

# CURRENT REGULATORY FRAMEWORK RELATING TO, AND IMPACTING ON, FOOD SECURITY

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# 1. INTRODUCTION

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## ▶ Aim

## ▶ Contents

- ▶ Context impacting on agricultural production & food security
- ▶ Constitutional framework for food security
- ▶ International framework for food security
- ▶ Policy and statutory framework for food security
- ▶ DAFF Legislative framework relating to agriculture
- ▶ Impact of DAFF legislative framework on food security
- ▶ Current context: shortcomings
- ▶ Conclusion and recommendations

## 2. CONTEXT IMPACTING ON AGRICULTURAL PRODUCTION & FOOD SECURITY (1)

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### ▶ **Strategic Priority 3**

- ▶ Comprehensive Rural Strategy linked to Land and Agrarian Reform and Food Security

### ▶ **Outcome 7**

- ▶ Vibrant, equitable and sustainable rural communities and food security for all
- ▶ DRDLR co-ordinating role

### ▶ **DRDLR**

#### ▶ Policies and related documents:

- ▶ White Paper, 1997
- ▶ Green Paper on Land Reform (three tier + communal land tenure), 2011
- ▶ State Land Leases and Disposal Policy, 2013
- ▶ Agricultural Landholding Policy, 2013
- ▶ To be finalised Draft Policy on Land owned by Foreigners
- ▶ Land audit, 2013 (79% private land; 14% state land; 7% still to be determined)

#### ▶ Legislation:

- ▶ SPLUMA 16 of 2013
- ▶ Restitution of Land Rights Amendment Bill, 2013
- ▶ Property Valuation Bill, 2013
- ▶ Redistribution legislation (Provision of Land and Assistance Act, 1993)
- ▶ Communal Tenure (CLaRA (2004), extension of Interim Protection of Informal Land Rights Act)

#### ▶ Programmes:

- ▶ Land reform: Restitution, Redistribution, Tenure Reform (pre- and post-settlement support)
- ▶ CRDP , 2009 (wards)
- ▶ RECAP, 2013

# 2. CONTEXT IMPACTING ON AGRICULTURAL PRODUCTION & FOOD SECURITY (2)

- ▶ **DWA**
  - ▶ Water Strategy 2013
  - ▶ Impact on agriculture
- ▶ **DMR**
  - ▶ MPRDA
  - ▶ Allocation of prospecting and mining rights in respect of high value agriculture land
  - ▶ Preference for mineral right holder in case of conflict with surface owner
- ▶ **DPW**
  - ▶ Expropriation Bill, 2013
- ▶ **DAFF**
  - ▶ Outcomes: (a) **4** (job creation (2)); (b) **7** (access to affordable and diverse food (1) + improved rural services (4)); (c) **10** (protecting biodiversity (4))
  - ▶ Review of DAFF legislation
  - ▶ Land capability classes 1-8:
    - ▶ High value and medium value agricultural land
    - ▶ HVAL= LCC 1, 2, 3, irrigated + unique land
    - ▶ Loss of high value agricultural land (mining, urban development, corridor development, etc)
  - ▶ SALA to be replaced by PDALFA (Preservation and Development of Agricultural Land Framework Act and related policy)
  - ▶ DAFF+ DSD: National Policy on Food and Nutrition Security
- ▶ **DSD**
  - ▶ 8 categories of grants
- ▶ **Presidency**
  - ▶ GWM&ES + Performance Management
  - ▶ Development Indicators

# 3. CONSTITUTIONAL FRAMEWORK FOR FOOD SECURITY (1)

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- ▶ **No definition in Constitution for “food”, “food security”, “poverty”, “development”**
  
- ▶ **Bill of Rights:**
  - ▶ **A. limited provision relating to sufficient food obligating the State (section 27)**
    - ▶ to the extent that the State must take the necessary steps within its available resources to achieve its progressive realisation:
      - *“right to access to health care services, sufficient food and water, and social security (including appropriate social assistance if unable to support oneself)”*
  - ▶ **B. absolute provisions relating to nutrition obligating the State without qualification:**
    - ▶ Section 28(1)(c):
      - *“every child has the right... to basic nutrition, shelter, basic health care services and social services”*
    - ▶ Section 35(2)(e):
      - *“everyone who is detained, including every sentenced prisoner, has the right- ... to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment”*

# 3. CONSTITUTIONAL FRAMEWORK FOR FOOD SECURITY (2)

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- ▶ **Other matters that in principle are directly related to food security mentioned in the Constitution in an incoherent and uncoordinated manner:**
  - ▶ Agriculture:
    - ▶ Only in Schedule 4 (Part A) as a concurrent national and provincial legislative (and executive) competence
  - ▶ Development:
    - ▶ Economic development, social development, sustainable development, population development, regional planning and development, urban and rural development, development programmes, development-oriented public administration; developmental and other needs of provinces, local government and municipalities, developmental duties of municipalities, development of national and provincial policies
  - ▶ Social:
    - ▶ Social justice, social security, social assistance, social services and welfare services
  - ▶ Food:
    - ▶ Sufficient food, licencing and control of undertakings that sell food to the public
  - ▶ Poverty, poor, poverty alleviation, poverty reduction:
    - ▶ No references
  - ▶ Growth:
    - ▶ *“Reserve Bank to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic”*

# 4. INTERNATIONAL FRAMEWORK FOR FOOD SECURITY (1)

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1. Universal Declaration of Human Rights, 1948
2. International Covenant on Economic, Social and Cultural Rights, 1966
3. Millennium Development Goals, 2001:
  - ▶ Goal 1: Eradicate extreme poverty and hunger
  - ▶ Target 1C: to halve, by 2015, the proportion of people who suffer from hunger
4. Comprehensive Africa Agriculture Development Programme, 2003 (CAADP):
  - ▶ General: 6% growth and 10% of budget
  - ▶ Pillar 3: Increasing Food supply and Reducing Hunger: Framework for African Food Security (FAFS)
  - ▶ RSA CAADP Compact
5. UN General Assembly Resolution 67/174: The Right to Food, 2012

# 4. INTERNATIONAL FRAMEWORK FOR FOOD SECURITY (2)

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- ▶ **International Covenant on Economic, Social and Cultural Rights (ICESCR):**
  - ▶ Article 11.1
    - ▶ Right to an adequate standard of living, “including adequate food...”
  - ▶ 1966 General Comment No. 12 (paragraph 15): The obligations of governments are to:
    - ▶ Respect existing access to adequate food. Requires 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

# 5. POLICY & STATUTORY FRAMEWORK FOR FOOD SECURITY (1)

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1. Reconstruction and Development Programme, 1994
2. White Paper on Agriculture, 1995
3. Integrated Sustainable Rural Development Strategy, 2000
4. Land Redistribution for Agricultural Development (LRAD), 2001
5. Integrated Food Security Strategy, 2002
6. Special Programme for Food Security, 2003
7. Comprehensive Agricultural Support Programme (CASP), 2004
8. DRDLR War on Poverty Programme, 2008
9. Medium Term Strategic Framework (MTSF), 2009-14: Strategic Priority 3 (comprehensive rural development strategy linked to land and agrarian reform and food security)
10. Comprehensive Rural Development Programme (CRDP), 2009
11. Outcomes Approach and Outcome 7: Vibrant, equitable and sustainable rural communities and food security for all, 2010
12. New Growth Path, 2010
13. Directorate of Food Security and the Zero Hunger Strategy, 2011
14. Green Paper on Land Reform, 2011
15. National Development Plan (NDP), 2012
16. DRDLR Strategic Plan, 2013-14 – 2017-18
17. DAFF Strategic Plan, 2013-2014 – 2017-18
18. DRDLR Policy for the Recapitalisation and Development Programme, 2013
19. National Policy on Food and Nutrition Security [underpinned by (a) Household Food and Nutrition Security Strategy and (b) Fetsa Tlala Food Production Intervention], 2013

## 5. POLICY & STATUTORY FRAMEWORK FOR FOOD SECURITY (2)

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- ▶ **Five pillars of the National Policy on Food and Nutrition Security, 2013:**
  - ▶ Availability of improved nutritional safety nets
  - ▶ Improved nutrition education
  - ▶ Alignment of investment in agriculture towards local economic development, particularly in rural areas
  - ▶ Improved market participation of the emerging agricultural sector
  - ▶ Food security risk management

# 5. POLICY & STATUTORY FRAMEWORK FOR FOOD SECURITY (3)

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## ▶ (2014) (Draft) Policies (non-exhaustive) :

- ▶ [National Treasury] 2014 Estimates of National Expenditure (tabled in Parliament on 26 February 2014)
- ▶ [National Treasury] 2014-2019 MTSF
- ▶ [DRDLR] Agricultural Land Holdings Policy Framework (approved by DRDLR Minister)
- ▶ [DRDLR] State assets acquisition and lease disposal policy
- ▶ [DRDLR] Recapitalisation and development policy
- ▶ [DRDLR] Policy on the establishment of a rural development agency
- ▶ [DRDLR] Policy on the establishment of a rural investment and development financing facility
- ▶ [DAFF] Protection and Development of Agricultural Land Framework Policy

## ▶ (2014) (Draft) Legislation (non-exhaustive):

- ▶ [DRDLR] Spatial Planning and Land Use Act 16 of 2013 (not yet commenced)
- ▶ [DRDLR] Restitution of Land Rights Amendment Bill [B54B – 2013] (not yet signed by President)
- ▶ [DRDLR] Draft Extension of Security of Tenure Amendment Bill, 2013
- ▶ [DRDLR] Communal Land Tenure Bill (not yet published)
- ▶ [DRDLR] Land Protection Bill, 2014 (not yet published)
- ▶ [DRDLR] Property Valuation Bill [B54B-2013]
- ▶ [DRDLR] Draft Land Management Commission Bill, 2014
- ▶ [DPW] Draft Expropriation Bill, 2013
- ▶ [DAFF] Protection and Development of Agricultural Land Framework Bill, 2014 (not yet published)

# 6. DAFF LEGISLATIVE FRAMEWORK RELATING TO AGRICULTURE (1)

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## ▶ DAFF 2009-2014 Strategic Plan

- ▶ Review of legislation programme: appointment of BE at UP
- ▶ Duration: 21 months
- ▶ Aim
- ▶ Process followed:
  1. Review of compliance with 1996+ constitutional, developmental agenda and mandate of government, and cross-cutting national statutory context
  2. Internal and external consultations by directorates responsible for individual Acts
  3. Receipt and implementation of detailed technical instructions signed-off by relevant DAFF DDG
  4. Submission to and consultation with directorates concerned
  5. Receipt and implementation of final detailed technical instructions signed-off by relevant DAFF DDG
  6. Publication in *Government Gazette* for comments
  7. Consultation process managed by directorates concerned
  8. Receipt and implementation of post GG-publication consultation technical instructions signed-off by relevant DAFF DDG

# 6. DAFF LEGISLATIVE FRAMEWORK RELATING TO AGRICULTURE (2)

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- ▶ **DAFF: 8 clusters + Acts per cluster**
  
- ▶ **1. DAFF Agricultural & Food Markets Cluster**
  1. Agricultural Produce Agents Act 12 of 1992
  2. Agricultural Product Standards Act 119 of 1990
  3. Liquor Products Act 60 of 1989
  4. Marketing of Agricultural Products Act 47 of 1996
  5. Perishable Products Export Control Act 9 of 1983
  
- ▶ **2. DAFF Agricultural Research Cluster**
  1. Agricultural Research Act 86 of 1990
  2. Onderstepoort Biological Products Incorporation Act 19 of 1999

# 6. DAFF LEGISLATIVE FRAMEWORK RELATING TO AGRICULTURE (3)

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## ▶ 3. DAFF Agricultural Resources Cluster

1. Agricultural Pests Act 36 of 1983
2. Conservation of Agricultural Resources Act 43 of 1983
3. Fencing Act 31 of 1963
4. Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947
5. Subdivision of Agricultural Land Act 70 of 1970

## ▶ 4. DAFF Animals Cluster

1. Animal Diseases Act 35 of 1984
2. Animal Health Act 7 of 2002
3. Animal Identification Act 6 of 2002
4. Animal Improvement Act 62 of 1998
5. Animals Protection Act 71 of 1962
6. Meat Safety Act 40 of 2000
7. Performing Animals Protection Act 24 of 1935
8. Societies for the Prevention of Cruelty to Animals Act 169 of 1993
9. Veterinary and Para-Veterinary Professions Act 19 of 1982

# 6. DAFF LEGISLATIVE FRAMEWORK RELATING TO AGRICULTURE (4)

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## ▶ 5. DAFF Plants (Genetic Issues & Materials) Cluster

1. Genetically Modified Organisms Act 15 of 1997
2. Plant Breeders' Rights Act 15 of 1976
3. Plant Improvement Act 53 of 1976
4. Groot Constantia Trust Act 58 of 1993
5. KwaZulu Cane Growers' Association Act Repeal Act 24 of 2002

## ▶ 6. DAFF Other Agricultural Legislation Cluster

1. Agriculture Laws Extension Act 87 of 1996
2. Agricultural Laws Rationalisation Act 72 of 1998

## ▶ 7. DAFF Fisheries Cluster

1. Marine Living Resources Act 18 of 1998

## ▶ 8. DAFF Forestry Cluster

1. National Forests Act 84 of 1998
2. National Veld and Forest Fire Act 101 of 1998

## 6. DAFF LEGISLATIVE FRAMEWORK RELATING TO AGRICULTURE (5)

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- ▶ **Cross-cutting issues in Acts:**
  - ▶ Trusteeship / Custodianship
  - ▶ Intergovernmental Relations & Co-operative Government
  - ▶ Assignment and Delegation
  - ▶ Reviews and Appeals
  - ▶ Public Participation
  - ▶ Administrative Justice
  - ▶ Access to Information
  - ▶ Monitoring and Evaluation

# 7. IMPACT OF DAFF LEGISLATIVE FRAMEWORK ON FOOD SECURITY (1)

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## ▶ **Methodology:**

- ▶ Extracts of the South African agricultural legislation with relevance to food security
- ▶ Matrix indicating relevance of Act concerned to RSA Government priorities (Outcomes) with reference to food security
- ▶ Analysis of Acts against key policy considerations for food security as outlined in *Comprehensive African Agriculture Development Programme's (CAADP) Framework for African Food Security (FAFS)*

# 7. IMPACT OF DAFF LEGISLATIVE FRAMEWORK ON FOOD SECURITY (2)

Protective role i.r.o. national food security – i.t.o. reducing agricultural and trade risk and ensuring food safety	Manage & regulate crop & breed improvement (improving productivity + levels of production to increase amount of food available), incl. food quality regulations	Improve efficiency of agricultural production and trade system
<ul style="list-style-type: none"> <li>• 1983 Agricultural Pests Act</li> <li>• 1990 Agricultural Products Standard Act</li> <li>• 1984 Animal Diseases Act</li> <li>• 2002 Animal Health Act</li> <li>• 2002 Animal Identification Act</li> <li>• 1983 Conservation of Agricultural Resources Act</li> <li>• <i>2013 Draft Plant Health (Phytosanitary) Bill</i></li> <li>• 1963 Fencing Act</li> <li>• <i>2013 Fertilizers and Feeds Bill (currently being discussed by the RSA Parliament's Portfolio Committee on Agriculture, Forestry and Fisheries)</i></li> <li>• 1947 Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act</li> <li>• 2000 Meat Safety Act</li> <li>• 1998 National Veld and Forest Fire Act</li> </ul>	<ul style="list-style-type: none"> <li>• 1990 Agricultural Research Act</li> <li>• 1998 Animal Improvement Act</li> <li>• 1997 Genetically Modified Organisms Act</li> <li>• 1998 Marine Living Resources Act</li> <li>• <i>2013 Plant Breeders' Rights Bill</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>2013 Draft Marketing of Agricultural Products Amendment Bill</i></li> <li>• 1998 Marine Living Resources Act</li> <li>• <i>2013 Marketing of Agricultural Products Amendment Bill</i></li> </ul>

# 7. IMPACT OF DAFF LEGISLATIVE FRAMEWORK ON FOOD SECURITY (3)

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- ▶ Acts that provide for inclusive growth across the spectrum of small and commercial production and trade and address far higher number of government priorities than any other agriculture legislation:
  - ▶ Marketing of Agricultural Products Act 47 of 1996
  - ▶ Marine Living Resources Act 18 of 1998
  - ▶ National Forests Act 84 of 1998
- ▶ No clear conflicts evident in existing DAFF legislation w.r.t. food security
- ▶ Current legislation adopts a '*do no harm*' approach in protecting national food security and safety
- ▶ Most Acts reviewed play a role in reducing risk of food insecurity, food safety, public health, production and marketing
- ▶ Only *Marine Living Resources Act* and *National Forests Act* look at transformative roles of government and policy, many custodial roles are set out related to protecting production, food safety and marketing

## 8. CURRENT CONTEXT: SHORTCOMINGS

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- ▶ While legislation plays protective role w.r.t. food production and marketing safety, little is addressed regarding improving the nutrition profile of South Africans. Some legislation may pose constraints to –
  - ▶ small businesses (*Meat Safety Act's* restrictions related to abattoirs and slaughter of animals), and
  - ▶ small producers (current *Subdivision of Agricultural Land Act* regarding division of commercial-sized farms (to be replaced by the *Protection and Development of Agricultural Land Framework Bill*, 2013), and *Animal Identification Act* that requires registration and tagging), restricting engagement by small producers or incurring costs for poorer segments of society
- ▶ Just less than half the Acts and Bills reviewed have some mention of role in sustainable resource management
- ▶ *Conservation of Agricultural Resources Act*, *Marine Living Resources Act* and *National Forests Act* have elements of environmental protection and conservation
- ▶ 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 *Outcomes 4 and 7*

# 9. CONCLUSION & RECOMMENDATIONS (1)

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- ▶ Ensuring food security in South Africa has been entrusted DAFF:
  - ▶ Only legislation under DAFF's jurisdiction that directly mentions food security: *Marketing of Agricultural Products Act* ('do no harm' requirement in 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)
- ▶ Research urgently required i.r.o. all policy and strategic frameworks of the individual SA government departments dealing with and/or impacting on food security
- ▶ Lack of food security legislation: right to food has no enforceable framework:
  - ▶ No mechanisms for ensuring individual and household food security is provided
  - ▶ While *Marketing of Agricultural Products Amendment Bill, 2013*, *Marine Living Resources Act* (as amended in 2000 and further amended in 2014) and *National Forests Act* make special mention of small producers and businesses and the promotion of economic growth and employment creation, no provision for addressing the structural inequalities that cause food insecurity in SA, reneging on DAFF and government's responsibility to respect, provide, protect and fulfil the basic human rights of the food insecure
  - ▶ *Social Development Income Grants and Food Parcels*, *Department of Education's School Feeding Programmes* and *Public Works Food/Water-for-Work Programmes*: do not provide comprehensive approach to food security and not legally enforceable due to lack of comprehensive food security legislative framework

## 9. CONCLUSION & RECOMMENDATIONS (2)

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- ▶ Society is only protected if laws and regulations are enforced, and fair appeal processes are accessible to all citizens
- ▶ Integrated and co-ordinated comprehensive food security policy and legislative framework is urgently needed to guide establishment of comprehensive national food security strategy and appropriate programmes to address hunger and poverty, in order to:
  - ▶ progressively realise the right to food enshrined in the Constitution; and
  - ▶ achieve the targets set out for national growth and development
- ▶ Such framework will also assist in the –
  - ▶ review of existing policies and legislation; and
  - ▶ effective and sustainable implementation of more food security sensitive policies and legislation in future