

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

Dissertation submitted in fulfilment of the requirements for the degree of LLD in the Faculty of
Law, University of the Western Cape

Student

Shehaam Johnstone

Student number

3213186

Mode

UNIVERSITY of the
LLD
WESTERN CAPE

Supervisor

Professor J de Visser

Co-supervisor

Professor N Steytler

Topic: Food security and local government in South Africa: the role of municipalities in a food systems approach.

KEY WORDS

right to food; food security; food system; multi-level government; distribution of state authority; food-sensitive planning and urban design; spatial planning, land use management and development, sustainable agriculture, protection of agricultural land, food access; right to the city, markets and street trading.

DECLARATION

I, Shehaam Johnstone, declare that ‘*Food security and local government in South Africa: the role of municipalities in a food systems approach*’ is my original work and has not been submitted for examination or degree in any other university or institution of higher learning. While, numerous materials and resources have been referred to, they have been properly referenced and duly acknowledged.

Signed

Date



Supervisor: Professor J de Visser

Signature

Date

Co-supervisor: Professor N Steytler

Signature

Date

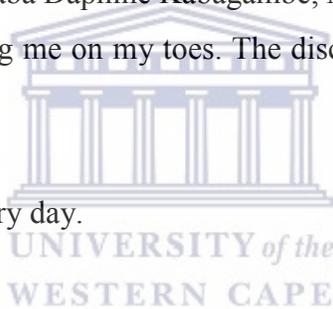
ACKNOWLEDGMENTS

I wish to thank the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI) and the DST/NRF Centre of Excellence in Food Security for the financial support I received to complete my thesis. I am also sincerely grateful to the DOI staff who created a warm, friendly and upbeat environment.

The comments provided by Prof de Visser were invaluable and certainly challenged my thinking. I am especially grateful to Prof de Visser for giving me the opportunity to pursue this LLD. Prof Steytler, thank you for your contribution and always making learning fun.

Thanks Associate Prof Zemelak, for encouraging me to undertake the LLD study. To the PhD Accountability Group, namely, Agaba Daphine Kabagambe, Meseret Kifle, Alois Madhekeni and Annette May thank you for keeping me on my toes. The discussions, interrogations and support pulled me through.

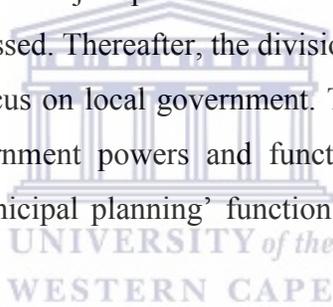
To my family, I love you more every day.



ABSTRACT

Realising the right to food in South Africa requires more than an increase in food supply. Instead it requires the structural causes that give rise to food insecurity be addressed. This is argued to compel the state to give equal consideration to the policy levers that enhance food access. A nuisance approach to food security is required that considers all the elements along the food value chain that impact food security. For this purpose, the dissertation adopts a food systems approach.

This dissertation argues that food security does not just concern only the higher levels of government but that it in fact demands of local government to contribute to realising the right to food. In this regard, local government's developmental mandate in the Constitution is emphasised. This duty must be carried out in a manner that gives effect to the Bill of Rights which includes the right to food. To make this assertion the jurisprudence of the South African Constitutional Court on socio-economic rights are discussed. Thereafter, the division of powers amongst the spheres of governments are set out with a focus on local government. The dissertation generally identifies linkages between the local government powers and functions and food security. However, significance is placed on the 'municipal planning' function to protect agricultural land and to improve food access.



LIST OF ABBREVIATIONS

AAAS	American Association for the Advancement of Science
ACC	African Centre for Cities
AFN	Alternative food networks
AFSUN	African Food Security Urban Network
ANC	African National Congress
APA	American Planning Association
BFAP	Bureau of Food and Agriculture Policy
CAHF	Centre for Affordable Housing Finance
CBO	Community Based Organisation
CFS	Committee on World Food Security
CFSA	Community food system assessments
CODESA	Convention for Democratic South Africa
COE	DST/NRF Centre of Excellence in Food Security
COMASA	Conselho Municipal de Abastecimento e Seguranca Alimentar
DAFF	Department of Agriculture, Forestry and Fisheries
DBE	Department of Basic Education
DEA	Department of Environmental Affairs
DFA	Development Facilitation Act 67 of 1995
DFID	Department for International Development
DFSC	District Food Security Committees
DoA	Department of Agriculture
DoH	Department of Health
DRDLR	Department of Rural Development and Land Reform
DSD	Department of Social Development
DTI	Department of Trade and Industry
EBT	Electronic Benefit Transfer
ECD	Early Childhood Development Centre
EIA	Environmental Impact Assessment
EPWP	Expanded Public Works Programme
FAO	Food and Agriculture Organisation

FBO	Faith- Based Organization
FBS	Free Basic Services
FFFI	Fresh Food Financing Initiative
FPC	Food Policy Council
FSP	Food Security Policy
FSPUD	Food Sensitive Planning and Urban Design
GDT	Gauteng Development Tribunal
GSAPP	Graduate School Architecture, Planning and Preservation
HCP	Hungry Cities Partnership
HLPE	High Level Panel of Experts on Food Security and Nutrition
HSRC	Human Science and Research Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTSD	International Centre for Trade and Sustainable Development
IDLO	International Development Law Organization
IDP	Integrated Development Plan
IFSS	Integrated Food Security Strategy
IGRFA	Intergovernmental Relations Framework Act
ITC	International Trade Centre
LFSAG	Local Food Security Action Groups
LG	Local Government
LSEN	Learners with Special Education Needs
LUM	Land-use management
LUPA	Land Use Planning Act of the Western Cape Act 3 of 2014
LUPO	Cape Land Use Planning Ordinance 15 of 1985
LUS	Land use management scheme
MDB	Municipal Demarcation Board
MDG	Millennium Development Goal
MEC	Member of Executive Council
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MHS	Municipal Health Services
MIC	Ministerial Interim Committee

MIG	Municipal Infrastructure Grant
MPNF	Multi-Party Negotiation Forum
MPT	Municipal Planning Tribunal
MSDF	Municipal Spatial Development Framework
MTEF	Medium-term expenditure framework
MTSF	Medium-term strategic framework
NAMC	National Agricultural Marketing Council
NCD	Non-Communicable Diseases
NCU	National Coordinating Unit
NDA	National Development Agency
NDP	National Development Plan
NEMA	National Environmental Management Act 107 of 1998
NFCS	National Food Consumption Survey
NFSF	National Food Security Forum
NGOs	Non-Governmental Organisations
NLGNF	National Local Government Negotiating Forum
NPA	National Peace Accord
NPFNS	National Policy on Food Nutrition and Security
NPOs	Non-Profit Organisations
NSDF	National spatial development framework
NSNP	National School Nutrition Programme
OCSLA	Office of the Chief State Law Adviser
ODI	Overseas Development Institute
OECD	Organization for Economic Co-operation and Development
PAJA	Promotion of Administrative Justice Act 3 of 2000
PDAL	Preservation and Development of Agricultural Land
PFSF	Provincial Food Security Forums
PHA	Philippi Horticulture Area
PPA	Physical Planning Act
PPP	Public-Private-Partnership
PRAI	Principles for Responsible Agriculture Investment

PSDF	Provincial spatial development framework
RAI	Responsible Agricultural Investment
RSDF	Regional spatial development framework
SACN	South African Cities Network
SAFSC	South African Food Sovereignty Campaign
SAHRC	South African Human Rights Commission
SALA	Subdivision of Agricultural Land Act 70 of 1970
SALGA	South African Local Government Association
SANCO	South African National Civics Organisation
SDF	Spatial Development Framework
SDG	Sustainable Development Goals
SERAC	Social and Economic Rights Action Centre
SIP	Strategic Infrastructure Plan
SMME	Small, medium and micro enterprise
SNAP	Supplemental nutrition assistance programme
SOEs	State Owned Enterprises
SPII	Study in Poverty and Inequality Institute
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013
Structures Act	Local Government: Municipal Structures Act 117 of 1998
Systems Act	Local Government: Municipal Systems Act 32 of 2000
UCLG	United Cities and Local Government
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
WCG	Western Cape Government

TABLE OF CONTENTS

DECLARATION.....	i
ACKNOWLEDGMENTS	i
ABSTRACT.....	i
LIST OF ABBREVIATIONS	i
CHAPTER 1: AN INTRODUCTION TO UNDERSTAND THE ROLE OF LOCAL GOVERNMENT IN FOOD SECURITY	1
1 PROBLEM STATEMENT	1
1.1 Food security in South Africa.....	1
1.2 The right to food in South Africa	4
1.3 The constitutional distribution of state authority.....	7
2. SIGNIFICANCE OF THE PROBLEM.....	11
3. RESEARCH QUESTIONS	12
4. LITERATURE REVIEW	12
5. CHAPTER OUTLINE.....	16
6. METHODOLOGY	17
CHAPTER 2: A NORMATIVE FRAMEWORK ON THE RIGHT TO FOOD AND OPPORTUNITIES FOR LOCAL GOVERNMENT TO IMPACT THE FOOD SYSTEM POSITIVELY.....	19
1 INTRODUCTION	19
2 STATE OF FOOD INSECURITY AND THE DISTORTED FOOD SYSTEM.....	19
2.1 Global food insecurity	19
2.2 Global Food System	20
2.2.1 Availability of food.....	20
2.2.2 Impact on public health.....	21
2.2.3 Role of multinational corporations in the production and supply of food	21
2.2.4 Food price volatility	22
2.2.5 Food loss and wastage.....	22
2.2.6 Impact of agricultural production on the environment.....	23
2.2.7 Impact of land grabs.....	23
2.3 Food insecurity in South Africa.....	25

2.4	The food system in South Africa	26
2.4.1	Availability of food	26
2.4.2	Impact on public health	27
2.4.3	Role of multinational corporations in the production and supply of food	28
2.4.4	Food price volatility	29
2.4.5	Food loss and wastage	31
2.4.6	Impact of agricultural production on the environment.....	31
2.4.7	Impact of land grabs	32
3	CONCEPTUALISING THE RIGHT TO FOOD	33
3.1	International law	33
3.1.1	Binding and non-binding instruments	34
3.1.2	Duties imposed on Member States	38
3.2	Regional law	40
3.3	The right to food under South African law	41
3.3.1	Constitutional provisions of the right to food	42
3.3.2	The legal framework	43
3.3.3	The right to food and multilevel government.....	44
3.3.4	<i>Grootboom</i> case.....	46
3.3.5	<i>Blue Moonlight</i> case	50
3.3.6	Accentuating the link of the local government mandate and the right to food	55
4	WHAT CAN BE DONE TO TACKLE FOOD INSECURITY?	577
4.1	The role of local government to realise food security in the development agenda ..	577
4.1.1	Localising the development agenda	577
4.1.2	Sustainable Development Goal 2	577
4.1.3	Recommendations to promote SDG 2.....	588
4.2	Local government levers to address food insecurity	61
4.2.1	The role of local government	61
4.2.2	Linking local government levers to food security.....	62
4.2.3	Strategic and responsive governance	64
	(a) A food charter	64
	(b) A food policy council.....	65

(c)	A community food assessment	66
4.2.4	Local land-use planning and regulation of the built environment and transport infrastructure	69
(a)	Local trade	73
(b)	Local environmental and health functions	78
5	CONCLUSION	81
CHAPTER 3: THE INTERSECTION OF MUNICIPAL POWERS & FOOD SECURITY		84
1	INTRODUCTION	84
2	THE SOUTH AFRICAN FOOD SECURITY POLICY FRAMEWORK	84
2.1	The Integrated Food Security Strategy (IFSS)	86
2.2	Government Outcomes Approach (Outcome 7)	89
2.3	National Development Plan Vision 2030 (NDP)	91
2.4	Food Security Policy	93
2.5	National Policy on Food and Nutrition Security	94
3	LOCAL GOVERNMENT UNDER APARTHEID	98
3.1	The pre-interim phase	103
3.2	The interim phase	104
3.3	The final phase	105
4.	DEMOCRATIC LOCAL GOVERNMENT	107
4.1	Developmental mandate for local government	107
4.2	Establishment of local government	110
4.3	Local government powers	114
4.3.1	Original powers	114
4.3.2	The provision of municipal services to support food security (electricity, water, sanitation, solid waste)	115
(a)	Electricity and gas reticulation	115
(b)	Water and sanitation services limited to potable water supply systems	115
(c)	Domestic wastewater and sewage disposal systems,	116
(d)	Municipal public transport	117
(e)	Refuse removal, refuse dumps and solid waste disposal	117

4.3.3	The regulation of the local food trade (trading regulations, street trading, markets and licensing and control of undertakings that sell food to the public and billboards) ...	119
(a)	Trading regulations.....	119
(b)	Street trading	120
(c)	Markets	121
(d)	Licensing and control of undertakings that sell food to the public	121
(e)	Billboards and the display of advertisement in public places.....	121
4.3.4	Food safety (municipal health and abattoirs)	122
(a)	Municipal health services	122
(b)	Municipal abattoirs.....	123
4.3.5	Food sensitive planning (municipal planning, public spaces and building regulations).....	124
(a)	Municipal planning.....	124
(b)	Public places.....	124
(c)	Building regulations	125
4.3.6	Childcare facilities.....	125
4.4	Assignment and subsidiarity.....	126
4.4.1	Criteria for 156(4) of the Constitution.....	127
4.4.2.	Making a case for assignment of the NSNP.....	128
4.5	Incidental powers.....	135
4.6	Division of powers between the district and local municipalities	137
4.6.1	Role of the districts	137
4.6.2	Division of powers between the district and local municipality	138
4.6.3	Overlapping Powers	140
4.7	Municipal by-law making.....	143
4.7.1	Confirming municipal legislative powers	143
4.7.2	Overlap with national and provincial functions	145
4.7.3	Municipal unwillingness to legislate on food security.....	145
4.8	National and provincial regulation	147
4.8.1	The legal framework	147
4.8.2	A food systems approach to regulation.....	149

(a)	Billboards and the display of advertisements in public places	149
(b)	Childcare facilities	150
4.9	Integrated planning for food security	152
4.9.1	Developmentally orientated IDPs	152
4.9.2	The legal framework	154
4.9.3	Implementation challenges.....	159
5.	CONCLUSION.....	161
CHAPTER 4: THE PRESERVATION OF AGRICULTURAL LAND, SUSTAINABLE		
FOOD SECURITY AND MUNICIPAL PLANNING.....		165
1.	INTRODUCTION	165
2.	CONNECTING PLANNING LAW TO SUSTAINABLE AGRICULTURAL LAND	167
3.	LEGISLATIVE ARCHITECTURE OF SALA.....	171
3.1	The key provisions of SALA.....	171
3.2	The economic model of SALA and history.....	174
4.	THE DEVOLUTION OF PLANNING POWERS TO MUNICIPALITIES.....	177
4.1	Jurisprudence on municipal planning.....	178
4.1.1	<i>Wary</i> case	179
4.1.2	<i>Gauteng Development Tribunal</i> case.....	187
4.1.3	<i>Maccsand</i> case.....	194
4.1.4	<i>Lagoonbay</i> case.....	201
4.1.5	<i>Habitat</i> and <i>Pieterse</i> cases	205
4.3.	Constitutionality of SALA.....	212
4.3.1	Principle of legality	212
4.3.2	Contestation around SALA	214
5	SPLUMA BACKGROUND AND WHAT IT AIMS TO ACHIEVE.....	217
5.1	SPLUMA architecture	218
5.2	SPLUMA principles to protect agricultural land.....	220
5.3	SPLUMA mechanisms to protect agricultural land.....	222
5.3.1	Developments affecting national interests	222
5.3.2	Special consideration must be given to agricultural land.....	224
5.3.3	Provincial legislation.....	225

(a)	LUPA development principles.....	225
(b)	LUPA mechanisms to protect agricultural land.	226
6.	CONCLUSION.....	228
CHAPTER 5: MUNICIPAL SPATIAL PLANNING AND LAND USE FOR IMPROVED FOOD ACCESS		230
1	INTRODUCTION	231
2	SPLUMA’s DEVELOPMENT PRINCIPLES & FOOD ACCESS	231
2.1	Application of the development principles.....	232
2.2	Content of the development principles and food access.....	233
2.2.1	The principle of spatial justice	233
2.2.2	The principle of spatial sustainability	236
2.2.3	The principle of efficiency	241
2.2.4	The principle of spatial resilience	243
2.2.5	The principle of good administration.....	244
3	THE SPATIAL DEVELOPMENT FRAMEWORK & FOOD ACCESS.....	246
3.2	Framework for SDFs	246
3.2.1	Different levels of spatial planning	246
3.2.2	Embedding a ‘food systems approach’ in SDFs	248
3.3	Legal status of SDFs.....	251
3.4	Municipal Spatial Development Frameworks	252
3.4.1	The framework for MSDFs.....	252
3.4.2	Legal status of the MSDF	253
3.4.3	Food-sensitive planning in the South African context.....	254
3.4.4	Linking the MSDFs to food access	258
3.4.5	Potential of the MSDF as an integrative instrument for food access	259
3.4.6	Accentuating the linkages between the local government mandate and the right to food	255
(c)	Improving alignment amongst the spheres of government towards food security	259

(d)	Striving for consistency in the municipal practice and plans to realise the right to food.....	260
(e)	MSDFs potential to help shape the private sector.....	262
(f)	MSDF and informality.....	265
4	LAND USE MANAGEMENT AND FOOD ACCESS	268
4.1	Defining the role of zoning.....	268
4.2	Framework for the Land Use Scheme	269
4.2.1	The purpose of the LUS	269
4.2.2	Core provisions for the LUS	269
4.2.3	Legal effect of the LUS.....	270
4.3	Linking land use management to food access	271
4.3.1	Preparation of the LUS.....	271
4.3.2	Intersection of food access with zoning and land use management.....	272
(g)	Zoning for the informal economy.....	272
(h)	Land distribution for informal township entrepreneurship	275
5	THE MUNICIPAL PLANNING TRIBUNAL AND FOOD ACCESS	277
5.1	SPLUMA framework for considering land development applications	277
5.1.1	Authority of first instance	277
5.1.2	Establishment of the MPT.....	278
5.1.3	Substantive powers of the MPT	278
5.2	Linking land development to food access	279
5.3	The use of conditions to promote food access.....	281
(i)	Including the informal sector	282
(j)	Grocery stores that sell fresh produce in retail developments.....	282
6	CONCLUSION.....	283
CHAPTER 6: EVALUATIVE SUMMARY & RECOMMENDATIONS		285
1	INTRODUCTION	285
2	MAIN FINDINGS OF THE CHAPTERS.....	285
2.1	A food systems approach to realise the right to food	285
2.2	Food security and local government in South Africa.....	289
2.4	Integrated development planning	296

2.5	Municipal planning to protect agricultural land and facilitate sustainable farming .	297
2.6	Connecting municipal planning to urban food security.....	300
3	RECOMMENDATIONS.....	305
3.1	General recommendations	306
3.2	Recommendations for local government.....	307
BIBLIOGRAPGHY		311



CHAPTER 1: AN INTRODUCTION TO UNDERSTAND THE ROLE OF LOCAL GOVERNMENT IN FOOD SECURITY

1 PROBLEM STATEMENT

1.1 Food security in South Africa

South Africa is considered a ‘food-secure’ country capable of producing enough calories to adequately feed every one of its 53 million people.¹ Despite the country’s apparent adequate production of food, one in four people still experiences hunger on a regular basis and more than half of South Africa’s population are at risk of going hungry.² According to a 2013 survey, ‘The South African National Health and Nutrition Examination Survey (SANHANES-1)’, ‘food insecurity’ affects formal and informal settlements in both rural and urban areas alike.³ The SANHANES-1 survey indicates that the largest groups experiencing hunger live in urban informal (32.4 per cent) and rural informal (37 per cent) areas.⁴ Hunger and malnutrition are stratified along racial, class and gender lines with the black population affected most when compared to other demographic groupings, while women suffer more than men.⁵ UNICEF South Africa detected that ‘every year about 75 000 children die before reaching five years of age, and 75 percent of newborn babies die in their first week of life’.⁶

UNIVERSITY of the
WESTERN CAPE

Many people are unable to access food.⁷ Yet food security is often perceived as a food production problem; that is, an agricultural matter.⁸ However, the ‘*capability theory*’ developed by Amartya Sen strongly links poverty and inequality to food insecurity.⁹ Sen argues that despite increases in

¹ Oxfam GB ‘Hidden Hunger in South Africa: The Faces of Hunger and Malnutrition in a Food-Secure Nation’ (2014) 2-12.

² Oxfam GB (2014) 2-12.

³ Shisana O, Labadarios D, Rehle T et al ‘The South African National Health and Nutrition Examination Survey SANHANES-1’ (2013) available at https://www.researchgate.net/profile/Thelmah_Maluleke/publication/316839699_SANHANES-launch_edition_online_version/data/591311694585152e199a73db/SANHANES-launch-edition-online-version.pdf (accessed 22 November 2018).

⁴ Shisana O et al (2013) 145-147.

⁵ Oxfam GB (2014) 24.

⁶ Dirk N ‘Hunger claims 65% of SA children’ *IOL* 13 May 2015.

⁷ Chitiga-Mabugu M et al ‘*Civil Society Organisations: Participation in Food Security Activities in South Africa*’ (2013) 23-24.

⁸ Battersby J ‘Food security amongst urban households’ in Fukuda-Parr S & Taylor V (eds) *Food Security in South Africa: Human rights and entitlement perspectives* (2016) 97-120.

⁹ Sen A ‘*Poverty and Famine: An Essay on Entitlement and Deprivation*’ (1981) Oxford: Clarendon Press.

CHAPTER 1

food supply and the availability of food people remain hungry.¹⁰ This is due to their inability to establish ‘entitlement’ (the ability to acquire or purchase food).¹¹ Sen articulates, that entitlement ‘concentrates on the ability of people to command food through the legal means available in the society, including the use of production possibilities, trade opportunities, entitlements *vis-à-vis* the state, and other methods of acquiring food’.¹²

Food insecurity in South Africa is intrinsically linked to high levels of poverty and inequality prevalent in the country.¹³ In fact, a 2018 World Bank report classified South Africa the world’s most unequal country.¹⁴ The high levels of poverty and inequality hamper people’s access to, and negatively affect their ability to make food choices. For example, a survey conducted in 2016 uncovered that approximately one-fifth of the country’s households (19.9 per cent) had run out of money to buy food in the past twelve months.¹⁵ Food security is as much about access and quality as it is about production. Therefore, food security will not be achieved by food production alone.

Furthermore, the state cannot be held entirely responsible for access to food. There are many structural and systemic problems in South Africa’s food system that exacerbate food insecurity and the state ultimately does not control the food system. A food system is broadly defined as all processes and infrastructure involved in feeding a population, growing, harvesting, processing, packaging, transporting, marketing, consuming and disposing of food and food-related items.¹⁶ Haysom found that within a complex urban food system there are multiple role-players and distributed authority.¹⁷ This means that no single entity assumes responsibility for the food system, let alone, addressing food insecurity.¹⁸ It will be argued later in this dissertation that South Africans

¹⁰ Sen A (1981) 7.

¹¹ Dawood G ‘*The Impact of Fiscal Expenditure and Intergovernmental Coordination on Food Security in South Africa*’ (2015) 159 – 160. Burns R and Shaw J (2007) 9.

¹² Sen A (1981) 45.

¹³ Oxfam GB (2014) 2-12.

¹⁴ Feketha S ‘South Africa world’s most unequal society’ *IOL* 28 March 2018 available at <https://www.iol.co.za/news/south-africa/south-africa-worlds-most-unequal-society-report-14125145> (accessed 11 November 2018).

¹⁵ Statistics South Africa *Statistical release: community survey 2016* available at www.statssa.gov.za/?page_id=737&id=1 (accessed 11 November 2018).

¹⁶ See Wikipedia available at http://en.m.wikipedia.org/wiki/Food_systems (accessed on 16 April 2015).

¹⁷ Haysom G, ‘*The Urban Food System: The Hungry Cities Workshop University of Cape Town, 09 February 2015*’ (2015) 4 of 15.

¹⁸ Haysom G (2015) 4 of 15.

CHAPTER 1

purchase the majority of their food. Moving from this premise ‘food access’, therefore has both economic and spatial dimensions.¹⁹

Arguably in South Africa, the food system is compromised in many respects. For example, framings on food security fail to recognise the role corporates play in the food system. This results in a legal gap since their actions remain poorly regulated. It will be shown later how corporate entities monopolise food value chains and negatively impact the food system.²⁰ For instance, 60 per cent of the retail markets are owned by only five retailers,²¹ and 32 per cent is shared by the ‘informal’ trading sector.²² Small-scale farmers, micro-enterprises and informal traders occupy a minor position in South Africa’s food system.²³

Literature suggests that the establishment of supermarkets in less developed areas has stifled local enterprise. As a result, it negatively affected the business of smaller retailers and informal traders, and led to business closures.²⁴ Corporates have also transgressed the trust of people particularly if regard is had to the prominent price-fixing and anti-competitive behaviour in respect of staple food commodities such as bread, maize, milk, and canned fish.²⁵

While it is clear that food security is not only a production problem, the preservation and protection of agricultural land is still an important consideration for sustainable food production.²⁶ Transnational corporations influence the manner in which agricultural land is utilised.²⁷ The phenomenon of land grabbing by transnational corporations especially in African countries is well-documented.²⁸ It involves the purchasing of portions of agricultural (arable) lands at low costs for

¹⁹ Haysom G (2015) 4 of 15.

²⁰ SACSIS Busiso Moyo 27 Feb 2015 available at <http://sacsis.org.za/site/article/2296> (accessed on 13 May 2015).

²¹ Oxfam (2014) 34. The retailers are Shoprite, Pick ‘n Pay, Spar, Massmart and Woolworths.

²² Oxfam (2014) 34. The informal trading sector include general dealers to spaza shops and roadside vendors.

²³ Oxfam (2014) 24.

²⁴ Oxfam (2014) 24.

²⁵ Oxfam (2014) 24.

²⁶ NPFNS (2014) 4; 12 and 13.

²⁷ Laishley R ‘*Africa Renewal: Special Edition on Agriculture- Is Africa’s land up for grabs?*’ (2014) available at <http://www.un.org/africarenewal/magazinespecial-edition-agriculture-2014/africa%E2%82%99s-land-grabs> (accessed 20 June 2015).

²⁸ Laishley R (2014) 29.

CHAPTER 1

agricultural production to maintain a monopoly over food supply.²⁹ Instances have been documented where corporates successfully obtained approval for the development of low-costs housing on arable land that could have been preserved for diversified agricultural production instead.³⁰

Shifting the focus from food production to food access highlights the gap in legislative and policy approaches to deal with urban food insecurity. Urban food insecurity was not addressed in earlier (local and international) framings on food security.³¹ In South Africa, food security is predominantly perceived as a rural rather than urban problem.³² This is at odds with the paradigm shift in the international context, in terms of which food security is viewed as an access rather than production problem.³³ With this change internationally, urban food insecurity is gaining increased attention from policymakers and political leaders.³⁴ Yet South Africa's legislation and policies still appear inadequate to deal with urban food insecurity.³⁵

This section provided an overview of the state of food insecurity in South Africa and discussed the gaps in the legislative and policy framework dealing with food access and urban food security. The next section will focus on the definition of the constitutionally-entrenched right to sufficient food.

1.2 The right to food in South Africa

The right of access to sufficient food is provided for in section 27(1)(b) of the South African Constitution.³⁶ Section 27(2) of the Constitution places a positive duty on the state to take reasonable legislative and other measures within its available resources to progressively realise this right. In addition, sections 28(1)(c) and 35(2)(e) provide an unqualified right to basic nutrition

²⁹ Haysom G *Food Governance for Urban Sustainability in the Global South* (unpublished PhD Thesis, University of Cape Town 2014) p 172- 180.

³⁰ Haysom G (2014) 172- 180.

³¹ Battersby J (2016) 100.

³² Battersby J (2016) 98. Yet 65.78 percent of South Africa's total population lived in urban areas and cities during 2017 see Statistics South Africa *South Africa: Urbanization from 2007 to 2017* available at <https://www.statista.com/statistics/455931/urbanization-in-south-africa/> (accessed 19 November 2018).

³³ Battersby J (2016) 99-101.

³⁴ Battersby J (2016) 99-101.

³⁵ Battersby J (2016) 99-101.

³⁶ S 27(1)(b) of the Constitution of the Republic of South Africa 1996, hereinafter the Constitution.

CHAPTER 1

for children and arrested, detained and accused persons. The right to ‘sufficient food’ that must be ‘progressively realised’ means it must be realised over time and within the state’s ‘available resources’.³⁷

It is, however, unclear how the right to food should be interpreted.³⁸ Unlike other socio-economic rights, such as the right of access to housing, education, health, an environment that is not harmful, social security and water which have been litigated in the South African courts, no court has interpreted the meaning of the right to food in South Africa.³⁹ As a consequence, there is little direction on how to enforce this right in a court of law. Furthermore, there is no legislative framework dealing with the right to food unlike the aforementioned socio-economic rights for which there is law in South Africa.⁴⁰ Hence the state’s mandate with respect to the right to food is not legally defined.⁴¹

The Constitution instructs that when defining any right in the Bill of Rights consideration must be given to international law and may be given to foreign law.⁴² To assist in giving meaning to the right to food (food security and insecurity) a few definitions will be provided below.

Article 11 of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴³ provides that: ‘[t]he 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.’⁴⁴ Yet the realisation of socio-economic rights in the ICESCR is also

³⁷ Section 27(2) of the Constitution. However, Ss 28(1)(c) and 35(2)(e) provide an unqualified right to basic nutrition for children, arrested, detained and accused persons.

³⁸ Khoza S ‘Protecting the Right to Food in South Africa: The Role of Framework Legislation’ (2004) Volume 5 No 1 *ESR Review*, 3. Also see Khoza S ‘Realising the Right to Food in South Africa: Not by Policy Alone- A Need for Framework Legislation’ (2004) Vol 20 *SAJHR* 670.

³⁹ Brand, J ‘Between availability and entitlement: The Constitution, Grootboom and the right to food law’, *Law Democracy and Development* Vol 1:22, 153. Brand D & Heyns C (eds) ‘Socio-Economic Rights in South Africa’ (2005) ch 1.

⁴⁰ Refer to Knuth & Vidar, they argue ‘in order for [the right to food] to be effective for individuals . . . national legislation must reflect the right in such a way as to make it applicable. This may take place through its incorporation into the constitution and through framework laws and sectoral laws’ cited in McDermott M ‘Constitutionalizing an Enforceable Right to Food: A Tool for Combating Hunger’ *Boston College International & Comparative Law Review* (2012) Vol 35 Issue 2 548.

⁴¹ Khoza S (2004) 670-672.

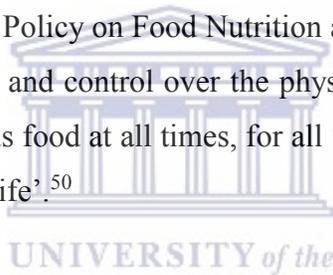
⁴² Section 39(1) of the Constitution.

⁴³ SAHRC welcomes Government’s decision to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR). Accessed 17 April 2015 available at www.sahrc.org.za/home/index.php?ipkArticleID=318. which the state ratified the ICESCR on 12 January 2015.

⁴⁴ CESCR *General Comment No 12 The Right to Adequate Food* UN Doc E/C/12/1999/5 (1999) para 6.

subject to the qualifications of ‘availability of resources’ and ‘progressive realisation’.⁴⁵ Therefore, the extent of the obligation imposed on the state remains unclear.⁴⁶

Subsequent to the ICESCR, there was a huge disparity in the aspirations contained in Article 11 and the situation on the ground. This led to a political commitment from global world leaders to address the high levels of malnutrition and hunger at a World Food Summit held in Rome during 1996. The Rome Declaration was an outcome of this summit. It is neither a treaty nor an international legal instrument,⁴⁷ yet the Rome Declaration has improved the formulation of the ‘right to adequate food’ and resulted in the General Comment 12 of Article 11 of the ICESCR.⁴⁸ As a result, its definition of food security was also used in other international instruments. It defines food security as a situation where ‘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’.⁴⁹ The South African National Policy on Food Nutrition and Security (NPFNS), defines food and nutrition security as ‘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’.⁵⁰



From the definitions above, four dimensions apply to food security, namely, (i) food availability, (ii) food access, (iii) utilisation, and (iv) stability.⁵¹ This chapter now turns to briefly define these dimensions. Food availability refers to the availability of sufficient food of appropriate quality, to meet people’s needs. Food access entails assuring people of adequate physical and economic access to nutritious food. Utilisation relates to food that is diverse and safe in accordance with what is required to maintain people’s health while being produced in an environmentally sustainable way. Stability always encompasses access to adequate food and the mitigation from

⁴⁵ CESCR *General Comment No 3 The Nature of States Parties Obligations* UN doc E/1991/23 (1990) par 9.

⁴⁶ Chenwi L Unpacking ‘progressive realisation’, its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance (2013) 743- 745. De Jure.

⁴⁷ McDermott M (2012) 547-547.

⁴⁸ McDermott M (2012) 547-547.

⁴⁹ Burns R & Shaw J (2007) ‘*World Food Security: A History Since 1945*’ 9.

⁵⁰ Government Gazette No. 37915 dated 22 August 2014, 8.

⁵¹ UN FAO ‘*Policy Brief Food Security- Issue 2*’ (2006) available at http://www.fao.org/fileadmin/templates/faoitally/documents/pdf/pdf_Food_Security_Cocept_Note.pdf (accessed 19 November 2018).

CHAPTER 1

losing access to food as a consequence of sudden shocks (for example, an economic or climatic crisis) or cyclical events (for example, seasonal food insecurity).

Food insecurity may be understood as ‘a situation when people lack secure access to sufficient amounts of safe and nutritious food for normal growth and development for an active and healthy life. It may be caused by the unavailability of food, insufficient purchasing power, inappropriate distribution or inadequate use of food at the household level. Food insecurity may be chronic, seasonal or transitory’.⁵² This definition emphasises food insecurity at a household level. So even when a country is food secure at a national level, like in the case of South Africa, it may not result in food security at a household level.

These definitions present an overview of how the right to food may be understood and the requirements needed to meet food security. The next section will focus on problems encountered by local government regarding food security.

1.3 The constitutional distribution of state authority

Many local governmental functions and responsibilities are linked to the four dimensions of food security mentioned above. This applies to local government in South Africa as well as globally, which will be fully discussed in Chapters 2 and 3 respectively. Although no express mandate on the right to food exists for local government it will be argued, specifically in Chapter 2, that the Constitution requires local government to progressively realise the right to food.⁵³

A direct relationship exists between the right to food and land. For example, land is required to grow food thus meeting the dimension of food availability. However, from the dimension of food access, land is also important as an economic asset and has social value attached to it.⁵⁴ Thus, the way land is controlled and managed (in other words, land use) is important for food security. All three spheres of government exercise land use. In practice, problems arose because there was no

⁵² Burns R & Shaw J (2007) 9.

⁵³ Ss 7(2) and 27(1)(b) read together with 40(1) of the Constitution, which provides that: ‘...government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated’.

⁵⁴ Turok I & Scheba A ‘Right to the city’ and the New Urban Agenda: learning from the right to housing’ (2018) *Territory, Politics, Governance*; Huchzermeyer M ‘The right to the city’ available at <https://wiser.wits.ac.za/system/files/documents/Huchzermeyer-RightToCity2014.pdf> (accessed 15 January 2019);

CHAPTER 1

clear division of powers between ‘municipal planning’ compared to the other planning functions exercised by the national and provincial governments. As planning powers were devolved to local governments, this problem became more pronounced.⁵⁵ It highlighted the need for a national act on planning that could address these tensions and legal uncertainties. Consequently, the Spatial Planning and Land Use Act 16 of 2013 (SPLUMA) was introduced. SPLUMA now provides in detail what the ‘municipal planning’ function entails which includes forward planning; that is, designing the space of a particular area and land use.

Local government does not have a clear food security mandate. Food security is furthermore not listed in the schedules of the Constitution which allocate the functions to be carried out by national, provincial and local government. No legislation on the right to food is available to assign a food security role to local government either. Since food security is associated with food production and thus with agriculture, the mandate of food security is perceived as a national and provincial function because the Constitution allocates agriculture to the national and provincial governments.⁵⁶ Local government does not have a constitutional mandate with respect to agriculture and therefore sees food security as an additional function. It is unlikely that municipalities would be willing to assume additional duties.⁵⁷ The discussion that will follow in subsequent chapters confirms the many ways in which local governments are linked to food security.

Literature suggests that local governments are negatively affected by the transfer of additional functions which often results in unfunded and/or underfunded mandates.⁵⁸ Struggling to deliver basic services, municipalities must manoeuvre within tight fiscal allocations and are thus inhibited from pursuing local food security initiatives.⁵⁹ Municipalities argue that in practice, assigned competencies do not follow the prescribed process.⁶⁰ Functions are transferred without the

⁵⁵ De Visser J ‘Devolution by Court Injunction: the case of Land Use Planning in South Africa’ (2016) 10 *Ugandan Journal of Management and Public Policy Studies* 1 84-99

⁵⁶ Ss 44(1) and 104(1) read with Sch4, Part A of the Constitution.

⁵⁷ Steyn J ‘Food Security in South Africa: Perceptions of the Role of Local Government’ (2011) available at http://www.hst.org.za/publications/NonHST%20Publications/food_security.pdf (accessed 21 November 2018).

⁵⁸ Basedo M ‘The Impact and Dilemma of Unfunded Mandates Confronting Local Government in South Africa: A Comparative Analysis’ (2011) 53.

⁵⁹ Steyn J (2011) 3.

⁶⁰ Dawood G (2015) 163-170.

necessary capacity available in municipal administration or without adequate funding.⁶¹ There is very little incentive for municipalities to implement food security initiatives.

Coming back to the dimension of food availability, municipalities also have little interest in protecting agricultural land from being converted to residential, industrial, and commercial use.⁶² So why are municipalities inclined to facilitate the development of agricultural land? Municipalities seem to be motivated by the increase that will result in its rates revenue base.⁶³ The levying of property rates and the sale of municipal services are crucial revenue sources for municipalities.⁶⁴ The revenue sources from agricultural land are however much less which means that the preservation of agricultural land is unlikely to be prioritised.⁶⁵ Thus, urban growth for housing and industrial spaces on agricultural land such as the Philippi Horticulture Area (PHA) area is under extreme pressure.⁶⁶ For example, the PHA situated on the urban edge of the City of Cape Town, produces fresh fruit and vegetables for the informal sector and plays an important role in providing nutritious food supply to the local residents.⁶⁷ Yet on more than one occasion, developments for housing and other industrial needs threatened this area.⁶⁸

Shifting the focus to food access, the question arises what is the relationship between municipal governance and food security.⁶⁹ For instance, do municipalities use their land-use powers progressively to further food security? More specifically, do municipalities zone areas appropriately to facilitate the operations of micro-enterprises in black townships for example?⁷⁰

⁶¹ Basedo M (2011) 52-53.

⁶² Haysom G (2012) 8.

⁶³ N Steytler 'The Decisions in Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another 2009 (1) SA 337(CC): Be Wary of these Holdings' in *Constitutional Court Review* 2009(2) 429-431.

⁶⁴ The municipal services include water, electricity, sanitation, and refuse removal.

⁶⁵ N Steytler (2009) 433.

⁶⁶ Haysom G (2012) 8.

⁶⁷ Haysom G (2012) 8.

⁶⁸ African News Agency 'No further development for Philippi Horticultural Area, council says' *IOL* 25 April 2018.

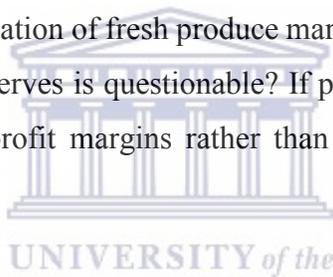
⁶⁹ SALGA 'Making the Informal Economy Visible: Guidelines for municipalities in respect of adopting a more developmental approach towards the informal economy' (2012).

⁷⁰ Skinner C 'Challenging city imaginaries: Street traders' struggles in Warwick Junction' (2009) available at https://www.researchgate.net/profile/Caroline_Skinner/publication/228376879_Challenging_city_imaginaries_Street_traders%27_struggles_in_Warwick_Junction/links/0c9605215172edbbd3000000.pdf (accessed 21 November 2018); and Sustainable Livelihood Foundation 'Post-apartheid spatial inequality: obstacles of land use management on township micro-enterprise formalisation' (2017) available at http://livelihoods.org.za/wp-content/uploads/2018/05/Post-Apartheid_Spatial_Inequality.pdf (accessed 20 October 2017).

CHAPTER 1

The zoning of areas in black townships should create economic opportunities but if an area is not zoned to permit such activity then it becomes illegal and unlawful to carry out such activity.

Food security is not only about access to any food but rather entails access to nutritious food. So do municipalities use their regulatory powers over fresh produce markets for example in a way that advances healthy food intake?⁷¹ Optimal functioning of the fresh produce markets is a real opportunity for local governments to improve the quality and quantity of healthy food for their communities.⁷² For instance, food security is facilitated in three ways by fresh produce markets. First, by making nutritious food available for the community at affordable prices. Second, enabling small-scale farmers to their produce and earn income to buy food. Third, serving as a supplier to informal traders to purchase produce to make a living.⁷³ Yet, the literature identifies a growing trend by municipalities to privatise the function of fresh produce markets to ensure they are optimally utilised. Whether privatisation of fresh produce markets best serves the interests of food security and the local residents it serves is questionable? If privatised, a market-driven approach may be applied that focuses on profit margins rather than the well-being of the surrounding community.⁷⁴



Given that local governments must work with the national and the provincial government in executing functions related to trading, municipal planning, and markets, for instance, the question arises, what does this mean in practice? The literature suggests that tension may come about due to the unclear manner in which the different functional areas are to be performed.⁷⁵ Also, the regulatory powers that need to be exercised by the national and provincial government at times may encroach on the autonomy of local government.⁷⁶ Within this context, the question arises how does the system of cooperative governance complicate local governments' ability to engage in food security initiatives?

⁷¹ The National Agricultural Marketing Council (NAMC) 'Section 7 Investigation: National Fresh Produce Markets' (2006) available at <https://www.nda.agric.za/docs/AMCP/Section7investigNFPM.pdf> (accessed 21 October 2015).

⁷² Chonco T 'An analysis of municipal regulation and management of markets as an instrument to facilitate access to food and enhance food security' (unpublished LLM thesis, University of the Western Cape, 2015).

⁷³ NAMC (2006) 15.

⁷⁴ NAMC (2006) 29.

⁷⁵ Steytler N and Fesha Y 'Defining provincial and local government powers and functions' (2007) 124 *SALJ* 320-327.

⁷⁶ Steytler N & Baatjies R 'Challenges for the new councils' (2006) Vol 8 Issue 1 *Local Government Bulletin* 1-3.

It is therefore clear that local governments do not view food security as a local government matter. To generate more revenue sources, local governments may therefore not be inclined to prevent developments on agricultural land. Inappropriate governance decisions may also restrict food access. Lastly, the system of cooperative governance potentially inhibits local governments' from engaging in food security. The next section deals with the significance of the problem.

2. SIGNIFICANCE OF THE PROBLEM

A problem identified by practitioners is that in practice, policy and programmatic interventions (particularly focused on agricultural programmes) appear to contradict the developmental role of local government.⁷⁷ Policy and programmatic interventions assign a minimalistic and/or regulatory role to local government. So essentially there is a lack of appreciation for the role of local government. If this is not addressed, it could mean that many of local governments' functions that directly impact food security will be underprioritised. Municipalities, however, can make an important contribution to realise the right to food. This will be discussed more fully in Chapter 2. The point here is to emphasise that local government, unlike the provincial and national government, are closely connected to their local residents and have a better awareness of the needs and challenges facing their communities. At the local scale, greater participation is afforded to communities to influence the development of policies and programmes affecting their right to food. In this way, municipalities are empowered to promote and protect the dignity and security of their local residents.⁷⁸ Thus if municipalities use their powers and functions to address all the dimensions of food security namely, food availability, food access, food utilisation, and food stability it may reduce the high levels of hunger and malnutrition.⁷⁹

⁷⁷ Dawood G (2015) 170. See also the Preamble of the Local Government: Municipal Systems Act 32 of 2000 (hereinafter Systems Act) states: '*...Whereas the Constitution of our non-racial democracy enjoins local government not just to seek to provide services to all our people but to be fundamentally developmental in orientation*'.

⁷⁸ Steyn J (2011) 3.

⁷⁹ Dirk N 'Hunger claims 65% of SA children' *IOL* 13 May 2015.

3. RESEARCH QUESTIONS

The dissertation aims to examine the legal basis for a ‘right to food’ in South Africa adopting a ‘food systems lens’ to assess the powers and obligations of municipal government to deliver this right. In addressing this enquiry the dissertation has four key objectives, namely, to:

- (i) Challenge and critique the ‘right to food’ and concepts of ‘food security’ in international law and practice, and examine the legal basis of the ‘right to food’ under the South African Constitution and law;
- (ii) Challenge the prevailing market-led approach to urban development and the food system, in South Africa through the lens of sustainability and social justice;
- (iii) Examine the duty and powers of South African municipal government in implementing the ‘right to food’, and its legal powers in achieving ‘food security’;
- (iv) Make recommendations to ensure that an integrated food systems approach is embedded in municipal strategic planning and service delivery.

In addition, to the abovementioned objectives this study seeks to answer, how municipalities should exercise their planning powers to contribute to food security in South Africa? In answering this question two sub-questions will be investigated:

- (i) What is the effect of the new enhanced role of local government in land-use planning and the interplay with the national and the provincial government’s role to protect prime agricultural land?
- (ii) How do the SPLUMA provisions empower municipalities to facilitate food access?

4. LITERATURE REVIEW

There is not much literature on the intersection of food security with the South African multilevel system of government. The absence of a framework law on the right to food and the unclear food security mandate that applies to the spheres of government makes it difficult to conceptualise the role that local government can fulfil towards food security. Yet understanding the local government functions that intersect with food security is critical for the advancement of food security. The discussion that follows will justify the study undertaken.

CHAPTER 1

During 2011, Battersby drew attention to the urban food security policy gap and the state of urban food insecurity in Cape Town.⁸⁰ Furthermore, a 2014 study by Frayne, Crush and McLachlan confirms the correlation between urbanisation and food insecurity at a regional level.⁸¹ The literature shifts the debate from a narrow focus on agriculture to a multidimensional focus on issues that include food access. However, it does not locate the conversation within the constitutional framework in which state authority is distributed amongst the sub-national governments. Moreover, the unclear mandates and the tensions brought about by the overlapping powers of the sub-national governments are not addressed.

A 2014 paper by Tsegay et al documented the state of hunger in South Africa and critiques the shortcomings of policies at a national level and the negative impact that private corporations have within the food system.⁸² A number of authors investigated the food system and food security in the City of Cape Town during 2014, namely, Battersby, Haysom, Tawodzera, McLachlan, Crush, Lombard, Labuschagne, Bitzer, Simpson, Rattle, Duncan, Marshak, James, and Kroll. The study confirmed the urban food system's lack of accountability, as well as the multiple role-players in the food system and the complex linkages within this system.⁸³ Both studies failed to investigate the dynamics of the multilevel system of government and its interaction with the food system. This dissertation will set out to determine how the food system implicates local government together with the provincial and national government. Further it will identify possible mechanisms within the multilevel government system to respond to food security challenges.

A number of authors such as Chitiga-Mabugu, Nhemachena, Karuaihe, Motala, Tsoanamatsie, and Mashile highlight the crucial role civil society could play in upholding the right to food.⁸⁴ No reference is made to the intergovernmental arrangements provided for within the multilevel system of government and how the state can be held accountable at different levels of government. This

⁸⁰ Battersby J (2011) 'The state of urban food insecurity on Cape Town'. Urban Food Security Series.

⁸¹ Frayne B, Crush J and MaLachlan M (2014) 'Urbanization, nutrition and development in Southern African cities' (2014) 6 *Food Security* 101-111.

⁸² Oxfam (2014) 24.

⁸³ Battersby J et al 'Food System and Food Security Study for the City of Cape Town' (2014) available at http://www.afsun.org/wp-content/uploads/2016/08/Final-Food-System-Study-Report_Corrected_WITH-COUNCIL-REPORT.pdf (accessed 15 January 2019).

⁸⁴ Chitiga-Mabugu M et al (2013) 23-24.

dissertation will expand the discussion on the right to food and demonstrate how civil society may entrench their right to food within the multilevel government system.

Authors such as Khoza, Brand, Chirwa, and Chenwi conducted a constitutional analysis of the right to food they point to the limitations of the right to food insofar as it is qualified by ‘*the progressive realisation*’ and ‘*within available resources*’.⁸⁵ So this means that local government need to make deliberate and concrete decisions to facilitate the right to food. So, for example, they cannot permit the development of land that would threaten food security for example. The analysis provided on the right to food does not unpack how the right must be realised within the multilevel system of government. The analysis is broadly framed within the human rights discourse and not reflect on the intergovernmental arrangements that are implicated with the right to food. This dissertation will further investigate the intergovernmental arrangements that can be used to promote the right to food and to deal with tensions that may arise amongst the three spheres of government.

Steytler and Fessha argue that countries with a decentralised system of government have certain difficulties in common.⁸⁶ These difficulties relate to intergovernmental tensions, overlapping powers, unclear mandates, and duplication in services. In other words, these difficulties reinforce the lack of accountability. In this regard, two pertinent factors come into play. Financial dimensions of powers and functions may drive contestation over definitional problems and political agendas may also result in conflicts. Steytler and Fessha observed that when expenditure is attached to functions, governments are likely to interpret their powers narrowly to escape financial responsibility.⁸⁷ Municipalities may adopt an expansive interpretation of ‘party-political interest’.⁸⁸ However, although the authors investigated the impact these tensions may have on

⁸⁵ Khoza S ‘Protecting the Right to Food in South Africa: The Role of Framework Legislation’ (2004) Volume 5 No 1 *ESR Review*, 3. Also see Khoza S ‘Realising the Right to Food in South Africa: Not by Policy Alone- A Need for Framework Legislation’ (2004) Vol 20 *SAJHR* 670; Brand, J ‘Between availability and entitlement: The Constitution, Grootboom and the right to food law’, *Law Democracy and Development* Vol 1:22, 15; Chirwa D ‘*Child poverty and children’s right of access to food and basic nutrition in South Africa: A contextual, jurisprudential and policy analysis*’ (2009); and Chenwi L Unpacking ‘progressive realisation’, its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance (2013) 743- 745. *De Jure*.

⁸⁶ Steytler N & Fessha Y (2007) 321-323.

⁸⁷ Steytler N & Fessha Y (2007) 321-323.

⁸⁸ Steytler N & Fessha Y (2007) 321-323.

CHAPTER 1

service delivery and accountability they did not focus their analysis on its impact on food insecurity. The dissertation will build on their analysis to probe how services delivery related to food security is implicated and how accountability mechanisms amongst the governments may be strengthened. A special focus is placed on local government.

Given that this dissertation focuses on ‘municipal planning’ powers to improve food security it is important to note that there is definitional uncertainty and overlaps in planning powers amongst the spheres of government and between the ‘municipal planning’ and other functional areas in the Constitution such as ‘agriculture’ for example. These uncertainties are well-documented.⁸⁹ The dissertation will, therefore, investigate the areas of planning and land-use management as it relates to food security.

Haysom’s 2014 study into urban food system governance provides a context to explore the role of local government with reference to urban food insecurity and food access.⁹⁰ His study explored the urban food governance innovations predominantly located in North America, with emerging trends in Europe and South America. Haysom investigated how these cities were using their governance powers to respond to the changing environmental, social and human behaviour towards food security.⁹¹ Ultimately, the study aimed to assess the relevance of these international interventions for South African Cities.⁹² A limitation of the study is its focus on the governance instruments alone. The study does not evaluate the constitutional division of powers dealing with the function of ‘municipal planning’ and how this links to the proposed interventions. The dissertation will, therefore, build on Haysom’s study to make the necessary linkages with the ‘municipal planning’ function.

A study conducted by Steyn during 2011 brings to the fore sentiments by local councillors in respect of their perception of the role they can play to facilitate food security.⁹³ This study focused

⁸⁹ De Visser J et al ‘*Report on a Roundtable on Law Reform in Planning*’ (2012) available at http://sacitiesnetwork.co.za/wp-content/uploads/2014/07/roundtable_law_reform_in_planning_report.pdf (accessed 21 November 2018).

⁹⁰ Haysom G (2014) 106-107.

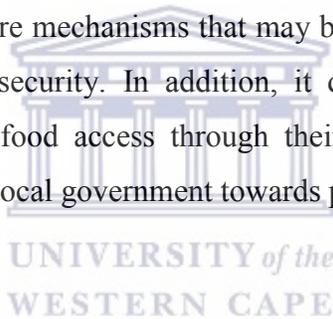
⁹¹ Haysom G (2014) 1-7.

⁹² Haysom G (2014) 1-7.

⁹³ Steyn J (2011) 3.

on the perceptions of the role of local government to promote food security for people living with HIV. It exposed the obstacles confronting local government in pursuing food security initiatives. These obstacles relate to an unclear food security mandate, confusion over what the responsibility is for local government to undertake the function and lack of available funding.⁹⁴ However, the study is limited to local governance within the municipal sphere and do not consider the interplay of the municipal functions with those of the national and provincial governments and do not address ‘municipal planning’. The dissertation aims to draw out these linkages.

Dawood conducted a study in 2015 to evaluate the financial and intergovernmental arrangements to improve food security. The purpose of the study was to provide an analysis of the tensions in the multilevel system of government.⁹⁵ Dawood concluded that the design of policies and programmatic interventions were short-sighted. He mainly focused on the agricultural sector. However, the study does not explore mechanisms that may be used within the multilevel system of government to promote food security. In addition, it does not identify levers that local government can use to facilitate food access through their powers related to land use. The dissertation will set out the role of local government towards preserving agricultural land for food security.



This section discussed the available literature on food security in South Africa and motivated the need for undertaking the study. The next section will provide an outline of the chapters to be presented in the dissertation.

5. CHAPTER OUTLINE

The dissertation has six chapters. Chapter 1 outlines the problem statement, significance of the problem, research questions, literature review justifying the study, and methodology.

Chapter 2 presents an overview of the state of food security and the structural causes that give rise to food insecurity. A standard to evaluate the right to food is provided and the international literature on how local governments can promote food security is presented.

⁹⁴ Steyn J (2011) 3-5.

⁹⁵ Dawood G (2015) 170.

Chapter 3 outlines the powers and functions of local government in South Africa. It assesses the developmental duties of local government and uses this as a framework to commit municipalities to improve food security. Attached to the developmental duties are significant food security levers of local governments. The discussion will identify the direct and indirect levers. The chapter will provide an outline of the constitutional distribution of planning powers and clearly set out the developmental and integrated manner in which municipalities ought to plan. Lastly, the chapter will assess the role of local government in food policies.

Chapter 4 critiques the legal and policy framework to preserve agricultural land from two angles. First, an investigation is carried out to assess the constitutional concerns about the legal framework to protect agricultural land and how this affects ‘municipal planning’ to control and regulate land. Second, the legal and policy framework to protect agricultural land is examined to answer the question of whether the current framework promotes accessibility to land and environmental sustainability. The chapter mainly focuses on the dimension of food availability, but the dimension of food access comes into play when considering how the legal and policy framework impacts the livelihoods of small-scale farmers.



Chapter 5 deals with food-sensitive planning to enhance food access. This chapter will be limited to urban areas only. The chapter also outlines the framework in which the SPLUMA development principles need to be implemented. In addition, the chapter sets out mechanisms for municipalities to endorse a food systems approach in their planning.

Chapter 6 will provide an evaluative summary of the key findings of the study. It will also seek to make recommendations on how to strengthen current shortcomings mentioned in Chapters 3, 4 and 5. The chapter outlines how the municipal planning function can realise the right to food.

6. METHODOLOGY

This study is primarily qualitative. The normative framework for developmental local government will be derived from the literature as well as from a review of previous country-specific studies.

CHAPTER 1

The research will be conducted by using a desktop research methodology. Data for this study will be drawn from primary and secondary sources. The primary sources entail treaties and international resolutions, policy documents, legislation, official documents, and court judgments. The secondary sources relate to journal articles, academic works, research papers, and statistical data.



CHAPTER 2: A NORMATIVE FRAMEWORK ON THE RIGHT TO FOOD AND OPPORTUNITIES FOR LOCAL GOVERNMENT TO IMPACT THE FOOD SYSTEM POSITIVELY

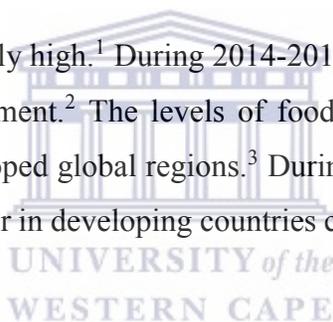
1 INTRODUCTION

The aim of this chapter is to outline the normative framework for the right to food at an international, regional, and national level. The chapter is divided into three sections. Section 1 deals with the state of food insecurity and the distorted food system. Section 2 conceptualises the right to food. Lastly, section 3 presents mechanisms at the local level to address food insecurity.

2 STATE OF FOOD INSECURITY AND THE DISTORTED FOOD SYSTEM

2.1 Global food insecurity

Global food insecurity is excessively high.¹ During 2014-2016 approximately 795 million people suffered from chronic malnourishment.² The levels of food insecurity are also highly skewed between the developing and developed global regions.³ During 2015 it was documented that 780 million people suffered from hunger in developing countries compared to the 11 million people in developed countries.⁴



A 2018 Report on World Hunger and Malnutrition confirms that the twin problem of hunger and malnutrition have intensified over the last decade.⁵ Limited progress was made in addressing the multiple forms of malnutrition, ranging from child stunting to adult obesity, putting the health of hundreds of millions of people at risk.⁶ The report stated that 150.8 million children under the age of five were affected by stunting (impaired growth and development that children experience from poor nutrition); 50.5 million children under five were wasted (refers to the process by which a

¹ Food and Agricultural Organisation of the United Nations (FAO), International Fund for Agricultural Development (IFAD), & World Food Programme (WFP) (2015) 'State of Food Insecurity in the World 2015- Meeting the 2015 International Hunger Targets and Taking Stock of Unequal Progress' available at <http://www.fao.org/3/a-i4646e.pdf> (accessed on 2 November 2016).

² FAO, IFAD & WFP (2015) 8-10.

³ FAO, IFAD & WFP (2015) 8-10.

⁴ FAO, IFAD & WFP (2015) 8-10.

⁵ FAO, IFAD, UNICEF, WFP & WHO 'The State of Food Security and Nutrition in the World 2018. Building climate resilience for food security and nutrition' (2018) available at <http://www.fao.org/3/I9553EN/i9553en.pdf> (accessed 22 November 2018).

⁶ FAO, IFAD, UNICEF, WFP & WHO (2018) 2-3.

debilitating disease causes muscle and fat tissue to waste away); 38.3 million children under five are overweight; and 672 million adults are obese.⁷ Recent statistics show that the number of hungry people in the world is growing.⁸ For example, the number of hungry people in the world was recorded at 821 million in 2017.⁹ This means that one in every nine people go hungry.¹⁰ Asia and Africa had the largest proportions of people suffering from hunger at 515 million and 2565 million respectively.¹¹

The findings documented in a 2018 Report identified the global food system as the major cause for the state of global food insecurity.¹² In the next part, the features of the global food system are considered.

2.2 Global Food System

Seven key features of the global food system will be presented. These features relate to the (i) availability of food; (ii) impact on public health; (iii) role of multinational corporations in the production and supply of food; (iv) food price volatility; (v) food loss and wastage; (vi) impact of agricultural production on the environment; and (vii) impact of land grabs.

2.2.1 Availability of food

Enough food is available to feed the world, yet hunger and malnutrition remain prevalent and pernicious.¹³ According to Oxfam, the world produces 17 per cent more food per person today than 30 years ago and there is enough food to feed the world.¹⁴ Oxfam argues that the problem of food insecurity is not about the availability of food but rather due to the global food system that is deeply inequitable.¹⁵

⁷ FAO, IFAD, UNICEF, WFP & WHO (2018) 16-19.

⁸ FAO, IFAD, UNICEF, WFP & WHO (2018) 2-6.

⁹ FAO, IFAD, UNICEF, WFP & WHO (2018) 2.

¹⁰ FAO, IFAD, UNICEF, WFP & WHO (2018) 2.

¹¹ FAO, IFAD, UNICEF, WFP & WHO (2018) 3-4.

¹² Jungcirt S 'CFS 45 Expresses 'Deepest Concern' About Rising Hunger, Decides to Develop Guidelines on Food Systems and Nutrition' (2018) available at <http://sdg.iisd.org/news/cfs-45-expresses-deepest-concern-about-rising-hunger-decides-to-develop-guidelines-on-food-systems-and-nutrition/> (accessed 22 November 2018).

¹³ Oxfam Canada 'There is enough food to feed the world' available at <https://www.oxfam.ca/there-enough-food-feed-world> (accessed 22 November 2018).

¹⁴ Oxfam Canada (undated) 1/1.

¹⁵ Oxfam Canada (undated) 1/1.

CHAPTER 2

2.2.2 Impact on public health

The impact of the food system on public health is a major concern.¹⁶ Hilal Elver, the United Nations Special Rapporteur on the Right to Food, attributed this problem to the dominant role of industrial food production and processing in the food system.¹⁷ She identified that trade policies support large food corporations to flood the global market with nutrient-poor food that is rich in energy and relatively cheap.¹⁸ People are consuming more packaged, processed foods, where the contents are loaded with added sugar, salt and refined carbohydrates.¹⁹ Hawkes and Popkin argue that food manufacturers purchase food directly from farmers then they transform it in various ways for consumption. In this process of food transformation, manufacturers fail to put quality protein and diversity into the food sources. This results in an increased risk of obesity and diabetes.²⁰

2.2.3 Role of multinational corporations in the production and supply of food

Multinational corporations continue to dominate the production and supply of food.²¹ A 2014 study on food-system trends over a 30-year period found that ‘food systems throughout the world have undergone massive transformation during the last 30 years. Developing countries are vulnerable to capture by multinational corporations. These corporations dominate the management of food supply chains’.²² The dominance of large and multi-national corporations in the global food systems reduced national governments’ power to regulate their own food system.²³ Common themes of food insecurity emerge across the global south.²⁴ A comparative study conducted in Brazil, Mexico and South Africa found that despite economic growth these countries continue to

¹⁶ Elver H *United Nations General Assembly Report A/71/282- Interim report of the Special Rapporteur on the right to food* (2016) available at http://www.un.org/ga/search/view_doc.asp?symbol=A/71/282&Submit=Search&Lang=E (accessed 22 November 2018) 7-10.

¹⁷ Elver H (2016) 7-10.

¹⁸ Elver H (2016)

¹⁹ Hawkes C & Popkin B ‘*Can the Sustainable development goals reduce the burden of nutrition-related non-communicable diseases without truly addressing major food system reforms?*’ *Journal BMC Medicine*,13(143), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4470341/> (accessed 14 October 2015).

²⁰ Hawkes C & Popkin B (2015) 2.

²¹ Guinn A & Hamrick D ‘*Empowering Civil Society Networks in an Unequal and Multi- Polar World-Changing Food Systems and Inequality: Implications for Food Security and Public Policy*’ (2015) available at (<http://archive.wphna.org/wp-content/uploads/2015/04/2014-09-Duke.-Guinn-Hamrick-etc-food-systems-inequity.pdf>) (accessed 22 November 2018).

²² Guinn A & Hamrick D (2015) 7.

²³ Guinn A & Hamrick D (2015) 5.

²⁴ Guinn A & Hamrick D (2015) 8-11.

struggle with high levels of poverty and inequality.²⁵ Inequalities throughout the food system affect both producers and consumers. Producers of food do not receive the best prices for their produce, and consumers must pay costly prices for nutritious food.

2.2.4 Food price volatility

The previous Rapporteur on the Right to Food, Oliver de Schutter, recognised food price volatility as a serious issue.²⁶ He examined how speculation by private companies impacted on the volatility of the prices of basic food commodities, and how the price volatility impacted food security during the period of 2007-2008.²⁷ The study revealed that a significant portion of the increases in price and volatility of essential food commodities were brought about by speculative behaviour from ‘powerful institutional investors’ such as hedge funds, investment banks, and pension funds.²⁸ The findings confirmed that people living in the poorest developing countries suffered the most.²⁹ For example, in developing countries, the urban and rural poor spent approximately four-fifths of their income on food.

2.2.5 Food loss and wastage

Almost one-third of all food produced every year in the world is lost or wasted.³⁰ In fact, an amount of one billion tonnes of food is not consumed.³¹ Developed and developing countries waste roughly the same quantities of food; respectively 670 and 630 million tonnes.³² In developed countries, food is wasted and lost mainly at later stages in the supply chain.³³ For example, waste and losses occur when food spoils in grocery stores or in refrigerators.³⁴ In developing countries food waste

²⁵ Guinn A & Hamrick D (2015)

²⁶ Oliver de Schutter ‘*Food Commodities Speculation and Food Price Crises- Regulation to reduce the risks of price volatility*’ (2010) available at https://www2.ohchr.org/english/issues/food/docs/briefing_note_02_september_2010_en.pdf (accessed 22 November 2018).

²⁷ Oliver de Schutter (2010) 3-5.

²⁸ Oliver de Schutter (2010) 3-5.

²⁹ Oliver de Schutter (2010) 3-5.

³⁰ Lipinski B et al ‘*SDG Target 12.3 on Food loss and Waste: 2017 Progress Report*’ (2017) available at https://assets.rockefellerfoundation.org/app/uploads/20170920151205/SDG-Target-12.3-on-Food-Loss-and-Waste_2017-Progress-Report.pdf (accessed 22 November 2018).

³¹ Lipinski B et al (2017) 2-3.

³² FAO ‘*Save Food: Global Initiative on Food Loss and Waste Reduction*’ available at <http://www.fao.org/save-food/resources/keyfindings/en/> (accessed 22 November 2018).

³³ Lipinski B et al (2017) 3-5.

³⁴ Lipinski B et al (2017) 3-5.

CHAPTER 2

and losses occur mainly at early stages of the food value chain.³⁵ For example, waste happens on the farm as a consequence of insufficient storage and processing facilities.³⁶

2.2.6 Impact of agricultural production on the environment

Current methods of production are unsustainable and harmful to our environment.³⁷ For example, agricultural production is responsible for almost 75 per cent of global deforestation.³⁸ Heavy reliance on chemical fertilisers, irrigation, and fossil fuels have led to a loss of biodiversity.³⁹ Degradation of ecosystems negatively affects the climate system, soil fertility, availability of freshwater and long-term agricultural productivity.⁴⁰ Agriculture is one of the largest contributors of greenhouse gas emissions.⁴¹ In addition, the sector is a major user of water, as well as a significant contributor to water pollution through runoff of excess nutrients, pesticides and other pollutants.⁴²

2.2.7 Impact of land grabs

The term '*land grabs*' (a phenomenon mostly experienced in the global south) is used to describe large-scale purchases or leases of agricultural or forest land on terms that do not serve those already living on the land.⁴³ The land is then mostly used for the production of crops that are exported or used to produce biofuel and rubber, or the land is used for mining, or to acquire access to freshwater.⁴⁴ Of these land uses, local residents do not benefit from the land and the intention is

³⁵ Lipinski B et al (2017) 3-5.

³⁶ Lipinski B et al (2017) 3-5.

³⁷ United Nations Environmental Programme (UNEP), the International Trade Centre (ITC) and International Centre for Trade and Sustainable Development (ICTSD) '*Policy Brief No. 3: Trade and Environment Briefings: Sustainable Agriculture*' (2012) available at https://wedocs.unep.org/bitstream/handle/20.500.11822/25950/sustainable_agriculture.pdf?sequence=1&isAllowed=y (accessed 22 November 2018).

³⁸ UNEP, ITC & ICTSD (2012) 1-2.

³⁹ UNEP, ITC & ICTSD (2012) 1-2.

⁴⁰ Goodenough P 'Green New Deal' Doesn't Go Far Enough, Says UN 'Right to Food' Expert' *CNS News* 1 March 2019.

⁴¹ American Association for the Advancement of Science (AAAS) 'Global food systems are failing humanity and speeding up climate change' *EurekAlert* 28 November 2018.

⁴² Fischer G 'Transforming the global food system' *News and Views* 22 October 2018.

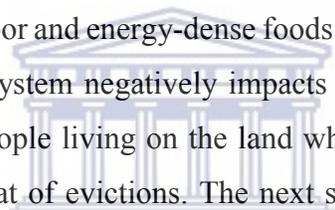
⁴³ Murphy S '*Land Grabs and the fragile food system- The role of Globalization*' (2013) available at https://www.iatp.org/sites/default/files/2013_02_14_LandGrabsFoodSystem_SM_0.pdf (accessed 22 November 2018).

⁴⁴ Murphy S (2013) 1-5.

CHAPTER 2

not to feed the local community.⁴⁵ Where the local communities are provided with employment by investors they are often exploited and underpaid.⁴⁶ A number of land evictions follow land grabs.⁴⁷ Land grabs occur in some of the world's poorest countries with the highest population of hungry people, such as the Democratic Republic of the Congo, Sudan, Mozambique, Ethiopia, Sierra Leone, and Uganda.⁴⁸ In fact, almost nine per cent of Africa's total area of arable land has changed ownership since 2000.⁴⁹ At a regional level, Africa is the most targeted continent.⁵⁰ The largest land acquisitions are concentrated in countries with weak governance structures.⁵¹

It is clear from the above that the global food system is distorted and unsustainable. There is sufficient food being produced to feed the world population. The lack of access to food is the dominant reason for world food hunger and malnutrition. Speculation in food prices render the most vulnerable people at risk of food insecurity. Corporate control of the world food system has resulted in the supply of nutrient-poor and energy-dense foods resulting in increased risk of obesity and diabetes. The distorted food system negatively impacts the environment. Lastly land grabs result in negative outcomes for people living on the land which includes lack of access to food produced on the land and the threat of evictions. The next section will examine South Africa's food security and food system.



UNIVERSITY of the
WESTERN CAPE

⁴⁵ Murphy S (2013) 1-5.

⁴⁶ Murphy S (2013) 1-5.

⁴⁷ Kothari M 'Land Grabbing and the UN Guidelines on Evictions: A Promising Soft-Law Approach' (2015) available at <https://journals.openedition.org/poldev/2188?lang=de> (accessed 22 November 2018).

⁴⁸ Murphy S (2013) 1-5. United States Agency for International Development 'Uganda Agriculture and Food Security' available at <https://www.usaid.gov/uganda/agriculture-and-food-security> (accessed 15 January 2019).

⁴⁹ Globalagriculture 'Agriculture at a crossroads findings and recommendations for future farming' available at <https://www.globalagriculture.org/report-topics/land-grabbing.html> (accessed 22 November 2018).

⁵⁰ Nolte K, Chamberlain W & Giger M 'International Land Deals for Agriculture Fresh insights from the Land Matrix: Analytical Report II' (2016) available at https://landmatrix.org/media/filer_public/ab/c8/abc8b563-9d74-4a47-9548-cb59e4809b4e/land_matrix_2016_analytical_report_draft_ii.pdf (accessed 22 November 2018).

⁵¹ Nolte K, Chamberlain W & Giger M (2016). For example the Ugandan Commission of Inquiry into Land matters found that land grabs were directly linked to poor governance of land, Twaha A 'Uganda: Judge - Most Land Grabs Are By Govt Officials, Soldiers' *The Observer Kampala* 11 October 2017.

CHAPTER 2

2.3 Food insecurity in South Africa

South Africa is the most food-secure country within the African continent.⁵² Moreover, a 2017 worldwide survey ranked South Africa as 44th out of 133 countries in terms of its food security.⁵³ This may lead to an assumption that food security at a household and individual level are acceptable. However, the evidence indicates otherwise.⁵⁴ Key findings derived from the SANHANES-1 survey, conducted during 2012, reveal that only 45.6 per cent of the population was food secure. The largest percentage of the participants that experienced hunger was in urban informal settlements (32.4 per cent) and rural formal (37 per cent) areas. Even though South Africa produces enough food to feed its people and has made positive strides in reducing ‘outright hunger’, a large proportion of its people remain hungry.⁵⁵

Statistics on hunger and malnutrition further suggest that food insecurity is stratified along racial, class and gender lines, with the black population most affected compared to other demographic groupings.⁵⁶ Less than half of African households, namely, 39.3 per cent were found to be food secure, compared to white households at 89.3 per cent.⁵⁷ More than half of the coloured, Asian, or Indian household were food secure while women were more food insecure than men.⁵⁸

The state of nutrition in South Africa is cause for concern.⁵⁹ Recent statistics indicate that 20 per cent of children are undernourished, there are high levels of non-communicable diseases related to insufficient nutrition and over-consumption.⁶⁰ Obesity is a growing health problem resulting in

⁵² Sihlobo W ‘*South Africa is the Most Food Secure Country on the Continent*’ (2018) available at <https://wandilesihlobo.com/2018/08/07/south-africa-is-the-most-food-secure-country-on-the-continent-2/> (accessed 22 November 2018).

⁵³ Sihlobo W (2018) 1/1.

⁵⁴ Shisana O, Labadarios D, Rehle T et al (2013) 145-147.

⁵⁵ Langba J ‘Food Security in South Africa: A review of the data and trends’ in Fukuda-Parr S & Taylor V (eds), *Food Security on South Africa: Human rights and entitlement perspectives*, (2016) 78-80.

⁵⁶ John-Langba J (2016) 76.

⁵⁷ John-Langba J (2016) 76.

⁵⁸ John-Langba J (2016) 76.

⁵⁹ South Africa Network on Inequality (SANI) at Economic Justice Network (EJC) ‘*Food and Nutritional Security in South Africa- An Agro-Food Systems Perspective: Fact Sheet*’ (undated) available at <http://www.plaas.org.za/sites/default/files/publications-pdf/Proof%20SANI%20Fact%20Sheet.pdf> (accessed 22 November 2018).

⁶⁰ Du Toit A & Loate L (undated) 1-2.

CHAPTER 2

seven per cent of all deaths in South Africa.⁶¹ Diet-related and non-communicable diseases such as diabetes and cardiovascular diseases make up 12 per cent of the national burden of diseases.⁶²

The unacceptable state of food insecurity and malnutrition is linked to many features in the food system in South Africa.⁶³ To understand some of these linkages the next section will present key features of the food system in South Africa.

2.4 The food system in South Africa

Seven key features of the food system in South Africa will be presented. These features relate to the: (i) availability of food; (ii) impact on public health; (iii) role of multinational corporations in the production and supply of food; (iv) food price volatility; (v) food loss and wastage; (vi) impact of agricultural production on the environment; and (vii) impact of land grabs.

2.4.1 Availability of food

Enough food is available in South Africa to feed its population, yet hunger and malnutrition remain unacceptably high.⁶⁴ According to the World Data Atlas, the 2016 Food Production Index for South Africa confirms that food production increased from a 57.2 index in 1967 to a 116.7 index in 2016.⁶⁵ The food production index cover food crops that are considered edible and that contain nutrients, so this means that food production increased.⁶⁶ Despite the advancement in food production food insecurity remains prevalent. The problem of food insecurity is thus attributed to a lack of food access in South Africa.⁶⁷ Most people do not have a choice in what they eat.⁶⁸ According to Shisanya and Hendriks, '[h]ousehold food insecurity and malnutrition springs from

⁶¹ Du Toit A & Loate L (undated) 1-2.

⁶² Du Toit A & Loate L (undated) 1-2.

⁶³ Pereira M 'The Future of South Africa's Food System: What is research telling us?' (2014) available at http://awsassets.wwf.org.za/downloads/safl_the_future_of_south_africas_food_system.pdf (accessed 22 November 2018). Also see, Greenberg S 'Research Report 42: Contesting the food system in South Africa: Issues and opportunities' (2010) available at <http://www.plaas.org.za/sites/default/files/publications-pdf/RR42.pdf> (accessed 22 November 2018).

⁶⁴ Oxfam GB (2014) 2-12.

⁶⁵ Knoema 'South Africa - Food production index' (2016) available at <https://knoema.com/atlas/South-Africa/Food-production-index> (accessed 22 November 2018).

⁶⁶ Knoema (2016) 1/1.

⁶⁷ Oxfam GB (2014) 2-12.

⁶⁸ South Africa Network on Inequality (SANI) (Undated) Food and Nutritional Security in South Africa: An Agro-Food Systems Perspective Factsheet 1/4.

an inability to meet nutritious daily food requirements and anxiety about the ability to produce, and or access food in future'.⁶⁹ Access to healthy food remains hard for the most food insecure, namely, people in informal settlements and rural areas.⁷⁰ Moreover, studies indicate that people living in informal settlements and rural areas pay more for a basic food basket compared to people living in formal houses in cities.⁷¹

2.4.2 Impact on public health

The negative impact of the food system on public health is well-documented.⁷² A serious threat to the wellbeing of South Africans is the availability of cheaper unhealthy food.⁷³ According to Pereira, the increased availability of fast-food has grown substantially over the last few years in formal and informal food sectors.⁷⁴ These foods are typically energy-dense, high in sugar and salt but lack essential micronutrients and fibre.⁷⁵ Pereira, confirms that this has resulted in increased stunting, wasting, undernutrition, and obesity in children and adults.⁷⁶ In addition, SANI identified that agricultural value chains in South Africa contribute to the problem.⁷⁷ For example, the agricultural value chains provide food of poor nutrition for cheaper prices to the urban poor.⁷⁸ This type of cheap food with poor nutrition is referred as '*Big Food*' which is processed, high-fat foods with refined cereals, high sodium levels and added sugar and fat.⁷⁹ Therefore, the health of South Africans is negatively impacted by the availability of 'fast food' and 'Big food' associated with malnutrition, diabetes and obesity.⁸⁰

⁶⁹ Shisanya S & Hendriks, S 'The contribution of community gardens to food security in the Maphephetheni uplands, determined by Household Food Insecurity Access Scale' (2011) 28 (4) *Development Southern Africa* available at https://repository.up.ac.za/bitstream/handle/2263/58303/Shisanya_Contribution_2011.pdf?sequence=1&isAllowed=y (accessed 22 November 2018).

⁷⁰ Pereira M (2014) 10.

⁷¹ Pereira M (2014) 10.

⁷² Pereira M (2014) 12-14.

⁷³ Pereira M (2014) 12-14.

⁷⁴ Pereira M (2014) 12-14.

⁷⁵ Pereira M (2014) 12-14.

⁷⁶ Pereira M (2014) 12-14.

⁷⁷ Du Toit A & Loate L (undated) 3/ 4.

⁷⁸ Du Toit A & Loate L (undated) 3/ 4.

⁷⁹ Du Toit A & Loate L (undated) 3/ 4.

⁸⁰ Du Toit A & Loate L (undated) 3/ 4.

2.4.3 Role of multinational corporations in the production and supply of food

Large-scale farming dominated the agricultural sector in South Africa with small-scale farming playing a minor role.⁸¹ For example, a 2016 study that reviewed three food value chains, namely poultry, milling and dairy confirmed little progress was made by small-scale farmers to enter into the markets.⁸² The study highlighted the need to unlock markets and allow for greater economic participation by small-scale farmers as a key concern.⁸³

South Africa's agricultural sector is made up of 35 000 larger-scale farmers and 2.7 million small-scale farmers.⁸⁴ However, the 35000 large-scale farmers occupy 80 per cent of the land while the 2.7 small-scale farmers occupy only 7 per cent of the land.⁸⁵ Small-scale farming is predominantly conducted by black South Africans.⁸⁶ Hence the agricultural sector is significantly influenced by the apartheid system of land ownership as well as the growing poverty and inequality gap amongst large-scale and small-scale farmers.⁸⁷

Agricultural restructuring was highlighted as a priority for the country in the transition to a democracy.⁸⁸ For example, during 1995 the national government observed that: '[t]he present structure of agriculture and rural communities is characterised ... by a very uneven income distribution. This problem can be addressed by broadening access to agriculture via land reform and bringing small-scale farmers into the mainstream of the Government's technical and financial assistance to agriculture'.⁸⁹ In spite of the reform imperatives, large-scale commercial farming

⁸¹ Ncube P et al 'Competition, barriers to entry and inclusive growth: Agro-processing' (2016) available at https://static1.squarespace.com/static/52246331e4b0a46e5f1b8ce5/t/57d03334d1758e630e04a79b/1473262401284/Agroprocessing+Sector+Study_07092016.pdf (accessed 22 November 2018). Although there is a view by Johann Kirsten and Wandile Sihlobo that the perception that agriculture is dominated by large commercial farms is incorrect refer to Kirsten J & Sihlobo W 'Perception that agriculture is dominated by large commercial farms is incorrect' *Business Day* 5 March 2019 or Kirsten J & Sihlobo W 'Is South African agriculture really dominated by big commercial farms? Evidence suggests not' 2019 *News 24* 27 February 2019.

⁸² Ncube P et al (2016) 80-82.

⁸³ Ncube P et al (2016) 4-5. Van Zyl G 'Empowering SA's emerging farmers: The story of Nceba Jakavula' *BizNews* 27 February 2019.

⁸⁴ Aliber M (2016) 175-178

⁸⁵ Aliber M (2016) 175-178.

⁸⁶ Aliber M (2016) 175-178.

⁸⁷ Aliber M (2016) 175-178.

⁸⁸ Cousins B 'Why South Africa needs fresh ideas to make land reform a reality'(2016) available at <https://thoughtleader.co.za/theconversation/2016/06/01/why-south-africa-needs-fresh-ideas-to-make-land-reform-a-reality/> (accessed 22 November 2018).

⁸⁹ Hall R (2006) 121-133.

CHAPTER 2

continued to be viewed as the basis for food security.⁹⁰ Progress on land reform was found to ‘barely’ impact the agrarian structure of South Africa and had little effect on rural livelihoods.⁹¹ Agrarian structure refers to the ownership and the control of productive resources across the entire food value chain and is critical to understand the food system. Small-scale farmers continue to lack (a) access to agricultural lands; (b) access to agri-markets to grow their business; (c) adequate resources in terms of infrastructure and agricultural technological tools; and (d) updated information and knowledge on farming methods.⁹² Consequently, the rural poor have limited entrepreneurial opportunities to develop alternative food systems.⁹³

2.4.4 Food price volatility

Speculation in food commodities results in unacceptable food prices which is a real problem for the poor in South Africa.⁹⁴ The deregulation of the agricultural sector was intended to achieve greater competition in the market and afford benefits to the consumer for lower food prices.⁹⁵ In contrast, since 2009 the Competition Commission of South Africa has uncovered the existence of cartels and exclusionary practices in the sector which resulted in numerous food agro-processing and forestry companies appearing before the Competition Commission of South Africa.⁹⁶ These companies included: Tiger Brands, Lancewood, Clover, Parmalat, Nestlé, Woodlands Dairy, Milkwoods Dairy, Foodcorp and Senwes, Premier Foods, Pioneer Foods, Rooibos Tea Limited, the Grain Silo Industry, Rainbow Chickens, and various agricultural industry associations.⁹⁷

In terms of selling of agricultural food products, half of the processed food sales belong to ten companies.⁹⁸ These companies are also in partnership with powerful international brand

⁹⁰ Greenberg S ‘*Disjunctures of Land and Agricultural Reform in South Africa: Implications for the Agri food system-Working Paper 26*’ (2013) available at <http://www.plaas.org.za/sites/default/files/publications-pdf/WP26Greenberg.pdf> (accessed 22 November 2018).

⁹¹ Cousins B (2016) 1/2.

⁹² Hall R (2006) 121-133.

⁹³ Van der Heijden T & Vink N (2013) 6-10.

⁹⁴ Pereira M (2014) 21-24.

⁹⁵ Pereira M (2014) 21-24.

⁹⁶ Pereira M (2014) 21-24. The Competition Commission is a statutory body constituted in terms of the Competition Act, No 89 of 1998 by the Government of South Africa empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy available at <http://www.compcom.co.za/> (accessed 22 November 2018).

⁹⁷ Pereira M (2014) 21-24.

⁹⁸ Du Toit A & Loate L (undated) 1-4.

CHAPTER 2

companies.⁹⁹ The agro-food system has the following negative effects: (a) it results in limited or non-existent access to market information; (b) it perpetuates low levels of bargaining power for small-scale farmers *vis-à-vis* buyers, corresponding with low volumes of production; (c) it exacerbates poor infrastructure in rural areas; (d) it restricts opportunities for sufficient funding, physical and human capital; and (e) it creates distrust between producers and buyers.¹⁰⁰ High levels of ‘*concentration and vertical integration*’ in services and retail, coupled with efficient, spatially extended distribution networks, means that new entrepreneurs are crowded out of the system.¹⁰¹ This happens even in deep rural areas where the commercial space essential to any strategy for inclusive growth is occupied by big corporations.¹⁰² In this scenario, the rural poor and small-scale farmers are therefore not excluded but rather ‘*adversely incorporated*’ since they are excluded as workers, traders, and farmers but are included as consumers.¹⁰³

Retail prices of staple foods in South Africa have been increasing rapidly since 2000.¹⁰⁴ Food expenditure comprises a large share of the spending of poor households making them more vulnerable to the impacts of food price inflation.¹⁰⁵ The National Agricultural Marketing Council of South Africa (NAMC) during 2012 confirmed that rural households pay higher prices for a food basket compared to urban households.¹⁰⁶ In South Africa a food basket contains items such as fish oil, pilchards, maize, salt, bread and sugar.¹⁰⁷ During 2016, the cost of a basic food basket increased every six months and staple items such as maize, sugar and peanut butter had amongst the highest increases.¹⁰⁸ Coping strategies of poor households to deal with rapid food inflation include purchasing smaller quantities of food, switching to different types of food, reducing dietary

⁹⁹ Du Toit A & Loate L (undated) 1-4.

¹⁰⁰ Van der Heijden T & Vink N (2013) 2-5.

¹⁰¹ Van der Heijden T & Vink N (2013) 6-10.

¹⁰² Van der Heijden T & Vink N (2013) 6-10.

¹⁰³ Van der Heijden T & Vink N (2013) 6-10.

¹⁰⁴ Ngidi B *Food Price Inflation and the Poor* (unpublished Master’s thesis, University of the Witwatersrand, 2015) available at <http://wiredspace.wits.ac.za/bitstream/handle/10539/20497/Bandile%20Ngidi%20485560%20Food%20Price%20Inflation%20and%20the%20Poor%20%28with%20corrections%29%20.pdf?sequence=1&isAllowed=y> (accessed 22 November 2018).

¹⁰⁵ Jacobs P ‘The status of household food security targets in South Africa’ (2009) Vol 48, No 4 *Agrekon* available at <http://ageconsearch.umn.edu/bitstream/58214/2/4.%20Jacobs.pdf> (accessed 22 November 2018).

¹⁰⁶ Pereira M (2014) 11.

¹⁰⁷ Pereira M (2014) 11.

¹⁰⁸ Alexis H ‘New data shows basket of ‘basic goods’ up by R100 since February’ *The South African* 26 August 2016 available at <https://www.thesouthafrican.com/new-data-shows-basket-basic-goods-r100-since-february/> (accessed 22 November 2018).

diversity and skipping meals.¹⁰⁹ Hendriks and Shisanya, point out that there is little empirical evidence to show that community food gardens contribute to food security but ‘their contribution to consumption cannot be entirely ignored’.¹¹⁰

2.4.5 Food loss and wastage

In South Africa, 10 million tonnes of food goes to waste every year.¹¹¹ This accounts for a third of the total food produced every year.¹¹² The losses comprise 44 per cent fruit and vegetables, 26 per cent grains, 15 per cent meat, and 13 per cent roots, tubers and oilseeds.¹¹³ Most of the loss of food occurs early in the food supply chain where 50 per cent is lost during the post-harvest phase, 25 per cent during processing and packaging, 20 per cent during distribution and retail, and 5 per cent at the consumer level.¹¹⁴ Between 65 and 90 per cent of organic waste (including food waste) collected by municipalities is dumped in landfills.¹¹⁵

2.4.6 Impact of agricultural production on the environment

Current methods of production are unsustainable and harmful to the environment.¹¹⁶ South Africa is one of the largest importers and users of pesticides in Africa.¹¹⁷ A 2014 study confirms a substantial increase in the use of pesticides from 1994 to 2000.¹¹⁸ Concern over the occurrence of pesticides in water resources and its possible effects on food safety and public health is well-documented.¹¹⁹ The agricultural sector in South Africa contributes five per cent of the country’s

¹⁰⁹ Jacobs P (2009) 413-414.

¹¹⁰ Hendriks S & Shisanya S (2011) 1.

¹¹¹ World Wide Fund for Nature (WWF) ‘*South Africa Food Loss and Waste: Facts and Futures- Taking steps towards a more sustainable food future*’ (2017) available at http://dtnac4dfluyw8.cloudfront.net/downloads/wwf_2017_food_loss_and_waste_facts_and_futures.pdf?21641/Food-Loss-and-Waste-Facts-and-Futures-Report (accessed 22 November 2018)

¹¹² WWF (2017) 8.

¹¹³ WWF (2017) 8-10.

¹¹⁴ WWF (2017) 8-10.

¹¹⁵ WWF (2017) 16.

¹¹⁶ NEWS24WIRE ‘South Africa will have to produce 50% more food by 2050 or face crisis – WWF’ *Creamer’s Media Engineering News* 20 February 2019.

¹¹⁷ Blignaut J et al ‘*Sustainable agriculture: A viable option for enhanced food and nutritional security and a sustainable productive resource base in South Africa: An investigation. Baseline Review*’ (2014) available at <http://www.sagreenfund.org.za/wordpress/wp-content/uploads/2015/09/Sustainable-Farming-in-SA-Lit-Review-Asset-Research.compressed.pdf> (accessed 22 November 2018).

¹¹⁸ Blignaut J et al (2014) 11-12.

¹¹⁹ Blignaut J et al (2014) 11-12.

greenhouse gas emissions.¹²⁰ Commercial farmers producing 95 per cent of South Africa's food, are heavily dependent on fertilisers.¹²¹ The dependence on agrochemicals and intensive industrialised agriculture is also linked to the deterioration of water quality.¹²²

2.4.7 Impact of land grabs

The impact of land grabs on the Southern African continent resulted in limited access to land and water for rural communities.¹²³ In South African land grabs occur as a result of foreign investment as well as commercial farmers that opt to sell their land for other business purposes which include game farming, tourism, mining, and the production of biofuel.¹²⁴ For example, the planned expansion of biofuel production on one million hectares of land in the poorest rural districts falling within the former Transkei Bantustan is well-documented.¹²⁵ The expansion of wildlife production has considerably changed the social and spatial landscape of one of South Africa's provinces, namely, the Eastern Cape Province.¹²⁶ The change was brought about by merging white-owned commercial farms and replacing many of its agriculture activities.¹²⁷ As a result, many of the black families who lived and worked on those farms became displaced.¹²⁸

From the discussion on the state of food insecurity in South Africa and the food system in South Africa it becomes evident that many of the problems regarding food insecurity at a global level are experienced in South Africa. To address these problems, it is necessary to understand what the right to food entails. Do the rights and obligations derived from the right to food provide a

¹²⁰ Blignaut J et al (2014) 11-12.

¹²¹ Blignaut J et al (2014) 7.

¹²² Blignaut J et al (2014) 7- 8. Von Bormann T 'Beneath the surface: South Africa's food system is in trouble' *Daily Maverick* 25 February 2019.

¹²³ Hall R 'Land Grabbing in Southern Africa: The Many Faces of the Investor Rush' (2011) 3-4 available at https://www.researchgate.net/publication/254335540_Land_Grabbing_in_Southern_Africa_The_Many_Faces_of_the_Investor_Rush (accessed 22 November 2018).

¹²⁴ Hall R (2011) 32-33.

¹²⁵ Hall R (2011) 32-33.

¹²⁶ Andrew N et al 'Land Consolidation and the Expansion of Game Farming in South Africa: Impacts on Farm Dwellers' Livelihoods and Rights to Land in the Eastern Cape' in Evers S, Seagle C and Krijtenburg F (eds) *Africa for Sale? Positioning the State, Land and Society in Foreign Large-Scale Land Acquisitions* in (2013) 29 ed 95-130. In addition, the Eastern Cape agricultural land is under threat of human settlements, see Sishuba S 'Rural human settlements could threaten farmland – report' *Farmer's Weekly* 7 February 2019.

¹²⁷ Andrew N et al (2013) 95-99. Sihlobo W & Kapuya T 'Special Report: the truth about land ownership in South Africa' *Rand Daily Mail* 23 July 2018.

¹²⁸ Andrew N et al (2013) 95-99.

framework in terms of which to hold both state and private actors accountable for realising a just and equitable food system and food security? The next section will interpret the right to food from an international, regional, and national level in order to answer this question.

3 CONCEPTUALISING THE RIGHT TO FOOD

3.1 International law

Safeguarding the right to food involves many factors, from access to land to creating sufficient opportunities for earning an income.¹²⁹ The right to food was initially framed as a component of the right to an ‘adequate standard of living’ in article 25 of the Universal Declaration of Human Rights (UDHR).¹³⁰ Thereafter, the ICESCR extended its application to include a right to ‘adequate food’ and ‘the fundamental right of everyone to be free from hunger’.¹³¹ The move towards adequate food symbolises the shift in the way food is conceived.¹³² Instead of deeming food as an essential commodity necessary for survival alone its interrelation with other human rights came to the fore.¹³³ In this regard, the right to dignity, for example, would require the availability of food that meets the health, religious, cultural needs and/or preferences of its beneficiaries.¹³⁴ The significance of the right to adequate food is framed as being ‘inseparable from social justice’ and requires states to adopt appropriate economic, environmental and social policies that are ‘oriented to the eradication of poverty and the fulfilment of all human rights for all’.¹³⁵

¹²⁹ FAO ‘*The right to food*’ (2001) available at <http://www.fao.org/WorldFoodSummit/english/fsheets/food.pdf> (accessed 22 November 2018).

¹³⁰ UDHR (1948) 217 A (III). The latter right was actually founded on the ‘Freedom from Want’ contained in article 1(3) of the Charter of the United Nations (1945) 1 UNTS XVI.

¹³¹ ICESCR Article 11(1) and (2). ICESCR, is the instrument that deals most comprehensively with the human right to food. The ICESCR, which represents a codification of the earlier norm contained in the UDHR entered into force ten years after its adoption, on 3 January 1976 in the ICESCR 993 UNTS 3.

¹³² Banik D ‘Democracy and the Politics of Hunger’ in Eide W and Kracht U (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 41-43.

¹³³ Burns R ‘*Realizing the Right to food in South Africa: An analysis of available frameworks and strategies*’ (2012) 9-11. Also see Vidar M ‘The Interrelationships between the right to food and other Human Rights’ In W Eide and U Kracht (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 141 – 155.

¹³⁴ United Nations CESCR General Comment No 12: The Right to Adequate Food, 12 May 1999, ESCOR [2000].Supp 2, 102 (GC 12). More specifically, GM 12, paras 7 and 9. In this context ‘*dietary needs*’ refer to the diet as a whole, so that it contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Also see, De Schutter O ‘Reflections by Olivier De Schutter’, in Right to Food and Nutrition Watch, *The Right to Food Guidelines, Food Systems Democratization and Food Sovereignty* (2014) 17-21.

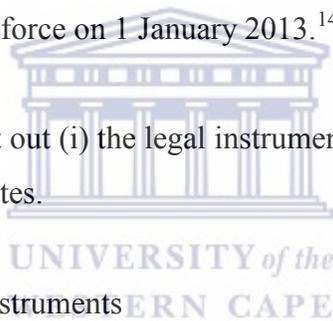
¹³⁵ United Nations CESCR General Comment No 12: The Right to Adequate Food, 12 May 1999 para 1.

CHAPTER 2

Human rights are interdependent, indivisible, and interrelated. Therefore, a violation of the right to food may impair the enjoyment of other human rights.¹³⁶ For example, the right to food is linked to the right to adequate housing and water. If people lack access to water for drinking or the production of food then their right to food will be threatened.¹³⁷ Alternatively, when a house lacks basic amenities for cooking or storing food the right to adequate food of its residents may be undermined.¹³⁸ Likewise, when the cost of housing is too high people may have to cut down on their food expenses.¹³⁹

With the continued problem of food insecurity in 2012, the Food Assistance Convention was adopted, making it the first legally binding international treaty on food aid.¹⁴⁰ The treaty aims at ‘addressing the food and nutritional needs of the most vulnerable populations’ and includes ‘mechanisms for information sharing and registration of commitments made towards such assistance’. The treaty entered into force on 1 January 2013.¹⁴¹

The discussion that follows will set out (i) the legal instruments to claim the right to food and (ii) duties imposed on the Members states.



3.1.1 Binding and non-binding instruments

The *right to food* is a human right, recognised under international law that provides entitlements to individuals to access adequate food and to the resources that are necessary for the sustainable enjoyment of food security.¹⁴² The right to food places legal obligations on states to overcome hunger and malnutrition and realise food security for all.¹⁴³

¹³⁶ Vidar M ‘The Interrelationships between the right to food and other Human Rights’ In W Eide and U Kracht (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 141 – 155. at <https://www.ohchr.org/documents/publications/factsheet34en.pdf> (accessed 22 November 2018).

¹³⁷ United Nations Office of the High Commission on Human Rights (OHCHR) & FAO ‘*The Right to Adequate Food-Fact Sheet No 34*’ available

¹³⁸ OHCHR & FAO (undated) 5-6.

¹³⁹ OHCHR & FAO (undated) 5-6.

¹⁴⁰ United Nations Food Assistance Convention, London, 25 April 2012. Entry into force on 1 January 2013, in accordance with article 15.

¹⁴¹ Food Assistance Convention of 2012.

¹⁴² OHCHR & FAO (undated) 9.

¹⁴³ OHCHR & FAO (undated) 4-5.

CHAPTER 2

In addition to the ICESCR a number of legally enforceable instruments may be used to secure the right to food, some of these include: (a) the Convention on the Prevention and Punishment of the Crime of Genocide for example, article 2 of the conventions is argued to include food deprivation, so in other words the convention may thus be used as a measure of protection;¹⁴⁴ (b) the International Convention on the Elimination of all Forms of Racial Discrimination for example, article 5 does not explicitly mention the right to food but it makes reference to other rights that promote food access such as ‘the right to work ... housing ... and public health, medical care, social security and social services’;¹⁴⁵ (c) the Convention on the Right of the Child, specifically mentions the right to nutrition for example, article 24 (couples the right to nutrition with the right to health) and article 27 (couples the right to nutrition with the right to an adequate standard of life);¹⁴⁶ (d) the Convention relating to the Status of Refugees does not explicitly mention the right to food or basic nutrition but article 18 is relevant for food security for example, it deals with the right to self-employment and includes the right to engage in agriculture. This allows for the engagement into producing food for consumption and livelihoods;¹⁴⁷ (e) the Convention on the Elimination of All Forms of Discrimination Against Women for example, the preamble acknowledges that ‘in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs’¹⁴⁸ Whereas article 12 makes specific provision for adequate nutrition during pregnancy and lactation;¹⁴⁹ and (f) the Convention on the

¹⁴⁴ Adopted on 9 December 1948, entered into force on 12 January 1951. Article 2 of the Convention defines genocide as: ‘... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group’. See Rhoda E & Hassmann H ‘State Food Crimes’ (2016) Cambridge, UK: Cambridge University Press. The authors examine the relationship between food deprivation and genocide and analysis the state of food crimes that currently exists.

¹⁴⁵ Adopted on 21 December 1965, entered into force on 4 January 1969. Refer to article 5(e)(i)-(iv).

¹⁴⁶ Adopted on 20 November 1989, entered into force on 2 September 1990. Jonsson U ‘Nutrition and the convention on the rights of the child’ (1996) Vol 21 *Food Policy* 41-55. Jonsson argues the CRC can be used to promote child nutrition.

¹⁴⁷ Adopted on 28 July 1951, 22 April 1954. Refer to Edwards A ‘Gainful Employment’ in Zimmermann A (ed) ‘The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol A Commentary’ (2011) Oxford: Oxford University Press.

¹⁴⁸ In this regard the Food Aid Convention, article VIII of the Convention states that ‘members shall pay attention to meeting the particular nutritional needs of women’.

¹⁴⁹ Convention on the Elimination of All Forms of Discrimination against Women, opened for signature on 18 December 1979, entered into force on 3 September 1981.

CHAPTER 2

Rights of Persons with Disabilities for example, article 28(1) particularly provides for the right to adequate food to persons with disabilities as part of an adequate standard of living.¹⁵⁰

The above instruments are directed at protecting specific vulnerable groups within society and call for special measures to secure and improve their right to food.¹⁵¹ These conventions are extensively discussed in the literature on international human rights law and will not be dealt with further.¹⁵² The purpose of mentioning the conventions is to accentuate the relationships between the rights, such as the right to life, the right to water, the right to health, the right to housing, to work, to land, to social security and the right to food.¹⁵³ It illustrates that access to food is a complex matter demanding a ‘holistic human rights-based approach to food availability and accessibility issues’, which shapes how this dissertation will approach the issue of food security.¹⁵⁴ More significantly it reinforces Sen's ‘*capability theory*’ that human development and human rights are mutually reinforcing in that they expand capabilities by protecting rights.¹⁵⁵

Some of the non-binding legal instruments that potentially advance the right to food will now be discussed. The foremost instrument is General Comment 12 of 1999 on the Right to Adequate Food. It provides the normative content for article 11(1) and (2) of the ICESCR.¹⁵⁶ From the General Comment on the right to adequate food two key features are identified. First, the right to food is dependent on a healthy and sustainable food system.¹⁵⁷ Second, it necessitates the timely, reliable, and nutritionally adequate supply of food on a long-term basis.¹⁵⁸

¹⁵⁰ Schulze M ‘*A Handbook on the Human Rights of Persons with Disabilities: Understanding the UN Convention on the Rights of Persons with Disabilities*’ 2nd ed (2010) New York: Fedex Office and Print Services.

¹⁵¹ Eide W & Kracht U (eds), *Food and human rights in development: Legal and Institutional Dimensions and Selected Topics* (2005). Also see Cotula L & Vidar M ‘*The right to adequate food in emergencies*’ (2002) available at <http://www.fao.org/3/a-y4430e.pdf> (accessed 15 January 2018).

¹⁵² Bilchiltz D ‘Is the right to food really necessary?’ In Fukuda-Parr, S and Vivienne, T (eds), *Food Security on South Africa: Human rights and entitlement perspectives*, (2016) p 56-57; Randolph S & Hertel S ‘The right to food a global perspective in Fukuda-Parr S and Taylor V (eds), *Food Security on South Africa: Human rights and entitlement perspectives*, (2016) 26-30.

¹⁵³ Human Rights Council ‘Human Rights Council holds interactive dialogue on the right to food and the effects of foreign debt on the full enjoyment of all human rights’ *ReliefWeb* 28 Feb 2019.

¹⁵⁴ Coomans F & Yakpo K (2004) 21.

¹⁵⁵ Felice W ‘The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Human Rights’ (2002) *Human Rights Quarterly* Vol 24, 225-225.

¹⁵⁶ Mahakul B ‘The Right to Food as Human Rights: Some thematic reflections with reference to India’ (2014) Vol 64 *Social Action* 22-33

¹⁵⁷ Mahakul B (2014) 25-27.

¹⁵⁸ Mahakul B (2014) 25-27.

CHAPTER 2

The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004), builds on the General Comment 12.¹⁵⁹ The Voluntary Guidelines are a practical tool to help implement the right to adequate food. Six aspects of the Voluntary Guidelines are sited as prerequisites to realise the right to food. The first aspect deals with basic conditions to ensure ‘good governance, democracy, non-discriminating markets, engaging in a multi-stakeholder approach including the private sector and civil society, and allocating sufficient national financial resources to anti-hunger and poverty’.¹⁶⁰ Second, providing an enabling environment by adopting relevant strategies and policies to promote food security.¹⁶¹ Third, to introduce a legal framework to enforce the right to food.¹⁶² Fourth, ensuring the availability of affordable and healthy food.¹⁶³ Fifth, special measures must be in place to support vulnerable populations. These measures include implementing safety nets for the weakest.¹⁶⁴ Sixth, preparations must be in place to deal with emergencies.¹⁶⁵

The Principles for Responsible Agriculture Investment (PRAI). PRAI, amongst others, aims to guide national regulations, international investment agreements, global corporate social responsibility initiatives, and investor contracts.¹⁶⁶ The principles were endorsed by the Committee on World Food Security (CFS) in 2014.¹⁶⁷ In broad strokes the principles are geared towards making sustainable and equitable agricultural investments, promoting women and opening up the agricultural sector to smallholders.¹⁶⁸

While international treaties do not refer directly to human rights obligations of the private sector, there is increasing recognition, including by the United Nations and international soft-law

¹⁵⁹ OHCHR & FAO (undated) 8.

¹⁶⁰ FAO ‘*The Right to Food: The Voluntary Guidelines in Brief*’ (2012) I Enabling Environment.

¹⁶¹ FAO (2012) II Policies and Strategies.

¹⁶² FAO (2012) III Legal Framework.

¹⁶³ FAO (2012) IV Adequate Food.

¹⁶⁴ FAO (2012) V Vulnerable Populations.

¹⁶⁵ FAO (2012) VI Emergencies.

¹⁶⁶ De Schutter, ‘United Nations Human Rights Council, Report by the Special Rapporteur on the Right to Food, Doc.U.N.A/HRC/25/57/ 24 January 2014, 2 -12.

¹⁶⁷ Inter-Agency Working Group ‘Responsible agricultural investment’ (undated) available at <https://responsibleagroinvestment.org/activities/guidance-on-responsible-investment/> (accessed 15 January 2019).

¹⁶⁸ UNCTAD–World Bank ‘*Responsible Agricultural Investment (RAI): Knowledge into Action Notes series*’ (2018) Washington DC: World Bank.

instruments, that corporations themselves have a responsibility to respect the right to food.¹⁶⁹ The usefulness of this responsibility under human rights law depends on whether there is a remedy.¹⁷⁰

3.1.2 Duties imposed on Member States

The duty imposed on states to facilitate adequate food for its people requires the adoption of appropriate economic, environmental and social policies at all levels of government to eradicate poverty.¹⁷¹ The ICESCR does not prescribe the manner in which states should achieve the right and guarantees some discretion in the implementation of the right by states.¹⁷² Member states are encouraged to progressively realise the right over time, within their ‘maximum available resources’.¹⁷³ States should strive for regular and equal access to resources and opportunities for all individuals to provide for their own needs over time.¹⁷⁴ In contrast, the right of freedom from hunger is an absolute right which entitles beneficiaries to immediate state action in circumstances where they are unable to meet their food needs for reasons beyond their control, such as age, disability, economic downturn, famine, natural disaster or discrimination.¹⁷⁵

Member states are under an obligation to ‘respect, protect, and fulfil’ the right to food.¹⁷⁶ States are required to put in place measures varying from passive non-interference to proactive steps to satisfy its peoples’ needs.¹⁷⁷ Specifically, the obligation to respect requires state parties to refrain from taking any measures that may result in preventing or denying individuals and/or groups from procuring food for themselves.¹⁷⁸ The obligation to protect requires the adoption of specific

¹⁶⁹ OHCHR & FAO (undated) 25.

¹⁷⁰ OHCHR & FAO (undated) 25.

¹⁷¹ Eide, W & Kracht, U ‘The Right to Adequate Food in Human Rights Instruments: Legal Norms and interpretations’ in Eide W and Kracht U (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 99.

¹⁷² Article 11 (1).

¹⁷³ Article 2 (1) provides that states parties to the ICESCR have the obligation ‘to take steps, individually and through international assistance and co-operation,’ to the ‘maximum of available resources, with a view to achieving progressively the full realization of the rights recognized.’ Also refer to CESCR General Comment No. 3: The Nature of States Parties’ Obligations.

¹⁷⁴ Article 11 (1).

¹⁷⁵ Article 11. Also note that article 3 provides that states parties to the ICESCR steps should be ‘deliberate, concrete, and targeted as clearly as possible’ toward meeting the obligations.

¹⁷⁶ United Nations Human Rights & FAO ‘*The Right to Adequate Food- Factsheet No 34*’ (2010) Geneva-Switzerland: Office United Nations 17.

¹⁷⁷ FAO, Methodological Toolbox on the Right to Food- Guide on Legislating for the Right to Food (2009) Right to food Studies 12 available at <http://www.fao.org/docrep/014/i0815e/i0815epdf> (accessed 25 July 2015).

¹⁷⁸ General Comment 12 para 19.

CHAPTER 2

legislative or other measures regulating third parties' activities to ensure they do not negatively affect peoples' enjoyment of the right to food.¹⁷⁹ The obligation to fulfil means that state parties must take positive measures to facilitate and provide the right to food.¹⁸⁰ This includes the direct provision of food at times when persons or groups are not able to exercise their right to food by their own means.¹⁸¹ The right to food places an explicit duty on states to actively identify vulnerable populations and implement policies and programmes to improve their access to food and capacity to feed themselves.¹⁸²

On the duty to actively identify vulnerable populations, it is submitted that small-scale farmers in South Africa meet the requirements for this category. This may be gauged from the difficulties that small-scale farmers face as presented in the situational analysis on South Africa's food system. In this regard, specific attention is drawn to the provisions in article 11 of the ICESCR that relate to the rural poor. Article 11 requires state parties to take measures, including specific programmes, which are needed to improve methods of production, conservation and distribution of food.¹⁸³ Member states are required to make full use of technical and scientific knowledge to transform the agrarian systems to achieve the most efficient development and utilisation of natural resources.¹⁸⁴ This duty includes the dissemination of knowledge on the principles of nutrition to ensure the sustainable production and distribution of nutritious.¹⁸⁵ The Voluntary Guidelines provide detailed direction on achieving sustainable food and agriculture.¹⁸⁶ Conditions required for this include non-discriminatory practices and secure access to resources and assets, including labour, land and water.¹⁸⁷ So the purpose of the discussion here was to stress how the right to food at an international level can be directly applied to vulnerable groups such as small-scale farmers. Simply put, international law instruments may indeed be used to claim and facilitate the rights of vulnerable groups.

¹⁷⁹ Ziegler J 'Preliminary Report of the Special Rapporteur of the Commission on Human Rights on the Right to Food, UN Doc, A/56/210, 23 July 2001' (2001) para 27.

¹⁸⁰ Ziegler J, (2001) para 27.

¹⁸¹ General Comment 12 para 15.

¹⁸² Ziegler J, (2001) para 28.

¹⁸³ OHCHR & FAO (undated) 9-11.

¹⁸⁴ OHCHR & FAO (undated) 9-11.

¹⁸⁵ OHCHR & FAO (undated) 9-11.

¹⁸⁶ OHCHR & FAO (undated) 9-11.

¹⁸⁷ OHCHR & FAO (undated) 9-11.

CHAPTER 2

3.2 Regional law

International law instruments are often reinforced through regional instruments. In this context the regional instruments of Africa will be mentioned that relate to the right to food. Unlike the ICESCR, the African Charter on Human and Peoples' Rights does not refer explicitly to the right to food.¹⁸⁸ However, the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights (Principles and Guidelines), states that 'the right to food is inherent in the Charter's protection of the right to life, health and the right to economic, social and cultural development'.¹⁸⁹ The Principles and Guidelines provide the normative content of the right to food. In keeping with General Comment 12 on article 11 of the ICESCR, the Principles and Guidelines establishes a minimum core for everyone to be free from hunger.¹⁹⁰

The Principles and Guidelines prescribe several state obligations.¹⁹¹ The most significant of these obligations for the purpose of this dissertation is the duty to develop national plans and policies to ensure food security.¹⁹² The national plans and policies must result in the provision of constant accessible and quality food.¹⁹³ Moreover, the outcome of the national plans and policies should result in diets that meet the requirements of nutrition and cultural acceptability.¹⁹⁴ Member states are bound to respect, protect, and fulfil the right to food.¹⁹⁵

Women were identified as a particularly vulnerable group for which the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the

¹⁸⁸ Social and Economic Rights Action Centre (SERAC) and Centre for Economic Right Social Rights v Nigeria (2001) Communication 155/96 (hereinafter SERAC case).

¹⁸⁹ Odinkalu C 'Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights in Evans M, Murray R (eds) *The African Charter on Human and Peoples' Rights: The System in Practice* (2002) 188-196.

¹⁹⁰ Odinkalu C (2002) 188-196.

¹⁹¹ The State duties include (i) to take the necessary action to guarantee the right of everyone to be free from hunger and to mitigate and alleviate hunger in times of natural or other disasters; (ii) to refrain from and protect against destruction and/or contamination of food sources; (iii) to refrain from using access to food as a political tool to reward supporters, punish opponents or recruit militias.

¹⁹² Odinkalu C (2002) 188-196.

¹⁹³ Odinkalu C (2002) 188-196.

¹⁹⁴ Odinkalu C (2002) 188-196.

¹⁹⁵ Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001). Also refer to Coomans F 'The Ogoni Case before the African Commission on Human and Peoples' Rights' *International and Comparative Law Quarterly*, vol. 52, (2003) 749-760 available at <http://www.righttoenvironment.org/ip/uploads/downloads/OgoniCaseProf.Coomans.pdf> (accessed 1 July 2015).

Maputo Protocol, was adopted.¹⁹⁶ Article 15, deals with food security and compels member states to ensure that women have the right to nutritious and adequate food.¹⁹⁷ Further, women should have access to: (a) clean drinking water; (b) sources of domestic fuel; (c) land; (d) means to producing nutritious food; and (e) establish adequate systems of supply and storage.¹⁹⁸ Article 18 concerns the right to a healthy and sustainable environment.¹⁹⁹ Amongst others, it obliges state parties to put in place measures to ensure greater participation of women in the planning, management, and preservation of the environment and the sustainable use of natural resources.²⁰⁰ Article 19, relates to the right to sustainable development.²⁰¹ One of the key duties on the state concerns the protection of women from the negative effects of globalisation and trade and economic policies.²⁰² The discussion on the above instruments is to emphasise the main trends that women continue to be marginalised in the production of food, the distribution of food, and the consumption of food.²⁰³ These trends to a large extent reflect the situation of women in South Africa. In this way the regional instruments may directly be used together with the international instruments to claim the rights of women in South Africa to food security.

3.3 The right to food under South African law

South Africa has ratified the international and regional instruments presented above.²⁰⁴ The Constitution demands that international law for be considered in the interpretation of the rights in the Bill of Rights.²⁰⁵ While the application to foreign law is encouraged. This means an interpretation of the right to food must have due regard to these frameworks. The discussion that

¹⁹⁶ Article 15 of the ACHPR (Protocol on the Rights of Women).

¹⁹⁷ Article 15 of the ACHPR (Protocol on the Rights of Women).

¹⁹⁸ Article 15 of the ACHPR (Protocol on the Rights of Women).

¹⁹⁹ Article 18 of the ACHPR (Protocol on the Rights of Women).

²⁰⁰ Article 18 of the ACHPR (Protocol on the Rights of Women).

²⁰¹ Article 19 of the ACHPR (Protocol on the Rights of Women).

²⁰² Article 19 of the ACHPR (Protocol on the Rights of Women).

²⁰³ Articles 15,18 and 19 of the ACHPR (Protocol on the Rights of Women).

²⁰⁴ Study in Poverty and Inequality Institute (SPII) *The Right to Food in South Africa: An Analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to food* Studies in Poverty and Inequality Institute, Working Paper 11, (2015) 16-18 Available at <http://www.spii.org.za/wp-content/uploads/2015/07/SPII-Working-Paper-11-The-Right-to-Food-in-South-Africa-2015.pdf> (accessed July 2015). South Africa has not adopted the Optional Protocol refer to ESCR-Net *The Government of South Africa ratifies the ICESCR* available at <https://www.escri-net.org/node/365752> (accessed 4 February 2015).

²⁰⁵ Ss39(1)(b) of the Constitution provides... 'must consider international law' whereas s39(1)(c) of the Constitution provides '...may consider foreign law'

follows will set out (i) constitutional provisions of the right to food; (ii) the legal framework; (iii) the policy framework; and (iv) the right to food and multilevel government.

3.3.1 Constitutional provisions of the right to food

How does the Constitution outline the right to food? The constitutional does this in three separate provisions. First, section 27(1)(b) provides for the right of everyone to ‘*have access to sufficient food*’. Second, section 28(1)(c) protects the right of every child to ‘*basic nutrition*’. Third, section 35(2)(e) affords every detained person to ‘conditions of detention that are consistent with human dignity, including at least the exercise and provision, at state expense, adequate ... nutrition...’. In evaluating the three sections, a noticeable difference is found. Section 27(1)(b) is a qualified right but sections 28(1)(c) and 35(2)(e) are unqualified right and apply to specific vulnerable groups.²⁰⁶ The former provisions can be understood as a constitutional injunction to ensure special measures are prioritised for the identified vulnerable groups.²⁰⁷

Section 27(1)(b) is limited by the application of section 27(2) of the Constitution.²⁰⁸ Section 27(2) of the Constitution limits the states obligation to ‘[t]he state must take reasonable and legislative and other measures, within its available resources, to achieve the progressive realisation of this rights’. The right of access to sufficient food involves at least three obligations, namely, (a) the state must provide for the direct, concrete and targeted allocation of resources; (b) the state should maximise the use of available resources, and (c) the state must progressively realise the right to food.²⁰⁹ Section 27(1)(b) of the Constitution must be read together with section 7(2) of the Constitution. Section 7(2) deals with the state’s responsibilities to fulfil the Bill of Rights in the Constitution.

Section 7(2) stipulates that ‘the state must respect, protect, promote and fulfil the rights in the Bill of Rights’. Two questions emerge, first what is the meaning of the word ‘*state*’, does it include all spheres of government and second, if so, then what are the implications? How does this affect the

²⁰⁶ Moyo B ‘The right to food in South Africa: We need a manifesto for food justice’ *Daily Maverick* 5 March 2019.

²⁰⁷ Foluke A *Access to Safe Food in South Africa as a Human Right Imperative* (unpublished LLM thesis, University of the Western Cape, 2015) 47-50.

²⁰⁸ S27(2) of the Constitution.

²⁰⁹ S 27(2) of the Constitution read with General comment 12 on the Right to food.

CHAPTER 2

three spheres of government in South Africa? 40(1) of the Constitution distributes state authority amongst the national, the provincial and the local government. Therefore, the meaning of the word 'state' includes the national, the provincial and the local government. The implication hereof is that section 7(2) binds all spheres of government to realise the rights in the Bill of Rights which includes the right to sufficient food.²¹⁰ So all spheres of government must take steps to achieve the right to food.

3.3.2 The legal framework

South Africa does not have a framework law on the right to food which means there is no enforceable framework to achieve the right.²¹¹ It has been argued that the failure of the state to implement a framework law on the right to food not only fails to protect vulnerable groups from violations on their right to food but may contribute to the high levels of food insecurity.²¹² Absence of a framework law results in legal uncertainty since no law clarifies the lines of accountability amongst the different spheres of government. The result is that the blurring of accountability derived from the Constitution remains unaddressed.²¹³

Proponents of the right to food argue that a framework law is an important mechanism to identify and allocate lines of accountability.²¹⁴ For example, a framework law can clearly identify the responsibility amongst the different sector departments as well as the distribution of powers across the different spheres of government.²¹⁵ A framework law may prescribe measurable targets and reporting requirements.²¹⁶ This will enable a culture of reporting on food security.²¹⁷ Monitoring and evaluating food security are particularly highlighted, by the High-Level Panel of Experts

²¹⁰ De Visser J 'A perspective on local government's role in realising the right to housing and the answer of the Grootboom judgment' (2003) 1 *Law, Democracy and Development* 211.

²¹¹ Hendriks S & Olivier N 'Review of the South African Agricultural Legislative Framework: Food security implications' (2015) Vol 32, 5 *Development Southern Africa* 563-566.

²¹² Mugabe M *A Proposed Framework Act for Food Security in South Africa* (unpublished LLM thesis, North West University, 2014) 35-38. For further reading refer to Nkrumah B *Mobilising for the realisation of the right to food in South Africa* (unpublished Doctor of Philosophy thesis, University of Pretoria, 2018).

²¹³ Mugabe M (2014) 35-38 and Nkrumah B (2018) 141-151.

²¹⁴ Mugabe M (2014) 35-38 and Nkrumah B (2018) 141-151.

²¹⁵ Overseas Development Institute (ODI) *Localising the Post -2015 Agenda: What does it mean in practice?* 2-3 available at http://www.delog.org/cms/upload/teaser/ODI_Localising_Post-2015_What_does_it_mean_in_practice.pdf (accessed 20 June 2015).

²¹⁶ Mugabe M (2014) 35-38 and Nkrumah B (2018) 184-194.

²¹⁷ Mugabe M (2014) 35-38 and Nkrumah B (2018) 184-194.

(HLPE) on food security as a critical mechanism to hold state parties accountable for the right to food and to determine the progress made for beneficiaries.²¹⁸ Monitoring and evaluation enable greater information on inequities, the opportunity to review decision-making and resource allocation.²¹⁹ In addition, it results in strengthening of data production on the impact that policies and strategies have on local communities.²²⁰

Although, no framework law on the right to food is available there is legislation such as the SPLUMA that makes specific reference to the right to food and the protection of agricultural land for food production. A further act that also deals with the protection of agricultural land, as well as food security, is the Subdivision of Agricultural Land Act 70 of 1970. These two acts will be discussed later in the dissertation to appreciate the specific role it envisions for local government together with the other levels of government. From a rights perspective the question remains how the right to food implicates local governments in South Africa. The next section will address this question.

3.3.3 The right to food and multilevel government

The discussion above confirmed that under South African law, the right to food is a legally enforceable socio-economic right. In addition, the implication for multilevel government is that each sphere is responsible for progressively realising the right to food within their constitutionally allocated powers.²²¹ The enforceable nature of these provisions establishes a framework in which to hold local governments accountable for the realisation of the right to food. De Visser, argues that the combination of legally enforceable socio-economic rights and the constitutionally entrenched devolution of powers ‘creates an important and rather unique dynamic in the Constitution’ which has significant budgetary implication for all spheres.²²² The discussion will

²¹⁸ ODI (2015) 3-4.

²¹⁹ ODI (2015) 3-4.

²²⁰ ODI (2015) 3-4.

²²¹ De Visser J ‘The Enforcement of Socio-Economic Rights against Local Governments in South Africa’ in Bosire M & Gikonyo W (eds) *Animating Devolution in Kenya the Role of the Judiciary* (2015).

²²² De Visser J (2015) 193-194.

show how this ‘unique dynamic’ is experienced in practice with respect to the jurisprudence on housing.²²³

In South Africa, no case law deals with the interpretation of the right of access to sufficient food in section 27(1)(b) of the Constitution.²²⁴ However, there is jurisprudence of the South African Constitutional Court that deals with the intersection between socio-economic rights and the constitutional division of functions and powers.²²⁵ The jurisprudence demonstrates how the Constitutional Court devolved functions to local government through the enforcement of the Bill of Rights.²²⁶ Two of these cases concern the right of access to adequate housing and will be presented, namely, the *Grootboom case* and *Blue Moonlight case*.²²⁷

The purpose of the discussion is to evaluate how the Constitutional Court dealt with the intersection between socio-economic rights and the constitutional division of functions and powers amongst the spheres. The aim is to give content to the right to food in section 27(1)(b) of the Constitution. So first, an analysis will follow on the Constitutional Court’s methodology for interpreting the right of access to adequate housing in section 26(1) of the Constitution.²²⁸ Thereafter the analysis will be used to determine a suitable approach for the right to food.

²²³ For the developmental role envisaged by the Court refer to Tissington K & Wilson S ‘SCA upholds rights of urban poor in Blue Moonlight judgement’ (2011) Vol 12 *ESR Review* 3-6 and Coggin T & Pieterse M ‘Rights and the city: An exploration of the interaction between socio-economic rights and the city’ (2012) 23 *Urban Forum* 257-258.

²²⁴ Brand D ‘The right to food.’ In D Brand & C Heyns (eds), *Socio-economic rights in South Africa* (2005) 5.

²²⁵ De Visser J (2015) 193-194. In addition, Fuo O & Du Plessis A ‘In the face of judicial deference: Taking the ‘minimum core’ of socio-economic rights to the local government sphere’ (2015) Vol 19 *LDD* 7- 10. De Visser J & May A ‘Functions and powers of devolved units’ in N Steytler & Y Ghai (eds) (2015) *Devolution in Kenya and South Africa* 174- 176.

²²⁶ Wilson S & Dugard J (eds) ‘Constitutional: The First and second waves’ in Malcolm L et al ‘*Symbols or Substance: The Role and Impact of Socio-Economic Rights Strategies in South Africa* (2013) 30-35. De Visser J (2015) 193-194. Pieterse M ‘Development, the Right to the City and the Legal and Constitutional Responsibilities of Local Government in South Africa (2014) Vol 131 *SALJ* 162-175, provides a detailed summary of the relevant jurisprudence.

²²⁷ *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC); and *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) BCLR 150 (CC).

²²⁸ Section 26(1) of the Constitution provides that ‘everyone has the right to have access to adequate housing’ and section 26(2) limits the right of access to adequate housing it stipulates ‘[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right’.

CHAPTER 2

3.3.4 *Grootboom* case

Only relevant aspects of the *Grootboom* case will be discussed since it has been extensively covered in the literature.²²⁹ A brief overview is presented for the purposes of the discussion on interpreting the right of access to sufficient food in section 27(1)(b) of the Constitution and the implications for the national, the provincial and particularly the local government as provided for in terms of section 27(2) of the Constitution.

In this case, a community was evicted from their informal homes situated on private land earmarked for formal low-cost housing. They sued the government (national, provincial, and local government) for violating their right to section 26(1) of the Constitution. The community demanded that the government provide them with adequate basic shelter or housing until they obtained permanent accommodation.²³⁰ The Constitutional Court had to determine which sphere of government was responsible for the different elements of the right of access to housing in terms of section 26(1) and (2) of the Constitution.

The court held the primary responsibility for securing a house in terms of section 26(1) of the Constitution falls on an individual.²³¹ The duty on the state is not to provide the house itself but to ensure an enabling environment where individuals are empowered to access resources such as available land, finances, and basic services.²³² However, the state is under a greater obligation to assist people in vulnerable groups that are unable to acquire adequate housing in circumstances of desperate need.²³³ In such circumstances, the state's responsibility is concerned with 'unlocking the system, providing access to housing stock and a legislative framework to facilitate self-built houses through planning laws and access to finance'.²³⁴ In this regard, the state must provide special assistance to vulnerable groups subject to the availability of resources and the progressive realisation of the right.²³⁵ The court found the housing programme unreasonable insofar as it failed

²²⁹ Refer to De Visser J (2004) and De Visser J (2015). De Vos 'Grootboom, the right of access to housing and substantive equality as contextual fairness' (2001) Vol 17 *SAJHR* 258 at 260.

²³⁰ De Visser J 'A perspective on local government's role in realising the right to housing and the answer of the Grootboom judgement' (2003) 1 *Law, Democracy and Development* 211.

²³¹ Brand D (2005) 5-10.

²³² Brand D (2005) 5-10.

²³³ Brand D (2005) 5-10.

²³⁴ Brand D (2005) 5-10.

²³⁵ Brand D (2005) 5-10.

CHAPTER 2

to provide housing assistance for people in desperate need such as evictions and ordered the state to remedy this situation.²³⁶

Therefore, if the approach of the court is applied to the right to access to sufficient food in section 27(1)(b) of the Constitution it means the duty primarily falls on the individual. The state is not responsible to provide food itself but must ensure an enabling environment where individuals are empowered to access resources such as available land, finances, and basic services. A legislative framework must be developed to facilitate self-help measures through planning laws and access to finance to secure the right to food. A greater duty is imposed on the state to assist people in vulnerable groups to acquire adequate food in circumstances of desperate need. This will include instances of natural disasters or where communities are economically unable to secure food for themselves. In these instances, the state must provide special assistance to vulnerable groups subject to the availability of resources and the progressive realisation of the right.

In determining the obligations that flow from section 26(2) of the Constitution the court scrutinised, amongst other, the provisions of the Housing Act 107 of 1997, that provides a framework for the responsibilities and functions of each sphere of government, as well as the implementation of the National Housing Programme.²³⁷ Section 26(2) and section 27(2) of the Constitution are framed in identical wording. Therefore, the court's findings in respect to section 26(2) in *Grootboom* may apply to section 27(2).²³⁸ Two primary findings of the court's application of section 26(2) of the Constitution bear relevance to the discussion.

First, the court highlighted that the Housing Act provides a framework in which the responsibilities of the different spheres of government are set out.²³⁹ In this regard, the court pointed out what would qualify as '*reasonable legislative and other measures*'.²⁴⁰ The latter entails giving effect to the allocation of the division of powers and functions in the Constitution, and the spheres of

²³⁶ *Grootboom case* para 69.

²³⁷ *Grootboom case* paras 39-40.

²³⁸ Steytler N & De Visser J '*Local Government*' in Woolman S, Bishop M & Brickhill J (eds) '*Constitutional Law of South Africa* 2 ed (2008) 64. *Grootboom case* paras 39-40. Bosire C '*Local Government and Human Rights: Building institutional links for the effective protection and realisation of human rights in Africa*' (2011) Vol 11 *African Human Rights Law Journal*' 144-150.

²³⁹ *Grootboom case* paras 39-40. De Visser J (2015) 199.

²⁴⁰ *Grootboom case* paras 39-40. Brand D (2005) 5-10.

CHAPTER 2

government working cooperatively in carrying out their constitutional tasks.²⁴¹ Even though housing is not a local government function, the court stated that local government has an important obligation to ensure that services are provided in a sustainable manner to the communities they govern.²⁴²

Second, the court outlined what is required for a reasonable policy, it must: (i) be rational; (ii) be inclusive of all significantly at-risk groups in society; (iii) be coherent; (iv) be coordinated, and flexible enough to respond to both short-term and longer-term needs; and (v) be effectively implemented.²⁴³ The court further instructed that a reasonable programme ‘must clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available’.²⁴⁴ The court concluded that a coordinated state housing programme must be comprehensive and determined by all three spheres of government in consultation with each other as contemplated by the principles of co-operative government.²⁴⁵ Lastly, the court declined to assign which sphere of government is responsible for the different components of the right to housing. The court held that the three spheres of government should work within the framework of the co-operative principles to resolve this matter.²⁴⁶

All spheres are required to ensure the ‘*progressive realisation*’ of the right of access to housing.²⁴⁷ The court held that this aspect of the right to housing obliges the state to take all reasonable and

²⁴¹ *Grootboom case* paras 39-40. Steytler N ‘Local government in South Africa: Entrenching decentralised government in Steytler N (ed) *The Place and Role of Local Government in Federal Systems* (2005) 180-185.

²⁴² *Grootboom case* paras 39-40. For example services include, water, sanitation, storm water drainage, roads, local public transport and town planning. Furthermore, for the developmental duties expected from local government refer to Ndlela N ‘Social development: An imperative for local government’ in Van Donk M et al (eds) *Consolidating Developmental Local Government: Lessons from the South African Experience* (2008)

²⁴³ Brand D (2005) 5-10.

²⁴⁴ De Visser J (2004) 212-215.

²⁴⁵ De Visser J (2004) 212-215.

²⁴⁶ *Grootboom case* paras 39-40. Pieterse M (2014) 162-162. Quinot G & Liebenberg S ‘Narrowing The Band: Reasonableness Review In Administrative Justice And Socio-Economic Rights Jurisprudence In South Africa’(2011) Vol 3 *STELL LR* 649-653.

²⁴⁷ *Grootboom case* para 4. Quinot G & Liebenberg S ‘Narrowing The Band: Reasonableness Review In Administrative Justice And Socio-Economic Rights Jurisprudence In South Africa’(2011) Vol 3 *STELL LR* at 651, they argue : ‘The narrowing of the band of options resulting from such ‘strong form’ reasonableness review does not, however, exclude innovative approaches to the realisation of rights. By the narrowing of the band we do not propose that the court will exhaustively formulate the actual measures that a reasonable administrator may take. Within the defined markers that set the band in a given case there should be ample scope for experimentation with different measures to realise the right. The concepts of ‘available resources’ and ‘progressive realisation’ in sections 26(2) and 27(2) represent specific considerations within the overall reasonableness inquiry which a court

CHAPTER 2

necessary steps to achieve this goal.²⁴⁸ It means that accessibility should be progressively facilitated which includes legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time.²⁴⁹

If the approach of the court is applied to section 27(2) of the Constitution, it means that there must at least be framework legislation enacted by the state to qualify as reasonable legislative and other measures. The framework legislation must set out the roles and responsibilities of each sphere of government and the allocated resources and funding required to perform those duties. The five requirements for a reasonable policy, mentioned above, must be implemented with respect to the right to food. The spheres of government must work together in a coordinated manner to realise the right of access to sufficient food in section 27(1)(b) of the Constitution. Furthermore, Brand argues that although the court only addressed the question of coordination between different spheres of government the principle has equal application to the coordination between different institutions and departments within one sphere of government.²⁵⁰ He argues the right to food is an interdependent right, and can only be realised by realising a range of other rights.²⁵¹ If Brand's view is thus supported then it would mean that each sphere of government needs to synchronise their work to reach policy coherence and coordination in the implementation of programmes.²⁵² The different spheres can use a range of measures to facilitate the right to food. These measures include the use of legal instruments, the streamlining of administrative processes to avoid duplication, the implementation of best practices in their operations, and the lowering of financial costs where possible. This means that local government as far as possible must use their powers and functions to realise the right to food.

must give weight to in assessing the State's justificatory arguments in opting for a particular measure. However, while resource constraints and 'progressive realisation' may constitute a basis for justifying the State's lack of progress in advancing access to socioeconomic rights, these factors also set standards of accountability within the reasonableness inquiry'.

²⁴⁸ *Grootboom case* para 45. Pieterse M (2014) 162-162.

²⁴⁹ *Grootboom case* para 45. For example Van Donk M et al (2008) argue with regard to the progressive realisation of socio-economic rights that municipalities are required to tackle poverty reduction, sustained economic growth, sustainable resource use, environmental conservation, spatial integration of diverse social class groups, and various land uses in ways that deepen democratic values, institutions and citizenship. They note this is a complex and challenging task 223-225.

²⁵⁰ Brand D (2005) 9-10.

²⁵¹ Brand D (2005) 9-10.

²⁵² Jagwanth S & Soltau F '*Socio-economic rights and implications for intergovernmental fiscal relations in South Africa*' (2014) 30 available at <http://www.nylslawreview.com/wp-content/uploads/sites/16/2014/11/Jagwanth.pdf> (accessed 22 November 2018).

3.3.5 *Blue Moonlight* case

Since *Grootboom* there has been an increase in local government's duties to realise aspects of the right to housing.²⁵³ In *Blue Moonlight* the Constitutional Court had to determine whether local government is directly responsible for the provision of emergency housing in cases where an eviction is most likely to result in homelessness.²⁵⁴ The court specifically focused on the provisions of Chapter 12 of the National Housing Code.²⁵⁵ Chapter 12 deals with the provisions of emergency housing and was inserted into the Housing Code subsequent to the *Grootboom* case. Furthermore, the court had to determine the constitutionality of the housing policy of the City of Johannesburg Metropolitan Municipality (hereinafter the City).²⁵⁶

The case concerned a group of residents that were evicted from privately owned land that they unlawfully occupied in the City. The residents applied to the City for temporary accommodation. The City refused on the basis that it was not within the City's mandate to temporarily or permanently accommodate those who face homelessness as a result of eviction by private property owners.²⁵⁷ Relying on the *Grootboom* case the City argued it was not directly responsible for the provision of emergency accommodation but rather had to ensure the provision of services in a sustainable manner.²⁵⁸ Six of the grounds which the City used to build its argument will be presented below.

First, the functional area of housing appears in Schedule 4A of the Constitution.²⁵⁹ Second, Schedules 4B and 5B that list the functions of local government do not confer on local government any function that places the onus of housing on local government, or for local government to be primarily responsible for the fulfilment of the right of access to adequate housing.²⁶⁰ Third, the Housing Act and Chapter 12 of the Housing Code, requires local governments to act only as a

²⁵³ Pietser M (2014) 172 argues that the case centered on the developmental role they state general and municipalities in particular had to perform. Also see, Tissington K & Wilson S (SCA upholds rights of urban poor in *Blue Moonlight* judgement' (2011) 12 *ESR Review* 3-6.

²⁵⁴ Van Wyk J & Steyn P 'Planning Law Casebook' (2015) 24-28.

²⁵⁵ *Blue Moonlight case* paras 47-48. The National Housing Code was enacted under section 4 of the Housing Act.

²⁵⁶ *Blue Moonlight case* para 5. Also refer to the 2010 Housing Report (Housing Report).

²⁵⁷ *Blue Moonlight case* para 70.

²⁵⁸ *Blue Moonlight case* paras 49-50.

²⁵⁹ *Blue Moonlight case* para 50.

²⁶⁰ *Blue Moonlight case* para 50.

CHAPTER 2

point of delivery it does not establish a duty for local government to provide emergency accommodation to people evicted from privately owned land.²⁶¹ Fourth, in realising the right to housing the City is limited to act within the parameters set in national and provincial policies.²⁶² Fifth, the City acted in terms of its Housing Report that requires the City to make application for assistance to the provincial government for emergency accommodation in respect of evictions that occur from privately owned land. An application made to the provincial government was refused and on this basis the City argued it exhausted its constitutional mandate.²⁶³ Sixth, the City submitted it does not have ‘available resources’ to fund emergency housing since the City is not legally obliged to go beyond its available budgeted resources to secure housing for homeless people.²⁶⁴

The Constitutional Court rejected the argument by the City. In response to the six arguments by the City the Constitutional Court found that local government is indeed responsible for providing emergency housing because this duty derived from the Bill of Rights in the Constitution.²⁶⁵ The court emphasised that local government was included in both Chapter 12 of the Housing Code and the Housing Act to realise the right to housing.²⁶⁶ In addition, the court referred to section 9 of the Housing Act that requires municipalities to take all reasonable and necessary steps to ensure the right of access to adequate housing.²⁶⁷

The court made reference to the Municipal Systems Act, namely, sections 4(1) and 8(2) that empower the municipalities with a degree of general, financial and institutional autonomy to carry out their functions, and section 4(2) places a duty on them to provide for the democratic governance and efficient provision of services to their communities.²⁶⁸ Moreover, the court held

²⁶¹ *Blue Moonlight case* para 50.

²⁶² *Blue Moonlight case* para 50.

²⁶³ *Blue Moonlight case* para 48.

²⁶⁴ *Blue Moonlight case* para 72.

²⁶⁵ *Blue Moonlight case* para 67.

²⁶⁶ *Blue Moonlight case* para 67.

²⁶⁷ *Blue Moonlight case* para 53. Pieterse M (2014) 172-173 notes that ‘when it comes to the delivery of socio-economic rights, the Constitutional Court regards local government’s developmental role in relation to housing provision as extending beyond the traditional conception thereof, to encompass positive obligations towards all of those who have been left without shelter in the city. Importantly, the court seems to hold this view regardless of the extent of the financial support that local government receives from the national and the provincial levels’.

²⁶⁸ *Blue Moonlight case* para 53.

CHAPTER 2

that section 4(2)(j) of the Municipal Systems Act requires local governments to: ‘contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.’ On this basis, the court stated that ‘[i]t would hardly be possible for the City to carry out its constitutional and legislative obligations without being entitled or obliged to fund itself in the sphere of emergency housing’.²⁶⁹ In addition, the court referred to section 23(1) of the Municipal Systems Act that imposes a duty on local government to undertake developmentally-oriented planning to achieve the objects of local government and to give effects to its developmental duties.²⁷⁰

Lastly, the court disputed the City’s argument that funding emergency accommodation for people evicted from privately owned land is beyond the ‘available resources’ of local governments.²⁷¹ Instead, the court said, irrespective of the intergovernmental processes and funding arrangements outlined in the Housing Code, the right to housing binds local government directly, and nothing stops them from using their own revenue to fund a housing programme (emergency accommodation) or to apply to the province for funds.²⁷² The court held further that the municipality was under a duty to plan and budget proactively for situations like these.²⁷³ The Constitutional Court found the City’s emergency housing programme unconstitutional and instructed the City to find alternative accommodation for the group and for other homeless people evicted from privately owned land.²⁷⁴

Before, dealing with the application of the judgment to the right to food it is important to note the divided responses which the judgment attracted. For example, some authors argued the judgement failed to go far enough. They based their concern on the failure of the court to develop the content and meaning of socio-economic rights; the reluctance to address the broader structural issues and the unwillingness to exercise ongoing oversight.²⁷⁵ Whereas, the judgment was also argued to go

²⁶⁹ *Blue Moonlight case* para 53.

²⁷⁰ *Blue Moonlight case* para 25.

²⁷¹ *Blue Moonlight case* para 69.

²⁷² *Blue Moonlight* para 67.

²⁷³ *Blue Moonlight* para 67.

²⁷⁴ *Blue Moonlight* paras 95-97.

²⁷⁵ Ray B ‘Evictions, Aspirations and Avoidance’ (2015) (7) *Constitutional Court Review*; Dugard J ‘Beyond Blue Moonlight: The Implications of Judicial Avoidance in Relation to the Provision of Alternative Housing’ (2015) (10) *Constitutional Court Review*; ‘Avoidance Remains Avoidance: Is it Desirable in Socio-Economic Rights

too far in terms of the financial implications it had on local governments.²⁷⁶ An analysis of these opposing views is beyond the scope of this dissertation.

A critical observation though is the Constitutional Court's expansion of the duties of local government in terms section 26(1) of the Constitution. The court relied heavily on the Housing Act and the Housing Code in defining the duties imposed on municipalities. In this regard the absence of a framework law on the right food can be argued to seriously compromise the development of the role that municipalities may fulfil towards the right to food. The precedent established in *Blue Moonlight*, is that local government cannot evade its responsibility on the basis that a function does not 'fall squarely' within the powers and functions allocated to local government in the Schedules of the Constitution, or through the assignment of statutory laws.²⁷⁷ Section 26(1) can be enforced against local government because the right derives from the Bill of Rights.²⁷⁸ However, the 'entire burden' for realising the right of access to housing cannot fall on local government alone. Only aspects that intersect with existing local government functions establishes a duty on local government with respect to realising the right of access to housing.²⁷⁹

If the approach of the court is then applied to section 27(1)(b) of the Constitution, it means that local government can be held directly accountable for realising certain aspects of the right to sufficient food. For example, local government functions that intersect with the right of access to sufficient food include functions such as municipal planning; street trading; markets; trading regulations as well as the provision of water services and the reticulation of gas and electricity for cold storage and the preparation of food.²⁸⁰

From the discussion, it is submitted that indeed the rights and obligations derived from the right to food provide a framework in which to hold the state accountable for realising the right to food. In

Cases?' (2015) (21) *Constitutional Court Review*; and Wilson S 'Curing the Poor: State Housing Policy in Johannesburg after Blue Moonlight' (2015) (21) *Constitutional Court Review*.

²⁷⁶ Van Bueren G 'Housing' in M H Cheadle et al (eds) *South African Constitutional Law: The Bill of Rights* (2014) 21-22 cited in De Visser (2015) 206.

²⁷⁷ De Visser J 'Multilevel Government, Municipalities and Food Security' (2019) Food Security SA Working Paper Series No. 005. DST-NRF Centre of Excellence in Food Security, South Africa 4.

²⁷⁸ De Visser J (2019) 4.

²⁷⁹ De Visser J (2019) 4.

²⁸⁰ De Visser J (2019) 10-14.

addition, research conducted by Durojaye and Chilemba during 2018 highlight how litigation can be used to improve state accountability on the right to food.²⁸¹ But the Courts are not able to address many of the structural hurdles that perpetuate poverty and inequality. For example, the ways in which the food system is compromised cuts across multiple levels. The latter includes the lack of resources to produce or access food, economic practices that breed exclusion and the monopolisation along the value chains, and the implication of state practices, regulations and policies that frustrate the informal trade sector etc. So this requires more, on the one hand Durojaye and Chilemba point out that South African civil society groups should establish a campaign on the right to food and file test cases to hold government accountable for its failure to realise the right to food; and on the other hand they argue that Chapter 9 institutions such as the South African Human Rights Commission (SAHRC), the Gender Equality Commission and the Public Protector all have important roles to play in holding the government accountable for the right to food. These institutions are constitutionally bound to monitor and report on the measures and steps taken by the government towards the realisation of socio-economic rights, including the right to food in the Constitution.²⁸² Moyo calls for civil society to take decisive action to ensure a framework law on the right to food.²⁸³ From these approaches it is apparent that civil society together with Chapter 9 institutions needs to assert the right to food against the state.

There is a marked difference between the right to housing and the right to food. Whereas the right to housing has a framework law which enables the court to delineate roles and responsibilities for this right, the right to food does not. In fact, the right to food is the only socio-economic right without a specific law ‘to give teeth to the constitutional provision on this right’.²⁸⁴ With respect to the right to housing it is argued to be a visible right one which can easily be claimed.²⁸⁵ For

²⁸¹ Durojaye E & Chilemba E ‘Accountability and the right to food: A comparative study of India and South Africa’ (2018) available at <https://foodsecurity.ac.za/wp-content/uploads/2018/06/CoE-FS-WP3-Accountability-and-the-right-to-food.pdf> (accessed 15 January 2019). They emphasise ‘although the right to food is not legally enforceable in India, the courts have been called upon to clarify the nature of the government’s obligation in this regard. Indian courts have been very creative by invoking other provisions of the constitution such as the rights to life and dignity to hold the government accountable for its failure to prevent hunger.’ 33.

²⁸² Durojaye E & Chilemba E (2018) 1-3.

²⁸³ Moyo B (2019) 1/1.

²⁸⁴ Durojaye E & Chilemba E (2018) 29-32.

²⁸⁵ Battersby J ‘Urban food security and the urban food policy gap’ (2012) available at https://www.mandelainitiative.org.za/images/docs/2012/papers/18_Battersby_Urban%20food%20security%20and%20urban%20food%20policy%20gap.pdf (accessed 12 January 2016).

example, not having a house may mean a person is deprived of shelter and susceptible to vulnerability these connections can easily be drawn. Arguably, the right to food is often subsumed by other rights because it is difficult to claim the right.²⁸⁶ The lack of access to food is not as apparent.²⁸⁷ It is not easy to make the connections between the many factors that culminate in food insecurity.²⁸⁸ So, for instance, it has been argued that the right to food is seldom prioritised by politicians because there is seldom protest action for food.²⁸⁹ This is partly attributed to people not understanding their right to food and how to claim their right from the state.²⁹⁰

3.3.6 Accentuating the link of the local government mandate and the right to food

From the above discussion on the international and regional instruments it is emphasised the ‘right to food’ encompasses a broad-ranging set of essentials. The essentials include:

- actively identify vulnerable populations and implement policies and programmes to improve their access to nutritious and adequate food;
- taking deliberate action to improve peoples’ capacity to feed themselves through secure access to, amongst other things, clean drinking water; land; means to producing nutritious food; and establish adequate systems of supply and storage;
- progressively improve methods of food production, conservation and distribution;
- ensuring the right to a healthy and sustainable environment by putting measures in place for greater participation of vulnerable groups in the planning, management, and preservation of the environment and the sustainable use of natural resources;
- achieving sustainable food and equitable agriculture investing by promoting women and opening up the agricultural sector to smallholders by non-discriminatory practices and secure access to resources and assets, including labour, land and water;
- taking steps to challenge the market-led approach to urban development and the food system, through the lens of sustainability and social justice; and
- introducing specific measures to facilitate access to livelihoods and security of tenure.

²⁸⁶ Molelekwa T ‘Accountability and the right to good food’ *Daily Maverick* 8 July 2018.

²⁸⁷ Even-Zahav E *Food Security and the Urban Informal Economy in South Africa: The State of Knowledge and Perspectives from street-Food* (Unpublished Master’s thesis, Stellenbosch University, 2016).

²⁸⁸ Even-Zahav E (2016) 1-5.

²⁸⁹ Molelekwa T (2018) 1/1

²⁹⁰ Molelekwa T (2018) 1/1

CHAPTER 2

The examination of the right to food in the South African legal framework confirmed that local government is included in the duty to realise the right to food. This means that together with the provincial and national government it must strive to achieve this right within its available resources. The nature and extent of this duty was argued to not to involve assigning additional duties to local government. Rather it was argued that the existing duties, namely, the local government powers and functions that intersect with the right to food must be exercised and performed in a matter that accords to the stated international and regional instruments, discussed earlier. The specific mandate of local government in implementing the ‘right to food’, will be comprehensively set out in Chapter three. And, the discussion will make specific recommendations to ensure that an integrated food systems approach is embedded in municipal strategic planning and service delivery.

The seven essentials, derived from the right to food, listed above that intersect with the local government mandate needs to be explained. For this purpose, the chapter presents a general approach on how the local government mandate intersects with the right to food through illustrating examples from cities across the world. These cities have introduced measures to interact with the right to food thus demonstrating the linkage between the local government mandate and the duty to realise the right to food. Additionally, the discussion in section 4 of this chapter, mentions how these cities have strategically used their regulatory powers to influence the ‘food system’ in their jurisdictions. The study does not aim to analyse the extent, or the scope or scale of these initiatives nor does it reflect on their success. The purpose for referring to these initiatives are to accentuate the link between the local government mandate and the right to food. It is acknowledged that little contextual information is provided for the discussion on the global initiatives. However, the discussion of these initiatives are contextualised within the local government development agenda set out in section 4 that follows this discussion. To gain greater clarity on the intersection of the local government mandate and the progressive realisation on the right to food reference will be made to how these cities have embedded a food systems approach in exercising their powers and performing their functions.

4 WHAT CAN BE DONE TO TACKLE FOOD INSECURITY?

This section will look at two issues. First, the role of local government to realise food security in the development agenda. Second, it will assess the local government levers available to sub-national actors to address food insecurity.

4.1 The role of local government to realise food security in the development agenda

4.1.1 Localising the development agenda

At an international level, the role of local government has become increasingly recognised as an important part of realising the development agenda.²⁹¹ When the Millennium Development Goals (MDGs) were introduced in 2000, the development agenda relied heavily on national government involvement and was primarily top-down with an insignificant role for local government.²⁹² However, the Sustainable Development Goals (SDGs) elevate the role of local governments and of the 17 adopted SDGs, SDG 11 is a clearly dedicated urban goal. SDG 11 is directed at cities ‘*to make cities and human settlements inclusive, safe, resilient, and sustainable*’.²⁹³ There is a noticeable shift to include local government in the development agenda.²⁹⁴ SDG11 together with several other SDGs are critical to achieving improved food security. This discussion is limited to a focus on SDG 2 that specifically draws on the aims and recommendations to address food security.

4.1.2 Sustainable Development Goal 2

The SDG 2, deals specifically with food security, ‘*to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture*’.²⁹⁵ The SDG 2 aims include:

- to end hunger by ensuring access to safe, nutritious, and sufficient food;

²⁹¹ Reddy S ‘Localising the sustainable development goals (SDGs) - The role of Local Government in context’ (2016) Vol 9 2 *African Journal of Public Affairs* 3-5.

²⁹² Reddy S (2016) 3-5.

²⁹³ Reddy S (2016) 3-5.

²⁹⁴ Cabannes Y & Marocchino C ‘Food and urban planning: The missing link’ in ‘*Integrating Food into Urban Planning*’ (2018) available at <https://www-jstor-org.ezproxy.uwc.ac.za/stable/pdf/j.ctv513dv1.8.pdf?refreqid=excelsior%3A32c4d911bf8de82fee120311d9ac98b5> (accessed 22 November 2018).

²⁹⁵ ODI (2015) 3-4.

- to end all forms of malnutrition to children under five years of age, adolescent girls, pregnant and lactating women, and older persons;
- to double the agricultural productivity and the incomes of small-scale food producers, particularly women, indigenous peoples, and family farmers;
- to secure equal access to land and other productive resources; and
- to ensure sustainable food production systems and implement resilient agricultural practices that help maintain ecosystems.

4.1.3 Recommendations to promote SDG 2

To promote the development of food security the High-Level Panel of Experts on Food Security and Nutrition (HLPE), was established in 2009.²⁹⁶ The HLPE contends that ‘to properly respond to food security the most pressing issue is not rural versus urban but how to foster a local geographic approach to the post-2015 agenda’.²⁹⁷ To promote SDG2 the HLPE asserts that a sustainable food system should at least comprise five elements, namely:

- it must be resilient to change including climate change, price inflation be accessible to all members of society;²⁹⁸
- it must enable and empower people to influence their environment and have choices over their food options; create accountability from states and/or other relevant parties;
- it must encourage organic farming and contribute to both the community and ecological health;
- it must support multiple forms of urban as well as rural food production and ensure that food processing facilities are available to farmers and processors; and

²⁹⁶ Committee on World Food Security (CFS) ‘HLPE - High Level Panel of Experts on Food Security and Nutrition’ (undated) available at <http://www.fao.org/cfs/cfs-hlpe/en/> (accessed 22 November 2018). The HLPE provides a science-policy interface to the CFS.

²⁹⁷ CFS (undated) 1/1. The HLPE fulfils as an essential element of the CFS reform and aim to facilitate policy debates and inform policy making by providing independent, comprehensive and evidence-based analysis and advice at the request of CFS

²⁹⁸ Cambridge Institute for Sustainability Leadership ‘Challenges in the global food system’ *University of Cambridge News* 11 December 2018. Experts point out that the cost of climate change on human health and the environment is greater than profits of the farming industry. They point towards evidence-based opportunities for businesses and policymakers that range from climate-smart food systems to international science advisory mechanisms.

- it must be integrated into the local communities through, events, markets, local restaurants, hospitals, schools, and public institutions.²⁹⁹

To achieve a sustainable food system requires a holistic approach to address food security. A '*food systems approach*' should be promoted for this task and will be discussed below.

4.1.4 'Food systems approach'

Before describing the '*food systems approach*' a definition of the food system is offered. The food system comprises all the processes associated with food production and food utilisation, such as growing, harvesting, packing, processing, transporting, marketing, and consuming of food.³⁰⁰ The food system includes the governance and economics of food production, its sustainability, the degree to which food is wasted, and how food production affects the natural environment.³⁰¹

The '*food systems approach*' describes the different components in the food system and the relationships between them. It analyses the impact of all the activities relating to the production, processing, distribution and utilisation of food, and the outcomes of food security.³⁰² Such analysis assists to understand the interplay between the socio-economic, environmental factors and the food system.³⁰³ Section 1 confirmed that food security is not simply about the availability of food. Food security is also about the affordability and the options of food that people can access.³⁰⁴ As a result, the focus is no longer on activities within the food production system alone but also on the outcomes of those activities related to the consumption, access and availability of food.³⁰⁵ This

²⁹⁹ United Nations Committee on World Food Security (CFS) High Level Panel of Experts '*HLPE Report on Nutrition and food systems Extract from the Report: Summary and Recommendations (11 September 2017)*' available at http://www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_S_and_R/HLPE_2017_Nutrition-and-food-systems_S_R-EN.pdf (accessed 22 November 2018).

³⁰⁰ Oxford Martin Programme on the Future of Food '*What Is The Food System?*' available at <http://www.futureoffood.ox.ac.uk/what-food-system> (accessed 22 November 2018).

³⁰¹ Oxford Martin Programme on the Future of Food (undated) 1/1.

³⁰² Van Berkum S, Dengerink J & Ruben R '*The 'food systems approach': sustainable solutions for a sufficient supply of healthy food*' (2018) available http://knowledge4food.net/wp-content/uploads/2018/07/20180630_FoodSystemsReport-WUR.pdf (accessed 22 November 2018).

³⁰³ Van Berkum S, Dengerink J & Ruben R (2018) 6-8.

³⁰⁴ Van Berkum S, Dengerink J & Ruben R (2018) 17-22.

³⁰⁵ Van Berkum S, Dengerink J & Ruben R (2018) 17-22.

CHAPTER 2

broader approach is essential for analysing the impact of interventions aimed at enhancing food security.

A food systems approach highlights the complexity of the food system and how the different subsystems interact with one another.³⁰⁶ A food systems approach helps in identifying the root causes and relationships within the food system.³⁰⁷ It helps to address the cause-effect patterns within the system through the feedback from other parts within the system.³⁰⁸ These insights assist in policy formulation and generate awareness for state interventions.³⁰⁹

With respect to stakeholder dialogue and consultation a food systems approach is argued to provide a mechanism that accommodates multiple stakeholders.³¹⁰ For instance, there are broadly six categories of food system stakeholders at a local scale.³¹¹ The six categories comprise production and support, access and health, infrastructure and supply chain, emergency food, policy, social justice, and researches. Arguably, adopting a broad stakeholder approach to understand the food system also enables a multi-disciplinary response to the presenting problems in a particular local food system.³¹² Furthermore, it is argued that a food systems approach particularly promotes the inclusion of the private sector to strive for a more sustainable and equitable food system.³¹³ This broad stakeholder approach possibly calls for integrated and developmental planning that entrenches broad consultation on food matters in the local governance systems.

Arguably local governments may address many of the problems in the food system which leads to the question of how local government can do this? Adopting, a food systems approach needs to be used to progressively realise the right to food. Evaluating local government powers and functions across the world is necessary to answer this question. Therefore, the next section will

³⁰⁶ Van Berkum S, Dengerink J & Ruben R (2018) 23-25.

³⁰⁷ Van Berkum S, Dengerink J & Ruben R (2018) 23-25.

³⁰⁸ Van Berkum S, Dengerink J & Ruben R (2018) 23-25.

³⁰⁹ Van Berkum S, Dengerink J & Ruben R (2018) 23-25.

³¹⁰ Food Access in Michigan 'Food System Stakeholders' available at <https://www.faimproject.org/research/food-system-stakeholders/> (accessed 15 January 2019).

³¹¹ Food Access in Michigan (2018) 1/1.

³¹² Food Access in Michigan (2018) 1/1.

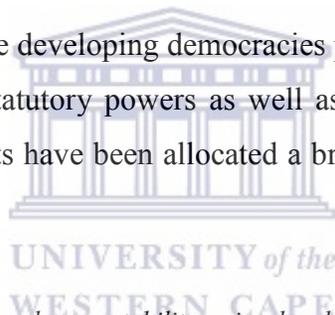
³¹³ Van Berkum S, Dengerink J & Ruben R (2018) 23-25.

government powers are steadily increasing and they can influence and shape their territorial areas by using powers conferred to them.³²⁰

In the developing world, decentralised powers to local government were promoted to bring about greater participation in the development planning and management, and to promote national unity.³²¹ The precise objectives and outcomes of the decentralisation programme in Africa vary from one country to the next.³²² In most cases, the overall goal was to bring governance closer to the people and make it more democratic, accountable and responsive to their needs, whether this was achieved in practice is a separate issue.³²³ In this regard, local government ought to perform an important role in creating inclusive and resilient living areas.³²⁴

4.2.2 Linking local government levers to food security

In keeping with global trends, some developing democracies provide for local government with a mixture of original and derived statutory powers as well as strong executive decision-making powers.³²⁵ Many local governments have been allocated a broad range of functions and powers,



³²⁰ Shah A (ed) *'Public sector governance and accountability series- local governance in developing countries'* (2006) available at <http://siteresources.worldbank.org/PSGLP/Resources/LocalGovernanceinDeveloping.pdf> (accessed 22 November 2018). Ul Haque A *'Theoretical Perspective of Local Government - Literature Review'* (2012) available at https://www.researchgate.net/publication/277142175_Theoretical_Perspective_of_Local_Government_-_Literature_Review (accessed 22 November 2018).

³²¹ Shah A (ed) (2006) 16-22.

³²² Fombad C *'Constitutional entrenchment of decentralisation in Africa: an overview of trends and tendencies'* (2018) available at https://repository.up.ac.za/bitstream/handle/2263/65241/Fombad_Constitutional_2018.pdf?sequence=1&isAllowed=y (assessed 22 November 2018). Also see, Stanton A *'Decentralisation and Municipalities in South Africa: An Analysis of The Mandate to Deliver Basic Services'* (unpublished PhD thesis, University of KwaZulu-Natal, Pietermaritzburg, 2009) 31-33.

³²³ Steytler N *'Domesticating the Leviathan: Constitutionalism and federalism in Africa'* (2016) 24.2 *African Journal of International and Comparative Law* 272–292.

³²⁴ Steytler N (2016) 272–292.

³²⁵ The Global Taskforce of Local and Regional Governments *'What local and regional governments bring to the global table- legitimacy, experience, organization'* (2016) available at https://www.uclg.org/sites/default/files/what_local_and_regional_governments_bring_to_the_global_table.pdf (accessed 15 January 2019). Also refer to UCLG *'Development Cooperation and Local Government'* (2013) available at <http://localizingthesdgs.org/library/42/Development-Cooperation-and-Local-Government.pdf> (accessed 15 January 2019); and United Nations Human Settlements Programme (UN-HABITAT) *'International guidelines on decentralisation and the strengthening of local authorities'* (2007) available at http://www.cib-uclg.org/sites/default/files/un_habitat_guidelines_decentralisation_strengthening_1_a.pdf (accessed 15 January 2019).

many of which, have a direct or implicit bearing on food security.³²⁶ For example, local authorities exercise governance functions, regulatory powers, purchasing powers, financing powers, and the provision of infrastructure and services.³²⁷

Local authorities can use their governing powers to respond to food insecurity by formulating policies and strategies.³²⁸ In addition, they can establish committees to focus on food security objectives.³²⁹ The regulatory powers concern a range of functions. It relates to the regulation of land-use, business trade, licensing for micro-enterprise and issuing of permits for street trading, as well as regulation of health and food safety.³³⁰ A few examples will be used to demonstrate the linkage to the food system. Land-use regulation is critical for the protection of agricultural land and the use of public spaces to facilitate agricultural production (for example, through the establishment of community gardens and home gardens) and the accessibility to fresh fruit and vegetables (for example, through the establishments of farmers markets). Regulation of the business trade can be used for the protection of shops that provide day-to-day food needs (especially fresh food and vegetables). Regulation of property tax incentives and rebates can be used to promote the availability of land for food production and the support of retail stores that sell fresh produce. With respect to purchasing powers, local authorities can adopt procurement policies that promote the purchase of nutritious local food produce.³³¹ Local governments often have revenue-raising powers for financing its' business and administrative operations. This offers local authorities some discretion in terms of developing policies to respond to priorities for their jurisdictions.³³² Moreover, local authorities can charge fees from street vendors to trade as well as charge development costs for developments within their areas to generate income and to ensure the maintenance of infrastructure. The provision of infrastructure, bridges, railways, roads, and

³²⁶ Brynne A 'Working with local government on food policy: A toolkit for civil society. Vancouver, B.C.: BC Food Systems Network' (2018) available at <https://gateway2.phabc.org/wp-content/uploads/sites/2/2018/08/Food-Policy-Toolkit-FINAL-1.pdf> (accessed 15 January 2019). Also refer to Slade C *Critiquing the capacity of local government to respond to complex sustainability challenges: two food security case studies* (unpublished PhD thesis, University of the Sunshine Coast Australia, 2014).

³²⁷ Smit W 'Urban governance and urban food systems in Africa: Examining the linkages' (2016) 58 *Elsevier- Cities* 81-82 available at <https://www.africancentreforcities.net/wp-content/uploads/2016/05/SMIT-Urban-governance-and-urban-food-systems-in-Africa.pdf> (accessed 15 January 2019).

³²⁸ Smit W (2016) 81-82.

³²⁹ Smit W (2016) 81-82.

³³⁰ Smit W (2016) 81-82.

³³¹ Smit W (2016) 81-82.

³³² Brynne A (2018).

provisions of services such as sanitation (both sewer and refuse), water, electricity, gas, are essential for the processing, distribution, and storage of food.³³³

The aforementioned provides a global overview of the local government powers and functions linked to food security. Each country is different, and each local authority is different but these countries and local authorities offer important global trends that can be used as examples for local government in South Africa. What follows is an examination of the example by local authorities to enhance food security. The discussion will be structured along four themes, namely, (a) strategic and responsive governance; (b) local land-use planning and regulation of the built environment and transport infrastructure; (c) local trade; and (d) local environmental and health functions.

4.2.3 Strategic and responsive governance

The literature demonstrates that at least three strategic governance initiatives can be employed to strengthen food governance in local or regional areas. This relates to the adoption of a food charter, the establishment of a food policy council (FPC), and the piloting of community food system assessments (CFSA). These initiatives will be presented below.

(a) A food charter

There is no single definition for a food charter. A food charter mostly contains a set of principles which bring together the local authority, community, private sector and other actors pursuing an agenda to increase food security within their localities.³³⁴ A food charter promotes the visions, actions, and strategies for civic engagement in the food system.³³⁵ It can be an effective means to address the challenge of food insecurity. Also, it can be contained in the municipal development

³³³ Smit W (2016) 81-82.

³³⁴ Hardman M & Larkham P 'The rise of the 'food charter': A mechanism to increase urban agriculture' (2014) 39 *Elsevier- Land Use Policy* 400-403 available at https://ac.els-cdn.com/S0264837714000507/1-s2.0-S0264837714000507-main.pdf?_tid=8eb65cce-a1f6-4fd5-9b6a-639e0b7c5127&acdnat=1547722149_3b1f3a9d54cef4913765caef6e586066 (accessed 15 January 2019).

³³⁵ Hardman M & Larkham P (2014) 400-403. 'Food charters emerged in Canada in the 2000s, with beacons such as Toronto (2000) and Vancouver (2007), and have expanded swiftly since then to at least 16 more locales. Since the late 2000s they have spread into the US (Philadelphia, 2008; Durham Region, North Carolina, 2009; Michigan Good Food Charter, 2010; etc.) and into the UK with the landmark London Food Charter (2010), followed by cities such as Plymouth (2010), Newcastle (2013), Birmingham, Cambridge and Oxford (2014). They have reached Australia as well'.

CHAPTER 2

plans of elected councils. This will bind a local authority to allocate appropriate resources to give effect to the food charter.³³⁶ A food charter facilitates integrated food planning across departments in a local government.

Adoption of a food charter by council resolution commits the local authority to crucial outcomes that include: norms and standards from which the local authority may not detract; mechanisms to hold local authorities accountable; entrench a people-centred food policy; establish public participation with the community on food security matters; and development of a transversal food strategy to direct the local authority in its territorial planning for improved food and nutrition outcomes. In addition, public spaces can be used to encourage exercise and movement as well as food gardens.³³⁷

(b) A food policy council

To give effect to the food charter a local authority can establish a food policy council (FPC). An FPC is a structured body that may be able to implement the food strategy derived from the food charter. An FPC usually includes multiple stakeholders. The purpose of the broad representation stakeholders is to contribute to cohesion and alignment amongst multiple agencies.³³⁸ Participation of various representatives is accommodated in these structures, such as the federal/national government, the state/provincial government, parliamentarians; civil society; local communities; the private sector; and the academic community. Once established, the FPCs can serve as a mechanism to ensure that institutional governance processes of the local government and their capital and financial resource allocations are aligned to the food security policy statements. In this way, the strategic imperatives are tracked against the implementation of its deliverables. Thus,

³³⁶ American Planning Association (APA) 'Planning for Food access and community-based food systems: A national scan and evaluation of local comprehensive plan' (2012) 22-43 available at https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/research/foodaccess/pdf/foodaccessreport.pdf (accessed 15 January 2019).

³³⁷ APA (2012) 22-43. Also refer to Baker L & Zeeuw H (ed) 'Urban food policies and programmes' in Zeeuw H & Drechsel P 'Cities and agriculture developing resilient urban food system' (2015) 34-35 available at <http://www.ruaf.org/sites/default/files/2.%20urban%20food%20policies.compressed.pdf> (accessed 15 January 2019).

³³⁸ Montague M (2011) 33-35.

CHAPTER 2

FPCs may engage in many initiatives ranging from production to processing; trade, retail, planning and social protection.³³⁹

Without a dedicated FPC it may be difficult to integrating food insecurity into the municipal public policy, as many municipal departments have a silo approach to deal with food security. For instance, in establishing the Baltimore's Food Policy Task Force the local authority discovered that several of the city's agencies had differing food policy agendas.³⁴⁰ Consequently, the municipality appointed a food policy director (within the planning office) to meet and engage regularly with the Food Policy Advisory Committee, which was established to help implement the task force recommendations.³⁴¹ This arrangement resulted in two successful initiatives, namely, the creation of a virtual supermarket and the zoning for urban farming.³⁴² Thus FPCs can fulfil an important role in bringing together diverse representation of communities to provide input into crafting of policies or amending existing policies. A further example that can be used is the Toronto FPC, established in 1991. The Toronto Food Council was established to institutionalise contributors emergency food programmes and look at the systemic causes of hunger and food insecurity. The Toronto Food Council actively engages the City Council on policies and programmes that will increase food security and served as the community reference group for the food strategy.³⁴³

(c) A dedicated city food supply agency

The City of Belo Horizonte established a dedicated food agency, namely, the Municipal Secretariat of Food Supplies (Secretaria Municipal de Abastecimento, SMAB) in 1992 to address the high prevalence of food insecurity.³⁴⁴ The purpose of SMAB was to achieve universal access to

³³⁹ Montague M (2011) *Local Government and Food Security: An Evidence Review: What We Know About What Works And What Might Work* p 33-35 available at http://www.vigar.org.au/Resources/Library/LocalGovernment_and_Food_Security-An_Evidence_Review_aspx (accessed 14 October 2015).

³⁴⁰ Johns Hopkins Bloomberg School of Public Health 'Baltimore Food Policy Advisory Committee' (2009) available at '<https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/projects/BFPAC/index.html>' (accessed 15 June 2016).

³⁴¹ Johns Hopkins Bloomberg School of Public Health (2009) 1/1.

³⁴² Johns Hopkins Bloomberg School of Public Health (2009) 1/1.

³⁴³ Baker L & Zeeuw H (2015) 28.

³⁴⁴ FAO 'Urban and Peri-urban Agriculture in Latin America and the Caribbean-Belo Horizonte' (2015) available at http://www.fao.org/ag/agp/greencities/en/GGCLAC/belo_horizonte.html (accessed 2 August 2017).

CHAPTER 2

affordable healthy and nutritious food for all citizens.³⁴⁵ As part of this aim, the SMAB set out to prevent and reduce malnutrition among vulnerable groups; bring food to parts of the city that were neglected by commercial outlets; and increased food production.³⁴⁶

The SMAB was assigned its own administrative structure and budget, with the purpose of mainstreaming food security into the municipal public policy.³⁴⁷ Moreover, an advisory body was established to advise in the design and implementation of a new food system, namely, the Conselho Municipal de Abastecimento e Seguranca Alimentar (COMASA). The COMASA comprises of 20 members with representatives from different governmental orders and institutions, food producers and distributors, labour unions of agricultural and industrial workers, and civil society.³⁴⁸

The city agency introduced many initiatives to improve food security under three programmes.³⁴⁹ First, to provide supplementary food assistance, second to ensure equitable food access by regulating the price of healthy foods and linking the private sector to areas with poor food access, and third by providing technical and financial incentives to local and small-scale farmers to grow, distribute, and market their products (through the establishment of supply chain connections between rural farmers and urban consumers and promoting intra- and peri-urban food production).³⁵⁰ These programmes progressively improved food access and which illustrates the value in establishing a city food supply agency.³⁵¹

(d) A community food assessment

Local authorities can proactively tackle the food and nutrition data gap by conducting community food assessments.³⁵² The data can be used to gain information from the private sector and other state organs to improve insight into the impact of the private sector within different locations.

³⁴⁵ FAO (2015) unnumbered.

³⁴⁶ FAO (2015) unnumbered.

³⁴⁷ FAO (2015) unnumbered.

³⁴⁸ FAO (2015) unnumbered.

³⁴⁹ FAO (2015) unnumbered.

³⁵⁰ FAO (2015) unnumbered.

³⁵¹ FAO (2015) unnumbered. Also see Halliday J, Platenkamp & Nicolarea Y 'A menu of actions to shape urban food environments for improved nutrition, GAIN, MUFPP and RUAF.' (2019).

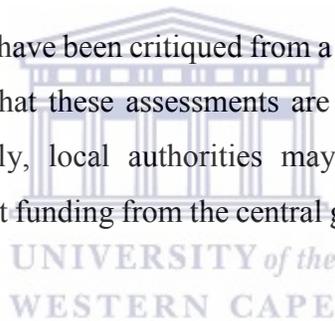
³⁵² Information Brief 'Food Systems Assessments -Theory and Background Information' (undated) available <http://sites.tufts.edu/foodeconomyfinalreport/files/2013/04/Food-Systems-Assessments.pdf> (accessed 15 January 2019).

CHAPTER 2

Ultimately, the data collection is to increase intelligence about the structural causes of food insecurity. There are eight types of community food assessments that can be used for this purpose mentioned below:

- foodshed assessment;³⁵³
- community food security assessment;³⁵⁴
- community food asset mapping;³⁵⁵
- food desert assessment;³⁵⁶
- local food economy assessment;³⁵⁷
- land inventory food assessment;³⁵⁸
- food industry assessment;³⁵⁹ and
- community food system assessments.

The above-mentioned assessments have been critiqued from a financial and value-add perspective. For example, it has been argued that these assessments are very costly to conduct and require highly specialised skills. Arguably, local authorities may not be able to implement these assessments because they do not get funding from the central government for such research. There



³⁵³ A foodshed assessment may be used to evaluate the existing and future potential for local food procurement within a geographic area and to measure the needs for feeding a given population.

³⁵⁴ A community food security assessment measures the extent to which communities have adequate access to affordable, healthy food. It typically evaluates health indicators in low-income communities and the need and opportunities for developing infrastructure and programming that would increase healthy food access and affordability

³⁵⁵ A *community food asset mapping* is a participatory model that engages community members in plotting the assets in their food system in the form of a map. Using workshops and focus groups, community members evaluate the positive assets within their food system, and identify opportunities for future collaboration that will further strengthen the food system.

³⁵⁶ A *food desert assessment* evaluates areas where there is inadequate access to supermarkets and grocery stores, typically presenting the data through maps.

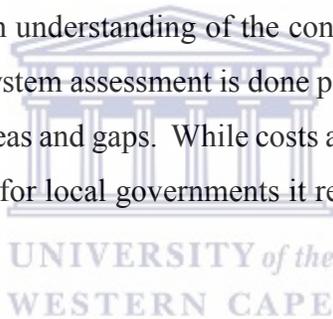
³⁵⁷ A *local food economy assessment* is a model that evaluates all components of the food system with regard to the existing and possible local food businesses and infrastructure.³⁵⁷ It frames strengthening the food system as an economic development strategy that engages stakeholders on community and municipal levels.

³⁵⁸ A *land inventory food assessment* is typically utilized for evaluation of urban land that is currently unused and suitable for urban agriculture. This assessment generally evaluates the productive potential of land and the extent to which the land, if made productive, can feed the community.

³⁵⁹ A *food industry assessment* evaluates the key food industries in an area where there are local and non-local operators and owners.³⁵⁹ Such a model can help investors to identify promising markets or identify existing or potential industry clusters in the food sector.

is scepticism about the value the information offers in practice.³⁶⁰ Yet there is a view that these assessments may help to better understand the different elements of the food system.³⁶¹

Given the opinion on the practicality of the eight types of assessments the discussion is limited to focus on one of these, namely, the CFSA because it has been shown to be rather useful in practice. The CFSA may be used to analyse and evaluate the entire food system. A CFSA identifies hazards and threats to life, health, and livelihoods within a particular context. For example, a CFSA conducted in Louisville, Kentucky, during 2007 utilised a year-long process that included community meetings, food-system research, and mapping of the city's food assets. The process identified key recommendations for the city to improve food security and catalysed the creation of new community infrastructure. The International Federation of Red Cross and Red Crescent Societies mentions that a comprehensive food system assessment not only identifies the 'needs of a community' but also provides 'an understanding of the context and dynamics' that has led to a crisis. In instances where a food-system assessment is done periodically, it facilitates the tracking of progress within identified risk areas and gaps. While costs and skills required to conduct a food-system assessment can be an issue for local governments it remains a valuable tool for evidence-based policymaking.



From the three strategic and responsive governance initiatives presented above the discussion will now turn to the regulatory and planning functions that local authorities exercise.

4.2.4 Local land-use planning and regulation of the built environment and transport infrastructure

Land-use policies are particularly important in facilitating healthy built environments that include food supply and equitable access.³⁶² For example, urban planning can influence the location and establishment of urban agriculture activities, such as community gardens and fresh food stands. These activities usually result in economic and social benefits that include the productive use of

³⁶⁰ Information Brief (undated) 1-5.

³⁶¹ Information Brief (undated) 1-5.

³⁶² Slade C, Baldwin C & Budge T 'Urban planning roles in responding to food security needs' (2016) Vol 7 *Journal of Agriculture, Food Systems, and Community Development* 36.

CHAPTER 2

vacant spaces, poverty alleviation, and improved health outcomes.³⁶³ For example, the District Municipality of Lurigancho Chosica in Peru implemented a programme ‘Chacrita Productiva’ which sought to encourage urban agriculture as a strategy to advance social inclusion, gender equity, job creation, food security, community participation, environmental protection and poverty alleviation.³⁶⁴ The programme set up 39 organic allotment gardens (family, community and institutional) which benefitted 1128 urban farmers.³⁶⁵ In fact the literature on ‘sustainable food security’ promotes urban agriculture as an essential mechanism to improve food access as well as social inclusion and environmental sustainability.³⁶⁶

For urban agriculture to be successfully practised requires amongst other things, appropriate zoning and design guidelines in local government planning schemes.³⁶⁷ The City of Waterloo in Canada, for example, developed urban agriculture guidelines in its local Official Plans, and the City of Dar es Salaam in Tanzania provides a specific land zoning category for urban agriculture.³⁶⁸ Furthermore, Kampala City in Uganda integrates space for home and community gardening in new public housing projects and slum-upgrading schemes.³⁶⁹

The City of Lima in Peru during 2012 approved a municipal ordinance that provided for zoning regulations to raise small livestock as well as permit urban farming in a variety of intra-urban areas.³⁷⁰ Urban agriculture is permitted: on rooftops, terraces, backyards, home gardens community and school farms, plots sponsored by public and private institutions, community gardens, agro-parks etcetera. The Greater London Authority incorporated urban agriculture in its Development Plan which commits the city to support urban agriculture especially in locations near food insecure and vulnerable communities and obliges local authorities to include space for urban agriculture in local spatial planning.³⁷¹ As part of this initiative it provides for the accommodation

³⁶³ Slade C, Baldwin C & Budge T (2016) 36.

³⁶⁴ Santandreu A ‘Urban agriculture in Lima metropolitan area- one (short) step forward, two steps backwards- the limits of urban food planning’ in Canbannes Y & Marocchino C (eds) ‘*Integrating food into urban planning*’ (2018) 121-122.

³⁶⁵ Santandreu A (2018) 122-124.

³⁶⁶ UN habitat III (2016) 1-4 and Santandreu A (2018) 122-124.

³⁶⁷ Santandreu A (2018) 122-124.

³⁶⁸ Slade C, Baldwin C & Budge T (2016) 36-37.

³⁶⁹ Baker L & Zeeuw H (2015) 34.

³⁷⁰ Santandreu A (2018) 123-125.

³⁷¹ Baker L & Zeeuw H (2015) 34.

CHAPTER 2

of zoning regulations to allow front and back yard gardening and/or small stock livestock keeping and community gardening in residential areas.³⁷² The City of Rotterdam adopted a policy in 2012 aligned to its ‘Agenda for Sustainable Rotterdam’ that obliged the city to abolish land-use regulations that hinder initiatives for urban agriculture.³⁷³ The City of Rotterdam stimulated the creation of new community gardens and rooftop food gardens in dense urban districts. It made available municipal land for the creation of intra- and peri-urban farms and provided an inventory of vacant open spaces.³⁷⁴

Local spatial planning and land-use powers may be innovatively used to improve children’s diets and curtail the intake of fast foods for children. For example, some local authorities are empowered to design and spatially plot areas that prohibit the development of fast-food restaurants.³⁷⁵ For example, the City of Detroit banned the development of fast-food restaurants within 152 metres from the nearest school.³⁷⁶ The Los Angeles City Council put a one-year ban on new fast-food restaurants opening in one of the city’s poorest areas in order to give the City more time to attract more fresh food stores to open for business.³⁷⁷ For example, the London Borough of Tower Hamlets adopted a policy to regulate the establishment of fast-food takeaways in the city centre to specific conditions.³⁷⁸

Apart from the local spatial and land-use planning the built environment and infrastructure is intricately related to food access and food distribution. Infrastructure forms a critical role in the way that food is distributed which includes transportation infrastructure and storage requirements.³⁷⁹ The key interconnection of the urban transport system and food security related

³⁷² Zeeuw H & Dreschel Z ‘*Cities and Agriculture Developing Resilient Urban Food Systems*’ (2015) available at http://www.iwmi.cgiar.org/Publications/Books/PDF/cities_and_agriculture-developing_resilient_urban_food_systems.pdf. (accessed 2 August 2018).

³⁷³ Baker L & Zeeuw H (2015) 36.

³⁷⁴ Baker L & Zeeuw H (2015) 36.

³⁷⁵ Public Health Law Centre (2015). Policy Options for Local Governments in Kansas: Increasing Access to Healthy Food available at <http://publichealthlawcentre.org/resources/policy-options-local-governments-kansas-increasing-access-healthy-food-2015> (accessed 14 October 2015).

³⁷⁶ Broad Leib M (2013) 339-340.

³⁷⁷ Broad Leib M (2013) 339-340.

³⁷⁸ Baker L & Zeeuw H (2015) 37. The policy restricts the location of fast-food takeaways in the city centre where the total fast-food takeaways does not surpass 5 percent of the total number of shops, there must at least be non-food shops on both sides and it should be within a 200 meter zone of a school.

³⁷⁹ Smit W (2016) 83.

CHAPTER 2

to the provisioning and maintenance of roads, managing traffic, and ensuring the roadworthiness of vehicles.³⁸⁰

Infrastructure is a serious problem for developing countries and negatively impacts food security.³⁸¹ With regard to transport infrastructure, a study of 14 cities in Africa found that the networks of paved roads and associated traffic control facilities are poor.³⁸² Furthermore in sub-Saharan Africa, limited infrastructure and transport services have occasionally disrupted food production and circulation.³⁸³ Notably, the deficient management of basic safety standards of vehicles and routine vehicle inspections are failing and an element of petty corruption by police officers on the road was witnessed.³⁸⁴ Also food distribution networks and taxi drivers are often subjected to state clampdowns.³⁸⁵

Moreover, well-functioning infrastructure is critical for the business operations of small-scale farmers and street traders.³⁸⁶ The development of infrastructure should include water and sanitation facilities, energy, storage, terminal and retail market infrastructure.³⁸⁷ For example, Cebu City in the Philippines, implemented the following interventions to improve the market: improved the supply of clean water; improved the personal hygiene of food vendors and the hygiene of sales equipment and sites by providing water points and toilets; improved the removal of refuse from markets and points of sale; improved communication routes between points of urban and peri-urban food production and markets; and between markets and outlying districts (places of consumption and of residence).³⁸⁸

³⁸⁰ Smit W (2016) 83.

³⁸¹ Maxwell et al *Urban Livelihood, and food and nutrition in Greater Accra, Ghana* cited in Matusschke I (2009) 6.

³⁸² Smit W (2016) 83.

³⁸³ Smit W (2016) 83.

³⁸⁴ Smit W (2016) 83.

³⁸⁵ Smit W (2016) 83.

³⁸⁶ Matusschke et al (2009) 1-7.

³⁸⁷ Matusschke et al (2009) 1-7.

³⁸⁸ Food and Agriculture Organization of the United Nations (2003) '*A briefing guide for mayors, city executives and urban planners in developing countries and countries in transition*' available at <http://www.fao.org/3/a-y4312e.pdf> (accessed 15 January 2019).

CHAPTER 2

It is globally recognised that the creation of improved livelihoods facilitates food access.³⁸⁹ The next section will look at local authorities' interventions to strengthen the informal/and informal food economy (street traders, hawkers, small-scale farmers).

(a) Local trade

To strengthen the informal sector some local governments have implemented progressive laws to improve food access.³⁹⁰ For example, the City of New York developed the Green Carts programme that provides special licences to vendors selling raw fruits and vegetables.³⁹¹ However, an assessment on the efficacy of the Green Carts programme found that as a result of its overregulation there was poor uptake by vendors.³⁹²

Further, in Southern Africa, it was established that the expansion of supermarkets constrained the informal sector.³⁹³ This has occurred even though informal food retailers, whether on pavements or in markets, have positively provided food access to low-income households. The informal retailers have low overheads and sell food products in small units rather than bulk sale and often provide items on credit.³⁹⁴ In this regard the City of Lusaka in Zambia has taken positive steps to address the problem of supermarket expansion.³⁹⁵ In spite of supermarket expansion, the informal food sector has maintained overall dominance in the urban food economy and continue to account for two-thirds of consumer food expenditure.³⁹⁶ The City of Lusaka achieved this by undertaking huge public market construction projects since 1964 that are able to house large-scale market stalls. Furthermore, the City allocated funds towards locating a bus station near the trading areas to support the market. In addition, in 2007 legislation was developed, namely, the Markets and Bus Station Act to deal with the management and representation of informal markets, transport networks and bus stations, and to give consumers, vendors and other stakeholders the opportunity

³⁸⁹ Matusschke et al (2009) 1-7.

³⁹⁰ GSAPP (2011) 12.

³⁹¹ GSAPP (2011) 17-18.

³⁹² GSAPP (2011) 17-18.

³⁹³ Battersby J & Watson V 'Improving urban food security in African Cities- Critically assessing the role of informal retailers' in Canbannes Y & Marocchino C (eds) *'Integrating food into urban planning'* (2018) 187-188.

³⁹⁴ Battersby J & Watson V (2018) 204.

³⁹⁵ Battersby J & Watson V (2018) 204.

³⁹⁶ Battersby J & Watson V (2018) 204.

to participate in decision-making around these facilities. Since then more wholesale and cold-storage facilities were planned.³⁹⁷

The foregoing presents alternative methods used by local authorities to address the corporate dominance of the food system on the one hand but also to ensure greater access to nutritious foods. Apart from those examples to improve informal food retail there are other mechanisms used by local authorities that fall within the concept of ‘alternative food networks’ (AFN). An AFN may be defined as: ‘the systems or channels of food production, distribution and consumption which are built upon the re-connection or close communication between producer, produce, and consumer, allowing for the development of new forms of relationship and governance of the actors’ network and also enhancing a re-distribution of value for primary producers’.³⁹⁸ From the definition it may be deduced that an AFN is a mechanism to ensure diverse supply chains that better connect local farmers within the agricultural value chains and the improved distribution of nutritious and affordable food. There are different ways to establish AFNs roughly five examples will be mentioned.³⁹⁹ For example, fair trade practices; public sector procurement; community food supply projects (public-private partnerships); farmers markets; and initiatives to promote local food. These will be discussed below.

Some local authorities develop by-laws to positively shape their food systems by indorsing ‘fair trade’ practices.⁴⁰⁰ This improves local economic development that benefits their communities and makes consumers conscientious purchases. To achieve this, local authorities need to establish an

³⁹⁷ Battersby J & Watson V (2018) 204.

³⁹⁸ Hernandez J ‘*Alternative Food Networks: concept, typology and adaptation to the Spanish context*’ (2009) available https://www.google.com/search?hl=en-ZA&authuser=0&ei=xaJFXIX2BISX1fAPxriLEA&q=alterntive+food+network%3A+concepts%2C+typology+and+adaptation+to+the+spanish+context+&eq=alterntive+food+network%3A+concepts%2C+typology+and+adaptation+to+the+spanish+context+&gs_l=psy-ab.3...31268.58556..58872...4.0..0.1000.32398.3-5j19j28j5j1.....0.....1..gws-wiz.....35i304i39j0i13j0i13i30j33i22i29i30j33i21j33i160.Jt3UBGJh7Vw (accessed 15 January 2019).

³⁹⁹ Hernandez J (2009) 376-378.

⁴⁰⁰ According to the World Fair Trade Organization (WFTO) the term ‘fair trade’ is defined as ‘... a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers-especially in the South’ available at <http://www.wfto.com/fair-trade/definition-fair-trade> (accessed 14 October 2016). Food Smart Cities Development ‘*Food Smart Cities for Development Recommendations and Good Practices*’ (2016) available at <http://www.milanurbanfoodpolicypact.org/wp-content/uploads/2017/02/FSC4D-Recommendation-and-good-practices.pdf> (accessed 14 October 2016).

CHAPTER 2

enabling environment that fosters trading of businesses, procurement regulations, optimal use of markets and open spaces within the municipal jurisdiction.⁴⁰¹ Local authorities often have the ability to regulate business, trade and occupations, and can enter into contractual agreements to promote fair trade. They can use these powers to increase ‘healthy food’ availability for their communities by permitting the use of farmer markets in certain spaces and by removing licence fees for farmlands selling fresh fruit and vegetables.⁴⁰²

Alternatively, local authorities can include in their procurement practices preference for purchasing locally grown food products.⁴⁰³ They can adopt a fair trade policy that ensures the fairness of trade terms to the farmers’ producing and selling fresh foods and the fair terms of employment for farm labourers working in the agricultural sector.⁴⁰⁴ Local authorities can also use by-laws to facilitate ‘healthy food’ access in retail markets located within their jurisdiction. For example, the Minneapolis City adopted an ordinance, namely, Minneapolis Staple Food Ordinance to ensure its’ residents have access to staple diets.⁴⁰⁵ The ordinance required food such as fruits, vegetables, meat, poultry, fish, bread and dairy to be stocked by supermarkets under their jurisdiction.⁴⁰⁶ The City of Malmö in Sweden established a food procurement scheme for restaurants at schools, nurseries and service centres that focuses on reducing the amounts of meat, minimising intake of junk food, increasing organic foods and transport efficiency.⁴⁰⁷

Entering into public-private partnerships can increase community food supply especially in areas where accessing the distribution of nutritious food is difficult. In this regard, two case studies prove the benefit to poorer communities. For example, the City of Baltimore entered into a public-private partnership in which the city worked with a local grocery chain to deliver groceries to public

⁴⁰¹ Food Smart Cities Development (2016) 1-7.

⁴⁰² Public Health Law Centre (2015) Policy Options for Local Governments in Kansas: Increasing Access to Healthy Food available at <http://publichealthlawcentre.org/resources/policy-options-local-governments-kansas-increasing-access-healthy-food-2015> (accessed 14 October 2015).

⁴⁰³ PHLC (2015) 1-10.

⁴⁰⁴ PHLC (2015) 1-10.

⁴⁰⁵ Staple Food Ordinance No. 2008-Or-015 which amends the Minneapolis Code of Ordinances, Title 10, Chapter 203.20 (c) to require licenced grocery stores to stock a minimum number of perishable and non-perishable. Grocery Stores.

⁴⁰⁶ Broad Leib M (2013) 334-340.

⁴⁰⁷ Baker L & Zeeuw H (2015) 37.

CHAPTER 2

libraries in the poorer communities.⁴⁰⁸ The customers could place their orders online by using the free library computers and could collect their groceries from the library.⁴⁰⁹ Philadelphia City entered into a public-private partnership to fund the Pennsylvania Fresh Food Financing Initiative (FFFI) to provide grants and loans to finance supermarkets and other food retailers in neighbourhoods lacking access to healthy food.⁴¹⁰

To promote buying local food, the City of Rosario in Argentina has created municipal agricultural land banks to bring producers in need of agricultural land into contact with owners of vacant land.⁴¹¹ The City of Rosario also increased municipal taxes on idle urban land and reduced the taxes of landowners who make unused land available for farming.⁴¹² The City of Cape Town provides technical assistance, fencing, basic infrastructure such as water connection and storage room, as well as vegetable seeds, compost and hand tools to community gardens in low-income neighbourhoods.⁴¹³ The City of Amsterdam provides long-term leases to urban gardeners' associations that rent plots on an annually renewable basis to individuals under the agreement. If these areas are to be used for other planned uses then the municipality makes alternative location available and assists with basic structural development.⁴¹⁴ Quito City in Ecuador implemented a programme, namely, Quito's Participatory Urban Agriculture Programme (AGRUPAR) during 2002 to advance job creation and food security for vulnerable populations in its urban and peri-urban areas.⁴¹⁵ AGRUPAR, resulted in the promotion of food security, food processing, access to microcredit, micro-enterprise management and marketing.⁴¹⁶ It is documented that the project has helped establish 140 community gardens, 800 semi-commercial gardeners and 314 livestock keepers, 128 school gardens. In addition, between 2004 and 2012 the project provided training for more than 7350 people most of them women, including migrants to the city and underemployed workers.⁴¹⁷

⁴⁰⁸ Broad Leib M (2013) 334-340.

⁴⁰⁹ Broad Leib M (2013) 334-340.

⁴¹⁰ Broad Leib M (2013) 334-340.

⁴¹¹ Baker L & Zeeuw H (2015) 34.

⁴¹² Baker L & Zeeuw H (2015) 34.

⁴¹³ Baker L & Zeeuw H (2015) 35.

⁴¹⁴ Baker L & Zeeuw H (2015) 35.

⁴¹⁵ Baker L & Zeeuw H (2015) 44.

⁴¹⁶ Baker L & Zeeuw H (2015) 44-45.

⁴¹⁷ Baker L & Zeeuw H (2015) 44-45.

CHAPTER 2

Broadly speaking farmer markets present three opportunities, it is an important mechanism to link small-scale farmers to the consumers, it enables the distribution of diverse healthy foods, and encourages local food supply. Philadelphia City encouraged the development of farmer markets in open spaces. The local authority reduced permit costs and amended their zoning codes to make the operation of markets a permitted use in as many areas as possible.⁴¹⁸

Belo Horizonte City, as far back as 1993, introduced the ‘Abastecer programme’ mentioned earlier, permitted licensed sellers (small-scale farmers) to set up stores in a city-owned property under licence agreements.⁴¹⁹ The City monitored the quality of the products and rendered technical assistance on product display, safe storage and handling.⁴²⁰ Belo Horizonte City also rolled out an initiative to transport fresh fruit and vegetable products, at lower costs to marginalised areas in the city.⁴²¹ The ‘Straight from the country’ programme, was established to strengthen direct relationships between the small-scale rural farmers on the one hand, and urban consumers on the other. In this programme the intermediary agents that would usually transfer products from the farm to the urban markets are therefore eliminated.⁴²² The selection of the small-scale farmers to the programme was conducted by a transparent public process.⁴²³ Once selected the small-scale farmers are assigned fixed sale points throughout the city.⁴²⁴ The success of the programme resulted in the city extending its reach and during 2008 approximately 34 rural producers from eight different municipalities outside of Belo Horizonte City also participated in the programme.⁴²⁵ Lastly, the city prioritised local food economies by purchasing food from local family farms for some of its other programmes, such as the ‘Popular restaurant’ which served over 20 000 meals per day and the school meal programme that served 40 million meals to 155 000 children per year.⁴²⁶ As a result of all these initiatives fresh fruit and vegetable sales by ‘alternative stores’ surpassed the sales of formal supermarkets.⁴²⁷

⁴¹⁸ Broad Leib M (2013) 336.

⁴¹⁹ Rocha C, Burlandy L & Maluf R ‘Small Farms and Sustainable Rural Development for Food Security: the Brazilian Experience’ (2012) Vol 29 (4) *Development Southern Africa* 523.

⁴²⁰ Rocha C, Burlandy L & Maluf R (2012) 524.

⁴²¹ Rocha C, Burlandy L & Maluf R (2012) 524.

⁴²² Rocha C, Burlandy L & Maluf R (2012) 524.

⁴²³ Rocha C, Burlandy L & Maluf R (2012) 524.

⁴²⁴ Rocha C, Burlandy L & Maluf R (2012) 524.

⁴²⁵ Rocha C, Burlandy L & Maluf R (2012) 524.

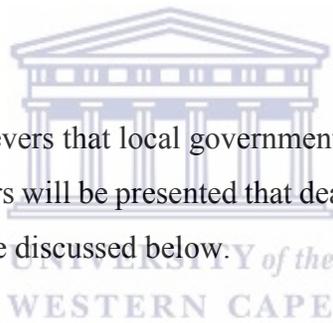
⁴²⁶ Rocha C, Burlandy L & Maluf R (2012) 524.

⁴²⁷ Rocha C, Burlandy L & Maluf R (2012) 524.

Another Brazilian City, namely, the City of Brasilia, implemented a programme to assist the local farmers (urban producers' groups). The support offered included organisational and legal support, land, infrastructure, and technical business and marketing advice. Special focus was given to support the establishment of farmer markets.⁴²⁸

For the optimal functioning of farmer markets, some local governments have introduced cash transfer technologies that enable the use of 'food access voucher benefits' (food stamps) at farmer markets. For example, Boston City provided an electronic benefit transfer (EBT) machine to farmer markets where the payment of the purchases is done with a supplemental nutrition assistance programme (SNAP) benefits formerly known as a food stamp.⁴²⁹ The SNAP programme enables customers to use the SNAP benefits at farmers markets accompanied by vouchers that double their money.⁴³⁰

These initiatives demonstrate the levers that local government must improve food access. Further examples of local government levers will be presented that deal with environmental sustainability, and health and safety. These will be discussed below.



(b) Local environmental and health functions

Noting the negative effect of current food systems on the environment energy-dense some local authorities have explored mechanisms to promote sustainable and eco-friendly agricultural production and distribution methods.⁴³¹ For example, the City of Malmo in Sweden ensured that its food procurement policy promotes the purchase of food that is produced and prepared in close proximity to consumers. Furthermore, the policy requires there to be low greenhouse gas (GHG) emissions and efficient transport, and food wastes need to be used in biogas production.⁴³² Havana City in Cuba, prohibits the use of agrochemicals in the city and supports the production and supply of bio-fertilisers and bio-pesticides.⁴³³ The City of Governador Valadares promotes the use of

⁴²⁸ Baker L & Zeeuw H (2015) 42.

⁴²⁹ Broad Leib M (2013) 334-340.

⁴³⁰ Broad Leib M (2013) 334-340.

⁴³¹ Baker L & Zeeuw H (2015) 46.

⁴³² Baker L & Zeeuw H (2015) 46.

⁴³³ Baker L & Zeeuw H (2015) 47.

CHAPTER 2

ecological techniques in urban agriculture production, processing and marketing by hosting training courses and providing technical assistance to urban farmers.⁴³⁴ Amman City in Jordan, ensures measures are in place for the mitigation of climate change in its urban agriculture policy. Antananarivo City in Madagascar, is protecting agriculture in flood zones to prevent the construction of houses to enhance urban resilience.⁴³⁵ The City of Bulawayo in Zimbabwe, supplies treated wastewater to poor urban farmers in community gardens.⁴³⁶

Apart from the ecological sustainability a critical function carried out by most local governments is to ensure that food is safe.⁴³⁷ The main determinants of food safety and the safety of those involved in producing and processing food are found in the procedures and standards and regulations.⁴³⁸ The regulation of and enforcement of food safety in the formal retail sector is much simpler compared to the informal sector.⁴³⁹ In Africa, for example street food is a chief concern for local authorities because they often fail to meet the required hygienic standards.⁴⁴⁰ This problem is mainly attributed to the lack of food safety laws, weak regulatory systems, insufficient financial resources to invest in safer equipment, and lack of education for food handlers.⁴⁴¹ Examples of local government levers to address these problems are presented. For example, the establishment of a separate street food regulatory body was recommended in Kumasi City, Ghana. A further recommendation by the city called for improved education and training on health and hygiene, as well as information about the regulators, their responsibilities and what they are legally allowed to do.⁴⁴² Some local authorities enforce standards of hygiene amongst street traders, for example Abeokuta in Nigeria require street traders to obtain an annual certificate from health authorities.⁴⁴³ The City of Maputo, worked with trade union organisations to regulate street

⁴³⁴ Baker L & Zeeuw H (2015) 47.

⁴³⁵ Baker L & Zeeuw H (2015) 47.

⁴³⁶ Baker L & Zeeuw H (2015) 47.

⁴³⁷ Smit W (2016) 84.

⁴³⁸ Smit W (2016) 84.

⁴³⁹ Smit W (2016) 84.

⁴⁴⁰ Smit W (2016) 84.

⁴⁴¹ Smit W (2016) 84.

⁴⁴² Forkuor J, Akuoko K & Yeboah E 'Effective and Inclusive Regulation of Street Foods in Kumasi: Promoting Food Safety, Protecting Consumers and Enhancing the Wellbeing of Food Vendors' (2015) available at https://dfcentre.com/wp-content/uploads/2017/03/2017-03-27_11-P21-GHA-Kwasi-Ohene-Yankyera.pdf (accessed 15 January 2019).

⁴⁴³ Smit (2016) 84.

vendors and to provide appropriate infrastructure, toilets, drainage and imposes rules for securing sanitary and health conditions.⁴⁴⁴

The above initiatives are directed at the distribution and regulation of safe and hygienic foods. But local government levers are also used to promote healthy eating behaviour.⁴⁴⁵ For example, there is literature that confirms how some local governments use their policies and strategies to target healthier eating behaviour in their communities.⁴⁴⁶ The policies are mostly aimed at community centres as well as state-owned buildings.⁴⁴⁷ Strategies include influencing the local food system and the promotion of farmer markets for example.⁴⁴⁸ Research suggests that the use of billboards may promote healthy food behaviour.⁴⁴⁹ Some local governments are using their function of billboards to promote healthy eating behaviour.⁴⁵⁰ In addition, local authorities in the United Kingdom are even calling for greater powers to limit the marketing of junk foods in their jurisdictions.⁴⁵¹

The discussion on the levers of sub-national actors to address food insecurity does present many opportunities that can be explored by local governments in South Africa.



⁴⁴⁴ Ulset A *Formalization of Informal Marketplaces - A case study of the Xikhelene market, Maputo, Mozambique* (unpublished Master's thesis, University of Oslo, Norway) available at <https://core.ac.uk/download/pdf/30813004.pdf> (accessed 15 January 2019).

⁴⁴⁵ Harris J & Graff S 'Protecting children from harmful food marketing: Options for local government to make a difference' (2011) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181192/> (accessed 15 January 2019).

⁴⁴⁶ Goble A 'Promoting Healthy Eating at the Local Government Level' (2016) available at <http://www.healthyaucklandtogether.org.nz/assets/Uploads/Promoting-Healthy-Eating-at-the-Local-Government-Level.pdf> (accessed 15 January 2019).

⁴⁴⁷ Goble A (2016) 6-9.

⁴⁴⁸ Goble A (2016) 6-9.

⁴⁴⁹ Asian News International (ANI) 'Putting billboards of healthy foods can break unhealthy eating habits' *Deccan Chronicle* 28 January 2017 available at <https://www.deccanchronicle.com/lifestyle/health-and-wellbeing/280117/putting-billboards-of-healthy-foods-can-break-unhealthy-eating-habits.html> (accessed 15 January 2019).

⁴⁵⁰ Cooper C 'Councils need powers to ban junk food advertising near schools and nurseries, town hall leaders say' *Independent* 17 March 2016 available at <http://www.independent.co.uk/news/uk/politics/councils-need-powers-to-ban-junk-food-advertising-near-schools-and-nurseries-town-hall-leaders-say-a6935681.html>

⁴⁵¹ Cooper C (2016) 1/1. For instance, the Local Government Association, representing 370 local authorities from England and Wales pointed out the urgent need to combat rising rates of childhood obesity to ban junk food advertising near schools, nurseries and children's centres.⁴⁵¹

5 CONCLUSION

Adopting a food-systems approach is essential to uphold the right to food. The distorted food system is inherently undemocratic and persists at a global and national level.

At a global level, the food crisis is complex and interrelated to the current global economic crisis and the longer-term environmental and climate crises. A consolidated global food system is dominated by large corporations in input-supply but also increasingly in processing, storage, trading, and distribution. At a country level, not only does agriculture negatively impact the environment but food production is also linked to the historic patterns of racial and gender oppression, land dispossession and economic exclusion. The apartheid legislation coupled with the market dominance of large corporates have excluded small-scale farmers, undermining shorter food value chains and healthier, more diverse rural and local food networks. In addition, there is poor regulation of land use that negatively impacts micro-enterprises and poor spatial planning and governance of street traders.

Scholars are increasingly discussing the role of a food systems approach to combat food insecurity. A food systems approach takes into account the inability of people to access the necessary levels of nutrition due to perpetuating cycles of poverty. It acknowledges that nutrition, wellbeing, and mortality are inextricably linked to public policies and strategies. Availability of ‘junk foods and/or big foods’ are significantly cheaper and more available compared to healthier less processed foods. What people eat is largely defined by their food environments. Therefore, it requires a holistic response to address issues related to food poverty, hunger, malnutrition, lack of dietary diversity, child wasting, child stunting, increased vulnerability to disease and the obesity epidemic. The food systems approach is promoted to realise the right to food.

The purpose of this dissertation is to contribute to the debate, by making the linkages between the food systems approach and the division of powers amongst the central and sub-national governments within a multilevel system of government. A particular focus is placed on the local government powers and functions that intersect with the right to food and the food system. Identification of these linkages is critical for understanding how local governments in South Africa can address food insecurity in their jurisdictions. Further emphasising the food systems approach

CHAPTER 2

prevents a perception that food is an agricultural and rural-based problem alone with a minimal role for local government. In this sense the dissertation investigates the initiatives of cities to respond to their local food systems and urban food insecurity.

In order to establish a theoretical approach for the right to food, Chapter 2 uses an adequate right to food framework for the enforcement of this right. The right to adequate food is recognised in numerous international, regional, and national documents. The chapter also draws out the content of the right to food by making reference to the way in which the international treaty monitoring, and regional human rights bodies have framed the right. More importantly, a presentation on the national interpretation and enforcement of the right to food is offered. The move towards adequate food symbolises the shift in the way food is conceived. Instead of deeming food as an essential commodity necessary for survival alone its interrelation with other human rights came to the fore. In this regard, the right to dignity, for example, would require availability of food that meets the health, religious, cultural needs and/or preferences of its beneficiaries. The significance of the right to adequate food is framed as being ‘inseparable from social justice’ and requires states to adopt appropriate economic, environmental, and social policies that are ‘*oriented to the eradication of poverty and the fulfilment of all human rights for all*’. The link between the right to food and social justice as envisioned by Amartya Sen is critical for this dissertation. It elevates the significance of livelihoods which impacts peoples’ ‘capability’ to access food and their ‘entitlement’ to state measures that facilitate their food access.

For states to realise the right to food and to facilitate food access is not a technical issue that can be addressed through isolated programmes led by different departments. It requires one political champion that can be held accountable for a coordinated approach to realising the right to food. Furthermore, this enables the identification of political priorities and associated resources to meet those priorities, including elements of immediate and direct relief and structural and institutional change. Moreover, it requires policies founded on principles and values such as democracy, inclusion, participation, and cultural sensitivity to provide for the development of solutions towards economic, ecological, and social sustainability. The discussion promoted a framework law on the right to food to achieve these objectives. For this dissertation, it is important to bear in mind that the integrated planning amongst the different sector departments are important but this must

CHAPTER 2

also be achieved across the different levels of government. A localised response to human rights is promoted for the appropriate development of policies and strategies. Therefore, the role of the sub-national governments is further entrenched in realising the right to food.

This dissertation contributes to the literature on the right to food in South Africa by focussing squarely on the role of local government pertaining to the right to food. Under South African law, the right to food is a legally enforceable socio-economic right. In realising the right to food, and holding the different levels of government accountable, it is stressed that accountability in the human rights sense is not 'blame-focused' but rather to find practical solutions to problems. The discussion of *Grootboom* and *Blue Moonlight* demonstrated that the implication for multilevel government in South Africa is that each sphere is responsible for the progressive realisation the right to food within their constitutionally allocated powers. The discussion shows that local governments can be held directly accountable when they fail to realise the right to food. Importantly, local governments must be proactive in planning for the needs of their local community which include the adoption of practical policies, budget, administrative and governance decision-making. The application of this principle of accountability, namely, whether local governments are implementing proactive and practical solutions to problems is essential for the subsequent chapters. Chapter 2 sets out a normative or theoretical basis upon which the subsequent chapters hinge.

Chapter 3 will set out the role of local government in the food security policy framework. In addition, the municipal powers and functions that intersect with food security will be identified and explained. Lastly, municipalities must undertake integrated developmental planning how this potentially facilitates food security will be discussed.

CHAPTER 3: THE INTERSECTION OF MUNICIPAL POWERS & FOOD SECURITY

1 INTRODUCTION

Chapter 2 evaluated local government initiatives that are employed globally to enhance food security. Chapter 3 investigates how municipalities in South Africa can respond to their local food system. For this purpose, municipal powers and functions linked to food security will be analysed. The discussion will hinge on four themes. First, an overview of the South African Food Security Policy Framework will be provided to critique the absence of a role for local government. Secondly, the evolution of local government will be presented. Thirdly, the developmental duties, powers and functions of local government will be analysed to demonstrate how the legal and institutional framework supports food security. Fourthly, the framework for the integrated development plan will be presented to determine its potential to support food security.

2 THE SOUTH AFRICAN FOOD SECURITY POLICY FRAMEWORK

There are many food security related policies in South Africa and government has since 1994 ‘prioritised food security as reflected in policy, programming and resourcing around specific elements of food security’.¹ The policies deal with a wide variety of areas that include food safety, food labelling, food nutrition, food production, the intersection of land reform and food security etc.² However, the scope of this dissertation does not allow for a comprehensive analysis of these policies. In addition, these policies have already been critiqued extensively.³ For this dissertation, the assessment will be limited to the question of whether or not the policy framework defines a

¹ Chitiga-Mabugu M et al ‘*Civil Society Organisations Participation in Food Security Activities in South Africa- A Research Report Produced by the Human Science Research Council in Partnership with the National Development Agency* (2013) Johannesburg : National Development Agency 1-10.

² According to researchers affiliated with the Centre of Excellence in Food Security (CoE-FS), ‘the country’s 17 policies directly related to food security – out of the 80 policies that they have identified as related to the country’s food system as a whole – are comprehensive’ ‘*South Africa’s strong food security policies still fail to put food on the table*’ available at <http://foodsecurity.ac.za/news/sas-strong-food-security-policies-still-fail-to-put-food-on-the-table/> (accessed 15 March 2019).

³ De Klerk M et al ‘*Food Security in South Africa: Key Policy Issues for The Medium Term*’ (2004) available at [https://sarpn.org/documents/d0000685/Food security SA January2004.pdf](https://sarpn.org/documents/d0000685/Food%20security%20SA%20January2004.pdf) (accessed 22 November 2018). Hendricks S ‘*South Africa’s National Development Plan and New Growth Path: reflections on policy contradictions and implications for food security*’ (2013) Vol 32, 3 *Agrekon* 1-17. Drimie S ‘*Understanding South African food and agricultural policy: Implications for agri-food value chains, regulation, and formal and informal livelihoods*’ (2016) 6-8. Drimie S & Ruysenaar S ‘*The Integrated Food Security Strategy of South Africa: An institutional analysis*’ (2010) Vol 49, 3 *Agrekon* 316-337. Lastly, Boatemaa S, Drimie S & Pereira L ‘*Addressing food and nutrition security in South Africa: A review of policy responses since 2002*’ *African Journal of Agricultural and Resource Economics* Vol 13 No 3 264-279.

CHAPTER 3

clear role for local government. Of the food security policies only a few mentions the multilevel system of government. The discussion will, therefore, concentrate on those policies. Thereafter, the local government levers to support food access will be presented. For the purpose of this study the meaning to be attributed to a policy generally refers to documents that are officially adopted by a government department or by Cabinet that underlined how it will manage the public affairs of a specific sector or for the country as a whole.

The *Grootboom* judgment discussed in Chapter 2 offers a benchmark against which the chief features of food policies can be measured.⁴ First, food security policies must be comprehensive and well-coordinated. A clear allocation of responsibility for the different levels of government must be established.⁵ The policies must establish accountability mechanisms in government.⁶ Secondly, it should include transparent participatory processes. The food policies need to be co-designed and formulated by all relevant stakeholders including groups adversely affected by malnutrition and hunger. Thirdly, policies must be ‘balanced and flexible’ to accommodate intermittent food crises as well as short, medium and long-term food needs.⁷ It is suggested that, in this respect, the food policies must be designed to address the negative influence of the private sector’s actions on food security. The national food policies will be analysed through the lens of three key features.

Five key policies are presented in chronological order. They include the Integrated Food Security Strategy (IFSS); Outcome 7 of The Government Outcomes Approach (Outcome 7); the Food Security Policy (FSP); the National Development Plan Vision 2030 (NDP) and the NPFNS.⁸

⁴ Chapter 2: section 3.3.4 44-48.

⁵ Grootboom paras 29 and 40, the principle of coordination and coherence is directly addressed. Brand D (2003) 5, contends the principle should be extended to include coordination between different institutions and departments within one sphere of government.

⁶ Brand D (2003) 9, convincingly argues that the Court in *Grootboom* called for framework legislation to support the development and implementation of a dedicated policy framework on a socio-economic right, such as the right to food.

⁷ *Grootboom* paras 39-44, The Court extensively described what is required for a policy to be reasonable ‘it must be rational, inclusive of all significantly at risk groups in society, coherent, coordinated, flexible enough to respond to both short- and longer-term needs, and effectively implemented’.

⁸ The National Department of Agriculture (2002) ‘*The integrated Food Security Strategy for South Africa*’ available at <http://www.nda.agric.za/docs/Policy/FoodSecurityStrat.pdf> (accessed 1 July 2015); Department of Planning Monitoring and Evaluation (2010) *Guide to the Outcomes Approach*’ available at <http://www.dpme.gov.za/publications/Guides%20Manuals%20and%20Templates/Guideline%20to%20outcome%20approach.pdf> (accessed 1 July 2015);

CHAPTER 3

2.1 The Integrated Food Security Strategy (IFSS)

The National Cabinet approved the IFSS in 2002 to address the fragmentation and poor coordination of food security policies.⁹ The IFSS, in turn, introduced mechanisms and structures for better alignment and coordination.¹⁰ It sought to eradicate malnutrition, hunger, and food insecurity by 2015. The strategic objectives included to increase household food production and trading; improve income generation and job creation opportunities; improve nutrition and food safety; increase safety nets and food emergency management systems; improve analysis and information management system; provide capacity building, and hold stakeholder dialogue.¹¹

As the lead department, the Department of Agriculture (DoA) together with Social Sector Cluster Departments were responsible for the implementation of the IFSS.¹² The DoA had to establish food security units in the national and provincial departments of agriculture whereas the Social Sector Cluster Departments were required to improve national food security by initiating new programmes in addition to their existing programmes.¹³ Many programmes were identified to address food security, namely, land reform; food production; procurement and marketing of food products; human resource management; education and training; processing; storage and transportation of food; ailments related to malnutrition and hunger; social security grants; food emergencies; and a right to food law.¹⁴

National Planning Commission (2012) 'National Development Plan 2030- Our future – make it work' available at https://www.google.com/search?ei=SSJkW_fiMoqTlwTtiKn4Dw&q=National+Development+Plan+Vision+2030&oq=National+Development+Plan+Vision+2030&gs_l=psy; Department of Agriculture Forestry and Fisheries (2012) 'Food Security for the Republic of South Africa' available at https://www.google.com/search?ei=QyVkW63kNrKclwSNuplo&q=food+security+policy+%2B+2012&oq=food+security+policy+%2B+2012&gs_l=psy-ab.3..0i22i30k112.24 (accessed 1 July 2015); and The National Policy on Food and Nutrition Security (NPFNS) of 2013 available at <https://www.health-e.org.za/wp-content/uploads/2015/03/Policy-on-Food-and-Nutrition-Security-22-August-2014.pdf> (accessed 1 July 2015).

⁹ DAFF (2002) 1-5.

¹⁰ DAFF (2002) 1-5.

¹¹ DAFF (2002) 1-5.

¹² DAFF (2002) 7. The Social Sector Cluster Departments included, 'Departments of Health; Social Development; Public Works; Water Affairs and Forestry; Transport; Education; Housing; Provincial and Local Government; Land Affairs; Environment and Tourism; Arts, Culture, Science and Technology.

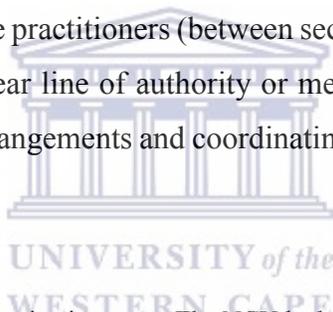
¹³ This cluster included Departments of Health, Public Works, Social Development, Education, Transport, Housing, Land Affairs, Local Government, and Science and Technology etc'. IFSS (2002) 7.

¹⁴ IFSS (2002) 8-9.

CHAPTER 3

To implement the IFSS a number of intergovernmental structures were identified, namely, (a) Ministerial Cluster;¹⁵ (b) National Coordinating Unit (NCU);¹⁶ (c) Provincial Food Security Forums (PFSF);¹⁷ (d) District Food Security Committees (DFSC);¹⁸ (e) Local Food Security Action Groups (LFSAG);¹⁹ and (f) National Food Security Forum (NFSF).²⁰ This chapter will not provide a detailed account of these structures. For now, the intergovernmental coordination envisaged at the local and district level is emphasised as this most directly relates to local government. The IFSS also provided for the inclusion of stakeholder representation from civil society and the private sector.

Many studies have documented the shortcomings of the IFSS and the reasons for its failure.²¹ Six of these challenges are touched on in this chapter.²² First, academics and practitioners alike consider the proposed policy responses inadequate as it failed to adopt a food-systems approach.²³ Secondly, the IFSS failed to provide practitioners (between sector departments and across the three spheres of governments) with a clear line of authority or mechanisms to ensure collaboration.²⁴ Thirdly, ineffective institutional arrangements and coordinating mechanisms required departments



¹⁵ IFSS (2002) 34.

¹⁶ IFSS (2002) 35. The NCU was administrative in nature. The NCU had to provide technical support and coordinate the activities of the IFSS. The NCU was tasked with supervising the activities of the national sectoral managers.

¹⁷ IFSS (2002) 35. The PFSF was formed in all the nine provinces. The PFSF was expected to comprise stakeholders from government, civil society and the private sector. Its' role was to prioritise projects and distribute funds to the appropriate programmes.

¹⁸ IFSS (2002) 36. The DFSC was tasked with identifying food insecure areas in its jurisdiction. The DFSC was required to compile pertinent information on the status of food security and make recommendations to strengthen the projects where obstacles and challenges were identified. Furthermore, the DFSC had to monitor the outcome and determine the project success and impact on food security.

¹⁹ The LFSAG comprised local government officers, churches and local NGOs. The LFSAG was responsible for the identification and quantification of vulnerable and insecure households in its jurisdiction. The LFSAG was supposed to be a conduit for local residents' food matters.

²⁰ The stakeholders from NFSF comprised stakeholders from the public sector, private sector and civil society. The NFSF was intended to give strategic leadership and an advisory services on food security. It was also intended to set standards and recommend policy options.

²¹ Pereira L & Drimie S 'Governance Arrangements for the Future Food System: Addressing Complexity in South Africa' (2016) Vol 58(4) *Environment: Science and Policy for Sustainable Development* 18-31. Drimie S & Ruysenaar S 'The integrated food security strategy of South Africa: an institutional analysis' (2010) 49 (3) *Agrekon* 316-337. Hendriks S 'Food security in South Africa: status quo and policy imperatives' (2014) Vol 53 (2) *Agrekon* 1-24. Drimie S & Pereira L 'Advances in food security and sustainability in South Africa' in Barling D (Ed), *Advances in Food Security and Sustainability* (2016) 1 Academic Press, Burlington (2016). Candel J 'Diagnosing integrated food security strategies' (2018) 84 *NJAS Wageningen Journal of Life Sciences* 103-113.

²² Drimie S (2016) 233-240. Candel J (2018) 103-109. Pereira L & Drimie S (2016) 20-28.

²³ Drimie S (2016) 233-240. Candel J (2018) 103-109. Pereira L & Drimie S (2016) 20-28.

²⁴ Drimie S (2016) 233-240. Candel J (2018) 103-109. Pereira L & Drimie S (2016) 20-28.

CHAPTER 3

to define their own intervention packages.²⁵ As a result, no single definition for food security or a uniform understanding of food security existed amongst departments and private stakeholders.²⁶ Fourthly, the prominent role of Department of Agriculture Forestry and Fisheries (DAFF) in driving the IFSS resulted in a narrow focus on rural food security and food production. Since food security was predominantly viewed as the mandate of the national department responsible for agriculture this resulted in some, but limited, involvement of and interactions with other departments.²⁷ In addition, the IFSS was located in an institutionally weak position within the DAFF itself. Hence, the IFSS failed to get financial and political buy-in from other departments and across the different spheres of government.²⁸ Moreover, other departments participated infrequently and in some cases (particularly at the provincial level) used their autonomy to stall the active implementation of the IFSS.²⁹ Fifthly, the IFSS lacked synchronisation across departments and amongst the spheres of government and as a result, policy fragmentation persisted.³⁰ Sixthly, the lack of a dedicated fund to support the IFSS proposed structures compromised its viability and as a result, these structures failed. For instance, at a municipal level generally no provision was made to allocate a budget, resources, or capacity to the DFSC and LFSAG. Yet, the IFSS aimed to use the municipal and district structures to gather information and monitor food security-related activities. Drimie argues that to carry out these activities would lead to underfunded mandates and compromise participatory.³¹

Overall, the IFSS failed to establish the features described in *Grootboom*. Although the objectives of the IFSS sought to realise the principles in *Grootboom* it mainly failed because it focused on food security from production and rural bias. At a conceptual level, the policy failed to address the structural causes of food insecurity and did not present a clear role for local government.³² Poor implementation of the IFSS implementation was largely attributed to the states' failure to coordinate its available resources to realise food security.³³ The DAFF itself acknowledged the

²⁵ Drimie S (2016) 233-240. Candel J (2018) 103-109. Pereira L & Drimie S (2016) 20-28.

²⁶ Drimie S (2016) 233-240. Candel J (2018) 103-109. Pereira L & Drimie S (2016) 20-28.

²⁷ Candel J (2018) 109.

²⁸ Candel J (2018) 109.

²⁹ Candel J (2018) 109.

³⁰ Candel J (2018) 109.

³¹ Drimie S (2016) 233-240.

³² Pereira L & Ruysenaar S 'Moving from traditional government to new adaptive governance: the changing face of food security responses in South Africa' (2012) Vol 4 (1) *Food Security* 41-58.

³³ Pereira L & Ruysenaar S (2012).

failures of the IFSS in subsequent policies that it developed, namely, the FSP of 2012 and the NPFNS of 2014. These policies are analysed later but first, the discussion on a subsequent policy statement, namely, Government Outcomes Approach (Outcome 7) will follow.

2.2 Government Outcomes Approach (Outcome 7)

The Department of Rural Development and Land Reform (DRDLR) developed Outcome 7 that Cabinet adopted in 2010.³⁴ Within this context, government agreed on twelve outcomes as a key focus of work between 2010 and 2014. Each outcome had a limited number of measurable outputs with targets. These outcomes were to strengthen accountability of the executive branch of government and to improve service delivery.³⁵ Each outcome was attached to a Cabinet Minister and was accompanied by a delivery agreement that included all spheres of government.³⁶ Outcome 7 dealt specifically with food security to ensure ‘vibrant, equitable and sustainable rural communities with food security for all’.³⁷

The strategic aims of Outcome 7 were to resolve the challenges facing rural areas that include, social factors such as poor infrastructure and institutional support to meet basic human needs; lack of decent shelter, food security, water and sanitation, electricity, social facilities and amenities.³⁸ It prioritised the improvement of small sustainable enterprises and industries, rural-urban linkages, local markets and credit facilities.³⁹ To achieve these goals, five outputs were identified, namely, (a) sustainable agrarian reform with a thriving farming sector; (b) improved access to affordable and diverse food; (c) improved rural services to support livelihoods; (d) improved employment and skills development opportunities; and (e) enabling an institutional environment for sustainable and inclusive growth.

³⁴ Department of Planning Monitoring and Evaluation (2010) *Guide to the Outcomes Approach* available at <http://www.dpme.gov.za/publications/Guides%20Manuals%20and%20Templates/Guideline%20to%20outcome%20approach.pdf> (accessed 1 July 2015).

³⁵ Department of Rural Development and Land Reform (DRDLR) ‘*Delivery Agreement – Outcome 7: Vibrant, equitable and sustainable rural communities and food security for all*’ (2011) 1-10. http://www.ruraldevelopment.gov.za/phocadownload/outcome7/outcome7_deliveryagreements_rural_development.pdf

³⁶ DRDLR (2011) ‘*Service Delivery Agreement*’ 1-5.

³⁷ DRDLR (2011) 1-5.

³⁸ DRDLR (2011) 1-5.

³⁹ DRDLR (2011) 1-5.

CHAPTER 3

In identifying the delivery partners, the DRDLR referred to all spheres of government, civil society, business and other public agencies.⁴⁰ Outcome 7 accentuated the role of local government basic service provision towards food security. It mentioned the need for municipal infrastructure repairs and maintenance to ensure the provision of basic services. However, the policy was critiqued for its framing of food security as a rural problem.⁴¹ For example, many of the initiatives that the policy proposed were directly linked to agricultural production alone and little attention was directed to urban food insecurity.⁴² This was problematic as will be discussed below.

The food production approach entrenched in Outcome 7 arguably influenced municipal responses to food security. For example, many municipalities cited Outcome 7 in their IDPs and tended to view food security as an agricultural matter.⁴³ Agriculture is a concurrent power of the national and the provincial government.⁴⁴ Municipalities were, therefore, reluctant and uncertain about their role in food security. Municipalities thus failed to appreciate the levers they have to realise the right to food. Chapter 2 pointed out the many levers local governments have that improve food security including municipal planning powers (spatial planning and land use).⁴⁵

The DRDLR established different task teams to achieve Outcome 7. Part of the process involved the development of legislation to deal with land reform, restitution and the preservation of agricultural land.⁴⁶ A major purpose of Outcome 7 was to strengthen the agricultural sector in order to improve job creation and livelihoods in the sector. This included the need to address shortcomings in the management of agricultural land. Although the DRDLR dealt with the land reform and restitution matters it was the DAFF that was responsible for the preservation of agricultural land and the viability of the agricultural sector. The details of the Subdivision of Agricultural Land Act 70 of 1970 and its application to local government are investigated in Chapter 4.

⁴⁰ DRDLR (2011) 1-5.

⁴¹ Battersby J et al (2014) 1-5.

⁴² Battersby J et al (2014) 1-5.

⁴³ Battersby J et al (2014) 1-5.

⁴⁴ Schedule 4 Part A of the Constitution.

⁴⁵ UN FAO *'Policy Brief Food Security- Issue 2'* (2006) available at http://www.fao.org/fileadmin/templates/faoitally/documents/pdf/pdf_Food_Security_Cocept_Note.pdf (accessed 19 November 2018).

⁴⁶ BLSA & BUSA (2017) 37-41.

The Outcome 7 policy statement failed to identify the local government planning powers to improve food security. The discussion that follows on the National Development Plan Vision 2030 shows a marked shift from the IFSS and the Outcome 7 approach.

2.3 National Development Plan Vision 2030 (NDP)

The NDP is an overarching plan for South Africa to eliminate poverty and reduce unemployment and inequality by 2030.⁴⁷ The ultimate goal of the NDP is for people to enjoy a decent standard of living, which includes access to nutrition, water, electricity, sanitation services, housing, and safety.⁴⁸ The NDP promotes the development of an inclusive economy and growing capacity of the state and society.⁴⁹

Chapter 6 of the NDP underpins six food security imperatives:

- 
- (a) to improve land administration and spatial planning for integrated development in rural areas;
 - (b) to promote sustainable land reform (agrarian transformation);
 - (c) to improve food security;
 - (d) to facilitate smallholder farmer development and support (technical, financial, infrastructure) for agrarian transformation;
 - (e) to increase access to quality basic infrastructure and services, particularly in education, healthcare and public transport in rural areas; and
 - (f) to grow sustainable rural enterprises and industries characterised by strong rural-urban linkages, increased investment in agro-processing, trade development and access to markets and financial services resulting in rural job creation.⁵⁰

⁴⁷ National Planning Commission (NPC) The National Development Plan: Vision 2030 (2011) available http://us-cdn.creamermedia.co.za/assets/articles/attachments/36224_npc_national_development_plan_vision_2030_-lo-res.pdf (accessed 13 February 2015).

⁴⁸ NPC (2011) 195-197.

⁴⁹ NPC (2011) 185-213.

⁵⁰ NPC (2011) Chapter 6.

CHAPTER 3

The NDP shapes how the state should address food security needs. It obliges national government to prioritise food security in the government's strategic mandate and requires the development of a policy framework to secure food security.⁵¹ The NDP calls for better integration of the departmental functions to 'identify the main elements of a comprehensive food security and nutrition strategy and the launch of a campaign involving a range of stakeholders and departments'.⁵²

There are mixed views about the value of the NDP to improve food security. For example, Van Donk and Gorgens argue that the NDP adopts a food systems approach whereas Hendriks argues that the NDP is far too ambitious and unrealistic.⁵³ The opinion expressed by Van Donk and Gorgens finds support since the NDP moved away from the focus on food production alone and adopted a multifaceted approach to food security and food system challenges. For example, the NDP connects food and nutrition security to the wider food system.⁵⁴ It does this in a number of ways. The NDP expands the concept of food security to include nutrition security by outlining the importance of the quality of food intake and not just the calories consumed.⁵⁵ The NDP stresses the need for investment in the agricultural and agro-processing sectors and one of its objectives is to stimulate small-scale farming. It identifies critical linkages between urban and rural areas to promote accessibility of healthy foods to the urban communities and to facilitate access to markets for small-scale farmers.⁵⁶

Although the NDP does not delineate a clear role for local government in food security, it obliges national government to develop a framework law on the right to food. It is unclear whether the NDP intends the envisaged framework law to provide greater specificity for local government. However, it will be shown that the NPFNS of 2014 was developed in terms of the NDP and was

⁵¹ NPC (2011) 289.

⁵² NPC (2011) 231.

⁵³ Van Donk M & Gorgens T 'National Development Plan Isandla Institute's Comments' available at https://search.yahoo.com/search?ei=utf-8&fr=tightropetb&p=National+Development+Plan+Isandla+Institute%E2%80%99s+Comment&type=Y61_F7_147051_051518 (access 15 January 2019) and Hendricks S (2013).

⁵⁴ NPC (2011) 231.

⁵⁵ NPC (2011) 231.

⁵⁶ NPC (2011) Chapter 6.

envisioned as a precursor to the framework law.⁵⁷ Before reflecting on that policy, a discussion will follow on the FSP that was developed in 2012 before the NPFNS.

2.4 Food Security Policy

The DAFF developed the FSP with the aim to improve the countries' adequacy and stability of access to safe and nutritious food at both the national and household level.⁵⁸ The FSP prioritised public spending to focus on improving the food security conditions of historically disadvantaged people.⁵⁹ It promoted increased targeted public expenditure on social programmes, education and health services, and public works programmes. Also, the FSP intended to re-prioritise government procurement of food from community food production initiatives.⁶⁰

The FSP had five objectives, namely, to:

- (a) align agriculture and land reform towards economic development, particularly of the poor and marginalised;
- (b) improve market participation of the emerging agricultural sector;
- (c) improve food distribution to ensure access by all;
- (d) improve nutrition education; and
- (e) ensure food security risk management.⁶¹

Ten guiding principles underpin the FSP.⁶² Some of these principles supported consultation on the food security interventions and programmes to ensure they were designed to meet the needs of targeted groups.⁶³

⁵⁷ For example, the National Policy on Food and Nutrition Security expressly states that it was developed as an outcome of the NDP this will be discussed later.

⁵⁸ DAFF (2012) 12.

⁵⁹ DAFF (2012) 12.

⁶⁰ DAFF (2012) 4.

⁶¹ DAFF (2012) 4-6.

⁶² DAFF (2012) 10.

⁶³ DAFF (2012) 10. As an example, the FSP recommended a food distribution approach in accordance with the Social Assistance Act 13 of 2004. The approach would be realised in three ways, through the provision of cash, food vouchers or food parcels.⁶³ Regarding the food voucher or food parcels, once the food was procured it reached the food insecure through community feeding scheme initiatives. These initiatives were aimed at feeding the malnourished and the food insecure.

CHAPTER 3

For the first time there was an explicit role provided for local government in the food-policy framework.⁶⁴ The FSP demanded that local government address food insecurity in urban and peri-urban areas, by using their municipal planning powers to ensure agricultural land was earmarked in the municipal spatial development plan (MSDF) for agricultural use.⁶⁵ This marked a shift from the framing of food security in the Outcome 7 policy. First, recognition of the urban context, although limited, was made. Second, municipal planning was directly identified as a tool to mitigate food insecurity and the FSP compelled SALGA to ensure that every municipal spatial development framework (MSDF) made provision for land earmarked for agricultural use.⁶⁶ However, this still does not link local government to the food system and fails to connect land use management to urban food insecurity.⁶⁷

While the FSP provided for consultation on the design and implementation of the policy, it failed in many other respects. The FSP only focused on the provision of immediate food and/or vouchers but ignored the long-term structural causes that gave rise to food insecurity.⁶⁸ It, therefore, failed to provide the necessary balanced approach demanded in *Grootboom*.⁶⁹

The DAFF developed the NPFNS with the aim to address the shortcomings of the previous food policies.

2.5 National Policy on Food and Nutrition Security

The NPFNS aims to provide a framework for the fulfilment of the constitutional mandate for food security and to ‘serve as a guide to national, provincial and local government in working towards

⁶⁴ DAFF (2012) 26-34.

⁶⁵ DAFF (2012) 26.

⁶⁶ DAFF (2012) 26.

⁶⁷ The perception of SALGA was misplaced, insofar as SALGA is not a punitive body that instructs municipalities to carry out certain actions. Rather SALGA serves as a representative body for organised local government. Its mandate is to promote and protect the interests of local governments. Therefore, it was not for SALGA to oversee that every MSDF made provision for land earmarked for agricultural production activities. The national and provincial departments, responsible for local government, are empowered to regulate the function of municipal planning.

⁶⁸ Pereira L & Drimie S (2016) 20-28.

⁶⁹ *Grootboom* judgment para 43.

CHAPTER 3

food and nutrition security at every level'.⁷⁰ It also aims to 'maximize synergy between the different strategies and programmes of government and civil society'.⁷¹

The NPFNS is presented as a mechanism to deliver the objectives of the NDP.⁷² Clear linkages can be drawn between its objectives and those of the NDP. NPFNS prioritises the advancement of security of land tenure, promotion of nutrition education, utilisation of productive land, and increasing food distribution etc.⁷³ The strategic goal of the NPFNS is to ensure the availability, accessibility and affordability of safe and nutritious food at national and household levels.⁷⁴

The policy has four strategies to achieve the above objectives, namely:

- (a) increased and better public spending in social programmes which impact food security;
- (b) efforts to increase food production and distribution, including increased access to production inputs for the emerging agricultural sector;
- (c) leveraging government food procurement to support community-based food production initiatives and smallholders; and
- (d) the strategic use of market intervention and trade measures which will promote food security.⁷⁵

The DAFF is responsible for the implementation of the policy with the support of the Department of Social Development. The other line departments are required to play a supportive role.⁷⁶ The NPFNS establishes an advisory structure, namely, the National Food Nutrition Advisory Committee (Committee) to guide the policy.⁷⁷ The structure comprises recognised experts from organised agriculture, food security and consumer bodies, climate change and environmental practitioners, and representatives of organised communities. The Committee is to be chaired by

⁷⁰ DAFF (2014) 28.

⁷¹ DAFF (2014) 6.

⁷² DAFF (2014) 5.

⁷³ DAFF (2014) 5.

⁷⁴ DAFF (2014) 6.

⁷⁵ DAFF (2014) 6.

⁷⁶ DAFF (2014) 1.

⁷⁷ DAFF (2014) 18.

CHAPTER 3

the Deputy President.⁷⁸ The policy encourages the establishment of similar structures at provincial and local levels.⁷⁹ In addition, an intergovernmental technical working group on food and nutrition security produced an implementation plan for the policy. The plan is a roadmap for the medium to long-term direction of the food security and nutrition implementation.⁸⁰

The NPFSN mentions local government with respect to its duty to assist in reducing food insecurity. It encourages local government to establish structures to give effect to the strategic goals for food security. Like the NDP, a direct role for local government with respect to municipal planning is not evident. The implementation plan, which is technical in nature, does however set outputs for local government. Local government must; advocate for the consumption of diversified diets; promote hand washing, food safety and hygiene; promote the safe preparation and storage of food in schools, and provide potable water and basic sanitation.⁸¹ Compared to the framework for local government presented in Chapter 2, the NPFSN minimises the role of local government in the food system and food security.

Grootboom confirmed that for a policy to qualify as being ‘reasonable’ it could not overlook ‘the degree and extent of the denial of the right they endeavour to realise’. People most adversely affected ‘must not be ignored by the measures aimed at achieving realisation of the right’.⁸² Arguably, the NPFSN does not give effect to the aforementioned principle because it establishes a food production bias like the IFSS and does little to build on the food systems approach of the NDP.⁸³ The most vulnerable communities are food insecure not because of a shortage of food supply but due to the social and economic barriers. The food system significantly frustrates food access for the most marginalised communities. If these communities are to be protected through the reasonable measures as required from *Grootboom* it demands that adequate measures such as a ‘food systems’ approach is used to realise their right to food. However, the NPFSN fails to achieve this and is particularly criticised for its technical shortcomings by academics and civil

⁷⁸ DAFF (2014) 18.

⁷⁹ DAFF (2014) 18.

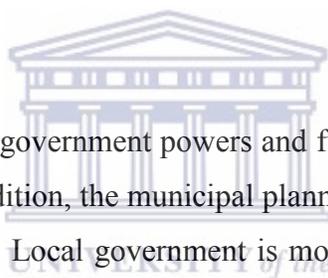
⁸⁰ DAFF (2014) ‘Food and Nutrition Security: Draft Policy Implementation Plan’ 5.

⁸¹ DAFF (2014) ‘Food and Nutrition Security: Draft Policy Implementation Plan’ Table 2: 22-50.

⁸² *Grootboom* judgment para 44.

⁸³ Haysom G ‘Food and the city: Urban scale food system governance’ (2015) 26(3) *Urban Forum* 263-281.

society.⁸⁴ For example, Chapter 2 confirmed the significant role of retailers in the food system. Yet, the NFNSP has a state-orientated focus and fails to tackle the monopoly and often adverse impact of the retail sector on food security and nutrition.⁸⁵ Although the NFNSP allocates responsibility to local government, it does little to draw linkages between local government powers and the food system. Chapter 2 identified the linkages of local government levers to food security and the broader food system. For example, powers and functions related to markets, trading regulations and street traders directly intersect with the business of food retailers.⁸⁶ The NPFSN does little to clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available as required in *Grootboom*.⁸⁷ In addition, civil society protested the ‘closed’ manner in which the policy was developed.⁸⁸ *Grootboom* instructs that reasonable measures must be understood in the context of the Bill of Rights.⁸⁹ Arguably, the failure to consult civil society broadly, violates the principles in *Grootboom*.



The analysis showed that the local government powers and functions that intersect with the food system are mostly neglected. In addition, the municipal planning powers are not identified as key instruments to attain food security. Local government is mostly assigned duties that require the compiling of information for provincial and national government or maintaining infrastructure for service provision. A food systems approach calls for multi-disciplinary interventions across government and includes the actors that shape local food environments. Despite this, linkages to the municipal functions such as markets, trading regulations, street trading, and service provision are poor. The food policies fail to allocate and clarify responsibilities amongst the spheres of government. A transparent participatory process is needed for the development of food policies where all the relevant stakeholders co-design the policy. It is questionable whether this is

⁸⁴ Moyo B Presentation rendered at the Dullah Omar Institute: *Exploring the link between developmental local government and food security through improved regulation and management of fresh produce markets*. Held on 22 October 2015.

⁸⁵ Oxfam GB *Terms of Reference for Research Consultancy: Role of Private Sector in fostering a ‘Food Insecure Nation*. (2015) available at [https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Oxfam+GB+\(2015\)+Terms+of+Reference+for+Research+Consultancy%3A+Role+of+Private+Sector+in+fostering+a+%E2%80%9CFood+Insecure+Nation](https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Oxfam+GB+(2015)+Terms+of+Reference+for+Research+Consultancy%3A+Role+of+Private+Sector+in+fostering+a+%E2%80%9CFood+Insecure+Nation). (accessed 2 October 2015).

⁸⁶ Chapter 2: 44-48.

⁸⁷ *Grootboom* judgment para 39.

⁸⁸ Moyo B 22 October 2015.

⁸⁹ *Grootboom* judgment para 44.

accomplished in practice.⁹⁰ In the absence of a right to food legislation the food security mandate for the spheres of government remain unclear.

With respect to local government there are two important matters that require clarification. First, how are local governments in South Africa empowered to improve food security? Second, how can the local residents hold local governments accountable for their right to food? The evolution of local government will be assessed to answer these two questions. At first, this may not seem relevant to the context of food security but subsequently, the intersection between the two subjects becomes clearer.

3 LOCAL GOVERNMENT UNDER APARTHEID

For local governments to facilitate the economic and physical access to food depends on a number of factors. For example, is their legal status constitutionally protected, can they pass by-laws, can they make executive decisions on matters in their jurisdiction, are they vested with revenue-raising measures, and can they exercise control over their powers and functions. If these factors are not in place, it is difficult to imagine how local government can influence the local food system or create an enabling food environment. The powers of local government are thus important for food security because failing to address the food system does not have neutral outcomes but actually exacerbates food insecurity.⁹¹

Chapter 2 illustrated how apartheid is to blame for many of the problems associated with current levels of food insecurity.⁹² Understanding the history of local government is important for this purpose. The 1910 Constitution of South Africa placed local government under the jurisdiction of the provinces.⁹³ Within this arrangement, local government had limited powers and was an implementing arm of the central government.⁹⁴ Although two further Constitutions were adopted

⁹⁰ Drimie (2016) 1-5.

⁹¹ Chapter 5 will comprehensively set out this argument.

⁹² Chapter 2 section 2 25-32. This section deals with food security in South Africa and the distorted food system in South Africa.

⁹³ Hattingh J 'Governmental Relations: A South African Perspective' (1998) 131-137.

⁹⁴ Hattingh J (1998) 131-137. The South Africa Act 1909 was an Act of the British Parliament which created the Union of South Africa from the British colonies of the Cape of Good Hope, Natal, Oranje River Colony, and Transvaal, and formed the basis of the first Constitution of the Union to provide for white rule.

in 1961 and 1983, local government powers remained the same.⁹⁵ Prior to 1993, local government powers and functions could be removed at the discretion of the central government and provinces.⁹⁶ By-laws, deemed as ‘subordinate delegated legislation’, were reviewable by the courts as administrative acts.⁹⁷ The framework was also highly fragmented. Each of the four provinces making up the Union, namely, the Cape of Good Hope, Natal, Orange Free State, and Transvaal enacted their own provincial ordinance to regulate local government.⁹⁸ Different local government institutions were created along geographical boundaries of towns, rural areas, and racial groupings.⁹⁹ For instance, these included city councils for large urban areas, town councils and village councils.¹⁰⁰ Separate local authorities were established for coloureds, Indians and blacks in urban areas.¹⁰¹ Tribal and regional authorities governed homelands while regional service councils applied in certain rural areas and joint service boards were established in others.¹⁰²

Black, coloured and Indian residents saw their local authorities as illegitimate and undemocratic.¹⁰³ By design, local institutions (excluding the white institutions) had limited revenue-raising powers. Consequently, they were incapable of generating the necessary funds to deliver proper services.¹⁰⁴ Apartheid barred most retail and industrial development in black areas.¹⁰⁵ This limited the local institutions’ tax base and forced residents to spend most of their money in formally developed white areas.¹⁰⁶ Instead of uplifting the living conditions of their residents, local authorities’ imposed high service charges, delivered poor services and even threatened their communities’ health, and indulged in large-scale evictions when residents could not afford the exorbitant taxes.¹⁰⁷ Local institutions in white areas had ‘developed infrastructure, thriving business districts

⁹⁵ The Republic of South Africa Constitution Act No 32 of 1961 declared South Africa a republic no longer under British rule.

⁹⁶ Steytler N & De Visser J (2014) 1-8.

⁹⁷ Steytler N & De Visser J (2014) 1-8.

⁹⁸ Steytler N & De Visser J (2014) 1-9.

⁹⁹ Binza S (2005) 75-78.

¹⁰⁰ Binza S (2005) 75-78.

¹⁰¹ Binza S (2005) 75-78.

¹⁰² Binza S (2005) 75-78 and also refer to Steytler N & De Visser J (2014) 1-9.

¹⁰³ DPLG (1998) White Paper on Local Government 1-13.

¹⁰⁴ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) at para 26.

¹⁰⁵ Pieterse E (ed) ‘Participatory local governance in the making’ in Parnell S et al (eds) ‘*Democratising local government the South African experiment*’ (2002) 1-5. Tsatsire I et al (2009) 141-142.

¹⁰⁶ Pieterse E (2002) 1-5.

¹⁰⁷ *Fedsure* at para 26.

CHAPTER 3

and valuable rateable property'.¹⁰⁸ This was not the case in other areas, particularly in black township areas.¹⁰⁹ Townships were characterised by dusty roads with potholes, open and unattended decomposing latrines, and overflowing sewerage pipes.¹¹⁰ Townships consisted of dormitory styled houses with few and scattered recreation facilities.¹¹¹

Chapter 5 will illustrate the linkages between the historical roots of space and location in townships with the current food security challenges. For now, emphasis is on the fact that businesses did not want to invest in black township areas.¹¹² Township areas were never conceived of or designed as places of potential for economic upliftment.¹¹³ There are many reasons that discouraged economic investment.¹¹⁴ One of the main reasons was the central government's resistance to the promotion of economic development of black townships.¹¹⁵ Simply put, these areas were conceived as a holding place for black labourers for the economic activity in white urban areas.¹¹⁶ Therefore, this meant that any developments in the township areas were a high risk to business.¹¹⁷ First, private developers were solely responsible for the business enterprise because the government did not fund developments in townships. Second, the land and built environment of black townships discouraged development. For example, development was often inhibited by the conditions of the land that were hard and difficult to excavate.¹¹⁸ Townships were far from infrastructure leading to and from commercial, economic and industrial hubs.¹¹⁹ Nqapela and Fakir indicate the poor road and route networks of black township areas caused higher costs for transporting goods, services and people.¹²⁰ They further argue that the logistics and supply chains to and from

¹⁰⁸ *Fedsure* at para 26.

¹⁰⁹ Nqapela N & Fakir E 'Can the 'Township Economy' be liberated?' *Polity* 8 September 2017.

¹¹⁰ Nqapela N & Fakir E (2017) 1/1.

¹¹¹ Nqapela N & Fakir E (2017) 1/1.

¹¹² Rogerson C 'The economic development of South Africa's townships' in Knight J & Rogerson C (eds) *The geography of South Africa: contemporary changes and new directions* (2018) Cham, Switzerland: Springer International Publishing. Chapter 1.

¹¹³ Rogerson C 'Johannesburg's Informal Sector: Historical Continuity and Change' *African Urban Quarterly*, 1. The research provides an historical explanation for understanding many of the contemporary issues of poverty and underdevelopment in the informal sector.

¹¹⁴ Rogerson C 'Emerging from Apartheid's Shadow: South Africa's Informal Economy' *Journal of International Affairs* Spring 2000, Vol. 53 Issue 2 673-73.

¹¹⁵ Rogerson C (2000) 674

¹¹⁶ Rogerson C (2000) 675-677. Rogerson highlights the influence of the apartheid influx control policies that denied Black people access to permanent residency in white urban areas thus forcing them into the black townships.

¹¹⁷ Nqapela N & Fakir E (2017) 1/1.

¹¹⁸ Nqapela N & Fakir E (2017) 1/1.

¹¹⁹ Nqapela N & Fakir E (2017) 1/1.

¹²⁰ Nqapela N & Fakir E (2017) 1/1.

CHAPTER 3

townships were underdeveloped and under-serviced.¹²¹ In these areas service points such as water sources, electricity generation grids were very limited and not conducive to economic activity.¹²² The built environment destroyed any real potential to grow the local economy.¹²³

This had a very negative impact on food security amongst black people. Chapter 2 pointed out food insecurity is highest in informal settlements townships and rural areas.¹²⁴ During apartheid it was difficult for black people to buy food and to make a livelihood from producing food.¹²⁵ The national government deliberately failed to create opportunities for black small-scale farmers in the formal food value chains.¹²⁶ In fact, Greenberg highlights how the formal agro-system served them poorly. For instance, small-scale farmers selling food had to use the informal food systems for their business and had to devise their own strategies to survive.¹²⁷ Greenberg further argues that, '[i]nformal systems of food procurement and distribution filled the vacuum created by apartheid failures to deliver adequate food to black areas, urban and rural alike'.¹²⁸ Black people bought most of their food from white-owned shops outside their residential areas.¹²⁹

The political agenda of apartheid to advance segregation and inequity resulted in a violation of the right to food in many ways. Overall, the configuration of local government was legally fragmented with local authorities that lacked legitimacy. Local institutions in black areas were stripped of any meaningful powers to improve their local economies.¹³⁰ Hence, black peoples' living conditions and access to basic human rights, such as the right to vote, to housing, to dignity were violated in the worst ways. The intention of the apartheid government was to use the legal system to break down the inherent dignity of black people.¹³¹ Apartheid defined black people as 'not having

¹²¹ Nqapela N & Fakir E (2017) 1/1.

¹²² Nqapela N & Fakir E (2017) 1/1.

¹²³ Nqapela N & Fakir E (2017) 1/1.

¹²⁴ Chapter 2 section 2.4: 25-31.

¹²⁵ Greenberg S 'Corporate concentration and food security in South Africa: is the commercial Agro-Food System Delivering?' (2015) available at <https://www.plaas.org.za/sites/default/files/publications-pdf/PLAAS%20Rural%20Report%20Book%201%20-%20Stephen%20-%20Web.pdf> (accessed 22 November 2018).

¹²⁶ Greenberg S (2015) 6-10.

¹²⁷ Greenberg S (2015) 6-10.

¹²⁸ Greenberg S (2015) 6-10.

¹²⁹ Greenberg S (2015) 6-10.

¹³⁰ Steytler N & De Visser J (2014) xx.

¹³¹ Steinmann A 'The Core Meaning of Human Dignity' (2016) Vol 19 *PER/PERJ* 14.

CHAPTER 3

inherent worth; as objects whose identities could be arbitrarily defined by those in power rather than as persons of infinite worth'.¹³²

To fight the injustices of apartheid protest action intensified in the 1980s. These protests are well documented in the international and national literature.¹³³ The concept of the 'one city, one tax base' entailed the democratisation of local government in terms of broad principles of redistribution, efficiency and non-racialism.¹³⁴

Protests became more prominent and violent.¹³⁵ The African National Congress (ANC) called on residents to 'make townships ungovernable' and to put an end to the Black Local Authorities.¹³⁶ On 20 July 1985, the national government declared a state of emergency over many parts of the country.¹³⁷ As the state's administrative system broke down, black people established their own democratic structures, street committees and people's courts, to administer their communities.¹³⁸ Black townships and many rural areas were effectively ungoverned during 1985 and 1986.¹³⁹ In fighting for a democratic country, the ANC and the South African National Civics Organisation (SANCO) exerted pressure on the government to reform the local government system.¹⁴⁰ They demanded a non-racial and democratic local government as part of the transition to a constitutional democracy.¹⁴¹

¹³² Steinmann A (2016) 14.

¹³³ Houston G 'The state of research on, and study of, the history of the South African liberation struggle' (2015) available at <https://www.sahistory.org.za/sites/default/files/file%20uploads%20/The%20state%20of%20research%20on%20and%20study%20of%20the%20history%20of%20the%20South%20African%20liberation%20struggle.pdf> (accessed 15 January 2019).

¹³⁴ Reddy P (ed) 'Metropolises in Africa' in Michiel S, et al (eds) 'Improving local government – Outcomes of comparative research' (2008) 52-54.

¹³⁵ For example, on 6 April 1984 the buildings of the Administrative Council in Bloemfontein were attacked and on 3 September 1984, the day the new constitution was promulgated Sharpeville embarked on a local rent boycott. The rent boycott was organised by the Vaal Civic Association, to protest the increase in charges imposed by the new Community Council.

¹³⁶ Tsatsire I et al 'Historical overview of specific local government transformatory developments in South Africa' (2009) No 57 *New Contree* 136-139.

¹³⁷ South African History Online (SAHO) 'The people armed, 1984-1990' 1/1 (2016) available at <https://www.sahistory.org.za/article/people-armed-1984-1990> (accessed 15 January 2019).

¹³⁸ SAHO (2016) 1/1.

¹³⁹ SAHO (2016) 1/1.

¹⁴⁰ SAHO (2016) 1/1

¹⁴¹ Ottaway M 'South Africa: The Struggle for a New Order' (1993) 10-15 and 119-125.

On 2 February 1990, President FW de Klerk announced the release of Nelson Mandela from prison and the unbanning of liberation movements.¹⁴² The unbanning of the liberation movements paved the way for establishing that constitutional democracy. Despite this, the political situation in the country was volatile.¹⁴³ On 4 May 1990, the Groote Schuur Minute was signed between the ANC and the National Party to work towards peace and a negotiated settlement.¹⁴⁴ A further mechanism for peace was the National Peace Accord (NPA) of 14 September 1991, which established a framework for the negotiation process.¹⁴⁵ The NPA was signed by 27 political organisations, homeland and national governments and paved the way for the Convention for Democratic South Africa (CODESA) negotiations in 1992.¹⁴⁶

The CODESA negotiations were used to plan the establishment of a new system of local government. The democratisation of local government occurred in three phases, namely, the pre-interim (1994-1996), the interim (1996-2000), and final phase (2000) briefly outlined below.¹⁴⁷

3.1 The pre-interim phase

The pre-interim phase set out to establish the legal and practical mechanisms to begin the transformation process.¹⁴⁸ In 1993 negotiations commenced on how local government had to be restructured and transformed. There were statutory and non-statutory bodies involved in the process. The non-statutory bodies enjoyed equal representation in the negotiation forum. The statutory bodies comprised persons from the disestablished apartheid municipalities and other organisations such as ratepayers' associations. The non-statutory bodies consisted of organisations that had vested interests in the political restructuring and transformation of local government including the Pan Africanist Congress (PAC), ANC and (SANCO).¹⁴⁹

¹⁴² De Visser J *'Developmental local government: A case study of South Africa'* (2005) Antwerp: Intersentia, Oxford.

¹⁴³ Anglin D 'International Monitoring of the Transition to Democracy in South Africa, 1992-1994' (1995) *African Affairs* Vol 94 519-543.

¹⁴⁴ Anglin D (1995) 522-527. 'Groote Schuur Minute' between [Nelson Mandela](#) of the [African National Congress](#) and [F.W. De Klerk](#), the then President of South Africa, on 4 May 1990. The document was a commitment between the two parties towards the resolution of the existing climate of violence and intimidation as well as a commitment to stability and to a peaceful process of negotiations.

¹⁴⁵ Anglin D (1995) 522-527.

¹⁴⁶ Mandela N *'Long Walk to Freedom'* (1994) United States: Macdonald Purnell.

¹⁴⁷ Bekink B *'Principles of South African Local Government Law'* (2005).

¹⁴⁸ Bekink B (2005).

¹⁴⁹ Sutcliffe M *'Article for democratic local government and effective service delivery Chapter Two: new era in local government (demarcation)'* (2000) available at <http://www.demarcation.org.za/site/wp->

Reaching agreement on the manner and substance of the transformation of local government proved challenging and as a result, two separate forums operated. The development of the Multi-Party Negotiation Forum (MPNF) was focused on the formation of the state, whereas the National Local Government Negotiating Forum (NLGNF) was the ‘principal mechanism’ for negotiation of the establishment of a democratic, non-racist, non-sexist and financially viable local government system.¹⁵⁰ The NLGNF thus played a dominant role in the ‘one city, one tax base’ campaign.¹⁵¹

The NLGNF comprised fifty per cent statutory and non-statutory representation. The South African National Civic Association (SANCO) that formed part of the non-statutory component fulfilled a vital role in the proceedings of the NLGNF.¹⁵² The active engagement of civil society positively influenced three outcomes, namely, the (i) ‘Agreement on Local Government Finance and Services, (ii) the Local Government Transition Act 209 of 1993 (LGTA) and (iii) the provisions of Chapter 10 of the Interim Constitution dealing with local government.¹⁵³

3.2 The interim phase

The LGTA became the bedrock for the establishment of a democratic local government and the appointment of temporary councils.¹⁵⁴ These councils were responsible for local government until the local government elections in 1995 and 1996.¹⁵⁵ The temporary councils were not completely democratic. For instance, the former Indian, coloured and white areas had the same number of ward councillors as the former African areas despite their respective populations being

<content/uploads/2016/12/CH20001022ChairpersonArticleMunicipalDemarcationNBI.pdf> (accessed 15 January 2019).

¹⁵⁰ De Beer J & Lourens L ‘Plaaslike regering: Die pad na demokrasie’ (1995) cited in Anticevich J *Local Government Transformation and the Recognition of the Disabled: an Analytical Perspective* (unpublished Master’s thesis, Potchefstroom Campus of the North-West University) 16-18.

¹⁵¹ Cameron R ‘Local government boundary reorganisation’ in Pillay U, Tomlinson R, & Du Toit J (eds) *Democracy and Delivery: Urban Policy in South Africa* (2006) 76-78.

¹⁵² Steytler N & De Visser J (2014) 1-8.

¹⁵³ Steytler N & De Visser J (2014) 1-8.

¹⁵⁴ Steytler N & De Visser J (2014) 1-8.

¹⁵⁵ Sutcliffe M (2000) 1-3.

substantially lower.¹⁵⁶ The temporary councils had to unite the different racial groups in urban areas.¹⁵⁷

The Interim Constitution prescribed the characteristics and requirements of local government.¹⁵⁸ The status of local government was elevated to ensure legitimate institutions with democratically elected councillors. An electoral system was prescribed based on a combination of proportional and ward representation.¹⁵⁹ The transformation imperatives which local government had to deliver guaranteed them revenue-raising powers.¹⁶⁰ Yet, section 175 of the Interim Constitution continued to subject the powers and functions of local government to be determined by a ‘competent authority’.¹⁶¹ This meant that local government under the Interim Constitution did not have constitutionally entrenched powers and functions.

3.3 The final phase

The final phase commenced with the municipal elections held on 5 December 2000.¹⁶² Municipalities were established in terms of the 1996 Constitution and the new local government legislation.¹⁶³ The status of local government was confirmed as a distinctive sphere with original constitutional powers.¹⁶⁴ The Constitution contains a list of the functional areas for local government and provides local government with the necessary legislative and executive powers to execute these functions.¹⁶⁵

The final phase included the local government law-reform process.¹⁶⁶ The main thrusts for the new dispensation involved developmental municipal governance; integrated service delivery with integrated development plans; ensuring equity and sustainability in the planning system, and

¹⁵⁶ Sutcliffe M (2000) 1-3.

¹⁵⁷ Sutcliffe M (2000) 1-3.

¹⁵⁸ Steytler N & De Visser J (2014) 1-8.

¹⁵⁹ Steytler N & De Visser J (2014) 1-8.

¹⁶⁰ Steytler N & De Visser J (2014) 1-10.

¹⁶¹ Steytler N & De Visser J (2014) 1-10.

¹⁶² Steytler N & De Visser J (2014) 1-10.

¹⁶³ Steytler N & De Visser J (2014) 1-10.

¹⁶⁴ S40 (1) read with s156 of the Constitution.

¹⁶⁵ S156 (1) and (2) of the Constitution.

¹⁶⁶ Ovens W & Associates ‘Sketching the Establishment of Local Government’ in Nkhahle S et al (eds) ‘15 Years Review of local government celebrating achievements whilst acknowledging the challenges’ (2015) 20-25.

CHAPTER 3

ensuring democratic representation and accountability, and the promotion and participation of local residents¹⁶⁷

The *White Paper on Local Government* (White Paper) was issued in March 1998 and served as the blueprint to achieve the local government's transformational goals coined a 'mini-Constitution' for local government. The White Paper defined developmental local government as 'local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives'.¹⁶⁸

The number of municipalities was rationalised throughout the various phases of the transformation of local government, commencing with the pre-interim phase (1992-1995), transitional phase (1995-1999), and final phase (2000). During 2000, the Municipal Demarcation Board rationalised the number of municipalities from 843 to 284. The demarcation and establishment of municipalities were viewed as a significant development.¹⁶⁹ Yet the process was met with scepticism particularly levelled at the spatial structuring of the municipalities.¹⁷⁰ The spatial structure resulted in municipalities being geographically much larger than before.¹⁷¹ This was argued to be unsuitable for the institutional and capacity context of the municipalities at the time.¹⁷² Municipalities ranged from big cities to small rural impoverished municipalities.¹⁷³ The next section will discuss the constitutional status of local government and its interplay with advancing the right to food.

¹⁶⁷ Ovens W & Associates (2015) 20-25. Important legislation passed to regulate local government included the Organised Local Government Act 52 of 1997; the Municipal Demarcation Act 27 of 1998; the Local Government Municipal Structures Act 117 of 1998; the Local Government Municipal Systems Act 32 of 2000; the Local Government Municipal Finance Act 56 of 2003; the Local Government Municipal Electoral Act 27 of 2000; and the Local Government: Municipal Property Rates Act 6 of 2004.

¹⁶⁸ The Ministry for Provincial Affairs and Constitutional Development 'The White Paper on Local Government' March 1998. (WPLG) 17.

¹⁶⁹ Bekink B The principles of South African Local Government (2005) 11-151. 13 Steytler (ed) The First Decade of the Municipal Demarcation Board: Some Reflections on Demarcating Local Government in South Africa (2010) 32.

¹⁷⁰ Van Donk M & Pieterse E 'Reflection on the design of a post-apartheid system of (urban) local government' in Pillay U, Tomlinson R, & Du Toit J (eds) 'Democracy and Delivery- Urban Policy in South Africa' 114-117.

¹⁷¹ Atkinson D (2002) 30.

¹⁷² Van Donk M & Pieterse E (2006) 114-117.

¹⁷³ Steytler N 'Local government in South Africa: Entrenching decentralised government' in Steytler N (ed) *The place and role of local government in federal systems* (2005) 194.

4. DEMOCRATIC LOCAL GOVERNMENT

4.1 Developmental mandate for local government

This section will provide an overview of the constitutional and legal framework for local government. It starts with the development objectives and then discusses the intersection of the developmental objectives and food security.¹⁷⁴ Section 152 contains five objectives, namely, to (a) provide democratic and accountable government for local communities; (b) ensure the provision of services to communities in a sustainable manner; (c) promote social and economic development; (d) to promote a safe and healthy environment; and (e) encourage the involvement of communities and community organisations in the matters of local government'.¹⁷⁵

These objects are not only ideals but must be realised by local governments. The Constitution instructs a municipality to, 'strive within its financial and administrative capacity, to achieve these objects'.¹⁷⁶ Section 153 instructs municipalities to prioritise their communities' basic needs. In addition, it demands a municipality to be 'developmental' when structuring and managing its administration on the one hand, and budgeting and planning processes on the other. The aim is to promote the social and economic development of the community. Municipalities must also participate in the national and provincial development programmes.¹⁷⁷

The above constitutional provisions can be grouped into four themes, namely, (i) democracy, (ii) development, (iii) a safe and healthy environment and (iv) participation in development programmes. They are important for local councils when exercising their legislative and executive powers. Extensive literature is available on the role of local government in sustainable development.¹⁷⁸ A brief account is provided on the intersection of sustainable development, food

¹⁷⁴ For a more comprehensive discussion refer to Chigwata T, De Visser J, & Kaywood L (eds) *The journey to transform local government* (2019) Cape Town: Juta; Kanyane M & Koma S *Developmental local government in South Africa: issues for consideration* (2014) Pretoria: HSRC Library.

¹⁷⁵ S152(1)(a)-(e) of the Constitution.

¹⁷⁶ S152(2) of the Constitution.

¹⁷⁷ S153(b) of the Constitution.

¹⁷⁸ UNDP *A Users' Guide to Measuring Local Governance* (undated) 5-6 available [greenberghttps://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/a-users-guide-to-measuring-local-governance-LG%20Guide.pdf](https://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/a-users-guide-to-measuring-local-governance-LG%20Guide.pdf) (accessed 14 June 2016). The UN Habitat of the Guidelines on Decentralisation and the Strengthening of Local Authorities in April

security, and the developmental local government. It is argued that the constitutional objectives do not just reinforce the general international argument, which was set out in Chapter 2, that local government must realise the right to food, but the Constitution instructs local government to be developmental in ways that resonate very clearly with the food systems approach.

The ultimate goal of sustainable development is to create an enabling environment for people to enjoy long and healthy lives.¹⁷⁹ Generally, the developmental objectives of local government include amongst others, the provision of basic services, designing spatial and built environments and the creation of livelihoods in their territories. Access to services is significant for the productivity of business, households, and people's quality of life. Local governments are obliged to safeguard access to basic services and ensure that consumers can afford the supply of such services.¹⁸⁰ The uninterrupted supply of services such as water, sanitation, electricity, and refuse removal are inextricably linked to the standard of living of people. Local government is compelled to ensure the provision of Free Basic Services to poor people.¹⁸¹

Sustainable development depends on a productive local economy and improved social conditions.¹⁸² A few examples do illustrate how they can improve local economic development in their environment. For instance, they can remove constraints on growth, investment and job

2007 was a major step forward in this direction. The Guidelines was premised on the European Charter of Local Self Government (1985) and recognises that sustainable development is made possible by 'the effective decentralization of responsibilities, policy management, decision-making authority and sufficient resources, to local authorities, closest to, and most representative of, their constituencies.' Kiingi F 'Improving citizen participation in local government: Participatory budgeting and municipal accountability tools' in Good Governance Learning Network '2018 State of Local Governance publication' (2018) 30-35. From an international perspective refer to Spoden K Local Government Sustainability Initiatives and City-Run Farmers' Markets' (2018) *Critique: a worldwide student journal of politics* 119-124. From a national level refer to Damon L Municipal regulation of food and waste pickers on landfill sites in South Africa: what should municipalities (dis)allow? (unpublished LLM thesis, University of the Western Cape, 2018), and SALGA 'Local government energy efficiency and renewable energy strategy' available at <https://www.sustainable.org.za/uploads/files/file100.pdf> (accessed 19 April 2019). Pasquini L & Shearing C Municipalities, Politics, and Climate Change: An Example of the Process of Institutionalizing an Environmental Agenda within Local Government *Journal of Environment and Development* (2014) 23(2):271-296. McLachlan M 'Food Security' (undated) available at http://www.enviropedia.com/topic/default.php?topic_id=296 (accessed 15 January 2019).

¹⁷⁹ Malhotra K 'The Purpose of Development' (2004) Vol 26 *Michigan Journal of International Law* 13-18.

¹⁸⁰ Malhotra K (2004) 13-18.

¹⁸¹ SERI 'Targeting the Poor? An Analysis of Free Basic Services (FBS) and Municipal Indigent Policies in South Africa' available at http://www.seri-sa.org/images/Targeting_the_Poor_Nov13.pdf (accessed 15 March 2016).

¹⁸² Steytler N & De Visser J (2014) 5-5.

CHAPTER 3

creation by lowering the costs of living and doing business.¹⁸³ Transport costs are closely related to how far people live from their place of work or education.¹⁸⁴ Sprawl and poor planning increase transport costs.¹⁸⁵ This requires local governments to develop strategies for densification and to provide more diverse accommodation options. They need to increase efficiencies in service provision that require infrastructure is kept in good order and losses in service provision are minimised.¹⁸⁶

Returning to the NDP, it raised specific development issues for local government to address, namely, the situation of small-scale farmers, micro-enterprises and street traders that sell food to the public.¹⁸⁷ Bannister argues that local government must recognise and support the informal economy and expand the ‘space for informality, not just physically, but also politically and in governance’.¹⁸⁸ She submits, for example, that a review of existing by-laws that restrict the activities of the informal sector must be done.

Chapter 2 pointed out the characteristics of a sustainable food system that includes a healthy and sustainable environment.¹⁸⁹ It is submitted that local government exercises many functions that intersect with sustainability challenges. For example, they can improve food security through food gardens, regulatory measures to optimise food waste management, and job creation. Local government can promote energy efficiency by improving the management of public facilities; building codes and development approvals; air quality management; and electricity distribution. Other local government initiatives include the implementation of: (a) flood risk reduction measures for example, regular maintenance of stormwater drainage systems and construction of additional

¹⁸³ Bannister S ‘SALGA 11th National MM’s Forum, George presentation: Implementing the National Development Plan at local government level held on 31 August 2017’ (2017) available at https://www.google.co.za/search?source=hp&ei=cjSPXODODsLzkwXdl6SYBA&q=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&btnK=Google+Search&oq=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&gs_l=psy-ab.3...286.286..1644...0.0..0.0.....0....2j1..gws-wiz.....0 (accessed 15 January 2019) 1-34.

¹⁸⁴ Bannister S (2017) 12-16.

¹⁸⁵ Bannister S (2017) 12-16.

¹⁸⁶ Bannister S (2017) 12-16.

¹⁸⁷ Bannister S (2017) 19-28.

¹⁸⁸ Bannister S (2017) 19-20.

¹⁸⁹ Chapter 2: section 4.1.3 58.

stormwater drainage systems; (b) drought risk reduction measures for example, issuing water tanks to previously disadvantaged rural areas; and (c) natural resource conservation and rehabilitation measures for example, working with conservation bodies to conserve the environment and to restore the wetlands. These development objectives are required to work towards a sustainable food system. Local government is, therefore, not only obliged to realise the right to food but must use their powers to influence the local food system positively.

The right to sustainable development concerns the protection of vulnerable groups especially women from the negative effects of globalisation, trade and economic policies.¹⁹⁰ This applies with equal force to the food system. Women continue to be marginalised in the production of food, the distribution of food, and the consumption of food.¹⁹¹ To secure the right to sustainable development as it relates to food security there must be measures in place for greater participation of women and other vulnerable groups in the planning, management, and preservation of the environment and the sustainable use of natural resources.¹⁹² It is argued that the developmental mandate of local government resonates with these principles. What follows is a discussion on the legislative framework for the establishment of municipalities and the prominent role that municipalities must fulfil towards public participation.

4.2 Establishment of local government

Municipalities are established in terms of section 155(1) of the Constitution that envisages metropolitan, district and local municipalities.¹⁹³ Local government must be established for the whole territory of the country referred to as wall-to-wall municipalities.¹⁹⁴ Previously, not all land fell under the jurisdiction of a municipality, particularly land in the ‘homelands’ or Bantustans as mentioned in the discussion on the local government evolution.¹⁹⁵ While the LGTA permitted traditional authorities to perform some local government functions in the former ‘homelands’ or

¹⁹⁰ Chapter 2: section 2.2: 19-22.

¹⁹¹ Chapter 2: section 2.2: 19-22.

¹⁹² Chapter 2: section 3: 32-40.

¹⁹³ The metropolitan municipalities are self-standing and enjoy exclusive executive and legislative whereas local municipalities share executive and legislative authority with a district municipality. In addition, there are different types of governance systems that municipalities adopt.

¹⁹⁴ Singh A ‘*Municipal representation as a mechanism to enhance local government efficiency: the role of associations for local authorities*’ (unpublished LLD thesis, University of South Africa, 2016)

¹⁹⁵ Chapter 3: section 4: Local government under apartheid.

CHAPTER 3

Bantustans, their role was diminished with the establishment of wall-to-wall municipalities in 2000.¹⁹⁶

This also means that, from 2000, all land falls within the jurisdiction of a municipality. This is important for the discussion of land use regulation that follows in Chapters 4 and 5.¹⁹⁷ The number of municipalities has steadily reduced since democracy.¹⁹⁸ With the 2016 local government elections, the number of municipalities was reduced from 278 to 257 municipalities.¹⁹⁹ Of these municipalities, there are eight metropolitans, 205 local and 44 district municipalities.²⁰⁰ These municipalities fall within nine provinces.²⁰¹ The Municipal Demarcation Board (MDB) determines boundaries of municipalities.²⁰²

The Constitution provides for an electoral system that consists of proportional and ward-based representation.²⁰³ The Municipal Structures Act prescribes that an independent body, namely, the MDB, must undertake the delimitation of wards.²⁰⁴ The main purpose of wards is to facilitate and support local democracy through the election of a candidate to represent the residents of that ward in the municipal council.²⁰⁵ Local and metropolitan councils comprise 50 per cent proportional representation and 50 per cent from the wards within the municipal area as a whole.²⁰⁶ A district

¹⁹⁶ Sekgala M *The role of traditional leaders in local governance: A case study of Limpopo* (unpublished LLM thesis, University of the Western Cape, 2016) 1-8.

¹⁹⁷ Singh A (2016) 230-233.

¹⁹⁸ Local government has gone through an extensive process of transformation as part of the overall democratisation and transformation of the state. More than 1100 municipalities that existed prior to the 1994 election was first reduced to 843 municipalities and prior to the 2000 local government elections further rationalised into 284 municipalities. With the 2006 local government elections the number of municipalities was even further reduced to 283 and with the 2011 local government elections the number of municipalities was again reduced to 278. Scheepers L (2015) 83.

¹⁹⁹ IEC *'The 2016 local government elections: The point where South Africa changed course?'* available at <https://icld.se/static/files/forskningspublikationer/andrew-siddle-sa-elections-analysis-report-8.pdf> (accessed 30 August 2017).

²⁰⁰ CoGTA (2016) *'Cooperative Governance on democratic local government'*, available at <http://www.gov.za/speeches/democratic-local-government-22-aug-2016-0000> (accessed on 30 August 2016).

²⁰¹ Provinces namely, Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

²⁰² S155(3)(b) of the Constitution.

²⁰³ S157(2)-(4) of the Constitution. The electoral system is regulated in at least four different statutes, the Electoral Act 73 of 1998, the Local Government: Municipal Structures Act 117 of 1998, the Local Government: Municipal Electoral Act 27 of 2000 and the Local Government: Municipal Systems Act 32 of 2000. Also, there are rules in various regulations under these Acts. As a result the electoral system is complex.

²⁰⁴ The Municipal Structures Act 117 of 1998 outlines the procedures and criteria for ward delimitation.

²⁰⁵ S78 of the Municipal Structures Act 117 of 1998.

²⁰⁶ Singh A (2016) 237-239.

CHAPTER 3

council comprises 60 per cent of councillors appointed by the local municipalities in the district to represent their local municipality in the district council, and 40 per cent of PR councillors (elected by all the voters in the district area).²⁰⁷

For each ward, a ward committee may be established.²⁰⁸ Only metropolitan and local municipalities of certain types may have ward committees.²⁰⁹ The purpose of the ward committees is to enhance participatory democracy in local government.²¹⁰ They serve as a formal communication channel between the community and the municipal council.²¹¹ In addition, ward committees may act as advisory bodies for a range of matters affecting their wards but with the council making the rules and providing the terms of reference for guiding the functioning of the ward committees.²¹²

Section 16(1) of the Municipal Systems Act that deals with public participation compels municipalities to facilitate the participation of the local community in all processes related to their integrated development plans (IDPs) and performance management systems, the preparation of municipal budgets, and strategic decisions about the provision of municipal services. The prominence of the IDP, as a strategic planning instrument, will be discussed in section 4.9. These are the principal processes in which ward committees are expected to participate.²¹³ In fact, the Municipal Systems Act defines a municipality to consist of political structures, the administration, and the community.²¹⁴ The community includes local organisations and the private sector. A municipality is obliged to ‘contribute, together with other organs of state, to the progressive

²⁰⁷ De Visser J & Steytler N ‘*Electing Councillors -A Guide to Municipal Elections*’ (2016) available at <https://dullahomarinstitute.org.za/multilevel-govt/publications/10062016-elections-guide.pdf> (accessed 19 August 2019).

²⁰⁸ S71(1) of the Municipal Structures Act 117 of 1998.

²⁰⁹ S73(1) of the Municipal Structures Act 117 of 1998.

²¹⁰ Refer to Smith T & De Visser J ‘*Are ward committees working? Insights from six case studies*’ available at <https://dullahomarinstitute.org.za/multilevel-govt/publications/ward-committ-pdf.pdf> (accessed 31 May 2019) They argue that Chapter 5 of the Municipal Systems Act 32 of 2000, specifically section 17(1) indirectly provide that ward committees are one of the structures through which participation by the local community in the affairs of the municipality must take place. Moreover, the Act details the obligations of municipalities in terms of what processes and procedures they need to put in place to facilitate community participation in local governance, how information regarding opportunities for public participation should be communicated, and how access by the public should be afforded to municipal decision-making processes.

²¹¹ Smith T & De Visser J (2009) 5-8.

²¹² Smith T & De Visser J (2009) 5-8.

²¹³ Smith T & De Visser J (2009) 5-8.

²¹⁴ S2 of the Municipal Systems Act.

CHAPTER 3

realisation of fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution'.²¹⁵ The Municipal Systems Act places a duty on local government to realise the right to food as was explained in the discussion on the *Blue Moonlight* judgment, section 3.3.5 of Chapter 2.

The question is how this legal framework responds to, for example the seven essentials of the right to food raised in Chapter 2.²¹⁶ As was explained in section 2, local government is not accorded a significant role in the FSP framework. However, it will be argued below that it has original powers that intersect with food security. Furthermore, as was explained above, the Constitution provides local government with a developmental mandate that clearly resonates with the food systems approach. The local community is central to the decision-making of local government and this supports collaborative efforts amongst the relevant stakeholders to formulate appropriate food security laws and strategies.

Lastly, the legal framework compels local government to engage meaningfully in planning instruments that affect fundamental human rights. Arguably, this duty promotes a food systems approach and requires local government to use their powers related to: municipal planning and regulation of the built environment and transport infrastructure; local trade; and local environmental and health functions to influence the food system positively.

Given, the constitutional duty imposed on local government to realise the right to food in terms of the Constitution, the Municipal Systems Act and SPLUMA there is a strong case for local government to respond positively to the obstacles that restricts food security listed in Chapter 2 with respect to the distorted food system.²¹⁷ What follows is a presentation of the powers and functions of local government in South Africa against the backdrop of the discussion in Chapter 2 with respect to the local government development agenda and the local government levers to facilitate food security.²¹⁸ The aim is to set out how the constitutional powers of local government

²¹⁵ S4(2)(j) of the Municipal Systems Act.

²¹⁶ Chapter 2 section 3.3.6 55-56.

²¹⁷ Chapter 2 section 2 19-30.

²¹⁸ Chapter 2 section 4.1.1 57-58.

CHAPTER 3

intersect with food security, particularly if the powers are analysed, using a food systems approach detailed in Chapter 2.²¹⁹

4.3 Local government powers

4.3.1 Original powers

Local government has legislative and executive powers derived from the Constitution to govern its own affairs.²²⁰ These are referred to as ‘original’ powers.²²¹ Neither national, nor provincial legislation can remove original powers.²²² Any amendment would mean amending the Constitution itself.²²³ Section 156(1) of the Constitution empowers municipalities with executive authority on Schedules 4B and 5B matters in the Constitution and the right to administer the functions and powers with respect thereto. Municipalities may enact by-laws with respect to those functional areas. A by-law that conflicts with national or provincial legislation is invalid.²²⁴ This only applies if the national or provincial law is valid, so in other words, it is not an automatic override.

Section 229 of the Constitution deals with the municipal fiscal powers and functions. It affords municipalities the power to impose surcharges on fees for services provided under section 229(1)(a) of the Constitution; and to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229(1)(b) of the Constitution. Section 230A of the Constitution further empowers local authorities to raise loans for expenditure or investment, subject to certain conditions.²²⁵

It is argued that many of these original powers are significant in the context of food security. When viewed through a food systems lens, it becomes clear that many of local government’s original powers intersect with food security. These will be discussed under five food security-related themes, namely, (a) the provision of municipal services to support food security (electricity, water,

²¹⁹ Chapter 2 section 4.1.4 59-60.

²²⁰ Ss 40(1) read with s156 of the Constitution.

²²¹ Steytler N & De Visser J (2014) 5-5.

²²² Steytler N & De Visser J (2014) 5-5.

²²³ Steytler N & De Visser J (2014) 5-5.

²²⁴ S156 (3) read with s151 (4) of the Constitution.

²²⁵ S230A (1)(a-b) of the Constitution.

sanitation, solid waste); (b) the regulation of the local food trade (trading regulations, street trading, markets and licensing and control of undertakings that sell food to the public and billboards); (c) food safety (Municipal health and abattoirs); (d) food sensitive planning (municipal planning, public spaces and building regulations) and (e) childcare facilities.

4.3.2 The provision of municipal services to support food security (electricity, water, sanitation, solid waste)

(a) Electricity and gas reticulation

The supply of electricity is critical for the preparation of food and the availability for cold storage facilities.²²⁶ For example, grocery stores rely on refrigeration to prevent food from spoiling. Small-scale farmers require cold storage mechanisms to avoid harvest losses. Micro-enterprises need the supply of electricity to operate their businesses. Lastly, it was shown in Chapter 2 that the supply of electricity is essential for, amongst other things, the storage of products and to operate payment devices at the markets. Therefore, the supply of electricity is significant for the production, distribution and preparation of food.²²⁷

(b) Water and sanitation services limited to potable water supply systems

Access to water is a vital aspect of ensuring improved food security and nutrition.²²⁸ The Water Service Act 108 of 1997 gives effect to section 27 of the Constitution. The Act prescribes how municipalities must perform their water supply and sanitation services to ensure efficient, affordable, economical and sustainable access to water services.²²⁹ In addition, the National Water Act 36 of 1998 provides the legal framework for municipalities to regulate water resources in their territories.²³⁰ Initially, the food security literature narrowly focused on water as a matter of (agricultural) food production but now water and sanitation is considered within all four

²²⁶ Chapter 2: section 4.2.1: 60-75.

²²⁷ Chapter 2: section 3.3.4 44-48.

²²⁸ HLPE 'Water for food security and nutrition. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security' (2015) Rome.

²²⁹ The Municipal Systems Act provides the fundamental principles, mechanisms and processes necessary for municipalities to ensure access to basic services, like water and sanitation services. Section 78 of the Systems Act has a particular impact on the provision of water services as it requires municipalities to perform a rigorous process when determining whether to allow an institution to provide municipal services like water.

²³⁰ The water resources refer to surface and ground water and regulates the protection, use, development, conservation, management and control of water resources.

dimensions of food security.²³¹ It is well documented how water and sanitation services are critical for the preparation and cooking of food for personal use, street traders, farmer markets and micro-enterprises.²³² Domestic wastewater and sewage disposal systems are also fundamentally linked to food safety imperatives. Municipal councils are empowered to decide on setting surcharges for water services provision (for domestic and industrial use).²³³ In this regard, local government may facilitate food security by introducing incentives that offer informal traders more affordable water services.

(c) Domestic wastewater and sewage disposal systems,

The proper management of wastewater treatment works by municipalities is crucial for food safety.²³⁴ If municipalities fail to perform this function, it will lead to a decay in the infrastructure which in turn leads to overloading and spillages. This will negatively affect the water quality in the sources such as rivers, streams and dams.²³⁵ Therefore, wastewater treatment works need to be operating optimally to ensure that treated effluent of acceptable standards is discharged into the water resources.²³⁶ In addition, the proper management of wastewater provides a secondary source of water and nutrients that can be fed back to the soils.²³⁷ This makes an important contribution towards achieving food security as water, soil, and waste are three key environmental resources involved in crop-based food production.²³⁸

²³¹ HLPE (2015) 1-5.

²³² Chapter 2: section 2.1 19-24.

²³³ Baleta H & Pegram G 'Water as an input in the food value chain. Understanding the Food Energy Water Nexus' WWF-SA, South Africa.

²³⁴ Pettersen D 'SA's waste water treatment works in bad shape' *Infrastructurenews* 10 May 2016.

²³⁵ Pettersen D (2016) 1/1.

²³⁶ Pettersen D (2016) 1/1.

²³⁷ Caucci S & Hiroshan H 'The Nexus Approach and Safe Use of Wastewater in Agriculture: A Workshop on Policy and Implementation for Tunisia. Proceedings, Tunis, 12–14 December 2017. Dresden: United Nations University Institute for Integrated Management of Material Fluxes and of Resources (UNU-FLORES). UN & UNU- FLORES 'The Nexus Approach and Safe Use of Wastewater in Agriculture: An International Workshop on Policy and Implementation for Tunisia' (2017) 10.

²³⁸ Caucci S & Hiroshan H (2017) 10

(d) Municipal public transport

Municipal public transport relates to the regulation and control and where applicable the provision of services for the carriage of passengers within the municipality.²³⁹ Many statistics show how costly transport is for indigent people and how this limits their ability to buy food.²⁴⁰ Public transport infrastructure is fundamental for connecting businesses, people and economic activity.²⁴¹ Poor infrastructure inhibits economic activity in informal townships and negatively affects small-scale farmers and restricts the operation of street traders.²⁴² Integrated land use and transport development need to be aligned to facilitate food security.²⁴³

(e) Refuse removal, refuse dumps and solid waste disposal

Refuse removal is defined as the collection of rubbish and waste before the final disposal whereas refuse dumps are disposal sites for rubbish.²⁴⁴ Appropriate waste management strategies are essential for recycling organic food waste and to divert it from landfill sites.²⁴⁵ Municipal regulation of refuse removal, refuse dumps and solid waste disposal is directly linked to many of the food security dimensions. For example, these functions are essential for a clean and safe environment, to reduce waste and to rely less on landfilling and instead promote the recycling of waste.²⁴⁶ It is argued that the recycling of organic food waste can be used to enable a more sustainable food system.²⁴⁷ This is elaborated below.

For example, the Philippi Township situated in Cape Town developed a combination of technologies to overcome the widespread disposal of organic waste to landfills while at the same

²³⁹ SALGA 'Accelerating a move towards prioritization of efficient public transport: A draft discussion document' (undated) available at http://www.cityenergy.org.za/uploads/resource_211.pdf (accessed 1 November 2018).

²⁴⁰ Chapter 2 section 2 19-32. The discussion deals with the global and South African distorted food systems.

²⁴¹ Chapter 5 will explain how these linkages to food security are drawn.

²⁴² Chapter 5 will detail this issue.

²⁴³ SALGA 'Cape Town a forerunner in Design, Tech and Innovation' (2018) available at https://www.salga.org.za/Documents/Knowledge%20Hub/Publications/inKNOWvation%20Magazine_Low.pdf (accessed 30 May 2019).

²⁴⁴ GreenCape 'Food and organic waste management Industry Brief 01/2017' (2017) available at <https://www.greencape.co.za/assets/Uploads/NF-1-Industry-Brief-GreenCape.pdf> (accessed 1 June 2019).

²⁴⁵ Heuer A 'Waste to Food Creating economic opportunities by recycling food waste' (2016) available at <https://www.seed.uno/articles/case-studies/case-study-waste-to-food> (accessed 1 June 2019).

²⁴⁶ Oelofse S 'Food waste research for South Africa presentation by CSIR Operating Unit: Natural Resources and the Environment' available at <https://www.cgcsa.co.za/wp-content/uploads/2019/04/Prof-Suzan.pdf> (accessed 1 June 2019).

²⁴⁷ Heuer A (2016) 2-6.

CHAPTER 3

time improving opportunities for employment and food security.²⁴⁸ One of the strategies used was to recycle food waste into high-quality organic compost and to sell it to commercial clients.²⁴⁹ The organic compost is also directly applied in community food gardens. An organisation such as the Waste to Feed (W2F) is focused on increasing the production of organic vegetables, which are then consumed by the local community and sold back to retailers.²⁵⁰ By employing people from the Philippi Township and training them to become independent compost entrepreneurs and gardeners, W2F offers new livelihood opportunities to address poverty in the community.

The above example illustrates that waste management is an important lever to improve livelihoods and food security. The regulation of waste pickers represents another important food security dimension. Waste pickers are individuals whose survival largely depends on collecting, sorting and selling recyclable waste.²⁵¹ They also search for landfill sites for food.²⁵² Waste picking is a means of survival and is often not regulated or facilitated by the government making waste pickers vulnerable to exploitation and hazardous working environments.²⁵³ At the same time, waste picking helps with recycling and thus reducing landfill; and they are local entrepreneurs making a livelihood. Therefore, municipalities can contribute to food security by incorporating waste pickers into their waste management systems. For this reason, the vulnerability of waste pickers needs to be taken into consideration in municipal waste management systems.

Damons studied the constitutional powers of municipalities to regulate food and waste pickers in South Africa.²⁵⁴ She assessed the role, regulation and rights of food and waste pickers. In addition, she considered the municipal powers to regulate the role and rights of waste pickers. Her review on the legislative and policy framework for waste management showed that ‘none of the legislative and policy instruments affords waste pickers the recognition that they deserve as the main contributors in the informal waste management sector’.²⁵⁵ Damons asserted that waste pickers not

²⁴⁸ Heuer A (2016) 2-6.

²⁴⁹ Heuer A (2016) 2-6.

²⁵⁰ Heuer A (2016) 2-6.

²⁵¹ Schenck CJ, Blaauw PF & Viljoen MM ‘The socio-economic differences between landfill and street waste pickers in the Free State province of South Africa’ (2016) 33(4) *Development of Southern Africa* 533.

²⁵² Damons L (2018) 44-48.

²⁵³ Damons L (2018) explains that depending on the management of the landfill, waste pickers could also potentially be faced with crime on landfills with gangsters robbing them of their recyclables and/or hard earned money.

²⁵⁴ Damons L (2018) 8-12.

²⁵⁵ Damons L (2018) 32-46.

only contribute enormously to the environment by recycling but also save municipalities valuable financial resources and airspace.²⁵⁶

She noted that in India and Brazil local governments play a central role in integrating waste pickers into the waste management sector and protecting waste pickers rights.²⁵⁷ For example, in India and Brazil national legislation provides for the inclusion of waste pickers in the waste management systems.²⁵⁸ Municipalities are compelled to address the needs of waste pickers.²⁵⁹ This has led to innovative approaches adopted by municipalities. In Pune India, the Solid Waste Collection and Handling co-operative (SWaCH) was established to provide door-to-door collection services to Pune's various property types and to ensure that waste pickers services are regular and reliable.²⁶⁰ These services assist local authorities by diverting waste to landfills. In addition, it facilitated the formal integration of waste pickers into the municipal waste management system.²⁶¹ For example, Belo Horizonte the municipality developed legislation that made recycling, social inclusion, job creation and income generation the four main pillars of Solid Waste Management Systems.²⁶²

4.3.3 The regulation of the local food trade (trading regulations, street trading, markets and licensing and control of undertakings that sell food to the public and billboards)

(a) Trading regulations

Trading regulations relate to the regulations of any area facility and/or activity to trade goods and services within a municipal area that are not already being regulated by national and provincial legislation.²⁶³ Trade regulations require that a business licence be issued from the relevant municipal authority in terms of the applicable laws.²⁶⁴ Trading regulations have implications for

²⁵⁶ Damons L (2018) 63.

²⁵⁷ Damons L (2018) 52-57.

²⁵⁸ Damons L (2018) 61.

²⁵⁹ For a detailed discussion on this issues refer to Damons L (2018) 46-61.

²⁶⁰ Circulate News 'Meeting India's waste pickers' available at <https://medium.com/circulateneews/meeting-indias-waste-pickers-3079cb092054> (accessed on 25 November 2018).

²⁶¹ Samson (2009) 58.

²⁶² Dias (2011) 2 cited in Damons L (2018) 64.

²⁶³ HLPE (2015) 1-5.

²⁶⁴ The relevant laws include the National Health Act, the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, the Business Act 71 of 1991 and the municipal by-laws regulating zoning, health and safety. Also refer to Regulation 638 Governing the General Hygiene Requirements for Food Premises, the Transport of Food and Related Matters has replaced the Regulation in terms of section 15 (1) of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972.

the built environment and the local community. Facilitating local trade is especially important for food security.²⁶⁵ Trading regulations specific to food businesses require a certificate of acceptability before trading can commence. Hawkers that sell food from food trucks and vehicles require a food permit and a certificate of acceptability.²⁶⁶

In practice there is confusion as to what the difference is between the function of ‘trading regulations’ and other local government functions, in particular ‘markets’ and ‘street trading’ but these functions are defined later. Both of these functions concern the quality and maintenance of food safety and hygiene and environmental health standards. The point here is that ‘trading regulations’, ‘markets’, ‘street trading’, ‘licensing and control of undertakings that sell food to the public’ are essential for the regulation of local food value chains and ensuring the safety of food. Trading regulations afford local government substantial power to influence the food system directly through improving the distribution and access to food.²⁶⁷

(b) Street trading

Street trading may be defined as, ‘the control, regulation and monitoring of the selling of goods and services along a public pavement, road reserve and other public places but excluding fresh produce markets’.²⁶⁸ Municipalities may enact by-laws to regulate street trading. These regulations are usually not contained in a single by-law. For example, an informal trading by-law will deal generally with the requirements that street traders must comply with whereas the health standards for street traders selling food are regulated in a separate by-law and other legislation. For example, by-laws that will also apply relate to public places, the zoning regulations (that specify where informal trading is permitted), and the prevention of nuisances.²⁶⁹ This means that local governments can influence the business of street traders in a significant way.²⁷⁰

²⁶⁵ Chapter 2 section 2.4.2 : 66

²⁶⁶ Jackson L (2017) 1/1.

²⁶⁷ De Visser (2019) 12-13.

²⁶⁸ MDB ‘*Municipal Powers and Functions Capacity Assessment 2018 National Report*’ (2018) <http://www.demarcation.org.za/site/wp-content/uploads/2019/01/National-draft-FINAL-FINAL-1.pdf> (accessed 1 June 2019).

²⁶⁹ Skinner C ‘Street Vendors Laws and Legal Issues in South Africa’ (2014) available at <http://www.wiego.org/sites/default/files/resources/files/Street-Vendors-Laws-and-Legal-Issues-S-Africa.pdf> (accessed 1 June 2019).

²⁷⁰ Skinner C (2014) 5-10.

(c) Markets

The function of markets concerns the regulation of market activities that include the issuing of permits, identification of location for setting up the market, the times the market may operate, and the permitted conduct at the marketplace. The regulation of markets may be used to promote local food production, livelihoods, and healthier food options.²⁷¹ Markets are more accessible to the poor because they are mostly held in public open spaces.²⁷² In Chapter 2 it was argued that markets are essential for food security by using examples that show how markets connect small-scale farmers to urban consumers and improve the access of healthier foods to poorer communities.²⁷³ Chonco argues that fresh produce markets fulfil a vital role in the availability of fresh food and also creates job opportunities for nearby communities.²⁷⁴

(d) Licensing and control of undertakings that sell food to the public

Municipalities need to ensure the quality of food safety and hygiene related to environmental health standards. A municipality issues a certificate of acceptability if these standards are complied with to permit the selling of food. The municipality must also monitor places that supply/handle food intended for human consumption. This function falls squarely under the food security dimension of utilisation, which relates to food that is diverse and safe in accordance with what is needed to maintain people's health, while being produced in an environmentally sustainable way.

(e) Billboards and the display of advertisement in public places

Billboards and the display of advertisements in public places concern the promotion of advertisements in streets, roads, thoroughfares, sanitary passages, squares in open spaces, or private property.²⁷⁵ This power intersects with food security because billboards can be used to display and promote positive eating behaviour.²⁷⁶ Large corporations are using aggressive marketing tactics to influence children and adolescents. These strategies entail associating 'junk

²⁷¹ Chapter 2 section 4.2.4: 66-77.

²⁷² Chapter 2 section 4.2.4: 66-77.

²⁷³ Chapter 2 section 4.2.4: 66-77.

²⁷⁴ Chonco T (2015) 5-7.

²⁷⁵ MDB (2003) 43.

²⁷⁶ Chapter 2 section 4.2.4: 76.

CHAPTER 3

foods' with popular brands. Chapter 2 illustrated how these corporations promote junk foods by associating it with cartoon characters and displaying them as popular and trendy.²⁷⁷ It was argued that municipalities might use their powers in terms of the billboards competence to combat these marketing strategies.²⁷⁸

A few examples are mentioned to illustrate how to combat these marketing strategies. For example, in Queensland Australia, more than 2000 Queensland government billboards and advertising spaces will become junk food-free zones under a plan to address childhood obesity.²⁷⁹ It was argued that the removal of access to advertising was to help Queenslanders make more healthy decisions about what they eat and to encourage people to eat more fruit and vegetables.²⁸⁰ The London borough of Lewisham has also banned all junk food on billboards and bus stop stands to address obesity in their jurisdiction.²⁸¹ The London Mayor Sadiq Khan has also undertaken to address this problem by banning junk food adverts on the London transport network.²⁸² These examples illustrate that municipalities may use their powers in terms of the billboards competence to promote healthy eating amongst their residents.

4.3.4 Food safety (municipal health and abattoirs)

(a) Municipal health services

Municipal health services are defined in section 1 of the Municipal Health Act 61 of 2003, as:

(a) water quality monitoring, (b) food control, (c) waste management, (d) health surveillance of premises, (e) surveillance of communicable diseases, excluding immunisation; (f) vector control; (g) environmental pollution control; (h) disposal of the dead; and (i) chemical safety; but excludes port health, malaria control and control of hazardous substances.²⁸³

²⁷⁷ Chapter 2 section 4.2.4: 76.

²⁷⁸ Chapter 2 section 4.2.4: 76.

²⁷⁹ Ironside R & Owens J 'Billboards to tear down all junk food ads' *The Australian* 20 August 2019.

²⁸⁰ Ironside R & Owens J (2019) 1/1.

²⁸¹ Unknown 'Lewisham to ban junk food on all billboards and bus stops (UK)' *BBC London News* 29 January 2019

²⁸² Unknown 'London transport network junk food advert ban starts' *BBC London News* 25 February 2019.

Posters for food and drink high in fat, salt and sugar will begin to be removed from the Underground, Overground, buses and bus shelters from Monday.

²⁸³ With reference to section 84(1)(i) of the Municipal Structures Act the municipal health function is allocated to the district and metropolitan municipalities.

CHAPTER 3

In Chapter 2 it was established that food safety is an integral part of the right to food.²⁸⁴ For example, municipal health services regulate the activities related to food control, that directly affect food safety, such as, the handling, preparation, and storage of food to prevent foodborne illnesses.²⁸⁵ The aim is to ensure that food will not cause harm to the consumer and is safe to eat. Local government environmental health practitioners must conduct inspections to check if food is handled in a hygienic manner and is fit for human consumption.²⁸⁶ If these conditions are met, a ‘certificate of acceptability’ is issued. A certificate of acceptability allows consumers to know what food producers or sellers are safe to purchase from. Therefore, the proper regulation of this function supports people in making informed choices about where to buy food.²⁸⁷

(b) Municipal abattoirs

The function of municipal abattoirs is defined as ‘the establishment, conduct and/or control of facilities for the slaughtering of livestock and poultry’.²⁸⁸ Municipal regulation of abattoirs intersects with food security and falls under the dimension of utilisation. The dimension of utilisation relates to food that is diverse and safe to maintain people’s health while being produced in an environmentally sustainable way. In Chapter 2 it was pointed out that at a global level meat consumption is very high and unsustainable. Attached to this is the high rate of foodborne infections that is a huge problem with millions of cases occurring annually across the world.²⁸⁹ The hygienic handling of carcasses after slaughter is critical in preventing contamination and ensuring meat safety in both formal and informal meat trading sectors.²⁹⁰ Municipalities are empowered to monitor if proper standards are complied with in terms of the applicable legislation, including the Meat Safety Act 40 of 2000. The regulations prescribed by the Act apply to the informal and formal meat trading sectors.²⁹¹ Municipalities need to pay particular attention to meat handling during the distribution stage where the quality of meat is easily compromised.²⁹²

²⁸⁴ Chapter 2 section 3: 32-40.

²⁸⁵ S1 of the National Health Act 61 of 2003.

²⁸⁶ Chapter 2 section 4.2.4: 75-77.

²⁸⁷ Chapter 2 section 4.2.4: 75-77.

²⁸⁸ MDB (2018) 134.

²⁸⁹ Chapter 2 section 4.2.4: 75-77.

²⁹⁰ Rani Z et al ‘Effect of post-slaughter handling during distribution on microbiological quality and safety of meat in the formal and informal sectors of South Africa: A review’ (2017) Vol 47 *South African Journal of Animal Science* 255-267.

²⁹¹ Rani Z et al (2017) 258-260.

²⁹² Rani Z et al (2017) 258-260.

4.3.5 Food sensitive planning (municipal planning, public spaces and building regulations)

(a) Municipal planning

The municipal planning power entails forward planning (which is the strategic and spatial planning) as well as the control and regulation of land use (which includes the zoning of land for certain activities). The control and regulation of land use may be used to promote the protection of agricultural land and to facilitate food production. The legal framework for the protection of agricultural land is discussed in Chapter 4. Moreover, in Chapter 2 it was argued that municipalities should engage in food sensitive planning. This involves using municipal planning to promote food security because it serves as an important instrument for strategically planning and regulating food.²⁹³ The intersection of municipal planning and food access is explained in Chapter 5.

(b) Public places

The municipal regulation of public places may be defined as the management, maintenance and control of any land or facility owned by the municipality for public use.²⁹⁴ Public places can be used to support food security in many ways. It was illustrated in Chapter 2 how public places can be used to provide spaces for food vendors, farmer markets, and street traders selling fresh food to the public.²⁹⁵ Public spaces can be used to promote urban food production through community and school gardens. In addition, municipalities may zone specific public spaces for affordable housing schemes to facilitate peoples' access to live in close proximity to the economic hubs in the municipality. The connection between affordable housing and food security is elaborated in Chapter 5.

²⁹³ Donovan J, Larsen K and McWhinnie 'Food sensitive planning and urban design: A conceptual framework for achieving, a sustainable and healthy food system' (2011) available at https://www.healthyplaces.org.au/userfiles/file/Design%20elements/foodsensitive_planning.pdf (accessed 1 July 2018).

²⁹⁴ MDB (2003) 83.

²⁹⁵ Chapter 2 section 4.2.2: 58-60.

(c) Building regulations

Local government's power with respect to building regulations concerns the power to approve building plans for the erection of any building and structure.²⁹⁶ The National Building Regulations and Building Standards Act 103 of 1977 defines buildings and structures and the requirements for the erection of them.²⁹⁷ A building includes 'any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof'.²⁹⁸ The administration of this function is important for food security because it regulates activities linked to food security.²⁹⁹ Any facility or system incidental to a building, which serves as a water supply, drainage, sewerage, stormwater disposal, or electricity supply, is included in the scope of the building regulations.³⁰⁰ These regulations are intended to protect the safety, health and welfare of people in and around buildings.³⁰¹ In addition, it aims to protect and enhance the environment and promote sustainable development.³⁰² It is argued that the function of building regulations is strongly linked to working towards a sustainable food system.

4.3.6 Childcare facilities

Local government is responsible for the regulation of childcare facilities which include Early Child Development (ECD) Centres. ECD centres are important for food security as they offer opportunities for enhanced food access for both women and children.³⁰³ The NDP identified ECD centres and programmes as a key lever to address unemployment and inequality. Although the NDP noted that there were policy gaps in terms of the infrastructure and the responsible sectors that inhibited the potential of ECD centres.³⁰⁴

²⁹⁶ Chapter 2 section 4.2.2: 58-60.

²⁹⁷ S1 of the National Building Regulations and Building Standards Act 103 of 1977 (NBRSA)

²⁹⁸ S1(a) of the NBRSA

²⁹⁹ Chapter 5 will detail the affect that restrictive building regulations have on food security.

³⁰⁰ S1 (e) of the NBRSA.

³⁰¹ Iyer M 'Addressing the shortcoming in the National Building Regulations to strengthen the role of local authorities in traditional areas' in Chigwata T, De Visser J, & Kaywood L (eds) *'The journey to transform local government'* (2019) 4-7.

³⁰² S1(a-e) of the NBRSA

³⁰³ DSD (2014) 88. Themes included in the audit relate to location of ECD centres, human resources, children, programmes, health and safety, nutrition and food, infrastructure and transportation.

³⁰⁴ PMG 'Early Childhood Development programme: Department of Social Development, National Development Agency & SALGA briefing' (2014) available at <https://pmg.org.za/committee-meeting/17753/> (accessed 19 August 2019).

CHAPTER 3

It is argued that ECD centres and programmes afford women employment opportunities. ECD centres are female dominated.³⁰⁵ For example, some are employed as ECD practitioners, cleaners and cooks. Land shortage and tenure issues in urban areas continue to mean that ECD programmes must be run out of existing premises.³⁰⁶ Thus ECD programmes operate from households as a means of survival for women.³⁰⁷ Moreover, home and community-based ECD programmes are often the only way that poor children can access appropriate learning and development opportunities.³⁰⁸

The ECD centres and programmes provide healthy food to children through provincial and national food programmes.³⁰⁹ This is significant since women and children are the most vulnerable to food insecurity. Therefore, the manner in which a municipality uses its powers to regulate and administer childcare facilities has a direct impact on food security, in particular for women and children.

The original powers in sections 4.3.2 to 4.3.6 are protected by the Constitution and comprise regulatory and administrative power. When assessed, using a food-systems approach, the Constitution clearly gives municipalities a number of critical levers to impact food security. The focus now turns to assigned powers in terms of section 156(4) of the Constitution.

4.4 Assignment and subsidiarity

Before dealing with the constitutional provisions on assignment it is important to explain why assignment is relevant to food security. There are certain functions that do not form part of the Schedule 4B and 5B matters that may only be exercised by the national and provincial government. Education is one of the matters that fall outside the remit of local government because it is listed

³⁰⁵ DSD ‘*Audit of Early Childhood Development (ECD) Centres National Report*’ (2014) available at <http://ilifalabantwana.co.za/wp-content/uploads/2015/08/ECDAuditNationalReport20140731ReviewedFINALVersionES11.pdf> (accessed 30 June 2019).

³⁰⁶ Matlhape G & Hickman R ‘Simple solutions for SA’s ECD dilemma’ *Mail and Guardian* 05 Apr 2019.

³⁰⁷ Matlhape G & Hickman R (2019) 1/1

³⁰⁸ Matlhape G & Hickman R (2019) 1/1.

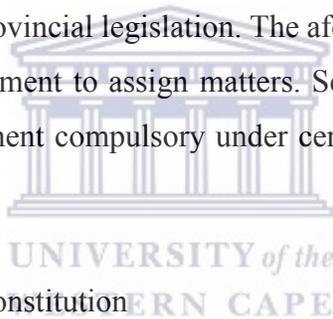
³⁰⁹ DSD (2014) 180-185. For example, meals are provided in an overwhelming majority of centres with 92 percent of fully registered centres providing meals, 90 percent of conditionally registered centres, and 79 percent of unregistered centres.

CHAPTER 3

as a Schedule 4A matter in the Constitution. Many food security programmes are allocated under the function of education such as school feeding schemes, and food gardening programmes.

In section 4.3.2 the connection between the original powers of local government and food security was made. It, therefore, becomes important to consider if local government can do more? It is argued that viewing local government's role as limited to the remit of Schedules 4B and 5B is too rigid because the Constitution allows for, and at times even demands the assignment of further powers. A matter may be assigned to local government by national and provincial legislation.³¹⁰ Assignments can be either general or specific assignments.³¹¹

More specifically, sections 99 and 126 of the Constitution accords assignment powers to the national and provincial executives, whereas sections 44 and 104 of the Constitution provides for assignment by either national or provincial legislation. The aforementioned sections do not oblige the national and provincial government to assign matters. Section 156(4) of the Constitution is different because it makes assignment compulsory under certain circumstances. The criteria for section 156(4) are set out below.



4.4.1 Criteria for 156(4) of the Constitution

Section 156(4) states: ‘The national government and provincial governments must assign to a municipality, by agreement, and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if – (a) that matter would most effectively be administered locally; and (b) the municipality has the capacity to administer it.’³¹²

Section 156(4) of the Constitution specifically relates to matters listed in Schedules 4A and 5A of the Constitution. It excludes residual national matters, such as land reform and land administration.

³¹⁰ S156(5) of the Constitution.

³¹¹ Steytler N & De Visser J (2014) 5: 5-6.

³¹² Emphasis added.

CHAPTER 3

Section 156(4) of the Constitution concerns the assignment of the ‘administration of a matter’. The right to make by-laws comes with the right to administer a matter, assigned in terms of section 156(4) of the Constitution.³¹³

For the assignment to be compulsory there are three elements that must be present: (i) the specific matter must ‘necessarily’ relate to local government; (ii) the matter would be ‘effectively’ administered locally; and (iii) the municipality has ‘capacity’ to administer the matter. Once the three elements are met the assignment is compulsory.

The assignment must be completed through an agreement by both parties. Municipalities are protected from unfunded assignments by the relevant legal framework to section 99 and 126 assignments.³¹⁴ The Constitution contemplates that sufficient support and funds are provided for in order to effectively administer an assigned matter.³¹⁵ It is argued that the principle of subsidiarity, as set out and operationalised in section 156(4) of the Constitution, adds an important dimension to the link between municipal powers and food security. If the subsidiarity principle is applied in the context of the food systems approach, the argument can be made that certain national or provincial powers should be assigned to municipalities because they are best placed to perform the power in a manner that enhances food security. This is illustrated with the example of school nutrition.

4.4.2. Making a case for assignment of the NSNP

The National School Nutrition Programme (NSNP) falls under the functional area of education which is a Schedule 4A matter and thus a concurrent power of the national and provincial governments. The question is whether the NSNP meets the criteria of section 156(4) of the Constitution.³¹⁶

³¹³ Section 156(2) of the Constitution.

³¹⁴ The procedures set out in the Municipal Systems Act, Intergovernmental Relations Framework Act and the Finance Fiscal Commission Act, should also apply.

³¹⁵ S154 of the Constitution.

³¹⁶ Nkrumah B *Mobilising for the realisation of the right to food in South Africa* (unpublished PhD thesis, University of the Western Cape, 2017) 149-151.

CHAPTER 3

The NSNP has three pillars. The first pillar is to feed nutritious school meals to learners from identified primary and secondary schools. The second pillar involves nutrition education.³¹⁷ The third pillar is geared towards sustainable food production by facilitating food gardens and other food production projects at schools. The institutional governance of the NSNP consists of many role players. The Department of Basic Education (DBE) is responsible for the coordination and implementation of the NSNP and works with the Department of Health (DoH) and DAFF in rolling out the programme.³¹⁸

Devereux et al critique the conceptual basis of the NSNP.³¹⁹ They argue that the programme objectives lack definitional clarity and uniformity amongst officials and is poorly financed.³²⁰ Four major problems emerge from the administration of the NSFP at a local level.

First, the DBE and DAFF have separate mandates and they prioritise their own departmental programmes. This is borne out by the DBE's approach to the pillar for sustainable food production.³²¹ Devereux et al found that officials of the DBE made little effort to collaborate with the DAFF to ensure school gardens are optimally supported because this was perceived as an agricultural function and not as part of their role.³²² In other words, school nutrition is separated from school food gardens.

Yet school food gardens are evolving in many schools in South Africa and abroad to address the challenges of hunger, malnutrition, and a need to engage students outside of the classroom.³²³ Schools play a vital role in communities. Not only are schools centres of learning, but they are also

³¹⁷ The awareness is directed at the deworming campaign targeted at learners and communities.

³¹⁸ Devereux S et al (2018) 17. Notably private companies such as Tiger Brands Foundation, Pioneer Foods and Economic Development Solutions assist by providing additional breakfast meals to schools.

³¹⁹ Devereux S et al (2018) 1-2. They argue that 'School feeding is an important social protection instrument and a component of South Africa's social protection system, but it receives far less attention than other programmes such as the Child Support Grant'.

³²⁰ Devereux S et al (2018) 16. They state 'the NSNP budget, the school feeding component is allocated 96% of funding, leaving 4% for all other components – nutrition education, deworming and administration. There is no allocation in the Division of Revenue Act for school food gardens'.

³²¹ Devereux S et al (2018) 17-20.

³²² Devereux S et al (2018) 28.

³²³ Khan Z 'Southern Africa Food Lab & Western Cape Government Food and Nutrition Security Strategy Design Lab Final Input Note : Food and Nutrition Security Strategy Design Lab | Potential of the school food garden as a community hub' (2017) available at <http://www.southernafricafoodlab.org/wp-content/uploads/2017/03/Input-Potential-of-the-school-food-garden-as-a-community-hub.pdf> (accessed 24 August 2019).

CHAPTER 3

cultural spaces, community centres and safe spaces for learners and other members of society.³²⁴ Many schools offer spaces where ‘a multitude of cultures meet, play, intermingle and engage in learning and exchange’. Within this context, it is suggested that school food gardens may facilitate the integration of diverse cultures and communities through food gardening.³²⁵

In Chapter 2 it was argued that special measures must be put in place for vulnerable groups to realise their right to food.³²⁶ The Beacon Organic Learning Centre (school garden) illustrates how this can be achieved. The school garden was started in 2014 by a local community member in partnership with Soil for Life to support the learners at the school and to create employment opportunities.³²⁷ The school garden is located at the Beacon School for Learners with Special Education Needs (LSEN) in Beacon Valley, Mitchell’s Plain, Cape Town.³²⁸ LSEN schools only support learners until they reach the age of 18 years, even though these learners’ struggle to integrate into their social environments.³²⁹ Their disability also alienates them from the work environment.³³⁰ In this context, it is necessary to support the LSEN learners with resources to encourage social integration and employment opportunities.³³¹ The Soil for Life Agri-Hub, which is a non-profit organisation, collaborated with the school to use its garden as a training venue for learners at the school.³³² Learners are taught to grow, harvest and sell vegetables, herbs and seedlings. In addition, they are trained to produce compost and maintain a garden and plant nursery.³³³ All of these skills represent potential income-generating opportunities for learners once they leave school.³³⁴ The effective management of school gardens thus serves as a means to realise the right to food for vulnerable groups, such as learners with special needs.

Second, Devereux et al contends that the DBE promotes a decentralised model to procure food that does not adequately promote the sourcing of food from local suppliers such as small-scale

³²⁴ Khan Z (2017) 3.

³²⁵ Khan Z (2017) 14.

³²⁶ Chapter 2: section 3 33-56. The discussion deals with the conceptualisation of the right to food.

³²⁷ Anonymous ‘Garden grows food, jobs’ *People’s Post* 1 November 2016.

³²⁸ Khan Z (2017) 5.

³²⁹ Khan Z (2017) 5.

³³⁰ Khan Z (2017) 5.

³³¹ Khan Z (2017) 5.

³³² Khan Z (2017) 5

³³³ Khan Z (2017) 5.

³³⁴ Khan Z (2017) 5.

CHAPTER 3

farmers. Devereux et al submit that in practice food (fruits and vegetables) is mainly sourced from the larger supermarkets and not from the local farmers.³³⁵ They argue that bulk purchases from supermarkets are more cost-effective compared to the prices of the local farmers.³³⁶ The background to this is the market concentration in the retail sector which makes it difficult for small-scale farmers to compete with the larger supermarkets. The sourcing of food from local producers is also not prioritised by the DBE because the department does not see this as part of their mandate. Instead the DBE views this as a responsibility of the DRDLR.³³⁷ In Chapter 2 it was emphasised that it is important to facilitate local food production along the food value chains.³³⁸ Therefore, it is important that the DBE, in fact, promotes small-scale production to ensure that it contributes to the overall objectives of food security instead of focusing narrowly on the cheapest purchasing price. This dissertation emphasises the need to create enabling markets for local producers to move away from corporate-dominated agricultural value chain. The practice of school nutrition schemes runs counter to this, despite its great potential to enhance food security more broadly.

Third, the NSNP does not assign any role to municipalities. There is not a structured platform for civil society, farming associations, the private sector and other state institutions to engage in the NSNP locally.³³⁹ In practice the NSNP is implemented by the departments of DBE, DAFF, DoH, and DRDLR in a silo manner and these departments refuse to go beyond their official mandate.³⁴⁰ In addition, the management of the NSNP is assigned to an educator who needs to manage the NSNP and fulfil their normal teaching duties which result in educators having to put in additional hours to administer the NSNP; and the vetting and procurement of services providers that supply food to the school are complex.

The fourth area of criticism relates to food safety, which is an essential element of the NSNP. Alarming incidents have been reported where outbreaks of illnesses occurred as a result of the food learners received through the school feeding programme.³⁴¹ Weak monitoring of the NSNP

³³⁵ Devereux S et al (2018) 28.

³³⁶ Devereux S et al (2018) 27.

³³⁷ Devereux S et al (2018) 28.

³³⁸ Chapter 2 sections 4.1.3 & 4.1.4 58-60.

³³⁹ Devereux S et al (2018) 20.

³⁴⁰ Devereux S et al (2018) 29-30.

³⁴¹ Sanousi M *The Expected Effects of the National School Nutrition Programme: Evidence from a Case Study in Cape Town, Western Cape* (unpublished Master's Thesis University of the Western Cape, 2019) 30.

CHAPTER 3

resulted in schools operating feeding schemes without acquiring the certificate of acceptability from the municipality. The literature reveals that insufficient food safety awareness and poor skills of caterers can result in unsafe food handling procedures and cross-contamination in food services. Sanousi noted that in 2011, 2560 outbreaks of food-borne diseases were reported of which the majority (1700) were prevalent in primary and secondary school learners.³⁴² In 2014, three learners in the Gauteng and Limpopo provinces were reported to have died after consuming contaminated meals provided by the NSNP.³⁴³ There are reported cases where school cooks have not been trained in the preparation and storage of foods and they do not have the necessary utilities to conduct their cooking.³⁴⁴ Nkrumah submits that the NSNP must be monitored by national and provincial government. However, the monitoring of the NSNP was infrequent as once per year per school.³⁴⁵

In order to change the disjointed manner in which the NSNP is being implemented, Devereux et al call for an integrated approach to plan and implement the NSNP. They explicitly identify local government to fulfil a central role in achieving this goal. This is in line with international practice. For example, in Ghana and Brazil municipalities are successfully performing a central role in school feeding schemes.³⁴⁶ In these jurisdictions, the procurement of food function is decentralised to local government who must prioritise the sourcing of food from the local small-scale producers. In Brazil the sourcing of food from local producers is written into the law and local government is obliged to meet this legal requirement.³⁴⁷ Furthermore, both Ghana and Brazil establish public participation platforms. Ghana has strong institutional collaboration amongst the district offices of agriculture, education, local NGOs and local government to procure food and deliver the school feeding programmes.³⁴⁸ In Brazil, a structure is in place for public participation, namely, the Civil Society and School Nutrition Councils (CAEs) comprising parents, teachers, and civil society that monitor the food quality, work with nutritionists in designing school menus and oversee bidding processes and budget statements of the municipality.³⁴⁹

³⁴² Sanousi M (2019) 30.

³⁴³ Sanousi M (2019) 30.

³⁴⁴ Devereux S et al (2018) 29-30.

³⁴⁵ Nkrumah B (2017) 151.

³⁴⁶ Devereux S et al (2018) 24.

³⁴⁷ In Brazil it is a legal requirement that a minimum of 30% of agricultural produce must be procured from small-scale farmers and land reform beneficiaries.

³⁴⁸ Devereux S et al (2018) 24.

³⁴⁹ Devereux S et al (2018) 24.

It is suggested that the four problems discussed above point towards a solution within the context of the principle of subsidiarity. The decentralised models presented in Ghana and Brazil can be argued to support a ‘food systems’ approach. It addresses many of the obstacles and barriers that are present in the undemocratic food system in South Africa.³⁵⁰ In light of the international models, it is argued that the principle of subsidiary is used to improve the administration of the school feeding programmes in South Africa by assigning this power in terms of section 156(4) of the Constitution to local government.

What follows is the application of the criteria in section 156(4) of the Constitution. The discussion above under section 4.4.1, to the assignment of the powers shared by the national and provincial government over the NSNP (which is a programme that falls under the function of education a Schedule 4A competence).

First, does the administration of the NSNP ‘necessarily’ relate to local government? It is argued that the local administration of the NSNP intersects with many of the developmental duties that local government must realise. The ‘developmental duties’ centre on democracy, sustainable service delivery, social and economic development, environmental protection, community participation, poverty alleviation and intergovernmental cooperation.³⁵¹ The White Paper on Local Government instructs local government to exercise its powers and functions in a way that has a maximum impact on economic growth and social development of communities.³⁵² This supports a food systems approach to be applied to the management of the NSNP. Municipalities must integrate and coordinate the developmental activities of other state and non-state agents in the municipal area. This places the municipality at the centre of interacting with all stakeholders involved in the local food system. Lastly, municipalities must build social capital and stimulate the finding of local solutions for increased sustainability. This may facilitate an enabling environment in which the local government can work with its communities to realise the full

³⁵⁰ Devereux S et al (2018) 17.

³⁵¹ WPLG (1998).

³⁵² WPLG (1998).

CHAPTER 3

potential of the NSNP. Lastly, the NSNP links with many of the local government competencies that include food safety, markets, and public open spaces that were discussed in section 4.3.2.

Second, would the administration of the NSNP be ‘effectively’ administered locally? It is submitted that in line with international best practice and local case studies there is evidence to suggest that the administration of the NSNP will be most effective at a local level. The administration of the NSNP is complex. It involves many different government departments with varying objectives they wish to realise through the NSNP. The lack of integration of these objectives results in poor outcomes, namely, (a) it was mentioned that sourcing food from small-scale farmers was often overlooked; (b) in some cases school gardens were poorly maintained and deprived community members of benefiting from the school gardens; (c) the current monitoring by the provincial government of the NSNP is ineffective which resulted in schools providing unsafe food to learners; and (d) most schools are not properly capacitated by the national and provincial government to implement the NSNP.

It is argued that local government is well placed to effectively manage the NSNP. If the NSNP is locally administered the integration of the different sector departments’ objectives can be supported within the IDP. The IDP will be discussed later but for purposes of this discussion, it is important to identify that the IDP is the central planning tool in the municipality that should integrate all sector plans, and development priorities, with the budget and resources of the municipal administration.³⁵³ The municipality may be more equipped than school educators to deal with the sourcing and supply of service providers. In Chapter 2 it was argued that municipalities should support AFN to promote small-scale farming and local food production.³⁵⁴ In this way municipalities can safeguard the prioritisation of small-scale farmers in the supply of food to the schools. Municipalities must deliver on their developmental mandate to create job opportunities; and to strengthen social cohesion and collaboration amongst, communities, community organisations, and government departments. The international models mentioned regarding Brazil and Ghana which provide support for the argument that the NSNP may be effectively administered at a municipal level.

³⁵³ Refer to section 4.9 of this chapter.

³⁵⁴ Chapter 2 section 2.4.2: 70- 73.

Third, the question is whether a municipality has the ‘capacity’ to administer the assigned function. Since the assignment is to a specific municipality. The question of capacity must be determined on a case by case basis. The purpose of the agreement is to enable a municipality to negotiate for the necessary support. The ‘agreement’ between the municipal council and the national or provincial government must be finalised before the power to administer the matter may be exercised by the specific municipality. Lastly, the municipality may administer it and, arguably, also adopt a by-law if need be.

4.5 Incidental powers

Aside from the two sources of local government power discussed above, there is section 156(5) which affords local government incidental powers. Section 156(5) of the Constitution states ‘[a] municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions’. Incidental powers refer to those matters which are not explicitly mentioned in Schedule 4B and 5B but are so closely connected to the ‘effective performance of its functions’ that they are considered to be a part of the functional areas over which a municipality has authority.³⁵⁵

The question is how must section 156(5) be interpreted? Steytler and De Visser suggest the interpretation must take into account the developmental mandate of local government.³⁵⁶ They argue that section 156(5) of the Constitution must be viewed as a source of power that equips municipalities to ‘enhance efficacy’ by administering an existing function. Section 156(5) is ‘not intended to increase the number of functional areas that local government can legislate on but serves as an instruction to the courts to adopt a purposive approach to interpreting matters around local government powers’.³⁵⁷

Whether the incidental powers include by-law making is considered by Steytler and De Visser who conclude that it does. A by-law enacted in terms of section 156(5) must fulfil distinct

³⁵⁵ Steytler N & De Visser J (2014) 5:6-7.

³⁵⁶ Steytler N & De Visser J (2014) 5:6-7.

³⁵⁷ Steytler N & De Visser J (2014) 5:6-7.

CHAPTER 3

requirements. It must be (i) 'reasonable necessary for, (ii) or incidental to (iii) the effective performance of (iv) its functions'.³⁵⁸ So the question is how can this power be used to facilitate food access? An illustration of how section 156(5) can be used to facilitate food security is made with reference to the case of waste pickers in South Africa.

The recognition of waste pickers into the waste management sector benefits municipalities by removing recyclable items from the landfill sites, which saves landfill space and costs associated with recycling and waste management. The services provided by waste pickers contribute to sustainable food systems. For example, Schenck et al argued that '[I]andfill and street waste pickers in South Africa are responsible for collecting substantial volumes of recyclable material, saving municipalities millions and contributing to a generally healthier and cleaner environment'.³⁵⁹ Also Schenck et al observed that waste pickers actually source food from landfills.³⁶⁰

Damons studied the role of local government with respect to waste pickers. There is no legislation that provides for the regulation of waste pickers. Damons argued that the existing local government powers and functions such as 'refuse removal, refuse dumps and solid waste disposal' should be promoted to include the regulation of waste pickers. However, if these functions are not wide enough then she suggested that section 156(5) of the Constitution applied because this is reasonably necessary for the effective performance and management of landfill sites.³⁶¹

Directing the discussion to the four criteria mentioned above it is noted that section 156(5) uses 'or' between the words 'reasonable necessary for' or 'incidental to'. This indicates that only one of these conditions must be met to exercise the power over a matter in terms of section 156(5) of the Constitution.

³⁵⁸ Emphasis added.

³⁵⁹ Schenck J, Blaauw P, Viljoen J and Swart E 'Exploring the Potential Health Risks Faced by Waste Pickers on Landfills in South Africa: A Socio-Ecological Perspective' *International Journal of Environmental Research and Public Health* (2019) 16, 2059 1-21.

³⁶⁰ Schenck J et al (2019) 9-14.

³⁶¹ Damons L (2018) 64.

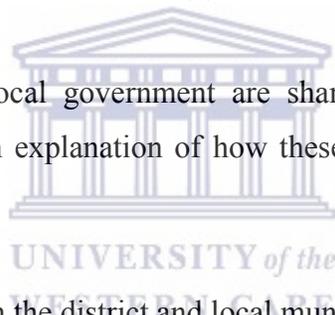
CHAPTER 3

The integration of waste pickers into the municipal administration is ‘inextricably linked and foundational to powers allocated in terms of the Constitution’ to local government.³⁶² For instance, the incidental power may be used to enhance the efficacy of the existing functional areas of ‘refuse removal, refuse dumps and solid waste disposal’. If three out of the four distinct requirements of section 156(5) of the Constitution are satisfied, then a municipality may enact a by-law to administer the integration of waste pickers into the waste management systems.

Local government may enact by-laws in terms of:

- its original powers over matters listed in Schedule 4B and 5B;
- assigned powers in terms of section 156(1)(b) of the Constitution;
- assigned powers in terms of section 156(4) of the Constitution; and
- incidental powers in terms of section 156(5) of the Constitution.

These constitutional powers of local government are shared between the district and local municipalities. What follows is an explanation of how these powers are allocated between the district and local municipality.



4.6 Division of powers between the district and local municipalities

4.6.1 Role of the districts

Earlier the different categories of local government were mentioned in section 4.2 namely, metropolitan, local and district municipalities. Metropolitan municipalities are self-standing institutions and may exercise all of local government’s original powers.³⁶³ The district municipality consists of a number of local municipalities and shares powers and functions with the local municipalities in its jurisdiction.³⁶⁴

The Constitution requires national legislation to appropriately divide powers and functions between the district and local municipalities.³⁶⁵ This is to ensure equitable and sustainable

³⁶² Ex Parte, Western Cape Provincial Government: In re: DVB Behuising (Pty) Ltd v North West Provincial Government 2001 1 SA 500 (CC).

³⁶³ S155(1)(a) of the Constitution.

³⁶⁴ S155(1)(b)-(c) of the Constitution.

³⁶⁵ S155(3) of the Constitution.

provision of municipal services.³⁶⁶ Districts must be responsive to the unique needs and capacity of the region.³⁶⁷ They should act as coordinators, an initiators of development and, only as a last resort, providers of services directly to the public.³⁶⁸ Thus districts are obligated to build local municipalities' capacity; initiate economic development; plan land use, and realise basic needs of people living in deprived areas.³⁶⁹

4.6.2 Division of powers between the district and local municipality

Section 84 of the Municipal Structures Act divides the local government powers between the district and local municipalities. This section will only deal with the original powers that affect food security, i.e. those that were addressed earlier in section 4.3.2 of this chapter.

Section 84(1) of the Municipal Structures Act lists the district municipal functions. Section 84(2) provides that the local government functions not allocated to the district becomes the responsibility of the local municipalities.³⁷⁰ Only the food security-related functions are listed. The district must administer: (i) potable water supply systems; (ii) electricity and gas reticulation; domestic wastewater and sewage disposal systems; (iii) solid waste disposal sites; (iv) municipal health services; (v) municipal planning for the whole area of the district; and (vi) fresh produce markets.³⁷¹

A local municipality has the authority to administer (i) municipal planning for the area of the municipality; (ii) building regulations; (iii) billboards and the display of advertisements; (iv) street trading; (v) trading regulations; (vi) public places; (vii) childcare facilities; (viii) licensing and control of sale of food; (ix) municipal public transport and (x) markets except for fresh produce markets.³⁷²

³⁶⁶ S155(4) of the Constitution.

³⁶⁷ Section 83 (3) of the Municipal Structures Act instructs the district municipality 'must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by...' (a) ensuring integrated planning; (b) promoting bulk infrastructural development; (c) building capacity of local municipalities that lack capacity; and (d) promote the equitable and distribution of resources between local municipalities to ensure appropriate levels of municipal services.

³⁶⁸ Steytler N (2003) 231.

³⁶⁹ WPLG (1998).

³⁷⁰ S84(2) read with S83(1) of the Municipal Structures Act.

³⁷¹ S84(1)(a, b,c,d,e, i, k, f) of the Municipal Structures Act.

³⁷² De Visser J (2005) 154-158. Steytler N & De Visser (2014) 5-31-535.

CHAPTER 3

The above division has been criticised. Steytler argues the provision of basic services such as potable water supply, electricity and gas reticulation, sewage and health services are better suited for local municipalities. For example, key to the criticism is the fact that district councils have no ward representation which limits public participation. This criticism resonates with the food systems approach discussed in Chapter 2.³⁷³ Shifting these functions to the district municipality is argued to reduce income-generating services for local municipalities. Moreover, the relationship between the service provider and the consumers is not favourable for collaborative planning and consultation. In practice many of the district municipalities are not performing their core functions in areas where there are strong local municipalities.³⁷⁴ This transfer of power is however provided for in the Municipal Structures Act, namely, through the process of authorisation or adjustment that will be explained later.³⁷⁵ Yet, district municipalities still perform an important coordination and redistributive role in areas with weak local municipalities particularly, where the district municipality can provide shared services to the local municipalities.

The above division of powers is not absolute because they may be transferred between the district and local municipality. Section 84(3)(a) of the Municipal Structures Act accords the Minister responsible for local government the authority to transfer certain functions from the district to the local municipality. The four functions that are eligible to be transferred to a local municipality include, (i) potable water supply system; (ii) bulk supply of electricity; (iii) domestic wastewater and sewage disposal systems and/or (iv) municipal health services. In 2003 the Minister issued directives on the powers and functions of the district and local municipalities and authorised bulk electricity; bulk water supply and sewage purifications to the local municipality.³⁷⁶ In 2018, the MDB confirmed that the local municipalities in Gauteng, Free State, Northern Cape and the Western Cape continue to perform these functions.³⁷⁷

The remainder of the functions can also be shifted from district to local municipalities. With respect to these functions, the authority is given to the member of the Provincial Executive, responsible for

³⁷³ Chapter 2 section 4: 54-58.

³⁷⁴ MDB (2018).

³⁷⁵ Ss 84(3) and 85 of the Municipal Structures Act.

³⁷⁶ Steytler N (2003) 237-238.

³⁷⁷ MDB (2018).

local government. Section 85 of the Municipal Structures Act grants the MEC the power to adjust function between the district and local municipalities. The MEC is constrained in exercising this power in two ways. First, an adjustment is only permitted if a municipality does not have the capacity to perform the specific function.³⁷⁸ Second, an MEC is prohibited by section 84(1) of the Act to adjust the functions, mentioned above, in respect of which the national Minister has the authority to make changes, namely, potable water supply systems; bulk supply of electricity; domestic wastewater and sewage disposal systems; municipal health services.³⁷⁹ Ncube and Vacu argue, that MECs often alter the powers and functions of the district and local municipalities that result in ‘much uncertainty in the local government space and the potential to compromise development’.³⁸⁰ The uncertainty in the division of responsibilities is one of the reasons why the role of district municipalities has attracted much debate ever since their introduction in 2000.³⁸¹

4.6.3 Overlapping Powers

The question arises how the division of powers between the district and local municipalities affects the food security mandate for local government. There are certain provisions in section 84(1) that directs the district municipality to administer functions for the ‘district municipality as a whole’ or ‘a major proportion’ thereof which works toward food security.³⁸² Jordan is critical of the division of powers and functions between the district and local municipalities. She argues that section 84 (1) of the Municipal Structures Act ‘is neither clear nor definitive with regard to the functions’. Moreover, Jordan contends that the legal uncertainty in terms of the ‘scope and technical meaning’ of the provisions causes conflict between the district and local municipalities.³⁸³ The powers and functions are conferred on districts create areas of functional overlap. Two examples of these overlap arise with respect to sections 84(1)(f) and (k) of the Municipal Structures Act.

³⁷⁸ S85(2) of the Municipal Structures Act.

³⁷⁹ Losch A ‘*The Reconfiguration Of The Two-Tier Lg System Within The Review Of Local Government System Process*’ (2019) available at <http://www.dwa.gov.za/MinisterSession/Presentations/Presentation%20to%20DWS%20and%20WSAs%20on%20DCoGs%20work%20on%20powers%20and%20functions%20February%202019.pdf> (accessed 10 June 2019).

³⁸⁰ Ncube M & Vacu N (2018) 258-260.

³⁸¹ Hughes S ‘*National Department of Cooperative Governance Presentation on: The Reconfiguration of District Government: SALGA Municipal Managers Forum-13 November 2018*’ (2018) available at <http://www.salga.org.za/event/mmf/Documents/13-11-2018/Role%20of%20Districts.pdf> (accessed 1 June 2019).

³⁸² Jordan J *Towards Co-Operative Relations Between District And Local Municipalities* (Unpublished LLM Thesis, University of the Western Cape, 2006). 15-16.

³⁸³ Jordan J (2006) 16-19.

Section 84(1)(f) of the Municipal Structures Act provides that ‘municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole’ are a district function. Section 84(1) (f) is argued to overlap with many other functions because of the phrase ‘for the area of the district as a whole’. Schedule 5B grants the functional area ‘municipal roads’ to local government and thus, local municipalities too. Section 84(1), however, circumscribes the functional area allocated to district municipalities, by the phrase ‘for the area of the district municipality as a whole’. Thus, a district municipality is responsible for municipal roads in as far as it forms an integral part of a road transport system ‘for the area of the district municipality as a whole’. The problem is then to clarify every municipal road in the district in terms of that obscure criterion which often results in blame-shifting between the district and local municipalities.³⁸⁴

Defining a function as a district function or a local function, by means of the phrase, is technical and open to interpretation. The MDB defines a ‘municipal road’ as ‘[t]he construction, maintenance, and control of a road which the public has the right to and includes, in addition to the roadway the land of which the road consists or over which the road extends and anything on that land forming part of, connected with, or belonging to the road’.³⁸⁵ It is argued that this definition is wide enough to incorporate aspects such as, local transport infrastructure, facilities for cold chains, storage, warehousing, and communications infrastructure situated on the land of which the road consists. All of these aspects play a key role in shaping the extent to which connections are made between the local nodes and distant markets and resources.³⁸⁶ Neves and Hakizimana, contend that these connections should be used to support smaller-scale producers. For instance by connecting small-scale producers to customers to make supermarket value chains more inclusive and effective.³⁸⁷ Most obviously, the lack of adequate transport infrastructure tends to increase the

³⁸⁴ *Myburgh N.O and Others v Msukaligda Local Municipality and Another* (3542/18) [2019] ZAGPPHC 300 (4 March 2019) at para 18.

³⁸⁵ MDB ‘*Municipal Powers and Functions Capacity Assessment 2018 Western Cape*’ (2019) available at <http://www.demarcation.org.za/site/wp-content/uploads/2019/05/Western-Cape.pdf> (accessed 12 September 2019). 88-89.

³⁸⁶ Neves D and Hakizimana C ‘*PLAAS -Policy Brief 38- Space, Markets And Employment In Agricultural Development: South Africa*’ (2015) available at http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/4293/pb_38_space_markets_employment_agricultural_development_south_africa_2015.pdf?sequence=1&isAllowed=y (accessed July 2019).

³⁸⁷ Neves D and Hakizimana C (2015) 1-4.

CHAPTER 3

effective distance between the farmers and other ‘nodes’ in agro-food networks, reducing external connectedness and thus access to markets. The duty to administer the function of ‘municipal roads’ is essential to improve the agro-food networks which are most likely to cross municipal jurisdictions.³⁸⁸ If so, it falls on the district municipality. However, if the municipal road does not form an integral part of a road transport system, for the area of the district municipality as a whole then it must be administered by the local municipality. This would mean that it is the local municipality that is responsible for local transport infrastructure to strengthen the local food system.

A similar overlap in the functional definition is created by the phrase ‘serving the area of a major proportion of the municipalities in the district’ in section 84(1)(k) as it pertains to the administration of fresh produce markets and abattoirs. For example, abattoirs may be administered by a:

- provincial government in terms of Schedule 5A of the Constitution;
- local government in terms of Schedule 5B of the Constitution;
- district municipality in terms of section 84(1)(k) if it is a municipal abattoir serving a major proportion of the municipalities in the district; and
- local municipality in terms of section 84(2) if it does not serve the areas of a major proportion.

The problem that follows is the potential conflict that may arise from the unilateral decision-making as to what is meant by ‘serving the area of a major proportion’. To add to this uncertainty, there is no definition provided for ‘serving the area of a major proportion’ therefore one district may interpret it differently from the other.

Although the meaning of ‘a major proportion’ is not defined it is argued to bind the district municipality. De Visser and many other authors argue that ‘fresh produce markets must be seen as an indispensable part of the food value chain, capable of significantly improving access to healthy food, particularly for lower income communities’.³⁸⁹ While the market attracts the vendors and

³⁸⁸ Neves D and Hakizimana C (2015) 1-4.

³⁸⁹ De Visser J (2019) 13-14.

consumers from across the district, it is the district that must regulate the market. If a market thus only serves the local municipality, then it remains the local municipality's function but if it services more than one local municipality, then it becomes a district function. De Visser stresses that the regulatory and local support effort to connect small-scale farmers and small retailers to consumers inevitably extends beyond municipal jurisdictions.³⁹⁰

In Chapter 2 it was emphasised that markets are crucial for improving food security. The opportunities that markets offer include providing livelihoods, availability of more nutritious food, and physical accessibility to affordable foods. It is submitted that the manner in which the Municipal Structures Act divides the powers between the district and local municipality is problematic. The act provides unclear terms and unworkable measures to divide the powers between the local and district municipalities.³⁹¹ In practice this has resulted in poor coordination between the district and local municipalities and strained intergovernmental relations.³⁹² Thus the legal framework is argued to impede food security imperatives.³⁹³

Given the alarming levels of food insecurity, it is critical for the district and local municipalities to work together in transforming the local food systems. In this respect, it is useful to consider how local government is using their legislative powers to further food security for their communities?

4.7 Municipal by-law making

4.7.1 Confirming municipal legislative powers

The local government powers to make and administer by-laws were discussed in section 4.3.1. In summary, local governments may pass by-laws with respect to their original powers, assigned powers and incidental powers. However, the national and provincial governments may enact framework laws to regulate the local government functions. This is to safeguard the constitutional principle, that the municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation.³⁹⁴

³⁹⁰ De Visser J (2019) 13-14.

³⁹¹ Steytler N & Fesha J (2007).

³⁹² Steytler N & Fesha J (2007).

³⁹³ Steytler N & Fesha J (2007).

³⁹⁴ S151(3) of the Constitution.

It is reminded that the original powers of local government matter as listed in Schedule 4B and 5B that intersect with food security were identified in section 4.3.1. The matters were discussed under five food security-related themes, namely, (i) the provision of municipal services to support food security (electricity, water, sanitation, solid waste); (ii) the regulation of the local food trade (trading regulations, street trading, markets and licensing and control of undertakings that sell food to the public and billboards); (iii) food safety (Municipal health and abattoirs); (iv) food-sensitive planning (municipal planning, public spaces and building regulations) and (v) childcare facilities.

It is argued that these powers can and must be used to promote food security. Not only may municipalities exercise their executive powers without undue interference from the national and provincial government, but they may also pass laws to effectively administer those functions. The ultimate goal is to ensure responsive governance within their jurisdictions.

Given the absence of a national framework law on the right to food and the failure on the part of provincial governments to use their powers to legislate on the right to food, there may be considerable scope for municipalities to regulate food security-related matters in their jurisdictions. For example, it was already argued that municipalities may provide for the inclusion of waste pickers in their waste management systems (by virtue of their incidental powers in terms of section 156(5) of the Constitution). In addition, the management of fresh produce markets are often challenged by the ‘presence of unregulated micro-markets undercutting the market system’ it is argued that section 156(5) of the Constitution may be used for local government to dress this problem through enacting appropriate by-laws.³⁹⁵

The discussion in section 2 on the FSP framework showed that there is fragmentation across all sectors and spheres of government in the implementation of the policies. It is argued that municipalities may prevent disjointed responses to food security within their administrations if they adopt by-laws to deal coherently with food security matters, as proposed in the ‘food systems approach’ discussed in section 4.2 of Chapter 2.

³⁹⁵ Chonco T (2015) 81.

4.7.2 Overlap with national and provincial functions

The Constitution does not define the legislative competencies listed Schedules 4B and 5B. In practice, this has proved to be problematic because the meaning that must be ascribed to these competencies is not always clear.³⁹⁶ In addition, the functions of the national, provincial, and local governments often overlap. This is a problem that affects a significant number of areas of governance. For example, Steytler and Fessha point out four instances of how this occurs in practice, namely, it results in ineffective and poor service delivery.³⁹⁷ The legal uncertainty may also result in duplication of laws or services that lead to wasted resources.³⁹⁸ A further consequence is an increase in unfunded and/or under-funded mandates for local government.³⁹⁹ The worst scenario is the failure to provide service delivery because one sphere of government holds the other sphere of government responsible for the functional area. It also significantly affects a number of functional areas that directly intersect with food security, as discussed in sections 4.3.2.

4.7.3 Municipal unwillingness to legislate on food security

Despite the considerable constitutional authority, municipalities are reluctant to pass by-laws aimed at promoting food security.⁴⁰⁰ In Chapter it was argued that this can be attributed in part to the uncertainty with respect to their mandate towards food security.⁴⁰¹ Municipalities do not make the necessary connections between their powers and their duty to realise the right to food.⁴⁰²

This is against the backdrop of a general reluctance on the part of municipalities to innovate and use their constitutional space to make their own policy and by-laws, except for the metropolitan municipalities.⁴⁰³ For example, the legal uncertainty with regard to the meaning of ‘municipal

³⁹⁶ Steytler N & Fessha Y ‘*Defining provincial and local government powers and functions: The management of concurrency*’ (2007) 320-323. De Visser J ‘Concurrent Powers in South Africa’ in Steytler N (ed) ‘*Concurrent Powers in Federal Systems*’ (2017) 227 Leiden: Brill/Nijhoff.

³⁹⁷ Steytler N & Fessha Y (2007) 321-324.

³⁹⁸ Steytler N & Fessha Y (2007) 321-324.

³⁹⁹ Steytler N & Fessha Y (2007) 321-324.

⁴⁰⁰ Chapter 1 section 1: 2-4.

⁴⁰¹ Chapter 1 section 1: 2-4.

⁴⁰² Chapter 1 section 1: 7.

⁴⁰³ De Visser J ‘*Local law making in Cape Town: A case study of the municipal planning by-law process*’ (2015) Nairobi: United Nations Human Settlements Programme. Also refer to The South African Law Reform Commission ‘*Review of regulatory, compliance and reporting burdens imposed on local government by legislation: Project 146-Issue Paper 37*’ (2019) available at <http://www.justice.gov.za/salrc/ipapers/ip37-proj146-2019May.pdf> (accessed 26 August 2019).

CHAPTER 3

health services' resulted in the district municipalities struggling to administer the function. They were unsure as to what activities they were permitted to carry out.⁴⁰⁴ May argues that this uncertainty significantly affected the work of environmental health practitioners.⁴⁰⁵ They were reluctant to issue 'certificates of acceptability' for food premises and conducting inspections and investigations in respect of food control.⁴⁰⁶ May contends that to avert this crisis, municipalities could have exercised their legislative power to enact the necessary by-laws to authorise the environmental health practitioners to fulfil their duties. However, municipalities were unwilling to do this. Instead, they preferred to wait for national government to pass the necessary regulations.⁴⁰⁷

A number of reasons can be put forward for the reluctance of municipalities to pass by-laws. The capacity and enthusiasm for municipal law-making vary considerably. For example metropolitan municipalities, on the one hand, are well capacitated with skilled technical staff, such as lawyers, planners, engineers, economist and accountants whereas smaller municipalities, in most cases, have to rely on the municipal manager to discharge most of their functions including interpretation and implementation of legislation.⁴⁰⁸

Local government has become increasingly compliance-driven and risk-averse which limits their ability to learn effectively and pursue dynamic, contextually-relevant solutions.⁴⁰⁹ Ordinarily municipalities are content to implement national and provincial legislation.⁴¹⁰ For instance municipalities are reluctant to enact by-laws over matters where they do not have a clear legal mandate. De Visser observed a culture of compliance by municipalities, insofar as they would often implement an intrusive national law if that 'offensive' law is workable.⁴¹¹ He argues that it is unlikely to for municipalities to challenge national laws that 'usurps' their powers.⁴¹² This goes against the spirit of the constitutional vision of developmental local government. Although the Constitution stimulates spaces for local innovation and development it instructs the national and

⁴⁰⁴ May A (2015) 503-504.

⁴⁰⁵ May A (2015) 512-515.

⁴⁰⁶ May A (2015) 512-515.

⁴⁰⁷ May A (2015) 512-515.

⁴⁰⁸ SALRC (2019) 13.

⁴⁰⁹ De Visser J *Cities and Climate Change: ex abundanti cautela* – 'from an excess of caution?' in A Cartwright, S Parnell, G Oelofse & S Ward (eds) (2012) *Climate Change at the City Scale* London: Routledge 122-146.

⁴¹⁰ De Visser (2005) 117.

⁴¹¹ De Visser J (2015) 43-44.

⁴¹² De Visser J (2015) 43-44.

CHAPTER 3

provincial government to exercise oversight over their powers.⁴¹³ The focus of the discussion is directed to the regulatory powers of the national and provincial government.

4.8 National and provincial regulation

4.8.1 The legal framework

The discussion on the municipal by-law making confirmed that local government is generally content to implement national and provincial laws. The question is how can the national and provincial government use this leverage that they have over municipalities to promote a food systems approach? If they have the power to determine minimum standards for municipal powers, how can they use that to promote food security? The relevance of this regulatory power for the dissertation will be illustrated at the hand of relevant examples. First, the legal framework is briefly set out.

The authority of the national and provincial government to ‘regulate’ Schedule 4B and 5B matters do not include the power to exercise municipal competencies or to perform municipal functions.⁴¹⁴ Instead, it includes the power to establish a framework within which a municipality must exercise its powers. The regulation must not extend to the ‘core’ of those matters. Instead, the regulation must amount to ‘framework legislation’ dealing with national standards, minimum requirements, monitoring procedures and so on.⁴¹⁵ Through their regulatory powers, the national and the provincial government have the authority to ensure that municipalities perform the Schedule 4B and 5B matters adequately.

The national and provincial government regulates Schedule 4B matters in terms of section 155(7) of the Constitution. The power to ‘regulate’ the exercise by municipalities of their executive authority is limited though. They may only pass laws to see to the ‘effective performance by municipalities of their functions in terms of ‘Schedule 4’ and the term ‘regulating’. The term

⁴¹³ De Visser J (2005) 117.

⁴¹⁴ *Executive Council of the Province of the Western Cape v Minister for Provincial Affairs and Constitutional Development and Another, Executive Council of KwaZuluNatal v President of the Republic of South Africa and Others* 2000 (1) SA 661 (CC); 1999 (12) BCLR 1360 (CC) at para 29. Furthermore the provisions of Ss 41(1)(e)-(g) and 151(4) of the Constitution are relevant.

⁴¹⁵ SALRC (2019) 8-9

CHAPTER 3

‘regulating’ in the context of section 155(7) was held by the Constitutional Court to connote ‘a broad managing or controlling rather than direct authorisation function’.⁴¹⁶

On the face of it, it appears that the provincial regulatory powers in terms of Schedule 5B matters are wider than national government's regulatory powers. Schedule 5B matters are the 'exclusive provincial legislative competence' in terms of section 44(1)(a)(ii) of the Constitution.⁴¹⁷ However, section 44(1)(a)(ii) is subject to the requirements of section 44(2) of the Constitution.⁴¹⁸

Section 44(2) of the Constitution states that: ‘Parliament may intervene, by passing legislation ..., with regard to matter falling within a functional area listed in Schedule 5, when it is necessary- (a) to maintain national security; (b) to maintain economic unity; (c) to maintain essential national standards; (d) to establish minimum standards required for the rendering of services; or (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole’.

From the above it becomes apparent that the national government may only legislate on Schedule 5B matter on the five circumscribed grounds listed in section 44(2) of the Constitution. This means that in certain circumstances both the national and provincial government may regulate the local government 5B matters. However, they may not legislate on the 'core' of the Schedule 5B matters. They are limited to setting a legal framework, including minimum standards and monitoring requirements.⁴¹⁹

Apart from the provincial regulatory power in section 155(7) they must also monitor and support local government matters as required by section 155(6)(a) of the Constitution. This section instructs provinces to: ‘by legislative or other measures, must- provide for the monitoring and support of local government in the province’. Section 155(6)(a) imposes the same duty on the provincial

⁴¹⁶ *In Re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 (10) BCLR 1253 (CC) at para. 377.

⁴¹⁷ De Visser J ‘*The Powers of Local Government*’ in *Local Government Working Paper Series No. 2* (2002) 6 -10.

⁴¹⁸ Section 44(2) of the Constitution permits the national government to pass legislation ‘*when it is necessary – to: (a) maintain national security; (b) maintain economic unity; (c) maintain essential national standards; (d) establish minimum standards required for the rendering of services; or (e) prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole*’.

⁴¹⁹ De Visser J (2002) 6-10.

government to support local government as per section 154(1) of the Constitution. Section 154(1) states '[t]he national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. This monitoring and support role is critical, 'if municipalities are not functioning optimally, 55.6 million South Africans who rely on municipalities for basic services or 'core services' that local government provides are affected'.⁴²⁰

4.8.2 A food systems approach to regulation

(a) Billboards and the display of advertisements in public places

A number of laws provide for the minimum standards that must apply to 'billboards and the display of advertisements in public places'. Since this is a Schedule 5B competence however in practice the competence is regulated by national legislation enacted in terms of section 44(2) of the Constitution. Three acts that are included in the legal framework, National Roads Act 93 of 1996 (NRA), National Building Regulations and Building Standards Amendment Act 49 of 1995 (NBRBSA), and National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA). The scope of this dissertation does not allow for a comprehensive discussion of these acts. Therefore, the broad objectives for these acts are used to support a food systems approach in the regulation of billboards and the display of advertisements in public places competence.

The question is how the national regulatory powers can be used to promote food security imperatives? It is argued that when making decisions municipalities are obliged to take into consideration a number of factors to meet the minimum standards set in the national acts. For example, it could require that the municipality takes into account: the locality and the number of signs already displayed on the erf; the findings of the available impact assessments (for traffic, environmental or heritage) and public participation processes where applicable. The national regulatory power may be used to ensure that aspects of food security are infused into the minimum standards. This may entail that no sign or advertisement may be designed or displayed if the content will detrimental or otherwise negatively impact the nutritional wellbeing of children.

⁴²⁰ SALRC (2019) 8-9.

Furthermore, open public places are intricately linked to poor people's freedom of movement and their access to food security. It was argued that many poor people live far from city centres and thus have to use public transport and infrastructure to get to their workplaces, public amenities, and social services. Evidence shows that the erection of unsafe billboards compromised the structure of bridges and that advertisement boards are placed over pedestrian bridges that blocked walkways and obscured visibility which left pedestrians vulnerable to criminal activity.⁴²¹ This intersects with the right to food because if people's physical access to places of employment or services is threatened it means they are also limited in securing opportunities to access food. The national government may use its regulatory powers in terms of section 44(2) to protect poor people from threats to physical safety in these public spaces. This will promote a food systems approach in the regulation of the competence of billboards and the display of advertisements in public places because it links the environmental, economic, transport and building regulations.

(b) Childcare facilities

The connection of childcare facilities, and particularly ECD centres to food security was discussed in section 4.3. It was confirmed that municipalities have the legislative competence to regulate the childcare facilities functions, budgets, and general management.⁴²² Although municipalities may pass by-laws to regulate childcare facilities this original power co-exists with the regulatory powers of the national and provincial government? The question is how this national and provincial regulatory power may be used to promote a food systems approach.⁴²³

In Chapter 2 it was emphasised that a 'food systems approach' has the potential to give special consideration to children's diets.⁴²⁴ Children's nutritional needs are not a priority in the existing food systems. The intricate relationship between children's development and cognitive learning ability is well documented.⁴²⁵

⁴²¹ Cox A (2016) 1/1.

⁴²² Steytler N & De Visser J (2014) 5-24 (10)-(12).

⁴²³ DSD 'Guidelines for Early Childhood Development Services' (2006) available at https://www.unicef.org/southafrica/SAF_resources_ecdguidlines.pdf (accessed 12 September 2019).

⁴²⁴ Chapter 2.

⁴²⁵ Sanders D, et al 'Hunger is still killing South Africa's children' *Mail&Gaurdian* 1 December 2017.

CHAPTER 3

The Children's Amendment Act 2007 regulates minimum standards for 'childcare facilities', a Schedule 4B competence.⁴²⁶ It is submitted that the national regulation may not regulate in detail how the childcare facilities are to be managed.⁴²⁷ In other words it should not constrain local governments' ability to exercise its developmental mandate in respect of the care of children.⁴²⁸ The regulatory powers of the national and provincial government over childcare facilities may be used to strengthen growth-promoting activities for children in lower-income areas.⁴²⁹ Particularly because a comprehensive and integrated ECD policy and programme needs to take into account many other cross-cutting functional areas such as educational programmes, healthcare, safety, nutrition, immunisation and other child centred services to provide for the holistic development of children.⁴³⁰

Experts in child nutrition articulate that current models of food provision fall short of the necessary measures required to effectively address child poverty and child hunger.⁴³¹ Evidence suggests that childcare practitioners and nursing staff at community clinics are failing to implement interventions if they detect that learners may be malnourished.⁴³² In this regard the regulatory power of the national and provincial government may be used to promote greater community-based services, like community health workers that have proven effective in extending the reach of healthcare services to vulnerable communities, to support the treatment of malnutrition. It is suggested that the national and provincial government use their powers over 'primary health care' to provide measures for the consistent and regular monitoring of food menus of childcare facilities. The menus need to be nutritionally adequate, affordable, culturally and age-appropriate.⁴³³

⁴²⁶ The Act deals comprehensively with the procedure for registering and operating a childcare facility. It stipulates norms and standards for ECD Centres that include the provision of a safe environment for children, adequate space and ventilation, safe drinking water, hygienic and adequate toilet facilities, safe storage of anything that may be harmful to children, access to refuse disposal services, a hygienic area for the preparation of food for children.

⁴²⁷ Steytler N & De Visser J (2014) 5-24 (10)-(12).

⁴²⁸ Steytler N & De Visser J (2014) 5-24 (10)-(12).

⁴²⁹ World Cancer Research Fund International 'The Nourishing framework and/or policy database.

⁴³⁰ Blom J & Atmore E 'Children's progress is more than kissing babies' *Mail & Guardian* 22 March 2019.

⁴³¹ Nzama P & Napier C 'Nutritional adequacy of menus offered to children of 2-5 years in registered childcare facilities in Inanda, KwaZulu-Natal Province, South Africa' *South African Journal of Child Health* (2017) Vol 11 no 2 80-85.

⁴³² Nzama P & Napier C.

⁴³³ Sanders D et al (2017) 1/1.

CHAPTER 3

In the context of townships, space shortages are a major problem for the expansion of ECD Centres.⁴³⁴ However, in practice, home and community-based child development programmes are emerging to fill this gap. The regulatory power of the national and provincial government may be used to strengthen these enterprises. For example, they may introduce measures that compel local government to identify available state land that may be used for community-based child development programmes, particularly in the township areas where the childcare facilities have shown to improve children's access to food and to provide a livelihood for women.

The illustration of billboards and the display of advertisements in public places and childcare facilities have shown that the regulatory powers of the national and provincial government may leverage local government to support the food security imperatives. The overlap in functional areas of the local, provincial and national government became apparent. This suggests that the integration of all the food-related functions must be carried out to work towards a food systems approach. The next section focuses on the IDP which is the central planning tool for local government.

4.9 Integrated planning for food security

The IDP gives expression to the political mandate of local government authority and must be aligned to the NDP. Furthermore, the Municipal Systems Act provides the legal framework for the development, adoption, and implementation of the IDP. This section will explain how the IDP may be used to promote a food systems approach in the forward planning instruments of the municipality.

4.9.1 Developmentally orientated IDPs

The White Paper on Local Government makes the IDP the central planning tool for transformation.⁴³⁵ Thus the municipal IDP should serve to achieve the NDP goals that include addressing obstacles in the food value chains. The NDP acknowledges that local government cannot do this alone all spheres of government must work in collaboration to achieve the

⁴³⁴ Matlhape G & Hickman R 'Simple solutions for SA's ECD dilemma' *Mail&Gaurdian* 5 April 2019.

⁴³⁵ WPLG (1998) 27-31.

CHAPTER 3

developmental objectives in line with the cooperative principles set out in section 41 of the Constitution.⁴³⁶ The NDP recognises that municipalities cannot succeed without the participation and investment of their citizens. In fact, the very power of local government stems from their unique capacity to bring together people from diverse social and cultural groups. This conception of democratic citizenship, empowers communities to shape and contribute to the development of spaces and to transform their quality of life.⁴³⁷

A food systems approach requires integrated and bottom-up planning. It is submitted that the IDP serves as a key instrument to achieve integrated and bottom-up planning within local government. As mentioned before, a food systems approach requires integrated planning that takes into account the entire food system. The different elements of the food system such as production, processing, marketing, consumption and the disposal of goods that originate from agriculture, forestry or fisheries must all be considered. Integrated planning is required to go even further and identify food systems activities that are interconnected with the 'non-food sector'. This will be elaborated on in Chapter 5.

The IDP is perceived as the bridge between the long-term vision of the NDP and the day-to-day workings of government.⁴³⁸ In this regard, municipalities must undertake 'developmentally-orientated' planning.⁴³⁹ This is understood to mean that municipal planning must be '*people-centred*' and address past injustice and human rights violations.⁴⁴⁰ One of the aims of developmentally orientated planning is to maximise municipal resources and to increase synergy across the different municipal departments and/or sectors.⁴⁴¹ In addition, municipalities must

⁴³⁶ CoGTA '*Sharpening the Planning Tools-Discussion Document providing a review of local government planning instruments in the context of the implementation of the IUDF DRAFT- 22 January 2018*' (2018) 5-8.

⁴³⁷ Pieterse E 'Tracing the 'Integration' Thread in the South African Urban Development Policy Tapestry' *Urban Forum*, Vol. 18 2007.

⁴³⁸ SALGA 'Infusing the NDP goals into the new IDPs' (2017) available <http://afesis.org.za/wp-content/uploads/2017/04/Infusing-the-NDP-goals-into-the-new-IDPs.pdf> (accessed June 2019).

⁴³⁹ WPLG (1998) 19-21. Cameron R & Tapscott C 'Challenges of state transformation in South Africa' (2000) Vol 20 *Public Administration and Development* 81-86.

⁴⁴⁰ Harrison P (2006) 188-191.

⁴⁴¹ For instance the Municipal Planning and Performance Management Regulations (2001)(GN R796, Government Gazette 22605, 24 August 2001). DRDLR '*Proposed Generic Integrated Development Planning (IDP): Template -Proposed Framework: (Conceptual Document developed to link up with SPISYS)*' (2012) available <https://www.westerncape.gov.za/text/2013/April/integrated-development-planning-template.pdf> (accessed 15 March 2015).

CHAPTER 3

develop sectoral plans and create mechanisms for the coordination amongst the different sectors, namely, transport, housing, water, health, environment etc.⁴⁴² All of these objectives resonate well with the food systems approach.

Municipalities should develop long-term plans that are aligned to the NDP and provincial strategies.⁴⁴³ These plans serve a critical role in creating the spatial form of the municipality. For example, they must identify the spatial restructuring zones; nodes for stimulating economic growth, connecting various parts of the municipality and protecting the natural environment; and areas for integrated human settlements.⁴⁴⁴ It was argued in Chapter 2 that a food systems approach is best realised when there is a central point for planning and regulating activities within the food system.⁴⁴⁵ It is submitted that the IDP is the central planning instrument to achieve the aforementioned development priorities. Moreover, the IDP must inform all development and give ‘expression’ to the national, provincial, partners and communities’ interest in the local space. This holds great potential to facilitate a food system.⁴⁴⁶ Before assessing whether it can indeed work in practice, the legal framework will be set out.

4.9.2 The legal framework

In terms of the Municipal Systems Act, which is where the IDP is regulated, approximately ten items are critical to the IDP, namely, a long-term vision; assessment of levels of existing development; inventory of development and existing programmes; development priorities and objectives; development strategies; operational strategies; financial plan; performance indicators and targets; spatial development framework and sector management plans.⁴⁴⁷ Some of these items will be evaluated in the paragraphs that follow in the context of food security and the spatial development framework will be set out in more detail in Chapter 5.

⁴⁴² Chapter 2 section 4.1.4: 57-60.

⁴⁴³ CoGTA (2018) 5-8.

⁴⁴⁴ CoGTA (2018) 5-8.

⁴⁴⁵ Chapter 2 section 4.1.4: 57-60.

⁴⁴⁶ Gorgens T ‘*Planning for Informality: Exploring the Potential of Collaborative Planning Forums- A Propositional Framework*’ (2013) Cape Town: Isandla.

⁴⁴⁷ Steytler N & De Visser (2014) 7: 6-8.

CHAPTER 3

The development and adoption of an IDP require extensive public consultation as set out in Chapter 4 of the Municipal Systems Act.⁴⁴⁸ The scope of this thesis does not permit a comprehensive assessment of the framework for, and practice of public participation in the IDP. For the purpose, actively encouraging communities to participate in the local government matters, such as ‘planning, service delivery, and performance management’.⁴⁴⁹ In addition, municipalities are instructed to consider people with ‘special needs’ when establishing mechanisms, processes and procedures for community participation.⁴⁵⁰ These are people who cannot read or write, those with disabilities, women and other disadvantaged groups.⁴⁵¹

In Chapter 2 it was argued that all actors that shape the local food system should be provided with an opportunity to actively engage the municipality during the drafting of the IDP.⁴⁵² There is an obligation on the municipality to facilitate this process. Section 1 of the Municipal Systems Act defines the ‘local community’ as residents; ratepayers; civic-organisations and non-government organisations, private sector or labour, visitors; and other people that live outside the municipality but make use of services or facilities provided by the municipality. The definition includes all the people that play a critical role in the food value chain (formal and informal). In addition, the definition emphasises the inclusion of the poor and other disadvantaged persons. Drimie contends the broad manner in which the ‘local community’ is defined in the Municipal Systems Act does present an opportunity for diverse stakeholders to engage the council on food security matters affecting the local area.⁴⁵³

In Chapter 2 it was indicated that food system planning involves a multi-stakeholder and community-based process.⁴⁵⁴ It encouraged the establishment of food social networks and new forms of democratic governance structures, such as FPCs to manage the power relations between the different stakeholders and to drive strategic food planning.⁴⁵⁵ It is suggested that, based on the

⁴⁴⁸ S29 (1) of the Municipal Systems Act.

⁴⁴⁹ S29 (1) of the Municipal Systems Act.

⁴⁵⁰ Manzini S *The views of government officials on the Integrated Development Plan as a framework for local government that is developmental and responsive to peoples’ needs [Gauteng]* (unpublished Honours thesis, University of the Witwatersrand, Johannesburg 2016).

⁴⁵¹ Section 17(3) Municipal Systems Act.

⁴⁵² Chapter 2 section 4.1.4: 57-60.

⁴⁵³ Drimie S (2016) 241.

⁴⁵⁴ Chapter 2 section 4.1.4: 57-60.

⁴⁵⁵ Chapter 2 section 4.1.4: 57-60.

CHAPTER 3

framework set out in Chapter 2, the IDP has great potential to become the framework for a food systems approach at a municipal level. Each municipal council must adopt an IDP.⁴⁵⁶ This IDP must capture the strategic vision and intent of the municipal council.⁴⁵⁷ To effectively implement the IDP a municipality must ensure that its IDP is properly aligned to the municipal resources and capacity.⁴⁵⁸

In Chapter 2 it was described that a FPC can be effective in striving for and meeting the food security objectives. It is, therefore, suggested that the concept of a FPC may be useful to implement the IDP objectives that intersect with the local food systems. Moreover, the FPC may provide for integrated governance of the local food system because it may consist of representatives from different government sectors, spheres of government, community-based organisations, academic institutions, private sector, labour organisations and other government agencies.⁴⁵⁹

The IDP is a five-year plan, developed together with the local community, and is annually reviewed. The Municipal Systems Act requires the IDP to advance the local government objects and duties of sections 152 and 153 of the Constitution.⁴⁶⁰ It defines the IDP as: '[T]he principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality'.⁴⁶¹ The definition makes it clear that the IDP must guide all planning and decision making in the municipality and apply to all stakeholders that carry out their activities within the municipality.⁴⁶² However, it is a policy and does not bind external parties. If parts of the IDP are contained in a by-law, those parts becoming legally binding on outsiders.⁴⁶³ The IDP supersedes all other plans in the municipality thus obliging the council to give effect to the IDP and conduct its affairs consistent with the IDP.⁴⁶⁴ The IDP must form the policy framework and general basis for the municipal

⁴⁵⁶ S25(1) of the Municipal Systems Act.

⁴⁵⁷ S25 of the Municipal Systems Act.

⁴⁵⁸ S25(1)(b) of the Municipal Systems Act.

⁴⁵⁹ Chapter 2 section 4.1.4: 57-60.

⁴⁶⁰ S23(1)(a) and(b) of the Municipal Systems Act.

⁴⁶¹ S35(a) and (b) of the Municipal Systems Act.

⁴⁶² Auriacombe C & Ackron F (2015) 10-17.

⁴⁶³ S35(b) of the Municipal Systems Act.

⁴⁶⁴ S36 of the Municipal Systems Act.

CHAPTER 3

annual budget.⁴⁶⁵ It must link, integrate and coordinate plans for the development of the municipality. Also, the IDP must give expression to the councils' development priorities and objectives for its elected term and its local economic development aims.⁴⁶⁶

In Chapter 2 it was established that the integration of different plans and spatial mapping is critical to address food insecurity.⁴⁶⁷ In Chapter 2 it was suggested that the adoption of a food charter as part of the IDP has the potential to commit a local authority to prioritise food security in its planning.⁴⁶⁸ The municipality should set out its vision and priorities towards food security and connect it to the municipal resources. For instance, the City of Johannesburg's 2012/16 IDP reported that food security is a major challenge for the City and the City identified job creation and sustainable livelihoods as critical for food security.⁴⁶⁹ The City also launched a 'Healthy Food Pledge' during 2013 where restaurants pledged to offer healthier food options to customers.⁴⁷⁰

The SACN review on urban food security strategies illustrates some of the positive steps taken by municipalities regarding food security.⁴⁷¹ For example, eThekweni's IDP makes reference to the alleviation of food security through community support farms, community gardens, provision of seedling and compost and professional support programmes.⁴⁷² Special attention is given to environmental and sustainability measures for implementing the food security programmes.⁴⁷³

It is argued, as a single strategic plan, the IDP enables a municipality to reflect a coherent picture of the local food system. In Chapter 2 examples of the different CFSAs were presented.⁴⁷⁴ These assessments aim to identify the root causes of food insecurity for specific areas to inform the municipal strategic response.⁴⁷⁵ This resonates with the requirement for the IDP to be informed by

⁴⁶⁵ S25(1)(c) and (e) of the Municipal Systems Act, read with s26(d) of the Act dealing with national or provincial sectoral plans.

⁴⁶⁶ S26(c) of the Municipal Systems Act.

⁴⁶⁷ Chapter 2 section 4.1.4: 57-60.

⁴⁶⁸ CoGTA (2018) 58.

⁴⁶⁹ SACN (2015) 60-63.

⁴⁷⁰ South African Cities Network (SACN) *'A study on current and future realities for urban food security in South Africa'* (2015) 60-63.

⁴⁷¹ SACN (2015) 58-63.

⁴⁷² SACN (2015) 58-63.

⁴⁷³ SACN (2015) 58-60.

⁴⁷⁴ Chapter 2 section 4.1.4: 57-60.

⁴⁷⁵ Chapter 2 section 4.1.4: 57-60.

CHAPTER 3

an assessment of the existing level of development in the municipality, and the identification of communities not having access to basic municipal services.⁴⁷⁶ This is to ensure that a municipality prioritises and meets the basic needs of especially the poor.

In Chapter 2 it was confirmed that a food systems approach requires specific measures to identify the most vulnerable groups of people that are food insecure.⁴⁷⁷ Thus the IDP assessment may be used to garner information on the levels of food insecurity. For instance, the City of Johannesburg developed the Food Resilience: Urban Agriculture Support Programme as part of the IDP. The programme prioritises three objectives, namely, to develop a ‘spatial food security index’ to collect and map information, to coordinate and support agriculture projects, and to lay the groundwork for the Food Empowerment Zone programme.⁴⁷⁸ The goal of the programme is to develop defined zones where shared infrastructure could be used to facilitate the development of localised food supply chains and market systems.

The Municipal Systems Act provides a framework for the provincial supervision of the IDP process.⁴⁷⁹ The MEC responsible for local government must see to the alignment of the IDPs with the plans and programmes of other parts of government on food security. There is a duty on MEC’s to monitor the IDP drafting process and assist municipalities with the development and implementation of their IDPs.⁴⁸⁰ The MEC may also facilitate the alignment of the IDPs between the district and local municipalities on the one hand, or with the municipal IDP and national and provincial programmes on the other hand.⁴⁸¹ It is suggested that this can be another lever for a food systems approach. The MEC can see to it that the IDP aligns with the food security policies and programmes of the other sector departments.

It is submitted that the above illustrations provide insight into the connections between integrated development planning and a food systems approach to food security. However, two decades of

⁴⁷⁶ S26(b) of the Municipal Systems Act.

⁴⁷⁷ Chapter 2 section 4.1.4: 57-60.

⁴⁷⁸ SACN (2015) 58-60.

⁴⁷⁹ S31(a) and (b) of the Municipal Systems Act

⁴⁸⁰ S31(c) of the Municipal Systems Act.

⁴⁸¹ S31(c) of the Municipal Systems Act.

IDPs have shown how difficult it is to achieve developmental orientated IDPs. What follows is a brief account of the challenges involved in the IDP implementation.

4.9.3 Implementation challenges

Before discussing the specific implementation challenges for integrated planning of food security, amongst the spheres of government, it should be acknowledged that local governments are confronted with significant challenges such as lack of resources and capacity to realise food security.⁴⁸² In more general terms, the Minister responsible for local government reported in 2014 on the state of municipal performance that, a third of the municipalities were carrying out their tasks adequately, while a third was just managing, and the last third was ‘frankly dysfunctional’.⁴⁸³ The underlying causes giving rise to this state of performance was attributed to poor governance, inadequate financial management, and poor accountability mechanisms. These matters will not be elaborated because they go beyond scope of this study.⁴⁸⁴ The point of emphasis is simply, that these challenges have by and large resulted in local governments’ inability for anything beyond basic statutory duties.⁴⁸⁵

Coming back to the implementation challenges for integrated food security planning, Drimie stresses that coordination amongst the national, provincial, and local level with regard to food security remains an area of concern.⁴⁸⁶ In practice, municipalities are confronted with many challenges that hinder their ability to realise integrated developmental planning. Three of those challenges are identified.

First, a culture of working in silos exists in municipal administrations.⁴⁸⁷ Consequently, the municipal department responsible for compiling the IDP needs to overcome a number of challenges when sourcing information from other municipal departments.⁴⁸⁸ Municipal councillors

⁴⁸² Chapter 1 section 4. 12-16.

⁴⁸³ Ministry of Cooperative Governance and Traditional Affairs, *Back to Basics: Serving our Communities Better!* available at <http://www.cogta.gov.za/summit2014/wp-content/uploads/2014/10/LG-Back-to-Basics-Approach-Document.pdf>.

⁴⁸⁴ CoGTA (2014) 1-5.

⁴⁸⁵ CoGTA (2014) 1-5.

⁴⁸⁶ Drimie S (2016) 240-241.

⁴⁸⁷ Drimie S (2016) 240-241.

⁴⁸⁸ Manzini S (2016) 45-50.

and officials mostly view the IDP as a compliance instrument and not a dynamic tool for integrative Planning.⁴⁸⁹ In addition, within municipalities, there appears to be a lack of alignment between municipal IDPs and the SDFs, as well as other municipal sectoral plans. This is largely due to either or both of the plans being developed by consultants, or separate municipal departments who do not liaise with each other sufficiently.⁴⁹⁰

Second, municipalities struggle to gain useful inputs and commitments from provincial and/or national departments and state-owned enterprises (SOEs) in compiling the IDP.⁴⁹¹ This is particularly important with respect to food security. In fact, the municipality must identify, amongst other things; the investment and development initiatives in the municipality and all known projects, plans and programmes that will be implemented by other organs of state within the municipality.⁴⁹² It is critical for the national and provincial departments and SOEs to set out their development priorities in terms of the NDP. However, provincial governments lack the finances and capacity to support and engage in IDP review processes.⁴⁹³ Provinces thus are failing to really help municipalities in integrating the development priorities for the whole of government into the IDP.⁴⁹⁴ It is argued that the MEC may not have the necessary technical expertise to check whether the alignment is in the best interest of food security, and specifically for the local food system in question.

Third, in practice municipalities fail to undertake proper financial analysis for their planned interventions. This results in negative outcomes for residents' food security. For example,⁴⁹⁵ officials from the City of Johannesburg argued that the Food Resilience: Urban Agriculture Support Programme, mentioned above was 'complex and ambitious'. Despite the programme being recognised as a Mayoral priority, the implementation failed because the City did not allocate

⁴⁸⁹ Manzini S (2016) 45-50.

⁴⁹⁰ CoGTA (2018) 58.

⁴⁹¹ Drimie S (2016) 241.

⁴⁹² Regulation 2(1) of the 2001 Municipal Planning and Performance Management Regulations: Detail of integrated development plan.

⁴⁹³ Drimie S (2016) 240-241.

⁴⁹⁴ For example, studies undertaken between 2001 and 2016 confirm that IDPs: (a) lack strategic planning and analysis; (b) inadequate alignment with national and provincial plans; (c) lack financial analysis into the viability of planned interventions; (d) weak linkages between the IDP and municipal budgets.

⁴⁹⁵ SACN (2015) 58-60.

sufficient resources to the programme.⁴⁹⁶ This indicates that a dedicated budget must be allocated to food security programmes. Moreover, every effort must be made to ensure coherence in the implementation of municipal food policies.

Despite the challenges presented above it is submitted that the IDP still has great potential to promote a food systems approach and to embed food thinking in municipal planning. Four reasons are stated to support this opinion. First, the IDP participatory process must ensure extensive engagement with the local residents. Second, the ‘evidence-led’ nature of the IDP provides a sound basis to address the communities’ needs (which includes their food needs). Third, the prominence and status of the IDP in the Municipal Systems Act means that if the IDP is used for food-sensitive planning, its status will be an advantage to include food-sensitive planning and design elements into the municipal development plans. Fourth, the IDP is linked to the municipal budget and the municipality may only spend money on development priorities that are identified in the IDP. The MSDF that provides for the spatial structuring of a municipality (this will be detailed in Chapter 5) forms part of the IDP. This means that identifying development priorities in the IDP should serve as a safeguard that the development across the municipality is underpinned by the necessary funds.

UNIVERSITY of the
WESTERN CAPE

5. CONCLUSION

Under apartheid, the spatial segregation and discriminatory laws were enforced at every level but had a specific impact at the local level. Economic activities were largely prohibited outside white areas with a lack of and/or poor infrastructure in black areas. In this chapter, it was argued that apartheid spatial planning contributed significantly to food insecurity. Therefore, municipalities need to pay particular attention to the implications of apartheid spatial planning and land use on current food security. A progressive role is expected from municipalities to give effect to the development and reconstruction programme of the country in terms of sections 152 and 153 of the Constitution.

⁴⁹⁶ SACN (2015) 62-64.

CHAPTER 3

The analysis of the South African food policy framework shows that comprehensive policies exist to combat food insecurity. Yet these policies were argued to be inadequate. Food policies were mostly designed for the development of rural livelihoods with the aim to promote food production. When it comes to urban food security, food policies do not go further than food gardens. However, producing enough food is only one dimension of food security. To ensure people have food access is an equally important dimension. Notably, the urban poor's access to food is linked to their proximity to food shops; low food prices; appropriate quantities; and access to credit.

The connection between food security and the original powers of local government in terms of Schedule 4B and 5B were comprehensively discussed. With respect to enhancing access to healthy and nutritious food, the municipal planning responsibilities offer points of leverage for municipalities to find a better balance between the role of large retailers and local food traders in the market. They may also offer opportunities to reduce the regulatory burden on food traders in low-income areas. There are a number of other municipal competencies that offer opportunities for municipalities to help improve access to healthy and nutritious food. Municipalities can use their power to regulate fresh produce markets to connect small-scale farmers and informal traders to consumers. They can also use their power to regulate refuse removal to reduce food wastage. Lastly, they can use their power to regulate billboards to discourage the promotion of unhealthy foods.

The constitutional division of powers is not static but provides for the discretionary assignment of functions and, sometimes compulsory assignment as per section 156(4) of the Constitution. It was argued that there are circumstances where section 156(4) must be applied to promote food security. For example, the NSNP shows that food security may be improved if a decentralised management model is used for the implementation of the NSNP. A decentralised management model is argued to promote a food systems approach. Comparative examples of the decentralised management models of school feeding programmes support the argument for such an assignment.

The use of 156(5) of the Constitution accords municipalities the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its

CHAPTER 3

functions. It was illustrated that municipalities may regulate waste pickers and to integrate them into the waste management sector.

Local municipalities share powers with district municipalities. It was argued that the manner in which the Municipal Structures Act divides the powers between the district and local municipality is problematic and impedes food security.

Municipalities were shown to have substantial powers to innovate and influence the development in their jurisdictions and to influence the local food system. For example, they can create food security policies or develop a food charter to direct how the municipality will implement food security interventions. Moreover, they can adopt by-laws to regulate the municipal functions that intersect with food security. However, in practice municipalities are generally reluctant to exercise their law-making powers. It was argued that municipalities are ordinarily contented to implement national and provincial legislation, this also applies to legislation on food-related matters.

It was submitted that the national and provincial government may use their regulatory powers in terms of section 155(7) and 155(6) of the Constitution as leverage over municipalities to promote a food systems approach? A number of examples were used to illustrate the relevance of the regulatory power of the national and provincial government for the dissertation. For example, the regulatory powers over the functional areas of 'billboards and the display of advertisements in public places' and 'childcare facilities' were discussed. It was argued that the regulatory powers may be used to entrench the food security imperatives.

A food systems approach requires food policies and strategies that are co-designed amongst all the relevant food system actors (academics, civil society, private sector, labour, state institutions, NGOs, etcetera). Arguably municipalities are well placed to achieve this kind of collaboration given their duty to promote public participation. A municipality must ensure integrated developmental planning with its local community through the IDP process. The Municipal Systems Act defines the local community broadly (to include the private sector and people that conduct their business in the municipality). In this way, the local community is indeed part of designing the IDP.

CHAPTER 3

However, the current IDPs generally do not pay much attention to food security as it is perceived as an agricultural matter. Where food security programmes are mentioned it is unsure to what extent it is properly resourced and whether there is a capacity to implement the programme. A caveat was included to acknowledge the broader context in which municipalities must perform their functions and also the challenges that confront them, such as lack of resources and capacity to realise food security, poor governance, inadequate financial management, and poor accountability mechanisms. These constraints negatively impact municipal performance.

In addition, it was suggested that the potential for integrated food planning is challenged. The IDP implementation challenges were mentioned that related to the fragmented manner in which the sector departments in the municipality operate. This includes the lack of participation by the national and provincial government and SOEs in the IDP development process. It was argued that the provincial government lacks the necessary resources to meaningfully participate in the IDP process. Moreover, it was argued that the provincial governments' duty to ensure alignment of the IDP with the national and provincial sectoral development plans is challenged in many respects.

The IDP is viewed as the building blocks to achieve the NDP, which was said to entrench the principles of a food systems approach. Despite the challenges presented above it was submitted that the IDP still has great potential to promote a food systems approach and to embed food thinking in municipal planning. The IDP is required to be developed through extensive public participation with the local residents, which potentially allows the communities food needs to be included in the IDP. The MSDF that forms part of the IDP (and the forward planning instruments in the municipality) can be used to direct the development priorities in the municipal jurisdiction and specifically target areas with high levels of food security.

The chapters that follow will explain how one specific and very important municipal power, namely the 'municipal planning' power ought to be used to facilitate food security. Chapter 4 deals with the intersection of 'municipal planning' and 'agriculture'. The legal framework to protect agricultural land (and promote food availability) will be examined. Chapter 5 will explain how spatial planning, land use management, and land use development powers may be used to promote food access.

CHAPTER 4: THE PRESERVATION OF AGRICULTURAL LAND, SUSTAINABLE FOOD SECURITY AND MUNICIPAL PLANNING

1. INTRODUCTION

To begin the discussion it is vital to contextualise the significance of the local government's mandate with respect to the control and regulation of agricultural land. In addition, it is necessary to appreciate the need for strategic planning towards a sustainable food system that progressively works towards improved food security and environmental sustainability.

In Chapter 2 seven essential components of the right to food were stated of which three directly intersect with the objective of enabling an environment for improved food security.¹ These are cited again for ease of reference, namely, (i) taking deliberate action to improve peoples' capacity to feed themselves through secure access to, amongst other things, clean drinking water; land; means to producing nutritious food; and establishing adequate systems of supply and storage; (ii) ensuring the right to a healthy and sustainable environment by putting measures in place for greater participation of vulnerable groups in the planning, management, and preservation of the environment and the sustainable use of natural resources; and (iii) achieving sustainable food and equitable agriculture investing by promoting women and opening up the agricultural sector to smallholders by non-discriminatory practices and secure access to resources and assets, including labour, land and water; improved access to agricultural land for greater local food production.²

The discussion in Chapter 2 highlighted the local government levers with respect to land-use planning and regulation of the built environment and transport infrastructure to create opportunities for local government to contribute towards the realisation of the right to food.³ Against this backdrop, the study honed into the specific powers and duties of local government in South Africa that intersects with the local government mandate. With reference to the South African municipalities' levers of land-use planning and regulation of the built environment and transport infrastructure it was argued the apartheid planning largely prevented local government from exercising their powers and performing their functions to realise the right to food for the most

¹ Chapter 2 section 3.3.6 55-56.

² Chapter 2 section 3.3.6 55-56.

³ Chapter 2 section 4.2.4 69-80.

CHAPTER 4

vulnerable and marginalised people. It was further argued that the regulation of land continues to be a highly contested issue in South Africa.

Land-use control and management practices as well as the past planning laws in South Africa were designed specifically to enforce the discriminatory goals of apartheid. Chapter 3 demonstrated that apartheid spatial planning brought about human settlements in which a large section of the population was excluded from the economic, social, and environmental benefits of vibrant, integrated, sustainable urban and rural development. It was submitted that the State's implementation of its planning laws and practices were deliberately implemented to deprive black people from gaining access to agricultural land, restricting their ability to produce adequate supply of food through forced removal from unique and prime agricultural land, and frustrating their means of livelihoods.

The contextual information provided above is to position the argument in this chapter, namely, that the intersection of the preservation of agricultural land, sustainable food security, and municipal planning is deeply located within local governments' mandate to facilitate access to the right to food. This assertion is placed on the interpretation of the right to food provided in Chapter 2. It was expressly argued that while there is no duty on the State (which includes local government) to provide food directly to people in terms of section 27(1)(b) of the Constitution there is no denying that a positive duty exists for the State to create an enabling environment in which people are entitled and capacitated to exercise their right to food. In the context of the planning law framework in South Africa there is a growing trend in case law that confirms local governments' powers and duties in terms of land use control and regulation. This chapter is aimed at confirming the progressive role that local governments' may and are empowered to fulfil in the preservation of agricultural land but also in facilitating access to land for vulnerable groups. The manner in which local government must manoeuvre within the legal planning framework is however a real challenge.

The challenge alluded to above concerns the parallel planning system that regulates the control and use of agricultural land. The Subdivision of Agricultural Land Act 70 of 1970 (SALA) regulated agricultural land. Since the promulgation of the Spatial Planning and Land Use

Management Act 16 of 2003 (SPLUMA), agricultural land is regulated under this act as well. The interplay between SALA and SPLUMA creates a complex legal environment for planning. The purpose of this chapter is, therefore, to clarify how ‘municipal planning’, a constitutional function exercised by local government, intersects with ‘agriculture’, a shared function between the national and provincial governments. Moreover, the chapter will determine how the intersection affects local government’s ability to contribute to food security.

Chapter 4 has four focus areas. First, planning law is connected to sustainable agriculture land. Second, the legislative architecture of SALA is introduced. Third, key Constitutional Court judgments from 2009-2016 on ‘municipal planning’ will be analysed in order to understand how the other spheres of government may exercise their competencies in relation to the function of ‘municipal planning’. Four, the legislative architecture of SPLUMA is introduced to highlight how SPLUMA protects agricultural land and the role that it identifies for local government.

2. CONNECTING PLANNING LAW TO SUSTAINABLE AGRICULTURAL LAND

Planning law is important to achieve sustainable development.⁴ Essentially, planning law may be understood to relate to an ‘... area of law that provides for the creation of a sustainable spatial planning framework as well as for the management of land use and land development management with the purpose of ensuring the health, safety, and welfare of society as a whole, while taking account of overarching interests that include interests of agriculture, the environment and transport’.⁵ Planning law thus establishes ‘principles and devices’ for spatial planning, land-use management, and land development management amongst the different spheres of government.⁶ In this regard, planning law concerns the regulation and management of the spatial environment or the use of land in a manner that positively transforms the lives of the communities it affects.⁷

⁴ Van Wyk J *Planning Law: Principles and Procedures of Land Use Management* (1999) 3-9. Van Wyk J *Planning Law* 2 ed (2012) 9-14.

⁵ Van Wyk J ‘The impact of Development on the Environment as Part and Parcel of Integrated Development Planning’ (2007) *LDD* 59.

⁶ Van Wyk J *Planning Law: Principles and Procedures of Land Use Management* 2 ed (2012) 11. Redress in the context of increased urbanization, informal settlements, and homelessness, inadequate or lack of infrastructure for the built environment and economic hubs, see Van Wyk J (2012) 11. Van Wyk J ‘Planning and Arun’s (not so straight and Narrow) Roads (2016) *PELJ* 2, the terms ‘subdivision of land’ and ‘township establishment’ can be used interchangeably Van Wyk J ‘Parallel Planning a Mechanism as a Recipe for Disaster’ (2010) *PELJ* 9-10/21.

⁷ Pieterse M (2014) 153-156.

Chapter 2 of this dissertation emphasised the connection between planning law to food security and highlighted the conversion of agricultural land to other land uses such as commercial, industrial and residential developments as a concern for food production on the one hand, and the need for access to agricultural land for small-scale farmers on the other.⁸ To address this, the state must undertake deliberate and well-coordinated developmental planning efforts. For instance, it requires identification of agricultural land, the zoning of such land, and the control and regulation thereof.⁹ In addition, it may require agricultural land to be earmarked and prioritised for small-scale farming as part of the greater land reform objectives.¹⁰

The discussion that follows will show how local government can facilitate the protection of agricultural land. However, local government have little power to facilitate access to agricultural land for small-scale farmers.¹¹ Recent debates on the linkages between land reform and food security are critical in shaping local government's role.¹² However, the scope of this thesis does not permit an investigation into this issue. That said, municipalities do perform functions such as spatial planning, land-use management that may impact the sustainability of agricultural land. Particularly, because municipalities are established throughout South Africa which means that all agricultural land is included in a municipality. By using its power to rezone or subdivide, a municipality may change agricultural land into land used for residential, commercial, or other non-agricultural purposes. De Visser points out that this may not only affect agricultural production but ultimately disturb the country's ability to safeguard food security.¹³

To avoid conflict in the exercise of their duties, municipalities together with the national and provincial governments need to know what they can and cannot do in terms of their planning

⁸ Chapter 2 section 3: 32-38.

⁹ Chapter 2 section 3: 32-38.

¹⁰ Chapter 2 section 3: 32-38.

¹¹ Jara M 'Land redistribution in South Africa: pondering the solidarity economy alternative' (2019) available at https://www.google.co.za/search?source=hp&ei=kCrZXPukCtHjgwf2xLigAg&q=food+security+and+land+reform+in+south+africa&oq=food+security+and+land+reform+&gs_l=psy-ab.1.0.0j0i22i30l4.279.5182..7838...0.0..0.505.9013.2-4j13j7j1.....0....1..gws-wiz.....0..0i131.yuWm99lxPQo (accessed 9 May 2019).

¹² Jara M (2019) 7-15.

¹³ De Visser J (2019) 16.

powers. For this purpose, the national, provincial, and local government require a legal framework that establishes clear roles and responsibilities for each sphere of government.

No legal framework is available that establishes a clear delineation of the role and duties for each sphere of government to protect agricultural land. In addition, the spheres of government need to avoid conflict. This means that the institutional integrity of local government needs to be respected by the provincial government. Therefore, a provincial government must ensure its actions are appropriate at an intergovernmental level and comply with the principles of co-operative government.¹⁴

Urban sprawl and non-farm residential developments on agricultural land in rural areas have shown to negatively affect food production and remain a threat to food security.¹⁵ The Western Cape Province is a good illustration of the tension brought about by the legal uncertainty. The PHA is situated along the urban edge of the City of Cape Town and is under threat of housing and other development projects.¹⁶ The land is estimated to yield one hundred and fifty thousand tonnes of agricultural products annually which is distributed locally within the City.¹⁷ The PHA creates livelihoods for people living areas where unemployment and poverty are high and provides economic opportunities for small-scale farmers.¹⁸ However, it should be stated at the outset that the scope of this study does not permit a detailed discussion on the contextual and historical information about the PHA, in any event a myriad of reports are available in this respect.¹⁹ Rather,

¹⁴ De Visser J (2016) 84-99.

¹⁵ DEADP (2016) 61-69.

¹⁶ South African Food Sovereignty Campaign (SAFSC) 'People's Food Sovereignty Act No.1 of 2016' (2016) 37-39 available at <http://www.safsc.org.za/wp-content/uploads/2016/11/Peoples-Food-Sovereignty-Act-2016.pdf> (accessed 2 February 2017).

¹⁷ Payi B 'Fate of Philippi Horticultural Area Hangs in the Balance' Weekend Argus (Sunday Edition) 16 July 2017.

¹⁸ Payi B (2017) unnumbered.

¹⁹ Battersby J & Haysom G 'Philippi Horticultural Area A City asset or potential development node?' (2012) available at <http://www.afsun.org/wp-content/uploads/2013/09/Philippi-Battersby-LennardandHaysom.pdf> (accessed March 2015). Indego Consulting et al 'Building the City of Cape Town's Resilience and Adding to Regional Competitiveness Philippi Horticultural Area: Socio-Economic Agricultural Plan 04 June 2018' (2018) available at <http://www.elsenburg.com/sites/default/files/PHA%20Socio-Economic%20Agricultural%20Plan%2004%20June%202018.pdf> (accessed 2 August 2019); Theron F 'The Urban Anthropocene: The Case Of Urban Encroachment Upon The Philippi Horticultural Area, Cape Town' (unpublished Masters Thesis, Stellenbosch University 2016); Jackson L 'The complex food system: A case study of soft vegetables purchased at different links in the food system' (unpublished Masters Thesis, University of Cape Town, 2010).

CHAPTER 4

the purpose for the discussion on the PHA case study, will be to illustrate the tension between protecting agricultural land and development experienced by municipalities.

Despite the agricultural potential of the PHA, the conversion of agricultural land still continued because the City of Cape Town had approved several applications for the rezoning of land use in support of the development of housing and other projects unrelated to agriculture in the PHA.²⁰ In 2017, the PHA Food and Farming Campaign approached the national Minister responsible for agriculture for his view on the City of Cape Town's approval of rezoning agricultural land for urban development. The national Minister responsible for agriculture confirmed that '[t]he area represents the use and role of viable agricultural land within urban areas, hence from an agricultural perspective it was evident that the application would have negative implications for food security as it is currently addressed'.²¹

Although the provincial government acknowledged that there was pressure on the City of Cape Town to develop low-cost housing in the area, the Province further highlighted that the City of Cape Town needed to consider the important role that this agricultural land offers the Province.²² The provincial government was concerned that the City of Cape Town would not adequately prioritise agricultural production in the PHA because City of Cape Town was not responsible for the function of 'agriculture'. In addition, the provincial government raised the concern that the City of Cape Town would be inclined to approve development projects to secure short-term goals rather than focus on the long-term goals of preserving agricultural land and environmental resources such as the aquifer situated in the PHA.²³

The loss of agricultural land is compounded by the incentive structure for municipalities that fundamentally works against preserving agricultural land.²⁴ Steytler and De Visser caution that the levying of property rates and the sale of municipal services (such as water, electricity, sanitation,

²⁰ Isaacs L (2017) 2. Xolani K 'WC Agriculture To 'Protect, Preserve' Philippi Horticultural Area' Eyewitness News 21 June 2017. Available at <http://ewn.co.za/2017/06/21/wc-agriculture-to-protect-preserve-philippi-horticultural-area> (accessed 2 August 2017).

²¹ Payi B (2017) unnumbered.

²² K Xolani (2017) unnumbered.

²³ Isaacs L (2017) 2.

²⁴ De Visser J (2019) 17.

and refuse removal) are critical sources of revenue for municipalities.²⁵ The municipal revenue potential of agricultural land is very little compared to the municipal revenue potential of land used intensively for residential, commercial or industrial purposes.²⁶ There is thus a clear incentive for municipalities to facilitate the development of agricultural areas and little, or no incentive for them to retain agricultural land.²⁷

During 2018 the provincial Minister responsible for the agriculture identified the PHA as a critical region for agricultural production and agri-business.²⁸ The PHA was reserved to be an economic hub and vibrant space for various small, medium and commercial enterprises in the agriculture value chain.²⁹ However during 2019, the PHA Food and Farming Campaign claimed that the Province together with the City of Cape Town is responsible for endorsing the loss of one-third of hectareage of the PHA.³⁰

So how the different spheres of government regulate agricultural land is complicated. In the interest of food security, SALA served as a legal mechanism to protect agricultural land from being subdivided and converted to other land uses. The legislative architecture of SALA will be set out below.³¹



3. LEGISLATIVE ARCHITECTURE OF SALA

3.1 The key provisions of SALA

The history of SALA is key to understanding its current application. SALA was adopted long before the introduction of the current local government regime. At the time, agricultural areas were largely excluded from the boundaries of the old local governments and SALA was applied to

²⁵ De Visser J (2019) 17.

²⁶ Steytler N (2009) 444.

²⁷ Steytler N contends that '[p]reserving agricultural land for the greater good of the country's food security, is unlikely to feature strongly in the calculations of a council trying to be self-sufficient by increasing its rates revenue base'

²⁸ Payi B (2017) unnumbered.

²⁹ Isaacs L 'Plea to protect Philippi Horticultural Area' Cape Times 2 August 2017 2.

³⁰ Sondag N 'No protection for Cape Town's breadbasket even after drought' available at <http://thegreentimes.co.za/no-protection-forcape-towns-breadbasket-even-after-drought/> (accessed 22 March 2019).

³¹ Moor G (2018) 1.

CHAPTER 4

control the conversion of agricultural land.³² Thus the provisions of SALA were drafted before the establishment of the wall-to-wall local government system. With the restructuring of local government, agricultural land was absorbed into local governments. This meant that the municipal planning powers and functions over agricultural land overlapped with the provisions of SALA.

The key provisions of SALA are explained as well as the economic model underpinning the Act. The purpose of SALA is to ‘control the subdivision of agricultural land and, in connection therewith, the use of agricultural land’.³³ Apart from regulating the subdivision of agricultural land, SALA also controls matters concerning subdivision, such as property transfers, lease agreements, sale and advertisements.³⁴ In *Wary*, the court held, the essential purpose of the Act was to serve ‘as a measure by which the legislature sought in the national interest to prevent the fragmentation of agricultural land into small uneconomic units. In order to achieve this purpose the legislature curtailed the common-law right of landowners to subdivide their agricultural property. It imposed the requirement of the Minister’s written consent as a prerequisite for subdivision which would have the unwanted result of uneconomic fragmentation’.³⁵

SALA vests the control of agricultural land in the Minister responsible for agriculture.³⁶ The aim of SALA is to avoid fragmentation of agricultural land into small ‘uneconomic units’.³⁷ Its ultimate goal is to ‘*shield agricultural land*’ from being converted to non-agricultural use.³⁸ SALA restricts the subdivision of agricultural land and the acquisition of undivided shares in agricultural land except where the Minister grants permission.³⁹

³² *Wary* Judgment discussed in detail later in section 4.

³³ See the Long Titles of The Subdivision of Agricultural Land Act 70 of 1970 (hereinafter SALA).

³⁴ Moor G ‘*Subdivision and land use laws hinder land reform and are unconstitutional*’ (2018) available at <https://www.golegal.co.za/subdivision-land-reform-unconstitutional/> 9 accessed 15 January 2019).

³⁵ *Wary* Judgment at para 13.

³⁶ Moor G (2018) 1.

³⁷ Frantz G *Repealing the Subdivision of Agricultural Land Act: A constitutional analysis* (unpublished LLM thesis, Stellenbosch University, 2010)

³⁸ Olivier NJ & Williams C ‘*Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd & Another (Trustees of the Hoogekraal Highlands Trust & SAFAMCO Enterprises (Pty) Ltd (amicus curiae); Minister of Agriculture & Land Affairs (intervening)*’ [2008] JOL 22099 (CC)’ (2010) Vol 35. No2 *Journal for Juridical Science*.

³⁹ S3 of SALA.

CHAPTER 4

SALA defines agricultural land negatively.⁴⁰ Section 1 of the Act is quoted below for ease of reference:

‘agricultural land’ means any land, except-

(a) land situated in the area of jurisdiction of a municipal council, city council, town council ..., but excluding any such land declared by the Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for the purposes of this Act;

(f) land which the Minister after consultation with the executive committee concerned and by notice in the Gazette excludes from the provisions of this Act; Provided that the land situated in the area of jurisdiction of a transitional council as defined in section 1 of the Local Government Transition Act 1993 (Act no. 209 of 1993), which immediately prior to the first election of the members of such transitional council was classified as agricultural land, shall remain classified as such.⁴¹

The exceptions include land within the jurisdiction of a municipality (which refers to land in urban areas prior to the 1993 municipal restructuring and peri-urban land falling within the area of a municipality or town council); land excluded from the definition in terms of provincial ordinances; land owned by the state; and land excluded by Government Gazette.⁴² How SALA defines a municipality is problematic and the discussion on the *Wary* judgment will elaborate on this point. SALA permits certain exemptions from the Act applying to agricultural land. These exemptions relate to two categories. The first, apply to instances when agricultural land is transferred, sold, or granted to the state. The second relates to transfers that occurred prior to the Act coming into operation.⁴³

Section 3(j) of the Act stipulates the requirements for any subdivision of agricultural land, it provides that ‘no portion of agricultural land, whether surveyed or not, and whether there is any building thereon or not, shall be sold or advertised for sale, except for the purposes of a mine... and...unless the Minister has consented in writing’.⁴⁴ Section 3(d) prescribes that a lease which lasts longer than ten years requires written consent from the Minister. Section 3(e) prohibits the selling or advertising the sale of agricultural land without the written consent of the Minister.⁴⁵

⁴⁰ Frantz G (2010) 30-32.

⁴¹ Ss 1(i)(a)-(f) of SALA.

⁴² Ss 1(i)(a)-(f) of SALA.

⁴³ Frantz G (2010) 44-45.

⁴⁴ S3 of SALA.

⁴⁵ *Van Wyk and Others v Topaz Sky Trading 146 (Pty) Ltd and Others* (50235/15) [2017] ZAGPPHC 1 (3 January 2017).

CHAPTER 4

This provision also applies to shorter lease agreements which allow the lessee to renew indefinitely accumulating to more than ten years. Section 3(g) prohibits the giving of public notice for the preparation of a scheme on agricultural land unless the Minister has consented in writing.

If there is no proposed subdivision of agricultural land, the Minister does not have any control of the sale of such land.⁴⁶ The Minister's power to control the sale of agricultural land is, therefore, limited to a contemplated subdivision thereof. Section 4 of the Act determines that the owner of the land concerned shall make any application for the Minister's consent in terms of section 3. The Minister may refuse or grant the application and may even impose conditions to determine the desired use of the land.⁴⁷

3.2 The economic model of SALA and history

The policy underlying SALA derived from two documents dated 1964 and 1965 respectively, presented to the then *Select Committee of Parliament on Subdivision and Agricultural land*.⁴⁸ The Committee was mandated to determine whether state measures had to be established for the regulation and subdivision of agricultural land.⁴⁹ Its brief was to evaluate how the state should prevent the practice of subdivision of farmlands.⁵⁰ The Committee had to identify mechanisms to avoid the fragmentation of agricultural land into uneconomic farms that would create non-viable farming practices.⁵¹ During this time South Africa's agricultural laws were designed to discourage the empowerment of 'black farming' practices and to ensure black and coloured people remained labourers rather than independent and self-sufficient farmers.⁵²

An economic model was proposed to maintain a critical mass of agricultural land held in contiguous blocks.⁵³ This model promoted a strong commercial sector based on a belief that small-

⁴⁶ *Van Wyk* Judgment at paras 23-24.

⁴⁷ S4(2)(a) of SALA.

⁴⁸ Frantz G (2010) 18-19 read with 22-30.

⁴⁹ Frantz G (2010) 18-19 read with 22-30.

⁵⁰ Frantz G (2010) 18-19 read with 22-30.

⁵¹ Frantz G (2010) 18-19 read with 22-30.

⁵² Frantz G (2010) 18-19 read with 22-30.

⁵³ Hall R 'Submission to the Department of Agriculture, Forestry and Fisheries on: Draft Preservation and Development of Agricultural Land Framework Bill and Policy, as published in the Government Gazette 38545, No 210 of 13 March 2015' (2015) available at <http://www.plaas.org.za/sites/default/files/publications-pdf/2015%20->

CHAPTER 4

farming units are mostly unproductive and the fragmentation of agricultural land into small uneconomic units threatens agricultural production and food security.⁵⁴ In the context of SALA, and even today, there is a misplaced idea of what small-scale farming is.⁵⁵ Sihlobo argues that small-scale farmers are equated with farmers in the former homelands farming on one hectare of dryland or less.⁵⁶ Kirsten and Van Zyl confirm that ‘small-scale’ farming is often equated with ‘a backward, non-productive, non-commercial, subsistence agriculture’. Yet small-scale farming internationally is not associated with these negative perceptions.⁵⁷

To measure economic viability, SALA uses farm size to determine agricultural productivity but many authors argue that this model is technically flawed.⁵⁸ Most agricultural experts agree that what constitutes a viable farm unit varies widely across the country, depending on soil conditions, rainfall and, most importantly, the type of agricultural model pursued on the farm. Therefore they argue that instead of emphasising farm size, the more appropriate measurement in terms of accurate economics is farm productivity.⁵⁹ The main objective, according to these authors, seems to be that the turnover should determine the farm size category, not the land size.⁶⁰ They cite evidence to point out that with the same production technologies and inputs, small-scale farming can be more efficient than large-scale farming, due to the use of family rather than hired labour.⁶¹ For example, Ashton reported during 2014, that research from Brazil highlights how farm size cannot be a true measure of productivity.⁶² He states that four out of five farms in Brazil are small, largely family-run enterprises.⁶³ These farms provide approximately 40 per cent of the total

%20PDALF%20policy%20%26%20bill%20-_%20PLAAS%20submission.pdf
(accessed October 2016).

⁵⁴ Hall R (2015) 3.

⁵⁵ Sihlobo W ‘*Perspectives on Farm Sizes*’ (2018) available at <https://wandilesihlobo.com/2018/11/18/perspectives-on-farm-sizes/> (accessed 15 January 2019).

⁵⁶ Sihlobo W (2018) 1/1.

⁵⁷ Kirsten J & Van Zyl J ‘Defining Small-Scale Farmers in the South African Context’ (1998) Vol 37 *Agrekon* 553-554.

⁵⁸ Sihlobo W (2018) 1/1. Kirsten J & Van Zyl J (1998) Hall R (2015) 3. Ashton G ‘*Revitalising Agriculture: Healing the Land, Feeding our Nation*’ The South African Civil Society Information Service available 30 Jun 2014 at <http://sacsis.org.za/site/article/2054> (accessed October 2016). Patnaik U ‘Economics of Farm Size and Farm Scale: Some Assumptions Re-Examined’ *Economic and Political Weekly* (1972) Vol. 7, No. 31/33, Special Number 1613-1624. Townsend R, Kirsten J, Vink N ‘Farm size, productivity and returns to scale in agriculture revisited: a case study of wine producers in South Africa’ (1998) *Agricultural Economics- Elsevier* Vol 19, 175-180.

⁵⁹ Wegerif M ‘Presidential panel’s land reform report is a missed opportunity’ *City Press* 28 August 2019 1/1.

⁶⁰ Wegerif M (2019) 1/1.

⁶¹ Ashton G (2014) 1-4.

⁶² Ashton G (2014) 1-4.

⁶³ Ashton G (2014) 1-4.

CHAPTER 4

agricultural production, including most food consumed in both rural and urban areas.⁶⁴ Ashton, indicates all this production comes from less than one-quarter of the total cultivated area of land.⁶⁵ He adds, that similar patterns exist in India and China.⁶⁶ In all of these countries they focus on linking small-scale farmers to markets, as well as on the feminisation of agricultural production.⁶⁷ It thus seems, with reference to Brazil, China and India, the approach of SALA is debatable.⁶⁸

Given the reality that black females are the most food insecure, the question arises to what extent South Africa past of racial segregation and racial laws and practices informs the current reality for small-scale farming. More specifically, does the economic model provided in SALA accord with the latest trends and transformation needs of the country? Hall argues that a normative model of large-scale, capital-intensive industrial farming practice was supported and continues to be promoted today.⁶⁹ This ‘farming business style’ is derived from ‘white settler agriculture’.⁷⁰ In addition, Ashton describes the nature of this type of industrial farming to be intrinsically linked to the dominant economic model of maximising profits while externalising impacts and costs.⁷¹ He views the model as apathetic and indeed an obstacle to reforming the agricultural sector, insofar as it concentrates land ownership amongst fewer owners while simultaneously failing to address the chronic levels of food insecurity.⁷² Hall remarks that small-scale farming is marginalised and under-valued in the legislative and policy frameworks.⁷³ Often when support is provided to small-scale farmers there is no follow-through with linking them to markets and infrastructural resources.⁷⁴ She concludes that the subdivision of agricultural land could immensely contribute to making land accessible to small-scale farmers.⁷⁵

⁶⁴ Ashton G (2014) 1-4.

⁶⁵ Ashton G (2014) 1-4.

⁶⁶ Ashton G (2014) 1-4.

⁶⁷ Ashton G (2014) 1-4.

⁶⁸ Ashton G (2014) 1-4.

⁶⁹ Hall R (2015) 4-9.

⁷⁰ Hall R (2015) 4-9.

⁷¹ Ashton G (2014) 1-4.

⁷² Ashton G (2014) 1-4.

⁷³ Hall R (2015) 4-9.

⁷⁴ Hall R (2015) 4-9.

⁷⁵ Hall R (2015) 4-9.

Van Staden points out that SALA is hampering economic upliftment.⁷⁶ He argues that even when there may seem to be an interest to promote access to land for farmworkers, or community interest, SALA burdens the subdivision of agricultural land in two ways.⁷⁷ First it unduly limits the owners' freedom to subdivide the land without the Minister's approval.⁷⁸ Secondly, if the Minister refuses to approve a farm owner's application for subdivision of agricultural land, this may prevent the release of parcels of agricultural land (at affordable prices) on the open market or selling land parcels to the farmworkers.⁷⁹

This suggests that the economic model of SALA is debatable and certainly not the only possible approach.⁸⁰ From a constitutional perspective, the SALA mechanism to protect agricultural land is questionable. For example, Chapter 3 explained the division of powers amongst the spheres of government. The SALA architecture contradicts the constitutional vision of what is appropriate for local government.

SALA was supposed to be repealed by the Subdivision of Agricultural Land Act 64 of 1998 (the Repeal Act), to undo the effects of SALA.⁸¹ The Repeal Act aimed to promote decision-making at the local level and facilitate access to land for the formerly dispossessed communities.⁸² However, the Repeal Act was not signed into law and the SALA provisions remain operative.

4. THE DEVOLUTION OF PLANNING POWERS TO MUNICIPALITIES

Since 2010 the Constitutional Court has consistently protected the 'municipal planning' authority of local government. If a provincial or national sphere unduly encroaches into the municipal planning authority, such action may be legally challenged and set aside. It will be argued that the impact of the jurisprudence of the Constitutional Court is that there are constitutional difficulties with SALA. This is despite the fact that the court initially sanctioned SALA.

⁷⁶ Van Staden M (2018) 1/1.

⁷⁷ Van Staden M (2018) 1/1.

⁷⁸ Van Staden M (2018) 1/1.

⁷⁹ Van Staden M (2018) 1/1.

⁸⁰ Refer to the Repeal of SALA Act 64 of 1998 and also the Draft Preservation and Development of Agricultural Land Bill (PDAL) of 2016 to repeal SALA. However, the PDAL proposes a similar economic model to SALA. This will be discussed in more detail later in this chapter.

⁸¹ Van Wyk J (2009) 550-551.

⁸² The objects and explanation of Repeal Act.

CHAPTER 4

4.1 Jurisprudence on municipal planning

As mentioned earlier, each sphere of government needs to act within its constitutional power. This section will explain how agricultural land may be protected while still respecting the function of ‘municipal planning’. To do this, four key questions are raised below. In answering these four questions, seven Constitutional Court decisions from 2009 to 2016 on ‘municipal planning’ will be analysed.⁸³ All these cases deal with the role of local government in the control and regulation of the use of land.

First, although ‘municipal planning’ must be executed by a local authority, are there certain instances such as the subdivision of agricultural land that merit the national government deciding and approving these applications? To answer this question the cases of *Wary* and *Gauteng Development Tribunal* are analysed. The *Wary* case decided in 2009 concerns the issue of ‘municipal planning’ and the preservation of agricultural land. The *Gauteng Development Tribunal* case, decided in 2010 concerns the meaning of municipal planning.

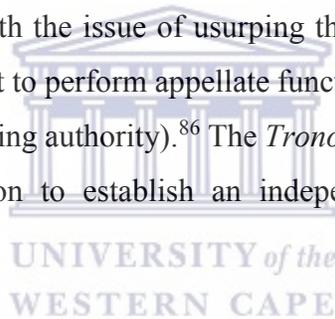
Secondly, the provincial and the national governments share responsibility for planning functions related to ‘urban and rural development’ and ‘regional planning and development’.⁸⁴ Chapter 3 explained the nature of these constitutional powers. The question here concerns how do these planning functions compare to ‘municipal planning’ and what are the implications for the control and regulation of agricultural land? To answer this question the *Maccsand* case is investigated. The *Maccsand* case was decided in 2012 and concerns the interplay of multiple authorisations required for land use. This case will be used to illustrate how overlapping functions should be regulated.

⁸³ *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Others* 2009 1 SA 337 (CC); *City of Johannesburg Metropolitan v Gauteng Development Tribunal* 2010 (9) BCLR 859 (CC) (hereinafter the *Gauteng Development Tribunal* case); *MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province In re: Minister for Mineral Resources and Swartland Municipality and Other and Maccsand (Pty) Ltd and The City of Cape Town and Others* [2012] ZACC 10 (hereinafter *Maccsand* case); *Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others* [2013] ZACC 39 (hereinafter *Lagoonbay* case); *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others* [2014] ZACC 9 (hereinafter *Habitat* case); *Pieterse NO v Lephalale Local Municipality* (CCT184/16) [2016] ZACC 40; 2017 (2) BCLR 233 (CC (hereinafter *Pieterse Maccsand* case) and *Tronox KZN Sands (Pty) Ltd v The Kwa-Zulu Natal Planning and Development Appeal Tribunal and Others* [2016] ZACC 1 (hereinafter *Tronox* case).

⁸⁴ Listed in Schedule 4A of the Constitution.

Thirdly, the provincial government has an exclusive function of ‘provincial planning’; how should the provincial interests in land-use development be understood against the ‘municipal planning’ function? This is important as Chapter 3 demonstrates how an overlap in functional areas can negatively impact service delivery.⁸⁵ To answer this question the *Lagoonbay* case is examined. The *Lagoonbay* case was decided in 2013 and concerns the scope of ‘municipal planning’ powers where the impact of a decision extends beyond the municipal boundary.

Fourthly, what intergovernmental considerations must be taken into account to safeguard the provincial and national interests of ‘planning’ and ‘agriculture’ and the local interests of ‘municipal planning’ critical for food security? To answer this question, three cases will be analysed, namely *Habitat*, *Pieterse* and *Tronox*. The *Habitat* case decided in 2014 and the *Pieterse* case decided in 2016 both deal with the issue of usurping the ‘municipal planning’ function by enabling the provincial government to perform appellate functions (to directly hear, decide and/or replace decisions of the local planning authority).⁸⁶ The *Tronox* case decided in 2016 concerns the enactment of provincial legislation to establish an independent body to decide ‘municipal planning’.



4.1.1 *Wary* case

SALA came into effect during 1970 as alluded to above, but only applied to ‘land not situated within an urban or semi-urban local government structure’.⁸⁷ With the local government restructuring process that commenced in terms of the Local Government Transition Act, this division became obscured.⁸⁸ Rural land not previously under municipal authority and classified as agricultural land before the implementation of the transitional councils would no longer qualify as agricultural land.

⁸⁵ Chapter 3 section 4: 113-120.

⁸⁶ A further case decided in 2018, namely, *City of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board and Others* 2018 (3) BCLR 881 (CC) is also relevant. It clarifies the meaning of the ‘municipal planning’ function with regards to the national governments power in terms of building regulations. The case confirms the strong constitutional protection of the ‘municipal planning’ function.

⁸⁷ *Wary judgment* at para 123.

⁸⁸ Chapter 3 section 3: 100-102.

SALA exempted land from being classified as agricultural land if it was in the jurisdiction of a transitional council.⁸⁹ This exemption would have operated based on the peculiar manner in which SALA defined agricultural land, along territorial basis and not in terms of the purpose for which the land is used. To overcome this problem and to maintain the legislative framework of SALA, in 1995 a proviso was inserted to amend the definition of agricultural land.⁹⁰ The proviso stated:

[p]rovided that land situated in the jurisdiction of a transitional council as defined in section 1 of the Local Government Transition Act, 1993 (Act no 209 of 1993) which immediately prior to the first election of the members of such transitional council was classified as agricultural land, shall remain classified as such.⁹¹

SALA continued to apply to land governed by a transitional council. With the final Constitution and the introduction of the suite of local government legislation, wall-to-wall municipalities were established in 2000.⁹² The application of the proviso to the permanent structures of local government thus became uncertain in law. This uncertainty was amplified because the Repeal Act was passed in 1998 but not signed into law.⁹³ This legal uncertainty gave rise to the *Wary* case. The dispute in the particular matter is explained.

During 2006 a contractual agreement between Wary Holdings (Pty) Ltd and Stalwo (Pty) Ltd was entered into for the sale of land classified as 'agricultural land'. But the land was not used for agricultural purposes. In terms of SALA, ministerial approval had to be obtained before the sale and advertisement of the 'agricultural land' (if a subdivision and rezoning of the land were required). SALA empowered the Minister to decide and approve all applications for the rezoning, subdivision and sale of land classified as agricultural land. If the 1995 proviso applied to the permanent local government structures, it would continue the application of the Minister's executive oversight for agricultural land. Consequently, Wary Holdings contested the validity of

⁸⁹ During the transition from apartheid to the establishment of democratic local government, the transitional council were established to facilitate the integration of the different racial and cultural entities that existed. The transitional councils operated between 1994 and 2000. The transitional councils composed of representatives of all existing local government bodies, including former black local authorities, former (white) local councils, boards of rural areas, committees for local affairs, regional service councils, joint service boards, joint-decision making bodies, joint local authorities, other official local authorities and persons, institutions or bodies with local government powers.

⁹⁰ Proclamation R100 of 1995, *GG* 16785, 31 October 1995.

⁹¹ Proclamation R100 of 1995, *GG* 16785, 31 October 1995.

⁹² Van Wyk J (2009) 548.

⁹³ Van Wyk J (2009) 548.

CHAPTER 4

the contractual agreement and argued that the advertisement and sale of the land were not in compliance with the provisions of SALA and the contract was 'invalid and unenforceable'. Stalwo on the other hand contested the applicability of SALA in the new local government dispensation. On this basis, Stalwo argued that the contract was valid and enforceable against Wary Holdings.⁹⁴

The court had to determine whether the municipal planning function could be subjected to a veto power by the Minister over agricultural land. This determination would provide guidance whether it was permissible for both spheres of government to regulate the use of agricultural land. In other words, can the local government exercise the municipal planning function within its jurisdiction while being subjected to a veto power exercised by the Minister responsible for the function of agriculture?

With the implementation of the 1996 Constitution, not only the wall-to-wall local government system but also the allocation of powers and functions amongst the three spheres of government was confirmed. Municipal planning is an original power conferred to local government by the Constitution.⁹⁵ In the new local government dispensation, municipalities are regarded as having the executive and legislative power for the control and regulation of the use of land in its jurisdictions.⁹⁶ Against this background, the executive oversight which SALA conferred to the national Minister responsible for agriculture was challenged.⁹⁷

Stalwo (Pty) Ltd argued that SALA contradicted the division of powers in the final Constitution by permitting the Minister a veto power over the municipal planning function.⁹⁸ The zoning, subdivision and sale of land were considered to form part of the planning function and not as a component of agriculture. On this contention it was argued that land use forms part of the original local government power and that it ought to be exercised by a local government authority.⁹⁹ Therefore the subdivision of land was argued to fall under the purview of municipal affairs.¹⁰⁰

⁹⁴ *Wary* judgment at para 3.

⁹⁵ Section 156 (1)(a) of the Constitution.

⁹⁶ Section 156 (1)(a) read with section 156(2) of the Constitution.

⁹⁷ Nagel C 'The subdivision of agricultural land act 70 of 1970, options to purchase and related matters' (2016) 2016 (79) *THRHR* 276-286.

⁹⁸ Nagel C (2016) 276-280.

⁹⁹ *Wary* judgment para 33 read with para 131.

¹⁰⁰ *Wary* judgment para 69 read with paras 79 & 140.

CHAPTER 4

Furthermore, the legislative framework in place for regulating municipal planning was argued to sufficiently provide for the protection of land classified as agricultural land.¹⁰¹ Therefore the continued executive oversight by the Minister into the municipal affairs was no longer required.¹⁰² SALA acted as planning law and permitted a veto power by the Minister over the executive authority of a local government.

Two competing policy and constitutional interests are at stake in the application of SALA, namely, the interests of ‘municipal planning’ versus ‘agricultural’ interests.¹⁰³ Local government needs to ensure that land development in its jurisdiction promotes financial viability.¹⁰⁴ The municipal planning interests must also be informed by the development needs of the local community.¹⁰⁵ Policy matters that inform the municipal planning function will, therefore, include the needs associated with residential housing, amenities, and infrastructural developments.¹⁰⁶ To serve these interests it was argued that municipalities will perhaps not prioritise the protection of land earmarked for agricultural use.¹⁰⁷ This may have been a justified concern at the time in the absence of a planning law that allocates clear roles and responsibility to each sphere. Yet, it is questionable whether this concern is still relevant with the introduction of SPLUMA.

Directing the focus to the national and provincial interests of sustainable agriculture. The national and provincial government share the power to legislate and take executive decisions to protect agricultural interests.¹⁰⁸ Chapter 2 illustrated how the national and provincial governments are constitutionally empowered to do.¹⁰⁹ The national Minister argued, that the protection of agricultural land still remains a vital matter for food security and land suitable for agricultural use must be protected from conversion to other land uses. The availability of agricultural land needs to be prioritised to produce sustainable food security. Therefore, the national Minister argued to

¹⁰¹ *Wary* judgment paras 79 to 81 read with paras 134 to 137.

¹⁰² *Wary* judgment paras 126 to 129 read with para 138.

¹⁰³ Steytler N ‘The decisions in *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another 2009 (1) SA 337 (CC): Be Wary of these Holdings (2009) 2 Constitutional Court Review 429-448. Wary* judgment para 53 to 129 read with para 138.

¹⁰⁴ Steytler N (2009) 439.

¹⁰⁵ Steytler N (2009) 439.

¹⁰⁶ Steytler N (2009) 439.

¹⁰⁷ Steytler N (2009) 439.

¹⁰⁸ *Wary* judgment at para 53 read with para 66.

¹⁰⁹ Chapter 3 xx.

CHAPTER 4

retain the national control and executive oversight over the subdivision application for agricultural land is required to ‘play a role in decisions to reduce agricultural land and for consistency as part of a national agricultural policy’.¹¹⁰

So how did the court deal with these competing interests? Kroon J writing for the majority held that the 1995 proviso, that amended the definition of agricultural land in SALA, not only contemplated the constitutional restructuring of local government but intended for it to remain in effect for the ‘continued efficient carrying out of the functional area of agriculture’.¹¹¹

The court determined that SALA provisions were not repealed or abrogated by other legislation which dealt with the new local government structures and SALA provisions remained applicable to the control and regulation of the use of land classified as ‘agricultural land’.¹¹² Therefore the municipal planning function as it relates to the subdivision of land remained subject to veto power by the national Minister.

The court declared that maintaining the parallel scheme of SALA over ‘agricultural land’ would result in the concurrent exercise of functional powers allocated to the local government in terms of municipal planning and the national government in terms of agriculture. This was held to be an appropriate means to deal with the overlap of the functional areas in the Constitution. The court held that it would serve to ensure the policy and constitutional interests from the national and local perspective. In this regard, the court held that:

[t]here is no reason why the two spheres of control cannot co-exist even if they overlap and even if, in respect of the approval of subdivision of agricultural land; the one may in effect veto the decision of the other. It should be borne in mind that the one sphere of control operates from a municipal perspective and other from a national perspective, each having its own constitutional and policy considerations land, agriculture, food production and environmental considerations are obviously important policy issues on a national level.¹¹³

¹¹⁰ *Wary* judgment at para 53.

¹¹¹ *Wary* judgment at para 66.

¹¹² *Wary* judgment at para 90.

¹¹³ *Wary* judgment at para 80.

CHAPTER 4

The court found the executive oversight by the Minister to be crucial for the right to food. In addition, it found the existence of a parallel scheme for agriculture to promote the realisation of other socio-economic rights contained in the Bills of Rights.¹¹⁴

However, the judgment was not unanimous. Yacoob J writing the minority judgment found the continued application of the 1995 proviso inappropriate. He argued that for land to be defined as agricultural land, two conditions must be met, namely, ‘the land must be situated within the jurisdiction of a transitional council, and had to be classified as agricultural land immediately before the first election of the transitional council having jurisdiction over the land concerned’.¹¹⁵ Therefore the status of the land and the Minister’s executive oversight would discontinue if that land ‘falls within the area of a municipal structure other than a transitional council’.¹¹⁶

Yacoob J argued that the continued executive oversight by the Minister during the transitional councils was necessary for the administration of agricultural land. At that time he argued the local government structures were fluid.¹¹⁷ The executive oversight from the Minister was required ‘until the appropriate division of the powers and functions (in relation to land, agriculture and land-use planning amongst all three spheres of government had been properly regulated by national legislation’.¹¹⁸ This he submitted was achieved with the final Constitution and the framework laws in place to regulate the municipal planning function.¹¹⁹

In contrast to Kroon J, writing the majority judgment, he believed the execution of the ‘municipal planning’ function by permanent municipal structures, without executive oversight from the national Minister would not adversely affect the administration of the agricultural function.¹²⁰ In addition, he opined that ‘municipal planning’ must be considered harmoniously with the other functional areas in the Constitution.¹²¹ He stated that: ‘planning entails land use and is inextricably connected to every functional area that concerns the use of land. There is probably not a single

¹¹⁴ *Wary* judgment at para 84.

¹¹⁵ *Wary* judgment at para 117.

¹¹⁶ *Wary* judgment at para 117.

¹¹⁷ *Wary* judgment at para 125.

¹¹⁸ *Wary* judgment at para 125.

¹¹⁹ *Wary* judgment at para 125.

¹²⁰ *Wary* judgment at Para 126.

¹²¹ *Wary* judgment.at para 127.

functional area in the Constitution that can be carried out without land. Land-use planning must be done at three levels at least provincial planning, regional planning and municipal planning'.¹²²

The crux of the matter according to Yacoob J concerns the overlap in executing the different functional areas allocated in the Constitution that intersect with the function of agriculture. He argued that this is inevitable and 'cannot be said to exist in a hermetically sealed compartment. The functional area includes the determination of frameworks and policy that would be binding on all provinces and municipalities as well as legislation concerning implementation made by provinces binding upon municipalities'.¹²³

Yacoob J, thus concluded that as far as SALA is concerned with zoning, subdivision, and the sale of land it is not concerned with agriculture but with the functional area of planning.¹²⁴ Furthermore, Yacoob J highlighted that it would be inappropriate to retain the Minister's veto power for approving each and every sale and subdivision of agricultural land within an area controlled by a democratically elected council and an appropriately structured municipality.¹²⁵ According to Yacoob J, to continue with a parallel land-use scheme for agricultural land disregarded not only the existing constitutional framework in place for planning but was contrary to the decentralisation and democratisation of powers afforded to the different spheres of government.¹²⁶

With respect to the right to food, Yacoob J stressed the reliance placed on the national Minister's executive oversight for maintaining agricultural land and making food more available, 'overstates the importance and competence of the executive head and minimises the role, importance and ability of municipal structures, the provincial legislature as well as the national legislature'.¹²⁷

¹²² *Wary* judgment at para 128. Also Du Plessis W, Olivier NJ and Pienaar J 'Land: still a contentious issue' 1998 (13) *SA Public Law* 149-169 argue that the execution of the distinct governmental functions should be based on the constitutionally entrenched principle of co-operative governance as embedded in sections 41(1)(e)-41(1)(h) of the Constitution.

¹²³ *Wary* judgment at para 128.

¹²⁴ *Wary* judgment at para 129.

¹²⁵ *Wary* judgment at para 138.

¹²⁶ *Wary* judgment at para 138.

¹²⁷ *Wary* judgment at para 139.

CHAPTER 4

Although this case is constitutionally problematic as it undermines the original powers of local government in respect of the function of ‘municipal planning’, there are certain principles that are important for the debate on the protection of agricultural land for food security. In this regard, three pertinent issues are mentioned. First, *Wary* confirms that the co-existence of multiple centres of control is an acceptable means for the different spheres of government to exercise their constitutional powers. Second, the control and the use of land requires a mechanism to ensure that the policy and constitutional interests for each sphere of government is safeguarded at the appropriate level. For example, at the national level the protection of agricultural land requires policy and legislation to avoid the conversion of land classified for agriculture used to be used for other purposes. The identification of land to be earmarked as protected agricultural land is best placed with the national and/or provincial government that is constitutionally empowered to perform this responsibility. Third, to protect the national interests of food security the executive authority of local government may be circumscribed with respect to the subdivision and rezoning of agricultural land.

Wary confirms that SALA remains lawful and applicable to local government in exercising the ‘municipal planning’ function. The Minister still exercises a final decision on all rezoning and subdivision applications on agricultural land. It is submitted that this aspect of the judgment is misplaced and inappropriate from a constitutional and food systems approach.¹²⁸ For example, Chapter 2 confirmed that ‘municipal planning’ should not be underestimated in the promotion of food security. The judgment has been criticised for undermining the executive powers conferred to local government in terms of the new system of local government in the Constitution.¹²⁹ Reflecting on case law decided after *Wary* there is a noticeable trend to reject a veto power over ‘municipal planning’ functions.

The dissenting judgment of Yacoob J, however, regarded SALA to be an overstatement of the Ministers’ executive oversight. In support of this argument, Yacoob J held that the ‘municipal planning’ function is sufficiently regulated to protect the conversion of agricultural land from

¹²⁸ Bindu A ‘*Environmental and developmental rights in the Southern African development community with specific reference to the Democratic Republic of Congo and the Republic of South Africa*’ (unpublished LLD Thesis, University of South Africa, 2010).

¹²⁹ Van Wyk J (2009) 545-562; and 550-551.

being used for other uses. Yacoob J submitted that the national and the provincial government is empowered to identify the suitability of land for the use of agricultural uses and may classify specific land as ‘agricultural land’. However, it is unacceptable for the national and the provincial government to make the final decision on the rezoning and subdivision of land because this falls within the exclusive domain of ‘municipal planning’.¹³⁰ To bring this back to the food security debate it means that a veto on ‘municipal planning’ is not a suitable mechanism to ensure food security. Jurisprudence decided after *Wary*, such as *Gauteng Development Tribunal, Maccsands, Lagoonbay and Habitat* endorsed the views of Justice Yacoob.¹³¹

4.1.2 *Gauteng Development Tribunal case*

When the ANC came into power in 1994, the ruling party enacted the Development and Facilitation Act 67 of 1995 (DFA) to fast-track the reconstruction and development programme and to undo the apartheid spatial planning legacy.¹³² Chapter 3 further mentioned the fragmented planning legislation that existed during apartheid and the DFA served as a stop-gap until the necessary planning legislation would be in place to rationalise the old-order legislation.¹³³ The DFA came into operation on 22 December 1995.¹³⁴ The DFA did not, however, repeal the various provincial ordinances which applied in the respective former provinces.¹³⁵

¹³⁰ Van Wyk J (2009) 557-559.

¹³¹ The *Gauteng Development Tribunal Case* did not explicitly reject the veto power over municipal planning the cases of *Lagoonbay* and *Habitat* expressly rejected the veto power as being unconstitutional.

¹³² Harrison P et al ‘*Urban Resilience Thinking for Municipalities*’ (2014) available at http://www.gcro.ac.za/media/reports/URreport_1201MR_9BDHWFr_cUW0tn0.pdf (accessed 15 January 2019), argue that the DFA was conceived as providing a parallel land-use management regulatory system for the approval of much-needed reconstruction and development projects while the transformation of the local government sphere was being achieved and a longer-term vision for urban and planning regulatory reform was being worked out. The structures and processes created by the DFA, however, became problematic when they were misused to subvert the existing local land use management procedures.

¹³³ SPLUMA now regulates this. For further reading refer to Berrisford S ‘Unravelling apartheid spatial planning legislation in South Africa: A case study’ (2011) Vol 22 *Urban Forum* 247–263, Abrahams G & Berrisford S ‘*Addressing the crisis of planning law reform in South Africa*’ (Report) 2012 South African Cities Network available <http://sacitiesnetwork.co.za/wp-content/uploads/2014/06/ADDRESSING-THECRISIS-OF-PLANNING-LAW-REFORM-IN-SOUTH-AFRICA.pdf> (accessed 16 June 2016), Berrisford S & De Visser J (2012), Van Wyk J (1999), Nortje A ‘*A local Government Executive Authority in respect of ‘municipal planning’*’ (unpublished LLM thesis, North West University, 2006), and The Presidency of the Republic of South Africa & UrbanLandMark *Assignment 2: Development Facilitation Act Review Synthesis Report (Final)* (2010) available at http://www.urbanlandmark.org.za/downloads/review_dfa_2010.pdf (accessed 10 February 2016).

¹³⁴ Nortje A ‘*A local Government Executive Authority in respect of ‘municipal planning’*’ (unpublished LLM thesis, North West University, 2006).

¹³⁵ Chapter Three xx.

CHAPTER 4

The DFA was transformative in nature and provided for, ‘extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land’.¹³⁶ It provided uniform procedures for the subdivision and development of land in both urban and rural areas.¹³⁷ Its purpose was to promote the speedy provision and development of land for residential, small-scale farming or other needs and uses.¹³⁸

The DFA created a normative framework in which land should be developed according to principles for land development.¹³⁹ These principles promoted efficient and integrated land development through (a) development of rural and urban areas in support of each other; (b) optimisation of existing resources, namely, agricultural, land, minerals, and infrastructure; (c) discouraging urban sprawl; (d) reforming historically distorted patterns of development; and (e) encouraging sustainable land development practices and processes.¹⁴⁰ These principles had to be developed further at a provincial and local level.

The DFA provided for provincial development tribunals to be established in the respective provinces, to consider any land development application to achieve the transformative goals.¹⁴¹ The DFA empowered the provincial tribunals to perform parallel planning functions to local government. For example, these powers included the determination of applications for rezoning and subdivision over all land. Simultaneously, however, provincial governments permitted local authorities to perform land-use functions of rezoning and subdivision of land.

In carrying out these delegated powers, municipalities had to exercise ‘municipal planning’ in accordance with the Constitution, the relevant provincial ordinance and its own planning tools and instruments.¹⁴² Over the same land, the provincial development tribunals could also control and

¹³⁶ Nortje A (2006) 5-7.

¹³⁷ Department of Environmental Affairs and Development Planning Western Cape Government (DEA&DP) ‘*Rural Land Use Planning & Management Guidelines*’ (2009) 4-10.

¹³⁸ DEA&DP (2009) 4-10.

¹³⁹ Nortje A (2006) 5-10.

¹⁴⁰ DEA&DP (2009) 4-10.

¹⁴¹ S15-26 of the Development Facilitation Act 67 of 1995.

¹⁴² *Gauteng Development Tribunal Case* at paras 9-13.

CHAPTER 4

regulate the use of land for the purpose of reconstruction and development in terms of the DFA. In this way parallel planning schemes operated in a municipality.¹⁴³

Soon after the enactment of the DFA, a practice emerged where approvals of the provincial development tribunals (for the rezoning and subdivision of land) conflicted with the municipal IDPs and MSDFs and the municipal town-planning schemes.¹⁴⁴ The nature of these planning tools was discussed in Chapter 3. The approved developments in some cases threatened the preservation of agricultural land because it permitted the conversion of agricultural land for other land-use purposes such as township developments and residential housing.¹⁴⁵

Moreover, the provincial development tribunals approved development applications that disregarded the municipal urban edge (in terms of the MSDF) resulting in urban sprawl.¹⁴⁶

Turning to the case at hand, the developers in the City of Johannesburg favoured the less cumbersome DFA application process over the Town-Planning and Township Ordinance Act 15 of 1986 (T).¹⁴⁷ The City of Johannesburg, argued that it was inappropriate for the Gauteng Development Tribunal (GDT) to approve the rezoning of land and to decide on the establishment of townships in its jurisdiction.¹⁴⁸ The City of Johannesburg argued that the DFA encroached on the constitutionally-guaranteed powers of local government (municipal planning) and the constitutional vision for planning at a local level and submitted that chapters V and VI of the DFA should be declared unconstitutional and invalid.¹⁴⁹

The issue to be decided was whether ‘municipal planning’ included the rezoning of land.¹⁵⁰ The court had to decide whether a provincial planning authority, namely, the GDT could approve an application for the subdivision or rezoning to serve the interest of ‘urban and rural development’.¹⁵¹

¹⁴³ *Gauteng Development Tribunal Case* at paras 9-13.

¹⁴⁴ Van Wyk J ‘Parallel planning mechanisms as a ‘recipe for disaster’’ (2010) Vol 13 *PER/PERJ* 214-234. Also, *Gauteng Development Tribunal Case* at para 22.

¹⁴⁵ Van Wyk J (2007) *SAPL* 371-38, argues that DFA could be used to avoid the application of SALA to the development application of agricultural land where this is not permitted with a provincial ordinance.

¹⁴⁶ *Gauteng Development Tribunal Case* at para 12.

¹⁴⁷ *Gauteng Development Tribunal Case* at para 22.

¹⁴⁸ *Gauteng Development Tribunal Case* at para 22.

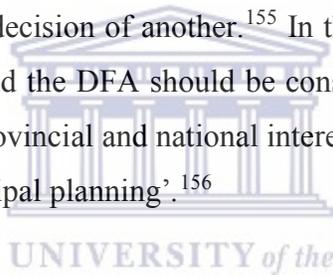
¹⁴⁹ *Gauteng Development Tribunal Case* at para 56.

¹⁵⁰ Para 1 of *Gauteng Development Tribunal Case*.

¹⁵¹ Para 19 of *Gauteng Development Tribunal Case*.

To resolve this conflict, the City of Johannesburg contended the provincial and national competence of ‘urban and rural development’ is not wide enough to include the rezoning and subdivision of land.¹⁵² Instead, the rezoning and subdivision of land form part of ‘municipal planning’, a competence that is distinct from the functions of ‘urban and rural development’ and ‘provincial planning’. On this basis, the City of Johannesburg contended that local government should exclusively perform the ‘municipal planning’ function subject only to the constitutionally permitted oversight from the national and provincial government.¹⁵³

In contrast, the GDT argued that the provincial and national government relied on the *Wary* judgment.¹⁵⁴ They argued that *Wary* promoted the concurrent exercise of overlapping powers allocated to the different spheres of government and found it constitutionally acceptable for one sphere of government to veto the decision of another.¹⁵⁵ In this line of reasoning, the provincial and the national government argued the DFA should be construed as SALA a parallel planning scheme for the regulation of the provincial and national interest of ‘urban and rural development’ which is a similar power to ‘municipal planning’.¹⁵⁶



Jafta J writing unanimously for the Constitutional Court referred to the dictum of Yacoob J in the dissenting judgment in the *Wary* Case. Describing the competence of ‘municipal planning’ Jafta J reiterated that: ‘planning in the context of municipal affairs is a term which has assumed a particular, well-established meaning which includes the zoning of land and the establishment of townships. In that context the term is commonly used to define the control and regulation of the

¹⁵² Bronstein V ‘South African Law Journal - Mapping legislative and executive powers over ‘municipal planning’: exploring the boundaries of local, provincial and national control’ (2015) Vol 132 *SALJ* 639 – 663.

¹⁵³ *Gauteng Development Tribunal* Case at para 18 read with para 68.

¹⁵⁴ *Gauteng Development Tribunal* Case at para 64 read with para 67.

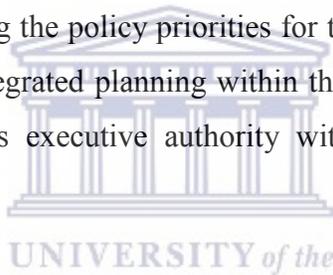
¹⁵⁵ *Gauteng Development Tribunal* Case at para 67.

¹⁵⁶ De Visser J ‘Constitutional Court shows DFA the door’ (2010) Vol 2 *Local Government Bulletin*. He cautioned that in many parts of the country, the DFA was indispensable and old order land use ordinances do not apply to areas of the former Transkei, Bophuthatswana, Venda, and Ciskei. Also, in areas where they did apply, many municipalities had insufficient capacity to administer them and relied on their provinces to determine applications for rezoning and the establishment of townships. Striking down the DFA with immediate effect would halt land development in many areas. Also See, Freedman W ‘The legislative authority of the local sphere of government to conserve and protect the environment: A critical analysis of *Le Sueur v eThekweni Municipality* [2013] ZAKZPHC 6 (30 January 2013) (2014) Vol 17 *PER/PERJ* 570-572. *Gauteng Development Tribunal* at para 58.

CHAPTER 4

use of land'.¹⁵⁷ He confirmed that 'municipal planning' entailed both forward planning and the control and regulation of the use of land. He emphasised that 'municipal planning' is not the same power which the Constitution allocates to the national and the provincial government in terms of 'urban and rural development'.

Jafta J, correctly held that each sphere of government is allocated '*separate and distinct powers which it alone is entitled to exercise*'.¹⁵⁸ The distinct nature of 'municipal planning' is intricately related to any development. The court linked the vital role of the municipal planning tools such as the IDP that guides development and the administration of land under municipal control. It identified the important responsibility the municipal authority must perform for development to occur, amongst other things, it needs to ensure alignment of the budget and resources required for the supply of basic services.¹⁵⁹ From a food security lens, municipal forward planning tools and instruments are critical in providing the policy priorities for the desired vision and growth of the local jurisdiction.¹⁶⁰ To ensure integrated planning within the municipal administration requires the local authority to exercise its executive authority without undue interference from the provincial government.



Interestingly, the court was requested to consider the implications when two centres of control co-exist for overlapping functions such as 'municipal planning' and 'urban and rural development' along the majority decision in *Wary*.¹⁶¹ Turning to this matter, Jafta J distinguished this case from *Wary*. He held that *Wary* concerned the interpretation of an Act of Parliament, namely SALA and its implication on agricultural land. *Wary* did not directly deal with the division of powers in the Constitution and its Schedules whereas the present case concerned the interpretation of local government powers in the Constitution and the Schedules.¹⁶² He stressed that in the constitutional order all spheres of government must conform to the principles of co-operative government and must respect the function of another and not assume any function or power not allocated by the

¹⁵⁷ *Gauteng Development Tribunal Case* at para 57.

¹⁵⁸ *Gauteng Development Tribunal Case* at para 58.

¹⁵⁹ *Gauteng Development Tribunal Case* at para 83.

¹⁶⁰ Chapter 2 section 4.2.4: 64-66.

¹⁶¹ *Gauteng Development Tribunal Case* at para 67.

¹⁶² *Gauteng Development Tribunal Case* at para 68.

CHAPTER 4

Constitution.¹⁶³ Therefore, chapters V and VI of the DFA was declared unconstitutional and invalid and was suspended for 24 months enabling the Parliament to correct the defect by enacting new legislation that concentrates decision-making powers (of the zoning and subdivision) of land use at the local level.¹⁶⁴

The judgment clarified the role of ‘municipal planning’ as an exclusive municipal function subject only to the oversight by the national and the provincial government that is permitted in the Constitution itself. The court confirmed the authority of local government to regulate the control and use of land in its jurisdiction as part of the ‘municipal planning’ function. Therefore, it is the municipality that must take the final decision to approve the zoning and subdivision of land.

If the reasoning of *Gauteng Development Tribunal* is applied to the relationship between ‘agriculture’ and ‘municipal planning’ then the continued executive oversight of the national Minister, to approve and veto decisions for every subdivision of agricultural land is constitutionally inappropriate. It is argued that Jafta J, erred in the way he distinguished *Wary* from the present case. The exercise of concurrent and overlap in functions was dealt with in *Wary* but it concerned the national government vetoing municipal powers. It is submitted that Jafta J should have addressed the unconstitutional manner in which SALA operated.¹⁶⁵ This approach could possibly have confirmed the significance of local government land-use powers to protect agricultural land.

It is clear from the judgment that the local authority must be vested with the power to make the final decision on applications for subdivision and rezoning in its jurisdiction. However, this decision must be guided by the national and provincial instruments that deal specifically with the protection of agricultural land. This is now regulated in terms of SPLUMA and will be discussed later.

¹⁶³ *Gauteng Development Tribunal* Case at paras 56-59.

¹⁶⁴ The enabling legislation to achieve this goal was SPLUMA.

¹⁶⁵ *Gauteng Development Tribunal* Case at para 68.

CHAPTER 4

From a food security perspective, the judgment makes important connections between the forward-planning tools and land development management. For example, all development within a municipal space must be aligned to the municipal IDP, the MSDF and the land-use management systems. Chapter 3 demonstrated how the IDP and the MSDF provide the vision and strategic direction to support food security initiatives while the land-use management systems (LUMs and the zoning regulations) enforce the desired land-use. In this way agricultural land may be prevented from being converted to other land uses. In addition, this may prevent the development of township establishments outside the urban edge that could encroach on farming activity.

More significantly, *Gauteng Development Tribunal* elevates the role of ‘municipal planning’ that allows local government to determine where suitable markets, transport needs, infrastructure and other local amenities are required to promote food production and food access. This supports the adoption of a ‘food systems approach’ that require local government to play a pivotal role in identifying its residents’ needs and addressing food insecurity through short, medium and long-term planning.

To answer the first question in section 4.1 above, whether the veto power over the ‘municipal planning’ function is constitutionally permitted the two judgments discussed so far, namely, *Wary* and *Gauteng Development Tribunal* confirmed that it is permitted in our law for multiple centres of control to co-exist. The court differed, however on the constitutionality of the national executive oversight of a veto power with respect to the ‘municipal planning’ function. The decision of *Wary* supported the national Minister’s executive oversight over the subdivision on agricultural land to protect the national interest of agriculture and food security. However, the *Gauteng Development Tribunal* supported the recognition of the enhanced planning powers of local government and therefore rejected the provincial executive interference into the municipal planning function because the rezoning and subdivision of land were argued to be an exclusive municipal executive function. *Gauteng Development Tribunal* held that the detail of information and the policy interests that concern rezoning, subdivision and township establishment was planning at a local scale. Thus, concluding from these two cases it is suggested that the national Minister’s veto power is legally permitted but is constitutionally inappropriate and may be challenged.

CHAPTER 4

The *Gauteng Development Tribunal* does not deal with the interplay between ‘municipal planning’ and the residual powers of the national government. This is the central issue decided in the *Maccsand* case.

4.1.3 *Maccsand* case

Unlike the listed grounds in Schedule 4 and 5 of the Constitution, it does not mention ‘mining’. This renders it a residual function. The Constitution allocates all residual functions exclusively to the national government.¹⁶⁶ Mining is regulated in terms of the Mineral and Petroleum Resources Development Act 28 of 2000 (MPRDA). When the Minister grants a mining permit he or she must ensure, amongst others, that three conditions are met in terms of the MPRDA, namely, that the minerals must be capable of being mined within two years; the area space in which the mining will occur must not exceed 1.5 hectares; and an environmental management plan was submitted.¹⁶⁷ Therefore the interests of mining do not concern or make provisions for the matters related to the control and regulation of land to serve the local interests.¹⁶⁸

Although mining has adversely impacted agricultural land, it is exempted from the application of SALA. The exemption served to facilitate the growth of the mining industry with the aim to improve economic development for the country.¹⁶⁹ The exemption of the MPRDA from SALA resulted in large pieces of agricultural land being converted for mining activity.¹⁷⁰

In terms of the MPRDA it is the Minister that has exclusive executive authority to approve and grant a mining right. In terms of the Act, one of the factors that need to be taken into consideration when granting a mining right includes the requirement that the proposed mining will not result in unacceptable pollution, ecological degradation or damage to the environment.¹⁷¹ Furthermore, a mining right only comes into effect once the environmental management plan or programme is

¹⁶⁶ S44(1)(a)(ii) of the Constitution.

¹⁶⁷ *Maccsand Case* at para 7.

¹⁶⁸ *Maccsand Case* at para 42.

¹⁶⁹ Thorton-Dibb MP ‘*Local Government and the protection of the environment: an analysis of the functional area of ‘municipal planning’ and ‘environment’*’ (unpublished LLM thesis, North West University, 2013) 35-39.

¹⁷⁰ Humby T ‘*Maccsand: Intergovernmental relations and the doctrine of usurpation*’ (2012) 27(2) *SA Public Law* 628–638.

¹⁷¹ S23(1)(d) of the MPRA.

approved.¹⁷² The proposed mining activity may only commence after a mining permit has been obtained. The mining permit grants the holder of a mining right, authority to enter the land where the minerals are located.¹⁷³ Before the Minister may issue a mining permit consideration must be given to the Environmental Ministers' comments on the environmental plan.¹⁷⁴

A practice developed where the Minister responsible for mineral resources granted mining permits independently from the planning system that governed over the land.¹⁷⁵ As a result, mining activities were conducted prior to the necessary environmental impact authorisations being granted. The environmental interests were therefore compromised in favour of the interests of mining. In addition, the mining activity was often carried out on land that was zoned for other land-use purposes such as agriculture or open space. The planning law system that governed the land was, therefore, disregarded in favour of mining developments.¹⁷⁶

AgriSA submitted during 2017 that a 'spate of applications to explore large areas of South Africa for natural resources to mine is of increasing concern to the agricultural sector'.¹⁷⁷ It further reported that mining negatively impacted agriculture. Moreover, the conflict between the function of 'mining' and 'agriculture' often occurs when for example, pollution limits or impedes crop yields, and water quality and availability deteriorate, or health hazards are posed to humans and farm animals due to increased air pollution.¹⁷⁸ The problem cannot be underestimated as mining has various material impacts on agriculture.¹⁷⁹ For example, it was communicated that water pollution and acid mine drainage was at unacceptable levels which resulted in the contamination

¹⁷² Para 6 of *Maccsand judgment*.

¹⁷³ Para 7 of *Maccsand judgment*.

¹⁷⁴ The National Environmental Management Act 107 of 1998 (NEMA) empowers the national and the provincial governments to regulate the competence of 'environment'. NEMA was passed to establish a framework regulating decision-making that may affect the environment.¹⁷⁴ To achieve integrated environmental management, and to establish principles of co-operative governance the NEMA requires the Minister responsible for Environment with the concurrence of the MEC to identify activities which may not commence without environmental authorisation from a competent authority. *Maccsand judgment* at para 10.

¹⁷⁵ Thorton-Dibb MP (2013) 35-39.

¹⁷⁶ Humby T (2012) correctly asserts that the Constitutional Court undoubtedly play a valuable role in affirming the functional area of municipal planning, as primarily located in the local government sphere, and that this function is inclusive of decision-making authority over zoning and subdivision within a municipal area.

¹⁷⁷ Phillips L (2017) 'Can mining and agriculture co-exist?' available at <https://www.farmersweekly.co.za/bottomline/can-mining-agriculture-co-exist/> (accessed 5 October 2017).

¹⁷⁸ Phillips L (2017) 1-2.

¹⁷⁹ Phillips L (2017) 1-2.

CHAPTER 4

of groundwater reserves.¹⁸⁰ The air pollution resulted in acid rain that reduced the quantity and quality of crops.¹⁸¹ AgriSA argued, that the negative effect of mining activity included the deterioration of roads and other infrastructure, increased criminal activities in mining areas and in some cases a total lack of rehabilitation of mined land after mine closures.¹⁸²

Directing the discussion to the case at hand, Maccsand (Pty) Ltd was granted a mining right for the Westridge Dune and a mining permit for the Rockland Dune both situated in Cape Town. Both these areas are located in Mitchell's Plain. The Rocklands Dune is vacant land located adjacent to private homes and situated between two schools. Westridge Dune consists of three contiguous erven and the City of Cape Town was the owner.¹⁸³ To proceed with the mining activity, Maccsand was required in terms of section 5(4) of the MPRDA to give notice to the City of Cape Town and it failed to do so.

The erven of the Westridge Dune were zoned for the permitted uses of 'public open space' and 'rural' and an informal settlement occupied that land.¹⁸⁴ The City of Cape Town interdicted Maccsand from continuing with mining activities. The City of Cape Town argued it had to comply and enforce the provisions in the Land Use Planning Ordinance 15 of 1985 (LUPO) which applied at that time in the Western Cape Province.¹⁸⁵ This was before the enactment of SPLUMA that codifies the division of powers between the national, provincial and local government and regulates the exercise of these powers. In addition, the City of Cape Town argued an environmental authorisation in terms of NEMA was also required for Maccsand to lawfully conduct the mining activity.¹⁸⁶

Maccsand, joined by the Minister responsible for mineral resources opposed the application on the basis that LUPO could not be construed to apply to land used for mining. They argued this would be inconsistent with the scheme of the Constitution.¹⁸⁷

¹⁸⁰ Phillips L (2017) 1-2.

¹⁸¹ Phillips L (2017) 1-2.

¹⁸² Phillips L (2017) 1-2.

¹⁸³ *Maccsand Case* at para 20.

¹⁸⁴ *Maccsand Case* at para 20.

¹⁸⁵ *Maccsand Case* at para 16.

¹⁸⁶ *Maccsand Case* at para 16.

¹⁸⁷ *Maccsand Case* at para 24.

At issue was the provisions of the MPRDA and whether it trumps the need to comply with other legislation relating to land use and rezoning.¹⁸⁸ Put differently, can the Minister take a decision in terms of the national law applicable to mining which obviates the need for a ‘municipal planning’ approval on land use?¹⁸⁹ Or does the division of powers in the Constitution require the exercise of ‘mining’ not to encroach on the competences of ‘municipal planning’ and ‘environment’. How must this conflict be resolved?

Taking into consideration the impact of mining on agricultural land and the environment both the local and provincial interests are affected. The local and provincial government argued that each sphere of government exercises distinct roles and must fulfil specific duties when regulating the use of land.¹⁹⁰ For example, to protect agricultural land from being converted to other land uses requires the local government to exercise appropriate land use control. Environmental degradation or heritage conservation, for example, requires the adoption of appropriate regulatory frameworks and land-use management.

The Minister argued mining is an exclusive national power and no tension exists in the implementation of the three functions, namely, ‘mining’, ‘environment’ and ‘municipal planning’.¹⁹¹ According to the Minister, the MPRDA adequately considered issues of environmental interest and therefore the provisions of NEMA did not apply to land earmarked for mining activity.¹⁹² The Minister argued further that where an overlap of powers and/or functions occurs, the exclusive power of mining should trump the other land-use authority. For instance,

¹⁸⁸ Bekink B & Botha C, ‘Maccsand v City of Cape Town, Minister for Water Affairs and Environment, MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province, Minister for Rural Development and Land Reform, and Minister for Mineral Resources 2- Making sense of the interwoven legislative interplay of timelines, hierarchical status, geographical space and governmental spheres in South Africa’ (2015) 48 Vol 2 *De Jure* 456-667. They discuss the pertinent lesson reinforced in this case, namely, that statutory interpretation is about making sense of the complete relevant legislative scheme that is applicable to a specific situation.

¹⁸⁹ *Maccsand Case* at para 5.

¹⁹⁰ *Maccsand Case* at para 23-25.

¹⁹¹ *Maccsand Case* at para 37.

¹⁹² *Maccsand Case* at paras 24-25.

CHAPTER 4

once approval of a mining right has been vested in an applicant and a mining permit was issued, no further approval is required for the activity of mining to be carried out on the land.¹⁹³

The City of Cape Town, the MEC for Local Government, Environmental Affairs and Development Planning: Western Cape and Agri SA (who represented the commercial farming industry) contested the view of the Minister.¹⁹⁴ They argued that it contradicted the division of powers in the Constitution and the competence of ‘municipal planning’ and ‘environment’ could not be subsumed by the competence of ‘mining’.¹⁹⁵

LUPO authorised municipalities to prepare structure plans that provided guidelines for future spatial development. It also required municipal zoning regulations to control the permitted use of land.¹⁹⁶ If a proposed development on land was not permitted in terms of the land-use right for which the land was zoned, then an application for a rezoning or a land-use departure had to be made to the relevant municipal planning authority. The proposed activity could only commence once approval was granted in terms of the rezoning or land-use departure. When carrying out this responsibility both the provincial and the local government acted in terms of their planning powers to control and regulate the use of land.

Jafta J, writing the unanimous judgment for the Constitutional Court, held that the MPRDA concerned the function of ‘mining’ and not ‘municipal planning’.¹⁹⁷ He submitted that LUPO specifically regulated land use and a municipality is obliged to implement the provisions of LUPO. Jafta therefore concluded that in exercising the function of ‘municipal planning’ it cannot be said that the local government’s executive authority usurped the national Minister’s executive powers over the function of ‘mining’.¹⁹⁸ The municipal executive decision-making on the use of land

¹⁹³ *Maccsand Case* at paras 40-41. With respect to the overlap between the function of ‘mining’ and the function of ‘municipal planning’ the national interest of mining was argued to obviate the need for approval in terms of the planning tools and instruments applicable to the local government. It was argued that once a mining permit was issued there was no need to suspend the mining operation in favour of obtaining planning approvals in terms of the LUPO. Also refer to *Maccsand Case* at paras 24-25.

¹⁹⁴ *Maccsand Case* at para 32.

¹⁹⁵ *Maccsand Case* at para 32.

¹⁹⁶ *Maccsand Case* at para 17.

¹⁹⁷ *Maccsand Case* at para 46.

¹⁹⁸ *Maccsand Case* at para 46.

cannot be construed as a veto power over the decision taken by the Minister with respect to the issuing of a mining permit.¹⁹⁹

In assessing the legislative framework for the function of ‘mining’ and ‘municipal planning’ the court made a significant contribution as to the manner in which concurrent functions should be exercised. Jafta J confirmed that the MPRDA and LUPO should operate in tandem because the two acts each ‘have different objectives and that each did not purport to serve the purpose of the other’.²⁰⁰ Consequently, Maccsand confirms that an applicant wanting to carry out mining activity must, therefore, make two applications, one to the local authority to ensure that the land is zoned for mining use and the other to the Minister for a mining permit. This may result in a refusal by one or more of the land regulators.²⁰¹ However, in these instances, ‘the authority from whom consent was sought would have exercised its power, which does not extend to the power of the other functionary. This is so in spite of the fact that the effect of the refusal in those circumstances would be that the first decision cannot be put into operation’.²⁰²

AgriSA believes this judgment would significantly protect and preserve agricultural land.²⁰³ In the past, too little value was attached to the environmental and long-term impact of mining on land, water and sustainable food production.²⁰⁴ The judgment realises a ‘balanced way’ in which the interests of agriculture, mining, provincial planning and ‘municipal planning’ can be carried out.²⁰⁵

To answer the second question in section 4.1, it bears reminding that the question consists of two parts. First, the provincial and the national government share responsibility for planning functions related to ‘urban and rural development’ and ‘regional planning and development’ how do these

¹⁹⁹ *Maccsand Case* at paras 46-48.

²⁰⁰ *Maccsand Case* at para 46.

²⁰¹ *Maccsand Case* at para 48.

²⁰² *Maccsand Case* at para 48.

²⁰³ AgriSA ‘Agri SA welcomes ConCourt's Maccsand ruling’ (2012) Politicsweb 18 April 2012 available at <http://www.politicsweb.co.za/opinion/agri-sa-welcomes-concourts-maccsand-ruling> (accessed 2 June 2015).

²⁰⁴ AgriSA (2012) unnumbered.

²⁰⁵ Visser J ‘*Constitutional Court: the saviour of farm land*’ (2012) available at <https://www.farmersweekly.co.za/opinion/by-invitation/constitutional-court-the-saviour-of-farm-land/> (accessed 2 June 2015). Visser informs that ‘The Constitutional Court has come to the rescue of many farmers who have mineral resources on their land and mining companies on their doorstep ready to dig in’.

CHAPTER 4

functions compare to ‘municipal planning’? Second, what are the implications for the control and regulation of agricultural land? The discussion in the *Maccsand* judgment highlighted three points. First, it addressed the precedent set in both *Wary* and *Gauteng Development Tribunal*. *Maccsand* incorporated the approach of the *Wary* judgment to recognise the concurrent exercise of authority over one piece of land but differed from the approach in the *Wary* judgment insofar as the Court rejected the Minister’s argument that once a mining permit is issued it obviated the need for approval from a local authority. Instead the Court held that the powers exercised by the Minister in terms of ‘mining’ and of the municipality in terms of ‘municipal planning’ are distinct powers. In this way it elevated the executive authority of the local government by not subjecting it to the national interest of mining. Second, it entrenched the precedent of *Gauteng Development Tribunal* that emphasised the exclusive nature of the ‘municipal planning’ function. Third in *Maccsand* the court held the distinctive functions of ‘mining’ and ‘municipal planning’ needs to be exercised alongside each other, where each sphere of government protects the policy interests associated with the function it must regulate.

Applying this approach to the overlap between ‘municipal planning’ and ‘agriculture’ it is for local government to do zoning and for the national and provincial governments to decide on applications for permission to convert agricultural land for other uses. For this purpose, the national and the provincial government may enact legislation to regulate the way land is used for the interests of agriculture. This may include the identification of prime agricultural land by the national and/or provincial government of areas that should be protected for the purpose of agricultural production.

The control and regulation of the use of land as it relates to zoning and subdivision forms part of ‘municipal planning’ and may no longer be subjected to veto power by the national Minister. A municipality must be the final decision-maker on applications for rezoning and subdivision for development applications at the local level. In practical terms, where a land development application is granted by the municipal planning authority but refused in terms of the agricultural authority, the development may not proceed.

CHAPTER 4

4.1.4 *Lagoonbay* case

The case dealt with a proposed development situated within George Municipality in the Western Cape Province. The land on which the development was sought was zoned for agricultural or forestry use.²⁰⁶ The extent of the development was approximately 655 hectares and involved two golf courses, a hotel, nature reserve and a gated community.²⁰⁷ In order to undertake the development, *Lagoonbay* required several approvals, including, an amendment to the Regional Structural Plan and approvals for the rezoning and subdivision of land in terms of LUPO.²⁰⁸

LUPO provided for the regulation of land use through the enforcement of structure plans at a regional level and zoning schemes at a municipal level.²⁰⁹ The general purpose of the structure plan was to guide future spatial development of a region in the most effective way to promote the order and the general welfare of the community.²¹⁰ The general purpose of a zoning scheme is to determine use rights and to provide for control over use rights.²¹¹

The empowering provisions in LUPO included the power of a provincial government to take decisions on/or approve the development applications related to rezoning and subdivision in a municipal area.²¹² This power concerned specific instances where the impact of the development would extend beyond the jurisdiction of one municipality into one or more municipalities.²¹³

The George Municipality approved the application for rezoning and subdivision. However, it referred the matter to the provincial government for final determination.²¹⁴ The development fell

²⁰⁶ *Lagoonbay* Case at paras 3-4.

²⁰⁷ *Lagoonbay* Case at paras 3-4.

²⁰⁸ *Lagoonbay* Case at paras 3-4.

²⁰⁹ Ss 16 and 25 of the LUPO.

²¹⁰ *Lagoonbay* Case at para 4. In terms of sections 5 and 6(1) of the Physical Planning Act 125 of 1991 (PPA), a structure plan provides guidelines for the future development of a particular region and has as its object the promotion of 'the orderly physical development of the area to which that [structure] plan relates to the benefit of all . . . inhabitants [of the region]'. Even though structure plans only provide guidelines, in terms of section 27(1)(a) and (b) of the PPA no land may be developed in a manner inconsistent with the relevant structure plan and no land may be used other than in a manner provided for by the structure plan's zoning prescriptions.

²¹¹ *Lagoonbay* Case at para 11.

²¹² *Lagoonbay* Case at paras 52-54.

²¹³ The LUPO has been repealed with the Western Cape Land Use Planning Act 3 of 2014.

²¹⁴ *Lagoonbay* Case at para 6.

within the boundary of the George Municipality but its impact extended to the Mossel Bay Municipality.²¹⁵ On this basis, the provincial Minister assumed jurisdiction over this matter.²¹⁶

The provincial Minister refused the application because:

(a) the proposed development's likely adverse effects on the affected area's water supply; (b) the agricultural importance of the land sought to be developed; (c) certain inadequacies in the economic and financial information supplied by Lagoonbay; (d) the possibility that the benefits listed as likely to accrue to the local community may have been misstated; (e) the inconsistency of the proposed development with the goals of the Western Cape Provincial Spatial Development Framework, as well as other policy documents and draft documents; (f) the potential adverse effects on vehicle dependencies and travelling costs in the area; and (g) the potential adverse effects on the landscape.²¹⁷

Lagoonbay rejected provincial Minister's approach. Drawing on the precedent set in *Gauteng Development Tribunal* and *Maccsand* they argued that the municipal authority must be the final decision-maker on approvals for the rezoning and subdivision of land.²¹⁸

The court had to decide whether a provincial planning authority may overrule a municipal planning approval if the impact of development stretches beyond municipal jurisdiction.²¹⁹

The Constitutional Court said it could not rely on the precedent set in *Gauteng Development Tribunal* to review and set aside the refusal of the provincial government.²²⁰ It based this finding on the fact that Lagoonbay failed to challenge the constitutionality of the empowering provisions of LUPO which the provincial Minister used to take his decision and therefore the provisions remain valid in law.²²¹

²¹⁵ *Lagoonbay* Case at para 6 read with para 2.

²¹⁶ Van Der Westhuizen J *Land Use Planning Mandate: a quest for legal certainty* (unpublished LLM thesis, University of Cape Town, 2014).

²¹⁷ De Visser J & Steytler N *Confronting the State of Local Government: 1 The 2013 Constitutional Court Decisions* (2016) CCR-V1 3-8.

²¹⁸ *Lagoonbay* Case at para 61.

²¹⁹ De Visser J & Steytler N (2016) 3-8. Also see, Van Wyk J & Steyn PJ '*Planning law Casebook*' (2014) 71-77.

²²⁰ *Lagoonbay* Case at para 35.

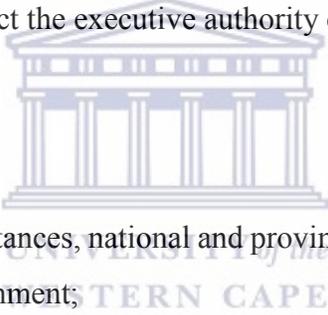
²²¹ *Lagoonbay* Case at para 26. The Court stated that old-order legislation remains in force until the necessary steps are taken to have it set aside.

CHAPTER 4

The court emphasised the principle of legality in its decision.²²² It reasoned that in *Gauteng Development Tribunal* the provisions of the DFA was challenged for being unconstitutional. On that basis, the decisions taken by the provincial development tribunals were set aside for being unlawful.²²³ In *Lagoonbay* the court was required to review the provincial Minister's action within the purview of his powers established in terms of LUPO, namely, section 16 read with section 25.²²⁴ These provisions permitted the provincial Minister to exercise veto power over 'municipal planning' decisions. The provisions were not challenged and therefore remained valid in law and as a result the veto power exercised by the provincial Minister could not be set aside.²²⁵

The court clearly stated that if the provisions of LUPO were challenged, it would have relied on the precedent set in *Gauteng Development Tribunal* and it would have reached a different decision.²²⁶ It stressed five guiding principles that should inform the way the provincial and the national government ought to respect the executive authority over 'municipal planning'.²²⁷

These five points are listed below:

- 
- i. barring exceptional circumstances, national and provincial spheres are not entitled to usurp the functions of local government;
 - ii. the constitutional vision of autonomous spheres of government must be preserved;
 - iii. while the Constitution confers planning responsibilities on each of the spheres of government, those are *different* planning responsibilities, based on what is appropriate to each sphere;
 - iv. planning in the context of municipal affairs is a term which has assumed a particular, well-established meaning *which includes the zoning of land and the establishment of townships*;

²²² *Lagoonbay* Case at paras 40-41.

²²³ *Lagoonbay* Case at para 47.

²²⁴ *Lagoonbay* Case at para 41.

²²⁵ Kummeling H 'Britannia Beach and Lagoon Bay: The Constitutional Court in Muddy Waters? Some comparative Reflections on the Benefits of an Active Judiciary' (2016) *Constitutional Court Review* 1, 24-31. He argues that the Court should have taken a bolder action and should have declared the LUPO provisions unconstitutional for violating the division of powers of the constitutional scheme.

²²⁶ *Lagoonbay* Case at para 46.

²²⁷ *Lagoonbay* Case at para 46.

CHAPTER 4

- v. the provincial competence for ‘urban and rural development’ is not wide enough to include powers that form part of ‘municipal planning’. At the very least there is, therefore, a strong case for concluding that, under the Constitution, the provincial Minister was not competent to refuse the rezoning and subdivision applications.²²⁸

From the above extract, it becomes apparent that the court found the competence of ‘regional planning and development’ not wide enough to include the power of a provincial government to take decisions on rezoning and subdivision of land. Arguably, the position of the court would, therefore, have reached the same conclusion as *Gauteng Development Tribunal* that a local authority must be the final decision-maker on the applications for rezoning and subdivision of land.

Therefore, if *Gauteng Development Tribunal* found it unconstitutional for the provincial development tribunal to use the function of ‘urban and rural development’ to take decisions of rezoning and subdivision parallel to the local authority, then similarly a provincial veto in terms of the function of ‘regional and development planning’ would also be inappropriate.

The underlying principle espoused by the court in *Lagoonbay* is that a veto power by a provincial government over the local government executive power of ‘municipal planning’ is inappropriate and constitutionally challengeable. This does not mean that the provincial government cannot exercise land-use management powers. The court confirmed that provincial governments are empowered to do so. However, they must do so by developing their own laws and making their assessments in terms of a separate process and/or decision.

In *Lagoonbay* the constitutionality of LUPO was not challenged. Therefore, the veto power of the provincial government with respect to rezoning and subdivision applications could not be set aside when it acted in terms of LUPO. Based on the principle of legality, it means that decisions taken by the national Minister in terms of SALA remain lawful but constitutionally challengeable. The national government should instead develop their own laws and conduct their own assessments in

²²⁸ *Lagoonbay* Case at para 4.

terms of a separate process and/or decision. This will be discussed further when the SPLUMA provisions are evaluated.

To answer the third question posed in section 4.1, how should the exclusive ‘provincial planning’ function of land-use development be understood against the ‘municipal planning’ function, the *Lagoonbay* judgment is instructive. It confirmed that the ‘regional development and planning’ function is not wide enough to incorporate the rezoning and subdivision of land that forms part of ‘municipal planning’ function.

A food systems approach requires integrated planning from all levels of government. Reflecting on the role of the provincial government with respect to food security, important aspects included the impact of development on the water supply; vehicle dependencies and travelling costs attached to development; and provinces role to protect agricultural land. However, *Lagoonbay* confirmed that the provincial governments are empowered to propose provincial legislation, develop spatial development frameworks to guide development, as well as introduce other policy documents and draft documents to regulate the ‘municipal planning’ function. The preservation of agricultural land may also be regulated in provincial legislation, such as the Western Cape Land Use Planning Act 3 of 2014 (LUPA) that will be discussed later.

4.1.5 *Habitat* and *Pieterse* cases

It is important to discuss these two cases in the context of local government’s role in food security because hearing an appeal against a municipal planning decision is most likely to have an impact on at least one of the four dimensions of food security. The question these cases address is whether a provincial government must hear an appeal. Since the cases deal with the same legal issue, the *Pieterse* case will not be discussed because it merely endorses the decision of the *Habitat* case.²²⁹

²²⁹ *Pieterse Case* at paras 12-15. The *Pieterse* case concerned an application brought by a trust, namely, the Waterkloof Family Trust to rezone the use of farmland falling in the Lephalale Local Municipality in the Limpopo Province. The Trust in this case challenged the provisions of section 139 of the Town-Planning and Townships Ordinance 15 of 1986. Section 139 of the Provincial Ordinance permitted an aggrieved developer to appeal a municipal planning decision to a provincially appointed and administered appellate body on the basis of a refusal by a municipal authority or where the municipality delayed in taking a decision on a development application.²²⁹ The local government sought to declare the provisions of section 139 unconstitutional and invalid because it permitted interference into the ‘municipality’s exclusive, constitutionally-enshrined domain by giving appellate powers over its planning competences to the provincial government’.

The City of Cape Town challenged two development applications in which the provincial Minister exercised his powers in terms of section 44 of LUPO. This provision empowered the provincial Minister to hear appeals against municipalities' planning decisions and to replace those decisions with its own. The first case dealt with a development for a residential estate on the Gordon's Bay slopes. The City of Cape Town delayed approving the application and the developer subsequently appealed to the provincial Minister to grant the approval to rezone and subdivide the land in terms of LUPO.²³⁰ The second case dealt with a redevelopment application over a historical building which required special consent from the City of Cape Town. The City of Cape Town refused to grant the special consent based on objections received from the Habitat Council.²³¹ The developer then appealed to the provincial Minister to approve the redevelopment. In exercising his appellate powers, the provincial Minister gave the City of Cape Town an opportunity to impose conditions on the approval.²³²

The City of Cape Town delayed in doing so and the provincial Minister imposed his own conditions in terms of section 42 of LUPO.²³³ Thereafter, the City of Cape Town, joined by the Habitat Council, challenged the decisions of the provincial Minister and the provisions of LUPO that empowered the provincial Minister to make these decisions. More specifically they approached the court to declare section 44 of LUPO unconstitutional and invalid. Section 44 of LUPO empowered the provincial Minister to hear appeals and to overturn the planning decisions taken by a local authority.

The court had to decide whether a development that has an extra-municipal effect should be referred to the provincial Minister to exercise an appellate power over a 'municipal planning' decision taken by a municipal executive authority for rezoning and/or subdivision of land.²³⁴

²³⁰ *Habitat Case* at Paras 2-3.

²³¹ *Habitat Case* at Paras 2-3.

²³² Steenkamp R 'Cultural heritage protection: the authority and functions of municipalities' (2018) (unpublished LLM thesis, North West University) 64-65.

²³³ *Habitat Case* at para 3.

²³⁴ *Habitat Case* at para 4 read with para 10.

CHAPTER 4

The provincial government argued that in certain instances it is appropriate for a provincial planning authority to exercise executive oversight over land-use decisions in terms of its regulatory authority set out in Schedule 4 Part B of the Constitution.²³⁵ In addition, the provincial government argued that it was empowered to exercise executive oversight over ‘municipal planning’ decisions in terms of its own exclusive ‘provincial planning’, the ‘urban and rural development’ and ‘regional and development planning’ functions.²³⁶ Provincial appellate powers were argued to prevent a municipality from taking decisions that would prejudice the provincial interests of agriculture, environment and planning or if it may have a ruinous effect on the province.²³⁷

The provincial Minister argued that the provincial appellate powers were constitutionally appropriate within the co-operative scheme and the division of powers allocated to the provincial and the local government.²³⁸ Particularly, when the power is limited to specific instances when the province acted in terms of its ‘*provincial legislative and executive surveillance*’ over ‘municipal planning’ decisions.²³⁹ The provincial Minister argued the need for provincial intrusion into ‘municipal planning’ was to ensure the effective performance by municipalities of their planning functions.²⁴⁰



The City of Cape Town contested the provincial government’s submission and argued that the overlap in competencies does not permit interference into municipal land-use decisions.²⁴¹ The City submitted that these are functions the Constitution reserved for municipalities only.²⁴² The City of Cape Town correctly argued that ‘municipal planning’ involves planning at a local level whereas ‘provincial planning’ is exercised at a different level.²⁴³ The City of Cape Town then argued that the provincial government exercised its powers through the creation of separate

²³⁵ *Habitat Case* at para 6 read with para 15.

²³⁶ *Habitat Case* at para 6 read with para 15.

²³⁷ *Habitat Case* at para 17-18. Rautenbach C, Hart D & Naudé M ‘Heritage Resources Management’ in Du Plessis A (ed) *Environmental Law and Local Government in South Africa* (2015) 821-853.

²³⁸ *Habitat Case* at para 6.

²³⁹ *Habitat Case* at para 6.

²³⁹ *Habitat Case* at para 18 -20.

²⁴⁰ *Habitat Case* at para 20.

²⁴¹ *Pieterse Case* at para 7.

²⁴² *Habitat Case* at paras 18-20 and *Pieterse Case* at paras 7-8.

²⁴³ *Habitat Case* at para 9.

CHAPTER 4

statutory mechanisms in which the provincial government must protect the provincial interests.²⁴⁴ Furthermore, the regulatory power that the provincial government must exercise cannot encroach on the local governments' ability to administer the local affairs of its residents.²⁴⁵

The Court in *Habitat* referred to the judgment of Mhlantla AJ in *Lagoonbay* with respect to rezoning and subdivision of land. Mhlantla AJ argued that municipal planning included land-use planning, which is a form of planning reserved for the local government executive authority. Cameron J, writing the judgment in *Habitat* confirmed this view and found that '[m]unicipalities are responsible for zoning and subdivision decisions and provinces are not'.²⁴⁶

Cameron J held further that the 'constitutional vision of robust municipal powers has been expanded in the jurisprudence in this Court...'.²⁴⁷ This he argued was appropriate since it is at the local level where service delivery is carried out. Zoning and subdivision required detailed information that is readily accessible for a planning authority to take land-use decisions. This is, therefore, most appropriate at the local level.²⁴⁸

Cameron J turned to the submission by the provincial government that in certain instances the veto power by a province is required for 'big municipal zoning and subdivision decisions that could have extra-municipal effect'.²⁴⁹ He confirmed that 'no matter how big' the impact of municipal land-use decisions they remain with local government. A veto power cannot be exercised over the 'municipal planning' competence.²⁵⁰

Confronting the issue of what powers the provincial government may exercise over big zoning and subdivision decisions, the court held it neither lies in vetoing those municipal decisions nor does it include subjecting them to appeal.²⁵¹ Local government may take land-use decisions in terms of the municipal land-use planning schemes the nature of these decisions fall under executive and

²⁴⁴ *Pieterse Case* at para 8.

²⁴⁵ *Pieterse Case* at para 13.

²⁴⁶ *Habitat Case* at para 13.

²⁴⁷ *Habitat Case* at para 12.

²⁴⁸ *Habitat Case* at para 14.

²⁴⁹ *Habitat Case* at para 19.

²⁵⁰ *Habitat Case* at para 19.

²⁵¹ *Habitat Case* at para 19.

CHAPTER 4

administrative acts. On this basis they are exclusively for the municipality to determine. This had been confirmed in *Gauteng Development Tribunal*.²⁵²

With respect to the ‘oversight’ argument, Cameron J held that the powers in terms of section 155(7) of the Constitution are ‘hands-off’. In referring to the First Certification case the court emphasised that this power does not entail ‘a substantial power in itself, certainly not a power to control [local government] affairs ...’²⁵³ Elaborating on the intergovernmental arrangement of the ‘hands-off’ approach the Constitutional Court held that the national and provincial government ‘to see to the effective performance by municipalities of their functions’ does not amount to a usurpation of the power itself.²⁵⁴

Irrespective of the extra-municipal effect of municipal planning (zoning and subdivision) this does not justify a provincial Minister exercising appellate powers over municipal planning decisions.²⁵⁵

The court confirmed that as far as the rezoning and subdivision of land is concerned, it is the ‘parochial interests’ that should inform planning at the municipal scale.²⁵⁶ The court thus ordered the constitutional invalidity of section 44 of LUPA to take immediate effect.²⁵⁷

In light of the court’s approach, it is argued that the appropriate provincial statutory and regulatory mechanisms, should entail for example the adoption of SDFs to guide municipalities in their decision-making as well as minimum standards which municipalities must abide.²⁵⁸ On this basis the LUPA’s provisions empower the MEC to exercise land-use management powers when a development threatens agricultural land. Thus, provinces should not interfere into municipal land-

²⁵² *Gauteng Development Tribunal Case* at para 56 and *Habitat Case* at para 19.

²⁵³ *Habitat Case* at para 21.

²⁵⁴ *Habitat Case* at para 22.

²⁵⁵ *Habitat Case* at para 23.

²⁵⁶ Humby T ‘Hands on or hands off? The constitutional court’s denial of a provincial municipal planning role: *Habitat Council v Provincial Minister of Local Government, Western Cape* 2013 6 SA 113 (WCC) & *Minister of Local Government, Western Cape v The Habitat Council (City of Johannesburg Metropolitan Municipality Amicus Curiae)* 2014 5 BCLR 591 (CC)’ (2015) Vol 1 *Journal of South African Law* 178-188.

²⁵⁷ Humby T (2015) argues, the constitutional court has gone too far in upholding the autonomy of municipalities’ authority over municipal planning and has arguably undermined the model of co-operative government so central to the constitution’s vision of the post-1994 political landscape. The decision in the court *a quo*, reported as *Habitat Council v Provincial Minister of Local Government, Western Cape* (2013 6 SA 113 (WCC)), struck a better calibration of the power between the provincial and local spheres.

²⁵⁸ *Pieterse Case* at para 11.

CHAPTER 4

use decisions by overturning decisions taken by a local authority or by usurping the decision of a local authority since this is constitutionally inappropriate.²⁵⁹

It becomes clear from the judgments, that a ‘hands-off’ approach is required from the national and provincial government in regulating ‘municipal planning’. The *Habitat* and *Pieterse* judgments endorsed the approach in *Lagoonbay*. It is now settled law that the impact of a municipal rezoning and subdivision decision cannot be vetoed or subjected to an appeal by the national or provincial government. When dealing with legislation in terms of the overlapping national and provincial competencies a ‘hands-on’ approach is permitted. However, such legislation cannot permit an encroachment into the local affairs of the municipality beyond what is constitutionally permitted.

The question that remained open in the *Habitat* and *Pieterse* cases was what meaning was to be attributed to ‘provincial planning’ since the courts declined to define this function. Thus, it remains difficult to resolve the overlap between the ‘provincial planning’ and ‘municipal planning’.

The appropriate mechanism to protect agricultural land as provided for by SALA also remains contested. Does SALA indeed construe planning legislation in its approach to protect agricultural land? If SALA is conceived of as planning legislation, it would mean that the veto power exercised by the Minister is constitutionally inappropriate. In addition, it would mean that to protect the interests of agriculture the provincial and the national government may not hear or take planning decisions on appeal from a local authority with respect to rezoning and subdivision applications over agricultural land.

To protect agricultural land a provincial government must instead rely on its own statutory mechanisms to protect agricultural land. Further, it would have to insist on a separate authorisation for developments to be carried out on land identified as agricultural land. In this way it will be acting in the best interest of agriculture and not in terms of vetoing or usurping a municipal land-use decision. It is for local government to be the final decision-maker on rezoning and subdivision applications. The local government should only be restricted to the regulatory framework laws and other legislation that fits with the constitutional vision of ensuring ‘autonomous’ local

²⁵⁹ *Pieterse Case* at paras 14 -15.

governments. This regulatory framework has now been adopted in SPLUMA and will be discussed later.

A further question that remained open, in the *Habitat* and *Pieterse* cases was what the extent of support and strengthening of municipal planning capacity entailed. For example, how far may a provincial government go to ensure the effective performance of the local government of its planning duties? The *Tronox* case dealt with the question, whether it is appropriate for a provincial government to establish an expert body to hear internal appeals against local government municipal land-use decisions?²⁶⁰

Van der Westhuizen J writing the judgment in *Tronox* relied on the precedent in *Gauteng Development Tribunal, Habitat and Lagoonbay*²⁶¹ and held that the appeal tribunal was not constitutionally appropriate.²⁶¹ Despite the appeal tribunal being considered ‘an independent and impartial body staffed by experts and not provincial officials’ he argued its impartiality was compromised.²⁶² The court reached this conclusion as the appeal tribunals were established in terms of provincial legislation and ‘subjected the municipalities to an appeal process without their consent and regardless of whether or not they think it appropriate’.²⁶³ Drawing on the precedent in *Gauteng Development Tribunal*, the court confirmed the provincial sphere cannot, by legislation, give itself the right to *administer* municipal affairs.²⁶⁴ The court held the appeal tribunal attempted to exercise a provincial function over municipal affairs.²⁶⁵

A provincial government may not establish statutory mechanisms that result in a veto power or a usurpation of municipal land-use decisions. As an example, an expert body established by a

²⁶⁰ *Tronox Case* at paras 6-8. Tronox made application to the Umlalazi Municipality for prospective land-use rights and was granted such rights. The Mtunzini Conservancy and Fish Farm lodged appeals against the municipality’s decision to the KwaZulu-Natal Planning and Development Appeal Tribunal, in terms of section 45 of the KwaZulu-Natal Planning Provincial Development Act 6 of 2008 (PDA). Section 45 of the PDA establishes an independent expert appeal tribunal to hear appeals from municipal planning decisions. Before the appeals were heard Tronox made application to the KwaZulu-Natal Division of the High Court in Pietermaritzburg to declare section 45 and Chapter 10 (establishes the Appeal Tribunal and provided for its functioning) of the PDA unconstitutional. Tronox argued those provisions interfered with the municipal planning decisions

²⁶¹ *Tronox Case* at para 17.

²⁶² *Tronox Case* at para 17.

²⁶³ *Tronox Case* at paras 27-28.

²⁶⁴ *Tronox Case* at para 26.

²⁶⁵ *Tronox Case* at paras 27-28.

CHAPTER 4

provincial government to render a support and capacity building mechanism to a local authority is not permitted to carry out municipal planning decisions. Applying this to how the competence of ‘agriculture’ must be regulated, it is clear that the regulatory scheme to protect the interests of agriculture (for the national and provincial government) may not establish independent advisory bodies that decide or hear internal appeals concerning municipal land-use decisions affecting agricultural land.

The provincial and national government must have a separate regulatory mechanism from the municipality that empowers them to protect the interest of agriculture, through a separate authorisation. As mentioned before, the SPLUMA, provides a framework for this type of regulation at a national level while the LUPA is an example of provincial legislation to regulate planning at a provincial level, these two acts will be discussed later.

The fourth question in section 4.1 asked what intergovernmental considerations must be in place regarding the functions of ‘agriculture’, ‘provincial planning’ and ‘municipal planning’ critical for food security? The *Habitat*, *Pieterse* and *Tronox* cases confirmed that national and the provincial government may not intrude on the ‘municipal planning’ authority of local government. Despite the important goal of food security, a veto power or an appellate power over municipal decisions are not permitted in law.

The discussion on the case law foregrounds the discussion that follows on SPLUMA. But first, the constitutionality of SALA is summarised below.

4.3. Constitutionality of SALA

4.3.1 Principle of legality

The *Habitat* and *Pieterse* cases concerned (old-order) provincial planning legislation. SALA is also old-order legislation. In addition, Yacoob J in *Wary* argued that the framework of SALA could be construed as planning legislation because it related to zoning, subdivision, and the sale of agricultural land. The precedent in these cases has equal application to the provisions in SALA. All three acts, namely, SALA, LUPO, and Limpopo’s Town-Planning and Townships Ordinance 15 of 1986 (dealt with in the *Pieterse* case) are similar as far as they fail to respect the elevated

status of local government in the constitutional era. The Court in *Habitat* and *Pieterse* highlighted how the provincial ordinances attempted to do what the Constitution now does, namely, to set out the ‘municipal planning’ powers that local government may perform on the one hand, while permitting provincial planning authorities to override those decisions to protect the provincial interests such as agriculture on the other.

The provisions of SALA were presented earlier. It revealed the Minister’s broad-discretionary powers to protect agricultural land. Given the discussion on the devolution of planning powers, it is argued that the SALA provisions contravene the constitutional framework for the division of powers amongst the spheres of government.²⁶⁶ SALA provides the Minister with far-reaching powers that fall exclusively within the purview of local government. The Courts have specifically held that rezoning and subdivision applications form part of localised planning, and these decisions are to be exercised at the local level as discussed in *Gauteng Development Tribunal, Lagoonbay* and *Habitat*.

The rule of law, demands that laws should be sufficiently defined, and government discretion should be sufficiently limited, to ensure that the law is not applied arbitrarily.²⁶⁷ At a minimum, the principle of legality requires that laws be formulated to give a clear guide and be evenly administered in practice.²⁶⁸ SALA does not adequately provide a mechanism against arbitrary decision-making from the Minister. As an example, the Western Cape Government (WCG) reported in 2016 that there were several cases where the Minister permitted the conversion of agricultural land in the Province to other land uses despite the WCG advising the Minister not to approve the applications for subdivision.²⁶⁹

The question then turns to the interplay between SALA and SPLUMA. Whether SALA remains lawful and relevant in the transformative state is questionable.²⁷⁰ SALA operates as a planning law

²⁶⁶ Currie I & De Waal J ‘*The Bill of Rights*’ (2005) also see *Fedsure Case* at para 374.

²⁶⁷ *Fedsure Case* at 374.

²⁶⁸ *Fedsure Case* at 374.

²⁶⁹ Western Cape Government Environmental Affairs and Development Planning (DEADP) ‘*Land use planning law Reform in the Western Cape- The road to transformation*’ (2016).

²⁷⁰ Van Staden M ‘*Land Reform: The Free Market Way- The land debate in South Africa is intensely confused when it comes to restitution and redistribution*’ (2018) available at https://www.huffingtonpost.co.za/martin-van-staden/land-reform-the-free-market-way_a_23393556/ (accessed 15 January 2019).

to protect the conversion of agricultural land. From a planning perspective, SALA's application no longer seems appropriate. Considering the planning interests at a local level the territorial basis in which SALA defines agricultural land is problematic. The definition of agricultural land was categorised in terms of place and/or location. For example, land falling within the jurisdiction of a municipality was not deemed agricultural land. Therefore, SALA applied to rural land that was not governed by a municipality. The definition of municipality excluded the rural forms of local government during apartheid.²⁷¹ With the introduction of wall-to-wall municipalities, the proviso's application was uncertain as was indicated in *Wary*. However, the Constitutional Court held SALA continued to apply since the '*proviso was not tied to the life of the transitional council*'.²⁷² So the definition of agricultural land in SALA continues. Battersby and Haysom observed that even when land is classified as agricultural land in terms of SALA it often has failed to provide adequate protection of such land from being converted to other land uses. They refer specifically to the PHA in Cape Town where the agricultural land used to produce fresh fruit and vegetables is threatened by the development of low-cost residential housing.²⁷³

4.3.2 Contestation around SALA

The contestation surrounding SALA led to the Draft Preservation and Development of Agricultural Land Bill (PDAL) of 2016 to repeal SALA.²⁷⁴ At the time of writing, this Bill was still under construction. It is still important to deal with the PDAL because it highlights the continuing contestation around SALA. Also, the discussion illustrates how the Department of Agriculture, Forestry and Fisheries (DAFF) continues to undermine the institutional integrity of municipal planning despite the Constitutional Court judgments.

PDAL intends to establish a more comprehensive approach to protecting agricultural land.²⁷⁵ An overview of PDAL is presented with a particular focus on the constitutional division of powers as

²⁷¹ Steytler N (2009) 430-431.

²⁷² Steytler N (2009) 430-431.

²⁷³ Battersby J & Haysom G '*Philippi Horticultural Area A City asset or potential development node?*' (2012) available at <http://www.afsun.org/wp-content/uploads/2013/09/Philippi-Battersby-LennardandHaysom.pdf> (accessed March 2015).

²⁷⁴ PDAL Bill is [BXX-2016] Version 4.0:

²⁷⁵ Preamble to PDAL of 2016.

CHAPTER 4

it relates to the competence of ‘agriculture’ and ‘municipal planning’. Thereafter, provisions directly concerned with food security and the economic model for agriculture are analysed.

PDAL has five objectives, namely, (i) to introduce norms and standards to ensure the optimal use of agricultural land; (ii) to demarcate protected agricultural areas; (iii) to support for long-term viable and resilient farming units from a production, ecological and socio-cultural perspective; (iv) to enact mechanisms that prevent fragmentation of farming systems and (v) to establish a national framework to regulate authorisations on agricultural land to ensure the sustainable and productive use of agricultural land, and to maintain the agricultural landscape through the prohibition or discouragement of land-use changes from agriculture to other forms of development.²⁷⁶

Section 6 (1) introduces a complex arrangement of classifications of agricultural land. This comprises agricultural land of high or medium potential. Section 7 provides an agricultural land classification system that will ‘determine the physical capability of land at national, regional, and local scales for the effective management of agricultural land’. The purpose of the system is to ensure intensive long-term agricultural use of land. Additionally, the Minister responsible for agriculture ‘may’ impose agricultural land-use zones according to its agricultural capability. Section 10 requires a municipality to incorporate the content of an approved agricultural sector plan in its MSDF, IDP and LUMs.²⁷⁷

Section 21 maintains a parallel planning scheme for ‘agricultural land’.²⁷⁸ Similar to SALA it prescribes that all land development applications concerning the subdivision or rezoning of agricultural land ‘must’ first be approved by the Minister responsible for agriculture.²⁷⁹ Section 21(3) provides that no authority may approve the subdivision on agricultural land prior to the permission granted by the Minister in terms of PDAL. Section 30 of PDAL attempts to align the different land development authorisations and requires that permission for the subdivision of agricultural land first be obtained in terms of the PDAL.²⁸⁰ Section 31 deals specifically with the

²⁷⁶ S3 of PDAL of 2016.

²⁷⁷ Ss 10 (3) of PDAL of 2016.

²⁷⁸ S 21 (1) of PDAL of 2016.

²⁷⁹ S21(2) of PDAL of 2016.

²⁸⁰ S 30(2) of PDAL of 2016.

restriction of municipal authority on agricultural land, it states in section 31(3) that a municipality is not allowed to permit the development on agricultural land where the municipal development controls or parameters are not consistent with or less restrictive than those of Minister for Agriculture.²⁸¹

Section 4 provides that '[i]n the event of any conflict between the provisions of this Act and any other law impacting on the preservation and sustainable development of agricultural land, the provisions of the Act prevail'. This provision is problematic for two reasons. First, it constrains the application of municipal by-laws should an inconsistency arise. The PDAL pre-empts the outcome of the conflict. But the Constitution itself provides a framework in which the conflict of laws should be dealt with.²⁸² If a by-law conflict with national legislation it is invalid but this is subject to that law not compromising or impeding a municipality's ability or right to exercise its powers or perform its function. Second, it contradicts the SPLUMA, as will be demonstrated later, because it aims to establish a parallel planning framework.²⁸³ On 7 February 2018, DAFF confirmed the PDAL needed to 'reconsidered and redrafted' because the Office of the Chief State Law Adviser (OCSLA) raised concerns, *inter alia*, on the 'concurrent mandate to be shared between the three spheres of government and the need to clearly define the roles and responsibilities of each sphere without infringing on the powers of the other'.²⁸⁴

The next section will assess the SPLUMA provisions that relate to the protection of agricultural land. This is essential because the discussion will illustrate how SPLUMA can be used to facilitate sustainable agricultural production.

²⁸¹ S 31(3) of PDAL of 2016.

²⁸² Ss 146-150 deals with conflicts between the national and provincial legislation and sections 156 (3) read with section 151(4) deals with conflicts between a by-law with national or provincial legislation.

²⁸³ Mve M 'Possible impacts of the Draft Preservation and Development of Agricultural Land Framework Bill on the geomatics profession' (2015) available at <http://www.ee.co.za/wp-content/uploads/2015/08/Melissa-Akoue-Mve.pdf> (accessed 16 July 2017).

²⁸⁴ Sabinet 'Preservation and Development of Agricultural Land Bill to be Redrafted' (2018) available at <http://www.sabinetlaw.co.za/agriculture-forests-and-fisheries/articles/preservation-and-development-agricultural-land-bill-be-re> (accessed 7 February 2018).

5 SPLUMA BACKGROUND AND WHAT IT AIMS TO ACHIEVE

Chapter 3 highlighted the fact that pre-1994 planning was designed to serve the apartheid aims of segregation, differentiation, and privilege. A plethora of laws, multiple institutions and parallel processes were instituted to achieve these objectives. As a result, the pre-1994 planning legislation was fragmented across the old boundaries of the four provincial administrations, homelands, and self-governing territories. The disjointed planning systems manifested in unequal, incoherent, and inefficient settlement patterns. Earlier it was mentioned that the DFA was as an interim measure to deal with the apartheid spatial legacy.²⁸⁵ The Constitutional Court found chapters V and VI of the DFA invalid on the grounds of unconstitutionality, as detailed in the discussion on the *Gauteng Development Tribunal*.²⁸⁶ The court called for the development of appropriate legislation to be enacted that respected the division of powers in the Constitution.

SPLUMA was enacted to replace the DFA as the legislative instrument to regulate spatial planning and land-use management. There are six objectives set out in section 3 of SPLUMA, namely, (a) to provide a uniform, effective and comprehensive system of spatial planning and land-use management; (b) to ensure the system of spatial planning and land-use management promotes social and economic inclusion; (c) to provide development principles and norms and standards; (d) to provide for the sustainable use and efficient use of land; (e) to provide for co-operative government and intergovernmental relations amongst the national, provincial and local government; (f) to redress the imbalances of the past and to ensure equity in the application of spatial development planning and LUMs.

SPLUMA, amongst others, aims to realise the right to sufficient food and water and calls for the sustainable development of land.²⁸⁷ Thus these two goals are essential in the adoption and the implementation of SPLUMA. To achieve these goals SPLUMA promotes the integration of social, economic, and environmental considerations in both forward planning and land use and

²⁸⁵ Refer to section 4.1.2 the discussion in *Gauteng Development Tribunal* case 183- 190.

²⁸⁶ Refer to section 4.1.2 the discussion in *Gauteng Development Tribunal* case 183- 190.

²⁸⁷ Preamble of SPLUMA 4.

development management.²⁸⁸ The ultimate aim is to ensure that land serves both the present and future generations.²⁸⁹

In this chapter SPLUMA is discussed because it contains important safeguards against the development of agricultural land, hence serves as a mechanism to protect food production. In the next chapter, namely, Chapter 5, SPLUMA is discussed because it contains important instruments for municipalities to contribute to improving food access.

5.1 SPLUMA architecture

SPLUMA defines planning concepts within a developmental context.²⁹⁰ It establishes a normative framework to give effect to the socio-economic rights in the Constitution. These rights refer to the right to have the environment protected, the right to ensure the protection of property rights including measures to gain access to land on an equitable basis, and the right of access to adequate housing, and sufficient food and water.²⁹¹ Five development principles are set out in SPLUMA, namely, spatial justice, spatial sustainability, efficiency, spatial resilience, and good administration.²⁹² All planning authorities in South Africa need to uphold these five development principles. The specific development principles and mechanisms through which SPLUMA protects agricultural land will be set out below.

Broadly speaking, SPLUMA provides for three outcomes. First, to provide a national framework for spatial planning and land-use management. Second, to provide for co-operative government and intergovernmental relations amongst the three spheres of government. Third, to provide a legislative framework for municipalities to integrated spatial development frameworks and land-use by-laws.

²⁸⁸ Preamble of SPLUMA.

²⁸⁹ Preamble of SPLUMA.

²⁹⁰ S6 of SPLUMA provides development principles that apply to all organs of state and other authorities responsible for the implementation of legislation regulating the use and development of land.

²⁹¹ Preamble of SPLUMA.

²⁹² S7 of SPLUMA.

CHAPTER 4

SPLUMA as a framework law outlines the planning powers and functions for each sphere of government, described as ‘partly original, direct legislation’ and ‘framework law’.²⁹³ In the first instance, its provisions may be applied without requiring further legislation whereas in the second instance referral to other legislation is required.²⁹⁴ This is particularly relevant for municipalities, as they are mandated to comply with the suite of local government legislation that relates to the MSDF and are subjected to provincial and national spatial frameworks.²⁹⁵

A municipality is confirmed to be the authority of first instance for all development applications.²⁹⁶ The subdivision and rezoning of agricultural land, for example, must, therefore, be considered by a local authority and the other land regulators must decide their decisions in terms of their own planning law instruments.²⁹⁷ SPLUMA empowers provincial governments to enact legislation to protect agricultural land.²⁹⁸ The provincial government may establish procedures relevant to the approval of an application for the subdivision of land, including land use for agricultural purposes or farming land.²⁹⁹

SPLUMA prescribes that no other planning legislation may provide an alternative or planning mechanism.³⁰⁰ It is unclear how this should be reconciled with SALA that especially reserves the power to decide and approve all applications concerning the subdivision and sale of agricultural land to the Minister responsible for agriculture? Although SPLUMA does make provision for other legislation concerning the provincial or national interests to be taken into consideration to regulate the use of land.³⁰¹ To elaborate this point, section 33(2) of SPLUMA prescribes that: ‘where an application or authorisation is required in terms of any other legislation for related land use, such an application must also be made or such authorisation must also be required in terms of that legislation’. In this sense, a careful balance must be struck in determining what other legislation

²⁹³ De Visser J & Berrisford S *Preparing for SPLUMA Implementation: an introductory course for lawyers and planners* (2015) on file 17-18.

²⁹⁴ De Visser J & Berrisford S (2015) on file 17-18.

²⁹⁵ S20(2) of SPLUMA.

²⁹⁶ S33(1) of SPLUMA.

²⁹⁷ S33(2) of SPLUMA.

²⁹⁸ Schedule 1 (g)(iv) of SPLUMA.

²⁹⁹ Schedule 1 (g)(iv) of SPLUMA.

³⁰⁰ S2(2) of SPLUMA.

³⁰¹ Schedule 1 of SPLUMA.

(to protect the agricultural interests) for preserving agricultural land is permitted and how such legislation must interface with local authorities' exercising the municipal planning function.

5.2 SPLUMA principles to protect agricultural land

From the five development principles, the principle of spatial sustainability is central to the way in which SPLUMA forces municipalities to protect agricultural land. Section 7(b)(ii) of SPLUMA requires special consideration be given to the protection of prime agricultural land when taking spatial planning or land-use management decisions. Section 7(b)(vii) of SPLUMA requires the promotion of land development in locations that are sustainable and limit urban sprawl.

Other principles that interact with the preservation of agricultural land prescribe how municipalities need to facilitate the protection of agricultural land. In this respect, the principle of efficiency and the principle of spatial resilience are relevant.

Section 7 of SPLUMA deals with the principle of efficiency. Section 7(c)(i) of SPLUMA requires land regulators to optimise the use of existing resources and infrastructure. For example, non-agricultural developments on high and medium potential agricultural land are increasing. In this regard, pressures associated with mining, urban, infrastructure, and residential development in respect of high-potential cropping land are currently major contributors to the alienation and reduced availability of agricultural land for agricultural production.³⁰²

Section 7(c)(ii) of SPLUMA instruct that decision-making procedures must be designed to minimise negative financial, social, economic, or environmental impacts. Section 7(d) of SPLUMA deals with the principle of spatial resilience and demands flexibility in spatial plans, policies, and LUMs to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. At first reading these two provisions may not seem relevant to the preservation of agricultural land since it deals with environmental, social, and economic impacts. Yet, Chapter 2 listed many factors that threaten food production, two are

³⁰² PDAL 12. 'A spatial statistical analysis undertaken by DAFF in 2011 indicated that the surface area of arable agricultural land that had been converted to non-agricultural uses through urban and mining developments equals the size of the Kruger National Park'.

mentioned below. First, climate change brings additional risks and further unpredictability of harvests for farmers which include shifts in rainfall patterns, and warming and aridity. Second, the capacity of global agricultural markets to absorb supply shocks and stabilise agricultural commodity prices is tied to the continued functioning of land and water systems.³⁰³

It is argued that sections 7(c)(ii) and 7(d) of SPLUMA indeed promote a food systems approach to (food production). Section 7(c)(ii) calls for decision-making procedures to address negative environmental impact which in turn may reduce its impact on the agricultural land and food production. Section 7(d) commands ‘flexibility’ both in planning policies and planning systems. For example, this demands an integrated approach to dealing with matters of ‘agriculture’ and ‘environment’. Arguably, the flexibility demanded must ‘ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks’. In this regard, where agricultural land or a marginalised farming community’s livelihood is threatened by a potential development, it follows that on the basis of these two principles a challenge can be brought against such development.

Apart from the development principles, SPLUMA also requires the Minister for Rural Development and Land Reform to prescribe norms and standards for the protection of agricultural land but also to improve the conditions for people living in rural and agricultural land. For example, section 8(2)(a) of SPLUMA states that ‘the norms and standards must- reflect the national policy, national policy priorities and the programmes relating to land use management and land development’. Especially, section 8(2)(b) which stipulates the norms and standards must promote ‘social inclusion, spatial equity, desirable settlement patterns, rural revitalization, urban regeneration and sustainable development’. At the time of writing, the Minister for Rural Development and Land Reform is yet to issue the prescribed norms and standards as required in terms of section 8(1) of SPLUMA. As a result, there remains a lack of clarity as to the procedures and standards that planning authorities must follow and adhere to in terms of SPLUMA.

³⁰³ PDAL 12-13.

The above discussion shows that the SPLUMA development principles and norms and standards can be used to realise a food systems approach to food security. The next section will assess the mechanisms that SPLUMA provides to protect agricultural land.

5.3 SPLUMA mechanisms to protect agricultural land

SPLUMA establishes mechanisms to protect agricultural land in three ways. First, SPLUMA demands that developments which affect the national interest require separate authorisation from the Minister for Rural Development and Land Reform.³⁰⁴ Secondly, SPLUMA entrenches the power of the provincial governments to enact legislation to protect agricultural land.³⁰⁵ Thirdly, SPLUMA obliges municipalities to protect agricultural land in terms of their planning tools, such as the MSDF, land use scheme and zoning regulations. These three mechanisms are discussed below.

5.3.1 Developments affecting national interests

The first mechanism is set out in section 52(1) of SPLUMA. This section deals with development applications affecting the national interest. Section 52(1) prescribes that a land development application must be referred to the Minister, where a development application ‘materially impacts’:

- (a) an exclusive functional area of the national government, which include for example land reform;³⁰⁶
- (b) national policy objectives, principles or priorities that include food security;³⁰⁷ and
- (c) land use for a purpose which falls within the functional area of the national sphere government.³⁰⁸

As an example, cases that deal with competencies that are shared between the national and the provincial government, such as ‘agriculture’ and ‘environment’ are relevant.

Section 52(2) of SPLUMA adds additional grounds on which the Minister’s application is required. These relate to development applications that may be: prejudicial to the economic, health

³⁰⁴ S52 of SPLUMA.

³⁰⁵ Schedule 1 of SPLUMA.

³⁰⁶ S52(1)(a) of SPLUMA.

³⁰⁷ S52(1)(b) of SPLUMA.

³⁰⁸ S52(1)(c) of SPLUMA.

or security interests of one or more provinces; or impede the effective performance of the functions by the local and provincial governments.³⁰⁹

It is important to distinguish the mechanisms in sections 52(1) and (2) of SPLUMA from the veto power that was provided for in SALA. It is argued that SALA conflated the function of ‘agriculture’ and ‘municipal planning’. This resulted in the ‘municipal planning’ function being unreasonably impeded. SPLUMA is different from SALA in four ways. First, it empowers the Minister for Rural Development and Land Reform to approve land development applications alongside the ‘municipal planning’.³¹⁰ Where a national interest is threatened section 52(5) establishes a build-in mechanism empower the Minister for Rural Development and Land Reform to either ‘join as a party in such application’ or ‘may direct that such application be referred to him or her to decide’. Second, it does away with the conflation of the function of ‘agriculture’ and ‘municipal planning’ because it allocates authority for the planning approval no longer with the Minister responsible for agriculture but rather with the Minister for Rural Development and Land Reform. Third, the approval is triggered to ensure the national interests are safeguarded. SPLUMA does not, however, define the term ‘national interests’. Sections 52(1) and (2) of SPLUMA may be interpreted to embody the meaning of ‘national interest’. Fourth, the veto power in SALA was argued to be open-ended and failed to be accompanied by a legal framework to guide the decision-making of the Minister. In contrast, SPLUMA demands the ‘Minister must, before the exercise of a power or the performance of a function ..., prescribe a set of criteria to guide the implementation of this section ...’³¹¹ In addition, section 52(7) of SPLUMA instructs that a development application must first be lodged and considered by a municipality.³¹² At the time of writing, the Minister had not issued the necessary regulations in terms of section 52(6) of SPLUMA and therefore this provision cannot be invoked. In other words, to avoid a negative impact on the ‘national interests’ such as the loss of agricultural land the Minister for Rural Development and Land Reform in the absence of the regulations cannot join in as a party to the decision-making, nor can the Minister direct the application to be referred for a decision.

³⁰⁹ S52(2)(a-b) of SPLUMA.

³¹⁰ S52(5)(a-b) of SPLUMA.

³¹¹ S52(6)(a-b) of SPLUMA.

³¹² S52(7) of LUPA.

5.3.2 Special consideration must be given to agricultural land

SPLUMA requires municipalities to use their planning instruments such as the MSDF, LUMs, and zoning regulations, as well as their planning powers to give special consideration to agricultural land. Six of these SPLUMA provisions are listed below:

- Section 12(n) demands that a spatial development framework give effect to, amongst others, the sustainable utilisation and protection of agricultural resources.
- Section 21(a) commands the MSDF to give effect to the development principles and norms and standards. Thus, the development principles promoting the protection of agricultural land needs to find expression in the MSDF.
- Section 21(j) requires an MSDF to include a strategic assessment of environmental pressures and opportunities, including the location of high potential agricultural land.
- Section 25 (1) specifies that a LUMs must give effect to the MSDF, and determine the use and development of land. The aim of the LUMs is to promote, amongst other, efficient land development and minimal impact on public health, the environment and natural resources.³¹³
- Section 25(2) requires a LUMs *‘must include- scheme regulations setting out the procedures and conditions relating use and development of land in any zone’* Therefore, specific procedures and conditions can be developed to protect land zoned as agricultural land.
- Section 42(1)(b) of SLUMA forces a Municipal Planning Tribunal (MPT) to make a decision which is consistent with the norms and standards, and measures designed to protect and promote the sustainable use of agricultural land. Also, the MPT must take into account the national and provincial policies as well as the MSDF.

While the status of the MSDF will be discussed in greater detail in Chapter 5, it is important to mention here, that section 22(1) of SPLUMA compels the MPT and any other authority to ensure land development decisions are consistent with the MSDF. A departure of the MSDF is only permitted if ‘site-specific’ circumstances justify such a departure. Therefore, the MSDF binds the

³¹³ S25(1)(c-d) of LUPA.

municipality as well as the provincial and national government. In other words, the SPLUMA provisions that promote the protection of agricultural land in the MSDF applies equally to an MPT and other planning authorities. These planning instruments are essential for connecting the spatial and land use management activities to the food security needs in municipal jurisdiction. More significantly, these instruments force municipalities to protect agricultural land. This underscores the argument that SALA ought not to be necessary and that Yacoob J's argument is correct that the planning framework sufficiently regulates the 'municipal planning' function and there is no need for veto power.

5.3.3 Provincial legislation

Schedule 1 of SPLUMA specifies the matters to be addressed by provincial legislation. These matters include the 'determination of procedures relevant to the approval of an application for the subdivision of land, including land use for agricultural purposes or farming land'.³¹⁴ In addition, Schedule 1(n) permits the provincial government to enact legislation to establish 'a uniform form and content of determinations and conditions of approval for the province'.

At the time of writing the WCG LUPA is the only provincial legislation enacted in terms of SPLUMA. The provisions in LUPA are useful to the extent that it protects agricultural land. LUPA will be evaluated through the lens of the LUPA principles and the mechanisms that LUPA offers will be detailed.

The development of land-use planning principles is contained in section 59 of LUPA. Broadly speaking, these principles restate the development principles contained in SPLUMA. The LUPA principles applicable to the protection of agricultural land are set out below.

(a) LUPA development principles

Section 59(2) of LUPA deals with the principle of spatial sustainability. This section provides that land-use planning be guided by, amongst other things, land development that ensures special

³¹⁴ Schedule 1(g)(iv) of SPLUMA.

CHAPTER 4

consideration is given to the protection of prime, unique and high potential agricultural land.³¹⁵ Section 59(2)(a)(vi) of LUPA promotes land development in locations that are sustainable and limit urban sprawl, while section 59(2)(a)(vii) of LUPA instructs that land-use planning should result in viable communities. Section 59(2)(b) of LUPA adds to the principle of spatial sustainability in SPLUMA. Section 59(2)(b) deals with the functional area of the environment. However, the protection of the environment has a direct bearing on the preservation of agricultural land as mentioned in section 5.2 above. For example, section 59(2)(b)(iii) of LUPA guides development to ensure the sustained protection of the environment with due regard to areas that are unsuitable for development, that include flood plains, steep slopes, wetlands and areas with a high water table.

Section 59 (3) of LUPA deals with the principle of efficiency. Section 59 (3)(a) of LUPA requires land development to optimise the use of existing resources, infrastructure, agriculture, land, minerals, and facilities. Section 59(3)(b) of LUPA guides land-use planning to promote the development of integrated cities and towns. This include, land development in rural and urban areas in support of each other and to discourage the phenomenon of urban sprawl in urban areas.³¹⁶ Section 59(5) of LUPA deals with the principle of spatial resilience. It demands flexibility in spatial plans, policy, and LUMs to ensure sustainable livelihoods in communities most likely to suffer the impact of economic and environmental shocks.

(b) LUPA mechanisms to protect agricultural land.

The discussion now turns to the mechanisms in LUPA to protect agricultural land. Provincial government must monitor compliance with the land-use planning principles.³¹⁷ The provincial government must also monitor provincial land-use planning and the impact of matters such as, the protection of biodiversity, heritage and agricultural resources which affects the province.³¹⁸

Section 45(1) of LUPA prescribes the specific circumstances in which it is compulsory for the municipality to obtain provincial comment on land-use applications. These circumstances include,

³¹⁵ S 59 (2)(a) of LUPA.

³¹⁶ S 59 (3)(b)(v) of LUPA.

³¹⁷ S 3(4) of LUPA

³¹⁸ S 3(5)(f) of LUPA.

CHAPTER 4

(a) a development is outside the municipality's planned outer limit of urban expansion in terms of the MSDF; (b) when there is no MSDF and, if the application is outside the physical edge, including existing urban land-use approvals, of the existing urban areas; and (c) a rezoning of land zoned for agricultural or conservation purposes.³¹⁹ Therefore, LUPA establishes an IGR mechanism that is triggered when a land-use application threatens agricultural land. The purpose of the provincial comment is to ensure the provincial interests are safeguarded. Section 45(3) provides that a municipality may not decide on a land-use application until written comment by the provincial government was received and considered.

The preservation of agriculture is particularly emphasised in section 53(1)(c) of LUPA. This section deals with provincial approvals on land development. It states that no person may without an approval develop land that will have a substantial effect on (a) the orderly, coordinated, or harmonious development of a region or province; (b) the general welfare of the inhabitants; or (c) agriculture. The restriction on the proposed development is considered in terms of the (i) 'nature or scale of the proposed land use; or (ii) 'the cumulative effect of multiple developments'.³²⁰

The development application in terms of section 53(2) of LUPA must be made to the Head of Department.³²¹ LUPA builds-in an intra-governmental mechanism within the province to consider land development.³²² For instance where a development application impacts agriculture land the Head of Department responsible for planning must consult the Head of Department responsible for agriculture on the matter before deciding the land development application.³²³ As an aside, the Head of Department must decide on land development applications and the provincial Minister must decide on appeals.³²⁴ When the provincial Minister responsible for planning must decide an appeal in terms of a land development application, section 53(8) requires that the provincial Minister responsible for agriculture, be consulted before deciding the appeal.³²⁵

³¹⁹ S45(1)(a-f) of LUPA.

³²⁰ S53(1) of LUPA.

³²¹ S53(2) of LUPA.

³²² S53(7) of LUPA.

³²³ S53(7) of LUPA.

³²⁴ S3 read with s 53(2) of LUPA.

³²⁵ S53(8) of LUPA.

CHAPTER 4

Although, section 53(3) of LUPA permits the provincial Minister to exempt certain categories of development that substantially affect agricultural land these instances are circumscribed. It includes land development that complies with the SDF; is consistent with other provincial policy; or to provide state-infrastructure projects, or the development was approved by other provincial legislation.

LUPA clearly defines the multiple approvals necessary for the development of land. Section 53(5) expressly states that '[a]n approval by the Head of Department for a land development application does not release an applicant from the obligation to obtain the required approval from the municipality...'. Section 53(6) of LUPA requires a land-use applicant to obtain both the municipal and provincial approval. With respect to the provincial approvals, section 54(5)(a-g) of LUPA empowers the provincial government to impose 'reasonable conditions' on the utilisation of land that also covers the 'agricultural or heritage resource conservation'.³²⁶ Hence the provincial government may impose conditions on land development applications to preserve agriculture land. Thus, LUPA offers an instrument to significantly prevent the loss of agricultural while at the same time respecting the institutional integrity of local government. It is uncertain whether other provinces will enact their own planning legislation but the LUPA certainly offers important examples of how provinces can protect agricultural land.

6. CONCLUSION

Within the new planning law framework, decentralisation is identified as one of the critical means with which to improve food security and protect agricultural land. However, tensions in exercising the functions of 'municipal planning' and 'agriculture' still occur. How the interests associated with different functional areas need to be regulated was the central question addressed in this chapter.

An assessment of the legal framework to protect agricultural land was carried out which confirmed that the SALA mechanism to protect agricultural land is flawed in two respects: The economic model was argued to be inappropriate and from a constitutional perspective and SALA contradicts

³²⁶ S54(5)(b) of LUPA.

CHAPTER 4

the divisions of powers contained in the Constitution. The 1998 Repeal Act criticised SALA's approach to protect agricultural land. Notwithstanding the SALA provisions being outdated and not aligned to the constitutional provisions, it remains operative.

The division of powers provided for in the Constitution and the Schedules allocate 'municipal planning' as an original function to local government. It was argued, that SALA encroached on the function of 'municipal planning' by analysing six key Constitutional Court judgments.

The *Wary* judgment demonstrated the difficulty of applying SALA in the new local government dispensation. The national, provincial and local governments now share planning powers and must perform their duties and execute their functions in compliance with the constitutional vision of what is appropriate at the level of planning for each sphere. Yacoob J considered it inappropriate for the Minister responsible for agriculture to approve each and every sale and subdivision of agricultural land within an area controlled by a democratically elected council and an appropriately structured municipality. Yacoob J argued, that a continued parallel planning scheme for agricultural land disregards not only the existing constitutional framework in place for planning but also contradicts the decentralisation and democratisation of powers afforded to the different spheres of government. However, the majority disagreed with him and held that the veto power was still necessary, citing food security as one of the reasons to justify the veto power.

Subsequent to the *Wary* judgment several other cases opposed the judgment and instead endorsed the views of Yacoob J. From the cases assessed that is, *Gauteng Development Tribunal*, *Maccsands*, *Lagoonbay*, *Habitat*, *Pieterse* and *Tronox*, three key principles emerged. First, municipalities are constitutionally empowered to exercise rezoning and subdivision powers. Whether a municipality makes planning decisions that have an impact beyond their boundary, the power remains with them and a provincial government may not veto or usurp this power. Secondly, the national and the provincial governments may not interfere and/or remove 'municipal planning powers' by enacting legislation for this purpose. This will be contrary to the original power of 'municipal planning' guaranteed by the Constitution. Legislation inconsistent with the constitutional framework is unconstitutional and if challenged, the Constitutional Court will declare such legislation invalid. This was confirmed in *Lagoonbay*. Thirdly, if the national and

CHAPTER 4

provincial governments wish to protect the provincial and the national interests, they must do so within their own planning powers and may not veto or usurp municipal land-use decisions. If challenged in a court of law, it is submitted that SALA will not survive constitutional scrutiny.

To address the uncertain status of SALA, The Minister responsible for agriculture introduced PDAL. PDAL classifies agricultural land as a ‘national interest’ and justifies the usurpation of municipal planning to protect agricultural resources and for food security. However, the PDAL’s approach is misplaced. To retain extensive powers for the Minister and maintain a parallel planning scheme for agricultural land goes against the constitutional and legislative trajectory of entrenching local government powers. PDAL maintains the economic model of SALA, which was argued to be debatable.

SALA operating as a planning law is no longer relevant and appropriate since it contradicts the constitutional division of planning powers since it makes the Minister responsible for agriculture the final decision-maker on subdivision applications which is a municipal planning function. SPLUMA now offers three mechanisms to force municipalities to protect agricultural land. A land development application that materially affects agricultural land needs a separate approval from the national Minister; the municipal spatial and land-use management instruments must give special consideration to agricultural land, and provincial governments are empowered to enact legislation to protect agricultural land as demonstrated in the discussion on LUPA. The foregoing underscores the argument that SALA ought not to be necessary and that Yacoob J was right, the function of ‘municipal planning’ is sufficiently regulated to protect agricultural land.

Chapter 4 dealt with the protection of agricultural land for sustainable food production. Chapter 5 will focus on the dimension of food access which relates to peoples’ physical access and their economic ability to buy food. Moreover, the chapter will assess how the SPLUMA provisions instruct municipalities to facilitate food access. Chapter 5 will also discuss how spatial justice and equitable LUMs need to be achieved in order to enhance food access.

CHAPTER 5: MUNICIPAL SPATIAL PLANNING AND LAND USE FOR IMPROVED FOOD ACCESS

1 INTRODUCTION

Chapter 4 defined the scope and content of ‘municipal planning’ and confirmed that SPLUMA places authority for municipal planning squarely in the shoulders of local government. This allows municipalities to design context-specific instruments to manage spatial planning and land use. This chapter will argue that food security imperatives need to be included in such municipal planning decisions.

Of the four dimensions of food security, this chapter is restricted to the dimension of food access, in particular urban areas. As set out in Chapter 2, food access centres primarily on an individual or household’s ability to purchase food, which in turn depends on household income, the price of food and the location of food outlets.

Chapter 5 is divided into four themes. First, it connects the development principles contained in SPLUMA to food access. The second and third themes address the food security dimensions of spatial planning and land-use management respectively. Fourthly, the crucial role of the MPT is described with respect to how they should use their powers to protect food access when they decide land development applications. More specifically, the study will evaluate how SPLUMA empowers a MPT to promote food access.

2 SPLUMA’s DEVELOPMENT PRINCIPLES & FOOD ACCESS

Chapter 4 provided a background to SPLUMA and set out the aims and objectives of this Act.¹ In addition, it provided an overview of the development principles contained in section 7 of SPLUMA insofar as they relate to the protection of agricultural land. The aim of this chapter is to identify how the development principles may be used to facilitate food access. Before engaging in this issue, it is important to understand how the development principles in SPLUMA apply to other parts of the Act.

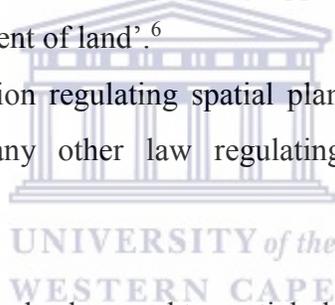
¹ Chapter 4 section 5:213-221.

CHAPTER 5

2.1 Application of the development principles

Section 6(1) of SPLUMA confirms that the development principles apply to all organs of state and other authorities responsible for the implementation of legislation regulating the use and development of land.² In addition, it specifies five instances that need to be guided by the development principles, namely the:

- ‘preparation, adoption and implementation of any spatial development framework, policy or by-laws concerning spatial planning and the development or use of land’.³
- ‘compilation, implementation, and administration of any land use scheme or another regulatory mechanism for the management of land use’.⁴
- ‘development principles must guide -the sustainable use and development of land’.⁵
- ‘consideration by a competent authority of any applications that impacts or may impact upon the use and development of land’.⁶
- ‘performance of any function regulating spatial planning and land use management in terms of SPLUMA or any other law regulating spatial planning and land use management’.⁷



SPLUMA thus provides a normative background to spatial planning and land use in South Africa. The development principles must guide not only the preparation and formulation of the planning instruments (spatial development frameworks and the land-use schemes) but also any land-use related decision-making by any competent authority.

Section 6(2) of SPLUMA specifies that ‘notwithstanding the categorisation of principles in section 7 of the Act, all the development principles apply to the aspects of spatial development planning, land development and land use management’.⁸ It is submitted that section 6(2) of SPLUMA thus

² S6(1) of SPLUMA.

³ S6 (1)(a) of SPLUMA.

⁴ S6(1)(b) of SPLUMA. Apart from the land use scheme the development principles will also apply to other regulatory mechanisms that are used to manage the use of land.

⁵ S6(1)(c) of SPLUMA.

⁶ S6(1)(d) of SPLUMA.

⁷ S6(1)(e) of SPLUMA.

⁸ S6(2) of SPLUMA.

rejects a hierarchy amongst the five development principles. All principles have equal application and any conflicts between the principles must be solved, based on the merits of each specific case.

2.2 Content of the development principles and food access

2.2.1 The principle of spatial justice

Section 7(a) deals with the principle of spatial justice and contains six sub-principles. Section 7(a)(i) is targeted at redressing past discrimination and related imbalances which includes improved access to land.⁹

Section 7(a)(ii) provides that all spheres of government must develop spatial development frameworks and policies to address the inclusion of persons and areas that were previously excluded. In this regard, areas such as informal settlements, and areas subject to widespread poverty and deprivation are specifically emphasised.

The principle of spatial justice emphasises redress for previously disadvantaged people and communities. The focus on informal settlements and disadvantaged areas is critical because Chapter 2 and Chapter 3 both demonstrated the correlation between the informal urban areas and higher levels of food insecurity.

Section 7(a)(iii) stipulates that the spatial planning system must include provisions that enable redress and access to land by disadvantaged communities and persons.

The principle of spatial justice obliges all three spheres of government, including the municipality to ensure the effective organisation of space in order to promote social relations.¹⁰ More significantly, the state must ensure the fair and equitable spatial or physical distribution of resources to improve the quality of life for the urban poor.¹¹

⁹ S7(a)(i) of SPLUMA.

¹⁰ Soja E 'Seeking spatial justice' (2010). Lefebvre H *Le droit à la ville* (1968) is translated and included in Kofman E & Lebas E (eds) *Writings on Cities: Henri Lefebvre* (1996) 1-181.

¹¹ Pothukuchi K & Kaufman J 'The food system: A stranger to the planning field' (2000) 66 (2) *Journal of Planning Education and Research* 113-117.

CHAPTER 5

Section 7(a)(iv) specifically demands that land-use management systems must include all areas of a municipality and provide flexible and appropriate management, targeted at areas including disadvantaged areas and informal settlements.

The impact that a location has on peoples' lives is well documented.¹² A location affects communities' spaces of opportunities, business, access to public services, local economies, labour, markets and infrastructure networks. In the context of informal settlements and townships. Chapter 3 illustrated the impact of apartheid spatial planning and its effects on food insecurity.¹³ Chapter 3 also depicted the stark contrast between former white urban areas and black townships.

In this regard, section 7(a)(v) of SPLUMA states that land development procedures must include provisions to accommodate access to secure tenure and the incremental upgrading of informal areas.

Chapter 3 discussed how current zoning schemes inhibit informal trading, micro-enterprises and street traders selling food to the public, particularly because compliance is too hard to achieve.¹⁴ Chapter 3 highlighted the fact that for informal settlements and townships to become economically viable, state interventions will be required, which include spatial planning and land-use management to improve the working environments of street traders, vendors, and micro-enterprises.¹⁵

In Chapter 2 it was confirmed that public spaces and infrastructure are important urban resources for informal food traders to sell their food and to have access to water and sanitation to prepare and store their food.¹⁶ However, informal food traders are often subjected to restrictive laws and poor regulatory practices that deny them the opportunity to make full use of the opportunities and

¹² Oranje M 'Spatial Transformation and Urban Restructuring: Lessons for the 20 year old post-apartheid South African City?' (2014) at 37; Sutcliffe M & Bannister S 'Land Governance in an interconnected world- Achieving Urban Spatial Justice in South Africa: Context, Reality and Integrated Urban Development Framework' (2018) 3/29; and Van Wyk J 'Can SPLUMA play a role in transforming spatial injustices to spatial justices in housing in South Africa?' (2015) 30 *SAPL* 27.

¹³ Chapter section 3: 95-98.

¹⁴ Chapter section 3: 95-98.

¹⁵ Chapter 2 section 4.2.2: 60-61.

¹⁶ Chapter 2 section 4.2.2: 60-61.

resources of urban spaces.¹⁷ It is submitted that the principle of spatial justice requires the state and in particular the municipality, to refrain from formulating and implementing laws or practices and social structures (the arrangement of institutions where human beings in a society interact and live together) that deny people the opportunity to influence the shape of urban areas or the use of its resources.¹⁸

Section 7(a)(vi) directs that a municipality should not be ‘restricted’ or ‘impeded’ in its discretion solely on the ground that the outcome of a development application may affect the value of land or property. One of the most direct expressions of spatial justice may be found in the above provision that forces a municipality not to be constrained by the value of the property when considering a development application. It is submitted that this legally endorses a ‘social land function’ that is, placing the social value of land over the monetary value of the land.¹⁹ How this intersects with food access is illustrated below.

The location of housing is a crucial factor for the urban poor. The fixed character of this asset, impacts on many aspects of people’s lives including access to jobs, public services, social networks, personal safety, and a sense of belonging.²⁰ In the South African context, low-cost housing development is mostly located in remote areas far removed from the urban economic activity and people need to travel far distances to get to work.²¹

In Chapter 2 it was argued the urban poor experience high costs associated with public transport that reduces their ability to purchase food.²² They commute for long hours away from their homes and this leaves them with little time to prepare a healthy home-cooked meal and instead, they mostly eat unhealthy foods.²³ In addition, when they do find accommodation in urban centres the rentals are so high that they often have no choice but to go without food to settle their rent. The

¹⁷ Chapter 2 section 4.2.2: 60-61.

¹⁸ It should be noted that Sojo E is the leading authority on the concept of spatial justice, but he derived the concept from the work of Lefebvre. In this regard refer to Sojo E (2010) ‘*Seeking Spatial Justice*’.

¹⁹ Friendly A ‘The Right to the City: Theory and Practice in Brazil’ (2013) Vol 14 (2) *Planning Theory and Practice* 158-179. In fact in Brazil the right to the city is incorporated into national legislation.

²⁰ Coggin T & Pieterse M ‘Rights and the city: An exploration of the interaction between socio-economic rights and the city (2012) 23 *Urban Forum* 257-260.

²¹ Chapter 2 section 4.2.2: 68.

²² Chapter 2 section 4.2.4: 66-70.

²³ Chapter 2 section 4.2.4: 66-70.

operation of the urban land market is therefore particularly important to address this problem because urban areas are inherently spatially unequal.²⁴

It is submitted that the principle of spatial justice challenges private property rights and serves as a mechanism in which to confront the dominance of private capital and market values over urban land. The phenomenon of ‘Not in my back yard’ (Nimby) prevents the transformation of especially urban areas and urban societies.²⁵ It connotes a situation where residents only oppose the developments because it is close to them but would tolerate or support it if it were built further away.²⁶ Nimby characterises an attitude by residents that is in opposition to proposed low-cost housing developments in their local area.

The principle of spatial justice entitles a community to demand from the municipality justification of its decisions or actions in terms of the principle of spatial justice.

2.2.2 The principle of spatial sustainability

Section 7(b) deals with the principle of spatial sustainability and consists of seven sub-principles. Section 7(b)(i) requires spatial planning and land use management systems to promote land development within ‘fiscal, institutional and administrative means’.

The principle promotes sustainable land development. In Chapter 3 it was stressed that integrated planning is essential for sustainable development. It was argued that the IDP potentially facilitates a ‘food systems approach’ to planning.²⁷ It is argued here that the principle of spatial sustainability, therefore, reinforces a food systems approach to planning future developments.

Section 7(b)(ii) emphasises that special consideration should be given to the protection of prime and unique agricultural land.

²⁴ Brand D (2014) 182-201.

²⁵ Lategan L *Informality and sustainability: reflecting on South Africa’s informal backyard rental sector from a planning perspective* (published PhD thesis, at the Potchefstroom Campus of the North-West University, 2017).

²⁶ Lategan L (2017).

²⁷ Chapter 3 section 4.9: 149.

CHAPTER 5

The protection of prime and unique agricultural land was discussed in Chapter 4 and will not be elaborated except to state that it directly connects to food security by requiring special consideration be given to the protection of prime agricultural land when taking spatial planning or land-use management decisions and the promotion of land development. The aim is to safeguard against unsustainable developments and urban sprawl.²⁸

Section 7(b)(iii) demands consistency of land-use schemes with the requirements of environmental management instruments.

In Chapter 2 the features of a sustainable food system were set out.²⁹ It encourages environmentally friendly development that maximises existing resources to promote sustainable food security.³⁰ This means that developments must make provision for the communities' food needs. However, the sustainability element applies to future generations as well as the need to protect the natural environment. As an example, Chapter 2 listed the characteristics of a sustainable food system, and one of the features included measures to reduce climate change and environmental degradation.³¹ It was stated in Chapter 4 that in South Africa a great deal of agricultural land is lost to developments.³² The aforementioned illustrates how the principle of spatial sustainability resonates with the elements of a sustainable food system.

Section 7(b)(iv) prescribes the spatial planning and land-use management systems to promote and stimulate an effective and equitable functioning of land markets.

An ineffective functioning land market is argued to influence the urban poor's ability to food access. The link between land markets and food security is briefly set out. First, what is a land market? Once land is traded as a commodity a land market is considered to exist. A well-functioning land market is achieved when the system governing the land market: (i) encourages fast development and transaction of land; (ii) offers reasonable access to all income groups; (iii)

²⁸ Ss7(b)(ii) read with 7(b)(vi) of SPLUMA.

²⁹ Chapter 2 section 4.1.3: 58.

³⁰ Chapter 2 section 4.1.3: 58.

³¹ Chapter 2 section 4.1.3: 58.

³² Chapter 4 section 2: 165.

protects its sustainable use for the good of both current and future users; and (vi) is integrated with other laws and regulations governing land, such as, planning, and the provision of public infrastructure and services.³³

In South Africa, the land markets are challenged in many ways. The focus is limited to the impact on townships.³⁴ King and Napier argue that the formal land market is inaccessible to most vulnerable groups. They observe four chief barriers that residents in townships are confronted with when they want to enter the formal housing market, namely, the absence of legal titles due to the lack of township registers; delays in transferring titles to deemed owners; lack of service providers in townships; and transaction costs are not affordable for low-income households.³⁵ Gorgens and Denoon-Stevens add that formal land markets create ‘artificial land shortages, which drives up the price of land and reduces the proportion of the population that qualifies to access housing’.³⁶ Township properties, on the other hand, are intentionally under-valued.³⁷

Bearing in the mind the above, Amartya Sen’s capability theory is applied to argue that ownership of housing improves an individual’s ability to access financial services from formal institutions and this increases the ability to purchase food or to enter into business opportunities to improve food access.³⁸ It is submitted that the inefficient and ineffective functioning of the existing land markets has resulted in many barriers to food access. The land market most directly affects the urban environment and the quality of life in urban centres.

An effective functioning land markets must provide for updated land registration systems which clearly indicate legal ownership. Section 7(b)(iv) of SPLUMA is argued to support Sen’s capability theory that places a duty on the state, including municipalities to adopt measures that would stimulate people’s ability to access land, and in turn, strengthen their capability to food

³³ Urbepedia ‘Land market’ available at https://urban.fandom.com/wiki/Land_market (accessed 17 June 2018).

³⁴ King N & Napier M ‘Market Interventions for Sustainable Cities: Understanding land markets’ in SACN ‘*Urban-Land-Series Vol 1*’ (2015) available at <http://www.urbanlandmark.org.za/downloads/SACN-Urban-Land-Series-Vol-1-King-Napier.pdf> (accessed 15 January 2015) 1-15.

³⁵ King N & Napier M (2015) 8.

³⁶ Gorgens T & Denoon-Stevens ‘Towards facilitative and pro-poor land-use management in South African Urban Areas: Learning from International Experience’ (2013) 24 *Urban Forum* 92-93.

³⁷ Gorgens T & Denoon-Stevens (2013) 92-93.

³⁸ Chapter 2 section 3: 35.

access. Although land registration is the responsibility of the national government, local government fulfils a vital role in regulating land use and development.

It is argued that the principle of spatial sustainability may be invoked to force municipalities to give special consideration to the interplay of land markets and the urban poor when considering developments.³⁹ This is especially necessary given the market-driven displacement of the urban poor.⁴⁰ Since 1994 plans to develop integrated urban areas with commercial and other opportunities and facilities nearer to former township areas, have been constrained by the operation of property markets.⁴¹ The economic power of the private sector has perpetuated fragmented, inequitable urban structures. The municipalities cannot compete with the private sector to purchase well-located land for the development of low-cost housing, resulting in opting for land on the peripheries of the urban centres.⁴² Section 7(b)(iv) of SPLUMA can be invoked to compel decision-makers to promote affordable housing in developments.⁴³ This is in keeping with the ‘food systems’ approach that recognises the structural causes of poverty and food insecurity. It argues that food access is improved when people are closely connected to municipal infrastructure, municipal basic services and social and economic opportunities.⁴⁴

Section 7(b)(v) compels municipalities to also consider the costs associated with future developments. They need to ensure the financial sustainability of the municipality. SPLUMA thus expects municipalities to consider the distribution and use of the infrastructure of ‘all current and future costs to all parties for the provision of infrastructure and social services in land developments’. On the one hand, the new economic growth of a municipality has a positive impact on a municipality’s finances as it increases revenue from property rates and service charges by expanding the base of ratepayers. On the other hand, it has an impact on the demand for essential engineering services such as water, sewer, stormwater, roads, transport, solid waste, and

³⁹ Gorgens T & Denoon-Stevens (2013) 92-93.

⁴⁰ Swilling M ‘Sustainability and infrastructure planning in South Africa: a Cape Town case study’, *Environment & Urbanization* (2006) Vol 18, No 1 23–50.

⁴¹ NCOP & SALGA ‘*Land Use: Towards Integrated Spatial Planning*’ (2018) available at https://www.parliament.gov.za/storage/app/media/ProjectsAndEvents/2018_ncop_local_government_week/docs/Information_Pack-LG_Edit.pdf (accessed 8 August 2019).

⁴² NCOP & SALGA (2018) 14-19.

⁴³ NCOP & SALGA (2018) 13-14.

⁴⁴ Chapter 2 section 4.2.4: 66-68.

electricity. In addition, it also must accommodate the increase in social services like clinics, schools, and other public amenities. Therefore, infrastructure is required to support sustainable social and economic development. Without the infrastructure, both public and private sector investment will weaken. In practice municipalities have trouble because the property rates and service fees that the new developments generate are inadequate to cover the infrastructural costs. Therefore, the municipality must plan, often through charging development levies as a condition to the land use approval, to ensure that the capital cost of economic infrastructure for a specific development is recovered through these charges.

It is argued that section 7(b)(vi) of SPLUMA demands that the land-use systems give effect to the range of activities that people engage in townships and informal settlements. This is to promote the sustainability of these areas. For example, these activities include farming, slaughtering animals for purposes of selling of meat products and to perform cultural practices, the selling of cultural foods etc.⁴⁵ Many of these activities take place outside the legal framework and does not comply with the purpose for which the land is zoned.⁴⁶

Section 7(b)(vii) insists the ‘spatial planning and land-use management systems must result in communities that are viable’.

The principle of spatial sustainability requires spatial planning and land-use management systems to result in communities that are viable. Section 1 of SPLUMA does not define a ‘viable’ community but it is suggested to mean ‘one in which people feel they can stay as inhabitants for a period of their lives, where they find sources of income and meaningful lives’.⁴⁷ Swilling and Annecke argue viability connotes a situation when the principles of spatial planning, urban design and development strategies achieve community viability and include ecological sustainability.⁴⁸ The latter relates to undisturbed access to sanitation, solid waste removal, energy, building materials and importantly, food security.⁴⁹ As part of this package, the delivery of houses and the

⁴⁵ Chapter 3 section 4.3.4: 119-120.

⁴⁶ Chapter 3 section 4.3.4: 119-120.

⁴⁷ Swilling M & Annecke E ‘Building sustainable neighbourhoods in South Africa: learning from the Lynedoch case’ (2006) *Environment & Urbanization* (2006) Vol 18, No 2 315-332.

⁴⁸ Swilling M & Annecke E (2006) 315-317.

⁴⁹ Swilling M & Annecke E (2006) 315-317.

appropriate transport mechanisms are crucial for liveable and functional places.⁵⁰ It is submitted that the viability concept under SPLUMA is not understood with reference to an individual's right to food per se but rather the establishment of an enabling environment in which a community becomes self-sufficient and would not require external funding to sustain food security.

2.2.3 The principle of efficiency

Section 7(c) deals with the principle of efficiency and consists of three sub-sets of principles. Section 7(c)(i) insists on land development that optimises the use of existing resources and infrastructure.

The principle of efficiency instructs municipalities to maximise existing resources and infrastructure. This requirement resonates with a 'food systems' approach because it stimulates sustainability. Instead of building more infrastructure it optimises the use of the existing built environment to promote activities related to the food system, such as urban transport systems. For instance, the improvement in efficient public transport and infrastructure is critical to food security. This can be illustrated with reference to Tawodzera who conducted research in Cape Town during 2017 that illustrates how the food system connects with the urban transport systems.⁵¹

The context for Tawodzera's research is that the majority of public transport commuters are black and internal migrants on the urban peripheries. Commuters are exposed to high levels of crime. Also, commuters are vulnerable to unreliable services and inadequate infrastructure.⁵² More efficient public transport will, therefore, improve the socio-economic opportunities of the urban poor.

⁵⁰ Centre for Affordable Housing Finance (CAHF) in Africa 'Literature Survey On Urban Land Issues South Africa' (2019) available at <http://housingfinanceafrica.org/app/uploads/Literature-Survey-on-Urban-Land-Issues-South-Africa-FINAL.pdf> (accessed May 2019)

⁵¹ Tawodzera G 'Food Vending and the Urban Informal Sector in Cape Town, South Africa' in Hungry Cities Partnership (HCP) Crush J (ed) No 23 Discussion Papers (2019)

⁵² Schoeman C 'The alignment between spatial planning, transportation planning and environmental management within the new spatial systems in South Africa' SSB/TRP/MDM 2015 (67) 40-45.

CHAPTER 5

The informal sector is located along public transport nodes and transport infrastructure (roadsides, taxi ranks, railway stations and bus terminus).⁵³ It offers a means of livelihoods but also a source of affordable food to the urban poor.⁵⁴ Despite this, transport infrastructure planning rarely considers transport and trade intersections. Yet the use of transport infrastructure by the informal sector is gaining across the world.⁵⁵ It is argued that this principle obliges municipalities to begin to engage in transport, trade, and food security intersections.

Tawodzera, collected data from five different types of areas in Cape Town where informal food vendors operate.⁵⁶ The study illustrated that food traders sell food to the urban poor at transport interchanges.⁵⁷ Food vendors offer commuters many advantages. For example, they provide affordable food, they cater to the preference of their customers, they permit customers to buy food on credit, they build a relationship of trust with their customers, and they operate their business at times that are convenient for the customers.⁵⁸ Still, they met with many challenges that include: lack of storage and refrigeration; lack of training and skills; poor sanitation; and illegal confiscation of stock.⁵⁹ Even though confiscated food items had to be returned after the fines were paid, vendors reported that some of their items were not returned and there was no proper documentation on the confiscation.⁶⁰ In addition, the threat of eviction had resulted in some vendors operating in multiple locations.⁶¹

Tawodzera's research demonstrates that the interconnections between the food system and urban transport system need to be strengthened. It is argued, that 'optimising the use of existing resources and infrastructure' as required in section 7(c)(i) of SPLUMA, also means connecting urban transport systems to the food system. This encourages municipalities to optimise infrastructure.

⁵³ Tawodzera G (2019) 1-3.

⁵⁴ Tawodzera G (2019) 1-3.

⁵⁵ Delgado C '*Integrating Food Distribution and Food Accessibility into Municipal Planning: Achievements and Challenges of a Brazilian Metropolis, Belo Horizonte. Integrating Food into Urban Planning*' (2018) London: UCL Press, Rome: FAO.

⁵⁶ Tawodzera G (2019) 5-6.

⁵⁷ Tawodzera G (2019) 7-8.

⁵⁸ Tawodzera G (2019) 7-8.

⁵⁹ Tawodzera G (2019) 10-11.

⁶⁰ Tawodzera G (2019) 10-11.

⁶¹ Tawodzera G (2019) 7-8.

Section 7(c)(iii) necessitates that the development application procedures be efficient, streamlined and that timeframes must be adhered to. While these provisions are laudable it is not specifically linked to food security or the ‘food systems’ approach, and therefore does not need to be unpacked.

2.2.4 The principle of spatial resilience

Section 7(d) deals with the principle of spatial resilience. It demands flexibility in spatial plans, policies, and land-use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The question is how does this relate to food security?

Chapter 2 confirmed that food price volatility affects the poor the most.⁶² On this basis, it is argued that the principle of spatial resilience may be used to force local authorities to ensure their planning instruments are flexible to create viable urban areas (mixed-land-uses) and to promote the availability of street food as a resilient measure to circumvent the effects of volatile spikes in staple food prices.

Apart from the provisions of suitable zoning such as mixed land-use section 7(a)(v) of SPLUMA demands flexibility in land-use management in township areas. For instance, what SPLUMA envisions is a relaxation of stringent regulations in townships that would normally apply in formal residential areas or formal business environments. Specifically, the needs of informal street traders must be considered in the spatial plans and land-use management systems. This is a disruptive approach that breaks away from the technocratic manner in which land-use management is conducted. Whether municipalities will give effect to this principle will require a paradigm shift in the way land-use is regulated. Parnell and Pieterse observed that urban planning and enforcement mechanisms often acted as barriers to street traders in black townships.⁶³ Street traders were exposed to the allocation of inappropriately sized stands that lacked service connections to enable refrigeration and there was a general lack of political will to secure a safe environment; mobility; and public spaces for street traders.⁶⁴

⁶² Chapter 2 section 2.4.4: 28-30.

⁶³ Parnell S & Pieters E (2008) 1-3.

⁶⁴ Parnell S & Pieters E (2008) 15.

If one applies the principle of spatial resilience to the above example, it illustrates how urban planning systems may be designed to improve the food security of vulnerable groups such as street traders from economic and environmental shocks. However, it is emphasised that the urban food system will not on its own safeguard the food security of vulnerable groups.

2.2.5 The principle of good administration

Section 7(e) deals with the principle of good administration and consists of five sub-sets of principles. Section 7(e)(i) prescribes that the levels of government should follow an integrated approach to land-use and land development guided by spatial planning and land-use management systems. Section 7(e)(ii) facilitates this integration by requiring all state departments to submit their sector inputs during the preparation or amendment of the spatial development framework. Section 7(e)(iii) instructs that ‘the requirements of any law relating to land development and land-use be met timeously’.

Gorgens and Petersen argue that planning in South Africa has contributed to the distorted food system. They contend that the planning systems must therefore adequately respond to the food system elements.⁶⁵ Spatial plans are often disconnected from the land-use decision-making, which has negative outcomes for socio-economic development and food security. For example, Chapter 4 illustrated the threat to sustainable food production if agricultural land is not protected.⁶⁶ Chapter 3 also indicated the significance of the forward planning instruments such as the IDP and MSDF to promote food security.⁶⁷ It is argued that the principle of good administration, specifically sections 7(e)(i)-(iii) of SPLUMA instructs municipalities to avoid taking decisions that fail to give effect to the forward planning instruments. This promotes integration in planning across the different levels of government. Furthermore, it enables municipalities to integrate food security and nutrition with other urgent priorities such as poverty, climate change, migration, economic development, and civic engagement, amongst others.

⁶⁵ Gorgens T & Petersen A ‘*Why the Western Cape needs and what it might look like*’ (2019) available at http://www.planningafrica.org.za/images/PAC2018/conf-presentations/tristan_gorgens_2.pdf (accessed 14 August 2019).

⁶⁶ Chapter 4 section 2: 164-167.

⁶⁷ Chapter 3 section 4.9: 149-155.

Section 7(e)(iv) demands the preparation and amendment of spatial plans, policies, land-use schemes and procedures for development applications, include transparent processes of public participation that gives ‘all parties an opportunity to provide inputs on matters affecting them’. Section 7(e)(v) prescribes that all policies, laws and procedures must be clearly set out in order to inform and empower members of the public. These two provisions particularly resonate with a ‘food systems’ approach insofar as it demands transparency and public input. In Chapter 2 it was argued that to address the food systems it is essential for municipalities to include food producers, food businesses and many other actors from civil society, the private sector, and research institutions as essential participants in food policy design and project implementation.

The question is what the legal effect of the development principles is. It is put forward that the development principles must inform all spatial development plans. Although the principles are of a guiding nature (that is, soft law) it does provide some measure to direct spatial plans towards the transformation goals of SPLUMA and food security. With regards to the application of the development principles in land-use decisions, the legal effect is much stronger as far as the land-use scheme is legally enforceable and therefore attaches to property rights. Thus, the land-use decisions must be justified in terms of the development principles. If a land-use decision violates one of these principles, it can be taken on judicial review and the court will assess the reasonableness of the decision, considering the development principles. Still, this does not mean that each rezoning and subdivision must satisfy each principle in equal measure. Rather, the development principles must be applied in a manner that ensures ethical choices are made that underpin the spatial planning and land-use management systems. For example, the application of the development principles must be justified in terms of the social impact of those particular choices, priorities and trade-offs on the right to food.

Now that the relationship between the development principles and food access is confirmed the discussion that follows will describe the role of the spatial development framework in forward planning. In addition, the different levels of spatial plans are briefly set out. Greater focus is on the MSDF and its intersection with food access.

3 THE SPATIAL DEVELOPMENT FRAMEWORK & FOOD ACCESS

A Spatial Development Framework (SDF) provides the framework for making resource-effective decisions. It can be a powerful lever for transforming areas and is instrumental in the realisation of a municipality's vision. It is a guide that impacts on the development and spatial form of a municipality. Thus, the purpose of the compilation of an SDF is to present a clear strategic vision for future spatial growth.

An SDF is a core component of a municipality's economic, sectoral, spatial, social, institutional, and environmental vision. In other words, it is a tool to achieve the desired spatial form of a municipality. Chapter 3 outlined the requirements of the IDP, and it was confirmed that the MSDF must be compiled in terms of the IDP process. Thus, the MSDF is critical in integrating the spatial development plans at the national, provincial, and regional level.

SPLUMA sets out the requirements for all SDFs in Chapter 4 of the Act. There are general requirements that apply to all SDFs and specific requirements for the (MSDF). The aim of the discussion is two-fold. First, to assess how the MSDF may be used to promote food access and second, to explain the mechanisms in SPLUMA to force land-use decisions to be guided by the MSDF. Before dealing with the MSDF the framework for all SDFs are mentioned.

3.2 Framework for SDFs

3.2.1 Different levels of spatial planning

SDF must be developed at every level of government, the national, provincial and municipal level. Therefore, there are different levels of spatial planning in the country, namely, national, provincial, regional and municipal. The different spatial plans must be aligned. This arrangement stems from the cooperative governance model in the Constitution that promotes the decentralisation of planning on the one hand but requires the national government to provide the development agenda and spatial planning framework on the other hand. From a food security perspective, this governance arrangement may provide a framework to establish uniformity in addressing unsustainable settlement patterns. Yet it involves intricate, alignment and integration of SDFs as well as coordination in the implementation of the spatial development frameworks.

SPLUMA provides some order as to the way SDFs need to be conceptualised. The national government sets the overall development trajectory of the country in the national spatial development framework (NSDF). The NSDF must contribute and give spatial expression to the national sector policies and plans.⁶⁸ It must adopt the NDP priorities and ensure that the spatial challenges are uniquely addressed, and as such, promote a differentiated approach to planning. In addition, the NDP demands a spatial vision and framework to be developed that compels government to progressively work towards, ‘just, adequate and sustainable spatial landscapes’.⁶⁹ These objectives must be reflected in the provincial, regional and municipal policies and spatial plans.

The provincial governments must give effect to the NSDF and set out a spatial vision for the province in the provincial spatial development framework (PSDF).⁷⁰ A regional spatial development framework (RSDF) is prepared by the national government that deal with distinctive spatial considerations that cross provincial and municipal boundaries. The RSDF must give effect to the national and provincial policies, priorities, plans and planning legislation.⁷¹ Lastly, the MSDF must assist in integrating, coordinating, aligning and expressing development policy and plans from the different sector departments at a national and provincial level.⁷²

SPLUMA provides a broad range of public participation requirements in the preparation of the NSDF, PSDF, RSDF and MSDF.⁷³ This supports a food systems approach. Moreover, one of the objectives of SPLUMA is to promote procedures, and institutions to facilitate cooperative government and intergovernmental relations in respect of spatial planning.⁷⁴ In Chapter 3 it was argued that one of the reasons for the failure of many of the food security policies is the general lack of sound intergovernmental arrangements and poor alignment.⁷⁵ The objectives of SPLUMA could possibly strengthen the coordination of food programmes.

⁶⁸ S12(3) of SPLUMA.

⁶⁹ Chapter 3 section 2.3:88-89.

⁷⁰ S12(4) of SPLUMA.

⁷¹ S19(b) of SPLUMA.

⁷² S12(5) of SPLUMA.

⁷³ Ss 13(4); 15(6); 18(4); 20(3) of SPLUMA.

⁷⁴ Preamble of the Act.

⁷⁵ Chapter 3 section 2: 83-94

3.2.2 Embedding a ‘food systems approach’ in SDFs

The general requirements of SDFs are contained in section 12 of SPLUMA. It was argued that SDFs connect to food systems in many ways.⁷⁶ To effectively address food system challenges it was suggested in Chapter 2 that a ‘food systems approach’ be followed.⁷⁷ The question then is, how does the framework for SDFs in SPLUMA promote a ‘food systems’ approach? Four themes are used to argue how SPLUMA promotes a food systems approach, namely, to stimulate integrated planning across the different sectors and prioritise trade-offs; to promote spatially informed development; to target vulnerable groups and/or areas, and to establish collaborative food systems planning.⁷⁸

SPLUMA sets out provisions that stimulate integrative and multi-sectoral planning. Section 12(1)(b) of SPLUMA directs that the SDFs must contain a ‘long-term spatial development vision’ and section 12(1)(c) adds that SDFs should represent the ‘integration and trade-off of all the relevant sector policies and plans’.⁷⁹ SDFs need to give spatial expression to development policy and plans and all spheres are required to integrate development policy and plans from other levels of government into their SDFs.⁸⁰ Section 12(6) makes the national, provincial and local government responsible for outlining in their SDFs specific arrangements for prioritising, mobilising, sequencing and implementing the public and private infrastructure investment in the priority spatial structuring areas, as identified in the SDF.⁸¹ It is argued that these provisions facilitate the alignment of the spatial plans across government and supports the integration of sectoral matters. Trade-offs must be made to address the specific geographic needs for the different areas. These development priorities should then frame the decision-making on land-use. If the development priorities contained in the SDFs are ignored, it would exacerbate discord in the intergovernmental planning and coordination.

⁷⁶ Chapter 3 section 4.9; and Chapter 4 section 5.3.

⁷⁷ Chapter 2 section 4.1.4: 57-58.

⁷⁸ Chapter 2 section 4.1.4: 57-58.

⁷⁹ S12(1)(c) of SPLUMA.

⁸⁰ Ss12(3-5) of SPLUMA.

⁸¹ S12(6) of SPLUMA.

Turning to the cooperative planning across government, a ‘food systems approach’ stresses that all levels of government need to coordinate their policies and programmes to ensure coherence in food-related policies and programmes. The question then turns on how SPLUMA supports this. It is argued that three provisions in SPLUMA promote the coherence within government planning. Section 12(1)(f) guides national, provincial and local governments’ SDFs to support a coherent, planned approach to spatial development. Section 12(1)(d) insists that SDFs guide forward planning and development across all spheres of government. Section 12(2)(a) obliges all spheres to ‘participate in the spatial planning and land-use management processes that impact on each other to ensure that the plans and programmes are coordinated, consistent and in harmony with each other’.⁸² The last provision is peremptory which makes it compulsory for the national, provincial and local government to realise cooperative planning.

Targeted support to vulnerable groups and the development of previously disadvantaged areas is recognised as an essential element of a ‘food systems approach’. This is mainly because the structural causes that give rise to food insecurity are not by coincidence. Chapter Three detailed how the spatial patterns and design of apartheid resulted in inequity amongst people, and places.⁸³ So what measures are available to ensure targeted support for vulnerable groups and/or areas? There are four key sections in of SPLUMA that are presented. Section 12(1)(i) requires SDFs to integrate previously disadvantaged areas and informal settlements into the spatial, economic, social and environmental objectives of the relevant sphere.⁸⁴ Section 12(1)(j) provides SDFs to identify long-term risks of spatial patterns of growth and development and policies and strategies to overcome those risks.⁸⁵ It is submitted that risks for the food system must be included in this assessment. Before SPLUMA, poor correspondence between the layout and extent of each property in the official register and the reality on the ground was prevalent in many townships.⁸⁶ Many structures, boundaries and access routes that have emerged over time, bear little or no

⁸² S12(2)(a) of SPLUMA.

⁸³ Chapter 3 section 3: 95-98.

⁸⁴ S12(1)(h) of SPLUMA.

⁸⁵ S12(1)(j) of SPLUMA.

⁸⁶ Hendler P ‘Capital accumulation, social reproduction and social struggle: rethinking the function of spatial planning and land use’ (2015) Vol 2 *African Sociological Review* 2-16.

relationship to the official plans.⁸⁷ This leads to challenges with, and often an inability to issue title deeds.⁸⁸ This frustrates township communities from gaining ownership. The latter has ramifications for, *inter alia*, securing capital from banks for investment. Furthermore, urban food production in townships should be optimally supported. However, small-scale farmers found in township areas, complain that they need more land to be made available for their farming. Thus, the agricultural potential of land in townships areas must be recognised in the SDFs to ensure that the land is appropriately zoned in the land-use scheme for the preservation of certain land parcels for food production.

Section 12(1)(k) needs the SDFs to offer direction for strategic development, infrastructure investment, and promote efficient, sustainable, and planned investment. The priority areas for investment should be indicated in the SDFs. The prioritisation of public investment in food-insecure areas is likely to stimulate development. Lastly, section 12(1)(l) guides SDFs to promote a rational and predictable land development environment to create trust and stimulate investment. This provision is directed at private investors and it demands that government planning instruments provide the required predictability to attract private developers to participate in the development of areas in general, but more specifically to be persuaded to invest in previously disadvantaged areas. However, it is necessary for the development of these areas to be aligned with the best interest of communities. This is elaborated later in section 3.4.4.3 of this chapter.

Section 12(1)(g) requires SDFs to provide clear and accessible information to the public and private sector. The objective of this provision is to influence where investment may occur. This speaks to a ‘food systems approach’ entails all actors of the food system working together to address food insecurity. Amongst the prerequisites for collaborative food systems planning, trust, transparency, and access to information are essential.⁸⁹

⁸⁷ Pieters E ‘*Integrated Urban Development Framework: A New Deal for South African Cities and Towns*’ (2017) available at <https://www.africancentreforcities.net/integrated-urban-development-framework-new-deal-south-african-cities-towns/> (accessed 15 January 2019).

⁸⁸ Cogger J & Rassouw J ‘Affordable Housing: City of Cape Town and developers at crossroads’ *GroundUp* 11 September 2018 1/1.

⁸⁹ Chapter 2 section 3: 32-38.

CHAPTER 5

Section 12(1)(o) prescribe that the SDFs must incorporate the outcomes of substantial public engagement, including direct participation in the process through public meetings, public exhibitions, public debates and discourses to promote direct involvement. The need for the participation of all actors in the food system was discussed comprehensively in Chapter 2. Here the purpose is simply to identify the provisions in SPLUMA that envisage collaborative food systems planning.

The above SPLUMA provisions dealt with the SDF requirements in general. However, the legal effect of the SDFs has not been confirmed. What follows is a discussion on the legal status of the SDFs at a national, provincial and regional level.

3.3 Legal status of SDFs

According to SPLUMA the SDFs do not grant actual land-use rights. For example, section 17(1) of SPLUMA confirms that a SDF ‘cannot confer on any person the right to use or develop any land except as may be approved in terms of this Act, relevant provincial legislation or a municipal land-use scheme’.

Prior to SPLUMA, the law was unclear about the relationship between SDFs and actual land-use rights.⁹⁰ De Visser and Poswa argue this compromised government's ability to guide infrastructure projects through budgets and plans.⁹¹ As a consequence land-use management decision-making continued to be disconnected from the forward planning expressed in the SDFs. If the MSDF is the forward-looking policy document that includes the municipality’s food systems approach, but the actual land-use management decisions go in another direction it will have negative implications for people’s access to food.

The question is thus, in order to boost food access, how the content of a planned vision for the area as set out in the SDFs, ought to influence the actual decision-making with respect to land-use rights? In other words, are the SDFs soft guidelines or legally binding instruments?

⁹⁰ De Visser J and Poswa X ‘Municipal Law Making under SPLUMA: A Survey of Fifteen 'First Generation' Municipal Planning By-Laws’ *PER / PELJ* 2019 (22) 1-28.

⁹¹ De Visser & Poswa (2019) 1-5.

The focus of the discussion will now turn to the MSDF.

3.4 Municipal Spatial Development Frameworks

3.4.1 The framework for MSDFs

Section 21 of SPLUMA sets out the requirements of the MSDFs. Section 21(a) specifically states that MSDFs must give effect to the development principles and norms and standards. Thus, the application of the five development principles as it relates to food security must be reflected in the MSDFs. This is crucial since the MSDFs includes a representation of the desired spatial growth and development patterns for the next 10 to 20 years in a municipality.⁹²

The MSDF must contribute to the restructuring of the municipal spatial form.⁹³ For instance, the MSDF needs to identify the development corridors, activity spines and economic nodes where public and private investment will be prioritised, engineering infrastructure and housing etc. This process must be informed by, data on the population growth, housing demands, economic activity and engineering infrastructure. In Chapter 2 the different methods for conducting community food security assessments were discussed that incorporated many of these matters.⁹⁴ Therefore it is argued that the MSDFs should be informed by the food security needs of areas with high levels of food insecurity.⁹⁵

SPLUMA instructs the municipality to include in its MSDFs a strategic assessment of the environmental pressures and opportunities in the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips.⁹⁶ It is argued that this provision reinforces the development principle of sustainability and sustainable food security.

⁹² S21(c) of SPLUMA.

⁹³ S 21(d) of SPLUMA.

⁹⁴ Chapter 2 section 4.2.3: 65.

⁹⁵ S 21(e-f) of SPLUMA.

⁹⁶ S21(j) of SPLUMA.

Section 21(k) responds to the SPLUMA objective to include areas in the planning framework that were previously excluded. Municipalities are required to identify areas where incremental upgrading approaches to development and regulation will be applicable in the MSDFs. Moreover, municipalities are encouraged to develop more detailed plans for some areas.⁹⁷ It is argued that the MSDFs has the potential to substantially shape the spatial form of the municipality and to promote a food systems approach to deal with food security. Municipalities are also required to identify where shortened land-use development procedures may be applied and where land-use schemes may be amended in the MSDFs.⁹⁸ This provision strengthens the development principle of spatial justice to fast-track development in previously disadvantaged areas for example.

SPLUMA is a framework law which guides the practical implementation of the MSDF in the municipal institution in a number of ways. For example, the MSDF needs to spatially represent the: municipality's coordination, alignment and integration of sectoral policies; capital expenditure framework for the development programmes; purpose, desired impact and structure of the land-use management scheme (LUS) and include an implementation plan.⁹⁹ This gives effect to the development principle of good administration because it improves the incorporation of the strategic planning objectives into practical implementation.

3.4.2 Legal status of the MSDF

As was explained in section 3.3 above SDFs, generally do not affect land-use rights but are policy documents. However, SPLUMA envisages the MSDFs to have a stronger role than the other SDFs (national, provincial and regional).

Section 22(1) prescribes 'a municipal planning tribunal or any other authority required to make a land development decision, may not make a decision which is inconsistent with the MSDF'. This suggests that SPLUMA binds the municipality into following through on its MSDF. Still, it does not mean the MSDF directly impacts on the land-use rights.

⁹⁷ 21(l)(i) of SPLUMA.

⁹⁸ S21(l)(ii) of SPLUMA.

⁹⁹ S21(m-(p) of SPLUMA.

An exception to the above is provided in section 22(2) of SPLUMA, which specifies that a MPT or any other authority, may depart from the provisions of the MSDF only if ‘site-specific circumstances’ justify such a departure. SPLUMA does not define what constitutes site-specific circumstances.

Thus far the content and legal effect of the SPLUMA provisions that relate to the MSDF were discussed. The next section deals specifically with the manner in which municipalities may use the MSDF to adopt food-sensitive planning. In Chapter 2 it was mentioned that many cities are already using food-sensitive planning to ensure their residents' food and nutrition security.

3.4.3 Food-sensitive planning in the South African context

In the African context, it is especially important to adopt a food-sensitive planning approach to safeguard that spatial planning is aligned to the needs of the people it serves. For example, Watson argues that the modernising agenda of African cities as ‘future cities’ resulted in ‘new urban fantasy plans’ that bear little resemblance to urban realities.¹⁰⁰ Battersby, observes an anti-informality trend in all forms, be it housing, employment or the food system.¹⁰¹ This goes against the objectives of food-sensitive planning that advocates for spatial plans to be sensitive to informality. This was argued earlier in section 2.2 of this chapter, that the informal food sector contributes to making food accessible to the most marginalised communities.

Chapter 2 mentioned the importance of food-sensitive planning which recognises ‘how meeting people’s food needs contributes to broader objectives of planning and urban design, including the promotion of health and fairness; sustainability and resilience; livelihoods and opportunity; and community and amenity’.¹⁰² It is submitted that, in formulating the MSDFs, the municipality must conduct food-sensitive planning. In fact, given its prominent and legally powerful status, the MSDF represents a critical vehicle for food-sensitive planning. Municipalities must recognise how the organisation of space impacts their local communities’ right to food. This is part of a

¹⁰⁰ Battersby J ‘Cities, planning and urban food poverty in Africa’ in Bhan G, Srinivas S, Watson V (eds.) *The Routledge Companion to Planning in the Global South* (2017) London: Routledge.

¹⁰¹ Battersby J (2017) 314-316.

¹⁰² Park-Ross R et al ‘*Incorporating Food into Urban Planning Consuming Urban Poverty a toolkit for planning educators in Africa*’ (2019) Governing Food Systems to Alleviate Poverty in Secondary Cities in Africa based at the African Centre for Cities, University of Cape Town.

municipality's duty to conduct its planning activities in a developmental way.¹⁰³ In Chapter 2 it was argued that to improve food access requires the consideration of the economic and spatial factors. Spatial accessibility must be considered in the context of where food sources are located relative to where people work, live and commute.¹⁰⁴

Although the concept of food sensitive planning was mentioned in Chapter 2 and Chapter 3 thus far a clear definition for what it entails has not been offered. For this purpose, the concept of Food Sensitive Planning and Urban Design (FSPUD) is unpacked. The aim is to accentuate how the legal framework in SPLUMA may be used to realise aspects of the right to food through the planning law instruments and tools. It is submitted that although FSPUD originated in Australia, to confront challenges faced by cities which included the need to incorporate food issues into the planning agenda, the concept has universal principles to build sustainable local food systems.¹⁰⁵

The concept according to Larsen, was 'to explore opportunities for integrated food production and consumption in urban and peri-urban planning and development'.¹⁰⁶ Moreover, she argues that it highlights the need and opportunities for integrating food into sustainable urban developments.¹⁰⁷ Food-sensitive planning connects the food system to other urban systems.¹⁰⁸ It goes beyond the focus of urban agriculture because urban agriculture contributes relatively little to food and livelihood security.¹⁰⁹ Food-sensitive planning comprises four features, namely (i) using the design of space to enhance food access (ii) using space to connect people, goods and processes; (iii) supporting participatory planning to garner dialogue from different communities and available evidence on food matters; and (iv) positively influencing strategy and policy to make the

¹⁰³ S23(1) of Municipal Systems Act, provides : 'A municipality must undertake developmentally-orientated planning so as to ensure that it –(a) strives to achieve the objects of local government set out in section 152 of the Constitution; (b) gives effect to its developmental duties required by section 153 of the Constitution; and (c) together with other organs of state contribute to the progressive realisation of the fundamental rights contained in sections 24,25,26,27 and 29 of the Constitution.

¹⁰⁴ Park-Ross R et al (2019) 9.

¹⁰⁵ Donovan J et el '*Food-sensitive planning and urban design A conceptual framework for achieving a sustainable and healthy food system*' (2011) available https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/healthy-eating/Food-systems---food-supply/FoodSensitivePlanning_UrbanDesign_FullReport.pdf (accessed 12 June 2016). 1-5.

¹⁰⁶ Larsen K (2008) cited in Donovan J et el (2011) 5.

¹⁰⁷ Larsen K (2008) cited in Donovan J et el (2011) 5.

¹⁰⁸ Park-Ross R et al (2019) 20-25.

¹⁰⁹ Park-Ross R et al (2019) 25-33.

CHAPTER 5

legislative landscape, including the land-use scheme and zoning regulations, support the consideration of food issues.

Battersby argues there are three broad opportunities to make the food system promote food and nutrition security, namely, (i) directing the food system interventions to support access to food for urban residents, especially the urban poor; (ii) embedding food considerations into planning decisions; and (iii) supporting the existing channels and systems that support food access.¹¹⁰ She also suggests a number of direct, food-sensitive, interventions in the planning regime, namely: ensuring zoning regulations are not exclusionary to informal food vendors; planning food processing sites for small-scale processors; designing municipal market precincts to be responsive to transportation and sanitation needs of traders; and integrating spaces for small-scale farming within municipal plans.¹¹¹

Beyond this, there is a wider need for food to be considered in non-food planning decisions which affect the food system.¹¹² This involves the planning of transport infrastructure and nodes, the provision of water and sanitation, and the location and design of residential areas, all of which impact on the structure of the food system and ultimately food security.¹¹³

Food-sensitive planning embraces broad opportunities for planning and designing food-sensitive places, to create jobs, build communities and transform, for the better, the environmental sustainability of settlements.¹¹⁴ This echoes the imperatives of the development principle of spatial resilience that was discussed in section 2.2.4 of this chapter. It is submitted that urban planning can play a vital role in creating an urban environment and food system that is resilient to sudden shocks that disrupt households' abilities to access food.¹¹⁵ However it is pointed out that while planning is a critical part of responding to food issues, it alone will not solve all challenges related to the distorted food system and there is a need for the integration of other measures to be taken.¹¹⁶

¹¹⁰ Battersby J (2019) 458- 460.

¹¹¹ Battersby J (2017) 318-319.

¹¹² Battersby J (2017) 318-319.

¹¹³ Battersby J (2017) 318-319.

¹¹⁴ Battersby J (2017) 308-309.

¹¹⁵ SACN (2015) 11.

¹¹⁶ Donovan J et al (2011) 12-15.

CHAPTER 5

For example, Donovan et al argue “fiscal incentives, policies, health promotion, community development and marketing campaigns are also essential components enabling people to make informed choices and nurture a culture in which Food is given a higher priority”.¹¹⁷ FSPUD seeks to complement other interventions in the food system and create the optimal circumstances for them to take effect.

It is argued that SPLUMA sets up a platform to begin this type of integration within the municipal space. In Chapter 4 it was confirmed that municipalities have significant authority to take charge of spatial planning and land-use management in their areas of jurisdiction. This transition provides an opportunity for new roles for urban planning and new approaches to food security to be developed within spatial planning. However, SPLUMA expressly makes the realisation of the right to sufficient food as one of its objectives of the Act.

In fact, an assessment of the provisions in SPLUMA that assign a duty on municipalities to act, by referencing to the word “must”, occurs 77 times in the legislation. This takes the inquiry to the next question, namely, do those provisions provide for substantive powers and duties that may be used to impact the food system? Arguably, the short answer is yes.

It is submitted that the extent to which this duty on municipalities may actually be realised is a different question, which concerns matters of resources, financial capacity, expertise etc. However, in adopting the innovative approach advocated for in the FSPUD framework, SPLUMA offers many opportunities as points of entry to ‘put food issues on the menu of the urban planning systems’. Of the duties assigned to municipalities in SPLUMA, by virtue of the word “must” 32 of those references highlight the meaningful powers and duties that local government must exercise and perform which intersect with the local food system¹¹⁸ The manner in which SPLUMA deals with these provisions will be comprehensively discussed. The next section will evaluate how the MSDF provisions may promote food-sensitive planning.

¹¹⁷ Donovan J et al (2011) 12-15.

¹¹⁸ The SPLUMA provisions referred to in the preamble and ss 4(a); 7(a)(i); 7(a)(iii); 7(a)(iv); 7(a)(v); 7(b); 7(e)(ii); 7(e)(v); s8(1); 8(2); 9(1)(a); 12(1); 12(2)(a); 12(2)(b); 12(5); 12(6); 20(2); 21(1)(i); 23(1)(a); 23(1)(b); 24(1)(b); 24(1)(2); 25(1); 26(1)-(6); 28(2); 29(1); 33(1); 35(1); 42(1); 47(2); 50(2); 51(5); 52(1) and 52(4) of the Act.

3.4.4 Linking the MSDFs to food access

Thus far the discussion provided an overview of the requirements for SDFs. Furthermore, the content requirements and legal status of the MSDF was confirmed. While the features of food-sensitive planning were described the next section will set out how the MSDF may be used to achieve these imperatives. In addition, it will illustrate some of the ways in which SPLUMA as a framework law resembles a food systems approach in planning. The MSDF a prospective tool for food-sensitive planning

Section 21(e) of SPLUMA require the MSDF ‘must include population growth estimates for the next five years’. This may assist in planning for food security.¹¹⁹ The collection and mapping of information about the levels of food security can be used to develop a spatial food security index and specific food security interventions in a municipality.¹²⁰ Furthermore, the data on the population growth and its food implications are expected to inform the policy formulation by the national and provincial governments.

SPLUMA requires the municipality to include estimates for economic activity, employment trends and the identification of future growth areas potentially in the MSDF may promote private investment.¹²¹ It is essential for the municipality to investigate business and industry trends and record the existing trends.¹²² This element of the MSDF represents an important potential for a further aspect of ‘food-sensitive planning’. For example, it instructs the municipality to investigate and understand how and where informal food traders operate. The aim is to understand the current reality and to realise spatial plans that enable and strengthen the informal food sector.¹²³

The MSDF must identify, quantify and provide location requirements for the engineering infrastructure, and the provision of the services of existing and future development needs for the

¹¹⁹ Population Action International ‘*Why Population Matters to food security*’ (2012) available at http://pai.org/wp-content/uploads/2012/02/PAI-1293-FOOD_compressed.pdf (Accessed 1 July).

¹²⁰ SA (2015) 60.

¹²¹ S21(g) of SPLUMA.

¹²² SACN ‘*Assessing Local Government Capacity for Spatial Transformation in South African cities*’ (2017) 5.

¹²³ SACN (2017) submit that ‘in as much as there are commendable and worth noting capacity strengths in most of the cities, there are also weaknesses that hinder spatial transformation. In most of the SACN member cities there is a shortage of critical skills in the planning...[t]here is also room for improving the links and coordination of interdepartmental spatial transformation initiatives’.

next five years.¹²⁴ Municipal infrastructure relates to the capital works needed for the provision of municipal services.¹²⁵ Included in the municipal infrastructure is the mechanical and electrical equipment that is required for, amongst other things, water and wastewater treatment works. SPLUMA instructs municipalities to determine current infrastructure capacity as well as the future densities that must inform infrastructure planning. It is suggested that this requirement in SPLUMA can be used to import aspects of food-sensitive planning into the MSDF. This is because, as was elaborated earlier in section 2.2.3, with respect to the development principle of efficiency, infrastructure and especially transport infrastructure is critical for informal food traders to make a living and for the availability of affordable food in urban centres. Thus, a food sensitive MSDF needs to thoroughly integrate the spatial and transport planning within a municipality.

3.4.5 Potential of the MSDF as an integrative instrument for food access

This section responds to two problems in the planning framework. The first problem involves the lack of alignment between the municipal spatial plans and the national and provincial government. At an intra-governmental level, however, alignment between the municipal spatial plans and land-use management is lacking.

(c) Improving alignment amongst the spheres of government towards food security

Gorgens and Petersen argue with respect to food security that the different spheres of government struggle to integrate their planning particularly due to the fragmented planning framework.¹²⁶ However, SPLUMA insists on the alignment of spatial planning and offers a framework to realise this. Section 12(2)(a) of SPLUMA demands that all spheres of government must participate in the spatial planning and land-use management processes that impact on each other to ensure that the plans and programmes are coordinated, consistent and in harmony with each other. Even though SPLUMA does not in fact render the programmes and projects cohere, it forces all spheres of government to consider the spatial development priorities at the different level of planning, namely, local, regional, provincial and national. In Chapter 2 it was argued that a holistic wide-

¹²⁴ S21(h) of SPLUMA.

¹²⁵ DRDLR (2014) 9.

¹²⁶ Gorgens T & Petersen A (2018) 9.

ranging approach to the food system is required. It is submitted that the legal framework in SPLUMA stimulates such an approach.

SPLUMA insists on the alignment in spatial planning at an intergovernmental level in two ways. First, section 12(5) of SPLUMA forces municipalities to ensure MSDFs ‘assist in integrating, coordinating, aligning, and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area’. Second, section 21(a) of SPLUMA obliges the MSDF to give expression to the development principles and the norms and standards. The two provisions must be read together with the requirement of the principle of good administration that requires government to cohere at an intergovernmental level.¹²⁷ Chapter 3 identified the challenges with respect to implementing the food security policies in practice. Many of the challenges related to the fragmented policy framework which failed to provide a uniform approach to achieve integration.¹²⁸ It is argued that the two provisions above may begin to create a uniform framework in which food-sensitive spatial plans are developed, bringing together the spatial aspects of national, provincial and municipal priorities and programmes as they relate to food security. This is underscored by the reality that the integration and alignment of food security policies across government are strained. Moreover, a minimal role is given to local government in the FSP framework.¹²⁹ From a development perspective, it was argued in Chapter 3 that the NDP expects the IDP to lead the development priorities within municipal jurisdictions. This means that the national and provincial development priorities must give effect to the IDP. The NDP was shown to promote a food systems approach, as a consequence it is envisaged that the MSDF that forms part of the IDP endorse a food systems approach.

(d) Striving for consistency in the municipal practice and plans to realise the right to food

Chapter 3 showed there is often a disjuncture in the way food access is dealt with. For example, although municipalities make commitments to improve food security in their jurisdictions they engage in actions that work against those objectives particularly when it comes to the management of land-use.¹³⁰ The misalignment between the food security objectives and the administrative

¹²⁷ Chapter 5 section 2.2.5: 241.

¹²⁸ Chapter 3 section 2: 94.

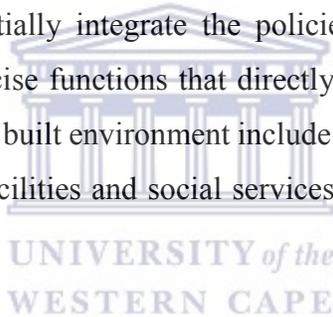
¹²⁹ Chapter 3 section 2: 94.

¹³⁰ Chapter 3 section 4.9: 156-159.

actions are partly caused by a lack of integration of the forward planning and the land-use management systems.¹³¹ SPLUMA demands greater alignment between a municipality's land-use administration and its MSDF. It does so in four ways.

First, SPLUMA clarifies the relationship between the MSDF and land-use management systems. Section 21(o) of SPLUMA provides that the MSDF must determine the purpose, desired impact and structure of the LUS to apply in that municipal area. It is suggested that, in determining this purpose and desired impact, the municipality must indicate how it envisages the MSDF to improve food security.

Second, section 21(m) of SPLUMA prescribes the MSDF 'provide the spatial expression of the coordination, alignment and integration of sectoral policies of all municipal departments'. The MSDF must thus be used to spatially integrate the policies of the various municipal sector departments, many of whom exercise functions that directly impact food security. Some of the sectoral policies with respect to the built environment include matters such as infrastructure, land-use and density, accessibility to facilities and social services, informality, inclusionary housing, and urban land markets.



Third, section 21 (n) of SPLUMA requires the MSDF to 'determine a capital expenditure framework for the municipality's development programmes depicted spatially'. This capital expenditure framework is envisaged to bring together all of government's capital expenditure plans in the municipal jurisdiction.

Fourth, the desire for integrative planning is further entrenched by the MSDF implementation plan. Section 21(p) of SPLUMA articulates the implementation plan must include the institutional arrangements necessary for the implementation and where necessary, any arrangements for partnerships in the implementation process. This creates an opportunity for the relevant stakeholders in the food system that could enter into partnerships with the municipality. The purpose of such partnership should be to understand and influence the functioning of the local food

¹³¹ Chapter 3 section 4.9: 156-159.

system to improve food access. The value of entering into partnerships is illustrated in the case of Belo Horizonte SMAB programme in Brazil.¹³²

Rocha stresses that a major factor shaping the success of the SMAB is its commitment to develop and implement projects through partnerships which were initiated by the municipality itself.¹³³ Some of the major partners in the SMAB included other government departments (especially Public Health, Education, and Environment), the private sector (small farmers, food manufacturers and store operators), NGOs (the Citizens' Action Campaign, the Network for Exchange in Alternative Technologies, and others), philanthropic groups (running day-care centres, community centres and nursing homes), community associations, and the University of Minas Gerais.¹³⁴ It is argued that section 21(p) of SPLUMA should encourage the creation of partnerships with the relevant stakeholders to develop the spatial planning and design that informs the MSDF, which must then be realised in the land-use management systems.

(e) MSDFs potential to help shape the private sector

Gorgens and Petersen emphasise that in government there remains a lack of understanding about how to shape the private sector and this is compounded by the insufficient technical capacity to embed food systems thinking in government.¹³⁵ As a result, they argue this will 'bedevil' any attempt at integrating food security into the planning system.¹³⁶ This begs the question, why is 'shaping the private sector' critical for the integration of food security into the planning system?

As was discussed in Chapter 2 the private sector influences the food system and too often with negative implications for food security.¹³⁷ More significantly, a trend in Africa is the increased role of large private sector actors, as 'partners in development' by the state and this results in the

¹³² Rocha C 'Urban Food Security Policy: The Case of Belo Horizonte, Brazil' (2001) *Journal for the Study of Food and Society* Vol 5:1 36-47,

¹³³ Rocha C (2001) 42-45.

¹³⁴ Rocha C (2001) 42-45.

¹³⁵ Gorgens T & Petersen A (2018) 9.

¹³⁶ Gorgens T & Petersen A (2018) 9.

¹³⁷ Chapter 2 section 2.1.1 19-24 and 2.2.2.

private sector shaping the visions of cities and funding new developments shaped by an economic growth agenda.¹³⁸ A typical example of this is the emergence of shopping malls.

In practice, a typical result of this development agenda is to formalise market places and expand the development of shopping malls.¹³⁹ This practice is associated with the desire to move the informal traders out of sight as they ‘make the town disorganised’.¹⁴⁰ However, the viability of markets is reduced when informal traders are moved as they locate to places that are convenient for consumers.¹⁴¹ Significantly, this practice occurs in spite of evidence that suggests that (i) the location of the street traders is essential to their businesses’ survival; (ii) the food sold by food vendors is cheaper than formal retailers; and (iii) the food vendors mostly sell fresh foods.¹⁴² Battersby and Peyton noted that the quality of the fresh produce sold from the supermarkets is of poorer quality compared to those sold by the informal traders.¹⁴³ On average the costs in formal shops were 76 per cent more than the same products sold by informal traders and the differences were particularly acute in fresh produce.¹⁴⁴ Hence, supermarkets do not always increase access to healthy foods but in some instances accelerate the ‘nutrition transition’.¹⁴⁵

Across Africa shopping malls are emerging as a symbol of urban development and cosmopolitanism.¹⁴⁶ However, municipalities hardly ever assess the impact these have on the existing food retail sector.¹⁴⁷ Yet, these malls are reshaping the local food system.¹⁴⁸ In South Africa, it has been shown that when large malls enter into urban areas there is an erosion of existing local businesses, many of which are food retailers.¹⁴⁹ Potts claims, this is often regarded as the work of the market but there is considerable evidence that large supermarket chains put pressure

¹³⁸ Battersby J & Watson V (2018) 186.

¹³⁹ Battersby J & Watson V (2018) 188-189.

¹⁴⁰ Battersby J & Watson V (2018) 188-189.

¹⁴¹ Battersby J & Watson V (2018) 188-189.

¹⁴² Chapter 2 section 2.4.3: 27-30.

¹⁴³ Battersby J & Peyton S (2014).

¹⁴⁴ Skinner C & Haysom G (2016) 7.

¹⁴⁵ Battersby J & Peyton S ‘*The Geography of supermarkets in Cape Town: Supermarket expansion and food access*’ (2014) 158.

¹⁴⁶ Haysom et al ‘*Food Systems Sustainability: An Examination of Different Viewpoints on Food System Change*’ *Sustainability* (2019) 11 3337.

¹⁴⁷ Chapter 2 section 2.4.3: 27-30.

¹⁴⁸ Chapter 2 section 2.4.3: 27-30.

¹⁴⁹ Chapter 2 section 2.4.3: 27-30.

on local government to control informal trade near to the supermarkets.¹⁵⁰ Chapter Three highlighted the difficulties that street traders for example experience due to the land-use management practices of local government.¹⁵¹ Too often, municipal officials are unaware of, or insufficiently consider the critical role that street traders fulfil in this context.¹⁵² A look at a 2016 case study by Pulka will be used to demonstrate this argument.

Pulka's study focused on the relationship between urban food security and the expansion of supermarkets from a planning perspective. The study was located in the City of Cape Town and concentrated on a township area, namely, Langa.¹⁵³ The spatial plans limited the urban poor's food access and threatened street traders' livelihoods due to the increased competition of the supermarkets.¹⁵⁴ Pulka observed that the municipal officials responsible for planning in Langa could not conceptualise the relationship between supermarket expansion and urban food insecurity. They were resistant to use planning policy as a tool to guide development because it may infringe upon the developer's rights.¹⁵⁵

The question that arises is, how does SPLUMA, and in particular its provisions on the MSDF, disrupt this relationship between the municipality and the private sector which is too comfortable and damaging to food security? It is submitted that the municipality's approach is biased towards private developers and is challengeable with respect to several SPLUMA provisions discussed below.

First, the MSDF binds the municipal administration in the exercise of their decisions. The binding nature of the MSDF is established in section 22(1) of SPLUMA. It instructs whoever takes a land development decision to adhere to the provisions of the MSDF. If this MSDF contains a reflection of a progressive food systems approach, this will be binding and decisions that go against the

¹⁵⁰ Potts D 'The urban informal sector in sub-Saharan Africa: From bad to good (and back again?)' *Development Southern Africa* (2008) 25(2): 151-167. DOI: 10.1080/03768350802090527.

¹⁵¹ Chapter Three xx.

¹⁵² Pulka A *The relationship between urban food security, supermarket expansion and urban planning and policy in the City of Cape Town: A Case of the Langa Junction Mini Mall* (2016) (unpublished Masters thesis, University of Cape Town, 2016) 69-110.

¹⁵³ Pulka A (2016) 12-13.

¹⁵⁴ Pulka A (2016) 29.

¹⁵⁵ Pulka A (2016) 92.

MSDF will be challengeable. Second, section 22(2) of SPLUMA prohibits the decision-maker from departing from the MSDF, they may only do so if 'site-specific' circumstances justify such a departure. Thirdly, section 22(2) of SPLUMA must be read together with three further provisions in SPLUMA that connect the municipality's regular land-use management instruments and decision-making to the forward-looking (and potentially food-sensitive) nature of the MSDF.

Here, sections 24(g)(2), 27(1) and 28(1) are relevant. Section 24(g)(2) provides that a municipal land-use scheme must give effect to the MSDF and the IDP. This will be elaborated on below, but it emphasises the extension of the MSDF's policy direction into the municipality's main instrument for land-use management, namely the land-use scheme. Section 27(1) requires a municipality to review its land-use scheme every five years in order to achieve consistency with the MSDF. Again, SPLUMA instructs the municipality to connect its forward-looking MSDF to its land-use scheme. Section 28 (1) encourages a municipality to amend its land-use scheme by rezoning any land considered necessary by the municipality to achieve the development goals and objectives of the MSDF.

The above provisions are significant to ensure that food access is taken into consideration in the urban planning systems. The MSDF has the potential to disrupt the negative influence that the private sector may have on municipal decision-making. SPLUMA forces decision-makers to be guided by the MSDF. They may only depart from the spatially represented development if site-specific circumstances justify the decision. It is argued that a food-sensitive planning approach, recognises the existing benefits that informal traders contribute to the local food system and represent this in the forward planning of the specific area. For instance, it would require the MSDF to reflect their needs in the spatial mapping and recognise the need for the delivery of infrastructure and services in food-insecure priority areas. In this context the municipality is compelled to make decisions in terms of the land-use scheme that is consistent with the MSDF.

(f) MSDF and informality

Urban informality relates to the disjuncture between legislated land-use rights that generally apply to urban land parcels and the reality of urban dwellers making homes and building communities outside of those legal frameworks. Chapter 3 detailed how apartheid laws aimed to exclude the

black majority from city centres. This resulted in many black people being deprived of urban management systems.¹⁵⁶

SPLUMA demands that all spatial planning responds to the 'unplanned' nature of many settlements in South Africa. SPLUMA instructs municipalities to address informality in various ways, one of which is by including informal areas in the MSDF and to address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere.¹⁵⁷ This means that municipalities need to prioritise the provision of basic services, access to transport and public amenities etc in informal areas.

The above approach recognises that informal settlements are a result of poverty and inequality that is both social and spatial in nature. Informal settlements are located in hazard-prone areas and inhabitants often need greater assistance to reduce risks and build resilience. Efforts to improve informal settlements and anticipate future ones are becoming more common but the desire for eviction still persists.¹⁵⁸ A study conducted by De Visser and Poswa suggests, that municipalities are slow to adjust their own regulatory planning regimes to the realities of informality. Nevertheless, it is argued that there are a further three provisions in SPLUMA that enable design thinking around informality, which is essential to meet the challenges of urbanisation.

First, section 21(k) requires the MSDF to identify areas where incremental upgrading approaches to development and regulation will be applicable. This provision aims to relax the bureaucratic red tape for development in these areas. This is critical because growing inequality forces more people into informal housing. As a result, the growth rate of informal settlements often outstrips the upgrading processes.¹⁵⁹

Second, section 21(l)(i) requires the MSDF to identify the designation of areas that need the development of more detailed local plans, whereas section 21(l)(ii) requires the MSDF to represent where shortened land-use development procedures may be applicable. In addition, it permits an

¹⁵⁶ Chapter 3 section 3: 95.

¹⁵⁷ S21(k) of SPLUMA.

¹⁵⁸ SAHRC 'SAHRC concerned over evictions on farms and informal settlements' *OFM News* 19 Apr 2019

¹⁵⁹ Royston L & Ebrahim T 'Urban land reform: Start with informal settlements' *Daily Maverick* 4 July 2019.

amendment to the land-use scheme to give effect to this purpose.¹⁶⁰ This supports municipalities' efforts for incremental, on-site upgrading. With the inclusion of the informal settlements in the MSDF it is possible to target the highest levels of food insecurity in urban areas and to ensure the consideration of food access in planning decisions. This includes the planning of transport infrastructure and nodes, the provision of water and sanitation, and the location and design of residential areas, all of which impact on of the food system and ultimately food security. For example, efficient and effective planning is critical for social and economic development of informal settlements and townships. The creation of certainty through truncated land development procedures, rapid decision-making on development applications is thus a priority to ensure that these areas attract public and private investment. Already there are case studies that show that township areas have the potential to provide lucrative business opportunities. As a result, municipalities need to take their elevated role in relation to planning and ensure that they effectively leverage the SPLUMA provisions to achieve spatial transformation. For this purpose, active engagement with communities and the private sector is essential to address the existing planning challenges.

Third section 24(2)(c) of SPLUMA deals with the land-use scheme, and it is relevant here because it shows how the municipalities forward planning in the land-use management systems must guide land-use management systems. SPLUMA demands a municipality to incrementally introduce land-use management and regulations in informal settlements. It is argued that this provision facilitates the development of informal areas and also the reduction of red tape for the purpose of fast-tracking development. Since the MSDF is supposed to represent the needs of the informal settlements it requires the land-use management systems to recognise those needs and should offer effective protection against forced evictions.¹⁶¹ Thus the MSDF must give a clear indication of where and how informal settlements will be addressed by the municipality. For example, how the municipality intends to channel public investment, influence, and other resources at its disposable must be clarified. This should include where infrastructure and public facility investment will be prioritised, and where private sector partnerships will be sought in development.

¹⁶⁰ S21(1) of SPLUMA.

¹⁶¹ Royston L & Ebrahim T (2019) 1/1.

The discussion suggested ways in which a ‘food systems approach’ and ‘food-sensitive planning’ may be embedded in spatial planning. It was argued that many aspects of the above concepts are echoed in the provisions of SPLUMA with respect to the development principles and directly to the spatial planning framework. To summarise it was argued that MSDFs need to reflect the development principles, as they relate to food security, and promote the objectives of food-sensitive planning. Further it was argued that SPLUMA forces municipalities to follow through on the MSDF priorities because it outlines the municipality’s spatial agenda of its own sector departments, ensuring that their sector plans, programmes, and projects are grounded in a spatial logic that advances food security imperatives. This was found to promote rational and predictable development and to address the problem of unsustainable developments. Decision-makers are thus obliged to ensure that this spatial logic is reflected in their decisions.

4 LAND-USE MANAGEMENT AND FOOD ACCESS

4.1 Defining the role of zoning

While the MSDF is the blueprint of spatial planning, zoning is regarded as the glue that binds spatial planning and land-use management. Zoning comprises different categories of land-uses that set out the purpose for which land situated in the area covered by a town planning scheme, or a zoning scheme may be used.¹⁶² There are land-use restrictions applicable in each category as determined by the town planning or zoning scheme and regulations crafted in terms of the scheme.¹⁶³ These regulations provide for the different restrictions that apply to buildings such as height, bulk, coverage and building lines as well as different uses such as residential, commercial or industrial.¹⁶⁴ Zones are usually kept together to avoid that a residential area will be near an environmental hazard.¹⁶⁵ An individuals’ use of land is thus compromised by zoning since use restrictions must be adhered to.¹⁶⁶ Municipalities will not be able to deliver on the spatial justice goals without addressing the content of the zoning schemes. It is crucial for the zoning scheme not to restrict land-use activities that will promote food access.

¹⁶² Van Wyk J (2012) 249.

¹⁶³ Van Wyk J (2012) 249.

¹⁶⁴ Van Wyk J (2012) 249.

¹⁶⁵ Van Wyk J (2012) 249.

¹⁶⁶ Van Wyk J (2012) 249.

CHAPTER 5

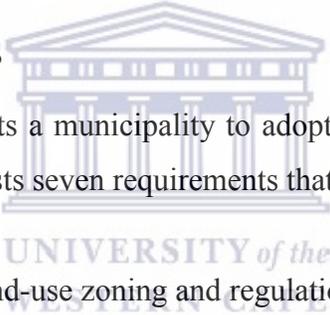
4.2 Framework for the Land-use Scheme

4.2.1 The purpose of the LUS

SPLUMA provides that the purpose of the LUS is to give effect to the MSDF and determine the use and development of land in the municipality.¹⁶⁷ Thus the LUS that grants land-use rights must give effect to the MSDF, which may possibly promote food-sensitive planning. Section 25(1) lists the objectives for the LUS, which are to (i) promote economic growth; (ii) social inclusion; (iii) efficient development of land; and (iv) minimal impact on public health, the environment and natural resources. Section 25(1) is a critical and controversial provision because it may impact individuals' property rights. The progressive nature of section 25(1) of SPLUMA is thus indicative of the significance that SPLUMA places on spatial transformation and the realisation of sustainable development.

4.2.2 Core provisions for the LUS

Section 24(1) of SPLUMA instructs a municipality to adopt and approve a single LUS for the entire municipal area. Section 24 lists seven requirements that the LUS must include, namely:

- 
- (a) appropriate categories of land-use zoning and regulations for the entire municipal area;
 - (b) give effect to applicable environmental legislation and instruments;
 - (c) permit the incremental introduction of land-use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a LUS;
 - (d) affordable housing in residential land developments;
 - (e) land-use and development incentives to promote effective implementation of the SDFS and other development policies;
 - (f) land-use and development provisions to give effect to national and provincial policies; and
 - (g) give effect to the MSDF and IDP.

¹⁶⁷ S25(2)(a) and (b) of SPLUMA demands the LUS include, 'scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone' and 'a map indicating the zoning of the municipal area into land zones'.

Section 24(3)(b) of SPLUMA enables the LUS to include specific requirements regarding any special zones identified to address the development priorities of the municipality. The objective of a special zone is to provide for circumstances where special or unique factors justify the creation of specific development management provisions for a specific site or sites without justifying the creation of a new zone. In addition, it provides an opportunity to introduce collaborative planning techniques into the development process, whereby a negotiated settlement between the municipality and owner/developer is possible in the interests of sustainable development. It allows for an unforeseen or special circumstance where it is not possible or expedient to accommodate the use or activity in an existing use zone, and it allows for innovative design, architectural styles, building forms and site relationships.

4.2.3 Legal effect of the LUS

Section 26(1)(a) of SPLUMA makes it clear that an adopted and approved LUS ‘has the force of law, and all land owners and users of land, including a municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of such a land-use scheme’. Moreover, section 26(1)(b) confirms that the approved LUS replaces all existing schemes. Section 26(1)(c) of SPLUMA states that the LUS provides for land-use and development rights. It is emphasised that the LUS confers actual land-use rights, unlike the MSDF. It is not only a representation of the municipal vision but accords the municipality actual power to transform settlements to serve the needs of the most vulnerable groups in society.

Section 32(1) of SPLUMA empowers the municipality to pass a by-law to enforce compliance with the provisions of the LUS. Section 32(2) of SPLUMA provides that a municipality may apply to a court for an order to interdict any person from contravening the LUS; or obtaining a court order to demolish any structure on land erected in contravention of the LUS.¹⁶⁸

¹⁶⁸ S32(3)(b) of SPLUMA provides that a municipality may designate municipal official or appoint people as inspectors to investigate any non-compliance with the LUS.

4.3 Linking land-use management to food access

4.3.1 Preparation of the LUS

A municipality's key contribution to spatial justice and improved food access is to proactively stimulate private and public development that transforms spatial structures.¹⁶⁹ SPLUMA introduced a firm legal connection between its development principles, the MSDF and land-use management. This was not legislated previously.¹⁷⁰ Thus SPLUMA requires the land-use management systems to do more than just control development but rather to realise the desired development for the municipality which is argued to include food-sensitive planning.

The municipality's executive authority needs to set out the general policy and guidelines for the LUS and should monitor and oversee its implementation.¹⁷¹ In preparing the LUS the municipality must conduct a proper public consultation.¹⁷² This must be used to elevate local food needs and to foster municipal collaboration with experts, communities, and business.¹⁷³ The aim is to collectively inform the trade-offs that need to be made by the municipality in a transparent and inclusive manner.¹⁷⁴

It is argued that since the municipality may use special zones to achieve its development priorities as articulated in the IDP and spatially reflected in the MSDF, the LUS may also contribute to embedding a food systems approach. The objectives of the special zones were described above. It is suggested that special zones may be used in specific areas that are identified as high-risk food-insecure areas. This is particularly useful because the community food security assessment data may indicate spatially where the food-deprived communities are located. To achieve the development priorities of the municipality special zones can play a critical role in identifying economic zones or food-sensitive areas.

¹⁶⁹ SACNb (2015) 52.

¹⁷⁰ SACNb (2015) 52.

¹⁷¹ S23(1)(a-b) of SPLUMA.

¹⁷² S24(1) of SPLUMA.

¹⁷³ SALGA (2018) 89.

¹⁷⁴ SALGA (2018) 89.

These provisions support the progressive design of the LUS to push the MSDF's transformative vision. Yet this is not always possible to achieve in practice. Thus, it needs to be recognised that the implementation of the LUS is complex. A balanced approach must be guaranteed to protect the existing land-use rights of property owners on the one hand while aspiring towards the transformative imperatives on the other hand. For example, the LUS records existing land-use rights for each land parcel that has zoning attached to it. A property owner will, therefore, be aggrieved if a municipality changes the zoning of the property in question, without their involvement or consent because it may affect their property value. Still the municipality must ensure that the decisions on development applications are aligned to the MSDF imperatives. In other words, the municipality must avoid the practice of confining residents to the previously enacted land-uses. Not only must the LUS give effect to the national and provincial policy but also to the IDP and MSDF

4.3.2 Intersection of food access with zoning and land-use management

(a) Zoning for the informal economy

South Africa has adopted much of the colonialist planning law model, which is arguably unsuited for our country's development trajectory.¹⁷⁵ Nel argues that SPLUMA seeks to redress past land management injustices but that the Act actually reinforces 'modernist planning' ideas by codifying land through zoning.¹⁷⁶ For example, Nel argues that SPLUMA prevents mixing of land-uses and is institutionalised with the aim, in particular, to preserve residential zones exclusively for a single activity.¹⁷⁷ Nel disapproves of zoning as a land-use management tool because it fosters exclusion and is socially, economically and environmentally unsustainable.¹⁷⁸ Given the purpose of SPLUMA to create equitable and sustainable development, she claims that zoning is an inappropriate land-use management tool for South Africa.

¹⁷⁵ Berrisford S, Palmer I, Van Niekerk B & Fin B 'Urban infrastructure in Sub-Saharan Africa- harnessing land values, housing and transport' (2015) 1-6.

¹⁷⁶ Nel V 'SPLUMA, Zoning and Effective Land Use Management in South Africa' (2015) Vol *Urban Forum* 1-15.

¹⁷⁷ Nel V (2015) 1-15.

¹⁷⁸ Nel V (2015) 1-15.

CHAPTER 5

Zoning traditionally protects the health, safety, and welfare of the inhabitants of an area. It is also used to preserve the character of an area.¹⁷⁹ Zoning articulates what, where, and when development is allowed.¹⁸⁰ Residential and formal parts of the urban areas are subject to urban planning and enforcement of land-use zoning.¹⁸¹ As alluded to in Chapter Three, (section three) a dormitory design of townships was enforced with residential zoning and significantly restricted business activity.¹⁸² Existing zoning continues to restrict business activity in these areas with respect to the informal sector.¹⁸³ Petersen et al argue that:

Instead of enabling formalisation, post-apartheid land-use management systems have had the effect of ‘disallowing informality’ ...through aiming to prevent informal businesses operating in specific places and spaces. The effect of stringent controls on land-use has been to keep these micro-enterprises small, profoundly informal and illegal’.¹⁸⁴ ...’In townships and informal settlements, where insecure property ownership is greatest, the majority of property holders are potentially disentitled from making the necessary applications to receive land-use or building plan approvals to operate a home-based micro-enterprise.¹⁸⁵

The phenomenon is a barrier to the regularisation, growth and investment of the informal sector.¹⁸⁶ When the micro-enterprises intend to rezone their property from ‘residential’ to ‘business’ the financial, bureaucratic and knowledge barriers often obstruct such attempts.¹⁸⁷ Evidence suggests that micro-enterprises significantly contribute to their communities’ food access. If the municipality, therefore, adopts a food systems approach in the implementation of the LUS it should give effect to the food-sensitive issues¹⁸⁸

It should be stated that SPLUMA does not prescribe specific zoning categories. Municipalities may, therefore, determine their own zoning categories, that is, formulate a zoning and decide what is permitted under it. However, SPLUMA does address the need for appropriate categories of land-use zoning in two ways. First economic inclusion is specifically listed in section 3(b) as one of the

¹⁷⁹ Van Wyk J (2012) 117.

¹⁸⁰ Van Wyk J (2012) 117.

¹⁸¹ Petersen L (2017) 3/10.

¹⁸² Petersen L (2017) 3/10.

¹⁸³ Petersen L (2017) 3 of 10.

¹⁸⁴ Petersen L et al (2017) 14.

¹⁸⁵ Petersen L et al (2017) 42.

¹⁸⁶ Petersen L et al (2017) 15.

¹⁸⁷ Petersen L et al (2017) 15.

¹⁸⁸ Petersen L et al (2017) 15.

objectives of spatial planning and land-use management. Section 3(b) of SPLUMA instructs a municipality to decide carefully the permitted use of land and the impact of its decision on economic inclusion.¹⁸⁹ Second, SPLUMA's call for the incremental inclusion of land-use management and regulation in informal settlements, slums and areas not previously falling under a land-use scheme, discourages municipalities from introducing onerous formal planning rules in those areas.¹⁹⁰ SPLUMA instructs municipalities to adopt an incremental approach to the introduction of land-use management and regulation. Municipalities may use broad, flexible zoning as well as overlay zones to allow for specific development projects, such as mixed-use developments, housing along transit corridors, or affordable housing. This must be coupled with a reasonable and lenient approach to enforcement of the LUS which will be dealt with later.

To improve food security and food access, it is argued that municipalities must consider introducing changes to the zoning regime, particularly in informal areas, to accommodate the needs of the informal sector. There are two provisions in SPLUMA that deal with the procedures to amend the LUS. First, section 26(5) of SPLUMA stipulates that a 'municipality, may after consultation, amend its land-use scheme if the amendment is (a) in the public interest; (b) to advance, or is in the interest of, a disadvantaged community; and (c) in order to further the vision and development goals of the municipality'. Section 26(5) is generally understood as a provision that deals with rezoning, initiated by the municipality. In other words, it is not occasioned by an application. Section 28(1) provides that a 'municipality may amend its land-use scheme by rezoning any land considered necessary by the municipality to achieve the development goals and objectives of the municipal spatial development framework'. Section 28(1) refers to the rezoning on application. In other words, the owner applies for a rezoning of his or her property. A public participation process must be followed to ensure all the affected parties have the opportunity to make representations on or appeal the decision.¹⁹¹

Both sections 25(6) and 28(1) require public participation but the first one is more contentious as the owner does not necessarily have to consent. It is, in particular, the rezoning at the initiative of

¹⁸⁹ SALGA (2018) 93.

¹⁹⁰ SALGA (2018) 97.

¹⁹¹ S28(2) of SPLUMA.

the municipality that represents an opportunity for the municipality to introduce ‘forward zoning’, that is, zoning that makes provision for multiple uses, even before land owners apply for it. It can be used to stimulate economic growth, in an area. This can be done to include local food traders into the local economy to safeguard that the LUS realises the development goals of the MSDF.

(b) Land distribution for informal township entrepreneurship

Many organic businesses have emerged in townships. They serve the needs of the ‘highly concentrated residential populations’.¹⁹² Mpangane and Fakir argue ‘[t]he township economy, albeit largely informal, is a multi-billion rand industry which provides employment and sustains the livelihoods of many South Africans’.¹⁹³ It was argued earlier in section 2.2.3 that local communities often prefer food sold from the informal street traders above the supermarkets.¹⁹⁴ Studies have also shown that in many instances homegrown food is more nutritious than food sold by the formal retailers, especially in the township context.¹⁹⁵ Formal retailers continue to expand their business in townships because they are financially equipped to do so.¹⁹⁶

In Gugulethu, a township in Cape Town, the current land distribution patterns in the township suggest that land is used mainly for housing but ‘by and large, much unused land has been used for the development of retail shopping centres, and to a very limited extent manufacturing or other industrial hubs’.¹⁹⁷ Mpangane and Fakir observed that in Gugulethu, the informal sector is home-based orientated not out of choice but rather as a means of survival.¹⁹⁸ In fact, entrepreneurs are mostly ‘forced to find geographical refuge for their businesses within their own homes due to the fact that it is the only piece of land they can easily access, leading to a decrease in the value of their homes and their overall quality of life’.¹⁹⁹ This hampers the growth and development of their businesses. In addition, they are met with further obstacles, such as their spatial ‘(dis)location’

¹⁹² Petersen L (2017) 3/ 10.

¹⁹³ Mpangane T and Fakir E ‘Hunger for urban land and township development central to expropriation debate’ *NEWS24* 23 March 2018 1-2.

¹⁹⁴ Petersen L (2017) 3 /10.

¹⁹⁵ Charman A, Bacq S & Brown K ‘*Supermarkets, Street Traders and Spaza Shops: Spatial Determinants Of Formal Retailers’ Impact On Informal Micro-Enterprises In Philippi, Cape Town*’ (2019) https://foodsecurity.ac.za/wp-content/uploads/2019/02/FINAL_CoE-RR-002_SLF-Feb-2019.pdf (accessed 7 September 2019).

¹⁹⁶ Charman A, Bacq S & Brown K (2019) 16-20.

¹⁹⁷ Mpangane T and Fakir E (2018) 1-2.

¹⁹⁸ Mpangane T and Fakir E (2018) 1-2.

¹⁹⁹ Mpangane T and Fakir E (2018) 1-2.

from established nodes of trade, commerce, industry and economic activity, and the state of poor infrastructure means the rail, road and other transport connectivity is poor.²⁰⁰

Mpangane and Fakir argue this is not a viable environment to grow the informal township economy and ‘vacant and unused land that is owned by government should be put to productive use and allocated and reserved for manufacturing hubs owned by township entrepreneurs’.²⁰¹ Mpangane and Fakir add, that in Gugulethu ‘large tracts of urban land in townships are state-owned...there are some open spaces and unused sports fields and built infrastructure that remain idly unproductive’.²⁰²

Pulka’s study, discussed in section 3.4.5, dealt with the expansion of supermarkets in Langa. She stressed the municipality failed to consult with the informal sector and little consideration was given to their needs. Pulka identified that in Langa stated-owned land was turned over to private developers instead of the informal sector. This happens in Gugulethu as well. Mpangane and Fakir observed that public-owned land is not released to grow the informal sector.²⁰³ The land release may address housing, economic, social cohesion and agricultural needs.²⁰⁴ For example it may stimulate urban agriculture, township businesses, sports and recreational activities.²⁰⁵

So how can SPLUMA be used to disrupt this pattern of land distribution in townships? It is argued that SPLUMA itself does not provide a mechanism to address the poor patterns of land release as a framework law, but it guides and encourages municipalities to develop the mechanisms to do this.

First, section 7(a)(iii) of SPLUMA instructs municipalities to incorporate into the LUS provisions that enable redress in access to land by disadvantaged communities and persons. Second, section 7(e)(ii) of SPLUMA requires all government departments to give their sector inputs during the preparation or amendment of spatial development frameworks. In this regard, it is argued that large

²⁰⁰ Mpangane T and Fakir E (2018) 1-2.

²⁰¹ Mpangane T and Fakir E (2018) 1-2.

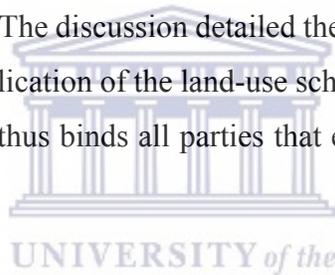
²⁰² Mpangane T and Fakir E (2018) 1-2.

²⁰³ Mpangane T and Fakir E (2018) 1-2.

²⁰⁴ Liedtke S ‘Gauteng rapid land release programme to be launched next week’ *Engineering News* 22 August 2018.

²⁰⁵ Liedtke S (2018) 1/1.

tracts of urban land in townships that are state-owned, and open spaces and unused sports fields and built infrastructure that are ‘idly unproductive’ be earmarked for the informal sector. Third, section 7(e) (iv) of SPLUMA demands transparent processes of public participation that afford all parties the opportunity to provide inputs on matters in the preparation and amendment of a LUS. Fourth, section 24(3) of SPLUMA encourages municipalities to include special zones to address the development priorities of the municipality. For example, if the MSDF identifies a particular area in the municipality for a future business hub or an area for low-cost housing, the municipality can proactively attach the required land-use rights to the properties in that area, even when there is no application yet.²⁰⁶ Alternatively, if the municipality wants to make land-use in particular areas more intensive and allow multiple use, it can proactively attach the required land-use rights to the properties in those areas.²⁰⁷ The above four examples illustrate the potential of SPLUMA to encourage zoning practices that follow a food systems approach, rather than merely controlling health, safety, and welfare aspects. The discussion detailed the levers that may be used to entrench a food systems approach in the application of the land-use scheme. It was argued that the land-use scheme is legally enforceable and thus binds all parties that exercise their land-use rights within the municipal jurisdiction.



5 THE MUNICIPAL PLANNING TRIBUNAL AND FOOD ACCESS

5.1 SPLUMA framework for considering land development applications

The section that follows will outline the role of the MPT. It will demonstrate how the MPT’s powers may be used to leverage a food systems approach when considering and approving development applications.

5.1.1 Authority of first instance

Section 33(1) of SPLUMA confirms that all development applications must be submitted to the municipality as the ‘authority of first instance’. However, subsection 33(2) of SPLUMA stresses

²⁰⁶ Note this was possible, even before SPLUMA. Berrisford S & Kihato M ‘Local government planning legal framework and regulatory tools: vital signs? Chapter 17 in van Donk M, Swilling M, Pieters E, Parnell S (eds) *Consolidating Developmental Local Government- Lessons from the South African Experience* (2008) 382-390.

²⁰⁷ Berrisford S & Kihato M (2008) 382-390.

that if authorisation is required in terms of any other legislation for related land-use, then such an application must be made to and approved by such authority.

5.1.2 Establishment of the MPT

Section 35(1) of SPLUMA instructs a municipality to establish an MPT to determine land-use and development applications. Section 35(3) of SPLUMA prescribes that the municipality must establish a system for how it receives, considers and decide applications. In doing so the municipality must consider whether the final decision will lie with the MPT or an authorised official. This includes procedures for decision-making, internal timelines, and application fees. The municipality must establish criteria for deciding which applications will go to the MPT or to an authorised official. Since these matters affect and bind everyone in the municipal area they must be contained in a by-law.

Section 36(1)(a-b) of SPLUMA sets out the requirements for the composition of the MPT. The MPT must consist of officials in the full-time services of the municipality; persons who are not officials and who have knowledge and experience in spatial planning, land-use management and land development or the law related thereto. Section 36(2) of SPLUMA expressly prohibits the appointment of municipal councillors to the MPT. Section 36(3) of SPLUMA insists that the MPT must consist of at least five members or more as the council deems necessary. In terms of section 36(4) a municipal council must designate the chairperson and deputy chairperson of the MPT.

5.1.3 Substantive powers of the MPT

Section 41 of SPLUMA sets out the substantive powers of the MPT. These provisions give practical content to the municipality's land development management powers.²⁰⁸

In terms of section 41(1) of SPLUMA an MPT may upon application change the use, form or function of land; or remove, amend or suspend a restrictive condition. Section 41(2) of SPLUMA

²⁰⁸ Although the section does not mention 'an authorised official' section 35(4) of SPLUMA is argued to apply to section 41. Therefore the powers conferred to the MPT has equal application to 'an authorised official'.

CHAPTER 5

provide that a land application includes: (i) township establishment; (ii) subdivision of land units; (iii) consolidation of land units; and (iv) amendment of a land-use scheme.

SPLUMA directs how the MPT may determine matters. For example, section 40(7)(d) permits the MPT to conduct any necessary investigation.

Section 42 of SPLUMA outlines the criteria to consider and decide applications. In deciding an application, the MPT must take the following into account:

- the development principles;
- the norms and standards;
- measures to protect and promote the sustainable use of agricultural land;
- national and provincial policies and the MSDF;
- the public interest;
- the constitutional transformation imperatives and the related duties of the state;
- the facts and circumstances relevant to the application;
- the respective rights and obligations of those affected;
- the state and impact of engineering services, social infrastructure, open space and environmental requirements; and
- any factor that may be prescribed, including timeframes for making decisions.

Section 42(3) of SPLUMA empowers a MPT to approve an application in whole, or in part, or rejected whereas section 43(1)(a-b) of SPLUMA permits the MPT to approve an application subject to conditions. It will be shown later how the use of conditions can assist to promote a food systems approach in land development.

5.2 Linking land development to food access

The MPT must take cognisance of the ways that food issues affect the lives of the community and the health of the community.²⁰⁹ Thus a ‘food systems’ approach must be used to ensure that a

²⁰⁹ Pothukuchi K & Kaufman J (2000) 118.

holistic strategy is used to overcome food insecurity. Locality, transport options, dwelling typology, refrigeration, employment patterns and places of work all determine the food access for communities.²¹⁰ As an example, the food sector establishments such as restaurants, fast food outlets, supermarkets, speciality food stores, taverns, food wholesalers, and the informal food sector all form an important part of the local economy.²¹¹ Municipalities need to acknowledge that many residents are employed in the food sector.²¹² The food sector also provides a means of survival for the poor who depend on low paying jobs in food stores and eating places.²¹³

Since food-sensitive planning is a new concept not many municipalities have developed expertise in this area. It is thus argued that the appointment of food planning experts is critical to understand the intersection of planning for sustainable development and food access. The technical experts and other advisers can advise and/or recommend to the MPT the possible impact of the different choices on a land development application as it relates to food access.²¹⁴ Section 40(7)(g) of SPLUMA allows the MPT to appoint a technical advisor to advise or assist in the performance of the MPT. Section 39(2) of SPLUMA, however, draws a clear distinction between the role of the technical advisers from the members of the MPT. It instructs that an adviser 'is not a member of, and has no voting rights in meetings of, the MPT'.

Given the critical role, the MPT performs it is useful to reflect on the SPLUMA provisions that empower the MPT to give effect to the needs of the urban poor. Section 40(7)(d) of SPLUMA grants the MPT to conduct investigations when necessary. This serves an opportunity for the MPT to investigate the impact of proposed developments on the wellbeing of vulnerable communities, which includes their food security. This is also supported by section 7(c)(ii) of SPLUMA, which forms part of the development principle of efficiency discussed in section 2.2.3 The specific provision 7(c)(ii), demands that the municipal decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts.

²¹⁰ Skinner C & Haysom G (2016) 8.

²¹¹ Skinner C & Haysom G (2016) 2-4.

²¹² Skinner C & Haysom G (2016) 5-6.

²¹³ Skinner C & Haysom G (2016) 5-6.

²¹⁴ Pothukuchi K & Kaufman J (2000) 117-119.

Furthermore, the MPT must also identify the existing impacts of the food system activities on a community's land-use patterns.²¹⁵ The MPT should analyse trends in the location, number and size, distribution, associated land-use requirements, and relationship to neighbourhoods of food entities.²¹⁶ It is suggested that municipalities carry out this type of analysis, by using their powers to conduct an investigation into certain cases to determine the impact of a development on a particularly vulnerable community. It may be argued that this is more appropriate as part of the preparation of the MSDF because it deals with the community food assessment data. Still the food system is dynamic and the MSDF is prepared only every five years and even though it is subject to review it does not provide the necessary scrutiny of a specific investigation. Thus section 40(7)(d) of SPLUMA is especially useful because it enables the investigation to be undertaken on a case-by-case basis. The MPT can also use the technical experts and other advisers to conduct these investigations.

5.3 The use of conditions to promote food access

Section 43(1) of SPLUMA provides that an application for development may be approved if it complies with certain conditions imposed by the MPT. It is argued that when used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The use of conditions is thus to balance the owner's interest in developing the land with the municipality's interest in matters for the common good and the community's interests in being protected from any adverse impacts that such a development may cause. The ability to impose conditions enables an element of flexibility in decision-making. In the context of food security, it is argued that conditions as a mechanism to conduct food-sensitive planning. What follows are two examples of how the MPT may use conditions provided for in section 43(1) of SPLUMA.

²¹⁵ Pothukuchi K & Kaufman J (2000) 120.

²¹⁶ Pothukuchi K & Kaufman J (2000) 120.

(a) Including the informal sector

Shopping centres are argued to affect micro-enterprises in lower-income areas.²¹⁷ How could the MPT address these problems? The argument here is that the MPT may subject development approvals to conditions. Denoon-Stevens argues that the inclusion of micro-enterprises in the development of malls is possible by coercing developers to create more inclusionary retail spaces. This may be achieved if developers are obliged, through conditions attached to development approval, to allocate a certain percentage of space for shops, market stalls, pop-up stalls or any other form of structure that accommodates the micro-enterprises.²¹⁸ The aforementioned conditions will not only improve the inclusion of the informal traders but it will increase the access to affordable food for poorer people working in the shopping centres.

(b) Grocery stores that sell fresh produce in retail developments

A further use of land-use conditions is to encourage the availability in retail buildings that lack access to fresh food and vegetables. Denoon-Stevens argues that in New York, incentive zoning was used to permit the inclusion of grocery stores in apartment blocks. To compensate for the lost residential space additional floor space was permitted in the building equal to the total area of the grocery store in the said building.²¹⁹ Although the mechanism of incentive zoning, is different from the use of conditions, it is argued that in the absence of incentive zoning then the land-use conditions may be used to ensure that nutritious food is available in retail developments.²²⁰ This is particularly important given the need to stimulate healthy eating behaviour and to promote the availability of fresh foods.

While the MPT is empowered to leverage their powers to promote a food systems approach through the use of conditions it remains uncertain whether they will use this power in practice. However, the discussion earlier pointed out that municipalities are already using food-sensitive planning in their spatial planning instruments. Also, they using their land-use powers to integrate

²¹⁷ Gauteng City Region Observatory (GCRO) '*Shopping malls and centres in Gauteng*' (2018) unnumbered.

²¹⁸ Denoon-Stevens P 'Developing an appropriate land use methodology to promote spatially just, formal retail areas in developing countries: The case of the City of Cape Town, South Africa' *Land Use Policy* (2016) Vol 54 18–28.

²¹⁹ Denoon-Stevens P (2016) 23.

²²⁰ Incentive zoning may be understood as a zoning in which, an incentive such as a relaxation in zoning restrictions are offered to a developer for providing public benefits like building a desired public improvement, or building in areas that requires economic development

CHAPTER 5

the availability of healthy foods into areas that were zoned for other land-use. It is becoming more suitable for municipalities to follow this trend. Particularly because Chapter 2 showed that the global food system mirrored the same challenges as the national food system which means that municipalities across the world are confronted with similar food access challenges.

6 CONCLUSION

SPLUMA is not the panacea for problems associated with food insecurity but this chapter offered some examples of how SPLUMA could assist in overcoming them. In addition, SPLUMA is a framework law and therefore not as progressive as what is expected of the reconstruction of the spatial environments that are divided along race and class. Yet it cannot be denied that SPLUMA does require a paradigm shift in the way planning systems are conceived and implemented. The chapter demonstrated that ignoring food issues in planning decisions does not have neutral outcomes. The neglect of food security has negative outcomes, especially for the most vulnerable communities. The planning and design of spaces must create opportunities to connect people, goods and processes that enhance food access. This requires accurate analyses to influence planning decision-making.

A democratic food system requires a participatory planning method. Municipalities must collaborate with all actors within the food system to address food insecurity. For example, it was argued that municipalities should enter into partnerships to implement projects. The major partners include government departments, the private sector that is, small-scale farmers, food manufacturers and store operators, NGOs, CBOs, and academia. These partnerships may strengthen food security imperatives in spatial planning and design. As a result, this could possibly entrench the food systems approach into the MSDF and in turn be realised in the LUS which deals with the land-use rights.

Municipalities should ensure their planning systems take food issues into account and link systems such as transport and infrastructure networks with the food system. SPLUMA's insistence that its development principles are taken into account, provides an opportunity for food security matters to enter the planning system. Thus, municipalities are encouraged to ensure that the MSDFs incorporate food security imperatives. The IDP and MSDF may be used to proactively plan and

CHAPTER 5

budget for food-sensitive planning. The legal status of the MSDF is important in that respect. It binds the municipality since a departure from the MSDF is only permitted if site-specific circumstances justify a departure. If the MSDF makes provision for the inclusion of informal traders it compels the municipality, when making decisions in terms of the land-use scheme to consider the impact of their decisions on the informal food sector.

In addition to its classic organising role, the LUS needs to promote forward zoning and not be confined to the recording and protection of existing land-uses. For example, the use of special zones can play a critical role in identifying economic zones or food-sensitive areas and incentive zoning or conditions to safeguard the inclusion of the informal economy. Should a municipality review its LUS and find it to be unresponsive to the food needs of a community it can amend the LUS on its own accord which serves as a further mechanism to ensure the LUS is connected to the reality of what the land must be used for rather than remaining ‘fantasy plans’.²²¹

The land-use management systems must be used for the public good and to further the SPLUMA objectives of social integration and neighbourhood improvement. This includes efforts to work towards a positive land market, in turn, to facilitate the capability of people to access food.

The MPT needs to appreciate the impact of the food system on their communities’ land-use patterns. SPLUMA, enables the appointment of technical and other advisers to assist the MPT. These technical and other advisers can, therefore, guide the MPT in analysing trends in the location, number size, distribution, associated land-use requirements, and relationship to neighbourhoods of food entities. The MPT is also empowered to impose conditions on the approval of developments that can proactively facilitate food access. One of the examples showed how the MPT could force developers to make spaces open for informal food traders in shopping centres and malls.

Chapter 6 will provide an evaluative summary of the thesis and make recommendations on the research question.

²²¹ Watson V cited in Battersby J (2017) 314-316.

CHAPTER 6: EVALUATIVE SUMMARY & RECOMMENDATIONS

1 INTRODUCTION

This chapter provides an evaluative summary of the four chapters. Recommendations are provided to improve the role of municipalities in food security by using a food systems approach.

2 MAIN FINDINGS OF THE CHAPTERS

2.1 A food systems approach to realise the right to food

It was submitted that the food systems approach, provides a comprehensive and integrated way to understand how each component of the food system functions. A food system comprises all the processes associated with food production and food utilisation, such as growing, harvesting, packing, processing, transporting, marketing, and consuming of food. The food system includes the governance and economics of food production, its sustainability, the degree to which food is wasted, and how food production affects the natural environment. It was argued that a food systems approach is required to confront the global and national food security challenges that are set out below.

The global food system is generally dominated by the corporate sector in the processing, storage and distribution of food. This unsustainable global food system threatens the food security of developing countries to a greater extent than the developed countries. Seven factors supported this assertion, namely, the availability of food; impact on public health; role of multinational corporations in the production and supply of food; food price volatility; food loss and wastage; impact of agricultural production on the environment and impact of land grabs.

It was further pointed out that food insecurity in the developing world can be attributed to a variety of factors including the:

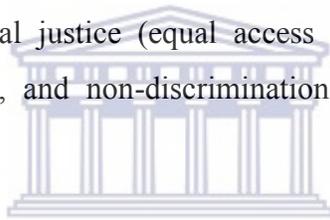
- consumption of cheap junk foods;
- lack of access to land;
- poor integration of small-scale farming into the agricultural sector;
- poor rural and urban linkages; lack of access to resources;

CHAPTER 6

- lack of access to opportunities in the cities;
- regulatory impediments to street trading;
- lack of affordable housing; and poor governance.

South Africa experiences all these challenges in its food systems. Corporations control a disproportionately large proportion of the food value chain. Apartheid legislation contributed to the marginalisation of small-scale farming and the informal food sector (street traders, micro-enterprises, and hawkers).

The SDG (2030 Agenda) calls for localised solutions to address the development challenges across the world, which include the distorted food systems. Local governments are increasingly taking on more responsibility to improve their local food systems. For example, local governments are directly dealing with many elements of the food system. This includes matters such as, climate change; resilient cities; and spatial justice (equal access to city resources the provision of affordable housing, social justice, and non-discrimination based on class, gender and race etcetera).



The right of access to adequate food, was shown to be useful in identifying the different components of the right to food. Early literature on the right to food provided a narrow interpretation of the right, with the focus on food availability alone as a matter of survival. The literature shifted to include the idea of “adequacy” in the right to food. The concept of adequacy encompasses broader issues such as nutrition, safety, as well as cultural and religious acceptability of food. At a conceptual level this means the right to food must be interpreted in a manner that promotes social justice and that demand states to adopt appropriate economic, environmental, and social measures. This approach represents a shift in the way food is conceived. It elevates the role of the state to put in place measure to facilitate food access.

It was argued that the right to adequate food is recognised in international, regional, and national instruments. The analysis on the right of access to sufficient food in section 27(1)(b) of the Constitution confirmed that the state is not responsible to provide individuals with food. Therefore individuals need to strive within their own means to acquire or produce food. However the state

CHAPTER 6

must ensure that an enabling environment is in place where individuals are empowered to access resources such as available land, finances, and basic services to acquire or produce food.

There is no framework law on the right to food in South Africa. Therefore it was argued that a framework law on the right to food is essential to achieve the objectives of the right to adequate food. In South Africa local government together with the national and provincial government must realise the right to food. Particular attention was given to how the right to food binds local government. The Constitutional Court's judgment in the *Grootboom* matter confirmed that each sphere of government is responsible for the progressive realisation of the right to housing within their constitutionally allocated powers. The same Court's judgment in *Blue Moonlight* confirmed that local governments can be held directly accountable when they fail to realise the right to emergency housing. (despite housing not appearing in local government's list of constitutional powers) it was contended that the same applies to the right to food.

The food systems approach, and the precedent set in *Grootboom* and *Blue Moonlight* established the normative basis for chapters 3, 4, and 5. Within this context it was argued that local governments must progressively plan for the food needs of their local community which include the adoption of, budgets, by-laws, policies and administrative decisions.

However, local governments' role in realising the right to food is new to South Africa. It thus required research on the question of how, direct linkages can be drawn between the food systems and the division of powers amongst the central and sub-national government in a multilevel system of government. A specific focus was directed on the local government powers and functions that intersect with the food system.

An overview on the typical local government responsibilities linked to food security was presented. Although each country is different and each local authority is different it was argued that there are global trends in local government food security initiatives that are particularly useful for local government in South Africa. The chapter presented four areas that are critical for the intersection of the food systems approach and local government responsibilities, namely, (a) strategic and responsive governance; (b) local land-use planning, regulation of the built

CHAPTER 6

environment and transport infrastructure; (c) local trade; and (d) local environmental and health functions. Some of the initiatives are mentioned below.

First at least three strategic governance initiatives can be employed to strengthen food governance in local or regional areas. This relates to the adoption of a food charter, the establishment of a food policy council, and the deploying of community food system assessments (CFSA).

Second it was shown how local authorities can develop land-use policies and use the built environment to facilitate equitable food systems. It was argued in particular that urban planning can influence the location and establishment of urban agriculture activities, such as community gardens. Urban agriculture does offer economic and social benefits that include the productive use of vacant spaces, poverty alleviation, and improved health outcomes. A food systems approach to the utilisation of local spatial planning and land-use powers can result in improved diets and curtail the intake of fast foods for children. For example, some local authorities are empowered to design and spatially plot areas that are specifically allocated for food production. Furthermore, the food systems approach emphasises the connection between food security and urban transport. This is especially important for the informal urban sector. For example many informal traders sell food (for affordable prices) along transport nodes and corridors that are accessible to the urban poor.

Third the study showed that local authorities use ‘alternative food networks’ (AFNs) to ensure diverse supply chains that better connect local farmers within the agricultural value chains and to improve the distribution of nutritious and affordable food. There are different ways to establish AFNs, such as, fair trade practices; public sector procurement; community food supply projects; farmer markets; and initiatives to promote local food.

Fourth it was argued that local authorities have explored mechanisms to promote sustainable and eco-friendly agricultural production and distribution methods. For example, some municipalities include sustainability criteria in the norms for municipal food procurement, with regard to the municipal procurement of food for restaurants at schools, nurseries and service centres. More specifically the municipal procurement policies promote: purchasing of food that is produced and

prepared in close proximity to consumers; low greenhouse gas (GHG) emissions and efficient transport; and conversion of food waste into biogas production.

Lastly a critical function carried out by many local governments is to ensure that food is safe. The main determinants of food safety, and the safety of those involved in producing and processing food are found in the procedures and standards and regulations often controlled by local authorities.

Many initiatives are implemented by local governments to improve food security. These initiatives offer important lessons and examples for local governments in South Africa. The above initiatives provided the backdrop for the identification of the ‘levers’ for municipalities in South Africa to improve food security.

2.2 Food security and local government in South Africa

Chapter 3 examined whether the food security policies of South Africa provided a meaningful role for local government. The policies were measured against the principles outlined in the *Grootboom* judgment which demands that the policies must be comprehensive and well-coordinated. With respect to the food security policies it was argued that a clear allocation of responsibility must be established to strengthen accountability by all spheres of government. The food security policies need to be co-designed by all relevant stakeholders, especially involving groups adversely affected by malnutrition and hunger. Policies must be ‘balanced and flexible’ to accommodate: (i) intermittent food crises; (ii) short; (iii) medium; and (iv) long term food needs.

Five key policies were assessed, namely, the Integrated Food Security Strategy (IFSS); Government Outcomes Approach (Outcome 7); Food Security Policy (FSP); National Development Plan (NDP) and the National Policy on Food and Nutrition Security (NPFNS).

First, the Integrated Food Security Strategy aimed to solve the problem of food security through an increase in the supply of agricultural production. It was contended that the IFSS failed to adopt a food systems approach. At a conceptual level, the policy failed to address the structural causes

CHAPTER 6

of food insecurity and provided an unclear and insignificant role for local government. The study found the IFSS failed to abide by the principles articulated in *Grootboom*.

Second, Government Outcomes Approach (Outcome 7) also reflected a food production bias similar to the IFSS. This negatively influenced municipalities' perception that food security concerns an increase in agricultural production. In South Africa the Constitution allocates the function of agriculture to the national and provincial government. Thus many municipalities cited Outcome 7 in their IDPs and tended to view food security as an agricultural matter. This suggests that municipalities are reluctant and uncertain about their role towards food security. Municipalities do not appreciate the levers they control to realise the right to food as demonstrated in Chapter 2. A major problem with Outcome 7 is its failure to acknowledge and respond to urban food security.

Third, the Food Security Policy marked a shift from the IFSS and Outcome 7. It provided a direct role for local government to address food insecurity in both urban and peri-urban areas. The FSP recognised the local government levers with respect to municipal planning to protect agricultural land. The FSP failed however to link local government to the food system and to connect the land-use management systems to urban food insecurity.

Fourth, the NDP is an overarching plan for the country to eliminate poverty, reduce unemployment, and inequality by 2030. The ultimate goal of the NDP is for people to enjoy a decent standard of living that includes access to nutrition, water, electricity, sanitation services, housing, and safety. The NDP promoted the development of an inclusive economy and growing capacity of the state and society thus it directly elevated the status of the informal sector. Specific to the issue of food security the NDP offered sound proposals to address the structural causes of food insecurity that resonated with a food systems approach. It obliged the national government to prioritise food security in the government's strategic mandate and required the development of a policy framework to secure the right to food. The NDP called for better integration at a national, provincial, and municipal level of the sector departments responsible for the functions associated with food security. However, it was concluded that the NDP failed to identify a clear role for local government in food security. While the NDP envisages the development of a framework law on

CHAPTER 6

the right to food, it is uncertain whether the NDP actually intended the framework law to provide greater specificity for local government.

Fifth, the National Policy on Food and Nutrition Security was introduced to give effect to the NDP. The NPFNS itself states that it serves as a precursor to the abovementioned framework law on the right to food. Still the NPFNS was argued to be flawed in many respects. One of the most significant failings is the lack of integration or ‘food systems approach’ to addressing the challenges of the food system. For instance the study found that no measures are provided to address the aggressive corporate domination of the food value chains.

The food policies failed to allocate and clarify responsibilities amongst the spheres of government. In the absence of a framework law on the right to food, the food security mandate for local government remains unclear. All in all, it seems that it is understandable that municipalities are unclear about what their role is in food security.

At the same time there are many powers and functions that local government performs that intersect with the food system. Particular emphasis was given to the constitutional protection of the local government status, which was explained in the evolution of local government from apartheid to the establishment of democratic local government. Based on the constitutional status of local government as a sphere with constitutionally protected powers and their developmental duties it was argued that in spite of the food policy framework of South Africa, local government has important constitutional obligations in terms of the right to food. Also a progressive role is expected from municipalities in terms of sections 152 and 153 of the Constitution that set out the developmental role for local government.

It was argued that the Constitution allocates original powers to local government that offer points of leverage for local government to make meaningful contributions to the realisation of the right to food. The connection between food security and the original powers of local government, listed in Schedules 4B and 5B of the Constitution were assessed. Five food security-related themes were used, namely, the:

CHAPTER 6

- (a) provision of municipal services to support food security that involved the role of local government in the functional areas of electricity, water, sanitation, and solid waste;
- (b) regulation of the local food trade that included the functional areas of trading regulations, street trading, markets and licensing and control of undertakings that sell food to the public and billboards;
- (c) food safety which concerned municipal health and abattoirs;
- (d) food-sensitive planning that dealt with municipal planning, public spaces and building regulations; and
- (e) regulation of child care facilities and its impact on food security.

With respect to enhancing access to healthy and nutritious food, the municipal planning responsibilities offer points of leverage for municipalities to find a better balance between the role of large retailers and local food traders in the market. They may also offer opportunities to reduce the regulatory burden on food traders in low income areas. There are a number of other municipal competencies that offer opportunities for municipalities to help improve access to healthy and nutritious food. For example, municipalities can use their power to regulate fresh produce markets to connect small-scale farmers and informal traders to consumers. They can also use their power to regulate refuse removal to reduce food wastage. Lastly, they can use their power to regulate billboards to discourage the promotion of unhealthy foods.

Apart from the Schedule 4B and 5B powers, there are additional powers through assignment. Assignments may be general (discretionary) or sometimes assignments are specific (compulsory) in terms of section 156(4) of the Constitution. The importance of section 156(4) of the Constitution for a food systems approach to local government powers was illustrated with respect to the National School Nutrition Programme (NSNP). It was argued that the implementation of the NSNP may be improved if a decentralised management model was used in South Africa. Comparative examples from Brazil and Ghana suggested that such a model supports the argument for assignment.

A further argument was provided for local government to exercise matters incidental to the Schedule 4B and 5B matters in terms of section 156(5) of the Constitution. The rationale is to

ensure the effective regulation of the food security-related matters by using the “incidental powers” provided for in section 156(5) of the Constitution. It was argued that the “incidental powers” are not to be interpreted as additional powers for municipalities but rather, they serve to ensure the effective exercise of the existing local government powers. The importance of section 156(5) of the Constitution for a food systems approach to local government powers was illustrated with respect to waste pickers in South Africa. They contribute significantly to diverting waste from landfill which saves municipalities cost and space in the landfill sites as well as facilitating the recycling of organic waste which contributes to environmental sustainability. Comparative examples from Brazil and India suggested that the inclusion of waste pickers into the formal waste management sector has many positive outcomes for food security. Based on the comparative examples it was submitted that section 156(5) of the Constitution may be used to regulate waste pickers since there is no national or provincial legislation in place that regulates waste pickers.

Local government has legislative competence with respect to the original powers in Schedule 4B and 5B of the Constitution as well as the matters assigned to it in terms of section 156(4) of the Constitution, and incidental powers in terms of section 156(5) of the Constitution. The legislative competence of local government is safeguarded in section 156(2) read with sections 155(6) and 155(7) of the Constitution. The authority of the national and provincial government to “regulate” Schedule 4B and 5B matters does not include the power to exercise municipal competencies or to perform municipal functions. Instead, the regulation must amount to “framework legislation” dealing with national standards, minimum requirements, monitoring procedures and so on. It was argued that the regulatory powers of the national and provincial government create further opportunities to direct municipalities to adopt a food systems approach. For example, the regulation of “billboards and the display of advertisements in public places” is regulated by a number of national acts. The minimum standards set out in those laws for example require municipalities to take into account the following matters when considering applications: the locality and the number of signs already displayed on the erf; the findings of the available impact assessments (for traffic, environmental or heritage) and the public participation processes where applicable. The national and provincial regulatory powers may thus complement these standards by food security related standards. It was contended in Chapter 2 that corporate companies use aggressive marketing strategies targeted at children and adolescents to sell unhealthy ‘junk foods’.

CHAPTER 6

Internationally local governments are using the regulation of billboards and the display of advertisement in public places as one of the measures to address this problem. For example, they particularly ban the use of billboards and advertisements in public places that promote unhealthy eating behaviour targeted at children.

It was argued that municipalities have significant powers to promote food security. The power to adopt by-laws is an important part of this constitutional authority. However, in practice municipalities are generally reluctant to exercise their law making powers.

There are different categories of local government, namely, metropolitan, local and district municipalities that were described in Chapter 3. The chapter proceeded to examine the role of the different categories of municipalities and the impact of this on the governance of food security.

Metropolitan municipalities are self-standing institutions and may exercise all of local government's original powers. The district municipality consists of a number of local municipalities and shares powers and functions with the local municipalities in its jurisdiction. The Constitution requires national legislation to appropriately divide powers and functions between the district and local municipalities. This is to ensure equitable and sustainable provision of municipal services.

Section 84 of the Municipal Structures Act 117 of 1998 divides the local government powers between the district and local municipalities. Some of the district food security-related functions include municipal health services; municipal planning for the whole area of the district; and fresh produce markets and abattoirs. The local municipal food security-related functions include municipal planning for the area of the municipality; municipal public transport; and markets except for fresh produce markets. The above division of powers are not absolute and may be transferred between the district and local municipality.

It was contended that the abovementioned division however produced a number of difficulties with respect to food security related matters. One of these difficulties concerned the definitional overlap of the functional areas. For example, there is confusion with respect to the allocation of the functional areas because of the obscure manner in which they are phrased. To illustrate this

CHAPTER 6

difficulty the phrase “*servicing the area of a major proportion of the municipalities in the district*” in section 84(1)(k) of the MSA will be mentioned. This section pertains to fresh produce markets and abattoirs. For example the meaning of “a major proportion” is not defined and it was argued that abattoirs may be administered by a: provincial government in terms of Schedule 5A of the Constitution; local government in terms of Schedule 5B of the Constitution; district municipality in terms of section 84(1)(k) if it is a municipal abattoir serving a major proportion of the municipalities in the district; and local municipality in terms of section 84(2) if it does not serve the areas of a major proportion. It was submitted that the manner in which the MSA divides the powers between the district and local municipality is thus problematic. The MSA provides unclear terms and unworkable measures to divide the powers between the local and district municipalities. In practice this has resulted in poor coordination between the district and local municipalities and strained intergovernmental relations. Thus the legal framework is argued to impede food security imperatives.

District municipalities must embed a food systems approach in exercising their powers. This was illustrated by the role that districts municipalities should fulfil with regards to fresh produce markets. Fresh produce markets were argued to form an indispensable part of the food value chains, and to significantly contribute to the poorer community’s access to healthy food. While the market attracts the vendors and consumers from across the district, it is the district that must regulate the market. It was stressed that the regulatory and local support efforts to connect small-scale farmers and small retailers to consumers inevitably extend beyond municipal jurisdictions. The consequence of the MSA is thus that district municipalities, and not local municipalities are expected to play a central part in the effort to use markets to connect small scale farmers and retailers to consumers.

The opportunities that markets offer include providing livelihoods, availability of more nutritious food, and physical accessibility to affordable foods. Districts are thus obliged respond to the unique needs of the region. Yet is was mentioned that districts are poorly capacitated and resourced to realise the right to food.

2.4 Integrated development planning

The integrated development planning (IDP) is the central planning tool for transformation. Thus the municipal IDP should serve to achieve the NDP goals that include addressing obstacles in the food value chains. The NDP acknowledges that local government cannot do this alone and that it requires all the spheres to work in collaboration to achieve the developmental objectives in line with the cooperative principles set out in section 41 of the Constitution. The IDP serves as the bridge between the long-term vision of the NDP and the day-to-day workings of government.

The MSA provides the legal framework for the development, adoption, and implementation of the IDP. The study noted that there were many ways in which the legal framework for the IDP resonated with the principles of a food systems approach. For example, a food systems approach requires integrated and bottom-up planning. It is submitted that the IDP serves as a key instrument to achieve integrated and bottom-up planning within local government. Moreover, the IDP must inform all development and give “expression” to the national, provincial, partners and communities’ interest in the local space.

The study highlighted how the IDP may be used to promote a food systems approach in the municipal forward planning instruments. For example, municipal planning instruments must strive to maximise the municipal resources and to increase synergy across the different municipal departments and/or sectors. Municipalities must develop sectoral plans and create mechanisms for the coordination amongst the different sectors, namely, transport, housing, water, health, environment etcetera. In addition, municipalities should develop long-term plans that are aligned to the NDP and provincial strategies and these plans serve a critical role in creating the spatial form of the municipality. This holds great potential to facilitate a food systems approach and to embed food thinking in the municipal planning. The IDP is required to be developed through extensive public participation with the local residents, which potentially allows the communities food needs to be included in the IDP. The municipal spatial development framework that forms part of the IDP (and the forward planning instruments in the municipality) can be used to direct the development priorities in the municipal jurisdiction and specifically target areas with high levels of food security.

In practice, however, municipal IDPs generally pay little or no attention to food security. This is because of the lack of clarity regarding local governments' role towards food security in the food security policy framework, where food security was largely perceived as an agricultural matter. In those instances where food security programmes were included in the IDP, there was often a poor linkage with the municipal budget and resources. However, the IDP was still argued to hold great potential to facilitate a food systems approach. The next section will demonstrate how the municipal planning competence may be used to embed a food systems approach to protect agricultural land and realise sustainable farming.

2.5 Municipal planning to protect agricultural land and facilitate sustainable farming

It was argued that connecting spatial planning and land-use management to a food systems approach facilitates the protection of agricultural land and sustainable agricultural practices. The regulation of agricultural land is important to protect land for food production, and to ensure the availability of food supply. It was argued that the Constitution allocates a number of functions to local government that offers points of leverage for municipalities to make meaningful contributions to the realisation of the right to food, through the protection of agricultural land and sustainable food production. The protection of agricultural land may be done through food-sensitive spatial planning in the Municipal Spatial Development Framework (MSDF) whereas the land-use management must ensure that agricultural land is not converted for other land-use. Municipalities must adopt a food systems approach in its' land-use scheme to ensure that for example small-scale farmers gain greater access to land parcels as this was argued to facilitate sustainable food production.

However the findings of this study showed that the legal framework aimed at controlling the development of agricultural land, namely, the Subdivision of Agricultural Land Act 70 of 1970 (SALA) does not provide a food systems approach to protect agricultural land and sustainable agricultural practices. Moreover, it was argued that SALA does not respect the local government original power of 'municipal planning'. In fact it was highlighted that the Subdivision of Agricultural Land Act Repeal Act 64 of 1998 (Repeal Act) aimed to repeal SALA in order to promote decision-making at the local level and to facilitate access to land for the formerly dispossessed communities. However, the Repeal Act was not signed into law and the SALA

CHAPTER 6

provisions remained operative until the time of writing. It was argued that the SALA mechanism, that allows the National Minister responsible for agriculture a veto power over each and every subdivision of agricultural land, to protect agricultural land was flawed in two respects. SALA contradicted the constitutional division of powers allocated to the spheres of government. The other shortcoming that was identified related to the economic model that SALA is based on. It was shown that many scholars are doubtful of the relevance of SALA in the context of the development priorities for the country. In fact many argue that SALA actually worked against the principles of establishing sustainable food systems that promote ecologically friendly food production and livelihoods for small-scale farmers. It was recognised that countries such as Brazil, India and China for example targeted small-farming practices that encouraged female farming and agro ecological farming. However, the economic model underpinning SALA continues to emphasise that farm size determines productivity. SALA pays little attention to questions of which models work better for small-scale farmers and the environment. The ‘municipal planning’ powers were investigated with respect to the dimension of food availability. It was argued that the international literature on the intersection of ‘municipal planning’ powers and food security illustrated the crucial role of local government in food security. However, in South Africa this is a new research area.

UNIVERSITY of the

The constitutionality of SALA was questioned because it limited the executive authority of local government with respect to the regulation and control of land in their jurisdiction. The allocation of the ‘municipal planning’ function by the Constitution to municipalities resulted in legal uncertainty as to which sphere is responsible for certain planning functions. A shift of power was required from the provincial government over critical areas of land-use management to the local governments. It was argued that this resulted in legal uncertainty, particularly in the regulation of agricultural land. The question that required legal clarity was whether the subdivision and rezoning of agricultural land formed part of an ‘agricultural’ function or a ‘municipal planning’ function. The study thus interrogated the meaning of ‘municipal planning’ by analysing seven Constitutional Court decisions spanning from 2009 to 2016. All these cases dealt with the role of local government in the control and regulation of the use of land.

The above analysis concerned how the ‘municipal planning’ powers in relation to the subdivision of agricultural land operates with respect to the veto power of the national government. In the

CHAPTER 6

Wary judgment the Constitutional Court considered the constitutionality of SALA because it was argued to interfere with the constitutional authority of municipalities to conduct ‘municipal planning’. SALA survived the constitutional challenge on the basis that the concurrent exercise of functional powers allocated to the local government in terms of ‘municipal planning’ and the national government in terms of ‘agriculture’ was determined to be an appropriate means to deal with the overlap of the functional areas in the Constitution. It was further determined that the veto power was still necessary, citing food security as one of the reasons to justify the veto power. However the dissenting judgment of Yacoob J found the veto power to be inappropriate because it disregards the existing constitutional framework in place for planning.

Subsequent to the *Wary* judgment a number of cases seemingly contradicted the judgment and instead endorsed the views of Yacoob J, reflected in the judgements of *Gauteng Development Tribunal*, *Maccsands*, *Lagoonbay*, *Habitat*, *Pieterse* and *Tronox*. It was argued that three key principles emerged. First, municipalities are constitutionally empowered to exercise their powers of rezoning and subdivision. Whether or not municipalities make planning decisions that impact beyond their boundary, the power remains with them and a provincial or national government may not veto or usurp this power to protect the interest of agriculture for food security. Second, the national and the provincial governments may not interfere and/or remove ‘municipal planning powers’ by enacting legislation for the protection of agricultural land and food production. This will be contrary to the original power of ‘municipal planning’ guaranteed by the Constitution. Legislation inconsistent with the constitutional framework as set out in *Lagoonbay* is unconstitutional and if challenged, the Constitutional Court will declare such legislation invalid. Third, if the national and provincial government wish to protect the provincial and the national interests of agriculture land and food security they must do so within their own planning powers and may not veto or usurp municipal land-use decisions. If challenged in a court of law, it is submitted that SALA will not survive a constitutional challenge. SALA operating as a planning law is no longer relevant and appropriate since it contradicts the constitutional division of planning powers because it makes the Minister responsible for agriculture the final decision-maker on subdivision applications which is a municipal planning function. The discussion then proceeded to identify how the new planning framework for spatial planning and land-use management,

namely, the Spatial Planning and Land-use Management Act 16 of 2013 (SPLUMA) obliges local governments to protect agricultural land.

It was argued that SPLUMA offers three mechanisms to force municipalities to protect agricultural land. A land development application that materially affects agricultural land needs a separate approval from the national Minister; the municipal spatial and land-use management instruments must give special consideration to agricultural land; and provincial governments are empowered to enact legislation to protect agricultural land as demonstrated in the discussion on the Western Cape Government Land-use Planning Act 3 of 2014. It was contended that this raises serious doubts as to whether the regime set out in SALA is still necessary and if the minority judgment in *Wary* was right, that the function of ‘municipal planning’ is sufficiently regulated to protect agricultural land.

2.6 Connecting municipal planning to urban food security

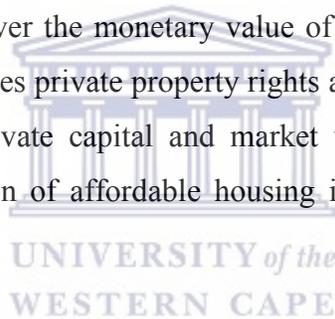
Chapter 5 dealt with food-sensitive planning to enhance food access in particular, urban areas. It was argued that food access centres primarily on an individual or household’s ability to purchase food, which in turn depends on household income, the price of food and the location of food outlets. The chapter outlined the framework in which the SPLUMA development principles need to be implemented. In addition, the chapter set out mechanisms for municipalities to adopt food systems thinking in their planning instruments.

The study confirmed that if food issues are ignored in spatial planning and land-use it does not have neutral outcomes but rather it has been shown to threaten people’s food security. It was argued that the design of spaces must create opportunities that connect people, and goods to improve food access. The research confirmed that the spatial dimensions of the food system requires detailed information about the local food systems to influence the planning decisions and to ensure the appropriate design and use of spaces. It was submitted that municipalities should ensure their planning takes into account food issues and link it to transport and infrastructural networks of the local food systems. This type of integration is promoted in the development principles of SPLUMA.

CHAPTER 6

It was argued that the five development principles in SPLUMA provide a normative background to spatial planning and land-use in South Africa. The development principles must guide not only the preparation and formulation of the planning instruments (spatial development framework and the land-use scheme) but also any land-use related decision making by any competent authority. The research demonstrated the importance of the development principles to embed a food systems approach in the planning instruments. An example on each of the development principles are provided to illustrate how it promotes a food systems approach.

First, the principle of spatial justice is targeted at redressing past discrimination and related imbalances which includes improved access to land. It was argued that this principle forces a municipality to no longer be ‘restricted or impeded’ by the value of property when considering a development application. It is submitted that this legally endorses a ‘social land function’ that is placing the social value of land over the monetary value of the land. It was submitted that the principle of spatial justice challenges private property rights and serves as a mechanism in which to confront the dominance of private capital and market values over urban land. This may potentially strengthen the inclusion of affordable housing in urban centres and improve food access.



Secondly, the principle of spatial sustainability stresses that special consideration be given to the protection of prime and unique agricultural land. The protection of prime and unique agricultural land was discussed earlier and will not be elaborated except to state that it directly connects to food security by requiring special consideration be given to the protection of prime agricultural land when taking spatial planning or land-use management decisions and the promotion of land development. The aim is to safeguard against unsustainable developments and urban sprawl.

Thirdly, the principle of efficiency insists on land development that optimises the use of existing resources and infrastructure. It was argued that this requirement resonates with a food systems approach because it stimulates sustainability. Instead of building more infrastructure it optimises use of the existing built environment to promote activities related to the food system, such as the way it connects with the urban transport systems. For example the study found that the informal

CHAPTER 6

food sector operates along public transport nodes and use transport infrastructure such as roadsides, taxi ranks, railway stations and bus terminus to sell affordable food to the urban poor.

Fourthly, the principle of spatial resilience demands flexibility in spatial plans, policies and land-use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. It was submitted that the principle of spatial resilience may be used to force local authorities to ensure their planning instruments are flexible to create viable urban areas (mixed-land-uses) and to promote the availability of street food as a resilient measure to circumvent the effects of volatile spikes in staple food prices.

Fifthly, the principle of good administration demands that all levels of government should follow an integrated approach to land-use and land development guided by the spatial planning and land-use management systems. The research highlighted that spatial plans are often disconnected from the land-use decision-making, which has negative outcomes for socio-economic development and food security. However, this principle obliges municipalities to avoid taking decisions that are disconnected from the forward planning instruments such as the MSDF.

UNIVERSITY of the

The MSDF must give effect to the development principles and norms and standards of SPLUMA. Thus the application of the five development principles as it relates to food security must be reflected in the MSDF. Prior to SPLUMA, the law was unclear about the relationship between spatial development frameworks and actual land-use rights. This compromised the state's ability to guide infrastructure projects through budgets and plans. This resulted in land-use management decisions being disconnected from the forward planning expressed in the IDP and MSDF. However, SPLUMA confirms that a departure from the MSDF is only permitted if site-specific circumstances justify a departure.

It was argued that municipalities must be encouraged to ensure that the MSDF are aligned to food security imperatives. There is a critical set of requirements in SPLUMA that the MSDF must fulfill that is relevant. For example the MSDF must include a representation of the desired spatial growth and development patterns for the next 10 to 20 years in a municipality; contribute to the restructuring of the municipal spatial form; and include areas in the planning framework that were

CHAPTER 6

previously excluded and identify areas where incremental upgrading approaches to development and regulation will be applicable in the MSDF. It was contended that these requirements resonated with the principles of food-sensitive spatial planning.

The study elaborated on food-sensitive planning and its connection to the food system and other urban systems. Food-sensitive planning comprises four features, namely, using the design of space to enhance food access; using space to connect people, goods and processes; supporting participatory planning to garner dialogue from different communities and available evidence on food matters; and positively influencing strategy and policy to make the legislative landscape, including the land-use scheme and zoning regulations, support the consideration of food issues.

It was argued that food-sensitive spatial planning is critical to improve food security in township areas. In this respect it was specifically mentioned that the MSDF may be used as a tool for food-sensitive spatial planning that allows for those principles to be embedded in the municipal administration. The MSDF must amongst other things, spatially represent the municipality's coordination, alignment and integration of sectoral policies and the capital expenditure framework for the development programmes. More importantly, the link between the MSDF and LUS is reinforced, because the MSDF must outline the purpose, desired impact and structure of the LUS and include an implementation plan. Over and above this it was shown how municipalities may work together with all actors of the food system to address food insecurity in the development of the MSDF. For example, it was argued that municipalities should enter into partnerships to implement projects. The major partners include government departments, the private sector i.e. small-scale farmers, food manufacturers and store operators, NGOs, CBOs, and academia. These partnerships were argued to potentially strengthen the food security imperatives in the spatial planning and design.

SPLUMA provides that the purpose of the LUS is to give effect to the MSDF and determine the use and development of land in the municipality. The LUS grants actual land-use rights. The LUS must promote economic growth; social inclusion; efficient development of land; and the minimal impact on public health, the environment and natural resources. These provisions were found to enable a food systems approach in the implementation of the LUS. Moreover it was submitted that

CHAPTER 6

section 25(1) of SPLUMA is crucial insofar as it, empowers the municipality to amend a LUS if it is inconsistent with the MSDF. It was argued that in the context of food sensitive planning, SPLUMA forces the land-use management systems to give effect to the food sensitive planning as contained in the MSDF. This means that if the MSDF promotes development in priority spatial locations then the LUS cannot contain restrictive zoning that would impede the development priorities, and food access.

The pertinent role of the land-use management systems to facilitate food security was discussed. It was contended that municipalities may use forward zoning to ensure that the zoning is aligned to the reality of the current land-use activities. SPLUMA was argued to facilitate a shift from using the LUS in a technical manner alone that is focused on orderly development but disconnected from the need to achieve the necessary spatial restructuring and spatial justice. It was submitted that the use of special zones potentially offered a critical role in identifying areas to be earmarked for economic zones, or food sensitive areas to improve people's livelihoods and access to food.

It was argued that the zoning and land distribution for informal township areas, may significantly improve informal entrepreneurship and food access. For example, the release of land may address housing, economic, social cohesion and agricultural needs. It may stimulate urban agriculture, township businesses, sports and recreational activities in the townships. Many scholars have argued that in practice townships there are parcels of vacant and unused land that are owned by government. It was submitted that this vacant state land must be use productively. For example it should be allocated and reserved for manufacturing hubs owned by township entrepreneurs. Furthermore it was contended that in townships stated owned land was turned over to private developers instead of the informal sector. Mindful of these challenges it was argued that SPLUMA may be used to disrupt these patterns of land distribution. For example, section 24(3) of SPLUMA encourages municipalities to include special zones to address the development priorities of the municipality. If the MSDF identifies a particular area in the municipality for a future business hub, the municipality can proactively attach the required land-use rights to the properties in that area, even when there is no application yet. Alternatively, if the municipality wants to make land-use in particular areas more intensive and allow multiple uses it can proactively attach the required land-use rights to the properties in those areas.

Chapter five detailed the role of the Municipal Planning Tribunal (MPT) in entrenching a food systems approach when deciding land development applications. It was submitted that the MPT is compelled to consider the potential impact of its decisions on food security. In addition, this duty emanates from the provisions in the preamble of SPLUMA that explicitly create a duty on the state to realise the constitutional imperatives of section 24, 25, 26 and 27(1)(b) of the Constitution. The latter provides for the progressive realisation of the right to sufficient food and water.

It was stressed that food sensitive planning is new and requires linkages between two complex systems that is the food system and land-use planning and management. SPLUMA offers assistance in this respect because it permits the MPT to appoint technical and other advisers to assist them. Thus, technical and other advisers that are knowledgeable on food sensitive planning and urban design for instance can therefore guide the MPT in analysing, amongst others, the trends in the location, number, size, distribution, associated land-use requirements, and relationship to neighbourhoods of formal and informal food retails. To establish a food systems approach the MPT is empowered to set conditions when approving development applications. For example, it was submitted that conditions may be imposed in terms of section 43(1) of SPLUMA provisions, to facilitate food access. It was contended that conditions on the development approval for shopping centres may be used to allocate a certain percentage of space for shops, market stalls, pop-up stalls or any other form of structure that accommodates the informal food sector. The use of conditions was argued to improve the inclusion of informal traders into formal retail areas and to increase the access of affordable food for the poorer people working at those shopping centres. Thus it was contended that SPLUMA offers points of leverage for municipalities to find a better balance between the role of large retailers and local food traders in the market.

3 RECOMMENDATIONS

The evaluative summary provided many critical issues that need to be addressed to improve food security. It was confirmed that the realisation of the right to food requires that a food systems approach must be adopted. In this section recommendations will be identified for the national and provincial governments and more specific recommendations are provided for local governments.

CHAPTER 6

The local government recommendations are formulated to respond to the main question, namely, what is the role of local government in a food systems approach in South Africa?

3.1 General recommendations

3.1.1 The national government should urgently enact a framework law on the right to food in terms of section 27(1)(b) of the Constitution. In the absence of the national law it is recommended that the provincial governments enact legislation on the right to food. This has the potential to improve alignment amongst the different sector departments on food security related programmes. More significantly it will clarify the roles and responsibilities for each sphere of government.

3.1.2 The obligation to facilitate public participation is a material part of the law-making process. It is recommended that the national government must ensure all parties interested in the proposed legislation are afforded a real opportunity to engage and contribute in a meaningful way.

3.1.3 There is an urgent need for the national government to address the constitutionality of SALA and the debatable economic model that SALA proposes. It is recommended that the Repeal Act be signed into law. This will ensure that municipalities have legal certainty in exercising the control and regulation of agricultural land. More specifically the Repeal Act especially identifies a critical role for the localised decision-making that would make it easier for small-scale farmers to access small parcels of agricultural land.

3.1.4 Provincial governments have the constitutional power and duty to regulate municipal planning. It is recommended that the provincial governments adopt a food systems approach in the regulation of the municipal planning function. They may introduce minimum requirements with respect to food-sensitive planning. Municipalities will then be compelled to adhere to the provincial regulation.

CHAPTER 6

3.2 Recommendations for local government

3.2.1 It is recommended that local government must progressively realise this right to food by interpreting their original powers to give effect to the imperatives of food security, food systems approach, and food-sensitive spatial planning.

3.2.2 It is recommended that municipalities refrain from viewing food security as an agriculture issue. Local government must identify their levers to influence the local food system positively. Municipalities must recognise that many of their original powers are significant in the context of food security. Five food security-related themes are mentioned that involves the local government original powers:

- (a) the provision of municipal services to support food security (electricity, water, sanitation, solid waste);
- (b) the regulation of the local food trade (trading regulations, street trading, markets and licensing and control of undertakings that sell food to the public and billboards);
- (c) food safety (Municipal health and abattoirs);
- (d) food sensitive planning (municipal planning, public spaces and building regulations) and
- (e) child care facilities.

3.2.3 It is recommended that local authorities establish a food policy council to promote the effective management of food security in the municipality. A food policy council may consist of representatives from representatives from different government sectors, spheres of government, community based organisations, academic institutions, private sector, labour organisations and other government agencies. The food policy council may be useful to implement the IDP objectives that intersect with the local food systems. It is recommended that the food policy council may provide for integrated governance of the local food system.

- 3.2.4 It is recommended that the national government needs to clarify, as part of its review of districts, the unclear terms and unworkable measures in the division of powers between the district and local municipalities. The legal clarification of the terms in the Municipal Structures Act will benefit specific food security related issues, such as the exercise of markets. For example, it will ensure a uniform approach in which district municipalities exercise the function of markets in their jurisdictions. The legal clarity will not only improve the regulation of the function but also improve the allocation of resources which in turn facilitates food security.
- 3.2.5 It is recommended that the powers shared by the national and provincial government over the NSNP, a programme that falls under education a matter listed in Schedule 4A of the Constitution, must be assigned to local government in terms of section 156(4) of the Constitution. The local administration of the NSNP intersect with many of their developmental duties. Municipalities must integrate and coordinate the developmental activities of other state and non-state agents in the municipal area. This places the municipality at the centre of interacting with all stakeholders involved in the local food system. The NSNP links with many of the local government competencies that include food safety, markets, and public open spaces. On this basis a food systems approach may be infused into the management of the NSNP.
- 3.2.6 It is recommended that municipalities develop food sensitive planning in the IDP and MSDF. Further it was argued that a community food security assessment (CFSA) is a useful tool to understand the food insecurity in a community. It is recommended that a municipality undertake a CFSA.
- 3.2.7 It was argued that the food-sensitive planning principles need to inform not only the spatial planning but also land-use management in a municipality. It is recommended that the municipality adopt the food-sensitive planning principles into their planning instruments. The following sub-recommendations are stated below:

- (a) Municipalities should ensure that the IDP reflects the food security imperatives for the municipality. The developmental priorities for the municipality that relates to food security must be expressed in the MSDF.
- (b) Municipalities should undertake community food security assessments to identify the areas that have high levels of food insecurity. This will then ensure that those areas are prioritised for targeted intervention.
- (c) Municipalities should appoint food planning experts to assist the planning officials to understand the local food system and how the municipal planning instruments may be used to facilitate sustainable development and food security.
- (d) Municipalities should enter into partnerships with the relevant stakeholders in the food system to formulate the MSDF. This will enable the MSDF to be appropriately designed to give effect to the reality of the different communities' needs. The stakeholders include other government departments (specifically public health, education, and environment); the private sector (small-scale farmers, food manufacturers and store operators); NGOs (running day-care centers, community centers and nursing homes), and academia.
- (e) Municipalities must recognise the existing benefits that informal traders contribute to the local food system and represent this in the forward planning instruments. This requires the MSDF to reflect their needs in the spatial mapping and to identify the need for the delivery of infrastructure and services in food-insecure priority areas. In this context the municipality is compelled to make decisions in terms of the LUS that is consistent with the MSDF.
- (f) Municipalities must provide for the alignment between the LUS and the MSDF and need to give effect to the food security imperatives contained in the MSDF. If the LUS is inconsistent with the provisions of the MSDF then municipalities must

determine to amend the LUS because they are empowered to do this in terms of section 28(1) of SPLUMA.

- (g) Municipalities must include special zones in the LUS to address the development priorities of the municipality. The objective of a special zone is to provide for circumstances where unique factors justify the creation of specific development management provisions for a specific site or sites without justifying the creation of a new zone. Municipalities are empowered to do this in terms of section 24(3)(b) of SPLUMA.
- (h) The MPT need to realise their role in facilitating a food systems approach when they decide development applications. Furthermore, the MPT must make use of imposing conditions on approvals that can facilitate the food security in their jurisdiction. Municipalities are empowered to do this in terms of section 43(1) of SPLUMA.



BIBLIOGRAPHY

BOOKS & CHAPTERS IN BOOKS

Abrahams C, Everatt C, Van den Heever A, Mushongera D, Nwosu C, Pillay P, Sceba A, and Ivan T 'South Africa: National Urban Policies and City Profiles for Johannesburg and Cape Town'(2018) Johannesburg : GCRF Centre for Sustainable, Healthy and Learning Cities and Neighbourhoods (SHLC).

Altman M, Hart T & Jacobs P '*Food security in South Africa*' (2009) Pretoria: HSRC.

Andrew N et al 'Land Consolidation and the Expansion of Game Farming in South Africa: Impacts on Farm Dwellers' Livelihoods and Rights to Land in the Eastern Cape' in Evers S, Seagle C and Krijtenburg F (eds) '*Africa for Sale? Positioning the State, Land and Society in Foreign Large-Scale Land Acquisitions*' in (2013) Leiden: Brill.

Atkinson D & Marais L 'Urbanisation and the future urban agenda in South Africa' in Pillay U, Tomlinson R & du Toit J *Democracy and Delivery* (2006) 22-49. Cape Town: HSRC Press

Aliber M 'Household-level food insecurity and agriculture in South Africa' in Fukuda-Parr S & Taylor V (eds) *Food Security in South Africa: Human rights and entitlement perspectives* (2016) Cape Town: University of Cape Town Press.

Auriacombe C & Ackron F '*Integrated Development and Planning*' (2015) Johannesburg: University of Johannesburg.

Banik D 'Democracy and the Politics of Hunger' in Eide W and Kracht U (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 41-43 Antwerp-Belgium: Intersentia.

Battersby J & Watson V 'Urban Food Systems Governance and Poverty in African Cities' (2018) London: Routledge.

Battersby J 'Food security amongst urban households' in Fukuda-Parr S & Taylor V (eds) *Food Security in South Africa: Human rights and entitlement perspectives* (2016) 97-120. Cape Town: UCT Press.

Battersby J & Watson V 'Improving urban food security in African Cities- Critically assessing the role of informal retailers' in Canbannes Y & Marocchino C (eds) '*Integrating food into urban planning*' (2018) London: University College London.

Battersby J ‘Cities, planning and urban food poverty in Africa’ in Bhan G, Srinivas S, Watson V (eds.) *The Routledge Companion to Planning in the Global South* (2017) London: Routledge.

Bekink B ‘*Principles of South African Local Government Law*’ (2006) Durban: LexisNexis Butterworths.

Berrisford S & Kihato M ‘Local government planning legal framework and regulatory tools: vital signs? Chapter 17 in van Donk M, Swilling M, Pieters E, Parnell S (eds) *Consolidating Developmental Local Government- Lessons from the South African Experience* (2008) 382-390. Cape Town: UCT Press.

Berrisford S & Oranje M ‘Planning law reform and change in post-apartheid South Africa’ in Hartmann T & Needham B (eds.) ‘*Planning by Law and Property Rights Reconsidered*’ (2012) London: Ashgate.

Bilchiltz D ‘Is the right to food really necessary? In Fukuda-Parr, S and Vivienne, T (eds), *Food Security on South Africa: Human rights and entitlement perspectives* (2016) 97-120. Cape Town: UCT Press.

Bovens M ‘Public Accountability’ in Pollitt L & Ferlie E (Eds) ‘The Oxford Handbook of Public Management’ (2005) Oxford: Oxford University Press.

Brand D & Heyns C (eds) ‘Socio-Economic Rights in South Africa’ (2005) Pretoria: Pretoria University Law Press.

Bronstein V ‘Cooperative government, devolution of powers and subsidiarity: The South African perspective’ in Konrad Adenauer Stiftung *Subnational Constitutional Governance* (2004) Johannesburg: Konrad Adenauer Stiftung

Burns R ‘*Realizing the Right to food in South Africa: An analysis of available frameworks and strategies*’ (2012) p 9-11. Also see Vidar M ‘The Interrelationships between the right to food and other Human Rights’ In W Eide and U Kracht (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 141 – 155. Antwerp- Belgium: Intersentia.

Brand D ‘The right to food.’ in Brand D and Heyns C (eds), *Socio-economic rights in South Africa* (2005) 5. Pretoria: Pretoria University Law Press.

Butler C ‘Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City’ (2012) Abingdon Oxon: Routledge.

- Caucci S & Hiroshan H *'The Nexus Approach and Safe Use of Wastewater in Agriculture: A Workshop on Policy and Implementation for Tunisia. Proceedings, Tunis, 12–14 December 2017'* (2018) Dresden: United Nations University Institute for Integrated Management of Material Fluxes and of Resources (UNU-FLORES)
- Chitiga-Mabugu M et al *'Civil Society Organisations Participation in Food Security Activities in South Africa- A Research Report Produced by the Human Science Research Council in Partnership with the National Development Agency'* (2013) Johannesburg : National Development Agency.
- Chigwata T, De Visser J, Kaywood L (eds) *'The Journey to Transform Local Government'* (2019) Cape Town: Juta.
- Claassen P 'Chapter 24: Spatial planning with the Western Cape Province as a case study' in Strydom H and King N *Environmental management in South Africa* 2nd ed (2009) 921-936. Cape Town: Juta.
- Conyers D & Hills P *'An Introduction to Development Planning in the Third World'* (1984) Chichester United Kingdom: John Wiley & Sons Ltd.
- Currie I & De Waal J *'The Bill of Rights Handbook'* 5th ed (2005) Cape Town: Juta.
- Delgado C *'Integrating Food Distribution and Food Accessibility into Municipal Planning: Achievements and Challenges of a Brazilian Metropolis, Belo Horizonte. Integrating Food into Urban Planning'* (2018) London: UCL Press, Rome: FAO
- De Ville J *'Constitutional and statutory interpretation'* (2000) Western Cape: Interdoc Consultants
- De Visser J *'Developmental Local Government: a Case Study of South Africa'* (2005) Antwerp: Intersentia.
- De Visser J 'Concurrent Powers in South Africa' in Steytler N (ed) *'Concurrent Powers in Federal Systems'* (2017) 227 Leiden: Brill/Nijhoff.
- De Visser *'Local law making in Cape Town: A case study of the municipal planning by-law process'* (2015) Nairobi: United Nations Human Settlements Programme.
- De Visser J 'The Enforcement of Socio-Economic Rights against Local Governments in South Africa' in Bosire M & Gikonyo W (eds) *'Animating Devolution in Kenya the Role of the Judiciary'* (2015) Rome, Italy : International Development Law Organization (IDLO) and Nairobi, Kenya : Judiciary Training Institute (JTI) : Katiba Institute

De Visser J & May A 'Functions and powers of devolved units' in N Steytler & Y Ghai (eds) (2015) *Devolution in Kenya and South Africa* Cape Town: Juta.

Devenish G 'A commentary on the Bill of Rights' (1999) Durban: Butterworths.

Devenish G, Govender K and Hulme D 'Administrative Law and Justice in South Africa' (2001) Durban: Butterworths

De Schutter O 'International Human Rights Law' 2nd ed (2014) Cambridge, UK: Cambridge University Press.

Donati F & Vidar M 'International legal dimensions of the right to food' in Kent G (ed) *Global obligations for the right to food* (2008) USA: Rowman and Littlefield Lanham.

Dreze J & Sen A *Hunger and Public Action* (1989) Oxford: Clarendon Press.

Drimie S 'Aligning policy to address food insecurity: Institutional challenges and political will in South Africa' in Parr S & Taylor V (eds) *Food Security in South Africa Human Rights and entitlement perspective* (2016) 240-241 Cape Town: UCT Press.

Drimie S & Pereira L 'Advances in food security and sustainability in South Africa' in Barling D (Ed), *Advances in Food Security and Sustainability* (2016) 1 Academic Press, Burlington (2016).

Du Plessis L 'Interpretation' in Woolman S, Roux T and Bishop M (eds) *Constitutional Law of South Africa* (2008) Vol 2 2nd ed Chapter three: Cape Town, Juta.

Du Plessis A 'Environmental Law and Local Government in South Africa' (2015) Cape Town: Juta.

Edwards A 'Gainful Employment' in Zimmermann A (ed) *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol A Commentary* (2011) Oxford: Oxford University Press.

Eide, W & Kracht, U 2005 'The Right to Adequate Food in Human Rights Instruments: Legal Norms and interpretations' in Eide W and Kracht U (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 99. Antwerp Belgium: Intersentia.

Frayne B, Crush J and MaLachlan M 'Urbanization, nutrition and development in Southern African cities' Series 7 African Food Security Urban Network (2011) Cape Town: IDASA Publishing.

Glazewski J & du Toit L Chapter 9: 'Planning Law and the Environment' In Glazewski J & du Toit L (eds) *Environmental Law in South Africa* (2013) 1-44. Durban: LexisNexis Butterworth

- Geyer Y *Integrated Development Planning, Handbook series for community-based organisations* (2006) Claremont, Cape Town: Top Copy.
- Harrison P & Todes A 'The use of spatial frameworks in regional development in South Africa' (2001) 35 *Regional Studies* 65-72.
- Harrison P, Todes A & Watson V *Planning and Transformation: Learning from the Post-Apartheid Experience* (2008) London and New York: Routledge.
- Hattingh J 'Governmental Relations: A South African Perspective' (1998) Vol 36 *Manualia didactica*. Pretoria: Unisa Press, University of South Africa.
- Joubert L, Battersby J & Watson B *Tomatoes & Taxi Ranks: Running Our Cities To Fill The Food Gap* (2018) Cape Town, ACC & UCT.
- Kidd M 'Land-use and Planning' in *Kidd M Environmental Law* (2nd Ed) (2011) 209-265. Cape Town: Juta.
- Kofman E & Lebas E (eds) *Writings on Cities: Henri Lefebvre* (1996) Malden, MA: Blackwell Publishers.
- Kanyane M & Koma S *Developmental local government in South Africa: issues for consideration* (2014) Pretoria: HSRC Library.
- Langba J 'Food Security in South Africa: A review of the data and trends' in Fukuda-Parr S & Taylor V (eds), *Food Security on South Africa: Human rights and entitlement perspectives*, (2016) 78-80 Cape Town: UCT Press.
- Laubscher N, Hoffman L, Drewes E & Nysschen J *SPLUMA A Practical Guide* (2016) Cape Town: LexixNexis Pinetown Printers
- Liebenberg S *Socio-Economic Rights: Adjudication under a Transformative Constitution* (2010) Cape Town: Juta & Co.
- Liebenberg S 'The interpretation of socio-economic rights' in Woolman S, Bishop M & Brickhill J (eds) *Constitutional Law of South Africa* 2 ed (Original service 2008) Cape Town: Juta & Co.
- Malhotra K 'The Purpose of Development' (2004) Vol 26 *Michigan Journal of International Law* 13-18.
- Mandela N *Long Walk to Freedom* (1994) United States: Macdonald Purnell.
- Mayer M (ed) 'The 'right to the city' in urban social movements', in Brenner N et al (eds) *Cities for people not for profit: critical urban theory & the right to the city* (2012) 63-85.

Marx K, Engels F, Mandel E, Fowkes B & Fernbach D 'Capital: a critique of political economy' (1990-1992) London; New York: Penguin Books in association with New Left Review.

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

Mitchell D 'The Right to the City: Social Justice and the Fight for Public Space' (2003) New York: Guilford Press.

Napier M 'Making urban land markets work better in South African cities and towns: Arguing the basis for access by the poor' in Lall S et al (eds) *Urban land markets: Improving land management for successful urbanization* (2009) 80-89. Springer Dordrecht Heidelberg London New York.

Ndlela N 'Social development: An imperative for local government' in Van Donk M et al (eds) *Consolidating Developmental Local Government: Lessons from the South African Experience* (2008) Cape Town: Juta .

Odinkalu C 'Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights in Evans M, Murray R (eds) *The African Charter on Human and Peoples' Rights: The System in Practice* (2002) 188-196. Cambridge: Cambridge University Press.

Ottaway M 'South Africa: The Struggle for a New Order' (1993) Washington DC: Brookings Institution Press.

Ovens W & Associates 'Sketching the Establishment of Local Government' in Nkhahle S et al (eds) '15 Years Review of local government celebrating achievements whilst acknowledging the challenges' (2015) Johannesburg: SALGA.

Poirier J & Saunders C (eds) Comparing intergovernmental relations in federal systems: an introduction in Poirier J, Saunders C & Kincaid J (eds) *Intergovernmental Relations in Federal Systems- Comparative Structures and Dynamics*' (2015) Ontario : Oxford University Press.

Powell D 'Imperfect transition – local government reform in South Africa 1994-2012' in S Booyesen (ed) 'Local elections in South Africa: parties, people, politics' (2012) Bloemfontein: Konrad-Adenauer-Stiftung.

Ray B 'Engaging with Social Rights: Procedure, Participation and Democracy in South Africa's Second Wave' (2016) United Kingdom: Cambridge University Press.

Rautenbach, I 'Introduction to the Bill of Rights' in *Bill of Rights Compendium* (1999) Durban: Butterworths.

Reddy P (ed) 'Metropolises in Africa' in Michiel S et al (eds) *'Improving local government – Outcomes of comparative research'* (2008): Basingstoke United Kingdom: Palgrave Macmillan.

Rhoda E & Hassmann H *'State Food Crimes'* (2016) Cambridge, UK: Cambridge University Press.

Rogerson C 'The economic development of South Africa's townships' in Knight J & Rogerson C (eds) *The geography of South Africa: contemporary changes and new directions*. Cham, Switzerland: Springer International Publishing.

SALGA (forthcoming) *'Towards a new generation land-use management systems that facilitate inclusive economic development and spatial transformation- an action agenda'* (2018). (File on hand).

Santandreu A 'Urban agriculture in Lima metropolitan area- one (short) step forward, two steps backwards- the limits of urban food planning' in Canbannes Y & Marocchino C (eds) *'Integrating food into urban planning'* (2018) London: University College London.

Scheepers, T *'A Practical Guide to Law and Development: An Introduction to the Law Applicable to Development and the Development Management Process in South Africa'* (2000) Cape Town: Juta and Co Ltd.

Shaw D *'World Food Security: A History Since 1945'* (2007) 9. United Kingdom: Palgrave Macmillan UK.

Shisana O, Labadarios, D, Rehle T, Simbayi L, Zuma K, Dhansay A, Reddy P, Parker W, Hoosain E, Hongoro C, Mchiza Z, Steyn NP, Dwane N, Makoae M, Maluleke T, Ramlagan S, Zungu N, Evans MG, Jacobs L, Faber M, and SANHANES-1 Team. *'South African National Health and Nutrition Examination Survey'* (SANHANES-1) (2013) Cape Town: HSRC Press.

Shisana O, et al. *'South African National Health and Nutrition Examination Survey'* (SANHANES-1) 2014 ed, Cape Town: HSRC Press.

Schulze M *'A Handbook on the Human Rights of Persons with Disabilities: Understanding The UN Convention On The Rights Of Persons With Disabilities'* 2nd ed (2010) New York: Fedex Office and Print Services.

Steytler N (ed) *'Local government in South Africa: Entrenching decentralised government'* in Steytler N (ed) *The place and role of local government in federal systems* (2005) Johannesburg: Konrad-Adenauer-Stiftung.

Steytler N & De Visser ‘*Local Government*’ in Woolman S Bishop, M and Brickhill J (eds) *Constitutional Law of South Africa* 2nd ed 5 rev (2013) Cape Town: Juta and Company Ltd.

Sollner S ‘The ‘breakthrough’ of the right to food: the meaning of general comment 12 and the voluntary guidelines for the interpretation of the human right to food’ in Bogdandy A, Wolfrum R (eds) *Max Planck Yearbook of United Nations Law* (2007).

Soja E ‘Seeking Spatial Justice’ (2010) Minneapolis: Univ of Minnesota Press.

Sowman M ‘Integrating environmental sustainability issues into local government planning and decision-making processes’ in Parnell S, Pieterse E, Swilling M & Wooldridge D (Eds) (2002) ‘*Democratising local government: The South African experiment*’ Cape Town: UCT Press.

Steytler N & De Visser J *Local Government Law of South Africa* 2 ed (2012) Durban: LexisNexis Butterworths.

Steytler N *The Brics partnership: challenges and prospects for multilevel government* (2018) Juta: Cape Town.

Van Bueren G ‘Housing’ in M H Cheadle et al (eds) *South African Constitutional Law: The Bill of Rights* 2nd ed (2009) Durban : LexisNexis Butterworths.

Van Wyk J *Planning Law: Principles and Procedures of Land-use Management* 2 ed (2012) Cape Town: Juta and Company Ltd.

Van Wyk J *Planning Law: Principles and Procedures of Land-use Management* (1999) Cape Town: Juta and Company Ltd.

Van Wyk J & Steyn P ‘*Planning Law Casebook*’ (2015) 24-28. Cape Town: UCT Press.

Venter PM ‘Understanding Fresh Produce Markets in South Africa’ (2000) Johannesburg: Peter Venter Associates.

Vidar M ‘The Interrelationships between the right to food and other Human Rights’ In W Eide and U Kracht (eds), *Food and human rights in development: Legal and institutional Dimensions and Selected Topics* (2005) 141 – 155 Antwerpen-Oxford: Intersentia.

Western Cape Government Environmental Affairs and Development Planning (DEADP) ‘*Land-use planning law Reform in the Western Cape- The road to transformation*’ (2016) Cape Town: Government Printers.

Wilson S & Dugard J(ed) ‘Constitutional: The First and second waves’ in Malcolm L et al ‘*Symbols or Substance: The Role and Impact of Socio-Economic Rights Strategies in South Africa* (2013) Cambridge : Cambridge University Press.

Windfuhr M & Jonsen J ‘*Food Sovereignty: Towards Democracy in Localised Food Systems*’ (2005) Rugby UK: ITDG Publishing.

Ziegler J; Golay C, Mahon C & Way S ‘*The Fight for the Right to Food*’ (2011) New York: Palgrave MacMillan.

JOURNAL ARTICLES

Anglin D ‘International Monitoring of the Transition to Democracy in South Africa, 1992-1994’ (1995) *African Affairs* Vol 94 519-543.

Battersby J ‘Beyond the food desert: Findings ways to speak about urban food security in South Africa’ (2012) 94 *Geografiska Annaler, Series B: Human Geography* 141-159.

Battersby J (2011) ‘*The state of urban food insecurity on Cape Town*’. Urban Food Security Series

Battersby J ‘Urban Food insecurity in Cape Town, South Africa: An alternative approach to food access’ (2011) 28 *Development Southern Africa* 545-561.

Battersby J ‘Food systems transformation in the absence of food system planning: The case of supermarket and shopping mall expansion in Cape Town, South Africa’(2017) 43(3) *Built Environment* 417-430.

Battersby J & Peyton S ‘The geography of supermarkets in Cape Town: Supermarket expansion and food access’ (2014) *Urban Forum* Vol 25 No 2 , 153-164.

Berrisford S ‘Unravelling Apartheid Spatial Planning Legislation in South Africa’ 2011 (22) *Urban Forum* 247- 263.

Bekink B & Botha C, ‘*Maccsand v City of Cape Town, Minister for Water Affairs and Environment, MEC for Local Government, Environmental Affairs and Development Planning, Western Cape Province, Minister for Rural Development and Land Reform, and Minister for Mineral Resources 2012 4 SA 181 (CC)*’ (2015) Vol 48 *De Jure* 456-667.

Binza S ‘The evolution of South African local governments: the politics of memory’ (2005) 2 Vol 30 *Journal for Contemporary History* 75-78.

Boatema S, Drimie S & Pereira L ‘Addressing food and nutrition security in South Africa: A review of policy responses since 2002’ *African Journal of Agricultural and Resource Economics* Vol 13 No 3 264-279.

Bosire C 'Local Government and Human Rights: Building institutional links for the effective protection and realisation of human rights in Africa' (2011) Vol 11 *African Human Rights Law Journal* 144-150.

Borgstrom D & Naidoo UK 'Playing with Power: The competing Competence of Provincial and Local Government' (2016) *Constitutional Court Review* 1, 57-75.

Brand D 'Between availability and entitlement: The Constitution, Grootboom and the right to food' (2003) Vol 7 (1) *Law democracy and Development* 1-26.

Brand D 'Law and the city: Keeping the poor on the margins' (2014) *De Jure* 182-201.

Ray B 'Evictions, Aspirations and Avoidance' (2015) (7) *Constitutional Court Review* 173-232.

Broad Leib M 'All (Food) Politics Is Local: Increasing Food Access through Local Government Action'(2013) 7 *Harv. L. & Pol'y Rev.* 321-341.

Bronstein V 'Mapping Municipal Planning Powers: Exploring the Boundaries of Local Provincial and National Control' (2014) *SALJ* 1-29.

Bronstein V 'South African Law Journal - Mapping legislative and executive powers over 'municipal planning' : exploring the boundaries of local, provincial and national control' (2015) Vol 132 *SALJ* 639 – 663.

Buchan R 'Local Food System Planning: The Problem, Conceptual Issues, and Policy Tools for Local Government Planners' (2015) Vol. 24, No. 1, *Canadian Journal of Urban Research* 1-23.

Cameron R & Tapscott C 'Challenges of state transformation in South Africa' (2000) Vol 20 *Public Administration and Development* 81-86

Cameron R 'Local government boundary reorganisation' in Pillay U, Tomlinson R, & Du Toit J (eds) '*Democracy and Delivery: Urban Policy in South Africa*' (2006) 76-78.

Candel J 'Diagnosing integrated food security strategies' (2018) 84 *NJAS Wageningen Journal of Life Sciences* 103-113.

Chenwi L 'Unpacking 'progressive realisation' its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) *De Jure* 743-745.

Christopher A 'Racial land zoning in urban South Africa' 1997 (14) *Land-use Policy* 311-323.

Christmas A and De Visser J 'Bridging the gap between Theory and Practice: Reviewing the Functions and Powers of Local Government in South Africa' (2009) *CJLG* 107–119.

Coetzee J 'The transformation of municipal development planning in South Africa (post-1994): Impressions and impasse' 2012 (61) SSB/TRP/MDM 10-20.

Coetzee J 'Not another 'night at the museum': 'moving on' – from 'developmental' local government to 'developmental local state' (2010) Vol 56 *Town and Regional Planning* 18-28.

Coggin T & Pieterse M 'Rights and the city: An exploration of the interaction between socio-economic rights and the city (2012) 23 *Urban Forum* 257-260.

Courtis C 'The Right to Food as a Justiciable Right: Challenges and Strategies' (2007) Vol 11 *Max Planck Yearbook of United Nations Law* 317-318.

Coomans F 'The Ogoni Case before the African Commission on Human and Peoples' Rights' *International and Comparative Law Quarterly*, vol. 52, (2003) 749- 760.

Crush J and Frayne B 'Supermarket expansion and the informal food economy in Southern African cities: Implications for urban food security' (2011) 37 *Journal of Southern African Studies* 781-807.

Crush J & Frayne B 'Pathways to Insecurity: Urban Food Supply and Access in Southern African Cities' (2010) Vol 3 *Urban Food Security Series*, AFSUN: Cape Town. 6-38.

Crush, J & Frayne B 'Urban Food Insecurity and the New International Food Security Agenda' (2011) Vol 28 No 4 *Development Southern Africa*, 527-544.

De Visser J 'A perspective on local government's role in realising the right to housing and the answer to the Grootboom judgement' (2003) 1 *Law, Democracy and Development* 201-215.

De Visser J 'Devolution by Court Injunction: the case of Land-use Planning in South Africa'' (2016) 10 *Ugandan Journal of Management and Public Policy Studies* 1 84-99.

De Visser J and Poswa X 'Municipal Law Making under SPLUMA: A Survey of Fifteen 'First Generation' Municipal Planning By-Laws' *PER / PELJ* 2019 (22) 1-28.

De Visser J & Steytler N *Confronting the State of Local Government: 'The 2013 Constitutional Court Decisions'* (2016) Vol 1 *CCR*- 3-8.

De Visser J 'Constitutional Court shows DFA the door' *Local Government Bulletin* (2010) Vol 12 Issue 2.

De Visser J 'The political-administrative interface in South African municipalities assessing the quality of local democracies' *Commonwealth Journal of Local Governance* (2010) (special issue).

De Visser 'Demarcating provincial and local powers regarding liquor retail' (2004) Vol 19 *SAPR/PL* 365-377.

De Visser J & November J ‘Overseeing the overseers: assessing the compliance with municipal intervention rules in South Africa’ (2017) Vol 9 *Hague Journal of the Rule of Law* 109 – 133.

De Vos ‘Grootboom, the right of access to housing and substantive equality as contextual fairness’ (2001) Vol 17 *SAJHR* 258 at 260).

Denoon-Stevens P ‘Developing an appropriate land-use methodology to promote spatially just, formal retail areas in developing countries: The case of the City of Cape Town, South Africa’ (2016) 54 *Land-use Policy* 18-23.

Dlamini B & Reddy P ‘Theory and practice of integrated development planning - a case study of Umtshezi Local Municipality in the KwaZulu- Natal Province of South Africa’ (2018) Vol 10 *African Journal of Public Affairs* 1-24

Drewes E & Van Aswegen M ‘National planning in South Africa: A temporal perspective’ (2013) (62) *SSB/TRP/MDM* 21-28.

Drimie S, & Ruysenaar S ‘The Integrated Food Security Strategy of South Africa: an institutional analysis’ (2010) *Agrekon* 49 (3): 316–337.

Domaradzka A ‘Urban Social Movements and the Right to the City: An Introduction to the Special Issue on Urban Mobilization’ (2018) Vol 29 (4) *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* 607–620.

Dugard J ‘Court of first instance? : towards a pro-poor jurisdiction for the South African Constitutional Court’ (2006) Vol 22 *SAJHR* 261 – 282.

Dugard J ‘Closing The Doors of Justice: An Examination of the Constitutional Court’s Approach to Direct Access, 1995–2013’ (2015) Vol 31 *SAJHR* 112-135.

Dugard J ‘Beyond Blue Moonlight: The Implications of Judicial Avoidance in Relation to the Provision of Alternative Housing’ (2014) *Constitutional Court Review* 265-279.

Du Plessis D ‘Land-use mix in South African cities and the influence of spatial planning: Innovation or following the trend?’(2015) Vol 97 *South African Geographical Journal* 217-242.

Du Plessis A ‘The ‘brown’ environmental agenda and the constitutional duties of local government in South Africa: a conceptual introduction’ (2015) Vol 18 *PER/PERJ* 1858-1860.

Du Plessis A ‘A role for local government in global environmental governance and transnational environmental law from a subsidiarity perspective’ (2015) Vol 48.No 2 *The Comparative and International Law Journal of Southern Africa* 281-316.

Du Plessis W, Olivier N and Pienaar J 'Land: still a contentious issue' 1998 (13) *SA Public Law* 149-169.

Dikec M 'Police, politics, and the right to the city' (2002) Vol 8 *South African Geographical Journal* 91 –98.

Drimie S & Ruysenaar S 'The Integrated Food Security Strategy of South Africa: An institutional analysis' (2010) Vol 49, 3 *Agrekon* 316-337.

Felice W 'The UN Committee on the Elimination of All Forms of Racial Discrimination: Race, and Economic and Social Human Rights'(2002) *Human Rights Quarterly* Vol 24 No1 205-236.

Frayne B & McCordic C 'Planning for food secure cities: Measuring the influence of infrastructure and income on household food security in Southern African cities' (2015) Vol 65 *Geoforum* 1-11.

Freedman W 'The legislative authority of the local sphere of government to conserve and protect the environment: A critical analysis of *Le Sueur v eThekweni Municipality* [2013] ZAKZPHC 6 (30 January 2013)' 2014 *PELJ* 567-594.

Friedmann, J 'The right to the city' (1995) Vol 1 *Society and Nature* 71 – 84;

Friendly A 'The Right to the City: Theory and Practice in Brazil' (2013) Vol 14 (2) *Planning Theory and Practice* 158-179.

Fuo O & Du Plessis A 'In the face of judicial deference: Taking the 'minimum core' of socio-economic rights to the local government sphere' (2015) Vol 19 *LDD* 1-28.

'Intrusion into the autonomy of South African local government: Advancing the minority judgment in the Merafong City case' (2017) *De Jure* 324-345.

Gorgens T & Denoon-Stevens 'Towards facilitative and pro-poor land-use management in South African Urban Areas: Learning from International Experience' (2013) 24 *Urban Forum* 85-103.

Harrison P & Todes A 'The use of spatial frameworks in regional development in South Africa' 2001 (35) *Regional Studies* 65-72

Harrison P 'The genealogy of South Africa's Integrated Development Plan' (2001) Vol 23 *Third World Planning Review* 175-193.

Harvey D 'The right to the city' (2008) 53 *New Left Review* 23-40.

Haysom G 'Food and the city: Urban scale food system governance' (2015) 26(3) *Urban Forum* 263-281.

Hawkes C & Popkin B 'Can the Sustainable development goals reduce the burden of nutrition-related non-communicable diseases without truly addressing major food system reforms?' (2015) 13-143 *Journal BMC Medicine*.

Heyns C 'The African regional human rights' system: the African charter' *Pennsylvania Law Review* 108 (2004) 682

Hendler P 'Capital accumulation, social reproduction and social struggle: rethinking the function of spatial planning and land-use' (2015) Vol 2 *African Sociological Review*

Hendricks S 'South Africa's National Development Plan and New Growth Path: reflections on policy contradictions and implications for food security' (2013) Vol 32, 3 *Agrekon* 1-17.

Hendriks S & Olivier N 'Review of the South African Agricultural Legislative Framework: Food security implications' (2015) Vol 32, 5 *Development Southern Africa* 563-566.

Huchzermeyer M 'Debates Invoking Lefebvre's 'right to the city' in South Africa today A response to Walsh' *City* (2014) Vol 18 41-49.

Humby T '*Maccsand*: Intergovernmental relations and the doctrine of usurpation' (2012) 27(2) *SA Public Law* 628-638.

Ismail N & Mphaisha C 'The Final Constitution of South Africa: Local Government Provisions and their Implications' (1997) *Occasional Papers, Konrad Adenauer Stiftung* 3-10.

Jacobs P 'The status of household food security targets in South Africa' (2009) Vol 48, No 4 *Agrekon* 410-433.

Jonsson U 'Nutrition and the convention on the rights of the child' (1996) Vol 21 *Food Policy* 41-55.

Khoza S 'Protecting the Right to Food in South Africa: The Role of Framework Legislation' (2004) Volume 5 No 1 *ESR Review*

Khoza S 'Realising the Right to Food in South Africa: Not by Policy Alone- A Need for Framework Legislation' (2004) Vol 20 *SAJHR* 670.

Kirsten J & Van Zyl J 'Defining Small-Scale Farmers in the South African Context' (1998) Vol 37 *Agrekon* 553-554.

Kirby C, Steytler N & Jordan J 'Towards a more cooperative local government' (2007) 22 *SAPR/PL*.

Kiingi F 'Improving citizen participation in local government: Participatory budgeting and municipal accountability tools' in Good Governance Learning Network '2018 *State of Local Governance* publication' (2018) 30-35.

Koch J 'The food security policy context in South Africa' (2011) *Country Study: International Policy Centre for Inclusive Growth* 1-48.

Kraai S, Holtzhausen N & Malan L 'Oversight Mechanisms in Local Government A Case of Ekurhuleni Metropolitan Municipality in South Africa' (2017) Vol 9(6) 0 *African Journal of Public Affairs*.

Kummeling H 'Britannia Beach and Lagoon Bay: The Constitutional Court in Muddy Waters? Some comparative Reflections on the Benefits of an Active Judiciary' (2016) *Constitutional Court Review* 24-32.

Labadarios D, Steyn N.P, Maunder M, MacIntyre U, Gericke G, Swart R, Huskisson J, Dannhauser A, Vorster H, Nesamvuni A. E, & Nel J. H (2005) The National Food Consumption Survey (NFCS): South Africa, (1999) 8(5), *Public Health Nutrition* 533–543.

Langa P 'Transformative Constitutionalism' (2006) 17 *Stellenbosch L.R* 351-360.

Liebenberg S 'South Africa's evolving jurisprudence on socio-economic rights: An effective tool in challenging poverty?' (2002) *LDD* 159-191.

Liebenberg S 'Participatory Justice in Social Rights Adjudication' (2018) *Human Rights Law Review*, Vol 18 623–649.

Liebenberg S & Goldblatt B 'The interrelationship between equality and socio-economic rights under South Africa's transformative constitution' (2007) 23 *South African Journal on Human Rights* 335-361.

Ligthelm A 'The impact of shopping mall developments on small township retailers' (2008) *South African Journal of Economic and Management Sciences*, NS 11 (1) 37-53.

Lodge T & Nasson B 'All, Here, and Now: Black Politics in South Africa in the 1980s' (1991) 270-272.

McDermott M 'Constitutionalizing an Enforceable Right to Food: A Tool for Combating Hunger' *Boston College International & Comparative Law Review* (2012) Vol 35 Issue 2 543-574.

Mahakul B 'The Right to Food as Human Rights: Some thematic reflections with reference to India' (2014) Vol 64 *Social Action* 22-33.

Marcuse P 'From critical urban theory to the right to the city'(2009) *City* Vol 13 185-197.

Matlala M ‘The 2011 Green Paper on Land Reform: Opportunities and Challenges – The National Africans Farmers Union (NAFU SA)’ 2014 *PELJ* 831-866.

Mettler J ‘Provincial municipal relations: A few challenges’ 2003 *LDD* 217-22.

Mureinik E ‘A bridge to where? Introducing the interim Bill of Rights’ (1994) 10 *South African Journal on Human Rights* 31 at 48.

Murray C & Ampofo-Anti O ‘L’etat, C’est Moi: Why provincial Intra-governmental disputes in South Africa remain ungoverned by the final constitution and the Intergovernmental Relations Framework Act – and how we can best resolve them’(2009) Vol 6 *LDD*

Nagel C ‘The subdivision of agricultural land act 70 of 1970, options to purchase and related matters’ (2016) 2016 (79) *THRHR* 276-286.

Narula S ‘Reclaiming The Right to Food as a Normative Response to the Global Food Crises’ (2010) Vol. 13 Issue 2 *Yale Human Rights and Development Law Journal* 403-420.

Nel V ‘Spluma, Zoning and Effective Land-use Management in South Africa’ (2015) Vol *Urban Forum* 1-15.

Nkwana H ‘The Implementation of the National Food and Nutrition Security Policy in South Africa Strategies for Multisectoral Coordination’ (2015) Vol 23 *Administratio Publica* 272-289.

Ondetti G ‘The social function of property, land rights and social welfare in Brazil’ (2015) Vol 50 *Land-use Policy* 29-37.

Olivier NJ & Williams C ‘ Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd & Another (Trustees of the Hoogekraal Highlands Trust & SAFAMCO Enterprises (Pty) Ltd (amicus curiae); Minister of Agriculture & Land Affairs (intervening)) [2008] JOL 22099 (CC)’ (2010) Vol 35. No2 *Journal for Juridical Science*.

Oranje M ‘The need for an appropriate system of urban development control in South Africa: Arguments and Characteristics’ (1995) *Town and Regional Planning* 22-33.

Oranje M, Harrison P, & Van Huyssteen E ‘Integrated Development Planning in South Africa: Lessons for International Peacebuilding’ (2002) Vol 7 (1) *African Journal on Conflict Resolution* 89-112.

O’Regan K *Checks and Balances Reflections on the Development of the Doctrine of Separation of Powers in the South African Constitution* (2008) Vol 8 *PER/PERJ* 1-32.

Pasquini L & Shearing C Municipalities, Politics, and Climate Change: An Example of the Process of Institutionalizing an Environmental Agenda within Local Government *Journal of Environment and Development* (2014) 23(2):271-296.

Pereira L & Drimie S 'Governance Arrangements for the Future Food System: Addressing Complexity in South Africa' (2016) Vol 58(4) *Environment: Science and Policy for Sustainable Development* 18-31.

Pereira L & Ruysenaar S 'Moving from traditional government to new adaptive governance: the changing face of food security responses in South Africa' (2012) Vol 4 (1) *Food Security* 41-58.

Peyton S, Mosely W, and Battersby J 'Implications of supermarket expansion on urban food security in Cape Town, South Africa' (2015) *African Geographical Review* 34 (1) 36-54.

Pieterse E 'Tracing the 'Integration' Thread in the South African Urban Development Policy Tapestry' *Urban Forum*, Vol. 18 2007.

Pieterse M 'Development, the right to the city and the legal and constitutional responsibilities of local government in South Africa' (2014) Vol 131 *SALJ* 149-177.

Pieterse M 'Rights, Regulation and Bureaucratic Impact: The Impact of Human Rights Litigation on the Regulation of Informal Trade in Johannesburg' (2017) Vol 20 *PER/ PELJ*

Pothukuchi K & Kaufman J 'The food system: A stranger to the planning field' (2000) 66 (2) *Journal of Planning Education and Research* 112-124.

Potts D 'The urban informal sector in sub-Saharan Africa: From bad to good (and back again?)' *Development Southern Africa* (2008) 25(2): 151-167.

Purcell M 'Excavating Lefebvre: The right to the city and its urban politics of the inhabitant' (2002) 58 *GeoJournal* 101-102.

Quinot G & Liebenberg S 'Narrowing The Band: Reasonableness Review In Administrative Justice And Socio-Economic Rights Jurisprudence In South Africa'(2011) Vol 3 *STELL LR* 649-653.

Rani Z, Hugo A, Hugo C, Vimiso P and Muchenje V 'Effect of post-slaughter handling during distribution on microbiological quality and safety of meat in the formal and informal sectors of South Africa: A review' (2017) Vol 47 *South African Journal of Animal Science* 255-267.

Rautenbach C, Hart D & Naudé M 'Heritage Resources Management' in Du Plessis A (ed) *Environmental Law and Local Government in South Africa* (2015) 821-853.

Reddy S ‘Localising the sustainable development goals (SDGs) - The role of Local Government in context’ (2016) Vol 9 2 *African Journal of Public Affairs* 3-5.

Rocha C, Burlandy L & Maluf R ‘Small Farms and Sustainable Rural Development for Food Security: the Brazilian Experience’ (2012) Vol 29 No 4 *Development Southern Africa* 519-529.

Rocha C ‘Urban Food Security Policy: The Case of Belo Horizonte, Brazil’ (2001) *Journal for the Study of Food and Society* Vol 5:1 36-47,

Sager T ‘Deliberative planning and decision making, an impossibility result’(2002) Vol 21 (4) *Journal of Planning Education and Research* 367-378.

Schoeman C ‘The alignment between spatial planning, transportation planning and environmental management within the new spatial systems in South Africa’ SSB/TRP/MDM 2015 (67) 40-45.

Shisanya S & Hendriks, S ‘The contribution of community gardens to food security in the Maphephetheni uplands, determined by Household Food Insecurity Access Scale’ (2011) 28 (4) *Development Southern Africa*.

Slade C, Baldwin C & Budge T ‘Urban planning roles in responding to food security needs’ (2016) Vol 7 *Journal of Agriculture, Food Systems, and Community Development* 36.

Smit W ‘Urban governance and urban food systems in Africa: Examining the linkages’ (2016) 58 *Elsevier- Cities* 81-82.

Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001). Also refer to Coomans F ‘The Ogoni Case before the African Commission on Human and Peoples’ Rights’ *International and Comparative Law Quarterly*, vol. 52, (2003) 749-760.

Spoden K ‘Local Government Sustainability Initiatives and City-Run Farmers’ Markets’ (2018) *Critique: a worldwide student journal of politics* 119-124.

Steenkamp L & Winkler T ‘Linking Spatial Planning and Land-use Management in the City of Cape Town: The Case of the Package of Plans’ (2014) Vol 25 *Urban Forum* 335-353.

Steinmann A ‘The Core Meaning of Human Dignity’ (2016) Vol 19 *PER/PERJ* 1-32.

Steytler N ‘*District municipalities: Giving effect to shared authority in local government*’ (2003) *LDD* 227-242.

Steytler N ‘The decisions in Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another 2009 (1) SA 337 (CC): Be Wary of these Holdings’ (2009) 2 *Constitutional Court Review* 429-448.

- Steytler N and Fessha Y 'Defining provincial and local government powers and functions' (2007) 124 *SALJ* 320-327.
- Steytler N & Baatjies R 'Challenges for the new councils' (2006) Vol 8 Issue 1 *Local Government Bulletin* 1-3.
- Steytler N 'Domesticating the Leviathan: Constitutionalism and federalism in Africa' (2016) 24.2 *African Journal of International and Comparative Law* 272–292.
- Strydom J & Viljoen S 'Unlawful Occupation of Inner-city Buildings: A Constitutional Analysis of the Rights and Obligations Involved'(2014) *PELJ* 1206-1261
- Swilling M 'Sustainability and infrastructure planning in South Africa: a Cape Town case study', *Environment & Urbanization* (2006) Vol 18, No 1 23–50.
- Swilling M & Annecke E 'Building sustainable neighbourhoods in South Africa: learning from the Lynedoch case' (2006) *Environment & Urbanization* (2006) Vol 18, No 2 315-332.
- Tsatsire I et al 'Historical overview of specific local government transformatory developments in South Africa' (2009) No 57 *New Contree* 136-139.
- Tawodzera G (forthcoming) 'Cape Town informal food retailers survey' (2018) unnumbered. (File on hand)
- Thornton A, 'Beyond the Metropolis: small town case studies of urban and peri-urban agriculture in South Africa' (2008) 19(3) *Urban Forum* 243–262.
- Tissington K & Wilson S 'SCA upholds rights of urban poor in Blue Moonlight judgement' (2011)Vol 12 *ESR Review* 3-6.
- Todes A, Karam A, Klug N & Malaza N 'Beyond master planning? New approaches to spatial planning in Ekurhuleni, South Africa' (2010) (34) *Habitat International* 414-420.
- Tsatsire I et al 'Historical overview of specific local government transformatory developments in South Africa' (2009) No 57 *New Contree* 136-139.
- Turok I & Scheba A 'Right to the city and the New Urban Agenda: learning from the right to housing' (2018) *Territory, Politics, Governance* 1-17.
- Van Donk M & Pieterse E 'Reflection on the design of a post-apartheid system of (urban) local government' in Pillay U, Tomlinson R, & Du Toit J (eds) '*Democracy and Delivery- Urban Policy in South Africa*' 114-117.
- Van der Schyff 'Constitutional interpretation according to first national bank of SA limited t/a Wesbank v Commissioner for the South African Revenue Services and another; First National

Bank of SA Limited t/a Wesbank v Minister of Finance 2002 (7) BCLR702 CC (2003) *PER/PERJ* 150-153.

Van der Walt A & Viljoen S 'The Constitutional Mandate For Social Welfare – Systemic Differences And Links Between Property, Land Rights And Housing Rights' (2015) Vol 18 *PER/PERJ* 1034- 1089.

Van Niekerk T 'Functionality of local government intergovernmental relations forums with specific references to district intergovernmental relations forums' (2015) Vol 50 *Journal of Public Administration* 841 – 853.

Van Wyk J 'Is subdivision of agricultural land part of municipal planning?' (2009) *SAPL* 545-562.

Van Wyk J 'The impact of Development on the Environment as Part and Parcel of Integrated Development Planning' (2007) *LDD* 59.

Van Wyk J & Oranje M '*The post-1994 South African spatial planning system and Bill of Rights: A meaningful and mutually beneficial fit?*' (2014) 13:4 *Sage Publications* 349-369.

Van Wyk J 'Can SPLUMA play a role in transforming spatial injustices to spatial justices in housing in South Africa?' (2015) Vol 30 No 27 *SAPL* 28-41.

Van Wyk J 'The legacy of the 1913 Black Land Act for spatial planning' (2013) 28 *SAPL* 91-97.

Van der Heijden T & Vink N 'Good for whom? Supermarkets and small farmers in South Africa - a critical review of current approaches to increasing access to modern markets' (2013) 52 *Agrekon*

Van Zyl J & Kirsten J 'Food security in South Africa' (1992) 31 No 4 *Agrekon* 172-175.

Vink, N 'Food security and African agriculture', (2012) Vol 19 No 2 *South African Journal of International Affairs* 157-177.

Wilson S 'Curing the Poor: State Housing Policy in Johannesburg after Blue Moonlight' (2015) (21) *Constitutional Court Review* 280–296.

Yigzaw D, 'Hunger and the Law: Freedom from Hunger as a Free Standing Right'(2014) Vol 36:3 *Houston Journal of International Law* 682-684.

REPORTS AND OTHER PAPERS

Abrahams G & Berrisford S '*Addressing the crisis of planning law reform in South Africa*' (Report) 2012 South African Cities Network available <http://sacitiesnetwork.co.za/wp->

content/uploads/2014/06/ADDRESSING-THECRISIS-OF-PLANNING-LAW-REFORM-IN-SOUTH-AFRICA.pdf (accessed 16 June 2016).

Abahlali baseMjondolo ‘*S’bu Zikode & Richard Pithouse debating Pallo Jordan on the Record of the ANC – Oslo, 22 November 2012*’ (2013) available at http://abahlali.org/node/author/Abahlali_3/page/105/ (accessed 15 January 2019).

African Centre for Cities (ACC) ‘*Urban infrastructure in Sub-Saharan Africa- harnessing land values, housing and transport*’ (2015) available at <https://www.africancentreforcities.net/wp-content/uploads/2015/09/DfID-Harnessing-Land-Values-Report-1.6-Property-Development-Cases-20150731.pdf> (accessed 20 June 2017).

Akintan O & Christmas A ‘*Intergovernmental Dispute Resolution in Focus: The Cape Storm*’ (undated) available at <https://dullahomarinstitute.org.za/multilevel-govt/publications/cape-storm-dispute-paper-igr-framework-act-january-16th.pdf> (accessed 15 March 2015).

Alexis H ‘New data shows basket of ‘basic goods’ up by R100 since February’ *The South African* 26 August 2016 available at <https://www.thesouthafrican.com/new-data-shows-basket-basic-goods-r100-since-february/> (accessed 22 November 2018).

American Planning Association (APA) ‘*Planning for Food access and community-based food systems: A national scan and evaluation of local comprehensive plan*’ (2012) available at https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/research/foodaccess/pdf/foodaccessreport.pdf (accessed 14 October 2015).

Ashton G ‘*Revitalising Agriculture: Healing the Land, Feeding our Nation*’ The South African Civil Society Information Service available 30 Jun 2014 at <http://sacsis.org.za/site/article/2054> (accessed October 2016).

Asian News International (ANI) ‘Putting billboards of healthy foods can break unhealthy eating habits’ *Deccan Chronicle* 28 January 2017 available at <https://www.deccanchronicle.com/lifestyle/health-and-wellbeing/280117/putting-billboards-of-healthy-foods-can-break-unhealthy-eating-habits.html> (accessed 15 January 2019).

Atkinson D ‘*A passion to govern: third-generation issues facing local government in South Africa- A think-piece in the interests of public debate on local government*’ (2002) available at https://www.google.co.za/search?source=hp&ei=IE5cXJS5FNKGauCrnvAO&q=atkoinson+a+passion+to+govern+&btnK=Google+Search&oq=atkoinson+a+passion+to+govern+&gs_l=psy-

[ab.3...1416.6633..7542...0.0..1.1180.8586.3-1j3j7j2j1.....0....1..gws-wiz.....0..0i131j0j0i13j0i13i10j33i160.Atd8WYs5Qkw](https://www.google.co.za/search?source=hp&ei=cjSPXODODsLzkwXdl6SYBA&q=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&btnK=Google+Search&oq=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&gs_l=psy-ab.3...1416.6633..7542...0.0..1.1180.8586.3-1j3j7j2j1.....0....1..gws-wiz.....0..0i131j0j0i13j0i13i10j33i160.Atd8WYs5Qkw) (accessed 15 January 2019).

Bannister S 'SALGA 11th National MM's Forum, George presentation: Implementing the National Development Plan at local government level held on 31 August 2017' (2017) available at [https://www.google.co.za/search?source=hp&ei=cjSPXODODsLzkwXdl6SYBA&q=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&btnK=Google+Search&oq=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&gs_l=psy-](https://www.google.co.za/search?source=hp&ei=cjSPXODODsLzkwXdl6SYBA&q=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&btnK=Google+Search&oq=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&gs_l=psy-ab.3...286.286..1644...0.0..0.0.0.....0....2j1..gws-wiz.....0)

[ab.3...286.286..1644...0.0..0.0.0.....0....2j1..gws-wiz.....0](https://www.google.co.za/search?source=hp&ei=cjSPXODODsLzkwXdl6SYBA&q=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&btnK=Google+Search&oq=SALGA+11th+National+MM%E2%80%99s+Forum%2C+George+presentation%3A+Implementing+the+National+Development+Plan+at+local+government+level+held+on+31+August+2017%E2%80%99+&gs_l=psy-ab.3...286.286..1644...0.0..0.0.0.....0....2j1..gws-wiz.....0) (accessed 15 January 2019) 1-34.

Banks T 'Balancing competing individual constitutional rights: raising some questions' available at https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1634&context=fac_pubs (15 January 2019)

Barbera F, Corsi A, Dansero E, Giaccaria P, Peano C and Puttilli M (2014) 'What is alternative about Alternative Agri-Food Networks? A research agenda towards an interdisciplinary assessment' available at <http://www.fupress.net/index.php/SdT/article/viewFile/14322/13303> (accessed 23 October 2015).

Battersby J & Haysom G 'Philippi Horticultural Area A City asset or potential development node?' (2012) available at <http://www.afsun.org/wp-content/uploads/2013/09/Philippi-Battersby-LennardandHaysom.pdf> (accessed March 2015).

Battersby J 'Urban food security and the urban food policy gap, Strategies to Overcome Poverty and Inequality: Towards Carnegie 3 Conference' (2012) Cape Town 3-7 September 2012.

Battersby J & Marshak M 'Growing Communities: Integrating the social and economic benefits of urban agriculture in Cape Town' (2013) available at: <http://www.africancentreforcities.net/growing-communities-integrating-the-social-and-economicbenefits-of-urban-agriculture-in-cape-town/> (accessed 6 October 2015).

Battersby J & Haysom G 'Philippi Horticultural Area A City asset or potential development node?' (2012) available at <http://www.afsun.org/wp-content/uploads/2013/09/Philippi-Battersby-LennardandHaysom.pdf> (accessed March 2015).

Berrisford S & De Visser J 'Preparing for SPLUMA Implementation- The Main Points of Discussion' 2015 presentation compiled by Cameron R for UCT CPD Programme available http://mcaplan.co.za/wp/wpcontent/uploads/2015/05/Preparing-for-SPLUMA-implementation_2015_Main-discussion-points.pdf (accessed 20 June 2016).

Berrisford S & De Visser J 'Important legal issues for provincial legislation dealing with Spatial Planning and Land-use Management' (A Discussion Document) 2012 South African Cities Network available http://sacitiesnetwork.co.za/wp-content/uploads/2014/06/provincial_legislation_issues_dealing_with_splum.pdf (accessed 20 June 2016).

Blignaut J et al '*Sustainable agriculture: A viable option for enhanced food and nutritional security and a sustainable productive resource base in South Africa: An investigation. Baseline Review*' (2014) available at <http://www.sagreenfund.org.za/wordpress/wp-content/uploads/2015/09/Sustainable-Farming-in-SA-Lit-Review-Asset-Research.compressed.pdf> (accessed 22 November 2018).

Birchfield L & Corsi J 'The Right to Life Is the Right to Food: People's Union for Civil Liberties v. Union of India & Others' *The Human Rights Brief* 17 No. 3 (2010): 15-18. available at <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1128&context=hrbrief> (accessed 20 June 2016).

Brown K, Bacq S, Charman A '*Supermarkets, Informal Micro-Enterprises and Household Consumption an assessment of the food systems implications in the case of Philippi east*' (2018) available at http://livelihoods.org.za/wp-content/uploads/2018/09/the-impact-of-supermarkets-in-philippi-east_v1.pdf (accessed 15 January 2019).

Bonato S, Strydom J & Webber J '*Subdivision – end of the road? options to purchase subdivision of agricultural land*' (2016) available at <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2016/real/download/Real-Estate-Alert-25-April-2016.pdf> (accessed 16 July 2016). *Wary judgment at paras 26-33*

Brynne A '*Working with local government on food policy: A toolkit for civil society. Vancouver, B.C.: BC Food Systems Network*' (2018) available at <https://gateway2.phabc.org/wp-content/uploads/sites/2/2018/08/Food-Policy-Toolkit-FINAL-1.pdf> (accessed 15 January 2019).

Business Leadership South Africa (BLSA) & Business Unity South Africa (BUSA) '*A Review of regulatory challenges uncertainty impeding investment & employment in South Africa*' (2017)

available at <https://busa.org.za/wp-content/uploads/2018/03/Public-3-BLSA-BUSA-report-on-regulatory-challenges-and-policy-uncertainty-final.pdf> (accessed 18 June 2019).

Carrigan A 'The 'Rights' Time: Civil Society Reflections on the Right to Adequate Food' in *Right to Food and Nutrition Watch -2014 Ten Years of the Right to Food Guidelines: Gains, Concerns and Struggles* available at https://www.righttofoodandnutrition.org/files/R_t_F_a_N_Watch_2014_eng.pdf (accessed 22 November 2018).

Cameron R 'MCA Urban and Development Planners: Presentation on the IUDF of 2014 Summary and Key Points available at https://mcaplan.co.za/wp/wp-content/uploads/2015/04/MCA-Presentation_IUDF-of-2014_Summary-and-Key-Points.pdf (accessed 15 January 2019).

Centre for Affordable Housing Finance (CAHF) in Africa 'Literature Survey On Urban Land Issues South Africa' (2019) available at <http://housingfinanceafrica.org/app/uploads/Literature-Survey-on-Urban-Land-Issues-South-Africa-FINAL.pdf> (accessed May 2019)

Centre of Excellence in Food Security 'South Africa's strong food security policies still fail to put food on the table' available at <http://foodsecurity.ac.za/news/sas-strong-food-security-policies-still-fail-to-put-food-on-the-table/> (accessed 15 March 2019).

Charman A, Bacq S & Brown K 'Supermarkets, Street Traders and Spaza Shops: Spatial Determinants Of Formal Retailers' Impact On Informal Micro-Enterprises In Philippi, Cape Town' (2019) https://foodsecurity.ac.za/wp-content/uploads/2019/02/FINAL_CoE-RR-002_SLF-Feb-2019.pdf (accessed 7 September 2019).

Chirwa D 'Child poverty and children's right of access to food and basic nutrition in South Africa: A contextual, jurisprudential and policy analysis' (2009) Community Law Centre, University of the Western Cape available at <https://repository.uwc.ac.za/bitstream/handle/10566/203/ChirwaChildPoverty2009.pdf?sequence=3&isAllowed=y> (accessed January 2015).

Christmas A 'The Powers And Functions Debate Continues: Defining 'municipal health services' available at <https://dullahomarinate.org.za/multilevel-govt/local-government-bulletin/volume-10-issue-5-november-2008/vol-10-no-5-defining-municipal-health-services.pdf> (accessed 25 June 2019).

Columbia University of Graduate School Architecture, Planning and Preservation (GSAPP) *New York City Street Vendors, Street Vendor Studio Report* (2011) available at

http://www.arch.columbia.edu/files/gsap/imceshared/StreetVendorReport_Final.pdf (accessed 4 September 2015)

Cotula L & Vidar M 'The right to adequate food in emergencies' (2002) available at <http://www.fao.org/3/a-y4430e.pdf> (accessed 15 January 2018).

Cousins B 'Why South Africa needs fresh ideas to make land reform a reality' (2016) available at <https://thoughtleader.co.za/theconversation/2016/06/01/why-south-africa-needs-fresh-ideas-to-make-land-reform-a-reality/> (accessed 22 November 2018).

De Klerk M et al 'Food Security in South Africa: Key Policy Issues for The Medium Term' (2004) available at https://sarprn.org/documents/d0000685/Food_security_SA_January2004.pdf (accessed 22 November 2018).

Devereux S et al 'School Feeding in South Africa: What we know, what we don't know, what we need to know, what we need to do' (2018) Food Security Working Paper Series No.004 13-16 available at <https://foodsecurity.ac.za/wp-content/uploads/2018/06/CoE-FS-WP4-School-Feeding-in-South-Africa-11-jun-18.pdf> (accessed 15 January 2019).

De Villiers B 'Summary of observations made during workshops on the review of provincial and local governments Briefing Paper' (2008) available at <http://www.kas.de> (accessed 16 July 2016)

De Visser J 'Multilevel Government, Municipalities and Food Security' (2018) (forthcoming) 4.

De Visser J & Akintan O 'Institutional Tensions between Municipal Chairpersons and Executives - Speaking of Mayor Conflicts? Community Law Centre (2008) available at <http://www.ldphs.org.za/publications/publications-by-theme/local-government-in-south-africa/governance-in-municipalities/Institutional%20Tensions%20between%20Municipal%20Chairpersons%20and%20Executives%20Speaking%20of%20Mayor%20Conflicts.pdf> (accessed 23 January 2017).

De Vos P 'Pius Langa: A man who knew the meaning of change' (2013) available at <https://www.dailymaverick.co.za/opinionista/2013-07-25-pius-langa-a-man-who-knew-the-meaning-of-change/> (accessed 23 January 2017).

De Schutter O 'The Right to Food Guidelines, Food Systems Democratization and Food Sovereignty: Reflections by Olivier De Schutter' in RTFN- Watch *Ten Years of the Right to Food Guidelines; Gains, Concerns, and Struggles* (2014) p18-21 available at <http://www.icco-international.com/int/linkservid/99A995F0-B30F-0118-DD80966BE7303139/showMeta/0/> (accessed January 2015).

De Schutter O (2012) *A rights revolution: implementing the right to food in Latin America and the Caribbean: Briefing Note 6* available at http://www.ochr.org/Documents/Issues/Food/SRRTF%20BNO6_LAC_en.pdf (accessed 14 October 2015) p 4.

Donovan J, Larsen K and McWhinnie et al '*Food sensitive planning and urban design: A conceptual framework for achieving, a sustainable and healthy food system*' (2011) available at https://www.healthypaces.org.au/userfiles/file/Design%20elements/foodsensitive_planning.pdf (accessed 1 July 2018).

Drimie S '*Understanding South African food and agricultural policy: Implications for agri-food value chains, regulation, and formal and informal livelihoods Working Paper 39*' (2016) Cape Town: PLAAS, UWC and Centre of Excellence on Food Security available at https://www.plaas.org.za/sites/default/files/publications-pdf/WP39Drimie_0.pdf (accessed March 2017).

Du Toit A, '*Adverse Incorporation and Agrarian Policy in South Africa Or, How Not to Connect the Rural Poor to Growth*' (2009) Paper presented at BASIS conference entitled Escaping Poverty Traps: Connecting the Chronically Poor to Economic Growth in Washington, DC on 26-27 February 2009 available at <http://www.basis.wisc.edu/ept/dutoitpaper.pdf> (accessed June 2015).

Durojaye E & Chilemba '*Accountability and the right to food: A comparative study of India and South Africa*' (2018) available at <https://foodsecurity.ac.za/wp-content/uploads/2018/06/CoE-FS-WP3-Accountability-and-the-right-to-food.pdf> (accessed 15 January 2019).

Findley L & Ogbu L '*South Africa: From Township to Town- After apartheid, spacial segregation remains*' (2011) *Places Journal* available at <https://doi.org/10.22269/111117> (accessed 15 January 2019).

Food Access in Michigan '*Food System Stakeholders*' available at <https://www.faimproject.org/research/food-system-stakeholders/> (accessed 15 January 2019).

Food Smart Cities Development '*Food Smart Cities for Development Recommendations and Good Practices*' (2016) available at <http://www.milanurbanfoodpolicypact.org/wp-content/uploads/2017/02/FSC4D-Recommendation-and-good-practices.pdf> (accessed 14 October 2016).

Fombad C '*Constitutional entrenchment of decentralisation in Africa: an overview of trends and tendencies*' (2018) available at

https://repository.up.ac.za/bitstream/handle/2263/65241/Fombad_Constitutional_2018.pdf?sequence=1&isAllowed=y (assessed 22 November 2018).

Forkuor J, Akuoko K & Yeboah E 'Effective and Inclusive Regulation of Street Foods in Kumasi: Promoting Food Safety, Protecting Consumers and Enhancing the Wellbeing of Food Vendors' (2015) available at https://dfcentre.com/wp-content/uploads/2017/03/2017-03-27_11-P21-GHA-Kwasi-Ohene-Yankyera.pdf (accessed 15 January 2019).

Gorgens T & Petersen A (forthcoming) 'Why the Western Cape needs food sensitive planning (and what it might look like)' (2018)(File on hand) 3-4.

Golay C 'The Right to Food and Access to Justice: Examples at the National Regional and International Levels' (2009) FAO Right to Food Publications 12 available at www.geneva-academy.ch/docs/publications/ESCR/fao_e.pdf (accessed August 2015).

Global Network for the Right to Food and Nutrition (GNRFN) '10 Years of the Right to Adequate Food Guidelines: Progress, Obstacles and the Way Forward, Civil Society Synthesis Paper for the 41st Session of the UN Committee on World Food Security (2014) p31-39 available at [https://www.google.co.za/search?q=Global+Network+for+the+Right+to+Food+and+Nutrition+\(GNRFN\)+%E2%80%9910+Years+of+the+Right+to+Adequate+Food+Guidelines&oq=Global+Network+for+the+Right+to+Food+and+Nutrition+\(GNRFN\)+%E2%80%9910+Years+of+the+Right+to+Adequate+Food+Guidelines&aqs=chrome..69i57j2360j0j7&sourceid=chrome&es_sm=93&ie=UTF-8](https://www.google.co.za/search?q=Global+Network+for+the+Right+to+Food+and+Nutrition+(GNRFN)+%E2%80%9910+Years+of+the+Right+to+Adequate+Food+Guidelines&oq=Global+Network+for+the+Right+to+Food+and+Nutrition+(GNRFN)+%E2%80%9910+Years+of+the+Right+to+Adequate+Food+Guidelines&aqs=chrome..69i57j2360j0j7&sourceid=chrome&es_sm=93&ie=UTF-8) (accessed 1 October 2015).

Globalagriculture 'Agriculture at a crossroads findings and recommendations for future farming' available at <https://www.globalagriculture.org/report-topics/land-grabbing.html> (accessed 22 November 2018).

Goble A 'Promoting Healthy Eating at the Local Government Level' (2016) available at <http://www.healthyaucklandtogether.org.nz/assets/Uploads/Promoting-Healthy-Eating-at-the-Local-Government-Level.pdf> (accessed 15 January 2019).

Greenberg S 'Research Report 42: Contesting the food system in South Africa: Issues and opportunities' (2010) available at <http://www.plaas.org.za/sites/default/files/publications-pdf/RR42.pdf> (accessed 22 November 2018).

Greenberg S 'Disjuncture's of Land and Agricultural Reform in South Africa: Implications for the Agri food system-Working Paper 26' (2013) available at

<http://www.plaas.org.za/sites/default/files/publications-pdf/WP26Greenberg.pdf> (accessed 22 November 2018).

Greenberg S ‘*Corporate concentration and food security in South Africa: is the commercial Agro-Food System Delivering?*’ (2015) available at <https://www.plaas.org.za/sites/default/files/publications-pdf/PLAAS%20Rural%20Report%20Book%201%20-%20Stephen%20-%20Web.pdf>(accessed 22 November 2018).

Guinn A & Hamrick D ‘*Empowering Civil Society Networks in an Unequal and Multi- Polar World-Changing Food Systems and Inequality: Implications for Food Security and Public Policy*’ (2015) available at (<http://archive.wphna.org/wp-content/uploads/2015/04/2014-09-Duke.-Guinn-Hamrick-etc-food-systems-inequity.pdf> (accessed 22 November 2018).

Hall R ‘*Land Grabbing in Southern Africa: The Many Faces of the Investor Rush*’ (2011) 3-4 available at https://www.researchgate.net/publication/254335540_Land_Grabbing_in_Southern_Africa_The_Many_Faces_of_the_Investor_Rush (accessed 22 November 2018).

Hall R ‘*Submission to the Department of Agriculture, Forestry and Fisheries on: Draft Preservation and Development of Agricultural Land Framework Bill and Policy, as published in the Government Gazette 38545, No 210 of 13 March 2015*’ (2015) available at <http://www.plaas.org.za/sites/default/files/publications-pdf/2015%20-%20PDALF%20policy%20%26%20bill%20-%20PLAAS%20submission.pdf>(accessed 25 October 2015).

Harrison P et al ‘*Urban Resilience Thinking for Municipalities*’ (2014) available at http://www.gcro.ac.za/media/reports/URreport_1201MR_9BDHWFr_cUW0tn0.pdf (accessed 15 January 2019).

Harris J & Graff S ‘*Protecting children from harmful food marketing: Options for local government to make a difference*’ available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181192/> (accessed 15 January 2019).

Haysom, G ‘*Alternative food networks and food insecurity in South Africa, Working Paper 33*’ Cape Town: PLAAS, UWC and Centre of Excellence on Food Security available at https://www.plaas.org.za/sites/default/files/publications-pdf/WP33%20Haysom_FINAL.pdf (accessed 20 June 2017)

Haysom G Presentation rendered at the Dullah Omar Institutes: *Exploring the link between developmental local government and food security through improved regulation and management of fresh produce markets* Held on 22 October 2015. (File on hand).

Hardman M & Larkham P 'The rise of the 'food charter': A mechanism to increase urban agriculture' (2014) 39 *Elsevier- Land-use Policy* 400-403 available at https://ac.els-cdn.com/S0264837714000507/1-s2.0-S0264837714000507-main.pdf?_tid=8eb65cce-a1f6-4fd5-9b6a-639e0b7c5127&acdnat=1547722149_3b1f3a9d54cef4913765caef6e586066 (accessed 15 January 2019).

Hendriks S & Olivier N '*Review of the South African Agricultural Legislative Framework: Food Security Implications*' (2015) available at https://repository.up.ac.za/bitstream/handle/2263/49204/Hendriks_Review_2015.pdf?sequence= (accessed 20 June 2016).

Heimann C '*Towards Inclusive Economic Development: Agri-Parks Programme As A Response National Led Conference 9 November 2017* Presented by Clinton Heimann DLDLR (2017) available at http://www.cogta.gov.za/cgta_2016/wp-content/uploads/2017/11/Clinton.Heimann.Agri-Parks-LED-Conference-9-November-2017.pdf (accessed 28 August 2019).

Hermien Kotze '*Factsheet: inequality in South African cities*' (2016) available at <https://africacheck.org/factsheets/factsheet-inequality-south-african-cities/> (accessed 15 January 2019).

Hernandez J '*Alternative Food Networks: concept, typology and adaptation to the Spanish context*' (2009) available at https://www.google.com/search?hl=en-ZA&authuser=0&ei=xaJFXIX2BISX1fAPxriLEA&q=alterntive+food+network%3A+concepts%2C+typology+and+adaptation+to+the+spanish+context+&oq=alterntive+food+network%3A+concepts%2C+typology+and+adaptation+to+the+spanish+context+&gs_l=psy-ab.3...31268.58556..58872...4.0..0.1000.32398.3-5j19j28j5j1.....0....1..gws-wiz.....35i304i39j0i13j0i13i30j33i22i29i30j33i21j33i160.Jt3UBGJh7Vw (accessed 15 January 2019).

Hornby D & Cousins B '*Rethinking Agriculture in South Africa: Constraints and Opportunities- Key Lessons for Policy Makers*' (2016) available at

https://www.plaas.org.za/sites/default/files/publications-pdf/PLAAS%20Rethinking%20Agriculture_report.pdf (accessed 20 June 2017)

Huchzermeyer M 'The right to the city' (2014) available at <https://wiser.wits.ac.za/system/files/documents/Huchzermeyer-RightToCity2014.pdf> (accessed 15 January 2019)

Hughes S 'National Department of Cooperative Governance Presentation on: The Reconfiguration of District Government: SALGA Municipal Managers Forum-13 November 2018' (2018) available at <http://www.salga.org.za/event/mmf/Documents/13-11-2018/Role%20of%20Districts.pdf> (accessed 1 June 2019)

Human Sciences Research Council *South African Social Attitudes Survey conducted 2008* available

http://www.hsreprpress.ac.za/downloadpdf.php?pdf=file=files/PDF/2280/eBook_SASAS_2_Report.pdf&downloadfilename=South%20African%20Social%20Attitudes:%20The%202nd%20Report (accessed 13 April 2015).

Human Sciences Research Council 'Civil Society Organisations: Participation in Food Security in South Africa' (2013) Final Report available at

https://www.google.com/search?ei=t3rLW4TuHMOCaoDagdAK&q=Human+Sciences+Research+Council+%E2%80%98Civil+Society+Organisations%3A+Participation+in+Food+Security+in+South+Africa%E2%80%99+Final+Report&oq=Human+Sciences+Research+Council+%E2%80%98Civil+Society+Organisations%3A+Participation+in+Food+Security+in+South+Africa%E2%80%99+Final+Report&gs_l=psy-ab.3...2223.5378.0.7036.2.2.0.0.0.0.0.1.0...0...1c.1j2.64.psy-ab..1.1.475.6..35i39k1.479.wroTJINjvIQ (accessed 13 April 2015).

IEC 'The 2016 local government elections: The point where South Africa changed course?' available at <https://icld.se/static/files/forskningspublikationer/andrew-siddle-sa-elections-analysis-report-8.pdf> (accessed 30 August 2017).

Information Brief 'Food Systems Assessments -Theory and Background Information' (undated) available <http://sites.tufts.edu/foodeconomyfinalreport/files/2013/04/Food-Systems-Assessments.pdf> (accessed 15 January 2019).

Inter-Agency Working Group ‘Responsible agricultural investment’ (undated) available at <https://responsibleagroinvestment.org/activities/guidance-on-responsible-investment/> (accessed 15 January 2019).

Islandla Institute ‘*Realising the right to the city in a South African Context*’ (2011) available at https://search.yahoo.com/search?ei=utf8&fr=tightropetb&p=the_right_to_the_city_in_a_south_african_context_national_roundtable_report.pdf&type=Y61_F7_147051 (accessed 15 January 2019).

Jagwanth S & Soltau F ‘*Socio-economic rights and implications for intergovernmental fiscal relations in South Africa*’ (2014) 30 available at <http://www.nyslawreview.com/wp-content/uploads/sites/16/2014/11/Jagwanth.pdf> (accessed 22 November 2018).

Jara M ‘*Land redistribution in South Africa: pondering the solidarity economy alternative*’ (2019) available at https://www.google.co.za/search?source=hp&ei=kCrZXPukCtHjgwf2xLigAg&q=food+security+and+land+reform+in+south+africa&oq=food+security+and+land+reform+&gs_l=psy-ab.1.0.0j0i22i30i4.279.5182..7838...0.0..0.505.9013.2-4j13j7j1.....0....1..gws-wiz.....0..0i131.yuWm99lxPQo (accessed 9 May 2019).

Johns Hopkins Bloomberg School of Public Health ‘*Baltimore Food Policy Advisory Committee*’ (2009) available at <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/projects/BFPAC/index.html> (accessed 15 June 2016).

Jungcurt S ‘*CFS 45 Expresses ‘Deepest Concern’ About Rising Hunger, Decides to Develop Guidelines on Food Systems and Nutrition*’ (2018) available at <http://sdg.iisd.org/news/cfs-45-expresses-deepest-concern-about-rising-hunger-decides-to-develop-guidelines-on-food-systems-and-nutrition/> (accessed 22 November 2018).

Kapindu R ‘*From the global to the local – the role international law in the enforcement of socio-economic South Africa*’ (2009) Community Law Centre, University of the Western Cape available at <http://repository.uwc.ac.za/bitstream/handle/10566/232/KapinduSocio-EconomicRightsEnforcement2009.pdf?sequence=1&isAllowed=y>

Khan Z ‘*Southern Africa Food Lab & Western Cape Government Food and Nutrition Security Strategy Design Lab Final Input Note : Food and Nutrition Security Strategy Design Lab Potential of the school food garden as a community hub*’ (2017) available at

<http://www.southernafricafoodlab.org/wp-content/uploads/2017/03/Input-Potential-of-the-school-food-garden-as-a-community-hub.pdf> (accessed 24 August 2019).

King N & Napier M 'Market Interventions for Sustainable Cities: Understanding land markets' in SACN 'Urban-Land-Series Vol 1' (2015) available at <http://www.urbanlandmark.org.za/downloads/SACN-Urban-Land-Series-Vol-1-King-Napier.pdf> (accessed 15 January 2015) 1-15.

Knoema 'South Africa - Food production index' (2016) available at <https://knoema.com/atlas/South-Africa/Food-production-index> (accessed 22 November 2018).

Kothari M 'Land Grabbing and the UN Guidelines on Evictions: A Promising Soft-Law Approach' (2015) available at <https://journals.openedition.org/poldev/2188?lang=de> (accessed 22 November 2018).

Kroll F (2017) 'Foodways of the poor in South Africa: How value-chain consolidation, poverty and cultures of consumption feed each other, Working Paper 36' Cape Town: PLAAS, UWC and Centre of Excellence on Food Security available at <http://www.plaas.org.za/sites/default/files/publications-pdf/WP36%20Kroll%20final.pdf> (accesses 17 June 2018)

Laishley R 'Africa Renewal: Special Edition on Agriculture- Is Africa's land up for grabs?' (2014) available at <http://www.un.org/africarenewal/magazinespecial-edition-agriculture-2014/africa%E2%82%99s-land-grabs> (accessed 20 June 2015).

Leavitt J, Roshan S, Brady M , Staff writer 'Congress theses on *The Right to the City*' (2011) *wiki.rechtaufstadt.net*. Recht Auf Stadt.

Lipinski B et al 'SDG Target 12.3 on Food loss and Waste: 2017 Progress Report' (2017) available at https://assets.rockefellerfoundation.org/app/uploads/20170920151205/SDG-Target-12.3-on-Food-Loss-and-Waste_2017-Progress-Report.pdf (accessed 22 November 2018).

Losch A 'The Reconfiguration Of The Two-Tier Lg System Within The Review Of Local Government System Process' (2019) available at <http://www.dwa.gov.za/MinisterSession/Presentations/Presentation%20to%20DWS%20and%20WSAs%20on%20DCoGs%20work%20on%20powers%20and%20functions%20February%2019.pdf> (accessed 10 June 2019).

McLachlan M 'Food Security' (undated) available at http://www.enviropaedia.com/topic/default.php?topic_id=296 (accessed 15 January 2019).

Mammon N 'Provincial Land-use *Legislative Reform Western Cape Province: Status Report September 2011*' (Report) 2011 South African Cities Network available http://sacitiesnetwork.co.za/wpcontent/uploads/2014/06/provincial_land_use_legislative_reform_-_western_cape_-_september_2011.pdf (accessed 20 June 2016).

Matusschke I (2009) 'Rapid urbanisation and food security: Using food density maps to identify future food security hotspots' available at http://www.fao.org/fileadmin/user_upload/esag/docs/RapidUrbanizationFoodSecurity.pdf (accessed 4 September 2015)

Magwaza M '*Local government and subsidiarity*' (2015) <http://www.cplo.org.za/wp-content/uploads/2018/01/BP-387-Subsidiarity-and-Local-Government-July-2015.pdf> (accessed 15 January 2015).

Maxwell D, Levin C, Armar-Klemesu M, Ruel M, Morris S, and Ahiadeke C '*Urban Livelihood, and food and nutrition in Greater Accra, Ghana*' IFPRI Research Report 112 Washington DC: International Food Policy Research Institute available at <https://pdfs.semanticscholar.org/d61f/f61cbcbee055519ba3b8ab325b9149e48e74.pdf> (accessed 4 September 2015)

McKeon N '*Global governance for the World Food Security: A scorecard four years after the eruption of the 'food crisis'*' Heinrich Boll Stiftung' (2011) available at <https://ke.boell.org/2011/11/03/global-governance-world-food-security-scorecard-four-years-after-eruption-%E2%80%9Cfood-crisis%E2%80%9D> (accessed 4 September 2015)

Montague M (2011) *Local Government and Food Security: An Evidence Review: What We Know About What Works And What Might Work* p 33-35 available at http://www.vigar.org.au/Resources/Library/LocalGovernment_and_Food_Security-An_Evidence_Review.aspx (accessed 14 October 2015).

Moor G '*Subdivision and land-use laws hinder land reform and are unconstitutional*' (2018) available at <https://www.golegal.co.za/subdivision-land-reform-unconstitutional/> (accessed 15 January 2019).

Mathoho M '*Intergovernmental relations and the voices of the marginalised*' (2011) <https://ggln.org.za/media/k2/attachments/SoLG.2011-Planact.pdf> (accessed 15 March 2015).

Moyo B Presentation rendered at the Dullah Omar Institutes: *Exploring the link between developmental local government and food security through improved regulation and management of fresh produce markets. Held on 22 October 2015* (file on hand).

Mojapelo M 'The doctrine of separation of powers, a South African perspective' <https://www.sabar.co.za/law-journals/2013/april/2013-april-vol026-no1-pp37-46.pdf> (2013) (accessed 16 July 2016).

Muller A 'Sustainability and Sustainable Development as the making of Connections: Lessons for Integrated Development Planning in South Africa' (2006) 1027- 1079 available at https://pdfs.semanticscholar.org/b8fc/5251a72e4d5e7913b9d589d74bdf4598deef.pdf?_ga=2.98469080.670849241.1553495855-1130849104.1553495855 (accessed 15 March 2015).

Murphy S 'Land Grabs and the fragile food system- The role of Globalization' (2013) available at https://www.iatp.org/sites/default/files/2013_02_14_LandGrabsFoodSystem_SM_0.pdf (accessed 22 November 2018).

Mve M 'Possible impacts of the Draft Preservation and Development of Agricultural Land Framework Bill on the geomatics profession' (2015) available at <http://www.ee.co.za/wp-content/uploads/2015/08/Melissa-Akoue-Mve.pdf> (accessed 16 July 2017).

Ncube P et al 'Competition, barriers to entry and inclusive growth: Agro-processing' (2016) available at https://static1.squarespace.com/static/52246331e4b0a46e5f1b8ce5/t/57d03334d1758e630e04a79b/1473262401284/Agroprocessing+Sector+Study_07092016.pdf (accessed 22 November 2018).

Ncube M & Vacu 'Chapter 13: District Municipalities and Rural Development' in *Submission for the Division of Revenue 2017/18* // (2018) available at 2017-2018-TR_Chapter_13_District_Municipalities_and_Rural_Development (1).pdf (accessed 23 June 2019).

Nolte K, Chamberlain W & Giger M 'International Land Deals for Agriculture Fresh insights from the Land Matrix: Analytical Report II' (2016) available at https://landmatrix.org/media/filer_public/ab/c8/abc8b563-9d74-4a47-9548-cb59e4809b4e/land_matrix_2016_analytical_report_draft_ii.pdf (accessed 22 November 2018).

Neves D and Hakizimana C 'PLAAS -Policy Brief 38- Space, Markets And Employment In Agricultural Development: South Africa' (2015) available at http://repository.uwc.ac.za/xmlui/bitstream/handle/10566/4293/pb_38_space_markets_employm

[ent_agricultural_development_south_africa_2015.pdf?sequence=1&isAllowed=y](#) (accessed July 2019).

Nqumse M 'Food Safety along the Food Value Chain explained' available at <http://www.gardenroute.gov.za/2018/08/13/food-safety-along-the-food-chain-explained/> (accessed 15 January 2019).

Oberdabernig A 'The Effects of Structural Adjustment Programs on Poverty and Income Distribution' (2016) available at <http://wiiw.ac.at/the-effects-of-structural-adjustment-programs-on-poverty-and-income-distribution-paper-dlp-2017.pdf>

Oelofse S 'Food waste research for South Africa presentation by CSIR Operating Unit: Natural Resources and the Environment available at <https://www.cgcsa.co.za/wp-content/uploads/2019/04/Prof-Suzan.pdf> (accessed 1 June 2019).

Oranje M 'Spatial Transformation and Urban Restructuring: Lessons for the 20 year old post-apartheid South African City?' (2014) available at https://www.google.com/search?ei=yeuMW-OOMsfvgAbd04OgDw&q=Spatial+Transformation+and+Urban+Restructuring%3A+Lessons+for+the+20+year+old+post-apartheid+South+African+City%3F&oq=Spatial+Transformation+and+Urban+Restructuring%3A+Lessons+for+the+20+year+old+post-apartheid+South+African+City%3F&gs_l=psy-ab.3...546040.548694.0.549938.3.3.0.0.0.0.0.1.0...0.1c.1j2.64.psy-ab..2.1.532.6..35i39k1.533.lbjlTvHSYvk (accessed 2 August 2016).

Overseas Development Institute (ODI) *Localising the Post -2015 Agenda: What does it mean in practice?* p 2-3 Available at http://www.delog.org/cms/upload/teaser/ODI_Localising_Post-2015_What_does_it_mean_in_practice.pdf (accessed 20 June 2015).

Ovens W, Kitchin F, Parnell S & Williams, A. 'Land Management and Democratic Governance in City of Johannesburg' (Overview Report) 2007 UrbanLandMark, Planact and CUBES available http://www.urbanlandmark.org.za/downloads/1_Land_Management_and_Democratic_Governance_inCoJ.pdf (accessed 20 June 2016)

Oxfam Canada 'There is enough food to feed the world' available at <https://www.oxfam.ca/there-enough-food-feed-world> (accessed 22 November 2018).

Oxfam GB 'Hidden Hunger in South Africa: The Faces of Hunger and Malnutrition in a Food-Secure Nation' (2014) available at <https://www.scribd.com/document/342213215/Hidden->

[Hunger-in-South-Africa-The-faces-of-hunger-and-malnutrition-in-a-food-secure-nation](#)(accessed 20 June 2015)

Oxfam GB *Terms of Reference for Research Consultancy: Role of Private Sector in fostering a 'Food Insecure Nation*. (2015) available at [https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-](https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Oxfam+GB+(2015)+Terms+of+Reference+for+Research+Consultancy%3A+Role+of+Private+Sector+in+fostering+a+%E2%80%9CFood+Insecure+Nation)

[8#q=Oxfam+GB+\(2015\)+Terms+of+Reference+for+Research+Consultancy%3A+Role+of+Private+Sector+in+fostering+a+%E2%80%9CFood+Insecure+Nation](#).(accessed 2 October 2015).

Oxford Martin Programme on the Future of Food '*What Is The Food System?*' available at <http://www.futureoffood.ox.ac.uk/what-food-system> (accessed 22 November 2018).

Patel Y '*Extent Of Poverty, Inability To Pay For Services And Indigent Support At Municipal Level 1 Local Government Capacity Building : Inca Summer School*' (2009) http://www.inca.co.za/presentations/Extent_of_poverty_inability_pay_for_services-Y_Patel.pdf (accessed 15 March 2016).

Parnell S & Pieters E '*The 'right to the city': institutional imperatives of a developmental state*'. available at http://www.theurbansalon.org/datalive/downloadfiles/Parnell_seminar_paper_UK_Dec_2008.pdf (2008) (accessed 22 July 2018)

Phillips L (2017) '*Can mining and agriculture co-exist?*' Available at <https://www.farmersweekly.co.za/bottomline/can-mining-agriculture-co-exist/> (accessed 5 October 2017).

Pereira M '*The Future of South Africa's Food System: What is research telling us?*' (2014) available at http://awsassets.wwf.org.za/downloads/safl_the_future_of_south_africas_food_system.pdf (accessed 22 November 2018).

Pieters E '*Integrated Urban Development Framework: A New Deal for South African Cities and Towns*' (2017) available at <https://www.africancentreforcities.net/integrated-urban-development-framework-new-deal-south-african-cities-towns/> (accessed 15 January 2019).

Pieterse E '*Spatial inequality in South African cities- presentation GTAC Economic Winter School 2018*' (2018) available at <https://www.gtac.gov.za/Eventdocs/Day%201%20-%20Spatial%20Inequality%20-%20Edgar%20Pieterse.pdf> (accessed 15 January 2019).

Population Action International ‘*Why Population Matters to food security*’ (2012) available at http://pai.org/wp-content/uploads/2012/02/PAI-1293-FOOD_compressed.pdf (accessed 1 July 2017).

Public Health Law Centre ‘*Policy Options for Local Governments in Kansas: Increasing Access to Healthy Food*’ (2015) available at <http://publichealthlawcentre.org/resources/policy-options-local-governments-kansas-increasing-access-healthy-food-2015> (accessed 14 October 2015).

Park-Ross R et al ‘*Incorporating Food into Urban Planning Consuming Urban Poverty a toolkit for planning educators in Africa*’ (2019) Governing Food Systems to Alleviate Poverty in Secondary Cities in Africa based at the African Centre for Cities, University of Cape Town.

Sabinet ‘*Preservation and Development of Agricultural Land Bill to be Redrafted*’ (2018) available at <http://www.sabinetlaw.co.za/agriculture-forests-and-fisheries/articles/preservation-and-development-agricultural-land-bill-be-re> (accessed 7 February 2018).

Sanders *et al* (Undated) *At the Bottom of the food chain: Small operators versus multinational corporations in the food systems of Brazil, Mexico and South* (Manual distributed at the 2016 International World Nutrition Conference at University of the Western Cape).

Schofield R (2013) ‘*Food Systems Assessments*’ available at <http://sites.tufts.edu/foodeconomyfinalreport/files/2013/04/Food-Systems-Assessments.pdf> (accessed 13 April 2015).

SERI ‘*Con Court slams Operation Clean Sweep as an act of ‘humiliation and degradation*’ (2014) available at http://seri-sa.org/images/SAITF_Press_release_4April2014.pdf (accessed 15 January 2019).

SERI ‘*Targeting the Poor? An Analysis of Free Basic Services (FBS) and Municipal Indigent Policies in South Africa*’ available at http://www.seria.org/images/Targeting_the_Poor_Nov13.pdf (accessed 15 March 2016).

Shah A ‘*Structural Adjustment—a Major Cause of Poverty*’ (2013) available at <http://www.globalissues.org/article/3/structural-adjustment-a-major-cause-of-poverty> (accessed 2 November 2016).

Shah A (ed) ‘*Public sector governance and accountability series- local governance in developing countries*’ (2006) available at <http://siteresources.worldbank.org/PSGLP/Resources/LocalGovernanceinDeveloping.pdf> (accessed 22 November 2018).

Sihlobo W ‘*South Africa is the Most Food Secure Country on the Continent*’ (2018) available at <https://wandilesihlobo.com/2018/08/07/south-africa-is-the-most-food-secure-country-on-the-continent-2/> (accessed 22 November 2018).

Skinner C ‘*Challenging city imaginaries: Street traders’ struggles in Warwick Junction*’ (2009) available at https://www.researchgate.net/profile/Caroline_Skinner/publication/228376879_Challenging_city_imaginaries_Street_traders%27_struggles_in_Warwick_Junction/links/0c9605215172edbbd3000000.pdf (accessed 21 November 2018).

Skinner C & Haysom G (2016) ‘*The informal sector’s role in food security: A missing link in policy debates? Working Paper 44*’ Cape Town: PLAAS, UWC and Centre of Excellence on Food Security available at <http://www.plaas.org.za/sites/default/files/publications-pdf/WP44%20SkinnerHaysom.pdf> (accessed 20 January 2017).

Skinner C ‘*Street Vendors Laws and Legal Issues in South Africa*’ (2014) available at <http://www.wiego.org/sites/default/files/resources/files/Street-Vendors-Laws-and-Legal-Issues-S-Africa.pdf> (accessed 1 June 2019).

SLF ‘*Submission to Grocery Retail Sector Market Inquiry*’ (2017) available at https://www.plaas.org.za/sites/default/files/publications-pdf/Submission-to-Grocery-Retail-Sector-Market-Inquiry_Feb.pdf (accessed 20 June 2017).

SLF ‘*Post-apartheid spatial inequality: obstacles of land-use management on township micro-enterprise formalisation*’ available at http://livelihoods.org.za/wp-content/uploads/2018/05/Post-Apartheid_Spatial_Inequality.pdf (accessed 20 October 2017).

Smith T & De Visser J ‘*Are ward committees working? Insights from six case studies*’ available at <https://dullahomarininstitute.org.za/multilevel-govt/publications/ward-committ-pdf.pdf> (accessed 31 May 2019)

Socio Economic Rights Institute of South Africa (SERI) ‘*What can a municipality do in terms of the Businesses Act?*’ (2014) available at <http://www.seri-sa.org/index.php/archived-news-articles/263-pamphlet-informal-traders> (accessed 12 November 2015).

South African Food Sovereignty Campaign (SAFSC) ‘*People’s Food Sovereignty Act No.1 of 2016*’ (2016) 37-39. Available at <http://www.safsc.org.za/wp-content/uploads/2016/11/Peoples-Food-Sovereignty-Act-2016.pdf> (accessed 2 February 2017).

Soja E ‘*The City and Spatial Justice*’ (2009) available at <https://www.jssj.org/wp-content/uploads/2012/12/JSSJ1-1en4.pdf>. (accessed 20 June 2017)

Sutcliffe M & Bannister S (2018) ‘*Land Governance in an interconnected world- Achieving Urban Spatial Justice in South Africa: Context, Reality and Integrated Urban Development Framework*’ 3/29. available at https://www.google.com/search?source=hp&ei=n-uMW667PMKEacimJAJ&q=Land+Governance+in+an+interconnected+world-+Achieving+Urban+Spatial+Justice+in+South+Africa%3A+Context%2C+Reality+and+Integrated+Urban+Development+Framework&oq=Land+Governance+in+an+interconnected+world-+Achieving+Urban+Spatial+Justice+in+South+Africa%3A+Context%2C+Reality+and+Integrated+Urban+Development+Framework&gs_l=psy-ab.3...14817.14817.0.16585.4.2.1.0.0.0.0..1.0....0...1c.2.64.psy-ab..2.2.279.6..35i39k1.271.3S0nNbfQpCc (accessed 2 August 2018).

Sutcliffe M ‘*Article for democratic local government and effective service delivery chapter 2: new era in local government (demarcation)*’ (2000) available at <http://www.demarcation.org.za/site/wp-content/uploads/2016/12/CH20001022ChairpersonArticleMunicipalDemarcationNBI.pdf> (accessed 15 January 2019).

Srinivas H ‘*Sustainable Development: Concepts*’ (2015) available at <http://www.gdrc.org/sustdev/concepts/22-s-consume.html> (accessed 14 October 2015).

Study in Poverty and Inequality Institute (SPII) ‘*The Right to Food in South Africa: An Analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to food*’ Studies in Poverty and Inequality Institute, Working Paper 11, (2015) available at <http://www.spii.org.za/wp-content/uploads/2015/07/SPII-Working-Paper-11-The-Right-to-Food-in-South-Africa-2015.pdf> (accessed July 2015).

Tawodzera G ‘*Food Vending and the Urban Informal Sector in Cape Town, South Africa*’ in Hungry Cities Partnership (HCP) Crush J (ed) No 23 Discussion Papers (2019).

The International Federation of Red Cross and Red Crescent *Food security training modules* (2007) available at http://www.ifrc.org/Global/Publications/disasters/food_security/fs-assessment.pdf (accessed 13 April 2015).

The Presidency of the Republic of South Africa & UrbanLandMark *Assignment 2: Development Facilitation Act Review Synthesis Report (Final)* (2010) available at http://www.urbanlandmark.org.za/downloads/review_dfa_2010.pdf (accessed 10 February 2016).

Tissington K ‘*A Review of Housing Policy and Development in South Africa since 1994*’ available at <http://spii.org.za/wp-content/uploads/2013/12/review-of-the-right-to-housing.pdf> (accessed 20 June 2016).

Turok I ‘*Settlement Planning and Urban Transformation*’ (2014) available at <https://www.google.com/search?hl=en-ZA&ei=OtmQW4rVHYOjwASVh6SIAQ&q=settlement+planning+and+urban+transformation&aq=‘Settlement+Planning+and+Urb> (accessed 20 June 2016).

Turok I (2014) ‘*Settlement Planning and Urban Transformation*’ available at http://www.sacities.net/wp-content/uploads/2014/10/spatial_transformation_conference_report_web.pdf (accessed 2 August 2018) 189-201.

Ul Haque A ‘*Theoretical Perspective of Local Government - Literature Review*’ (2012) available at https://www.researchgate.net/publication/277142175_Theoretical_Perspective_of_Local_Government_-_Literature_Review (accessed 22 November 2018).

Ulset A *Formalization of Informal Marketplaces - A case study of the Xikhelene market, Maputo, Mozambique* (unpublished Master’s thesis, University of Oslo, Norway) available at <https://core.ac.uk/download/pdf/30813004.pdf> (accessed 15 January 2019).

United Cities and Local Government (UCLG) ‘*Development Cooperation and Local Government*’ (2013) available at <http://localizingthesdgs.org/library/42/Development-Cooperation-and-Local-Government.pdf> (accessed 15 January 2019)

United States Agency for International Development ‘*Uganda Agriculture and Food Security*’ available at <https://www.usaid.gov/uganda/agriculture-and-food-security> (accessed 15 January 2019).

Unknown ‘*Meaning, nature and scope of local governments*’ (unknown) available at http://shodhganga.inflibnet.ac.in/bitstream/10603/4262/11/11_chapter%202.pdf (accessed 22 November 2018).

Urban LandMark ‘*Second Economy Strategy: Addressing Inequality and Economic Marginalisation Inequality and economic marginalisation-the state of land-use management in South Africa*’ (2008) 32-33 available at http://www.tips.org.za/files/2E_Charlton_Landuse_April08.pdf (accessed 20 June 2016).

The Global Taskforce of Local and Regional Governments ‘*What local and regional governments bring to the global table- legitimacy, experience, organization*’ (2016) available at https://www.uclg.org/sites/default/files/what_local_and_regional_governments_bring_to_the_global_table.pdf (accessed 15 January

Van Berkum S, Dengerink J & Ruben R ‘*The food systems approach: sustainable solutions for a sufficient supply of healthy food*’ (2018) available http://knowledge4food.net/wp-content/uploads/2018/07/20180630_FoodSystemsReport-WUR.pdf (accessed 22 November 2018).

Van Donk M & Gorgens ‘*National Development Plan Isandla Institute’s Comments*’ available at https://search.yahoo.com/search?ei=utf-8&fr=tightropetb&p=National+Development+Plan+Isandla+Institute%E2%80%99s+Comment&type=Y61_F7_147051_051518 (access 15 January 2019).

Victorian Health Promotion Foundation (Vichealth), ‘*Ten ways local government can act on food security*’ (2010) available at www.vichealth.vic.gov.au/foodforall (accessed on February 2015).

Van Staden M ‘*Land Reform: The Free Market Way- The land debate in South Africa is intensely confused when it comes to restitution and redistribution*’ (2018) available at https://www.huffingtonpost.co.za/martin-van-staden/land-reform-the-free-market-way_a_23393556/ (accessed 15 January 2019).

Visser J ‘*Constitutional Court: the saviour of farm land*’ (2012) available at <https://www.farmersweekly.co.za/opinion/by-invitation/constitutional-court-the-saviour-of-farm-land/> (accessed 2 June 2015).

Wandile S ‘*Perspectives on Farm Sizes*’ (2018) available at <https://wandileihlobo.com/2018/11/18/perspectives-on-farm-sizes/> (accessed 15 January 2019).

Weinert J ‘*Making sense of Lefebvre’s ‘The Production of Space’ in 2015 A review and personal account*’ (2015) available at <https://blog.ethnologie.uni-halle.de/2015/08/%E2%80%A8the-production-of-space/> (accessed 2 August 2018).

Weinert J (2015) *'Making sense of Lefebvre's 'The Production of Space' in 2015 A review and personal account'* available at <https://blog.ethnologie.uni-halle.de/2015/08/%E2%80%A8the-production-of-space/> (accessed 2 August 2018).

The World Bank *'Overview of South Africa'* (2018) available at <https://www.worldbank.org/en/country/southafrica/overview> (accessed 15 January 2019).

Work R (2002) 2nd International Conference on Decentralisation- Federalism: The Future of Decentralizing States? 25-27 July 2002, Manila, Philippines 3-5 available at [https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Work+R+\(2002\)+2nd+International+Conference+on+Decentralisation-Federalism:+The+Future+of+Centralizing+States?+25-27+July+2002,+Manila,+Philippines](https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Work+R+(2002)+2nd+International+Conference+on+Decentralisation-Federalism:+The+Future+of+Centralizing+States?+25-27+July+2002,+Manila,+Philippines) (accessed 20 June 2016).

World Wide Fund for Nature (WWF) *'South Africa Food Loss and Waste: Facts and Futures- Taking steps towards a more sustainable food future'* (2017) available at http://dtnac4dflyw8.cloudfront.net/downloads/wwf_2017_food_loss_and_waste_facts_and_futures.pdf?21641/Food-Loss-and-Waste-Facts-and-Futures-Report (accessed 22 November 2018).

THESIS

Anticevich J *Local Government Transformation and the Recognition of the Disabled: an Analytical Perspective* (unpublished Master's thesis, Potchefstroom Campus of the North-West University, 1995)

Bindu A *'Environmental and developmental rights in the Southern African development community with specific reference to the Democratic Republic of Congo and the Republic of South Africa'* (unpublished LLD Thesis, University of South Africa, 2010)

Chonco T *'An analysis of municipal regulation and management of markets as an instrument to facilitate access to food and enhance food security'* (unpublished LLM thesis, University of the Western Cape, 2015).

Damon L *Municipal regulation of food and waste pickers on landfill sites in South Africa: what should municipalities (dis)allow?* (unpublished LLM thesis, University of the Western Cape, 2018)

De Villiers I *Law, Spatiality, and the Tshwane Urban Space* (unpublished LLD thesis, University of Pretoria 2017).

Even-Zahav E *Food Security and the Urban Informal Economy in South Africa: The State of Knowledge and Perspectives from street-Food* (Unpublished Master's thesis, Stellenbosch University, 2016).

Foluke A *Access to Safe Food in South Africa as a Human Right Imperative* (unpublished LLM thesis, University of the Western Cape, 2015)

Frantz G *Repealing the Subdivision of Agricultural Land Act: A constitutional analysis* (unpublished LLM thesis, Stellenbosch University, 2010)

Gibbens M *The invisible director: An exploration of the role of power in intergovernmental communication on meaningful municipal integrated development planning* (unpublished Masters thesis, University of Pretoria 2008)

Haysom G 'Food Governance for Urban Sustainability in the Global South' (unpublished PhD thesis, University of Cape Town, 2014)

Jackson L *The complex food system: A case study of soft vegetables produced in the Philippi Horticultural Area and the soft vegetables purchased at different links in the food system* (unpublished Masters Thesis, University of Cape Town, 2010).

Jocelyne K *The nature, scope and purpose of spatial planning in South Africa towards a more coherent legal framework under SPLUMA* (unpublished Masters thesis, University of Cape Town 2015).

Jordan J *Towards Co-Operative Relations Between District And Local Municipalities* (Unpublished LLM Thesis, University of the Western Cape, 2006).

Joseph W *Prospects for the reform of district municipalities: The scope for manoeuvre* (unpublished MPhil Degree, University of the Western Cape, 2012)

Letuka KW *The potential impact of the Draft Preservation and Development of Agricultural Land Framework Bill on land-use and planning laws* (unpublished LLM thesis, North West University 2016)

Maleham N *Almost three years after commencement of the Spatial Planning and Land-use Management Act 16 of 2013: An analysis of challenges to its implementation with relation to planning applications and appeals* (unpublished LLM thesis, University of KwaZulu-Natal 2018).

Manzini S *The views of government officials on the Integrated Development Plan as a framework for local government that is developmental and responsive to peoples' needs [Gauteng]* (unpublished Honours thesis, University of the Witwatersrand, 2016).

Mugabe M *A proposed framework act for food security in South Africa* (unpublished LLM thesis, North West University, 2014)

Ngwenya N *The implementation of South Africa's Housing Policy in the local sphere a case study of Mamelodi and Diepkloof* (unpublished Master's thesis, University of Pretoria, 2016).

Ngidi B *Food Price Inflation and the Poor* (unpublished Master's thesis, University of the Witwatersrand, 2015).

Nkwana H *A multisectoral public policy framework for food security in South Africa* (unpublished PhD thesis, University of Pretoria, 2016).

Nortje A *A local Government Executive Authority in respect of 'municipal planning'* (unpublished LLM thesis, North West University, 2006).

Pietersen J *'Intergovernmental relations: Delivery of potable water to poor communities in Diepsloot of Gauteng province'* (unpublished PhD thesis, University of South Africa, 2017)

Pulka A *The relationship between urban food security, supermarket expansion and urban planning and policy in the City of Cape Town: A Case of the Langa Junction Mini Mall* (2016) (unpublished Masters thesis, University of Cape Town, 2016).

Sekgala M *The role of traditional leaders in local governance: A case study of Limpopo* (unpublished LLM thesis, University of the Western Cape, 2016).

Slade C *Critiquing the capacity of local government to respond to complex sustainability challenges: two food security case studies* (unpublished PhD thesis, University of the Sunshine Coast Australia, 2014).

Sidbanda D *Urban land tenure, tenancy and water and sanitation services delivery in South Africa* (unpublished PhD thesis, University of the Western Cape, 2018).

Singh A *'Municipal representation as a mechanism to enhance local government efficiency: the role of associations for local authorities'* (unpublished LLD thesis, University of South Africa, 2016)

Siddle A *'Decentralisation in South African Local Government: A Critical Evaluation'* (unpublished PhD thesis, University of Cape Town, 2011)

Solomons G *Measuring the performance of The Integrated Development Plan in a selected Metropolitan Council in the Western Cape, South Africa* (unpublished Masters thesis, Cape Peninsula, University of Technology, 2016).

Stanton A *'Decentralisation and Municipalities in South Africa: An Analysis of The Mandate to Deliver Basic Services* (unpublished PhD thesis, University of KwaZulu-Natal, Pietermaritzburg, 2009).

Steenkamp R *'Cultural heritage protection: the authority and functions of municipalities'* (unpublished LLM thesis, North West University, 2018).

Strauss M *A right to the city for South Africa's urban poor* (unpublished LLD thesis, Stellenbosch University 2017)

Thorton-Dibb MP *'Local Government and the Protection of the Environment: An analysis of the functional area of 'municipal planning' and 'environment'* (unpublished LLM thesis, North West University, 2013).

Theron F *'The Urban Antropocene: The Case Of Urban Encroachment Upon The Philippi Horticultural Area, Cape Town'* (unpublished Masters Thesis, Stellenbosch University 2016).

Van Der Westhuizen J *Land-use Planning Mandate: a quest for legal certainty* (unpublished LLM thesis, University of Cape Town, 2014).

Wylie D *'The urban edge: a spatial planning tool or device for land development management: a Western Cape perspective'* (unpublished LLM thesis, University of Cape Town, 2016).

TREATIES, CONVENTIONS & OTHER SOURCES

CHARTERS

Charter of the United Nations, 26 June 1945, Can TS 1945 No 7.

African Charter on Human and Peoples' Rights Adopted on 27 June 1981 by the OAU Assembly of Heads of State and Government in Nairobi, Kenya OAU Doc CAB/LEG/67/3 rev 5, (1982) 21 International Legal Materials 58, entered into force 21 October 1986.

CONVENTIONS

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 adopted by the UN General Assembly (18 December 1979)

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 adopted by the UN General Assembly (16 December 1966)

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

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

Office of the High Commissioner for Human Rights, CESCR General Comment No. 12, The Right to Adequate Food (Art. 11) (12 May 1999), 20th Sess, UN Doc E/C.12/1999/5.

Universal Declaration of Human Rights, 10 December 1948. General Assembly Resolution 217 A (III) (entered into force 16 December 1949).

Optional Protocol to the International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The General Assembly adopted resolution A/RES/63/117, on 10 December 2008 (entered into force 5 May 2013).

Resolution Adopted by the General Assembly on 18 December 2009: 64/159. The Right to Food, A/RES/64/159, 10 March 2010. Resolution Adopted by the Human Rights Council [2015]: 28/10. The Right to Food. A/HRC/RES/28/10, 2 April 2015.

Voluntary Guidelines to the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Adopted by the 127th Session of the FAO Council, November 2004.

FOOD AND AGRICULTURAL ORGANISATION SOURCES

FAO 'An Introduction to the Basic Concepts of Food Security' (FAO Rome 2008)

FAO 'Guide on legislating for the right to food' (FAO Rome 2009)

FAO 'Food Security Policy Brief' (FAO Rome June 2006)

FAO 'The State of Food Insecurity in the World' (FAO Rome 2001)

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

FAO '*The right to food in theory and practice*' (FAO Rome 1998)

FAO '*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 '*Right to Food Making it Happen*' (FAO Rome 2008)

FAO '*Regional Overview of Food Insecurity in Africa-African Food Security Prospects Brighter Than Ever*' (FAO Accra 2015)

FAO , International Fund for Agricultural Development (IFAD), & World Food Programme (WFP) (2015) '*State of Food Insecurity in the World 2015- Meeting the 2015 International Hunger Targets and Taking Stock of Unequal Progress*' available at <http://www.fao.org/3/a-i4646e.pdf> (accessed on 2 November 2016).

FAO '*Policy Brief Food Security- Issue 2*' (2006) available at http://www.fao.org/fileadmin/templates/faoitally/documents/pdf/pdf_Food_Security_Cocept_Note.pdf (accessed 19 November 2018).

FAO '*A briefing guide for mayors, city executives and urban planners in developing countries and countries in transition*' (2003) available at <http://www.fao.org/3/a-y4312e.pdf> (accessed 15 January 2019).

FAO , International Fund for Agricultural Development (IFAD), & World Food Programme (WFP) (2015) '*State of Food Insecurity in the World 2015- Meeting the 2015 International Hunger Targets and Taking Stock of Unequal Progress*' available at <http://www.fao.org/3/a-i4646e.pdf> (accessed on 2 November 2016).

FAO, IFAD, UNICEF, WFP & WHO '*The State of Food Security and Nutrition in the World 2018. Building climate resilience for food security and nutrition*' (2018) available at <http://www.fao.org/3/I9553EN/i9553en.pdf> (accessed 22 November 2018).

FAO '*Save Food: Global Initiative on Food Loss and Waste Reduction*' available at <http://www.fao.org/save-food/resources/keyfindings/en/> (accessed 22 November 2018).

FAO '*Policy Brief Food Security- Issue 2*' (2006) available at http://www.fao.org/fileadmin/templates/faoitally/documents/pdf/pdf_Food_Security_Cocept_Note.pdf (accessed 19 November 2018).

United Nations Environmental Programme (UNEP), the International Trade Centre (ITC) and International Centre for Trade and Sustainable Development (ICTSD) '*Policy Brief No. 3: Trade and Environment Briefings: Sustainable Agriculture*' (2012) available at https://wedocs.unep.org/bitstream/handle/20.500.11822/25950/sustainable_agriculture.pdf?sequence=1&isAllowed=y (accessed 22 November 2018).

United Nations *Habitat III New Urban Agenda: Draft Outcome document for adoption in Quito, October 2016 (2016)* available at http://unipd-entrodirtiumani.it/public/docs/Habitat_III_New_Urban_Agenda_10_September_2016.pdf (accessed 14 October 2015)

United Nations Human Settlements Programme (UN-HABITAT) '*International guidelines on decentralisation and the strengthening of local authorities*' (2007) available at http://www.cib-uclg.org/sites/default/files/un_habitat_guidelines_decentralisation_strengthening_1_a.pdf (accessed 15 January 2019).

United Nations Committee on World Food Security (CFS) High Level Panel of Experts '*HLPE Report on Nutrition and food systems Extract from the Report: Summary and Recommendations (11 September 2017)*' available at http://www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_S_and_R/HLPE_2017_Nutrition-and-food-systems_S_R-EN.pdf (accessed 22 November 2018).

United Nations Development Programme (UNDP) '*Human Development Report*' 2000 (2000) New York: Oxford University Press.

United Nations Development Programme (UNDP) '*Human Development Report*' (2001) New York: Oxford University Press.

United Nations Human Rights & FAO '*The Right to Adequate Food- Factsheet No 34*' (2010) Geneva- Switzerland: Office United Nations.

UNCTAD–World Bank '*Responsible Agricultural Investment (RAI): Knowledge into Action Notes series*' (2018) Washington DC: World Bank.

REPORTS OF THE SPECIAL RAPPORTEUR

De Schutter O 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Building resilience: A human rights framework

for world food and nutrition security Report of the Special Rapporteur on the right to food (2008) UN doc. A/HRC/9/23.

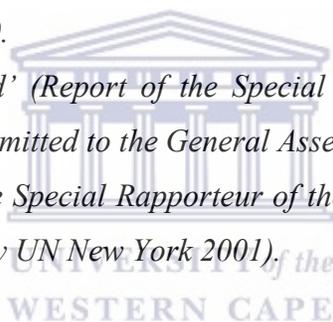
De Schutter O and Magdalena S' Underwriting the Poor: A Global Fund Social Protection (2012) available at http://www.ohchr.org/Documents/Issues/Food/20121009_GFSP_en.pdf (accessed 20 October 2015).

Oliver de Schutter 'Food Commodities Speculation and Food Price Crises- Regulation to reduce the risks of price volatility' (2010) available at https://www2.ohchr.org/english/issues/food/docs/briefing_note_02_september_2010_en.pdf (accessed 22 November 2018).

Elver H United Nations General Assembly Report A/71/282- Interim report of the Special Rapporteur on the right to food (2016) available http://www.un.org/ga/search/view_doc.asp?symbol=A/71/282&Submit=Search&Lang=E (accessed 22 November 2018) 7-10.

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



GOVERNMENT DOCUMENTS

City of Cape Town 'Urban agriculture policy for the City of Cape Town' (2007) Cape Town: Department of Economic and Human Development.

City of Cape Town 'Agricultural Land Review. Report 1498/2. Report compiled by iKapa Enviroplan' (2008) Cape Town: City of Cape Town.

City of Cape Town '*Food system and food security study for the City of Cape Town*' (2014) available at http://www.afsun.org/wp-content/uploads/2016/08/Final-Food-System-Study-Report_Corrected-_WITH-COUNCIL-REPORT.pdf (accessed 4 September 2018).

CoGTA (2016) '*Cooperative Governance on democratic local government*', available at <http://www.gov.za/speeches/democratic-local-government-22-aug-2016-0000> (accessed on 30 August 2016).

DSD '*Audit of Early Childhood Development (ECD) Centres National Report*' (2014) available at <http://ilifalabantwana.co.za/wp->

content/uploads/2015/08/ECDAuditNationalReport20140731ReviewedFINALVersionES11.pdf (accessed 30 June 2019).

DAFF (Department of Agriculture, Forestry and Fisheries) '*Abstract of Agricultural Statistica*', (2013) Pretoria.

DAFF *Food and Nutrition Security Policy* (2014) DAFF: Pretoria.

DAFF *Food and Nutrition Security Implementation Plan* (2014) DAFF: Pretoria.

DAFF *Portfolio Committee Briefing: Proposal for Meat Inspection in South Africa* (2013) Pretoria: DAFF.

DAFF, Department of Trade and Industry (DTI) and Department of Health (DOH) *Food safety and control in South Africa: specific reference to meat labelling: Report Submitted to the Joint Sitting of the Parliamentary Portfolio Committees* (2013) DAFF, DTI and DOH: Cape Town.

DAFF '*Fetsa Tlala: integrated food production initiative*' (2013) available at https://www.google.com/search?ei=riRkW_PmD4uWaN_Ls_AC&q=Fetsa+Tlala+&oq=Fetsa+Tlala+&gs_l=psy-ab.3..35i39k1j0l4j0i22i30k114.61601.66610.0.95844.3.2.1.0.0.0.331.331.3-1.2.0....0...1c.1j2.64.psy-ab..0.3.1055.6...697.xWwhyi3FbTw (accessed 1 July 2015).

DAFF '*The Preservation and Development of Agricultural Land Framework Act*' (PDAL). [BXX-2016] Version 4.0: December 2016- GN 115 in GG 15813 of 17 June 1994

DAFF '*The Draft Policy Document on the Preservation and Development of Agricultural Land*' of 2013 (2013) Pretoria: DAFF.

DoH (Department of Health) '*South African Demographic and Health Survey 2003*' (2007) Pretoria: DoH

Department of Planning Monitoring and Evaluation (2010) *Guide to the Outcomes Approach*' available at <http://www.dpme.gov.za/publications/Guides%20Manuals%20and%20Templates/Guideline%20to%20outcome%20approach.pdf> (accessed 1 July 2015).

Department of cooperative governance and traditional affairs '*National state of Local government assessment report*' <http://www.pmg.org.za/files/docs/091017tas.pdf> [accessed 8 March 2012

Department of Environmental Affairs and Development Planning Western Cape Government (DEADP) '*Rural Land-use Planning & Management Guidelines*' (2009) Western Cape Government Printers.

DRDLR '*Proposed Generic Integrated Development Planning (IDP) Template*' (2012) <https://www.westerncape.gov.za/text/2013/April/integrated-development-planning-template.pdf> (accessed 15 March 2015)

DRDLR '*The White Paper on Spatial Planning and Land-use Management: Wise Land-use*, GN 1658 in GG22473 of 20 July 2001.

DRDLR '*SDF Guidelines – Guidelines for the development of Provincial, Regional and Municipal Spatial Development Frameworks and Precinct Plans*' (2014) Pretoria: DRDLR.

Ministry for Provincial Affairs and Constitutional Development *White Paper on Local Government* (1998) Department of Constitutional Development: Pretoria.

MDB '*Municipal Powers and Functions Capacity Assessment 2018 National Report*' (2018) <http://www.demarcation.org.za/site/wp-content/uploads/2019/01/National-draft-FINAL-FINAL-1.pdf> (accessed 1 June 2019).

National Agricultural Marketing Council *Fresh Produce Marketing in South Africa*, Report 2 (2006) available at <https://www.namc.co.za/wp-content/uploads/2017/09/NationalFreshProduceMarkets.Section7InvestigationFinalReport.pdf> (accessed March 2016)

NCOP & SALGA '*Land-use: Towards Integrated Spatial Planning*' (2018) available at https://www.parliament.gov.za/storage/app/media/ProjectsAndEvents/2018_ncop_local_government_week/docs/Information_Pack-LG_Edit.pdf (accessed 8 August 2019).

National Department of Agriculture (NDA) '*The Integrated Food Security Strategy (IFSS) for South Africa. Department of Agriculture*' (2002) Pretoria.

National Planning Commission '*National Development Plan: Our Future – Make it Work, The Presidency*' (2012) Pretoria

National Planning Commission '*National Development Plan 2030*' (2012) available at <http://www.info.gov.za/issues/national-development-plan/index.html>, (accessed 2 September 2012).

National Planning Commission, '*A note on rural development priorities for South Africa*' (2011). Pretoria, National Planning Commission.

SALGA '*Infusing the NDP goals into the new IDPs*' (2017) available <http://afesis.org.za/wp-content/uploads/2017/04/Infusing-the-NDP-goals-into-the-new-IDPs.pdf> (accessed June 2019).

SALGA *'Making the informal economy visible: guidelines for municipalities in respect of adopting a more developmental approach towards the informal economy'* (2012) available at http://led.co.za/sites/default/files/cabinet/orgname-raw/document/2012/municipal_informal_economy_guidelines_final_june2012_v2_0.pdf (accessed 14 March 2015).

SALGA *'Cape Town a forerunner in Design, Tech and Innovation'* (2018) available at https://www.salga.org.za/Documents/Knowledge%20Hub/Publications/inKNOWvation%20Magazine_Low.pdf (accessed 30 May 2019).

SALGA *'Local government energy efficiency and renewable energy strategy'* available at <https://www.sustainable.org.za/uploads/files/file100.pdf> (accessed 19 April 2019).

SALGA *'Accelerating a move towards prioritization of efficient public transport: A draft discussion document'* (undated) available at http://www.cityenergy.org.za/uploads/resource_211.pdf (accessed 1 Nov 2018).

SALGA *'Provision of Municipal Health Services By Municipalities 2017-2018 Municipal Health Services (MHS) Status Quo Report'* (2018) available at <https://www.salga.org.za/Documents/Knowledge%20Hub/Publications/MHS%20booklet%20%20%282017-2018%29%204th%20final.pdf> (accessed 23 June 2019).

SACN *'A study on current and future realities for urban food security in South Africa'* (2015) available at <http://www.sacities.net/wp-content/uploads/2015/11/Urban-Food-Security-Report.pdf> (accessed July 2017).

SACN *'SPLUMA as a tool for spatial transformation'* (2015) available at http://sacitiesnetwork.co.za/wp-content/uploads/2015/05/SPLUMA-as-a-tool-for-spatial-transformation_final-April2015.pdf (accessed July 2017).

SACN *'Assessing Local Government Capacity for Social Transformation in South African Cities'* (2015) [http://www.sacities.net/wp-content/uploads/2015/11/Assessing-Local-Government-Capacity-for-Spatial-Transformation-in-South-African-cities\).pdf](http://www.sacities.net/wp-content/uploads/2015/11/Assessing-Local-Government-Capacity-for-Spatial-Transformation-in-South-African-cities).pdf) (accessed 15 January 2019).

SALGA *Making the informal economy visible: guidelines for municipalities in respect to adopting a more developmental approach towards the informal economy* (2012) Pretoria: SALGA.

SACN *'Localising the New Urban Agenda South Africa Discussion Document'* (2018) <http://www.sacities.net/wp->

content/uploads/2018/03/SA%20NUA%20Localisation%20Discussion%20Paper.pdf (accessed 15 January 2019).

SACN 'A study on current and future realities for urban food security in South Africa'(2015) Pretoria: SACN.

SACN 'SPLUMA as a tool for spatial transformation' (2015) available at http://sacitiesnetwork.co.za/wp-content/uploads/2015/05/SPLUMA-as-a-tool-for-spatial-transformation_final-April2015.pdf (accessed July 2017).

LEGISLATION

The Constitution of the Republic of South Africa, 1996.

Businesses Act 71 of 1991.

Development Facilitation Act 67 of 1995.

Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972.

Foodstuff Cosmetics and Disinfectants and the General Hygiene Requirements for Food Premises, the Transport of Food and Related Matters Regulation number 638 *Government Gazette* 41730 22 June 2018.

Intergovernmental Relations Framework Act 13 of 2005.

Local Government: Municipal Finance Management Act 56 of 2003.

Local Government: Municipal Structures Act 117 of 1998.

Local Government: Municipal Systems Act 32 of 2000.

Local Government Transition Act 209 of 1993.

Marketing of Agricultural Products Act 47 of 1996.

Municipal Systems Act and the Local Government: Municipal Planning and Performance Management Regulations GN R796, *Government Gazette* 22605, 24 August 2001.

National Building Regulations and Standards Act 103 of 1977

National Environmental Management Act 107 of 1998.

National Health Act 61 of 2003.

Spatial Planning and Land-use Management Act 16 of 2013.

Spatial Planning and Land-use Management Regulations GN239 GG 38594 OF 23 March 2015.

Subdivision of Agricultural Land Act 70 of 1970.

Subdivision of Agricultural Land Act Repeal Act 64 of 1998.

Western Cape Land-use Planning Act 3 of 2014.

CASES

Certification of the Constitution of the Republic of South Africa 1996 4 SA 744 (CC)

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 Ltd and Another, (CCT 37/11) [2011] ZACC 33

City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (9) BCLR 85 (CC).

Ex Parte President of the Republic of South Africa: In re: Constitutionality of the Liquor Bill 2000 (1) BCLR 1 (CC).

Ex Parte Chairperson of the Constitutional Assembly In re: Certification of the Constitution of the Republic of South Africa, 1996 (10) BCLR 1253 (CC).

Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others 1998 (12) BCLR 1458 (CC).

*Fuel Retailers Association v DG, Environmental Management, Mpumalanga 2006 SCA 109 RSA
Fuel Retailers Association of Southern Africa v Director-General: Environmental Management
Department of Agriculture, Conservation and Environment, Mpumalanga Province [2007] ZACC
13.*

Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169 (CC)

Kotze v Minister van Landbou 2003 1 SA 445 (T)

Maccsand (Pty) Ltd v City of Cape Town 2010 4 SA 181 (CC).

*Makwickana v Ethekwini Municipality and Others (11662/13) [2015] ZAKZDHC 7; 2015 (3) SA
165 (KZD) (17 February 2015).*

*MEC for Local Government, Environmental Affairs and Development Planning, Western Cape
Province In re: Minister for Mineral Resources and Swartland Municipality and Other and
Maccsand (Pty) Ltd and The City of Cape Town and Others [2012] ZACC 10 (29 May 2012).*

*Minister of Local Government, Environmental Affairs and Development Planning of the Western
Cape v Lagoon Bay Lifestyle Estate (Pty) Ltd and Others 2014 (2) BCLR 182 (CC).*

*Minister of Local Government, Environmental Affairs and Development Planning, Western Cape
v The Habitat Council and Others; Minister of Local Government, Environmental Affairs and
Development Planning, Western Cape v City of Cape Town and Others 2014 (5) BCLR 591 (CC).*

364

People's Union for Civil Liberties v Union of India and Others SC 2001 Writ Petition (Civil No. 196 of 2001).

Pieterse NO v Lephalale Local Municipality (CCT184/16) [2016] ZACC 40; 2017 (2) BCLR 233 (CC).

Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v the Government of Nigeria Communication No. 155/96, 2001 AHRLR 60.

Tronox KZN Sands(Pty) Ltd v The Kwa-Zulu Natal Planning and Development Appeal Tribunal and Others [2016] ZACC 1

Van Wyk and Others v Topaz Sky Trading 146 (Pty) Ltd and Others (50235/15) [2017] ZAGPPHC 1 (3 January 2017).

Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd 2009 1 SA 337 (CC).

NEWS

African News Agency 'City of Joburg adopts inclusionary housing framework' *IOL* 21 February 2019.

African News Agency 'No further development for Philippi Horticultural Area, council says' *IOL* 25 April 2018.

AgriSA 'Agri SA welcomes ConCourt's Maccsand ruling' (2012) *Politicsweb* 18 April 2012

American Association for the Advancement of Science (AAAS) 'Global food systems are failing humanity and speeding up climate change' *EurekAlert* 28 November 2018.

Busiso Moyo *SACIS* 27 Feb 2015.

Cambridge Institute for Sustainability Leadership 'Challenges in the global food system' *University of Cambridge News* 11 December 2018

Cogger J & Rassouw J 'Affordable Housing: City of Cape Town and developers at crossroads' *GroundUp* 11 September 2018

Cooper C 'Councils need powers to ban junk food advertising near schools and nurseries, town hall leaders say' *Independent* 17 March 2016

Dirk N 'Hunger claims 65% of SA children' *IOL* 13 May 2015.

ESCR-Net *The Government of South Africa ratifies the ICESCR* available at <https://www.escr-et.org/node/365752> (accessed 4 February 2015).

Fischer G ‘Transforming the global food system’ *News and Views* 22 October 2018.

Fokazi S ‘Shacks built in Cape Town CBD to protest sale of vacant land’ *Sowetan Live* 5 December 2018.

Goodenough P ‘Green New Deal’ Doesn’t Go Far Enough, Says UN ‘Right to Food’ Expert’ *CNS News* 1 March 2019.

Havelaar A and Woldegiorgis A ‘Why food safety in Africa's informal markets must be driven by consumers’ *The Conversation* 7 June 2019.

Head T ‘Cape Town housing activists say property market is a form of ‘contemporary apartheid- Rising costs are driving poorer residents out of CPT’ *The South African* 11 July 2017.

Human Rights Council ‘Human Rights Council holds interactive dialogue on the right to food and the effects of foreign debt on the full enjoyment of all human rights’ *ReliefWeb* 28 Feb 2019.

Ironside R & Owens J ‘Billboards to tear down all junk food ads’ *The Australian* 20 August 2019.

Isaacs L ‘Plea to protect Philippi Horticultural Area’ *Cape Times* 2 August 2017.

Jackson L ‘How do I get a Certificate of Acceptability- COA’ *FoodFocus* 30 October 2017.

Xolani K ‘WC Agriculture To ‘Protect, Preserve’ Philippi Horticultural Area’ *Eyewitness News* 21 June 2017.

Kirsten J & Sihlobo W ‘Perception that agriculture is dominated by large commercial farms is incorrect’ *Business Day* 5 March 2019.

Kirsten J & Sihlobo W ‘Is South African agriculture really dominated by big commercial farms? Evidence suggests not’ *2019 News 24* 27 February 2019.

Mabasa N ‘Urban development must be for all, demands SA Federation of the Urban Poor’ *Daily Maverick* 1 November 2018

Maile L ‘Integrate informal waste pickers into the mainstream economy’ *Daily Maverick* 31 August 2017.

Matlhape G & Hickman R ‘Simple solutions for SA’s ECD dilemma’ *Mail and Guardian* 05 Apr 2019.

Mckaiser E ‘Reclaim the City fights the City for vacant land in Green Point’ *Cape Talk* 30 May 2018.

Molelekwa T ‘Accountability and the right to good food’ *Daily Maverick* 8 July 2018.

Moyo B ‘The right to food in South Africa: We need a manifesto for food justice’ *Daily Maverick* 5 March 2019.

Mpangane T and Fakir E 'Hunger for urban land and township development central to expropriation debate' *NEWS24* 23 March 2018 1-2.

NEWS24WIRE 'South Africa will have to produce 50% more food by 2050 or face crisis – WWF' *Creamer's Media Engineering News* 20 February 2019.

Nicolson G & Lekgowa T 'Operation Clean Sweep: not just a clean-up but a purge of the poor' *Daily Maverick* 15 November 2013.

Nqapela N & Fakir E 'Can the 'Township Economy' be liberated?' *Polity* 8 September 2017.

Pather R 'De Lille to consider affordable housing in Cape Town's tallest skyscraper' *Mail and Guardian* 21 May 2018.

Patel Y 'Integrated Development Planning: Improving Governance and Development' *Plan Press* 5 November 2001.

Payi B 'Fate of Philippi Horticultural Area Hangs in the Balance' *Weekend Argus* (Sunday Edition) 16 July 2017.

Royston L & Ebrahim T 'Urban land reform: Start with informal settlements' *Daily Maverick* 4 July 2019.

Sendin J 'Using municipal land for bowling greens during a housing crisis is unjust' *GroundUp* 14 June 2018.

Sihlobo W & Kapuya T 'Special Report: the truth about land ownership in South Africa' *Rand Daily Mail* 23 July 2018.

Sishuba S 'Rural human settlements could threaten farmland – report' *Farmer's Weekly* 7 February 2019.

Twaha A 'Uganda: Judge - Most Land Grabs Are By Govt Officials, Soldiers' *The Observer Kampala* 11 October 2017.

Unknown 'Lewisham to ban junk food on all billboards and bus stops (UK)' *BBC London News* 29 January 2019

Unknown 'London transport network junk food advert ban starts' *BBC London News* 25 February 2019.

Unknown 'Garden grows food, jobs' *People's Post* 1 November 2016.

Unknown 'SAHRC concerned over evictions on farms and informal settlements' *OFM News* 19 Apr 2019.

Van der Berg S 'SAHRC: SA is most unequal country in World' *Eye Witness News* 12 July 2018

Van Zyl G 'Empowering SA's emerging farmers: The story of Nceba Jakavula' *BizNews* 27 February 2019.

Visser M 'Informal trade may hold the key to food security' *Fin 24* 20 October 2018

Von Bormann T 'Beneath the surface: South Africa's food system is in *trouble*' *Daily Maverick* 25 February 2019.

Webster D 'New inclusionary housing policy shakes up Joburg' *NewFrame* 22 February 2019.

