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TO: THE HEAD OF DEPARTMENT
DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS
MPUMALANGA

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WRITTEN COMMENTS ON THE MPUMALANGA NUTRITION SOURCING BILL, 2025 - SUBMITTED BY THE SUIDER AFRIKA AGRI INISIATIEF NPC (SAAI)

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INTRODUCTION

1 The Suider Afrika Agri Inisiatief NPC (SAAI) is a non-profit organisation established by farmers for farmers. Saai functions as a national agricultural interest network, with a primary mission to protect and promote the rights, values, and livelihoods of family farmers in the primary production sector. Saai is deeply committed to securing the survival of family farming and to preserving rural communities through sustainable and responsible agricultural policy.

2 Saai's work spans advocacy, strategic partnerships, digital empowerment, and community mobilisation, all aimed at addressing the real and pressing threats that family farmers face (ranging from policy overreach and market disruptions to poor service delivery and rising administrated costs). In this light, Saai actively challenges legislation and policies that, whether by design or unintended effect, jeopardise the autonomy, economic viability, and constitutional rights of family farmers.

3 It is against this background that Saai submits its written comments on the Mpumalanga Nutrition Sourcing Bill, 2025 ("the Bill"), published for public comment in the Government Gazette 52939 of 4 July 2025.

4 While Saai recognises the Provincial Government's objective to broaden participation in the agricultural sector, we are of the view that the Bill, in its current form, is conceptually flawed, structurally unsound, and administratively overreaching.

5 The Bill introduces extensive regulatory controls that risk entrenching bureaucratic gatekeeping, limiting open market access, and disincentivising production among so-called "other farmers" (the non-preferred or non-compliant producers under the Bill). It imposes unclear permit and contractual conditions, centralises procurement mandates through a state-controlled market mechanism, and fails to strike an appropriate

constitutional balance between transformation objectives and the foundational rights to equality, property, and freedom of trade.

6 This submission outlines our general concerns with the Bill's legal framework and implementation risks and provides targeted commentary with recommended amendments. At its core, the Bill is constitutionally defective as it violates section 217 of the Constitution by unlawfully centralising procurement authority within a provincial entity; imposes racial preference regimes without lawful delegation or national framework; and displaces the procurement discretion of individual organs of state through a coercive, monopolistic model.

7 These fatal defects, on their own, render the Bill incapable of surviving constitutional scrutiny. Saai therefore calls for the Bill to be withdrawn in its current form and redrafted.

FAILURE TO PROPERLY DEFINE SCOPE IN AS FAR AS THE BILL RELATES TO HDPs AND NON-HDPs

8 The Bill introduces two key categories of beneficiaries for its support schemes and procurement mechanisms. The first is "*historically disadvantaged persons (HDPs)*" and the other being "*other eligible farmers*".

9 While the definition of "HDP" is itself imprecise and vague, the Bill provides no statutory definition, criteria, or framework to determine who qualifies as an "*other eligible farmer*."

10 The definition of "HDP" in section 1(1) states:

> *"HDP" means a historically disadvantaged person in the Province who is a Black emerging, small-scale or commercial farmer or a Black person who seeks to become an emerging, small-scale or a commercial farmer.**

11 This wording is problematic on several levels:

11.1 It lacks clarity on whether the reference to “Black” is aligned with the B-BBEE Act or AgriBEE Codes, or a standalone definition.

11.2 It makes no provision for juristic persons, trusts, co-operatives, or family-owned enterprises, which are common forms of agricultural entities.

11.3 It fails to distinguish between historically disadvantaged individuals and those currently disadvantaged based on socio-economic factors or market exclusion.

11.4 The inclusion of persons “who seek to become” farmers invites unbounded discretion and broad interpretive leeway.

12 Compounding this issue even further is the undefined category of “other eligible farmers” that appears throughout the Bill, particularly in relation to financial assistance (e.g., section 2(g)-(h), section 3, and section 6). Yet, no guidance is provided on what specific criteria, indicators, or thresholds apply.

13 The Bill thus:

13.1 Fails to identify whether “other eligible farmers” must meet any race-based, size-based, financial turnover, or operational capacity test;

13.2 Leaves open to interpretation whether non-HDPs (including white or non-Black family farmers) may qualify under any circumstance;

13.3 Creates no transparent procedure for inclusion, exclusion, or appeal.

14 The inevitable legal result is that the Bill, in practice, establishes an exclusive and potentially exclusionary regime in which:

14.1 HDPs are the only clearly defined (though vaguely described) beneficiaries;

14.2 Other eligible farmers" may be included or excluded at the whim of the Department;

14.3 All others, especially established family farmers who do not fall within the undefined criteria, will seemingly be excluded *in toto* and without any legal recourse.

15 This definitional opacity renders the Bill unconstitutionally vague, offends the principle of legality, fails to provide legislative boundaries within the ambit of a rules-based society under the Rule of Law and opens the door to arbitrary administrative decision-making. It grants officials sweeping discretionary powers without clear statutory limits, which undermines the rights to equality (section 9), lawful and procedurally fair administrative action (section 33), and access to economic activity (section 22) under the Constitution.

16 Moreover, if the AgriBEE Codes or B-BBEE Act are to be imported (implicitly under section 2(2) of the Bill or by further departmental criteria in the province) to govern eligibility under this regime, it would potentially amount to creating a *de facto* "Black-only" agricultural procurement and finance system, contrary to the constitutional principles of inclusiveness, non-racialism, and fair access to state support measures. No such race-exclusive regime can survive constitutional scrutiny without express justification, necessity, and proportionality - none of which is set out in the Bill.

IMPROPER MARKET ACCESS RESTRAINTS

17 The Bill further establishes a coercive centralised procurement regime within the Mpumalanga International Fresh Produce Market ("the Market") and its designated "agricultural hubs".

18 All Provincial Organs of State and their appointed entities are compelled to procure commodities via the Market unless it formally *declares itself unable to supply* the required goods. This centralisation of agricultural procurement violates core economic

freedoms, the financial discretion of the procuring Organs of State, distorts price signals, and suppresses the ordinary market order.

Collapse in actual Market functions

19 This Bill represents a textbook case of the economic calculation problem. The Market, being a state-sanctioned and centralised procurement gatekeeper, lacks access to the dispersed, tacit knowledge held by thousands of producers, intermediaries, and state-level buyers across Mpumalanga. By imposing a singular purchasing mechanism, it destroys the price system that normally coordinates supply and demand through voluntary exchange.

20 Price formation in free markets is not just a transactional mechanism - it is a signal and a guide to all participants in that market. When procurement is channelled through a single point, and market access is rationed through opaque permitting and racial categorisation, these signals are distorted or lost. It no longer matters which producers can supply Organs of State (and effectively the public) at the best price. It only cares about the racial composition of producers from the preferred categories of persons who may supply the Market when determining who may participate in price formulation at the market level. Prices established in this Market will no longer be able to inform buyers about which commodities are produced most cost-effectively, which producers are the most efficient, which products have the highest demand, or where significant innovations are occurring. This is because the dynamic discovery process of free exchange has been eliminated (if nothing else, severely curtailed by the race-based permit and access requirements of the Bill).

Displacement of entrepreneurial action

21 For the development of upcoming and previously disadvantaged persons to occur, there should be institutional focus on the entrepreneur as the agent of economic coordination and value creation.

22 Under the Bill, participation in entrepreneurship is no longer the focus, as the market mechanisms of the Bill are not accessible to everyone who can potentially provide the required commodities to buyers. Instead, it is restricted to those who meet arbitrary and discretionary inclusion criteria set by provincial officials. This system does not reward individuals who effectively allocate resources; rather, it favours those who fall within the preferred racial categories of producers. Because of the negative market and race-based incentives being incorporated into the Bill, it is unlikely that the Market will attract the interest of capital from outside of the Organs of State, who are forced by the Bill to procure from the Market.

23 This is antithetical to entrepreneurial creativity, which Mpumalanga desperately requires. The act of selecting which farmers are “permitted” to sell into the Market transforms the province into a planner of nothing more than the current, already strained, financial reach of Provincial Organs of State – rather than being a facilitator of economic growth. It substitutes decentralised competition with monopolistic privilege and ignores the function of market entry, creativity, competition, and profit and loss as tools for economic refinement.

Artificial market segregation and knowledge decay

24 Perhaps most damaging is the Bill’s enforced separation of emerging and established producers, severing the organic networks that develop in open markets.

25 In a competitive trading environment, smaller producers learn from larger ones, benefit from shared infrastructure, gain credibility through association, and tap into downstream

logistics and distribution systems. The Bill's model isolates emerging farmers in homogenous, closed-loop trading systems with limited exposure to new technology, innovation, strategic financial thinking, best practices and entrepreneurial discipline.

26 Functional markets emerge not from artificial participant restrictions, but rather from emergent interaction among diverse actors. By removing larger, established producers and non-compliant participants from the Market's floor, the Bill eliminates this diversity and entrenches fragmentation, rather than promoting upliftment.

Disinvestment in the Mpumalanga agricultural trade

27 A key and dangerous consequence of the Bill is the risk of structural disinvestment in Mpumalanga's agricultural sector. By coercively restricting participation in the Market to a limited, politically defined groups of producers, the Bill introduces significant regulatory uncertainty and risk to all other market participants.

28 Larger producers, particularly those excluded from the Market or discouraged by the bureaucratic and ideological framing of the Bill, will have strong economic incentives to relocate trade activity outside of the province, or even outside the country. Others may be forced to develop alternative private markets or supply chains, thereby bypassing the state-run Market arena entirely.

29 This Bill will cause a classic case of capital flight in response to interventionism. When the rules of exchange become unpredictable, exclusionary, and politicised, rational actors withdraw their capital, effort, and innovation to jurisdictions where their rights are better respected and where market signals remain intact. The entrepreneurial function, which Mpumalanga agriculture desperately requires to create real long-term growth, and not merely a legislative funnelling as per the Bill, cannot flourish under conditions of arbitrary rulemaking.

30 The real cost of such disinvestment is borne not by the excluded producers, who can already access other markets, but by local consumers and the provincial economy at large, particularly:

30.1 The poor and vulnerable who rely on state feeding schemes in schools, hospitals, prisons, and rural welfare systems;

30.2 Emerging farmers, who lose the benefit of proximity to larger players and established networks;

30.3 Local agribusinesses, which face higher input costs and reduced competition;

30.4 State institutions, which face increased procurement costs and reduced food security.

31 The Bill will, in effect, seek to artificially shrink the supply side of the provincial agricultural economy. This will make prices more volatile, quality more uncertain, and supply chains more fragile. In economic terms, it will destroy any hope of long-term catallactic coordination (the ability of individuals to align their needs, plans and expectations through real markets).

32 The damage is compounded by the reputational risk created by the Bill. Investors and agribusinesses will view Mpumalanga as a politically unstable and ideologically hostile environment for agricultural investment. Long-term capital formation will decline, and already developed critical in-province commercial infrastructure (such as packhouses, cold storage, logistics centres, and processing facilities) will become underutilised or even abandoned.

33 In essence, the Bill replaces open agricultural exchange with a state-enforced cartel. Such a model leads to stagnation, reduced innovation, and ultimately, lower food security.

SELF-DECLARATION OF INABILITY TO SUPPLY BY THE MARKET

34 One of the most alarming provisions of the Bill is its delegation of procurement gatekeeping to the Market, through the requirement that only the Market itself may confirm its inability to fulfil procurement needs before any Provincial Organ of State may source from elsewhere. This not only introduces a dangerous monopoly of administrative decision-making and judgment but also violates both constitutional mandates and sound economic principles.

35 The dispersal of knowledge is a foundation for real-world market and procurement insight. The Market (especially in view of its self-imposed market access restrictions) will not possess all the information needed to make rational economic decisions. By requiring that only the Market may assess its own incapacity, the Bill assumes a level of institutional omniscience that is fundamentally flawed.

36 Procurement decisions, especially for essential services such as school meals, hospital food, and correctional facilities, require real-time, localised information on prices, lead times, logistics, perishability, and supplier capacity. These data cannot be collected, processed, and rationally assessed in real time by a single provincial-level Market

37 By creating a legal monopoly on the decision of capacity or incapacity, the Bill destroys the basic functions of market calculation and discovery that can only be done effectively by the procurer of goods and services faced with the real risk of being unable to meet its institutional or related mandates to offer predictable supply of goods and services to the public. Even if a school or department knows of a local supplier with capacity, the Bill will compel it to wait on bureaucratic confirmation of non-availability, which will likely only occur long after the window for effective and acceptable basic service delivery has closed. This results in delays, inefficiencies, and ultimately, degraded public service delivery.

38 Section 4 is not saved by its exception mechanism. Requiring procuring departments to wait for or request written confirmation of non-availability from the Market introduces delays, bureaucratic inefficiency, and legal uncertainty. This is especially problematic for essential and time-sensitive services such as school feeding, emergency relief, and clinical nutrition.

39 The provision also conflicts with sections 125 and 195 of the Constitution, which place governance and service delivery obligations on each provincial department, including procurement autonomy. No law may impose external veto powers on a department's constitutional mandate without express, lawful delegation - which is lacking here.

CONSTITUTIONAL PROCUREMENT PRINCIPLES AND ULTRA VIRES LEGISLATIVE INTRUSION

40 Section 217 of the Constitution governs all procurement by Organs of State and sets out a decentralised framework intended to ensure transparency, accountability, and responsiveness to local needs.

41 The Bill, by centralising procurement through a provincial market and displacing the procurement discretion of Provincial Organs of State, violates multiple constitutional principles embedded in section 217.

42 Section 217(1) stipulates that:

> *(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*

43 This language is both mandatory and specific to the individual procuring organ of state. It is not a general obligation on the province as a whole, nor does it authorise another organ of state - such as the Department administering the Market - to determine the system of procurement applicable to other departments or entities.

44 The Bill, in contrast, displaces this constitutionally required autonomy by mandating that all Provincial Organs of State procure through the Market, unless the Market consents otherwise. This is an unlawful interposition of one organ of state's internal procurement structure on another, which the Constitution does not permit. Each organ must determine its own procurement system (subject only to national legislative frameworks under section 217(3)) and shall not be bound by a provincial statute that effectively overrides its discretion.

45 Section 217(2) further entrenches the autonomy of a procuring Organ of State by providing that:

> *(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-*
>
> *(a) categories of preference in the allocation of contracts; and*
>
> *(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

46 The use of the phrase "the organ of state" again reaffirms that each department or public entity must adopt its own procurement policy. The Constitution thus explicitly allows for individualised, tailored transformation strategies, which can (and often must) vary across departments and locations. The Bill, by contrast, imposes a uniform and externally imposed racial preference scheme, irrespective of the specific institutional needs, contexts, or legal procurement frameworks of each organ of state.

47 Finally, section 217(3) makes clear that:

> *"National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented."*

48 Only national legislation may provide a common procurement framework. Provincial legislation cannot do so. The Bill in purporting to create a provincial procurement policy that binds all organs of state in the province- and dictates from whom and on what basis

they must procure - exceeds the legislative authority of the province and violates the supremacy of national procurement legislation, including the Preferential Procurement Policy Framework Act (PPPFA) and the Public Finance Management Act (PFMA).

49 Moreover, the Bill introduces a parallel system of racial preference and procurement rules (via the designation of HDPs and undefined "other eligible farmers") that is incompatible with the policy discretion conferred on each procuring organ of state under section 217(2). These provisions operate not as optional guidance, but as mandatory procurement directives, thereby attempting to override the constitutional and legislative competence of other organs of state.

50 The Bill creates a legislative monopoly over the sources of state procurement within Mpumalanga.

51 This is not a facilitation of opportunity; it is the exclusion of competitors by legislative fiat. Such coercion is not only economically regressive. It is constitutionally objectionable. It violates equality (section 9), undermines freedom of trade (section 22), and facilitates arbitrary state action (section 33).

52 Section 217 of the Constitution requires that public procurement systems be fair, equitable, transparent, competitive and cost-effective. The Bill's mandatory procurement model directly violates this requirement by:

52.1 Prohibiting competitive bidding or open sourcing for a wide range of commodities;

52.2 Making procurement contingent on a bureaucratic exemption (confirmation of non-availability);

52.3 Undermining institutional discretion and responsiveness of state departments.

CONSTITUTIONALLY IMPROPER DELEGATION AND USURPATION OF MANDATE

53 Under the Constitution, every Organ of State has an independent and non-delegable duty to ensure effective, lawful, and efficient service delivery in fulfilment of its constitutional obligations.

54 Section 195 of the Constitution requires public administration to be development-oriented, transparent, accountable, and responsive to people's needs. Procurement, if considered constitutionally, is accordingly not a mechanical act. It is an extension of the constitutional responsibility to fulfil these duties.

55 However, the Bill effectively removes this autonomy from provincial Organs of State by forcing them into a procurement bottleneck controlled by the Market. This amounts to an unlawful usurpation of constitutional functions, as:

55.1 No provision in the Bill constitutes a lawful and explicit delegation by every potential Provincial Organ of State required by section 238 of the Constitution.

55.2 The Bill includes no real intergovernmental cooperation and dispute resolution mechanisms which would bridge the gap between the ideals of the Market, and a potential failure by the Market to in fact, offer a high-quality, price-sensitive and continued supply of goods to other Organs of State.

55.3 There is no legal mechanism in Constitutional law by which one institution (the Market) may override the procurement discretion of another constitutional entity (e.g., a Department of Health or Education);

55.4 The Bill imposes an executive veto power in favour of the Market over decisions that rest constitutionally and operationally with Provincial Departments.

56 This legal structure undermines both institutional accountability and service efficacy. If the Market fails to act timeously, acts irrationally, or engages in patronage, the procuring organ of state has no remedy (a failure for which the public will bear the consequences).

57 The Market's self-declaration mechanism introduces:

57.1 A single point of failure for the entire provincial food procurement chain;

57.2 Perverse incentives for the Market to deny unavailability, even when known, to protect its internal stakeholders or political image;

57.3 Administrative delays that harm time-sensitive procurement (particularly in education and healthcare sectors);

57.4 Litigation risk against state departments that fail to deliver services due to unlawful delay, despite availability of alternative suppliers.

58 The Constitution does not contemplate a scenario where one state-created entity may unilaterally constrain another's ability to deliver on its core mandate. The Bill thus violates the principles of cooperative governance (sections 40–41), good administration (section 33), and the right of access to food and basic services (sections 27 and 28 for vulnerable groups like children and detainees).

COMPULSORY PERMIT AND AGREEMENT FRAMEWORK

59 Section 3 of the Bill introduces a highly restrictive regime in which no HDP or "other eligible farmer" may benefit from departmental support or financial schemes without first obtaining:

59.1 A producer permit;

59.2 Registration on the Department's database;

59.3 Food Business Operator System codes; and

59.4 A formal agreement with the Head of Department.

60 This framework raises grave concerns under both economic and legal lenses.

Regulatory overreach and market entrenchment

61 The essence of market vitality is voluntarism and competitive entry. Section 3 substitutes these with a centrally controlled licensing regime. Every producer’s participation is made subject to bureaucratic screening, discretionary registration, and contractually rigid conditions - not market signals or production capability.

62 The permit framework erodes entrepreneurial discovery. It does not reward producers who offer better quality, more competitive pricing, or greater innovation. Instead, it prioritises administrative compliance with race-based and ideological filters, thereby undermining real competition and protecting state-favoured producers from market pressure.

63 This approach stifles capital formation. Producers will hesitate to invest in long-term operations if their ability to trade is contingent on periodic permit renewals (limited to three years) and regulatory favour. Such uncertainty promotes short-termism and reduces the attractiveness of agriculture as an enterprise.

Legal and Constitutional Implications

64 The permit-and-agreement system also raises significant constitutional and administrative law concerns, particularly in light of:

64.1 The principle of legality (section 1(c) of the Constitution);

64.2 The right to administrative justice (section 33);

64.3 The right to choose a trade freely (section 22).

65 Section 3(1) makes support conditional on entering an agreement with the Head of Department. Yet no legal framework is provided to ensure fairness, transparency, or appeal in the issuance of permits or the conclusion (or denial) of these agreements. The Head of Department is empowered to alter, withdraw, or refuse such agreements without clear criteria, subject only to vague notions of "consultation" and "good cause."

66 Section 3(8) further entrenches this opacity by declaring that no HDP or other eligible farmer is entitled to enter into an agreement merely because they hold a permit. In effect, two layers of approval are required 1) first the permit and 2) then the agreement. For some reasons each step is subject to a separate administrative discretion and decision by the Head of Department.

67 These structures facilitate arbitrary decision-making, violate the principle of rationality in public administration, and lack safeguards such as independent review, defined application processes, or right of recourse. They also present fertile ground for corruption, rent-seeking, and political patronage, especially where procurement contracts are lucrative.

Practical and structural flaws

68 The Bill imposes rigid requirements that do not account for the varied nature of agricultural enterprises:

68.1 Many producers are seasonal or irregular suppliers and may not seek or need long-term agreements;

68.2 Some may be incorporated as juristic entities or family trusts, which the Bill does not account for;

68.3 Not all participants, even thoughs falling within the preferred racial categories of the Bill, will be able to navigate the administrative burdens of the Bill. No features are built in to accommodate people based on language or literacy.

69 The linkage between the permit system and participation in public procurement, as well as access to funding and infrastructure support, creates a closed ecosystem where only a select few producers can meaningfully operate. This raises the risk of exclusion, regulatory fatigue, and production bottlenecks.

RACE-BASED MALINVESTMENT

70 Sections 6 and 7 of the Bill establish two funding pathways to support emerging farmers:

70.1 The national Blended Finance Scheme (section 6(a));

70.2 A Provincial-specific agricultural finance scheme (section 7), aimed at accelerating HDPs and “other eligible farmers”.

71 Both schemes are positioned as tools to diversify the agricultural sector and drive transformation. However, their implementation, as contemplated in the Bill, is racially restrictive, administratively opaque, and economically short-sighted.

72 The finance provisions in sections 6 and 7 effectively create a race-exclusive funding model, prioritising HDPs and providing no clear criteria for how “other eligible farmers” are identified. The absence of inclusive or transparent thresholds renders the scheme susceptible to constitutional challenge under sections 9 (equality), section 217 (procurement) and 195 (fair, accountable public administration) of the Constitution.

73 The Bill fails to:

73.1 Establish lawful and proportionate means of determining eligibility;

73.2 Provide opportunities for participation by non-HDPs facing economic hardship or systemic exclusion;

73.3 Include objective oversight mechanisms or safeguards against racial discrimination.

74 The Provincial Finance Scheme is also vague in structure and design:

74.1 It lacks clear thresholds, caps, or sectoral prioritisation;

74.2 It delegates decision-making to unspecified “strategic partners”, exposing public funds to private capture and unaccountable governance;

74.3 It provides no meaningful path for excluded producers to access state-backed financing.

75 Modern agricultural development is networked and interdependent. Excluding successful, experienced producers from participating in financial ecosystems deprives the emerging sector of mentorship, investment partnerships, and technical capacity. The Bill disconnects emerging farmers from the very resources (private capital, market access, production knowledge) that would help them succeed.

76 Capital is not a static quantity but rather a complex structure of interrelated investments over time. The Bill disrupts this process. Instead of integrating emerging producers into the broader supply ecosystem, it quarantines them within a funding silo that lacks competitive exposure and inter-temporal coordination.

77 Directing capital on political or ideological grounds, rather than letting markets determine risk, value, and creditworthiness, will only result in wastage of public funds and malinvestment. Reserving access almost exclusively for HDPs and undefined "eligible farmers", distorts resource allocation and undermines economic efficiency.

78 When prices are manipulated or distorted in the manner envisaged with the Market under the Bill, malinvestment occurs. This refers to the misallocation of capital and resources to uses that are unsustainable once artificial supports are removed. In this case:

78.1 Infrastructure will be built around unstable and unsustainable politically determined procurement, not genuine market demand.

78.2 Hubs may exist in locations where they are economically unviable, unnecessary or even wasteful.

78.3 Because of the restrictions placed by the Bill, it's highly probable that the state-run Market would attempt to compete with already functioning free market municipal or private markets in certain areas, resulting in a massive wastage of public funds.

78.4 Emerging producers will grow crops or scale operations without clear signals from buyers, leading to waste, oversupply, or poor quality. In short, the lack of proper market signals and the shaky economics of the Market under the Bill will, in the long run, harm the ability of emerging producers to become sustainable competitors in more competitive market spaces.

78.5 Further, the cost of building and maintaining a province-wide network of hubs and markets is prohibitively high. Without free-market incentives, these logistics systems will become cost sinks, reliant on continuous taxpayer subsidies from the Provincial Government. Infrastructure, market operator and transport inefficiencies will either fall on the already-fragile provincial budget, or force emerging producers to bear costs they cannot afford - eroding any developmental gains.

79 This will result in a system where:

79.1 Credit or finance is extended to politically preferred actors, many of whom may lack operational readiness or market ability;

79.2 Sound producers, particularly family farmers and mid-sized enterprises, are excluded despite their proven track records;

79.3 The taxpayer and provincial fiscus are exposed to elevated default risks and poor returns on agricultural investment.

80 The danger of the Bill is not just its inefficiency - it is the illusion it gives of sustainability. A system that directs funds to politically favoured recipients, without market discipline or performance metrics, fails to recycle capital productively, leading to dependency and stagnation.

NO ACTUAL MARKET CREATED

81 Despite its title and stated objectives, the Bill does not in fact establish a functional or economically viable “market” in any real sense. A market is, by definition, a space where voluntary exchange occurs, prices are formed through the interaction of supply and demand, and entrepreneurial actors discover value through open competition. None of these elements are present in the procurement and trading regime envisaged under the Bill.

82 Instead, what the Bill creates is a centralised, state-administered wholesale operation masquerading as a market. This structure lacks the dynamism, competition, decentralised decision-making, and price signalling that are essential for genuine market activity. It is not a place of free exchange but rather a bureaucratic funnel for limited producers to sell to an equally constrained and captive buyer: the state.

83 The state, under the Bill, becomes both the principal buyer and arbiter of which sellers may participate. Prices will not be discovered through competition, but rather administratively fixed or heavily influenced by the political imperatives and ideological preferences of the department. This turns the so-called “market” into little more than a procurement depot for a narrow group of pre-approved producers.

84 The likely outcome is twofold:

84.1 For the majority of upcoming or marginalised producers, the so-called Market will serve as a price-suppressing mechanism. It will leverage the state’s purchasing power to drive prices down, while limiting alternative buyers and competition that could otherwise support small producers in negotiating better returns.

84.2 For those producers who manage to position themselves as the preferred beneficiaries of the Bill’s racial and administrative filters, a creamy layer will emerge. These actors will compete not on cost, quality, or innovation, but on proximity to power, bureaucratic favour, and preferential inclusion on internal lists or agreements. The result will be rent-seeking, over-pricing, and systemic inefficiency.

85 The incentive structure is perverse: instead of rewarding efficient producers or market-responsive entrepreneurs, the Bill rewards compliance with administrative processes and alignment with political identity politics. This destroys the entrepreneurial function of a market and replaces it with a patronage system disguised as a procurement framework.

86 This artificial “market” will also damage real markets operating in parallel. By undercutting legitimate free-market operations and crowding out private procurement channels through coercive centralisation, the Bill harms both private traders and public

finances. Instead of building inclusive value chains, it entrenches an extractive model where capital flows only through state-controlled routes.

87 In essence, the Bill creates not a market, but a state-administered barter system with select suppliers. It lacks the core ingredients of market functionality (competition, price discovery, freedom of entry and exit, and voluntary exchange). What emerges is not empowerment, but a false promise of market inclusion that conceals deeper exclusionary logic and inefficient procurement practices.

88 Saai accordingly submits that the Bill, if enacted in its current form, will fail to build the competitive agricultural economy it purports to support. It will erect a bureaucratic shell of a market, unable to deliver either transformation or efficiency, and certain to increase the cost of public procurement while stifling real growth in the agricultural sector.

CONCLUSIONS AND RECOMMENDATIONS

89 The Mpumalanga Nutrition Sourcing Bill, 2025, is both economically unworkable and constitutionally indefensible. Its core premise - the creation of a centralised, state-controlled procurement mechanism that effectively monopolises access to state markets - violates the explicit procurement autonomy granted to each organ of state under section 217 of the Constitution.

90 The Bill, by forcing procurement through a single provincial entity (the Market), and by requiring a prior finding of incapacity by that Market before alternatives may be pursued, unlawfully usurps this discretion. It substitutes a decentralised, constitutionally compliant framework with a coercive, centralised gatekeeping model that cannot be reconciled with either the letter or spirit of the Constitution.

91 The Bill further contravenes sections 217(2) and (3) by seeking to impose a racial preference regime and procurement policy across all provincial organs of state through provincial legislation, despite the Constitution being clear that such policies must be

determined individually by organs of state and within a framework set only by national legislation.

92 In addition to these structural constitutional flaws, the Bill is also riddled legislative problems:

92.1 It fails to provide proper and lawful definitions for key concepts such as “HDP”, “other eligible farmers”, or “agricultural hubs” in a way that permits objective interpretation and application.

92.2 It grants vast discretionary powers to the Department and the Head of Department without clear guiding criteria, appeal mechanisms, or oversight safeguards.

92.3 It duplicates approvals (permits and agreements), introduces parallel procurement systems outside the bounds of national law, and creates unfunded mandates and economic distortions that are unviable in practice.

93 The following provisions are particularly unconstitutional, irrational, or administratively improper and should be deleted or wholly redrafted:

93.1 Section 2(2): vague incorporation of race-based economic development goals without clarity or limits;

93.2 Section 3: the permit and agreement system creates an unlawful precondition to market participation and invites arbitrary exclusion;

93.3 Section 4(1)-(3): centralised procurement requirement and unlawful veto power given to the Market;

93.4 Section 6 and 7: racially exclusive finance models and delegation to unspecified “strategic partners”;

93.5 Section 15: compulsory registration and data control mechanisms without procedural clarity or safeguards;

93.6 Section 40(h) and 43: creation of extensive infrastructure mandates without economic feasibility or cost controls.

94 The Bill, as currently framed, not only fails to achieve its stated objectives but also exposes the province to significant constitutional litigation, administrative paralysis, and reputational damage. It will deepen rather than solve inequality, entrench inefficiency, and further fragment the agricultural economy in Mpumalanga.

95 Saai strongly recommends that the Bill be withdrawn in its current form. If the Department wishes to proceed with a revised version, it should do so only after wide-ranging consultation with affected producers, constitutional law experts, and economic stakeholders - guided not by central planning imperatives, but by principles of decentralisation, market access, and institutional accountability.

CONTINUED PARTICIPATION

96 Should the Mpumalanga Nutrition Sourcing Bill, 2025, proceed to any further stage of legislative development (including but not limited to revised drafts, public hearings, stakeholder consultations, or any regulatory processes flowing from the Bill), Saai formally indicates that it be notified of such developments and afforded a full opportunity to participate, comment, and make further written and/or oral submissions.

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