



Agri SA

Conflict management and dispute resolution guide

Konflikthantering- en geskilbeslegting-handleiding

Compiled:

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Centre of Excellence: Rural Safety

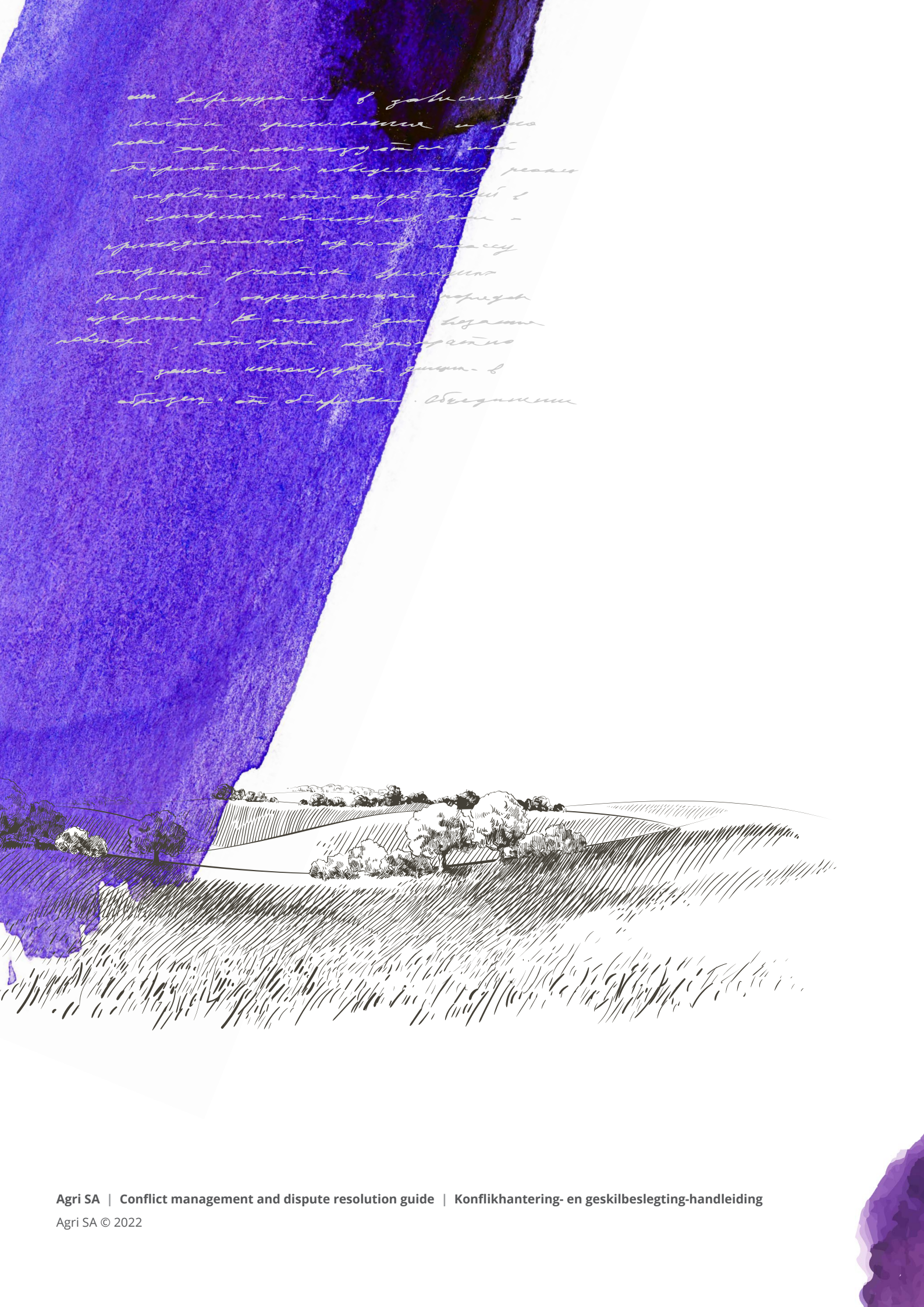
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INDEX | INHOUDSOPGAWE

4	Purpose of the guide Doel van die handleiding
5	Conflict management and dispute resolution on farms Konflikhantering en geskilbeslegting op plase
8	Land related conflict Grondverwante konflik
9	Managing workplace conflict and dispute resolution Konflikhantering en geskilbeslegting in die werkplek
11	Conflict management and dispute resolution on farms through consensus seeking and trust building (Annexure 1) Konflikhantering en geskilbeslegting op plase deur konsensus te bereik en vertroue te bou (Bylae 1)
13	Workplace grievance procedure (Annexure 2) Werkplekgrieweprosedure (Bylae 2)
24	Workplace engagement forum (Annexure 3) Werkplekgespreksforums (Bylae 3)
26	Workplace facilitation and mediation (Annexure 4) Werkplekfasilitering en bemiddeling (Bylae 4)
27	Facilitation and mediation contact details (Annexure 5) Fasilitering en bemiddeling-kontakbesonderhede (Bylae 5)
29	Lessons learned from South African land mediation (Annexure 6) Lesse geleer uit grondbemiddeling in Suid-Afrika (Bylae 6)
33	Acknowledgment Erkenning



PURPOSE OF THE GUIDE

DOEL VAN DIE HANDLEIDING

The purpose of this **Agri SA conflict management and dispute resolution guide** is to provide a practical 'toolkit' for:

1. The effective management and resolution of **'community related' conflicts and disputes** occurring between a farm or farms and 'communities', including housing and eviction disputes, disputes regarding grazing and access to water, the repairing of, alteration and addition to housing structures, land use, visitors and other conflicts and disputes of a 'mutual interest' nature to both the farm and to the community.
2. The effective conflict management and resolution of 'internal' farm related **employment, labour, workplace, tenure, housing and related disputes**.

Mediation can assist parties to find common ground and in this regard contact details for the external facilitation and mediation (including 'conflict coaching') for both 'community' and 'workplace' conflicts and disputes have been included in Annexure 5.

DISCLAIMER

Although everything possible is done to ensure the correctness of this information, Agri SA and the Agri Securitas Trust Fund do not guarantee the accuracy thereof and Agri SA and the Agri Securitas Trust Fund do not accept any liability concerning the information contained herein.

Die doel van **Agri SA se Konflikhantering- en geskilbeslegting-handleiding** is om voorsiening te maak vir 'n praktiese hulpmiddel ('gereedskapskissie') met die oog op die volgende:

1. Die effektiewe bestuur en beslegting van **'gemeenskaps- verwante konflikte** en geskille wat tussen 'n plaas of plase en 'gemeenskappe voorkom, met inbegrip van behuising- en uitsettingsgeskille, geskille rondom weiding en toegang tot water, die herstel en verandering of uitbreiding van behuisingstrukture, grondgebruik, besoekers, en ander konflikte en geskille van 'wedersydse belang' vir die plaas en die gemeenskap.
2. Effektiewe konflikthantering en beslegting van 'interne' plaasverwante geskille rondom **indiensneming, arbeid, werkplek, verblyf, behuising en verwante aangeleenthede**.

Bemiddeling kan die partye help om gemeenskaplike grond te vind. Vir hierdie doel maak Bylae 5 voorsiening vir kontakbesonderhede vir eksterne fasilitering en bemiddeling (met inbegrip van konflik-afrigting) vir gemeenskaps- sowel as werkplekkonflikte en -geskille.

VRYWARING

Alhoewel alle moontlike sorg toegepas is om die korrektheid van hierdie inligting te verseker, waarborg Agri SA en die Agri Securitas Trustfonds nie die korrektheid van die inligting nie, en word Agri SA en die Agri Securitas Trustfonds hiermee gevrywaar van enige aanspreeklikheid rondom die inligting hierin vervat.



CONFLICT MANAGEMENT AND DISPUTE RESOLUTION ON FARMS

KONFLIKHANTERING EN GESKILBESLEGTING OP PLASE

CONFLICT: ITS CAUSES AND ITS STAGES

Conflict can be caused by a number of issues, which include:

- **Relationships** between individuals and groups.
- A **lack of effective consultation and engagement** between individuals and groups.
- A **lack of information sharing** between individuals and groups, with parties often not having the relevant or correct information to 'meaningfully engage' about the conflict or the dispute.
- **Differing needs and interests** (as opposed to rights) as identified by the parties, and different perceptions on how such needs and interests should be addressed.
- A **lack of or ineffective procedures/structures** for participation, engagement and for managing conflict and resolving disputes.
- Not having the necessary **negotiation and problem-solving capacity and skills** to engage the conflict and dispute resolution effectively.
- Possible **hidden agendas, lack of respect and lack of trust**.
- **Lack of government ability / will to truly resolve a matter**.
- **Political interference**.
- **Differing interpretation of legislation, e.g. impounding of animals, hunting with dogs, invasion for grazing or crops**.
- **Poor infrastructure (i.e. to prevent livestock conflicts)**.

Conflict can move through different stages. It can lie dormant and be unexpressed, and without effective conflict management and dispute resolution mechanisms that could detect it early on and manage it proactively and timeously, it could **manifest** and express itself in inappropriate and often 'costly' ways that could cause serious and significant harm to, people, property, jobs, finances, the economy and more. Conflict has the potential to be healthy or unhealthy, it can lead to creativity and growth, and it can lead to destruction and devastation.

Identifying its **different stages**, underlying causes, factors that can aggravate and worsen the conflict and factors that can stabilise, moderate and manage the conflict could assist in the early, proactive and constructive management of conflicts and disputes between individuals and parties.

KONFLIK: OORSAKE EN STADIA

Konflik kan veroorsaak word deur 'n aantal faktore, insluitend die volgende:

- **Verhoudinge** tussen individue en groepe.
- 'n **Gebrek aan doeltreffende beraadslaging en skakeling** tussen individue en groepe.
- **Gebrekkige deel van inligting** tussen individue en groepe, waar die partye dikwels nie die tersaaklike of korrekte inligting het om 'sinvol' oor die konflik of geskil te 'onderhandel' nie.
- **Verskillende behoeftes en belange** (anders as regte), soos geïdentifiseer deur die partye, en verskillende persepsies oor hoe sodanige behoeftes en belange aangespreek moet word.
- 'n **Gebrek aan, of ondoeltreffende prosedures/strukture** vir deelname en skakeling en vir die hantering van konflik en beslegting van geskille.
- Gebrek aan die nodige **onderhandelings- en probleem-oplossingskapasiteit en -vaardighede** vir doeltreffende konflik- en geskilbeslegting.
- Moontlike **verskuilde agendas** en 'n gebrek aan respek en vertroue.
- **Gebrek aan regering se vermoë of wil om werklik die probleem aan te spreek**.
- **Politieke inmenging**.
- **Verskillende vertolkings van wetgewing, bv. die skut van diere, jag met honde, grondbesetting vir weiding of gewasproduksie**.
- **Swak infrastruktuur (om veeverwante konflik te vermy)**.

Konflik kan deur **verskillende stadia beweeg**. Dit kan sluimerend en onuitgedruk bly en dan, weens 'n gebrek aan doeltreffende konflikhantering- en geskilbeslegtingsmeganismes om dit vroeg te identifiseer en proaktief en tydig aan te spreek, op on gepaste en dikwels 'duur' wyse manifesteer en tot uitdrukking kom, met aansienlike en vernietigende gevolge vir mense, eiendom, werkgeleenthede, finansies, die ekonomie ens. Konflik het die potensiaal om gesond of ongesond te wees, dit kan kreatiwiteit en groei tot gevolg hê, of dit kan venietiging en verwoesting saai.

Identifisering van die **verskillende stadia**, onderliggende oorsake, faktore wat die konflik kan vererger, en faktore wat die konflik kan stabiliseer, ontloot en bestuur, kan meehelp om konflikte en geskille tussen individue en partye vroegtydig, proaktief en konstruktief te bestuur.

THE FIVE MAIN APPROACHES TO MANAGING CONFLICT

- **Confronting** the conflict in an assertive manner.
- **Collaborating** with the individuals/parties.
- **Compromising**.
- **Accommodating** the individuals/parties.
- **Avoiding** dealing with the conflict.

There is no right or wrong approach when it comes to managing conflicts and to resolving disputes, however each of the above approaches used 'appropriately' in the circumstances could lead to the conflict being managed in either an effective or an ineffective manner.

To find out your own 'preferred' or more natural conflict style you could take this assessment that will also give you feedback on when the use of each style could be either more or less effective in the given circumstances:

<https://www.usip.org/public-education/students/conflict-styles-assessment>

RIGHTS AND INTERESTS DISPUTES

Rights disputes have as their basis a right to something as a result of legislation (statutes, case law, common law) and other legally binding agreements, as a first step in such a conflict or a dispute the parties are encouraged to try to resolve the matter through consensus seeking, dialogue and communication with or without the assistance of a facilitator or a mediator. Should the individuals and/or groups not reach an amicable agreement or settlement, they would then have the right to (in most cases) proceed to an adjudicated process like arbitration or to the court.

Interest disputes and conflict come about not from rights but rather an 'interest' that an individual or a group has in acquiring something. These conflicts and disputes should also initially be engaged between the individuals in a more consensus seeking approach such as consultation and negotiation and facilitators and mediators could also be engaged where the parties agree to this. Should 'interest' matters not be resolved consensually or amicably, individuals and groups might resort to other forms of action including demonstrations, occupations, violence and in the workplace, strike action, lockouts and pickets. Certain types of action in labour or workplace interest disputes are protected by legislation, however, other types of action may not be and may even be illegal with the need to remedy it through legal (adjudicative) channels and mechanisms.

DIE VYF HOOFBENADERINGS TOT KONFLIKHANTERING

- **Konfronteer** die konflik op 'n besliste wyse.
- **Samewerking** met die individue/partye.
- **Skikking**.
- **Akkommodasie** van die individue/partye.
- **Ignoreer** die konflik.

Daar is geen regte of verkeerde benadering wanneer dit kom by konflikhantering en geskilbeslegting nie. Enige van bogenoemde benaderings, indien 'toepaslik' aangewend, kan daartoe aanleiding gee dat die konflik óf doeltreffend óf ondoeltreffend gehanteer word.

Om jou eie 'voorkeur' of meer natuurlike konflikhanteringsstyl te bepaal, kan jy hierdie webwerf besoek – jy sal ook terugvoering ontvang oor wanneer die betrokke styl minder of meer doeltreffend in die gegewe omstandighede is:

<https://www.usip.org/public-education/students/conflict-styles-assessment>

GESKILLE MET BETREKKING TOT REGTE EN BELANGE

Geskille rondom regte het hul oorsprong in die reg tot iets wat vervat is in wetgewing (statute, regspraak, die gemeenereg) en ander regtens-bindende ooreenkomste. As eerste stap in sodanige konflik of geskil, word die partye aangemoedig om te probeer om die saak op te los deur konsensus te bereik of deur middel van dialoog en kommunikasie, met of sonder die hulp van 'n fasiliteerder of bemiddelaar. Indien die individue en/of partye nie 'n vriendelike ooreenkoms of skikking kan bereik nie, sal hulle die reg hê (in meeste gevalle) om voort te gaan met 'n beregtigingsproses soos arbitrasie of 'n hofgeding.

Belange-geskille en -konflik ontstaan nie as gevolg van regte nie maar eerder weens 'n 'belang' wat 'n individu of groep het in die verkryging van iets. Hierdie konflikte en geskille moet ook aanvanklik tussen die individue aangespreek word met die oog daarop om moontlik konsensus te bereik, bv. beraadslaging en onderhandeling. Fasiliteerders en bemiddelaars kan ook gebruik word waar die partye daartoe instem. Indien konflik rondom 'belange' nie konsensueel of vreedsaam opgelos kan word nie, kan individue en groepe hul moontlik wend tot ander vorms van optrede, met inbegrip van protesoptogte, besetting, geweld, en, in die werkplek, stakings, uitsluiting en plakkaatdemonstrasies (picketing). Sekere tipes optrede kan selfs onwettig wees, in welke geval dit deur middel van regskanale en -meganismes beslis sal moet word.



MECHANISMS TO EFFECTIVELY MANAGE CONFLICT AND RESOLVE DISPUTES

- Effective and credible **procedures** and processes for people and groups to **raise issues, concerns, grievances, disputes and conflict**.
- Effective conflict management and dispute resolution early warning and preventative mechanisms established through the setting up of effective representative **committees / forums / structures** for consensus seeking and relationship building (see Annexure 1).
- The **use of external independent facilitators and mediators** ('conflict coaches') to assist the parties in their conflicts and disputes. (See Annexure 6 for more information about mediation; when to use it and who should be involved).

The above mechanisms for managing conflict and for resolving different types of disputes have been presented below in the **annexures**, with each setting out a practical guide on 'how to' implement the mechanism or process. A differentiation has been made between dealing with **labour and workplace conflicts and disputes** and conflicts pertaining to other (non-labour/workplace) areas, often referred to more broadly as '**community conflicts and disputes**'. These can include:

- **The rights and responsibilities of landowners and occupiers.**
- **NEMA related conflicts and disputes.**
- **ESTA related conflicts and disputes.**
- **Other types of disputes, including land claims, trespassing and theft.**

BARRIERS TO EFFECTIVE DISPUTE RESOLUTION

It is important that the 'ground rules' at the start of dispute resolution (discussed later) include a differentiation between dispute resolution (the process of finding solutions to a point of disagreement or conflict) and dispute management (the allocation of rights, responsibilities and blame in order to close a matter). Dispute resolution, if it is to succeed, requires a reconciliation of the human components of the conflict.

MEGANISMES VIR DOELTREFFENDE KONFLIKHANTERING EN GESKILBESLEGTING

- Effektiewe en geloofwaardige **prosedures** en prosesse vir mense en groepe **om kwelpunte, besware, griewe, geskille en konflikte te opper / aan te meld**.
- Vroeë waarskuwing- en voorkomingsmeganismes vir effektiewe konflikthantering en geskilbeslegting word bewerkstellig deur doeltreffende, verteenwoordigende **komitees / forums / strukture** in plek te hê om konsensus te bereik en verhoudinge te bou (**sien Bylae 1**).
- Die **gebruik van eksterne onafhanklike fasiliteerders en bemiddelaars** (conflict coaches) om die partye behulpsaan te wees met betrekking tot konflikte en geskille. (Verwys na **Bylae 6** vir verdere inligting oor bemiddeling, wanneer om dit te gebruik en wie betrokke moet wees.)

Bogenoemde meganismes vir konflikthantering en die beslegting van verskillende soorte geskille word aangespreek in die hieropvolgende **bylaes**. Elkeen bied praktiese riglyne oor 'hoe' die meganisme of proses geïmplementeer moet word. 'n Onderskeid word getref tussen die hantering van **arbeid- en werkplekverwante konflikte** en -geskille, en konflikte met betrekking tot ander (nie-arbeid/werkplek) aspekte, waarna daar dikwels verwys word as '**gemeenskapskonflikte en -geskille**', wat die volgende kan insluit:

- **Die regte en verantwoordelikhede van grondeienaars en bewoners.**
- **Omgewingswetgewing (NEMA)-verwante konflikte en geskille.**
- **Verblyfreg (ESTA)-verwante konflikte en geskille.**
- **Ander soorte geskille, insluitend grondeise, betreding en diefstal.**

STRUIKELBLOKKE TOT DOELTREFFENDE GESKILBESLEGTING

Dit is belangrik dat daar in die 'grondbeginsels' aan die begin van die **geskilbeslegtingsproses** (word later bespreek) 'n onderskeid getref word tussen **geskilbeslegting** (die proses om oplossings die vind waar daar meningsverskille of konflik bestaan) en geskilhantering (die toekenning van regte, verantwoordelikhede en blaam om die saak af te sluit). Vir geskilbeslegting om te slaag, moet daar versoening bewerkstellig word tussen die menslike komponente van die konflik.

LAND RELATED CONFLICT

GRONDVERWANTE KONFLIK

Land and land reform are emotive issues, often leading to conflict on farms. Unresolved restitution and labour tenant claims, tenure disputes, disputes regarding visitation of graves, visitors, livestock, access to water etc. can easily escalate and get out of hand. Often different understanding of the rights and duties conferred by laws such as the Labour Tenants Act (LTA) and the Extension of Security of Tenure Act (ESTA) are at the root of such disputes. Often persons or organisations with agendas (political or otherwise) fuel these tensions. A serious lack of implementation of settlements and legislation by the responsible departments cause serious frustration and can escalate conflict.

There is no statutory body akin to the CCMA that has been set up to mediate and arbitrate labour disputes for land. This is problematic, because parties to such disputes are then left with few options to come to amicable settlements. These matters often either end up in court or are not dealt with at all and keeps on simmering until it turns violent. Litigation can be prohibitively expensive and often does not address the root causes of conflict.

Training by reputable service providers in land reform legislation provisions and rights and duties conferred by such legislation may be helpful.

The ESTA Amendment Act provides for land rights management committees that will consist of representatives of occupiers, labour tenants, communal property associations, various land owners, officials from the Department of Rural Development and Land Reform, state institutions with vested interests in land matters, various relevant non-government organisations and civil society organisations, local farming and business development agencies, organised labour and representatives of the local government structures. One of the functions of these committees, once they are set up, will be to identify and monitor land rights disputes observed through adequate participation of all actors whose relative rights are contested; and take steps to resolve a dispute. In the event that a dispute cannot be resolved, refer such dispute to the Land Rights Management Board.

The proposed Land Court Bill also provides for the court to order compulsory mediation in a land dispute. The court may specify the time, date and the place where such process is to start; and appoint a fit and proper person as mediator to chair the first meeting between the parties. The parties may at any time during the course of the mediation, by agreement, appoint another person to mediate the dispute. If the parties to the mediation are not able to resolve the matter to the satisfaction of all the parties, or one or more of the parties to the mediation so request, the mediator must, in the prescribed manner, refer the matter to the Court for adjudication.

Grond en grondhervorming is emosionele aangeleenthede wat dikwels aanleiding gee tot konflik op plase. Onopgeloste restituisie- en huurarbeiderseise, verblyfsgeskille, geskille rakende grafte, besoekers, vee, toegang tot water ens. kan maklik eskaleer en hande uitruk. Verskillende persepsies van regte en verpligtinge ingevolge wetgewing soos die Huurarbeiderswet (LTA) en die Wet op die Uitbreiding van Verblyfsekerheid (ESTA) is dikwels onderliggend aan sodanige geskille. Mense of organisasies met agendas (politie of andersins) vererger dikwels hierdie spanning. 'n Gebrek aan implementering van skikkings en wetgewing deur die verantwoordelike departemente veroorsaak erge frustrasie en kan die konflik laat eskaleer.

Daar is geen statutêre liggaam soos die CCMA wat bemiddeling en arbitrasie in die geval van grondverwante geskille behartig nie. Dit is problematies omdat die partye tot sodanige geskille min opsies het om vreedsame skikkings te bereik. Hierdie aangeleenthede eindig dikwels in die hof of word geensins aangespreek nie en sluimer bloot voort totdat dit tot geweld lei. Litigasie kan ontsettend duur wees en spreek dikwels nie die onderliggende oorsake van die konflik aan nie.

Opleiding deur betroubare diensverskaffers met betrekking tot die bepalings van grondhervormingswetgewing, asook regte en verpligtinge aangaande sodanige wetgewing, kan van hulp wees in hierdie verband.

Die Verblyfreg-wysigingswet maak voorsiening vir grondregte-bestuurskomitees wat sal bestaan uit verteenwoordigers van bewoners, huurarbeiders, gemeenskaplike eiendomsverenigings, grondeienaars, amptenare van die Departement van Landbou, Landelike Ontwikkeling en Grondhervorming, staatsinstellings met gevestigde belange in grondsake, verskeie tersaaklike nie-regeringsorganisasies en burgerlike samelewingsorganisasies, plaaslike boerdery- en besigheidsontwikkeling-agentskappe, georganiseerde arbeid en verteenwoordigers van plaaslike regeringstrukture. Een van die funksies van hierdie komitees, nadat hulle saamgestel is, is om grondregte-geskille te identifiseer en te monitor deur genoegsame deelname van alle spelers wie se relatiewe regte in dispuut is, en om stappe te neem om sodanige geskille te besleg. In die geval waar 'n geskil nie besleg kan word nie, word dit verwys na die Grondregtebestuursraad.

Die voorgestelde Grondhof-wetsontwerp maak ook voorsiening vir die hof om 'n bevel uit te reik vir verpligte bemiddeling in 'n grondgeskil. Die hof mag die tyd, datum en plek waar sodanige proses moet begin spesifiseer, en 'n bekwame persoon aanstel as bemiddelaar om te dien as voorsitter van die eerste vergadering tussen die partye. Die partye mag te eniger tyd gedurende die bemiddeling, per ooreenkoms, 'n ander persoon as bemiddelaar aanwys. Indien die partye tot die bemiddeling nie daarin slaag om die geskil tot die tevredenheid van alle partye op te los nie, of indien een of meer van die partye tot die bemiddeling dit versoek, moet die bemiddelaar, op die voorgeskrewe wyse, die saak na die hof verwys vir 'n beslissing.

MANAGING WORKPLACE CONFLICT AND DISPUTE RESOLUTION

KONFLIKHANTERING EN GESKILBESLEGTING IN DIE WERKPLEK

RIGHTS AND DUTIES OF EMPLOYERS AND WORKERS

The rights and duties of employers and workers are found mainly in the common law, statutes, collective agreements, policies, procedures, practices and individual contracts of employment.

In terms of the common law:

Employers are required to:

- Provide work for their workers.
- Pay their workers remuneration due.
- Provide a healthy and safe working environment.

Workers are required to:

- Attend work regularly and punctually.
- Work efficiently and diligently (comply with all reasonable, lawful instructions).
- Further the good of their employer's business.

The employer's right to set valid and reasonable workplace rules and standards, to discipline and to manage poor performance, is recognised in the LRA and the Code of Good Practice Dismissal (Schedule 8).

The workers' right to fairness (substantive and procedural) is also recognised in the LRA (section 185) and the Code of Good Practice (Schedule 8).

THE SOURCE OF OUR WORKPLACE RULES AND STANDARDS

The foundation for our **labour relations, dispute resolution and workplace conflict management** are to be found in:

- Section 23(1) of the **Constitution of the Republic of South Africa**, Act 108 of 1996 that states that 'Everyone has the right to fair labour practices,' and
- The **Labour Relations Act (LRA)**, Act 66 of 1995, where section 1 states its purpose to be 'the advancement of economic development, social justice, **labour peace** and the democratisation of the workplace'.

LRA section 1(d) speaks specifically to labour peace and to the promotion of –

- orderly collective bargaining.
- collective bargaining at sectoral level.
- employee participation in decision-making in the workplace; and**
- the effective resolution of labour disputes.**

REGTE EN VERPLIGTINGE VAN WERKGEWERS EN WERKNEMERS

Die regte en verpligtinge van werkgewers en werknemers word hoofsaaklik geregleer ingevolge die gemene reg, wetgewing, kollektiewe ooreenkomste, beleid, prosedures, praktyke en individuele dienskontrakte.

Ingevolge die gemene reg:

Werkgewers is verplig om:

- Werk te verskaf aan hul werknemers.
- Hul werknemers die vergoeding te betaal wat hulle toekom.
- 'n Gesonde en veilige werksomgewing te voorsien.

Werknemers is verplig om:

- Hul werk gereeld en stiptelik te verrig.
- Hul werk deeglik en pligsgetrou te verrig (ingevolge alle redelike, wettige instruksies).
- Ter bevordering van die werkgewer se besigheid te werk.

Die werkgewer se reg om geldige en redelike werkplekreëls en -standaarde te stel; om dissipline te handhaaf; en om swak prestasie te bestuur, word erken in die Wet op Arbeidsverhoudinge (WAV) en die Kode van Goeie Praktyk: Ontslag (Skedule 8).

Die werknemers se reg tot billikheid (substantief en prosessueel) word ook erken in artikel 185 van die Wet op Arbeidsverhoudinge en in die Kode van Goeie Praktyk (Skedule 8).

DIE OORSPRONG VAN ONS WERKPLEKREËLS EN -STANDAARDE

Die grondslag van ons **arbeidsverhoudinge, geskilbeslegting en konflikthantering in die werkplek** is te vinde in:

- Artikel 23(1) van die **Grondwet van die Republiek van Suid-Afrika**, Wet 108 van 1996, naamlik: 'Elkeen het die reg op billike arbeidspraktyke', en
- Artikel 1 van die **Wet op Arbeidsverhoudinge (WAV)**, Wet 66 van 1995, wat die doel van die wet soos volg beskryf: 'om ekonomiese ontwikkeling, maatskaplike geregtigheid, **arbeidsvrede** en die demokratisering van die werkplek te bevorder'.

Artikel 1(d) van die WAV verwys spesifiek na arbeidsvrede en die bevordering van –

- ordelike kollektiewe bedinging;
- kollektiewe bedinging op sektorale vlak;

- The **LRA Code of Good Practice: Collective Bargaining, Industrial Action and Picketing** refers to section 1(d) and emphasises the importance of –
 - i. promoting trust and mutual understanding and constructive engagement; and
 - ii. promoting the maximum involvement of workers and worker representatives in negotiations.

A key principle of the LRA is that employers and workers should treat each other with mutual respect.

Meaningful social dialogue, collaboration and co-determination are key intentions of the above statutes and code.

The Agri SA conflict management and dispute resolution guide proposes **three mechanisms for effectively engaging workplace conflict and labour disputes**.

1. The first is the **individual grievance mechanism (Annexure 2)**.
2. The second is the establishment of a **workplace/labour communication forum (Annexure 3)**.
3. The third is the engagement of an **external workplace (or community where appropriate) mediator or facilitator for workplace mediation/facilitation (Annexure 4)**.

In addition to this guide, training and capacity building for the setting up of the processes and structures mentioned, as well as the training, capacity building and mentoring for the skills required by individuals and groups to effectively participate and engage in the mechanisms are also available through the organisations listed in Annexure 5.

- iii. **werknemerdeelname aan besluitneming in die werkplek; en**
- iv. **die doeltreffende beslegting van arbeidsgeskille.**

- Die **WAV Kode van Goeie Bedryfspraktyk: Kollektiewe Bedinging, Arbeidsoptrede en Plakkaatprotes** verwys na artikel 1(d) en beklemtoon die bevordering van –
 - i. vertroue en wedersydse begrip en konstruktiewe betrokkenheid; en
 - ii. maksimum betrokkenheid deur werknemers en werknemerverteenwoordigers in onderhandelinge.

'n Sleutelbeginsel van die WAV is dat werkgewers en werknemers mekaar met wedersydse respek moet behandel.

Sinvolle sosiale dialoog, samewerking en gesamentlike besluitneming is sleuteloogmerke van die bogenoemde wette en kode.

Agri SA se Konflikthantering- en Geskilbeslegting-handleiding stel **drie meganismes vir doeltreffende skakeling rondom werkplekkonflik en arbeidsgeskille** voor:

1. Die eerste is die **individuele griewe-meganisme (Bylae 2)**.
2. Die tweede is die **daarstelling van 'n werkplek/ arbeidskommunikasieforum (Bylae 3)**.
3. Die derde is die gebruik van 'n **eksterne werkplek- (of waar van toepassing, 'n gemeenskapsbemiddelaar of -fasiliteerder vir bemiddeling/fasilitering in die werkplek (Bylae 4)**.

Benewens hierdie handleiding, is daar ook 'n lys van organisasies (sien Bylae 5) wat kan help met opleiding en kapasiteitsbou om bogenoemde prosesse en strukture te skep, asook om aan individue en groepe die nodige opleiding, kapasiteitsbou en mentorskap te voorsien om doeltreffend aan sodanige meganismes te kan deelneem.



CONFLICT MANAGEMENT AND DISPUTE RESOLUTION ON FARMS THROUGH CONSENSUS SEEKING AND TRUST BUILDING

KONFLIKHANTERING EN GESKILBESLEGTING OP PLASE DEUR KONSENSUS TE BEREIK EN VERTROUW TE BOU

Committees, forums and structures may effectively be established in communities and in various areas for 'interested and affected' individuals and groups to consult, communicate and engage each other in a proactive and collaborative manner on matters of 'mutual interest' affecting both the workplace (the farm) and the community.

In addition to internal labour and workplace structures, committees and communication forums can also be established with representatives of the farm or various farms (the respective workplaces), government officials and the 'community' to deal with matters of mutual interest and concern to the parties involved. The involvement, independence and commitment from the relevant government officials is a critical factor in ensuring successful and sustainable outcomes.

The setting up of these structures/mechanisms may be done by and between the parties themselves or they could enlist the assistance of an independent facilitator or mediator to help them in doing this, including the drafting up of an agreement (the terms of reference) between the parties on how the structure will operate.

'Buy in' to the structure and representation on and participation in the structure will be essential for it to have credibility and for it to operate effectively. Facilitators listed in Annexure 5 below could assist with this (often referred to as 'dispute systems design'), where it would be beneficial for the parties to have the knowledge and skills of an independent experienced person in this field.

A process outline for the chairing and the facilitation of joint problem-solving meetings is set out below. The chairperson of the meeting and the representatives at the meeting should be agreed to in the terms of reference for the meeting or forum, the chairperson could also with the agreement of the parties (in the terms of reference), be rotated, giving different members the opportunity to play this role. If the parties so elect, an independent facilitator could also chair the initial meetings to get the process up and running and simultaneously provide through their skills as a facilitator and a mediator; capacity building, mentoring and training of the chairperson/s and representatives elected to the 'forum' or committee.

Komitees, forums en strukture kan effektief saamgestel word in gemeenskappe en in verskeie gebiede vir 'belanghebbende en geaffekteerde' individue en groepe om op 'n praktiese en samewerkende wyse met mekaar te beraadslaag, kommunikeer en gesprek te voer oor sake van 'wedersydse belang' wat 'n impak het op beide die werkplek (die plaas) en die gemeenskap.

Benewens interne arbeids- en werkplekstrukture, kan komitees en -kommunikasieforums ook ingestel word, met verteenwoordigers van die plaas of verskeie plase (die onderskeie werkplekke), regeringsamptenare en die 'gemeenskap', om te handel met sake van wedersydse belang vir die betrokke partye. Die betrokkenheid van die tersaaklike regeringsamptenare is 'n kritieke faktor om suksesvolle en volhoubare uitkomst te verseker.

Die opstel van sodanige strukture/meganismes kan deur en tussen die partye as sulks gedoen word, of hulle kan 'n onafhanklike fasiliteerder of bemiddelaar nader om hulle daarmee te help, insluitend die opstel van 'n ooreenkoms (verwysingsraamwerk) tussen die partye oor hoe die struktuur bedryf sal word.

Betrokkenheid by, asook verteenwoordiging in en deelname aan die struktuur, sal noodsaaklik wees met die oog op geloofwaardigheid en die doeltreffende bedryf daarvan. Fasiliteerders gelys in Bylae 5 hieronder kan daarmee behulpsaam wees waar dit voordelig vir die partye sal wees om toegang tot die kennis en vaardighede van 'n onafhanklike ervare persoon in hierdie veld te hê (dikwels na verwys as 'dispuutstelselontwerper').

Die proses rondom die voorsitterskap en fasilitering van gesamentlike probleemoplossingsvergaderings word hieronder uiteengesit. Die voorsitter en verteenwoordigers by die vergadering moet ooreenkom op 'n verwysingsraamwerk vir die vergadering of forum. Die voorsitterskap kan ook geroteer word met die instemming van die partye (in die verwysingsraamwerk) ten einde verskillende lede 'n geleentheid te gee om hierdie rol te vervul. Indien die partye akkoord gaan, kan 'n onafhanklike fasiliteerder ook as voorsitter tydens die aanvanklike vergaderings dien om die proses aan die gang te kry en, gegewe hul vaardighede as fasiliteerder en bemiddelaar, terselfdertyd behulpsaam wees met kapasiteitsbou, mentorskap en opleiding vir die voorsitters en verteenwoordigers wat tot die 'forum' of komitee verkies word.



A PROPOSED MEETING / JOINT PROBLEM SOLVING MODEL

Stage One:

Introduction (Creating the 'climate' for consensual dialogue)

- Introductions, establishing meeting protocols/'ground rules' (creating a conducive problem solving environment).
- Clarifying purpose for meeting, issues etc.
- Agenda for meeting.
- Address minutes/outstanding issues from previous meeting/s.

Stage Two:

(Analysis)

- Engage in discussion about agenda items, seek to understand each other's issues, needs, concerns and inputs.
- Explore each other's needs and interests and attempt to prioritise the order in which to address the issues.

Stage Three:

(Problem solving)

- Engage in consultation and joint problem solving to generate options for possible solutions.

Stage Four:

(Designing)

- Jointly identify 'objective criteria' (SWOT analysis etc.) to select and determine action plans.
- What is to be done?
- How is it to be done?
- Who is to be responsible for doing it?
- When should it be done?
- Draft/confirm 'action plan' and 'next steps'.

'N VOORGESTELDE VERGADERING- / GESAMENTLIKE PROBLEEM-OPLOSSINGSMODEL

Stadium Een:

Bekendstelling (Skep 'n 'klimaat' vir konsensuele dialoog)

- Bekendstellings, formuleer vergaderingprotokols/'grondbeginsels', (skep 'n gunstige omgewing vir probleemoplossing).
- Verduidelik die doel van die vergadering, besprekingspunte ens.
- Sakelys van die vergadering.
- Bespreek die die notule / uitstaande punte van vorige vergadering(s).

Stadium Twee:

(Ontleding)

- Bespreek items op die sakelys; probeer om mekaar se kwelpunte, besware en insette te verstaan.
- Verken mekaar se behoeftes en belange en probeer om prioriteite te identifiseer vir bespreking.

Stadium Drie:

(Probleemoplossing)

- Beraadslaging en 'n gesamentlike poging om opsies vir moontlike probleem-oplossing te vind.

Stadium Vier:

(Ontwerp)

- Gesamentlike identifisering van 'objektiewe kriteria' (SWOT-ontleding ens.) om aksieplanne te selekteer en te bepaal.
- Wat moet gedoen word?
- Hoe moet dit gedoen word?
- Wie is verantwoordelik daarvoor om dit te doen?
- Teen wanneer moet dit gedoen word?
- Formuleer/bevestig 'aksieplan' en 'volgende stappe'.

WORKPLACE GRIEVANCE PROCEDURE

WERKPLEKGRIEWE- PROSEDURE

OBJECTIVE OF THE PROCEDURE

Individual and group conflict is inherent and inevitable in workplaces, but it is also completely manageable, and it can lead to positive outcomes if engaged constructively.

It is preferable to first attempt to manage conflicts and to resolve disputes in as informal a manner as possible, however in order to maintain a healthy working environment, employers should, in addition, provide workers with a formal process for raising grievances.

The grievance procedure should attempt to resolve grievances as close to their source as possible, as soon as possible and through meaningful consultation, dialogue and joint problem solving with worker participation in this decision making.

KEY PRINCIPLES UNDERLYING THE PROCEDURE

The grievance procedure should be and perceived to be legitimate and credible and employees/workers should feel that they are able to raise their grievances effectively and without any fear of victimisation or recrimination.

To ensure the legitimacy and credibility of the Grievance Procedure, employers and workers should jointly engage on the following:

1. Where there is **an existing grievance procedure** in place, look at the procedure below (in this Annexure) to determine whether there is any necessity to amend the current procedure.
2. Where **no grievance procedure** exists, consult jointly over the adoption of the procedure below or a similar one best suited to the respective workplace environment.
3. **Implement the grievance procedure and brief all managers, supervisors and workers on the use of the procedure.**
4. Following the awareness sessions, **training** should be facilitated where necessary for capacitating managers, supervisors and workers **on how to effectively implement the procedure.**
5. **Copies of the procedure** should be made **easily available and accessible** to all workers.
6. The grievance process should focus on **constructive engagement** and dialogue between the parties with the aim of identifying the issues in dispute, and agreeing mutually acceptable, sustainable solutions.
7. The grievance process should have **agreed time frames for feedback**, and these should be adhered to to ensure the legitimacy of the procedure.
8. Where the **confidentiality** of the worker's grievance is requested, this should also be adhered to.

DOEL VAN PROSEDURE

Individuele en groepskonflikte is inherent aan en onvermydelik in werkplekke, maar dit is ook geheel en al bestuurbaar en kan lei tot positiewe uitkomstes indien gesprekvoering konstruktief geskied.

Daar moet verkieslik eers 'n poging aangewend word om konflik te bestuur en om geskille so informeel as moontlik op te los. Ten einde 'n gesonde werksomgewing te handhaaf, moet werkgewers egter ook voorsiening maak vir 'n formele proses waarvolgens werknemers hul griewe kan lug.

Die doel van die grieweproses moet wees om griewe so naby moontlik aan die oorsprong op te los – so spoedig moontlik en deur middel van sinvolle beraadslaging, dialoog en gesamentlike probleem-oplossing, asook met werknemers se deelname aan sodanige besluitneming.

SLEUTELBEGINSELS ONDERLIGGEND AAN DIE PROSEDURE

Die grieweprosedure moet legitiem en geloofwaardig wees (en as sodanig geag word) en werknemers/workers moet voel dat hulle hul griewe effektief en sonder enige vrees vir viktimisasie of beskuldiging kan lug.

Om die legitimiteit en geloofwaardigheid van die grieweprosedure te verseker, moet werkgewers en werknemers gesamentlik beraadslaag oor die volgende:

1. Waar 'n **bestaande grieweprosedure** in plek is, verwys na die prosedure hieronder (in hierdie bylae) om te bepaal of dit nodig is om die huidige prosedure te wysig.
2. Waar **geen grieweprosedure** in plek is nie, beraadslaag gesamentlik oor die aanvaarding van hierdie prosedure of 'n soortgelyke een wat meer toepaslik is in die betrokke omgewing.
3. **Implementeer die grieweprosedure en lig alle bestuurders, toesighouers en werknemers in oor die toepassing van die prosedure.**
4. Ná afloop van die bewusmakingssessies moet **opleiding** gefasiliteer word waar nodig om bestuurders, toesighouers en werknemers in staat te stel **om die prosedure doeltreffend te implementeer.**
5. **Afskrifte van die prosedure** moet **geredelik beskikbaar en toeganklik** vir alle werknemers wees.
6. Die grieweprosedureproses moet fokus op **konstruktiewe gesprekvoering** en dialoog tussen die partye ten einde die redes vir die geskil te identifiseer en om wedersyds aanvaarbare en volhoubare oplossings te vind.
7. Die grieweprosedure moet onderhewig wees aan **ooreengekome spertye vir terugvoering**, en daar moet voldoen word aan sodanige spertye om die legitimiteit van die prosedure te verseker.

9. The process should ensure that grievances are settled as near to their point of origin as possible, and that they are **settled in a speedy and fair manner**.
10. **Responsibility for the implementation** of the grievance procedure should be given to a **senior manager** who has the respect and credibility with the parties for their impartiality.

GUIDELINES FOR EMPLOYERS AND WORKERS ON HOW TO IMPLEMENT AND HOW TO USE THE GRIEVANCE PROCEDURE

What is a grievance?

- It is any concern, unhappiness or discontent that a worker might have about a workplace issue.

Who can raise a grievance?

- Any worker (or in certain specific circumstances a group of workers).

How is a grievance raised?

- Workers may raise their grievance/s informally or formally in terms of the grievance procedure.
- It is in the interests of employers and workers that workers be given the opportunity to raise their grievances, and that in so doing they:
 - Be given a fair hearing by their immediate supervisor/manager concerning any grievance they may wish to raise.
 - Have the right to appeal to a more senior manager against a decision made by their supervisor/manager.
 - Have the right to be accompanied by a fellow worker of their choice or a union representative (where there is a recognition agreement in place) when raising a grievance.
- While it is preferable that workers use the grievance form provided below or a similar one adopted by the respective workplace to raise grievances, should workers wish to raise their grievance with their supervisor (stage one of the process), or to the next higher level of management (stage two of the process) in another appropriate manner or format, they should be permitted to do so.
- Such manner may include a fellow worker or a worker representative raising the matter on their behalf.

8. Waar daar 'n versoek is dat die werknemer se grief **vertroulik** gehanteer word, moet daar voldoen word aan sodanige versoek.
9. Die proses moet verseker dat griewe so naby moontlik aan die punt van oorsprong geskik word en dat dit **op 'n spoedige en billike wyse geskied**.
10. **Verantwoordelikheid vir die implementering** van die grieweprosedure moet toegeken word aan 'n **senior bestuurder** wat die partye as geloofwaardig ag en respekteer vir sy/haar onpartydigheid.

RIGLYNE VIR WERKGEWERS EN WERKNEMERS OOR HOE OM DIE GRIEWEPROSEDURE TE IMPLEMENTEER EN TE GEBRUIK

Wat is 'n grief?

- 'n Grief is enige beswaar, ontevredenheid of ongelukkigheid wat 'n werknemer ervaar oor enigiets in die werkplek.

Wie kan griewe lug?

- Enige werknemer (of in sekere omstandighede 'n groep werknemers).

Hoe word griewe gelug?

- Werknemers mag hul griewe informeel, of formeel ingevolge die grieweprosedure, lug.
- Dit is in die belang van werkgewers sowel as werknemers dat werkers 'n geleentheid gegun word om hul griewe te lug en dat hulle, in die proses:
 - Op billike wyse aangehoor word deur hul onmiddellike toesighouer/bestuurder wanneer hulle enige griewe wil lug.
 - Die reg het om appèl aan te teken by 'n meer senior bestuurder teen 'n besluit van die toesighouer/bestuur.
 - Die reg het om bygestaan te word deur 'n mede-werknemer van hul keuse of 'n vakbondvertegenwoordiger (waar 'n erkenningsooreenkoms in plek is) wanneer 'n grief aanhangig gemaak word.
- Terwyl dit verkieslik is dat werknemers gebruik maak van die griewevorm wat hieronder voorsien word, of 'n soortgelyke een wat deur die betrokke werkplek aanvaar is, moet werknemers ook toegelaat word om hul griewe op 'n ander toepaslike wyse, of in 'n ander formaat, met hul toesighouer (stadium een van die proses) of 'n hoër bestuursvlak (stadium twee) op te neem.
- Hierdie wyse kan insluit die moontlikheid dat 'n mede-werknemer of werknemersvertegenwoordiger die grief namens die werknemer lug.

What does a grievance form look like and where should the forms be kept?

- A copy of a grievance form has been attached below.
- Grievance forms should be made available to all workers in places that are easily and confidentially accessible to them, examples of such places could be change rooms, workshops and other places regularly frequented by workers.

Who is the grievance lodged with?

- The grievance is lodged with the worker's immediate supervisor/manager. Where the grievance is against the supervisor/manager, the worker may raise the grievance with the supervisor's manager. This is done by the worker handing the grievance to the particular supervisor or manager.
- Where it is the worker's supervisor/manager that they are raising the grievance against:
 - The worker may request that another manager hears his/her grievance where the grievance is against his/her immediate manager/supervisor.
 - Such permission should not be unreasonably refused by the supervisors/managers concerned.
 - Where the grievance is of such a nature that it is felt that an external independent person should hear the grievance, such a person may be engaged (contact details are in Annexure 5).

What should a supervisor/manager do if a grievance is lodged?

On receipt of a grievance from a worker, the applicable supervisor/manager should investigate the matter within the time frames set in the procedure and convene any necessary meetings in this regard.

STAGE ONE: Where the grievance is raised verbally with the immediate supervisor/ manager.

The immediate supervisor/manager must:

- Give the worker an opportunity to freely express their concerns in confidence.
- Listen to the worker's grievance and attempt to identify the issues of concern.
- Provide the worker with a decision regarding the grievance as quickly as reasonably possible.

The parties should meet and seek to resolve the grievance within two working days of the grievance being raised by the worker.

Hoe lyk 'n griewevorm en waar moet die vorms gehou word?

- 'n Afskrif van 'n griewevorm verskyn hieronder.
- Griewevorms moet beskikbaar wees vir alle werkers op 'n plek wat maklik en vertroulik toeganklik vir hulle is, bv. kleedkamers, werkwinkels en ander plekke wat werknemers dikwels besoek.

By wie moet die griewe aanhangig gemaak word?

- Die grief word opgeneem met die werknemer se onmiddellike toesighouer/bestuurder. Waar die grief verband hou met die toesighouer/bestuurder, mag die werknemer die grief opneem met die toesighouer se bestuurder. In hierdie geval verwys die werknemer die grief na die betrokke toesighouer of bestuurder.
- Waar die grief verband hou met die werknemer se toesighouer/bestuurder:
 - Die werknemer mag versoek dat 'n ander bestuurder sy/haar grief aanhoor waar die grief teen sy/haar onmiddellike bestuurder/toesighouer is.
 - Die betrokke toesighouers/bestuurders mag nie sodanige versoek onredelik weier nie.
 - Waar die grief van sodanige aard is dat daar gevoel word dat 'n eksterne onafhanklike persoon die grief moet aanhoor, mag só 'n persoon aangestel word (kontakbesonderhede in Bylae 5).

Wat moet 'n toesighouer/bestuurder doen indien 'n grief aanhangig gemaak is?

By ontvangs van 'n werker se grief, moet die betrokke toesighouer/bestuurder die saak ondersoek binne die spertye soos uiteengesit in die prosedure en die nodige vergaderings vir hierdie doel belê.

STADIUM EEN: Waar die grief mondelings met die onmiddellike toesighouer/bestuurder opgeneem word, moet die onmiddellike toesighouer/bestuurder:

- 'n Geleentheid aan die werknemer bied om vryelik en vertroulik sy/haar griewe te lug.
- Na die werknemer se grief luister en 'n poging aanwend om die redes vir die grief te identifiseer.
- So spoedig redelikerwys moontlik die werknemer voorsien van 'n besluit aangaande die grief.

Die partye moet vergader en probeer om die grief aan te spreek binne twee werkdade vanaf die datum waarop die werknemer die grief gelug het.

STAGE TWO: Where a grievance is raised formally (on a grievance form or in another appropriate manner or format), with the next level of management:

- On receipt of the grievance form, the senior manager must schedule a formal grievance meeting, as soon as reasonably possible.
- The worker, and any other relevant parties, should be provided with written notice of the grievance meeting, preferably using the form **Notice of Formal Grievance Meeting** (attached below).
- The worker who lodged the grievance should be informed of their right to the assistance of a fellow worker (or recognised trade union representative).
- The format of the grievance hearing will depend on the nature of the grievance raised by the worker and may range from a discussion between the parties to a formal enquiry (where the relevant parties are allowed the opportunity to present their version and, where necessary, call relevant witnesses).
- The senior manager will be required to provide the worker who lodged the grievance with their written decision. This should be recorded in the space provided in the grievance form.

The parties should meet and seek to resolve the grievance within three working days of the formal grievance being raised by the worker.

What if workers believe that they are being victimised or harassed for raising a grievance?

- Workers who lodge grievances using the procedure shall not be victimised or harassed. Should a worker believe they are being victimised or harassed, they may raise this with the senior manager overseeing the grievance procedure. This manager should promptly investigate the worker's claim and take whatever steps necessary to address the issue including any appropriate disciplinary action against the victimiser/harasser where a person is found guilty of such misconduct.

Should the worker still not be satisfied with the decision made by the senior manager they may (depending on the nature of the grievance)* refer their matter to the Commission for Conciliation Mediation & Arbitration (CCMA). (Contact details in Annexure 4).

*(Disputes concerning unfair dismissals, unfair labour practices and unfair discrimination can be referred to the CCMA by completing an LRA Form 7.11. The LRA Form 7.11 can be obtained at the CCMA's offices, and it can also be downloaded from the CCMA website www.ccma.org.za)

STADIUM TWEE: Waar 'n grief formeel opgeneem word (op 'n Griewevorm, of op 'n ander toepaslike wyse of in 'n ander formaat) met die volgende bestuursvlak:

- By ontvangs van die griewevorm, moet die senior bestuurder so spoedig moontlik 'n formele griewevergadering belê.
- Die werknemer en enige ander betrokke persone moet skriftelik in kennis gestel word van die vergadering, verkieslik deur gebruik te maak van die **Kennisgewing van Formele Griewevergadering-vorm** (sien hieronder).
- Die werknemer wat die grief aanhangig gemaak het, moet ingelig word oor sy reg tot bystand deur 'n mede-werknemer (of erkende vakbondvertegenwoordiger).
- Die formaat van die griewevergadering sal afhang van die aard van die grief wat die werknemer lug en kan wissel van 'n gesprek tussen die partye tot 'n formele ondersoek (waar die betrokke partye 'n geleentheid gegun word om hul eie weergawe van gebeure te gee en, waar nodig, getuies te roep).
- Daar sal van die senior bestuurder verwag word om die gegriefde werknemer skriftelik in kennis te stel van die besluit. Dit moet ook aangeteken word in die spasie soos voorsien op die griewevorm.

Die partye moet vergader en probeer om die grief aan te spreek binne drie werkdade vanaf die datum waarop die werknemer die formele grief aanhangig gemaak het.

Wat gebeur as werknemers glo dat hulle geviktimiseer of geteister word omdat hulle 'n grief aanhangig gemaak het?

- Werknemers wat griewe ingevolge hierdie prosedure aanhangig maak, mag nie geviktimiseer of geteister word nie. Indien 'n werknemer van mening is dat hulle geviktimiseer of geteister word, mag hulle dit opneem met die senior bestuurder wat oorsig oor die grieweprosedure uitoefen. Sodanige bestuurder moet dan onmiddellik die werknemer se bewering ondersoek en, indien nodig, verdere stappe neem om dit aan te spreek, met inbegrip van toepaslike dissiplinêre optrede teen die persoon wat die werknemer viktimizeer of teister indien die persoon skuldig bevind word aan wangedrag.

Indien die werknemer steeds nie tevrede met die senior bestuurder se besluit is nie, mag hy/sy (afhangend van die aard van die grief)* die saak verwys na die Kommissie vir Versoening, Bemiddeling en Arbitrasie (CCMA). Die kontakbesonderhede verskyn in Bylae 4.

*(Geskille met betrekking tot onbillike ontslag, onbillike arbeidspraktyk en onregverdige diskriminasie kan verwys word na die CCMA deur 'n WAV-vorm 7.11 te voltooi. Die vorm is beskikbaar by die CCMA se kantore en kan ook afgelaai word van die CCMA se webwerf www.ccma.org.za)

GRIEVANCE PROCEDURE

A worker wishing to lodge a grievance should follow the procedure below:

Stage 1: Informal process

- Discuss the grievance with his/her immediate supervisor/manager.
- The worker must raise the grievance verbally with the immediate supervisor/manager.
- The immediate supervisor/manager must:
- Give the worker an opportunity to freely express their concerns in confidence.
- Listen to the worker's grievance and attempt to identify the issues of concern.
- Provide the worker with a decision regarding the outcome to the grievance as soon as reasonably possible.

The parties should meet and seek to resolve the grievance within two working days of the grievance having been raised by the worker.

Stage 2: Formal process

- Should the worker not be satisfied with the immediate supervisor's/manager's decision, the worker may raise a formal grievance (see Grievance form) with the next level of management.
- On receipt of the grievance form or if the grievance is raised in another appropriate format or manner, the senior manager must schedule a formal grievance meeting, as soon as reasonably possible. The worker and any other relevant parties should be provided with written notice of the grievance meeting, preferably using the form **Notice of Formal Grievance Meeting** (attached below). The worker who raised the grievance should be informed of their right to the assistance of a fellow worker (or recognised trade union representative).
- The form of the grievance meeting will depend on the nature of the grievance raised by the worker and may range from a discussion between the parties to a formal enquiry (where the relevant parties are allowed the opportunity to present their version and call relevant witnesses where necessary).
- The senior manager will be required to provide the worker who raised the grievance with their written decision. This should be recorded in the space provided in the Grievance form.

The parties should meet and seek to resolve the grievance within three working days of the formal grievance being raised by the worker.

GRIEWEPROSEDURE

'n Werknemer wat 'n grief aanhangig wil maak, moet die volgende prosedure volg:

Stadium 1: Informele proses

- Bespreek die grief met sy/haar onmiddellike toesighouer/bestuurder.
- Die werknemer moet die grief mondelings met die onmiddellike toesighouer/bestuurder opneem.
- Die onmiddellike toesighouer/bestuurder moet–
- Die werknemer 'n geleentheid gun om sy/haar griewe vryelik en vertroulik te lug.
- Luister na die werknemer se griewe en probeer om die redes vir die grief te identifiseer.
- So spoedig redelikerwys moontlik die werknemer voorsien van 'n besluit oor die uitkoms.

Die partye moet vergader en probeer om die grief aan te spreek binne twee werkdade vanaf die datum waarop die werknemer die grief gelug het.

Stadium 2: Formele proses

- Indien die werknemer nie tevrede met sy/haar onmiddellike toesighouer/bestuurder se besluit is nie, mag hy/sy 'n formele grief (sien griewevorm) aanhangig maak op die volgende bestuursvlak.
- By ontvangs van die griewevorm, of indien die grief in 'n ander toepaslike formaat of op 'n ander wyse aanhangig gemaak word, moet die senior bestuurder so spoedig redelikerwys moontlik 'n formele griewevergadering belê. Die werknemer en enige ander betrokke partye moet skriftelik in kennis gestel word van die griewevergadering, verkieslik deur gebruik te maak van die **Kennisgewing van Formele Griewevergadering-vorm** (sien hieronder). Die werknemer wat die grief aanhangig gemaak het, moet ingelig word oor hul reg tot bystand deur 'n mede-werknemer (of erkende vakbondvertegenwoordiger).
- Die formaat van die griewevergadering sal afhang van die aard van die grief wat deur die werknemer aanhangig gemaak word en kan wissel van 'n gesprek tussen die partye tot 'n formele ondersoek (waar die betrokke partye 'n geleentheid gegun word om hul weergawe van die gebeure te gee en, indien nodig, getuies te roep).
- Daar sal van die senior bestuurder verwag word om die gegriefde werknemer skriftelik in kennis te stel van die besluit. Dit moet ook aangeteken word in die spasie soos voorsien in die Griewevorm.

Die partye moet vergader en probeer om die grief aan te spreek binne drie werkdade vanaf die datum waarop die werker die formele grief aanhangig gemaak het.

Should the worker still not be satisfied with the decision made by the senior manager, they may (depending on the nature of the grievance)* refer the matter to the CCMA. (The CCMA's contact details have been included under Annexure 4 below)

*(Disputes concerning unfair dismissals, unfair labour practices and unfair discrimination can be referred to the CCMA by completing an LRA Form 7.11. The LRA Form 7.11 can be obtained at the CCMA's offices, and it can also be downloaded from the CCMA website www.ccma.org.za)

Indien die werknemer steeds nie tevrede met die besluit van die senior bestuurder is nie (afhangend van die aard van die grief)*, mag dit verwys word na die CCMA. (Die CCMA se kontakbesonderhede verskyn hieronder in Bylae 4.)

*(Geskille met betrekking tot onbillike ontslag, onbillike arbeidspraktyk en onregverdige diskriminasie kan verwys word na die CCMA deur 'n LRA-vorm 7.11 te voltooi. Die vorm is beskikbaar by die CCMA se kantore en kan ook afgelaai word van die CCMA se webwerf www.ccma.org.za)



GRIEVANCE FORM

Name: _____ Surname: _____

Formal grievance raised with _____ (senior manager's name)

The nature of my grievance is:

Worker's signature

Date

To be completed by the worker's senior manager

Date the grievance meeting was held _____ (insert date here)

Result of the grievance meeting:

Senior manager's signature

Date

Note: The worker should be provided with a copy of the senior manager's decision and a copy should be placed on the worker's file.

GRIEWEVORM

Naam: _____

Van: _____

Formele grief aanhangig gemaak by _____ (senior bestuurder se naam)

Die aard van my grief is soos volg:

Werknemer se handtekening

Datum

Die volgende moet deur die werknemer se senior bestuurder voltooi word:

Datum waarop die griewevergadering gehou is _____ (voeg die datum hier in)

Uitkoms van die vergadering:

Senior bestuurder se handtekening

Datum

LW: Die werknemer moet voorsien word van 'n afskrif van die senior bestuurder se besluit, en 'n afskrif moet ook in die werknemer se lêer geplaas word.

NOTICE OF FORMAL GRIEVANCE MEETING

Name: _____ Surname: _____

A formal grievance meeting to seek to resolve your grievance raised on: _____

will take place on:

Date: _____ Time: _____

Venue: _____

The nature of the grievance being:

You are reminded that you may be accompanied by a fellow worker of your choice or a union representative (where there is a recognition agreement in place).

Senior manager's signature

Date

KENNISGEWING VAN FORMELE GRIEWEVERGADERING

Naam: _____

Van: _____

'n Formele griewevergadering om u grief wat op _____

ingedien is te bespreek, is soos volg geskeduleer:

Datum: _____

Tyd: _____

Plek: _____

Die aard van die grief is soos volg:

Let daarop dat u vergesel mag word deur 'n mede-werknemer van u keuse of 'n vakbondverteenwoordiger (waar 'n erkenningsooreenkoms in plek is).

Senior bestuurder se handtekening

Datum

GRIEVANCE PROCEDURE FLOWCHART

- The worker has a workplace concern/grievance as a result of a workplace issue, or a workplace relationship.
- Where the worker has been unsuccessful in attempting to resolve the issue informally with the person/party concerned, the worker may follow the process set out in the grievance procedure below:

Stage 1: Informal process

- The worker raises the grievance verbally with his/her immediate supervisor/manager.
- The parties meet and seek to resolve the grievance within two working days of the grievance being raised by the worker.

Stage 2: Formal process

- Where the worker is not satisfied with the immediate supervisor's/manager's decision, the worker may raise a formal grievance with the next level of management on the **Grievance form** provided or in another appropriate manner/format.
- The worker may be assisted by a fellow worker or recognised trade union representative.
- The form of the grievance meeting will depend on the nature of the grievance (it may range from a discussion between the parties to a formal enquiry, parties have opportunity to present their version and to call relevant witnesses).
- Parties meet and seek to resolve the grievance within three working days of the formal grievance being raised by the worker.

Where the worker is not satisfied with the decision made by the senior manager the worker may (depending on the nature of the grievance) refer the dispute to CCMA. (Contact details in Annexure 4).

GRIEWEPROSEDURE-VLOEIPLAN

- Die werknemer het 'n werkplekgrief as gevolg van 'n werkplekaangeleentheid of -verhouding.
- Waar die werknemer onsuksesvol was in sy/haar poging om die grief informeel met die betrokke persoon/party aan te spreek, kan die werknemer die proses, soos uiteengesit in die grieweprosedure, volg:

Stadium 1: Informele proses

- Die werknemer neem die grief mondeliks op met sy/haar onmiddellike toesighouer/bestuurder.
- Die partye vergader en probeer om die grief binne twee werkdade op te los nadat dit aanhangig gemaak is.

Stadium 2: Formele proses

- Waar die werknemer nie tevrede met die toesighouers/bestuurders se besluit is nie, mag die werknemer 'n formele grief na die volgende bestuursvlak verwys deur middel van die **Griewevorm** wat voorsien word, of in enige ander toepaslike formaat of op 'n ander wyse.
- Die werknemer mag bygestaan word deur 'n mede-werknemer of erkende vakbondvertegenwoordiger.
- Die formaat van die griewevergadering sal afhang van die aard van die grief. Dit kan wissel van 'n gesprek tussen die partye tot 'n formele ondersoek waar die partye 'n geleentheid het om hul eie weergawe van gebeure te gee en, indien nodig, getuies te roep.
- Partye vergader en probeer om die grief binne drie werkdade op te los nadat dit deur die werknemer aanhangig gemaak is.

Waar die werknemer nie tevrede met die senior bestuurder se besluit is nie, mag die werknemer die geskil (afhangend van die aard van die grief) na die CCMA verwys (kontakbesonderhede in Bylae 4).

WORKPLACE ENGAGEMENT FORUMS

WERKPLEK- GESPREKSFORUMS

At the heart of the LRA is labour peace, the effective resolution of labour disputes and employee participation in decision-making in the workplace (LRA section 1(d)(iii)&(iv).

The Preamble to the LRA speaks of the promotion of employee and worker decision-making through the establishment of workplace forums and this is provided for in chapter 5 of the LRA.

An intention of a workplace forum is for **information sharing, consultation and joint decision-making**.

In addition to workplace forums as proposed in the LRA, employers and workers have also established their own workplace/labour communication structures and mechanisms unique to themselves to enhance workplace collaboration and the effective management of conflicts and resolution of disputes.

To enhance communication, problem solving, conflict management and dispute resolution at a farm and a workplace level, it is proposed that workplaces have the following communication structures and channels in place:

- Formal **weekly** production/communication **meetings**, these meetings should be participative and comprise representatives of management/supervisors and workers.
- Formal **monthly** management/supervisors and workers **meetings**. This meeting should include shop stewards where a union has recognition to represent the workers.

The above meetings should take place on a regular basis to consult on certain workplace issues and to participate in joint decision-making on others. (These constitute **information sharing, consultation and joint decision making** needs to be defined. There is much guidance and authority in labour law for this.)

A proposed workplace joint problem solving model:

Stage 1: Introduction

- Introductions, establishing meeting protocols/'ground rules'.
- Clarifying purpose for meeting.
- Agenda for meeting.
- Address minutes/outstanding issues from previous meeting.

Stage 2:

- Engage in discussion about agenda items, seek to understand each other's issues, concerns and inputs.
- Explore each other's needs and interests and attempt to prioritise the order in which to address the issues.

Arbeidsvrede, die doeltreffende oplossing van arbeidsgeskillte en werknemerdeelname aan besluitneming in die werkplek is sentraal tot die arbeidswetgewing (artikel 1(d)(iii)&(iv) van die WAV).

Die aanhef tot die WAV verwys na die bevordering van werknemer- en werkerbesluitneming deur die instelling van **werkplekforums**. Voorsiening hiervoor word gemaak in hoofstuk 5 van die WAV.

Die doel van 'n werkplekforum is om **inligting te deel, te beraadslaag en gesamentlik besluite te neem**.

Benewens werkplekforums, soos bedoel in die WAV, het werkgewers en werknemers ook hul eie unieke werkplek/ arbeidskommunikasiestrukture en -meganismes geskep om samewerking in die werkplek en doeltreffende konflik- en geskil-oplossing te bevorder.

Met die oog op die bevordering van kommunikasie, probleemoplossing, konflikthantering en geskil-oplossing op plaas- en werkplekvlak, word daar voorgestel dat werkplekke die volgende kommunikasiestrukture en -kanale in plek sit:

- Formele **weeklikse produksie-/kommunikasievergaderings**. Sodanige vergaderings moet voorsiening maak vir deelname en bywoning deur verteenwoordigers van die bestuur/ toesighouers en werknemers.
- Formele **maandelikse bestuurs/toesighouer- en werknemervergaderings**. Hierdie vergaderings moet verteenwoordigers van 'n erkende vakbond insluit om werknemers te verteenwoordig.
- Bogenoemde vergaderings moet op 'n gereelde grondslag geskied om te beraadslaag oor sekere werkplekaangeleenthede en om deel te neem aan besluitneming oor ander. (Die konsep van die **deel van inligting, beraadslaging en gesamentlike besluitneming** moet omskryf word. Daar is menige riglyne en voldoende magtiging hiervoor in die arbeidswetgewing.)

'n Voorgestelde gesamentlike probleem-oplossingsmodel vir die werkplek:

Stadium 1: Bekendstelling

- Bekendstellings, formulering van vergaderingprotokols/ grondbeginsels.
- Uitklaring van die doel van die vergadering.
- Sakelys vir die vergadering.
- Bespreek die notule / uitstaande besprekingspunte van vorige vergadering.

Stage 3:

- Engage in consultation and joint problem solving to generate options for possible solutions.

Stage 4:

- Jointly identify 'objective criteria' (SWOT analysis etc.) to select and determine action plans.
 - What is to be done?
 - How is it to be done?
 - Who is to be responsible for doing it?
 - When should it be done by?

Stadium 2:

- Voer gesprek oor sakelys-items; probeer mekaar se knelpunte, besware en insette te verstaan.
- Verken mekaar se behoeftes en belange en probeer om prioriteite vir bepreking te identifiseer.

Stadium 3:

- Beraadslaging en 'n gesamentlike poging om opsies vir moontlike probeem-oplossing te genereer.

Stadium 4:

- Identifiseer gesamentlik 'objektiewe kriteria' (SWOT-ontleding ens.) om aksieplanne te identifiseer en te bepaal.
 - Wat moet gedoen word?
 - Hoe moet dit gedoen word?
 - Wie is verantwoordelik daarvoor om dit dit doen?
 - Teen wanneer moet dit gedoen word?



WORKPLACE FACILITATION AND MEDIATION

WERKPLEKFASILITERING EN -BEMIDDELING

WORKPLACE FACILITATION AND MEDIATION FOR DEALING WITH CONFLICTS AND DISPUTES:

To ensure impartiality and the effective resolution of workplace disputes and conflicts, employers and workers could consider the option of independent/external facilitation and mediation at stages one and two of the grievance process as well as in other conflict and dispute situations.

A key objective of workplace mediation is to have an independent/external person assist the respective parties to engage each other through joint problem solving and consensus seeking so as to manage their conflict and to resolve their disputes in a voluntary and collaborative way and thereby create a more stable and sustainable workplace environment.

Workplace facilitation and mediation is not designed to replace existing internal grievance (and disciplinary) procedures but, when used strategically and appropriately, it can enhance these processes and lead to improved trust and workplace relations.

Workplace mediators often combine a variety of skills when facilitating a workplace mediation process, including facilitation, mediation, coaching, training and capacity building.

External facilitators and mediators (contact details in Annexure 5) could be used to assist with managing conflict and to resolving workplace disputes through workplace facilitation and mediation, however employers and workers could also be trained and capacitated in these skills to effectively facilitate and mediate these processes at a farm and a workplace level themselves.

WERKPLEKFASILITERING EN -BEMIDDELING OM KONFLIK EN GESKILLE AAN TE SPREEK:

Om onpartydigheid en doeltreffende oplossing van werkplekgeskille en -konflik te verseker, kan werkgewers en werknemers die opsie van onafhanklike/eksterne fasilitering en bemiddeling oorweeg tydens stadia een en twee van die grieweproses, asook in ander konflik- en geskilsituasies.

'n Sleuteldoelwit van werkplekbemiddeling is om 'n onafhanklike/eksterne persoon te gebruik om gespreksvoering tussen die onderskeie partye te fasiliteer met die oog op gesamentlike geskiloplossing, en om op 'n vrywillige en samewerkende wyse konsensus te bereik ten einde hul konflik te bestuur en geskille op te los en sodoende 'n meer stabiele en volhoubare werkpleksomgewing te skep.

Werkplekfasilitering en -bemiddeling is nie bedoel om bestaande interne griewe- en dissiplinêre prosedures te vervang nie maar kan, indien dit strategies en toepaslik aangewend word, sodanige prosesse verbeter en lei tot groter vertroue en beter werkplekverhoudinge.

Werkplekbemiddelaars kombineer dikwels 'n verskeidenheid vaardighede wanneer hulle 'n werkplekbemiddelingsproses fasiliteer, met inbegrip van fasilitering, bemiddeling, mentorskap, opleiding en kapasiteitsbou.

Eksterne fasiliteerders en bemiddelaars (kontakbesonderhede in Bylae 5) kan gebruik word om deur middel van fasilitering en bemiddeling te help met konflikhantering en geskiloplossing in die werkplek. Werkgewers en werknemers kan egter ook opgelei en bemagtig word in hierdie vaardighede om self sodanige prosesse doeltreffend op plaas- en werkplekvlak te fasiliteer en te bemiddel.

FACILITATION AND MEDIATION CONTACT DETAILS

FASILITERING- EN BEMIDDELING-KONTAKBESONDERHEDE

1. COMMUNITY FACILITATORS AND MEDIATORS

Conflict Dynamics

(Independent accredited facilitators and mediators)

W | www.conflictdynamics.co.za

T | +27 (0)10 448 8956

E | info@conflictdynamics.co.za

2. LABOUR AND WORKPLACE FACILITATORS AND MEDIATORS

Conflict Dynamics

(Independent accredited facilitators and mediators)

W | www.conflictdynamics.co.za

T | +27 (0)10 448 8956

E | info@conflictdynamics.co.za

Commission for Conciliation Mediation & Arbitration

W | www.ccma.org.za

T | National office: 011 377 6650/01/00

E | ho@ccma.org.za

PROVINCIAL AND REGIONAL OFFICES:

Gauteng:

Johannesburg: 011 220 5000, johannesburg@ccma.org.za

Tshwane: 012 317 7800, pta@ccma.org.za

Ekurhuleni: 011 845 9000, ekurhuleni@ccma.org.za

Vaal: 016 440 2700, johannesburg@ccma.org.za

Mpumalanga:

Emalahleni: 013 655 2600, wtb@ccma.org.za

Mbombela: 013 752 2155, wtb@ccma.org.za

Limpopo:

Polokwane: 015 287 7400, ptb@ccma.org.za

1. GEMEENSKAPSFASILITEERDERS EN -BEMIDDELAARS

Conflict Dynamics

(Onafhanklike geakkrediteerde fasiliteerders en bemiddelaars)

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T | +27 (0)10 448 8956

E | info@conflictdynamics.co.za

2. ARBEID- EN WERKPLEKFASILITEERDERS EN -BEMIDDELAARS

Conflict Dynamics

(Onafhanklike geakkrediteerde fasiliteerders en bemiddelaars)

W | www.conflictdynamics.co.za

T | +27 (0)10 448 8956

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Vaal: 016 440 2700, johannesburg@ccma.org.za

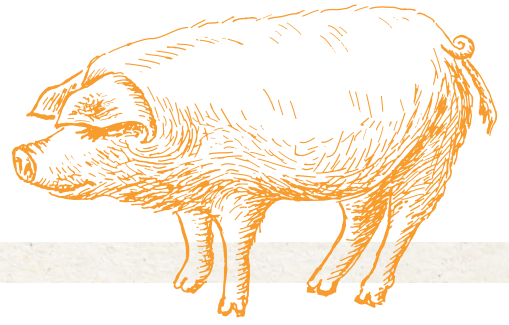
Mpumalanga:

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Mbombela: 013 752 2155, wtb@ccma.org.za

Limpopo:

Polokwane: 015 287 7400, ptb@ccma.org.za

**North West:**

Rustenburg: 014 591 6400, kdp@ccma.org.za

Klerksdorp: 018 487 4600, kdp@ccma.org.za

KwaZulu-Natal:

Durban: 031 362 2300, kzn@ccma.org.za

Pietermaritzburg: 033 328 5000, kzn@ccma.org.za

Richards Bay: 035 799 3300, kzn@ccma.org.za

Newcastle: 034 328 2400, kzn@ccma.org.za

Port Shepstone: 039 688 3700, kzn@ccma.org.za

Free State:

Bloemfontein: 051 411 1700, blm@ccma.org.za

Welkom: 057 910 8300, blm@ccma.org.za

Northern Cape:

Kimberley: 053 836 7300, kmb@ccma.org.za

Eastern Cape:

Port Elizabeth: 041 509 1000, pe@ccma.org.za

East London: 043 711 5400, el@ccma.org.za

Western Cape:

Cape Town: 021 469 0111, ctn@ccma.org.za

George: 044 805 7700, ctn@ccma.org.za

Noordwes:

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KwaZulu-Natal:

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Pietermaritzburg: 033 328 5000, kzn@ccma.org.za

Richardsbaai: 035 799 3300, kzn@ccma.org.za

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Port Shepstone: 039 688 3700, kzn@ccma.org.za

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Port Elizabeth: 041 509 1000, pe@ccma.org.za

East London: 043 711 5400, el@ccma.org.za

Wes-Kaap:

Kaapstad: 021 469 0111, ctn@ccma.org.za

George: 044 805 7700, ctn@ccma.org.za



LESSONS LEARNED

FROM SOUTH AFRICAN LAND MEDIATION

LESSE GELEER

UIT GRONDBEMIDDELING IN SUID-AFRIKA

WHEN SHOULD MEDIATION BE USED?

Mediation should be used for disputes where it may potentially deliver a settlement or contribute to settlement. Even where mediation cannot deliver a settlement on all aspects of a dispute, if it can contribute to the settlement of some of the elements of the dispute, it may be an appropriate process.

The necessary conditions for mediation include:

- There needs to be scope for possible settlement.
- The parties must be prepared to talk about settlement.
- Relevant information needs to be shared to allow the parties to assess the merits of their or the other party's position.

WHO SHOULD MEDIATE?

A professional mediator should conduct the mediation.

For effective mediation on rights and interest disputes, the following is required:

- The mediator needs to have a good knowledge and understanding of the relevant applicable law and policy.
- The mediator should have the necessary experience in the particular field.

WHO SHOULD BE INVOLVED IN THE MEDIATION?

All the parties to the dispute

All parties to a dispute should be invited to participate in the mediation. If a key party does not participate, the dispute may arise again and an eventual settlement agreement may not be implementable.

The government land reform agency

While it is not the mediator's primary task to ensure adherence to the government's policies, a settlement agreement reached without proper government input may not be implementable. Ensuring the commitment of government departments and officials is critical for the implementation of settlement agreements that are reached.

Other institutions responsible for implementation

Those institutions, government and otherwise, who will be responsible for implementing or monitoring parts of any settlement agreements, should participate in, or be consulted in detail about, the mediation. They can then ensure that settlement agreements can be implemented and that the necessary resources in this regard can be obtained or allocated.

WANNEER MOET BEMIDDELING GESKIED?

Bemiddeling moet gebruik word in geskille waar 'n skikking potensieel bereik kan word of waar dit kan bydra tot sodanige skikking. Selfs waar bemiddeling nie daarin slaag om 'n skikking ten opsigte van alle aspekte van 'n geskil op te lewer nie, mag dit wel die aangewese proses wees indien dit kan bydra tot die skikking van sommige van die elemente van die geskil.

Die voorwaardes vir bemiddeling sluit die volgende in:

- Die omvang daarvan moet voorsiening maak vir moontlike skikking.
- Die partye moet bereid wees om te praat oor skikking.
- Tersaaklike inligting moet gedeel word sodat die partye die meriete van hul eie of die ander party se posisie kan bepaal.

WIE MOET BEMIDDEL?

'n Professionele bemiddelaar moet die bemiddeling onderneem. Vir doeltreffende bemiddeling in geskille rondom regte en belange, word die volgende vereis:

- Die bemiddelaar die deeglike kennis van en begrip vir die betrokke wetgewing en beleid hê.
- Die bemiddelaar moet die nodige ervaring in die betrokke veld hê.

WIE MOET BETROKKE WEES BY BEMIDDELING?

Al die partye tot die geskil

Alle partye tot die geskil moet genooi word om deel te neem aan die bemiddeling. Indien 'n sleutelparty nie deelneem nie, mag die geskil weer opvlam, met die gevolg dat die uiteindelijke skikkingsooreenkoms nie geïmplementeer kan word nie.

Die regering se grondhervormingsagentskap

Terwyl dit nie die bemiddelaar se primêre taak is om nakoming van die regering se beleid te verseker nie, is dit moontlik dat 'n skikkingsooreenkoms wat bereik word sonder behoorlike regeringsinsette nie implementeerbaar sal wees nie. Met die oog op implementering van die skikkingsooreenkoms wat bereik word, is dit uiters noodsaaklik om 'n verbintenis van regeringsdepartemente en -ampnare te verkry.

Ander instellings wat vir implementering verantwoordelik is

Die instellings – regeringsinstansies en andersins – wat verantwoordelik sal wees vir die implementering of monitering van dele van enige skikkingsooreenkomste, moet deelneem aan,

OTHER FACTORS INFLUENCING THE EFFICACY OF LAND MEDIATION

Sufficient resources for mediation

Without sufficient resources for the mediation process itself and the implementation of settlements reached, mediation will not be possible.

Attitude and respect between parties

A significant portion of South Africa's conflicts have an undercurrent of race and class conflict. Very often the soft issues – e.g. the perception that one party is not respected, that they are viewed as inferior and/or that they are not respected forms a significant 'soft' barrier to finding tangible 'hard' solutions. To this end, the support of faith-based facilitation organisations and other non-government organisations can at times enable an environment of forgiveness and understanding, which opens up the conversation to productive solutions.

Community representation and stakeholder involvement

At appropriate stages of the mediation process, different groups of stakeholders may need to participate. Attempting to keep all stakeholders involved all the time can often lead to inefficiencies. Processes need to be focused and this can be achieved by facilitating the clustering or separation of issues and ensuring that key stakeholders relevant to the given issue participate.

Where there are no elected community representatives, it may be appropriate for the mediator to facilitate the election of community representatives or a steering committee.

Where a community is represented by unelected people, e.g. a hereditary chief, the mediator should ideally facilitate the election of such a broader steering committee, of which the chief may be a member. Traditional structures may favor an elite within the community vis-à-vis other sections of the community. This is an area of much dispute in South Africa, because of conflict between traditional community structures and demands within communities for more democratic forms of government.

Nonetheless, there are usually good reasons for policy and mediation practice to ensure broader participation and representation.

Addressing unbalanced power relations between stakeholders

Where unbalanced power relations between stakeholders are not addressed, it is likely that settlements will favor the more powerful. This will often undermine the efficacy of settlement agreements.

en in fyn besonderhede geraadpleeg word met betrekking tot die bemiddeling. Hulle sal dan kan verseker dat skikkingsooreenkomste geïmplementeer word en dat die nodige hulpbronne vir hierdie doel verkry of toegeken word.

ANDER FAKTORE WAT DIE DOELTREFFENDHEID VAN GRONDBEMIDDELING BEÏNVLOED

Voldoende hulpbronne vir bemiddeling

Sonder voldoende hulpbronne vir die bemiddelingsproses as sulks en vir die implementering van skikkings wat bereik word, sal bemiddeling nie moontlik wees nie.

Partye se houding en respek teenoor mekaar

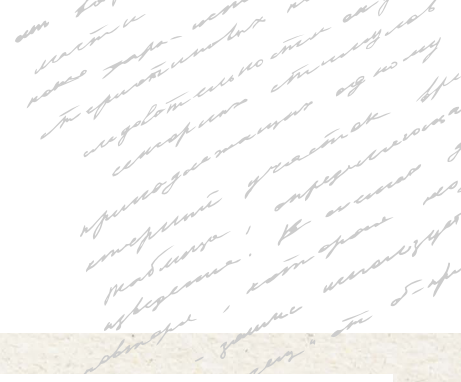
Ras en klas is onderliggende faktore by 'n groot hoeveelheid konflikte in Suid-Afrika – baie dikwels 'sagte' aangeleenthede soos die persepsie dat een party nie gerespekteer word nie of as minderwaardig geag word, wat dan dien as 'n aansienlike struikelblok tot werkbare 'harde' oplossings. Om hierdie rede kan ondersteuning van geloofgegronde fasiliteringsorganisasies en ander nie-regeringsorganisasies soms 'n omgewing skep vir vergifnis en begrip wat produktiewe oplossings moontlik maak.

Betrokkenheid van gemeenskapsverteenwoordiger en belanghebbendes

In sekere stadia van die bemiddelingsproses sal die verskillende groepe belanghebbendes moontlik daaraan moet deelneem. 'n Poging om alle belanghebbendes te alle tye betrokke te hou, kan dikwels lei tot 'n ondoeltreffende proses. Prosesse moet gefokus wees. Vir hierdie doel kan fasilitering meewerk om die verskillende geskil-elemente saam te groepeer of te skei en om die deelname te verseker van sleutelbelanghebbendes wat relevant tot 'n gegewe element is.

In die afwesigheid van verkose gemeenskapsverteenwoordigers mag dit gepas wees vir die bemiddelaar om die verkiesing van gemeenskapsverteenwoordigers of 'n stuurkomitee te fasiliteer. Waar 'n gemeenskap verteenwoordig word deur onverkose persone, bv. 'n tradisionele hoofman, moet die bemiddelaar verkieslik die verkiesing van só 'n breër stuurkomitee (waarvan die hoofman moontlik 'n lid kan wees) fasiliteer. Tradisionele strukture kan moontlik ten gunste van 'n elite binne die gemeenskap vis-à-vis ander dele van die gemeenskap wees. Hier lê die oorsprong van menige geskille in Suid-Afrika, gegewe die konflik tussen tradisionele gemeenskapstrukture en eise binne gemeenskappe vir meer demokratiese regeringsvorme.

Daar is nietemin gewoonlik goeie redes vir beleids- en bemiddelingspraktyk om breër deelname en verteenwoordiging te verseker.



Communities understanding their rights and obligations

Where people understand their rights and obligations, land mediation is more efficient, and chances of a sustainable settlement are greater. This often requires community training sessions as part of, or associate with, mediation.

Training initiatives often focus on rights without due regard to obligations. Where a community's obligations in terms of the law or agreements are underemphasised, it is more likely that the community will not comply, leading to future disputes and failure to achieve land reform objectives. Similarly, people elected to represent a community need clear rules of conduct and understanding of their obligations as representatives. Without them, disputes within the community are likely to arise.

Communities understanding their risks

There may be cases where communities are engaged in conflict without recognising the risks that they face should mediation/facilitation fail. For example, in failure to find settlement between a landowner and occupiers, a possible recourse could be eviction.

Provision of sufficient information

Key relevant information should be made available to the mediator by the parties.

A clear assessment of the issues in dispute

Sometimes, the parties themselves do not identify key underlying issues that need to be addressed. The mediator should keep a keen eye out for such issues and, where identified, facilitate agreement on them.

Grouping of cases

Where there are cases from the same geographic area with similar facts and legal rights, and the same or similar parties, it may be appropriate to group the cases and mediate them together.

Provision of services that would support mediation

Legal advice: Communities and other parties involved in mediation or contemplating their options regarding land disputes may need legal and strategic advice.

Facilitation: Sometimes a wider facilitation service is required, where a mediator may be appointed to seek out interested parties not present, obtain documents, and advise parties.

Valuation: Effective procedures need to be in place in order to address the issue of the compensation or price that should be paid to the present landowner or occupant to release the required land. Settlements often include purchasing land. This in turn requires an assessment of the value of the land, referred to as valuation.

Spreek ongebalanseerde magsverhoudinge tussen belanghebbendes aan

Waar ongebalanseerde magsverhoudinge tussen belanghebbendes nie aangespreek word nie, is dit moontlik dat skikkings ten gunste van diegene met meer mag sal wees. Dit sal dikwels ook die doeltreffendheid van skikkingssooreenkomste ondermyn.

Gemeenskappe se persepsie van hul regte en verpligtinge

Waar mense hul regte en verpligtinge verstaan, is grondbemiddeling meer doeltreffend en die kanse vir 'n volhoubare skikking groter. Dit verg dikwels gemeenskaps-opleidingsessies as deel van, of tesame met, bemiddeling.

Opleidingsinisiatiewe fokus dikwels op regte sonder om die gepaardgaande verpligtinge in ag te neem. Waar 'n gemeenskap se verpligtinge ingevolge wetgewing of ooreenkomste oorbeklemtoon word, is dit egter meer waarskynlik dat die gemeenskap nie daaraan sal voldoen nie, wat dan weer verdere geskille en versuim om grondhervormingsdoelwitte te verwesenlik tot gevolg het. Mense wat verkies word om 'n gemeenskap te verteenwoordig, moet dus voorsien word van duidelike gedragsreëls en 'n goeie begrip hê van hul verpligtinge as verteenwoordigers. Daarsonder is dit heel moontlik dat daar weer geskille binne die gemeenskap sal ontstaan.

Gemeenskappe se begrip van die risiko's

Daar is moontlik baie gevalle waar gemeenskappe betrokke is by konflik sonder dat hulle die risiko wat hulle loop indien bemiddeling/fasilitering sou misluk, beseft. In die geval waar 'n skikking tussen 'n grondeienaar en bewoners nie bereik kan word nie, is uitsetting 'n moontlike opsie.

Voorsiening van voldoende inligting

Die partye moet die bemiddelaar voorsien van die tersaaklike sleutel-inligting.

Duidelike bepaling van die besonderhede van die geskil

Soms identifiseer die partye self nie die belangrikste onderliggende oorsake van die geskil wat aangespreek moet word nie. Die bemiddelaar moet uitkyk vir sulke gevalle en waar dit geïdentifiseer word, konsensus in hierdie verband probeer bewerkstellig.

Groepering van sake

Waar daar gevalle in dieselfde geografiese gebied voorkom, met soortgelyke feite en regte asook dieselfde of soortgelyke partye, mag dit gepas wees om dit saam te groepeer en gesamentlik te bemiddel.



Parameters for mediation and monitoring

Mediation can be unproductive and wasteful of resources where clear parameters are not set by the land reform agency (or other parties) paying for such services. Parameters could include setting aside a specified number of days for the process.

Voorsiening van dienste wat bemiddeling sal ondersteun

Regsadvies: Gemeenskappe en ander partye betrokke by bemiddeling, of wat hul opsies met betrekking tot grondgeskille oorweeg, het moontlik regs- en strategiese advies nodig.

Fasilitering: Soms word 'n wyer fasiliteringsdiens benodig waar 'n bemiddelaar moontlik aangestel word om belanghebbende partye wat nie teenwoordig is nie, te nader en om dokumente te verkry en die partye te adviseer.

Waardasie: Effektiewe prosedures moet in plek wees om die kwessie van vergoeding of prys wat aan die huidige grondeienaar of bewoner betaalbaar is ten opsigte van die betrokke grond aan te spreek. Skikkings sluit dikwels die aankoop van grond in. Dit vereis dan dat die waarde van die grond bepaal word (grondwaardasie).

Parameters vir bemiddeling en monitering

Bemiddeling kan onproduktief en 'n verkwisting van hulpbronne wees indien die grondhervormingsagentskap (of ander partye) wat vir sodanige dienste betaal, versuim om duidelike grense te stel, byvoorbeeld deur voorsiening te maak vir 'n spesifieke getal dae vir die proses.



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The Trust was founded by Agri SA in February 1999 as an initiative started by the late President Mandela after a special summit dealing with rural safety issues as a mechanism to serve farming and rural communities financially to enable these communities to safeguard their own and their worker's lives and property. The purpose of the Trust has since then been to work with local communities and the police, to ensure that a safe and sustainable farming industry in South Africa can be maintained.

Die finansiële bydrae van die Agri Securitas Trusfonds om die handleiding moontlik te maak word hiermee erken.

Die Trusfonds is gedurende Februarie 1999 deur Agri SA in die lewe geroep as 'n inisiatief geïnisieer deur wyle president Mandela na afloop van die spitsberaad oor plattelandse veiligheid om as 'n spesiale meganisme te dien om boerdery- en landelike gemeenskappe finansiële te bemagtig om hulle en hul werkers se veiligheidsituasie te kan verseker. Die doel van die Trust is sedertdien om deur samewerking met plaaslike gemeenskappe en die polisie, 'n veilige en volhoubare landboubedryf in Suid-Afrika te bevorder.

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PROTECTING THE FARMING COMMUNITY
BESKERM DIE BOERDERYGEMEENSKAP





Agri SA

Conflict management and dispute resolution guide

Konflikhantering- en geskilbeslegting-handleiding

Compiled:

Centre of Excellence: Land

Centre of Excellence: Rural Safety

Saamgestel:

Sentrum van Uitnemendheid: Grond

Sentrum van Uitnemendheid: Landelike Beveiliging

