



**Report of the 1st FAEA-supported GOK task force retreat on the food safety
policy and legislation
Enashipai Resort and Spa, Naivasha
7-11 December 2020**



health, East African Community (EAC) and trade. They all called for unity of purpose and indicated their commitment to seeing a successful enactment of a rigorous and well-coordinated food safety regulatory system.

2. All members of the task force were able to reach a consensus on the draft food policy document, adding value to the various sections. An improved draft policy document was subsequently a major outcome of the meeting. The policy however requires fine-tuning to ensure that it reads well before the document can be subjected to expert groups and stakeholder consultation.
3. The presentations by key resource persons, namely Rufino Hurtado of USTR and Andrew Edewa of TradeMark East Africa, were important in adding value to the discussions and decision-making process. With this experience, my proposal is that we engage experts in each future task force meeting, to assist the team navigate key aspects of the process.
4. Members discarded the “one agency approach”, and agreed on a framework that will empower various competent authorities to effectively handle their food safety regulatory mandates, with an over-arching co-ordination mechanism. The deliberations on what would be the best coordination mechanisms and governance on food safety regulation in Kenya were evidently delicate. The discussions around this could not be concluded and will form part of the key agenda in the next meeting in January 2021. The decision-making process will benefit a lot from presentations from resource persons with extensive experience in food safety regulation coordination from other parts of the world.
5. There is need to ramp up the technical representation of the agriculture team, to enrich discussions amongst task force members and guarantee informed outcomes. This shortcoming was also pointed out by the health co-chair in his closing remarks.
6. Kenya’s on-going process for food safety legislation continues to raise a lot of interest with other programs requesting to be enjoined. After the Naivasha meeting, we were contacted by UNIDO and TRASE projects, both requesting to be enjoined in various ways. I will bring these proposals to the attention of PS Boga at the earliest opportunity, for his opinion.

Next immediate steps agreed on

1. It was agreed that the second taskforce meeting be held within the month of January, to focus on the food safety coordination mechanism, discuss the bill based on the revised policy and develop instructions for the legal drafters.
2. PS Boga recommended that FAEA and his office organize to engage the Chairs of the parliamentary committees of Agriculture and Health in parliament and senate, to sensitize them on the progress made so far, considering that there is a bill in parliament due for second reading. The meeting will also be used to sensitize them on the deficiencies of the bill in parliament, particularly its noncompliance with international best practices and GOK commitments. While this activity was not originally planned for in the roadmap, it is considered necessary.
3. That FAEA supports the process of identifying speakers who can add value in the next meeting, especially those who can talk about best examples/case studies of effective food safety regulatory coordination.

Summary of recommendations

1. I recommend that the inclusion of resource persons be integrated as components of the program in task force retreats.
2. I will recommend to PS Boga and the taskforce for a smaller team of about three, to refine the policy document, to ensure it reads well, in readiness for expert and stakeholder consultations.
3. I will recommend to PS Boga, to boost the agriculture team, by bringing in a staff who is well grounded on matters food safety regulation and coordination.
4. I recommend that we reach consensus with GOK ahead of the next meeting, on the sequencing of legal drafting - whether the drafters will simultaneously work on the drafting of the bill during the meeting or will require a few days after.
5. I recommend we enhance our interaction with Kenya's State Department of Trade, in view of the perspectives that they bring to the process and their being Kenya's lead in the ongoing U.S. – Kenya FTA negotiations.
6. I will implore on the participating departments and agencies to retain their current members through the process, to guarantee consistency and logical development of the process.

Itinerary

Please find the attached program (Annex 1). As evidenced in the daily activities, there was flexibility in how the program was administered, to accommodate aspects/timelines that members felt were important.

Daily activity

Sunday, 6 December 2020

Charity Mutegi and Wilfred Wachira arrived early afternoon at Enashipai Resort to set up and ensure that all plans were in place, including a secretariat room for handling logistics, conference room and reservations and set up of zoom link for those who were not able to join in physically. Majority of participants arrived later in the day while a few others arrived the following day in the morning.

Monday, 7 December 2020

The meeting started with individual introductions from participants and setting the scene for discussions on the food safety legislative process. This session was led by Dr Christopher Wanga, joint task force chair from agriculture. PS Boga took over the second and main session of the day whereby official remarks were made by USDA-FAS Agriculture Counselor, Rayan Scott, and Principal Secretaries from key ministries. The following is a summary of the remarks made by the dignitaries:

- Remarks by Ryan Scott, Regional Agriculture Counselor, USDA-FAS: Ryan acknowledged PS Boga for his leadership of Kenya's food and feed safety legislation process, the presence of the other dignitaries present and task force members for their commitment in finalizing the food safety legislative process. Scott also acknowledged the role of FAEA in the process and recognized the U.S- Kenya mutual interest in the process, stressing that both sides were interested in an outcome that would protect the country's populations from unsafe foods through a robust food safety regulatory system, founded on

strong scientific principles and codified in clear laws and regulations. Scott reiterated that policies, laws and regulations that come out of the process needed to promote transparency and predictability and be consistent with best international practices – thereby facilitating Kenya’s trade in agricultural and food products.

- Remarks by Amb. Johnson Weru, Principal Secretary, State department for Trade and Enterprise Development: The PS’s remarks were read by the Trade secretary, Dr. Bruno Linyiru. The PS acknowledged the Ministry of Agriculture as well as the US government through FAEA, for supporting the process. He highlighted the importance of Kenya’s food and beverage export as the prominent category of Kenya’s domestic exports, hence the need to ensure strict adherence to national and international safety protocols. He noted that the State Department for Trade through the National Trade Policy advocated for complementarity with other sectors and provides a framework for adoption of policies that complement rather than compete with each other. Hence his ministry viewed trade related aspects such as food quality and safety, as important avenues to build synergy and leverage on opportunities for trade-led policy reforms in the food supply chain. The PS noted that to ensure protection of public safety and food trade in a manner consistent with World Trade Organization (WTO) Agreement on the Sanitary and Phytosanitary (SPS) Protocol measures and other international requirements, the State Department had established the National SPS Committee which is responsible for articulation of SPS measures. The PS expected that the new Food Safety Policy will address food safety concerns in areas of legislation, institutional framework, monitoring and evaluation, traceability, resources information and education. He hoped that the policy would also capture and integrate agriculture, nutrition and trade policy making to achieve greater policy coherence.
- Remarks by Prof Micheni Ntiba, PS Aquaculture, Fisheries and Blue Economy: PS Ntiba noted the bias towards attending to food safety issues that cater for other markets at the expense of locally consumed food, yet solutions needed to start with addressing local food safety concerns. He stressed that a successful food safety process and interventions needed to take into account the complex nature and factors along the food value chains. Professor Ntiba also acknowledged that several considerations for a functional food control system had to be considered in totality, and that included trusted and harmonious synergistic arrangements amongst players. He decried the fact that various players concerned with food safety in the country tended to compete rather than seek complementarity. He proposed good surveillance and monitoring system, including documentation as components of a functional food control system. He summed it all by urging members to work as a team, and reminded members that all were equally relevant.
- Remarks by Dr. Kevit Desai CBS – PS East Africa Community (EAC): Dr Desai noted that current trade as a country stood at 25% within the EAC and that there was tremendous potential in value addition. He reiterated the need to promote the practice of science based evidence approaches as an avenue for promoting industrial capacity, and spoke on the huge capacity the approach had to improve international trade with EU, UK, and the US. He noted that the ability to find ways in which to build capacity to promote value chains required collective responsibility. From an EAC ministerial perspective, the PS encouraged

the members to work on solutions that would minimize intergovernmental conflict, streamline roles to minimize conflict and duplication, and promote trade and human health, and in line with the fulfilment of international obligations such as WTO. He further proposed that efforts be built into a policy and a legal framework and urged members to ensure that the complementary role played by private sector was accommodated. Dr Desai noted that the EAC had developed an SPS protocol ratified by Kenya, and SPS act 2018. The EAC, through support by USAID, had also developed aflatoxin control policy briefs and supported the aflasafe manufacturing plant for managing of aflatoxins, based in Machakos. He emphasized the private sector's interest in finding solutions to aflatoxins, noting that that in October 2020, the EAC undertook a fact finding mission on boarder points to assess aflatoxin management capabilities.

- Remarks by Mr. Harry Kimtai, CBS – PS State Department of Livestock: The PS acknowledged partners, led by the Agricultural Counselor Ryan scot and all PSs present for their support in the food safety legislative initiative. He thanked PS Boga for taking lead in GOK efforts to co-ordinate the process. He noted that while the food safety issues in the country were critical, they had been neglected, thereby affecting the growth of the country's GDP. The existing measures had also not been implemented, and food safety matters were addressed using a piece meal approach. PS Kimtai urged members to ensure that proposed policies and legislations were in line with international standards set through WHO, Codex, WTO, IPPC and IOE organizations. He also stressed that private sector needed a conducive and non-restrictive path for doing trade. He urged government to desist from trade and focus on laying procedures/regulations that provided the enabling environment for private sector to come on board. He regretted that the process had taken long, giving way for a private members bill to proceed, in spite of the gaps it carried in it. PS Kimtai encouraged members to learn from other jurisdictions that are working well as they engaged in the process and ensure that the role of competent authorities was clearly spelt out. He also requested members to provide a workable proposal for food regulations on food safety that will separate human medicines and food. The PS concluded by making a call to members to ensure the outcome facilitated the growth of the economy through a good environment for trade with international partners.
- Remarks by Prof Hamadi Boga, CBS – PS State Department of Crop Development and Agricultural Research: The PS began by putting the food control system in Kenya into context, acknowledging that it was in a discomfoting place, and requiring to deal with evolving/emerging issues at national, regional and global level. He noted that several agencies were stuck with archaic laws that were not responsive to the dynamic and changing environment. He called upon the task force to ensure that their outcomes of the policy and legislative process addressed this environment. PS Boga urged the task force to commit to create a system that will position Kenya for global, regional and local trade and safe trade for all. He requested members to avoid a copy paste approach that would be detrimental to the nation. He also made a strong call that members avoid working in silos and avoid hard line positions that would impact negatively on the process. He encouraged Public health department to engage members on how they wanted to prosecute their mandates within the food drugs and chemical substances act and public health act. The PS

appealed to members to work towards seeking consensus on the contentious issues in order to forge ahead with one voice. He also requested for the involvement of the County governments, an aspect that was left out in the Food safety Policy of 2013 and an inclusion of the Council of Governors (CoG) in the process. PS Boga reiterated the need to have laws that were robust enough to deal with all food safety issues including GMOs, pesticides, mycotoxins, AMRs, amongst others.

- Remarks by Ms. Susan Mochache, CBS – PS Health-The PS appreciated PS Boga, for marshalling support for the process. She acknowledged that the food safety concerns were multi-sectoral and that food safety was central to health. She also took time to explain how the food safety matters were part of many issues that touched on health and emphasized the need to recognize international commitments. PS Mochache provided a chronological context of the KFDA bill and the private member's bill; she acknowledged the outstanding issues between the agriculture and health dockets, and requested for consensus and removal of personal matters from the process. She also acknowledged the tight deadlines for the completion of the process and requested members to ensure that the process was concluded in good time.



From left to right: Dr. Bruno Linyiru -Trade Secretary, State Department of Trade and Enterprise Development; Prof. Micheni Ntiba, CBS – PS Fisheries, Aquaculture & Blue Economy; Professor Hamadi Boga, CBS – PS State Department of Crop Development and Agricultural Research; Ms. Susan Mochache, CBS – PS Health; Dr. Kevit Desai CBS – PS East Africa Community (EAC); Mr. Harry Kimtai, CBS – PS State Department of Livestock.

Before the PS Mochache made her comments, members took a tea break and proceeded for a photo session. After the remarks by PS Mochache, the following presentations were made:

1. Presentation on the Food safety Policy 2103, by Brenda Obura, joint secretariat member from public health (Annex 2).
2. The draft Food safety bill, by James Ndombi, from the Kenya Law reforms.
3. The Kenya Food and Drugs Authority Bill, by Dr Julius Ogato, co –chair from health (Annex 3).
4. Food safety-Implications on public health and Trade, by Dr. Andrew Edewa (Annex 4). In his presentation, he defined food safety hazards, highlighted aspects of international governance on food safety and merits of addressing food safety concerns using a value chain approach.

Tuesday, 8 November 2020

The second day's session was chaired by Lucy Njenga, Director of Policy in the Ministry of Agriculture, Crops department. The day was dedicated towards reviewing and improving the existing food safety policy, and started with a recap of the previous day's activities. To kick off discussions, Andrew Edewa gave a presentation on the expected structure of a food safety policy (Annex 5). Key elements to be considered for inclusion were: a forward signed by a suitable senior authority; background to the policy; statements of vision, mission and policy objectives; guiding principles; policy directions; implementation framework; institutional mechanisms for achieving policy objectives; monitoring and evaluation; and funding mechanisms. It was noted that there was no EAC framework to benchmark on.

The policy issues were then agreed upon collectively by all members, as these would form the basis for group work. To enable discussions, the secretariat was tasked with grouping members of the task force in to four (4) groups to discuss the policy issues that had been identified by members. For each policy issue, members were tasked to come up/review the situation analysis, define objective, develop the policy statement, state the challenges and proposed interventions. Below is how the policy issues were distributed amongst the groups:

Group 1

1. Legislation and standards
2. Information, Education and Communication

Group 2

1. Traceability
2. Surveillance and Laboratory
3. Validation, Inspection, Certification and Self-assessment
4. Emerging and Re-emerging Food Safety Challenges

Group 3

1. Financing the Food Safety system
2. Monitoring and Evaluation

Group 4

1. Institutional Framework, Mandates, Infrastructure and capacities
2. Capacity development/ Human Resource Development

Wednesday, 9 December 2020

In the morning session, task force members finalized their group discussions on policy in preparation for presentations and plenary discussions. Group presentations went on until lunch break, during which group members received additional input from all taskforce members. Group members subsequently spent the afternoon session making input resulting from plenary discussions.

Presentation by Rufino Hurtado, Senior Director for Agricultural Affairs at the Office of the United States Trade Representative (USTR): Rufino elaborated on the US food safety system, providing details on its operational structure and also discussed his experience on food safety governance in other countries. Key in his observations is the fact that he had not come across a single agency approach for managing food safety in the countries he had engaged with, including in the US. Rufino wished the task force members well and expressed the US's interest to see the process being successfully concluded and promised that his office would keep monitoring the process and remain committed to being available for guidance in the future.

Thursday, 10 December 2020

The day started off with two presentations that were meant to set the stage for discussions on the bill, as well as give insights in some sections of the policy. The two presentations were:

1. Food law presentation by Andrew Edewa: Andrew explained food governance at global level including the global system for agricultural trade. He went ahead to elaborate the form and content of a food law and provisions of a basic food law, which included: scope and definitions; general principles; enabling provisions; administrative provisions; enforcement provisions; substantive provisions; regulations; repeal and savings. He highlighted the form and content of food regulations, which included -regulations affecting food products in general; regulations affecting specific food products; regulations for organizational or coordinating purposes and schedules. The full presentation is provided as annex 6
2. Presentation on the legal framework governing food safety in Kenya by James Ndombi. James explained the objectives of the legal frame work, gave examples of Kenya laws governing food safety in Kenya and legal challenges from the draft policy. He made a presentation on the KFDA bill being one that had already commenced parliamentary engagements.

After the presentations and follow up discussions, group members were given time to complete incorporating comments from the previous day's plenary in their respective groups. In the afternoon, group representatives made final presentations in plenary to ensure that all input provided on situational analysis, objectives, challenges, policy statements and policy interventions had been incorporated. Annex 7 contains a summary of the group deliberations. The secretariat was then tasked to consolidate all group work discussions and input into the draft policy in the evening, in preparation for presentation and concurrence to all members the following day.

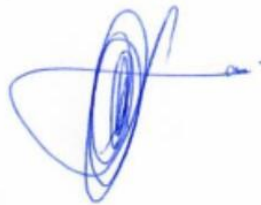
Friday, 11 November 2020

This marked the last day of the meeting. The draft policy with inclusions from group work was presented by Mr Peter Owoko, joint secretariat member from agriculture. Members made further input and initiated discussions on options for a coordination mechanism. To get members perspectives on this, they were split into four groups. The following ideas came out from the deliberations:

1. To have a coordination committee at the office of the president whose role would be overseeing the various agencies with a mandate on food safety
2. To have a food safety agency rather than a coordination committee for coordination purposes, while retaining the mandates of the various agencies dealing with food safety
3. To have the national food safety coordination committee NFSCC to be given legal grounding to be legally recognized for overseeing food safety matters in the country.

Most members preferred a coordination committee rather an agency. The matter could not be concluded due to time and members also asked to be given time to think through in readiness for conclusive deliberations in the next meeting that was proposed for January 2021.

It was also agreed that the food safety policy would be the basis for developing the food safety law. A joint resolution, signed by both agriculture and health co-chairs was also shared for consensus by all members as a commitment to what was agreed upon in the meeting.



Signature:

Date: 5 Jan 2021

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