supervisor and the men went to the doctor to be tested, but never the women. Before I left, white supervisor was diagnosed to have pesticides in blood so he did other

---

[182] Human Rights Watch interview with Dino M., Grabouw, November 27, 2010. Under the Hazardous Chemical Substances Regulations, 1995, employers must, "where reasonably practicable, provide employees … with adequate washing facilities" to control their exposure and avoid the spread of hazardous chemicals.

[183] Human Rights Watch interview with Anton B., Farmworker, Citrusdal, March 5, 2011.

[184] Human Rights Watch interview with farmworkers, Franschoek, December 8, 2010.

> jobs. Women asked to be taken to the doctor, but the farmer said that only the men had to go. But the women spent as much time with the pesticides as the men.[185]

Such discrimination could have serious health consequences for women and their children, as some pesticides pose reproductive health risks, and some can be transferred through breastfeeding or in utero.

Failure to Mitigate Pesticide Exposure for People Not Working Directly With Pesticides

> People put their jackets over their heads while [I am] spraying.
>
> —Dino M., Grabouw, November 27, 2010.

When safety precautions are not followed on farms, farmers also endanger workers who do not work directly with pesticides. Kleintjie S. explained that she sometimes has to follow workers who are spraying pesticides, in order to pick up damaged fruit. The farmer does not give her a mask like he does for the sprayers, and "[w]hen you go into the orchard, the chemicals [are] very strong."[186] Similarly, Roedolf V., who has worked on a farm for 20 years, said that, until the previous year, workers had to follow tractors spraying pesticides, although they were given masks and gloves. Workers challenged this with the help of a union, and the practice was changed last year; now when pesticides are sprayed, workers can leave the field until the leaves are dry.[187]

Nolita Z., who works on a farm certified by a fair-trade organization to meet certain standards, told Human Rights Watch:

> The farmer says poison doesn't have any effect on people, it's just to make plants grow. People spraying will be very close; when the wind blows, it gets on [us]. When you say [you] have a rash, then farmer said it's not the poison. I had a big rash on my face.[188]

On another farm, farmworkers who must remain in the orchards when pesticides are sprayed said that they eat lunch next to where pesticides are stored. Although they

---

[185] Human Rights Watch interview with Greta P., Stellenbosch, December 10, 2010. In contrast, some farmworkers who work directly with pesticides explained safety precautions that are taken on their farms and could be replicated elsewhere.

[186] Human Rights Watch interview with Kleintjie S., Citrusdal, November 30, 2010.

[187] Human Rights Watch interview with Roedolf V., Stellenbosch, November 24, 2010.

[188] Human Rights Watch interview with a farmworker, Grabouw, December 4, 2010.

sometimes get itchy skin and rashes, the farmer does not take their complaints seriously.[189]

Even when they are not working in the fields, farm dwellers, including pregnant women and children, can be exposed to pesticides. For example, Katrina M., who lives on the farm and worked in the fields until she became pregnant, explained that the orchard is next to the workers' houses, so when pesticides are sprayed, the wind carries the spray into the houses. Moreover, the spray tractors are parked directly in front of the workers' houses, where they drip spray into the ground.[190] Phakhama J. said that after developing asthma and becoming increasingly sick, a doctor said she must not work near pesticides. She went to work in the crèche (day care center) with the children, but it did not help because the crèche was very near the vineyards where they sprayed.[191]

South African law does not specifically prohibit spraying pesticides while other workers are in the field or nearby, but regulations promulgated under the Occupational Health and Safety Act require that employers either prevent exposure to hazardous chemicals or make sure that exposure is adequately controlled, including by limiting the number of employees who are exposed and the period of time during which they are exposed.[192] As noted above, the lack of labor inspector capacity means that the government fails to enforce regulatory protections for workers, thereby allowing adverse health impacts to arise when farmers do not take steps to control pesticide exposure.

4.2. Sanitation and Access to Drinking Water While Working

The majority of farmworkers that Human Rights Watch interviewed about these conditions said that farmers did not provide them with toilets, hand washing facilities, or drinking water while working, contrary to law. Toilets and hand washing facilities are important for the basic hygiene of farmworkers, and can prevent gastrointestinal infections, skin and pesticide-related illness, respiratory infections, and urinary tract infections. Access to drinking water is necessary to avoid heat-related illness.[193] By law, employers are required to provide these basic necessities. Yet, again, the government has failed to enforce the law on farms throughout the Western Cape.

---

[189] Human Rights Watch interviews with farmworkers, Franschoek, December 8, 2010.

[190] Human Rights Watch interview with Katrina M., Grabouw, November 27, 2010.

[191] Human Rights Watch interview with Phakhama J., De Doorns, March 8, 2011.

[192] Department of Labour, Hazardous Chemical Substances Regulations, 1995, arts. 10(1), 10(2)(b).

[193] OSHA-NIOSH "Heat Illness Info Sheet," US Center for Disease Control and Prevention, 2011, http://www.cdc.gov/niosh/docs/2011-174/pdfs/2011-174.pdf (accessed August 12, 2011).

Toilets and Hand Washing Facilities

> If you have a need, you dig a hole.
>
> —Nolita Z., describing how the provided toilets are too far away to use, Grabouw, December 4, 2010.

Farmers often do not provide toilets near fields, forcing farmworkers to relieve themselves in or near the vineyard or orchard where they work. Many of the same farms also do not provide hand washing facilities, so farmworkers are unable to wash their hands after relieving themselves. As one example, Wimpie H. said that because there were no toilets near the field, he must go to the bush if he needs to relieve himself, and because there is no place to wash his hands, he uses the water irrigation system in the field to do so.[194]

Anodiwa C., a seasonal farmworker on an export farm, explained,

> When working in the field, there is no toilet near [the] field. So dig a hole and help yourself. There is also no place to wash your hands, so [you] eat without washing hands. The only water comes from a pipe, but it has chemicals inside it so we can't wash with it.[195]

Other farmers provide toilets only during some parts of the year, or in inconvenient locations. Farida C. told Human Rights Watch that there were toilets near the field when the farm was harvesting for export; there were no accessible toilets when harvesting for domestic production, and no place to wash hands.[196]

Failure to provide sanitary facilities contravenes the Facilities Regulations, 1990, which requires that employers provide sanitary facilities.[197] Similarly, when employees work with hazardous chemicals, employers must provide employees with adequate washing facilities when reasonably practicable.

---

[194] Human Rights Watch interview with Wimpie H., Lutzville, November 30, 2010.

[195] Human Rights Watch interview with Anodiwa C. and other farmworkers, De Doorns, November 28, 2010.

[196] Human Rights Watch interview with Farida C., Vredendal, December 1, 2010.

[197] On premises where fewer than 11 persons are employed, employers may make written arrangements for employees to use sanitary facilities on adjoining premises within certain constraints. Facilities Regulations, 1990, art. 2(2), (7).

Drinking Water

Some farmers do not provide drinking water for workers, which can have detrimental impacts on workers' health. Farmworkers thus must bring their own water.[198] Other employers do provide water for farmworkers, although it is not always suitable for drinking. For example, Nolita Z. explained that the farm provides two tubs of water in the morning, but because it sits in the sun, the workers cannot drink it after a while because it is boiling hot. If they do not bring their own water, then they have nothing to drink.[199]

4.3. Injuries While Working

> The farmer told me "in order to be disabled, [you] have to be dead."
>
> —Pieter N., former farmworker who stopped working due to work injuries, Ceres, December 3, 2010.

Around the world, agriculture is one of the most dangerous sectors in which to work, with machinery accidents, exposure to pesticides and agrochemicals, and musculoskeletal disorders among the most prevalent problems.[200] The agricultural sector in the Western Cape is no exception and farmworkers described a range of injuries. In some cases, the injuries were exacerbated by the farmworker's poor access to health care or the farmer's insistence that the worker keep toiling after being injured.

Injured farmworkers sometimes face pressure to continue working, and thus may be reluctant to stop working for fear of losing housing or other privileges on farms where they have long lived. Pieter N., a former farmworker facing eviction, used to work on the farm on which he was born, which produces both fruit and pine trees. He began as a general worker and then was promoted to chain operator, cutting pine trees on the farm. He injured his back in 2002 while cutting a tree that fell the wrong way, but continued to work for eight more years despite constant pain. In 2010 a doctor declared him unfit to work. Shortly afterward, however, the farm owner told him that because he continued to live on the farm he had to work in the garden. He began to do so, but was still in pain, and the doctor again said he should not work. According to Pieter, however, the owner pressured him to continue working, pointing to other people on the farm receiving disability grants who still worked. Pieter's father, who worked on the same farm, had faced similar

---

[198] See, Human Rights Watch interview with a farmworker, Vredendal, December 1, 2010; Human Rights Watch interview with Arnold M., Rawsonville, December 5, 2010.

[199] Human Rights Watch interview with Nolita Z., Grabouw, December 4, 2010.

[200] ILO & FAO Working Together, *Food, Agriculture & Decent Work*, "Safety and Health," 2011, http://www.fao-ilo.org/more/fao-ilo-safety (accessed August 12, 2011).

problems up until he died: after three serious injuries on the farm, he continued to have to work in order to live on the farm—even after losing a leg he was sent to work in a carpenter store on the farm.[201]

Workers are also sometimes unable to access medical care, whether due to obstacles from the farmer or the medical facility. For example, Anton B. said he was bitten by a farm owner's dogs three times. Although he asked to go to the doctor the farmer refused to take him.[202] Arnold M., a former farmworker, told Human Rights Watch that he had injured his eye while cutting grapevines. The farmer drove him to a private doctor and dropped him off, but because he did not have a letter from the farm the doctor would not treat him. Arnold did not go to a public doctor so the farmer simply gave him eye drops.[203]

Even public hospitals can fail to treat farmworkers in a timely manner. For example, one farmer described how he has taken sick or injured farmworkers to the hospital three times without their being treated until he intervened: "I was very angry about the situation and said it is not right … I am a South African citizen, I pay tax, and [I] feel that people deserve better treatment than this."[204] One person who conducts health projects for farmworkers noted that farmworkers get treated poorly whenever they go into town for health or other reasons, stating that "the moment you mention you come from a farm, you get treated very, very differently."[205] Although farmworkers are legally entitled to workers' compensation and disability benefits for injuries occurring on the job, injured farmworkers and their families are often uncertain about the benefits to which they are entitled.[206]

4.4. Legacy of the *Dop* System

The *dop* or *tot* system, which was a widespread practice in the Western Cape through which farmers partially compensated workers for their labor with wine, has been illegal for decades.[207] Farmers continued to provide *dop* payments up until the 1990s, however,

---

[201] Human Rights Watch interview with Pieter N., Ceres, December 3, 2010.

[202] Human Rights Watch interview with Anton B., farmworker, Citrusdal, March 5, 2011.

[203] Human Rights Watch interview with Arnold M., Rawsonville, December 5, 2010. In South Africa, although public medical facilities cannot deny treatment, there is no legal obligation on private facilities to provide care if the patient cannot pay and does not have medical aid.

[204] Human Rights Watch interview with a farmer, De Doorns, February 28, 2011.

[205] Human Rights Watch interview with Goedgedacht Trust, March 17, 2011.

[206] The Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993, covers workers' compensation and disability benefits for injuries occurring on the job. This covers both temporary injuries that last more than three days and injuries causing permanent disabilities. Arts. 22(2)-(4), 49(a). If the employer's negligence caused the accident, the amount due to an employee who is temporarily or permanently disabled will be increased.

[207] The *dop* system is named after the Afrikaans word *dop*, which is a colloquial term for alcohol.

when the government made a more concerted effort to eradicate the system.[208] These payments have generally disappeared, although Human Rights Watch did document two farms that provide wine as partial compensation, as discussed in the box below.[209] Much more prevalent in the Western Cape are problems that flow from the legacy of the *dop* system. Combined with other factors, it has had devastating effects on the farmworker population in the province, leading to rampant alcohol abuse on farms and one of the highest levels of fetal alcohol syndrome in the world.[210]

Widespread alcohol abuse on farms has led to frequent violence among farm dwellers.[211] Elize A., a young adult who grew up on a farm, said "it's common for people to be drunk and fighting."[212] Domestic violence is also a big problem on some farms, affecting both women and children.[213] One teacher from a rural school described a student whose stepfather works on a farm and receives wine from the farmer "seven days of the week. And then when his stepfather gets drunk, he turns violent on him."[214]

Although the legacy of the *dop* system has had a severe impact on farmworkers' well-being and that of their families, the government, farmers, and the wine industry have failed to address comprehensively both the *dop* system's lasting consequences and the impact of its ban.[215] No consensus exists on how to address these problems, or who is responsible for doing so. Yet the South African Constitution obligates the government to take

---

[208] Susan Levine, "In the season of the grape: changing patterns of children's work in the Western Cape, South Africa," May 4, 2010; South African Wine Industry Council, "The Wine Industry Transformation Charter," July 30, 2007, http://www.wine.co.za/attachments/PDF-View.aspx?PDFID=400, p. 5.

[209] For example, one labor inspector noted that the "practice has ceased to exist. In 15 years, we have not found one case where this still exists." Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011. People working with an organization on alcohol abuse on farms noted that they have not seen the *dop* system, although they clarified that they were "not saying that it's not happening." Human Rights Watch interview with a civil society organization, Cape Town, November 29, 2010. Civil society actors who assert that *dop* payments continue to a limited extent note that, where it exists, it is difficult to document, as farmworkers are often reluctant to discuss and potentially lose the *dop* payments.

[210] According to the Foundation for Alcohol Related Research, "worldwide FAS is a big problem, although formal figures of the incidence are only available for America (0.1-3%), France (2.1%) and South Africa (8-12%). South Africa has the highest reported rate of FAS worldwide." Foundation for Alcohol Related Research (FARR), "Fetal Alcohol Syndrome: A Short Overview," May 12, 2010, http://www.farr-sa.co.za/Fas_Info_Engl.htm (accessed August 12, 2011).

[211] See, Human Rights Watch interview with a farmworker, Citrusdal, November 30, 2010; Human Rights Watch interview with Dino M., Grabouw, November 27, 2010; and Human Rights Watch interview with farmworkers, Vredendal, December 1, 2010.

[212] Human Rights Watch interview with Elize A., Stellenbosch, December 7, 2010.

[213] Human Rights Watch interview with Lawyer at Women's Legal Centre, Cape Town, November 22, 2010.

[214] Human Rights Watch interview with a school teacher, Citrusdal, March 1, 2011.

[215] It has been argued, for example, that banning the *dop* system without addressing alcohol abuse led to farmworkers spending a greater proportion of their salary on alcohol. This, in turn, coupled with the stricter enforcement of laws prohibiting child labor, consequently created greater levels of hunger among farmworkers' children. Susan Levine, "In the season of the grape: changing patterns of children's work in the Western Cape, South Africa."

reasonable measures to ensure that everyone has the right to have access to health care services,[216] and, as a state party to the African Women's Charter, the government must take all appropriate measures to "provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas."[217] Some government departments, as well as the wine and alcohol industries, have undertaken efforts to address alcohol abuse on farms and fetal alcohol syndrome.[218] While important, the government and other actors have not undertaken steps that are sufficiently comprehensive, such as ensuring that farmworkers throughout the province have access to information on alcohol abuse and fetal alcohol syndrome, as well as access to rehabilitation programs that are affordable for farmworkers.

Box 2: Remnants of the *Dop* System

Piet A., a farmworker who recently started working at a new farm after working for over two decades on a different one, told Human Rights Watch that on the old farm his pay slip said he received 1600 rand per month, but that each month he instead received 400 rand (approximately US$59), along with a package of food the farmer said was worth 800 rand, and daily wine:

> During the week, I am given wine in the afternoon at 12 p.m. and at 6 p.m. in the evening. I also get this on Saturdays. On Sundays, we get wine in the morning, afternoon, and evening. In the morning, we get it before 7 a.m., at 12:00 p.m., and we have to do Sunday prayer and then get more wine at 6:30 p.m.... If you don't want the wine, then it's your choice. Everybody is drinking except the children and the guy driving the school bus....

---

[216] Constitution of the Republic of South Africa, art. 27.

[217] The Maputo Protocol, art. 14(2).

[218] For example, the alcohol industry has funded administrative work supporting research on fetal alcohol syndrome. Human Rights Watch interview with ARA, Stellenbosch, November 25, 2010; Human Rights Watch interview with FARR, Cape Town, November 29, 2010. The Department of Agriculture: Western Cape has dedicated 10 percent of the funds it has available for social upliftment programs for farmworkers to programs that focus on alcohol abuse. Human Rights Watch interview with a Department of Agriculture Western Cape official, March 17, 2011. The Department of Health and Department of Social Development also have funded relevant research or other programs. Human Rights Watch interview with FARR, Cape Town, November 29, 2010. In addition, the Department of Health has worked on alcohol abuse issues generally at the community level. See, Department of Health, "Annual Performance Plan 2011/2012," http://www.doh.gov.za/docs/reports/annual/2011-12/part_a1.pdf (accessed August 12, 2011), p. 23.

> When I started working at age 12, the *dop* system was legal so I started getting *dop* when I was 12. Children working now on the farm don't get *dop* because it is not legal.... I don't like to get the wine because [I'm] scared to get injured on duty, but since it is free I take it.[219]

On another farm in the area, Anton B. stated that:

> [The farmer] doesn't pay overtime. They give people wine for overtime. But not me, because I don't drink.... I start at 7 a.m., and sometimes work until 9 or 10 p.m. Without pay. [The farmer] only says he will give me a drink. If he does give me money, it is only six rand.[220]

4.5. Failure to Provide Sick Leave or Maternity Leave

If I am sick or injured on the job, they don't pay me.

—Anton B., Citrusdal, March 5, 2011.

In 99% of cases [of farms audited], farmers require that workers furnish a doctor certificate (and sometimes a clinic certificate) before sick leave is granted, even if they were sick for only one day.... The health of farm workers are compromised as a result of the physical nature of the work; the legacy of the dop-system; high incidence of TB and HIV/AIDS. To then expect workers to pay a doctor's fee every time they are sick is mercenary.[221]

—Third-party auditor who has conducted audits on numerous farms in the Western Cape, email exchange, April 4, 2011.

Human Rights Watch research revealed that farmers almost uniformly fail to provide farmworkers with legally required sick leave, and in some cases do not provide maternity

---

[219] Human Rights Watch interview with Piet A., farmworker, Citrusdal, March 1, 2011. In a separate interview, a local teacher told Human Rights Watch that one of his former students had lived on the same farm and had described to him the *dop* that was given to the farmworkers, including his stepfather, who worked on the farm. Human Rights Watch interview with a teacher, Citrusdal, March 1, 2011. As noted above, it is now rare for farms to provide wine to workers as partial compensation for work.

[220] Human Rights Watch interview with Anton B., farmworker, Citrusdal, March 5, 2011.

[221] Human Rights Watch email correspondence with a third-party auditor, April 4, 2011.

leave, denials that also constitute a violation of the workers' right to health. Under Sectoral Determination 13, farmers must provide their workers with a certain amount of paid sick leave; if workers are ill for only one or two days, they do not have to obtain a medical certificate in order to receive it. Beyond that an employer may require a worker to furnish a medical certificate before providing paid sick leave for more than two consecutive days or on more than two occasions during an eight-week period.[222] Sectoral Determination 13 also states that a farmworker is entitled to a minimum of four consecutive months of maternity leave.[223]

Over one-third of farmworkers interviewed about benefits said they were not given sick leave, even when they provided a medical certificate. This includes almost all of the foreign workers interviewed by Human Rights Watch. As Anodiwa C., a Zimbabwean, said, "There is no sick leave. If you are sick, you stay at home. But if I am absent, then there is no money."[224] A worker from Lesotho explained, "If I'm sick, I must go to doctor, but [I] don't get paid."[225] Other farmworkers were given fewer days of sick leave than the days to which they knew they were entitled. Kiersten H. explained that "sick leave is one of the big problems. I have a friend who was sick and got two days from the doctor [in a letter] but the farmer only paid for one day and threatened to withhold her bonus.... [But we are] supposed to get 10 days of sick leave."[226] Arnold M., a former farmworker who has tuberculosis, said that he was not given sick leave, although some of the other farmworkers did. He went to the clinic regarding his tuberculosis and got a letter from the doctor, but when he gave it to the farmer, the farmer simply threw it away without explaining why.[227]

When farmers do pay sick leave, Human Rights Watch found that almost all of them require workers to provide a medical certificate to collect paid leave even for one or two days off, contrary to the law. Two third-party auditors stated that they found the same problem on

---

[222] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. 22. Art. 13(22)(6) states: "An employer is not required to pay the farm worker in terms of this clause if the farm worker has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the farm worker was unable to work for the duration's absence on account of sickness or injury."

[223] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. 24(1).

[224] Human Rights Watch interview with Anodiwa C. and other farmworkers, De Doorns, November 28, 2010.

[225] Human Rights Watch interview with Lesotho farmworker, Ceres, March 12, 2011.

[226] Human Rights Watch interview with Kiersten H., Grabouw, November 27, 2010.

[227] Human Rights Watch interview with Arnold M., Rawsonville, December 5, 2010.

farms in the Western Cape.[228] In many cases procuring such a certificate in order to receive sick leave is not worth the effort for workers. Obtaining a letter from doctors attesting to illness can be prohibitively expensive for farmworkers,[229] as the fee for one visit to the doctor is often between 150 and 300 rand, the equivalent of an entire week's salary.[230] While farmworkers can sometimes go to free clinics, they still may have to pay for transport to the clinic, which can be expensive, and then must wait for hours or longer to receive treatment.[231]

Pregnant women face additional discrimination: farmers sometimes deny them work or dismiss them when they are pregnant, thus avoiding the provision of maternity leave required by law.[232] Betty S. explained, "[I]f you are pregnant for three months, they send you away because [they are] afraid something could happen." On her farm, however, the farmer does not pay pregnant workers when they are sent away.[233] Pregnant seasonal farmworkers are in the most precarious position: once they are denied work, they cannot expect to return later to their seasonal jobs, and they will likely have to hide their pregnancy in order to find a new job: "If you are pregnant, then you can't work. If you come to work when you're pregnant, then they will chase you off the farm. We know people who have been pregnant who are not allowed to work. [The farmers] only want healthy people."[234] A labor broker who hires many foreign seasonal workers told Human Rights Watch that seasonal workers are never paid maternity leave:

---

[228] Human Rights Watch interview with a third-party auditor, Cape Town, March 18, 2011; Human Rights Watch email correspondence with a third-party auditor, April 4, 2011.

[229] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, Farm Worker wages 2011.

[230] Human Rights Watch email correspondence with a third-party auditor, April 4, 2011, which states that it can cost between 150-250 rand per visit. One farmer said that it costs farmworkers in his area 190 rand to go to the doctor. Human Rights Watch interview with a farmer, February 28, 2011. Some farmworkers said that it cost them 300 rand for a doctor's visit. Human Rights Watch interview with farmworkers, Franschoek, December 8, 2010.

[231] Farmworkers often have to spend a long time waiting for treatment at clinics or hospitals. For example, one farmer described how one of his foreign workers had had a miscarriage; the farmer had his driver take her in his truck to the hospital at 4 p.m. The farmer went to the hospital the next day at 9 a.m. and they still had not assisted his worker; it was only when he arrived that they finally helped her. Human Rights Watch interview with a farmer, February 28, 2011.

[232] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. 24, states that "[a] farmworker is entitled to at least four consecutive month's maternity leave." Maternity leave may start from four weeks before the expected date of birth or at a date deemed necessary for health reasons; employers may not "require or permit a pregnant farm worker or a farmworker who is nursing her child to perform work that is hazardous to her health or the health of her child."

[233] Human Rights Watch interview with Gerald S. and Betty S., Lutzville, November 30, 2010.

[234] Human Rights Watch interview with Zimbabwean farmworkers, De Doorns, November 28, 2010.

Farmers also don't want pregnant workers. If someone becomes pregnant while working, they just hide it.... Permanent workers [are] given [paid] days off,... seasonal workers [are] just fired if [the farmer] finds out that [they're] pregnant; [It] happens a lot. [There are] four this season that I know about [between October and December]. Workers just go find another job on another farm so they end up working the entire season.[235]

Box 3: Challenges Faced by Foreign Migrant Workers in the Western Cape

Although there are many foreign migrant farmworkers in the Western Cape, they are often invisible. Trade unions rarely focus on foreign migrant workers,[236] and workers often have no support to address problems. This can exacerbate their vulnerability, particularly concerning lack of contracts; improper deductions and lack of benefits; and a greater likelihood of verbal or physical abuse. Farmers often do not provide contracts to casual or seasonal workers. Almost all of the foreign workers whom we interviewed had never had a contract. As one seasonal worker from Lesotho explained, "there is no contract, just come and work; when it's finished, it's finished." She was not even given a pay slip.[237]

Farmers often do not provide seasonal farmworkers, particularly foreign workers, with paid annual leave, in contravention of Sectoral Determination 13, which requires that employers grant farmworkers annual leave on full pay.[238] After the agricultural season ends, some foreign seasonal workers have great difficulty receiving benefits to which they are legally entitled from the Unemployment Insurance Fund (UIF), even though they have had UIF contributions deducted from their wages. Fearing deportation, foreign migrant workers often fail to report or contest abuses.

---

[235] Human Rights Watch interview with a labor broker, Touws River, December 12, 2010.

[236] See, Human Rights Watch interview with a union leader, Stellenbosch, December 9, 2010.

[237] Human Rights Watch interview with a farmworker, Ceres, December 2, 2010.

[238] Sectoral Determination 13, No. 75 of 1997, http://www.labour.gov.za/legislation/sectoral-determinations/sectoral-determination-13-farm-worker-sector, art. 21.

V. Lack of Freedom of Association and Obstacles to Union Formation

Farmers regularly interfere with workers' organizing efforts, thus denying workers their right to freedom of association, which is a fundamental right enshrined in international law and the South African Constitution.[239] Obstacles to union formation are prominent problems on many farms in the Western Cape. Farmworkers are some of the most poorly organized workers in the country; although there are no reliable statistics on how many farmworkers are organized in the Western Cape, estimates of union "density"—the percentage of workers represented by trade unions—range between 3 and 11 percent,[240] compared to 30 percent in the formal sector as a whole and over 75 percent for mineworkers in the country.[241] Denial of freedom of association and resulting low levels of union representation can prevent workers from negotiating better working and living conditions or remedying exploitative situations.

5.1. Obstacles to Union Formation

Farmers often deny union organizers' access onto farms, threaten union organizers and workers who want their assistance, or create workers' committees to thwart genuine trade union formation. Union organizers do not have a right to enter onto farms to recruit or communicate with members until the union becomes "sufficiently representative" at the work place, rendering it difficult for workers to organize.[242] Although, in the past, union organizers sometimes joined labor inspectors going onto farms, the Department of Labour agreed to prohibit this practice due to farmers' protestations.[243]

---

[239] ILO Convention 87, 68 U.N.T.S. 17; ILO Convention 98, 96 U.N.T.S. 257; Constitution of the Republic of South Africa, arts. 18, 23.

[240] One person who has been working to improve the institutional capacity of organized labor within the Western Cape agricultural sector noted that, based on a number of extrapolations, trade union level of penetration within the agricultural sector in the province is less than 5 percent. Human Rights Watch interview with a civil society representative, Cape Town, February 25, 2011; Human Rights Watch interview with a union representative, Cape Town, December 10, 2010; Human Rights Watch interview with a union representative, Stellenbosch, December 9, 2010; and Human Rights Watch interview with a union representative, Cape Town, December 8, 2010.

[241] Statistics South Africa, "Labour Force Survey: September 2005," January 24, 2006, http://www.statssa.gov.za/Publications/P0210/P0210September2005.pdf (accessed August 12, 2011), p. 37, table: Employees by main industry and trade union membership.

[242] Labour Relations Act, *Office of the President*, No. 66 of 1995, arts. 11-12.

[243] Human Rights Watch interview with a farmer/farmers' association representative, Paarl, November 29, 2010; see also Protocol A: Criteria That Would Form the Basis of Any Future Approach by Labour Inspectors Towards Farmers, in the Execution of Their Duties.

Union organizers thus struggle to establish initial contact with farmworkers free from intimidation by the farmer. As one farmer explained, "labor unions must make [an] appointment with [the] farmer; farmer will ask workers if they want the union to come on."[244] This arrangement exposes workers who want to meet union organizers and may influence workers to say that they are not interested to avoid reprisals. Some union organizers also confront more difficulties accessing farms than other workplaces: for example, one union leader, whose union supports both farmworkers and factory workers in the food industry, stated that farmers were more likely to unreasonably refuse permission to enter than factory management, which generally provides reasonable access to union organizers.[245] Yet without this permission it is difficult for organizers to reach farmworkers. For example, another union leader explained that, to find workers, an organizer must sneak onto a farm, find workers in town, or get a contact person on the farm to begin a conversation.[246]

Some farmers or managers who do not want unions to enter their farms resort to threats against union organizers. For example, one union leader described receiving an SMS message from a farmer threatening severe violence if he entered onto a farm.[247] Another union leader explained that one of his recruiters had been locked up the previous week for trespassing. Although the union had members on the farm, the manager blocked the recruiter's car and called the police because he had not made an advance appointment.[248] Farmers may also take other efforts to stymie unions, such as neglecting to transfer union dues from workers to the union management for periods of time.[249]

Farmers sometimes establish workers' committees to address problems between farmworkers and employers. However, this runs afoul of international strictures against management creation and domination of employee organizations.[250] Although there are different views regarding the impact of such committees, some farmers use them to circumvent unions with structures that do not provide workers with any bargaining

---

[244] Human Rights Watch interview with a farmer/farmers' association representative, Paarl, November 29, 2010.
[245] Human Rights Watch interview with a union leader, Cape Town, December 8, 2010.
[246] Human Rights Watch interview with a union leader, Stellenbosch, December 9, 2010.
[247] Human Rights Watch interview with a union leader, Cape Town, December 10, 2010.
[248] Human Rights Watch interview with a union leader, Stellenbosch, December 9, 2010.
[249] Human Rights Watch interview with a union leader, Cape Town, December 10, 2010.
[250] ILO Convention No. 98, 96 U.N.T.S. 257, art. 2(2); see also ILO, "Digest of Decisions,"2006, paras. 868, 873.

power.[251] As one example, Greta P., who served as chairperson of a workers' committee, explained that workers were initially excited, agreeing to pay 10 rand per week:

> At that time, [we] thought it was a good thing, but at end of day realized it was a bad thing. [The farm] said they would buy [a] bus with [our] money, and help with school fees, if you were part of workers' committee. But … they didn't give people money.… Once they had a *braai* [barbecue] and they gave all the workers workers' committee t-shirts and caps. That's all they buy.…
>
> My role as chairperson—if people [had] problems on the farm, it [was] my duty to go to farmer and tell him this is the problem.… The farmworkers were very scared of him.… He would always say, "if you don't like it, then you leave my farm."[252]

5.2. Farmers' Efforts to Force or Persuade People to Resign from Unions

Some farmers try to unilaterally withdraw farmworkers from unions or convince them to resign. For example, Arnold M., who was recently dismissed subsequent to joining a union, explained that the farmer had sent a letter to the union saying that he and other union members had resigned. He noted that the "farmer never asked me or told me [he] was doing that.… We weren't aware of what [the] farmer was doing."[253] The union representative who received the letter said that when she asked the members about the letter, they had not known about it but still wanted to be members.[254]

Greta P. described a similar occurrence that arose two months after she and other farmworkers joined a union. The manager met with her and two supervisors:

> He told me to tell workers that they must resign from [the] union because there are no problems on the farm, all these years he allowed them to go to trainings, no problem. I said that you are also in a union, you never asked

---

[251] For example, one industry representative asserted that a workers' committee was better than nothing. Human Rights Watch interview with Representative from the fruit industry, Stellenbosch, December 6, 2010. In contrast, a union leader argued that they block unions and manipulate workers. Human Rights Watch interview with a union leader, Cape Town, December 8, 2010.

[252] Human Rights Watch interview with Greta P., Stellenbosch, December 10, 2010.

[253] Human Rights Watch interview with Arnold M., Rawsonville, December 5, 2010.

[254] Human Rights Watch Conversation with a former farmworker/current union organizer, Rawsonville, December 5, 2010.

> us. I said it is my right to be in a union of my choice.… So the day after that, the two supervisors made a list of people in [the] union and resigned on behalf of them. [The union] organizer called me and said we received a list of names that [said] people resigning out of [the] union. She said let me set up [a] meeting with workers tonight. So she did that and asked them if they resigned. They said no we did not resign out of this union.… People were very angry.[255]

Sindi M. was dismissed along with her husband a year after they joined a union. She noted:

> There were many members of [the union], but when we were dismissed, then all the members resigned … because things get bad when you join [a] union.… And the farmer was intimidating farmworkers and said same thing will happen to you if you don't get out of union.[256]

Karel M., who recently joined a union after working on a farm for almost seven years, was told by the farmer that he would be dismissed because he joined the union. Although this has not happened yet, Karel said that he was sent home without pay one day during the period of union negotiations with the farmer; given the farmer's previous threat, Karel suspects this was linked to his union membership and the negotiations.[257]

Dino M., who is a member of a union, said that although most farmworkers on his farm initially joined, the farmer threatened to restrict members' working hours and promised to give more money to people who resigned. Most workers left the union, but the farmer did not provide more money. Dino said the farmer promised to give him anything he wants, including a free phone, if he left the union, but Dino refused to quit.[258]

Given the animosity that farmers show towards unions, some farmworkers simply never join. As Kiersten H. explained, "I'm not a member of a union. If you speak about union, you will lose [your] job or [be] treated bad."[259]

---

[255] Human Rights Watch interview with Greta P., Stellenbosch, December 10, 2010.
[256] Human Rights Watch interview with former farmworker, Rawsonville, December 5, 2010.
[257] Human Rights Watch interview with farmworkers, Franschoek, December 8, 2010.
[258] Human Rights Watch interview with Dino M., Grabouw, November 27, 2010.
[259] Human Rights Watch interview with Kiersten H., Grabouw, November 27, 2010.

5.3. Poor Treatment of Union Members

Farmworkers who have joined unions sometimes believe that the farmer subsequently discriminates against them based on their union membership, in contravention of their rights to freedom of association. Farmers appear to treat workers differently after joining a union, or provide non-union members with greater benefits, sometimes while specifically referring to union membership. As one example, Johnny A. said that after he joined a union, the farmer he worked for was angry and subsequently treated him "differently and badly." The farmer began to give him and other union members' tasks that were not practical, such as sending workers out into the mud without boots, which the farmer had never done before workers joined the union. When Johnny requested electricity for his house, the farmer said he must ask the union to give him electricity.[260] Similarly, Nolita Z. explained that the farmer for whom she works does not like unions: "if you ask for a loan, [the farmer] says go ask the union.... He treats union and non-union members different: for non-members, he gives loans [and] paints houses, but he will never help union members." Prior to their current union, another union had tried to organize workers, but the workers told the union they did not want to join "because we were very scared."[261]

One farmworker explained that after joining a union, the farmer promised that things would remain the same, yet he treats non-union farmworkers better. For example, the farmer gives another farmworker free transport, but "if I ask as a union member, [I] can't get it."[262] Roedolf V., who works on the same farm, said that the manager was mad that he joined, while other workers said that the owner suggested that they should resign from the union.[263]

5.4. Impact of Union Formation

Farmworkers in the Western Cape struggle to form unions, not only because of obstacles imposed by owners, but also because it can be hard to gain assistance from union representatives. Aside from being denied access to workers, union representatives find it difficult to organize such a remote and poorly paid population. Workers' long hours, seasonality, or transience also inhibit union formation.[264] Despite the difficulty, some

---

[260] Human Rights Watch interview with Johnny A., Ladismith, March 20, 2011.

[261] Human Rights Watch interview with Nolita Z., Grabouw, December 4, 2010.

[262] Human Rights Watch interview with a farmworker, Stellenbosch, November 24, 2010.

[263] Human Rights Watch interview with Roedolf V., Stellenbosch, November 24, 2010; Human Rights Watch interview with workers, Stellenbosch, November 24, 2010.

[264] Human Rights Watch interview with a union leader, Stellenbosch, December 9, 2010. Union organizers that work with both primary and secondary food industry workers have sometimes found it easier to focus on supporting factory workers in

farmworkers who have joined unions describe subsequent improvements on the farm. For example, Mandy S. stated that there was greater equality between men and women and improved working conditions after farmworkers formed unions.[265] Naomi A. noted that the union had helped implement many changes, including an increase in the amount of money that the farm will pay for visits to the doctor.[266]

Unions sometimes provide the sole support for farmworkers who face problems with their employers. Union representation is particularly helpful in proceedings at the Commission on Conciliation, Mediation and Arbitration (CCMA), which is an independent government-funded dispute mechanism.[267] At most proceedings workers may be represented only by a union official, while employers may be represented by an employers' association official.[268] Some farmworkers join unions after being dismissed, primarily so they can be supported in the CCMA process. For example, one farmworker explained that a union leader helped him open up a case after he was dismissed from his job.[269] A different union leader described how farmworkers who are dismissed often come to the union for help.[270] Union representation at the CCMA can be crucial, given that farmers are often represented at the CCMA.

---

their efforts to organize, as the organizers can reach more workers at a time, earn more money in dues, and are less likely to have access withheld by employers.

[265] Human Rights Watch interview with Mandy S., Stellenbosch, December 7, 2010.

[266] Human Rights Watch interview with Naomi A., Grabouw, November 27, 2010.

[267] Labour Relations Act, No. 66 of 1995, arts. 112-117, 122, discuss the establishment, composition, funding, and functions of the Commission for Conciliation, Mediation and Arbitration (CCMA). The CCMA's compulsory statutory functions include the conciliation of workplace disputes and the arbitration of certain categories of disputes that remain unresolved after conciliation.

[268] CCMA, Rules for the Conduct of Proceedings Before the CCMA, October 10, 2003, rule 25.

[269] Human Rights Watch interview with former farmworker, Ladismith, March 20, 2011.

[270] Human Rights Watch interview with a union leader, Stellenbosch, December 9, 2010.

VI. Protection and Redress

The South African government has an obligation under international and domestic law to protect farmworkers and farm dwellers from human rights abuses and to ensure that legislation is implemented effectively. Although South Africa has a robust constitution that guarantees many rights, as well as laws that are specifically intended to protect farmworkers, it has failed to protect adequately farmworkers and farm dwellers in the Western Cape. The government's laxity in enforcing basic protections has created a climate in which exploitative practices by employers remain widespread.

Beyond their duty to obey national laws, private actors also have a responsibility to respect human rights. Although many of them disregard these legal and moral duties, as evidenced elsewhere in this report, a number of private actors inside and outside of South Africa have attempted to address problems that arise on farms in the Western Cape, often in response to controversy. Various initiatives by individual farmers, farmers' associations, industry groups, and retailers have been established, a few of which were developed years ago. Although contributing to some improvements, some of these efforts encompass only a limited number of farms or other businesses. Moreover, even where positive initiatives are in place, change sometimes has been slow and uneven.

Box 4: The Government's Failure to Protect Beneficiaries in Farm Equity Schemes

> I started this project very positively. It was about a year after we started that I began to have problems about how they run things.... It really turned sour ... I really just want to know what are my rights here?
>
> —Human Rights Watch Interview with FES shareholder, Bonnievale, March 20, 2011.

> [T]he farmer was harassing us so much, and I wanted to commit suicide.
>
> —Human Rights Watch Interview with Wenzel P., an FES shareholder who was unfairly dismissed and then forced off his farm, Worcester, November 26, 2010.

Farm Equity Schemes (FES) were developed in South Africa to enable farm dwellers and workers to acquire equity in farms; they sometimes take the

place of land reform in high-value agricultural areas. Under FES, the government provides money to workers and other beneficiaries to become shareholders in a farm. The government has invested hundreds of millions of rand in FES since 1996, but it has not ensured that the money has supported beneficiaries rather than simply recapitalizing struggling farms. Although the Department of Rural Development and Land Reform placed a moratorium on FES in 2009 out of concern that farmworkers were not benefiting, it was lifted in early 2011 with assurances of greater protections.

While it is critical that the government implement new safeguards if it continues to fund FES, it is equally important that it protect the rights of farmworkers and farm dwellers who are already part of such schemes. Human Rights Watch interviewed multiple farmworkers who are also shareholders in farm equity schemes; on three of the farms, there were numerous problems with its implementation, including a variety of rights abuses. Although the government had provided between 16,000 rand (US$2,380) and 31,000 rand (US$4,612) for each shareholder in those schemes, those beneficiaries generally saw no benefits, received no or few dividends, had not received training on how to be a shareholder, were not provided with transparent information, and continued to be treated poorly by the employer. Two farmworker shareholders had been evicted, three were facing eviction, and several—including Bennie S. and Farida C., mentioned above—had worked for days without pay. Shareholders had not seen labor inspectors, and many struggled to receive assistance from the Department of Rural Development and Land Reform.[271]

[271] Human Rights Watch interview with a farmworker, Worcester, November 26, 2010; Human Rights Watch interview with Farida C., Vredendal, December 1, 2010; Human Rights Watch interview with farmworkers, Vredendal, December 1, 2010; Human Rights Watch interview with a farmworker and shareholders, Bonnievale, March 20, 2011. Of course not all farmworker shareholders on farm equity schemes confront problems, and Human Rights Watch spoke to shareholders from two other farm equity schemes who were pleased to be a part of such schemes. Both farms are mentioned in the section on better practices. As one DRDLR official acknowledged, "people being evicted while part of farm equity scheme is a reality; don't dispute that." Human Rights Watch interview with a DRDLR official, Worcester, March 15, 2011.

6.1. Lack of Effective Government Monitoring of Labor Conditions and Enforcement of Labor Laws

The Department of Labour has failed to monitor labor conditions adequately on farms in the Western Cape or ensure that farmers comply with labor legislation and other relevant laws. Almost none of the farmworkers whom Human Rights Watch interviewed had ever seen or heard of a labor inspector visiting the farm or farms where they worked, including workers who have been working for over a decade. There are simply not enough inspectors to monitor all farms consistently. Rendering labor inspectors even less effective is the unique agreement between the Department of Labour and Agri SA, the main farmers' association, which states among other things that labor inspectors must inform farmers in advance before inspecting farms. Agricultural work seems to be the only sector in South Africa that has a formal agreement regarding advance notice for labor inspectors.

Labor Inspector Capacity

At the time of research, there were 107 labor inspectors in the Western Cape and 15 vacancies.[272] As in the rest of the country, these labor inspectors are expected to cover all workplaces in the province. Labor inspectors undertake two types of inspections: reactive inspections, with the goal of resolving complaints received, and proactive inspections, or audits, when the inspectors have not received any complaint but go out to monitor conditions. Some proactive inspections take place as "blitz" inspections, during which multiple inspectors converge on one area to examine a certain sector after notifying stakeholders in advance. As one labor inspector explained, labor centers constantly get complaints and attend to them, but proactive inspections on farms do not occur as frequently:

> Unfortunately we don't have the manpower to go every year or even every three years. We don't have manpower to visit all employers every three years. Our inspectors are also inspecting factories, etcetera; they are responsible for all sectors.[273]

Even if all vacancies were filled, there would only be 122 labor inspectors for all workplaces in the province, including the approximately 6,000 farms.[274] It is thus not

---

[272] Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011.

[273] Ibid.

[274] According to the Department of Agriculture, Forestry and Fisheries, Republic of South Africa, "Abstract of Agricultural Statistics 2011," http://www.nda.agric.za/docs/statsinfo/Abstract_2011.pdf (accessed August 12, 2011), p. 6, there were 6,653 farming units in the Western Cape as of 2007. The "Agricultural Statistics in Brief," *Wesgro*, http://www.elsenburg.com/economics/statistics/start.htm, states that there are "nearly 9 700 farms in the province."

surprising that the vast majority of farmworkers Human Rights Watch interviewed had never heard of a labor inspector visiting the farm. Indeed, only one farmworker with whom we spoke had ever been interviewed personally by a labor inspector—and that was in response to a specific complaint made against the farm.[275] Several other farmworkers said that they had heard of a labor inspector coming to the farm but had never spoken to one.

Similarly, farmers and other employers noted that they did not see labor inspectors regularly, and sometimes not at all. For example, one employer noted that the farm had not received any visit from a labor inspector since it started in 2001.[276] Another farmer in a different area stated that a few labor inspectors have come over the past four to five years, but that they do not come every year.[277] In yet another area, a farmer explained that "labor inspectors don't come regularly. Not once a year or even once every two years."[278] One ward councilor in a farming area noted his frustration with the limited number of labor inspectors in his area, saying, "It is useless to bring a case to labor inspectors.... The staff is under-capacitated."[279]

Labor Inspections and the Agreement Between the Department of Labour and Agri SA

Labor inspectors have the authority to enter farms without an appointment in order to monitor and enforce compliance with employment legislation.[280] However, the Department of Labour, Agri SA, and other parties have entered into an agreement regarding access to farms. Under this protocol which was prompted by security problems on farms, officials who are statutorily authorized to access farms, including labor inspectors, must make prior arrangements with the farmer or person in charge of the property.[281] One representative of a farmers' association noted that the protocol creates a procedure so that "people don't just rock up during working hours" and was important to ensure the safety of farmers and

---

[275] Human Rights Watch interview with Piet A., farmworker, Citrusdal, March 1, 2011.

[276] Human Rights Watch Email Correspondence with the CEO of wine farm, May 5, 2011.

[277] Human Rights Watch interview with a farmer, Citrusdal, March 2, 2011.

[278] Human Rights Watch interview with a farmer, De Doorns, February 28, 2011.

[279] Human Rights Watch interview with a ward councilor, Citrusdal, November 30, 2010.

[280] BCEA, No. 75 of 1997, art. 65. As a labor inspector explained, inspectors do not automatically have the right to enter homes on farms, but the rest of the farm is not considered to be a home for purposes of the legislation. Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011.

[281] One version of the Protocol on file with Human Rights Watch states that "no visitor shall in future be allowed access to any farm property except in the following cases: ... 2. Other officials who, in terms of statutory arrangements, have the right/power to access the property in order to carry out their duties: ... 2.1 Only per prior arrangement/appointment with and from the owner or other person in charge of the property." Another version states: "2. Officials empowered in terms of any statute to have access to property: Responsibility of official: Where ever practicably possible make prior arrangements with the farmer owner or person in charge of the property ..." Both versions state that if the official is unable to make an appointment because he could not contact the owner or because his request was turned down the official must then contact the local farmers' association, agricultural union, or police to assist him.

farm dwellers.[282] Similarly, Agri SA explained to Human Rights Watch that the intent was "to contribute towards a safe environment for all residing on farms" and that inspectors should adhere to the protocol for "practical reasons."[283]

As one Department of Labour official explained, the "protocol was fundamentally meant to facilitate the relationship" between farmers, the Department, and its inspectors. He noted that, although "it has its unintended consequences,… it also has its positive spinoffs—relationship between farmers, farmworkers, and the Department of Labour have improved."[284] In addition, according to a labor inspector, providing advance notice is useful because it ensures that the employers' documents are in order and that shop stewards are on notice to be present.[285]

Advance notice of labor inspections goes against the general spirit of the law that empowers inspectors to enter freely into places of employment.[286] It also can enable farmers to try to manipulate labor inspections, either by ensuring that certain farmworkers are not present or by instructing farmworkers on what to say. As a third-party auditor explained, "in a checklist process, being prepared or warned in advance would make it easy for a farmer to warn people or coach farmworkers."[287] This can be particularly problematic when labor inspectors undertake reactive inspections based on a specific complaint.

For example, Piet A., the farmworker who said that he was provided with *dop*, was also the only farmworker interviewed by Human Rights Watch who said he personally had spoken to a labor inspector. The inspector visited based on a complaint. Piet explained that, before the labor inspector came, the farmer told farmworkers to say that no *dop* was given. The labor inspector spoke to the workers in a group. Piet noted that he did not tell the inspector about any of the problems because one of the workers would tell the farmer what he said and "there would be a lot of trouble."[288]

---

[282] Human Rights Watch interview with a farmer/farmers' association representative, Paarl, November 29, 2010.

[283] Human Rights Watch correspondence with Agri SA, August 12, 2011.

[284] Human Rights Watch interview with a department of labour official, Pretoria, March 25, 2011.

[285] Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011. The inspector noted that, although the protocol is unique to access to farms, inspectors generally also make advance appointments when going to factories as well, for the same reasons of efficiency and courtesy.

[286] Similarly, art. 16 of ILO Convention No. 129 on labor inspectors in agriculture, which South Africa has not ratified, notes that "Labour inspectors in agriculture provided with proper credentials shall be empowered -- (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection."

[287] Human Rights Watch interview with a third-party auditor, Cape Town, March 18, 2011.

[288] Human Rights Watch interview with Piet A., farmworker, Citrusdal, March 1, 2011. One person who works at the Department of Labour after hearing this story said that he "would argue that the farmworker with *dop* who spoke to [Human Rights Watch] was disgruntled." Human Rights Watch interview with a Department of Labour official, Pretoria, March 25, 2011.

When undertaking proactive inspections to monitor labor conditions on farms, labor inspectors are supposed to follow the same procedure, looking at documents and speaking to farmers and farmworkers to ascertain whether applicable laws are followed. After greeting the employer, inspectors examine paperwork provided by the employer, including pay slips. Inspectors then question the employer, and subsequently use that information to question employees. This has been described as a way to confirm whether the information is correct and also as an awareness-raising session. The inspector then returns to the employer, in some cases using the information garnered from employee interviews to question the employer further.[289]

Although labor inspectors are supposed to speak with both employers and workers, they do not always speak to workers. Of the small number of farmworkers who had heard of labor inspectors coming to the farm, most said inspections occurred without contact with farmworkers.[290] For example, Naomi A., who has worked on the same farm for 15 years, said that she had never personally seen a labor inspector. She believed that labor inspectors do visit the farm, but simply go to the office.[291] Kiersten H. said that if a labor inspector comes,

> the farmer keeps them away … Three to four months ago, someone came. The manager said person is coming, you must say this and that, but then we never even saw the inspector. When a person comes to visit the farm [to inspect], they are driven around, but never ask the workers any questions.[292]

Similarly, another farmworker who has worked for 15 years explained that he had never seen a labor inspector personally: "They don't come to workers, they just go to office. I

---

[289] In the case of non-compliance the inspector will provide a written undertaking to the employer, who has 21 days to rectify the issue before a follow-up inspection. If it is not subsequently fixed, the department can take a series of steps, including issuing a compliance order, getting a court order from the Labour Court, and getting interests and fines from the court. Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011.

[290] When undertaking proactive inspections to monitor labor conditions on farms, labor inspectors are supposed to follow the same procedure, looking at documents and speaking to farmers and farmworkers to ascertain whether applicable laws are followed. After greeting the employer, inspectors examine paperwork provided by the employer, including pay slips. Inspectors then question the employer, and subsequently use that information to question employees. This has been described as a way to confirm whether the information is correct and also as an awareness-raising session. Afterwards, the inspector returns to the employer, in some cases using the information garnered from employee interviews to question the employer further. In the case of non-compliance, the inspector will provide a written undertaking to the employer, who then has 21 days to rectify the issue before a follow-up inspection. If it is not subsequently fixed, the department can take a series of steps, including issuing a compliance order, getting a court order from the Labour Court, and getting interests and fines from the court. Human Rights Watch interview with a labor inspector, Cape Town, March 18, 2011.

[291] Human Rights Watch interview with Naomi A., Grabouw, November 27, 2010.

[292] Human Rights Watch interview with Kiersten H., Grabouw, November 27, 2010.

have heard of them coming to office, lots of people come here to farm but don't come to see the workers."[293]

Greta P. stated that labor inspectors, who came about once a year, only spoke to farmworkers selected by the farmer. She noted that the inspectors only spoke to workers chosen by the farmer, and they "never spoke to people in union because [the farmer] always set up his own list."[294]

Labor inspectors generally do not share the results of their inspections with outside parties, which can lead to a lack of accountability. In the agricultural sector, this has created frustration on the part of both farmers and those working on behalf of farmworkers. One representative of a farmers' association explained that there is a

> continued debate about whether [the Department of Labour] will provide the result of inspections. We [farmers] want to know where are [cases of] non-compliance, who not complying … so we can provide training. So far have failed to get this info … we want transparency … we want specifics. Never seen the department publish how many inspections they have done.[295]

Similarly, a ward councilor in a farming area explained that after a recent blitz inspection in the area and subsequent follow-up inspection, there was no public report, so he was unable to monitor what happened or what problems exist. Although a civil society group with which he worked has repeatedly requested inspection reports, they are not provided.[296] This lack of information renders it difficult for farmers' associations and civil society groups to understand the depth of problems in any given area or to ensure that inspectors have properly monitored farms, enforced labor legislation, and conducted follow-up.[297]

---

[293] Human Rights Watch interview with a farmworker, Citrusdal, November 30, 2010.

[294] Human Rights Watch interview with Greta P., Stellenbosch, December 10, 2010.

[295] Human Rights Watch interview with a farmer/farmers' association representative, Paarl, November 29, 2010.

[296] Human Rights Watch interview with a ward councilor, Citrusdal, November 30, 2010.

[297] Note that the Minister of Labour has recently announced that the Department of Labour has created a code of conduct for labor inspectors "as a way of rooting out alleged malpractices among inspectors" and "ensure Labour inspectorate operates in a transparent and accountable manner." It has not yet been released publicly, however. Lloyd Ramutloa, "Inspectors code the way to go - Oliphant," Department of Labour, Republic of South Africa, May 3, 2001, http://www.labour.gov.za/media-desk/media-statements/2011/inspectors-code-the-way-to-go-oliphant (accessed August 12, 2011).

6.2. Failure of the Government to Protect People Evicted from Farms

The government is failing to protect the rights of farm dwellers who are evicted or displaced from farms, in particular by not planning appropriately to address their short-term shelter needs. Evicted farm dwellers often have nowhere to go. Municipal governments are generally unprepared to assist evicted farm dwellers, and there is no clear agreement on which government entities are responsible for doing so. Although the government provides long-term housing for citizens, the waiting lists in the municipalities where farmworkers reside are massive, and not a realistic solution.

As noted in the section on evictions, although it is a crime for owners to illegally evict occupiers from land, criminal proceedings are rarely commenced. Under the ESTA, either a public prosecutor or a victim acting as a private prosecutor can institute a prosecution against an alleged offender.[298] However, charges must first be laid with the police. Because police officers are not always aware of rights under the ESTA, the first step for commencing criminal proceedings is often not taken. In addition, although courts will remedy illegal evictions if no due process is followed,[299] whether this occurs can depend on farm dwellers' ability to find assistance, since many farm dwellers are not aware of their rights under the ESTA or the steps they should take when faced with illegal evictions.

Regardless of whether an eviction is legal or illegal, in many cases farm dwellers do not have a place to go once they are evicted, yet the government has no plan to assist them. Municipalities in the Western Cape do not have comprehensive policies to address the short-term needs of evicted farm dwellers, despite an awareness of the high numbers of farm dwellers who have been evicted or face eviction. As one ward councilor who works on the Human Settlements portfolio focusing on housing needs in her area explained, "We don't actually have a plan for when people are evicted because we don't have resources." Thus, the municipality simply encourages evicted people to put their names on the housing list, despite acknowledging the huge backlog of people waiting for housing. She noted that if farmworkers are evicted in her area, they could try to stay at the one local homeless shelter, but "otherwise, we don't have a place."[300]

Every municipality in South Africa is required to undertake developmentally-oriented planning, with the goal of contributing to the progressive realization of fundamental rights,

---

[298] ESTA, No. 62 of 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808, art. 23.

[299] Human Rights Watch interview with Sheldon Margardie, Lawyers for Human Rights, Stellenbosch, November 25, 2010.

[300] Human Rights Watch interview with a ward councilor, Ceres, March 12, 2011.

including the right to housing. Relatedly, municipalities must adopt an Integrated Development Plan (IDP) to guide planning efforts.[301] Although municipalities could include in their IDPs plans to address the housing needs of evicted farm dwellers, they generally do not do so in any detail.[302]

Among national government departments, the Department of Rural Development and Land Reform (DRDLR) has the most clear-cut mandate to address the short-term needs of evicted farm dwellers. As one DRDLR official explained, the Department is the custodian of the ESTA, which governs evictions procedures for farm dwellers.[303] Under the ESTA before a court makes an order for eviction, the owner must provide written notice to the occupier, the municipality, and the head of the relevant provincial office of the DRLRD.[304]

Once the DRDLR receives notice of a threatened eviction, it can intervene, although it cannot prevent evictions. Yet, as the DRDLR official explained,

> [A] major stumbling block [is that the] department doesn't have personnel capacity to address. If [we] receive 10 notices to evict in one month, normally [we] are unable to visit all those people within a two-month period. So this is problematic.[305]

The Department is sometimes able to support farm dwellers during the eviction process indirectly through its Land Rights Management Facility, which provides mediation assistance and legal services support through contractors.[306]

The DRDLR is not solely responsible for farm dwellers or housing concerns, however, and a lack of clarity regarding government departments' respective responsibilities regarding evicted farm dwellers exacerbates the government's failure to protect their rights. For example, the DRDLR is not responsible for housing generally. While the Department of

---

[301] Municipal Systems Act, No. 32 of 2000, *Republic of South Africa Government Gazette*, arts. 23(1)(c), 25, 26, 35(1), http://www.saflii.org/za/legis/num_act/lgmsa2000384.pdf (accessed August 12, 2011).

[302] Human Rights Watch interview with a civil society representative, Cape Town, February 25, 2011, who explained that IDPs do not consider farmworkers' issues, except sometimes superficially; Human Rights Watch interview with a DRDLR Official, Worcester, March 15, 2011 who noted that IDPs do not cater to accommodations for possible evictees.

[303] Human Rights Watch interview with a DRDLR Official, Worcester, March 15, 2011.

[304] ESTA, No. 62 of 1997, http://www.info.gov.za/view/DownloadFileAction?id=70808, art. 9(2)(d).

[305] Human Rights Watch interview with a DRDLR Official, Worcester, March 15, 2011.

[306] Ibid. The proposed land tenure security bill would create a Land Rights Management Board, which would then be responsible for managing land rights, including legal aid and legal representation to affected persons. Draft Land Tenure Security Bill, Sections 36, 37.

Human Settlements is responsible for housing it is not tasked with addressing the needs of farm dwellers, and also requires the supply of land on which to build houses. The Department of Agriculture, which does focus on farmers and farmworkers, does not seek to address farm dweller evictions; one official from the Department of Agriculture explained, "We don't have the mandate."[307] Municipalities are responsible for identifying land to which people can be moved, and providing infrastructure and services on the land. Municipalities often do not have available land, however.[308] Although government departments are supposed to collaborate, this does not seem to occur.[309] This failure to collaborate effectively and consistently creates a lack of accountability and hinders the government's ability to assist farm dwellers who have been evicted or are facing eviction.

Adding to the lack of accountability is the government's failure to track farm dweller evictions. Although the Department of Rural Development and Land Reform receives notice of all threatened evictions, there is no requirement that it be notified when evictions actually occur. One DRDLR official explained that this is "one of the biggest shortcomings in the process—[we] can tell [the] number of threatened evictions but not actual evictions."[310] Although DRDLR officials can request that magistrates provide this information regarding legal evictions, they are not required to do so, and the DRDLR does not have the capacity to follow up. This gap in tracking farm dweller evictions renders it difficult for government entities to assess the numbers of farm dwellers who have been evicted legally and may need services. It also fuels the dispute between farmers and civil society groups over the amount of evicted farm dwellers, as there is no official record of court-ordered evictions.

---

[307] Human Rights Watch interview with a Department of Agriculture official, March 17, 2011.

[308] Human Rights Watch interview with a Department of Agriculture official, March 17, 2011 ,("Municipalities have responsibility to ID land where can reallocate people, but they just put up their shoulders and say sorry we don't have land."); Human Rights Watch interview with a ward councilor, Ceres, March 12, 2011, (explaining that municipality had identified land in area where farmworkers had been evicted, but that it had been waiting for five years to receive report from Department of Environment that would allow converting agricultural land for developing houses, and noting that in other areas, there simply was not land or not enough money to purchase land from private owners).

[309] One official from the Department of Agriculture suggested that formal collaboration did not occur between government departments because the implementation of ESTA legislation created a procedure to be followed by the government, under which responsibility is solely on the Department of Rural Development and Land Reform. Human Rights Watch interview with a Department of Agriculture official, March 17, 2011.

[310] Human Rights Watch interview with a DRDLR Official, Worcester, March 15, 2011. In 2010 the Cape Winelands District commissioned an initial research project to look at the number of evictions cases in the municipality. In discussing the available information, the report noted that "[t]he most striking finding is that no-one appears to be routinely recording the outcomes of all applications for evictions from farms in terms of ESTA or PIE." Janet Annandale, "What do we know about legal evictions?" *Phuhlisani*, http://www.phuhlisani.com/oid%5Cdownloads%5C20100621CWDMCourtReviewSubmitted.pdf.

6.3. Limited Private Efforts to Address Conditions for Farmworkers and Farm Dwellers

Various private entities have undertaken initiatives to address conditions for farmworkers and farm dwellers in the Western Cape. Farmers' associations, industry groups, and international retailers have recognized the poor conditions and rights abuses that can occur on farms, and have stated that they are committed to improving the situation faced by farmworkers and farm dwellers. The resulting initiatives, which date back as far as 2001, have had varying levels of effectiveness, and the continuing serious problems that remain on wine and fruit farms illustrate how much more remains to be done. It is notable that several of the efforts do little more than require farms to adhere to the same basic standards to which they are already bound as a matter of national law; the main difference is that some of the initiatives encompass independent third-party monitoring and reporting to drive better compliance. Given that these more robust efforts were precipitated by concern from the South African and international public, it is imperative that consumers continue to press for good working conditions on Western Cape wine and fruit farms.

Box 5: Better Practices on Farms

> It is not all doom and gloom here.
>
> —Representative from civil society organization who works with rural communities, Cape Town, March 10, 2010.

Not all farmworkers interviewed by Human Rights Watch had encountered rights abuses. In a small minority of cases, farmworkers described employers who comply with all relevant South African law and respect the full range of the workers' rights. Indeed, in a handful of cases, farmworkers and farm owners noted a variety of beneficial practices by employers that went beyond what is legally required. These ranged from small to large initiatives:

- Naomi A. described buying fresh food cheaply from the farm's garden.[311]
- Farmers often provide workers with free transport to town to go shopping.[312]
- One farmer gives workers land to grow crops, which they can eat or sell.[313]
- Another farmer fully pays for doctor visits and provides free food to workers in the winter.[314]

---

[311] Human Rights Watch interview with Naomi A., Grabouw, November 27, 2010.

[312] Human Rights Watch interview with a farmer, Citrusdal, March 2, 2011.

[313] Human Rights Watch interview with a farmer, Stellenbosch, December 6, 2010.

[314] Human Rights Watch interview with a farmer, De Doorns, February 28, 2011.

- Some farmers provide crèches on their farms or pay school fees.[315]
- Other farmers participate in outside programs, including educational ones for children[316] or alcohol abuse interventions for workers.[317]
- Some farmers have set up trusts that benefit workers or shareholder schemes that include workers. When done carefully and with the intention to benefit farmworkers, these efforts can benefit farmworkers, albeit with varying levels of empowerment.[318]
    - Danie L., a worker and shareholder in an equity share scheme, stated that simply knowing that he owned equity was powerful.[319]
    - One farmer arranged a bank loan—secured with his own farm—for workers to start a trust, which now owns a farm and operates in partnership with the original farm and another farm. A trust committee allocates its share of profits, which have funded a full-time social worker, a music program, and educational support.[320]

Providing benefits to farmworkers beyond what is required by law is not simply an altruistic move; farmers who described doing so were quick to point out that it can be profitable as well:

- One farmer stated that, while he provided more benefits to workers than most farmers in his area, he has "a very highly productive team."[321]
- Another farmer said that, even if expensive, providing good houses for farmworkers enables them to contribute productively to the business.[322]
- Another farmer explained that his farm, which has provided many benefits to workers through a trust, has had "business sales through the roof."[323]

---

[315] Human Rights Watch interview with a farmer, Stellenbosch, December 6, 2010.

[316] Human Rights Watch interview with a representative from the Anna Foundation, Stellenbosch, March 16, 2011; Human Rights Watch interview with representatives from Goedgedacht Trust.

[317] Human Rights Watch interview with representatives from Ignite, Stellenbosch, December 6, 2010.

[318] Not all shareholder farming schemes are beneficial for farmworkers, and some can be extremely problematic. As has been acknowledged even by its supporters, some farm equity schemes have been undertaken primarily to recapitalize failing businesses. See "Box 4: The Government's Failure to Protect Beneficiaries in Farm Equity Schemes," in Section VI of this report, which discusses abuses that can arise on farm equity scheme farms.

[319] Human Rights Watch interview with a farmworker, Stellenbosch, December 11, 2011.

[320] Human Rights Watch telephone interview with a farmer, March 17, 2011; Human Rights Watch interview with a farmer (second interview), New York, April 27, 2011.

[321] Human Rights Watch interview with a farmer, De Doorns, February 28, 2011.

[322] Human Rights Watch interview with a farmer, Koue Bokkeveld, March 17, 2011.

[323] Human Rights Watch telephone interview with a farmer, March 17, 2011.

Farmers' Associations

Agri SA and its affiliates have pledged under a recent declaration of intent to ensure their members' compliance with legal and ethical standards, stating that they will "disassociate and/or distance themselves" from members who do not comply with labor and land tenure laws or ethical norms related to farmworkers.[324] The members of Agri Wes-Cape, an affiliate of Agri SA, are also subject to its comprehensive Code of Conduct, released in 2001.[325] Under the code, members agree to comply with legislation and specifically undertake additional wide-ranging commitments related to land reform, working and living conditions, and environmental rights.[326] Several notable ways in which the code asserts a standard higher than national law is by incorporating commitments to "ensure" the provision of "a living wage," to "ensure that housing, where it is provided, is safe and hygienic and provides adequate protection," and to take proactive steps to combat the culture of alcohol dependence within the farm community.[327]

Although the Code provides that Agri Wes-Cape is responsible for monitoring and implementing the Code and ensuring compliance,[328] in practice it is not clear that it undertakes comprehensive monitoring or enforcement. Instead, when asked how they ensure adherence to these standards, representatives of farmers' and employers' associations primarily referred to actions that encourage compliance with South African law, which is more limited than the Code. In particular, they told Human Rights Watch that they frequently stress the importance of the law to their members, but that monitoring members' conduct was beyond their capacity, and, moreover, that it was the government's responsibility to ensure compliance with the law. They asserted, based on their own observations and the outcome of labor inspections, that in the vast majority of cases their members do comply with the law and that most complaints against farmers were false.[329]

---

[324] Agri SA, "Declaration of Intent: Labour in the Agricultural Sector," undated, http://www.agrisa.co.za/Dokumente/ArbeidE.pdf (accessed August 12, 2011).

[325] Agri Wes-Cape, "Code of Conduct, 2001," 2002.

[326] The commitments, some of which are also covered by national law, include respect for freedom of association, freedom of movement for family members, rights of women, freedom from violence; preventing unfair discrimination; providing maternity leave; ensuring a safe and healthy work environment; providing remuneration that allows an adequate livelihood; ensuring that provided housing "is safe and hygienic and provides adequate protection;" assisting evictees to find alternative housing; and providing for collective bargaining. Agri Wes-Cape, "Code of Conduct, 2001," 2002, arts. 2.1, 2.2, 2.3, 2.4.

[327] Ibid, arts. 2.4.3, 2.4.5, 2.3.10.

[328] At the time it was agreed, the code envisioned that processes would be developed subsequently to provide a monitoring and complaints procedure and to encourage compliance through incentives and sanctions. Agri Wes-Cape, "Code of Conduct, 2001," 2002, arts. 5.1, 5.4.

[329] Human Rights Watch telephone interview with an employers' association representative, August 3, 2011; Human Rights Watch correspondence with Agri Wes-Cape, August 10, 2011; Human Rights Watch correspondence with Cape Agri Employers' Organisation, August 11, 2011; Human Rights Watch correspondence with Agri SA, August 12, 2011.

Representatives of Agri Wes-Cape, Agri SA, and the Cape Agri Employers' Organisation also stated that they are rarely provided with the details of accusations against farmers, which precludes them from taking action, but that, when faced with a complaint, they themselves undertake to investigate and remedy any problems on a case-by-case basis.[330] One group provided examples of incidents in which it had intervened, including securing the closure of farm housing that was in extremely poor condition.[331] Such an ad-hoc solution led by individual farmers or association representatives, however, is not a viable framework for implementing the Code consistently on members' farms, especially given the deep power imbalances on farms and farmworkers' well-grounded fear of repercussions.

Wine Industry

The various stakeholders that formed the Wine Industry Ethical Trade Association (WIETA) in 2002 have elaborated a Code of Conduct focused on employment standards. This code is based on the standards of the Ethical Trading Initiative (ETI), known as the ETI Base Code, and South African legislation.[332] For the most part, the WIETA code simply requires compliance with South African law, including compliance with the Extension of Security of Tenure Act, with the notable addition of a provision calling for payment of a "living wage."[333]

A distinguishing feature of the WIETA is that it audits members of the association based on its code and commits to monitoring implementation "until all standards have been met."[334] Although there is value in ensuring that accredited members meet certain standards, WIETA's ability to improve conditions on farms is limited. First, it currently does not audit

---

[330] Human Rights Watch interview with a farmers' association and industry representatives, Paarl, November 29, 2010; Human Rights Watch telephone interview with an employers' association representative, August 3, 2011; Human Rights Watch correspondence with Agri Wes-Cape, August 10, 2011; Human Rights Watch correspondence with Cape Agri Employers' Organisation, August 11, 2011.

[331] Human Rights Watch correspondence with Cape Agri Employers' Organisation, August 11, 2011.

[332] WIETA, 2004, http://www.wieta.org.za/ (accessed August 12, 2011); and WIETA, "WIETA Code," 2004, http://www.wieta.org.za/code.html (accessed August 12, 2011). Human Rights Watch interview with WIETA, Stellenbosch, December 9, 2010.

[333] WIETA's code defines a living wage as "enough to allow employees and their households to secure an adequate livelihood. This should be sufficient to meet basic needs such as food, clothing, shelter and education, and to have money left over for discretionary spending." WIETA, "Code of Conduct," http://www.wieta.org.za/documents/WIETA%20Code%20in%20English.pdf (accessed August 12, 2011). WIETA has asserted that some issues that are not found on their website are included in its benchmarks, such as housing issues: WIETA stated that it advises members to have a housing policy, and that auditors examine farm dweller housing. Human Rights Watch interview with WIETA, Stellenbosch, December 9, 2010.

[334] WIETA, "Questions and Answers," 2004, http://www.wieta.org.za/qa.html (accessed August 12, 2011). Those who are deemed to comply in full with the code or who have taken steps to rectify non-compliance become "accredited" members. WIETA, "Membership," http://www.wieta.org.za/membership.html (accessed August 12, 2011), emphasis removed; WIETA, "Auditing," 2004, http://www.wieta.org.za/auditing.html (accessed August 12, 2011).

down the supply chain (although this is envisioned for the future), but only audits the workplace of the member. Since many WIETA members are wine producers who do not grow crops themselves but source them from a variety of suppliers, many audits have not been of farms or primary input suppliers. WIETA is thus unable to guarantee that farmworkers who work on farms that supply to accredited members work under decent conditions.[335] Second, WIETA does not conduct audits annually, so the audits can only provide a snapshot of what was occurring on a farm at the time of the audit, even if conditions change in subsequent years.[336] Third, as an ethical trade association it is limited in scope: almost a decade after its creation and even after expanding its focus to cover agriculture generally, WIETA has fewer than 150 producer or grower members.[337]

Fruit Industry

In 2008 the fruit industry, through Fruit South Africa (FSA), began an effort to improve labor practices on fruit farms and pack houses in South Africa.[338] FSA narrowly defines ethical trade for the purposes of its new Ethical Trade Program as "merely the implementation of [South African] labor laws,"[339] although it also promotes best practices on farms by disseminating guidelines and other materials.[340] In addition, FSA has set out to harmonize audit standards so that South African farms that are currently subject to audits by retailers using different international codes will instead be able to apply a common standard.[341] It plans to conduct audits every five years, with non-compliant farms required to address deficiencies within one year or submit to a second audit.[342]

FSA has also begun to implement awareness-raising, training, and capacity-building programs, including the distribution of an ethical trade handbook to producers and collaboration with the Western Cape Department of Agriculture. FSA argues that industry

---

[335] WIETA Questions and Answers, http://www.wieta.org.za/qa.html; Human Rights Watch interview with WIETA, Stellenbosch, December 9, 2010.

[336] Human Rights Watch interview with WIETA, Stellenbosch, December 9, 2010, in which WIETA explains that accreditation is followed by a follow-up assessment within a year, and that re-accreditation must take place within three years, but that audits are not conducted each year. Human Rights Watch interview with a third-party auditor, Cape Town, March 18, 2011; the auditor explained that one drawback of audits is that they only provide a snapshot of the farm.

[337] WIETA, "Members," http://www.wieta.org.za/members.html.

[338] Fruit South Africa (FSA), "FSA Ethical Programme," Useful Questions and Answers.

[339] Ibid.

[340] Human Rights Watch correspondence with FSA Ethical Trade Programme, August 11, 2011.

[341] FSA is drawing on the work of the Global Social Compliance Programme to create a single standard for audits that integrates requirements contained in various international codes, including the ETI Base Code. Ibid.

[342] FSA says it will use other measures to monitor improvements in intervening years. In anticipation of the expected launch of its new, harmonized standard in October 2011, FSA has begun conducting trial audits against that standard. Ibid.

"cannot play an inspectorate role on farms—this is the function of the Department of Labour." However, has undertaken ad-hoc efforts to address specific problems that have arisen on farms.[343] The FSA program was developed in part in order to respond to increasing demands on South African suppliers from international retailers for assurances about ethical practices along their supply chains.[344] As FSA acknowledges, the framework of its ethical trade program is not yet in place and it remains "a work in progress."[345]

Fairtrade Certification

Fairtrade International is one of several organizations devoted to promoting more equitable trade that benefits workers in producing countries and upholds basic values.[346] It has developed a market-based certification scheme, known as Fairtrade, under which consumers pay higher prices to ensure that producers receive a "fair" price or wage and that other standards are met. Third-party auditors inspect Fairtrade producers annually and, if Fairtrade International's standards are deemed to be met, these producers are approved to use the Fairtrade label.[347] Originally designed to assist smallholder farmers, Fairtrade International has expanded to cover hired labor farms, which constitute most of the certified farms in South Africa. Approximately 50 farms in the Western Cape participate in Fairtrade International's certification program.[348]

Although the process of Fairtrade certification may help identify problems and help ensure that flagrant rights abuses do not occur, its scope is limited to participating farms. Even on

---

[343] Ibid; and Human Rights Watch interview with Bill Thomson, CCMA Senior Commissioner, Cape Town, March 10, 2011. He described how FSA arranged for an external mediator to help resolve a public dispute that arose between the owners and a trade union at an exporting farm.

[344] FSA, "FSA Ethical Trade Programme," Useful Questions and Answers. In responding to questions from Human Rights Watch, several British and South African retailers also highlighted FSA's ethical trade program and their support of it.

[345] Human Rights Watch correspondence with FSA Ethical Trade Programme, August 11, 2011.

[346] Fairtrade International contacted Human Rights Watch in response to written questions and sought to send a reply, but was unable to provide it in time for the organization's comments to be reflected in this report, given publication deadlines.

[347] Fairtrade International, *About Fairtrade*, 2011, s.v. "What is Fairtrade?" http://www.fairtrade.net/what_is_fairtrade.0.html (accessed August 12, 2011). The standard for hired labor farms includes, inter alia, requirements regarding freedom of association, conditions of employment, occupational health and safety, and decisions over how to use the Fairtrade Premium that is included in the price of Fairtrade products. Fairtrade International, "Generic Fairtrade Standard for Hired Labour," May 1, 2011, http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/generic-standards/2011-05-11-HL_EN_01.pdf (accessed August 12, 2011). In South Africa, there is also a requirement that producers demonstrate their contribution to Broad-Based Black Economic Empowerment. Flo-Cert, "Information Sheet for Implementation of Certification Policy for South Africa," undated, http://www.flo-cert.net/_admin/userfiles/file/Certification_Policies/PC%20SouthAfricaPolicy%20ED%2013%20en.pdf (accessed August 12, 2011).

[348] There are only three certified smallholder farms in the entire country, yet almost 50 certified hired labor farms in the Western Cape alone, which produce fruit, wine, or tea. All fairtrade certified wine and fruit in South Africa is produced on commercial hired labor farms. Human Rights Watch interview with FLO-Cert, Cape Town, February 24, 2011.

such farms, Fairtrade audits sometimes fail to uncover problems with working conditions. For example, Nolita Z., a farmworker on a Fairtrade-certified farm, described problems she encountered regarding pesticides, access to toilets and water, and poor treatment of union members. She also told of being physically abused by a foreman, who "grabbed my shirt and threw me down. I tried to block him but he hit me on [my] face. He sat on me and hit me and [swore]." She explained that she felt unable to share her account with the Fairtrade auditor without fear of repercussion because she and other workers were questioned in a group; if someone voiced complaints, workers to whom the farmer was close would tell him what had been said.[349] When asked about this scenario, a Fairtrade certifier noted that "the model was created for massive plantations where auditors can interview large numbers of workers and feedback cannot be traced,"[350] and acknowledged that, on a small farm, it is "difficult to avoid" situations in which management knows who was interviewed.[351] However, the certifier stated that workers who do not feel comfortable raising issues with an auditor have recourse, including to an allegations mechanism.[352]

Obstacles to union formation are the most prevalent problems on Fairtrade-certified farms in the Western Cape. Although Fairtrade standards require freedom of association,[353] some farmers on Fairtrade-certified farms are resistant to unions, and Fairtrade-certified farms are not immune to efforts to preempt union formation through workers' committees.[354] Overall, there are low levels of union formation on Fairtrade-certified farms in the province, as there are generally on other farms. When asked about union formation on Fairtrade-certified farms, FLO-Cert, the Fairtrade certifier in South Africa, acknowledged that this is the most controversial issue with fair trade in South Africa, but noted that every certified

---

[349] Human Rights Watch interview with Nolita Z., Grabouw, December 4, 2010. Similarly, a former farmworker from the same farm explained that she eventually had to stop working because of severe health problems with her lungs due to pesticide exposure. Human Rights Watch interview with a former farmworker/current union Organizer, Rawsonville, December 5, 2010.

[350] Human Rights Watch interview with FLO-Cert, Cape Town, February 24, 2011.

[351] Human Rights Watch email correspondence with FLO-Cert, August 4, 2011.

[352] Although farmworkers could phone the certifier's office with complaints, not many farmworkers do so.[352]

[353] The Fairtrade Standards require that management allows trade unions to communicate with workers and that workers are not discriminated against based on union membership. However, "If no active and recognized union is able to work in the area, all the workers shall democratically elect a workers' committee that represents them and negotiates with management to defend their rights and interests." Fairtrade International, "Generic Fairtrade Standard for Hired Labour," http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/generic-standards/2011-05-11-HL_EN_01.pdf, para. 1.4.1.3.

[354] One person who works to support workers on Fairtrade certified farms noted that the "biggest issue at the moment is freedom of association," and that the workers' committees undermine union rights: "lots of workers' committees are rubber stamps and not empowered at all." Human Rights Watch interview with a civil society organization, Cape Town, December 7, 2010.

farm must have some form of worker organization, if not a union, by the third year of certification.[355]

International and Domestic Retailers

Retailers, particularly those from Europe, have been involved in initiatives to address conditions in both the wine and fruit industries. For example, after media reports and civil society campaigns drew attention to problems on South African farms, pressure applied by UK retailers helped spur the creation of WIETA and of FSA's ethical trade program.[356]

Aside from involvement in industry-wide efforts, retailers have also taken their own steps related to labor conditions in their supply chain. Although Human Rights Watch's research did not trace supply chains and thus does not assess conditions on the basis of individual retailers, Human Rights Watch contacted nine international and domestic retailers who purchase fruit or wine from the Western Cape to inquire about their ethical commitments and assurance mechanisms. In meetings and correspondence, some companies shared information on their efforts regarding conditions on the farms from which they source.

For example, Tesco, which has come under pressure from civil society groups regarding farmworkers' wages and working conditions,[357] has hired an ethical action team manager based in the Western Cape. The British company, which is the biggest importer of South African fruit and sources from about 600 farms, requires independent third-party audits of suppliers based on the ETI Base Code.[358] It has also undertaken several projects focused on labor conditions and relations on farms in South Africa, including a training fund to improve levels of compliance, an ethical handbook for growers, and a grievance mechanism pilot project.[359] Recently, Tesco has considered developing a set of best

---

[355] Human Rights Watch interview with FLO-Cert, Cape Town, February 24, 2011; Human Rights Watch email correspondence with FLO-Cert, August 4, 2011.

[356] There are currently six retailers who are WIETA members, five of which are from the United Kingdom.

[357] See, for example, ActionAid, "Rotten fruit," http://www.actionaid.org.uk/doc_lib/14_1_rotten_fruit.pdf; and War on Want, "Sour Grapes."

[358] Human Rights Watch interview with a Tesco Ethical Action Team Manager, Stellenbosch, March 15, 2011. The ETI Base Code requires, among other things, living wages, defined as wages that "meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher … [and] should always be enough to meet basic needs and to provide some discretionary income." Ethical Trading Initiative, "ETI Workbook: Ethical Trade, a comprehensive guide for companies," October 7, 2009, http://www.ethicaltrade.org/sites/default/files/resources/ETI%20workbook%202nd%20edition.pdf (accessed August 12, 2011).

[359] Human Rights Watch interview with a Tesco Ethical Action Team Manager, Stellenbosch, March 15, 2011. The pilot project was undertaken in conjunction with John Ruggie and the Harvard Kennedy School's Corporate Social Responsibility Initiative to test principles on grievance mechanisms. The project has led to the creation of an oversight stakeholder body, but the

practices for suppliers regarding on-farm housing; the best practices would not cover the issue of evictions, however, and compliance would be voluntary.[360]

Other British retailers sourcing from South Africa also have developed ethical trade programs to address labor conditions in their supply chains. For example, in response to questions from Human Rights Watch, Marks and Spencer explained that it implements the ETI Base Code in its supply chain. In South Africa, agronomists audit their supplier sites on a range of issues, and any suppliers deemed "high risk" must also undergo an independent ethical audit. The company noted that, "[s]ince 2008, over 1200 corrective actions to non compliances have been completed." In addition to audits, it has undertaken other projects focused on farm conditions, including raising awareness on ethical trading and undertaking capacity-building efforts.[361]

Morrisons told Human Rights Watch that it carried out targeted audits of its suppliers in 2008 and 2009 against its Ethical Trading Code, which is based on the ETI Base Code and incorporated into its purchase agreements. A large majority of the audits did not identify serious concerns. Where conditions were not satisfactory—including issues with living conditions, excessive working hours, and living wages—the company said auditors made recommendations to improve conditions, which were subsequently implemented. It has not re-assessed conditions since then.[362]

Sainsbury's informed Human Rights Watch that its new revised Code of Conduct for Ethical Trade, which is not yet public, "requires that suppliers ensure that they and their suppliers comply with the [ETI] Base Code and/or national laws." The company said its product technologists monitor compliance against its Code of Conduct in visits to suppliers and growers, but stressed that responsibility for monitoring the state of labor rights at the farm level rests with the suppliers themselves. Sainsbury's acknowledged numerous problems in South African supply chains, including some that are not readily captured by audits,

---

approach has only been tested on three farms in the Western Cape out of approximately 600 that supply Tesco. Harvard Kennedy School, *Research Programs—Governance and Accountability*, 2008, s.v. "Company Grievance Mechanisms Pilo," http://www.hks.harvard.edu/m-rcbg/CSRI/ga/company_grievance.html (accessed August 12, 2011); Caroline Rees, "Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned," Harvard Kennedy School, Corporate Social Responsibility Initiative, May 23, 2011, at http://www.business-humanrights.org/media/documents/ruggie/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf (accessed August 12, 2011). A full case study on the project with Tesco appears on pp. 63-75 of the report.

[360] Human Rights Watch interview with a Tesco Ethical Action Team Manager, Stellenbosch, March 15, 2011.

[361] Human Rights Watch correspondence with Marks and Spencer Group PLC, August 11, 2011.

[362] Human Rights Watch correspondence with Wm Morrison Supermarkets PLC, August 5, 2010.

such as discrimination. The company noted that it has undertaken projects related to farm conditions and purchases Fairtrade products from South Africa.[363]

Waitrose explained that its Responsible Sourcing Code of Practice applies to the supplier farms in South Africa from which it sources, and that it monitors compliance through independent ethical audits. It noted that "we do recognise that more can always be done to help suppliers improve working conditions on farms and we always try to identify opportunities to help us do that." In addition, although not directly addressing labor issues, the Waitrose Foundation funds social upliftment projects chosen by farmworkers and smallholders through profits from produce sales.[364]

Some South African retailers have also begun to require that suppliers meet certain ethical standards.[365] For example, SPAR South Africa explained to Human Rights Watch that it requires suppliers from farms to comply with GLOBALG.A.P.[366] standards, which cover worker welfare, and that it engages independent, certified, third-party auditors to undertake annual audits. It also noted that it is in the process of implementing the GLOBALG.A.P. Risk Assessment on Social Practice (GRASP),[367] which checks for "very basic worker welfare criteria."[368]

The impact of the retail companies' ethical trading programs and various projects is unclear, in part because farmworkers interviewed by Human Rights Watch often did not know which retailers purchase their products.[369] Of the retailers that provided information to Human Rights Watch,[370] most asserted a preference to work with suppliers in the case of non-compliance in order to attempt to improve conditions, sometimes in collaboration

---

[363] Human Rights Watch correspondence with J. Sainsbury plc, August 11, 2011.

[364] Human Rights Watch correspondence with Waitrose Ltd, August 10, 2011. The number of audits appears to depend on the type of supplier. For example, Waitrose "performs a risk assessment" of suppliers of Waitrose own-label products every six months; Waitrose Foundation member farms have an independent ethical audit at least once every three years. Waitrose asks its suppliers to ensure that their suppliers comply with the code.

[365] Human Rights Watch contacted three South African retailers but did not receive a response from Pick'n'Pay or Shoprite. Cape Agri Employers' Organisation noted to Human Rights Watch that "[l]arge local retail chains such as Woolworths and Pick n Pay are also now insisting on similar audits." Human Rights Watch correspondence with Cape Agri Employers' Organisation, August 11, 2011.

[366] GLOBALG.A.P. stands for Global Good Agricultural Practice; it "sets voluntary standards for the certification of agricultural products around the globe." http://www.globalgap.org/cms/front_content.php.

[367] Human Rights Watch correspondence with The SPAR Group Ltd, August 5, 2011.

[368] GLOBALG.A.P., "GLOBALG.A.P. Risk Assessment on Social Practice (GRASP)," 2011, http://www.globalgap.org/cms/front_content.php?idcat=126 (accessed August 12, 2011).

[369] One retailer also declined to provide a list of suppliers when asked, stating that it is a trade secret and that suppliers change from year to year.

[370] Of the six British retailers contacted by Human Rights Watch, only Asda Ltd did not respond.

with NGOs and worker organizations.[371] However, despite the efforts that have been undertaken to date, retailers acknowledged that problems still exist on South African farms. While they uniformly said they seek to ensure that their standards are followed, none asserted that their programs guaranteed that conditions on all supplier farms meet the requirements of their ethical trade programs.[372]

6.4. Conclusion

The South African government's overarching failure to protect and promote the housing, health, and labor rights of farmworkers and farm dwellers in the Western Cape—where conditions are arguably better than in other provinces—raises profound questions about its ability to translate constitutional obligations into security for some of South Africa's most vulnerable populations. Greater coordination within the government; more robust monitoring, resource allocation, and transparency; and clarity on responsibility for the millions of farmworkers and dwellers in South Africa would go a long way towards ameliorating the intolerable abuses that they suffer.

At the same time—and particularly in light of the government's failure thus far to monitor and enforce applicable laws—private actors, especially farm owners, must ensure that basic laws are respected on farms in the Western Cape. The various ethical initiatives and codes of conduct that have been developed reflect this goal. But, despite their existence, many farm owners continue to deny their workers very basic nationally and internationally protected rights to health, housing, and decent labor. South Africa's citizens, as well as international consumers of the country's wine and fruit, must continue to apply pressure on both the government and private actors to remedy the denial of the basic standards of living to which the country's farmworkers and dwellers are entitled.

---

[371] Human Rights Watch correspondence with Marks and Spencer Group PLC, August 11, 2011; Human Rights Watch correspondence with Wm Morrison Supermarkets PLC, August 5, 2010; Human Rights Watch correspondence with J. Sainsbury plc, August 11, 2011; Human Rights Watch correspondence with Waitrose Ltd, August 10, 2011; and Human Rights Watch correspondence with The SPAR Group Ltd, August 5, 2011.

[372] For example, in an interview with Human Rights Watch, the head of Tesco's Ethical Trading Program said, "We do not claim in any way that every site we source from in South Africa rigorously meets our ethical standards;" rather, what matters is to "see improvement." Human Rights Watch telephone interview with Giles Bolton, Tesco Ethical Trading Manager, July 5, 2011.

VII. Detailed Recommendations

To the Department of Labour

- Take immediate action to enforce compliance with existing labor and health protections, including by filling all labor inspector vacancies and ensuring that labor inspectors always speak with workers when conducting inspections.
- Rigorously enforce the rights of foreign and other migrant farmworkers to the benefits to which they are entitled, including by ensuring that information and services are provided in the language of migrant communities, and that measures to protect against discrimination are enforced. Ensure that all workers in an employment relationship, whether documented or undocumented, benefit from the provisions relating to conditions of employment as set out in South African employment law, and consistently enforce these provisions.
- Revise the Protocol for Access to Farms, which was agreed upon by the Department, Agri SA, and others, to ensure that labor inspectors will not set up advance appointments with farm owners. Train labor inspectors not to provide a notice of visit, particularly before undertaking a reactive inspection.
- Strengthen the capacity of labor inspectors by hiring more inspectors, providing more training, and ensuring that inspectors spend a sufficient amount of time focusing on the agricultural sector.
    - In particular labor inspectors undertaking inspections on farms must speak to farmworkers—and ensure that they include workers from vulnerable groups such as women and migrants—doing so in a way that will not lead to repercussions from the employer.
- Undertake renewed efforts to provide farmworkers with complete and accurate information about their employment and housing rights, including their rights to sick leave without a medical certificate, maternity leave, and access to water and sanitation facilities. Provide this information in a language and manner that all farmworkers can understand.
- Make labor inspection reports publicly available to the extent possible while protecting workers' privacy.
- Ensure that employers provide farmworkers with an adequate supply of drinking water and access to a toilet and hand washing facilities, and that all pesticide use is undertaken in a way that minimizes hazards.

To the Department of Rural Development and Land Reform

- Take immediate action to ensure the protection of farm dwellers' rights under existing law, including by prioritizing work by Department employees to support persons facing evictions from farms.
- Hire more personnel to focus on eviction cases.
- Create a system to track evictions from farms. This should include all legal evictions that occur under procedures established by the Extension of Security of Tenure Act (ESTA) or the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE). This system should also incorporate all data collected by the Department on real or threatened illegal evictions.
- Affirm the rights of children over the age of 18 who are not working on a farm yet living with working family members.

To the Department of Labour, Department of Rural Development and Land Reform, Department of Agriculture, and Department of Human Settlements

- Develop, in collaboration with each other and in consultation with farmers, farmworkers, and industry representatives, a policy that addresses poor housing conditions on farms without creating a disincentive for farmers to provide farmworker housing.
- Collaborate on addressing farm dweller evictions. At the national, provincial, and local levels, government departments should work more closely on the issue, including how to provide for the short-term needs of those who are evicted.

To the Parliamentary Portfolio Committee on Labour

- Ensure that labor inspectors are regularly inspecting farms and are not providing advance notice to farm owners when they respond to a specific complaint.

To the Employment Conditions Commission

- Revise Sectoral Determination 13(22) to make it unambiguous that workers can receive paid sick leave for up to two days before needing to provide a medical certificate. This could be done simply by following the more precise phrasing used in Sectoral Determination 7.
- Revise Sectoral Determination 13(21) to clarify that all workers, including temporary workers, are entitled to annual leave on full pay per the current formulation in the Sectoral Determination.
- Revise Sectoral Determination 13(8)(2) to add in "or payment required" regarding electricity, water, or other services, so that it reads: "An employer may only make a deduction in respect of accommodation and/or food … if … (d) in the case of

accommodation, no deduction is made or payment required by the employer for electricity, water or other services …"

- Revise Sectoral Determination 13 to set minimum standards of housing and sanitation for workers who reside on their employers' premises that are aligned with (1) Agri Wes-Cape Code of Conduct 2.4.5,[373] and (2) the standards in the Sectoral Determination that currently exist for workers who have their wages deducted for accommodations.[374]

To the National Government and Municipalities that Cover Rural Areas

- Ensure that farmworkers and farm dwellers are included in government housing plans.
- Devise actionable plans that address the short-term shelter needs of evicted farm dwellers.

To the South African President and Parliament

- Ratify the International Covenant on Economic, Social and Cultural Rights, which was signed in 1994.
- Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and amend domestic laws accordingly.

To the South Africa Human Rights Commission

- Regularly investigate and report on human rights abuses in the farming sector, including abuses against female and migrant farmworkers.

To Farmers' Associations

- Create a system to implement and monitor the Agri Wes-Cape Code of Conduct. As suggested in the Code of Conduct, this should be done in collaboration with other stakeholders, including non-governmental organizations and trade unions.
- Negotiate an agreement with unions to expand their organizers' access to members' farms before recognition agreements are in place, within reasonable restrictions.

---

[373] Agri Wes-Cape Code of Conduct, art. 2.4.5 states: "Housing: We will ensure that housing, where it is provided, is safe and hygienic and provides adequate protection."

[374] Although Sectoral Determination 13 currently only sets standards for housing where employers deduct from wages, under the Basic Conditions of Employment Act, "A sectoral determination may in respect to the sector and area concerned— … (h) set minimum standards for housing and sanitation for employees who reside on their employers' premises." BCEA, No. 75 of 1997, art. 55(4)(h).

To Farmers in the Western Cape

- Comply with national labor, tenure security, and immigration legislation.
- Ensure that all housing that is provided meets the standards set forth in Agri Wes Cape's Code of Conduct by being safe, hygienic, and providing adequate protection.
- Provide farmworkers with access to toilets, hand washing facilities, drinking water, and proper safety equipment, and require that all pesticide use is undertaken in a way that minimizes hazards.
- Grant reasonable permission for union organizers to enter onto farms for the purpose of organizing workers, and respect workers' right to freedom of association.
- Pay wages that enable workers and their households to attain an adequate livelihood.

To Relevant Industry Bodies and Ethical Trade Bodies

- Promote free access of unions onto members' farms and better working conditions across all farms.
- Adopt or revise membership criteria to incorporate robust standards and to develop assurance processes, including certification schemes or other compliance mechanisms, to include periodic independent third-party audits down the supply chain and to ensure that any products coming from accredited members have been sourced from farms that provide good working conditions and meet standards that exceed those contained in national law.

To Retailers Sourcing from Western Cape Farms

- Continue to put pressure on suppliers to comply with the law and to improve labor, health, and housing conditions.
- Retailers that adhere to the ETI Base Code should ensure that the standards contained therein, including regarding freedom of association, are respected on supplying farms. Retailers should establish a safe and transparent complaints mechanism that allows workers to raise problems, including intimidation or discrimination based on union membership. Retailers should also ensure that, following any third-party audits, all recommendations are followed.

To International Consumers

- Inquire into the human rights and labor rights conditions on farms that grow the products they purchase.
- Push retailers to only purchase from farms with working conditions that meet international standards.

- Ask that ethical trading initiatives include strong assurance measures, including independent third-party audits down the supply chain, so that consumers can be confident that "ethical trade" products they purchase are in fact made without the exploitation of workers.

To Trade Unions Representing Farmworkers in the Western Cape

- Increase visibility in rural areas, including with groups of workers who are often overlooked by unions such as seasonal, female, and migrant workers.

Acknowledgements

This report was written by Kaitlin Cordes, fellow in the Africa Division. Kaitlin Cordes, Sipho Mthathi, Director of the South Africa Office, and Clive Baldwin, Senior Legal Advisor, conducted the research. The report was edited by Rona Peligal, deputy director of the Africa division, and reviewed by Rebecca Schleifer, Health and Human Rights Program advocacy director; Lisa Misol, Business and Human Rights Program senior researcher; Agnes Odhiambo, Women's Rights Division researcher; Siphokazi Mthathi; Clive Baldwin; and Babatunde Olugboji, deputy program director in the program office. Dani Haas and Tom Porteous from the program office also provided comments. Megan Worman, legal intern in the US program; Jamie Farrell, Nkemakonam Ejoh, Meagan Byrne, and Frederick Bolageer, interns in the Africa division; and Eryn Schornick, volunteer in the Legal Division, conducted background research for this report. Rumbidzai Chidoori and Charlene Harry in the South Africa office provided logistical support.

Additional editorial and production assistance was provided by Lindsey Hutchison and Jamie Vernaelde, associates in the Africa Division. The report was prepared for publication by Grace Choi, publications director; Anna Lopriore, creative manager; and Fitzroy Hepkins, administrative manager. Assistance with report-related work also was provided by Veronica Matushaj, creative director; Kathy Mills, publications coordinator; and Amanda Bailly, communications assistant.

Human Rights Watch is particularly grateful to the following individuals and organizations for their generous assistance: Andries Titus and the Surplus People Project; Wendy Pekeur; Naomi Betana; Rocky Van der Merwe; the staff of Sikhula Sonke; Colette Solomon and the Women on Farms Project; Desmeline Minyi; Braam Hanekom of PASSOP; Danie Niemand, Department of Agriculture: Western Cape; Carl Opperman, Agri Wes-Cape; Karel Swartz, Trevor Christians, and CSAAWU; Sheldon Magardie of Lawyers for Human Rights; and Leslie London, University of Cape Town.

We are also grateful to Marion Hattingh and Denile Samuel of the University of Stellenbosch Legal Aid Clinic; PLAAS; Colleen Chennells, Fruit South Africa; Johan Giliomee, VinPro; William Kerfoot of The Legal Resources Centre; Bill Thomson; Mandy Moussouris, Environmental Monitoring Group; FAWU; BAWUSA; COSATU; Gareth Haysom; Anthony Dietrich; Kimani Ndungu; Sandile Dolweni, Centre for Rural Legal Studies; Evance Kalula, Margareet Visser, and Jan Theron, University of Cape Town; Cameron Jacobs of the South African Human Rights Commission; Penny Parenzee; Bronwyn Page-Shipp, FLO-Cert;

Rawsonville Krisis Kommitee; Ntokozo Nzimande, Nkuzi Development Association; Allegra Louw, University of Cape Town African Studies Library; Rural Development Support Program; Klaus Kotzé; Black Sash; and the many others who shared their expertise and stories with us, including some who did not wish to be named. Human Rights Watch thanks officials at the Department of Labour and the Department of Rural Development and Land Reform who provided information and agreed to be interviewed for this report.

In addition, we thank Chris Dapkins, filmmaker, and Marcus Bleasdale, photographer. Elizabeth Seuling, Senior Director of Foundation Relations, assisted with multimedia work; Nick August-Perna edited the related multimedia film.

Human Rights Watch thanks The Atlantic Philanthropies for its support of our work in South Africa.

Most of all, we thank the many current and former farmworkers and farm dwellers who spoke with us and shared their stories. Without them, this report would not have been possible.

HUMAN RIGHTS WATCH
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

www.hrw.org

HUMAN RIGHTS WATCH

Ripe with Abuse

Human Rights Conditions in South Africa's Fruit and Wine Industries

Millions of consumers around the world enjoy the fruit and wine that come from South Africa's farms. But the workers who help produce these goods are among the most vulnerable people in South Africa. Farmworkers in South Africa's Western Cape Province work long hours for little pay, often without access to toilets or drinking water. They routinely are exposed to toxic pesticides and are denied proper safety equipment, even after they ask for it. The housing for many farmworkers, where it does exist, is unfit for living; laborers and residents of farms also face the possibility of eviction from their homes by farm owners, and a lack of alternative housing. Many farmworkers who seek to remedy these conditions confront obstacles to union formation.

The Western Cape's fruit and wine industries contribute billions of rand to the country's economy and support its vibrant tourism sector. Yet farmworkers benefit very little from this success, and the government of South Africa and farm owners largely have failed to ensure that workers receive the benefits to which they are entitled. South African legislation provides important protections to farmworkers and farm dwellers, but the limited number of labor inspectors means that the government cannot guarantee that farmers throughout the province comply with national law.

This report—based on more than 260 interviews with a range of actors—shows the precarious position in which many farmworkers and farm dwellers continue to find themselves. The problems that these rural residents face are not new, nor are they unknown to the South African government, farmers, or retailers who purchase their products. South Africa's Human Rights Commission documented the same abuses in 2003 and 2008. But the steps taken to date, whether by the government or private actors, have not been sufficient to bring overall conditions on farms in line with the basic standards required either by South African law or industry codes of conduct.

This report urges the South African government to protect farmworkers from mistreatment, principally by enforcing their rights to adequate labor, housing, and health. The government should press farm owners to promote better conditions on farms, allow inspectors unrestricted access to farms, and honor workers' rights to association. In the absence of such improvements, farmworkers and farm dwellers will remain trapped in an exploitative situation with little hope of redress.

All photos © 2011
Marcus Bleasdale/VII for Human Rights Watch

A farmworker in Stellenbosch, Western Cape, South Africa, collects grapes during harvest time.