



AFRICAN CENTRE for MIGRATION & SOCIETY

Research Report

April 2012

“WE HAVE TO GO INTO THE BUSH”

Understanding the responses of NGOs and government in addressing conditions faced by cross border migrant workers in Musina

Case Study:
Musina, Limpopo South Africa

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people unlimited

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List of Acronyms

ARV- Anti-retro-viral

BCEA- Basic Conditions of Employment Act

CSO- Civil society organisations

DHA- Department of Home Affairs

DoL- Department of Labour

FBO- Faith based organisations

HIV- Human immunodeficiency virus

IOM- International Organisation for Migration

MSF- Médecins sans Frontière

NGO- Non- governmental organisations

SA- South Africa

SANDF- the South African National Defence Force

SAPS- the South African Police Service

STI- Sexually transmitted infections

TB- Tuberculosis

UNHCR- United National High Commission for Refugees

ZDP- Zimbabwean Documentation Process

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EXECUTIVE SUMMARY

This report documents the working and living conditions of commercial farm workers in Musina¹² - the majority of whom are Zimbabwean - and the state of play of government and civil society bodies mandated to protect them. It also seeks to understand perceptions of mobilisation amongst farm workers and the rationale for (dis)engaging in formal justice seeking processes.

Based on original empirical research in Musina, and a desktop study, this report highlights a number of human rights violations against commercial farm workers, particularly Zimbabweans, in Musina, and points to a lack of capacity and authority by civil society, international organisations, and government departments to effectively address these problems. It also finds that farm workers are reluctant to engage with formal justice seeking systems to claim rights and services.

Despite the existence of progressive and clear legal frameworks in South Africa, which govern the recruitment, retention, and termination of employment of commercial farm workers, most farm workers interviewed in this study were subjected to exploitative labour practices, and sub-standard living conditions that undermine their Constitutional right to human dignity. In particular, many farm workers reported that they received less than the minimum wage, were not compensated for overtime work, did not receive any paid leave, lived in sub-standard housing without electricity and water, and had no ablution or sanitation facilities. These conditions, prompted one respondent to state that if workers need to relieve themselves at home or while at work, they were “forced to go into the bush.”³⁴ In addition,

¹Musina Municipality Limpopo, South Africa.

² In this report Musina refers to the Musina Municipality², and not to the town of, unless otherwise stated. The Municipality covers an area of 757682.6ha. (<http://cpu.uwc.ac.za/municipalities/summaries.asp?muni=LIM341>) and has an estimated population of 57 195 according to the 2007 Community survey <http://www.statssa.gov.za/publications/p03011/p030112007.pdf>, of which an estimated 15 000 are cross border migrants www.musina.gov.za.

³Interview with a group of farm workers 22-05-2011, Musina.

⁴ It is worth noting that the conditions described by farm workers in this report point to a wider problem of service delivery in rural and peri-rural areas, especially in Limpopo. In Musina the number of households with no toilet facilities in 2007 was 12.6%, lower than the 27.8% recorded in the 2001 census but higher than the provincial average of 12.4%. For instance the number of households without toilet facilities in 9 of the 25 municipalities in Limpopo was higher than that of the province. This included Musina and the following: Greater Giyani (40,7%), Greater Letaba (18,6%), Greater Tzaneen (15,2%), Ba-

farm workers stated that they are, at times, subjected to physical abuse by their employers, and do not have the means or time off work to access health care or other social or legal services provided by various government departments and civil society organisations in Musina town. Although these findings are acknowledged and corroborated by the civil society organisations and government departments that render services in the area, little is done to ensure that farm workers receive the protection to which they are entitled under South African legal and policy frameworks. This violation of rights is due to a number of factors: the limited human and financial capacity of government departments and civil society organisations; a lack of authority by these state and non-state actors to implement and monitor the provisions contained in South Africa's labour policies; the isolation of the farms and difficulty in accessing these properties, and the reluctance expressed by farm workers to engage with those mandated to protect them. As one civil society worker stated, *“to help farm workers, we need to go into the bush; how do we do that without a car and when the farm owners don't want us there?”*⁵ The lack of any significant, formal, mobilisation by farm workers on the issue of rights violations of farm workers, and migrant farm workers in particular, also exacerbates the problem. The reluctance of farm workers to claim rights from formal structures, and to organise themselves politically stems partly from a desire to be invisible, or “in the bush” in order to avoid detection by authorities, as they fear that they will lose their livelihood.

STRUCTURE OF REPORT

This report is divided into three sections: section I gives a background of the study, sets out its methods and objectives and provides a review of the relevant literature and policy relating to this study; section II details the key findings of this study and is structured into two main parts: rights and responses from government, civil society, farmers and farm workers; and finally section III of the report consolidates these findings into key recommendations and conclusions for relevant stakeholders.

Phalaborwa (19,6%), Maruleng (20,0%), Musina (12,6%), Mutale (29,4%), Thulamela (17,5%), and Boluberg Local Municipalities (21,4%). Source: Community Survey, 2007 Basic Results: Municipalities <http://www.statssa.gov.za/publications/p03011/p030112007.pdf>.

⁵ Interview with a paralegal officer from Mamadi Advice Office, 05-10-2011.

SECTION I: Background

1.1. Introduction

The public debate on how many Zimbabweans live in SA has been filled with unfounded, contradictory and politicised numbers⁶.

South Africa's agricultural, and mining sectors, have for decades been structurally dependent on migrants to meet their demands for lower skilled labour⁷. In addition, the deteriorating political and economic conditions in Zimbabwe over the last decade have resulted in an increase in the number of Zimbabwean migrants entering South Africa to seek work.

Whilst South Africa has benefitted from the skills that well-educated, highly skilled, Zimbabweans have brought, lower skilled and often undocumented migrants face a high level of insecurity. In part this vulnerability stems from the overly restrictive provisions and nature of the South African Immigration Act (No 13 of 2002), which limits the options for lower skilled workers to regularise their status. For these migrants -who have neither the skills nor resources to seek stable and secure livelihoods or work permits- precarious, low-paid work on the number of commercial farms near the Zimbabwean- South Africa border is their only option for survival. Previous studies have revealed that farm workers, and particularly migrant workers, face a number of human rights violations.⁸ Although this report⁹ confirms these findings, **the primary objective of this report is to probe into the capacity and desire of farm workers to claim rights and protection from state and civil society bodies** on an individual or collective basis. This report **draws on original empirical evidence collected from 106 commercial farm workers on 11 farms in the Musina Municipality over a period of 11 months in 2011.**

⁶ Anne Hammerstad, Linking South Africa's Immigration Policy and Zimbabwe Diplomacy, December 2011. SAIA.

⁷ Crush 1997.

⁸ HRW 2006, Vol 18, No 6(a); Rutherford 2008; Rutherford and Anderson 2007; IOM 2009.

⁹ This report is the second phase of a multi-year Knowledge project in Southern Africa conceptualised and supported by Hivos. Phase 1 of this study focused on civil society and migrant mobilisation in Southern Africa, the report derived from that phase, titled "Migrant mobilisation: structures and strategies in claiming rights in Southern Africa" can be downloaded at www.migration.org.za

1.2. Context

The political economy of South Africa's agricultural sector has relied on cross border and internal migrants for decades, to fill its seasonal and permanent labour needs, through formal and informal arrangements (HRW, 2006: 9-10). Even as this has shifted significantly toward more casual labour practices facilitated outside bilateral agreements on labour supply between South Africa and its neighbours, commercial farms in border-laying areas, continue to provide much needed work for newly arrived migrants¹⁰. The work that is offered is precarious, and often low paid, and is accompanied by poor living and working conditions. These conditions often stem from the recruitment and retention of foreign labour outside of legal provisions and result in a minimum implementation of labour laws by employers. There have been a number of studies on the working conditions of farm workers in South Africa recently which, not surprisingly, highlighted rights abuses and physical and economic insecurity amongst farm workers.¹¹

In northern Limpopo, Zimbabweans constitute a major part of the agricultural labour force, as both permanent and seasonal farm workers. In addition, since 2008¹², many Zimbabweans, particularly the most vulnerable in terms of documentation, and socio-economic status, are drawn to the number of South African farms alongside and in close proximity to the border. As a result of the historical trends in this sector and the recent events in Zimbabwe, there is currently a diverse group of foreign farm workers in Musina, comprising of older, more settled labour migrants, recurrent seasonal workers, and newly arrived temporary workers. In terms of documentation, farm workers hold various types of documentation including: asylum permits; 90 day visitor's entry permits; work permits; corporate permits, and farmer issues identity documents. Many are also undocumented.

¹⁰ Crush 1998; Harris 2001.

¹¹ Bloch 2008; Lincoln & Mararike, 2000; Rutherford and Addison 2007; Rutherford 2009; SAHRC, 2003:105-106; IOM 2009 and 2010, HRW 2006,2011, Addison 2011, unpublished paper.

¹² Following the violence and unrest in the wake of the general election in Zimbabwe (Rutherford 2008:38).

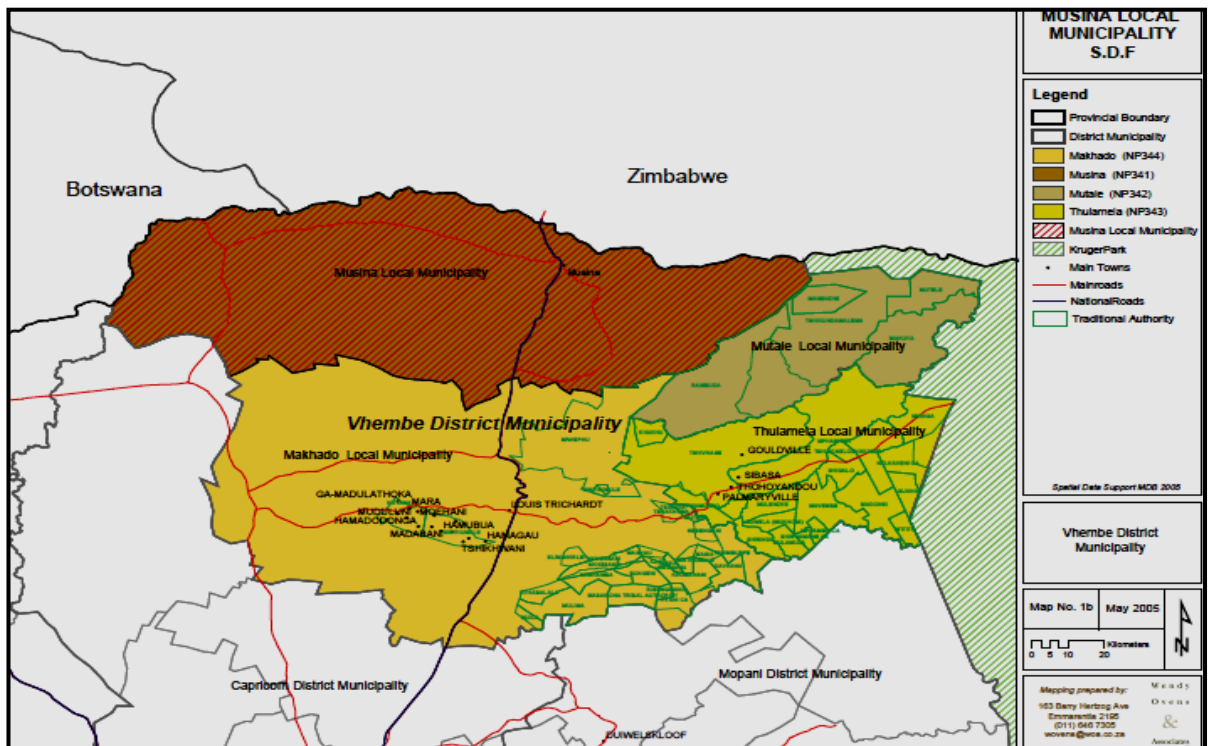
Limpopo- surveying the terrain

Figure 1: Map of Vhembe District Municipality (Wendy Ovens and Associates: www.vhembe.gov.za)

Musina and the farms surrounding it fall within the Musina Local Municipality, which is part of the Musina Magisterial District. This district, together with three other local municipalities – Makhado, Thulamela, and Mutale- form part of the Vhembe District Municipality (see map above). The Musina local municipality is unique in that it has two international borders, Zimbabwe to the north, and Botswana to the north-west and is in close proximity to a third with the Kruger National Park buffering Mozambique to the east. Although strategically located for trade and travel within the Southern African Development Community (SADC), the province’s annual reports and strategic plans make little mention of how it manages or envisages the mobility of people through and within this space.

Limpopo is 125 701 square kilometers, and has a population of 5.2 million, which represents roughly a tenth of the respective national indicators¹³. It contributes about 6.8% to the national economy, a relatively small proportion which is steadily increasing. Limpopo’s economy rests primarily on mining, which makes up for 25% of the economic structure of the

¹³ Cited in official 15 year review report of the Limpopo Province, available online at www.limpopo.gov.za.

province. Although agriculture constitutes only 3% of the economy of the province, it produces more than 60% of the country's tomatoes, avocados and deciduous fruits prompting it to be known as 'the garden of South Africa'¹⁴. More than 60% of the land is privately owned¹⁵, most of it in the hands of white commercial farmers. There are an estimated 200¹⁶ commercial farms in northern Limpopo, of a total of 2915 in the province¹⁷, employing between 15 000- 20 000 Zimbabweans¹⁸. In Musina there are a number of commercial farms which are located alongside this long border. Although small scale subsistence farming does exist, and a small number of commercial farmers are black, land reform has been chaotic, slow, and corrupt in the province¹⁹.

Musina was a previously obscure town, unwittingly propelled into the public eye due to its location at the border crossing between South Africa and Zimbabwe. Since the rise in the number of cross-border migrants entering South Africa, a number of international organisations have begun offering services in Musina, and many local non-governmental organisations (NGO's) and faith-based organisations (FBO's) have either been formed or extended their services in that area to meet the needs of cross-border migrants. To date, there has been little attempt at documenting this response. Most of the literature that exists²⁰ is an evaluation of the needs of migrants or a record of the violation of rights that migrants face and have been commissioned or conducted by international organisations like the International Organisation for Migration (IOM), Human Rights Watch (HRW), or donors, such as Save the Children. Although a proper evaluation of services provided is beyond the scope of this report, some insight into the (mis)match of needs and services in so far as they relate to migrant farm workers will be provided in order to begin to fill that gap.

In 2005, the municipal area of Musina had a population of 13 183 people. By all account these official figures did not include the number of cross-border migrants living and working in Musina. Previous studies have estimated that there are between 15-20 000 Zimbabweans on these farms. Given that many Zimbabweans in this area are undocumented²¹ or wish to

¹⁴ Often referred to in business and tourism websites, see for example www.polokwane.info; www.seeff.com/limpopo.

¹⁵ Department of Land Affairs (Limpopo Regional Office), 2009.

¹⁶ Rutherford and Addison, 2007:622.

¹⁷ Stats SA 2004.

¹⁸ Lincoln and Maraike 2000, NP DoL 2000, IOM 2003:18, 2004:17 cited in Rutherford and Addison (2007:622)

¹⁹ See http://www.plaas.org.za/pubs/tr/PLAAS_RR36_Lahiff.pdf for more information on land reform in Limpopo.

²⁰ There is some emerging work by Addison and Rutherford which examine the political and social landscape of the area. This is discussed in the literature review section.

²¹ Rutherford (2008:37).

remain invisible, and that mobility in the area is high, the actual number of Zimbabweans in Musina is unknown.

Figure 2, below, shows that 59% of the land in Musina is privately owned, most of it by farmers who use the land for agriculture or game farming. Access onto land is therefore wholly controlled by land owners.

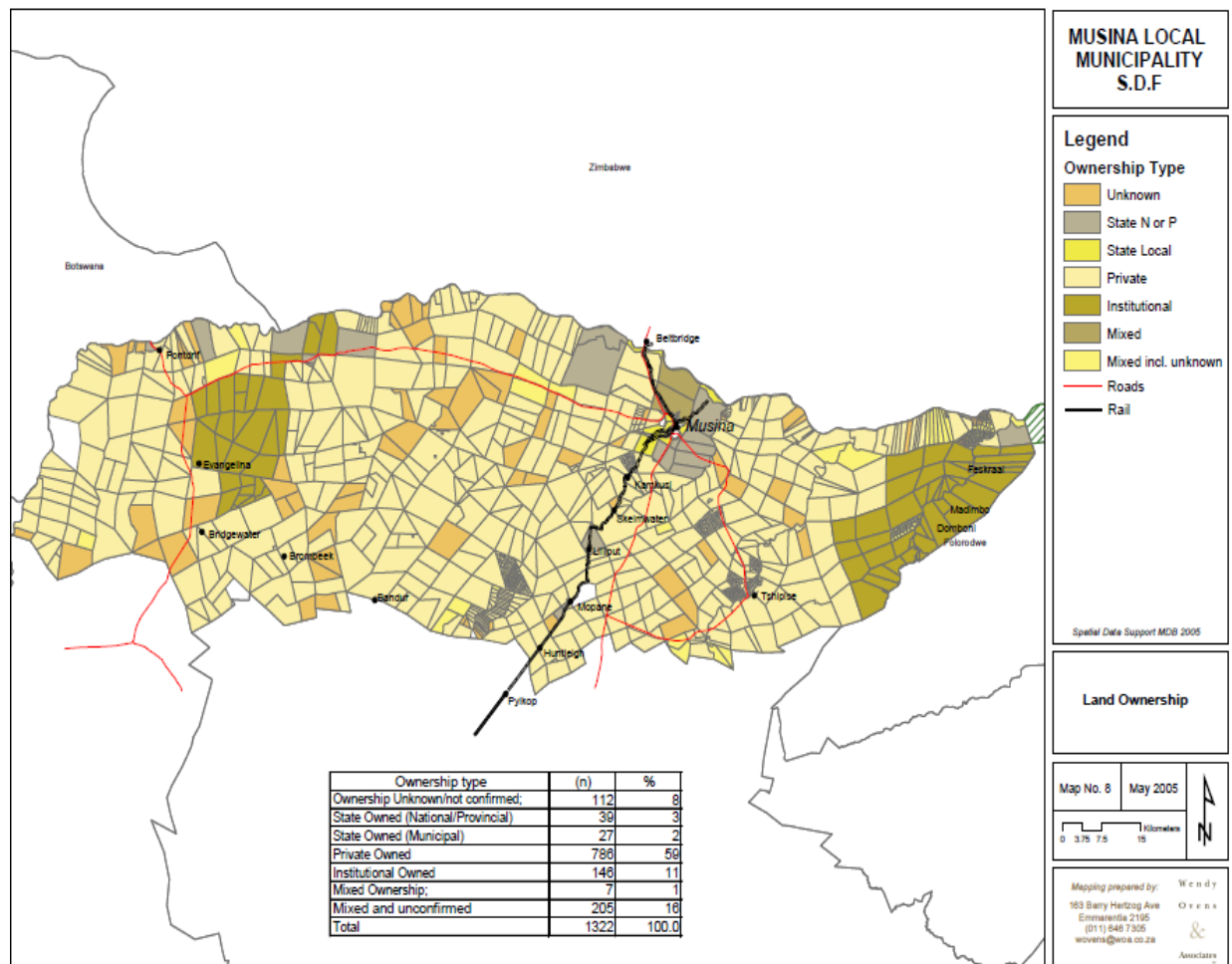


Figure 2: Map of land ownership in Musina municipality (Wendy Ovens and Associates: www.vhembe.gov.za)

Figure 3 illustrates the relatively rural context of Musina. Most of the municipality has untarred minor roads. Aside from the national highway linking Pretoria to the Zimbabwean border, there are only two additional main tarred roads leading west and south east from Musina. Most of the farms are accessible by secondary roads which are often untarred and in poor condition. Farmers use private pickup trucks and four by four vehicles to transport goods and workers, farm workers often walk as public transport between farms and Musina is virtually non-existent.

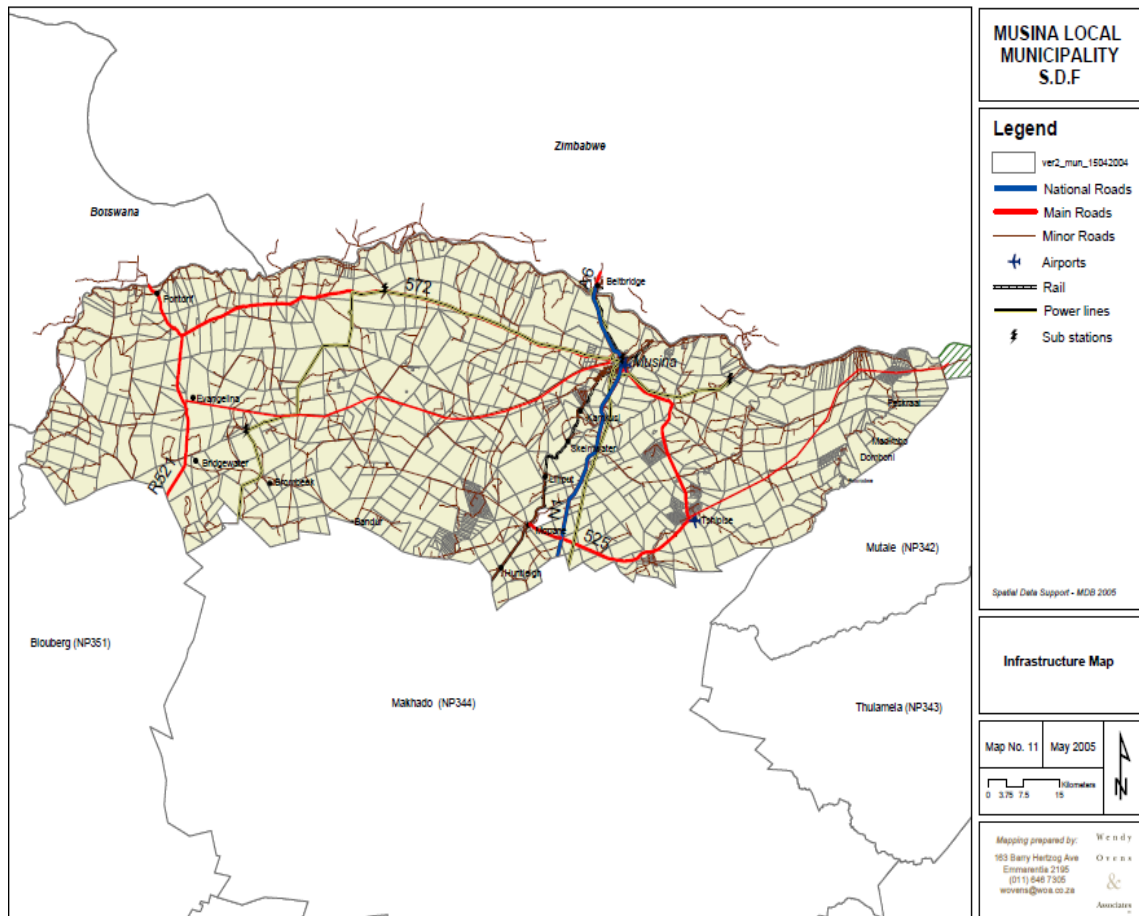


Figure 3: Map of infrastructure Musina municipality (Wendy Ovens and Associates: www.vhembe.gov.za)

Figure 4 illustrates the dominance of agriculture in the economy of Musina, with small pockets of mining activity visible on the southern outskirts of the city.

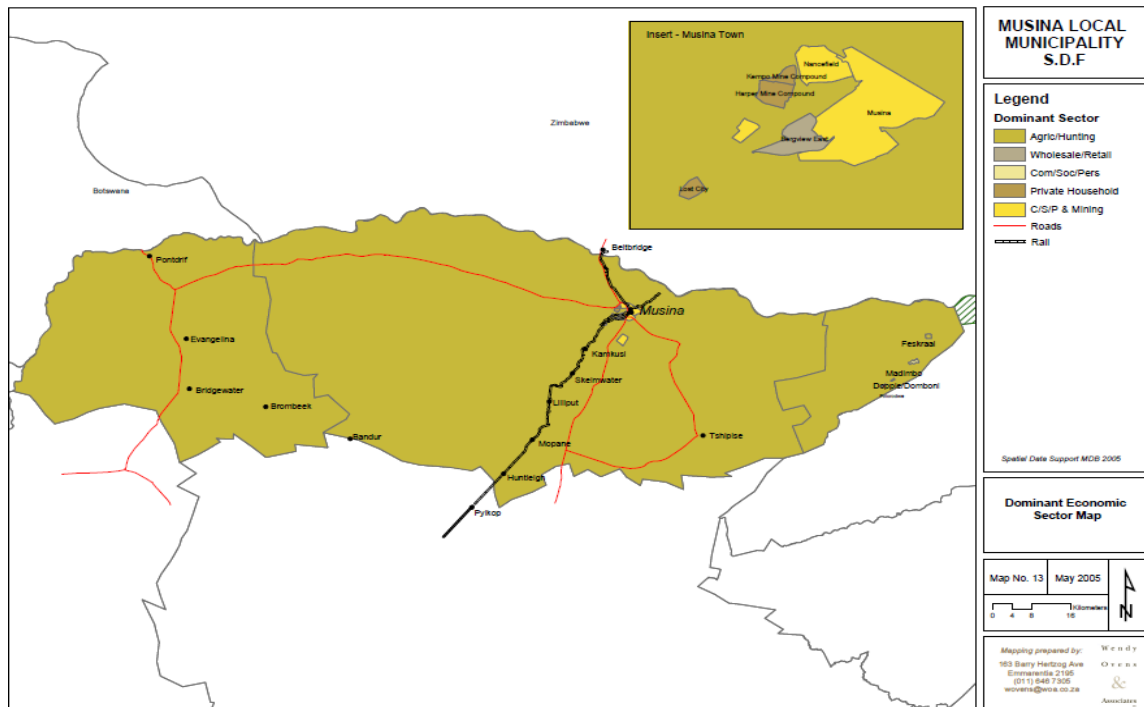


Figure 4: Map of dominant economic activity in Musina municipality (Wendy Ovens and Associates: www.vhembe.gov.za)

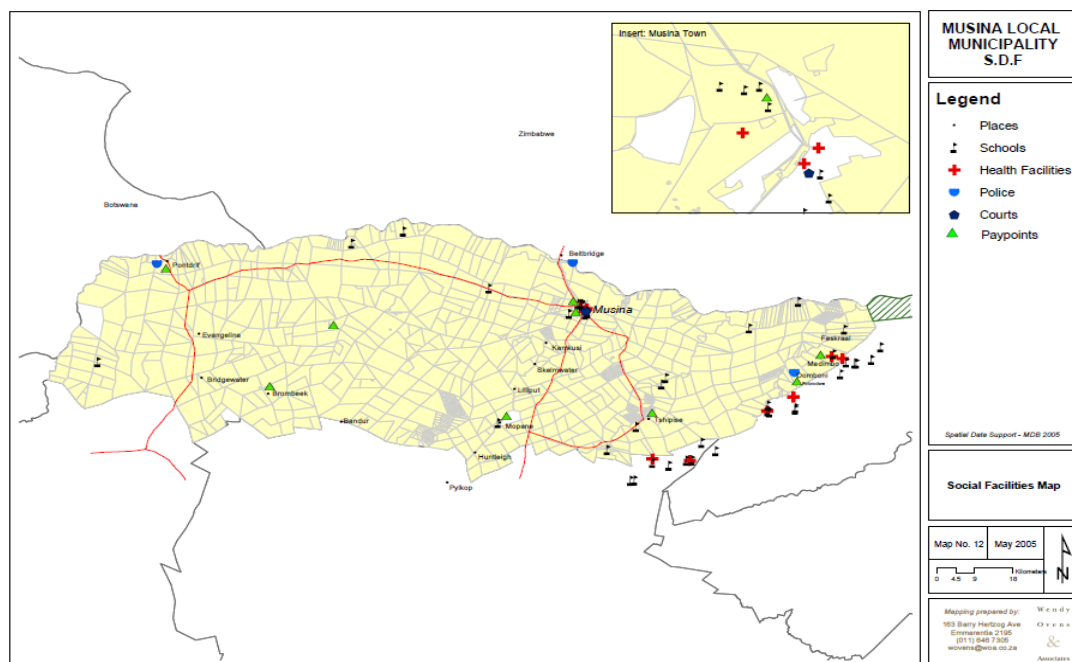


Figure 5: Musina local municipality: social services (Wendy Ovens and Associates: www.vhembe.gov.za)

Like much of rural South Africa, social services such as schools, hospitals and police stations are clustered around towns, as is evident in figure 5. Many of the rural areas, where the farms are situated, experience poor service delivery. This is particularly evident for farms in border-

laying areas. Farms in the Tshipise area, south east of Musina town, have access to more public social services than those in the north near the border. Aside from the Médecins Sans Frontière (MSF) and IOM mobile clinic, which travels to farms around the Alicedale area, all NGO's are located in the centre of Musina.

According to an IOM (2009) survey of 1155 people in Musina (which targeted Zimbabweans), most migrants in the area faced multiple vulnerabilities and risks associated with precarious livelihoods, insecure documentation, and poor access to social services. The survey found that Zimbabwean migrants were employed as farm workers, domestic workers, street vendors, cross border traders, and in piece jobs²². The distribution of men, women, and youth was unequal, with a majority of men being employed on farms and women dominating in street vending and cross border trading (IOM, 2009: xxxx). Migrant children, those below the age of eighteen, were engaged in piece jobs, street vending and begging (IOM, 2009:xxxx).

High HIV Prevalence

Another IOM survey in Limpopo (N=2810) shows that farm workers have higher levels of HIV/AIDS infection than the rest of the population. The study found that 39.5% of farm workers were HIV positive, which is higher than the estimates for the province (21% in 2009²³) and South Africa (29.4%). In spite of the high HIV prevalence, farm workers were found to be engaging in high-risk sex, including perpetrating and experiencing sexual violence, having multiple partners, engaging in age-disparate sex, trading sex for resources and not using condoms consistently. Furthermore detailed knowledge about prevention was poor amongst respondents.

The farm workers surveyed in the IOM study seem to be more vulnerable to HIV infection when working on farms due to the conditions present there. Commercial farms can be considered to be “spaces of vulnerability”. According to IOM (2010b:xxxx), spaces of vulnerability are those areas “where migrants and mobile populations live, work, pass-through or originate, and may include the following: land border post, ports, truck stops or hot spots along transport corridors, construction sites, commercial farms, fishing communities, mines,

²² Piece jobs are temporary engagements which may be for a day or more in which they may be employed to do house work, gardening, cleaning out a warehouse, loading a truck etc.

²³ www.avert.org and www.tac.org.za.

migrant communities and urban informal settlements, migrant sending sites, detention centres, and emergency settlements”.

1.3. Research Methods

This report is based on a combination of original, qualitative, empirical research in Musina, a desktop review of existing literature and policies, and interviews (telephonic and in person) with relevant stakeholders between November 2010 and October 2011.

The primary research consisted of:

- Qualitative field research using agreed-upon interview instruments with 100 farm workers, of whom 95 were Zimbabweans and 5 were South Africans at 12 farms around Musina, and several focus groups with 34 farm workers all of whom were Zimbabwean. This study specifically targeted Zimbabweans in order to examine the intersection of migration, labour in border laying areas. A probability sampling method was used.
- Participation in several local forums established by government departments, civil society organisations, and farmers in Musina. These are:
 - The UN-NGO Stakeholders Forum, held at UNHCR weekly;
 - Migrant’s Health Forum, held once a month at the Musina Municipality;
 - Immigration Forum (for farmers, government departments and civil society organizations, held once in month at the Musina Municipality);
 - The Steering Committee Meeting (for migrant unaccompanied minors) which is was held monthly at Save the Children;

Minutes of these meetings were used to understand the work that is being done by these actors in as far as the rights of farm workers are concerned. There was no representation of farm workers at any of these forums.

- Interviews with local organizations and community leaders to facilitate initial access to the target populations, and to identify major obstacles in protecting farm workers.
- Structured telephonic and in-person interviews with 15 civil society organisations rendering services to farm workers, or migrants, or both, based in Musina or other parts of Limpopo.
- Visits to and observation at 12 farms in the Tshipise and Weipe area.

- Interviews with 7 farm owners in the Tshipise and Wiepe area in Musina.
- Interviews with representatives of 4 local government departments in Musina at district level in order to understand how they are working with farm workers. These included:
 - an inspector at the South African Police Service (SAPS);
 - an extension officer at the Department of Agriculture (DoA);
 - a social worker at the Department of Social Development (DSD); and
 - a manager and a field officer at the Department of Justice (DoJ).
- Informal, unofficial discussions with a representative from the Department of Labour (DoL) in Musina and with nurses working at a hospital in Musina.
- Finally a number of reported cases of injustices reported to the police and other stakeholders, which have been tracked and challenges in access to justice were identified.

Research constraints and ethical considerations

There were considerable difficulties encountered in doing this research. Firstly, farm workers are an isolated, mobile, and invisible group. Farm owners were reluctant at times to grant permission to access their private properties in order to interview farm workers and document conditions.

Once access was obtained, farm workers were also reluctant to be interviewed due to their precarious positions as unsecured labourers on the farms and as undocumented migrants in the country, for fear of reprisal from the employer or immigration officials. In each instance, the researcher and fieldworker introduced themselves, and explained the nature and purpose of the study, the terms and conditions of the interview (voluntary participation with no monetary or other gain) and requested permission to conduct an interview with each farm worker. Verbal consent was obtained from each respondent before each interview commenced. Names of farm workers, and farms, were changed or omitted to maintain the anonymity of the respondents.

The researchers did not receive authorisation from the provincial offices of the DoL to interview local DoL representatives in Musina. However, comments on an earlier draft of this report from the national office of the DoL have been incorporated into this report.

1.4. Legal and Policy Framework –historical patterns and contemporary dynamics

“Contrary to media concerns that the MoU with the government of Zimbabwe will encourage a flood of Zimbabweans across the border due to economic woes, we recognise this reality and want to do it in a controlled wayIt is also necessary to remind people that the sourcing of labour from neighbouring countries is nothing new. It actually dates back 50 years. The former Rhodesian government had a similar agreement with the apartheid government. Similar deals have allowed workers from Lesotho, Swaziland, Mozambique and Botswana to work on South African soil over the years.” - Labour Minister Membathisi Mdladlana in a statement released by Department of Labour on 21 August 2006²⁴

The regulation of lower skilled migrant workers in the agricultural sector in South Africa stemmed from the apartheid era (as is evident in the statement above), when commercial farmers were able to recruit foreign labourers (mainly Zimbabweans) under a special dispensation provision²⁵, which allowed them to circumvent the standard administrative processes of acquiring work permits for each employee. This provision was entrenched in the then Aliens Control Act.²⁶ Despite this, and indeed aside from the heavy penalties that the law prescribed for the recruitment of undocumented migrants²⁷, there has been an embedded

²⁴ available at <http://www.labour.gov.za/media-desk/media-statements/2006/sa-zimbabwe-ministers-of-labour-to-meet-at-the-border-post>.

²⁵ As recently as 1991, section 41 of the Aliens Control Act of 1991 still contained this provision, which allowed for large scale employment of foreign, lower -skilled labourers in the agricultural and mining sectors.

²⁶ The predecessor to the Immigration Act No 13 of 2002.

²⁷ This strictly regulated the employment of foreign nationals in theory. Under Section 32 of the Aliens Control Act no employer shall employ or continue to employ any alien who is in the Republic of South Africa in contravention of the provisions of the Act (Section 32(1)(a)). In addition no employer shall permit the provision of instruction or training to such alien (Section 32(1)(b)). There are further intrusive provisions under Section 32 which in fact make it an offence to carry on business with such illegal alien, to harbour such alien and even to let premises to such illegal alien. The consequences for the alien would be deportation for contravening the residency regulations with the ultimate deportation after due process. The employer, in turn, lays itself open to the imposition of a fine of up to R10 000.00 (Ten Thousand Rand) for a first offence and up to R20 000.00 (Twenty Thousand Rand) for subsequent offence. Section 32(5)(b) creates presumption that if a foreign national is found on any premises where a business is conducted or where instruction or training is provided, that such foreign national is either employed by or being trained by such employer and the onus would rest on the employer to prove the contrary. There is a further presumption against the employer in terms of which the employer is deemed to have known that such foreign national was in fact illegally in the country unless such employer can prove the following: That he

practice amongst commercial farmers in border-lying areas to recruit foreign workers outside the legal and policy frameworks²⁸.

This practice continued into the first decade in the post-apartheid period, with tacit government approval.²⁹ When job creation for South Africans became a politicised issue in the mid 1990's, farmers were pressurised by the Department of Home Affairs to replace the foreign labour force (estimated at about 15 000, mainly Zimbabweans³⁰) with South Africans. Naturally, this was met by resistance by the farmers who had for decades enjoyed the supply of lower cost migrant labour. Nevertheless, by the end of the decade the legal and political terrain had shifted.

According to a representative of the Transvaal Agricultural Union (TAU), a farmers union, cited in HRW (2006:14), "*the government of South Africa reached an informal agreement with farmers in November 2011, to allow farmers to employ Zimbabweans on their farms, provided that the workers receive the same wages and benefits as South African farm workers*" (HRW 2006: 14). In October 2004, the governments of South Africa and Zimbabwe signed a Memorandum of Understanding (MoU) on migration and labour to regulate the status of Zimbabweans, in the country and on the farms. As part of this measure the government of Zimbabwe agreed under the MoU to issue emergency travel documents (ETDs) to the workers, in lieu of passports, a practice which continues to date.

From 2005, farmers were able to employ migrant workers under the Corporate Permit scheme. A Corporate Permit³¹ is a provision in the Immigration Act No. 13 of 2002, for employers to employ a number of foreign workers without obtaining a work permit for each employee. The DHA determines the maximum number of foreigners the corporate permit applicant may hire as per Section 21 (2) of the Immigration Act, 2002. In the 2010-2011 year, the DHA indicated that it had issued a total of 812 Corporate Permits. Farmers are also required to submit proof of the need to employ the requested number of foreigners, provide a

employed such alien in good faith; and That the circumstances in which the employment took place were not of such a nature that he could reasonably have been expected to suspect that the alien was in the Republic in contravention of the Aliens Control Act (vide Section 32(5)(c)) of the Act) but did not often implement sanctions in practice.

²⁸ Crush 1997, Rutherford and Addison (2007:623).

²⁹ Crush 2000, Peberdy and Crush 1998:33-34, Rutherford and Addison (2007:623).

³⁰ LHR 2001.

³¹ A corporate permit allows a corporate entity (e.g. a mine group, farmer, etc) to employ a pre-determined number of skilled/semi-skilled/unskilled workers. There is no fixed validity period for such permits as the validity period is determined and stipulated by the corporate entity upon application" cited in

<http://www.dha.gov.za/Types%20of%20temporary%20residence%20permits.html#tt3>

job description, and proposed remuneration for each foreigner. Many commercial farm owners have obtained corporate permits to regularise the migrant workers whom they employ.

Prior to the special dispensation process for Zimbabweans in April 2009, all undocumented Zimbabweans were subjected to arrest, detention, and deportation by the South Africa National Defence Force (SANDF) and SAPS. **South Africa did not have a specific policy framework to regulate Zimbabwean migrants until April 2009 when the DHA introduced the Zimbabwean Documentation Process (ZDP). This comprised of a moratorium on deportations of undocumented Zimbabweans and a free 90 day visa for Zimbabweans with valid travel permits. These include passports or emergency travel documents (ETD). The special dispensation process paved the way for Zimbabweans, including those who worked on the farms, to obtain documentation. Although there have been inherent administrative problems with ZDP³², the DHA reported that more than 9000 Zimbabweans on the farms in Limpopo³³ applied for work permits. However, the recent lifting of the moratorium on deportations³⁴ created an unstable, unsafe, policy environment which was perceived as a threat to most undocumented farm workers. Since October 2011, reports indicate that about 10 000³⁵ undocumented Zimbabweans have been deported.**

Under a series of national legislations and polices, migrant farm workers in South Africa are entitled to the following rights and protection:

The language of the Constitution, which is the supreme law of the country, and most of South Africa's labour legislation, is inclusive and refers to all living in the country, and therefore does not distinguish between citizens and non-nationals or documented and undocumented migrants.

The Constitution and the Bill of Rights make the following provisions³⁶:

- all people living in the country, regardless of status or nationality are entitled to basic human rights, including inter alia, the right to life, freedom of expression,

³² Amit 2011.

³³ Migrant's Health Forum, Presentation from DHA, Provincial Director, Mr Matsaung.

³⁴ During the course of this research the policy stance on the deportations was unclear, with many in the sector fearing an overnight lift on the moratorium. On October 5 2011 the DHA announced that it restart deportations with immediate effect. www.dha.gov.za.

³⁵ <http://reliefweb.int/node/476057>.

³⁶ The Constitution of the Republic of South Africa Act No 108 of 1996, Chapter 2 Bill of Rights.

protection from forced labour, human dignity, equality, access to adequate housing, social services,

- in particular section 23 pertains to labour relations and stipulates that:³⁷
 - ✓ Everyone has the right to fair labour practices.
 - ✓ Every worker has the right to form and join a trade union; to participate in the activities and programmes of a trade union; and to strike.
 - ✓ Every employer has the right to form and join an employers' organisation; and to participate in the activities and programmes of an employers' organisation.
 - ✓ Every trade union and every employer's organisation have the right to determine its own administration, programmes and activities; to organise; and to form and join a federation.
 - ✓ Every trade union, employer's organisation and employer has the right to engage in collective bargaining³⁸.

The Basic Conditions of Employment Act No. 75 of 1997, and the Sectoral Determination no 13³⁹ for Farm workers, sets out:

- The legal requirements with regard to minimum wages, working hours, deductions⁴⁰, number of leave days, and termination rules.

The minimum wage for farm workers at the time of this report was R1375.94 a month based on a 45 hour week as illustrated in the table below:

Table 1: Minimum wages for Farm Workers in the Republic of South Africa (in ZAR)			
	1 March 2009 To 28 February 2010	1 March 2010 To 28 February 2011	1 March 2011 To 29 February 2012
Hourly	6.31	6.74	7.04
Weekly	284.23	303.84	317.51

³⁷ This section is taken from www.labour.gov.za and The Constitution of the Republic of South Africa Act No 108 of 1996, Chapter 2 Bill of Rights.

³⁸ Section taken from www.labour.gov.za.

³⁹ in accordance with the provisions of Section 51(1) of the Basic Conditions of Employment Act

⁴⁰ A deduction of not more than 10% each of the wage may be deducted for food and accommodation provided on a consistent and regular basis and provided the house has a roof that is durable and waterproof, has a glass window that can be opened, electricity and water on tap is available inside the house and a flush toilet or pit latrine is available inside or in close proximity to the house.

Monthly	1231.70	1316.69	1375.94
The CPI (excluding owners' equivalent rent) utilized to determine minimum wage increases is 3.5% as published by Statistic South Africa on 19 January 2011. The Sectoral Determination stipulates that the wage increase will be determined by utilizing the CPI + 1%. Therefore in terms of percentage increase, the new minimum wage as from 1 March 2011 will be 4.5% higher than the current minimum wage.			

Table 1: Minimum wage for farm worker sector (source:DoL⁴¹)

Summary of provisions and restrictions under The Immigration Act no13 of 2002, and subsequent amendments:

- The Immigration Act makes provision for skilled workers to enter the country, while special dispensations govern lower skilled employment, but only on an employer-driven, group basis, where there is a specific need for foreign workers in the absence of local labour supply. Individual migrants cannot apply for a special dispensation permit independently. The Act criminalises undocumented migrants, and those that knowingly employ them, and makes provision for the arrest, detention, and deportation of undocumented migrants and imposition of a penalty on employers who hire them

In particular, refugees and asylum seekers are protected under The ***Refugees Act no 130 of 1998, and amendment no 33 of 2008, which stipulates that:***

- A refugee and asylum seeker has all the rights contained in the Bill of Rights, except rights specifically reserved for citizens, for example the right to vote or stand for office.
- can get an identity document and passport

⁴¹<http://www.labour.gov.za/downloads/legislation/sectoral-determinations/basic-conditions-of-employment/Sectoral%20Determination%2013%20-%20Farm%20Workers%20-%20Part%201.pdf>.

- can seek employment or study
- can access basic health care services, and primary education facilities

The Labour Relations Act no 66 of 1997, regulates the following for documented workers only⁴²:

- the organisational rights of trade unions;
- the right to promote and facilitate collective bargaining at the workplace and at sectoral level;
- the right to strike and the recourse to lockout in conformity with the Constitution;
- the right to promote employee participation in decision-making through the establishment of workplace forums;
- the right to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;
- it also establishes the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act⁴³;

The Occupational Health and Safety Act no 85 of 1993 and amendments makes provisions for:

- Employers to ensure the health and safety of all workers, regardless of nationality, or status

International obligations

South Africa is a signatory to a number of international treaties, and conventions that protect the rights of migrants, refugees, and workers.

⁴² Section taken from www.labour.gov.za

⁴³ <http://www.labour.gov.za/legislation/acts/labour-relations/labour-relations-act>

South Africa has signed and ratified the following conventions which prohibit it from deporting asylum seekers and refugees to countries where they might face a risk of persecution:

- The 1951 UN Convention Relating to the Status of Refugees,
- the 1967 Protocol
- the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

and the

- International Covenant on Civil and Political Rights (ICCPR) which protects the civil rights of all people;

South Africa has signed but not ratified the **International Covenant on Economic, Social and Cultural Rights** (HRW, 2006). More significantly though, it has not yet signed **The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, which is perhaps the most inclusive convention as it protects all migrant workers including undocumented migrants.

Nevertheless the above legal framework makes provisions for the protection of a broad range of migrant workers' civil, economic and labour rights. The disjuncture that has been highlighted in studies before⁴⁴, arise from the lack of implementation of these laws from employers, and poor monitoring capacity of the DoL to routinely inspect labour conditions and penalise violations. In part this is due to workers remaining under the radar of unions, and state authorities, which is addressed in more detail later in the report.

2. Literature Review

Migrants in Musina and farm workers in South Africa

Whilst there has been considerable research on migrants in Musina and farm workers in South Africa⁴⁵, most of this has focused on the violation of human rights⁴⁶, or the vulnerabilities of these populations⁴⁷. Only recently has there been interest in examining the interplay between

⁴⁴ HRW 2006, Rutherford 2008, Rutherford and Addison 2007.

⁴⁵ Crush 2005.

⁴⁶ 2006 HRW, Rutherford 2008, Rutherford and Addison.

⁴⁷ IOM 2008 and 2009 reports on migrants' needs and vulnerabilities.

how migrants conceptualise and claim rights. In Musina with its particular institutional, policy and socio-economic environment,⁴⁸ the ways in which rights are understood, and negotiated point to an interesting mix of formal-informal arrangements structured within the broader political economy and historical context of that area.

As outlined previously, many low skilled Zimbabweans struggle to enter or regularise their legal status in South Africa. As a result, many Zimbabweans, enter South Africa through irregular and risky means⁴⁹. The migration routes taken by many are clandestine: crossing through the Limpopo River and across the vast bush land in the border areas; at the risk of natural elements like floods and criminal gangs⁵⁰ who prowl the area⁵¹. These routes include paying border officials at both the Zimbabwean and South African sides of the border, cutting a hole through the border fence and navigating the bush, crossing the Limpopo River, which can be deadly during the rainy season, or traversing through the Kruger National Park. Some farms lay adjacent to the border between South Africa and Zimbabwe and many workers simply walk back and forth between the two countries as needed.

Mobilisation amongst migrant (farm) workers

Globally, labour has been one denomination for mobilisation amongst migrants, as it introduces a common objective - better labour practices- for workers of different ethnic and national backgrounds to work toward. The presence of organised, formal structures such as trade unions also assists in facilitating access and communication with workers. Migrant workers on commercial farms present a different context and in turn pose new challenges for mobilising. Some of these emanate from farms being private property and not accessible for monitoring conditions or for mobilising workers. Workers are isolated as they live and work on the farms which are located a distance from commercial and other service centres. A compounded factor is that many farm workers are undocumented migrants which constrains their desire to engage in formal processes of justice seeking or mobilising.

Although South Africa holds political stability and economic opportunity, its history of xenophobic tendencies and attacks make it a hostile place for migrants, where rights are either not known or sought through formal channels. Rutherford (2008:xxx) discusses a concept

⁴⁸ Rutherford 2008, Addison 2011.

⁴⁹ IOM 2009.

⁵⁰ Commonly referred to as *amagumaguma*, comprising of Zimbabweans and South Africans.

⁵¹ HRW MSF,

known as ‘modes of belonging’ which are routine discourses, social practices, and institutional arrangements that define particular forms of recognition that shape access to material and non material resources. This can be one way to look at migrants’ access to their rights, that is, one’s feelings of belonging and/or non belonging will shape what they see as their entitlement or their right and thus what they make claim to. In the Limpopo commercial farms for example, the practices of authority and power relations that exist and shape access to resources or access to the farm itself would influence the kind of rights migrant farm workers then claim and how they claim these. Access to the farms in Limpopo has been found to be almost entirely resting on the farm owners. Commercial farms are private property and Rutherford (2008:xxx) calls them “zones of localised sovereign power”. This power may not always be exercised by the farm owner, but perhaps the farm manager who is acting on behalf of the farm owner⁵².

A similar framework is expounded by Polzer (2008) in looking at refugee rights. She argues for a shift away from looking at rights as expounded by international covenants toward an analysis of local actors and of the different ways in which refugees access rights and resources. Polzer (2008) argues that refugees access rights and resources in relation to local power holders and may employ different identities than their refugee identity. In this regard, she argues, refugees may use different strategies and tactics, including the use of similar language, cultural norms, ethnic identity and possessing labour power.

The above theoretical approaches to understanding how migrants or refugees access their rights, **do not** take the state to be a central player in the attainment of rights by non-nationals. Findings from the first phase of this report showed that non-nationals negotiate rights and services through faith-based organisations and informal contacts, in whom they have a greater sense of reliability and whom they regard as more legitimate (Jinnah and Holaday 2010). The discussion above has outlined how documentation plays a significant role in migrants accessing better employment or having better employment conditions. Undocumented migrants are said to be more vulnerable to exploitation and poor labour conditions⁵³.

In summary therefore:

⁵² It is not always that the farm managers act on behalf of the farm owner as certain studies have shown the farm managers at times abuse these positions of power to their advantage.

⁵³ Araia, Kola and Polzer 2010; Addison 2011.

1. Migrants rights in South Africa are strewn in historical and contemporary policies and practices of exclusion and discrimination⁵⁴.
2. Migrant rights are not popular in the public domain in South Africa, which may also influence how and what types of rights are claimed in public spaces⁵⁵.
3. The South African economy is perceived to present better opportunities for many individuals from across the region than their home country, and therefore, may influence the choices of workers to accept poor working conditions and not claim certain rights.

Having outlined the background and theoretical context of this study, the report now turns to a discussion of the findings. This is structured in two parts: the (violation of) rights of farm workers and the responses to these by the state, civil society, farm owners, and farm workers themselves.

⁵⁴ Landau 2009, 2010, Crush 2007.

⁵⁵ Jinnah and Holiday 2009.

SECTION II: RESEARCH FINDINGS

Rights and Responses

2.1. Background of farm workers

A total of 100 farm workers -95 Zimbabwean and 5 South African- were interviewed for this study. Four of the South African respondents were internal migrants who originated from the Venda region, whilst one was from Musina. Of this, 60 were men and 40 were women. The workers ranged in age from 18 to 59. The internal migrants who were staying and working on the farms were from Venda while the majority of Zimbabwean farm workers in both areas were from the southern Zimbabwean provinces of Matebeleland and Masvingo, which are located near the South African border. Some Zimbabweans were from further north.

The majority of Zimbabweans (94%) stated that they left home as a result of the deteriorating social and economic conditions at home. Only one fifth of respondents identified themselves as long term economic migrants who had worked in South Africa farms before the political and economic crises in Zimbabwe over the last decade. Almost all interviewed farm workers had not done farm work at home.

All internal and cross border migrant respondents said that Musina and farm work were not their first choices for destination or work. Many Zimbabweans stayed on in the border town because they had no means to travel further south, due to limited capital. Some respondents intended to travel to Johannesburg when they left home, but were robbed while crossing the border, or had used their money to bribe officials. One motivating factor for remaining in Musina was the rumour passed through networks at home and on arrival in South Africa, that there were job opportunities on the farms which did not require any skill or documentation. There appears to be two main ways that migrants started working on farms in Musina: Firstly the majority of farm workers **had heard of work through family, friends and other social contacts**, at home or were brought to the farms by family or friends already working on that particular farm. Secondly, about 30% of respondents were **recruited by farmers** while staying in shelters in Musina, or waiting in or around the Department of Home Affairs offices.

Despite the difficult and at times inhumane conditions faced by the workers on the farms (which is discussed below), many respondents stated that they were happy to at least have an income which they could use to support themselves and their families at home. This is an important finding, for it reflects a strong desire amongst workers to make a living **under any conditions**, and explains in part why workers are reluctant to engage in forms of organising that could threaten their livelihoods (this is discussed in the mobilisation section later).

2.2. Rights

Labour rights

Working conditions

In all sites visited, the farm workers complained of poor, and at times illegal, labour practices including low wages, unlawful deductions from wages, no paid leave, poor sanitation and health conditions in lodgings, lack of safety and protection measures at work, and intimidation or assault from employers. Each of these is discussed below.

Income and unlawful deductions

Most farm workers (85%) reported that they earn between R500- R1 400 a month, before deductions, regardless of skills or experience. In most cases, this is below the minimum wage of R 1316.69 (in the 2010 financial year) stipulated for farm workers. Furthermore, at one farm, some workers complained of delays in payment of wages:

“...as you can see. ... today is the 9th of May, but I have not yet received salary for last month, April, and the employer is quiet, how do I work or eat not even talking of support for my children back home?...we only keep quiet because if you complain too much you can be told to leave...” Interview with a female farm worker, 12 May 2011: code-58).

Many farm workers complained of deductions from their salary without their consent or knowledge. As most farm workers do not receive payslips, they are unable to determine what their salary and deductions constitute. The amount deducted varies from farm to farm and covers any number of items including food, water, shelter, and electricity. At one farm, between R300-R400 was being deducted monthly for electricity, food, utilities, housing, and

water, which was in excess of the maximum amount determined by law. At another farm, deductions were as little as R4 a month. In terms of S8(1)a-e of The Sectoral Determination Act a maximum of 20% of the worker's salary can be deducted monthly from wages⁵⁶, provided that the food and housing provided is of an acceptable standard⁵⁷. If a worker earns the minimum wage of R1316.69, the maximum deduction permitted would be R26.35. This does not appear to be the case amongst the respondents of this study. Some workers stated that they do not have electricity at their lodgings on the farms, despite paying for it from their wages. In another instance, a number of farm workers reported that their salaries were being deducted for water, electricity and housing even though they were not staying at the farm. As one respondent said:

“...I have been working for more than five years here and I do not stay here on the farm but I pay R85 for water and stepping on (the) soil and R25 for burial society but people when they die are not compensated (interview, 5 May, 2011, code; 42).

Some farm workers allege that at certain farms the owner deducts a portion of each farm worker's salary in the event that livestock is stolen or lost.

⁵⁶ (1) An employer may not make any deduction from a farm worker's wage except –

- a. a deduction not exceeding 10 percent of the farm worker's wage made in accordance with sub-clause (2) for food supplied to the farm worker;
- b. deduction not exceeding 10 percent of the farm worker's wage made in accordance with sub-clause (4) for accommodation in which the farm worker ordinarily resides;
 - i. at the written request of a farm worker, a deduction of an amount which the employer has paid or undertaken to pay to a third party contemplated by sub-clause (7);
- c. deduction, not exceeding one-tenth of the wage due to the farm worker on the pay-day concerned,
 - i. towards the repayment of any amount loaned or advanced to the farm worker by the employer; and
 - ii. a deduction of any amount which the employer is required to make by law or in terms of a court order or arbitration award.

⁵⁷

- a. the food or accommodation is provided free of charge by the employer to the farm worker at the employer's cost;
- b. the food or accommodation is provided on a consistent and regular basis as a condition of employment;
- c. no additional deduction is made from the farm worker's remuneration for food or accommodation;
- d. in the case of accommodation, no deduction is made by the employer for electricity, water or other services; and
- e. the deduction does not exceed the cost to the employer of supplying food or accommodation, as the case may be.

(2) A deduction in terms of sub-clause (1)(b) may only be made for a house that meets the following requirements:

- i. the house has a roof that is durable and waterproof ; b)the house has glass windows that can be opened; c)electricity is available inside the house if the infrastructure exists on the farm; d)safe water is available inside the house or in close proximity, which is not more than 100m, from the house; e) a flush toilet or pit latrine is available in, or in close proximity, to the house; and f) the house is not less than 30 square meters in size.

Given the low wages of most farm workers, it is not surprising that 85% of respondents indicated that they are unable to meet all their needs or to save any money from their wages. Farm workers reported the following as their main expenditure items: food, transport to go home to see their family, and savings for the family.

Leave and working hours

A common problem reported by farm workers is the lack of paid or sick leave. The Sectoral Determination Act S21-25 entitles farm workers to receive a minimum of 15 days of paid annual leave as well as other leave provisions such as paid sick leave, family responsibility leave, and paid or unpaid maternity leave. In practice though, farm workers unanimously claim that they receive no paid leave. This applies to instances where workers take a few hours off in a day or if they take a whole day off. This results in most farm workers being unable to leave work to seek social or legal services or support.

Farm workers also report that they are paid in terms of productivity rather than hours. One respondent said:

“... Another major problem here is when it is raining, some of us have been here for more than 15 years now and we are permanent workers but the owner does not recognize that, if it is raining, there is no ticket for you, the owner deducts money from your wages because you were not working...” (Interview with a male farm worker, 05May 2011, code: 19).

Most farm workers complained that they do not receive any compensation for overtime work after working on public holidays and weekends, despite strict regulations to the contrary in the SDA s (11-14). As one respondent says:

“...even with the recent holiday, we just heard that there is Easter holiday, but we were working and we know there is no payment for that. Here you work and there is no holiday, if you decide to go on holiday then (there is) no payment...” (Interview with farm worker, 07 May 2011: code 33)

Generally, workers do an 11 hour shift a day (on average from 06H00am to 17H00) which is contrary to the maximum number of hours per week stipulated in the BCEA.

The majority of farm workers stated the following as their main tasks during the day: working in the fields, ploughing, picking fruits, and weeding. At two farms, farm workers complained that the farm owner pays them R56 per task (e.g. planting a field), instead of per day, thus regardless of how long a task takes, a person will be paid a fixed amount. In some cases, such tasks can take up to 3 days, further reducing the amount of money a person earns in a month.

Job Insecurity

Despite the requirements stipulate in the SDA, almost all of the farm workers reported that they did not have an employment contract regardless of whether they were seasonal, temporary, or permanent workers. Eighty-two percent of interviewed farm workers felt unsecure at work because of this and feared that they could be dismissed at any time without reason or recourse. At a few farms, some workers did have work contracts, although they claimed that the conditions in their contracts were not adhered to. For example, there was no overtime paid for work on a public holiday even though their contracts stipulated that workers must be compensated for overtime work.

Health and Safety regulations and practices

The Occupational Health and Safety Act and the Basic Conditions of Employment Act stipulate that the employer is bound to provide necessary protective clothing, and to take measures to ensure that employees are protected from job related risks. A major problem appears to be on the provision of protective clothes. While farmers are mandated to provide protective clothing to their workers, some workers state that they are coerced to pay for the clothing, resulting in some cases workers refusing to buy the protective clothing. As outlined by one male farm worker:

“...as you can see, the shoes that I am wearing here have been bought by the employer but I was told to pay him because it is me who will be wearing them...I didn't have an option but to pay for these shoes because it is important for the sake of my health, because I cannot spray chemicals without proper protective clothes. However, it is still a challenge to pay R250 for shoes considering my monthly earnings...” (Interview, 16 May, 2011: code- 99).

A related concern is injury whilst on duty. Many farm workers stated that there is no compensation for them if they are injured at work:

“...a number of people, especially foreigners who are injured at work are not being compensated,(in the) past few months, another guy from Zimbabwe was injured at work and could not report for duty, the owner fired him” (Interview with male farm worker 16 May 2011, code 12).

Socio-economic rights

Access to social services is a major challenge for farm workers. This sub-section discusses the findings in relation to housing, education, and health care services.

Living conditions

At almost all of the farms, farm workers were staying in informal or dilapidated housing consisting of mud-baked bricks, corrugated iron, or thatch houses, which offered minimal protection from the weather. Where there were some houses which were made of bricks, cement and proper roofs, these were overcrowded. It was common to find 6-8 people staying in one room. Another serious concern is the lack of ablution facilities. In many of the lodgings visited there were no toilets either inside or outside of the houses. Farm workers used the bush area to relieve themselves. Two farms that were visited had outside toilets without a flush, whilst other farms had toilets that were no longer in use and needed renovation. Most workers revealed that they have informed their employers about the situation but nothing had been done to address the problem:

“...these toilets are full of faeces, you cannot get in to do anything, the owner must build new ones, our current option is to go into the bush...” (Interview with Farm, 15 May, 2011, code: 77).

The majority of respondents at farms complained of a lack of clean running water. Although some farms do have taps, most do not have hot water. In some cases workers also reported that the cold water tap was shut off by the farmer:

“...the farm owner just closes the tap water at any time, especially when we are from the fields, sometimes it can be closed for days then you will have to use the dam water...when you report the matter to the foreman he or she tell you that go and talk to the owner, and they know we are not allowed to do so...there is no workers

committee here, it was there but was banned...” (Interview with a farm worker, code 26).

This state of housing has serious implications for health and sanitation (some workers complained of rodents in the houses), particularly in relation to infectious diseases like TB and cholera⁵⁸.

Health

The most common health care issues reported by the farm workers were diarrhoea, influenza, persistent coughing, and injuries to arms and legs caused by farming equipment.

Access to healthcare for farm workers is restricted. Although some farm workers are accessing health care provided by the MSF, DoH, and IOM these services do not offer comprehensive, or frequent care (in terms of reach and type of services offered) to all farm workers. MSF’s mobile clinic provides services to a few farms once a week while the DoH’s mobile clinic visits almost all farms in Limpopo monthly. Given the lack of opportunity and the costs of transport to visit primary health care services in Musina town, mobile clinics remain the only health care option for farm workers.

Education

Aside from some of the bigger farms which have schools on their land, the children of most farm workers travel up to 25km, to go to school by public bus or on foot. At one farm, the primary school offers lessons up to Grade 8 only⁵⁹. Although the extent of child labour was not the focus of this study, anecdotal evidence from some of the respondents suggest that children present themselves as 15 years old or older to prospective employers in the hope of securing work. At some farms, respondents indicated that there were children under the age of 15 who were working as labourers.

Human rights

The right to dignity and equality

⁵⁸ The cholera and dysentery outbreak in Musina shelters is well documented.

⁵⁹ The education system in South Africa makes provision for two levels of exit at secondary school, grade 10 (for vocational and artisan training entry) and grade 12 (for university entry).

Sixty two farm workers reported being beaten by their employers while working. This appears to be more prevalent in some farms than in others. For example, 18 out of 20 interviewed farm workers, at one particular farm, reported that one of their major problem is physical harassment (beatings) by the farm owners “...he can beat you once he feel that, or if something is stolen, he will just suspect you without any evidence and beat you...” (Interview with male respondent 12 May 2011 code 58). Another farm worker narrated his story as follows “I was in hospital last month after being beaten here. I had arrived from Zimbabwe that morning when the boss arrives at our compound. Some items have been stolen at the farm. He just came straight to me, took me from the crowd and beat me badly...when I questioned him and told him that he hurt my leg, he gave me R100(not clear whether this was for treatment or as compensation) and not even saying sorry...” (Interview with farm worker, 12May 2011, code; 57).

Gender

There are a number of gender related issues and challenges that farm workers face. This subsection discusses some of these.

On average women tend to earn slightly less than men (between R600-R 1 200 a month compared to R900- R1 400 for men) and do household and farm work, for instance many women did domestic chores in the farmers’ houses, in addition to farming. However, the sample size was not large or representative enough to suggest the generalisability of this claim.

Thirty (of the forty female) respondents in this study were mothers who had children living with them on the farms. Some of the children were as young as one month old. All of the mothers reported that the major difficulty facing them as female farm workers was the absence of proper child care facilities at the farm. Because of this, they have set up an informal system- known as the “pre-school” with other women on the farms who – for a small fee- will look after the children while the mothers work in the fields. Conditions at the pre-school are dismal. There is no food available at the “pre-school”, mothers need to ensure that children are left with enough food for the day, and secondly there is a lack of adequate sanitation and recreational facilities at the “school”. In most cases the quality of care provided is compromised as one woman takes care of up to 10 children. Another major concern is the

lack of provision for maternal leave. In one instance a mother left a week old baby at the school in order to go back to work to earn money. Female workers have no time off for breastfeeding (which as a result is only done at night and on Sundays) and do not have money to buy milk powder, resulting in mothers providing only porridge (mielie meal) for the children, including young babies, for the whole day. Food insecurity and malnutrition in the area and its development effects have been well documented.⁶⁰ Children under the age of 5 who do not receive sufficient nutrition are at risk for other illnesses and educational and emotional developmental challenges. The women are aware of the dangers of leaving children in such circumstances but feel that they have no alternative as they need to earn money to support their families, citing again the “no work, no pay” principle that governs work on the farm:

“we cook porridge in the morning and leave the child with the teachers at the pre-school ...three babies died at the beginning January 2011 at this farm, in this pre-school because they were not well cared for. The women who are looking after these kids are also under pressure, because there are many children, however, we do not have a choice because we are here to work, and if you are absent for work, then there is no pay...”(group interview with three women with young babies, 12 May 2011 code:54).

This situation was corroborated by the MSF field coordinator and reports from nurses at Musina Hospital who stated that they see a number of malnourished babies from the farms⁶¹.

Gender based violence

Aside from the risk of gender based violence and rape while crossing the border, many women feel physically vulnerable working on farms due to their isolation from family, friends, and the police. A few women who do not live on the farms face the risk of rape when walking through dense vegetation or “bush areas” to and from work. Similar concerns were documented in earlier studies⁶². Women who are living or working with their husbands or partners feel slightly more secure than those living or working alone.

⁶⁰ See for instance: P Crowther – 2007; M Altman – 2009; J Heckman, A Samie, P Bessong 2010.

⁶¹ Observations at farms and informal interviews with nurses at the Musina Hospital, interview with MSF Field Coordinator.

⁶² MSF

2.3. Responses

Having documented the range of rights violations that farm workers experience, the report now turns to understanding the responses of various actors to these issues. The following subsections details how civil society, international organisations, government departments, farmers, and farm workers themselves perceive and respond to the living and working conditions of workers on commercial farms in Musina. All of the aforementioned stakeholders, regardless of size, location or focus, concede that farm workers in general, and migrant farm workers in particular, face unfair labour practices and substandard living conditions on commercial farms. Despite this level of awareness, there is disagreement on what causes these conditions and therefore on how to address these problems.

International organisations

Generally international organisations, which have the authority to intervene at government level, believe that poor working and living conditions of farms workers stems from their state of being undocumented and economically, politically, and socially marginalised. They therefore focus their energy on regularising migration. In addition they do not appear to share the political will of NGO's and local level government departments in addressing rights abuses faced by farm workers. A representative of one international organisation, who wished to remain anonymous said:

“We have brought the farmers on the table; we brought the department of labour on the table for them to discuss how best the South African farm owners can access Zimbabwean farm workers. In terms of farm workers welfare, we have an HIV AIDS prevention and care program.”

In turn, many local NGO's feel that the international organisations are bureaucratic and uncaring. When asked to give an opinion on the services which were being provided to farm workers by government and international organisations, some of the responses were:

“Services are not accessible- even with mobile clinics- you can go to the farm but workers will be working, they only visit the clinic at lunch time.”⁶³

⁶³ Interview with representative from Fountain of Hope 20-05-201.1

“Farm workers are not aware of their existence and their role as well as how they can be assisted. These services are not easily accessible –organizations must lobby with farmers who should understand that they are also being assisted.”⁶⁴

“The services are not targeting much of farm workers’ needs. There is need for an organisation targeting farm workers’ rights.”⁶⁵

One area of service provision which appears to be well-coordinated is health. In 2009, the IOM started a health cluster in conjunction with a few NGO’s and government. As part of this service, it together with MSF, provides a mobile clinic service to farms in the southern part of Musina. According to a few NGO’s and farm workers, primary health care services currently rendered by these organizations are critical but not adequate in terms of both the scope of care provided and the frequency of the service.

NGO’s

A number of interviewed NGO’s started working with farm workers, migrants, and farm owners in 2007 after an increase in the numbers of Zimbabweans crossing the border, due to the reasons discussed earlier. The particular problems documented in the Musina Showgrounds⁶⁶ and at the shelters⁶⁷ also prompted some NGO’s to intervene on humanitarian grounds.

Whilst NGO’s appear to demonstrate a stronger sense of sympathy and support for farm workers, they don’t have the capacity and/or authority to significantly shape the policies and practices which systematically place migrant farm workers in positions of multiple vulnerability. Some NGO’s state that all they can do given their resources and mandates is to educate farm workers on their rights and refer them to the DoL:

“Every day, we get reports from farm workers, coming back from the farms complaining about harsh working conditions, low payments, yet when they come here, they promise them better wages, food and accommodation. This is not what they see once they arrive, some do come back without being paid at all, and others come back because of hunger, working the whole day, without lunch or break...” (Interview: I Believe in Jesus, Church Shelter).

⁶⁴ Interview with LHR employee, 19-05-2011.

⁶⁵ Interview with a Pastor from I Believe in Jesus Church Shelter 22-05-2011.

⁶⁶ See for example the reports by CoRMSA and the IOM

http://iom.org.za/site/index.php?option=com_docman&task=doc_view&gid=138.

⁶⁷ Ibid.

Many NGO's stated that their limited resources prevent them from monitoring cases, and spending more time on public advocacy and lobbying these issues.

“We provide accommodation and food to asylum seekers or farm workers who have been fired who have nothing. But what is really needed is for stakeholders in Musina to effectively collaborate in advocating for farm workers rights, Government, NGO's and Workers Unions' interventions. We know what the problems are: Ill-treatment by farm owners, harsh living and working conditions, very low payments and sometimes no payments at all, long working hours- no tea break or lunch, forced to leave employment without getting paid, being taken advantage of by their bosses because they are foreigners basically -labour exploitation, and what do we offer them?” (Interview with a Pastor, I Believe in Jesus, Church Shelter).

Several NGO's hinted at the underlying structures and systems of power which are leveraged to marginalise and oppress migrant farm workers. One respondent⁶⁸ stated that some farm owners intentionally recruit illegal migrants, do not pay them and then call SAPS to have the workers arrested for failing to have documentation, at the end of the month. This was corroborated by several other local activists who suggested that farmers are well connected to the local economic and political elite. Many farm workers stated that farmers collude with immigration and police officials to detain and deport workers irrespective of their legal status if complaints are made about working conditions or if there are any problems on the farms (such as theft or damage to property).

There are also a number of practical impediments that NGO's face in providing services to farm workers. The geographical location of the farms and their isolation from one another, and from Musina where the offices of these agencies are located, make it difficult for NGO's to access these sites. There is no regular public transport between the farms and the main town to seek legal or social advice or services, which makes commuting to the farms long and expensive for farm workers. Many NGO's have constrained budgets that do not allow for sufficient staff and vehicles to enable them to travel to all of these areas (in some cases, more than 100km) to provide holistic, comprehensive and consistent services, or to monitor conditions (Interviews with LHR, MSF, IOM, Red Cross). If farm workers do have the means

⁶⁸ Interview with James Chirwa, Musina Legal Advice Office.

to travel to Musina, they risk losing a day's wages based on the "no work, no pay" principle that farmers adopt.

A second major challenge is related to access. Farms are private property, which NGO's cannot gain access to in order to inspect or offer services without the permission of the (often reluctant) farm owners. As one NGO worker stated, *"when we try to visit the farms, the gates are locked. We have to use our phone and try and phone them or scream for the farmers. The farmers will say to us: "What do you want? We are busy." If we are given access to the farms, we have to leave the car at the main house and walk to the fields, with the dogs which follow us. If we are not given access we have to park on one side of the road and walk into the bush to try and speak to the workers through the fence. How do we do that type of work? The whole day can go and we won't even talk to one farm worker"*⁶⁹. Telephone Interview 19-11-2011.

Thirdly, funding constraints are a major challenge, particularly for the smaller organisations and the various Advisory Offices, in rendering effective, comprehensive services. The Legal Advice offices employ between three and ten administrative and paralegal staff, who work on an average caseload of about 200 each month. The lack of reliable telecommunication tools - like email, internet, a vehicle to undertake visits, and at times, even a basic landline- impede on the ability of staff to reach farm workers and monitor cases.

All interviewed NGO representatives believed that the DoL should intervene to improve the working relationship between themselves and farmers. This, in their opinion, constitutes an integral part in being able to carry out their mandate to protect and render services to farm workers. NGO's stated categorically that the DoL is best placed, politically, to negotiate access to farms to inspect conditions and to report, investigate and address cases of labour violations amongst farm workers. *"We refer some farm workers to DOL, but you will see that in most cases their cases take years without being resolved..."* (Interview with Musina Legal Advice Office Paralegal).

"We don't get access to the farms, we tried to arrange with DoL who have access with their labour inspectors, but DoL are understaffed - they don't have vehicles - they say we must wait for them to come to us and then we can go to the farms, but we are still waiting, so we end up

⁶⁹ Interview with paralegal at Opret Legal Advice office.

not going to the farms” – Interview with a representative from the Mamedi Legal Advice Office).

Government

It appears from interviews with CSO’s and state bodies⁷⁰ that the lack of capacity at the DoL, which is responsible for inspecting and ensuring compliance with labour laws, is a major impediment to stemming the reported cases of rights abuses of farm workers. The DoL has less than 10 inspectors who themselves are at times reluctant to approach farm owners for fear of verbal and physical abuse. At the time of this research there was only one male staff member at DoL and the rest were females; many of the women interviewed expressed a feeling of fear at the prospect of intimidation and abuse from farm owners⁷¹. Furthermore, there is only one car at the DoL Musina office and it is difficult for staff members to make regular visits to all farms in Tshipise and Weipe in a short amount of time.

Most government departments affirmed that their legal and professional jurisdiction includes farm workers and migrants. However a key challenge in fulfilling their mandate is in identifying the *correct* department at the *appropriate level* that is able to intervene. Given the myriad set of complex, interrelated rights issues that migrant farm workers face, this task often staggers in paperwork and intergovernmental processes. A compounding factor is the lack of coordination in between the DHA and the DoL in addressing labour issues related to low skilled or undocumented migrants. One exception to the problem of jurisdiction is the Department of Agriculture, whose main mandate is to provide agricultural support services to farmers.

Almost all government employees interviewed agreed that the geographical distance between farms and their offices, and the lengthy terrain and poor infrastructure of the area directly affects farm workers’ access to services. At the same time these departments face a shortage of an appropriate budget and adequate personnel to provide regular, comprehensive mobile services to the farms. SAPS stated that a major challenge in making the area more secure and

⁷⁰ See appendix A for a list of departments interviewed in this study.

⁷¹ Interview with an anonymous respondent from DoL- 22-05-2011.

in investigating criminal cases is the long borderline (more than 200km) with its presence of robbers (magumagumas) and the difficult physical terrain (river and bushes).⁷²

Like the NGO's, most government departments are aware of the conditions facing farm workers such as labour exploitation, low wages, ill-treatment, sudden termination of employment, and lack of adequate training, safety and protection mechanisms. On this last issue, one respondent stated that:

“this results in some of them operating machines and getting injured, they report cases but when you question them, that is when you realize that the person has not been trained for the job... some do not even open cases against their bosses and majority end up leaving work without even compensation from their employers...”

(Interview with Mr Pesulo, Court Prosecutor, DOJ).

Yet many government employees do not have the capacity or authority to intervene at a local level without authorisation from their national or provincial offices to reallocate budgets which will enable them to carry out their functions.

Aside from these logistical and practical constraints, there appears to be an underlying matter which affects official redress of rights violations. NGO's and state bodies alike stated that there is a very low report-rate amongst farm workers for any form of misconduct and contravention of law that they face. From the perspective of NGO's and government the main reason for this silence appears to result from a lack of information on rights and recourses available; and the physical isolation of the farms from service providers. Yet, as will be discussed later, farm workers cite a fear of reprisal in the form of arrest, detention, and deportation, and/or a lack of faith in official processes of justice. This disjuncture on how rights are conceptualised and claimed is integral in understanding the responses to the conditions outlined in this report. This is discussed in greater detail in the section on responses from farm workers.

Farm owners

In total seven farm owners or managers agreed to be interviewed for this study. The farms which they owned or managed ranged in size from 330 hectares to over 1000 hectares, and

⁷² Interview with Inspector Mudau, SAPS.

employed between 200 and 1000 farm workers. Most of the farms were engaged in either fruit and vegetable farming, or game farming. They supplied the commercial local and international commercial market. The following table illustrates the size, number of employees and main outputs of the farms.

Farm Size	Main Agricultural Activity	No. of Employees	Annual Financial Output
800ha (L)	Citrus –oranges, grape fruits	800	+/-14million
771ha (L)	Mixed farming, crop, citrus, melons, game, tomatoes, sheep, etc	400	18million
1000ha (XL)	Citrus	1000	DNR
400ha (L)	Citrus, game	600	100milliom
800 (L)	Cotton, tomatoes, wheat, oranges, vegetables and citrus	400	7million
330 (M)	Vegetables, diary, tomatoes, green paper	400	DNR
400ha	Vegetables, tomatoes, mealie, butter nuts	200	DNR

Table 4: Farm owners interviewed for this study

“This farm was initially owned by my grandmother, before given to my parents, I started farming here in 1983.”⁷³

Farmers are generally well organised and represented in national and provincial fora through the Agricultural Union, a strong body that protects the interests of commercial farmers. Most of the farmers have been living and working in the area for decades and have a reasonable good relationship with each other and with local government officials, although problems between farmers and SAPS have emerged.

⁷³ Interview with farmer 13-05-11

Recruitment practices

Whilst there is no overt policy of preference in employing migrants or local, farm owners, tend to prefer foreign labour due to its availability and lower cost. This practice is a reflection of both the historical patterns in the sector which were enshrined and supported by national and bilateral agreements, and the contemporary dynamics of a large and fairly desperate Zimbabwean labour supply. This practice augments the perception amongst farmers that South Africans, unlike their Zimbabwean counterparts, have neither the inclination nor the interest to pursue farming.

Farmers have both seasonal and permanent employees and therefore the size of the workforce fluctuates. In harvesting time, farmers recruit labour through informal means by asking workers and other farmers and social contacts if labour is available. The major criteria in employing workers are honesty and the ability to do manual work. Farmers state that they only employ workers who are above the age of 15, and therefore have the right to work under South African law, and do not intentionally recruit undocumented migrants as they would face the risk of being fined or lose part of their labour force through detentions and deportation. Seasonal employees are hired during the harvesting seasons, (in citrus production this is from May –September). One farmer had 250 permanent employees, but during the peaking season they often hired more than 1000 labourers. Views on gender as a criterion for employment are mixed: five of the interviewed farmers said that they hire women to do certain jobs like sorting fruit and vegetables while they hire men to work in the fields; whilst the remaining two farmers said that gender does not influence their recruitment patterns. At one farm 70% of their workers are women because they focus on vegetables (tomatoes, butternuts, and green pepper) and women are considered better pickers than men. All farmers stated that conditions are the same for women and men and that no special concessions are made for either.

Conditions or context?

According to the farmers, workers are paid in accordance with statutory provisions, thus the salary starts from R7,04 per hour or a minimum of R1376 per month. Some farmers acknowledged that they deduct a small amount for services each month including housing, water and electricity (between R4- R50 per house) provided to farm workers, in line with

provisions in the BCEA, while others stated they provide free housing. This finding contradicts what farm workers have stated on income amounts, deductions, and overtime pay. All farmers stated they give permanent employees between 15-30 days paid leave annually. Farmers are keen to frame the poor living and working conditions of farm workers as a symptom of deeper political, policy, and structural causes rather than as a result of exploitative employers. Whilst some consideration of the broader context which affects lower skilled workers is relevant, the particular actions of farmers themselves cannot be ignored.

According to the farmers, an unclear immigration environment, a bureaucratic, corrupt, and inefficient police force and immigration department, and a lack of political support for the agricultural sector contribute to dismal conditions for farmers and their employees. This context, they argue, creates and sustains the exclusion of a legal migrant labour force in the agricultural sector, which is the underlying cause of the dismal conditions facing migrant workers.

According to the farmers, their workers risk detention and deportation, even if they hold valid documentation, due to their inefficiency and corruption within the DHA and SAPS. This, they argue, impacts on the sustainability of their workforce..

The farmers state that they have a good working relationship with their workers. They cited their main challenge as the lack of, or inadequate response from government departments, particularly the SAPS and DHA, in response to providing documentation for workers and investigating criminal cases on the farms. The farms that are close to the Limpopo River, which divides South Africa and Zimbabwe, face particular problems from the amagumagumas (border robbers/ thugs) who allegedly steal their farm equipment, engines and other items and sexually abuse and harass migrants crossing the river while trying to enter South Africa. Reports of these crimes had been made to SAPS, but there had no arrests had been made:

“...we have filed lots of reports and opened cases for many years, but police have not been cooperative in arresting this group of criminals...” (Interview with farm owner).

“We have limited assistance from the government, especially SAPS’ response on crime. The theft rate is very high especially for cables, electric pumps, fertilizer, diesel, every year, it is a problem here.”(Interview with farm owner).

At some farms, farm owners complained that SAPS detain their workers on suspicion of being involved in criminal activities with the *amagumaguma* because the workers are in close proximity to the border. In other instances, farmers stated that some workers were arrested and detained for not having valid documentation without being given a chance to collect their belongings, or inform their families and employers “... *In a number of times, I struggle here with some (workers) leaving very young babies with no one to attend to them, which I think is very unprofessional of SAPS...*” (Interview with Farm Owner 18-05-2011).

The farmers expressed their concerns about the arbitrary and unclear documentation process at official forums in Musina and are working actively with the relevant authorities to ensure that farm workers are documented. However, due to the numerous amendments on regulations pertaining to the application and renewal of a work permit in the Immigration Act and the lifting of the moratorium on Zimbabwean deportation in late 2011, farmers were uncertain as to how they can ensure that their workers have proper documentation. Some farmers also complained that after investing time and money in assisting their employees to obtain documentation, the workers leave the farm for better opportunities elsewhere.

In terms of the broader economic context, farmers noted that market price instability is a places constant pressure on them to produce goods at a lower price. “*Competition in the market is very stiff. You have to make sure that you product is good enough to give value to the customer so that they buy it*”⁷⁴. The absence of any state level protection, in the form of subsidies, for example, means that farmers often shift this risk to their employees. (Interview with Farm owner 18 May 2011):

“the farming industry is still being looked down on in South Africa. Only lowly skilled personnel seek employment in Agriculture compared to countries such as Argentina,⁷⁵, farmers have no support here.”

Services provided by farmers

All of the farmers stated that they provide some of the following services to their employees: having a school and basic training at some farms, providing transport for their employees to go to Musina once a month to do shopping, having a first aid kit and basic medication

⁷⁴ Interview with farm owner at Tshipise 18-05-2011.

⁷⁵ Interview with farm owner at Tshipise 18-05-2011.

available for workers, and assisting in applying for and obtaining documentation and negotiating with DHA to issue ETD's. These conditions are in stark contrast to those outlined by farm workers in the following section.

Farm workers

*“No, here (at the farms) we just mind our own work. There is nothing like a workers committee to take our matter to the higher office”.*⁷⁶

Despite the presence of a number of government departments, international organisations, NGO's and FBO's in Musina and the pressing needs of farm workers in accessing services and claiming rights, most respondents are not formally approaching these bodies for assistance⁷⁷ for three main reasons: fear of reprisal from authorities or employers; a lack of faith in official avenues of justice and redress; and an unclear understanding of their capacity to make claims. Compounding these issues are practical considerations such as a *lack of information* on rights and services which are available and attainable; *and lack of opportunity* to claim these services and rights due to the physical isolation of farms and minimal time off work.

Reprisal

Most farm workers, regardless of documentation status, fear that any overt or covert mobilisation for an improvement in living and working conditions will result in them losing their jobs, being evicted from the property or in the worst case, being detained by police and deported to Zimbabwe. At its core, this principle is a reflection of a simple cost and benefit equation, whereby 'bearing it out' in poor conditions outweighs the risk of losing an important source of livelihood for oneself and one's dependents. This fear is based on a number of factors: a compounded vulnerability of a worker who is dependent on an employer to legitimise his or her stay in the country (as is the case of farm workers who have corporate permits), or is undocumented, and being low skilled with few prospects of alternative work. Underlying this sentiment though, is a deeper apathy amongst migrants, regardless of legal or economic status, to engage in mobilising activities in the host country. One farm worker expressed this sentiment as follows:

⁷⁶ Interview with a female South Africa farm worker, 03-05-2011.

⁷⁷ About 90% do not know where and how to report cases when they are victims of abuse, or labour disputes. About 10% of those who know where to report do not have enough information about where to locate the offices and their contact details.

“I am here to work and send money for my family. If I get involved in other things like strikes how will it help my children?”

Lack of faith

Many workers have no history of mobilisation, or of processes that can bring about change, indeed many have experienced the negative outcomes of protests at home in Zimbabwe. In other instances they have escaped violence and persecution *without* the assistance of a third party. In simple terms, they have struggled and survived on their own. These workers have no experience of a positive outcome emanating from protests of any sort. Furthermore, the structure at the farm places workers under a foreman who many workers claim is easily bribed. In the event of inspections, foremen coerce workers to make particular statements, or point out selected workers who officials can interview. In a group interview with farm workers, many expressed the following sentiment:

“Who is there to complain to? The foreman can be bribed to take sides, so what is the use of complaining?”⁷⁸

This hesitation also extends to the role of service providers. If farm workers experience any rights violations, for example, if they are the victims of assault, unfair dismissal, experience labour exploitation, or are sexually abused, the majority of respondents (80%) feel that they have no official recourse. Going to the police station is difficult, as it is some distance away, and it is expensive to travel repeatedly in order to open a case, follow up on the investigation and make repeated statements. Aside from the fear of reprisals from state authorities, especially the police, migrant farm workers also feel that reporting cases to the police often produces no tangible outcome, as investigations are protracted. In cases such as assault or rape, the lack of capacity of the police and DoJ, and of victim protecting centres and services compounds the vulnerability of the victim as they have to, in some cases, continue living and working with the accused, while forensic tests are done in the nearby city of Polokwane. According to the SAPS, this process takes four months or more.

In 4 farms, farm workers revealed that they had reported work related problems -such as misunderstandings with a co-worker or management- to the Workers’ Committee. In other farms they reported that they resolved issues through the foreman who then informs the

⁷⁸ Interview 25-05-2011.

management (mostly the farm owner). However, many respondents stated that the main intermediary between farm owners and employees is the foreman who can be bribed to take sides as illustrated by the following quotes:

“the foremen can be paid so they take sides” interview on 03-05-2011 with farm worker (2).

“...here you cannot just report anything to the police because this is a private property, our foreman again cannot go against the Boss, they report what the Boss wants to hear, so if you have your own concerns, the best may be to keep them and just do the work that you came for...foremen are after favours from the Boss so if you need extra increments, do not think that they will tell the Boss, they will tell you to go and tell him alone...if the Department of Labour staff arrives here, we do not see them, you will only see the foremen talking to them and few others who are selected by the foremen, we do not have money to visit them in Musina so at the end of the day, we are left without an option but to keep quiet and stay like that...” (Interview group of 3 with farm workers 21-05-2011).

One key finding from the study was a high level of mistrust and lack of unity amongst farm workers. Many interviewees felt that people were living and working on the farms for their own personal interests and were not inclined to organise themselves. On the contrary many workers spoke openly about hatred toward co-workers, cases of food poisoning, allegations of witchcraft, assault, theft, and even murder amongst farm workers. As one worker said:

“it’s a matter of being careful when dealing with people here”, (interview with farm worker, 11-05-2011).

Interestingly these feelings of ill-will and a sense of danger were not articulated according to nationality or ethnicity. On the farms and in Musina, xenophobia was not a major issue for the majority of respondents, although some migrant farm workers felt that they were being discriminated against by SAPS because they are migrants. As one worker said:

“...If it is a South African who attacked you, we call the Police, but they delay to come and in most cases they do not even take him to court but just request to forgive each other, but if it is a foreigner who attacked a South African, the police will arrest him

fast, in few minutes that person will be in the cells...this leaves us (to) not report cases... ”⁷⁹.

Workers are drawn into silos of self preservation, a situation that is reinforced by the lack of structural and institutional attempts at mobilising and uniting workers.

About 40 interviewed farm workers know that the DoL has a role to play in protecting their rights; however, their major worry is that the DoL has had a limited response when they have reported cases in the past. A number of farm workers stated that they once reported cases of non-payment of labour, low wages, and harsh working and living conditions, but none of the concerns had been effectively addressed:

“...I think DoL staff is being bribed here because when they visit the farm, the farmer just take them inside the office and are allowed to speak to few foremen and after that they just leave. We are not being consulted here, they just do what they think is right, after that, when they leave, we won't see them again...”⁸⁰

A number of farm workers also highlighted that SAPS has not been effective in responding to their needs and sometimes they take the sides of the farm owners when something happens. A worker at a farm in Weipe narrated a case of his late colleague who died recently after being severely assaulted by the SAPS and SANDF officials:

“...we were told by the farm owner to remove the border fence that was falling down and take it to the farm office. During this process, SANDF and SAPS officials caught us. We explained that the farm owner is the one who order us to do so but they could not listen, I think they were bribed, they assaulted us badly. We were taken to Musina Police Station but the farm owner never followed us and SAPS did not bother to call him, they only released us after a few weeks but after that one of us became very sick because of injuries. He only stayed for few weeks and later on died... we had to raise money for his body to be taken by his family to Zimbabwe...” (Interview with farm worker- Weipe 23-05-2011).

⁷⁹ Focus Group discussions with male farm workers-22-05-2011.

⁸⁰ Interview with farm worker – 20-05-2011.

Capacity

“*How can we make claims if we don’t exist?*” Interview with a group of farm workers 20-05-2011.

The respondents in this study had various legal status ranging from asylum applicants, corporate permits and being undocumented. Each of these constrains the perception and ability of migrants to seek legitimacy and make claims for rights. Asylum applicants are awaiting the finalisation of their refugee status, a process which is drawn out and lengthy. Although they have the right to work and remain in the country pending a decision on their status, many farm workers who have applied for asylum feel that making any demands for rights would jeopardise their claims as they would be seen as burdens to the state. Furthermore, many asylum applicants are already investing considerable time in renewing their applications every 2 or 3 months and do not have the resources to make additional claims. Some respondents stated that they were being asked to pay R1, 500 to DHA, as a bribe, to renew their application or risk being detained and deported.

Many of the migrants who are working under a corporate permit schemes, have their passports kept by farmers to prevent them from leaving the employ of the farm. This practice, has two implications for migrant workers: 1) it restricts their movement outside the farm property; and 2) it affects how they perceive their own sense of legitimacy *outside* the farm. For as long as their legal status is tied to the farm, they hold no desire or opportunity in staking claims outside this space. If they encounter any social, medical, or economic problems they seek redress within the farm from colleagues or the farmer.

Undocumented migrants face the risk of detention and deportation by police and immigration officials, and therefore adopt an “under the radar strategy,” where they believe that remaining invisible and silent would be safer for them. Despite the ZDP (and its provision on a moratorium on deportations which was in place for most this study’s duration), only a few farm workers had applied for regularisation, and most had not received any documentation.

Documentation issues are not concentrated in the host country only. Indeed, for many workers their status as undocumented migrants emanates from problems in the home country. The

lengthy time (several months or years) and cost (50USD, excluding transport costs) of obtaining a Zimbabwean passport means that many without adequate means or time, irregularly cross the border. Once in South Africa, it appears that farm workers are caught in a vicious cycle of poverty and marginalisation, as they are unable to save enough money from their poorly paid jobs or take leave in order to travel home to apply for a passport. At the same time, they not will to visit NGO's and government departments to access services for fear of arrest and deportation because they do not have relevant documents. As one respondent says, *“It is difficult for me to go to SAPS when I have a problem, when I do not have a passport”* (interview with farm worker at Maroyi farm 3 May 2011 code7).

The lack of relevant documents also impacts negatively on farm workers' ability to seek other livelihoods opportunities. Paradoxically, the invisibility of the farms which isolates the workers also provides a sense of protection from immigration officials and police, and thus many stay on and work under difficult conditions. This aspect points to a sense of agency among farm workers, which they adopt to meet their needs. In a similar vein, workers may lie about their age in order to get work (children under the age of 15 or 18 claiming to be older).

Access

More than 90% of the interviewed farm workers stated that they were not aware of the service providers and the kinds of services that they are entitled to as migrants, and/ or undocumented migrants aside from those services that are present on the farms (such as the MSF and DHA mobile clinics). The few who were aware of services felt that they did not have time to access them or that they would not benefit in any significant way by accessing services through formal means.

SECTION III: CONCLUSIONS and RECCOMENDATIONS

3.1. Conclusions

This report has documented a number of poor living and working conditions for commercial farm workers in Musina. Farm workers report being paid less than minimum wage, having little or no paid leave, and no formal employment contracts. Many farm workers live in sub-standard housing with limited access to electricity, clean running water or sanitation. They are also vulnerable to risks associated with physical safety and food insecurity. Women in particular face additional vulnerability stemming from poor child care arrangements, rape and gender based violence. Despite these exploitative labour practices and sub-standard living conditions, many farm workers continue to work on the number of commercial farms around Musina, and many newly arrived migrants are drawn to the farms, due to their precarious economic and legal state, as lower-skilled undocumented migrants. Although issues related to health have not been an explicit focus of this study, anecdotal evidence supports findings from previous studies (see Addison 2011, MSF 2009, IOM 2009) which point to a number of public health concerns relating to poor sanitation, limited access to health care facilities and spaces of vulnerability in which the spread and infection of HIV/AIDS and TB is a concern.

Although there are several NGO's and international organisations in Musina, and numerous government departments who provide access to rights and services, practical, institutional and structural constrains impede effective service delivery. Furthermore, many farm workers are disinterested in or reluctant to engage with formal institutions and structures fearing reprisals from employers or the police. They also express a lack of desire in collectively mobilising to improve conditions. This is a reflection of how migrant workers perceive their own status and conceptualise what rights are and how they can be claimed.

The Department of Labour appears to be doing little to provide an effective response to the needs of farm workers, especially in addressing the outlined labour challenges. There is also a lack of an effective coordination between CSO's, government departments, and farm owners

in ensuring that farm workers' rights are not compromised and they have access to information and basic services

3.2. Recommendations

Considering the conditions outlined above, the following recommendations are made in this report:

To commercial farm owners

- To ensure that working and living conditions on the farm meet the statutory provisions contained in the Constitution and are compliant with labour laws in South Africa.
- To enable workers adequate time off work to access the services provided by NGO's and government in Musina.
- To ensure access to farms for CSO's and government departments to provide services and monitor conditions.
- To support the creation of worker committees in order to improve communication and relationship between employers and employees.
- To support efforts to ensure the documentation of cross border migrant workers.

To Government Departments

Department of Labour

- To effectively investigate, monitor, and address all labour related issues.
- To enhance its capacity and administrative functions so that it can carry out its mandate to protect workers.
- To improve relationships with commercial farmers so that access to farms is possible.
- To educate and inform workers, including undocumented migrants, of their labour rights.
- To better coordinate service delivery and monitoring with the DHA and with CSO's.

Department of Health

- To increase the number of health facilities available for farm workers and for rural households in Musina and surrounding areas.

- To strengthen mobile services to commercial farms, including TB, STI and HIV testing, and the provision of TB, STI and HIV treatment.
- To strengthen partnerships with non-governmental organisations, such as MSF, who currently have some capacity to deliver basic outreach services.

Department of Social Development:

- To provide basic child care protection and facilities for farm workers.
- To provide services through community development workers and to recruit members of farming communities in this network.

South African Police Services and the Department of Justice:

- To increase the number and capacity of police stations, and courts in the area in order to effectively deal with criminal and civil cases.

Department of Home Affairs:

- To clarify and streamline the process of applying for and issuing work permits, and corporate permits for farm workers in border laying areas.
- To ensure that detention or deportation is undertaken with due process.
- To provide mobile services to farm communities.
- To adopt an inclusive, human rights based approach stemming from international obligations rather than a narrow regulative approach in dealing with cross border migrant workers.
- To work closely with DoL to address rights issues, and justice seeking mechanisms for migrant workers

Department of Education:

- To provide adequate schooling facilities until secondary school level for children living on farms.

To Civil Society Organizations

- To take a lead in educating farm workers about their rights and responsibilities

- To coordinate with other CSO's, and with government departments and farmers on the provision of services to farm workers.
- To secure diverse and sustainable funding sources so that effective organisations with sufficient human and material capacity can continue to provide services.

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Appendices

Appendix A: government departments interviewed

DEPARTMENT	REPRESENTATIVE	DATE WHEN PROGRAM COMMENCED	RESPONSIBILITIES	TARGET POPULATION
Department of Justice	Mr Pesulo (Chief Prosecutor)	2003	-Legal Assistance	Migrants, farmers and farm workers
Department of Social Development	Social Worker- (Anonymous)	2008	-Child protection	Unaccompanied and separated migrant children
Department of Agriculture	Mr Mbulaheni T.S (Extension Officer)	2007	-Agriculture support services -Livestock production -Technical support on research results -Develop farmers' database	Farmers, farm workers and migrants
South African Police Services	Inspector Mudau	1994	-Safety and Security -Victim Empowerment Programme	Farmers, farm workers and migrants
Musina Municipality	Mr Dzebu (Local and Economic Development Officer)	1994	-Provision of services; land, housing, electricity, disaster management etc	Farmers, farm workers, and migrants

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