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# Violations of **human rights** in farming communities

*Exploitation and oppression of farmworkers continue despite the ongoing democratisation process. **Chris Derby Magobotiti** explores this issue with particular reference to human rights abuse (not limited to traditional white farmers) in the Eastern Cape.*

**M**any years of colonial oppression and institutionalised racial discrimination has left South Africa with a terrible legacy of vast social and economic inequalities. In the case of Queenstown (Eastern Cape) this legacy resulted in land dispossession and wealth by the majority of black people who were forced into the reserves and locations. They now face oppression on white-owned farms. Frontier wars of land dispossession created some significant tenure farming communities in the jurisdiction of Queenstown. Farmworkers continue to face exploitation, evictions, feudal practices and the violation of human rights, despite the ongoing democratisation and constitutionality.

## **Constitutionality in the context of farming community**

The 1994 democratic breakthrough ushered in a constitutional democratic

state. South Africa prides itself on being a constitutional state, which has entrenched democratic institutions – A Bill of Rights, Human Rights Commission, Public Protector, Constitutional Court and independent judiciary. Despite these achievements farmworkers continue to be subjected to degrading abusive practices by farmers. Urban South Africans witness their rural counterparts in the farming community being isolated from the macrocosm of society and prohibited from enjoying their rights. Human rights textbooks tend to view human rights violations as practices carried out by the state through its agents such as the police, the army, courts and anyone acting with the authority of the state against the individual or citizens.

In essence, human rights abuses have been the dominant factor on a broader scale by the regimes. But another silent side of human rights abuses, which is equally devastating,

includes violations in the farming community in the claim of ownership. The ongoing case of illegal evictions on Queenstown farms exhibits the gravity of the problem. Section 7(2) of the Constitution states that: 'the state must respect, protect, promote and fulfil the rights in the Bill of Rights.' This section places positive obligations on the state not to be neutral or play a regulatory role, while its laws and people are being violated. Section 23 broadly guarantees rights and fair labour practices including unionism. Section 26(3) of the Constitution states that: 'no one may be evicted from or have their home demolished, without an order of court made after considering all the relevant circumstances, no legislation may permit arbitrary evictions.' Section 27(1)(a)(b) of the Constitution states that: 'everyone has a right to have access to health care services including water.' These are the major sections or constitutional rights that seem to be



commonly offended in the farming community. Other infringements include section 10, which relate to the right to human dignity and section 11, which relate to the right to life (see Constitution, Act 108 of 1996, p 7).

**Extension of Security of Tenure Act, 62 of 1997 (ESTA)**

This Act, which became law after February 1997, secures occupiers' legal right to live on and use the land. In the context of the farming community, the Act seeks to prohibit unfair or arbitrary evictions. It does permit legal evictions under certain circumstances on court orders. Access to water and education services is provided. It goes on to give special rights to people who are 60 years or older and who have been on the land for 10 years or longer. According to the Act: 'if owners force occupiers off the land or deprive them of use of the land or water against their will, they commit a criminal offence and

can be jailed or fined for this.' Broadly the Act provides rights and duties to both owners and occupiers.

In the case of the Queenstown farming community some lessons with regard to the notion of deracialising and democratising ownership can be drawn. There are instances where new black farmers have been charged for offending the ESTA and other constitutional rights discussed above. The conduct and oppressive practices, in the claim of ownership, by black farmers against former farmworkers has exposed serious distortions on the notion of deracialising and democratising the economy.

In an interview with some workers and families, there was a sense that present black farmers have replaced their former white bosses in the oppression and abusive practices. The responses suggest that capitalists whether black or white is distinguished by its pursuit of private

profits. In this regard, race or individual background is often used opportunistically in the land reform project. Individual background or race does not automatically lead to progressive conduct, rather what seems to be fundamental is class interests. There is a possibility that the rights enshrined in the Constitution and the ESTA, can serve only the rich and the elite including chauvinistic and reactionary elements. They are able to afford powerful lawyers in cases of litigation or rush to lessee the occupied land. In this regard, land rights and the Constitution can become a commodity and serve the interests of the powerful elite.

**Access to justice**

In this context, the notion of access to justice should entail empowerment of workers to know their rights and change their social and economic conditions. This involves effective land



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use by the workers as they constitute the majority and possess skills through experience of working the land. In the Queenstown area, some lessees have been charged for illegal eviction by the Department of Land Affairs (DLA), the Border Rural Land Committee, Human Rights Commission of PE and Lawyers for Human Rights. These structures and institutions responded sensitively to what seemed to be a trend in human rights abuses in the farming communities. In the context of the farming community there is danger that the entrenched rights in the Constitution, ESTA and the Bill of Rights might not be known by the farmworkers or even lack an understanding of these rights. It is also possible they may not have the capacity or lack financial means to invoke them.

#### **Accountability and independency of institutions**

In recent years we have witnessed attempts by the courts to resolve

cases of evictions and criminal offences in a manner that shows a sense of accountability and independent judiciary. In *S v Mhlakaza* the public sentiments were generally running high and it is in this judgment that sentencing dynamics were revealed. The court decision was that: 'the duty of the court is not to satisfy public opinion but to serve the public interest.' In the case of *Mosoko Rampuru* who was brutally murdered by his farm boss the trial court handed down a disproportionately lenient sentence to the convict. This case suggests an element of disparity in the approaches of the courts.

#### **The way forward**

The farming community faces enormous challenges, which will require some form of human rights education. Cases discussed above suggest that institutions and structures that are already created by the new Constitution need to be proactive in order to prevent human

rights abuses. In this regard the upcoming conference by the South African Human Rights Commission on the abuses of human rights in the farming community including the killing of farmers is a step forward. Unions also face some challenges in trying to get to grips with the issues, aside from lacking capacity to recruit and service members. The South African Agricultural, Plantation and Allied Workers' Union (Saapawu) needs to be visible in the farming community and ensure that it protects and advances worker interests and rights.

This discussion recognises the seriousness of the ongoing violations of human rights in the farming communities. It takes into account the realities that have been created by the Constitution and ESTA as the bases from which to depart from in the struggle for justice.

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