



PEOPLES' FOOD SOVEREIGNTY ACT

No.1 of 2018

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COVER NOTE

Background to the Act

The dominant paradigm of food security has failed the world and South Africa. Billions are hungry, malnourished and obese in the globalised and corporate-controlled food system. South Africa has not escaped these realities. Our unique apartheid legacy, characterised by land dispossession, coupled with the corporate food regime's current and increasing brutalities, such as malnourishment, obesity, climate shocks, environmental degradation and increasing hunger, have contributed to a food system that is inherently unjust, unsafe and unsustainable. In this system, at least one in four South Africans go to bed hungry every night and almost half of the population is food insecure. Increasing food prices are worsening the hunger and food system crisis.

Since 1996 small scale food producers, through the largest movement in the world with over 200 million members, La Via Campesina, has called for an alternative food system pathway based on food sovereignty. Various countries and local governments have heeded this call and have innovated on regulatory, institutional and policy support for food sovereignty. Food sovereignty is a critique, a movement and a systemic alternative on the world's agenda. In South Africa, in November 2014, through a national consultative conference on the right to food, small scale food producers, the landless, the hungry and support organisations resolved to address the multiple systemic crises of South Africa's broken food system. It was also agreed to build a campaigning platform for food sovereignty.

In February 2015 the South African Food Sovereignty Campaign (SAFSC) was launched at an assembly unifying agrarian NGOs, small scale food producers, food justice activists, environmental justice organisations and community movements. After two years of campaigning through a hunger tribunal, food sovereignty festivals, a drought speak out, a bread march against increasing food prices, activist schools, learning exchanges and local forum building, the SAFSC is poised to escalate its activism for a food sovereignty pathway. We demand a people's driven food sovereignty law that advances, strengthens and deepens systemic reform from below.

Why a Food Sovereignty Act?

Solutions to the hunger crisis in South Africa have failed us, particularly those emanating from the market or the government. It is for this reason that the South African Food

Sovereignty Campaign (SAFSC) seeks to unify struggles on the ground with progressive social forces to ensure that food sovereignty is placed on the national agenda and is an alternative way forward for our food system. We are not calling for technical solutions for households to access food, but rather we are calling for the deep transformation of our food system by breaking the control of food corporations and repositioning the state to realise the Constitutional right to food, and ensure the creation of conditions and space for the emergence of food sovereignty alternatives from below. This Act is one way in which we seek to do this. It expresses our emancipatory desire for transformation.

South Africa's drought cycle is further compounded by climate change. We are an extremely vulnerable country. The current drought has demonstrated the challenges we need to address to have a resilient and ecologically sustainable food system. This means diversifying the food system as a crucial policy and strategy so that South Africa has a greater chance of adapting, mitigating and protecting its food system. For us, that means creating the conditions and enabling support for a food sovereignty pathway. This Act provides a crucial mechanism to realise such a pathway.

The South African Food Sovereignty Campaign has initiated a process to develop a Food Sovereignty Act in response to multiple crises in the food system. This Act lays out what we, as small-scale food producers, landless people, the hungry, community organisations, activists and movements envision a just and transformative food system to embody. We argue that a food sovereign system cannot be achieved by government alone. As such, this Act does not cede all power to the government but sets provisions for the government to ensure favourable conditions for food sovereignty practices and ideals to take root. At the same time, rights and responsibilities are conferred on all persons and small scale food producers, as they have an important part to play as conscious agents in promoting a more just, sustainable, non-racial, democratic and food sovereign system in South Africa.

This Act also serves as a campaigning tool that will equip SAFSC activists to:

- a. create awareness about food sovereignty in our communities, thus heightening social consciousness about our unjust food system and radical non-racial systemic alternatives; and
- b. put food sovereignty on the national agenda, by entering into dialogue with other transformative actors, as well as relevant local, provincial and national government bodies.

Because food sovereignty involves an ongoing dialogue, this Act has and will be further developed, refined and strengthened through the following process, as outlined.

Process

The process of developing this Act has been a participatory process, involving the following:

- Commissioning of research into two areas:
 - i) The South African Food System Regulations
 - ii) Case Studies and Lessons from Country Experiences
- Workshops to draft a peoples' agenda based on presentation of research
- Peoples' agenda formulated into the first draft of the Act
- Process of consultation with lawyers and SAFSC activists (including small-scale food producers, consumers, students, civil society organisations and farming communities)
- A second workshop to comment on the revised Act
- All comments incorporated into the first printed version (Act no.1 of 2016)
- Launch of the first version at a Peoples' Parliament in November 2016 to SAFSC and progressive civil society formations for further consultation and input
- Dialogue, input and revisions at grassroots level in community organisations, movements and local food sovereignty forums
- Presenting the Act to relevant government departments
- Input comments from dialogues into second version of the Act (this version, No.1 of 2018)
- Ongoing dialogue at local and national levels by continuing engagements with relevant state departments, and presenting to parliament and local governments
- Encourage communities to use the Act as a compass to develop local food sovereignty pathways in communities, villages, towns and cities.

We envision that this act will play an important role in the pursuit of food sovereignty in South Africa, as it could bind the government to play a progressive and supportive role in the realisation of the Right to Food, and create a vision of our ideal food sovereign South Africa, based on the peoples' own agenda.

**Affirm the right to food
Give control of the food system to the people
Forward to Food Sovereignty!**

PEOPLES' FOOD SOVEREIGNTY ACT
No.1 of 2018

ACT OVERVIEW

The objectives of this act are to change the laws governing the food system, and for that purpose-

- to give effect to the right to food in the constitution, provided under section 27 and to ensure that the right to food is realised by all people;
- to ensure that indigenous seeds and seed saving practices are protected to maintain the biodiversity of seed and food systems;
- to promote the ownership of land by food producing communities, and ensure that land is distributed and managed so as to maintain biodiversity;
- to establish the rights of persons and food producers in relation to water, and to promote the sustainable use of water in the context of climate shocks, such as drought, so as to maintain food production;
- to ensure that all food production is undertaken by methods that are environmentally sustainable, safe and just;
- to promote the consumption of adequate, culturally appropriate, indigenous and nutritious food for all persons;
- to ensure that all food producers have access to relevant financial mechanisms to improve food production and distribution;
- to promote community markets linked to small-scale food producers and processors for distribution of food and to ensure that local food supply is prioritised over trade;
- to provide for the setting up of national, provincial and local participatory mechanisms to ensure democratic planning of the food system;
- to limit, prohibit and push back through regulation the destructive practices of the existing corporate controlled food system;
- to democratise the food system and reposition the post-apartheid state in support of food sovereignty through active citizen's intervention; and
- to amend and repeal any laws that give power to monopolistic food enterprises along the food chain, thereby maximising control of the people over their food production resources and food system.

BE IT PROMOTED by the South African Food Sovereignty Campaign, as follows:-

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CHAPTER ONE

Definitions, Purpose, Application and Interpretation

1. Definitions

In this Act, unless the context indicates otherwise-

“Active citizenship” is about constituting social power through democratic practice and consistent with the constitution. In this regard, women, youth, small-scale farmers, the landless, the hungry and workers are at the forefront of championing food sovereignty as citizens;

“agroecology” means an ecological approach to agriculture that views agricultural areas as ecosystems and is concerned with the ecological impact of agricultural practices. Agroecology is a science that is innovating on traditional farming knowledge that works with nature. Agroecology also embodies a political approach, employed by small-scale food producers as a way of life, and as a means to bring about social, economic and environmental justice;

“community” means any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group;

“community market” refers to a market that is owned and controlled by producers or consumers or both, involved in food sovereignty;

“co-operative” refers to an autonomous association of persons who come together voluntarily to meet their common economic and social or cultural needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles;

“corporate food system” refers to the corporate controlled and globalised food system (inputs, production, processing, retail, trade) which exists to make profit at the expense of meeting human need and protecting ecosystems;

“corporation” refers to a large company or group of companies that is controlled together as one single organisation for profit;

“customary law” refers to an established system of immemorial rules evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases;

“decent work” involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men;

“eco-social function of land” refers to prioritising public interests over individual or corporate interests in the sustainable use of land as part of eco-systems;

“ecosystem” refers to the physical and biological components of an environment considered in relation to each other as a unit. Central to this concept is the idea that living organisms are continually engaged in a set of relationships with every other element constituting the environment in which they exist. Ecosystems can be bounded and discussed with tremendous variety of scope, and describe any situation where there is relationship between organisms and their environment;

“environmental function of land” refers to prioritising natural ecosystems and natural reserves over individual or corporate interests for the purpose of maintaining biodiversity;

“farmer’s seed varieties” are the opposite of commercial seeds (hybrids and Genetically Modified seeds). They include seeds of varieties that are gathered, picked and maintained through selection, conservation, multiplication and exchange by the farmers themselves.

“food security” is a narrow concept that measures nutrition deficiency and allows corporations to control the food system. Food security has failed to end hunger and is destroying our natural system. It is anti-people and nature.

“food sovereignty” is the right of people to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define and control their own food and agriculture systems. It is an alternative to the corporate food system;

“food sovereign system” refers to an alternative food system which is defined by small-scale food producers and values people and nature over profit;

“Genetically Modified” any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology. These seeds are controlled by corporations for their benefit;

“government” refers to the executive, legislature and judiciary, including national, provincial and municipal structures. Government is the means by which state policy is developed and implemented;

“hectare” is a unit of measurement of an area of land (10,000 m²);

“household” refers to all persons living under one roof or occupying a separate housing unit, having either direct access to the outside (or to a public area);

“hybrid seeds” refers to a seed variety that is developed through a specific, controlled cross of two parent plants. Seeds saved from hybrid seed varieties do not produce uniform offspring, further hybrid seed varieties are in many cases owned by big seed corporations. Both of these features undermine collective seed saving;

“junk food” refers to cheap food that is high in calories from sugar or fat, with little nutritional value;

“persons” includes all human beings;

“precautionary principle” is about protecting all people and the environment from an uncertain science. It is a principle used by governments to restrict and prohibit the introduction of living and non-living GMO products;

“regulation” means a regulation made under this Act;

“right to food” means that food is a human right. The right to food is provided by the South African constitution but we believe this act should be implemented to take forward this provision to affirm the right to food.

“small-scale food producers” includes all peasants and smallholder farmers, agricultural and food workers, pastoralists, small-scale fishers and artisanal fisher-folk, forest dwellers, indigenous peoples, the landless, women and youth, who rely on access to and control over natural resources to advance food sovereignty;

“solidarity economy” refers to an economy in which production, consumption, finance, distribution and resources are controlled by the people to meet social needs and promote ecological justice. It is based on constituting four forms of power; structural, movement, direct and symbolic to advance a solidarity economy pathway;

“staple food” refers to foods that the majority of people eat on a regular basis to alleviate hunger and from which people get most of their calorie requirements;

“this Act” includes all the provisions, schedules and regulations within its ambit;

“water” is more than a physical resource, it is a source of life, provides sites for spiritual practice and a common resource for all;

“worker co-operative” means a primary co-operative in which the members pursue the objective of meeting their needs by building a jointly owned and self-managed enterprise;

“zero waste” refers to the philosophy that encourages the redesign of resource life cycles so that all products are reused. No trash is sent to landfills or incinerators. Zero waste is ethical, economical, efficient and visionary; and guides people to change their lifestyles and practices to emulate more sustainable natural cycles where all discarded materials are designed to become resources for others to use.

2. Purpose of this Act

The purpose of this Act is to advance a food sovereign system, by fulfilling the primary objectives of this Act, which are-

- (1) to give effect to and regulate the fundamental rights conferred by section 27¹, Section 25² and Section 24³ of the constitution;
- (2) to provide a framework within which all persons, communities and food producers can-

- a. produce nutritious and culturally appropriate food using agroecological methods; and
 - b. access and consume nutritious and culturally appropriate food.
- (3) to provide a framework within which the government shall limit-
 - a. the monopolistic tendencies and power of agro-industrial, and food retailers in the dominant corporate food system (including producers, suppliers of inputs, retailers and distributors); and
 - b. trade which hampers national food sovereignty.
- (4) to promote-
 - a. sustainable use of natural resources during food production; including water and land
 - b. local food trade; and
 - c. biodiversity of nature and seeds.
- (5) to provide a framework within which the government shall provide-
 - a. favourable conditions for all small-scale food producers, including sufficient infrastructure, training, access to land, credit and inputs.

- 1 Section 27, which is the Chapter on Fundamental Rights in the Constitution entrenches the following rights-
 - (i) Everyone has the right to have access to sufficient food and water...
- 2 Section 25, which is the Chapter on Property, entrenches the following rights-
 - (i) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable persons to gain access to land on an equitable basis...
- 3 Section 24, which is the chapter on the environment, entrenches the following rights-
 - (i) Everyone has the right to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that -
 - a. Prevent pollution and ecological degradation;
 - b. Promote conservation; and
 - c. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development...

3. Exclusion from application of this Act

No person shall be excluded from the application of this Act.

4. Interpretation of this Act

The following principles will guide the interpretation of this Act-

- (1) Laws and regulations shall enable *active citizenship* and shall empower persons to lead and drive this legislation;
- (2) *Non-racial unity* to ensure the food sovereign system meets the needs of all South Africans while challenging the racialised power of the corporate food system;
- (3) Laws and regulations shall promote *system change* of production, consumption, finance and social living to accord with the requirements of a harmonious relationship with the planetary ecosystem;
- (4) *Environmental justice* fights the inequality in resource use, is against racial discrimination and opposes pollution and destruction of ecosystems. It seeks systemic alternatives to privilege the interests of the workers, the poor, the dispossessed and the vulnerable;
- (5) *Democracy* through people's power shall be promoted to ensure that the majority in the food system shall have control over production and consumption of food;
- (6) Promotion of *communal and socialised ownership* to ensure collective property relations and self-management; that is also consistent with customary law and customary communities.
- (7) *Non-discrimination*: No distinction in favour of or against a person based on their group, class or category to which they belong shall be permitted by this Act, including racial, gender and all other forms of discrimination.

CHAPTER TWO

Seed

5. Persons' and communities' right to seed

- (1) All persons have the right to save and share seeds in South Africa.
- (2) All households and communities have the right to preserve seed systems through seed banks.
- (3) Persons, food producers, households and communities have the right to propagate, renew and grow seeds, and share knowledge, and thereby maintain biodiversity.
- (4) All persons have the right to revive and preserve beneficial indigenous practices of seed saving.

6. Restrictions on corporations and seed

- (1) All seed corporations are prohibited from producing, importing, marketing, and cross-pollinating genetically modified (GM) and hybrid seed in South Africa.
- (2) All GM seeds are banned in South Africa based on the precautionary principle.

7. The government's role in protecting seed and seed biodiversity

- (1) The government shall support active citizenship through a household and community controlled national seed bank to protect our seed systems and support local seed banks.
- (2) The government shall amend all relevant seed laws to ensure that seed saving or seed sharing by all persons is not restricted or prohibited.
- (3) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

CHAPTER THREE

Land

8. Persons' and communities' rights to land

- (1) All persons have a right to claim and use land to advance food sovereignty, particularly land which is not being used for a social and environmental function.

9. Food producers' rights to land

- (1) All small-scale food producers are entitled to a piece of land with the minimum size being 1 hectare and maximum size of 2 hectares consistent with national food system democratic planning and land communal councils as contained in Section 28 and Section 29.
- (2) Every piece of land utilised by small-scale food producers and those in the existing food system for food production shall maintain the ecosystem in a sustainable way.
- (3) Every food producer who is allocated redistributed land for food production shall produce on that land or it will be allocated to someone else by the government.

10. The role of the government in ensuring the right to land

- (1) The government shall ensure regular land audits and maintain a proper land registry to prevent land theft and ensure fast track redistribution to small-scale food producers.

- (2) The government shall utilise participatory mechanisms provided for in this act (in Sections 26,27,28,29) to undertake proper spatial planning to ensure the development of a food sovereignty system in rural and urban areas.
- (3) The government shall deconcentrate all large farms and pass on ownership to small-scale food producers over the next 20 years. Every 5 years 10 000 commercial farms must be deconcentrated, in accordance with the constitution.
- (4) The government shall recover costs and do what is necessary to rehabilitate land that has been damaged through pesticides, industrial farming and mining and other types of pollution.
- (5) The government shall prohibit land speculation for agricultural land.
- (6) The government shall ensure that land regulation in towns and cities does not hinder or prohibit agroecological food production, farming and food sovereignty pathways.
- (7) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

CHAPTER FOUR

Water

11. Water as a communal resource

- (1) Water shall be recognised as a source of life and a public good, integral for life in all eco-systems and shall, therefore, be used sustainably.
- (2) Water shall be prioritised for communal use and maintaining the natural environment before being allowed to be used for industrial and extractive purposes.
- (3) Water shall be democratised, such that water rights and access is determined in accordance with the constitution and water policy.
- (4) Water shall be free of individual or corporate control.
- (5) All dams, rivers and ground water are considered a public good and shall be utilised for public benefit and democratically utilised by interested parties through communal councils under section 29.
- (6) Private dams on farms shall be accessible to all, this in accordance with national policy and legislation which states that water belongs to all people.
- (7) Active citizenship shall have the rights to protect water through people's science, agro-ecology and spiritual practices.

- (8) Any pollution or wastage of water resources shall be penalised and treated as a criminal offence.

12. Water as a food production input

- (1) All small-scale food producers have the right to adequate water infrastructure.
- (2) All food producers shall implement sustainable water management practices.
- (3) Water, as a food production resource, shall be prioritised for these purposes before being allowed to be used for industrial or extractive purposes.
- (4) All water used for industry and mining shall be treated so that it poses no risk to the environment and food production. This burden shall be borne by the industry responsible for its contamination.

13. The role of the government in maintaining water sovereignty

- (1) In allocating water, the government shall-
 - a. ensure that all households, communities working communal land and small-scale food producers have access to sufficient water supply for producing food; and
 - b. maintain water infrastructure to ensure water is clean, safe and utilised sustainably for communal benefit in rural and urban areas.
- (2) Government shall ensure all polluters of water shall be taxed, business licenses revoked and rehabilitation costs carried by offenders based on the circumstances.
- (3) Government shall ensure all mining houses are regulated, monitored and penalised if they misuse, pollute or damage water.
- (4) Water management-
 - a. The government shall devise a suitable water management strategy for times of water shortage, to ensure that it does not disrupt food production. This strategy shall include:
 - i. traditional water management methods, such as water harvesting; and
 - ii. scientific research
- (5) All rights envisioned in this chapter for citizen's action shall be affirmed by government.
- (6) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

CHAPTER FIVE

Production

14. The rights of food producers

- (1) All small scale food producers and food providers are considered an integral part of the food sovereignty system.
- (2) All small scale food producers, persons and households have the right to produce food through agroecological methods.
- (3) All small-scale food producers have the right to implement, share and affirm indigenous culture, customs and knowledge about food production so that all beneficial indigenous practices of food production are revived.

15. Food waste and loss in the corporate food system

- (1) Food corporations in the existing corporate food system have the responsibility to eliminate food waste in a manner that meets the needs of the hungry and brings about zero waste as the ultimate objective.
- (2) Food producers and food providers shall promote ecological sustainability in the usage of resources, especially land and water.

16. Food production as worker-owned and decent work

- (1) Small scale food producers have the right to socialise work through worker-owned cooperatives, community-based and collectively owned food markets.
- (2) Youth have the right to be educated in agroecology, to produce food and to find meaningful, dignified work in food production.
- (3) All farm workers have a right to decent work and to the food they produce.
- (4) Small-scale food producers shall link and network to ensure that inputs, production and consumption advance the Solidarity Economy.

17. The role of the government in promoting sustainable food production

- (1) The government shall initiate a purchasing programme commencing with vegetables and milk that is farmed agroecologically by small-scale food producers. This shall be provided to supplement school feeding schemes, prisons, hospitals, clinics, universities and other anti-hunger initiatives promoted by the government.

- (2) The government shall promote ecological sustainability and usage of resources, especially through enabling renewable energy, land, water and wet waste that is used in organic composting.
- (3) The government shall prohibit highly industrial and chemical agriculture that degrades the ecosystem and in accordance with transitional arrangements contained in Section 37.
- (4) The government shall limit foreign ownership of core farming inputs such as seeds, organic fertilisers and pesticides.
- (5) The government shall promote an information and training system for agroecological agriculture and advance agroecology as a science.
- (6) The government shall assist small-scale food producers in relation to -
 - a. Solidarity Economy based production networks in the food sovereign system;
 - b. an enabling environment for small-scale food producers, this includes suitable infrastructure for successful agroecological agriculture; and
 - c. the protection of the property and livestock of small-scale food producers.
- (7) The government shall invest in the processing of healthy food products and staples through the solidarity economy.
- (8) All public institutions in communities (schools, hospitals, police stations and other government facilities) shall promote agroecological food production initiatives on their premises and in partnership with small-scale food producers involved in food sovereignty initiatives within their communities.
- (9) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

CHAPTER SIX

Consumption and Indigenous food

18. The rights of persons and communities relating to food consumption

- (1) All persons have the right to access and consume nutritious and culturally appropriate food.
- (2) All communities shall be encouraged to adapt their diets in such a manner that they eat foods that are locally produced and suited to the local eco-systems.
- (3) All persons and communities have the right to implement, share and affirm indigenous culture, customs and knowledge about food, nutrition and food preparation.

19. Restrictions on junk food outlets and retail

- (1) Junk food franchises and other junk food suppliers shall be prohibited from advertising their products to the public.
- (2) Foods that contain GM products shall not be imported, marketed nor consumed.
- (3) All nutritional information on junk food must be provided visibly together with necessary health warnings.

20. The role of the government in ensuring adequate nutrition

- (1) Health and nutrition-
 - a. Government shall set indicators of food sovereignty to be based on household nutrition, food affordability and availability.
 - b. Government provisioning of food through school feeding schemes and other anti-hunger initiatives shall be culturally appropriate and nutritious.
 - c. The government shall offer immediate and intermediate relief in a sustainable way that addresses the health and nutritional needs of children, and insulates the most vulnerable from the inflationary pressure of the corporate food system.
 - d. The government shall prohibit the advertising of low-nutrient food, and instead encourage the consumption of locally produced, sustainable staples and fresh food.
- (2) The government shall increase taxes on all unhealthy foods such as sugar, junk food and all foods that have adverse health consequences.
- (3) The government shall research and promote the consumption of culturally appropriate nutritious food.
- (4) The government shall commission research into indigenous foods so as to understand the nutritional content better, and those foods should be brought back into the food system.
- (5) Staple foods-
 - a. The government shall take control of basic foods and staples through empowering solidarity economy-based production.
 - b. The government shall ensure that staples that are produced and consumed are nutritious, grown locally and are suited to the environment.
 - c. The government shall subsidise nutritious staples.
- (6) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

CHAPTER SEVEN

Finance

21. The rights of small-scale food producers to finance

- (1) All small-scale food producers shall have access to finance for-
 - a. investments in agroecological farm production methods and equipment;
 - b. improvement in post-harvest practices;
 - c. promoting better management of risks;
 - d. ensuring better access to local community markets; and
 - e. financing adaptation to climate variability to ensure farming facilities and practices are climate resilient.

22. The role of the government in ensuring finance for food producers

- (1) Government developmental finance shall be biased towards small-scale food producers involved in agroecology, urban agriculture and for upgrading rural farming and infrastructure.
- (2) A government supported community, household and small-scale producer led national cooperative bank shall support small-scale agroecology and farming cooperatives, particularly worker cooperatives.
- (3) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

CHAPTER EIGHT

Distribution, Markets and Trade

23. Food producers' and communities' right to community food markets

- (1) Communities, households and food producers have the right to establish community-based and collectively owned food markets that are accessible to community members.

24. The role of the government in promoting markets

- (1) The government shall develop infrastructure and markets for small-scale producers.
- (2) The government shall support street traders with social infrastructure and necessary training so that they become an integral part of the system and are enabled through solidarity economy pathways.

- (3) Government intervention shall limit corporate centred market competition against small-scale food producers, through influencing prices, consumption and production patterns and constrain the power of the corporate food system.
- (4) Government procurement shall be skewed in favour of small-scale food producers, including through the establishment of a small-scale food producer support parastatal. Such a parastatal shall procure from small-scale food producers, provide transport and storage infrastructure and other necessary support to promote food sovereignty.
- (5) All these actions by government shall be informed and determined by the national food sovereignty council envisaged in this Act.

25. Regional and international trade agreements

- (1) Trade agreements shall be subject to food sovereignty priorities and the needs of small-scale food producers.
- (2) Trade agreements shall be determined by domestic food production capacity and local consumption needs.
- (3) Trade within Africa and the global South shall be informed by solidarity, reciprocity and co-development.

CHAPTER NINE

Participatory mechanisms to support the food sovereign system

26. National food sovereignty fund

- (1) A national food sovereignty fund shall be established.
- (2) This fund shall be managed by the government and representatives from food sovereignty organisations.
- (3) This fund will manage the farm buyout process, capitalisation of small-scale food producer enterprises and provide working capital to small-scale food producers.
- (4) Regulations shall be passed by the relevant minister to establish such a fund, and in keeping with the purpose of this Act.

27. National food sovereignty council

- (1) A national food sovereignty council shall be established to include government but will be led by food sovereignty organisations.
- (2) This council shall-
 - a. oversee the implementation of this Act;

- b. monitor the development of necessary mechanisms; and
 - c. coordinate all relevant government departments to realise this act.
- (3) Regulations shall be passed by the relevant minister to establish such a council, and in keeping with the purpose of this Act.

28. National food system democratic planning commission

- (1) A national food system democratic planning commission shall be established to include government but shall be led by food sovereignty organisations.
- (2) The purpose of this mechanism shall be to plan and guide the transition of the entire food system towards food sovereignty. This includes-
 - a. the development of research, policies and other necessary instruments to enable this process;
 - b. support of the activities of the food sovereignty fund, council and local communal councils through research and technical advice; and
 - c. devise a participatory planning process involving all food sovereignty organisations to develop 5-year food sovereignty plans.
- (3) Regulations shall be passed by the relevant minister to establish such a commission, and in keeping with the purpose of this Act.

29. Local communal councils

- (1) Participatory councils shall be established in which-
 - a. persons can determine local government policies on the food sovereign system consistent with food sovereignty principles and vision.
- (2) Local communal councils shall include representative local government and all communities and small-scale food producers in the local food system.
- (3) Regulations shall be passed by the relevant minister to establish such councils, and in keeping with the purpose of this Act.

CHAPTER TEN

General provisions to advance food sovereignty

30. Food sovereignty, agroecology and water education

- (1) Intervention in the primary, secondary and tertiary school curriculum shall be undertaken to educate children and youth about the food system, as such-

- a. Agroecology, ecology and indigenous food knowledge, including healthy food preparation, shall be essential subjects at all grades of school so that a connection with soil and food is instilled in persons at a very young age;
 - b. the primary and secondary school curriculum should include agroecology food gardens at schools as well as actively promote the growing of food at home as part of school assignments;
 - c. water rights, water commons and the preservation of water shall be included in the school curriculums; and
 - d. content around food sovereignty, solidarity economy and the food system shall be included in the curriculum.
- (2) Agroecology as a science shall be introduced as a course of study at universities.

31. Research and development for agroecology

- (1) The government shall establish training institutions and agricultural colleges to introduce education on agroecology training, capacity building and food sovereign systems.
- (2) The government shall invest resources to strengthen the research and development of agroecology as a science.
- (3) The government shall invest in research into indigenous knowledge about ecology, spirituality and nutritious food preparation practices.

32. Food sovereignty and customary law

- (1) Customary law shall be interpreted in consistence with this act

SCHEDULE 1

Amended and repealed laws

33. Seed laws

- (1) All relevant seed laws shall be amended to ensure that-
 - a. no persons are restrictions from saving and sharing seeds;
 - b. patenting of seeds is prohibited; and
 - c. GM seeds and trials in South Africa are banned based on the precautionary principle.

34. Land and agrarian reform

- (1) All land and agrarian reform policy and relevant laws shall be amended to ensure that policies are in line with this Act.

35. Municipal by-laws

- (1) Any municipal by-laws that impede the promotion of food sovereignty in local municipalities shall be amended to favour small-scale food producers and communities in rural and urban areas. These amendments shall be made by local communal councils.

SCHEDULE 2

Transitional arrangements

36. Land

- (1) The government shall deconcentrate all large farms (larger than 100 hectares) and pass on ownership to small-scale food producers over the next 20 years. Every 5 years 10 000 commercial farms shall be deconcentrated, in accordance with the constitution and in keeping with this Act's provision of 2 hectares being the maximum size of farm.
- (2) This shall be overseen and supported by all food sovereignty institutions envisaged in this Act.

37. Industrial farming methods

- (1) Over a five-year period, industrial farming methods, including the use of chemical pesticides and fertilisers, GM seeds, hybrid seeds and mono-cropping shall be phased out and replaced with agroecological practices.

38. Staple foods

- (1) Over a seven-year period, the government shall ensure national awareness raising around alternative, culturally appropriate and healthy staple foods.
- (2) All food sovereignty institutions envisaged in this Act shall also play their part in national awareness raising around nutrition, culturally appropriate and healthy local food alternatives.

- END-

APPENDIX I

The South African Food System Regulations: A Food Sovereignty Perspective

Marc Wegerif
July 2016

Food Sovereignty

“Via Campesina launched the idea of “Food Sovereignty” at the World Food Summit in 1996. This idea has now grown into a global people's movement carried by a large diversity of social sectors such as the urban poor, environmental and consumer groups, women associations, fisher-folks, pastoralists and many others. It is also recognised by several institutions and governments.

Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through sustainable methods and their right to define their own food and agriculture systems. It develops a model of small scale sustainable production benefiting communities and their environment. It puts the aspirations, needs and livelihoods of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations.

Food sovereignty prioritises local food production and consumption. It gives a country the right to protect its local producers from cheap imports and to control production. It ensures that the rights to use and manage lands, territories, water, seeds, livestock and biodiversity are in the hands of those who produce food and not of the corporate sector. Therefore, the implementation of genuine agrarian reform is one of the top priorities of the farmer's movement.

Food sovereignty now appears as one of the most powerful responses to the current food, poverty and climate crises.” (La Via Campesina, 2011)

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Abbreviations

CASP	-	Comprehensive Agricultural Support Programme
CSG	-	Child Support Grant
DAFF	-	Department of Agriculture, Forestry and Fisheries
DDG	-	Deputy Director General
DRDLR	-	Department of Rural Development and Land Reform
DSD	-	Department of Social Development
FAO	-	Food and Agriculture Organization of the United Nations
GN	-	Genetic modification/Genetically modified
ICSID	-	International Centre for the Settlement of Investment Disputes
IFSS	-	The Integrated Food Security Strategy For South Africa
NPFNS	-	National Policy on Food and Nutrition Security
NSNP	-	National School Nutrition Programme
PLAS	-	Proactive Land Acquisition Strategy
LRAD	-	Land Redistribution for Agricultural Development
RSA	-	Republic of South Africa
SAFSC	-	South African Food Sovereignty Campaign
SARS	-	South African Revenue Services

1. Introduction

“Understood as a requirement for democracy in the food systems, which would imply the possibility for communities to choose which food systems to depend on and how to reshape those systems, food sovereignty is a condition for the full realisation of the right to food.” (De Schutter, 2014)

This paper is based on research aimed at understanding the regulation of the South African food system and informing dialogue on the development of a Food Sovereignty Act for South Africa. The paper gives an overview of important legislation, regulations and implementation strategies and programmes that directly relate to the food system and others that impact on the system. This includes national policy, municipal regulations, food security policies and programmes, relevant trade and investment treaties and the institutional arrangements for the implementation of these. The paper identifies some of the weaknesses, gaps, strengths and space for transformation towards greater food sovereignty in the country and ends with specific recommendations for a possible Food Sovereignty Act.

This paper is produced in the context of a continued failure, notwithstanding some progress, to ensure the right to food for all South Africans despite the moral and constitutional imperative to do so (Tsegay et al., 2014; Global Hunger Index, 2015b). This is part of the chronic violation of the right to food internationally that continues despite some improvements in statistics on people’s nutritional status (Global Hunger Index, 2015a). The challenge in South Africa is not just the production of food but the concentration of control of the food system in a few hands to the exclusion of the vast majority, even rural people who are potential food producers (Greenberg, 2015; Manyelo et al., 2014; Heijden and Vink, 2013). The dominant and increasingly corporate-controlled global food system is widely critiqued for its failure to meet the right to food for all, its creation of a new health and obesity crisis and for being socially and environmentally unsustainable (Patel, 2007; Gura and Meienberg, 2013; Lang, 2010; Lang and Heasman, 2004). Beyond the critiques, there are movements that are defending existing non-corporatized agriculture and food systems and building alternatives. Notable amongst these efforts is the international peasant movement, La Via Campesina, and the principle of food sovereignty that they promote (see cover page). South Africa is both highly integrated into the global food system, with international food companies operating in the country (Greenberg, 2015; Igumbor et al., 2012), and part of challenges to it, including having activists and organisations that form part of the global food sovereignty campaign

(SAFSC, 2016; Hoepfl, 2016). South Africa also has its own peculiarities rooted in its history and the nature of its incorporation into the global economy.

It is important to note that the internationally recognised right to food involves more than a narrow right to certain calories. It also contains the right to adequate nutrition, the cultural appropriateness of the food and the sustainability. Building on this, a just food system needs to address how and by who food and its production is controlled (FAO, 2016; De Schutter, 2014). This is

“The right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.” (De Schutter, 2014)(p.3)

where the principles of food sovereignty provide a clearer direction. The lack of existing literature and policy work on food sovereignty policy in South Africa has, however, meant that the research for this paper drew a lot on work related to food security and the right to food. The limitations of the food security approach are well known: “food security discourse has been criticised for being largely silent on the appropriate paths to achieve food security and more importantly for not being able to challenge the structural causes and global imbalances that have been the chief causes of hunger in the modern world”(Hoepfl, 2016)(p.32). De Schutter, when he was the UN special rapporteur on the right to food, has also stated that “food sovereignty is a condition for the full realisation of the right to food.” (De Schutter, 2014)(p.20). There is an urgent need now to move towards a just food system in South Africa that ensures all people can enjoy their right to food within the framework of food sovereignty. This paper is one contribution to the discussions, mobilisation and work needed to ensure this happens.

2. Moving towards food sovereignty

To assess existing food regulation and make recommendations it is necessary to have an approach to how we could move towards food sovereignty in South Africa. First, the ambition has to be for food sovereignty to become the dominant food system as we believe it will work better for people and our planet now and in the future. It should not be reduced to being addressed as a nice to have small-scale poverty alleviation programme for “the poor”. Food sovereignty principles need to be applied across the food system from the production to the processing and retailing. This is both because the aim is democratic control across the food system, not only in production, and also because farming based on food sovereignty principles needs to link to compatible distribution, processing and retailing across the food system if it is to be viable.

The concentration of ownership of farms and capital-intensive large-scale primary production in South Africa has led to the massive loss of jobs and land-based livelihoods and with that also driven evictions from commercial farms (O'Laughlin et al., 2013; Aliber and Cousins, 2013; Wegerif et al., 2005). At the same time the concentration of corporate ownership and control in the South African food system as a whole closes the space for smaller scale producers, who are central to food sovereignty, but cannot easily - and never equitably - link to the corporate controlled processing and retailing operations (Greenberg, 2015; Heijden and Vink, 2013). Where small-scale food producers, in South Africa and elsewhere, are succeeding to produce food for themselves and feed others, importantly the growing numbers of urban dwellers, it is happening through networks of processors, transporters and markets that have a fit in terms of cultural repertoires and scale of operation (Van der Ploeg et al., 2016; Wegerif, 2014; Manyelo et al., 2014; Wegerif and Hebinck, Forthcoming).

What a Food Sovereignty Act has to do, therefore, is to create an enabling environment for a complete food system that is governed by and supportive of the achievement of the core principles of food sovereignty. To do this the Act will need to address the obstacles and threats to the emergence of food sovereignty, such as the highly concentrated patterns of ownership and control of land and other parts of the food system that are the antithesis of the equity and democratic control central to food sovereignty. This paper assesses the current food system regulation from this perspective.

3. South African Food System Regulatory and Institutional Mapping

3.1. National Food Regulations and Programmes

To-date, South Africa does not have any specific food sovereignty legislation or policy in place, what it does have is various laws and policies related to the right to food and food security.

3.1.1 Constitution

The Constitution of the Republic of South Africa specifies a clear right to food. Section 27 (1) states that “Everyone has the right to have access to – ... (b) sufficient food and water”. Section 28 (1) goes on to say that “Every child has the right - ...(c) to basic nutrition, shelter, basic health services and social services” (RSA (Republic of South Africa), 1996). The right to food can also be directly linked to achieving the right to dignity and right to life as contained in sections 10 and 11 respectively. Section 22 states that “Every citizen has the right to choose their trade, occupation or profession freely. Arguably, read with section 25, many South Africans continue to be denied the opportunity to engage in agriculture due

to the denial of access to land that is rooted in historic racial injustices. Section 25 of the Constitution, in particular, 25 (5), (6) and (7) mandate action to “enable citizens to gain access to land”, ensure the security of tenure for those denied it in the past and allow for restitution of land they were disposed of in the past. Section 25 (1-4) specifically empowers the state to expropriate land for land reform purposes and makes clear that compensation does not have to be at market value. Access to land and a more equitable distribution of land will be foundational to inclusive and equitable food sovereignty in South Africa and the Constitution provides the powers for this, although the state has failed to effectively use these powers.

There is, to date, no Right to Food Act in South Africa. The 2013 National Policy on Food and Nutrition Security notes the need for such an Act (RSA, 2013), but there have been no steps to the realisation of this yet. The fulfilment of these constitutional rights could be done through the creation of an effective food system based on principles of food sovereignty and this becomes one of the stronger legally based arguments for the creation of a Food Sovereignty Act.

3.1.2 National Food and Nutrition Policies and Their Implementation

The central piece of national policy is the National Policy on Food and Nutrition Security (NPFNS) that was adopted in 2013. It was developed by the Department of Agriculture, Forestry and Fisheries (DAFF) who are also responsible for leading on its implementation (RSA, 2013). This policy is a development on The Integrated Food Security Strategy For South Africa (IFSS), which claims to be in line with the National Development Plan: Vision 2030 and sets out to fulfil the constitutional imperative related to the right to food. Vision 2030 itself does not give a lot of attention to food but does have the broad outcome statement “we have food on the table” (National Planning Commission, 2011).

The NPFNS shows that the government of South Africa is not unaware of the challenges or uncritical of some of the drivers of the problems that the food sovereignty movement also point to. For example, the NPFNS states that despite sufficient food being available in the country: “Household food security is threatened by globalisation, international trade regimes, climate change, and the poor storage and distribution of food.” (RSA, 2013)(p.3). The policy explicitly takes on board concerns and recommendations from the UN Special Rapporteur on the Right to Food, including the need to improve market access for smallholder farmers and support agro-ecological farming. It states that “[t]here is limited access to processing facilities or markets for small-scale primary producers, including farmers, fishers and foresters;” (RSA, 2013)(p.4).

The dimensions of food security that are identified follow classic food security approaches covering: adequate availability of food; accessibility; utilisation (i.e. food safety and quality); and stability of supply. The pillars for implementation are identified as: nutritional safety nets; nutrition education; investment in agriculture; market participation; and risk management (RSA, 2013)(p.7-8). There is nothing intrinsically wrong with these, but they are a little limited and there is no real detail of what these will look like and how they will be implemented.

Importantly it is recognised that that South Africa has a responsibility in relation to regional, that is Southern Africa, food and nutrition security as well as national food security. This needs to be considered within any South African Food Sovereignty Act.

The definition of food security in the policy refers to the Food and Agriculture Organisation (FAO) of the UN definition - “access by all people, at all times, to the food required for a healthy life”. The policy, however, proceeds to make its own definition, which seems to shift attention away from “access by all people” to focussing on the government having the ability to provide for people: “This Policy 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”” (RSA, 2013)(p.8). The policy identifies the need to revitalise the agricultural sector and mentions that some countries have used subsidies and tariffs, but does not make any clear recommendation for what is to be done.

The NPFNS clearly identifies that in addition to there being a constitutional need for right to food legislation, “[i]n line with its international obligations, South Africa has to consider the recommendation of the Food and Agriculture Organisation of the United Nations (FAO) that Member States should consider the enactment of legislation on the right to access to food” (RSA, 2013)(p.18). The policy, therefore, suggests a Food and Nutrition Security Act and the development of Green and White Papers to prepare for this.

The NPFNS is a poorly constructed policy document, repetitive and unclear in place. While it does identify some of the issues, it is not very coherent in how they will be addressed. As with the IFSS the recommendations are often vague and framed as suggestions, frequently using words like “consider” and “could”, rather than making clear calls for action or stating agreed positions (RSA, 2013). There has also been a clear lack of implementation and a lack of consultation both on the policy and implementation plans for it (Gonzalez, 2015). More importantly, there has been no progress towards green or white papers and no sign of a food security or right to food Act. The policy identifies the need to gather and make

available food and nutrition data, but there is currently no recent or regular conducting of a nationally representative nutrition survey (Hendriks, 2014; HANCI, 2014).

The suggested institutional arrangement of a National Food and Nutrition Advisory Committee has also not been implemented. Reference to other structures, or proposed structures, can be found in reports of meetings and in presentations, such as the Integrated Food Security and Nutrition Task Team and the National Food and the Nutrition Security Coordinating Committee, but none of these seem to be functioning. One structure that is functioning is the South African Vulnerability Assessment Committee along with its provincial Vulnerability Assessment Committees. This structure is Chaired by the Director: Subsistence Farming in DAFF and meets every two or three months with all provinces represented on the national structure. There is a National Coordination Committee on Food and Nutrition Security that intend to meet quarterly, but is apparently new and so far, has met on a more ad-hoc basis. This is co-chaired by a Deputy Director General (DDG) from DAFF and a DDG from the Department of Social Development (DSD) and has only government representation from the provinces and some other relevant departments. There is an intention to form a wider Food and Nutrition Security Advisory Council with academic and civil society representation alongside government. The University of Pretoria is intended to take a lead in forming this, but it has not happened yet.

The intended implementation plan for the NPFNS that was supposed to be in place in 2014 is not yet finished, although it was said that a draft will be released for consultation “before long”.

3.1.3 Fetsa Tlala

There was a Zero Hunger Programme, but that was stopped and has been replaced by the Fetsa Tlala (End Hunger): Integrated Food Production Initiative. This has been criticised for over focusing on production and therefore not being a full food security programme, which would need greater attention to nutrition, health and social issues. The original budget estimate for Fetsa Tlala was over R11billion to put 1million hectares of land under production by 2019. The allocation to Fetsa Tlala was R678million in 2015/16 (Zokwana, 2015) and then in 2016 an additional R2.8billion was allocated from drought relief funds that totalled R15billion (Mkentane, 2016).

Food security and even more so the right to food, appear to be treated with little urgency or priority. The responsibility for the NPFNS was left with the Director: Subsistence Agriculture in DAFF. Early in 2015 the primary responsibility for developing the policy further and any potential legislation was moved to the Department of Planning, Monitoring

and Evaluation (DPME) in the Presidency. But it is said that the move is not yet formalised and there is still no indication of a draft green or white paper or legislation. The tendency has been to leave it as an agriculture issue with little of the required cross-departmental coordination. This was intended to be addressed by moving the responsibility into the DPME.

Within agriculture, the priority tends to be on large scale commercial farming, not subsistence, small-scale farming or food security. The DAFF web page describing the Integrated Food Security and Nutrition Programme (IFSNP) had not, at the time of writing, been updated since they posted information on World Food Day Events in 2006 (DAFF, Undated). The link on their website for the “Monthly Food Security Bulletins” had no information. The only reports on that part of the web page that were available were the monthly crop estimate reports providing information on areas planted with different crops and the structure that was functioning, at least meeting, was the Crop Estimates Committee and the monthly “Crops Estimate” reports. This confirms the focus of attention on production, and essentially large scale commercial production, with little or no attention to other issues essential for addressing the right to food.

There are elements of the policy that can be drawn on to support the arguments for food sovereignty, such as the call for “Alignment of investments in agriculture towards local economic development” along with suggestions of tariff protection and the commitment to passing new legislation (RSA, 2013). The development and push for a Food Sovereignty Act can take the weaknesses in the policies and the lack of implementation as an opportunity to offer a comprehensive way forward.

3.1.4 School Feeding

The National School Nutrition Programme (NSNP) is another important intervention with a budget of R6bn in the 2016/17 year and reaching 9million learners. National government funds are provided to all provinces as conditional grants. The programme started in primary schools and was extended to secondary schools with a roll out from 2009 onwards. It aims to provide food to all learners in primary and secondary schools in quintiles 1-3.

“The objectives of the NSNP are to:

1. contribute to improving the learning capacity
2. promote self-supporting school food gardens and other production initiatives
3. promote healthy lifestyles amongst learners” (Department of Education, 2009)(p.3)

The specifications for the food that is to be provided attempts to ensure some balance of diet, requiring protein, starch and vegetables in every meal. It also calls for limited use of fats and oils. It is encouraging that it calls for food that is “socially acceptable” and encourages the use of “indigenous food” (Department of Education, 2009)(p.4). Unfortunately, the guidelines sent to schools give no indication of how school gardens and other productive activities could or should be encouraged.

As with the NPFNS, some of the good intentions in the policy can be drawn on to support arguments for food sovereignty and the implementation gap, especially in terms of linking school feeding to developing local production, can be seen as an opportunity for positioning the food sovereignty approach as a solution. The advantage of the NPFNS is its existing funding and implementation with the potential to channel the resources towards local production, if the implementation approach can be shifted towards genuinely supporting local production. There is now considerable experience of such initiatives from different countries, which shows the potential, as well as challenges that have often undermined the potential positive impacts on local and small-scale production (Sulemana, 2016).

3.2. Social Grants

The social grants programme of the Department of Social Development has probably been the most significant post-apartheid intervention to reduce poverty and redistribute resources in South Africa. In 2015/16 year there were about 12m recipients of Child Grants amounting to a spend of over R50bn (Ferreira, 2016). The roll out of child grants, along with other social grants, is almost certainly the main reason for the improvement in child nutrition status since 2004/05 that has been identified as a success story in reducing child malnutrition (Rumsby and Richards, 2016; Ferreira, 2016; Global Hunger Index, 2015b; DSD et al., 2012).

The size and nature of the grants do not, however, create a basis for people to move out of dependency. A study on the impact of Child Support Grants (CSGs) on women found that “[f]ar from providing them with greater autonomy, for some, the CSG was paradoxically emblematic of their lack of autonomy and their inability to obtain paid work” (Wright et al., 2015)(p.9). Further, the positive contribution of grants is being constantly eroded by a failure of the government to adjust the grants to keep up with inflation, thus leaving those depending on them with less and less food purchasing power. Some celebrated the government's increase in social grant spending in the budget announced in April 2016, but when looked at more closely we see that the child grant went up by just 6.06% and old age pensions by 5.63% (Ndenze, 2016). This was against an inflation rate at the end of March

of 6.3% and a much more worrying food price inflation of 9.5%, which increased to 10.8% by the end of June 2016 (Trading Economics, 2016; Stats SA, 2016). While those depending on grants for food have to eat less, food retailing companies have continued to profit from selling more expensive food, arguably becoming the largest beneficiaries of these grants. For example, around the same time the child grant went up by 6.06%, Pick N Pay (one of the country's largest food retailers) announced that their pre-tax profits were up 26.1% and dividends paid to shareholders was up 26.5% (Jakoet, 2016).

While the social grants programmes must certainly be continued, they cannot be a substitute for the establishment of food sovereignty and in their current form will do little, or nothing, to assist in developing food sovereignty.

3.3. Trade and Investment

The way that South Africa, despite misgivings, had to bow to international pressure and accept the importation of chicken parts from the USA clearly illustrated how current trade policies cannot protect national food systems (Kgomoeswana, 2016). The resistance from the government on this showed that they are not unaware of the problem. Those responsible for food security in the government are also concerned about the limited power the state has to intervene when people are going hungry due to factors such as food price increases.

South Africa does have a range of anti-dumping duties in place for items such as frozen chicken parts (SARS, 2016), but this is not stopping the importation of significant amounts of such products. What has not been so well explained in the debates on the importation of chicken from the USA is that most of what is being sent are parts that Americans don't want as they favour white meat for use in chicken burgers and as fillet chicken etc... The target market is already met and most profit already made, before what are off-cuts to the Americans are sent to South Africa.

South Africa has signed up to a number of "free-trade" agreements and as with the chicken case value reciprocal trade arrangements with other countries. Unfortunately, in these negotiations, food security is not a priority when put against the potential for earning foreign currency. South Africa also continues to give rebates on a large number of food products. For example, "full duty less 32%" for "Boneless meat of bovine animals, fresh or chilled" (SARS, 2016). Cheese imports get full duty less 19% and most dairy products have a similar rebate, this could in part account for the large number of imported dairy items on our supermarket shelves at prices similar to local products. These imported products are

there despite having a local dairy industry and the potential economic activity in the dairy processing.

Investment treaties - bi-lateral and international investment agreements and arbitration processes - can undermine the powers of the state to put in place certain regulations. South Africa has been taken to the International Centre for the Settlement of Investment Disputes (ICSID) that has binding decision-making powers. In Case No ARB(AF)/07/1 South Africa managed to successfully defend a case where a Belgian and Italian company tried to claim for losses based on the government's Black Economic Empowerment Policies and the New Mining Act. While South Africa won the case it took years, was expensive and shows the kind of cases that can be brought to thwart transformation. Zimbabwe has been successfully sued in international investment arbitration for the loss of land by international investors due to the country's land reforms.

The limitations that trade deals and bilateral investment agreements place on the powers of the state will clearly limit the space that can be created for food sovereignty in South Africa.

3.4. Land, Agriculture and Fisheries

3.4.1 Land: A failure to reform, let alone transform

The highly skewed nature of land ownership and access in South Africa makes a far-reaching land reform a prerequisite for the establishment of food sovereignty in the country. There is a considerable body of research and literature available that details the failures of South Africa's post-apartheid land reform efforts. These failings can be summarised under three main headings. 1) Failure to substantially deconstruct the colonial and apartheid land structures through redistribution, restitution or securing of tenure for those with weak land rights. 2) The contradiction between a land reform programme that aimed to make more land available to more people and economic policies of liberalisation that encouraged the greater concentration of landholding and production in fewer and fewer increasingly corporate hands; and 3) The poor production performance on the little land that has been redistributed or returned to people through restitution.

The Proactive Land Acquisition Strategy (PLAS) was launched as the new model for land redistribution in 2006 with the aim to overcome limitations with the previous Land Redistribution for Agricultural Development (LRAD) programme. PLAS has increased the ability of the state to acquire land, but the amount of land actually acquired and transferred has been limited by financial and administrative constraints. The strategic purchases of suitable land, based on area plans, has not transpired as intended and the results for

beneficiaries have generally not improved when compared to the previous LRAD and other initiatives (de Satgé, 2014; DRDLR, 2014; Binswanger-Mkhize, 2014; Ranwedzi, 2013). The same problems of people encouraged into unworkable groups not well suited to the land available and the demands of production have continued. The DRLDR annual report for 2015 shows that there was not a single Communal Property Association in the country that was compliant with legislation (DRDLR, 2015). Along with this, there has been a high dropout rate, continued dependence on state support that is not adequate and elite capture (de Satgé, 2014; Ranwedzi, 2013).

Under PLAS, despite the notion of it involving “proactive land acquisition”, in practice the willing-buyer willing-seller model has prevailed and the state has continued to pay market, or even over market prices for land (Binswanger-Mkhize, 2014). At the same time the beneficiaries have not gained full ownership rights, rather being given lease and rental agreements, which are also often poorly administered and are often not paid (Binswanger-Mkhize, 2014; de Satgé, 2014; Ranwedzi, 2013).

Only a fraction of land has been redistributed in South Africa in the 22 years since liberation. The arguably already low target of redistributing 30% of agricultural land by 1999 has now been moved to 2025 and only about 7% had been distributed by 2011 (O’Laughlin et al., 2013). The Department of Rural Development and Land Reform (DRDLR) targets for hectares of land to be redistributed annually would require around 45 more years to achieve the 30% target and in practice the DRLDLR, according to its own reports, is falling far short of even these annual targets (DRDLR, 2015; DRDLR, 2014; DRDLR, 2013).

The Tens of thousands of land claims under the Restitution of Land Rights Act and the Land Reform Labour Tenants Act remain unsettled (Lahiff, 2008). These failures continue with the most recent DRLDR annual report, for the year 2015, shows zero labour tenant claims settled in that year (DRDLR, 2015). At the same time, we see an increasing concentration of farms in fewer and fewer hands and mass evictions of people from farms that could mean more black South Africans have actually lost land since the end of apartheid than gained from the land reform programmes (Wegerif et al., 2005). Greenberg argues that corporate concentration of ownership has continued and the government has failed to transform the food system, “[d]espite the rhetoric of land redistribution and support for black small-scale farmers, therefore, state interventions have consolidated corporate power in agri-food chains” (Greenberg, 2013).

Farm dwellers, including labour tenants, who have often lived their whole lives on farms could be the core of the revival of a more equitable land ownership and production, but are not being secured and instead are losing land. To make matters worse much of the land

that has been redistributed is often under-utilized making a limited contribution to improving livelihoods (Aliber and Cousins, 2013).

Many bemoan the lack of 'post-settlement' support for people receiving land through land reform. This has undoubtedly been extremely poor, but the more systemic problem lies in the structure of the agri-food sector and the uncritical adoption and attempted imposition by the post-apartheid state of the large-scale commercial farming model (Greenberg, 2015; Aliber and Cousins, 2013). By way of contrast, Aliber and Cousins found that in Zimbabwe, where there has been a much greater redistribution of land, "the 'dualistic' structure inherited from the past been radically transformed" and what they found, at least at Masvingo, "suggests that smallholder farming on subdivided commercial farms has the potential to support large numbers of rural producers, and that small-scale agriculture combined with other livelihood sources can benefit many of the rural poor" (Aliber and Cousins, 2013)(p.164).

Political rhetoric around land remains high, but there is no coherent action to fundamentally transform land holding or the food system that the current land holding patterns are a central part of. Food sovereignty offers a framework for addressing the nature of landholding and production that we need to move beyond the current models. There has to be an alignment between a radical restructuring of land holding and the food system.

3.4.2 Agricultural support to Land Reform

Programmes in support of agricultural development, sometimes linked to land reforms, include the Comprehensive Agricultural Support Programme (CASP) and Ilima/Letsema Programme. Through this R2.3billion was said to have been made available to support small farmers in the year 2015/16. This out of a total of R3.7billion, including funds for Fetsa Tlala mentioned above, that DAFF made available as conditional grants to support farmers from its total budget of R6.38billion in the same year (Zokwana, 2015).

Despite the colonial and apartheid era efforts to destroy African agriculture there continues to be a large number of black small-scale farmers who do produce at varying levels, some of whom also sell their produce (Binswanger-Mkhize, 2014). This resilience and farming activities, even if in some cases small, are very important and need to be built on in the context of not only the removal of so many from their land but also the deskilling that has occurred with generations not having opportunities to produce. Sadly, far from nurturing and building on positive examples, too often they are undermined or threatened by other "development" interventions. For example, the historically grounded and varied

food production in Xolobeni, in the Eastern Cape, is under threat both from mining initiatives and the plan for a new toll road. In Phillipi, outside Cape Town, a vibrant range of farming operations that supplies around 150,000 tons of agricultural produce to the city annually is threatened by housing and other projects (Gontsana, 2016). The Phillipi case also highlights some of the challenges of different interests between small emerging farmers and larger, often still white-owned, commercial farms. These share certain common interests in protecting land and space for agriculture, but also have very different interests when it comes to the nature of agriculture and the transformation needed in the sector.

The government has promoted mentorship of new black farmers by white commercial farmers and pressured communities who got land into strategic partnerships, often also with white commercial farmers and corporate orientated agri-business partners. These approaches have been largely ineffective from a production point of view and continue to promote unsustainable agricultural practices with a high concentration of ownership – hence also the exclusion of others – even if some of the owners are now black. The power relations within these arrangements have also often favoured the partners over the new land owners doing little for genuine transformation (Binswanger-Mkhize, 2014; Lahiff et al., 2012).

3.4.3 Agri-Parks

The Agri-Parks/Agri-Hubs initiative is another effort from the government, led by the DRDLR, to support emerging farmers. This has an “initial R2billion budget” to support the establishment of multi-purpose small farmer support centres in every district of the country. The basic idea of a range of support services, including processing facilities, advice, soil testing equipment, etc... is not bad, the concern is how it will be implemented given the poor track record of this and other governments when it comes to top-down delivery of such programmes. In this case, there is even a generic design for the “agri-hubs” and a roll out from central government with provinces identifying where to put the new facilities. The intention is that these become somehow self-sustaining after 10 years, but how this will happen is unclear. Small farmers, including some in the vicinity of the new hubs, report that there has been no consultation with them about what is needed.

3.4.4 Fishing

As with land rights, there have been struggles to reform fishing rights in order to overcome the historic marginalisation of black small-scale fishers. The new small-scale fisheries policy has been welcomed by many as progressive, but there continues to be a lack of resources

to support small-scale fishers and the approach of allocating individual quotas has also caused inequality and divisions within communities (Nthane, 2015; Isaacs and Hara, 2015).

In the Dwese Cwebe case, we see environmental conservation interests overriding the rights of local fisher people and Department of Environmental Affairs (DEA) regulations overriding the DAFF policy on small-scale fishers. After court action by the Legal Resources Centre, a level of access to fishing was granted, but the restrictions continue to effectively block fishing and other gathering of seafood by local fisher people who in the past derived food, nutrition and incomes from these activities.

3.4.5 Seeds

South African seed laws and regulations maintain a high level of control, which is good for seed quality but makes it hard for small-scale seed producers to comply with the requirements. Now the seed sector is increasingly controlled by very few international companies, primarily Monsanto, Panner and Pioneer Hi-Bred (ACBio and TCOE, 2012).

Various laws allowing for the use of genetically modified seeds in South Africa were passed in the 1990s with little public engagement or consultation. These laws, along with an initially limited public scrutiny and weak administration that involved many people from the seed industry (including GM seed producers) within the governance has allowed the rapid spread of Genetically Modified (GM) seed use in the country. GM seed testing and commercial use started with almost no independent field trials and assessment and little public knowledge (BioWatch SA, 2016; Wynberg and Fig, 2013). The main laws give exclusive and strong rights of ownership over genetic material and focus on protecting the rights of commercial seed companies who are producing for capital-intensive, mechanised and mono-cropping models of agriculture (ACBio, 2016).

There has been a concerted push-back from civil society organisations that have managed to use the courts, especially the Constitutional Court, and public pressure to firstly start getting access to the information and then to challenge the licencing of GM seeds (Wynberg and Fig, 2013; ACBio, 2015). Nevertheless, by the 2012/13 season, 86% of maize and 90% of soybean grown in South Africa was genetically modified and 2.9million hectares of land was planted with GM crops (SAASTA, 2014). As is well known, aside from the serious environmental concerns, GM seeds are owned by large transnational companies and require farmers to buy new seeds every year, thus locking them into a dependency on those companies. Such dependence in this key part of agricultural production is the antithesis of food sovereignty.

South Africa has opened up to international seed companies and to the use of controversial GM seeds. Alongside this there has been a lack of public investment in local, non-GM, new seed and other technology development. The increasing control of the seeds used in South Africa by international corporations and the loss of bio-diversity that is going with that is a serious threat to the potential for food sovereignty. As “the African Centre for Biodiversity has argued: “existing policies and laws will require substantial revision to enable small-scale farmers who want to produce and maintain seed to do so—without fear of criminalisation and without having to meet stringent certification and other requirements that are not appropriate for their needs or conditions.” (ACBio, 2016)(p.24)

3.5. Municipal Regulation.

Municipal regulations, largely by-laws, have a big impact on the ease with which small businesses can trade in food and other related goods. They also can be enabling or obstructive of urban agriculture. These factors are important for food sovereignty as the majority of the population reside in urban areas, meaning that a food system needs to be able to meet the food and nutrition needs of these urban residents and the cities are an important market opportunity that can make farming more viable.

It would be a large job to look at all the town and city by-laws, but Johannesburg and Cape Town are important cities and indicate the type of approach being taken in the country. The City of Johannesburg has a programme to support urban agriculture and they include it in the city’s Integrated Development Plan as a means to meet food and employment needs. They have also tried to develop the long-standing Johannesburg fresh vegetable market as an outlet for farmers (COJ, 2009). The City of Cape Town has an Urban Agricultural Policy that is positive toward the development of urban agriculture. Section 3.3.5 says that “[t]he City will identify land in all urban areas suitable for urban agriculture” (City of Cape Town, 2006). This is, however, accompanied by stipulations that the Urban Agricultural Unit will specify what type of agriculture will happen where depending on factors such as size, location, the surrounding community and environmental impacts. This kind of control is unlikely to fit well with the more organic growth of an urban agricultural sector. We also see, as mentioned above, that successful peri-urban agriculture in Philippi is under threat from “development” plans of the same city.

Municipal by-laws in both cities continue to set limitations that will hinder the growth of food trading urban agriculture. This especially impacts small-scale traders and producers with limited resources to follow difficult application procedures and comply with a range of requirements. For example, in Johannesburg, one needs a permit to keep more than ten chickens and any cattle, goats or sheep. Goat keepers are required to have a minimum of

30m² space with a minimum of 1.5m² per goat, so there will be a reduced viability for anyone with less than 20 goats who still has to have the same size structure (COJ, 2004). The 2-metre minimum height of walls in goat and sheep sheds also seems excessive. The stipulation for animal sheds to be located certain minimum distances from both residential structures and property boundaries amounts to ruling out animal husbandry for anyone who does not have a large piece of land. A goat or sheep enclosure must be no closer than 15metres from any dwelling and from any boundary as well as 50-metres from any water source. Compare this to standard township plot sizes of around 300m² which means 15 x 20 metres, in other words, no animal husbandry in the townships. As for pigs they need to be over 100metres from any dwelling or boundary of a property (COJ, 2004). While that is enforced there is no chance of seeing pig keeping in the city. In cities where there is substantial urban and peri-urban agriculture, animal husbandry is a central part of it with products such as eggs and milk and the supply of manure that is important for urban horticulture. In Johannesburg, we find, however, that “manure making or storing or compost making” is listed as an “offensive trade” for which additional permits are needed and only available when a list of standards is fulfilled (COJ, 2004).

3.6. Disaster Management

South Africa has fairly comprehensive disaster management laws and policies, with the Disaster Management Act 57 of 2002 given important revisions by the Disaster Management Amendment Act 16 of 2015. The Amendment Act put greater emphasis on, amongst others, risk reduction, rehabilitation after disasters and giving specific attention to the impacts of climate changes (RSA, 2015). There is provision made in the Acts for national and provincial disaster management structures with space for various civil society groups participating including “organised agriculture” (RSA, 2002). It is well known that in South Africa “organised agriculture” tends to mean the large commercial farmers organisations who continue to exert pressure on government to defend their interests. They have captured large amounts of drought relief funds over the years and continued trying to do this in the 2016 drought (Mkentane, 2016).

It is a concern that there is nothing specific said about food and agriculture in the disaster management Acts. While the government has stepped in when drought affects farmers and food security, there is little specific guidance in the current laws to steer the nature of the interventions and who should benefit.

3.7. Competition Regulation

The South African Competition Act, as amended, has a primary focus on creating a competitive and efficient economy. The aims of the Act include protecting consumers and providing the opportunity for all South Africans “to participate fairly in the national economy” and it establishes structures to ensure implementation, including a Competition Commission, Competition Tribunal and Competition Appeal Court (RSA, 1998).

The most prominent case of these laws being applied in relation to food was when the Competition Commission acted against three bread companies who control around 60% of the bread market in South Africa. The companies were found guilty of acting as a cartel and had to pay large fines. The core of the problem, however, lies in the high concentration in the sector as well as a history of this type of anti-competitive behaviour that was condoned in the apartheid era in order to help these companies get to their dominant position (Berkowitz, 2013). Aside from the bread case there have been few other food related competition cases. National consumer rights and competition legislation should assist to avoid companies profiteering from food sales and protect consumers from harmful foods. The increased consumption of highly processed foods, high obesity levels and the rising food prices alongside the growing profits of food corporations leaves many South Africans believing that regulations are not working for food consumers.

One central problem is that the Competition Act and related policies and structures rely on market forces, in fact even set out to unleash such forces, to solve any problems. This is in a context where, as the Act acknowledges, there has been a history of discriminatory practices that have helped create excessive concentration of ownership and restrictions on the full participation of all citizens (RSA, 1998). It cannot be expected that the competition policy would unravel the outcomes of such a history by relying on the market and indeed we have seen a continued concentration of ownership in the economy, including in the food sector (Greenberg, 2015).

4. Conclusions and Recommendations for a food Sovereignty Act

There is a lack of coherence to the South African government policies related to food security and the right to food. Thus, there is not only a significant implementation problem, but also both policy gaps and policy obstacles to achieving the right to food and even more so to achieving food sovereignty. The opportunity in this situation is that the food sovereignty principles could serve to guide the development of a much more coherent approach that would be better at meeting the government’s own stated objectives as well as constitutional obligations.

The biggest successes in addressing food security, in terms of reducing stunting and malnutrition, are probably the roll out grants, in particular the child grants, along with the school feeding programme. These certainly help meet food needs narrowly defined, but there is little dignity in it and these do nothing to put the food system more in people's control or to put "those who produce, distribute and consume food at the heart of food system".

The element of democratization and people's control of the food system is almost completely absent with even the policies that may have merit, such as the Agri-Parks, being conceptualised and implemented in a very top down way. At the same time the current approaches to free-trade and the international investment regimes that South Africa is complying with, undermines the government's ability to provide the protection and regulation that would be needed for the achievement of the right to food for all based on a food sovereignty model. Although there is some awareness in government of the problems of international trade and investment regimes and the extent of concentration and corporate control in the food system, the government and their policies remain essentially locked into enabling the large-scale commercial farm model linked to large retail and processing corporations. This will have to change, and the power of corporations in the food system will need to be dismantled if food sovereignty is to be achieved.

Creating food sovereignty will need targeted trade protection for the food and agriculture sectors, in the form of import tariffs and outright bans in some cases. The Act must specifically override - based on the imperative of meeting a constitutional and moral obligations - trade and investment policies and agreements or ensure that they are aligned with the requirements of food sovereignty. This will require amendments to existing trade and investment agreements.

Duty free importation of agricultural and food processing equipment that is suitable for small and medium scale processors would help to make some technology more accessible. In particular, India and China have small-scale processing and production equipment. Large machinery that is serving corporate agriculture could at the same time be taxed to reduce the incentive to bring in such equipment. These tax interventions can of course be accompanied by research, development and the promotion in other ways of technology appropriate to a smaller scale of production and processing and greater democratic control.

Urban planning must create and protect the physical space needed for food markets, small-scale local traders, urban and peri-urban agriculture and low cost means of transport. Regulations and bi-laws must be amended to enable the food production activities

compatible with a food system based on food sovereignty activities. This includes easy access to permits (or no permits required) for food trading and urban agricultural activities including livestock keeping.

There is a considerable amount of public money going to existing food and agriculture related programmes, some of which have been mentioned in this paper. This is an opportunity if those resources can be reoriented to supporting food sovereignty and be effectively utilised. This requires programmes to be reoriented to fit with the proposed Food Sovereignty Act. Whether an Act is passed or not, it will be essential to build effective and inclusive local monitoring to ensure that there is delivery that meets people's needs and builds food sovereignty. There could be room for gains to be made by, for example, small-scale farmers engaging with Agri-Parks/Hubs to from the ground up re-orientate these resources to respond to their needs and support food sovereignty. If this can work in some areas, it will serve as an example for other areas and national advocacy for wider change.

A wide range of interventions are needed and one that cannot be escaped is the need for a redistribution of land on a scale not yet seen in South Africa. A difference with what has been done to date must be that these land reforms happen within the context of a restructuring of the food system as whole. What is needed is not so much planning or training, as an environment in terms of access to markets, supplies and technology that people can use in ways they chose. Land must be put into people's hands without the imposition of government plans, corporate or large farm collaborations, or state imposed forms of collaboration among new land rights holders. Those who are already, or wish to be the primary users of the land, need to be at the heart of this process. The existing small farmers, the farm dwellers and the labour tenants need to be the primary targets.

Given state failures at land reform, legislative and constitutional changes should enable people's action to seize land. An option would be to create the legally recognised "social function of land", informed by the Brazilian example, that would both require land to be used for the creation of food sovereignty (a core part of the proposed social function of land) and allow for land that is not used as such to be occupied. This would create legal conditions where land not be used for its social function could be taken if the purpose is to use it for its social function. Such a provision should create a right for landless people to occupy and use land that is not fulfilling its social function and to be legally secured on that land if they do use it for its social function, such as to achieve food sovereignty.

A Food Sovereignty Act needs, in summary, to create an enabling environment for food sovereignty to be built from the ground up by addressing the following issues:

1. A far reaching redistribution of land that fundamentally transforms land holding to become far more inclusive.
2. The creation of a legislated social function for land with food sovereignty at its heart.
3. Increasing the powers of national government to protect the South African food, fisheries and agriculture sector including the markets from international and corporate competition.
4. Put in place a programme to remove GM seeds from South Africa and reduce corporate control of seed varieties, while building up state and farmer managed seed development and production that will serve as a national asset.
5. Removing South Africa from the limitations imposed by international investment and trade regimes.
6. Public investment in research and development of ecological agriculture, fisheries and food production, farmer-managed seed systems and processing and transporting technologies appropriate to a food system based on food sovereignty.
7. Provision of training and mentorship for small-farmers in ecological farming practices.
8. Build into disaster management legislation and practice an explicit support for protecting food sovereignty and applying food sovereignty principles as a solution in risk reduction, emergency response and rehabilitation interventions.
9. Gradually limiting corporate control of all parts of the food sector through taxations and regulatory regimes that will make the corporate model uncompetitive in the sector.
10. State and parastatal food procurement done in a way the builds food sovereignty and benefits small-scale farmers and fishers.
11. Urban planning and regulation to create space to trade and produce food.
12. Amend laws and regulations to limit bureaucratic requirements - such as for town planning and seed production - that are expensive and hard to comply with for small-scale producers, processors and traders.
13. Shifting the approach of South Africa in the rest of Africa to one that ensures the South African government and companies do not undermine national and local food systems in other countries. Rather, actively support and collaborate with other countries in their development of food sovereignty.

The promotion of a Food Sovereignty Act will need to draw on the constitutional mandate. The Act should be supported in order to ensure the fulfilment of Sections 27(1)(b) and 28(1)(c) and to contribute to meeting the obligations contained in sections 10, 11, 22 and 25. Taken together these form a strong mandate for food sovereignty as it will address the

right to food, nutrition, dignity, life, land and choice of work that are all contained in these sections of the Constitution.

A move to food sovereignty will require not only the legislative tools, but also the national and international mobilisation of solidarity to prevent corporate interests, backed by diplomatic pressure of other nations, overriding the required transformation in South Africa.

Getting such an Act passed and implemented will require a long-term and concerted effort with multiple levels of engagement. This requires: mobilisation of pressure locally, national and internationally; seeking and collaborating with allies in various parts of government; legal actions; and perhaps most importantly, vigorously protecting and then building on the pockets of local production and food markets that already follow food sovereignty principles.

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APPENDIX II

A Food Sovereignty Act for South Africa: Case Studies and Lessons from Country Experiences

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1. Introduction

The notion and practice of food sovereignty represents a response by social movements to the crisis of the world food system. When talking about food sovereignty, most attention has tended to be given to the movements and initiatives working to forge food sovereignty from below. However, attention is now also being turned to the need to contest the state's role in supporting unjust food system relations, and the potential role it can play in securing the conditions for food sovereignty. One way in which movements in some parts of the world have sought to secure the transformation of their national food systems in favour of small producers, and consumers, is to lobby for legislation that legally binds the state to providing a framework for, and playing an active role in, supporting food sovereignty. Today, seven nations have included food sovereignty principles in their constitution or pieces of legislation, namely Ecuador, Venezuela, Nicaragua, Bolivia, Mali, Senegal and Nepal.

The state is a powerful actor in shaping national food systems through its policy frameworks and political priorities. The South African state has largely upheld the framework of an export-led, industrial and globalising food system under increasing corporate control and with profit as its central motive. Hence contesting and finding ways to pressure the state into supporting a more just food system has much relevance today. The South African Food Sovereignty Campaign (SAFSC) is currently working to develop a Food Sovereignty Act that lays out grassroots proposals that represent a vision for food sovereignty in South Africa and that can be used as a mobilising tool to further galvanise society around the food sovereignty alternative, as well as to pressure the state.

As part of the learning process, this paper explores a few cases of countries that have developed legislation aimed at food sovereignty, namely Ecuador, Venezuela, Mali and Senegal, as well as local experiments in the United States and Canada. It outlines the background, key elements and challenges of each case. It then attempts to draw out key lessons from the cases that may be applicable to the South African context, and ends with key recommendations for advancing a process to develop a Food Sovereignty Act for South Africa. Rather than recommending specific content for the Act, the recommendations draw together insights from the case studies, the lessons learned, and the South African context to put forward some suggestions for developing the Act.

2. Ecuador

Although Venezuela was the first country to enshrine food sovereignty in its Constitution, Ecuador was the first to adopt food sovereignty legislation, under the leftist President Rafael Correa (Peña, 2016). Prior to this, in the 1990s Ecuador saw an upswing in indigenous and peasant struggles, in the context of a state that had traditionally supported the industrialisation of the agri-food system, with production focused on export, and a high dependence on imported food (Giunta, 2014). In a country where nearly one-third of the population lives in rural areas and 70% of this rural population is involved in agriculture, this globalising food system marginalised peasant producers, which was intensified with the imposition of neoliberal structural reforms advanced by the World Bank and IMF in the 1990s and associated privatisation of land and resources. Years of intense struggle through a number of social movements resulted in a set of victories against the neoliberal rollout, including the toppling of three standing presidents (Giunta, 2014).

During this time a group of peasant and indigenous organisations formed an alliance called the *Mesa Agraria*, which for a number of years undertook extensive organisation and deep mobilisation around a food and agrarian framework for food sovereignty. The precursors to the food sovereignty content of the Constitution and the subsequent development of the food sovereignty law were therefore practices of resistance by the many indigenous and peasant organisations in Ecuador, transnational activism and linkages through movements' and organisations' affiliations to Via Campesina, and advancement of alternatives through 'networks for social innovation inspired towards sustainable agriculture as well as solidarity economy' (Giunta, 2014: 1209).

A collective proposal for an 'Agrarian Revolution' was finalised in 2006 by the *Mesa Agraria* and an agreement signed with Rafael Correa that on assuming the presidency he would remain committed to and work to enact this Agrarian Revolution (Giunta, 2014). After Correa's election, in 2007 a Constituent Assembly was established to develop the new Constitution, which would set the framework for radically transforming the state and the social, economic and production landscapes (Giunti, 2014). A key shift, as in the wider left-turn in Latin America, was re-positioning the role of the state in national (post-)development (Clarke, 2016). Peasant and indigenous organisations had strong representation in the Assembly and it was due to the agrarian social movements that food sovereignty was high on the agenda of the new Constitution. Indeed, the participatory formulation process for the 2008 Constitution opened the political opportunity for these

highly mobilised social movements, the largest and most powerful being CONAIE, to cement a place for food sovereignty in the constitution, under the framing of the indigenous notion of *Sumak Kawsay*, or *Buen Vivir*, meaning ‘the good life’.¹ *Buen Vivir* is officially the guiding framework for ‘post-development’ in Ecuador, but as will be discussed below in relation to food sovereignty legislation in the country, there has been a relatively wide gap between such notions and intentions on paper, and the government’s actual policies and practices (Clarke, 2016; Giunta, 2014).

In the drafting of the 2008 Constitution spaces were created for social movements to participate in its drafting, largely through working groups tasked with developing its content. In addition, some social movements and NGOs also took their own initiative and formed working groups alongside the work of the legislators and the official working groups, in order to expand the scope and content of proposals (Peña, 2016). It is important to mention that the very process of engagement by social movements on food sovereignty through the Constituent Assembly process helped in diffusing food sovereignty from the ambit of peasant organisations and into the political arena and wider society (Giunta, 2014; Peña, 2016).

Article 13 of the final 2008 Constitution obliges the Ecuadorian state to promote food sovereignty and contains relatively detailed provisions on the obligations of the state in this regard. It also obliges the state to ensure that activities and issues that might undermine food sovereignty do not take place; for example, that efforts to achieve energy sovereignty do not undermine food sovereignty. In particular, the Constitution outlines the following role for the state in achieving food sovereignty:

1. Boost production, food processing and fisheries small and medium-sized production units, community and social and solidarity economy.
2. Adopt fiscal, tax and tariff policies that protect the food industry and national fisheries, to avoid dependence on food imports.
3. Strengthen diversification and the introduction of environmentally friendly technologies and organic practice in agricultural production.

¹ *Buen Vivir* can be understood as an ‘alternative to development’, in the sense of representing a cosmological vision that embodies a relational understanding of humans, nature and the universe, grounded in plurality rather than single, linear understandings of progress. It is the guiding notion of the Ecuadorian Constitution and hence of Ecuadorian society’s vision for what constitutes progress, development and wellbeing.

4. Promote redistributive policies that allow access by peasants to land, water and other productive resources.
5. Establish preferential financing mechanisms for small and medium producers, in order to provide for the acquisition of means of production.
6. Promote the preservation and recovery of agricultural biodiversity and ancestral knowledge linked to it; and the use, conservation and free exchange of seeds.
7. Ensure that animals intended for human consumption are healthy and are raised in a healthy environment.
8. Ensure the development of scientific research and innovation technology appropriate to ensure food sovereignty.
9. Regular biosafety standards under the use and development of biotechnology and experimentation, use and marketing.
10. Strengthen the development of organizations and networks of producers and consumers, as well as marketing and distribution of food that promotes equity between rural and urban areas.
11. Generate fair and responsible distribution systems and food marketing. Prevent monopolistic practices and any type of speculation with food products.
12. Provide food to the populations of victims of natural disasters or events that put access to food at risk. The food received through international aid should not affect the health and the future of food production produced locally.
13. Prevent and protect the population from food consumption contamination or that endangers their health or where science is uncertain of its effects.
14. Purchase food and raw materials for social and food programmes, giving priority to associative networks of small producers.

According to Article 282, the state is also responsible for ensuring all land is regulated according to its social and environmental use, and to prohibit land concentration and the development of *latifundia* (large estates). However, one of the contentious issues in the Constitution was genetically modified organisms (GMOs). The state regarded GMOs as necessary for modernising agricultural production and boosting productivity, whereas social movements and NGOs involved in drafting the Constitution vociferously opposed it (Peña, 2016). A compromise was eventually reached whereby Article 401 declares Ecuador GMO-free, but the president can still introduce GMOs through permission from the National Assembly if it is deemed in the 'national interest'.

In 2009 the Organic Law of Food Sovereignty Regime (LORSA) was passed, to give effect to the Constitutional provision for food sovereignty. The aim of the law is to establish the conditions and legislate the role of the state in ensuring a transition in the agri-food system in accordance with the principles in the Constitution of food sovereignty, and ensure the 'Agrarian Revolution', in the context of *Buen Vivir*. The law provided for the drafting of nine supplementary laws to give effect to food sovereignty. The LORSA established the Plurinational and Intercultural Council on Food Sovereignty (COPISA), a body responsible for drafting the nine laws through a national participatory process (Peña, 2016). The COPISA began its work in 2010, and between 2010 and 2012 developed the nine laws through workshops that involved over 15 000 individuals and over 5 000 organisations and government institutions (Peña, 2016).

The LORSA itself covers an array of issues that bind the state to actions that will shift Ecuador towards food sovereignty. Some of the key elements include:

- The state must ensure that land access is geared to meet social and environmental functions, and the prevention of land concentration.
- The state will create legal and institutional measures to protect agricultural biodiversity, through supporting mechanisms for crop diversity, research and support, seed banks, and so on. The Act also requires the state to promote and protect the use, conservation and free exchange of seed, as well as the processing and marketing of seed for agro-biodiversity. It also prohibits patents or intellectual property (IP) limitations on seed. The Act declares Ecuador free of GMOs except in the case of national interest and approved by the National Assembly. The law also requires the state to strictly regulate biotechnology development and distribution, where GM products are used they must not be able to multiply and enter into ecosystems, and no risky biotechnology activities may take place.
- Shift to organic and agroecological production: The Act requires the state to develop research and extension capacity through new institutions, to undertake participatory research through dialogue and exchange between producers and food system actors, and the participation of universities and agricultural colleges in servicing peasant demand and shifting to organic and agroecological production.
- Production and marketing: The Act calls on the state to develop incentives to small and medium producers to support cooperative activity between producers, and support investment in and provision of infrastructure for production, processing and marketing. It also calls for a System of National Marketing for Food Sovereignty, which would establish mechanisms for direct negotiations between producers and

consumers. It also calls on local governments to provide infrastructure for direct exchange and marketing between producers and consumers, as part of supporting the social and solidarity economy.

- Finance: the law requires the state to provide tax incentives and subsidies, preferential credit to micro-, small and medium producers and enterprises, productive funds for farmers and enterprises, and crop and animal insurance. The provision of finance is also aimed at supporting farmers in making the shift to agroecological production.
- Emphasis on domestic food production and consumption: The law makes provision for the participatory planning of domestic food needs and to ensure that a strong domestic supply of food is aligned with these needs, and so as to require no food imports. It also makes provision for the implementation of tariffs to protect the domestic market. It states that the export and import of food should only take place if will not harm food sovereignty.
- Nutrition: The state should undertake efforts to ensure improved nutrition, such as nutritional education, proper nutritional labelling of products, the prohibition of marketing of low nutrient products in educational institutions, and restrictions on marketing through the media of foods that are of low nutritional quality.
- The state must procure food preferentially from micro-, small and medium producers for its nutrition and feeding programmes.
- In areas of emergency and disaster the state must provide nutritious food to populations affected by disasters for as long as the emergency lasts, and it must rebuild infrastructure to recover productive capacity.

As mentioned earlier, the LORSA established COPISA, which was tasked with developing the content for and drafting nine supplementary laws, as well as the key policy issues, to design the implementation of the LORSA. The supplementary laws that were developed and the policy issues are summarised below, and give further substance to the above provision of the LORSA:

Table 1: Summary of supplementary laws in Ecuador

Law	Policy Issues
Credits, Subsidies, and Insurance	Financial Support for the conservation of ecosystems, financial credits at low interest rates, credits for reforestation, subsidies to support agroecological practices.

Consumer and Nutritional Health	Consumer right-to-know labelling (GMO labelling), consumer rights to food security and food sovereignty, promotion of local markets and community-supported agriculture, agroecological products and state-funded programmes, nutritional health.
Food Safety and Quality Control Regulation	Animal health and welfare, pest and disease control using organic/ecological practices, certification of food safety and quality, incentives and sanctions for a new regulatory framework, quality control for livestock and poultry, protection of consumers from contaminated food products, regulation of biotechnology.
Artisanal Fishing, Aquaculture, and the Conservation of Mangrove Fisheries	Gender equality in the sector, safety regulation and health insurance, permits for mangrove fisheries, conservation of artisanal practices, extension of marine zone for artisanal fishing.
Land and Territories	Land property rights, prohibition of (re)concentration of land ownership, environmental and social functionality of land, redistribution, expropriation, creation of a Ministry of Food Sovereignty, preferential access to land for women.
Agrobiodiversity, Seeds and Agroecology	Regulatory framework for conventional seeds (certification, export/import), prohibition of GMO seeds, promotion of agroecology, preservation of seeds in situ, conservation of agrobiodiversity, free exchange of seeds.
Ancestral Territory and Communal Property	Collective rights and property rights, financial support for communities, cultural identity and preservation of traditional practices, informed consent before projects are implemented in a community, recognition of women's rights, traditional justice, state support for agricultural development, autonomous governance.
Agricultural Development and Employment	Sustainable development of agroindustrial production, technical assistance for the development of value-added production, farmer training programmes, infrastructure for value-added production, product exchange systems at regional scales.
Trade and Food Supply	Fair prices for both producers and consumers, consumer rights, local regulation of local and regional trade, markets for agroecological products, regulation of prices for food imports, protection of national production, food quality certification, Institute for Trade in Food Products.

Source: Peña (2016: 234)

The above proposals for laws were drafted by COPISA in 2012 and handed to the Committee for Food Sovereignty in the National Assembly, but as of writing none have

been approved. This includes the law on Land and Territory that was drafted by COPISA and sent to the National Assembly in 2012, but several elements of the law were incorporated into Ecuador's recently drafted Land Law, around which consultations are currently taking place. Furthermore, COPISA's supplementary law on Agrobiodiversity is currently being debated in the National Assembly, yet it is expected that the approval of this law will be delayed due to upcoming presidential elections (Peña, email communication, 8 June 2016). In addition, the state has implemented some aspects from the supplementary laws in a seemingly disconnected way (Frederick, 2015), but overall the state's balance of favour seems to be shifting towards the industrial agro-food sector (Clarke, 2016).

Thus, as it stands, none of the nine supplementary laws have passed through the National Assembly. Instead,

the practice of food sovereignty in Ecuador remains elusive and contentious. Since the 2008 Constitution, movements have waited for the promise of La Revolucion Agraria to be fulfilled. While the government has implemented programs and projects that redistribute land (Plan Tierras) and aid in the transition to agroecology (Hombro a Hombro), it has not been to the extent that movements believe would bring about a radical change in land tenure and property rights (Peña, 2015: no page on html).

This makes the new Land Law that is currently being consulted on more pressing. In 2012 COPISA and the *Red Agraria*, a coalition of civil society organisations, developed and introduced a proposal for a new land law into the National Assembly.² The proposal was reviewed but not accepted, and instead the Committee for Food Sovereignty included some aspects of the proposal in its own draft Land Law, which is currently going through a consultation process (Peña, 2015). For social movements, key to the law is that it limits the size of land holdings that any individual can own, in a context where small and medium producers constitute around 84% of farms in Ecuador but occupy only 20% of land.

² COPISA and the Red Agraria got this proposal into the National Assembly by strategically using a provision in the Constitution called *iniciativa popular*, whereby a law can be introduced for consideration by the National Assembly if at least 0.25 of the voting population consent to it. The *Red Agraria* managed to raise over 40 000 signatures through a petition supporting the proposal, representing over 0.4% of votes, and hence was able to enter the National Assembly for consideration.

The key challenge in Ecuador has thus been the implementation of the law, which has been stymied by the balance of power in society, the prevailing development model, state interests in existing agricultural arrangements and declining power of social movements. Since the passing of the food sovereignty legislation the state has developed rural and agricultural programmes independently of this legislation and which in many respects contradict the legislation and the overall food sovereignty approach to agrarian reform as espoused by La Via Campesina. Clarke (2016) finds that while some of these programmes have benefitted a few small scale producers, they remain within a productivist paradigm in ways that do not accord with the principles of food sovereignty as espoused by the Constitution and legislation. In fact, activities of large-scale agri-business and agricultural exports have expanded under Correa's presidency.

Furthermore, after the incorporation of food sovereignty into the Ecuadorian Constitution and laws, social movements have become weaker and less able to push for their desired reforms (Clarke, 2016). The conceptualisation of food sovereignty and the role for achieving it was also over-vested in the state, instead of an emphasis on facilitating spaces for communities to define and construct their own food systems (McKay *et al*, 2014). Linked to this is that the state has incorporated the movements' demands around food sovereignty and has more legitimacy to claim that through their current actions and policies, it is acting in their interests. McKay *et al* (2014) extend this to say that part of this problem lies in the drafting process itself and how food sovereignty was incorporated into the state. For example, a key demand of movements was land and agrarian reform, but there were many in the Constituent Assembly that were opposed to extensive reform and ensured that the task remained with MAGAP, which is a centre-right institution concerned more with developing export agriculture as a development strategy. As a result of division between the movements themselves over the meaning of food sovereignty and the short time allowed for drafting the document on food sovereignty to be submitted to the Constituent Assembly, strong alliances were not developed between the movements and pro-reform members of the Constituent Assembly in order to be able to push the implementation of the food sovereignty agenda both within and outside the state in a synergistic way that builds power. Since the passing of the legislation, social movement mobilisation has weakened and hence the capacity to continue to pressure the state and hold it to account over food sovereignty legislation.³

³ For proposed reasons for the decline of social movements in Ecuador, see Clarke (2016: 193-194).

3. Venezuela

Rather than a single Act or number of Acts specifically couched in terms of food sovereignty, the Venezuelan state's approach to building food sovereignty has been through a set of complimentary initiatives and programmes, many of them legislated in various laws. These laws are situated in a context of high land concentration, oil dependence and consequent high dependence on food imports, and the dynamics of a radical state attempting to build '21st Century socialism.' This is manifested in a massive state effort to transform all aspects of Venezuela's economy and society and to deepen democratic participation and control.

In the 19th century, Venezuela was a predominantly agricultural country, with 70% of the population living in rural areas. However, after the discovery of oil, as well as large-scale land appropriations, by 1935 Venezuela had become the largest exporter of oil in the world and its agricultural sector had drastically decreased (Beauregard, 2009). Referred to as 'Dutch Disease' where one sector of an economy based on resource extraction grows at the expense of others (Clarke, 2010), by the 1990s Venezuela relied on imports for most of its food needs and 90% of its population was urbanised. It also had an extremely concentrated pattern of landholding: in 1997 5% of the largest landowners controlled 75% of the land, while 75% of the smallest landowners controlled just 6% (Beauregard, 2009).

By the time Hugo Chavez was elected to power in 1999, Venezuela's massive oil wealth and its economy were largely in the hands of a small elite, with the great majority of the country not benefitting from the oil wealth. It also exhibited drastic poverty and inequality – poverty increased from 17% of the population in 1980 to 65% in 1996 (McKay *et al*, 2014). In this context, the new Constitution that was drafted in 1999 under President Hugo Chavez was largely aimed at providing a framework for the correction of these injustices and inequalities. The Organic Law of Food Security and Sovereignty was only passed in 2008, but the 1999 Constitution guaranteed its citizens the right to food and, although it does not mention food sovereignty, a number of articles deliberately make provision for enacting policies and programmes to transform Venezuela's food system in line with food sovereignty. Article 305 of the Constitution lays the groundwork for the expansion of sustainable agriculture, greater internal production, and technical and financial support for producers. Article 306 focuses on the necessity of the state to support rural development, especially by supporting agricultural producers. Article 307 focuses on the necessity for land reform and laid the basis for the development of the 2001 Law of the Land. Land

reform is also explicitly linked to food production, with the Article mentioning that the state will ensure ‘the sustainable ordering of arable land to guarantee its food-producing potential’ (in Beauregard, 2009: 32). These Articles would in turned be operationalised through a series of laws, institutes and programmes, under the banner of food sovereignty (Schiavoni, 2015).

The development of these laws, institutions and programmes to shift Venezuela towards food sovereignty must be placed in the context of a broader political project of endogenous development, twenty-first century socialism and participatory democracy. Endogenous development refers to a process of the development of the domestic economy and independence, with an emphasis on equality and human development. Twenty-first century socialism refers to Chavez’s vision of socialism that is distinct from 20th century experiences of top-down, authoritarian incarnations of socialism, and is instead grounded in democracy and human and ecological development. Developing structures for enacting participatory democracy and democratising the state has been key to this vision (Clarke, 2010). Venezuela’s pursuit of food sovereignty is thus grounded in the necessities of developing national food production capacities as well as transforming the structures of ownership and production in the food system, to prioritise collective democratic control and ecologically sustainable food production.

Understanding Venezuela’s attempts to shift to food sovereignty must therefore involve an exploration of a range of programmes, initiatives and policies rather than a single law, for example. In understanding the policies and programmes that were developed to enact a shift to food sovereign Schiavoni (2015) adds that there are two main dynamics shaping this food sovereignty experiment in Venezuela. The first is the national, state-led effort to reduce dependency on food imports and secure the right to food for the citizenry through sustainable domestic production. The second is the attempts to build and deepen participatory democracy through communal councils, or *comunas*, which are community-level structures where communities determine their local development priorities, manage budgets and interact with the state. These have been central to embedding social control over food system production and distribution. In what follows, we will examine the state’s approach in directly ending hunger through food security and distribution measures, its attempts to engender agrarian transformation as part of its efforts to both transform the agricultural system and increase food production, and the communal councils and *comunas*.

Food Security

An important focus of the state has been on directly reducing rates of hunger and malnutrition by increasing access to food. Venezuela achieved remarkable successes in reducing food insecurity and malnutrition over a relatively short period of time,⁴ largely through food security measures and the state-run food distribution system. These included school nutrition programmes that provided a free breakfast, lunch and snack to students. There was also the development and expansion of state-supported soup kitchens and ‘feeding houses’ run by the communal councils, which feed 900 000 Venezuelans with a free, nutritionally balanced meal every day. State-subsidised food markets known as Mercales, which are supplied by the state run distribution company, PDVAL, supply basic food items at low, subsidised prices. These measures resulted in average Venezuelans receiving more calories per day than the minimum level advised by the Food and Agriculture Organisation (FAO). Venezuela’s successes in food security prompted the FAO’s representative in Venezuela to say, ‘Strengthening the networks like MERCAL, PDVAL and the public cafeterias, but also promoting local food production, is precisely the strategy that FAO has promoted to deal with food insecurity’ (in Pearson, 2009: no page number on html). In 2013, the FAO officially recognized Venezuela as one of 18 countries that had achieved ‘exceptional progress’ in reducing the prevalence of malnutrition (Bercovitch, 2013). Alone, these measures constitute basic food security interventions, but they are part of a wider effort at transforming Venezuela’s food system.

Agrarian Reform

Key to shifting to food sovereignty was a comprehensive programme of agrarian reform that was one of the most radical and extensive in Latin America (Kappeler, 2013; McKay *et al*, 2014). The process covered access to land as well as to food and markets, technical and financial assistance to agricultural production, and the attempted development of new production relations through cooperatives. The 2001 Law of the Land established the *Mision Zamora*, whose task was to set limits to the size of landholding, tax unused land in order to spur agricultural growth, redistribute state-owned land to peasants and cooperatives, and as of 2005, to recover or expropriate fallow or illegally held land for the purpose of redistribution (McKay *et al*, 2014). Between 1998 and 2009 the government redistributed over a third of large estate holdings and over 180 000 peasants obtained land (Clarke, 2010). Three institutes were also created to oversee the land and agrarian reform:

⁴ See Clarke (2010: 143) and FAO article for more detail.

the National Land Institute to oversee redistribution; the National Rural Development Institute for technical assistance and infrastructure; and the Venezuelan Agricultural Corporation for distribution and marketing of agricultural products (Beauregard, 2009).

The National Land Institute and Ministry of Popular Power for Agriculture worked with subsidiaries and local governments to provide credit, expertise and subsidised inputs to farmers as part of the attempt to increase domestic agricultural production. However, given the country's high urbanisation rate of 90% there was a significant shortage of labour in the countryside in the form of a peasantry, necessary for the country to build independence in food production through a peasantry, as with Via Campesina's vision of food sovereignty (Kappeler, 2013). Therefore, perceiving the need to rebuild the agricultural labour force, policy makers declared the start of a 'return to the countryside.' Based on the notion of 'land to the tiller', the government aimed to rebuild a peasantry and its sovereignty over land, and so the 'return to the countryside' attempted to lure urbanites back to rural areas through the provision of free land. These residents would then establish cooperatives and undertake farming with the assistance of government experts (Kappeler, 2013).

An initial phase promoted cooperatives in a relatively unregulated environment, and cooperatives were conceptualised as the key mode of organising the 'new peasantry' as they returned to the land from urban areas through the 'return to the countryside' process. However, there was a high failure rate of cooperatives, and so the government developed a number of responses. One was to exercise greater control over the cooperatives by creating a more regulated framework for the promotion of Social Production Enterprises (EPS). These enterprises entail more state regulation and oversight than cooperatives, but they remain worker/community-controlled (Clarke, 2010). The Venezuelan Agrarian Corporation (VCA) also set up *Unidades des Produccion Social* (UPS), which function as decentralised marketing boards run by the government where farmers sell their products at a regulated floor price, and are aimed at cutting out intermediaries, making products cheaper for consumers and providing producers with a fair price (Clarke, 2010). However, many of these agricultural cooperatives are an outgrowth of state-run agro-industrial enterprises, with relatively high levels of state control (Kappeler, 2013; Schiavoni, 2015), where technical experts from the enterprises decide on technical assistance to the cooperatives, often what crops they will produce, and the produce is usually sold directly to the state enterprises to be shipped off and processed elsewhere.

Extending Venezuela's approach to and framework for agrarian reform and food sovereignty, at the end of 2015, just before the National Assembly was handed over to the Right opposition majority, a new Seed Law was passed (De Schutte *et al*, 2016). Based on the precautionary principle,⁵ the law bans GMOs in Venezuela, protects its germplasm, protects the ability of farmers to freely save and exchange indigenous seeds, and establishes the legal foundation for a participatory and agroecological food system (Camacaro *et al*, 2016). The law was constructed through a process of what Camacaro *et al* (2016: no page number on html) call 'the people as legislator': 'a deliberative partnership between members of the country's National Assembly and a broad-based grassroots coalition of eco-socialist, peasant, and agroecological oriented organizations (*sic*) and institutions.' The highly participatory manner in which the law was drafted was not a given, however, as movements and organisations acting under the banner of Venezuela Free of Transgenics Campaign (VFTC) had to undertake significant mobilisation to be granted the ability to participate in the deliberative and drafting processes. The result was a law constructed with deep popular participation and grounded in *Vivir Bien* and ecosocialist principles (Camacaro *et al*, 2016). Key provisions of the law are:

- Ensures the means for popular control over seeds through recognising the Popular Council for the Storage and Protection of Local, Peasant, Indigenous and Afro-descendent Seed;
- Recognises the government's role in licencing free seed to protect it from patents and privatisation;
- Advances ecosocialist principles by promoting small and medium-scale farming using agroecological methods as opposed to monoculture;
- Prioritises collective interest in the farming community's control of production, distribution and consumption of food;
- Bans GMOs and so prevents the capture of seed policy by corporate interests;
- Promotes and protects heirloom seeds and farming methods of Venezuela's indigenous, peasant and Afro-descendent communities;
- Makes traditional seeds immune to patents and other forms of privatisation;
- Seed is considered a living thing and so is entitled to rights and protections;
- Rights, together with *Vivir Bien* and ecosocialist principles, form the ethical and legal basis for the development of food sovereignty and security.

⁵ The precautionary principle is used as a guide for policy making in matters of new technology, determining that unless a technology has been decisively proven to be safe it should not be legalised for broad usage.

Communal Councils

Enshrined in the Communal Council Law of 2006, these councils are 'local, self-organised bodies through which communities determine their own priorities, manage their own budgets, and interface with the government' (Schiavoni, 2015: 470). They are key mechanisms for deepening participatory democracy in Venezuela and there are over 43 000 of them today. There is currently a move to shift even more power to citizenries by connecting local communal councils across territories to form *communas*, or communes. By 2014 there were 803 registered *comunas*, and they are seen as the cornerstone of grounding power less in the state and more in society (Schiavoni, 2015). Many of these larger communes are expanding their range of activities, including providing agricultural inputs and technical assistance to farmers. As part of the Venezuelan Agricultural Corporation's (VCA) efforts to purchase produce directly from farmers and distribute to socialist food markets, some of the communes are also organising collection centres where farmers can sell their produce and receive a better price than through the normal market (McKay *et al*, 2014). While these councils and communes are also subject to conflicting dynamics within and between the state and society, they are also proving important ways of creating institutional arrangements for operationalising community control over development aspirations and practices, including food sovereignty (McKay *et al*, 2014).

Challenges

The programme of 'return to the countryside' faced many challenges, with only a few hundred thousand of the expected millions returning to the land. Of those who did return and organised themselves in cooperatives, there was a high level of failure due to lack of ecological and technical knowledge, struggles in adapting to the realities of agricultural life, and inadequate or unsuitable state support (Page, 2010; Kappeler, 2013). As Page (2010) shows, one cause of the challenges faced in the 'return to the countryside' programme was that the state largely adopted a top-down approach to identifying the areas where land would be redistributed to new farmers, without taking into account regional, local, ecological and political specificities that undermined new farming efforts and cooperatives in various ways.⁶

In response to these failures, the attempt at re-agrarianisation and increasing food production evolved into a particular form. In the context of the objective of increasing

⁶ See Page (2010) for more detail.

domestic agricultural production, the state focused on developing agro-industrial enterprises that farm in conventional, petroleum-based ways, and employed traditional structural hierarchies that reproduced management-labour relations and resultant contestations (Kappeler, 2013). Much of Venezuela's food production is also coming from these enterprises rather than peasants and cooperatives. Instead of adopting a path of agrarian reform based on peasant producers, the state has now shifted to a mixed approach with the state enterprises as 'centres of gravity', with peasant cooperatives 'arrayed around these centres so they could take advantage of the technical services provided by experts and receive aid, but the state was never entirely reliant upon the actors it claimed to defend' (Kappeler, 2013: 13). On the other hand, for Kappeler this does not necessarily represent a failure of the food sovereignty process in Venezuela, but rather raises questions about the form it has taken. He argues that whereas much of the global discourse on food sovereignty, and that of La Via Campesina, elevates the peasantry as the central actor on the question of sovereignty, in the case of Venezuela there simply was not a peasant basis on which to build food sovereignty, and attempts to create this peasantry on which to hinge national food production have been riddled with challenges. Adopting a mixed system of state enterprises with small peasant cooperatives linked to them and that are able to take advantage of technical assistance and economies of scale, for now, appear to have become a more workable model in feeding a predominantly urban population. Hence, in aiming to grow domestic production and feed the population, 'the model implicitly recognises the Venezuelan population as the guarantor of food sovereignty, rather than the peasantry' (Kappeler, 2013: 16). Nonetheless, the government continues to provide supportive measures to the peasant movement and, through the agrarian reform process, land holding patterns have been drastically transformed.

The agrarian reform and investments in agricultural production did result in an increase in food production (Clarke, 2010), but nonetheless the import of food roughly tripled between 2008 and 2014. This was due largely to the socioeconomic successes of the Chavez government, as rising consumer demand as a result of socioeconomic improvements drove the increase in imports, as well as scarcity of availability of many food products (Mallet-Outrim, 2016). For Schiavoni (2015: 474) it also indicates that 'the government's ability to ensure that the population's nutritional needs are met despite the shortages indicates that Venezuela has reached a certain level of food *security*, but it is still far from food *sovereignty*.' There is also a key tension in trying to make the shift towards food sovereignty. Because of Venezuela's high dependence on food imports, one of the first levels at which food sovereignty has been defined in Venezuela is therefore in terms

of national self-sufficiency; to produce food domestically to replace imports. While there is a strong movement supporting small scale agroecology farming in Venezuela, due to challenges encountered in the attempted 're-peasantisation' process the state has tried to 'balance' the ideal of small scale agriculture with support for industrial agriculture and mass food production in trying to build national self-reliance. Much support has gone to small scale, agroecological farming, but there has also been significant support to industrial farming, the sentiment being that it has in fact been skewed towards large-scale agriculture (Schiavoni, 2015; see Kapere, 2013).

After the passing of the new Seed Law in the National Assembly on 22 December 2015, the Popular Movement For the New Seed Law asserted, 'The product of our struggle is a law that has no precedent anywhere in the world in terms of both its emancipatory content and the way it has been made possible by the protagonistic participation of the People as Legislator' (quoted in Camacaro *et al*, 2016: no page number on html). However, as the paper will later discuss, the passing of such a law is only the first step and its implementation is complicated by societal relations of power, state dynamics and institutional arrangements. The law was passed in a particularly turbulent political situation in Venezuela, just before the National Assembly was handed over to a conservative opposition majority aligned to the interests of corporate agribusiness. This difficult situation and the necessity for ensuring it is not reversed by the new national assembly, and is instead fully implemented, prompted the writing of a 'Statement of International Solidarity with Venezuela's Seed Law' (De Schutte *et al*, 2016), signed by over 220 progressive, food and agrarian scholars, activists and organisations, including the former UN Special Rapporteur on the Right to Food, Olivier De Schutte. The popular movements that drove the construction of the law have also recognised the threats and hence the necessity of disseminating the law, defending it and pushing for its full implementation (Camacaro *et al*, 2016).

Despite these challenges, the Venezuelan state has purportedly made the most progress in Latin America in the direction of food sovereignty. It has been contradictory, as efforts at agrarian reform through re-peasantisation were criticised for their top-down nature, by both analysts and participants (Page, 2010; Schiavoni, 2015: 472). However, on the other hand, the communal councils and *comunas* have been successful at opening up the space for participatory democracy and allowing communities to take more control over their lives and to become key institutions in a new food system architecture. This leads McKay *et al*

(2014: 1178) to argue that of the three countries that have enshrined the right to food sovereignty in Latin America, compared to Ecuador and Bolivia:

Only in Venezuela are these nominal rights accompanied by partial structural changes that contribute to empowering people at the local level to have greater control over their food production and consumption. This has been achieved through a radical re-envisioning of the locus of governance, creating and supporting community-level structures that put political power in the hands of the people in a new way. This strategy is transforming relations around access to resources and decision-making control in favour of participatory institutions in communities, resulting in a symbiotic relationship between state and society that contributes to institutional reform and empowers local producers and consumers.

4. Mali

80% of the population in Mali lives in rural areas and of these over 97% are small-scale farmers (Beauregard, 2009). Three quarters of the country's cultivated land feeds local populations and domestic markets (Hands Off the Land, 2014). In 2006, Mali's agricultural policy was passed, called the *Loi d'Orientation Agricole (LAO)* (Agricultural Orientation Law). The law came about as a result of pressure from Malian farmers' organisations, mainly *Coordination Nationale des Organisations Paysannes* (CNOP) and dialogue and discussion with the government, and especially the commitment by these organisations to ensure that the law included food sovereignty. The LAO therefore defines and includes commitments on food sovereignty, the family farming system, payments and insurance for family farmers.

Organisations like CNOP were critical in organising debates, dialogues and forums for peasants, together with deliberate inclusion of women, to participate at regional and national level in discussing and developing the content of the law. CNOP took from these discussions the key points to include in the law, which centred around family farming, food grown for the well-being of Malians, the ability to ensure food safety, and a greater role for agriculture in the national economy (Beauregard, 2009). Workshops were held in 2005 to finalise a first draft of the law, and the importance of organised pressure was illustrated after the CNOP handed over its own version of the law to the government. In the version that the government then presented to the National Assembly, CNOP found that 300

alterations had been made, which they called a 'genetically modified' copy of their document (Goita, in Beauregard, 2009: 41). They restored the document and it was debated in its correct form in the assembly, and in 2006 the Bill was approved, signing into law the Law of Agricultural Orientation (LAO). The law itself, though, still contains some divergent elements, such as the attraction of private investment into agriculture, and the ability to assign varying meanings and applications to the notion of the modernisation of agriculture, which is a key aim of the law.

Article 55 of the law states food sovereignty is the guideline for all agricultural policy development. It defines food sovereignty in the context of this law as the role of the state to 'implement an autonomous agricultural and food policy ensuring sustainable agriculture based on local production and accountability of producers who have, to this end, appropriate means, including land, water, credit and markets.' The law covers a wide array of issues relating to agricultural production, such as:

- It includes the development of research and farmer support institutions, with extension support to farmers to be based on 'pluralism in the delivery of services' to farmers;
- Special financing for agriculture through an Agricultural Development Fund;
- Young, women and vulnerable farmers will be favoured by the state in access to factors of production and support mechanisms;
- The state must ensure that farmers and their organisations are supplied with quality inputs at affordable costs;
- The state is responsible for providing infrastructure to support farmers;
- Under the theme of supporting plant production, the state has a role to play in intensification and diversification of agricultural plant production, sustainable management of soil fertility, and a regular supply of food to markets. Territorial authorities must also develop agricultural development plans for their regions based on their agroecological zones. The state also has to undertake, together with representative organisations, overall planning for agricultural development (as opposed to leaving its expansion and direction to market forces);
- The law also makes provision to ensure that producers obtain greater value from agricultural production through, for example, the state implementing policies for the valuation of agricultural products, providing support for value adding, and the state must play a role in searching for agricultural markets for agricultural products;

- The state also has to take measures to revitalize the national market and subregional integration of agricultural and food markets;
- The state must create spaces for collaboration and dialogue with farmers and their organisations;
- The law also deals with land, and states that the state must develop a land policy that secures land tenure for farmers (including the recognition of customary rights), promotes private and public investment, ensures equitable access to resources, and their sustainable management. It also notes the need to fight land transactions aimed at speculation.

The High Commissioner of Agriculture leads the process of implementing and developing the LAO, and consists of the President of Mali, the Prime Minister and a variety of other actors including farmer representatives and the minister of agriculture. The technical secretariat is responsible for the implementation of the law. The law itself gives rise to a host of other documents to realise its implementation, including 35 policy documents, 5 legal texts, 60 decrees and others (Beauregard, 2009). The process of writing subsequent policies is informed by broad participation, and food and farming studies that have been conducted in Mali by farmers' organisations and their supporters.

The implementation process of the law is still being developed and carried out, but challenges facing it include 'favourable' agreements that Mali has with the European Union and United States that would have to be forfeited if it fully provides the supports to small farmers envisaged in the Law. The state therefore has to attempt to balance these competing demands and continues to negotiate with CNOP about more protective programmes for family farmers (Beauregard, 2009).

The law is also confronted with the power of transnational corporations and the prerogatives of the state, and tensions in the LAO express themselves further in material ways. The LAO includes the need for the state to protect land rights, while at the same time promoting both public and private investment in land and the modernisation of agriculture. Thus, in promoting the modernisation of Malian agriculture, the state actively attracts and promotes private investment and agro-industrial projects. These often include large-scale land acquisitions by domestic or foreign investors where farming communities lose access to land that had been integral to their survival through farming (Hands Off the Land, 2014). The Malian state argues that these private investments are required to modernise the agricultural sector and increase production, as is required by the LAO, even though the

emphasis of the LAO is on small scale production and farmers rights, in a context where 75% of the employed work in peasant agriculture, which provides 60% of Mali's staple grains (Hands Off the Land, 2014). Peasant agriculture is also confronted with attempts by transnational organisations like the Rockefeller Foundation and the Alliance for a Green Revolution in Africa (AGRA), who are promoting GM crops in Africa, including Mali, so undermining seed sovereignty and the skills and knowledge of African farmers themselves. This illustrates again how the implementation of food sovereignty laws are confronted with existing power relations in society and so requires mobilisation as part of a range of movement tools to roll back the forces undermining food sovereignty.

5. Senegal

After decolonisation in the 1960s, the Senegalese government set about enacting land reforms to overcome colonial arrangements around land. By the 1980s it was realised that many of the goals had not been achieved and that a new reform was needed. However, this also coincided with economic decline. In accordance with a structural adjustment plan overseen by the IMF and World Bank, the state pulled back from its role in land reform and liberalised the agricultural sector (Diouf, 2015). Senegal imports about 60% of its food needs, although after liberalisation in the 1990s it also exports a relatively large amount of foodstuffs, such as groundnuts (del Pozo-Vergnes and Vorley, 2015).

The government of Abdoulaye Wade, whose presidency began in 2002, aimed to build food security and self-sufficiency in Senegal and recognised the need to undertake extensive land reform, and to revive the agricultural sector. It thus introduced a new law for agricultural development, called the Agricultural Framework Law. Key to this law was reform of land legislation to create the conditions for rural development, secure agricultural operations, and revitalise agricultural production. In the early 2000s, there emerged a national umbrella for producer organisations called the National Council for Rural Consultation and Cooperation (CNCR), a member of La Via Campesina. In 2003, at the time the law was being developed, the CNCR called for concerted state effort in rebuilding the agricultural sector after small scale farmers had been devastated by the reforms since the 1980s, and for farmer organisations to be part of developing a new law. There was therefore a convergence of intent by the state and farmer organisations to rebuild the agricultural sector as a driver of the national economy (Diouf, 2015).

The new framework law was initially drafted by a small team in the government in a top-down manner. The CNCR responded by developing a methodology for wide reflection on the draft law by farmers across the country. This methodology was implemented over a period of a few months and involved a number of stages that are relevant for thinking about the process of developing a Food Sovereignty Act in South Africa:

- Stage 1: Capacity building for farmer leaders
- Stage 2: Facilitating local-level reflection in rural communities
- Stage 3: Regional consultation and workshops for major agricultural supply chains
- Stage 4: The national workshop

After this a period of negotiation took place with the state. Most tenets in the LOA were agreed, except on land reform. As a result, land reform was removed from the LOA. However, after a period of intense mobilisation and lobbying by the CNCR the government adapted the LOA to include land reform and the final law, the Agro-sylvo-pastoral⁷ framework law (LOASP), was adopted, and included many food sovereignty principles as advanced by the CNCR. The fact that the CNCR was able to achieve the law that reflected the needs of farmers and rural communities was due to the deep and wide participation process it undertook, capacitation and mobilisation it had been doing on the land issue prior to the development of the law, and its societal mobilisation, including the use of media, to pressure the government into including their demands in the final law.

According to the law, its strategic pillars are based on principles of economic efficiency, social justice, environmental sustainability, market economics, decentralisation, empowerment of local communities, agricultural organisations and civil society, solidarity, partnership and subsidiarity and the creation of a common market within UEMOA (West African Economic and Monetary Union) and ECOWAS (Economic Community of West African States). Many might identify some of these principles as contradictory to each other. The strategic points of focus of the law include:

- Formal recognition of careers in agriculture and the professionalisation of agriculture— this is part of the state’s role to ensure that a system of developing information, knowledge and training to guide agricultural development and modernisation is built;

⁷ Sylvo refers to silviculture, which is the cultivate of trees.

- Social protection of people in the agriculture business;
- Definition of the legal status of farms;
- Land reform: land rights of rural communities, secure tenure, allowing inheritance of land to encourage investment in sustainable farming, transferability of land.
- The diversification of agricultural production, the integration of the agricultural sector and market regulation, focusing on developing products for export and for import substitution. This section also includes providing protections from distortions in exchanges through UEMOA and ECOWAS while remaining compliant with WTO rules.
- Forestry and forest management;
- Livestock development policy – the state is obliged to, in consultation with rural communities, develop a national livestock development policy;
- Water management – the state must ensure efficient water management in agriculture and overall in the country;
- The development of infrastructure and public services in rural areas;
- The promotion of social equity in rural areas – in order to reduce inequality between urban and rural areas the state must provide basic social services in education, training and health. It must also favour women in access to land and credit.
- Protection against natural calamities and business risks of agro-forestry-pastoral;
- The development of agricultural information, education and training for the benefit of agricultural occupations;
- Capacity building of professional agricultural organisations, civil society, local authorities and services in the State;
- The development of research and agro-forestry-pastoral council – coordination of the agricultural development strategy.
- The financing of agro-forestry-pastoral development – provision is made for the creation of an agricultural development fund, and it mandates that within three years of the passing of the law the state must institute an assistance fund for modernising agriculture.

However, due in some part to the apparent weaknesses in the consultation and mobilisation process, the state is largely failing to develop the decrees to implement the law and so there is a lack of political will to drive its implementation by the state. What has been given most attention by the government is policy efforts aimed mainly at increasing national food production, through price stabilisation for key products produced

in Senegal, direct subsidies, elimination of producer debts, VAT exemption and so on. A policy innovation aimed at fostering national production and value chains has been the Agency of Market Regulation (ARM), which is responsible for developing an inclusive approach to regulation of markets. This is done by linking all actors involved in a particular chain in order to develop public-private partnerships where regulations are co-developed by government and actors in the chain. One of the roles played by ARM has also been to prevent imports of particular food products at times of the year when those same products are in abundance locally, such as onions and sugar (del Pozo-Vergnes and Vorley, 2015). However, these policy efforts occur mostly independently of the LOASP.

There are contradictions and tensions in whether policy is shifting Senegal to food sovereignty, or merely increasing agricultural production. For example, much of Senegal's food security efforts are informed by its membership of the G8's New Alliance for Food Security and Nutrition, which has been criticised for being more about opening up African agriculture to global private investment and opening new markets for GMOs. There have also been tensions with traditional brotherhood trading associations who have interests in importing certain foodstuffs to supply consumer demand that their trade meets but which at certain times of the year are blocked by the government. Furthermore, there are also tensions between stimulating local production and consumer preference in relation to some imported food products (del Pozo-Vergnes and Vorley, 2015).

6. Local Regulations: US Food Sovereignty Ordinances and Food Policy Councils

Across the United States food activists and organisation are undertaking a wide array of activities to resist the corporate food system and advance alternatives, at various levels (see Field and Bell, 2013). A particular approach that aims to use legal mechanisms to protect and advance local food systems is the Food and Community Self-Governance Ordinances, which have been drafted in a number of towns across the United States, starting in the town of Sedgewick in the state of Maine (Baden-Mayer and Paul, 2016). The development of local ordinances was sparked by a bill introduced by the Maine legislature, which allowed small poultry producers selling less than \$1000 worth of poultry per year to slaughter at home rather than at certified commercial abattoirs. However, the legally required infrastructure would have cost between \$30 000 to \$40 000 to implement, which would far outweigh potential revenues (Russ, 2013). This led to mobilisation by farmers and food activist organisations to fight for regulations that were better suited to small scale production, but in the end the state legislature announced that it would not approve any

legislation that was less restrictive than state regulations, as it would lose funding from the US Department of Agriculture (USDA) for meat inspection (Kurtz, 2013).

On a practical level small farmers felt that such regulations restricted their right to produce and consume food of their choosing. At a broader political level, they felt that these regulations favoured industrial agriculture and corporate food producers and processors, and were designed to regulate industrial-scale production and aggregate and long distance food trade, rather than local, contextual, smaller scale activities and transactions (Kurtz, 2013). Recognising the need to take a stand to protect 'traditional food ways that have been shaping social relations in Maine for hundreds of years' (Kurtz, 2013: 12), a small group of farmers worked with the Community Environmental Legal Defense Fund (CELDF) to draft a Local Food and Community Self-Governance Ordinance and succeeded in having it put on the agenda of 5 Maine towns.

The ordinance situates its authority as deriving from the aims and provisions set out in the Declaration of Independence of the United States of America, the Constitution of Maine, and various sections of the Maine Revised Statutes, such as self-governance, the necessity of local governments to ensure the health, safety and welfare of its citizens, and the preservation of rural life and family farms (*Justice Rising*, 2014).

Key provisions of the ordinance include:

- Exemption of locally produced and processed foods from licensure and inspection provided that the food products are prepared for, consumed or sold at a community social event;
- The right to access and produce food: all citizens in the town have the right to save and exchange seed, and produce, consume, sell and purchase food of their own choosing;
- The right to self-government, and that governments' power and actions should be grounded in the people's authority and consent;
- Citizens have the right to adopt measures that prevent the rights laid out on the ordinance from being violated;
- The ordinance also states that it would be illegal for any law or regulation, or activity of a corporation, to contravene the provisions of the ordinance;
- People who purchase food directly from producers may enter into agreements with the producer that the producer will hold no liability for the consumption of that food. (The assertion underlying this provision is that direct relationships between

producers and consumers guarantee the safety and quality of food, through moral commitment on the side of producer and disincentive on the side of the consumer to purchase from a particular producer if a product is of poor quality or breaks a relationship of trust (Russ, 2013).

The basis of the ordinance is that of rights and, in the above provisions, there are three key substantive assertions about the nature of the food system (Kurtz, 2013). First, the right to community self-government in matters related to food. Second, the local as the spatial basis on which to organise the food system. Linked to this is the third, namely the need for scale-appropriate regulations for small-scale production for direct sale. The ordinance explicitly conceptualises a particular, local food system, in opposition to the framework, practices, language, conceptualisations and resulting legal rules articulated by the USDA (Kurtz, 2013). What is important then about the Maine ordinance is that it does not just set out a set of rules and activities in a technical or legal manner, it specifically articulates and conceptualises an alternative food system.

However, the resistance to state regulations on production and transaction of food and the drafting of the ordinance was initially not necessarily inspired by explicit notions of food sovereignty, but rather by experiences of discontent at specific rights being transgressed and inhibited by unjust state regulations (Kurtz, 2013). Rights were the initial spark and motivation behind the ordinance: rights to produce and consume food of choosing, and rights to protect a particular food, cultural and social system that was being threatened by corporate-dominated policies. Kurtz (2013) argues that two court cases gave significant impetus to the food ordinance strategy becoming framed as a struggle for food sovereignty. This resulted from the close relationship between social organisations invested in the concept of food sovereignty, and the group of farmer activists fighting to defend their local food ways. In 2011 six towns in Maine passed local food ordinances, the first being the town of Sedgewick. Believing he was now protected by the ordinance in his town, a farmer named Dan Brown defied the instructions of a food safety inspector and continued to sell raw milk directly to consumers from a stall on his farm. The USDA responded by filing a lawsuit against him. A group called Food for Maine's Future, formed to advance the ordinance strategy, launched a campaign called We Are All Farmer Brown, which mobilised the public to write to and pressure the Agricultural Commissioner and State Governor to get the USDA to drop the lawsuit against Dan Brown. By providing a broader frame in which to locate the ordinance struggles, using the discourse of food

sovereignty deepened the resonance of what was at stake in advancing the ordinances (Kurtz, 2013).

In the end, the ordinance could not provide legal protection to Dan Brown and he lost his case. However, the finding against him ignored the ordinance as the court believed that it was not relevant to the buying and selling of raw milk. As it stands, the ordinance as a purely legal strategy has indicated some limits. Its strength seems to lie more as a symbolic tool that in the case of Maine played an important role in raising consciousness about power, the nature of the industrial food system and the role of the state, and in valuing food systems that reflect alternative values and practices (Bayly, 2016; Kurtz, 2013). The battles over the above-mentioned legal cases and the social resistance and awareness raising that it sparked captured the state legislature's attention and in 2013 activists were notified that state legislators were planning to introduce a number of bills into the legislature that specifically dealt with the concerns of small farmers, including a 'concept bill' called An Act to Promote Food Sovereignty in Maine Communities. The activist group Local Food Rules mobilised for intensive participation in the sessions to draft the array of bills related to small farmers, and worked closely with the legislator who sponsored the food sovereignty bill. Through the process a number of legislators came out in support of the food sovereignty bills, but many also opposed it. In the end, however, the food sovereignty bill was killed inside the legislative process.

Ordinance activists have since worked to strategise on mobilisational strategies to achieve the goals of the ordinances. The ordinance process has, however, succeeded in building public dialogue and awareness about the ordinances and the issues they raise, which has encouraged other towns to pass the ordinance. Ten towns in the state of Maine have passed the ordinances, eight towns in the state of Vermont have passed food sovereignty resolutions modelled on the ordinances, and various counties and/or municipalities in the states of California, Arizona, Massachusetts and Utah have passed similar measures (Kurtz, 2013).

A further innovation in the United States context that builds the capacity for citizens to participate in food policy making is the development of Food Policy Councils (FPCs). These councils are created at the town, city and state level to investigate where food systems fall short in meeting people's needs and to try and transform those programmes by developing programmes and catalysing policy changes (Field and Bell, 2013). The councils work on a range of issues depending on the context, including increasing the amount of local food

purchased by public institutions, preserving farmland, and drafting food charters to guide food policy. Over one hundred of these councils currently exist in the United States. Some are grassroots efforts while others are commissioned by local or state governments. Most of them represent broad alliances between city officials, farmers, youth and others that work to democratise policy-making by providing a space for broad participation (Field and Bell, 2013). Part of the context that is amenable to the formation of these councils is that local and state governments have some degree of autonomy in policy making in relation to the national government, and so setting up Food Policy Councils provides the platform in which citizens can engage in policy making at the levels closest to them.

Food Policy Councils have also spread to Canada. An important aspect of FPCs are that they work on issues beyond only agricultural production to other issues shaping local food systems. The value of FPCs is that '[i]nstead of many advocates working on the isolated symptoms of a failing food system, Food Policy Councils attempt to establish platforms for coordinated action at the local level' (Harper *et al*, 2009: 2). The FPC operating in the City of Vancouver in Canada gives the following examples of the local food policy issues it works on:

- The regulatory requirements placed on someone planning to open a food-based business;
- Food purchasing decisions of institutional buyers and how they relate to the use of locally produced items;
- A decision by school officials on whether or not to allow junk food and soft drinks in the vending machines;
- The child nutrition requirements placed on daycares that receive municipal funding. (<http://www.vancouverfoodpolicycouncil.ca/food-policy-resources/what-is-food-policy/>)

FPCs of course do come up against various challenges, such as those associated with working with diverse membership and constituencies, working in complex political environments, funding, balancing a focus on policy or programme work, or between structural and narrow foci. However, they have also in the main proven to be dynamic spaces with many successes to show for (see Harper *et al*, 2009).

Table 2: Summary of Country Legal Frameworks

Country	Key Elements (Role of State)	Nature of Law (Evolutionary or omnibus)	Challenges
Ecuador	<ul style="list-style-type: none"> • Finance: credit subsidies and insurance • Consumer and nutritional health • Food safety and quality control regulation (including GMO labelling) • Protection of artisanal fishing, aquaculture and mangrove fisheries • Land: protection of land rights, prohibition of land concentration, social and ecological function of land • Agribiodiversity and agroecology: ban GMOs, regulatory framework for conventional seeds, conservation and exchange of seeds • Ancestral and communal property rights: protection and support for traditional communities, agriculture etc • Agricultural development and employment: support for agroindustries, exchange mechanisms, state preferential procurement, infrastructure for value-adding • Trade and food supply: fair prices, price regulation of imports, local regulation and local and regional trade. 	Evolutionary: initial law, then series of laws	<ul style="list-style-type: none"> • Political will – subsequent laws not passed • Too much emphasis on the state • Prevalence of state priorities, continuation of dominant development model • Weakening social movements
Venezuela	<ul style="list-style-type: none"> • Direct efforts to tackle hunger (eg. community kitchens) • Agrarian reform: land redistribution, 're-peasantisation', development of productive capacity, state support, cooperatives • Communal councils • Seed: ban GMOs and protect popular control over seed systems 	Evolutionary: series of laws and programmes	<ul style="list-style-type: none"> • 'Re-agrarianisation' in predominantly urban society • Insufficient state support

Country	Key Elements (Role of State)	Nature of Law (Evolutionary or omnibus)	Challenges
Mali	<ul style="list-style-type: none"> • Research and farmer support institutions • Agricultural Development Fund (special financing for small farmers) • Favouring of young, women and vulnerable farmers • Supply of quality inputs at affordable costs • Provision of infrastructure for small farmers • Supporting plant production and regular supply of food to markets • State planning of agricultural development • Territorial authorities to develop agricultural development plans based on agroecological zones of regions • Greater value to producers: valuation of agricultural products, providing support for value adding, and the state must play a role in searching for agricultural markets for agricultural products; • Revitalise national and regional market • Create spaces for collaboration and dialogue with farmers and their organisations; • Land: develop policy that secures tenure for farmers, promotes investment, and sustainable management. 	Omnibus, but gives rise to a range of policies and other texts	<ul style="list-style-type: none"> • Conflicting interests • International trade • Investment attraction • Divergent policy paths
Senegal	<ul style="list-style-type: none"> • Development of careers in agriculture • Social protection of agriculturalists • Land reform • The diversification of agricultural production, the integration of the agricultural sector and market 	Omnibus	<ul style="list-style-type: none"> • Political will to implement law • Competing policy aims

Country	Key Elements (Role of State)	Nature of Law (Evolutionary or omnibus)	Challenges
	<p>regulation, focusing on developing products for export and for import substitution.</p> <ul style="list-style-type: none"> • Forestry and forest management • Livestock development policy • Water management • Development of infrastructure and public services in rural areas • Promotion of social equity in rural areas • Protection against natural calamities and business risks • Development of agricultural information, education and training for the benefit of agricultural occupations; • Capacity building of professional agricultural organizations, civil society, local authorities and services in the State; • The development of research and agro-forestry-pastoral council – coordination of the agricultural development strategy. • The financing of agro-forestry-pastoral development – agricultural development fund 		
United States - Ordinances	<ul style="list-style-type: none"> • Eschews role of state in food system • Individual rights and self-governance situated in opposition to state and corporate power 	-	<ul style="list-style-type: none"> • Difficulty in affirming legal power

7. Key Lessons

The case studies explored above provide a wide variety of experience to draw lessons from for thinking about the key strategic tasks for advancing food sovereignty legislation in other contexts, like South Africa. Below are some of the key lessons that can be drawn from the discussed case studies.

7.1. Relationship with the state

A fundamental assumption behind attempts to develop food sovereignty legislation is that the state has a significant role to play in transforming a national food system. The nature of the particular state in question, state-civil society relations and the expected role of the state must thus become key considerations. In the case of Ecuador, social movements had been highly mobilised in the fight against neoliberalism in the 1990s and when a new, progressive government came into power, the opportunity for pushing their demands formally into a state agenda was opened up. This in turn depended on the level of mobilisation of the social movements. In Venezuela, the pieces of legislation and programmes aimed at food sovereignty were developed in a context of broader resistance to neoliberalism in Latin America and a state that was determined to fundamentally transform society in the interests of the poorer majority and equality. A significant amount of initial impetus for food sovereignty thus came from the state itself. In Senegal as well, there was a convergence between the desires of farmer organisations and the then government to undertake land reform and revive agricultural production. In the case of ordinances in the United States, activists were able to take advantage of devolved rule-making processes at town level to develop the ordinance process. However, whereas food sovereignty legislation is aimed at tying the state into a particular and active role in food system transformation, much of the impetus of ordinances is to keep the state at bay. The overall political context and legislative openings therefore play an important role in the timing and potential for developing and enacting food sovereignty legislation. The challenge is to build a dialogue between movements/organisations/campaigns and institutions in the state, but from a basis of strength and capacity on the part of movements and organisations to avoid confusion and co-option into pre-conceived state agendas.

7.2. Expanding democracy and collective deliberation

The case of Ecuador illustrated that the agency for developing food sovereignty was arguably over-vested in the state and hence food sovereignty demands were easily co-opted and social movements lost their power to continue to push the state for reforms in

the context of the legislation. On the other hand, the state in Venezuela created decentralised spaces for participatory democracy, which provide an important mechanism for placing more power for advancing food sovereignty in civil society, with the support of the state. Although Venezuela has faced many challenges, and is as we speak in a state of crisis, these spaces perhaps assist in ensuring that the momentum for taking forward food system transformation is not vested solely in the state and therefore is less vulnerable to political shifts in the state. Creating these spaces can also be part of ensuring constant mobilisation to exert continued pressure on the state from outside, while also creating strategic linkages into the state. Identifying what these strategic links may be in the South African context may be a task for us.

7.3. Linking Direct Needs to Broader Structural Issues and Education

In most of the cases explored in this paper, the contents of the food sovereignty legislation were developed through wide education, participation and consultation. Firstly, this meant that for the most part the legislation reflected the direct, material struggles and needs of various sectors of society, especially producers. Secondly, it arguably increased mobilisational potential and therefore social power for the legislation as actors and organisations felt more directly vested in having the state take seriously their direct needs. Thirdly, it also links these direct needs and struggles to broader issues of food system transformation and food sovereignty.

Following from this, in many cases, such as in Senegal, the process of developing the content of the legislation was seen as an opportunity to deliberately undertake education and capacity-building work among constituencies so as to not only build consciousness about the broader issues, but also to increase the ability to engage with the process of developing the content of the legislation itself. Developing legislation was thus used as an educative process as well.

Visualising and articulating what food sovereignty means and looks like in practice can often be a challenge, and so an important means of conceptualising it in context is to ensure broad social participation in its drafting by the most affected and important constituencies in terms of food sovereignty.

7.4. The impact of mobilising for and developing legislation

An important lesson emerging from the above cases, especially Ecuador and local ordinances in the United States, is that the very process of contestation and debate over

potential legislation can also assist in putting the issue of food sovereignty onto the agenda of broader society, beyond just the activists and organisations fighting for the legislation. In the US, an outcome of the legal battles over farmer production activities was that it shifted people's attention on the ordinances from understanding them in relation to farmers' and consumers' rights to a broader question of food sovereignty. In Ecuador, during and after the Constituent Assembly phase of the food sovereignty legislation, 'the issue of food sovereignty expanded from the inner circles of certain peasant organisations to the wider context of the whole Ecuadorian society, achieving centrality in the political arena' (Giunta, 2014: 1202). The very process of mobilising for food sovereignty legislation at the state level can thus be an important strategic tactic in widening awareness about the issues from the usual suspects to broader society. This has particular salience in the South African context, where public discussion about food (and more specifically, food security) is dominated by the commercial food and agriculture sector and discourses of the value of large-scale commercial farmers, for example. Methods to raise the public profile of the Food Sovereignty Act process should be clearly strategised over, so that the process of lobbying for the Act has maximum effect in projecting itself into the national conversation and contesting the messages put forward by the commercial agriculture lobby.

7.5. The challenges of widening the production base

As discussed above, a key basis of Venezuela's agrarian reform strategy for food sovereignty was extensive redistribution of land to increase the number of agricultural producers; in other words, to re-peasantise. Yet this faced many challenges, largely around the ability of those returning to the countryside to cope with the demands and challenges of farming and rural life. This poses a question for South African conceptualisations of food sovereignty. If a component of this is seen as de-concentrating agricultural production and widening the productive base, and therefore re-agrarianisation, then the challenges of this would also have to be engaged with. However, through a consultation and participation process to develop the content of a proposed Act, this issue may clarify itself further. Additionally, the case of Venezuela illustrates the importance of state support (which fell short) in a re-agrarianisation process. Also, given the tremendous power of capital in the food value chain beyond only land and farming requires that greater attention is also given to these parts of the chain in legislation.

7.6. The prevailing balance of power

In the case of Ecuador, despite the food sovereignty legislation, the state has continued to promote industrial and export agriculture, has failed to undertake extensive land reform, and has failed to develop the nine pieces of legislation that were supposed to result from the initial legislation. In Mali and Senegal, despite the legislation the respective states have continued to implement policies and programmes more aligned with export agriculture, adhering to international trade agreements, and promoting agro-industrial development by private interests, and cooperation with initiatives from the North such as the G8 Alliance for Nutrition and Food Security in Africa, which contradict attempts for food sovereignty. In Venezuela the most effort has been undertaken by the state in shifting food system relations, in the context of 21st century socialism and endogenous development. What they illustrate is that while food sovereignty legislation is an important achievement in itself, its implementation and practical impacts on food system transformation are still restricted by the balance of power in society and in the food system. In a context like South Africa where capital dominates the food system and government policy is organised around this, thinking about the links between food sovereignty legislation and other components of a broader process of building power is important.

7.7. Developing mechanisms of power at the local level

The case of communal councils in Venezuela and local ordinances in the United States urge us to think about possible forms of legislation and building of power at the local government level. These can provide spaces in which communities can directly participate in designing and influencing local food economies, as well as broader national issues. However, experiences like that of ordinances in the US context may not necessarily transplant in the same manner, for example, in relation to the legal form of local government in South Africa and the opportunities that may exist for legal action by communities. More research would be needed into what influence communities can have over local regulation and the potential for food sovereignty influence, such as on by-laws. Furthermore, as opposed to micro-scale artisanal production in the US, South Africa has a relatively sizeable informal food economy, especially in townships and which, of course, draws much of its food from the dominant value chain. More deliberation may therefore be needed on what principles can be drawn from the US ordinance experience and how they may apply in a South African local legal context.

8. Recommendations

This section is divided in two: the first part discusses recommendations for the actual content of the proposed Food Sovereignty Act and the second discusses recommendations for the process of developing it.

8.1. Content Recommendations

Outlining specific suggested content for the Act would require many pages, and such content should be developed through participation and consultation with relevant constituencies. Instead, drawing from the experiences in this case study and knowledge of existing struggles and challenges in the South African food system, some potentially important thematic considerations are listed, after which a few further considerations to take into account are suggested.

8.1.1. Possible thematic content

- Land
- Seeds, including banning of GMOs, protection and multiplication of indigenous knowledge and varieties, support for seed saving and sharing, protection of indigenous knowledge and varieties from patenting and corporate capture
- Forms and methods of agricultural research by the state
- Supporting the development of ecological forms of production, such as the nature of extension services
- Marketing for small farmers
- Infrastructure
- Finance
- Small-scale fishing
- The role of the state in directly addressing immediate hunger challenges
- Approach to export agriculture and international trade
- Water and natural resource management
- Role of local government
- Democratic gricultural planning may also be an interesting theme to expand on. This would involve planning on a national scale to form some kind of alignment between agroecological zones and production on the one hand, and consumption and nutritional needs of the population on the other, as opposed to production and

distribution being organised purely by market signals, corporate control, and export incentive.

8.1.2. Role of the State

Given that a key aim of a Food Sovereignty Act is to oblige the state to play a specific role in securing the conditions for food sovereignty, the proposed Act should be based on reflection of what role it envisages for the state, and how to translate this into an Act. For example, especially given the nature of the current South African state, what sort of powers should the Act grant the state? Or should it grant powers based on the form of state it envisages? What mechanisms should it include that ensure the democratisation of state activity in relation to the Act?

8.1.3. Mechanisms for participation

Communal Councils in Venezuela and Food Policy Councils in the United States provide important spaces for citizens to actively shape food policy as well as actively engage in constructing people-centred food systems. They also build a relationship between state and society that helps to democratise the local state. The SAFSC has promoted forums as key activist spaces to advance campaigning, but proposed legislation may want to propose legally mandated spaces that ensure citizen engagement in food system issues and policy making, as well as specific guidelines for their operation that ensure unequal power relations between the state and communities is not reproduced, or to ensure that such spaces do not simply become conveyor belts for existing state priorities. The consultation process of the Integrated Development Plans (IDPs) has proven deficient in terms of participation, but it is provisioned for in law. Could these provisions be taken advantage of in the proposed Food Sovereignty Act? The Food Policy Councils in the United States and Canada may also provide useful ideas for how local/provincial government policies and regulations can be subjected to societal participation.

8.1.4. Regulation of the Private Sector

Except for Venezuela, in the country case studies explored in this paper, the majority of food producers are small-scale farmers, and hence the food sovereignty legislation tended to relate mainly to the conditions of agricultural production. However, in South Africa, the majority of the population is urbanised, our food is produced by a small number of large commercial farmers, and its processing and distribution happens through a tightly concentrated value chain. Hence most South Africans are most affected by the food system through their engagement in consumption rather than production. While the reasons for

this include the lack of agrarian reform which stifles the widening of the production base, and which the Act will surely deal with, the Act should also focus on proposed measures for limiting the powers and reach of corporate actors, so as to increase justice in the value chain and the consumption of food. It is therefore recommended that the Act include specific measures to regulate, de-concentrate and control the spread of the private sector in the food value chain. This may also extend to mechanisms to ensure more value goes to food producers.

8.1.5. Relation to existing policies

In the research for the case studies in this paper, it was not clear what the power of the food sovereignty legislation is in relation to other pieces of legislation and policies that it may be at odds with it. But in practice, in many cases it seems that the food sovereignty legislation did not take precedence, as governments continued to pursue policies and activities that contradicted the food sovereignty legislation. As Marc Wegerif's paper shows, state policy relating to food and agriculture is vast and contains myriad contradictions: some state policies and programmes contain on paper objectives and practices that would assist in advancing food sovereignty; such content often takes form in divergent directions in practice; different policies contradict each other; other policies such as those relating to land reform and international trade explicitly contradict principles of food sovereignty. A proposed Act would therefore need to specify how it relates to these other policies; for example, does the Food Sovereignty Act abolish policies that undermine food sovereignty, or to amend such policies? Or, when in contradiction with other policies, does the Food Sovereignty Act take precedence?

8.2. Process Recommendations

8.2.1. Wide participation to develop content for Act

A key recommendation in terms of the process for developing the Food Sovereignty Act is that the content of the Act should be developed through wide participation. This can be done by identifying all organisations that represent or work with identified constituencies and to bring them into the process of developing the content of the Act. This is important for a number of reasons:

- A critical lesson from the case studies explored in this paper is the importance of the content of a law/s being developed through participation by relevant constituencies to ensure that a law reflects their material struggles and needs.

- This in turn helps to ensure they have a greater stake in the law, which can increase the potential for wide mobilisation over it.
- The wide array of issues that a Food Sovereignty Act should cover in relation to reflecting the principles of food sovereignty and the material needs of various constituencies for food sovereignty in South Africa, in relation to water, land, seeds, agrarian reform, methods of production, forms of support, rights, consumption, and so on, mean that it will be necessary to take into account what the current situation on each issue is, in terms of policy and practice as well as struggles over them. This would be a large task for a single research or organiser to scope and take into account on their own. Thus bringing in a wide array of organisations, movements and communities into a process of analysing the current situation on particular issues affecting them and developing their alternative proposals for an Act would be a more comprehensive exercise.
- This participation process can also assist in further developing and articulating a collective vision of food sovereignty in South Africa that the range of diverse actors can cohere around.

8.2.2. Education and capacity building

Participation and consultation on the content of the Act is itself an educative process. Therefore, in planning the consultation phase specific attention should be given to how the process can be used for education, specifically in linking the concrete issues raised and proposed for the Act as linked to structural questions of food sovereignty.

8.2.3. Building alliances

Linked to the above point is that bringing as many constituencies as possible into the process to develop the content of the Act provides opportunity for alliance building, between community organisations, small farmers, social movements and the labour movement. All of these constituencies experience food challenges in varied, and sometimes similar, forms, and so using the question of food could be an important factor in assisting to unite these forces behind the food sovereignty alternative.

8.2.4. Local Government Planning

As part of developing the legal framework of the Act in relation to local government, it may be useful to explore ways in which local government can be legally bound in its existing mandate to create conditions for food sovereignty at the local level. For example, through developing local food economy plans that detail the provision and use of land, water

provision and management, infrastructure, marketing, and so on. This would then also bring in the role of participatory mechanisms to ensure citizens are involved in developing such plans. Conceptualising how we develop a South African version of Food Policy Councils to operate at local government level may be a useful exercise.

9. Conclusion

This paper has presented case studies of various countries that have implemented food sovereignty legislation, as an attempt to draw experience and lessons that could be useful in informing a process for developing a proposal for a Food Sovereignty Act on a campaigning platform in South Africa. It showed how critical it is for food sovereignty legislation to emerge from a grassroots process that represents the key interests of forces fighting for food sovereignty. It also indicated the importance of contesting the state, both around the struggle to have legislation adopted and to see through its implementation. Both also depend to a large extent on power relations in society, and so the Act should be seen as one, albeit important, tool in a larger mobilisational approach to shifting power relations and transforming the food system.

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