

A proposed framework act for food security in South Africa

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Abstract

South Africa is characterised by high levels of poverty and inequality. Often poor households suffer inadequate or unstable food supplies as well as poor nutrition. Food insecurity is exacerbating due to *inter alia* high food prices, high living costs, land reform programmes, political instability as well as continuing population and consumption growth. Climate change also has a significant impact on food security for future generations, due to the seasonal shifts and temperature changes. Food insecurity affects the enjoyment of the right to food. Section 27(1)(b) of the Constitution, provides for a right to food and section 27(2) provides the constitutional mandate of the state to take legislative measures for the realisation of this right. As to date of this study, South Africa has not as yet enacted a food security framework act as legislative measure for the progressive realisation of the right to have access to sufficient food. The principal objective of this study is accordingly to propose provisions that may be necessary for inclusion in a proposed South African Food Security Framework Act.

Various aspects relating to the right to food, food security and framework legislation, is discussed in order to establish the need for a food security framework law in South Africa. Subsequently, provisions from similar South African framework legislation (namely the *National Housing Act* 107 of 1997 and the *National Health Act* 63 of 2003) are distilled in order to identify provisions that are common in framework legislation for the realisation of other qualified socio-economic rights. The legislative guidelines of the United Nations' Food and Agricultural Organizations (FAO) are then considered in order to identify and discuss the provisions (food related and general in nature) that the FAO deems necessary for inclusion in a food security framework act. Thereafter, the food framework acts of Brazil and Guatemala are outlined in order to determine what provisions other jurisdictions have included in their food security framework acts. The study concludes with recommendations of provisions (according to the findings of the various sections) for inclusion in the proposed South African Food Security Framework Act.

Keywords: right to food, food security, framework act, South Africa, Brazil, Guatemala

Opsomming

Suid-Afrika word deur hoë vlakke van armoede en ongelykheid gekenmerk. Arm huishoudings ly dikwels aan onvoldoende of onstabiele voedselvoorrade asook swak voeding. Voedselonsekerheid vererger weens onder andere hoë voedselpryse, hoë lewenskoste, grondhervormingsprogramme, politieke onstabieleit asook bevolking- en verbruikgroei. Klimaatsverandering het ook 'n beduidende impak op voedselsekureit vir toekomstige geslagte as gevolg van seisoenale- en temperatuurveranderinge. Voedselonsekerheid beïnvloed die genot van die reg op voedsel. Artikel 27(1)(b) van die Grondwet maak voorsiening vir die reg op toegang tot voedsel en artikel 27(2) bepaal die grondwetlike mandaat van die staat om wetgewende maatreëls te tref vir die verwesenliking van hierdie reg. Tot op datum van hierdie studie, het Suid-Afrika nog nie 'n voedselsekureitsraamwerk saamgestel om as wetgewende maatreël vir die progressiewe verwesenliking van dié reg te dien nie. Die hoofdoel van hierdie studie is om dienooreenkomstig bepalings wat nodig mag wees, vir insluiting in 'n voorgestelde Suid-Afrikaanse voedselsekureitsraamwerkwetgewing voor te stel.

Verskeie aspekte wat verband hou met die reg op voedsel, voedselsekureit en raamwerkwetgewing, word bespreek ten einde die behoefte vir voedselsekureitsraamwerkwetgewing in Suid-Afrika te bepaal. Daarna word bepalings van soortgelyke Suid-Afrikaanse raamwerkwetgewing (naamlik die *Nasionale Wet op Behuising* 107 van 1997 en die *Wet op Nasionale Gesondheid* 63 van 2003) bestudeer om bepalings wat algemeen in raamwerkwetgewing vir die verwesenliking van ander gekwalifiseerde sosio-ekonomiese regte te identifiseer. Die wetgewende riglyne van die Verenigde Nasies se Voedsel- en Landbou-organisasies (FAO) word dan oorweeg om die bepalings (voedsel verwant en algemeen) wat deur die FAO as nodig geag word, vir insluiting in voedselsekureitsraamwerkwetgewing te identifiseer en te bespreek. Daarna word die voedselraamwerkwetgewing van Brasilië en Guatemala uiteengesit ten einde te bepaal watter bepalings deur ander jurisdiksies ingesluit word in hul voedselsekureitsraamwerkwetgewing. Die studie sluit af met aanbevelings van bepalings (volgens die bevindinge van die verskillende afdelings) vir insluiting in 'n voorgestelde Suid-Afrikaanse voedselsekureitsraamwerkwetgewing.

Sleutelwoorde: reg op voedsel, voedselsekuriteit, raamwerkwetgewing, Suid-Afrika, Brasilië, Guatemala

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List of abbreviations

AHRLJ	African Human Rights Law Journal
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CONASAN	Consejo Nacional de Seguridad Alimentaria y Nutricional (National Food and Nutrition Security Council) (Ecuador, Guatemala)
CONSEA	Conselho Nacional de Seguridad Alimentar e Nutricional (National Council on Food and Nutrition Security) (Brazil)
CRC	Convention on the Rights of the Child
DAFF	Department of Agriculture, Forestry and Fisheries
DOA	Department of Agriculture
FAO	Food and Agriculture Organization of the United Nations
FIAN	Food First Information and Action Network
FIVIMS	Food Insecurity and Vulnerability Information Mapping Systems
GC	General Comment
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPMWF	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IFSS	Integrated Food Security Strategy
IHR	International Human Rights
MDG	Millennium Development Goal
SAJHR	South African Journal of Human Rights

SESAN	Secretaría de Seguridad Alimentaria y Nutricional (Food and Nutrition Security Secretariat) (Guatemala)
SINASAN	Sistema Nacional de Soberanía y Seguridad Alimentaria y Nutricional (National System on Food and Nutritional Sovereignty and Security) (Nicaragua)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNRISD	United Nations Research Institute for Social Development
Voluntary Guidelines	Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security
WFP	World Food Programme
WHO	World Health Organization

1 Introduction and contextualisation

"Food Security"¹ is defined by the United Nations Food and Agricultural Organization (hereafter FAO) as being "access by all people, at all times, to the food required for a healthy life." Furthermore, the World Bank² defined food security in 1986 as:

... the physical, social and economic access to sufficient, safe and nutritious food by all, at all times, to meet their dietary and food preferences.

The 1996 World Food Summit³ stipulated that:

Food security exists 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 and healthy life.

These definitions contain four different but inter-related components or dimensions namely: (a) accessibility (by physical, social and economic means) of food; (b) adequacy of available food; (c) utilisation, quality and safety of food; and (d) food supply stability.⁴

In the *South African Food and Nutrition Security Policy of 2013*,⁵ the Department of Social Development (DSD), together with the Department of Agriculture, Forestry and Fisheries (DAFF), accordingly concluded that "food security" within a South African context refers to:

Access to and control over the physical, social and economic means to ensure sufficient, safe and nutritious food at all times, for all South Africans, in order to meet the dietary requirements for a healthy life.

1 FAO 2008 http://www.foodsec.org/docs/concepts_guide.pdf.

2 Clay "Food Security" 10.

3 FAO *World Food Summit, 1996* para 1. available at FAO 1996 <http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>. See also McLaughlin Date Unknown www.coc.org.

4 DSD and DAFF 2013 <http://www.nda.agric.za/docs/media/NATIONAL%20POLICYon%20food%20and%20nutrition%20security.pdf>. See also CESCR *General Comment 12: The Right to Adequate Food* (hereafter *General Comment 12*) for the components of food security. See also FAO 2006 <http://www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf>.

5 DSD and DAFF 2013 <http://www.nda.agric.za/docs/media/NATIONAL%20POLICYon%20food%20and%20nutrition%20security.pdf>.

Accordingly, people are exposed to food insecurity if any of the above-mentioned dimensions are not fulfilled.⁶

South Africa is characterised by high levels of poverty and inequality.⁷ Often poor households suffer inadequate or unstable food supplies as well as poor nutrition.⁸ In South Africa food insecurity and poverty are some of the outcomes of race-based, socio-economic development practices prevalent all the way through the apartheid era.⁹ The industrial transformation that resulted in urbanisation robbed many households by disturbing the African farming, rural capital, wealth and farming expertise.¹⁰ This exacerbated households' vulnerability to hunger.¹¹ Historically, African households were located far from markets in order to advance a more sustainable agricultural industry and men were compelled to work as migrant labourers in cities.¹² Hence, the loss of land and unemployment contributed to food insecurity among black people in South Africa.¹³

The reliance on non-agricultural income sources to buy food has contributed to food insecurity in South Africa.¹⁴ Baiphethi and Jacobs¹⁵ have estimated that many

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- 6 DSD and DAFF 2013 <http://www.nda.agric.za/docs/media/NATIONAL%20POLICYon%20food%20and%20nutrition%20security.pdf>.
 - 7 Altman, Hart and Jacobs *Food security in South Africa* 345.
 - 8 Anon Date Unknown https://www.statssa.gov.za/PublicationsHTML/Report-03-18-032011/html/Report-03-18-032011_11.html.
 - 9 Koch 2011 <http://www.ipc-undp.org/pub/IPCCountryStudy21.pdf>. See also Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>. who is of the view that the concept of food insecurity is closely linked with poverty in a country. Du Toit is of the opinion that these two concepts are interrelated and they can influence each other. It is difficult for one to discuss food insecurity matters without mentioning poverty, hence it is crucial to highlight briefly the plight of poverty in the country. Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>. defines "poverty" as "Poverty refers to the condition of not having the means to afford basic human needs such as clean water, nutrition, health care, education, clothing and shelter". Du Toit further states that: The *United Nations Development Programme* (UNDP) stipulates that food insecurity has a strong relationship with poverty, income and unemployment and also food insecurity comes in the form of multiple deprivations. Food insecurity may start with the issue of unemployment which leads to poor living standards. Lack of income in turn contributes to food insecurity.
 - 10 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.
 - 11 Hart (ed) *Food security definitions, measurements and recent initiatives in South Africa and Southern Africa* 21.
 - 12 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.
 - 13 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.
 - 14 Hart *Food security definitions, measurements and recent initiatives* 10.
 - 15 Baiphethi and Jacobs *The contribution of subsistence farming* 5.

households buy nearly 90% of their food and that food expenses can even amount to 60%-80% of their total household income for low-income households.

In South Africa, the effect of poverty is unequally spread.¹⁶ Gauteng and Western Cape provinces have the lowest percentage of poor households, whereas Eastern Cape, Limpopo and Mpumalanga, have the majority of poor households.¹⁷ The issue of food security should be discussed along with other developmental issues such as poverty, commodity price increments that includes water and sanitation, social protection, electricity, rural and urban development, access to land, sources of income, changing household structures, health and education, just to mention but a few.¹⁸

Food insecurity is also worsening due to *inter alia* high food prices, high living costs, land reform programmes and political instability.¹⁹ Continuing population and consumption growth entails that the South African demand for food increases as well.²⁰ Climate change also has a significant impact on food security for future generations due to the seasonal shifts and temperature changes.²¹ It could be predicted that food security is threatened in terms of food production and availability, food accessibility and food system stability.²²

The government has tried to address these challenges by way of social programmes that includes school feeding schemes, health services for pregnant and lactating women, free health services for children younger than six years and well-targeted cash transfers or social grants.²³ Social grants have played a crucial role to benefit the poor and vulnerable people in reducing poverty and food insecurity, but the levels of food insecurity are still high.²⁴ The *Constitution of the Republic of South Africa*, 1996 (hereafter the Constitution), the supreme law of the country, provides in

16 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.

17 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.

18 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.

19 De Klerk *et al Human Sciences Research Council* 2004.

20 Kamara and Sally 2002
<http://www.iwmi.cgiar.org/assessment/files/word/publications/Workshoppapers/Kamara.pdf>.

21 Anon Date Unknown http://www.wwf.org.za/what_we_do/climate_change/.

22 Anon Date Unknown http://www.wwf.org.za/what_we_do/climate_change/.

23 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.

24 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.

section 27(1)(b) for the right to have access to sufficient food and water. Section 27(2) further provides for an obligation on the state to take reasonable *legislative* and other measures to achieve the progressive realisation of this right. In *Government of South Africa v Grootboom and Others*,²⁵ the Constitutional Court emphasised the importance of framework legislation as a legislative measure in realising socio-economic rights. Despite the duty imposed on the state in section 27(2) of the Constitution, there is currently no overarching piece of legislation specifically dealing with the right to have access to sufficient food as *legislative* means.²⁶

It must be remembered that food security is not a legal concept *per se*, because it has neither obligations imposed nor provision of entitlements to them.²⁷ However, food security can be regarded as a pre-condition for the full enjoyment of the right to food.²⁸ On the other hand, the right to food is a human right that is recognised under both international and national law.²⁹ This right provides entitlements to people in order for them to have access to adequate food as well as the resources that are essential for the enjoyment of food security that is sustainable.³⁰ The right to have access to food in international instruments³¹ provides legal duties³² on states to overcome hunger and malnutrition and realise food security for everyone. Furthermore, the right to food addresses states' duties beyond their borders, which includes trade-related issues.³³ For example, the International Covenant On Economic, Social And Cultural Rights (ICESR) encourages the state parties to take the measures essential for a justifiable distribution of world food supplies.³⁴ While it does not recommend any precise manner to attain such distribution, it obliges states to ensure their trade or other policies serve this aim.

25 2001 1 SA 46 (CC).

26 Khoza 2004 SAJHR 664 is of the opinion that this omission is subject to Constitutional testing.

27 FAO 2008 *The Right to Adequate Food* 4.

28 FAO 2008 *The Right to Adequate Food* 4.

29 SAHRC 2013 <http://www.sahrc.org.za/home/index.php?ipkContentID=112&ipkMenuID=94>.

30 Schutter Date Unknown <http://www.srfood.org/en/governance-and-the-global-food-crisis>.

31 For example, the Preamble of the Constitution Of FAO, 1965; Objective 7.4 of the World Food Summit Plan Of Action, 1996; a 25 of the Universal Declaration of Human Rights, 1948; a 11 of the International Covenant On Economic, Social And Cultural Rights, 1966 and a 24, a 27 of the United Nations Convention on the Rights of the Child, 1989.

32 More specifically in South Africa the duty to take legislative and other measures (for example a proposed framework act and other measures) such as strategies, programmes and policies.

33 FAO 2008 *The Right to Adequate Food* 5.

34 A 11(2)(b).

It is important to distinguish what the right to adequate food entails and what it does not entail. The right to food is not a right to specific nutrients or the same as the right to be fed.³⁵ Instead, the right to adequate food is about being given an assurance or guarantee to feed oneself, which requires not only the availability of food or the sufficiency of food production in proportion to the population but also the accessibility of such food.³⁶ Hence, every household should have means to produce or purchase its own food. For one to produce food there is need of land, water and other important resources and also money and accessibility to the market.³⁷ Therefore, the right to adequate food places an obligation on states to provide an enabling environment that makes it possible for people to utilise their full potential for the production and procurement of adequate food for themselves and their families.³⁸

However, when people are not able to feed themselves with their own means, for example in cases of a natural disaster or because they are in detention, the state has a duty to provide food directly.³⁹ In a nutshell, the right to adequate food requires states to utilise all the available resources and take actions that reduce and eradicate the levels of hunger, food insecurity and malnutrition.⁴⁰

The primary objective of this study is accordingly to answer the following research question namely: What provisions are necessary for inclusion in a proposed South African framework act for food security by taking into account the legislative guidelines of the FAO, the legislative provisions of countries that have already enacted framework act for food security (specifically Brazil and Guatemala) as well as South African framework act for the realisation of other socio-economic rights (specifically the *Health Act* and the *Housing Act*)?

In order to answer this research question, various aspects relating to the right to food, food security and framework act will be discussed. Section two will provide the theoretical background to the right to have access to sufficient food, food security

35 Mechlem 2004 *European Law Journal* 631–648.

36 Mechlem 2004 *European Law Journal* 631–648.

37 Mechlem 2004 *European Law Journal* 631–648.

38 Schutter "The Global Hunger Crisis and Human Rights" 8-14.

39 A 11. See also section 2.2.3 of this study.

40 FAO Unknown <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>.

and framework act. This is done from an international level then narrowed down to the South African perspective. The FAO's legislative guidelines will be considered in section three in order to identify and discuss the provisions (food related and general in nature) that the FAO deems necessary for inclusion in a food security framework act. Section four will deal with South African framework Acts (namely the *Housing Act* and the *Health Act*). The aim of section four is to identify provisions that are common in framework act for the realisation of other qualified socio-economic rights. Thereafter, section five deals with other jurisdictions and framework act, specifically the food framework acts of Brazil and Guatemala⁴¹ in order to determine what provisions other jurisdictions have included in their food security framework acts. Finally, chapter six concludes the study and makes recommendations (according to the findings of the various sections) for inclusion in the proposed South African Food Security Framework Act.⁴²

This study is mainly based on a literature study of relevant textbooks, law journals, legislation, case law and electronic sources relating to the realisation of the right to have access to sufficient food. Even though reference is made to other jurisdictions, this study is not intended to be of a legal comparative nature. The discussion of the framework acts of Brazil and Guatemala in section five are only necessary in order to make further recommendations for the proposed South African Food Security Framework Act and not to compare the South African position with that of Brazil and Guatemala.

41 For purposes of this study, secondary sources will be used to discuss the food framework acts of Brazil and Guatemala because their legislations are written in Portuguese and Spanish respectively.

42 Although other authors have written on the desirability to enact a South African Food Security Framework Act - this study is unique in that it also includes reference to other jurisdictions that have already enacted framework acts - in order to make recommendations. See Terblanche and Pienaar 2012 *PER / PELJ*.

2 Theoretical background to the right to have access to adequate food, food security and framework act

2.1 Introduction

The right to adequate food is a universal human right that is recognised in several instruments under international law as well as national laws. Article 11.1 of the ICESCR indicates that states parties should recognise:

...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 of the ICESCR provides that states should ensure that more immediate and imperative steps are taken to ensure that "the fundamental right to freedom from hunger and malnutrition is secured." The right to adequate food is of importance for the enjoyment of all rights and it is applicable to everyone.⁴³

As previously mentioned,⁴⁴ section 27(1)(b) of the South African Constitution provides for the right to have access to sufficient food and water. Furthermore, section 27(2) provides the constitutional mandate of the state to take legislative measures for the realisation of this right. The South African government reprioritised food security in the State of Nation Address of 2010, as well as in various other strategic instruments.⁴⁵ This is in accordance with South Africa's compliance with the *Millennium Development Goals* (MDGs) which aims to reduce the proportion of people who go hungry between the period 1990 and 2015 and to alleviate poverty and unemployment by 2014.⁴⁶

43 A 11.1 of the ICESCR. For example, the right to food is linked to one's right to life and dignity and requires that food be available, accessible and adequate for everyone without discrimination. The right to food is also essential to one's health and wellbeing. See also SAHRC 2013-2014 <http://www.sahrc.org.za/>. It should be noted that food is important for the survival of all living beings; hence the right to food cannot exist if people lack access to basic services such as water. Water is essential for the preparation of food and for the cultivation of crops.

44 See section 1 of this study.

45 Adong *Patterns of Food Consumption and Expenditure* ii.

46 Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf> 1. Food security is addressed in various South African developmental strategies and programmes including the:

In section two, a background to "the right to food" under both international law⁴⁷ and the South African constitutional dispensation⁴⁸ is provided. A background discussion on the proposed South African Food Security Framework Act will also be provided.⁴⁹

2.2 The right to adequate food

2.2.1 The right to adequate food under international law

The right to food has a strong foundation in international human rights law. It forms part of the right to an adequate standard of living which is stipulated in the *Universal Declaration of Human Rights*,⁵⁰ and in instruments such as the *United Nations Convention on the Rights of the Child*⁵¹ and the *African Charter on the Rights and Welfare of the Child*.⁵² However, the key international instrument on the right to food is the ICESCR.⁵³ It should be noted that in South Africa, section 39 of the Constitution justifies the use of international law even though South Africa did not ratify the ICESCR. You will need to do this early on in section 2 - in order to justify your discussion of the ICESCR. The ICESCR was concluded in 1966 and came into force in 1976.⁵⁴

(a) *Integrated Nutrition Programme* of 1995 (See Department of Health Date Unknown <http://www.doh.gov.za/programmes/nutrition.html>); (b) *ANC 2009 Manifesto*, which mentions food security as an important policy issue (See ANC 2009 <http://www.anc.org.za/elections/2009/manifesto/manifesto.html>); (c) *Reconstruction and Development Programme* of 1994, which identified food security as a basic human need and mainstreamed food security as a priority policy objective See SAHRC 2013-2014 <http://www.sahrc.org.za/home/21/files/Concept%20Paper%20on%20the%20Right%20to%20Food%2018072013%20%282%29.pdf>) (d) *Integrated Food Security Strategy* (2002) (IFSS) which coordinates the inputs of the "Social Sector Cluster" into a comprehensive programme affecting virtually all spheres of government with the vision to eradicate hunger, malnutrition and food insecurity by 2015 (See Anon Date Unknown <http://www.info.gov.za/view/DownloadFileAction?id=70243>); and the 2013 *National Food and Nutrition Security Policy*. See National Development Agency 2013 <http://www.nda.org.za/docs/Symposium%20Report%20-%20Food%20and%20Nutrition%20Security%20%20.pdf>.

47 See section 2.2.1 of this study.

48 Section 2.2.4 of this study.

49 See section 2.3 of this study.

50 A 25 of the *Universal Declaration of Human Rights* 1948 (UDHR).

51 A 27 of the *United Nations Convention on the Rights of the Child* (CRC).

52 Aa 14 and 20 of the *African Charter on the Rights and Welfare of the Child*.

53 A 11 of the ICESCR. See 2.1 above.

54 The ICESCR opened for signature on the 16th of December 1966 and entered into force on the 3rd of January in 1976. 148 states have ratified or acceded this treaty. South Africa is not yet a state party to the ICESCR. It should be noted that South Africa has signed it but has not yet ratified it.

The United Nation's (hereafter the UN) *Committee on Economic, Social and Cultural Rights*⁵⁵ (hereafter the CESCR) gave meaning to "the right to adequate food" as provided for in article 11 of the ICESCR in General Comment 12 *The Right to Adequate Food* (hereafter General Comment 12).⁵⁶ According to the CESCR:⁵⁷

...the right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access to food or means for its procurement.

A former UN Special Rapporteur on the Right to Adequate Food, De Schutter has further elaborated on the right to adequate food. De Schutter⁵⁸ has defined the right to food as:

...the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.

In 1996, the *World Food Summit* requested that the right to adequate food, as recognised in the UDHR and enshrined in the ICESCR, be given a more concrete and operational content.⁵⁹ De Schutter⁶⁰ mentioned that a number of initiatives were taken as a result of this request, namely:

- a) As mentioned, the CESCR adopted General Comment 12 on the right to adequate food.⁶¹
- b) In 2000, the Special Rapporteur's mandate on the Right to Food was recognised by the Commission on Human Rights by Resolution 2000/10 of 17 April 2000.⁶²

55 The body of independent experts monitoring states' compliance with the ICESCR, adopted General Comment 12 on the Right to Adequate Food.

56 General Comment 12 para 6. See FAO Date Unknown <http://www.fao.org/docrep/005/y4430e/y4430e05.htm>.

57 FAO Date Unknown <http://www.fao.org/docrep/005/y4430e/y4430e05.htm>.

58 General Comment 12 para 6. See FAO Date Unknown <http://www.fao.org/docrep/005/y4430e/y4430e05.htm>.

59 FAO Date Unknown <http://www.fao.org/docrep/005/y4430e/y4430e05.htm>.

60 De Schutter Date Unknown <http://www.srfood.org/en/right-to-food>.

61 De Schutter Date Unknown <http://www.srfood.org/en/right-to-food>. It is worth noting that although General Comments are not legally binding, they serve as the authoritative interpretation of the ICESCR, in which states parties to this treaty are legally bound.

62 De Schutter Date Unknown <http://www.srfood.org/en/right-to-food>.

- c) In 2003, an Intergovernmental Working Group was established in support of the FAO in order to prepare a set of guidelines on the implementation of the right to food.⁶³ This process led to the adoption on 23 November 2004, by the 187 member states of the General Council of the FAO, of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*.⁶⁴ The international law guidelines are the set of recommendations that states have chosen on how to implement their obligations under article 11 of the ICESCR.⁶⁵

Accordingly the key elements of the right to adequate food will be discussed.

2.2.2 *The key elements of the right to food*⁶⁶

There are three main elements of the right to food, namely: availability,⁶⁷ accessibility⁶⁸ and adequacy.⁶⁹ These elements should be acknowledged when incorporating the necessary provisions in the proposed South African food security framework act.

"Availability"⁷⁰ is:

...a notion that stipulates that food should be available from natural resources by way of food production, land cultivation, animal husbandry, and through other ways that can be available to obtain food such as fishing, hunting or gathering. In addition, availability entails that food should be available for sale in markets and shops. The food produced should be enough for both the present and the future generations hence upholding the principle of sustainable development.

"Accessibility"⁷¹ is guaranteed in two ways which are economic and physical access to food:

'Economic accessibility' means that food must be affordable. It should be possible for people to afford food for an adequate diet without jeopardizing other

63 De Schutter Date Unknown <http://www.srfood.org/en/right-to-food>.

64 De Schutter Date Unknown <http://www.srfood.org/en/right-to-food>.

65 See section 2.2.

66 Many of these elements of the right to food are clarified in General Comment 12 para 7-13.

67 See General Comment 12 para 12.

68 See General Comment 12 para 13.

69 Anon Date Unknown <http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx>. See also General Comment 12 para 7.

70 General Comment 12 para 7.

71 OHCHR 1996-2014 <http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx>.

basic needs, such as education, health or housing. 'Physical accessibility' means that food should be accessible to everyone, inclusive of the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to get food.

"Adequacy" means that the food must be satisfactory to dietary needs, considering age, health, living conditions, sex and occupation.⁷² For example:⁷³

Food for children is considered inadequate if it does not contain the nutrients necessary for their physical and mental development. Food should also be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable. For example, aid containing food that is religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable.

2.2.3 State obligations

General Comment 12⁷⁴ provides that it is generally accepted that the right to food implies three obligations upon the states, namely to respect, protect and fulfil. CESCR *General Comment 3: The Nature of States Parties' Obligations* (hereafter General Comment 3) further imposes "an obligation to move as expeditiously and effectively as possible towards the obligation to respect."⁷⁵ The obligation to protect⁷⁶ means that states should enforce suitable laws and pertinent measures to prevent third parties from infringing the right to food of others.⁷⁷ This means that states must protect people from the actions of powerful others that might violate the right to food. The obligation to fulfil, simply put is to facilitate and provide adequate food.⁷⁸ This means that states must get involved in activities that intend to strengthen the accessibility to and utilisation of resources so as to facilitate their

72 General Comment 12 para 8.

73 FAO 2008 *The Right to Adequate Food Fact Sheet* 3.

74 General Comment 12 para 15.

75 FAO Date Unknown <http://www.fao.org/docrep/005/y4430e/y4430e05.htm>.

76 Ziegler Date Unknown <http://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>.

77 Ziegler Date Unknown <http://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>.

78 United Nations Human Rights Date Unknown <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>.

ability to feed themselves.⁷⁹ As a last resort, whenever an individual or group fails to enjoy the right to adequate food for reasons beyond their control, states have an obligation to fulfil that right directly.⁸⁰ Furthermore, the *Right to Food Guideline 8.1* provides that "...states should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination..." Against this background, when incorporating the necessary provisions in the proposed South African food security framework act; the state has to incorporate its obligations in the act and nothing contrary to them.

2.2.4 *The right to have access to sufficient food in the South African constitutional dispensation*

As previously indicated,⁸¹ the right to have access to adequate food is entrenched in the Constitution. The principal provision is section 27(1)(b), which stipulates that "everyone has the right to have access to sufficient food." This provision is however limited by section 27(2) which provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of the socio-economic rights listed in section 27(1).⁸² The second formulation of the right to food is found in section 28(1) which provides "every child with the right to basic nutrition." This means that the right to have access to sufficient food is qualified for everyone but nutrition for children is not qualified. Thirdly section 35 (2)(e) provides that detained persons have a right to nutrition.⁸³

79 Ziegler Date Unknown <http://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>.

80 General Comment para 15.

81 See section 1 of this study.

82 S 27(2).

83 Brand 2003 *Law, Democracy & Development* 5. provides that the two last mentioned rights apply only to children and detained persons respectively, but they do not weigh more than s 27(1)(b). In *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 1 SA 46 (CC) 77, the court held that s 28(1) is applicable only in limited circumstances such as where children are not cared for by their parents or extended families, that is when the state will incur liability or obligation to provide directly to the required needs. In actual fact the parents, guardians and extended families are the ones liable to provide food for their children. The state's duties in this regard are only for the purposes of providing legal, administrative and institutional framework to enforce the parents responsibilities to fulfil their duties. The *Minister of Health and Others v Treatment Action Campaign and Others* 2002 5 SA 721 (CC) mitigated this position by stating that the state's obligation is to guarantee that children are protected as provided by s 28 when parental or family care is unavailable or when their families are also dependent on the state.

There are also some rights that are indirectly linked to the right to sufficient food, for instance section 25(5) fosters equitable access to land and is of particular relevance in the South African context, where the realisation of the right to food is inextricably linked to an equitable distribution of land.⁸⁴

In South Africa, the Bill of Rights is the cornerstone of democracy and section 7(2) is the basis for the state's obligation. It provides that "the state must respect, protect, promote and fulfil the rights in the Bill of Rights." Hence, section 7(2) requires the state to respect, protect, promote and fulfil the right to sufficient food. It is also worth noting that the rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.⁸⁵ Up to date, there is no court case that has been used to test the justiciability of the right to have access to sufficient food. However, in the *Grootboom* case⁸⁶ (on the right to access to housing) the Constitutional Court has interpreted the state's duty to take reasonable measures to progressively realise socio-economic rights in general.

In the *Grootboom* case⁸⁷ and *Minister of Health and Others v Treatment Action Campaign and Others*⁸⁸ (hereafter the *TAC* case) the Constitutional Court emphasised that the positive obligations imposed on the state by section 26(1) and section 27(1) are in their totality described in section 26(2) and section 27(2) respectively. Therefore, sections 26(1) and 27(1) place a positive obligation on the state to develop and implement policies that realise socio-economic rights that are reasonable in light of the available resources on a progressive basis. Thus, the fundamental premise for the development of a proposed South African food security framework act is the Constitution, which upholds democratic values of human dignity, equality, freedom, economic and social rights.⁸⁹

84 Mbazira 2006 *Realising socio-economic rights in the South African Constitution: The obligations of local government* 4.

85 S 7(3).

86 2001 1 SA 46 (CC).

87 2001 1 SA 46 (CC) 95.

88 2002 5 SA 721 (CC)100.

89 DAFF 2012 "Food Security Policy for the Republic of South Africa" 5.

Furthermore, various researchers, including Anderson,⁹⁰ found it necessary to make a distinction between food security at national, community and household level. This distinction is important for this study because it indicates the various levels that a proposed food security framework must cater for. Anderson⁹¹ is of the opinion that food security at national level refers to the situation whereby a country manages to manufacture, import, retain and sustain food required to support its entire population. Furthermore, Anderson⁹² states that at community level, food security is the condition whereby the residents in a community are able to obtain safe, culturally accepted, nutritionally adequate diets through a sustainable system that maximises community self-reliance. Finally, at the household level food security refers to the availability of food in one's home which one has access to.⁹³ In this case, a household is regarded as food secure when the members of the family do not live in hunger or fear of starvation.⁹⁴

2.3 Background to the proposed South African food security framework act

Section 27(2) of the Constitution expressly places an obligation on the state to take legislative and other measures to ensure that everyone has access to food at all times. In pursuant to this duty, the government has previously taken steps to adopt legislation on food in the form of *the National Food Security Draft Bill* during 2002. This draft bill was a reasonable effort to enact a complete piece of legislation that addresses food issues holistically.⁹⁵ It should be noted, however, that it only remained a draft bill.

In the *Grootboom* case,⁹⁶ the Constitutional Court recommended the idea of framework act as one of the most reasonable and comprehensive measures to implement socio-economic rights. The Constitutional Court dealt with the right to

90 Anderson 1990 *Journal of Nutrition* 1559-1600. See also Liebenberg "South Africa's evolving jurisprudence on socio-economic rights" 143 and Brand *Law, Democracy & Development* 12.

91 Anderson 1990 *Journal of Nutrition* 1557-1599.

92 Anderson 1990 *Journal of Nutrition* 1557-1599.

93 Labadarios *et al The assessment of food insecurity* 10.

94 Labadarios *et al The assessment of food insecurity* 10.

95 Khoza Date Unknown
http://reference.sabinet.co.za/webx/access/electronic_journals/esrrev/esrrev_v5_n1_a2.pdf.

96 *Grootboom* case para 40.

housing in this case and it held that a national framework act may be important to meet the states' duties obligations under section 26 of the Constitution. Furthermore, in the *TAC* case⁹⁷ the Constitutional Court restated the progressive realisation duty by stating that "the state has a duty to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflict our society." With regard to the South African perspective, it will be rational to enact a framework act for purposes of food security in order to adhere to the requirement of comprehensive and reasonable measures as stipulated by the Constitutional Court.⁹⁸ In this respect, the decision of the Constitutional Court is more persuasive than the encouraging nature of the recommendations of the ICESCR.⁹⁹ However, for the government to achieve this objective, it would be advantageous to draw inspiration from international and foreign jurisprudence on the elements of food security framework act as was discussed in section 2.2 of this study.

2.4 Conclusion

There is no doubt that the universal community has expressed a strong commitment to ensure the fulfilment of the right to food. This has been shown by the development of international law and by repeated international conferences and corresponding action plans signed by the majority of nations. But law makes little difference unless it is implemented at the domestic level, and conference documents remain mere rhetoric unless undergirded by political will.¹⁰⁰

Section 3 of this study will outline the suggested provisions that a framework act should contain according to the FAO guidelines. Of course, South Africa may address and incorporate all the guidelines or only a few and add other provisions that are necessary considering its own needs and circumstances.

97 *TAC* case para 36.

98 *Grootboom* case para 40 and *TAC* case para 36.

99 As previously mentioned, South Africa only signed and did not ratify the ICESCR.

100 Randolph and Hertel *The State of Economic and Social Human Rights: A Global Overview*.

3 The UN FAO Voluntary Guidelines

3.1 Introduction

As previously mentioned¹⁰¹ the World Food Summit “established the mandate of an Intergovernmental Working Group to draft a set of *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (hereafter the *Voluntary Guidelines*).”¹⁰² The FAO Council adopted the Guidelines by consensus in 2004.¹⁰³ The *Voluntary Guidelines* recommend coordinated institutional frameworks as well as legislative and constitutional action to address the cross-sectoral dimensions of the right to food.¹⁰⁴

The *Voluntary Guidelines* is the first endeavour made by states to interpret economic, social and cultural rights and to recommend actions that needs to be done to realise them.¹⁰⁵ The primary aim of the *Voluntary Guidelines* is to give practical guidance to states in order to help them implement the progressive realisation of the right to adequate food in their national food security.¹⁰⁶

The *Voluntary Guidelines* are not compulsory and they cover a variety of actions to be deliberated by states in order to create a favourable environment for people to feed themselves in dignity and to establish suitable safety nets for people who are unable to feed themselves.¹⁰⁷ They can be utilised to reinforce and advance existing development frameworks, mainly concerning social and human dimensions, putting the entitlements of people more firmly at the centre of development.¹⁰⁸

101 See section 1 of this study.

102 An Intergovernmental Working Group was established in November 2002.

103 FAO 2009 *Guide on legislating for the right to food* viii.

104 FAO 2009 *Guide on legislating for the right to food* viii.

105 FAO 2009 *Guide on legislating for the right to food* viii.

106 FAO 2004 *Voluntary Guidelines* 5, 7, 17 and 18 offer "states practical guidance to develop effective institutional and legal frameworks to guarantee the right to adequate food and to establish independent mechanisms to monitor and evaluate the implementation of these Guidelines towards the realisation of the right to food."

107 FAO 2004 *Voluntary Guidelines* iii.

108 FAO 2004 *Voluntary Guidelines* iii.

3.2 *The FAO selected Voluntary Guidelines*

3.2.1 *Provisions on prioritising the most vulnerable persons and groups*

The international human rights law on food security stipulates that states have an obligation to prioritise the most vulnerable groups when resources are inadequate.¹⁰⁹ To this end, states should exhaust all available measures to avert discrimination. A Constitution is the supreme law of the country; it also emphasises on the principle of non-discrimination.¹¹⁰ Therefore, these measures should be prioritised in the incorporation of provisions in the proposed food security framework act for South Africa. The *Voluntary Guidelines* encourage states to create *Food Insecurity and Vulnerability Information and Mapping Systems* (FIVIMS), for purposes of identifying vulnerable groups to food insecurity as well as their food insecurity reasons.¹¹¹

Detailed identification of the vulnerable people, their location and the specific causes of their vulnerability is highly imperative for designing and implementing the proposed framework act for food security in South Africa.¹¹² The proposed framework act may consider the listing of the vulnerable persons in order to determine support measures that are necessary.¹¹³

3.2.2 *Provisions on education and awareness raising*

“Education is a key element for the effective realisation of the right to food.”¹¹⁴ It is important for every person to access information so as to know how to utilise their

109 UNRISD Date Unknown <http://www.unrisd.org>.

110 See s 9.

111 FAO 2004 *Voluntary Guidelines* 13.1 and 13.2.

112 FAO 2009 *Guide on Legislating for the Right to Food* 113.

113 FAO 2009 *Guide on Legislating for the Right to Food* 117: "For instance, for 'children group', it could go on to include more specifically street children, children in custodial institutions, children working in hazardous industries, children in conflict situations, children of refugees, children with debilitating illnesses, children of parents with debilitating illnesses and so on... The benefit of such a comprehensive listing in the proposed framework act would be to necessitate the state authorities to think of more definite entitlements for each of these categories."

114 FAO 2009 *Guide on Legislating for the Right to Food* 125.

entitlements and rights. Apart from being a human right itself,¹¹⁵ the right to education is also used to realise other human rights that includes the right to food.¹¹⁶ The *Voluntary Guidelines*¹¹⁷ recognise the role of education in realising the right to food by urging states to support the opportunities for primary education especially for marginalised groups."¹¹⁸

The proposed framework act can play an important role in reinforcing the nexus between the right to education and the right to food in South Africa. Human rights are interdependent, inseparable and related.¹¹⁹ This means that infringing the right to food may affect other human rights such as the right to health, education or life, and *vice versa*.¹²⁰ Hunger and malnutrition weaken children's learning abilities and may force them to quit school and go for work at a younger age so that they can have money to buy food, hence, discouraging the enjoyment of the right to education.¹²¹ For the purposes of the proposed Food Security Framework Act for South Africa, education should be seen as essential for the enjoyment of the right to food.¹²²

3.2.3 Provisions on emergencies

The right to food is applicable all the times and in different situations, these include during: peace times, armed conflict times, ordinary times as well as in times of emergency.¹²³ The state must be ready to sufficiently respond to an emergency¹²⁴

115 A 26 of the UDHR; a 13(1) of the ICESCR; a 5(e)(v) of the ICERD; aa 10 and 14(2)(d) of the CEDAW; and a 28 of the CRC.

116 Vidar "The interrelationships between the right to food and other human rights" 146.

117 *Guide on Legislating for the Right to Food* 117.

118 FAO 2004 *Voluntary Guidelines* guideline 1.2.

119 FAO 2008 *The Right to Adequate Food Fact Sheet No 34* 5-6.

120 FAO 2008 *The Right to Adequate Food Fact Sheet No 34* 5-6.

121 FAO 2009 *Guide on Legislating for the Right to Food* 125.

122 FAO 2009 *Guide on Legislating for the Right to Food* 125.

123 Cotula and Vidar 2003 <http://www.fao.org/Legal/legstud/list-e.htm> are of the opinion that: "In times of public emergency, states are allowed to deviate from some human rights according to applicable provisions and conditions under the relevant international human rights treaties. For the right to food, the ICESCR merely provides a general limitation clause and has no provision on any deviations. However, in its minimum core content, i.e. freedom from hunger, the right to food is related to a non-derogable right to life and thus cannot be derogated even in emergencies."

situation (natural disasters like droughts, floods, hurricanes, earthquakes.) and man-made disasters (international and internal armed conflicts).¹²⁵ The *Voluntary Guidelines* urge states to "provide sufficient and operational mechanisms of early warning to prevent or mitigate the impacts of natural or human-made disasters."¹²⁶ The proposed framework act may need to cater for emergency situations and consider the inclusion of provisions that would address preparing for an emergency and reacting to an emergency.

3.2.4 Provisions on international cooperation

There is no agreement amongst states on international cooperation as an international legal duty or concerning any responsibilities regarding extraterritorial matters.¹²⁷ However, every state has a discretion to decide whether to establish criteria and scope for its international cooperation.¹²⁸ This expresses how the state applies their obligations extraterritorially.¹²⁹ The *Voluntary Guidelines* invite states that have international food support to often review their policies in order to support the progressive realisation of the right to food by receiving states.¹³⁰ Furthermore, the *Guide on Legislating for the Right to Food*¹³¹ provides that in respect of international cooperation, a framework act could also oblige competent authorities to ensure that activities within their countries do not infringe the enjoyment of the right to food in other countries.

Against this backdrop, the proposed framework act for food security in South Africa may consider the inclusion of provisions in this regard to further state action in the international cooperation field. For example, the European Union -Africa (EU-Africa) cooperation on Science, Technology and Innovation (STI) intends to support

124 FAO 2009 *Guide on Legislating for the Right to Food* 128 indicates that: "An emergency can be caused by natural events such as drought, floods, storms, and earthquakes, crop failures resulting from pests or disease or by human agency: internal or international armed conflict."

125 FAO 2002 *The right to adequate food in emergencies* 1.

126 FAO 2004 *Voluntary Guidelines* 16.7.

127 Donati and Vidar "International legal dimensions of the right to food" 47-89 and Cotula and Vidar 2003 <http://www.fao.org/Legal/legstud/list-e.htm>.

128 AO 2009 *Guide on Legislating for the Right to Food* 134.

129 FAO 2009 *Guide on Legislating for the Right to Food* 134.

130 FAO 2004 *Voluntary Guidelines* 13.

131 FAO 2009 *Guide on Legislating for the Right to Food* 134.

knowledge-based societies by deploying more effective solutions for societal challenges of common concern such as cheap renewable energy, climate change, infectious diseases or food and nutrition security.¹³² The EU-Africa cooperation on STI also contributes to reaching international commitments such as the MDGs and the future post-2015 agenda and sustainable development goals.¹³³ This cooperation engages the European Commission, the African Union Commission and their respective member states in which South Africa is a member.¹³⁴

Hence, one can conclude that in respect of international cooperation concerning food security South Africa is engaging with other countries. However, this can only have weight if South Africa decides to establish conditions in the proposed framework act. The proposed framework act should therefore stipulate how far South Africa should be internationally involved regarding food security issues as well as the extent to which its obligations in respect of the right to food should be applied extraterritorially.¹³⁵

3.2.5 Provisions on a monitoring system

Monitoring¹³⁶ is fundamental to a state's compliance with its obligations under the right to food.¹³⁷ The *Voluntary Guidelines* directly invite states to establish mechanisms to monitor the realisation of the right to food.¹³⁸ Further pertinent aspects correlated to monitoring are covered in other guidelines.¹³⁹ The available in-

132 Anon Date Unknown <http://ec.europa.eu/research/iscp/index.cfm?pg=africa>.

133 Anon Date Unknown <http://ec.europa.eu/research/iscp/index.cfm?pg=africa>.

134 Anon Date Unknown <http://ec.europa.eu/research/iscp/index.cfm?pg=africa>.

135 FAO 2009 *Guide on Legislating for the Right to Food* 134.

136 Alfredsson *et al International Human Rights Monitoring Mechanisms* 318 provides that: "The FAO Right to Food Unit has developed a working definition of monitoring as a process consisting of periodic collection, analysis and interpretation, and dissemination of relevant information to assess the progress in the realisation of the right to adequate food among all members of society, and whether this is achieved in ways compatible with human rights principles and approaches." Alfredsson *et al International Human Rights Monitoring Mechanisms* 318.

137 FAO 2009 *Guide on Legislating for the Right to Food* 148.

138 FAO 2004 *Voluntary Guidelines* guideline 17. See FAO 2008 *Methods to Monitor the Human Right to Adequate Food*.

139 For example FAO 2008 *Methods to Monitor the Human Right to Adequate Food* 5 provides for: (i) undertaking right to adequate food assessments to formulate a national human-rights based strategy (FAO 2004 *Voluntary Guidelines* guideline 3.2.) (ii) establishing national intersectoral coordination mechanisms to monitor and evaluate policies, plans and programmes, (FAO 2004

country information systems are often weak and do not offer much information availability as in analytical capacity.¹⁴⁰ This limits the right to food monitoring, which entails adequate consideration of what human rights principles mean in practice, technical monitoring capacity and the ability to scrutinise monitoring information from a human rights perspective.¹⁴¹

Furthermore, monitoring the right to adequate food is a tool still in its infancy.¹⁴² Currently, there is little empirical evidence on how to monitor the right to food, what to monitor, for whom and for what purpose.¹⁴³

Therefore, in order to improve food security in South Africa, there is a need to identify areas of weakness, develop and implement appropriate responses as well as monitor the results in order to safeguard progress.¹⁴⁴ It is imperative to monitor the outcomes of state actions and of the processes by which impacts are attained. These processes should abide by the human rights approaches and principles such as transparency, non-discrimination, participation, empowerment and respect of the rule of law as well as human dignity.¹⁴⁵ Following the *Voluntary Guidelines* on monitoring, the proposed Framework Act may consider the inclusion of monitoring provisions. In South Africa framework acts for other socio-economic rights have also

Voluntary Guidelines guideline 5.2.) (iii) involvement of stakeholders, particularly communities and local government in monitoring and evaluating food production and consumption programmes, FAO 2004 *Voluntary Guidelines* guideline 10.3. (iv) undertaking disaggregated food insecurity, nutrition and vulnerability analysis to assess forms of discrimination (FAO 2004 *Voluntary Guidelines* guideline 13.2.) and (v) participation by civil society organisations and individuals in the monitoring activities of human rights institutions. (FAO 2004 *Voluntary Guidelines* 18.1.)

140 FAO 2008 http://www.fao.org/fileadmin/templates/righttofood/documents/other_documents/2008_rtf_forum/RightToFood-Forum_Panel4_en.pdf.

141 FAO 2008 http://www.fao.org/fileadmin/templates/righttofood/documents/other_documents/2008_rtf_forum/RightToFood-Forum_Panel4_en.pdf.

142 FAO 2008 http://www.fao.org/fileadmin/templates/righttofood/documents/other_documents/2008_rtf_forum/RightToFood-Forum_Panel4_en.pdf.

143 FAO 2008 http://www.fao.org/fileadmin/templates/righttofood/documents/other_documents/2008_rtf_forum/RightToFood-Forum_Panel4_en.pdf.

144 FAO 2009 *Guide on Legislating for the Right to Food* 134.

145 FAO 2009 *Guide on Legislating for the Right to Food* 136.

incorporated monitoring provisions.¹⁴⁶ Monitoring helps to restore and create physical and economic access to adequate food for those who are food insecure.¹⁴⁷

3.2.6 *Provisions on civil society representation and participation*

Generally, a framework act provides a section on fundamental principles that are used to administer all governmental bodies' actions.¹⁴⁸ These principles may include the principle of participation which involves civil society representation. The *Voluntary Guidelines*¹⁴⁹ encourage states to guarantee transparent public participation. This means that individuals should be able to converse their queries to the government and contribute to programmes and policies that have an impact on them.¹⁵⁰ Furthermore, the *Voluntary Guidelines* also emphasise the need to eliminate discrimination against women.¹⁵¹

In this respect, South Africa has been progressive as the country has been planning and implementing policies that aims at reversing past apartheid impacts that encourages democratic consolidation, competitive multi-party engagement and civil participation.¹⁵² Against this backdrop, the provisions on civil society representation and participation should be included in the proposed framework act.

3.2.7 *Provisions on remedies*¹⁵³

The availability and accessibility of mechanisms that permit individuals to complain in cases of the infringement to their right to adequate food is of crucial importance in the realisation of the right to food. The international human rights law stipulates that access to justice consists of the right to an "effective remedies" for individuals with

146 See also section 4.5.4 of this study.

147 FAO 2008 *Methods to Monitor the Human Right to Adequate Food* 5. See also section 3.5.4 of this study.

148 FAO 2009 *Guide on Legislating for the Right to Food* 78.

149 FAO 2004 *Voluntary Guidelines* guidelines 5.4.

150 Marschall 2001 *Social Economy and Law Journal* 120. See also Boyer 2001 http://www.unu.edu/inter-linkages/docs/DiscussionP/2001_03_Brook.pdf.

151 FAO 2004 *Voluntary Guidelines* guideline 8.6.

152 Koch 2011 <http://www.ipc-undp.org/pub/IPCCountryStudy21.pdf> See also Tapscott "A Proposal for the Establishment of a National Forum on Food Security and Nutrition in South Africa" 14.

153 See section 4.5.3 of this study.

infringed rights.¹⁵⁴ Administrative remedies are realised and they are often affordable, faster, effective and more accessible to people compared to formal court procedures.¹⁵⁵ In South Africa, administrative law defines the scope of administration. It also provides for remedies in the cases of maladministration.¹⁵⁶ Furthermore, the *Voluntary Guidelines* encourages states to provide judicial and administrative mechanisms that afford individuals access to effective remedies.¹⁵⁷ In South Africa judicial measures include criminal sanctions, civil sanctions, judicial review and interdicts which are normally applied by the judiciary.¹⁵⁸

To this end, access to justice with regards to the proposed framework act requires strong provisions on remedy mechanisms in alleged infringement cases of the right to food.¹⁵⁹ The inclusion of remedy mechanisms in the proposed framework contributes to accountability of the competent public authorities. In South Africa, the current provisional position on accountability has been shown by the endeavour to develop a food-security policy and food-security bill which strengthens the state's accountability to its citizens.¹⁶⁰

3.2.8 *Financial provisions*

The *Voluntary Guidelines* invite states to assign initiatives for food security in their national financial budgets¹⁶¹ as well as to ensure accountability and transparency when utilising public resources."¹⁶² The proposed framework act may specify the financing provisions necessary for the right to food implementation and the principles that governs the distribution and expenditure of resources.¹⁶³ The framework act

154 See a 8 of the UDHR; and a 2(3) of the ICCPR.

251 FAO 2009 *Guide on Legislating for the Right to Food* 165.

156 See in this regard Hoexter and Lyster *Constitutional and Administrative Law* 2-4; Glazewski *Environmental Law* 99; and Devenish, Govender and Hulme *Administrative Law* 83-85.

157 FAO 2004 *Voluntary Guidelines* 7.2.

158 Glazewski *Environmental Law* 143.

159 FAO 2009 *Guide on Legislating for the Right to Food* 165.

160 Koch 2011 <http://www.ipc-undp.org/pub/IPCCountryStudy21.pdf>. As previously stated, see section 2.3 of this study the draft bill did not strengthen the state's accountability, it remained a draft bill and was not enacted.

161 FAO 2004 *Voluntary Guidelines* 12.1.

162 FAO 2004 *Voluntary Guidelines* 12.2.

163 FAO 2009 *Guide on Legislating for the Right to Food* 177.

may include provisions that relates to other possible financial avenues for right to food programs, such as tax interventions and special funds.¹⁶⁴

In this respect South Africa can learn from the Guatemalan Law on the *National Food and Nutritional Security System (CONASAN)*¹⁶⁵ which obliges the Minister of Finance to assign an average of 0.5% in the general budget that should be used precisely for food security strategies especially for the most vulnerable persons.¹⁶⁶ Furthermore, on an annual basis CONASAN requests the Ministry of Finance to indicate the approximation of VAT incomes to enable them manage and plan the available resources in the budget.¹⁶⁷ Lastly, when drafting the annual financial budget of state incomes and expenses, the Ministry of Public Finance makes provision for funding necessary for food security implementation.¹⁶⁸

3.2.9 Provisions on land issues

The *Voluntary Guidelines*¹⁶⁹ obliges states to respect and protect individuals' rights concerning resources such as land, fisheries, water, and livestock without discrimination of any form.¹⁷⁰ Ziegler, on the Right to Food,¹⁷¹ indicates that:

Land and agrarian reform access should be an important part of the right to food because land is essential for food production purposes hence it ensures hunger freedom.

Therefore the proposed framework act may consider the inclusion of provisions that protects land and develop access for the poor and disadvantaged groups of the society. This is because some rights are indirectly linked to the right to sufficient food, particularly section 25(5) of the Constitution which calls for equitable access to land which is of particular relevance in the South African context, where the realisation of the right to food is inextricably linked to an equitable distribution of land.

164 FAO 2009 *Guide on Legislating for the Right to Food* 177.

165 See section 5 of this study for more information on CONASAN and SINASSAN.

166 A 38.

167 A 39.

168 A 40. See section 5 of this study for more information on CONASAN and SINASSAN.

169 Guideline 8.1.

170 See also section 2.2.3 of this study.

171 Ziegler 2002 *The right to food* para 30 and 24.

The reason why this provision should be considered is because it is evident that food insecurity is more likely to be serious where there is “uneven and unequal distribution of access to land.”¹⁷² The distribution of income and wealth (which includes land) in South Africa is among the most unequal in the world.¹⁷³

3.2.10 Provisions on the issue of labour

The *Voluntary Guidelines*¹⁷⁴ encourage states to provide remunerative job opportunities in order to promote self-employment. The main means for the realisation of the right to food involves employment and the protection of people from unemployment.¹⁷⁵ As noted, economic accessibility as a component of the right to have access to food implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.¹⁷⁶

Thus, South Africa's proposed framework act for food security may consider the provision of certain groups of workers to receive "food bonuses"¹⁷⁷ as part of their salaries and the minimum wage should not be less than the subsistence amount. Some may argue that this cannot be regulated in the proposed framework act but it has worked for other countries such as Venezuela to improve economic productivity in the country as well as facilitating the realisation of the right to food.¹⁷⁸ This measure enables low-paid workers to work and subsequently fulfil their basic food needs, hence the realisation of the right to food.¹⁷⁹

172 See Coomans *Agrarian Reform as a Human Right Issue* 7-31.

173 Anon Date Unknown <http://www.polity.org.za/polity/govdocs/reports/poverty.html>.

174 FAO 2004 *Voluntary Guidelines* 8.8.

175 FAO 2009 *Guide on Legislating for the Right to Food* 242.

176 SAHRC Date Unknown http://www.sahrc.org.za/home/21/files/Reports/4th_esr_chap_5.pdf.

177 FAO 2009 *Guide on Legislating for the Right to Food* 246 provides that: "A food bonus may be given in the form of a meal, food stamps or an electronic debit card."

178 FAO 2009 *Guide on Legislating for the Right to Food* 246.

179 FAO 2009 *Guide on Legislating for the Right to Food* 246.

3.2.11 Provisions on social security

People can obtain their security of income that is required to realise their right to food through social security mechanisms. The *Voluntary Guidelines*¹⁸⁰ encourage states to establish and maintain social safety and food safety nets in order to protect individuals who cannot provide for themselves. The *Voluntary Guidelines*¹⁸¹ provides suggestions for planning, implementing and financing the social safety nets. Social security mechanisms avoid deprivation or vulnerability to deprivation.¹⁸² Against this backdrop, South Africa should also look at the suggested social security mechanisms from the *Voluntary Guidelines*¹⁸³ and refer to them in the proposed framework act for food security. However, it should be noted that South Africa already offers social security in form of grants. For purposes of food security it is advisable to incorporate the different types of food security grants for vulnerable persons such as old people and infants who are left from HIV infected persons. This would regulate the distribution of such food grants. This is mainly because the state has a duty to provide the right directly, whenever an individual or group is unable, for reasons beyond their control, to gain access to the right through the means at their disposal.¹⁸⁴

3.2.12 Provisions on nutrition, food safety¹⁸⁵ and consumer protection

The right to adequate food entails safe and nutritious food as well as sufficient food in quantity.¹⁸⁶ The *Voluntary Guidelines*¹⁸⁷ encourage states to guarantee that food produced in the country as well as imported food is safe. States are also requested to produce nutritiously healthy food, particularly those rich in micronutrients.¹⁸⁸

180 FAO 2004 *Voluntary Guidelines* 14.

181 FAO 2004 *Voluntary Guidelines* 14.

182 See Dreze and Sen *Public action for Social Security: Foundations and Strategy* 3-5.

183 FAO 2004 *Voluntary Guidelines* 14.

184 Liebenberg "South Africa's evolving jurisprudence on socio-economic rights" 164.

185 Anon Date Unknown http://www.ehrn.co.za/download/reg_meattrans.pdf Department of Health "Policy Guidelines" 4 refers to the assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use.

186 FAO 2001 *The State of Food Insecurity in the World* 4.

187 FAO 2004 *Voluntary Guidelines* 9.1.

188 FAO 2004 *Voluntary Guidelines* 10.2.

Against this back drop, garden planting can be essential in combating micronutrient deficiencies and promoting healthy eating.¹⁸⁹

In South Africa, consumers are probably the most unprotected in the world with nearly no protection from exploitation and no remedy against scrupulous importers, wholesalers, manufacturers, service providers and retailers.¹⁹⁰ Thus, with regards to consumer protection, the *Consumer Protection Act*¹⁹¹ regulates labelling of biotech foods and ingredients.¹⁹² The South African food safety and food control systems are developed and enforced by three government departments namely the: Department of Health, Department of Agriculture, Forestry and Fisheries and Department of Trade and Industry.¹⁹³ Therefore, it would be important for the proposed framework act to just mention the current measures of consumer protection and food safety and direct the society where to get comprehensive information with regards to a specific concern. However, incorporating provisions to regulate the production, trade and handling of food¹⁹⁴ and to educate individuals about the household safe storage, handling and utilisation of food in the proposed framework act would be prudent.¹⁹⁵

3.2.13 Provisions on information

The *Voluntary Guidelines*¹⁹⁶ make numerous references to information. Information is of vital importance to assist government officials to act in ways that does not infringe on any one's right to food. The South African position regarding the promotion of access to information existing measures includes the *Consumer*

189 FAO 2004 *Voluntary Guidelines* 10.3.

190 Anon Date Unknown <http://www.thefoodsafetynetwork.co.za/component/content/article/144-main-navigation-consumer/291-impact-of-the-consumer-protection-act-on-the-food-industry.html>.

191 68 of 2008.

192 Siphugu 2011 http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20-%20Narrative_Pretoria_South%20Africa%20-%20Republic%20of_12-22-2011.pdf.

193 Siphugu 2011 http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20-%20Narrative_Pretoria_South%20Africa%20-%20Republic%20of_12-22-2011.pdf.

194 See Vapnek and Spreij *Perspectives and Guidelines on Food Legislation* 13.

195 FAO 2004 *Voluntary Guidelines* 9.6.

196 See FAO 2004 *Voluntary Guidelines* 7.3, 9.6, 9.7, 10.6.

*Protection Act*¹⁹⁷ and the *Promotion of Access to Information Act* 2 of 2000. The proposed framework act for food security would be ideal if it adopts and incorporate some of the information provisions as suggested in the *Voluntary Guidelines* as well as stipulated in the above mentioned legislations.¹⁹⁸

3.2.14 Provisions on a national authority on the right to food

The right to food implementation requires interdisciplinary cooperation among public and private sectors.¹⁹⁹ The *Voluntary Guidelines*²⁰⁰ encourage states to ensure efforts that are coordinated by the relevant governmental institutions. For the purposes of the proposed Framework Act on the right to food, this coordination would assist proper powers to organise all necessary elements towards the realisation of the right to food.

In South Africa, government efforts to address the challenge of food insecurity, malnutrition and hunger have been done primarily through policy measures.²⁰¹ There have been different pieces of sectoral legislation interconnected to the right to food which have also been enacted.²⁰² Although admirable and well planned, these measures have failed to address food insecurity sufficiently.²⁰³ Policies are fragmented and poorly co-ordinated and implemented.²⁰⁴ This situation is exacerbated by poor communication between the appropriate government departments responsible for the right to food.²⁰⁵ Thus, the proposed framework should include provisions that explicitly deal with working together of the three tiers of government alongside the public society in respect of policy-making and implementation of the realisation of the right to access to adequate food.

197 S 22.

198 FAO 2004 *Voluntary Guidelines* 7.3, 9.6, 9.7 and 10.6.

199 FAO 2009 *Guide on Legislating for the Right to Food* 135.

200 FAO 2004 *Voluntary Guidelines* guideline 5.2.

201 Khoza 2004 SAJHR 664.

202 Khoza 2004 SAJHR 664. See also Coomans and Yakpo AHRLJ 23 who provides for example "land reform legislation, land tenure regulations, agricultural policy, access to credit regulations and programmes, access to water regulations, employment policy, housing policy, environmental policy, regulations on food production, food marketing, food quality and food safety, food prices, wage policy and social safety nets."

203 Khoza 2004 SAJHR 664.

204 Khoza 2004 SAJHR 664.

205 Khoza 2004 SAJHR 664.

3.3 Conclusion

Food security cannot be achieved without the adoption of legal measures thus the addition of legally enforceable rights makes the future of food security more secure.²⁰⁶ The *Voluntary Guidelines* goals are to achieve food security for all and support the progressive realisation of the right to adequate food in the context of national food security.²⁰⁷ While supporting efforts towards the eradication of hunger and poverty, the *Voluntary Guidelines* are also intended to contribute to achieving sustainable livelihoods, social stability, housing security, rural development, environmental protection, and sustainable social and economic development.²⁰⁸ The *Voluntary Guidelines* are meant to benefit all people in all countries, although there is an emphasis on vulnerable and marginalised people. As noted in this section the main provisions that should be included in the framework act are just to mention but a few; provisions on prioritising the most vulnerable persons and groups, provisions on international cooperation as well as provisions on nutrition, food safety and consumer protection.

The following section will focus on selected South African socio-economic framework acts in order to identify the general nature and typical contents of a framework act for purposes of identifying possible provisions for inclusion in a proposed framework act.

4 Learning from other South African framework acts

4.1 Introduction

The Constitution aims to "improve the quality of life of all citizens and free the potential of each person."²⁰⁹ This constitutional objective is apparent in the entrenchment of a wide range of justiciable socio-economic rights in the Bill of Rights.²¹⁰ The Constitution requires the state to take legislative measures in the realisation of the qualified socio-economic rights. Hence, for the purposes of this

206 Misra Date Unknown <http://dprcg.gov>.

207 FAO 2004 *Voluntary Guidelines* iii.

208 FAO 2012 *Voluntary Guidelines on the Responsible governance* 1.

209 Preamble to the *Constitution*.

210 Liebenberg 2002 *Law, Democracy and Development* 159.

study a framework act for the right to food is considered.²¹¹ The focus of this section is to distill common provisions included in already enacted framework act for other qualified socio-economic rights, namely the *Health Act* and the *Housing Act*, in order to make recommendations for the proposed South African Food Security Framework Act. This is done by considering: (a) socio-economic rights in the constitutional dispensation for contextualisation in section 4.2; (b) providing brief backgrounds to the *Housing Act* and *Health Act* in sections 4.3-4.4; and (c) distilling the prominent features or provisions of the mentioned acts in section 4.5.

4.2 Socio-economic rights in the constitutional dispensation

The Constitution distinguishes between two categories of socio-economic rights²¹² and a third related group of procedural rights that have socio-economic consequences.²¹³ First, qualified socio-economic rights follow a standard formulation, confining the positive duties they impose on the state.²¹⁴ These rights are for everyone and they are known as "access" rights. They impose positive duties²¹⁵ on the state to take reasonable legislative and other measures, within available resources, to achieve their progressive realisation.²¹⁶ They are composed in a two-part structure. The first part states the right to have access to the relevant social good whilst the second part outlines the obligation of the state to realise the right.²¹⁷

The second category is known as the basic socio-economic rights.²¹⁸ These rights do not have internal limitations. However, this does not mean that these rights are completely without qualification since all rights in the Constitution are subject to the

211 Ss 26(2) and 27(2).

212 Namely qualified and basic socio-economic rights.

213 McLean "Constitutional Deference" 18.

214 McLean "Constitutional Deference" 18.

215 The positive duties of these rights are explicitly described in ss 26(2) and 27(2) respectively, so that the state is required to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of these rights.

216 Ss 24(b), 25(5), 29(1)(b) of the *Constitution*.

217 See also Mclean "Constitutional Deference" 18.

218 Ss 29(1), 28(1)(c), 35(2)(e) of the *Constitution*.

general limitations clause.²¹⁹ These socio-economic rights are generally directed towards specific groups, such as children²²⁰ and those in detention.²²¹

In addition to socio-economic rights, there are a number of procedural rights²²² which have socio-economic implications.²²³ These rights are formulated as prohibitions of certain forms of conduct rather than rights to particular things.²²⁴

As previously mentioned,²²⁵ this section deal with selected framework acts, that were enacted for the realisation of the corresponding qualified socio-economic rights, namely the *Housing Act* (enacted in terms of section 26(2) of the Constitution) and the *Health Act* (enacted in terms of section 27(2) of the Constitution).

Generally, a framework act makes provision for the purpose and its means of achievement; sets targets, goals, timeframes, and benchmarks for monitoring; ensures the participation of civil society and other stakeholders which include the international community; and set up institutional accountability and monitoring mechanisms.²²⁶ These provisions have been incorporated in the *Housing Act* and the *Health Act*. In order to recommend provisions in this regard for inclusion in the proposed *South African Food Security Framework Act*, it is necessary to discuss how the mentioned provisions are incorporated in current *framework legislation* such as the *Housing Act* and the *Health Act*.

4.3 National Health Act 61 of 2003

Health related rights are found in sections 27(1), 28(1), 24(a) and 35 of the Constitution. The fact that people are entitled to health rights does not necessarily mean that they have a right to any kind of medical treatment free of charge. The

219 S 36(1) of the Constitution.

220 See s 28(1)(c), See Brand and Heyns (eds) *Socio Economic Rights in South Africa* 161 for the distinction of these rights.

221 See s 35(2)(e).

222 Ss 26(3) and 27(3) of the Constitution.

223 Ss 26(3) and 27(3) describe particular elements of the s 26(1) right to have access to adequate housing and s 27(1)(a) right to have access to health care services respectively.

224 For example, ss 26(3) and 27(3) of the Constitution.

225 See section 1 of this study.

226 General Comment 12 para 29.

treatment that can be provided depends on the health care resources available to the state to progressively fulfil the right and the nature of illness.²²⁷ The government must raise the budget of publicly provided health services through taxes.²²⁸ At least everyone should have access to primary²²⁹ and preventative health care services.²³⁰

South Africa is well secured in terms of health care legislation.²³¹ The *Health Act*, provides a framework for a health system for South Africa in terms of section 27(1)(a) of the Constitution. Furthermore, the *Health Act* aims to realise the health rights set out in the Constitution by providing a framework for a structured and quality uniform health system in South Africa. It outlines the laws that govern national,²³² provincial²³³ and local government with regard to health services. The *Health Act* also clarifies the state's duty to do what it can to address the right to have access to health care services.²³⁴ It recognises that no person may be refused emergency medical treatment and that everyone has the right to an environment that is not harmful to their health.²³⁵

227 Kautzky and Tollman Date Unknown http://www.hst.org.za/uploads/files/chap2_08.pdf.

228 Kautzky and Tollman Date Unknown http://www.hst.org.za/uploads/files/chap2_08.pdf.

229 Primary health care includes adequate supply of safe water and sanitation, immunisation against infectious diseases and education on health problems and methods of preventing and controlling them. See Kautzky and Tollman Date Unknown http://www.hst.org.za/uploads/files/chap2_08.pdf.

230 Kautzky and Tollman Date Unknown http://www.hst.org.za/uploads/files/chap2_08.pdf provides that: "Preventive health care (or preventive medicine) consists of measures taken for disease prevention, as opposed to disease treatment."

231 For example, several pieces of legislation were enacted to secure the right to health, just to mention but a few:- (a) *Medicines and Related Substances Amendment Act* 59 of 2002, this particular Act is mainly used to make drugs more affordable and provide for transparency in the pricing of medicines; (b) *Medical Schemes Act* 131 of 1998 used to regulate the medical schemes industry; (c) *Choice on Termination of Pregnancy Act* 92 of 1996 used to legalize abortion and allow for safe access to it in both public and private health facilities; (d) *Tobacco Products Control Amendment Act* 23 of 2007 used to limit smoking in public places, create public awareness of the health risks of tobacco by requiring certain information on packaging, and prohibit the sale of tobacco products to anyone younger than 18; *Nursing Act* 33 of 2005 providing for mandatory community service for nurses; (e) *Mental Health Care Act* 17 of 2002, introducing a process to develop and redesign mental health services so as to grant basic rights to people with mental illnesses; (f) *Pharmacy Amendment Act* 1 of 2000 allowing non-pharmacists to own pharmacies, with the aim of improving access to medicines.

232 Chapter 3 of the *Health Act*.

233 Chapter 4 of the *Health Act*.

234 See the *Health Act*.

235 S 5 of the *Health Act*.

The primary aim of the *Health Act* is to ensure that everyone has access to equal health services by building a national health system that governs both public and private health services.²³⁶ It sets out the rights and duties of all health practitioners,²³⁷ and protects the right of children to basic nutrition and health care, as well as the rights of vulnerable groups (for example women, older persons, and people with disabilities).²³⁸

4.4 National Housing Act 107 of 1997

The right to housing is found in sections 26,²³⁹ 28(1)(c)²⁴⁰ and 35(2)(e)²⁴¹ of the Constitution. Building on section 26 of the Constitution, the legislative framework for housing is first and foremost underpinned by the *Housing Act*.²⁴² Part 1 of the *Housing Act* provides the general principles that are applied to the housing development. The principles in this section comprise the duties of the national, provincial and local government. For example all three spheres of government, must: (a) prioritise the needs of the poor in housing development,²⁴³ (b) guarantee housing development that is reasonable and sustainable,²⁴⁴ and (c) must respect, protect, promote and fulfil the rights in the Bill of Rights especially in cases regarding to housing development.²⁴⁵

All three spheres of government must promote mechanisms that are against unfair discrimination by all housing development process actors;²⁴⁶ they should encourage

236 S 2 of the *Health Act*.

237 Chapter 2, s 20 of the *Health Act*.

238 S 2 (c)(iii) of the *Health Act*.

239 S 26(1) addresses the right of access to adequate housing for everyone. It states that everyone has the right to have access to adequate housing. It also deals with the security of tenure. It states that no one should be evicted from their homes or have their homes destroyed, without an order of court, after considering all relevant circumstances. There should be no legislation, which allows unfair evictions.

240 S 28(1)(c) states that every child has the right to basic nutrition and shelter.

241 S 35(2)(e) provides for everyone who is detained, including every sentenced prisoner, the right to adequate accommodation at state expense.

242 *Housing Act*.

243 S 2(1)(a) of the *Housing Act*.

244 S 2(1)(c) of the *Housing Act*.

245 S 2(1)(h)(i) of the *Housing Act*

246 S 2(1)(e)(vi) of the *Housing Act*.

special housing needs that include the disabled;²⁴⁷ as well as women and other marginalised groups that are disadvantaged by unfair discrimination.²⁴⁸

Furthermore, the *Housing Act* provides for the functions of the three tiers of government regarding implementation and policy-making. The main function of the national government is to create and enable a national housing development process that is sustainable.²⁴⁹ The Minister (according to this Act) has a duty to regulate the national policy and prepare delivery goals of national housing. The *Housing Act* required publication of a *National Housing Code*, which contains national housing policy.²⁵⁰ On the other hand, the function of the provincial government is to do everything in its power to facilitate and promote adequate housing in a particular province in compliance with the national housing policy framework.²⁵¹ A provincial government must also set and keep a multiyear plan concerning the execution in the province of every national housing programme and every provincial housing programme.²⁵²

On the local government level, every municipality has a duty to take all reasonable and essential steps to ensure *inter alia* that people in its jurisdiction have access to adequate housing on a progressive basis.²⁵³ This should be done within the framework of national and provincial housing legislation and policy. Section 9 of the *Housing Act* provides more obligations on the municipalities.

247 S 2(1)(e)(viii) of the *Housing Act*.

248 S 2(1)(e)(x) of the *Housing Act*.

249 S 3(1) of the *Housing Act*.

250 S 4 of the *Housing Act*. The *National Housing Code* was published in 2000 and updated in 2009.

251 S 7(1) of the *Housing Act*. This is done through the member of the province's executive council (MEC) responsible for housing.

252 S 7(2)(g) of the *Housing Act*.

253 S 9(1)(a)(i)–(iii) of the *Housing Act*. See more by reading through-out s9 of the *Housing Act*.

4.5 Prominent features of framework act as distilled from the Housing Act and the Health Act²⁵⁴

This section looks at provisions that are common to both acts (just to mention but a few) thereby making it possible to recommend provisions for possible inclusion in the proposed South African food security act.

4.5.1 Re-affirming government's commitment to the right

Adopting a framework act has many advantages. The adoption of a framework act denotes the government's commitment to realise the constitutional duties.²⁵⁵ The state is also obliged to take reasonable legislative measures to ensure a particular right.²⁵⁶ The preambles of both the *Housing Act* and the *Health Act* re-affirm the government's commitment to the rights at hand. This provision is important for inclusion in the proposed Framework Act for food security. This commitment cannot be left to the executive's discretion alone. The right contains a commitment that every relevant segment of the society needs to take part, and will be better achieved if they do so.

4.5.2 Defining content or scope of the right and its principles

A right to a food framework act would; just to mention but a few, outline the scope and content of this right, express state duties concerning the right as well as provide for the legal foundation for subsidiary laws.²⁵⁷ Thus, it can enable the implementation of the human right to food.²⁵⁸ Framework legislation assists in defining the scope and nature of a particular right as well as outline the principles to be followed to achieve the realisation of that particular right.²⁵⁹ For example, the *Housing Act*²⁶⁰ provides a definition of "housing development" whereas section 1 of

254 The headings in section 3.5 are based on the salient features of framework act as identified by Khoza 2004 SAJHR 676-677.

255 Khoza 2004 SAJHR 676.

256 TAC case para 28.

257 Khoza 2004 SAJHR 676.

258 Khoza 2004 SAJHR 676.

259 Khoza 2004 SAJHR 676.

260 S1 of the *Housing Act*.

that the *Health Act* provides the definition of "health services". These definitions enable one to know what a right really entail, for instance the right to housing does not mean that the state has to provide houses for all and the fact that people are entitled to health rights does not necessarily mean that they have a right to any kind of medical treatment free of charge.

For purposes of the proposed food security framework act, it will be important to include a definitions section which should incorporate definitions of both "food" and "food security." Therefore, the proposed food security framework act needs, in the first place, to define the right. In doing so, it may refer to the definition used in the General Comment 12.²⁶¹ The definitions in the proposed framework act should make it clear that food must be adequate, available, accessible and acceptable.²⁶² Individuals would also understand their legal entitlement through the normative content of the right to food; hence, they can enforce it before the competent administrative and judicial authorities.²⁶³ Furthermore, a framework act for the right to food can also be the foundation for reinforcing the judiciary role in implementing this right in South Africa.²⁶⁴

4.5.3 *Enforcement and remedies*

A framework act re-enforces the justiciability or the enforceability of a right by providing strong remedies to redress violations of the right to food.²⁶⁵ Unlike the Constitution which leaves broad powers to the courts to determine effective and appropriate remedy on a given finding of a violation of the right, legislation normally provides some specific redress mechanisms and establishes quasi-judicial avenues such as tribunals for claiming the right in the event of an infringement.²⁶⁶ Putting provisions that caters for enforcement and remedies in a proposed framework act for food is ideal to ensure food security in South Africa. This is because these avenues

261 Namely: "The right to food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement." General Comment 12 para 6.

262 See section 1 of this study.

263 Khoza 2004 SAJHR 676.

264 Khoza 2004 SAJHR 676.

265 Khoza 2004 SAJHR 664–683.

266 Khoza 2004 SAJHR 664–683.

are often more efficient and cost effective than the normal route of enforcing the right.²⁶⁷

A framework act for the right to food can assist public officials to limit possible violations of the right.²⁶⁸ Furthermore, a framework act on the right to food can make provision for the establishment of a national coordinating body or institution that will control the coordination of the enforcement of the framework act.²⁶⁹ Furthermore, a framework act is able to provide a legal foundation for the adoption of necessary measures required to rectify the existing disparities in society regarding “access to food or means for its procurement.”²⁷⁰

4.5.4 Efficiency gains and monitoring

The allocation of specific duties to different organs of state and other institutions ensures better co-ordination and improved accountability.²⁷¹ It provides a sustainable way for measuring and monitoring the progress in the realisation of socio-economic rights.²⁷² For example section 3(2)(c) of the *Housing Act* provides that the Minister has a duty to monitor the performance of the national government. The *Health Act* also stipulates provisions for monitoring.²⁷³

The inclusion of the efficiency gains and monitoring provisions in a Framework Act provides an improved accountability of the state's actions that disturbs the enjoyment of the right.²⁷⁴ Regarding the right to food; monitoring can take two forms, namely:²⁷⁵

267 Liebenberg "The protection of economic, social and cultural rights" 79.

268 Khoza 2004 SAJHR 677.

269 Khoza 2004 SAJHR 677.

270 Khoza 2004 SAJHR 677. For example, ss 17(2), 57(5), 61(5)(b) and 89(2) provides for remedies in the case of contravention of *the Health Act*. On the other hand, s 10(3)(c)(ii) of the *Housing Act* provides for the steps to be taken in enforcing the right when the state fails to perform. See also s 47(3) of the *Health Act*.

271 Khoza 2004 SAJHR 677.

272 Khoza 2004 SAJHR 677.

273 See ss 21(2)(d), 90(1)(p)(ii), 23(1)(a)(ix), 25(2)(f), 27(1)(a)(ix), 31(3)(b), 32(3)(c), 47(3), 48(1), 50(4)(f),(m), 77(2)(a), 78(2)(f)(g)(j), 81 of the *Health Act*

274 FAO 2009 *Guide on legislating for the right to food* 149. In this regard, a framework act sets out the responsibilities of the different government actors hence improving accountability.

275 FAO 2009 *Guide on legislating for the right to food* 149.

- (a) *Monitoring government compliance with its obligations necessary to realise the right to food*

In this case, monitoring evaluates the government's efforts (articulated through the adoption of subsidiary and primary laws, policies, and regulations) to implement the Framework Act.

- (b) *Monitoring progress in the realisation of the right to food*

In this case, monitoring deals with the extent to which individuals enjoy their right to food as well as the effects of the available measures aimed to realise the right to food.

4.6 Conclusion

As noted the *Housing Act* and the *Health Act* has established most of the provisions that can be fruitful in the proposed framework act for food. There is still a need to provide for these provisions in a comprehensive fashion in legislation specifically dealing with this right. The main disadvantage of the use of policies alone is that the policies are not rigid, meaning that they are very flexible in that they can be changed any time by the executive without the consultation or involvement of the legislature.²⁷⁶ Hence, policies are uncertain if used without being governed by a particular piece of legislation. A framework act "cements" the link between constitutional rights, policies and laws.

Following a discussion on the framework acts of other socio-economic rights, the next section considers Guatemala and Brazil's provisions that have been included in their framework acts for food security. This is done in order to see what provisions other jurisdictions included in their enacted food security framework acts.

276 Khoza 2004 SAJHR 683.

5 Jurisdictions that have enacted a Food Security Framework Act

5.1 Introduction

Few countries recognised the right to adequate food in their constitutions, whereas some countries refer to the responsibility of the state on the provision of basic necessities of life such as food in their constitutions.²⁷⁷ Some governments have contended that a standardised expression of the right to food in national legislation is not imperative due to the fact that the right to work and the right to social security are already promoted and that is adequate to undertake and assure that people have access to food.²⁷⁸ Simply put, if one has a job or is supported by a social security scheme, the peril or risk of hunger should not be a problem. Against this backdrop, some governments are reluctant to adopt the right to food as a legal norm in the domestic legal order.²⁷⁹ However, the rationale above clearly neglects to acknowledge that the provision of the right to food at domestic level could serve the purpose of initiating relationships between rights such as the right to water, the right to health, the right to life, to work, social security, land and the right to food.²⁸⁰ In other words, framework act would reveal the interdependence of rights and reflect a holistic human rights-based approach to food availability and accessibility issues.²⁸¹ The link between constitutions and the enactment of framework act is that a framework act is a "legislative technique used to address cross-sectoral issues."²⁸² Furthermore, framework acts are more specific than a constitutional provision, as it lays down general obligations and principles.²⁸³

This section only focuses on Guatemala²⁸⁴ and Brazil²⁸⁵ that have already adopted framework acts to promote the realisation of the right to food. South Africa is still in

277 FAO 1998 *The Right to Food in Theory and Practice* 40-45.

278 FAO 1998 *The Right to Food in Theory and Practice* 40-45.

279 FAO 1998 *The Right to Food in Theory and Practice* 40-45.

280 FAO 1998 *The Right to Food in Theory and Practice* 40-45.

281 See section 2.3 of this study.

282 Knuth and Vidar "Constitutional and Legal Protection of the Right to Food around the World" 30.

283 Knuth and Vidar "Constitutional and Legal Protection of the Right to Food around the World" 12.

284 Guatemala adopted its framework act for the realisation of the right to food in 2005.

285 Brazil adopted its framework act for the realisation of the right to food in 2006.

the process of drafting a framework act in its effort to improve food security. Following a discussion on the need for the adoption of a Framework Act for food security in South Africa, provisions that have been used by Guatemala and Brazil are referred to for purposes of possible inclusion in the proposed South African Framework Act for food security.

5.2 Food Security Framework Act in Guatemala

The development of a legal framework for the realisation of the right to food has been a long and uneasy process in Guatemala.²⁸⁶ It started in 1975 with the Guidelines for a *National Nutrition Policy*.²⁸⁷ The initiatives relating to food security took time due to the years of domestic armed conflict, which ended with the signing of the peace agreements in 1996.²⁸⁸ Despite notable development, the question of land remained a serious source of social conflict and the continued lack of an effective land registry system of an agrarian code and of legal recognition of indigenous forms of land ownership were serious obstacles to the realisation of the right to food.²⁸⁹

The adoption of the food framework act (*National Food and Nutrition Security System*) in Guatemala was motivated by the fact that acute malnutrition levels had increased in the country.²⁹⁰ In Latin America, Guatemala is considered to have high levels of chronic child malnutrition and extreme poverty particularly amongst the indigenous group.²⁹¹ In 2004 Guatemala took the initiative to fight against hunger and malnutrition as a priority. Guatemala created a national "Front against Hunger" and a powerful legal and policy framework that recognises the right to food. Furthermore, Guatemala implemented the recommendations of General Comment 12 of the CESCR when it promulgated Legislative Decree 32-2005 establishing the

286 FAO 2008 *Right to Food Making it Happen* 80.

287 Known as *Lineamientos Para Una Política Nacional de Nutrició*. See FAO 2008 *Right to Food Making it Happen* 80.

288 FAO 2008 *Right to Food Making it Happen* 80.

289 Ziegler 2006 <http://www.refworld.org/docid/4411820a0.html>.

290 Ziegler 2006 <http://www.refworld.org/docid/4411820a0.html>.

291 Ziegler 2006 <http://www.refworld.org/docid/4411820a0.html>.

National Food and Nutrition Security System (SINASAN).²⁹² The enactment of this law and the adoption of a *State Food Policy* in 2005 constituted a major step forward, opening up greater possibilities for government to take on the responsibility to respect, protect and fulfil the right to food.²⁹³

5.3 Food Security Framework Act in Brazil

One-third of Brazil's export earnings come from agriculture, and yet a study undertaken in 2004 showed that 72 million of its 185 million inhabitants were affected by food insecurity.²⁹⁴ The Brazilian Institute of Geography and Statistics²⁹⁵ conducted a food security survey to ascertain if there was enough food to eat and whether the access to food was sporadic or limited in the country. The outcome of the survey showed that in some areas, the right to food was not being realised hence Brazil's baseline for measuring the impact of public policies and assessing progress in fighting hunger was established.²⁹⁶ According to this survey, food insecurity affected 72 million Brazilians (18 million households) or 39.8% of the population.²⁹⁷ The slightly insecure people amounted to 32.6 million or 18%; the moderately insecure were 25.5 million or 14.1%; and the severely insecure were 13.9 million or 7.7%.²⁹⁸

Following the recommendation by the second *National Food and Nutrition Security Conference* in 2004 to draft a framework act, the Government of Brazil assigned this task to CONSEA's²⁹⁹ *Food and Nutrition Security System Working Group*.³⁰⁰ In October 2005, the draft law was sent to the Brazilian Parliament where it was given top priority.³⁰¹ During September 2006, after negotiations, the Parliament approved

292 FAO 2008 *Right to Food Making it Happen* 75.

293 FAO 2008 *Right to Food Making it Happen* 75.

294 Brazilian Institute of Geography and Statistics 2004 148.

295 Known as Instituto Brasileiro de Geografia e Estatística. See FAO 2008 *Right to Food Making it Happen* 80.

296 Brazilian Institute of Geography and Statistics 2004 148.

297 FAO 2008 *Right to Food Making it Happen* 58.

298 FAO 2008 *Right to Food Making it Happen* 58.

299 CONSEA stand for National Council on Food and Nutrition Security.

300 FAO 2008 *Right to Food Making it Happen* 65.

301 FAO 2008 *Right to Food Making it Happen* 65.

Brazil's *National Food and Nutrition Security Framework Act (LOSAN)*³⁰² and the President signed it into law.³⁰³ This framework act on the food security system stipulates that adequate food is a basic human right, inherent to human dignity and indispensable for the realisation of the rights established by the Federal Constitution of Brazil.³⁰⁴ The law states that the government shall respect, protect, promote, provide, inform, monitor, supervise and evaluate the realisation of the human right to adequate food, as well as guarantee the implementation of specific claim and recourse mechanisms.³⁰⁵

5.4 Examples of provisions in the Guatemalan and Brazilian Acts³⁰⁶

5.4.1 Preambles

Generally, the Preamble of a framework act provides the reasons for its enactment.³⁰⁷ In most cases the preamble gives reference to the applicable international instruments on the right to food.³⁰⁸ For example, the Preamble of the *Law on Food and Nutrition Security* of Guatemala refers to the UDHR, the ICESCR and to General Comment 12. The preamble also provides the constitutional imperative of the realisation of the right to food. For example Article 2 of the Brazilian law confirms this. Hence, the proposed food security framework act for South Africa should consider the inclusion of these provisions, for purposes of being consistent with the universal human rights. Although South Africa did not ratify the ICESCR it still has the constitutional duty in terms of section 27(1)(b) of the Constitution to ensure that the right to sufficient food is achieved. Therefore, section 27(1)(b) should definitely be referred to as the constitutional mandate or reason for enacting the proposed *Food Security Framework Act*.

302 The National Food and Nutrition Security System (SISAN) was created to guarantee the human right to adequate food and takes other measures.

303 FAO 2007 *Lessons learned in Brazil* 20.

304 FAO 2009 *Guide on Legislating for the Right to Food* 66.

305 A 2(2).

306 The structure for section 5.4 has been adapted from the FAO 2009 *Legislating for the Right to Food* in order to provide a logical structure for outlining the provisions of the Guatemalan and Brazil acts.

307 FAO 2009 *Guide on Legislating for the Right to Food* 66.

308 See ICESCR, the CRC, the CEDAW and the *Voluntary Guidelines*.

5.4.2 Objectives

Any framework act for food security should be aimed to realise and sustain the human right to adequate food.³⁰⁹ This objective has been encompassed in most of the adopted framework acts for food, even though it has been done in different words. For example, Brazil's *National Food and Nutritional Security Framework Act* of 2006³¹⁰ provided its objectives. The Guatemala's Law on the *National Food and Nutritional Security System* also includes its obligations.³¹¹

Specific objectives in a framework act show the priorities within a given country regarding the right to food.³¹² For example, if lack of natural resources accessibility or widespread discriminatory conduct has been acknowledged as primary obstacles to the enjoyment of this right, a framework act could be used to eliminate and prevent discrimination.³¹³ This can be achieved by identifying individuals or groups that are discriminated against and adopt suitable measures such as agrarian reform, raising education and awareness, training and opportunity access vulnerable groups.³¹⁴

As noted earlier,³¹⁵ South Africa has enough food to feed everyone but there is some people are still facing poverty. Hence, eradicating hunger and malnutrition may be seen as the priority objective or the anticipation, mitigation and address of emergency situations that may put food security at risk.

5.4.3 Scope

According to the FAO,³¹⁶ the framework act has to give a brief summary of its scope and stipulate who the act governs. The right to food duties should bind all branches

309 FAO 2009 *Guide on Legislating for the Right to Food* 67.

310 A1 *National Food and Nutritional Security Framework Act* 2006.

311 See FAO 2009 *Guide on Legislating for the Right to Food* 68.

312 FAO 2009 *Guide on Legislating for the Right to Food* 68.

313 FAO 2009 *Guide on Legislating for the Right to Food* 68.

314 FAO 2009 *Guide on Legislating for the Right to Food* 68.

315 See section 2.6 of this study.

316 FAO 2009 *Guide on Legislating for the Right to Food* 69.

of government.³¹⁷ It could also enforce obligations and responsibilities on private persons or entities to restrict them from infringing other people's enjoyment of the right to food.³¹⁸

Fundamental rights are universal which means that all the fundamental rights including the right to food applies to every person regardless of their jurisdiction.³¹⁹ The scope of the right holders is usually limited to individuals in a particular state and subject to its laws.³²⁰

From both a moral and practical perspective, all countries should guarantee that their actions and policies do not violate the right to food in other countries.³²¹ This should be incorporated on the scope section and state obligations' section of the proposed Food Security Framework Act. Chapter one of Brazil's act provides for general dispositions which are the same as the scope of any other framework act.

5.4.4 Definitions³²²

The definitions section safeguards the agreed and precise meaning of the terminology that may reappear often in the framework act.³²³ This section serves as a reference point for terminologies that may be controversial in the enforcement of the law.³²⁴ It is not necessary for South Africa to create new meanings for the terms to be incorporated in the framework act. Instead people who will draft the proposed food security framework act can use definitions provided from different international instruments related to human rights or “definitions proposed by the relevant international agencies dealing with food.”³²⁵ In addition to this, the definitions in the

317 “In practice, the right to food can only be effectively ensured if all branches of government adopt necessary measures that fall within their sphere of competence.” See FAO 2009 *Guide on Legislating for the Right to Food* 69.

318 FAO 2009 *Guide on Legislating for the Right to Food* 70.

319 A 55(c) of the *United Nations Charter*.

320 A 2(1) of the *International Covenant on Civil and Political Rights*.

321 Donati and Vidar *International Legal Dimensions of the Right to Food* 59–60.

322 See section 4.5.2 of this study.

323 FAO 2009 *Guide on Legislating for the Right to Food* 71.

324 Vapnek and Spreij *Perspectives and Guidelines on Food Legislation* 167. See also FAO 2009 *Guide on Legislating for the Right to Food* 71.

325 Such as FAO, World Health Organisation (WHO), World Food Program (WFP) or Food Insecurity and Vulnerability Information Mapping Systems (FIVIMS). See Vapnek and Spreij

framework act can be applied by judges in adjudicating cases regarding the infringement of the right to food.³²⁶

Only a few terminologies are illustrated in section 5.4.4, namely "adequacy" and "food and nutrition security". The concept of adequacy has been defined in both the Brazil and Guatemala acts. Article 3 of the *National Food and Nutritional Security Framework Act* of Brazil³²⁷ provides the definition of "adequate food", namely:

'adequate food' means realisation of the right of everyone to regular and permanent access to qualitatively and quantitatively sufficient food without compromising access to other basic necessities, taking as a basis food practices that promote health, respect cultural diversity and which are environmentally, economically and socially sustainable.

In Guatemala, in the Law on the *National Food and Nutritional Security System*³²⁸ the term "food and nutrition" is defined as

'food and nutrition security' means the right of every person to have regular and permanent physical, economic and social access to food which is adequate, in quality and quantity, and with cultural relevancy, and which is preferably of national origin as well as to its adequate biological use to maintain a healthy and active life.

Although the term "adequacy" itself is not really defined in Guatemala, it should be noted that it is contained in the definition of the term "food and nutrition security". This concept emphasises different factors that should be considered to ascertain whether food is accessible.³²⁹ Following General Comment 12, the key elements of the right to food includes the term adequacy.³³⁰ In South Africa section 27(1)(b) refers to "sufficient food" therefore the proposed framework act should give provision for the term "sufficient food" which should also contain the meaning of adequate food so that the two terms may be used interchangeably to avoid confusion.

Perspectives and Guidelines on Food Legislation 167. See also FAO 2009 *Guide on Legislating for the Right to Food* 71.

326 Vapnek and Spreij *Perspectives and Guidelines on Food Legislation* 167. See also FAO 2009 *Guide on Legislating for the Right to Food* 71.

327 A 3 of the *National Food and Nutritional Security Framework Act* of Brazil.

328 A 1 of the *National Food and Nutritional Security System* of Guatemala.

329 FAO 2009 *Guide on Legislating for the Right to Food* 74.

330 See section 2.2.1.

5.4.5 Principles

Generally, the Framework Act provides a fundamental principles' section. These principles are there to check and govern the state's actions and to implement their duties under the right to food.³³¹ States should ensure that decision-making processes to implement the right to food conform with the following principles: participation, accountability, non-discrimination, transparency, human dignity, empowerment and rule of law.³³² Provisions of fundamental principles have been included in both Brazil and Guatemala legislation for food security. Article 8 of the *National Food and Nutritional Security Framework Act* of Brazil³³³ and the Law on the *National Food and Nutritional Security System* of Guatemala, have provisions on principles that govern the actions of different bodies in the realisation of food and nutrition security.³³⁴

For example, just to mention but a few, firstly, the principle of non-discrimination entails that any human right protection should be afforded in the same manner for every individual despite their race, colour, sex, age, religion or any other ground.³³⁵ In the context of the proposed framework act, this requires giving attention to all groups³³⁶ that cannot enjoy their right to food as fully as others.

Brazil's *National Food and Nutritional Security Framework Act* ensures to perform on a non-discrimination basis.³³⁷ Article 2 of the Guatemalan Law on the *National Food and Nutritional Security System* provides that any form of discrimination in access to food as well as to means and rights to its procurement constitutes a violation of that law.

331 FAO 2009 *Guide on Legislating for the Right to Food* 78-80.

332 FAO 2009 *Guide on Legislating for the Right to Food* 29 provides that: "PANTHER" framework was developed by FAO *Right to Food* Unit (participation, accountability, non-discrimination, transparency, human dignity, empowerment and rule of law).

333 A 8 of the *National Food and Nutritional Security Framework Act* of Brazil.

334 FAO 2009 *Guide on Legislating for the Right to Food* 80.

335 See CERD and the CEDAW.

336 See section 3.2.1 of this study.

337 A 8.1 *National Food and Nutritional Security Framework Act* of Brazil.

Secondly, the principle of transparency has been defined as "open access by the public to timely and reliable information on the decisions and performance of public authorities."³³⁸ The *National Food and Nutritional Security Framework Act* of Brazil is based on the principle of transparency.³³⁹ Whereas, the Law on the *National Food and Nutritional Security System* of Guatemala³⁴⁰ requires objective monitoring measures to ensure transparency in public management, social auditing as well as consideration for the people's needs.

Applying the principle of transparency within the context of the proposed framework act would mean that individuals should be given vital information regarding procedures in decision-making and accountability issues.³⁴¹ Individuals may also be allowed to demand information concerning the realisation of the right to food if it is not offered to them.³⁴² This would be used as a tool to check maladministration.³⁴³

Thirdly, human dignity has been defined as "the absolute and inherent worth that a person has simply because they are human, not by virtue of any social status or particular powers."³⁴⁴ The *National Food and Nutritional Security Framework Act* of Brazil is based on "preservation of autonomy and respect of human dignity."³⁴⁵ The Law on the *National Food and Nutritional Security System* of Guatemala provides for the protection of human dignity in realising food and nutrition security.³⁴⁶ However, in South Africa human dignity³⁴⁷ is already a right in terms of the Constitution, the proposed framework act for food can incorporate it as a principle the same way Guatemala and Brazil did.³⁴⁸

338 FAO 2009 *Guide on Legislating for the Right to Food* 81.

339 A 8.IV the *National Food and Nutritional Security Framework Act* of Brazil.

340 A 4b *Law on the National Food and Nutritional Security System* of Guatemala.

341 FAO 2009 *Guide on Legislating for the Right to Food* 82.

342 FAO 2009 *Guide on Legislating for the Right to Food* 82.

343 FAO 2009 *Guide on Legislating for the Right to Food* 82.

344 FAO 2009 *Guide on Legislating for the Right to Food* 82.

345 A 8.II of the *National Food and Nutritional Security Framework Act* of Brazil.

346 A 4.a of the *National Food and Nutritional Security System* of Guatemala.

347 S 10 of the Constitution.

348 To comply with this principle in the implementation of the framework act, South Africa, through its public officials, must treat persons in the same way and respect their human worth and dignity.

5.4.6 Provisions on governmental obligations

When a state uses a rights-based approach³⁴⁹ to food security, it is important to address the issue of its accountability and actions.³⁵⁰ As noted,³⁵¹ where there is a right there must be obligations. In Brazil the *National Food and Nutritional Security Framework Act*³⁵² provides for state obligation regarding the right to adequate food.

Section 7(2) and section 27(2) of the Constitution states that the state must take steps within its available resources to progressively realise the right to food. The proposed framework act “could simply state that it is the obligation of the government to respect, protect and fulfil the right to food.”

5.4.7 Provisions on international cooperation³⁵³

Articles 2.1 and 11 of ICESCR stipulate international cooperation and assistance as means to attain the full realisation of the right to food. It is important for states to seek support from an enabling international environment in order to achieve the full realisation of the right to food at the national level. According to the effect of General Comment 12 states should take measures to respect the enjoyment of the right to food in other states as well as offering assistance when it is needed.³⁵⁴ Simultaneously, states also have responsibilities to work together with other countries in order to assist them in times of need.³⁵⁵ Moreover, a former UN Special Rapporteur on the Right to Food³⁵⁶ has deliberated that states should support the

349 FAO 2006 *The right to food in practice: Implementation at the National level* 3 provides that: "A rights-based approach views governments' promotion of food security as an obligation, hence not as a form of benevolence. It insists on the accountability of duty-bearers to rights-holders. Its conception of good governance places special emphasis on the active participation of all stakeholders in policy development, on transparency in government, and on ensuring, through an independent legal framework, that people have access to effective remedy whenever they have not received their due."

350 See Eide *The Right to Food: From Vision to Substance* 30.

351 See section 2.2.3 of this study.

352 A 2.2 of the *National Food and Nutritional Security Framework Act* of Brazil.

353 See also section 4.2.4 of this study.

354 *General Comment 12* para 36.

355 *General Comment 12* para 38.

356 Ziegler 2006 *The right to food* para 34.

enjoyment of the right to food of people in other countries in order to conform with their right to food obligations.³⁵⁷

Article 6 of the *National Food and Nutritional Security Framework Act* of Brazil, promotes international cooperation to realise the right to adequate food. Against this backdrop, the proposed South African act may enact a provision that specifically deals with international cooperation to achieve the right to sufficient food at the international level.

5.4.8 *Provision on quasi-judicial remedies*³⁵⁸

Although courts are the primary mechanisms of human rights protection purposes, they normally depend on cases that are brought to them and they do not have independent research capacity.³⁵⁹ Whereas, when national human rights institutions are given quasi-judicial competence, they can conduct an independent research and recommend suitable remedies.³⁶⁰ Procedures used by these institutions are usually cheaper and easy to access.³⁶¹ In most cases, the infringement of the socio-economic rights emanates from legislative gaps or government policies.³⁶² Hence, national human rights institutions are important in the realisation and enforcement of the right to food.

The *National Commission for Monitoring Human Rights Violations* in Brazil is an example of the quasi-judicial bodies. It deals with investigations concerning the right to food violations.³⁶³ In Guatemala, the *Office of the Human Rights Ombudsperson*

357 Ziegler 2006 *The right to food* para 34.

358 See section 4.5.3 of this study.

359 FAO 2009 *Guide on Legislating for the Right to Food* 171.

360 FAO 2009 *Guide on Legislating for the Right to Food* 171 also provides that: "In some countries, the public ministry (office of public prosecution), which is traditionally in charge of criminal prosecution only, is also given the power of ensuring the good administration of the rule of law, including protection of guaranteed human rights. Thus, it conducts investigations concerning individual and systemic violations. In this regard, it is especially important that such an institution enjoys the status of a judiciary body, which would make it more independent and impartial."

361 FAO 2009 *Guide on Legislating for the Right to Food* 171.

362 FAO 2009 *Guide on Legislating for the Right to Food* 171.

363 FAO 2009 *Guide on Legislating for the Right to Food* 172.

serves to protect the right to food.³⁶⁴ Although this is not in their food security framework acts, South Africa may consider incorporating the quasi-judicial bodies' provisions in the proposed framework act for food security. In South Africa, the *South African Human Rights Commission* (SAHRC) plays a quasi-judicial role. According to the knowledge from Brazil and Guatemala, it is evident that quasi-judicial remedies provisions are faster and effective than the general courts.³⁶⁵

5.5 Conclusion

Legislative action is essential to sanction the state to take reasonable action to realise the right to food as a fundamental human right. The previous sections have shown the elements that can be found in a framework act on the right to food. In South Africa, the features to be included in the proposed food security act will be determined by the political and the legal context. There are various features that will influence the content of the proposed Framework Act, just to mention but a few: national priorities, causes of hunger, vulnerability and food insecurity. South Africa may choose to follow Brazil and Guatemala and include all or some of the elements discussed above. South Africa may also decide to go beyond the provisions discussed in this section and address additional issues that have not been discussed. Against this background, section six will deal with the recommendations and conclusion of the study.

6 Conclusion and recommendations

6.1 Conclusion

As noted³⁶⁶ the main objective of this study was to answer the following research question namely: What provisions are necessary for inclusion in a proposed South African framework act for food security by taking into account the legislative guidelines of the FAO, the legislative provisions of countries that have already

364 Kjaerum *National Human Rights Institutions Implementing Human Rights* 19. See also FAO 2009 *Guide on Legislating for the Right to Food* 172.

365 FAO 2009 *Guide on Legislating for the Right to Food* 172.

366 See s 1.

enacted framework act for food security (specifically Brazil and Guatemala) as well as South African framework act for the realisation of other qualified socio-economic rights (specifically the *Health Act* and the *Housing Act*)?

In order to answer this research question, various aspects relating to the right to food, food security and framework act were discussed. Section two provided the theoretical background to the right to have access to sufficient food, food security and framework act. Further, section three dealt with similar South African Framework Acts (namely the *Housing Act* and the *Health Act*). The findings of this section were the identification of provisions that are common in Framework Act for the realisation of socio-economic rights. For example, re-affirmation of the government's commitment to the right, provision of the scope of the right as well as monitoring provisions. In section four, the suggested FAO's legislative guidelines were identified and the findings are that the *Voluntary Guidelines* strive to support the progressive realisation of the right to food in the context of national food security.³⁶⁷ The *Voluntary Guidelines* would be beneficial to South Africa's proposed framework act if considered. Section five then dealt with the food framework acts of Brazil and Guatemala. It is evident in this section that these two jurisdictions food framework acts are more or less the same. South Africa may decide to address and include all the provisions from these three sections or just a few and add other provisions that are necessary regarding its own needs and circumstances.

6.2 Recommendations

Taking the constitutional mandate to take legislative measures for the progressive realisation of the right to have access to sufficient food into account, as well as the advantages that a Food Security Framework Act can provide, it is accordingly the researcher's opinion that a South African Framework Act for food security be enacted. In drafting the act, the legislature should have due cognizance of the recommendations made by the FAO as well as the lessons learned from other jurisdictions that have already enacted such framework act. Other South African framework act for qualified socio-economic rights can also be consulted. More specifically it is recommended that

367 FAO 2004 *Voluntary Guidelines* iii.

the proposed South African Food Security Framework Act, at least make provision for: (a) defining the content or scope of the right and its principles;³⁶⁸ (b) enforcement mechanisms and remedies;³⁶⁹ (c) efficiency gains and monitoring;³⁷⁰ (d) prioritising the most vulnerable persons and groups;³⁷¹ (e) education and awareness raising;³⁷² (f) emergency measures;³⁷³ (g) international cooperation;³⁷⁴ (h) civil society representation and participation;³⁷⁵ (i) financial matters;³⁷⁶ (j) addressing land issues;³⁷⁷ (k) addressing labour issues;³⁷⁸ (l) social security;³⁷⁹ (m) nutrition, food safety and consumer protection;³⁸⁰ and (n) on governmental obligations.³⁸¹

368 See sections 4.5.2 and 5.4.1-5 of this study.
369 See sections 4.5.3 and 5.4.8 of this study.
370 See sections 3.2.5 and 4.5.4 of this study.
371 See sections 3.2.1 of this study.
372 See sections 3.2.2 of this study.
373 See sections 3.2.3 of this study.
374 See sections 3.2.4 and 5.4.7 of this study.
375 See sections 3.2.6 of this study.
376 See sections 3.2.8 of this study.
377 See sections 3.2.9 of this study.
378 See sections 3.2.10 of this study.
379 See sections 3.2.11 of this study.
380 See sections 3.2.12 of this study.
381 See sections 4.5.6 of this study.

Bibliography

Literature

Adong *Patterns of Food Consumption and Expenditure*

Adong CJ *Patterns of Food Consumption and Expenditure among Households in the Limpopo Province, South Africa* (Master of Science in Nutrition and Rural Development-dissertation University of Ghent 2012)

Alfredsson *et al International Human Rights Monitoring Mechanisms*

Alfredsson G, Gremheden J, Ramcharan B and De Zayas A *International human rights monitoring mechanisms: essays in honour of Jakob Th, Moller* (Nijhoff Leiden 2009)

Altman, Hart and Jacobs *Food security in South Africa*

Altman M, Hart T and Jacobs P *Food security in South Africa* (HSRC Pretoria 2009)

Anderson 1990 *Journal of Nutrition*

Anderson SA "Core indicators of nutritional status for difficult-to-sample populations" 1990 *Journal of Nutrition* 1557-1599

Baiphethi and Jacobs *The contribution of subsistence farming*

Baiphethi MN and Jacobs PT *The contribution of subsistence farming to food security in South Africa* (HSRC Pretoria 2009)

Brand and Heyns (eds) *Socio Economic Rights in South Africa*

Brand D and Heyns CH (eds) *Socio Economic rights in South Africa* (Pretoria University Law Press Pretoria 2005)

Brand 2003 *Law, Democracy & Development*

Brand D "Between availability and entitlement: The Constitution, Grootboom and the right to food" 2003 *Law, Democracy & Development* 1-26

Cooman and Yakpo 2004 *AHRLJ*

Cooman F and Yakpo K "A framework act on the right to food: An international and South African perspective" 2004 *African Human Rights Law Journal* 17-33

Clay "Food Security"

Clay E "Food Security: Concepts and Measurement" in *Food and Agricultural Organisation Trade Reforms and Food Security: conceptualising the linkages* (FAO Rome 2003)

DAFF 2012 *Food Security Policy for the Republic of South Africa*

Department of Agriculture, Forestry and Fisheries *Food Security Policy for the Republic of South Africa* (2012)

Devenish, Govender and Hulme *Administrative Law*

Devenish GE, Govender K and Hulme D *Administrative Law and Justice in South Africa* (Butterworths Durban 2001)

Department of Social Development and DAFF 2013 *National Policy on Food and Nutrition Security*

Department of Social Development and Department of Agriculture, Forestry and Fisheries *National Policy on Food and Nutrition Security* (August 2013)

De Klerk *et al* Human Sciences Research Council 2004

De Klerk M *et al* "Food security in South Africa: key policy issues for the medium term" 2004 Human Sciences Research Council 1-86

Donati and Vidar "International legal dimensions of the right to food"

Donati F and Vidar M "International legal dimensions of the right to food" in Kent G (ed) *Global obligations for the right to food* (Rowman and Littlefield Lanham USA 2008) 47-109

Dreze and Sen *Public Action for Social Security: Foundations and Strategy*

Dreze J and Sen AK "Public action for social security: foundations and strategy" in Ahmad E, Dreze J, Hills J and Sen A (eds) *Social security in developing countries* (Clarendon Press Oxford UK 1991) 3-40

FAO 2008 *An Introduction to the Basic Concepts of Food Security*

Food and Agricultural Organisation *An Introduction to the Basic Concepts of Food Security* (FAO Rome 2008)

FAO 2009 *Guide on legislating for the right to food*

Food and Agricultural Organisation *Guide on legislating for the right to food* (FAO Rome 2009)

FAO 2001 *State of Food Insecurity*

Food and Agricultural Organisation *State of Food Insecurity* (FAO Rome 2001)

FAO 2006 *Food Security*

Food and Agricultural Organisation *Food Security Policy Brief* (FAO Rome June 2006)

FAO 2001 *The State of Food Insecurity in the World*

Food and Agricultural Organisation *Food Security Policy Brief* (FAO Rome June 2006)

FAO 2001 *The State of Food Insecurity in the World*

Food and Agricultural Organisation *The State of Food Insecurity in the World* (FAO Rome 2001)

FAO 2012 *Voluntary Guidelines on the Responsible governance*

Food and Agricultural Organisation *Voluntary Guidelines on the Responsible governance of tenure of land, fisheries and forests in the context of national food security* (FAO Rome 2012)

FAO 1998 *The right to food in theory and practice*

Food and Agricultural Organisation *The right to food in theory and practice* (FAO Rome 1998)

FAO 2004 *Voluntary Guidelines*

Food and Agricultural Organisation *Guide on Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (FAO Rome 2004)

FAO 2008 *Right to Food Making it Happen*

Food and Agricultural Organisation *Right to Food Making it Happen* (FAO Rome 2008)

FAO 2002 *The right to adequate food in emergencies*

Food and Agricultural Organisation *The right to adequate food in emergencies* (FAO Rome 2002)

FAO 2008 *Methods to monitor the human right to adequate food*

Food and Agricultural Organisation *Methods to monitor the human right to adequate food* (FAO Rome 2008)

Glazewski Environmental Law

Glazewski J *Environmental Law in South Africa* (Butterworths Durban 2013)

Hart *Food security definitions, measurements and recent initiatives*

Hart T *Food security definitions, measurements and recent initiatives in South Africa and Southern Africa* (HSRC Pretoria 2009)

Hoexter and Lyster *New Constitutional and Administrative Law*

Hoexter C and Lyster R *The New Constitutional and Administrative Law Vol 2* (Juta Cape Town 2012)

Human Sciences Research Council *Synthesis report on social and economic impacts of government programmes since 1994*

Human Sciences Research Council "Synthesis report on social and economic impacts of government programmes since 1994" (Pretoria 2004)

Khoza 2004 *SAJHR*

Khoza S "Realising the right to food in South Africa: not by policy alone - a need for framework legislation : current developments" 2004 *South African Journal of Human Rights* 664-683

Kjaerum *National Human Rights Institutions Implementing Human Rights*

Kjaerum M 2003 *National human rights institutions implementing human rights*

Knuth "Constitutional and Legal Protection of the Right to Food around the World"

Knuth LVM "Constitutional and Legal Protection of the Right to Food around the World" (FAO Rome 2011)

Labadarios *et al The assessment of food insecurity*

Labadarios D, Davids YD, Mchiza Z and Weir-Smith G *The assessment of food insecurity in South Africa* (HSRC Report Pretoria 2009)

Labadarios 2008 *SAJCN*

Labadarios D "Executive summary of the National Food Consumption Survey: Fortification Baseline South Africa 2005" 2008 *South African Journal of Clinical Nutrition* 247-300

Labadarios (ed) *The National Food Consumption Survey*

Labadarios D (ed) *The National Food Consumption Survey: Children aged 1–9 years: South Africa 1999* (Stellenbosch South Africa 2000)

Labadarios (ed) *The National Food Consumption Survey*

Labadarios D (ed) "The National Food Consumption Survey: Children aged 1–9 years: South Africa 1999" 2000 *Forum of nutrition* 106-109

Labadarios *The assessment of food insecurity in South Africa*

Labadarios D *The assessment of food insecurity in South Africa* (HSRC Pretoria 31 March 2009)

Liebenberg *Socio-economic rights*

Liebenberg S *Socio-economic rights: adjudication under a transformative constitution* (Juta Cape Town 2010)

Liebenberg "The protection of economic, social and cultural rights"

Liebenberg S "The protection of economic and social rights in domestic legal systems" in Eide A, Krause C and Rosas A (eds) *Economic, social and cultural rights: a textbook* 2nd ed (Kluwer Law International The Hague 2001) 55-84

Liebenberg "South Africa's evolving jurisprudence on socio-economic rights"

Liebenberg S "South Africa's evolving jurisprudence on socio-economic rights: An effective tool in challenging poverty?" 2002 *Law, Democracy and Development* 159-191

Marschall 2001 *Social Economy and Law Journal*

Marschall M "Legitimacy and effectiveness: NGOs in comparative perspective" 2001 *Social Economy and Law Journal* (SEAL) See <http://www.efc.be/Newsletters/Seal/contentsseal200103.html>

Mbazira 2006 *Realising Socio-Economic Rights in the South African Constitution*

Mbazira C *Realising Socio-economic rights in the South African Constitution: The obligations of local government* (University of Western Cape 2006)

McLean "Constitutional Deference"

McLean KS *Constitutional Deference, Courts and Socio-economic Rights in South Africa* (University Law Press Pretoria 2009)

Mechlem 2004 *European Law Journal*

Mechlem K "Food Security and the Right to Food in the Discourse of the United Nations" 2004 *European Law Journal* 631–648

National Development Agency Research and Policy Unit in collaboration with the Human Sciences Research Council Economic Performance and Development "Civil society organisations 'participation in food security activities'"

National Development Agency Research and Policy Unit in collaboration with the Human Sciences Research Council Economic Performance and Development Civil society organisations' participation in food security activities in South Africa (Food Security Study Report April 2013)

Puoane *et al* 2002 *Obesity research*

Puoane T *et al* "Obesity in South Africa: the South African demographic and health survey" 2002 *Obesity research* 1038-1048

Vapnek and Spreij *Perspectives and Guidelines on Food Legislation*

Vapnek J and Spreij M *Perspectives and guidelines on food legislation: with a new model food law* (FAO Rome 2005)

Vidar "The interrelationships between the right to food and other human rights"

Vidar M "The interrelationships between the right to food and other human rights" in Eide WB and Kracht U (eds) *Food and human rights in development. Legal and institutional dimensions and selected topics* (Antwerp Belgium Intersentia 2005) 141-160

Ziegler 2004 "The right to food"

Ziegler J 2004 "The right to food" (Report of the Special Rapporteur of the United Nations Commission on Human Rights, submitted to the General Assembly, New York 27 August)

Ziegler *Preliminary Report of the Special Rapporteur*

Ziegler J *Preliminary report of the Special Rapporteur of the Commission on Human Rights on the right to food* (General Assembly UN New York 2001)

Case law

Government of South Africa v Grootboom and others 2001 1 SA 46 (CC)

Minister of Health and Others v Treatment Action Campaign and Others 2002 5 SA 721 (CC)

Soobramoney v Minister of Health, KwaZulu Natal 1998 1 SA 765 (CC)

Legislation

Constitution of the Republic of South Africa, 1996

National Housing Act 107 of 1997

National Health Act 61 of 2003

International instruments

Convention on the Rights of the Child (1990)

Convention on the Rights of the Child adopted by the UN General Assembly (2 September 1990)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention on the Elimination of All Forms of Discrimination against Women adopted by the UN General Assembly (18 December 1979)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Convention on the Elimination of All Forms of Racial Discrimination adopted by the UN General Assembly (21 December 1965)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted by the UN General Assembly (18 December 1990)

International Covenant on Civil and Political Rights (1966)

International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on (19 December 1966)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly (16 December 1966)

United Nations Convention on the Rights of the Child (1989)

United Nations Convention on the Rights of the Child adopted by the UN General Assembly on (20 November 1989)

Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights accepted by the General Assembly of the United Nations (10 December 1948)

Internet sources

Anon Date Unknown <http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>

Anon Date Unknown *Rome Declaration on World Food Security and World Food Summit Plan of Action* <http://www.fao.org/docrep/003/w3613e/w3613e00.htm> [date of use 25 Apr 2014]

Anon Date Unknown https://www.statssa.gov.za/PublicationsHTML/Report-03-18-032011/html/Report-03-18-032011_11.html

Anon Date Unknown *Statistics of South Africa* https://www.statssa.gov.za/Publications.h/Report-03-18-032011/html/Report-03-18-032011_11.html [date of use 16 Jun 2014]

Anon Date Unknown <http://www.un.org/en/development/devagenda/food.shtml>

Anon Date Unknown World Food Conference of 1974: *Outcomes on Food* <http://www.un.org/en/development/devagenda/food.shtml> [date of use 18 May 2014]

Anon Date Unknown <http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx>

Anon Date Unknown *Toolkit on the right to food UN Human Rights* <http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx> [date of use 12 Sept 2014]

Anon Date Unknown http://www.sahrc.org.za/home/21/files/Reports/4th_esr_chap_5.pdf

Anon Date Unknown *The right to have access to sufficient food* http://www.sahrc.org.za/home/21/files/Reports/4th_esr_chap_5.pdf [date of use 11 May 2014]

Anon Date Unknown http://www.ehrn.co.za/download/reg_meattrans.pdf

Anon Date Unknown *Department of Health Policy Guidelines: National food safety alerts and official food product recalls in South Africa* June 2004 http://www.ehrn.co.za/download/reg_meattrans.pdf [date of use 16 Oct 2014]

Anon Date Unknown <http://www.thefoodsafetynetwork.co.za/component/content/article/144-main-navigation-consumer/291-impact-of-the-consumer-protection-act-on-the-food-industry.html>

Anon Date Unknown *The food safety network* <http://www.thefoodsafetynetwork.co.za/component/content/article/144-main-navigation-consumer/291-impact-of-the-consumer-protection-act-on-the-food-industry.html> [date of use 13 Sept 2014]

Anon Date Unknown <http://www.polity.org.za/polity/govdocs/reports/poverty.html>

Anon Date Unknown *Poverty and Inequality in South Africa Summary Report* <http://www.polity.org.za/polity/govdocs/reports/poverty.html> [date of use 15 Aug 2014]

Boyer 2001 http://www.unu.edu/inter-linkages/docs/DiscussionP/2001_03_Brook.pdf

Boyer B 2001 *Institutional coordination, multi-stakeholder participation and the implementation of MEAs: National experiences of Malaysia and Thailand* http://www.unu.edu/inter-linkages/docs/DiscussionP/2001_03_Brook.pdf [date of use 25 Aug 2014]

Cotula and Vidar 2003 <http://www.fao.org/Legal/legstud/list-e.htm>.

Cotula L and Vidar M 2003 *The right to adequate food in emergencies* <http://www.fao.org/Legal/legstud/list-e.htm> [date of use 19 Feb 2014]

De Schutter Date Unknown <http://www.srfood.org/en/right-to-food>

De Schutter O Date Unknown *Right to food* <http://www.srfood.org/en/right-to-food> [date of access 27 Jun 2014]

Du Toit 2011 <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf>.

Du Toit DC 2011 *Food Security* <http://www.nda.agric.za/docs/GenReports/FoodSecurity.pdf> [date of use 12 Mar 2014]

Eide Date Unknown <http://www.fao.org/doAcrep/w9990e/w9990e03.htm>.

Eide A Date Unknown *The right to adequate food as a human right* <http://www.fao.org/docrep/w9990e/w9990e03.htm> [date of use 2 June 2014]

FAO Date Unknown <http://www.fao.org/docrep/005/y4430e/y4430e05.htm>

FAO Date Unknown Document Repository: *The right to food in emergencies* <http://www.fao.org/docrep/005/y4430e/y4430e05.htm> date of use 06 Aug 2014]

FAO Date Unknown http://www.fao.org/fileadmin/templates/righttofood/documents/other_documents/2008_rtf_forum/RightToFood-Forum_Panel4_en.pdf.

FAO Date Unknown *Right to Food Forum Discussion Paper Panel 4: Durable Impact - Benchmarks and Monitoring* http://www.fao.org/fileadmin/templates/righttofood/documents/other_documents/2008_rtf_forum/RightToFood-Forum_Panel4_en.pdf [date of use 26 Oct 2014]

Koch 2011 <http://www.ipc-undp.org/pub/IPCCountryStudy21.pdf>

Koch J 2011 *The food security policy context in South Africa: Country study* <http://www.ipc-undp.org/pub/IPCCountryStudy21.pdf> [date of use 15 July 2014]

Kamara and Sally 2002 <http://www.iwmi.cgiar.org/assessment/files/word/publications/Workshoppapers/Kamara.pdf>.

Kamara A and Sally H 2002 *Water for Food, Livelihoods and Nature: Simulations for Policy Dialogue In South Africa* <http://www.iwmi.cgiar.org/assessment/files/word/publications/Workshoppapers/Kamara.pdf>. [date of use 18 Nov 2014]

Kautzky and Tollman Date Unknown http://www.hst.org.za/uploads/files/chap2_08.pdf

Kautzky K and Tollman SM Date Unknown *A Perspective on Primary Health Care in South Africa* http://www.hst.org.za/uploads/files/chap2_08.pdf [date of use 21 Oct 2014]

Khoza Date Unknown
http://reference.sabinet.co.za/webx/access/electronic_journals/esrrev/esrrev_v5_n1_a2.pdf

Khoza Date Unknown *Protecting the right to food in South Africa: The role of framework legislation*
http://reference.sabinet.co.za/webx/access/electronic_journals/esrrev/esrrev_v5_n1_a2.pdf [date of use 27 Jun 2014]

McLaughlin Date Unknown www.coc.org

McLaughlin M Date Unknown *Report on the World Summit* www.coc.org [date of use 16 Jan 2014]

Misra Date Unknown <http://dprcg.gov>

Misra DS Date Unknown *Right to Food and Nutrition* <http://dprcg.gov> [date of use 9 Aug 2014]

OHCHR 1996-2014 <http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx>

United Nations Human Rights 1996-2014 *Toolkit on the right to food*
<http://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx> [date of use 12 Sept 2014]

Romer and Knowles 2005 <ftp://ftp.fao.org/docrep/fao/008/af140e/af140e00.pdf>.

Romer C and Knowles M 2005 *Tomorrow's Hunger: A framework for analysing vulnerability to food insecurity* <ftp://ftp.fao.org/docrep/fao/008/af140e/af140e00.pdf> [date of use 5 June 2014]

SAHRC <http://www.sahrc.org.za/>

SAHRC 2013-2014 *Concept Paper on the Strategic Focus Area: The Right to Food* <http://www.sahrc.org.za/> [date of use 24 Sept 2014]

Schutter Date Unknown <http://www.srfood.org/en/governance-and-the-global-food-crisis>

Schutter Date Unknown *The Global Hunger Crisis and Human Rights*
<http://www.srfood.org/en/governance-and-the-global-food-crisis> [date of use 13 Oct 2014]

Siphugu 2011 http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20-%20Narrative_Pretoria_South%20Africa%20-%20Republic%20of_12-22-2011.pdf

Siphugu L 2011 *Food and Agricultural Import Regulations and Standards*
http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20-%20Narrative_Pretoria_South%20Africa%20-%20Republic%20of_12-22-2011.pdf [date of use 20 Oct 2014]

UNRISD Date Unknown <http://www.unrisd.org>

UNRISD Date Unknown *Linking Social Protection and Human Rights: A Resource Platform for Development Practitioners and Policy Makers*
<http://www.unrisd.org> [date of use 14 Apr 2014]

Ziegler Date Unknown <http://www.righttofood.org/>

Ziegler J Date Unknown *Right to Food* <http://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/> [date of use 8 May 2014]

Ziegler 2006 <http://www.refworld.org/docid/4411820a0.html>.

Ziegler 2006 *Mission to Guatemala*
<http://www.refworld.org/docid/4411820a0.html>. [date of use 15 Nov 2014]

