

FORGOTTEN SCHOOLS: Right to Basic Education for Children on Farms in South Africa

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Map of South Africa



I. Summary

“There are many problems at this school. Sometimes we can’t hold classes because the farm manager locks the main gate allowing no public access. The pupils can only attend class by entering onto the school premises through a hole in the fence. There is no electricity and no running water at the school. . .The district education officer tells me to see the farm manager about these problems, but the manager refuses to speak to me. There is no assistance from the farm owner and the department of education does not help us. School inspectors visited just one month ago but nothing ever changes here.”

-Primary school teacher, Free State Province, May 23, 2003

The South African government is failing to protect the right to a primary education for children living on commercial farms by neither ensuring their access to farm schools nor maintaining the adequacy of learning conditions at these schools. This violates South Africa’s 1996 South African Schools Act (Schools Act), the National Education Policy Act, and its obligations under the Convention on the Rights of the Child. Receiving an education is compulsory for all children up to grade nine or age fifteen, depending on whichever comes first. The historical, social and economic conditions on commercial farms, inherited from years of an undemocratic minority government, mean that farm schools—public schools on private commercial farms, which constitute 13 percent of all state-funded schools and provide education to about 3 percent of learners in the public school system—are among the poorest in financial resources, physical structure and quality in South Africa. Farm children may attend schools without electricity, drinking water, sanitation, suitable buildings or adequate learning materials. Also, children may face harassment from farm owners.

While the present government has made efforts to redress these conditions, including promulgating legislation recognizing education as a right and introducing policies aimed at addressing the needs of the poorest schools in South Africa, a great deal remains to be done; not least the full implementation of national government policies at provincial government level. Without adequately addressing the conditions at farm schools—which provide an education for farmworkers’ children—they remain impoverished and limit children’s educational opportunities.

The government has adopted a legal framework to convert schools on commercial farms from largely farm owner-controlled institutions to ordinary government-managed public schools with limited farm owner responsibility, through a process of concluding

contracts with each farm owner where a school is located. But the process of concluding these contracts has been unacceptably slow and threatens the continued operation of schools. To date, a minority of these farm schools is governed by such agreements. In some cases, the farm owner or manager of the land on which a farm school is built has actively tried to prevent children or teachers from accessing the school. While government officials and police do, on occasion, intervene to ensure access, these interventions do not prevent future interference. By not negotiating these agreements, the legal status of the schools is uncertain and the responsibility for the provision of services on the premises left ambiguous. Furthermore, ineffective remedial measures prohibiting landowners or managers from preventing physical access to premises demonstrate that the government is failing to protect the right of children on commercial farms to receive a primary education—a right the government is legally obliged to protect under the Schools Act, the National Education Policy Act and the Convention on the Rights of the Child.

Farm schools are the only accessible sites of education for many children who live with their parents or relatives on commercial farms. Historically under apartheid, farm owners established these schools—in part to keep the children occupied by providing a basic, limited education while their parents or relatives worked on the farm. The owner was effectively in charge of the school, though he/she received a state subsidy under an agreement with the government. The joint government and farm owner- management of farm schools confused the roles of government and farm owner in the provision of education in a way that continues today. Since the introduction of a new legal framework governing schools in South Africa, farm schools have been classified as public schools on private property. The 1996 Schools Act provides for the transition of farm schools from their previous status to public schools. As part of this process, contractual agreements must be concluded between farm owners and the provincial departments of education. The Schools Act also makes provision for the expropriation of the land on which a school is built in the public interest—that is for educational purposes—if an agreement cannot be concluded. At the time of writing, land had not been expropriated.

There are still hundreds of schools on commercial farms in South Africa where no new contract exists between the farm owner and the provincial government. In some cases, the extent to which a previous agreement is applicable is not clear. This uncertainty jeopardizes the status of the school on private land. Yet, this report shows, even where an agreement is in place, the uneasy relationship between the needs of a public school and the demands of a private landowner places the right to education in a precarious situation. The sale or rent of a farm, or a change in the activities on a farm, can result in access to the school being denied.

Most farm schools have only the barest of facilities—a classroom. Water and power supply, which in a number of cases depend on the co-operation of the landowner, are not always available. At some schools fresh drinking water is not available. The lack of power affects the administrative activities at a school and also hinders advancement in teaching. The state, or where applicable the farm owner, is required in terms of the regulations made under the Schools Act to provide basic services such as adequate drinking water, sanitation and power. Some schools lack sanitation altogether; in others the facilities are in disrepair and unhygienic. Failing to provide basic services, which encompass the fulfillment of the right to education, are directly linked to an absence of contracts that would normally delineate which party—state or farm owner—is responsible for their provision.

This report documents cases where landowners obstructed physical access to schools or frustrated their functioning by suspending water supply or closing off short routes to a school. A landowner may use the threat of closure of a school to drive parents off the farm to a location where they can find education for their children. Greater efforts need to be made to secure the tenure of farm schools and thereby protect the right to education, in particular by ensuring the speedy conclusion of agreements with the landowners of schools that are not yet covered by this process. The government should—in line with the Schools Act and the South African constitution—develop guidelines for the expropriation of land in the public interest in instances where agreement cannot be reached and measures to resolve the matter have been exhausted.

The lack of state-funded transport from homes to farm schools further hinders the right of access to education in commercial farm areas. Because commercial farms are large and children from neighboring farms travel long journeys on foot, the lack of transportation can prevent children in South Africa's commercial farming districts from accessing schools. For example, two-thirds of the children—some as young as eight years old—attending a farm school in Vaalwater, Limpopo Province travel up to thirty kilometers on foot each morning to school. Fatigue and exhaustion adversely affect these and many other children's ability to adequately participate in activities in the classroom. Furthermore, children are exposed to dangers such as sexual assault and road accidents when walking to and from school. This can result in non-attendance or irregular attendance. This report argues that the state's provision of transportation, particularly for those pupils who have to walk long distances to schools and do not have the financial means to pay for transportation, is essential for access to education.

South Africa is a party to the African Charter on the Rights and Welfare of the Child and the U.N. Convention on the Rights of the Child, which guarantee the right to a primary education—a component of basic education. With the passage of the Schools Act and the 1996 National Education Policy Act, the government has committed itself to making basic education accessible to all school-age children. The effective implementation of these government policies at schools on commercial farms is crucial in the provision of this right.

The hardships children in the farming community face are enormous. Their parents' precarious tenure on the land, poverty, and poorly resourced police services that are unable to deliver prompt assistance to children, all affect the enjoyment of children's right to education as enshrined in the South African constitution. However, there are steps that can and should be taken by the state to guarantee the right to education of children on farms. The primary responsibility to protect the right to an education for children attending farm schools rests with the government.

Human Rights Watch researchers visited Free State, Limpopo and Mpumalanga Provinces in South Africa during 2003 where we documented cases where accessibility and availability of the right to education are seriously hampered. Researchers visited twenty-eight schools and conducted interviews with teachers, children, parents, farmworkers and farm owners. We also conducted interviews with provincial education and labor department officials, social workers, and land rights organizations. In this report, the word "child" refers to anyone under the age of eighteen. The U.N. Convention on the Rights of the Child states: "For the purposes of the present Convention, a child is every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."¹

II. Background

"Under the apartheid government, the farmer built the school and claimed a subsidy from the government. It was in the interest of the farmer to have a school on his farm; it kept the children busy while their parents were working in the fields, created an available future labor force, and restricted possibilities for children outside the farm."

-Mpumalanga Department of Education official, May 15, 2003

¹ Convention on the Rights of the Child, Article 1, adopted November 20, 1989 (entered into force September 2, 1990).

Historically, education in South Africa was designed to assert white domination, and African race inferiority and continued under-development.² Education was a privilege and not a right for Africans. The National Party government, which was in office from 1948 to 1994, made provision for community schools, government schools, private, and state-aided schools. Farm schools, which were partly subsidized by government and located on commercial farms, were established under the Bantu Education Act No. 47 of 1953 and classified as “state-aided” schools. The Department of Education and Training, which regulated education for Africans, was directly responsible for these schools. The purpose of the schools was “to create economic value for the farmers and to prevent migration into the cities.”³ These schools, which were attended by African children, were primarily designed to benefit the farmer by providing a level of education that would create a more efficient future farmworker. Not only did the farm owner have access to the liberal use of child labor during harvest time, but also farmworkers themselves were less likely to leave a farm when their children were receiving an education. These schools could be viewed as day care centers for “[children who] were getting into trouble all the time and bothering their parents who were busy working.”⁴ In line with the “Bantu education” policy, the families of African children were forced to shoulder the financial demands of going to school, such as fees, textbooks and stationery, which was not the case with their white counterparts.⁵

The farm owner had full control of the management of farm schools.⁶ This included responsibility for teacher selection and dismissal, maintaining school records and enrollment. As managers of the school, the farm owners could remove the children during school hours to work on the farm. Children from neighboring farms could

² Pam Christie and Colin Collins, “Bantu Education: Apartheid Ideology and Labour Reproduction,” in Peter Kallaway (ed), *Apartheid and Education: the Education of Black South Africans*, (Johannesburg: Ravan Press, in association with Education Policy Unit and Center for African Studies, University of Cape Town, 1984), pp. 161-162. See also report by the 1936 Interdepartmental Committee on Native Education which states “The education of the white child prepares him for life in a dominant society and the education of the black child for a subordinate society,” quoted in same publication, p.168.

³ Adele Gordon, “Farm Schools: A Bumper Harvest for the 90s,” *Matlhasedi*, Nov/Dec 1991. In a speech delivered in the South African Parliament on June 7, 1954 Minister of Bantu Education Hendrik Verwoerd said on the education of Africans: “The establishment of farm schools has in the past been somewhat neglected, resulting in the sending of children to towns schools and the moving of parents into towns.... If fundamental education can also be obtained on the farms, the trek from the farms will be combated, more especially if the training contributes towards more remunerative employment in farm work, owing to the greater skill and usefulness of laborers. Bantu mothers can erect walls where farmers allow it, and the Department will provide the windows, doors and roof.” See also Brian Rose and Raymond Tunner (eds.), *Documents in South African Education* (Johannesburg: AD Donker, 1975).

⁴ Human Rights Watch interview, farm owner, Sabaan, Hazyview, Mpumalanga Province, May 14, 2003.

⁵ Christie and Collins, “Bantu Education,” p. 180.

⁶ Ken Hartshorne, *Crisis and Challenge: Black Education 1910-1990*, (Cape Town: Oxford University Press, 1992), p. 140.

attend the school with the permission of the farm owner on whose land the school was located. Under a contract with the government, the farm owner received a 50 percent subsidy for building the school and maintaining services at the school. The Department of Education supplied school furniture, learning materials and teachers' salaries but no housing for teachers. By 1986, out of the 5,399 farm schools in the country, only one offered secondary level education. At that time, 76 percent of primary schools for African children in the country were located on commercial farms.⁷ Thirty-six percent of children living on farms of primary school-going age (that is between seven and thirteen) were not at school.⁸ Grade seven⁹ was the highest level of education in the majority of schools.

Following a 1986 report, *The Provision of Education for Black Pupils in Rural Areas*, which sought to resolve the ambiguities around the legality and governance of farm schools, the government promulgated the Education Laws (Education and Training) Amendment Act of 1988,¹⁰ which prohibited farmers from withdrawing children from schools to work. A farm owner found in contravention of this law was liable to a fine or imprisonment not exceeding three months.¹¹ However, a farmer could employ children over fifteen who were not enrolled in school. The amendment further encouraged the extension of the level of education at farm schools by providing for combined schools which incorporated primary and secondary school up to grade ten. Government subsidies for the building of schools were raised from 50 percent to 75 percent. This included the provision of housing for teachers.

By 1994, with the new African National Congress (ANC) - led government, the state subsidy fully covered the building costs, while the state contributed 50 percent of the maintenance costs.¹² In return, the farm owner had to enter into a contractual agreement with the provincial department of education to keep the school open for twenty years. The farm owner was responsible for providing services such as water and electricity, and

⁷ North West Department of Education, "The Rural Landscape on Farm Schools in South Africa: an Overview on some Reflections within the North West Province. A Travesty of Education Justice," paper presented at a conference on the future of farm schools, May 13, 2000.

⁸ Department of Education and Training, *The Provision of Education for Black Pupils in Rural Areas*, A synthesis report, 1986, p. 84.

⁹ The average age at entry level into the South African public school system—grade one—is seven years. Primary level schooling is between grade one and seven, and the average age for a grade-seven pupil is thirteen years old.

¹⁰ Act No. 31 of 1988 (an amendment to the Education and Training Act No. 90 of 1979).

¹¹ Hartshorne, *Crisis and Challenge*, p. 142. Education Laws (Education and Training) Amendment Act No. 31 of 1988.

¹² Department of Education, *Report of the Committee to Review the Organization, Governance and Funding of Schools*, August 31, 1995, p. 20. para 3.19.

doing necessary repairs to the school. By the time of the new constitutional dispensation in 1994 half of the African children living on white-owned commercial farms were not enrolled at school.¹³ Few schools offered secondary-level education by 1994.¹⁴ In the main, management of the school was the preserve of the farm owner.¹⁵

The 1996 Schools Act put in place a new legal framework for all schools in South Africa. In particular, the law distinguishes between two types of schools—public and private. Thus farms schools are classified as public schools on private property. Provision is made for the transition of farm schools to public schools and in particular the roles and responsibilities of landowners and provincial government authorities in the right to education.

Since 1994 there has been a decline in the number of farm schools. In 2000, there were 3,550 farm schools, which constitute 13 percent of all state-funded schools.¹⁶ Reasons for the decline of these schools include low enrollment, eviction of parents, farm owners' request for closure, farm owners demanding compensation, amalgamation of schools and urbanization.¹⁷

III. Obstacles to the right to education on commercial farms

The social and economic legacy of the apartheid era continues to affect the rights of those living on farms in South Africa, including the rights of children to education. A national Department of Education report published in 2000—*Education for All: The South African Assessment Report*—found that approximately 19 percent of children in rural areas, which include commercial farm areas and former homelands, were not in school, as opposed to 11 percent in urban areas.¹⁸ The physical and teaching conditions at farm schools are among the poorest in South Africa.¹⁹ Below are cases where children and educators experience difficulties in accessing the school premises and conducting

¹³ Ibid., para 3.20 p. 20.

¹⁴ As at 1990, only fourteen out of 5, 851 farm schools offered grade 12. Adele Gordon, "Farm Schools: A Bumper Harvest for the 1990s?" *Mathasedi*, Nov/Dec 1991.

¹⁵ See note 6 above, at para 3.22-3.

¹⁶ Department of Education, *Report on the School Register of Needs 2000 Survey*, 2001, table 23. Documents can also be found at <http://education.pwv.gov.za>.

¹⁷ Report by Dr. Charles Sheppard, national Department of Education, presented at conference on farms schools convened by the minister of education, May 13, 2000.

¹⁸ Department of Education, *Education for All – the South African Assessment Report*, 2000 [online], http://education.pwv.gov.za/policies&20and%20Reports/2000_Reports/2000_Reports_Index.htm. (Retrieved July 11, 2003).

¹⁹ Adele Gordon, "Providing Quality Education in Schools on Commercial Farms," paper presented at a conference on farm schools convened by the minister of education, May 13, 2000.

educational activities without interference. Although many farm owners cooperate with authorities over the administration of schools, some do not. And while the provincial departments of education, and, on occasion, the police services, do intervene on behalf of teachers, learners and parents, these interventions are neither rapid, effective nor offer any long-term resolution to access interference. The difficulties in physically accessing schools, keep children and teachers out of school.

Physical access to schools

Denial of access to farm schools

Human Rights Watch researchers came across various forms of deliberate interference by farm owners with access to education. In some cases, the deliberate closure of the school was linked to a possible eviction of farmworkers whose children attend the farm school. In other cases, the farm owner wanted the school shut due to the proposed sale of the farm, a change in the nature of the business operations, or as a result of a dispute with the provincial department of education arising from non-payment of rent,²⁰ or the conditions or lack of an agreement.²¹ In all these cases, the children pay the price when disputes between landowners and department officials lead to interference. The Regulations under the Schools Act state unequivocally that the landowner may not limit access to the schools premises by a learner, teacher, parent or “a member of the public who has a reasonable interest in the activities of the school.”²²

The fact that some farm owners repeatedly interfered in the operation of some of the schools visited by Human Rights Watch would suggest that the intervention strategies of provincial departments of education, which have included discussions with landowners, may be inadequate to secure the long-term future of the school or ensure that the teachers and learners will no longer face harassment.

Teaching staff at Jevington Combined School, which has 137 learners and is located in the Free State province, told Human Rights Watch researchers of one instance where the farm owner made it impossible for teachers and learners to continue with their

²⁰ See also, “Subsidy Cuts at Farm Schools,” *The Citizen* (South Africa), January 24, 2000.

²¹ Lukas Meyer, “Court Orders a farmer to Re-open School,” *Die Rapport* (South Africa), January 23, 2000. This is a translation from Afrikaans.

²² Regulations Relating to the Minimum Requirements of an Agreement between the Member of the Executive Council and the Owner of a Private Property on which a Public School is provided, No. 18566, December, 1997, under the South African Schools Act No. 84 of 1996, Regulation 5 (3).

examinations.²³ On November 5, 2002, the provincial department of education was prevented from delivering a geography examination paper for grade twelve learners. According to one teacher, the farm owner obstructed the dirt road leading to the school by parking his tractor in the middle of the road. After appeals by the teachers on the same day, the road was cleared and the examination papers were delivered and learners were able to sit for their examinations. While the reason for this obstructionist behavior was not clearly explained, it seems that part of it stems from an ongoing dispute between the farm owner and the occupants, who are being threatened with eviction.²⁴ The children of the farm occupants attend the school.

In early June 2003, the same farm owner erected a gate along the tree-lined dirt path that leads to the school. According to the principal, the foreman, who lives on the farm with the permission of the farm owner, locks the gate after school and unlocks it each morning before school begins.²⁵ At weekends the gate is locked. This means that school activities such as school governing board meetings cannot take place on the school premises, which is the only appropriate place to hold such meetings. It was through the intervention of the nearby Tweespruit police that the gate was opened on August 10, 2003 so that a school governing board meeting could take place at the school.²⁶ The police broke the padlock, as the teachers do not have the keys. A police officer at Tweespruit police station told Human Rights Watch that this was not the first time that the lock had to be broken, and he remarked that there was a lack of co-operation between the farm owner and the school.²⁷ According to the principal, the farm owner has refused to give the school a set of keys to the padlock. Furthermore, the farm occupants living on the property, who use the same and only dirt track to access their homes, are prevented from accessing the main road and leaving the farm in the case of an emergency. The principal, who has informed the authorities of this deliberate interference, told Human Rights Watch that the school was governed by a contractual agreement with the provincial department of education and further that the right to use the land for educational purposes and the road to the school had been registered in a

²³ Human Rights Watch interview, teacher, Jevington Combined School, Tweespruit, Free State Province, May 19, 2003.

²⁴ Human Rights Watch interview, fieldworker, Free State Rural Development Association, May 19, 2003. Comment supported by principal, Jevington Combined School, Tweespruit, Free State Province, in a telephone interview with Human Rights Watch on August 20, 2003.

²⁵ Human Rights Watch telephone interview, principal, Jevington Combined School, Tweespruit, Free State Province, August 20, 2003.

²⁶ Ibid.

²⁷ Human Rights Watch telephone interview, police officer, Tweespruit South African Police Service, August 28, 2003.

deed of servitude.²⁸At the time of writing, some of the parents had voluntarily left the farm with their children.²⁹

In the cases that follow, the farm owner, and in some cases the lessee with the acquiescence of the landowner, has kept the gates leading to the school premises locked, and thus prevented the school from operating effectively.

At Cambridge Primary School, also in the Free State Province, the principal, who is also the only teacher at the school, informed Human Rights Watch researchers that the new owner of the property had repeatedly locked the gate to the school, and that the provincial department of education had not effectively intervened to prevent the interference with access to the school.³⁰ In most cases, the new owner changed the locks to the school premises thereby obstructing access to the school when the principal was away attending courses or meetings arranged by the provincial department of education. According to the principal, the new owner plainly did not want the school on the property. The schools inspector confirmed that the new owner wanted the school shut and the children moved elsewhere.³¹

Following interruptions on April 7 and 14, the deliberate closure on April 22, 2003, led the former farm owner to intervene. On the teacher's arrival in the morning the gates were yet again locked. While waiting at the gate, the previous farm owner saw the teacher at the gate on the way to his home.³² At around 9:30 a.m. the previous farm owner returned with the current owner and the gate was unlocked and opened. The teacher subsequently wrote a letter to the schools' inspector reporting the matter. The schools' inspector visited the school the next day on receipt of the letter, and met with the previous farm owner and the present owner separately. In the meantime, the owner placed a "no trespassing" notice at the gate to the school. In resolving the matter, the schools' inspector advised the principal to purchase a new lock—this is despite the principal's assertion that she had purchased padlocks on previous occasions, which allegedly had been broken off by the new owner. The principal remarked that money to purchase locks came from the meager school funds, further limiting educational

²⁸ Human Rights Watch has in its possession a copy of the deed of servitude, which is a legal document giving an entity or person the right to use a piece of land for a designated purpose.

²⁹ Human Rights Watch telephone interview, fieldworker, Free State Rural Development Association, June 30, 2003.

³⁰ Human Rights Watch interview, teacher, Cambridge Primary School, Free State Province, May 23, 2003.

³¹ Human Rights Watch telephone interview, inspector of schools, Westminster, Free State Province, August 11, 2003.

³² The farm owner lives on a property across the major national road a few meters from the school premises.

activities for the learners. To prevent further interference, the schools inspector told Human Rights Watch that he notified the current owner in writing in May 2003 that the provincial department of education would have to call on the assistance of the police if further deliberate obstruction of the school occurred.³³ The provincial department of education plans to shut down the school and move the learners to a boarding school in Hobhouse, Free State Province, in 2004.³⁴

Due to the inability to access Kwaluwadupe Primary School, Free State Province, Human Rights Watch researchers conducted the interview with the teachers on the side of a major national road. The primary school is divided onto two pieces of land on either side of the major national road between Ficksburg and Clarens. The owner of the land on which the school buildings stand leased it to two different people. In practice, each school building is under the day-to-day control of a different lessee. This creates a dilemma for teachers who have to negotiate with different people to ensure that the school functions.³⁵ Gates to each of the school buildings are padlocked and the teachers do not have the keys. According to the teachers, anyone wishing to visit the school, including representatives of the provincial department of education, has to make an appointment with the lessee at least two weeks in advance. As there are homesteads on either side of a major national road, the learners either cross this road or use alternate routes and walk through the unfenced sections of the school premises because the main school gates are locked. There is no free access onto the school premises to engage in various educational activities.

The actions of the farm owner at Mareletsane Primary School, Limpopo Province, resulted in legal action against him and the provincial department of education. The matter arose after threats by the landowner to shut the school to give way for a game farm on the property and actions to frustrate access to education. The landowner began to erect a fence in October 2002 and completed it in May 2003. The effect of the new fence was to block the gate leading to the school and one of the short routes that learners used to reach school. Learners now have to travel twenty kilometers instead of eight on foot, and this has exposed them to a dangerous alternate route. A further consequence was a drop in the enrollment of the lower grades. The head of the school governing board applied to the court on August 1, 2003 for the landowner and the provincial department of education to secure unhindered access to the school. A

³³ Human Rights Watch telephone interview, inspector of schools, Westminster, Free State Province, August 11, 2003.

³⁴ Ibid. Hobhouse is a town approximately seventy kilometers from Westminster where Cambridge Primary School is located.

³⁵ Human Rights Watch interview, teachers, Kwalawadupe Primary School, Free State Province, May 22, 2003.

settlement was reached for the farm owner to install a gate to replace the one that was blocked and to erect a fence around the school and from the gate to the school. Furthermore, the farm owner had to make an undertaking not to harass or threaten the learners. The provincial department of education would contribute financially to the cost of the fencing.³⁶

The teachers at Molisa ea Molemo Farm School, Free State Province, reported that the lessee's³⁷ actions had extended the distance learners traveled on foot making it difficult for some to reach the school on time. The lessee closed off the shorter routes that the learners from the neighboring farms were accustomed to using and explained to the teacher that the learners were stealing corn in the fields. While there may be legitimate reasons for the lessee to reduce theft of crops, this example shows the tensions between farming activities and the normal functioning of schools. Since the eviction of previous farmworkers, the lessee has threatened to shut down the school and refurbish the school buildings for his own purposes. However at the time of the Human Rights Watch visit in May 2003, children from the neighboring farms continued to attend the school.

Labor disputes emanating from the inception in April 2003 of the minimum wage for farmworkers have already had an impact on education. Some 2,000 farmworkers employed by South Africa's largest tomato producer in Limpopo Province were retrenched following a strike arising from a wage dispute. Because of the labor dispute, the Zet Zet Two Primary School was shut without approval from the provincial department of education during the strike period. Learners enrolled at this school were forced to drop out, unless their parents could afford to send them to another school. A farmworker and mother who was subsequently dismissed following the strike stated that she could not afford fees and other costs such as school uniforms and transport to send her child to another school due to a lack of a steady income.³⁸ The consequences of the labor dispute between the farm owner and farmworkers and parents resulted in children being effectively deprived of education.

³⁶ Human Rights Watch interview, researcher, Education Rights Project, Center for Applied Legal Studies, University of the Witwatersrand, Johannesburg, July 14, 2003. Also founding affidavit of Raphuti Jacob Mocheke in the case of Raphuti Jacob Mocheke v Johannes Jacobus Coetzee, the Member of the Executive Council for Education, Limpopo Province and others. The matter came before the Pretoria High Court on August 1, 2003. See also Vicki Robinson, "State has Failed Farm Schools," *The Mail and Guardian* (South Africa), August 8-14, 2003.

³⁷ In some cases, a farm owner leases a portion of his/her land to a lessee for various purposes including cattle grazing.

³⁸ Mziwakhe Hlangani and Mujahid Safodien, "Minimum wages ruined our lives," *The Star* (South Africa), August 13, 2003.

Following a threat to shut down the school and dissatisfaction with the amount of rental being paid by government, Lianas Combined School, Limpopo Province, was briefly closed in 2000. According to the teachers, the school was to be moved to a nearby location because the owner no longer wanted the school on his property.³⁹ The farm owner closed the school; but due to a lack of publicly provided transport to neighboring schools, the owner re-opened the school two weeks later. According to the teachers, during the two weeks when the school was shut, the department's intervention amounted to it instructing the teachers and pupils to report to school until the situation changes i.e. that the school re-opens. Despite the provincial department of education's knowledge of the problems at the school, this interruption meant that children were unable to receive an education for two weeks. The teacher informed Human Rights Watch researchers that the owner was demanding R1, 000 (U.S. \$143) instead of the government's offer of approximately R300 (U.S. \$43) per annum. The teachers at the school believed that not enough was being done to secure the tenure of the school.⁴⁰

Disruptions at Funyufunyu Farm School, Limpopo Province were directly related to the provincial department of education's not paying rent due to the farm owner. The government was ten years in arrears in rent payments.⁴¹ The owner closed the school down from January 17 -23, May 5-19, and again from May 28 to June 4th of 2003. The provincial department of education paid the outstanding rent to the farm owner by June 9, 2003.⁴²

Lack of Transportation

Farm schools are often distant from the homes of many of the learners. Although some learners come from the farm where the school is located, others come from neighboring farms. Commercial farms are large, schools on these farms are remotely located and distances are vast. The lack of services in rural areas results in public transport not being ordinarily available for school children to use. In the most severe cases, this involves children walking distances of up to thirty kilometers each way. Lack of transport has an

³⁹ Human Rights Watch interview, principal and teacher, Lianas Combined School, Magoebaskloof, Limpopo Province, June 3, 2003.

⁴⁰ It should be noted that since the interview at Lianas Combined School was conducted in June 2003, the ownership of the farm has changed.

⁴¹ Human Rights Watch telephone interview with farm owner, Makhado, Limpopo Province, June 6, 2003. This rent was for maintenance and keeping the school open for educational purposes in terms of a previous contract between the farm owner and the government before the coming into effect of the South African Schools Act No. 84 of 1996, which introduced a new system of contractual agreements between the provincial department of education and the landowner.

⁴² Human Rights Watch telephone interview, official, Limpopo Department of Education, June 20, 2003. In a follow-up telephone interview with the school principal on July 9, 2003, the school was not shut.

impact on truancy, non-attendance and drop-out rates.⁴³ According to a Statistics South Africa 2002 report, rural communities either walk or take a commuter minibus to reach services and schools with 90 percent of rural learners walking to the nearest primary school.⁴⁴ Most routes, excluding major and minor national roads, are dirt tracks.

In a telling observation on the impact of transport on school attendance at farm schools, a provincial education department official admitted that, “[t]he problem with providing transport is that the moment there is a new route and a bus, new kids show up to go to school. Some are kids who have moved to the urban areas or trust [lands]⁴⁵, and then return home when the new route is opened. Or others who now decide to go back to school. This makes planning and budgeting problematic.”⁴⁶

Teachers are also affected by the lack of transport. Such is the case at Wolksberg Farm School, Limpopo Province where learners walk between five and seven kilometers each way from the neighboring farms. The school is located thirty-five kilometers from the major national road. The ascent to the school in the depths of the pine forests is a rutted dirt track. The teaching staff stays on the farm during the school week. At weekends they return to their homes in Polokwane. The school is shut on Monday and Friday, in order to allow teachers to travel to and from school with the assistance of lifts, which would otherwise not be available.⁴⁷ This effectively means that children do not receive an education two days out of a school week. They rely on lifts mainly from the logging trucks to get to and from the school, which means that at times they arrive late at school. Human Rights Watch researchers had experience of this when they offered a lift to a person who was in fact the principal of the school. This was at 10:30 a.m. during school hours. The principal told Human Rights Watch researchers that the lack of adequate transport affects teaching.⁴⁸ Nkuzi Development Association, a land rights organization, wrote to the provincial department in September 2002 on how the lack of transport deprived children of access to education.⁴⁹ At the time of writing, the nongovernmental organization had not received a response.

⁴³ Statistics South Africa, *Measuring Rural Development – Baseline Statistics for the Integrated Sustainable Rural Development Strategy*, 2002, Table 2.10.

⁴⁴ *Ibid.*, Table 16.2.

⁴⁵ These are the former homelands, which were established away from the cities by the Apartheid government for Africans along cultural and linguistic lines.

⁴⁶ Human Rights Watch interview, official, Mpumalanga Department of Education, May 15, 2003.

⁴⁷ Human Rights Watch interview, fieldworker, Nkuzi Development Association, Polokwane, Limpopo Province June 3, 2003.

⁴⁸ Human Rights Watch interview, Wolksberg Farm School, Haenertsberg, Limpopo Province, June 3, 2003.

⁴⁹ Human Rights Watch telephone interview, fieldworker, Nkuzi Development Association, Polokwane, Limpopo Province July 21, 2003.

Joseph, a grade-seven learner enrolled at Monate School, Limpopo Province, told Human Rights Watch researchers that he starts walking between 6:30 and 7:00 a.m. and only arrives at school around 9:30 a.m.⁵⁰ He walks with fellow learners some as young as seven who cannot manage the long distance without rests along the way to school. He feared people who kidnap children for ritual killings on the way to and from school, and pleaded for the provision of transport. The teacher at the school told Human Rights Watch researchers that classes had to start an hour late each day to accommodate latecomers.⁵¹ The erection of a fence by the farm manager in September 2002 effectively cut off the shorter route to the farm school. In addition to learners arriving late at school, the principal noted that a third of the learners stopped attending classes immediately after the erection of the fence.

At Wallop Farm School, Free State Province, learners interviewed by Human Rights Watch researchers walked up to fifteen kilometers to school.⁵² Some children started walking each morning at 6:30 a.m. in order to be at school by 8:00 a.m. Some worked after school to augment the household income; in some cases reaching home at 6:00 p.m. As a consequence, according to the teacher “[t]hese children are not doing homework [as] there is not time, either working or walking long distances to and from school.”⁵³

Children have to travel between fifteen and twenty kilometers each way to Kwaluwadupe Primary School, which lies between Clarens and Fouriesberg in the eastern Free State Province. Long distances of between fifteen and twenty kilometers were also traveled each way daily by learners coming from neighboring farms attending Doreen-Bridge Combined School, Limpopo Province.⁵⁴ No public transport is available, leading to the same delays and missed school time.

At Petrusheep Intermediate School, Free State Province, pupils told Human Rights Watch researchers of the long distances that have to be traveled on foot daily in order to attend school. According to Thabo, an eighteen-year old grade nine pupil, he wakes at

⁵⁰ Human Rights Watch interview, Joseph, learner, Monate School, Vaalwater, Limpopo Province, September 11, 2003.

⁵¹ Human Rights Watch interview, teacher, Monate School, Vaalwater, Limpopo Province, September 11, 2003.

⁵² Human Rights Watch interview, pupils and teachers at Wallop Farm School, Clocolan, Free State Province, May 19, 2003.

⁵³ Ibid.

⁵⁴ Human Rights Watch interview, teachers, Doreen-Bridge Combined School, Tshipise, Limpopo Province, April, 22, 2003. The farm owner confirmed that children lived on farms twenty kilometers away from the school in a telephone interview on July 23, 2003.

5:00 a.m., leaves home at about 6:00 a.m. in order to be at school by 8:00 a.m. Dineo, a sixteen-year old learner also in the same grade and who lives a bit further away, wakes up at 5:00 a.m., starts walking at 6:00 a.m. and only arrived at school at approximately 8:30 a.m., after the start of school.⁵⁵ She arrived late at school most times. Asked why they endured these long distances, their reply was that this was the only school that offered grade nine in the area.⁵⁶ According to the teachers, more than fifteen children travel distances of fifteen kilometers or more to school each day. Teachers have been applying for transport for their learners since 2000 and at the time of interview there had been no progress.

In Mpumalanga Province, there is some provision of transport for pupils. Learners from Inyoni and Goodluck farms as well as Coopersdal and Winkelhaak⁵⁷ who attend Inyoni Primary School, Mpumalanga Province, have access to transport in the form of commuter minibuses. Teachers at Running Waters School have submitted applications for transport to be provided for learners who have to travel more than five kilometers to school.⁵⁸ The farmers in the area volunteer to transport learners who would normally travel a distance of less than five kilometers to school.⁵⁹ Although this private initiative is commendable, it only assists those children that have to travel short distances. It remains the state's responsibility to ensure that children can access schools, including the provision of public transport where necessary.

In the national Department of Education's June 2003 policy document, *Improving access to free and quality basic education for all*, the government recognizes that "schooling [should be] easily accessible to all learners of compulsory going age."⁶⁰ Rather than committing itself to providing transport, the department is to consider various options that would make schooling physically accessible. It should be noted that in South Africa's 1997 initial report to the U.N. Committee on the Rights of the Child, the government recognized

⁵⁵ The real names of children interviewed are not used in this report.

⁵⁶ Human Rights Watch interview, Dineo and Thabo, learners, Petrushoop Intermediate School, Marseilles, Free State Province, May 23, 2003.

⁵⁷ These farms and areas are within a twenty-kilometer radius from Inyoni Primary School, Komatipoort, Mpumalanga Province.

⁵⁸ Human Rights Watch interview, principal, Running Water School, Hazyview, Mpumalanga Province, May 14, 2003.

⁵⁹ Human Rights Watch interview, principal, Running Water School, Hazyview, Mpumalanga Province, May 14, 2003.

⁶⁰ Department of Education, *Plan of Action: Improving Access to free and basic education for all*, June 14, 2003, paras 52-3.

that it had to make learner transport widely available in order to make school accessible.⁶¹

Some provincial governments have dedicated funds for learner transport. In May 2000, three provinces, Eastern Cape, Gauteng and Mpumalanga had budget allocations for learner transport. The Mpumalanga Department of Education presently makes provision for transport for children who have to walk more than five kilometers on foot to school each day. The provincial department of education awards contracts, through a tendering process, to private entities that are paid a nominal rate of less than R1 (U.S. \$.014) per learner, per kilometer per day.⁶² In May 2003, the provincial department of education was managing approximately 200 routes.⁶³

Free State Department of Education officials told Human Rights Watch researchers that it was not affordable to provide school transport “[b]ecause the children are spread all over the place, one here, one there.”⁶⁴ Yet, the officials admitted that children who have to walk to and from school are exposed to sexual assaults and car accidents.

In those provinces where there is no budget for scholar transport, learners rely on donations. In 2003, a private company donated 300 bicycles to learners at Naletsana Farm School, Limpopo Province.⁶⁵ In January of the same year, the school, which has 460 enrolled learners, was given two buses—also from private sources. However, despite these initiatives, there remain some learners who journey up to twenty kilometers on foot each day because they do not live along the bus route and there were not enough bicycles for everyone.

The various provincial departments have adopted their own approaches to addressing farm schools and related transport problems. There would seem to be a general consensus that the conditions children have to endure at farm schools are not favorable. One option being considered is the establishment of boarding schools to accommodate children from farm schools that have been shut. One-teacher schools and those with a low-enrollment are some of the reasons for shutting down schools. The view by some provincial officials is that in time [beyond five years] the farm school system will no

⁶¹ South Africa’s initial country report, to the U.N. Committee on the Rights of the Child, November 1997, paras 424-5.

⁶² Human Rights Watch interview, official, Mpumalanga Department of Education, May 15, 2003.

⁶³ Ibid.

⁶⁴ Human Rights Watch interview, official, Free State Department of Education, May 23, 2003.

⁶⁵ Matebello Motloung, “Kids to get on their bikes,” *The Sowetan* (South Africa), July 25, 2003. Human Rights Watch interview, teachers, Naletsana Farm School, Koedoeskop, Limpopo Province, September 12, 2003.

longer exist.⁶⁶ However, other department of education officials expressed the opposite view that farm schools would continue to exist because of the vast distances between farms and “[t]he state simply can’t provide the infrastructure.”⁶⁷ Whatever the ultimate fate of the farm school system in South Africa is, in the interim, the lack of transport provided to learners in many provinces continues to affect farm school attendance and deny children their right to education.

Inadequate infrastructure and service provision

The regulations made under the Schools Act require that the agreements between farm owners and provincial departments of education must provide for, among other things, the maintenance and improvement of school buildings and the supply of basic services. The regulations under the Schools Act relating to minimum requirements of a contractual agreement state that: “potable water and toilets must be provided and secured. The supply of electricity to the school must comply with national safety standards.”⁶⁸ Where such a contractual agreement does not exist, the lines of responsibility for the provision of these services become blurred. This uncertainty has a negative impact on proper functioning of the school, and the provision of an adequate learning environment for learners.

Water

According to the *South African Education for All Assessment* published in 2000, approximately 25 percent of primary and combined schools had no access to water within walking distance.⁶⁹ Access to adequate drinking water is still a problem on some farm schools, even where there is a water source on the farm. In cases where there is a good relationship between the farm owner and the school, the provision of water does not seem to be a problem. In general, problems were experienced at those schools where there is no contractual agreement between the farm owner and the provincial department of education. In other cases teachers were unaware of whether such an agreement in fact existed. In both instances, entrance onto the school for the purposes of installing water pipes required the co-operation of a farm owner, which was not

⁶⁶ Human Rights Watch interview, official, Free State Department of Education, May 23, 2003.

⁶⁷ Human Rights Watch interview, official, Mpumalanga Department of Education, May 15, 2003.

⁶⁸ Regulations relating to the Minimum requirements of an agreement between the member of the executive council (provincial minister of education) and the owner of a private property on which a public school is provided, under the South African Schools Act No. 84 of 1996, December 19, 1997, Regulation 7 (1), (2) and (4).

⁶⁹ Department of Education, *Education for All—The South African Assessment Report*, 2000 [online], http://education.pwv.gov.za/policies%20and%20Reports/2000_Reports/2000_Reports_Index.htm. (retrieved July 11, 2003).

always forthcoming. In light of the clear regulatory provisions, some provincial departments of education have been forthright in their position that the department should provide water to schools as a matter of priority regardless of the existence of a contractual agreement between a landowner and the state.⁷⁰

The Free State Department of Education's failure to respond to requests from Khotso Pula Primary School since 1989 has meant that the learners have no access to clean drinking water.⁷¹ According to the teacher, the farm owner has suggested that the government provide funds so that a pipe can be installed in order to pump clean, drinkable water to the school from a dam on the farm. In the absence of such a pipe, the only water available is not of drinkable quality and is fetched by buckets from the dam. An official responsible for that school told Human Rights Watch that the teacher had not raised the matter with him, but he promised to investigate it.⁷² The teachers and learners at Sabaan Primary School in Mpumalanga bring their own water in buckets, as water in the dam nearby is not suitable for human consumption.⁷³

At a primary school in the Free State Province, the teachers brought water in bottles from their homes daily. Although there are taps at Molisa ea Molemo Farm School, there is no water. The inspector of schools in the area was not aware of the problem.⁷⁴ However, an official from the provincial department of education confirmed that provision of water at a school was a priority regardless of the existence of a contractual agreement.⁷⁵ In the same province, the community at Montagu Farm School, which is bound by a contractual agreement, has access to water drawn from a nearby stream.⁷⁶ An official directly responsible for the school told Human Rights Watch that a request for water had been submitted to the provincial department of education in June 2003.⁷⁷

A primary level farm school in Limpopo Province has had no water since 1997. The principal of Wolksberg Farm School told Human Rights Watch that she has repeatedly

⁷⁰ Human Rights Watch interview, official, Free State Department of Education, August 5, 2003 and official, Xhariep district, Free State Department of Education, August 19, 2003.

⁷¹ Human Rights Watch interview, teacher at Khotso Pula Primary School, Free State Province, May 19, 2003.

⁷² Human Rights Watch telephone interview, official, Xhariep district, Free State Department of Education, August 19, 2003.

⁷³ Human Rights Watch interview, teacher, Sabaan Primary School, Mpumalanga Province, May 13, 2003.

⁷⁴ Human Rights Watch telephone interview, inspector of schools, Free State Department of Education, August 6, 2003.

⁷⁵ Human Rights Watch telephone interview, official, Free State Department of Education, August 5, 2003.

⁷⁶ Human Rights Watch interview, teachers at Montagu Farm School, Free State Province, May 19, 2003.

⁷⁷ Human Rights Watch telephone interview, official, Xhariep district, Free State Department of Education, August 19, 2003.

informed the provincial department of education of the lack of water.⁷⁸ The Nkuzi Development Association, a land rights nongovernmental organization wrote a letter reporting the matter on behalf of the school to the provincial department of education in September 2002. At the time of writing, there has been no response to that letter from the provincial authorities.

At Kranenburg Primary School, Limpopo Province, Human Rights Watch researchers found in a visit in April 2003 that there was no water or electricity for the 101 learners.⁷⁹ Teachers brought in water from homes. The provincial department of education apparently visited the school in 1999 and promised to provide these services.

Human Rights Watch visited schools in Vaalwater and Marken, Limpopo Province where water was drawn from natural wells because of a broken water pump where the provincial department of education had failed to respond. A visit to Monate School in Vaalwater in September 2003 revealed that the school had had no water since July of the same year.⁸⁰ When the farm owner was approached about the water pump, he told Human Rights Watch researchers that it was the responsibility of the provincial department of education.⁸¹ Human Rights Watch raised the matter with the authorities, and was informed that the matter would be attended to.

At Lianas Combined School and Funyufunyu Farm School, both in Limpopo Province, Human Rights Watch researchers found that farm owners withheld water by failing to fix water pipes in order to force the provincial department of education to capitulate to outstanding rent payments. The farmers were claiming rent due under the agreements with the government that existed prior to the new Schools Act. No new contract had been concluded. According to teachers at Lianas Combined School, the owner of the farm refused to carry out maintenance of services for the school because rent had not been paid.⁸² When the school experienced a water stoppage due to a pipe rupture, it was restored through the intervention of the owner of a farm at the bottom of the hill who is dependent on the water from the same pipe. At Funyufunyu Farm School, the principal of the school informed Human Rights Watch researchers that the owner had failed to fix

⁷⁸ Human Rights Watch interview, principal at Wolksberg Farm School, Limpopo Province, June 3, 2003.

⁷⁹ Human Rights Watch interview, teachers at Kranenburg Primary School, Limpopo Province, April 24, 2003.

⁸⁰ Human Rights Watch interview, teacher, Monate School, Vaalwater, Limpopo Province, September 11, 2003.

⁸¹ Human Rights Watch interview, farm owner, Vaalwater, Limpopo Province, September 11, 2003.

⁸² Human Rights Watch interview, principal and teacher, Lianas Combined School, Magoebaskloof, Limpopo Province, June 3, 2003.

the pipes thus preventing water delivery to the school.⁸³ These examples show how the government's failure to conclude agreements with farm owners, and to fulfill its own obligations under such agreements leads to situations where farm owners interfere with children's right to education.

Human Rights Watch researchers did come across cases where, as a result of a cordial working relationship between the farm owner and the school principal, access to water was not interrupted.⁸⁴ But we are concerned that access to water in most cases is dependent on the good will of a farm owner regardless of contractual obligations that require the maintenance of a water supply. The failure by the department of education to respond in a timely way to complaints compounded by the tampering of the water supply as an intimidation tool or a sign of frustration is of concern. The result is that the farm school community is denied access to water. Not only are there hygienic and health care reasons for the need for water, but also school buildings need to be kept clean to maintain an adequate learning environment.

Supply of power

Farm schools are rarely connected to a power supply, whether the national power grid, a generator or solar power. The lack of some form of energy limits the teaching and learning that can take place in a school. Administrative activities can also be impaired. Learners are excluded from accessing information technology systems either donated or provided by the provincial department—as opposed to children in urban and wealthier areas who have greater access to these resources.⁸⁵ Regulations under the Schools Act presuppose that electricity is provided at the school and that its provision “should comply with national safety standards.”⁸⁶ Thus it can be inferred that a farm owner or the provincial department of education must ensure that electricity is provided where a contractual agreement exists. No power affects the usage of visual teaching methods; administering school business; visibility in the classroom where a school is located in a forested area and advancing learner education such as computer training. These problems affect the education received by children.

⁸³ Human Rights Watch interview, principal, Funyufunyu Farm School, Makhado, Limpopo Province, June 4, 2003.

⁸⁴ Some of the schools visited by Human Rights Watch researchers such as Running Water School, Hazyview; and KaMehlwane Primary School, Komatipoort, Mpumalanga Province had access to drinking water on the premises.

⁸⁵ Adele Gordon, *Facilitating Education in Rural Areas of South Africa: The Role of Electricity and other sources of Energy*, (Energy and Development Research Centre, University of Cape Town: Cape Town, August 1997), para 2.1.

⁸⁶ Regulations No. R 1738, December 19, 1997, under the South African Schools Act No. 84 of 1996, section 7(2).

At Doreen-Bridge Combined School, Limpopo Province, electricity was suspended in December 2002. According to the principal, dangerous wiring necessitated the suspension of electricity. The farm owner promised that the re-wiring would be done during the school holidays. From December 2002 to April 2003, the school closed on two occasions for school holidays but the repairs had not been done. However in an interview with the farm owner in July 2003, he claimed that the electricity had been re-connected.⁸⁷

In an apparently deliberate act to harass the school in its activities, electricity at Jevington Combined School, Free State Province, has been suspended. According to the principal, the lack of electricity means that administrative tasks cannot be carried out for lack of a fax machine and photocopier.⁸⁸ The school has had no electricity since the beginning of August 2003. In the words of the principal: "I went to the foreman [to ask why there was no electricity, [h]e told me that [the farm owner] said I must suspend it." The principal concluded that the electricity cut was in retaliation for complaints lodged by the school with the police service about the obstruction of access onto the school premises. The principal attempted to resolve the matter by asking the farm owner to furnish the school with a bill in order to make payment. With no progress on this initiative, the principal raised the matter with the provincial department of education. The school has now placed an application with the national electricity supplier.

Sabaan Primary School, Mpumalanga Province, has had no electricity since 1996 following the theft of the power cables and a television set.⁸⁹ A similar situation exists at Wolksberg Farm School, Limpopo Province. At the school, the principal told Human Rights Watch that the matter had been reported to the Limpopo Department of Education on a number of occasions. The principal, who appeared disillusioned with the provincial department's inadequate response to her requests, anecdotally remarked that as things stood at the school "[c]omputers are a luxury."⁹⁰ Even though the department is aware of the lack of electricity at the school, it has failed to respond. As

⁸⁷ Human Rights Watch telephonic interview, farm owner, Tshipise, Limpopo Province, July 23, 2003. This conflicts with statements made by the principal of the school in a telephone interview on July 22, 2003 where a Human Rights Watch researcher was told that there was no electricity.

⁸⁸ Human Rights Watch telephone interview, principal, Jevington Combined School, Tweespruit, Free State Province, August 20, 2003.

⁸⁹ Human Rights Watch interview, farm owner, Sabaan Primary School, Hazyview, Mpumalanga Province, May 14, 2003.

⁹⁰ Human Rights Watch interview, principal, Wolksberg Farm School, Haenertsberg, Limpopo Province, June 3, 2003. It should be noted that the school principal completes a survey periodically of the needs of the school. Human Rights Watch viewed a copy of the survey forms.

the school is encircled with tall trees, the light quality in the classrooms is poor, making it difficult for learners to read. The situation worsens during inclement weather when light quality within the classroom is severely diminished. In addition, the use of visual media to teach, or access to photocopiers to supplement learning materials is impossible.

Sanitation

Forty-five percent of schools in South Africa continue to have pit latrines, and a small number are still using the bucket system.⁹¹ Regulation 7 (1) under the Schools Act states that toilets must be provided. Human Rights Watch researchers found that pit latrines were in various degrees of repair and generally unhygienic at most schools visited. Some schools visited had unventilated pit latrines, while others had no facilities at all. Flush toilets at some schools were not all in working order. At Marula Primary School, in Mpumalanga Province, the farm owner reportedly cut the water supply to the flush toilets without prior warning in 2001.⁹² According to the principal, the farm owner diverted the water for his own personal use. The matter was raised with the authorities. The provincial department of health intervened by erecting pit latrines for the school.

At Kranenberg Primary School, Limpopo Province, there were no such sanitation facilities. When the teachers were asked where children relieve themselves, we were shown the bush.⁹³ Human Rights Watch researchers were informed that the matter had been reported in 1999 to the provincial department of education, but there has been no response. Human Rights Watch researchers saw incomplete construction of flush toilets, which was apparently the work of a neighboring farmer who had offered to assist the school at the time of the visit in April 2003. Failure to properly service sanitation facilities not only creates an unhygienic environment for the learners and educators, it may also present certain dangers for the younger children, who may injure themselves because of insecure seats or privacy. In addition, girls face the additional risk of sexual assault when secure facilities are not available at schools.

Poor facilities and inadequate learning materials

The national Department of Education has reported that the conditions of all school buildings throughout South Africa have notably deteriorated from 1996 to 2000.⁹⁴

⁹¹ Department of Education, *Report on the School Register of Needs 2000 Survey*, 2001, table 17(c).

⁹² Human Rights Watch interview, principal and teacher, Marula Primary School, Hazyview, Mpumalanga Province, May 14, 2003.

⁹³ Human Rights Watch interview, teachers, Kranenberg Primary School, Musina, Limpopo Province, April 23, 2003.

⁹⁴ Department of Education, *Report on the School Register of Needs 2000 Survey*, 2001,

Twenty-six percent of school buildings were considered “weak” and 8.4 percent “very weak,” that is dilapidated and unsuitable for educational purposes.⁹⁵ According to an official in one of the five education districts in the Free State province, approximately 75 percent of the schools in the one district are dilapidated.⁹⁶ Most schools Human Rights Watch researchers visited comprised only classrooms and a makeshift playground. Buildings were usually in need of repair. At some schools windowpanes needed replacing, ceilings were collapsing, floors needed finishing and there was no heating. At Inyoni Primary School, Mpumalanga Province, the damaged ceiling had been reported to the department of education for over a year and nothing had been done about it.⁹⁷ At Wallop Farm School, Free State Province, the junior grades were housed in a four-walled collapsing structure with broken windows, no ceiling or flooring. The principal informed Human Rights Watch researchers that he was trying to find funds to renovate the school, which for him was not conducive to learning.⁹⁸ A further problem is the lack of telephones. At Wolksberg Farm School, the nearest telephone is two kilometers away in the Haenertsberg.⁹⁹ The lack of a telephone at a school or nearby hinders the ability of teachers to contact provincial authorities when repairs and services are needed or when there is an emergency at the school.

Storerooms are few and security is lacking at some schools. At some schools, book materials are stacked in a corner of the classroom as there is no storage space. At one school Human Rights Watch researchers were informed of the theft of learning materials during school holidays.¹⁰⁰ Some schools lack sufficient learning materials. At Kranenberg Primary School, the teachers told Human Rights Watch researchers that grade six learners were using grade five textbooks.¹⁰¹ Computers were not seen at any of the schools visited.

In the government’s 2003 *Plan of Action: Improving Access to Free and Quality Basic Education for All*, the government has made proposals to subsidize the poor learners and schools. The allocation for one enrolled learner per year is calculated on the basic minimum funding required for general education and training such as textbooks, stationery,

⁹⁵ Ibid.

⁹⁶ Human Rights Watch telephone interview, Xhariep district, Free State Province, August 19, 2003.

⁹⁷ Human Rights Watch interview, teachers, Inyoni Primary School, Mpumalanga Province, May 9, 2003.

⁹⁸ Human Rights Watch interview, Wallop Farm School, Clocolan, Free State Province, May 19, 2003.

⁹⁹ Human Rights Watch interview, teacher, Wolksberg Farm School, Haenertsberg, Limpopo Province June 3, 2003.

¹⁰⁰ Human Rights Watch interview, teachers, Kwaluwadupe Primary School, Free State Province, May 22, 2003.

¹⁰¹ Human Rights Watch interview, teacher Kranenberg Primary School, Musina, Limpopo Province, April 23, 2003.

electricity and water consumption, and furniture.¹⁰² The poorest schools will receive the largest proportion of the budget allocation. Thus as from 2004, the poorest schools will be eligible for R450 (U.S. \$64) per learner per annum as opposed to the wealthier schools which will receive R75 (U.S. \$10) based on the household income of the school-going child.¹⁰³ If properly implemented, such a plan should directly benefit farm schools, which serve some of the poorest communities in the country.

The government is also looking into giving schools considerable autonomy in spending school funds. At present, section 21 of the Schools Act allows for schools, which are assessed as being properly managed, to disburse the funds apportioned to them by the provincial department of education. The new proposals will give considerable autonomy to approved schools. These schools will be able to find their own suppliers. In the case of farm schools where there has been a management vacuum, not many are likely to acquire this status. Even in cases where farm schools are deemed properly managed, complications arising from the lack of electricity or public telephones to facilitate communication with suppliers would make such autonomy impossible.

While the new funding system is designed to help schools to be less reliant on the collection of fees to function, the government “[d]oes not believe that a complete school fee ban in the case of poor schools with better levels of public funding is the optimum solution.”¹⁰⁴ This is based on the assumption that the farm school communities, which include parents who are farmworkers, are more likely to participate actively in the running of the school if they pay school fees that contribute towards projects at the school. Human Rights Watch researchers found that parent participation was rare and school governing boards were in most cases dysfunctional at farm schools.¹⁰⁵ In part, this was because of long working hours for farmworkers during the week and a half-day on Saturdays. The Schools Act vests the governance of a public school in the governing body, which includes parents and teachers.¹⁰⁶ Furthermore, the limited resources available at farm schools may result in these schools not using these funds. The U.N. Committee on the Rights of the Child in its concluding observations to the South African government, which is party to the U.N. Convention on the Rights of the Child, recommended that primary education should be free to all.¹⁰⁷

¹⁰² Department of Education, *Plan of Action: Improving Access to Free and Quality Basic Education for All*, June 14, 2003, para 34.

¹⁰³ *Ibid.*, para 36.

¹⁰⁴ *Ibid.*, para 59.

¹⁰⁵ Human Rights Watch interview, official, Soutpansberg, Limpopo Department of Education, June 6, 2003.

¹⁰⁶ South African Schools Act No. 84 of 1996, section 16(1).

¹⁰⁷ Concluding observations of the Committee on the Rights of the Child: South Africa, February 23, 2000, CRC/C/15/ADD.122, para 34.

The South African Human Rights Commission, a statutory body, which was established in terms of section 185 of the South African constitution, recently made recommendations for the better use of funds allocated to provinces for the purposes of education, skills development and more staffing in those provinces that are under-resourced.¹⁰⁸

IV. Current legal status of farm schools

The Schools Act makes provision for two types of schools—public (state-run) and independent (private). Farm schools have a hybrid status, being deemed to be public schools on private property.¹⁰⁹

Section 14(1) of the Schools Act states that “a public school may be provided on private property only in terms of an agreement between the member of the executive council (the provincial education minister) and the owner of the private property.” According to section 14(5) of the Schools Act, such an agreement must provide for:

- The provision of education and the performance of the normal functions of a public school;
- Governance of the school, including the relationship between the governing body of the school and the owner;
- Access by all interested parties to the property by the school;
- Maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services; and
- Protection of the owner’s rights in respect of the property occupied, affected or used by the school.¹¹⁰

In addition, section 56 of the Schools Act states that:

¹⁰⁸ The report concerns the measures taken by the South African government towards the realization of economic and social rights covering the period between April 2000 and March 2002. Monitoring the realization of social and economic rights is a constitutional mandate of the South African Human Rights Commission. See Constitution of the Republic of South Africa Act No. 108 of 1996, section 184(3). South African Human Rights Commission, *4th Economic and Social Rights Report: 2000/2002*, (Johannesburg: April 2003) [online] www.sahrc.org.za.

¹⁰⁹ South African Schools Act, No. 84 of 1996, section 52(1).

¹¹⁰ *Ibid.*, section 14(2).

If an agreement contemplated in section 14 (above) does not exist at the commencement of this Act, in respect of a school, standing on private property and which is deemed to be a public school in terms of section 52(1), the Member of the Executive Council must take reasonable measures to conclude such an agreement *within six months of the commencement of this Act* [emphasis added].

The Schools Act provides for the title deeds of the affected lands to be endorsed with a note that the land is subject to an agreement with the provincial department of education.¹¹¹ However, nothing is stated as to what the consequences are if no such agreement is concluded within the envisioned timeframe.

Regulations relating to the minimum requirements of an agreement between the member of the executive council and the owner of a private property on which a public school is provided were published in 1997.¹¹² Included in the regulations is a pro forma or standard agreement to be used as a guideline by provincial departments of education (see appendix). Options are put forward for ownership rights of the school. The farm owner can give the right of the use of the land to the school either free of charge or for rent. On closure of the school, all improvements to the school buildings will either become the property of the farm owner free of charge or in exchange for agreed payment by the farm owner to the provincial department of education. Provision is made for a pre-existing agreement between the state and a farm owner to remain valid as long as it is consistent with the Schools Act and the regulations.

Some of the provisions that should be contained in the agreements are the following:

Services:

- Potable water and toilets must be provided and secured.
- Electricity should be provided and this should be in compliance with national safety standards.

Access to school:

¹¹¹ South African Schools Act No. 84 of 1996, section 14(5).

¹¹² Regulation No. 18566 under the South African Schools Act No. 84 of 1996, Regulations Relating to the Minimum Requirements of an Agreement between the Member of the Executive Council and the Owner of a Private Property on which a Public School is provided, December 16, 1997.

- Access to schools must not be limited to learners, teachers, but also granted to parents, workers at the school and members of the public who have a reasonable interest in the activities of the school.
- The property and access roads to the school must be adequately fenced.

The agreement must determine whether payment will be made to the farm owner for the use of the property by the provincial department of education and any services or management undertaken by the farm owner. Responsibility for maintenance of the school and payment for water and electricity consumption must be clearly defined in the agreement.

Where either party falls short of its obligations, the other must notify the defaulter in writing within fourteen days of breach of the nature of the complaint. Provision is made for mediation between the parties.

If the landowner sells the property where the school is located, the provincial department of education must be informed of the change of ownership, and the new owner must be notified of the existence of the school. However, it is not clear whether the new owner is bound by a pre-existing agreement or would have to negotiate a new agreement.

Section 58 of the Schools Act empowers the state to expropriate land “for any purpose relating to school education in a province.” The section details the procedures that need to be followed to ensure that the expropriation is lawful.

Although the six-month period following the enactment of the Schools Act has long since elapsed, agreements have not been signed in relation to most schools in the provinces. In some cases, farm owners have failed to sign contracts while in others the provincial education department has not committed to the agreements. Whatever the reason, the current status of these schools remains unclear. A further complication is that there is no sanction should the landowner fail to sign the new contract. No guarantee has been placed within the Schools Act or the regulations on ensuring access to education and non-interference pending the signing of the contracts.

The role of provincial governments

The provincial departments of education are responsible for implementing national education policy. In the context of farm schools, their role in ensuring the conclusion of contractual agreements with landowners is critical in order to secure children’s access to

education. In the words of a Free State Province department of education official, “[the conclusion of these agreements ensures] the rights of learners, the right of the private owner and the right of parental involvement. The bottom line is that the farm owner [cannot] interfere with the rights of children to go to school.”¹¹³

The provinces have been given some scope to decide on the options available to landowners as outlined in the generic pro forma agreement suggested by the national Department of Education. The provincial governments at the outset met with the farm owners’ representative bodies to negotiate agreements. The initial deadline—within six months from the commencement of the Schools Act—lapsed with only approximately 10 percent of the schools having new contracts.¹¹⁴ A further deadline was set for December 2000 following a national conference on the future of farm schools where it emerged that in five of the nine provinces no farm schools were bound by the new contractual agreements.¹¹⁵

In June 2003, Human Rights Watch researchers found that, in many provinces, the majority of farm schools were operating without contractual agreements. Out of 494 farm schools in Mpumalanga Province, approximately 135 were bound by contractual agreements.¹¹⁶ Limpopo Province had 317 farm schools for which between fifteen and twenty contracts had been signed.¹¹⁷ Three hundred and sixteen farm schools existed in the North West Province; approximately fifty of these schools had contractual agreements. In the Eastern Cape Province 146 contracts had been concluded out of approximately 400 schools. In the Free State Province, which has the largest number of farm schools in South Africa, 643 new contracts existed for 1,206 farm schools.¹¹⁸ At the time of writing, the national Department of Education was unable to inform Human Rights Watch of the national total of contractual agreements concluded by farm owners

¹¹³ Human Rights Watch interview, official, Free State Department of Education, May 23, 2003.

¹¹⁴ Address by Minister of Education, Kader Asmal, delivered at a national conference on farms schools convened by the minister of education, May 13, 2000.

¹¹⁵ Report by Dr. Charles Sheppard, national Department of Education, presented at a national conference on farm schools convened by the minister of education, May 13, 2000.

¹¹⁶ In Mpumalanga Province, out of 494 farm schools, only thirteen farm schools are secondary schools; fifty combine both primary and secondary and the balance are primary schools.

¹¹⁷ Limpopo Province has twenty-three schools with both primary and secondary levels; thirty secondary and the balance are primary and pre-primary schools.

¹¹⁸ Nationally, the number of farm schools has dropped since 1994. The Free State province had 2018 schools in 1998. The authorities state that the province has been losing approximately 10,000 pupils a year since 1994. According to the Free State provincial department of education officials, this is because of urbanization, parents moving their children to towns to receive a better education and mechanization on commercial farms.

and provincial departments of education.¹¹⁹ Furthermore, Human Rights Watch researchers found that some farm schools visited did not appear on provincial lists of farm schools. It is also not apparent if data on farm schools also includes those schools located in former homelands. This lack of clarity and the disparity in the availability of accessible information on farm schools within the provincial departments of education affected research on these schools, and underlines the need for the government to collect and maintain a register, including statistical information, on the status of schools on commercial farms.

School inspectors, who are also referred to as a school management directors in some provinces, monitor and evaluate school performance. They are responsible for a number of schools within a designated area in a province. In addition to assessing the physical and educational needs of a school with a view to improving them, they intervene between the farm owner and school in ensuring that education is accessible to learners on farms. The inspector also has an oversight function on management issues at a school.

Some officials interviewed argued that the absence of a national strategy on farm schools affected access to education in the farm dweller communities. Others called for a dedicated program for farm schools, as provincial departments were not devoting the necessary time and resources to farm schools.¹²⁰ One official went so far as to say that, "I wish President Mbeki [would] come up and say provinces must provide a budget for farm schools to uplift the standard of education."¹²¹ In the meantime several provinces are discussing alternative strategies for the provision of education in commercial farming communities, such as the establishment of boarding schools where children of farm dwellers would be able to learn with a larger number of fellow learners and presumably with adequate teachers and better facilities.

Eastern Cape Province

The education department has given landowners two options; either the farm owner can allow the land where the school is situated to be used for educational purposes free of charge in which case the department takes responsibility for maintenance and renovations or, rent is paid to the farm owner who then takes responsibility for

¹¹⁹ Human Rights Watch telephone interview, official, national Department of Education, July 23, 2003. Each provincial department of education mentioned was telephoned to collect the data.

¹²⁰ Human Rights Watch telephone interview, official, Eastern Cape Department of Education, August 5, 2003; Human Rights Watch telephone interview, official, North West Department of Education, July 28, 2003.

¹²¹ Human Rights Watch telephone interview, official, North West Department of Education, July 28, 2003.

maintenance.¹²² At present, the nominal rent is calculated at between R2.50 (U.S. \$0.36) and R3.50 (U.S. \$0.50) per square meter per month. In the case where a former agreement (where a farm owner received a subsidy from government) exists and a contractual agreement has not been concluded, the department will consider rent payment. The situation is less clear where a lease does not exist. According to a department official, the province is not contemplating the establishment of boarding schools.¹²³ The department official stated that the provincial department would not shut schools in remote areas that are providing an education for farm children and are difficult to amalgamate with others.

Free State Province

The provincial department of education began its meetings with the Free State Agricultural Union, an affiliate of Agriculture South Africa (Agri-SA) the largest national body representing farm owners, to negotiate a draft agreement in 1997.¹²⁴ The agreement negotiated in the Free State Province differs from that in Mpumalanga Province [see below] in that it obliges farm owners to make land available for educational purposes for no rent, and in turn the provincial department of education is responsible for maintaining the school buildings and facilities. Department officials acknowledged, “[s]ome farmers have refused to sign the agreements” as they believe that “[g]overnment is going to try to take their land.”¹²⁵ The department believes that if there is no contractual agreement, a farm school should not exist. The Free State Department of Education is converting disused boarding schools into schools for children from farming communities. At the time of writing, four boarding schools were operating. The provincial government is to pay boarding school fees for learners from commercial farms.

Limpopo Province

In terms of the negotiated agreement for Limpopo Province, the department is responsible for construction of the buildings, supplying teaching materials, and paying teachers’ salaries. The state pays for water and electricity consumption and attends to the maintenance of these services.¹²⁶ The provincial department pays a nominal rent of approximately R300 (U.S. \$43) each year for schools that have less than one hundred

¹²² Human Rights Watch telephone interview, official, Eastern Cape Department of Education, August 5, 2003.

¹²³ *Ibid.*

¹²⁴ South African Schools Act No. 84 of 1996, Regulations relating to the minimum requirements of an agreement between the member of the executive council and the owner of a private property on which public schools are provided, No. 18566. Pro forma agreement, Appendix 1.

¹²⁵ Human Rights Watch interview, official, Free State Department of Education, May 23, 2003.

¹²⁶ Human Rights Watch telephone interview, official, national Department of Education, June 20, 2003.

learners to farm owners. Schools with an enrollment exceeding one hundred learners attract a rental on a sliding scale to a maximum of R600 (U.S. \$86) per year.¹²⁷ It would appear from Human Rights Watch's research that a majority of contractual agreements in the province have not been finalized. Some of the concerns put forward are the landowner's resistance to government's apparent encroachment on their property rights and the fear of expropriation. In addition, according to the provincial department of education, some farm owners believe that the rent being offered to retain these schools is too low.¹²⁸ Officials have also admitted that failure by government to pay rent has discouraged other farm owners from committing themselves to these agreements.¹²⁹

Mpumalanga Province

The Mpumalanga Department of Education met with the Mpumalanga Agricultural Union, also an affiliate of Agri-SA, at the end of 1999 to discuss the generic pro forma agreement in the regulations published by the national Department of Education.¹³⁰ Following this meeting the provincial department sent a draft agreement to landowners in 2000 and 2001. Three options were given to farm owners. The farm owner can agree to retain the school to be used for educational purposes free of charge. Alternatively, the owner may opt to be paid nominal rent, which covers out of pocket expenses such as pumping water to the school. In both these cases, the provincial department of education is responsible for maintaining the school. The third option is that the farm owner is paid market-related rent. According to the provincial government, those owners who entered into agreements have preferred the option by which government pays rent and the farm owner shoulders the responsibility for maintaining the school. The school size and the facilities provided are some of the considerations taken into account when computing rent. Some farm owners receive rent of R3, 600 (U.S. \$514) per annum.¹³¹ In the absence of an agreement, no payment is made to farm owners.¹³² As noted above, less than one-third of farm owners in Mpumalanga Province have signed these contracts. The owner of Friedenheim Farm reportedly shut two primary schools in January 2000 due to the provincial department's delay in committing to an offer of land for the relocation of the farm schools.¹³³

¹²⁷ Ibid.

¹²⁸ Human Rights Watch telephone interview, official, national Department of Education, August 29, 2003.

¹²⁹ Human Rights Watch interview, official, Soutpansberg district, Limpopo Department of Education, June 6, 2003. It should be noted that in some cases non-payment arises from the contracts that existed prior to the South African Schools Act No. 84 of 1996 coming into effect in terms of which subsidies were paid.

¹³⁰ "Farm Schools under Discussion," *Farmers Weekly* (South Africa), January 7, 2000.

¹³¹ Human Rights Watch interview, principal, Running Waters Primary School, Hazyview, Mpumalanga Province, May 14, 2003.

¹³² Human Rights Watch interview, official, Mpumalanga Department of Education, May 15, 2003.

¹³³ Tefo Mothibeli and SAPA, "Most schools open doors of learning," *The Star* (South Africa), January 12, 2000.

The provincial department of education is considering shutting down one-teacher schools where “[n]o teaching is going on.”¹³⁴ Five farm schools were recently shut down outside Nelspruit on the way to Malelane and a new school was built in Louieville, in the former KaNgwane self-governing territory to accommodate the children. Transport is provided for learners to and from school. Clustering schools is a further option. This would allow for “[m]ore teachers, better control.”¹³⁵

North West Province

In the North West Province, landowners have to agree, in terms of the draft contract, to offer the land for the purpose of education free of charge. In return, the provincial department of education is responsible for maintenance, improvements, and services. However, according to a department official, there were insufficient funds to adequately address maintenance needs at farm schools.¹³⁶ The North West Province is also looking at closing some schools and establishing boarding schools for children living on farms.¹³⁷ A former military base, Klippan, has been identified as a location for a boarding school, which will accommodate children from approximately thirty farm schools in Zeerust, Mafikeng and Lichtenberg.¹³⁸

The role of non-state institutions

Farm owners’ representative bodies

The Transvaal Agricultural Union—representing approximately 6,000 farm owners mainly in the Limpopo, Mpumalanga and North West Provinces¹³⁹—has raised a number of concerns relating to the management and governance of farm schools, the dilapidated state of schools, and the general standard of education on farm schools.¹⁴⁰ In the view of the organization, it is prepared to assist its members in the conclusion of agreements provided that the obligations are “fair and not an additional burden on the owner.”¹⁴¹ In terms of the contractual agreements, the organization proposes that the

¹³⁴ Human Rights Watch telephone interview, official, Mpumalanga Department of Education, July 21, 2003. The South African Schools Act No. 84 of 1996, section 33 (1) makes provision for the closure of public schools.

¹³⁵ Ibid.

¹³⁶ Human Rights Watch telephone interview, official, North West Department of Education, July 28, 2003.

¹³⁷ Human Rights Watch telephone interview, official, North West Department of Education, July 25, 2003.

¹³⁸ SAPA, “NW [North West] Plans New Farm School,” *The Citizen* (South Africa), March 27, 2000.

¹³⁹ Human Rights Watch interview, representatives, Transvaal Agricultural Union, August 29, 2003.

¹⁴⁰ Ibid. Also Transvaal Agricultural Union, submission to the South African Parliament, February 14, 2000.

¹⁴¹ Transvaal Agricultural Union, submission to the South African Parliament, February 14, 2000, p. 3.

school be made available for educational purposes. The provincial department of education should be responsible for maintaining the school premises. Thus, for example, the farm owner will make water available to the fence of the school, but it will be the responsibility of the provincial department of education to get that water to the learners and teachers. In return, the provincial department should pay nominal rent of R1 (U.S. \$0.14) per learner per year. Should the school shut down, the buildings and any improvements made will be the property of the farm owner. This is because, “[in the experience of farm owners], the school functions for a couple of years, it falls apart, learners leave, and the facilities remain [disused].”¹⁴² It is on these terms that the organization has supported its members in the signing the contractual agreements. According to the organization, the provincial departments of education have yet to countersign these contracts. A national Department of Education official confirmed that a number of contracts had been signed by farm owners in 2000/01, and sent to the provincial departments of education for countersigning.¹⁴³ A concern raised by an official in one of the districts in Limpopo Province is the failure by the provincial department of education to implement the contractual agreements.¹⁴⁴

Agriculture South Africa (Agri-SA), which represents approximately 62,000 commercial and emerging farmers, has indicated that it is committed to the conclusion of the agreements in order to “[p]romote and support the education and development of learners in farm schools.”¹⁴⁵ The Free State Agriculture Union, an affiliate of Agri-SA, however confirmed, that landowners who have schools with fewer than ten children did not sign the contracts as they believed that it was not in their interests to retain the schools.¹⁴⁶

Professional organizations

The South African Democratic Teachers Union acknowledged that farm schools are neglected, and that as an organization it needs to address the plight of learners and teachers at farms schools.¹⁴⁷ The lack of transportation and insufficient resources are some of the concerns raised by the organization. In essence, the organization believes

¹⁴² Human Rights Watch interview, representatives, Transvaal Agriculture Union, August 29, 2003.

¹⁴³ Human Rights Watch telephone interview, official, national Department of Education, August 29, 2003.

¹⁴⁴ Human Rights Watch interview, official, Waterbank district, Limpopo Department of Education, September 12, 2003.

¹⁴⁵ “Government, Agricultural Unions Agree on Farms Schools,” *SAPA* (South Africa), October 22, 2000.

¹⁴⁶ Letter dated September 30, 2003 in response to a written enquiry by Human Rights Watch sent on July 31, 2003.

¹⁴⁷ Communication from representative, South African Democratic Teachers Union to Human Rights Watch, August 18, 2003.

that clarity on the legal status of farm schools is important for the transformation of these schools.

V. The rights of children living on commercial farms

South Africa's rural economy has been based on racial inequalities since white settlers first arrived in the Cape. At the time of the first post-apartheid elections in 1994, approximately 60,000 white farmers and the National Party government owned 87 percent of the land.¹⁴⁸ The African majority, which constitutes 75 percent of the population, had access to less than 13 percent of land, mostly in the ten "homelands" or "self-governing territories," created for Africans along cultural and linguistic lines. The forced removal of Africans from their traditionally owned land through racially-motivated laws in turn created a reserve of cheap labour. Working on white-owned commercial farms gave Africans their only opportunity to gain access to land in viable commercial farming areas, through relationships of sharecropping or labor tenancy (by which Africans could farm on a small scale and keep livestock on land allocated to them, provided they also worked for agreed periods for the land owner).¹⁴⁹ Progressively, however, the Apartheid government attempted to prevent Africans from farming in their own right and to force them into cash employment only.

The power imbalance created by past policies continues today and has exposed farmworkers to exploitation and abuse in relation to working conditions, wages and land tenure. Farmworkers are reluctant to report abuses and unlawful evictions for fear of reprisals. Immigrant workers, some illegally employed, have also been exposed to various forms of abuse at the hands of farm owners.¹⁵⁰ In addition, there are few alternative employment opportunities in rural areas, including the former homelands, which are also largely deprived of municipal services and support systems.

Impact of insecure labor and land tenure on children's education

The rights of children living on commercial farms are directly affected by the security of tenure of their parents, whether they are farmworkers working for a cash wage or labor

¹⁴⁸ For a historical overview of land ownership in South Africa see Human Rights Watch/Africa, *Unequal Protection: The State Response to Violent Crime on South African Farms*, (New York: Human Rights Watch, 2001), pp. 18-29. See also Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, (New Jersey: Princeton University Press, 1996), pp. 90-102.

¹⁴⁹ Geoff Budlender, "Farm workers: Law, Land and Justice," in *Trends in South Africa's Labour Law*, selected papers from the 4th Annual Labor Law Conference, (Johannesburg: Centre for Applied Legal Studies, University of the Witwatersrand, 1991), pp. 21-28.

¹⁵⁰ Human Rights Watch/Africa, *Unequal Protection: The State response to violent crime on South African farms*, (New York: Human Rights Watch, 2001), pp. 61-2.

tenants, partly paid by the right to grow their own crops. Since 1994, the government has introduced legislation, aimed at improving security of tenure on commercial farms, including the Extension of Security of Tenure Act of 1997 and the Land Reform (Labour Tenants) Act of 1996.¹⁵¹ The intention of both laws is to prevent arbitrary eviction. Despite these laws, actual or threatened evictions have a negative impact on children and their education. For example, a family was evicted from a farm on which Lianas Combined School is situated in Magoebaskloof, Limpopo Province at the end of September 2003.¹⁵² The mother sought accommodation for her two children at a nearby farm, which is also served by Lianas Combined School, so that they could continue to attend the farm school. The farm owner reportedly removed the children from Lianas Combined School because of the eviction; thereby denying them access to an education.¹⁵³

Some teachers interviewed by Human Rights Watch attributed irregular school attendance to insecure employment of parents—particularly in the case of non-nationals. At Overvlakte Primary School in Musina, Limpopo Province, the teacher remarked that the enrollment at the school had dropped from thirty in January 2003 to twenty-four in June of the same year.¹⁵⁴ The teacher noted that there were a number of additional children, predominantly of Zimbabwean origin and living on the farm, who were not attending school at all.

Farmworkers often do not participate actively on school governing boards as they do not want to lose working hours¹⁵⁵ In these cases, the school governing boards, of which farmworkers are members, fail to meet regularly and guide management of schools. In some cases, farmworkers are prevented from attending meetings during a school week as it “interferes with work.”¹⁵⁶

¹⁵¹ Extension of Security of Tenure Act No. 62 of 1997; Land Reform (Labour Tenants) Act No. 3 of 1996.

¹⁵² Human Rights Watch telephone interview, fieldworker, Nkuzi Development Association, October 2, 2003.

¹⁵³ Human Rights Watch telephone interview, principal, Lianas Combined School, Magoebaskloof, Limpopo Province, October 6, 2003.

¹⁵⁴ Human Rights Watch interview, principal and teacher, Overvlakte Primary School, Musina, Limpopo Province, June 5, 2003.

¹⁵⁵ Human Rights Watch interview, official, Soutpansberg district, Limpopo Department of Education, June 6, 2003.

¹⁵⁶ Human Rights Watch interview, teacher, Petrusshoop Intermediate School, Marseilles, Free State Province, May 23, 2003.

Child labor

The employment of children below the age of fifteen has been prohibited since 1997 by the Basic Conditions of Employment Act of 1997.¹⁵⁷ In addition, the law makes it an offence for a third party to assist an employer to use child labor.¹⁵⁸ The act permits the employment of children between fifteen and seventeen who are no longer subject to compulsory education.¹⁵⁹ Such employment should not “[b]e inappropriate for the child’s age” and should not put at risk the child’s “[w]ellbeing, education, physical or mental health or spiritual, moral or social development.”¹⁶⁰ The onus rests on the employer to prove that he/she reasonably believed at the time of employment that the child was not below fifteen years.¹⁶¹

Teachers informed Human Rights Watch researchers of the continued use of children between fourteen and eighteen on some farms, which prevented children from completing their schooling. Teachers in Hazyview in Mpumalanga Province blamed low enrollment and poor attendance on labor being an attractive option for children.¹⁶² The teacher at Wallop farm school alleged that boys under the age of seventeen sought employment on a neighboring farm in the Free State Province.¹⁶³ Whether the farm owner was aware that some of the boys fell under the permitted minimum age of employment was not clear. The principal informed Human Rights Watch researchers that the matter had been raised with the authorities. In a follow-up call to the regional department of labor office on June 30, 2003, Human Rights Watch was told that an inspection of these allegations on the farm was scheduled.¹⁶⁴

¹⁵⁷ Basic Conditions of Employment Act No 75 of 1997, section 43(1).

¹⁵⁸ *Ibid.*, section 46.

¹⁵⁹ *Ibid.*, section 44(1). Section 3 of the South African Schools Act 84 of 1996 makes schooling compulsory for grades one to nine or up to fifteen years depending on which comes first.

¹⁶⁰ *Ibid.*, section 43(2) (a) and (b). See also section 28(1)(f), The Constitution of the Republic of South Africa Act 108 of 1996.

¹⁶¹ *Ibid.*, section 47 states that: “ In any proceedings in terms of this Act, if the age of an employee is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the employment complied with the provisions of this Chapter to prove that it was reasonable for that party to believe, after investigation, that the person was not below the permitted age.”

¹⁶² Human Rights Watch interview, teachers, Marula Primary School and Running Waters Primary School, Hazyview, Mpumalanga Province, May 12, 2003.

¹⁶³ Human Rights Watch interview, principal, Wallop Farm School, Clocolan, Free State Province, May 19, 2003.

¹⁶⁴ Human Rights Watch interview, labor inspector, Ficksburg, Free State Department of Labor, June 30, 2003.

Pruning trees and lifting logs onto lorries in the Haenertsberg area in Limpopo Province drew children between fourteen and eighteen out of school.¹⁶⁵ A teacher at Wolksberg Farm School, which is located in the Haenertsberg forests, argued that the lack of a secondary school nearby and insufficient funds to enroll at a secondary school forty kilometers away in GaMolepo—the nearest village—were contributing factors for children to work on farms.

Access to basic nutrition for children

One of the first initiatives of the new government in 1994 was to introduce the Primary School Nutrition Program to encourage enrollment and school attendance in poor communities, as one of the presidential lead projects of the Reconstruction and Development Program.¹⁶⁶ The Department of Health is presently administering the feeding scheme.¹⁶⁷ The 2003 allocation to schools in designated areas is calculated on R1.07 (U.S. \$0.15) per learner per day. The government aims to provide lunches to all learners attending the poorest schools by 2004. Those individual learners who do not attend a school within this category and yet qualify for the welfare poverty grant may receive a state-subsidized meal. In either case, the school bears the responsibility to find a food supplier and to ensure that the government pays the supplier. This however places an administrative burden on poorly resourced schools such as a number of those on commercial farms. Among the problems encountered during this research was non-delivery of food by the supplier. The department has acknowledged that in some cases suppliers have failed to deliver due to non-payment by the state.¹⁶⁸

The administration of the scheme has been sporadic at farm schools. Most schools visited provide one cooked meal a day through the feeding scheme. At some schools, however, there have been problems with the scheme. At Wallop Farm School, Free State Province, the feeding scheme was suspended in 1999 and since then the school has been applying for food assistance with no result at the time of writing.¹⁶⁹ In other cases, the delivery of food has been irregular. Teachers at Petrusheep Intermediate School,

¹⁶⁵ Human Rights Watch interview, teacher, Wolksberg Farm School, Haenertsberg, Limpopo Province, June 3, 2003.

¹⁶⁶ The Reconstruction and Development Program was an African National Congress (ANC) government-initiated social and economic policy framework launched in 1994. It sought to meet the needs of the people such as access to basic services. Some of the groups targeted include child development. [online], <http://www.polity.org.za/html/govdocs/rdp/rdp1.html> (retrieved August 12, 2003).

¹⁶⁷ This responsibility is to be shifted to the department of education. See Department of Education, *Plan of Action – Improving access to free and quality basic education*, June 14, 2003.

¹⁶⁸ South African Human Rights Commission, *4th Economic and Social Rights Report: 2000/2002*, (Johannesburg: April 2003), p. 251. The report can also be found at <http://www.sahrc.org.za>.

¹⁶⁹ Human Rights Watch interview, teacher, Wallop Farm School, Clocolan, Free State Province,

Free State Province, complained that the feeding scheme was unreliable.¹⁷⁰ From January to April 2003 there was no food delivery. After some relief, food delivery was interrupted again from May 18 to June 23, 2003.¹⁷¹ The principal at Doreen-Bridge Combined School informed Human Rights Watch researchers that the school was unable to provide meals due to a lack of funds.¹⁷² The feeding scheme at the school was suspended in November 2002 and resumed again in June 2003. Human Rights Watch researchers were informed that for some learners the food provided at school is the only meal for the day.

Access to social assistance for children

As part of South Africa's effort to give effect to children's rights, vulnerable groups, including children from poor rural households, have been identified as eligible for government grants. Children under the age of nine are eligible for a monthly grant of R160 (U.S. \$23) per child.¹⁷³ The age limit is being raised progressively to fourteen years by 2005.¹⁷⁴ At present, the grant applies to South African citizens only.¹⁷⁵ In impoverished rural communities with limited financial resources, parents are less inclined to send their children to school because of school fees and related costs such as, uniforms and shoes, and this grant may assist them to do so.

In one case in Mpumalanga Province, a single mother was supporting eight children between five and seventeen years of age on a farmworkers' wages. None of her children, whom Human Rights Watch researchers spoke to, were enrolled at a school in the area where they were living. Their mother told Human Rights Watch that she could

¹⁷⁰ Human Rights Watch interview, teachers, Petrusshoop Intermediate School, Marseilles, Free State Province, May 23, 2003.

¹⁷¹ Human Rights Watch telephone interview, Petrusshoop Intermediate School, Marseilles, Free State Province, August 5, 2003. According to the teacher, the recent food delivery meant that each child receives three biscuits and soup.

¹⁷² Human Rights Watch interview, principal, Doreen-Bridge Combined School, Tshipise, Limpopo Province, April 23, 2003. In a follow-up telephone interview on July 22, 2003, the principal confirmed that the feeding scheme had resumed.

¹⁷³ "Child Protection Week Launch call to promote the right of children to social security," May 26, 2003 [online], <http://www.welfare.gov.za> (retrieved July 2, 2003).

¹⁷⁴ State of the Nation address of the President of South Africa, Thabo Mbeki, House of Parliament, Cape Town, February 14, 2003.

¹⁷⁵ Social Assistance Act No. 59 of 1992, section 4 states that: "subject to the provisions of this Act, any person shall be entitled to a child support grant if that person satisfies the Director-General that:

- a) he or she is the primary care-giver of a child; and
- b) he or she and that child-
 - i) are resident in the Republic at the time of the application of the grants in question;
 - ii) are South Africa citizens; and
 - iii) comply with prescribed conditions."

not afford to send her children to school. Her children did not have birth certificates and so could not access the child support grant; and she was also unaware of the existence of the government financial support.¹⁷⁶ The added financial assistance can potentially encourage parents to send children to school. The social worker responsible for the Hazyview area confirmed that a number of farmworkers in the area have neither identity documents nor birth certificates for their children.¹⁷⁷ A young woman told Human Rights Watch that she dropped out of Overvlakte Primary School, Limpopo Province in 1994 after completing grade four in search of work on the farm since her parents could no longer afford to send her to school.¹⁷⁸

Small schools

Small schools of learners of fifty or less are found predominantly among farm schools.¹⁷⁹ This results in the teaching of multiple grades and in some cases one-teacher schools. As of 2000, approximately 20 percent of farm schools were one-teacher schools.¹⁸⁰ All schools visited had more than one grade in a class either due to insufficient classrooms or due to too few learners per grade and a limited number of teachers. In general, the latter situation is common at farm schools.

The instructor at one-teacher schools is both a teacher and principal. Problems arise where a teacher has to attend courses either on skills or curriculum developments. This effectively means that the school is shut for the day and the children are deprived of an education. This is the case at Cambridge Primary School, Free State Province where the teacher and principal are one. When the teacher was away attending courses, the school was shut for the time that she was away.¹⁸¹ At Itemogeleng School, also in the Free State Province, it was reported that the school was shut for two months when the only teacher took ill.¹⁸² The teacher at a farm school in the Free State Province reportedly stated that she was unable to apply new teaching methods in her multiple grade class.¹⁸³ The teacher at Khotso Pula Primary School, which was visited by Human Rights Watch researchers, raised similar concerns. Teachers at these schools have to weigh the benefits of

¹⁷⁶ Human Rights Watch interview, mother and children, Hazyview, Mpumalanga Province, May 12, 2003.

¹⁷⁷ Human Rights Watch interview, social worker, Hazyview, Mpumalanga Province, May 14, 2003.

¹⁷⁸ Human Rights Watch interview, young woman, Musina, Limpopo Province, June 5, 2003.

¹⁷⁹ Report by Dr Charles Sheppard, national Department of Education, presented at a conference on farm schools convened by the minister of education, May 13, 2000.

¹⁸⁰ Ibid.

¹⁸¹ Human Rights Watch interview, teacher, Cambridge Primary School, Westminster, Free State Province, May 23, 2003.

¹⁸² Reggy Moalusi and Suzan Chala, "Farms Schools sniff the winds of change," *The Teacher* (South Africa), October 1, 2003.

¹⁸³ Moalusi and Chala, "Farm schools sniff the winds of change," *The Teacher* (South Africa).

attending courses, which introduce new teaching methods and curriculum developments, and which may positively affect the quality of education, against the drawback of shutting the schools which deprive children of an education during their absence.

The development of alternative teaching methods to enhance learning in multi-grade classes is important. Substitute teaching should be considered at one-teacher schools to minimize the interruption of the teaching program.

School fees and uniforms

The national Department of Education recently published its policy on school funding, which states that it does not support the total elimination of school fees.¹⁸⁴ The Schools Act does, however, allow for exemptions where a parent is unable to pay the fees.¹⁸⁵ In the main, farm schools are willing to enroll children even though they are unable to meet the school fees. At Overvlakte Primary School, Limpopo Province, none of the children pay school fees.¹⁸⁶ At the schools visited, Human Rights Watch found that school fees range from R5 (U.S. \$0.71) to R90 (U.S. \$13) per year. Where parents were unable to pay school fees, their children were granted exemptions.

A number of parents whose children are enrolled at Westminster Farm School, Free State Province, stated that since March 2003 [the commencement of the minimum wage regulation] most of them are finding it difficult to meet the financial demands such as school fees, uniforms, and other educational materials.¹⁸⁷ This is largely because of evictions at Eastry Farm in March 2003, where the farm school was shut, and as a result most of those children have since moved to Westminster Farm School. The parents of these children lost their permanent jobs resulting in the loss of regular income. While these parents would ordinarily qualify for a school fees exemption, they were not aware of such an exemption for indigent parents, underlying the need for information campaigns to raise awareness in rural areas on the existence of social assistance programs.

¹⁸⁴ Department of Education, *Plan of Action: Improving Access to Free and Quality Basic Education for All*, June 14, 2003, para 59.

¹⁸⁵ South African Schools Act No. 84 of 1996, section 39(2)(b). See also National Norms and Standards for School Funding (1998) under the South African Schools Act No. 84 of 1996 and the National Education Policy Act No. 27 of 1996, para 51.

¹⁸⁶ Human Rights Watch interview, principal, Overvlakte Primary School, Musina, Limpopo Province, June 5, 2003.

¹⁸⁷ Human Rights Watch interview, parents, Westminster, Free State Province, May 22, 2003. School fees at Westminster Primary School are R30 (U.S. \$3.75) per annum.

A government policy issued in 2003 suggests a support for the retention of school uniforms.¹⁸⁸ Generally, teachers at farm schools on their own initiative have not insisted that children wear school uniforms in light of the hardships faced by their farmworker parents. Human Rights Watch researchers came across only one case where a school-going child was excluded for not wearing the requisite school uniform. The mother of a girl enrolled at Westminster Primary School, Free State Province, said that her child had been expelled in March 2003 because she did not wear a school uniform.¹⁸⁹ It was only after she pleaded with the teachers that the child was re-admitted.

Limited secondary education

Education in South Africa is compulsory between the ages of seven and fifteen which includes the first two years of secondary education.¹⁹⁰ However, according to the census conducted in 2001, only 30.8 percent of people of twenty years and above have some secondary education. The lowest rates are in Limpopo (26.1%) and in Mpumalanga (26.6%). Both provinces are largely rural. Limited access to secondary schools in rural areas is likely to be a factor in these figures.

The inaccessibility of secondary schooling within the vicinity of a primary school severely hampers the opportunities of learners who have completed their primary school education. Human Rights Watch researchers discovered that children sacrifice personal safety by living with other school children in shantytowns in order to be near a secondary school. The principal of Lianas Combined School remarked that children fail to complete their schooling, as there is no accessible secondary school nearby.¹⁹¹ The additional costs for a school-going child such as food, clothing, and transport are a disincentive to send a child to secondary school.

A teacher at KaMehlwane Primary School, which has 120 learners, was in favor of a secondary school in the area. Parents could not afford the school fees and living costs should children proceed to a secondary school in Block C township, in a former

¹⁸⁸ National Department of Education, *Plan of Action: Improving Access to Free and Quality Basic Education for all*, June 14, 2003, para 67.

¹⁸⁹ Human Rights Watch interview, a parent, Westminster Primary School, Westminster, Free State Province, May 22, 2003.

¹⁹⁰ South African Schools Act No. 84 of 1996, section 3(1).

¹⁹¹ Human Rights Watch interview, teachers, Lianas Combined School, Magoebaskloof, Mpumalanga Province, June 3, 2003.

homeland area near Komatipoort along the Mozambican and South African borders some thirty kilometers from the farm where the primary school is located.¹⁹²

Themba, a seventeen-year-old boy,¹⁹³ who completed primary school at KaMehlwane in 2001, told Human Rights Watch he was unable to enroll at a secondary school about thirty kilometers away from the farm where he lived because he was unable to meet the school fees and the additional costs including transport. He so desperately wanted an education, that with his earnings from seasonal mango pickings on nearby farms, he had purchased school shoes, two white shirts and black trousers (a basic school uniform).

A grade-nine schoolgirl enrolled at Doreen-Bridge Combined School, Limpopo Province, expressed concern that she was unable to continue her education through to grade twelve.¹⁹⁴ The principal told Human Rights Watch that the failure of the school to be extended beyond grade nine was due to an intransigent farm owner.¹⁹⁵ The provincial department of education allegedly had issued a directive for the construction of additional classrooms, yet no construction had begun. The landowner told Human Rights Watch that he was not prepared to have the school extended to cater for secondary level education, as the school began as and should remain a primary school.¹⁹⁶ However, it is the farm owner's contention that it is not his duty to fulfill a role that is essentially government's (that is the provision of education). According to him, an agreement with the provincial department of education has not been concluded because of this dispute. The school's principal believed that the secondary school in Musina, approximately forty kilometers from the farm, was unsatisfactory as the transport, rent, and living costs are beyond the reach of most parents of these children. Furthermore, the principal cited exposure to victimization as a further threat to security for children who were living away from their parents or guardians. Blame has been directed towards both the farm owner and the provincial department of education for failing to meet their obligations.

¹⁹² Human Rights Watch interview, teacher, KaMehlwane Primary School, Komatipoort, Mpumalanga Province, May 8, 2003.

¹⁹³ Human Rights Watch interview, former pupil at KaMehlwane Primary School, Komatipoort, Mpumalanga Province, May 8, 2003.

¹⁹⁴ Human Rights Watch interview, grade-nine pupil, Doreen-Bridge Combined School, Tshipise, Limpopo Province, April 23, 2003. Grade nine is the highest level offered at the school.

¹⁹⁵ Human Rights Watch interview, principal, Doreen-Bridge Combined School, Tshipise, Limpopo Province, April 23, 2003.

¹⁹⁶ Human Rights Watch telephonic interview, farm owner, Tshipise, Limpopo Province, July 23, 2003. It should be noted that the Manenzhe clan is contesting title to the land on which the farm and school are located. Members of which work on the farm and their children are enrolled at Doreen-Bridge Combined School.

Teachers at schools within a sixty-kilometer radius from Smithfield were concerned that the lack of a secondary school nearby limited options for learners.¹⁹⁷ Children who did not have relatives in Smithfield, the town having the nearest secondary school, had to resort to living in squalid conditions in a nearby shantytown where rental for a makeshift house cost R50 (U.S. \$7) per month.¹⁹⁸ Human Rights Watch researchers were told that the quarters were in most cases shared with other learners. The highest level of education offered at Khotso Pula Primary School is grade five, while grade four is the highest level offered at Montagu Farm School. Learners who complete their primary schooling would logically enroll at a secondary school at the town of Smithfield.

VI. Domestic and international law obligations

Children's Rights

South Africa is a party to a number of international human rights instruments relevant to the issues raised in this report. These include the African Charter on Human and Peoples' Rights; the United Nations (U.N.) Convention on the Rights of the Child; the African Charter on the Rights and Welfare of the Child; and the U.N. Educational, Scientific, and Cultural Organization (UNESCO) Convention against Discrimination in Education.¹⁹⁹ South Africa signed the Covenant on Economic, Social and Cultural Rights on October 3, 1994, but has not yet ratified the treaty. While this treaty does not technically bind South Africa, it is obliged under international law to "refrain from acts which would defeat the object and purpose of the treaty."²⁰⁰

The South African constitution provides that international law must be considered in the interpretation of the bill of rights and legislation.²⁰¹ International law becomes legally enforceable in South Africa once it has been enacted into domestic law.²⁰² In the case of

¹⁹⁷ Human Rights Watch interview, teachers, Khotso Pula Primary School and Montagu Farm School, Smithfield, Free State Province, May 19, 2003.

¹⁹⁸ Human Rights Watch interview, teacher, Montagu Farm School, Smithfield, Free State Province, May 19, 2003.

¹⁹⁹ South Africa ratified the African Charter on Human and Peoples' Rights on July 9, 1996; the U.N. Convention on the Rights of the Child on June 16, 1995; the Convention on the Elimination of All Forms of Discrimination against Women on January 14, 1996; the African Charter on the Rights and Welfare of the Child on January 7, 2000; and the U.N.E.S.C.O. Convention against Discrimination in Education on March 9, 2000.

²⁰⁰ Vienna Convention on the Law of Treaties, article 18.

²⁰¹ The Constitution of the Republic of South Africa, 1996, section 39(1)(b) and section 233. See also *S v Makwanyane and another* 1995 (3) SA391 (CC), paras 34-35 on application of international law in interpreting South African domestic laws and Bill of Rights.

²⁰² The Constitution of the Republic of South Africa, 1996, section 231(4).

a self-executing provision in an international instrument that has been ratified by the South African parliament, such provision will become law.²⁰³

Implementation of children's rights in domestic law

The South African constitution gives specific recognition to the rights of children, on a more generous basis than the rights of adults.²⁰⁴ It protects the rights of children to basic nutrition, health care and social services. Children are to be protected from neglect and abuse, and have a right to security. Exploitative labor practices, which infringe on the child's ability to develop socially, mentally and intellectually, are prohibited.

In December 2002 the South African Law Commission²⁰⁵ approved a draft Children's Bill,²⁰⁶ which aims to give effect to South Africa's international obligations to promote, protect and develop and ensure the well being of children. The bill consolidates and strengthens the structures designed to provide care and protection for children. Proposed structures and services are envisaged to promote and monitor physical, intellectual, emotional, and social development of the child. Following public comments to the draft, a revised bill is to be tabled in South Africa's national parliament in the first quarter of 2004 for formal consideration.

Chapter 4 of the draft bill protects the right to access to education and the right to be protected from economic exploitation, maltreatment, and abuse. Recognition is given to undocumented migrant and refugee children and the protection of their rights.

Right to Education

The right to education is recognized by international law.²⁰⁷ At a minimum, states are obliged to provide free basic education, of which primary education is considered a component.²⁰⁸

²⁰³ Ibid.

²⁰⁴ The Constitution of the Republic of South Africa Act No. 108 of 1996, chapter 2, section 28.

²⁰⁵ The South African Law Commission is a statutory law reform body established in terms of the South African Law Commission Act No. 19 of 1973.

²⁰⁶ The draft Children's Bill can be found online at <http://www.pmg.org.za/bill/bills/htm>.

²⁰⁷ U.N. Convention on the Rights of the Child article 28. African Charter on the Rights and Welfare of the Child article 11; African Charter on Human and Peoples' Rights, articles 17. International Covenant on Economic, Social and Cultural Rights, article 13.

²⁰⁸ Committee on Economic, Social and Cultural Rights, "General Comment No. 13: The right to education," 1999, para. 9.

The right to education is enshrined in article 26 of the Universal Declaration of Human Rights, which provides that: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.” The African Charter on Human and Peoples’ Rights provides that: “Every individual shall have the right to education.”²⁰⁹

Article 11 of the African Charter on the Rights and Welfare of the Child recognizes that: “Every child shall have the right to an education” and that basic education should be “free” and “compulsory.”²¹⁰ States should progressively provide for the realization of “[f]ree and accessible” secondary education. Article 28(1) the U.N. Convention on the Rights of the Child, in its protection of the right to education, requires states to endeavor “with a view to achieving [the right to education] progressively and on the basis of equal opportunity” to provide free and compulsory primary education available to all. Both the African Charter on the Rights and Welfare of the Child and the U.N. Convention on the Rights of the Child call upon states to take measures to encourage regular attendance and to reduce dropout rates.²¹¹

Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), guarantees the right to education for everyone. In particular, article 13(2) (a) provides that “primary education shall be compulsory and available free to all.”²¹²

While South Africa is not bound by the provisions of the ICESCR, the interpretations of the U.N. Committee on Economic, Social and Cultural Rights, the body responsible for monitoring compliance with the provisions of and interpreting the ICESCR, constitute useful guidance to states on the content of the right to an education, including a basic education and how to work towards the realization of the right to education. In addition, the South African Constitutional Court has cited the U.N. Committee’s general comments in cases relating to social and economic rights.²¹³ The state’s obligation rests on three fronts. The state itself should not hinder the enjoyment of the right to education. The state should take protective measures to prevent a third party from frustrating the enjoyment of this right. Lastly, the state should take steps to assist individuals and communities to access this right. These three steps and in particular the

²⁰⁹ African Charter on Human and Peoples’ Rights, article 17(1).

²¹⁰ African Charter on the Rights and Welfare of the Child, article 11(3)(a).

²¹¹ *Ibid.*, article 11(3)(d) and the U.N. Convention on the Rights of the Child, article 28(1)(e).

²¹² International Covenant on Economic, Social and Cultural Rights, article 13(2)(a) and (b).

²¹³ See *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1)SA 46 (CC), paras 39 – 45.

latter include providing infrastructure and adequate learning materials.²¹⁴ Thus the state's failure to prevent third-party interference, or to ensure that young children gain access to schools would indicate that the state is not fulfilling its obligations to protect the right to education. The same is true in cases in which the state's fails to prevent the owner of the property on which a school is located from closing off access to a school.

In its General Comment on the right to education, the U.N. Committee on Economic, Social and Cultural Rights identified the essential elements to the right to education as including accessibility and availability.²¹⁵

Availability

This relates to the state's provision of facilities allowing the day-to-day function of the school itself. Thus adequate buildings, learning materials, sanitation facilities and safe drinking water are some of the factors that would impact on the availability of education to all.²¹⁶

Accessibility

Education should be physically and economically accessible to all without discrimination. The school should be within safe reach or alternatively, means must be made available to ensure that children get to school. In the context of learners at farm schools, this would include transport provision for learners, who travel long distances on foot, from their homes to school. School fees should not in effect exclude enrollment. There is recognition that education—particularly at the primary level—should be free for all.

Implementation of the right to education in domestic law

The South African government has gone some way in incorporating international principles on the right to education into domestic law. Section 29(1) (a) of the South African Constitution recognizes that everyone has a right to a basic education, thereby placing a primary obligation on the state. Unlike some other social and economic rights, such as the right to health care, the right to a basic education is not qualified by language referring to the availability of resources and progressive realization of the right. While

²¹⁴ U.N. Committee on Economic, Social and Cultural Rights, general comment 13, para 47.

²¹⁵ The U.N. Committee on Economic, Social and Cultural Rights, general comment 13, para 6.

²¹⁶ *Ibid.*, general comment 13, para 6(a).

basic education is broader than primary education, for the purposes of this report, primary education is the main content of the government's obligation.²¹⁷

The Schools Act elaborates on this right in its attempt to redress the past injustices based on discrimination in the provision of education. Laws that segregated access to education on the basis of race have been repealed.

Of particular relevance to farm schools on private property, the 1995 *White Paper on Education and Training* states that “[t]he duty of public educational institutions is to facilitate the access to education of all eligible members of the public, not to frustrate such access.”²¹⁸ The White Paper makes reference to those schools in 1995 that were in receipt of public funds such as subsidies for farm schools and unequivocally states that these schools “[h]ave an obligation to observe scrupulously the provision of the [South African] constitution with respect to rights such as non-discrimination and equal access to educational institutions.”²¹⁹ The White Paper makes a further acknowledgement of the difficulties at farm schools, namely that “[t]he situation of farmworkers’ children may be a special case, since the farmer may be at one and the same time the owner and governing body of the farm school, the employer of the workers whose children attend the school, and the source of instructions for child labor.”²²⁰

Guidelines in policy making are formalized in the National Education Policy Act.²²¹ Central to this statute is the inclusion of rights, which need to be considered in exercising the government's powers. They include:

- That every child has a right to a basic education and access to an education institution within or by an education department or education institution on any ground whatsoever.
- The right of the child in respect of his or her [access to] education.²²²

²¹⁷ The Committee on Economic, Social and Cultural Rights has opined, “While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by UNICEF: ‘Primary education is the most important component of basic education.’” Committee on Economic, Social and Cultural Rights, “General Comment No. 13: The right to education,” 1999, para. 9.

²¹⁸ Department of Education, *White Paper on Education and Training*, March 15, 1996, chapter 7, para 50.

²¹⁹ *Ibid.*

²²⁰ *Ibid.*, chapter 7, para 26.

²²¹ National Education Policy Act No 27 of 1996.

²²² *Ibid.*, section 4 (a).

In furthering the constitutional and international law obligations, the policies of government should be designed to:

- Enable education systems to contribute to the full personal development of each student and to the moral, social, cultural, political and economic development of the nation at large.
- Achieve equitable education opportunities and the redress of past inequalities in education.²²³

A monitoring mechanism is included in the statute. Section 8 provides that delivery and performance of education needs to be monitored annually or at specified intervals in order to “[assess] progress in complying with the provisions of the [South African] constitution.” Where a provincial government is found to be in contravention with the constitutional obligations, the responsible political head will be required to respond within ninety days on how the situation will be corrected (section 6).

The Schools Act makes it compulsory for children to go to school between the first year of the educational program (grade one) to grade nine, or fifteen years old, depending on whichever occurs first.²²⁴ Section 5 of the Schools Act provides that “[a] public school must admit learners and serve their educational requirements....”²²⁵

In recognition of poor communities, the government has adopted an early childhood development program for children from birth to nine years of age “[t]o protect the child’s right to develop his or her full cognitive, emotional, social and physical potential.”²²⁶ Included in government programs are the improvement of the quality and effectiveness of teaching at essentially primary level schools and also the improvement of the functioning of the schools. This program is to encourage enrollment of more children in primary schools in rural areas.

²²³ Ibid., section 4 (b) and (c).

²²⁴ South African Schools Act of 1996, section 3(1).

²²⁵ Ibid., section 5 (3) (a).

²²⁶ Early childhood development is defined as that which is required by a child to grow physically, mentally, emotionally, morally and socially. See Department of education, *Education White Paper 5 on Early Childhood Education: Meeting the Challenge of early childhood development in South Africa*, May 2001, para 1.3.1.

Efforts have been made to make primary level education particularly for children on the margins of society free and accessible. This is to be facilitated through weighted funding in favor of the poor—particularly those in rural communities.²²⁷

The legal framework put in place by the South African government is generally compliant with its international obligations. In practice, as this report documents, the implementation of these laws can fail to respond to the needs of poor pupils at farm schools. Frequently the specificities of their situation are not taken into account in the implementation of policy. The effect is a failure by the state to fully guarantee the right to primary education for children living on commercial farms.

VII. Recommendations

To the national government of South Africa

- Devise strategies for the rapid conclusion of the outstanding agreements between the provincial departments of education and farm owners, and the fulfillment by provincial departments and farm owners of their obligations under these agreements and monitor their implementation.
- Amend the Schools Act to address the legal status of those farm schools that are presently not bound by a contractual agreement in terms of this Act.
- Develop guidelines on the conditions under which land can be expropriated for educational purposes under the Schools Act and the South African constitution. These guidelines should consider the procedures necessary to establish whether expropriation is necessary in the public interest.
- Prioritize policies to ensure access to education for children living on commercial farms through adequate financing and planning. Appropriate steps could include establishing a unit at the national Department of Education to focus on the management of farm schools and facilitate a forum for provincial departments of education to exchange best practices on the governance and management of farm schools and strategies to ensure that all children can access primary education. The unit could also convene a multi-sectoral forum, with farm owners, farmworkers, teachers and farm owners' representative bodies, nongovernmental organizations and local government, to review the situation on farm schools and devise strategies for their improvement. This unit should also maintain a database on farm schools.

²²⁷ Department of Education, *Plan of Action: Improving Access to Free and Quality Basic Education for All*, June 14, 2003.

- Consider the incorporation of state-provided transport as a cost in the national budgeting process for education.
- Ensure that the monitoring and evaluative role of the national Office of the Rights of the Child in safeguarding the rights of children in government policies extends to the right to a primary education for children on farms.
- Ratify the International Covenant on Economic, Social and Cultural Rights.

To provincial governments

- Take concrete and enforceable steps to expedite the conclusion of the contractual agreements between provincial departments of education and farm owners.
- Meet the obligations set out in the contractual agreements with farm owners, including the maintenance of services and buildings, and the payment of rent.
- Ensure that school inspectors and management directors in the provincial departments of education make appropriate interventions where a farm owner obstructs access to a farm school, and establish effective liaison with the police service to enforce access where necessary.
- Take steps to ensure that farm owners who deliberately obstruct access to schools on farms face appropriate sanctions, including rapid and effective interventions by school inspectors and management directors from the provincial departments of education, or by the police.
- Establish a focal point in the provincial department of education primarily responsible for matters arising from the governance and management of the farm school. Co-ordinate the activities of inspectors and management directors at district level who will report to this focal point on matters pertaining to farm schools.
- Collect and maintain a register on the status of farm schools on commercial farms (as distinct from schools that may be located on farms in the former homelands) to ensure that there is adequate information available on which to base interventions to improve education in commercial farming areas. The register should include information on the facilities and services provided and the condition of buildings, as well as on the number of children who require schooling.
- Implement stronger monitoring mechanisms for children seeking access to education in commercial farming areas to ensure their needs will be met, and on the condition of farm schools generally.

- Strengthen supervision of teachers and school inspectors to ensure learners receive quality education and to respond timely to difficulties at farm schools.
- Inform teachers and parents of the status of the farm school, and in particular the content of the contractual agreement between the provincial department of education and farm owner. Regularly educate school governing board members who comprise farm dwellers and farm owners of their roles and responsibilities in relation to the school.
- Take steps to provide transport for school-age children on commercial farms, whether by provincial or local government authorities, and to ensure the availability of water and power at schools.

To farm owners and their representative organizations

- Co-operate with the government to ensure a speedy conclusion of the outstanding contractual agreements with the provincial departments of education.
- Permit access to the school by pupils, teachers, parents, government authorities and members of the public who have a reasonable interest in the activities of the school as stipulated under the Schools Act.
- Inform lessees and managers of their obligations with regards to the school, and in particular to ensure that access to the school is not obstructed.
- Fulfill obligations under the contractual agreements with provincial governments, in particular those related to essential services such as water, power, and maintenance of buildings.
- Inform schools and provincial departments of education of a change of ownership or management on the property.

VIII. Conclusion

“Government is aware that the farms are not well served, but it is difficult, there is not enough money, transport, access, farm [owners] don’t want the government on the land, there is a huge geographic area to cover, not enough personnel, etc.”²²⁸

The government faces enormous challenges in attempting to protect the rights of those living in remote rural areas, particularly the right of children living on commercial farms to education. The present government has inherited a situation where a child may have

²²⁸ Human Rights Watch interview, social worker, Hazzyview, Mpumalanga Department of Social Development, May 14, 2003.

to endure long journeys on foot, be unable to meet schools fees or pay for a school uniform. All these needs create a burden on the child and parent(s). In its concluding remarks to South Africa's initial report as required by the U.N. Convention on the Rights of the Child, the U.N. Committee on the Rights of the Child expressed concern at "[c]ertain vulnerable groups of children, including Black [African] children... living in rural areas" and that "[i]nequality in access to education remains in some areas particularly among Black [African] children...from economically disadvantaged families, many of whom still do not attend school."²²⁹ In its recommendations, the U.N. Committee on the Rights of the Child called on the South African government to improve the quality of education and to make education accessible to all children.

The provision of education in rural areas and for the farming community in particular has its difficulties. This largely rests on the fact that the children attending farm schools are of farmworker parents. Their right to be enrolled at the school stems from their parents working on the farm where the school is located or on a neighboring farm. This means that in a case of the eviction of a parent who is a farmworker, the child has to also leave the property and in turn the school—unless the child can find appropriate accommodation near the school to continue attending classes.

The dual responsibility—private and public—in the provision of education, that is, through the conclusion of contractual agreements, is not ideal. The obligation to guarantee the right to education falls within the purview of the state and thus the primary obligation to protect this right lies with the state. Where the management of these schools is clearly not operating in the interests of a child receiving an education, the state should consider as a last resort the option of expropriating land in the public interest as provided for by the South African constitution and the Schools Act. Amalgamating schools is a further option. Where this will involve shutting down schools, the provision of transport must be considered for children who will be required to travel long distances as a result of the move. Local government should play a role in cooperating in the provision of transport and waiving the cost of services such as water and electricity consumption for schools so as to make these services affordable.²³⁰

²²⁹ Concluding observations of the Committee on the Rights of the Child: South Africa, February 23, 2000, CRC/C/15/ADD.122. paras 18 and 34.

²³⁰ Nazeem Ismail, Saheed Bayat and Ivan Meyer, *Local Government Management*, (International Thomson Publishing Southern Africa: Johannesburg, 1997), pp. 68-69; Jenny Karlsson, "The Role of Local Government in the Provision of Public Schooling in South Africa," Education Policy Unit Research Report, University of Natal, April 1998; The Constitution of the Republic of South Africa Act No. 108 of 1996, section 156 on powers and function of a local government authority.

The South African government has inherited an education system in rural areas based on racial, social and economic inequalities. Through the 1996 constitution and the ratification of international human rights law pertaining to children's rights to education, the government is obliged to protect the right to an education. Children living on farms have the right to receive an education freely and in an environment conducive to learning.

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Appendix: Pro Forma Agreement

AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN

The Member of the Executive Council (hereinafter referred to as the “MEC”) of.....(name of Province) herein represented by.....
.....(name and rank), duly authorized by the MEC

AND

.....(name of owner, hereafter referred to as the “the Owner)

Postal address:

.....
.....
.....

.....ID Number.....

Telephone.....

PREAMBLE

WHEREAS

..... is the Owner of the immovable property on which.....
(name of school, hereafter referred to as “the school”) is situated

Postal address:

.....
.....
.....

Physical address:

.....
.....

Telephone.....

WHEREAS the school is a public school offering education from grade.....to grade.....; and

WHEREAS the MEC and the Owner have agreed to enter into this agreement pursuant to sections 14 (1) and 57 of the South African Schools Act (Act No.84 of 1996) (hereafter referred to as “the Act”), whereby the school is established/deemed to be established as a public school on private property.

IT IS HEREBY AGREED THAT:

Definitions

1. In the agreement any word or expression to which a meaning has been assigned by the Act or Regulations Relating to the Minimum Requirements for an Agreement between the Member of the Executive Council and the Owner of the Private Property on which a Public School is situated (hereafter referred to as “the Regulations”), has the same meaning assigned to it in the Act or Regulations, unless the context indicates otherwise.

The status and description of the school

2. The school is a public school on private property in terms of section 52 (1) of the Act or established in terms of section..... of (Provincial Education Law).
3. A description of the site and buildings and access roads to the school is set out in Schedule 1.

Propriety rights held by the school

4. The Owner declares himself or herself willing to the right of use of property referred to in paragraph 2 for the sole purpose of education in a public school on the property.
5. The Owner gives the right of use to the school free of charge.

OR

The owner lets the property referred to in paragraph 2 to the MEC for the amount of R..... per month/year which payment must be paid into the Owner’s bank account No..... (Bank)..... (town) not later than the first day of each month/first day of January each year.

6. An agreement between the State and the Owner which existed prior to the commencement of the Act remains in force to the extent that is consistent with the Act, and is only amended to the extent that is in conflict with this agreement, in which case this agreement prevails.
7. The agreement is valid as long as the school exists. The school can only be closed in terms of section 33 of the Act and after a reasonable period of notice has been given to the Owner by the MEC. A lease agreement, if it is in existence, terminates on the date on which the school is closed. All the improvements to the immovable property will become the property of the Owner free of charge

OR

After payment by the Owner to the State of an agreed sum of money calculated on the day of the closure of the school.

8. All reasonable maintenance, including insurance and security to the buildings and fixed assets and improvements, is done by..... [if such maintenance is the responsibility of the school an agreement must be entered into between the school and the Owner on the date such allocated function in terms of section 21 (1) of the Act is allocated to such school.] The extent of such maintenance is set out Schedule 2.

General

9. The MEC undertakes to provide a copy of this agreement to the school and ensure that the school makes it available to the parents, learners and any third person if requested by them as contemplated in Regulation 2 (7).
10. must erect clear road signs giving directions to the public school an access roads to the school where access to the school in by way of private roads.
11. The curriculum offered at such public school is in accordance with the prescribed curriculum for public schools and the applicable administrative directives.
12. must ensure that a fresh drinking water supply is available at all times at such schools.
13. must erect new buildings or effect improvements to the existing buildings. Such new buildings or improvements may only be effected after separate agreement is concluded between the parties and stipulating the cost to be incurred and who carries the responsibility for effecting such changes.

14. must ensure that the supply of electricity to the school complies with the national safety standards.
15. must ensure that the property on which the school is situated and all access roads are safe for school purposes and all dangerous areas on the property referred to in paragraph 2 are safeguarded.
16. The Owner guarantees access to the school by the public, school community and officials referred to in Regulation 5 (3) in relation to educational purposes.
17. The State indemnifies the Owner for any damage or loss claimed against such Owner as a result of the property being owned and provided that such claim is related to any educational activity conducted by the school for which the Owner would have been liable.

Dispute

18. Any dispute arising under this agreement must, as a first step, be resolved amicably through conciliation between the MEC and the Owner, or by any other manner mutually agreed upon by them.
19. If any dispute arises (including a breach of contract), the aggrieved party must notify in writing the other party affected by the dispute, within 14 days, stating the nature and extent of his or her complaint.
20. A conciliation meeting between the parties to the dispute must take place within 7 school days of the notice referred to in paragraph 19.
21. If a dispute is referred to a Magistrate's Court then the applicable cost structures must be agreed to.

Selling of the immovable property

22. If the Owner sells the property on which the school is situated, he or she must notify –
 - a. the buyer of the existence of such school in writing before entering into an agreement with such buyer; and
 - b. the school and the MEC of such sale and attach the letter referred to in subparagraph (a) within 7 days of such sale.

Amendments

23. This agreement comprises the agreement and all amendments and annexures thereto.

24. This agreement may only be amended, varied or changed if both parties agree to such amendment, variation or change in writing and it is signed by both parties.

Domicilium

25. The Owner chooses the following address as his or her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence according to this agreement:

.....
.....Thus
done and signed at..... on this.....day
of.....19.....

.....

OWNER

AS WITNESS:

.....
.....

Thus done and signed at..... on this.....day
of.....19.....

.....

MEC FOR EDUCATION OF..... (PROVINCE) or

.....

DELEGATE OF THE MEC

AS WITNESSES:

.....
.....