

**Memorandum: Repeal of Colonial and Apartheid Legislation (SALRC Project 149): The Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947)**

**Submitted by Professor Leslie London, UCT, for the Civil Society Network Unpoison, 3<sup>rd</sup> June 2021**

1. This submission is made by Professor Leslie London, on behalf of the Civil Society Network, Unpoison, in the public interest.
2. The Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947) (the Act) provides the basic legislative framework for the governance of most agricultural chemicals including pesticides, herbicides and fungicides. The Act has barely changed in seventy years despite major changes in the agricultural and chemical sector not to mention changes in the South African Constitution which aims to address the legacy of apartheid through realisation of the constitutional rights contained in the bill of rights.
3. In terms of section 7(2) of the Constitution, the state must respect, protect, promote and fulfil the rights in the Bill of Rights. In order to give effect to this constitutional imperative the State must reform this Act and bring it in line with the Bill of Rights as set out briefly below. More detail as to what is required is reflected in recent changes in the Pesticide Management Policy.
4. The impacts on health and well-being caused by the use of agricultural chemicals and pesticides are most acutely felt by the most vulnerable members of society, black farm workers and their families living on farms, often in extremely deprived conditions. (See report by Professor Leslie London attached)
5. Black farm workers found themselves compelled to work on farms, mostly in conditions of dire poverty, as a result of apartheid and colonial dispossession, and systems of labour coercion that rendered farm workers effectively powerless to assert their rights or protect their health and safety at work. With no legislative and institutional protection, they have historically been at the mercy of whatever farming practices take place on farms including the widespread application of highly toxic pesticides in large volumes on most agricultural crops. Many live on farms or near farms and are subject to pesticide drift when the aerial spraying of pesticides moves off the target area and into adjacent properties where many have their homes. Little or no assistance is forthcoming when complaints are made to local authorities responsible for air pollution in addressing this serious threat to health.
6. The existing legislation does not take account of various elements in the Bill of Rights. It was drafted 74 years ago and no amount of amending can make it fit for purpose in a democratic South Africa.
7. The 2010 Pesticide Management Policy<sup>1</sup> (attached) recognises this anomaly clearly on pages 2 and 3. As in “The Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947) is 74 years old. Changes to the context within

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<sup>1</sup> GN 110 of 2010 published in GG 33899 on 24 December 2010

which pesticides are managed have taken place and have led to a need to consider reviewing the current Act to improve efficiency and effectiveness of pesticides management in South Africa. The review yielded a number of concerns, including, inter alia:

- The Act does not adequately address Constitutional requirements in relation to Bill of Rights (Le. right of environment which is not harmful to health), Access to Information, openness, transparency and participate in decision - making and also just administrative action;
  - The Act does not adequately incorporate international obligations and agreements to which South Africa is a Party;
  - Under the current Act, anyone contravening a provision of the Act or the regulations is guilty of an offence and will be summarily convicted and liable to a fine not exceeding R1000, and such penalties have limited deterrent effect;<sup>2</sup>
  - There is no requirement for review of registered pesticides or re-evaluation of old chemicals;
  - lack of establishment of pesticide use surveillance and monitoring systems to gather information on common conditions of use and their impact on health and environment;
  - The Act does not adequately protect non-target areas (e.g. residential areas, schools, hospitals, etc) from exposure to activities spraying activities;
  - The Act does not require prior training and certification to use/apply the most toxic pesticides (e.g. WHO hazard class 1 and II);
  - lack of capacity for research on alternative pest control and crop production measures;
  - lack of awareness raising, education and training appropriate to the public and the user;
  - The Act does not adequately encourage registration that favours lower risk products and reduced reliance on pesticides overall;
  - The Act does not adequately address the problem of obsolete stockpile pesticides and their disposal;
  - The Act does not adequately address the issue of pesticide container management; and
  - Inadequate integration across government departments and complementing other legislations.”
8. The above concerns highlight the fact that the Fertilizers, Farm Feeds and Agricultural Remedies Act, 1947 (Act No. 36 of 1947) is a piece of legislation which promoted apartheid and colonialism by exclusively promoting the interests of the racist colonial state and in particular the farming sector, at the expense of workers and impoverished black people in rural areas.

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9. The concerns above can be linked to various rights in the Bill of Rights (attached) as follows:

a. Section 9: Equality

*9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.*

Black farmers and farm workers suffer discrimination as a result of the fact that the Act fails to ensure that pesticides are managed safely.

b. Section 10 Dignity

The failure of the Act to ensure the protection of farm workers from pesticides results in work conditions which are degrading and an insult to human dignity.

c. Section 24 – environment

*Everyone has the right—*

*(a) to an environment that is not harmful to their health or wellbeing; and*

*(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—*

*(i) prevent pollution and ecological degradation;*

*(ii) promote conservation; and*

*(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

The Act falls far short of providing reasonable legislative measure that would protect farm workers from working and living environments that are detrimental to their health and well-being due to chemical pollution

d. Section 25 property:

The failure of the Act to contain the drift of toxic pesticides from the farm into the homes and adjacent properties of in particular farm workers creates an unavoidable infringement of their property rights.

e. Section 28 children's rights:

*28(1)(d) (Every child has the right ...(d) to be protected from maltreatment, neglect, abuse or degradation;*

The failure to ensure that legislation protects children from exposure to toxic pesticides on farms, and, in rural schools, constitutes a failure the ensure that children

of farm workers are protected from harm. Note that special protections are afforded to children under our Constitution and by virtue of South Africa's ratification of the Convention on the Rights of the Child.

f. Section 32 – access to information:

The Act fails to provide mechanisms to promote access to information and public participation in the regulation of pesticides for those most vulnerable to exposure to them, namely farm workers. Those who profit from pesticides have easy access to the information. Labelling of pesticide does not ensure that those most at risk to poisoning are able to understand their risk and protect themselves. In the absence of updated regulations that ensure comprehensibility of labels and information, the provision of labels for pesticides serves only the interests of companies producing and marketing pesticides, since they use these label to indemnify themselves against the hazards of these chemicals. The state is obliged to make sure that workers and other persons at risk are not harmed because of absence of access to information.

g. Section 33 – just administrative action:

The Act does not promote just administrative action for those most vulnerable to the effects of pesticides. Enforcement through administrative penalties and fines, which could be effective, has not been extended to the Act, and cumbersome criminal proceedings are the only way to enforce its provisions. Not surprisingly there have been very few prosecutions and widespread exposure to unlawful practices go on unabated.

The Act is also silent on how the public may participate in the governance of pesticide and the registration of chemicals. In these times, there should be clear direction of how the public may have a say in which chemicals are registered, under what conditions and for what purposes.

10. International commitments – The International Covenant of Social, Economic and Cultural rights and the General Comment 14 specifically cite the obligation of states to address environmental and occupational risks and cited the importance of industrial hygiene. There are also multiple international treaties in the environmental field that were adopted after 1947 which are not catered for in the Act, specifically, the Rotterdam Convention, the Stockholm Convention, the Basel Convention, amongst others. The Act fails to address these international commitments and must be brought in line with them.