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Review of the South African Agricultural Legislative Framework: Food security implications

Sheryl L Hendriks¹  & Nic JJ Olivier²

Although South Africa has reported national food security for decades, current production patterns, land uncertainty and consumer preferences put future national household food insecurity in question. Household food insecurity in South Africa is at unacceptable levels. This paper reviews the country's agricultural legislative framework in terms of food security and the right to food. The review found that South African agricultural policies do not actively promote food security and the lack of enforceable food security policy makes it difficult to coordinate existing policies. The lack of food security legislation means that the right to food has no enforceable framework. A comprehensive food security policy, legislative framework and implementation strategy are urgently needed to address hunger poverty to progressively achieve the targets set out for national growth and development and realise the right to food enshrined in the Constitution.

Keywords: food security; legislation; policy; right to food; food insecurity

1. Introduction

As the period for achieving the Millennium Development Goals draws to a close, regional and international committees (AU/NEPAD, 2009; High Level Task Force on the Global Food Security Crisis, 2010; Committee on World Food Security High Level Panel of Experts, 2012a, 2012b; United Nations, undated) are calling for comprehensive policy and legislative national food security frameworks to guide national progress on reducing food insecurity. The first United Nations Millennium Development Goal is to eradicate extreme poverty and hunger (UN, 2012). It is in this context that a review of the South African agricultural legislative framework was undertaken to evaluate the consistency and convergence of agricultural legislation in support of national and household food security and the realisation of the right to food as enshrined in South Africa's progressive Constitution.

This paper investigates the agricultural legislative framework that (at least in theory) enables the establishment of comprehensive structures and systems that would assist in improving food security. Only legislation overseen by the Department for Agriculture, Forestry and Fisheries (DAFF) is reviewed. The background (Section 2) is followed by an overview of the international and South African constitutional context (Section 3) and of the current South African food security context (Section 4).

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Section 5 provides a brief overview on the South African food policy context, presenting a discussion of the contents and focus of the most important key policies and strategies. Section 6 identifies the need for an appropriate regulatory framework and implementation strategy for food security. Section 7 gives an overview of DAFF's agricultural legislation relating to food security, and is followed (Section 8) by a detailed structured review of the current and envisaged South African agricultural statutory context. The conclusion (Section 9) deals with a number of key findings and related recommendations.

2. Background

Food security is defined as: 'When all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active healthy life' (FAO, 1996). This definition covers four inter-related elements of availability, access, bio-utilisation and a stable supply of food. It infers that every person should be able to acquire food through growing their own food and purchasing foods they do not produce. Their consumption of food should be adequate to meet their nutritional needs as determined by age, sex, weight and height as well as the level of physical activity and biological factors. The definition goes beyond stating that every person should have enough food for today, but implies that all people should not have to worry about securing enough food to meet their needs in the future. The definition therefore infers the need for sustainable production, supply and incomes underpinned by sustainable livelihoods.

For too long, food security has been assumed present when countries have sufficient food to feed their people. This has long been the case for South Africa. The country is food secure at the aggregate national level, with adequate agricultural production to feed its population of 53 million people through a highly commercialised and efficient agricultural sector established before 1994 (Stats SA, 2012).

Commercial food production has largely sustained national food security, providing enough cereals to ensure a positive food balance as estimated by Food Balance Sheet estimates. Since 2007 the country has been a net importer of food in some years and a net exporter in other years. There are just over 40 000 farmers feeding the nation, with over one million small farmers struggling to enter the formal sector (Stats SA 2006). Less than one-quarter of the entire population engages in any form of agriculture (Stats SA, 2012). Land tenure uncertainty caused by land reform programmes and high levels of political uncertainty places the sustainable future food security situation under question.

Food security goes beyond having enough food to include food safety, adequate sanitation and appropriate risk management (AU/NEPAD, 2009). However, the narrow interpretation of food security has led to a dire neglect of essential elements of policy and strategy and the design and implementation of strategic programmes in South Africa to address the daily reality for between one-third and one-half of the nation's population (Stats SA, 2014). Food security is an outcome of complex inter-relationships and interactions of various parts of the food system (Erickson, 2007) and social inequalities (Hendriks, 2014).

The consequences of widespread food insecurity threaten national security, significantly impair labour productivity and place a heavy burden on national health and social

security systems. The human potential and productivity losses due to under-nutrition seriously constrain economic development, costing more than 10% of individual lifetime earnings and accounting for 2 to 3% loss of annual gross domestic product (World Bank, 2006). The evidence in favour of improving nutrition is clear – even if based simply on the costs of not acting (World Bank, 2006; Alderman, 2004):

- Underweight is the single largest risk factor contributing to the global burden of disease in the developing world, causing nearly 15% losses in total disability-adjusted life years in countries with high child mortality (Ezzati et al., 2002; World Health Organization, 2002).
- Malnutrition is directly or indirectly associated with nearly 60% of all child mortality and even mildly underweight children have nearly double the risk of death of their well-nourished counterparts (Caulfield et al., 2004).
- Infants with low birth weight (less than 2.5 kilograms) are at two to 10 times the risk of death compared with normal birth weight infants. These same low birth weight infants are also at a higher risk for non-communicable diseases such as diabetes and cardiovascular disease in adulthood (Behrman et al., 2004).
- Vitamin A deficiency compromises the immune systems of approximately 40% of the developing world's children under age five, leading to the deaths of approximately one million young children each year (World Bank, 2006).
- Severe iron-deficiency anaemia causes the deaths in pregnancy and childbirth of more than 60 000 young women a year and leads to almost 18 million babies a year being mentally impaired with IQs that are at least 10 to 15 points lower than those not deficient (World Bank, 2006).
- Maternal folate deficiency leads to a quarter of a million severe birth defects every year (UNICEF & MI, 2004).

3. International and South African constitutional context

The right to food asserts that the government has responsibilities to ensure that food is acceptable to a certain culture, supply is sustainable (environmentally and economically) and the access to food does not interfere with the enjoyment of other human rights. This right to food is set out in the Universal Declaration of Human Rights of 1948 (UN General Assembly, 1948) and the International Covenant on Economic, Social and Cultural Rights of 1966 (UN General Assembly, 1966). Article 11.1 of the Covenant states that parties recognise the right to food as part of the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Article 11.2 recognises the fundamental right of everyone to be free from hunger and a commitment by State Parties to take 'individually and through international cooperation, the measures, including specific programmes, which are needed'. In terms of Article 11, the State's Parties are obliged to ensure adequate (access to) food and freedom from hunger (Brand, 2013:56C-6). In General Comment No. 12 (paragraph 15), the obligations of governments are to:

- Respect existing access to adequate food, requiring that Parties do not adopt measures that could prevent such access.
- Protect access to adequate food.
- Fulfil (facilitate) access to and use of resources and means to ensure sustainable livelihoods (of which food security is an outcome).

- Fulfil (provide) that right directly whenever an individual or group is unable to enjoy the right to adequate food.

The South African Constitution (RSA, 1996) states in section 7(1) and (2) and in section 8 that the South African Government is obliged to uphold and implement the rights contained in the Bill of Rights:

7(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the right of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The State must respect, protect, promote and fulfil the rights in the Bill of Rights.

....

8(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. (RSA, 1996)

Section 24 provides everyone with the right to a clean environment:

24 Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; 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.
- (RSA, 1996)

The right to health care, food, water and social security is enshrined in section 27, which also obliges the South African state to take reasonable legislative and other steps, within the context of its available resources, to progressively give content to each of these rights (the section therefore includes an internal limitation; Brand, 2013:56C-8). In this regard, sections 27(1)(b) and 27(2) are relevant:

27(1) everyone has the right to have access to –

(b) Sufficient food and water; and

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.
(RSA, 1996)

In respect of children, section 28(1) of the Constitution determines that every child has the right, amongst others:

- (c) To basic nutrition, shelter, basic health care services and social services;
- (d) To be protected from maltreatment, neglect, abuse or degradation. (RSA, 1996)

In the case of children, the section 28(1)(c) and (d) rights (including the right to basic nutrition) are not dependent on the availability of state resources; the obligation to ensure the full realisation of these rights (and other section 28 rights) is unqualified.

Cognisance must also be taken of section 2 (the right to equality) and section 11 (the right to life).

There are two legs relevant to the right to food, namely (economic and physical) accessibility and sufficiency (the implementation of effective distribution systems by the State) (Van Bueren, 2013:22-11). The constitutional right to food creates both duties and standards of justification and scrutiny. The State is obliged to protect the right to food and may not impair existing access to adequate food or make it difficult or impossible for people to gain access to or enhance existing access to food (i.e. by implementing deliberately retrogressive measures). This is called a negative duty, even though it also has a positive aspect in that the State must take steps to protect the right from interference (Rautenbach & Malherbe, 2009:386; Brand, 2013:56C-10 and 56C-15; Brickhill & Ferreira, 2013:568–70). The State also has a duty to promote and fulfil the right to food by adopting relevant measures (including legislative, administrative and budgetary measures). This is called a positive duty (Rautenbach & Malherbe, 2009:386; Brand, 2013:56C-21; Brickhill & Ferreira, 2013:573–4 and 591–2). The reasonableness test must be applied to the section 27 right – are reasonable steps taken by the State (i.e. reasonable legislative and other measures), within the available resources, to achieve the progressive realisation of the right (with the duty on the State to move expeditiously and effectively) (Rautenbach & Malherbe, 2009:387; Brand, 2013:56C-6–7)?

According to Terblanche & Pienaar (2012), when the international and South African constitutional context is taken into account, food security can be described as the situation that follows when persons have physical, social and financial access to sufficient, healthy and wholesome food at all times to meet their diet and food preferences for an active and healthy life, whether such access is the result of an enabling environment and/or State or other provision as required by section 27(1)(b) of the Constitution (Terblanche & Pienaar, 2012:244).

4. The South African food security context

While national food security is not currently a concern in South Africa, unacceptable levels of household and individual food insecurity and under-nutrition should be a major concern of national government. The General Household Survey (Stats SA, 2014) includes two questions on the frequency of the experience of hunger (interpreted as vulnerability to hunger) among adults and children. These questions have been included in the survey since 2002. The experience of hunger has declined from 23.8% in 2002 to 11.4% in 2013 (Stats SA, 2014). Yet 23.1% of households experience difficulty in accessing food (Stats SA, 2014). However, no comprehensive or conclusive system for monitoring food security and nutrition exists in the country. Four national surveys have included questions related to hunger and food insecurity:

- The National Food Consumption Survey of children aged one to nine years conducted in 1999 (Labadarios, 2000).
- National Food Consumption Survey Fortification Baseline conducted in 2005 (Labadarios et al., 2008).
- South African Social Attitudes Survey conducted in 2008 (Human Sciences Research Council, 2008).
- More recently, the South African National Health and Nutrition Examination Survey or SANHANES-1 (Shisana et al., 2013).

The findings depict the realities of the triple burden of malnutrition (under-nutrition, micronutrient deficiencies and over-weight). Although the questions asked and samples were not consistent, these are the only surveys with relevant national data (see Hendriks [2014] for a synopsis of the current food security situation and comparison of the results of the surveys listed above). No conclusive estimate of food insecurity in the country is available and current survey findings do not reflect the daily realities of hunger and deprivation and no surveillance system exists to monitor the situation.

5. The South African food policy context

The drafting of a food security policy was commissioned in 1996, but never moved past a draft document. The White Paper on Agriculture is the closest South Africa had to a food security policy prior to 2014. The White Paper came into operation in 1995 (RSA, 1995). Its purpose is to ensure equitable access to agriculture and promote the contribution of agriculture to the development of all communities, society at large and the national economy, in order to enhance income, food security, employment and quality of life in a sustainable manner. It views national and household food security as equally important, and to be addressed from a multidimensional point of view. The government should therefore support the full spectrum of production systems and practices, from urban food gardens and small-scale production for household income and food security to large-scale production systems. The White Paper states that:

- Productive agricultural land should be retained for agricultural use.
- Government will promote the establishment of a plant genetic resource programme to protect those plant species – in particular those that are essential in maintaining national food security.
- Comprehensive information is needed for the formulation of trade policy and to ensure national food security.

The Green Paper on Land Reform was released in 2011. The principles that underpin the Green Paper are: decentralising the rural economy; democratic and equitable land allocation and use across race, gender and class; and a sustained production discipline for food security (RSA, 2011:11). The Green Paper attempts to improve on past and current land reform perspectives, without significantly disrupting agricultural production and food security; and to avoid or minimise land redistribution and restitution which do not generate sustainable livelihoods, employment and incomes. In terms of the Constitution and the 1997 White Paper on South African Land Policy, the South African Government has to implement three land reform programmes. Firstly, the restitution programme (section 25(7) of the Constitution and the Restitution of Land Rights Act 22 of 1994, as amended in 2014) aims to restore land to those who had been dispossessed of land on account of race-based legislation or administrative practices. Beneficiaries include individuals, groups and communities, or those whose ancestors had been dispossessed as stated. Secondly, the redistribution programme (section 25(5) of the Constitution and the Provision of Land and Assistance Act 126 of 1993) provides support in order to enable persons access to land on an equitable basis. Thirdly, the tenure reform programme (section 25(6) of the Constitution, the Extension of Security of Tenure Act 62 of 1997, the Land Reform (Labour Tenants) Act 3 of 1996 and the Interim Protection of Informal Land Rights Act 31 of 1996) aims to strengthen the security of tenure of individuals, groups and communities

whose tenure was insecure as a result of past race-based legislation or administrative practices.

As regards improving the security of communal tenure, the Communal Land Rights Act 11 of 2004 was assented to on 14 July 2004, but was subsequently declared unconstitutional by the Constitutional Court in 2010 (see *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* 2010 (6) SA 214 (CC)), as the wrong parliamentary process had been followed. No new draft legislation has since been submitted to Parliament.

The Integrated Food Security Strategy was adopted in 2002 (NDA, 2002), based on the Food and Agricultural Organisation Special Programme for Food Security Guide for such strategies. It is considered a failure, with very little integration of Ministries, no real implementation and no functional coordination structure (Drimie & Ruysenaar, 2010; Perriera & Ruysenaar, 2012). The strategy aims to eradicate hunger, malnutrition and food security by 2015 and outlines the following strategic objectives to:

- increase household food production and trading;
- improve income generation and job creation opportunities;
- improve nutrition and food safety;
- increase safety nets and food emergencies management systems;
- improve analysis and information management systems;
- provide capacity-building; and
- hold stakeholder dialogues (NDA, 2002).

However, the Integrated Food Security Strategy has not been widely implemented, largely due to a lack of sectoral coordination (Drimie & Ruysenaar, 2010; Perriera & Ruysenaar, 2012). Notwithstanding the above, a number of past and current policies and programmes contain elements relating to food security. For example, the Reconstruction and Development Programme (RSA 1994:53) that was launched in the early post-1994 era to address poverty and inequality aimed at improving living conditions and stimulating economic growth. The Integrated Sustainable Rural Development Strategy published in 2000 (RSA, 2000a) was designed to foster social cohesion with strong institutions, sustainable economies and access to essential services. The Land Redistribution for Agricultural Development initiative was launched in 2001, and is a sub-programme of the Redistribution Programme of the Department of Land Affairs, which is jointly run by the Department of Land Affairs and the Department of Agriculture (NDA, 2001). The programme sought to allow previously disadvantaged communities to buy land and agricultural implements to establish agricultural livelihoods and boost food production at a community level. The Comprehensive Agricultural Support Programme was prioritised for implementation during 2004 and sought to provide post-settlement support for the beneficiaries of land reform and private land acquisitions to encourage value-adding enterprises (DAFF, 2004). The War on Poverty Programme was launched in 2008 (PMG, 2009) as an urgent short-term measure to bring together a menu of interventions that were already in place but gave greater prominence to this presidential priority. The central element of the campaign was to visit households and determine the conditions in which poor households exist, and to identify specific interventions that could alleviate the conditions.

The Comprehensive Rural Development Programme was launched in August 2009 to tackle issues such as underdevelopment, hunger, poverty, joblessness, lack of basic services and other social ills in rural areas (RSA, 2009:4).

The new Growth Path is aimed at enhancing growth, employment creation and equity (DED, 2010). It recognises that creating decent work opportunities, reducing inequality and defeating poverty can only happen through higher levels of economic growth that provides labour opportunities (DED, 2010:1). The New Growth Path sets out a range of measures to achieve employment targets, such as restructuring land reform to support smallholder schemes with comprehensive infrastructure, marketing, finance and extension services support; upgrading employment in commercial agriculture; supporting growth in commercial farming and addressing price fluctuations in maize and wheat while supporting national food security; accelerating land claims processes and improving post-settlement support; implementing programmes to ensure competitive pricing of inputs; and supporting fishing and aquaculture (DED, 2010:12). In addition, the government will increase its support for small-scale agriculture by establishing community food gardens, marketing and service coops as well as accessible banking facilities (DED, 2010:14).

The National Development Plan was published in 2012 and aims to eliminate income poverty by 2030 (by reducing the proportion of households with a monthly income of less than R419 per person [in 2009 prices] from 39% to 0%) and to reduce inequality (a reduction in the Gini coefficient from 0.69 to 0.6 by 2030) (RSA, 2012:34). Ensuring quality access to basic services, health care, education and food security (which includes both household food security and nutrition) are key issues to be addressed in building an integrated and inclusive rural economy. In this regard, the Plan proposes a reduction in the cost of living for low-income and working-class households (including a reduction in the cost of food) (RSA, 2012:40). In addition, it proposes a commitment to household food and nutrition security involving both public and private-sector action in order to achieve broader social security coverage (RSA, 2012:53).

The Plan states that South Africa should aim to 'maintain a positive trade balance for primary and processed agricultural products, and not to achieve food self-sufficiency in staple foods at all costs'. In this regard, regional cooperation and regional expansion of production are favourable (RSA, 2012:231). According to the Plan, the ability to access food determines household food security. As such, job creation and agricultural productivity as well as the provision of assistance to poor households to cope with increases in food prices are important. In addition, public works programmes should be utilised and expanded for rural infrastructure development, and access to social grants for eligible households should be provided. Taking into account that households spend approximately 35% of their income on food (far more than the 3% spent by upper-income households), measures should be investigated to close the urban/rural food-price gap (RSA 2012:231). The Plan also stresses that any food security strategy should ensure that increased agricultural employment and rural incomes translate into improved nutrition (RSA 2012:231).

In October 2013, the Cabinet passed the South African National Food and Nutrition Security Policy (Department for Social Development & Department for Agriculture, Forestry and Fisheries, 2013). The Policy was gazetted on 22 August 2014. This sets out five pillars for achieving food security, namely: availability of improved nutritional safety nets; improved nutrition education; alignment of investment in agriculture towards local economic development; improved market participation of the emerging agricultural sector; and risk management. However, the Policy lacks a legislative framework and implementation strategy necessary to achieve its goals.

6. The need for a regulatory framework and implementation strategy for food security

Policy as such is not legally binding and is not enforceable. According to the South African state administration model, any policy must be followed by legislation. The line functionary departments concerned must then submit their annual performance plans, setting out the programmes (and detailed projects) as well as their requests for funding. Thereafter, the legislature concerned (national parliament or provincial legislature, as the case may be) considers such annual performance plans, and expenditure is then approved by the said legislature.

Governments have an obligation to adopt legislative measures to give effect to constitutional rights in order to respect, protect, promote and fulfil the rights afforded to citizens. Such legislation provides a sound framework for the evaluation of existing policies, strategies and programmes and a mechanism for ensuring alignment and compliance of these with human rights and the overall commitments of government. This occurs even more so in a country like South Africa, where most legislation has been inherited from the previous apartheid system – the very system that created the dramatic inequalities which explain food insecurity in the new South Africa. Since 1996, limited legislative reform has been carried out to realign past policies in ways that address the structural inequalities of the past. A few examples (examined below) of more recent Bills and draft Acts demonstrate how revisions of legislation can address these inequalities.

However, adjustments in existing individual Acts do not lead to the coherence and consolidation of cross-cutting food policy issues that will ensure food security for the country. In addition to a comprehensive food security policy which provides the benchmark and review framework to ensure that legislative reform and national plans, strategies and programmes facilitate, protect and promote future food security, there is a need for concomitant legislation and an implementation strategy.

A food security Act will entrench the right to access to food and will form the framework to obtain dedicated food security-related funding for programmes and projects specified in respective departments' annual performance plans. It will provide the basis for cooperation between government departments and other entities, and will also provide for enforcement mechanisms to ensure that relevant provisions are adhered to. The Act should include a mix of instruments to fulfil basic human rights, identification of beneficiaries, targeting and registration methodologies, institutional arrangements, delivery mechanisms, accountability systems, and a sound monitoring and evaluation system that includes continuous surveillance of hunger and poverty levels, and should provide for mandatory early warning systems and contingency plans (including insurance mechanisms and requirements, emergency response systems and compensation schemes for disasters). The Act should also include an appeals mechanism.

An implementation strategy will provide a framework setting out the detailed institutional responsibilities, timeframes, deliverables, expected outputs and outcomes and an appropriate monitoring and evaluation system to ensure a phased approach with set deadlines which is binding for all stakeholders.

7. Overview of South African legislation related to agriculture and food security

In the post-1994 period there was considerable activity in drafting of strategic documents by the newly appointed post-apartheid Ministries and Provincial Departments. Each

Ministry set out to draft a green paper and then a white paper. There have been various iterations over the 15 years. The composition of Ministries related to agriculture has changed at least three times in the post-apartheid era. The current Provincial Departments of Agriculture do not directly align with the National Ministries. Officials from Provinces liaise with multiple National Ministries – primarily Agriculture, Forestry and Fisheries, Water Affairs, Rural Development and Land Reform, Trade and Industry and Public Works.

Continual restructuring within government has led to perpetual changes in leadership. This has led to instability and a situation where a high proportion of leadership positions are filled by acting incumbents. Therefore, very few strategies in the agriculture, rural development and related sectors are being implemented and even fewer translated into legislation.

Agricultural legislation relevant to food security includes the following:

- Agricultural Pests Act 36 of 1993.
- Agricultural Products Standards Act 119 of 1990.
- Agricultural Research Act 86 of 1990.
- Animal Diseases Act 35 of 1984.
- Animal Health Act of 2002.
- Animal Identification Act 6 of 2002.
- Animal Improvement Act 62 of 1998.
- Conservation of Agricultural Resources Act 43 of 1983.
- Fertilizers, Farm feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947.
- Meat Safety Act 40 of 2000.
- Plant Breeders Rights Act 15 of 1976.
- Plant Improvement Act 53 of 1976.
- Subdivision of Agricultural Land Act 70 of 1970.

No agricultural policies were passed between 1996 and 2010. The following draft strategies, policies and legislation relevant to food security are currently under consideration (many are not available for public review):

- Draft Rural Development Strategy.
- Draft Policy on the Expropriation Bill. This policy hopes to generate sufficient public interest in the debate on the principles that should inform the new expropriation bill and allows for a consultative and participatory process.
- Memorandum on the Objects of the Land Tenure Security Bill, 2010. Section 25(6) of the Constitution of the Republic of South Africa, 1996 entitles persons whose land tenure is legally insecure as a result of past racially discriminatory laws and practices, either to legally secure tenure or comparable redress.
- Plant Breeders' Rights Amendment Bill, 2013 provides a system under which plant breeders' rights relating to varieties of certain kinds of plants may be granted and set out the requirements that have to be complied with for the granting of such rights.
- Agricultural Produce Agents Bill, 2003.
- National Pound Bill, 2012.
- Fertilizer and Feeds Bill, 2013.
- Marine Living Resources Amendment Bill, 2013.
- National Bill for Agricultural Training Institutes of South Africa, 2012.
- Protection and Development of Agricultural Land Framework Bill, 2013. This Bill will provide for the sustainable use of natural agricultural resources, including

control over the subdivision and change of use of agricultural land, with reference to high-value and medium-value agricultural land in support of biodiversity.

- The Transfer of Rights Policy was gazetted in 2010.
- The Small-scale Fisheries Policy was gazetted in 2011.
- The Policy on the Transfer of Commercial Fishing Rights was published and gazetted in 2010. This programme continued with the granting of interim relief measures pertaining to exemptions/permits.
- The list of protected trees under the National Forest Act was gazetted for public comment, 2010.
- The Pesticides Policy was approved by the Minister and gazetted in 2010.
- The Draft Policy on Organic Agriculture is currently at a stakeholder consultative stage.
- A discussion document was finalised towards the provision of primary plant health diagnostic services in rural areas in partnership with the Agricultural Research Council.
- The South African National Food and Nutrition Security Policy (Department for Social Development & Department for Agriculture, Forestry and Fisheries, 2013) was approved by the Cabinet in September 2013 and gazetted on 22 August 2014.

8. Review of South African agricultural legislation related to food security

[Appendix A](#) provides a matrix analysing the relevance of the Acts against government priorities (the Presidential Outcomes) with reference to food security, while [Appendix B](#) provides an analysis of the Acts against key policy considerations for food security as outlined in the Comprehensive African Agricultural Development Programme Framework for African Food Security (AU/NEPAD, 2009). A summary of the existing Acts is presented in [Table 1](#).³ While it is acknowledged that other sector policies affect food security, the current review focuses only on legislation administered by the DAFF.

The Marketing of Agricultural Products Amendment Act 47 of 1996, the Marine Living Resources Act 18 of 1998, the Marine Living Resources Amendment Bill, 2013 and the National Forest Act 84 of 1998 make deliberate efforts to provide for inclusive growth across the spectrum of small and commercial production and trade. These address a far higher number of government priorities than any other legislation.

The Marketing of Agricultural Products Act 47 of 1996 sets out the regulatory framework for the establishment and enforcement of regulations related to the marketing of agricultural products. This Act has a direct and important role in food security, safeguarding against statutory measures which affect food security and unemployment in South Africa. It seeks to increase market participation for all producers, improve efficiencies, optimise export earnings and improve the viability of the agricultural sector.

The amendments presented in the Draft Marketing of Agricultural Products Amendment Bill, 2013 provide greater alignment with government policies, with a social focus on the role of smallholders in the agricultural sector and ensuring that these players have access to markets, training and support.

³A table of extracts of the South African agricultural legislation with relevance to food security can be found online: http://www.researchgate.net/publication/267910525_Review_of_the_South_African_Agricultural_Legislative_Framework_Food_Security_Implications_Summary_table Accessed 15 May 2015.

Table 1: Summary of South African agricultural legislation with regard to food security and the right to food

Agricultural Produce Marketing Agencies Bill	Agricultural Product Standard Act 199 of 1990	Agricultural Pests Act 36 of 1983	Agricultural Research Act 86 of 1990	Animal Diseases Act 35 of 1984	Animal Health Act 7 of 2002	Animal Identification Act 6 of 2002	Animal Improvement Act 62 of 1998	Conservation of Agricultural Resources Act 43 of 1983	Fencing Act 31 of 1963	Fertilizers and Feeds Bill, 2009	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947	Genetically Modified Organisms Act 15 of 1997	Marine Living Resources Act 18 of 1998	Marketing of Agricultural Products Act 47 of 1996	Marine Living Resources Amendment Act 68 of 2000	Draft Marketing of Agricultural Products Amendment Bill, 2010	Meat Safety Act 40 of 2000	National Forest Act 84 of 1998	National Veld and Forest Fire Act 101 of 1998	Plant Breeders Rights Act 15 of 1976	Draft Plant Health (Phytosanitary) Bill, 2012	Subdivision of Agricultural Land Act 70 of 1970
Acts that play a protective role with regard to national food security – mainly in terms of reducing the agricultural and trade risk and ensuring food safety																						
	X	X		X	X	X		X	X	X	X						X		X		X	
Acts seek to manage and regulate crop and breed improvement – such activities have benefits for improving the productivity and levels of production of agriculture to increase the amount of food available. These Acts include regulations to safeguard the quality of food.																						
			X				X					X			X						X	
The following Acts have elements that seek to improve the efficiency of the agricultural production and trade system																						
															X	X						

So too does the Marine Living Resources Act 18 of 1998 (as amended in 2000) – to be further amended by means of the Marine Living Resources Amendment Bill, 2013 – provide for greater protection and provision of opportunities for the livelihoods of small players and addresses issues directly related to ensuring equitable access to natural resources, conservation of resources to ensure sustainable food system and livelihoods in future and attempts to address inequalities. The National Forest Act 84 of 1998 includes a section on Community Forestry. These two Acts also make provision for compensation in the case of emergencies and disasters with reference to livelihoods.

However, the Marine Living Resources Act 18 of 1998 fails to adequately address an emerging interest in aquaculture and in-land fish production. This has been identified as a rich source of protein with potential for sustainable livelihood development in rural areas of the country to address under-nutrition.

No clear conflicts are evident in the existing legislation with regard to food security. The current legislation adopts a ‘do no harm’ approach in protecting national food security and safety. Most Acts and Bills reviewed plays a role in reducing risk of food insecurity, food safety, public health, production and marketing. Only the Marine Living Resources Act 18 of 1998 and the National Forest Act 84 of 1998 look at transformative roles of government and policy; many custodial roles are set out related to protecting production, food safety and marketing.

While the legislation plays a protective role with regard to food production, marketing safety, little is addressed regarding improving the nutrition profile of South Africans. Some legislation may pose constraints to the following:

- small businesses (the Meat Safety Act 40 of 2000 has restrictions related to abattoirs and slaughter of animals); and
- small producers (the current Subdivision of Agricultural Land Act 70 of 1970 regarding division of commercial-sized farms [to be replaced by the Protection and Development of Agricultural Land Framework Bill, 2013], and the Animal Identification Act 6 of 2002 that requires registration and tagging), restricting engagement by small producers or incurring costs for poorer segments of society.

Just less than half of the Acts and Bills reviewed had some mention or role in sustainable resource management. The Conservation of Agricultural Resources Act 43 of 1983, the Marine Living and Resources Act 18 of 1998 and the National Forest Act 84 of 1998 have elements of environmental protection and conservation. There is some mention of sustainable livelihoods and increasing access to income opportunities in these Acts, but on the whole few Acts and Bills contribute directly to Presidential Outcome 4 (Decent employment through inclusive economic growth) and Presidential Outcome 7 (Vibrant, equitable and sustainable rural communities with food security for all).

Ensuring food security in South Africa has been entrusted to the DAFF, yet the only legislation under the jurisdiction of the DAFF that directly mentions food security is the Marketing of Agricultural Products Act 47 of 1996, adopting a ‘do no harm’ requirement in the consideration of statutory measures. The criteria used to judge this are not set out and government interpretation of food security (national or household) is not definitive.

The lack of food security legislation means that the right to food has no enforceable framework. No mechanisms for ensuring individual and household food security are provided. While the Marketing of Agricultural Products Amendment Bill, 2013, the Marine Living Resources Act 18 of 1998 (as amended in 2000 and to be further amended in 2013) and the National Forest Act 84 of 1998 make special mention of small producers and businesses and the promotion of economic growth and employment creation, there is no provision for addressing the structural inequalities that cause food insecurity in South Africa, reneging on the DAFF and government responsibility to respect, provide, protect and fulfil the basic human rights of the food insecure. Although Social Development Income Grants and Food Parcels, the Department of Education's School Feeding Programmes and the Public Works Food/Water-for-Work Programmes offer some relief to those suffering or susceptible to hunger and poverty, these programmes do not provide a comprehensive approach to food security and are by no means legally enforceable due to the lack of a comprehensive food security legislative framework.

9. Conclusion

An enforceable and comprehensive food security policy, legislative framework and implementation strategy are urgently needed in South Africa to guide the establishment of a comprehensive national food security strategy and appropriate programmes to address hunger and poverty to progressively achieve the targets set out for national growth and development and realise the right to food enshrined in the Constitution. Having sound legislation sets the framework for enforcement, but society is only protected if these laws and regulations are enforced and fair appeal processes are accessible to all citizens. Such a framework will assist in the review of existing policies and legislation and the implementation of more food security sensitive Acts in future.

Disclosure statement

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Appendix A. Summary of legislation with impact on food security-related outcome

South African priorities and strategies	Agricultural Produce Marketing Agencies Bill	Agricultural Pests Act 36 of 1983	Agricultural Product Standard Act 199 of 1990	Agricultural Research Act 86 of 1990	Animal Diseases Act 35 of 1984	Animal Health Act 7 of 2002	Animal Identification Act 6 of 2002	Animal Improvement Act 62 of 1998	Conservation of Agricultural Resources Act 43 of 1983	Fencing Act 31 of 1963	Fertilizers and Feeds Bill 2009	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947	Genetically Modified Organisms Act 15 of 1997	Marine Living Resources Act 18 of 1998	Marine Living Resources Amendment Act 68 of 2000	Meat Safety Act 40 of 2000	Marketing of Agricultural Products Act 47 of 1996	Draft Marketing of Agricultural Products Amendment Bill, 2010	National Forest Act 84 of 1998	National Veld and Forest Fire Act 101 of 1998	Plant Breeders Rights Act 15 of 1976	Draft Plant Health (Phytosanitary) Bill, 2012	Plant Improvement Act 53 of 1976	Subdivision of Agricultural Land Act 70 of 1970
1. Transformational, developmental and custodial objectives	Prepare	5&6	3 & 4		Preamble	Preamble			5,6		Preamble	Preamble	Preamble	Preamble	S2c		3		Preamble		S27	S19 & 10	Preamble	
2. RSA Government Strategic Priorities																								
2.1. Speeding up growth and transforming the economy to create decent work and sustainable livelihoods														S2d			S2(3)	S2A						
2.2. Massive programme to build economic and social infrastructure														S2d				S2A						
2.3. Comprehensive rural development strategy linked to land and agrarian reform and food security														S j			S2(3)	S2A	S3(2)					
2.4. Strengthen the skills and human resource base				S4j														S2A						
2.5. Improve the health profile of all South Africans	Preamble	5&6	3&4								Preamble		1	S42L	S2c	Preamble						S4, 5, 10	Preamble	
2.6. Intensify the fight against crime and corruption						Preamble																		

South African priorities and strategies	biodiversity	Agricultural Produce Marketing Agencies Bill	Preamble	
		Agricultural Pests Act 36 of 1983	5&6	
		Agricultural Product Standard Act 199 of 1990	S7(3)	
		Agricultural Research Act 86 of 1990		
		Animal Diseases Act 35 of 1984	Preamble	
		Animal Health Act 7 of 2002	Preamble	
		Animal Identification Act 6 of 2002		
		Animal Improvement Act 62 of 1998	Preamble	
		Conservation of Agricultural Resources Act 43 of 1983		
		Fencing Act 31 of 1963		
		Fertilizers and Feeds Bill 2009	Preamble	
		Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947	Preamble	
		Genetically Modified Organisms Act 15 of 1997	Preamble	
		Marine Living Resources Act 18 of 1998	Preamble	
		Marine Living Resources Amendment Act 68 of 2000	S2&j	
		Meat Safety Act 40 of 2000	Preamble	
		Marketing of Agricultural Products Act 47 of 1996	3	
		Draft Marketing of Agricultural Products Amendment Bill, 2010	2A	
		National Forest Act 84 of 1998	Preamble	
		National Veld and Forest Fire Act 101 of 1998	S4(f)	
		Plant Breeders Rights Act 15 of 1976		
		Draft Plant Health (Phytosanitary) Bill, 2012	S4.5, 10	
		Plant Improvement Act 53 of 1976	Preamble	
		Subdivision of Agricultural Land Act 70 of 1970		

Appendix B. Matrix comparing Acts and Bills against the Comprehensive African Agricultural Development Programme Framework for African Food Security criteria.

	Agricultural Produce Marketing Agencies Bill	Agricultural Product Standard Act 199 of 1990	Agricultural Pests Act 36 of 1983	Agricultural Research Act 86 of 1990	Animal Diseases Act 35 of 1984	Animal Health Act 7 of 2002	Animal Identification Act 6 of 2002	Animal Improvement Act 62 of 1998	Conservation of Agricultural Resources Act	Fencing Act 31 of 1963	Fertilizers and Feeds Bill, 2009	Fertilizers, Farm Feeds, Agricultural Remedies and Genetically Modified Organisms Act 15 of 1997	Marine Living Resources Act 18 of 1998	Marketing of Agricultural Products Act 47 of 1996	Marine Living Resources Amendment Act 68 of	Draft Marketing of Agricultural Products	Meat Safety Act 40 of 2000	National Forest Act 84 of 1998	National Veld and Forest Fire Act 101 of 1998	Plant Breeders Rights Act 15 of 1976	Draft Plant Health (Phytosanitary) Bill, 2012	Subdivision Of Agricultural Land Act 70 of 1970
Increase economic growth?		X						X			X	X	X	X	X	X				X		
Increase opportunities for producers and marketers?		X						X			X	X	X	X	X	X				X		
Exploit competitive advantages across the value chain?								X				X	X	X	X	X				X		
Improve productivity?			X					X			X	X	X		X		X			X	X	X
Reduce risk and increase resilience?		x	x		X	x	x		X	x	X	X	X	X	X	X	X	X	X	X	X	x
Increase supply of affordable food?								X			X	X	X	X	X	X				X		
Increase incomes of the poor?								x	X			x	X		X					x		
Reduce malnutrition or increase dietary diversity?									x				x		X			x				