



**Report on the 2nd USDA/FAEA-supported GOK task force retreat on food
safety policy review and legislation drafting
Enashipai Resort and Spa, Naivasha
March 1-5, 2021**



Name/Title: Charity Mutegi, FAEA Representative, Kenya **Start date:** 03/01/2021
Destination (City/Country): Naivasha, Kenya **End date:** 03/05/2021

Preamble: The process of developing a food safety legislation by the government of Kenya (GOK) resumed in 2020, and a successful first task force meeting that was appointed by the PS Professor Hamadi Boga was held in Naivasha on December 5-11, 2020 (Naivasha I). A key achievement from Naivasha I was the draft food safety policy, in line with the current food safety concerns and Kenya's governance structure. A main resolution was to separate food and drugs mandates and subsequently develop a food safety focused legislation.

The main objective of the second task force meeting (Naivasha II) was therefore to develop a draft food safety bill. Both the draft food policy and the food safety bill would then be ready for the next step - stakeholder and public consultations.

Purpose of the meeting

1. To come up with a draft food safety bill that is in line with the country's jurisdiction around food control as well as with international food safety governance.
2. To present the draft food safety policy document resulting from the follow-up meeting at Sarova Panafric Hotel that took place on February 24-26, 2021.
3. To engage on next immediate steps in line with moving the food safety policy and legislation drafting process forward.

Observations

The following are key observations made during the retreat:

1. The support by top level government officials across various ministries continues to be evident. The PS State Department of Crops Development and Agricultural Research (SDCDAR) was present and marshalled the task force into engagements on the food safety bill. The PS Fisheries, and PS EAC attended, while the PS Trade was represented by the Trade Secretary. They all gave strong statements on the importance of the assignment and on the need for a unified process.
2. A draft food safety bill (Annex 1) that promotes a risk based approach and one grounded in science was developed. The document took into consideration the current food safety concerns including emerging issues, Kenya's governance system under the new constitution and its commitments as a signatory to the WTO and supporting agreements. The draft was a major improvement compared to the previous one that leaned mainly towards defining a coordination structure with little consideration on key food safety aspects.
3. The title of the bill was amended to read "Food safety bill", to reflect the full scope of the draft legislation
4. The draft bill contains a schedule that defines the mandates of food safety regulatory agencies. This was a significant milestone, considering that one of the underlying problems of resolving foods safety issues in Kenya is the duplicity and non-coordinated approach. The sensitives around redefining food safety mandates across agencies was evident.

Further discussions are expected at stakeholder consultation and Sector Working Groups (SWAGS) stages, to bring out more clarity on the aspect of mandates.

5. More recommendations were made by members on how to further improve the policy document and are described further in this report.
6. There was active participation from all members present, including Trade and the EAC ministries. The new members that had been brought on board by the PS added value to the process and participated actively.
7. Regrettably, the health taskforce members and the Health PS did not participate. When contacted, the secretariat mentioned that the communication to them came late and were subsequently unable to adjust their programs.
8. Presentations by various US food safety regulators, by Dr Andrew Edewa (TMEA), Martha Byanyima (TRASE), and Ian Goulding (UNIDO) were very useful in guiding the drafting process.

Next immediate steps agreed on

The group discussions on the bill continued into the night of the last day of the meeting. While the resulting outcome was a much improved draft bill, there was no time for members to discuss other immediate steps jointly. I however followed up with the PS Boga on immediate steps in order to guide in planning, and the following was agreed on.

1. PS Boga recommended that FAEA and his office organize an engagement with the Parliamentary committees of Agriculture and Trade, to present the draft policy and the draft bill.
2. The PS agreed to sensitize key members of both national assembly and senate about modern food safety law making processing in order to guide critical decision making when the policy and bill are presented to parliament
3. The PS agreed to invite key PSs to a meeting to build consensus on the process as well as update the CS.
4. The PS agreed to reach out to members from the Ministry of Health, with an aim to addressing issues raised for their non-participation.
5. The PS agreed to have discussions with the Solicitor General's office and that of the Office of the President as a means of seeking clarity on the process of food safety law making.
6. The PS recommended that in the meantime, the process should go on, and the health team be kept informed, and all meeting invitations be sent to them.

Summary of recommendations

1. I recommend that the taskforce members be firmed up, their TORs be clearly defined, to help the smooth running of the next key steps
2. I recommend that the next steps in the road map should proceed without delay, in order to avoid disruptions from upcoming processes such as the proposed BBI referendum, which will most likely distract key actors in the food safety process.
3. I recommend to FAEA/USDA to consider supporting aspects that are evidently becoming important to the process, even though they are not part of the earlier submitted roadmap. For example, sensitization of key members of the legislature and executive arm.

4. I recommend that we keep both Trade and EAC ministries fully engaged in the process. They are key to the process, and are likely to provide a balanced opinion required in streamlining mandates for various agencies.

Itinerary

Please find the attached program (Annex 2).

Daily activity

Sunday, 28 February 2021

Wilfred Wachira, Simon Mukabana and Charity Mutegi 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 virtual links for those meant to join remotely.

Monday, 1 March 2021

The day began with prayers by Lucy Njenga, Director of Policy in the Crops Department. Dr Christopher Wanga, co-chair to the taskforce then made opening remarks and explained the purpose of the second taskforce meeting, which was to draft the food safety bill. He noted that the process required the participation of all, and that the process would benefit from guidance by the Principal Secretaries, technical persons and peers. After the brief, members were given an opportunity to introduce themselves.

PS Boga then took over and moderated the next session that involved remarks by key guests, namely other PSs present and the USDA Agricultural Counselor. In his opening statements, the PS noted that the process suffered a perennial problem of tension because of agencies wanting to cling on to their current mandates. The PS reiterated the need to fast track the process in order to provide an alternative to the Private member's bill which was not built on consensus and yet was advancing in parliament. He stated that he was keen on leading a process and an outcome that was all inclusive. He urged members to think of everyone, including those who had not been able to join in the process. He noted the need to involve the National Biosafety Authority (NBA) and make presentations to County level representatives, to forestall parallel processes.

Remarks by Scott Ryan, Regional Agricultural Counselor, USDA/Foreign Agricultural Service, U.S. Embassy, Nairobi.

The Agricultural Counselor thanked PS Prof. Hamadi Boga and FAEA, for the opportunity to make remarks at the second retreat in Naivasha. He lauded the leadership and the teams of all participating departments and agencies, for their commitment towards the process. He agreed that the process was complex and required the knowledge skills of all in the team for a successful outcome and assured the team of USDA/FAS confidence in competency and drive of the task force to finalize this process. Ryan also acknowledged FAEA's track record in supporting food and feed safety systems processes in other countries including Nigeria, Morocco, Cameroon, and Vietnam. He further reiterated the need to have a robust food safety regulatory system, that was founded on strong scientific principles and that was codified in clear laws and regulations, to create consumer confidence in Kenya's agricultural and food products, both locally and internationally, and to enhance Kenya's trade with its partners, including the United States. He expected that policies,

laws, and regulations that eventually came out of the process would be clear, predictable, and consistent with international practices. In conclusion, he acknowledged mutual cooperation between Kenya and the United States on key international agricultural trade issues and indicated that USDA was keen to continue supporting bilateral programs aimed at supporting the partnership.

Remarks by PS EAC Dr Kevit Desai

The PS reported that the EAC aims to deepen regional integration in many ways including harmonization of trade facilitative aspects such as product standards, regulation protocols and policies for purposes of enabling partner states reap mutual benefits. He pointed out that harmonized trade aspects were critical to agricultural transformation, trade coordination, increased agricultural productivity, improving partnerships and assuring food safety for member states.

Further, he highlighted the strong linkage of the EAC SPS Protocol (Tanzania was yet to ratify them) with the development of Kenya's Food Safety Policy, where partners undertook to integrate and cooperate in matters of food safety matters as follows:-

- (a) Harmonization of food inspection, certification and approval procedures
- (b) Harmonization of safety requirements for food derived from genetically modified organisms
- (c) Safe movement of food
- (d) Harmonization of surveillance systems for food-borne hazards in the community
- (e) Harmonization of import requirements for food
- (f) Notification of food-borne hazards through prompt and transparent sharing of information
- (g) Harmonization and strengthening of traceability systems for food
- (h) Establishment of tolerance levels for additives, contaminants, toxins and disease causing organisms in food.

The PS updated participants on the outcome of the 36th Meeting of the EAC Council of Ministers in 2017 that directed Partner States to mainstream EAC Aflatoxin Prevention and Control Strategy priorities in their national budgets and national agriculture investment plans. Prior to this, the EAC regional project on aflatoxin abatement had been launched in 2014 with the aim of preventing and controlling adverse impacts of aflatoxins along the food and feed value chains. Further, 9 Policy Briefs (PB) on aflatoxin Prevention and Control were developed in 2018, namely:

PB No.1 Harmful Effects of Aflatoxin and its Impact on Human Health

PB No.2 Impact of Aflatoxin Exposure to Children during the first 1000 Days of Life

PB No. 3 Harmonization and Strengthening of Aflatoxin Standards Regulation for Human Food and Food Products to Promote Public Health

PB No. 4 Controlling the Burden of Liver Disease through Integrating A and B Vaccination into the National Immunization of the EAC Partner States

PB No. 5 Use of Biocontrol for Aflatoxin Prevention and Control in the EAC

PB No. 6 Mitigating Harmful Effects of Aflatoxin on Animal Health and Productivity

PB No.7 Prevention and Control of Aflatoxin and Associated Losses during Postharvest

Handling of Agricultural Commodities in the EAC

PB No 8. Disposal and Alternative use of Aflatoxin Contaminated Food

PB No.9 Aflatoxins: A threat to Competitiveness of EAC Agricultural Produce and Products in the Domestic and International Markets

The PS gave the example of the EAC's adoption of aflatoxin loads in foods to be 5 parts per billion (ppb) for Aflatoxin B1 and 10 ppb for total aflatoxin. But existing evidence from some neighboring EAC States indicated that the levels of toxins in maize, soybeans, cassava chips, groundnuts and formulated baby foods contained more than 20 ppb, above the set threshold, and hoped that such issues would find solutions in the food safety policy and bill. Dr Desai emphasized the need to consider a regional approach in dealing with food safety matters in Kenya to safeguard the health of the community. Before concluding, the PS updated participants on two important developments at the EAC, namely, the appointment of President Uhuru Kenyatta as the new EAC chairman and a new EAC secretary general, Peter Mutuku Mathuki from Private sector, who was also Kenyan. He acknowledged that it was indeed a great opportunity to be part of the process and wished all a fruitful deliberation.

Remarks by Trade secretary: Dr Bruno Linyuru (On behalf of Ambassador Johnson Weru, PS State Department for Trade and Enterprise Development.

The PS was grateful for the opportunity to be part of the process. He noted that well-developed food safety systems were essential in improving public health systems, increased access to food trade, increased food security and the protection of the environment. He noted that globalization and liberalization of markets had created greater food safety challenges, with distribution systems becoming much broader. He acknowledged that the food safety issues required a multi-sectoral focus and shared responsibility between government, private sector and the public. The discussion also came at a time the region was confronted more with the burden of trade imbalance in favor of imports, hence the need for EAC countries to put structures that enabled them trade amongst each other.

The PS stated that Kenya was a strong member of WTO and subscribed to other international obligations that have SPS standards protocols and compliance requirements. While Kenya had made progress on SPS measures, it was not devoid of gaps, noting that the value chain aspects of food safety had experienced serious deficiency in resource allocation, communication, research and development as well as lapses in monitoring and surveillance. He acknowledged that the multi-sectoral approach for handling food safety concerns had inherent shortfalls and that the coordination mechanism was presently weak, resulting in duplication and overlap of mandates. The PS proposed that the bill should consider provisions for preferential status in favor of local persons and businesses especially those prioritizing utilization of local inputs and content in their production processes in accessing procurement and financial opportunities. Further, the bill should seek to create linkages between the industries and the local economy. This link was crucial in utilizing available capacity in skills and entrepreneurship. He concluded by emphasizing that the effectiveness of the policy direction lied in its implementation and acceptability of the policy instruments by the stakeholders. To make this noble initiative succeed, the support of everyone was needed.

Remarks by PS Fisheries, Dr Francis Owino

Dr Owino, was recently appointed the PS Fisheries, prior to which he served in the Ministry of Trade in the same capacity. He congratulated the team for the progress made and requested to do more listening acknowledging that he had a lot to learn, having not interacted much with the process before. He however advised on the sustainable exploitation of the resources in lakes, rivers, oceans and committed to in-depth engagements in the subsequent steps.

The key remarks were followed by a tea break and photo session. The draft policy was then presented to members by the secretariat and aspects noted for improvement, as listed below:

- The scope on risk assessment/management/communication needs to be brought out more strongly in the document
 - Responsibility of FBOs in food safety needed to be highlighted
 - Include industrialization policy in the situation analysis section
 - There was the concern that the policy document has listed some archaic regulations in the document and hence may end up sending the wrong message. This was however clarified to be within the context of a situation analysis.
 - Secretariat to check with the Kenya Constitution and what it says with regards to international alignments
 - Many of the existing laws and acts that were proposed to be removed in the document needed to be retained, as they had a relation to food safety. These included: The National Policy on prevention and containment of antimicrobial resistance; Pest Control Products Act, Veterinary Surgeons' and Veterinary Para-professionals (VSVP) Act (No.9 of 2011), Radiation Protection Act Cap243, Alcoholic Drinks Control (No 4 of 2010) and Competitions Authority Act.
 - Reorganize the acts in line with their functions
 - Aspects of recall/should be highlighted
 - Feed is an important part of food safety, hence feed safety should be reflected in policy
 - Primary objective of the food safety policy should remain as safe food
 - Links between food safety and other SPS policy areas (animal health and plant health) should be demonstrated
- Cluster challenges so that there are fewer bullets
 - Consider including a SWOT analysis
 - Research aspect was not evident in the document
 - Digitization of processes needed to come out strongly

The rest of the day had a series of presentations, whose content is summarized below. Full presentations were shared in soft copy to all participants.

Analysis of Food Control System in Kenya & Alignment to the International and Regional Frameworks - Dr Andrew Edewa: Andrew expounded on the expected alignment of the country's SPS frameworks to those at regional and global level. He went ahead to elaborate on the country's

food safety governance, including policies, laws and regulations. Further, he presented the elements of food regulation as well as food control functions.

Food safety legislation reform in Kenya-Dr Ian Goulding: Ian touched on international aspects of food safety control including WTO agreements, elaborated on the risk based approach for food safety, and expounded further on regional approaches to SPS measures and on the scope and structure of food law. He brought out a justification for alternative approaches to food control, and recommendations for reform, including institutional aspects of food control, the role of laboratories, and other non-control considerations such as budgets and capacity building.

Food Safety Coordination and Decision Making-Panel by US regulators: These presentations were made to give the task force an opportunity to interact and understand other SPS jurisdictions and how they function and collaborate. The details of presenters are provided in Annex 3. The presentations are summarized as follows:

Protecting America's Agricultural and Natural Resources through the Animal and Plant Health Inspection Service, by Viondette Lopez. The presenter explained the key functions of APHIS that included plant protection and quarantine, veterinary services, wildlife damage management animal care, biotechnology regulatory services, veterinary services, and international services, e.g. negotiating import/export protocols, training and technical support.

Office of Chemical Safety and Pollution Prevention's Role in Food Safety Regulation U.S. - Environmental Protection Agency, by Ashley Nelsen, Senior Technical Advisor, Inter-governmental Community Relations Branch: The presentation touched on U.S. Federal Agency coordination on food safety (noting that the role on MRLs is shared across three agencies, namely EPA, FDA and FSIS); EPA office roles in food safety; U.S. regulations important for food safety; processes for establishing and revoking MRLs/tolerances; regulatory implementation and enforcement and EPA international coordination on food safety.

The Food Safety and Inspection Service (FSIS). The presenter highlighted how the agency prevents food borne illnesses, mainly through inspections, compliance with food safety policies, public education and outreach and collaboration with internal and external stakeholders. The agency's role in managing the FSIS World Trade Organization (WTO) SPS/TBT notification process and representation in international bodies including WTO, Codex, etc. was elaborated.

Codex in the United States, by Ken lowery, Senior international issues analyst, U.S. codex office: The presenter explained how the CODEX operations are structured in the US and its key mandates. He noted that the US was one of the founding members of the Codex Alimentarius Commission (CAC) in 1963 and maintains a key role of coordinating policy formulation concerning sanitary and phyto-sanitary standard-setting activities of the CAC and informing the public on the same. Its mandate also spans international SPS obligations.

Key comments from presentations

- Risk Assessment needed to be captured well in the mandates of competent authorities on food safety

- Proper data gathering should be used to inform risk assessment processes.
- Multiple registrations across competent authorities needs to be addressed with finality in the policy and bill outcomes.
- Considering several factors in Kenya, the taskforce agreed to adopt a hybrid system, where competent authorities are to be assigned key food safety functions, but with a food safety controller who shall address cross cutting issues.
- The role of the OMB in the US would have been important in assisting the Taskforce get views on how to define their coordination mechanism.

Tuesday, 2 March 2021

The second day's session was moderated by Eliud Mathu, from the Policy Department of Crops, in the Ministry of Agriculture. Prior to the drafting process, there were three presentations given, namely:

Reflections from other Countries in the Region on Food Safety Coordination/Coordination of Food Inspection Services, by Martha Byanyima, Chief of Party, TRASE: in her remarks, Martha noted that no two food control systems were similar. She discussed the multi-agency approach to food control and gave merits and demerits of such a system. She further gave case studies of Zambia and Rwanda and how they have managed their food safety/SPS systems. She gave a few pointers to consider in developing the policy, including a comprehensive distribution of functions and mandates across Competent Agencies e.g. who would be responsible for risk profiling and assessment; the need to address the devolution challenge comprehensively; provision for remote verifications and digitization of some inspection activities. She highlighted the need for scientific committees, for priority areas, e.g. MRLs review, veterinary drug residues and risk assessment committees; Martha also emphasized the importance of aligning the quality infrastructure with the food safety regulatory framework for recognition of local certification, practices such as traceability, conformity assessment procedures, to facilitate trade.

Food law component by Dr Andrew Edewa: Andrew made this presentation to provide guidance to members as they settled into drafting the various sections. Thereafter, James Nombi, one of the legal drafters, made a presentation on the existing food safety coordination draft bill as the draft was to act as a point of reference during group work.

Members then spilt themselves into three groups to address the various components as follows:

- Group I: Preliminaries including: Short Title, Interpretation, Objects and purpose and Scope of the Act
- Group II: Administration and Controller's Responsibility on Cross cutting issues and Schedules
- Group III: General provisions as to Articles of food; Special Responsibilities; Enforcement; and Legal Proceedings.

The rest of the day was spent making input within the groups.

Wednesday, 3 March, 2021 & Thursday, 4 March 2021

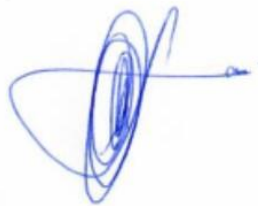
Both days were largely spent by the task force members making input to the draft bill, and presenting in the plenary for further comments. At 3.30pm, members were joined by Jennifer

Thomas of the U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, who made a presentation on the U.S. Food and Drug Administration's (FDA) role in food safety. In her presentation, she elaborated on the FDA's Organizational structure, governing food safety laws and expounded on the Food Safety Modernization Act. She highlighted the foods regulated by the US FDA, which did not include all categories. Again, effective food safety control was achieved by partnering with other entities including, EPA, State and Local Health and Agriculture Agencies, Department of Commerce/NOAA/NMFS, Alcohol and Tobacco Tax and Trade Bureau (TTB), Customs and Border Protection (CBP).

Friday, 05 March 2021

The plenary presentation of the draft bill on Friday identified some sections that members had not given much attention to. It was noted that there was a lot of focus on the coordination mechanisms and little attention to actual food safety control. The Friday morning session was therefore spent beefing up the neglected sections. Members also spent time to developing a schedule that spelt out the functions of various agencies. While a good attempt as made, there will be need to spend time on this section to refine it further and to ensure that all ambiguities on food safety mandates are conclusively addressed. The deliberations stretched up to 8.30 in the night. It was not possible for members, who were exhausted to discuss a way forwarded before breaking off. This was left to be followed up with the secretariat and PS office immediately after return to Nairobi.

At 4.30 pm, the meeting deliberations were placed on hold for the EAC PS, Dr Kevit Desai, to give the closing remarks. In his remarks, Dr Desai noted that the right to safe food was enshrined in the Kenyan constitution, 2010 that saw the jurisdiction of agriculture get devolved to Counties. The devolution of agriculture to county governments presented a gap in the role of national level institutions to demonstrate sole control and obligations on food safety to the citizens. While he noted that the food safety policy and Act was long over-due in Kenya, he also cautioned on developing instruments that were not implementable and that would stifle trade. He urged that consultations on the policy and bill with key stakeholders start early to encourage inclusivity, e.g. with processors and others who would be affected directly by the instruments. In addition to consumer health protection, the instruments required to position Kenya strategically for trade, and needed to be in line with international and regional statutes developed by WTO, AU, COMESA and EAC that Kenya had subscribed to. He thanked USDA for supporting the process and TMEA for providing someone to backstop the deliberations.



Signature:

Date: 5 Jan 2021

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MINISTRIES OF AGRICULTURE, LIVESTOCK, FISHERIES
& COOPERATIVES; HEALTH; INDUSTRIALIZATION
TRADE AND ENTERPRISE DEVELOPMENT

**RETREAT PROGRAMME FOR THE REVIEW OF
FOOD SAFETY POLICY AND DEVELOPMENT
OF THE FOOD SAFETY BILL**

1ST-5TH MARCH 2021



1st March 2021

		Responsibility
08.30 - 09.00	Registration	Secretariat
09.00 - 09.30	Preliminaries Objectives and expected outputs	Dr. Christopher Wanga, EBS Dr. Julius Ogato
09.30 - 10.15	Remarks by: <ul style="list-style-type: none"> • USDA Agricultural Counselor • Trade Secretary, State Department of Trade and Enterprise Development • PS Fisheries, Aquaculture & Blue Economy • PS EAC • PS State Department of Livestock • PS Health • PS Crops Development and Agricultural Research. 	Ryan Scott Amb. Johnson Weru, CBS Dr Francis Owino, CBS Dr. Kevit Desai, CBS Mr. Harry Kimtai, CBS Ms Susan Mochache, CBS Prof. Hamadi Boga, CBS
10.15 -10.45	Health Break	
10.45 -11.15	Presentation of the Draft Food Safety Policy 2021	Secretariat
11.15 -12.15	Plenary - the Draft Food Safety Policy 2021	All
12.15 -13.00	Analysis of the Food Control System in Kenya and Alignment to the International and Regional Frameworks	Dr. Andrew Edewa
13.00 -14.00	Health Break	All
14.00-14.30	Risk Based Approach to Food Safety Control and Functions of an Overarching Mechanism; Alternatives to Regulatory Approaches for Food Control	Ian Goulding
14:30-15:00	Q&A/Feedback	
15:00-15:20	Health Break	All
15:20-18:00	Food Safety Coordination and Decision Making –Panel by US regulators and Office of Management and Budget (OMB)	U.S. Regulators
15:20 -15.30	U.S. Participants log into meeting	
15.30-15.40	Introduction led by FAEA and USTR	Kent Sisson and Rufino Hurtado

15:40-17:30	Food and Agriculture Regulatory Agency Presentations (EPA, APHIS, FSIS, U.S. CodexOffice, FDA)	
17:30-18:00	Q&A and Conclusion	
2nd March 2021		
08.30 - 08.45	Review of Day 1	
08.45-09.15	Reflections from other Countries in the Region on Food Safety Coordination/Coordination of Food Inspection Services	Ms Martha Byanyima
09.15-9.45	Recap on the Components of the Food Safety Law and Emphasis of Value Chain Approach for Food Control	Dr. Andrew Edewa
10.00-10.30	Presentation of the Draft Food Safety Bill	Mr James Nombi
10.30 -11.00	Health Break	
11.00 -13.00	Drafting of the Food Safety Bill – Group work	Group leaders
13.00 -14.00	Health Break	
14.00 -17.00	Drafting of the Food Safety Bill – Group work continues	
17.00 -17.30	Health Break	
3rd March 2021		
08.30-10.30	Presentation of group work and discussions	Group leaders
10.30 -10.50	Health break	
10.50 -13.00	Drafting of the Food Safety Bill – Group work	Group leaders
13.00 -14.00	Health Break	
14.00 -17.00	Drafting of the Food Safety Bill – Group work-group work continues	
17.00-17.30	Health break and End of day	
4th March 2021		
08.30-10.00	Presentations by groups and feedback	Group leaders
10.00-10.30	Health break	
10.30-13.00	Updating of the sections of the draft Food Safety Bill	Groups and legislative drafters
13.00-14.00	Health break	

14.00-17.00	Updating of the sections of the Food Safety Bill	Groups and legislative drafters
17.00-17.30	Health break	
5th March 2021		
08.30-09.30	Presentation of the draft Food Safety Bill	Mr. James Nombi
09.30-10.00	Reactions from members	
10.00-10.30	Health break	
10.30-13.00	Incorporation of comments from plenary	Secretariat/legislative drafters
13.00-14.00	Health break	
14.00-15.00	Next steps (actions and follow-up)	
15.00-16.00	Closing session	Dr. Julius Ogato Dr. Christopher Wanga, EBS

Co-Facilitators: Beatrice Nyamwamu and Health Counterpart

Technical backstopping: Andrew Edewa

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THE NATIONAL FOOD SAFETY BILL, 2021

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THE FOOD SAFETY BILL, 2021

A Bill for-

An Act of Parliament to establish a science based framework for regulating food safety matters to guarantee consumer protection; to coordinate food safety functions and facilitate fair practices in food trade; to establish the office of the Controller of Food Safety; and for connected purposes.

Enacted by the National Assembly as follows-

PART I – PRELIMINARY

Short Title	1.	This Act may be cited as the Food Safety Act, 2021.
Interpretation	2.	<p>In this Act, unless the context otherwise requires–</p> <p>“adulterant” means material which is or could be employed making food unsafe, or substandard or misbranded or containing extraneous matter;</p> <p>“adulteration” includes the addition to food of any substance which is injurious to health or in which any constituent has been in whole or in part omitted, substituted, damaged, concealed or substance added to increase bulk or weight;</p> <p>“article” includes– any food or substance labeling or advertising material in respect of food; or anything used for the preparation, preservation, packing or storing of any food;</p> <p>“authorized officer” means any suitably qualified person authorized in writing by national government or county government for purposes of this Act.</p> <p>“Cabinet Secretary” means the cabinet secretary for the time being responsible for matters relating to crops, livestock and fisheries</p>

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	<p>“Controller” refers to office of the food safety controller established under Section Of this Act</p> <p>“competent authority” means an authority or institution of national government responsible for official control as defined under section.....and the first schedule</p> <p>“contaminant” means any substance not intentionally added to food , which is present in such food as a result of the production (whether carried out in crop husbandry, animal husbandry or veterinary medicine) manufacture, processing, preparation, treatment, packing, packaging, transportation or holding of such food or as a result of environmental contamination and does not include insect fragments, rodent hairs, or other extraneous matter.</p> <p>“container” includes any basket, pail, tray, package, or receptacle of any kind, whether open or closed;</p> <p>“Establishment” means any premises engaged in placing food on the market, including premises where food are prepared, processed (including slaughtered), packaged or stored.</p> <p>“food” means any substance whether processed, semi-processed or raw which is intended for human consumption and includes drink, chewing gum and any substance which has been used in the production, manufacture, preparation or treatment of food but does not include cosmetics, tobacco or substances used as drugs.</p> <p>“food additive” means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food resource or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting characteristics of</p>
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	<p>such food. The term does not include "contaminant" or substances added to food for maintaining or improving nutritional qualities.</p> <p>"food business" means any undertaking, whether public or private that carries out any activities related to, or any of the stages of the food supply chain.</p> <p>"food business operator" means a person or his agent engaged in the food business, whether for profit or not, is responsible for ensuring that the requirements of this act are met within the food business under his control;</p> <p>"food safety" means all measures to ensure that food will not cause harm to the consumer when it is prepared and eaten according to its intended use;</p> <p>"food safety audit" means a systematic and functionally independent examination of the food safety measures and systems to determine whether they meet the set objectives of food safety.</p> <p>"hazard" means any biological, chemical or physical agent in or condition of food with the potential to cause an adverse health effect;</p> <p>"sanitary conditions" means such conditions that preclude agents that would render food unsafe for human consumption.</p> <p>"label" means any tag, brand, mark, pictorial or any other descriptive matter, written, printed, stenciled, marked, embossed or impressed upon or attached to food or container of food.</p> <p>"labelling" includes any written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including that of the purpose of promoting its sale or disposal.</p> <p>"lead agency" means the an agency mandated with the regulation of specific value chains along the food safety continuum and with the scope as specified in the First Schedule;</p>
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	<p>“Reference food laboratory” means a laboratory designated by office of the food safety controller as a national food laboratory under section</p> <p>"misbranded food" means the food– offered or promoted for sale with false, misleading or deceptive claims.</p> <p>“official control” means any form of control that the competent authority performs for the verification of compliance with food law.</p> <p>“package” includes anything in which any food is wholly or partially placed or packed;</p> <p>“precautionary principle” is applied where there is possibility of harmful effect on health but scientific uncertainty persists, provisional risk management measures are applied to eliminate or reduce food safety risks</p> <p>“premises” means any building or tent together with the land on which the same is situated and any adjoining land used in connection therewith and includes any vehicle, conveyance or vessel;</p> <p>“food recall” shall mean an action to remove food from the market at any stage of the food chain, including that possessed by consumers.</p> <p>“risk analysis”, means a process consisting of three components, i.e., risk assessment, risk management and risk communication;</p> <p>"risk assessment" means a scientifically based process consisting of the following steps:</p> <ul style="list-style-type: none">(i) hazard identification,(ii) hazard characterisation,(iii) exposure assessment, and(iv) risk characterisation; <p>“risk communication” means the interactive exchange of information and opinions throughout the risk analysis process concerning risks, risk-related factors and risk</p>
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	<p>perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions;</p> <p>“risk management” means the process, distinct from risk assessment, of evaluating policy alternatives, in consultation with all interested parties considering risk assessment and other factors relevant for the protection of health of consumers and for the promotion of fair-trade practices, and, if needed, selecting appropriate prevention and control options;</p> <p>“sell” includes offer, advertisement, keep, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of or for any consideration whatsoever, or transmit or deliver in pursuance of a sale, exchange or disposal as aforesaid;</p> <p>“street vended food” means food prepared or sold by vendors in the streets and other public places for consumption without further processing or preparation and includes fresh fruits and vegetables sold outside authorized markets for immediate consumption;</p> <p>"unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health:-</p> <ul style="list-style-type: none">(a) by the article itself, or its package, which is composed, whether wholly or in part, of poisonous or deleterious substances; or(b) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or(c) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or(d) by the substitution of any inferior or cheaper substance whether wholly or in part; or(e) by addition of a substance directly or as an ingredient which is not permitted; or(f) by the abstraction, wholly or in part, of any of its constituents; or
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		<p>(g) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or</p> <p>(h) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or</p> <p>(i) by the article having been infected or infested with worms, weevils or insects; or</p> <p>(j) by virtue of its being prepared, packed or kept under insanitary conditions; or</p> <p>(k) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or</p> <p>(l) by virtue of containing pesticides and other contaminants in excess of quantities specified by any law in force.</p> <p>“vessel” includes any means of transport by land, air or water</p>
Objects and purpose	3.	<p>The objects and purpose of this Act is; –</p> <p>a) protect the rights of the consumers through developing an effective food regulatory mechanism;</p> <p>b) protect the public from food-borne and water-borne illnesses and unsanitary, unwholesome, misbranded or adulterated foods;</p> <p>c) delineate and coordinate the mandates and responsibilities of the food lead agencies involved in food safety;</p> <p>d) provide a mechanism for coordination and accountability in the implementation of food regulatory functions;</p>
Application	4.	<p>(1) This Act shall apply to every person in the food business whether public or private.</p> <p>(2) Despite subsection (1), this Act shall be in addition to, but shall not derogate any law applicable law.</p>
Guiding principles	5.	<p>This Act shall be guided by the following principles:</p> <p>(a) protection of human life and health in the production and consumption of food;</p>

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		<ul style="list-style-type: none"> (b) protection of consumer interests through fair practices in the food trade; (c) promote the use of scientific basis and science based risk analysis for food measures to ensure that food products and services are safe; and (d) promote economic growth and development by promoting fair trade practices and sound food regulatory foundation for domestic and international trade.
PART II – ADMINISTRATION		
Establishment of the Office of Food Safety Controller	6.	<p>(1) There is established a body to be known as the Office of the Food Safety Controller which shall be a body corporate with perpetual succession and a common seal, and capable, in its corporate name of;—</p> <ul style="list-style-type: none"> (a) suing and being sued; (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; (c) borrowing and lending money; (d) charging fees for services rendered by the Office of the Controller; and (e) doing or performing all other things or acts which may lawfully be done by a body corporate.
Functions of the Office of the Controller	7.	<p>(1) The Office of the Controller shall-</p> <ul style="list-style-type: none"> (a) coordinate the lead agencies who regulate and monitor the production, manufacture, processing, transport, distribution, sale and import of safe wholesome food; (b) establish a network among lead agencies with the aim to facilitate a scientific cooperation framework by co-ordinating activities, the exchange of expertise and information, development and implementation of food safety policies and best practices; (c) Collation of food safety outcomes from the lead agencies and provide feedback; (d) Assess the extent to which lead agencies develop and utilize a transparent decision-making process based on scientific evidence on issues related to food safety and advise and recommend on corrective measures;

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		<ul style="list-style-type: none">(e) Identify foods or processes not regulated by any lead agencies and recommend for assignment by the relevant Cabinet Secretary;(f) co-ordinate information, education and communication of issues related to food safety;(g) disseminate, in consultation with the lead agencies, information and advice to consumers to enable them make informed choices;(h) Support lead agencies to, monitor and conduct food safety audit activities including food analysis, inspection, enforcement and education;(i) identify policy and legislative needs and make appropriate recommendations for effective national food safety systems;(j) Assess and make recommendation on the adequacy of emergency preparedness strategies related to food safety of the lead agency and maintain a database;(k) identify capacity building needs for implementation of an effective integrated national food safety system;(l) strengthen linkages with research institutions and international bodies on issues related to Food Safety;(m) identify cross-cutting matters hazardous to food safety and enhance risk analysis capacity and establish systems to mitigate the risk;(n) Evaluate the effectiveness of food safety control system by the lead agencies and provide recommendations for improvement.(o) Designate national reference food safety laboratories and notify on accredited laboratories;(p) Harmonize the methods of sampling, analysis and exchange of information among lead agencies(q) Establish a platform of information sharing among lead agencies on food safety matters;(r) Provide for the manner and procedure subject to which risk analysis, risk communication and risk management shall be undertaken by lead agencies;
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		<ul style="list-style-type: none"> (s) Conduct risk assessment and advise the lead agencies to manage (t) Coordinate the participation and representation of relevant lead agencies in regional and international meetings in the area of food safety; and (u) Provide and receive notification in food safety related alerts.
Authorization of Third Parties	8.	<ul style="list-style-type: none"> (1) The food safety controller may authorize Third Parties for carrying out specific food safety service. (2) The Cabinet Secretary in consultation with the food safety controller may prescribe regulations for Third Party Authorization.
Food Safety Lead agencies	9.	<p>For the purposes of this Act the Lead Agencies relevant to food safety include;-</p> <ul style="list-style-type: none"> (a) The Public Health Standard Board (b) Kenya Bureau of Standards (c) The Directorate of Veterinary Services (d) The Kenya Fisheries Services (e) Agriculture and Food Authority (f) Kenya Plant Health Inspectorate Service (g) Pest Control Products Board (h) The Veterinary Medicines Directorate (i) Kenya Dairy Board (j) Any other food control agency established by law
Official control of safety of food	10.	<ul style="list-style-type: none"> (1) Official control of safety of food shall comprise of one or more of the following operations:- <ul style="list-style-type: none"> (a) inspection; (b) sampling and analysis; (c) staff health status and hygiene; (d) examination of written and documentary material; (e) examination of the records; (f) Issuance of regulatory permits and licenses and (g) investigation of compliance with the requirements of the relevant Acts and regulations made thereunder (2) The relevant Lead Agencies listed in section.... shall be respectively responsible for the

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		<p>implementation of official controls under this Section.</p> <p>(3) The relevant Lead Agencies shall conduct official controls according to written procedures, and shall inform the food business operator in writing of the results of any official controls conducted.</p> <p>(4) the control functions of the responsible Food Safety Control agency is as prescribed in the First Schedule</p>
Domestic food control	11.	<p>(1) The Controller shall put in place measures to ensure that routine food controls performed at the level of Food Business Operators are planned, managed and implemented in a way that ensures safety of the food products placed on the market.</p> <p>(2) Such measures in (1) shall be developed by the Cabinet Secretary in consultation with the Controller.</p>
Imported food control	12.	<p>(1) The office of the controller shall put in place measures to ensure that there are food controls over imported food products and that the controls are planned and implemented in a manner that ensures food safety in coherence with domestic controls</p> <p>(2) Such measures in (1) shall be developed by the Cabinet Secretary in consultation with the Controller.</p>
Food export control	13.	<p>(1) The office of the controller shall put in place measures to ensure that food exported or re-exported is safe and complies with the requirements of importing country.</p> <p>(2) Such measures in (1) shall be developed by the Cabinet Secretary in consultation with the Controller.</p>
Board	14.	<p>(1) There shall be a Board of Directors for the Office of the Controller which shall, subject to this Act, be responsible for the policy, control and management of the Office of the Controller, and which shall consist of—</p>

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	<ul style="list-style-type: none">a) Non-executive Chairperson appointed by the Presidentb) the Principal Secretary responsible for Finance or designated representative;c) the Principal Secretary responsible Crops or designated representative;d) the Principal Secretary responsible for Livestock or designated representative;e) the Principal Secretary responsible for Fisheries or designated representative;f) the Principal Secretary responsible for Health or designated representative;g) the Principal Secretary responsible for Trade and Industry or designated representative;h) Four (4) members appointed by the Cabinet Secretary as follows:-<ul style="list-style-type: none">(i) A person nominated by the Council of Governors;(ii) A person nominated by a relevant Food business Operators Association(iii) A person nominated by a Consumer Organizationi) A person nominated by an institution involved in Food Safety Researchj) The Chief executive officer who shall be ex-officio <p>(2) To qualify for appointment as Chairperson of the Board, the person shall possess postgraduate qualifications with 15 years' experience 5 of which must be in senior management position.</p> <p>(3) The Chief Executive Officer of the office shall serve as Secretary to the Board.</p> <p>(4) A person shall be eligible for appointment under subsection 1(b)(ii) if that person is a public officer with competence in food safety in areas of Food of plant origin and of the rank of Assistant Director or above.</p> <p>(5) A person shall be eligible for appointment under subsection 1(b)(iii) if that person is a public officer with competence in food safety in areas of Food of animal origin and of the rank of Assistant Director or above.</p>
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		<p>(6) A person shall be eligible for appointment under subsection 1(b)(iv) if that person is a public officer with competence in food safety in areas of fisheries;</p> <p>(7) A person shall be eligible for appointment under subsection 1(b)(v) if that person is a public officer with competence in public health relating to food safety and is of the rank of Assistant Director or above.</p> <p>(8) A person shall be eligible for appointment under subsection 1(b)(vi) if that person is a public officer with competence in Food safety Standards and of the rank of Assistant Director or above.</p> <p>(9) A person shall be eligible for appointment by Cabinet Secretary under subsection 1d), e) and f) if that person-</p> <ul style="list-style-type: none"> (a) Has experience in food safety matters; (b) meets the requirements of Chapter Six of the Constitution; (c) is a not a public officer. <p>(10) Members of the Board appointed under (1) h) i) and j) shall hold office for a term of 3 years which may be renewed for one further term of 3 years.</p>
<p>Conduct of affairs of the Board</p>	<p>15</p>	<p>(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule, but subject thereto, the Board may regulate its own procedure.</p> <p>(2) The Board may delegate any of its functions to a committee of the Board provided shall be chaired by the chairperson or deputy chairperson.</p> <p>(3) The Board may invite any person to participate in its deliberations on any particular issue, but a person so invited shall have no right to vote at any meeting of the Board.</p> <p>(4) The Board may co-opt members with relevant expertise when needed to advice on specific matters.</p>

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		(5) The Board shall utilize the advisory from the Lead Agencies in transacting matters relevant to their role in the food safety continuum.
Committees of the Board	16	(1) The Board may constitute such committees, as it may require for the proper conduct of it's business.
Delegation by the Board	17	The Board may, by resolution generally or in any particular case, delegate to any committee of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.
Disclosure of interest	18	<p>(1) The Chairperson or a member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board.</p> <p>(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting of the Board and the Chairman or member shall not take part in the consideration or discussion of or vote during any deliberations on the matter by the Board.</p>
Chief Executive Officer	19	<p>(1) There shall be a Chief Executive Officer of the Office of the Food Safety Controller, who shall be recruited competitively by the Public Service Commission and appointed by the Board</p> <p>(2) A person shall qualify for appointment as Chief Executive Officer under this section if that person–</p> <p style="padding-left: 40px;">(a) holds a post graduate degree in human, veterinary medicine; public health, food science, animal science, food safety, agricultural sciences or fisheries science</p> <p style="padding-left: 40px;">(b) has at least fifteen years' experience relating to food safety;</p>

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		<p>(c) has at least five years' experience in a senior management position;</p> <p>(d) meets the requirements of Chapter Six of the Constitution.</p> <p>(3) The Chief Executive Officer shall–</p> <p>(a) subject to the direction of the Board, be responsible for the day-to-day management of the Office of the Controller;</p> <p>(b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Office of the Controller, the exercise, discharge and performance of its objectives, functions and duties.</p> <p>(c) perform such other duties as may be assigned by the Board from time to time.</p> <p>(d) Authorized officer</p> <p>(4) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.</p>
Staff	20	<p>(1) The Office of the Controller may hire its own staff to carry out functions as are necessary for the proper discharge of the mandate on such terms and conditions of service as may be approved by the Board.</p> <p>(2) Staff seconded to the Controller shall also constitute staff of the Controller.</p>
Disclosure of interest	21	<p>(1) The Office of the Controller shall constitute scientific committees for the purpose of conducting food safety risk assessment and investigations.</p> <p>(2) The Office of the Controller shall maintain a database of eminent scientists for the purpose of subsection (1) above</p> <p>(3) A Scientific Committee shall-</p>

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	<ul style="list-style-type: none">a) be responsible for rendering scientific advice to the Office the Controller on matters relating to food safety.b) adopt its working procedures, in relation to the preparation of scientific advices. These procedures shall be approved by the Board.c) Operate independently and guided by science <p>(3) A Scientific Committee shall be composed of an odd number of members not less than three and not exceeding nine eminent scientists with relevant qualifications and experience, whose term of appointment will be as and when necessary.</p> <p>(4) The members of the Scientific Committee shall be appointed by the Chief Executive Officer in consultation with the Board, on such terms and conditions as prescribed.</p> <p>(5) The Scientific Committee shall elect a Convenor from amongst its members.</p> <p>(6) Where a subject on which the Scientific Committee is to give an opinion does not fall within the expertise of its members, the Scientific Committee shall request the Board to co-opt additional member or to establish a sub-committee for this purpose.</p> <p>(7) The Scientific Committee shall provide an opinion by a majority of its members and any minority opinions shall be recorded.</p> <p>(8) The Office of Food Safety Controller shall be entitled to be present in the meetings of the Scientific Committee on invitation to assist or clarify on the matter under consideration.</p> <p>(9) The Scientific Committee shall render a scientific opinion regarding assessment of food safety at the request of the Office of the Controller in respect of its functions</p>
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		<p>(10) The requests referred to in subsection (6) shall be accompanied by an explanatory note explaining the scientific issue to be addressed.</p> <p>(11) The Office of the Controller may require a lead agency to provide information in their respective areas of competency to support the committee deliverables.</p> <p>(12) The Scientific Committee shall render scientific opinion within the time limit specified in the request for opinion, except in duly justified circumstances.</p> <p>(13) The Office of the Food Safety Controller shall take into account the scientific opinion in its decisions.</p> <p>(14) The Office of the Food Safety Controller shall provide the technical and logistic support necessary for the Scientific Committee and provide the Secretariat for its meetings.</p>
<p>County Food Safety Committee</p>	<p>22</p>	<p>(1) Every County Government shall establish a County Food Safety and Risk Management Committee.</p> <p>(2) The County Executive Committee Member responsible for Agriculture in Consultation with the County Executive Committee Member responsible for Health shall appoint Members of the County Food Safety committee as appropriate in the respective competencies of public health, veterinary services, crops, food science, fisheries sciences and other relevant competencies for the effective implementation of this Act.</p> <p>(3) A person shall be eligible to be appointed as member of the County Food Safety Committee under this section if that person is employed by the County Government.</p> <p>(4) The County Food Safety Committee shall in collaboration with the lead agencies perform all or any of the following functions, namely–</p>

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		<p>(a)</p> <p>(i) carry out survey of the industrial units engaged in the manufacture or processing of food in the county to find out compliance by such units of the standards notified by the the Office of the Controller for various articles of food;</p> <p>(ii) conduct or organise training programmes for different segments of food chain for generating awareness on food safety;</p> <p>(iii) ensure an efficient and uniform implementation of the standards and other requirements as specified and also ensure a high standard of objectivity, accountability, practicability, transparency and credibility;</p> <p>(b) The Committee shall submit periodic reports to the office of the controller on matters of food safety in the county.</p> <p>(c) carry out such other functions as the Office the Controller may, in consultation with the County Government, prescribe.</p>
Delegation by the Board	23.	The Board may, by resolution generally or in any particular case, delegate to any committee of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.
PART III – OTHER FUNCTIONS OF THE OFFICE OF THE CONTROLLER		
Food Safety Laboratory Infrastructure	24.	<p>(1) The Controller shall designate official testing laboratories</p> <p>(2) The Controller shall designate reference laboratories for confirmatory testing, quality assurance, coordination of proficiency testing, Testing program or any other related function.</p> <p>(3) The Controller shall review performance of laboratories and may revoke designation if found to have contravened this Act and regulations under it.</p>

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		<p>(4) The designation and operations of laboratories shall be in accordance to regulations prescribed under this Act.</p> <p>(5) Laboratory which falsely holds itself or purports to be a designated or reference laboratory commits an offence</p>
Inspectors	25.	<p>For purposes of realizing the objects of this Act, the food safety Controller may appoint inspectors;</p> <p>(a) From staff of the food safety Controller</p> <p>(b) From qualified inspectors in the lead agencies</p> <p>(c) From qualified staff nominated by County Government</p>
Powers of an Inspector	26.	<p>(1) An inspector may at any reasonable time for the proper performance of their duties–</p> <p>(a) enter any premises where the inspector believes an activity to which a provision or any regulation made under this Act apply is handled and examine or take samples;</p> <p>(b) stop, search or detain any aircraft, ship or vehicle in which the inspector believes that any food is being conveyed and to examine such food and take samples thereof;</p> <p>(c) open and examine any receptacle or package which the inspector believes contains any food to which this Act or any of it's regulations apply;</p> <p>(d) examine any books, documents or other records found in any place mentioned in paragraph (a) for subsection (1) of this section that the inspector believes to contain any information relevant to the enforcement of this Act with respect to any article to which this Act or any of it's regulations apply and may make copies or take extracts from the documents;</p> <p>(e) seize and detain for such time as may be necessary any article by means of or in relation to which the inspector believes</p>

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		<p>any provision of this Act or any of its regulations has been contravened.</p> <p>(2) An inspector acting under this section shall produce the inspector's identification.</p> <p>(3) An inspector who seizes any article in terms of with subsection (1) shall as soon as is practicable, in writing, inform the Controller or the lead agency as the case may be of the actions taken,</p> <p>(4) No search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.</p> <p>(5) An inspector shall release any article seized by such inspector when satisfied that all the provisions of this Act and any of its regulations have been complied with.</p> <p>(6) Where an inspector has seized an article under this Act and the owner thereof or the person in whose possession the article was at the time of seizure consents to the destruction of the article may be destroyed or disposed of as the inspector may direct.</p> <p>(7) Where any article has been seized under the provisions of paragraph (e) of subsection (1) of this section and the owner thereof has been convicted of an offence under this act, the article may be destroyed or otherwise disposed of as the inspector may direct.</p> <p>(8) Any article seized under this Act may at the option of an inspector be kept or stored in the premises where it was seized or may at the direction of the inspector be removed to any other proper place; and any person who removes alter or interferes in anyway with an article seized without the authority of an inspector commits an offence.</p>
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		<p>(9) An inspector may submit any article seized or any sample taken by such inspector to a public analysis or examination; and a public analyst shall as soon as practicable analyse or examine any sample sent in pursuance of this Act and shall give the inspector a certificate specifying the result of the analysis or examination and such certificate shall be in such form as may be prescribed.</p> <p>(10) In this section, “premises” includes a street, open space, place of public resort, bicycle, or other vehicle utilized for the preparation, packaging storage or conveyance of any article.</p> <p>(11) Any owner, occupier or person in charge who is entitled to or in possession of any article seized, detained, marked, condemned, quarantined, decontaminated, denatured, disposed of, destroyed or recalled under this section are jointly and severally liable to the government for all expenses incurred in doing any of those things.</p> <p>(12) An expense incurred in terms of subsection (11) constitutes a debt due to the government and is recoverable by action in a court of competent jurisdiction.</p>
<p>Certification inspection, and validation</p>	<p>27.</p>	<p>(1) The controller shall verify every lead agency has put in place a system capable of providing accurate certification, inspection and validation.</p> <p>(2) In carrying out verification under subsection (1) the controller shall have regard to–</p> <ul style="list-style-type: none"> (a) effective monitoring of compliance with set standards; (b) corrective measures including penalties, suspension and withdrawal of licenses; (c) sustainability of the system; (d) investigative powers of the agency; (e) registration provisions; (f) provisions relating to confidentiality; (g) self-assessment provisions for producers, manufacturers, traders, and other food operators;

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		<p>(h) an effective early warning system;</p> <p>(i) an effective complaint receiving and solving system</p> <p>(j) a compensation mechanism;</p> <p>(k) any other matter it considers relevant.</p>
Risk analysis	28.	<p>(1) The Controller shall undertake risk assessment in relation to food hazards</p> <p>(2) Notwithstanding the provision of sub section (1), the Controller may appoint a committee or a competent authority to undertake on its behalf the risk management on identified hazard</p> <p>(3) The Controller shall assign to a relevant lead agency the responsibility to conduct risk management of the hazard based on the risk assessment report</p> <p>(4) The Controller in collaboration with relevant lead agent shall bear the responsibility risk communication of the hazard based on the risk management report</p> <p>(5) Cabinet Secretary may prescribe regulations under this Act on Risk analysis.</p>
Information management centre	29.	<p>(1) The Controller shall establish, maintain and keep updated a database and information management centre on matters of food safety.</p> <p>(2) The database shall contain such information as the Controller may determine including information–</p> <p style="padding-left: 40px;">(a) on which lead agency is responsible for a specific aspect of food safety;</p> <p style="padding-left: 40px;">(b) names and addresses of national food safety laboratories;</p> <p style="padding-left: 40px;">(c) data and statistics on food safety;</p> <p style="padding-left: 40px;">(d) traceability requirements of specified products;</p> <p style="padding-left: 40px;">(e) risk assessment report</p>

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		(3) Without prejudice to (1), the Controller shall maintain a register of Food Business Operators in manner prescribed in the regulations under this Act.
Traceability	30.	<p>(1) All food business operators shall establish and maintain a food traceability system.</p> <p>(2) The food safety controller may recognise any organisation or agency for the purposes of conducting a food safety audit and for checking compliance with food safety management systems required under this Act.</p> <p>(3) The Cabinet Secretary in consultation with the Controller may develop regulations on food traceability.</p>
Food vendors	31.	<p>(1) All street vended food shall meet requirements of food safety.</p> <p>(2) The Controller shall establish standards and guidelines to ensure food safety compliance by street food vendor</p> <p>(3) A street vendor who fails to comply with the standards and guidelines prescribed, commits an offence.</p>
Control of Disease causing organisms in food	32.	<p>(1) No article of food shall contain disease causing bacteria, viruses, moulds, parasitic worms and protozoa in excess of such levels or microbiological criteria as may be specified by relevant legislation.</p> <p>(2) Any Food Business Operator who sells article of food with disease causing organisms in excess of permitted levels or against prescribed microbiological criteria commits an offence.</p>
Control of Environmental Contaminants and	33.	(1) No article of food shall contain any contaminant, naturally occurring toxic substances or toxins, hormone or heavy metals in excess of such

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<p>naturally occurring toxic substances in food.</p>		<p>quantities as may be specified by relevant legislation.</p> <p>(2) Any Food Business Operator who sells article of food with contaminants, naturally occurring toxic substances, heavy metals or such contaminant commits an offence.</p>
<p>Control of Food Additives</p>	<p>34.</p>	<p>(1) No article of food shall contain food additives not approved for use or in excess of such quantities as may be specified by relevant legislation.</p> <p>(2) Any Food Business Operator who sells article of food with non-approved food additives or in in excess of approved maximum use levels commits an offence.</p>
<p>Control of Pesticide residues, veterinary drug residues and anti-microbiological agents.</p>	<p>35.</p>	<p>(1) No person shall use none approved pesticides; veterinary medicines; anti-microbial and microbiological agents; solvents; food additives and pharmacologically active substances may be used in food production and or food articles</p> <p>(2) Without prejudice to sub section 1</p> <p style="padding-left: 40px;">a) No food business operator shall sell article of food which contain insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and micro-biological counts in excess of such tolerance limits as may be specified by lead agency or legislation under this Act.</p> <p style="padding-left: 40px;">(b) No person shall use pesticide directly on an article of food except approved under the relevant legislation.</p> <p>(3) No person shall use other chemical or substance shall be used in food production or food articles unless approved for such use by the Controller or lead agency</p>

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		(4) Any person who contravenes this section commits an offence.
Control of Allergens in Food	36.	<p>(1) No article of food, containing milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, soybeans, or other food containing known allergenic reactions shall be supplied to the public without declaration of such allergens as may be specified by relevant legislation.</p> <p>(2) Any Food Business Operator who sells article of food with known allergenic reactions, without approval of the Controller commits an offence.</p>
Novel food, functional foods, proprietary foods, etc.	37.	Any person who sells Novel food, functional foods, proprietary foods, shall ensure they meet the requirements of food safety
Packaging and labelling of foods	38.	<p>(1) No person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner specified by this Act or it's regulations:</p> <p>(2) The labels shall not contain any statement, claim, design or device which is false or misleading in any particulars concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.</p> <p>(3) Every food business operator shall ensure that the presentation of food, including their, packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed does not compromise food safety requirements,</p>

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		<p>(4) Every food business operator Shall ensure that the food contact material used in the package does not expose the food to safety hazards</p> <p>(5) Every food business operator shall ensure that the labelling, presentation and the information which is made available about them through whatever medium, does not mislead consumers</p> <p>(6) Any person who contravenes this section commits an offence</p>
<p>Restrictions of advertisement and prohibition as to unfair trade practices.</p>	<p>39.</p>	<p>(1) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made there under.</p> <p>(2) No person shall engage in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which–</p> <p style="padding-left: 40px;">(a) falsely represents that the foods are of a particular standard, quality, quantity or grade-composition;</p> <p style="padding-left: 40px;">(b) makes a false or misleading representation concerning it's need for, or the usefulness;</p> <p style="padding-left: 40px;">(c) gives to the public any guarantee of the efficacy that is not based on an adequate scientific justification thereof:</p> <p>(3) Where a defense is raised to the effect that a guarantee under (2)(c) is based on adequate scientific justification, the burden of proof of such defense shall lie on the person raising that defense.</p> <p>(4) Any person who contravenes this section commits an offence</p>
<p>Responsibilities of the food business operator with regard to food.</p>	<p>40.</p>	<p>(1) It is the responsibility of a food business operator to ensure that all stages of production, importation, processing and distribution of food under such food operator's control satisfy the requirements of food</p>

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		<p>traceability and hygiene as prescribed in the regulations under this Act.</p> <p>(2) If a food business operator becomes aware that any food which such food business operator has imported, produced, processed, manufactured or distributed does not comply with the food safety requirements, the food business operator shall immediately initiate procedures to withdraw the food in question released by the Food Business operator.</p> <p>(3) A food business operator who fails to comply with the provisions of this section commits an offence and on conviction shall be liable to a fine not exceeding shillings Or imprisonment for a term not exceeding or both such fine and imprisonment.</p> <p>(4) An operator convicted under subsection (3) may, in addition to any penalty the court determines, have their business license suspended or revoked.</p>
<p>Responsibilities of the food business operator with regard to food articles</p>	<p>41.</p>	<p>(1) Every food business operator shall ensure that the articles of food satisfy the requirements as set by lead agency and conformance to the principles of this Act and it's regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.</p> <p>(2) It is the responsibility of the food business operator to ensure that the food they produce, manufacture, process import or distribute and offers for sale meets the requirement of safe food.</p> <p>(3) No food business operator shall himself or through any other person produce, process, manufacture, store, sell or distribute any article of food-</p> <ul style="list-style-type: none"> (a) which is unsafe; or (b) which is misbranded or sub-standard or contains extraneous matter; or (c) for which a licence is required, except in accordance with the conditions of the licence; or

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		<p style="text-align: center;">(d) in contravention of any other provision of this Act or its regulations.</p> <p>(4) Where any food in the possession of a food business operator is unsafe in part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe;</p> <p>(5) Without prejudice to any other provisions in this Act, any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe.</p>
<p>Responsibility of manufacturer, packer, wholesaler and distributor as Food Business Operators</p>	<p>42.</p>	<p>(1) The manufacturer or packer of any food or article of food shall be liable for such food or article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.</p> <p>(2) A wholesaler or distributor shall be liable under this Act for any food or article of food which –</p> <ul style="list-style-type: none"> (a) is supplied after the date of its expiry; or (b) is stored or supplied in violation of the safety instructions of the manufacturer; or (c) is unsafe or misbranded; or (d) the manufacturer from whom the food has been received cannot be identified; or (e) is stored or handled or kept in violation of the provisions of this Act, the rules and regulations made there under; or

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		<p>(f) is received by him with knowledge of being unsafe.</p> <p>(3) A seller shall be liable under this Act for any article of food which –</p> <p>(a) is sold after the date of its expiry; or</p> <p>(b) is handled or kept in unhygienic conditions; or</p> <p>(c) is misbranded; or</p> <p>(d) is received by the seller with knowledge of it being unsafe; or</p> <p>(e) the manufacturer or the distributor from whom such article of food was received cannot be identified.</p>
<p>Right of Purchaser to have food analyzed</p>	<p>43.</p>	<p>(1) Nothing contained in this Act shall prevent a purchaser of any food from–</p> <p>(a) having such food analyzed by a designated food laboratory, on payment of such fees as the laboratory or any other designated laboratory may determine, and</p> <p>(b) receiving from the national laboratory or any other designated laboratory a report of the analysis within such period as may be specified by regulations.</p> <p>(2) A purchaser who has food analysed in accordance with subsection (1) shall inform the food business operator at the time of purchase of the intention to have such food so analysed.</p> <p>(2) If the report of the national reference laboratory or any other designated laboratory shows that the food is not in compliance with this Act, the purchaser shall be entitled to get a refund, from the food business operator, of the fees paid to the national laboratory.</p> <p>(3) The national food laboratory or any other designated laboratory shall, where it finds any food</p>

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		analysed under this section is not in compliance with the provisions of this Act, forward a copy of the report to the Controller and the relevant lead agency.
Food recall procedures.	44.	<p>(1) If a food business operator considers or has reasons to believe that a food which he has processed, manufactured or distributed does not meet safe requirements the operator shall immediately initiate procedures to withdraw in accordance to regulations under this act.</p> <p>(2) Office of the food controller in consultation with the respective agent may recall any food which in their opinion is unsafe.</p> <p>(3) Any food business operator may recall any food which in their opinion they consider unsafe.</p>
Duty of county government to enforce Act	45.	<p>(1) It shall be the duty of every county to exercise such powers with which it is invested as maybe, in special circumstances, reasonably practicable so as to provide proper safeguards for the sale of food and in particular to direct its officers to procure samples for analysis.</p> <p>(2) If the office of the food safety controller is of the opinion that a county has failed to execute or enforce any of the provisions of this Act in relation to any article and that it's failure affects the general interests of the consumer, the office of the food safety controller may by order empower an officer to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article mentioned in the order.</p> <p>(3) The expenses incurred under such an order shall be recoverable by the office of the food safety controller and the amount so recovered shall be treated as expenses incurred by the county under this Act.</p>
Power of the office of the food safety controller to obtain	46.	<p>(1) The office of the food safety controller may direct any person who at the time of the direction or at any subsequent time carries on a business which</p>

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<p>particulars of certain food ingredients</p>		<p>includes the production, importation or use of any class to which this Act applies to furnish him, within such time as may be specified in such direction, such particulars as may be so specified of the composition and use of such substance sold or for sale in the course of the business or used in the preparation of food.</p> <p>(2) Without prejudice to the generality of sub-section (1), a direction made thereunder may require the following particulars to be furnished in respect of any substance—</p> <ul style="list-style-type: none">(a) Particulars of the composition and chemical formula of the substance;(b) Particulars of the manner in which the substance is used or proposed to be used in the preparation of food;(c) Particulars of any investigation carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance or any product formed when the substance is used as aforesaid, is injurious to it or in any other way affects health;(d) Particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities. <p>(3) No particulars furnished in accordance with a direction under this section and no information relating to any individual business obtained by means of such particulars shall, without the previous consent in writing of the person carrying on the business in question, be disclosed except—</p> <ul style="list-style-type: none">(a) in accordance with regulations prescribed so far as may be necessary for the purposes of unsanitary conditions
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		<p>(b) for the purpose of any proceeding for an offence against the order or any report of those proceedings,</p> <p>(4) Any person who discloses any such particulars or information in contravention of subsection (3) commits an offence.</p>
Offences under Part III	47.	<p>(1) Any person who, without the permission of an inspector, retains, removes or tampers with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized under this Act, commits an offence and on conviction shall be liable to a fine not exceeding or imprisonment for a term not exceeding ... or to both.</p> <p>(2) Any person who, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading, commits an offence and shall on conviction that person shall be liable to a fine not exceeding or imprisonment for a term not exceeding ... or to both.</p> <p>(3) Any person who without reasonable excuse, resists, obstructs, or attempts to obstruct, impersonate, threaten, intimidate or assault or by any gratuity, bribe, promise or other inducement prevents or attempts to prevent the due execution by the inspector of his duty under this Act commits an offence and shall on conviction be liable to a fine not exceeding or imprisonment for a term not exceeding ... or to both.</p>
Certificate of analysis and presumptions	48.	<p>In any proceedings under this Act–</p> <p>(a) a certificate of analysis purporting to be signed by a public analyst shall be accepted as prima facie evidence of the facts stated therein: Provided that–</p> <p>(i) the party against whom it is produced may require the attendance of the public analyst for purposes of cross examination;</p> <p>(ii) no such certificate of a public analyst shall be received in evidence unless the party intending to produce it has, before the trial</p>

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		<p>given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate;</p> <ul style="list-style-type: none">(b) evidence that a package containing any article to which this Act or any regulations made thereunder apply, bore a name, address or registered mark of the person by whom it was manufactured or packed shall be prima facie evidence that such article as manufactured or packed as the case may be by that person;(c) any substance commonly used for human consumption shall, if sold or offered, exposed, or kept for sale, be presumed, until the contrary is proved, to have been sold, or as the case may be, to have been intended for sale for human consumption;(d) any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance commonly used in the manufacture of products for human consumption which is found on the premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;(e) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which the substance is prepared shall, until the contrary is proved, be presumed to be intended for such use. (S.37 cap 254)(f) any article used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or sale of that thing shall, until the contrary is proved, be presumed to be intended for sale, or manufacturing food for sale for human consumption.

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Power of the court to order licence to be cancelled	49.	On the conviction of any person for any offence under this Act or any of its regulations, the court may in addition to any other penalty which it may lawfully impose, cancel any licence issued under the laws of any of the lead agencies.
Prosecution	50.	<p>(1) The authorized officer may take out proceedings for an offence under this Act or the regulations before any magistrate having jurisdiction in the place where any article sold was delivered to the purchaser or where the sample was taken.</p> <p>(2) In any proceeding under this Act the contents of any container appearing to be intact and in the original state of packing by the manufacturer shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.</p>
		PART IV – OFFENCES
Prohibition against sale of unwholesome, poisonous or adulterated or unsafe food	51.	<p>Any person who sells food that–</p> <ul style="list-style-type: none"> (a) has in or upon it any poisonous or harmful substance; or (b) is unwholesome or unfit for human consumption; or (c) consists in whole or in part of any filthy putrid, disgusting, rotten, decomposed or diseased substance or foreign matter; (d) is adulterated; <p>commits an offence.</p>
Deception	52.	Any person who labels, packages, sells or advertises any food in contravention of any regulations made under this Act, or in any manner that is false, misleading or deceptive as regards its character, nature, value, substance quality, composition, merit or safety commits an offence.
Standards of foods	53.	Where a standard has been prescribed for any food, any person who labels, packages, sells or advertises any food which does not comply with that standard in

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		such a manner that it is likely to be mistaken for food of the prescribed standard commits an offence.
Prohibition against the sale of food not of nature substance or quality demanded	54.	Any person who sells to the prejudice of the purchaser any food which is not of the nature, or is not of the substance, or is not of the quality demanded by the purchaser commits an offence.
Penalties for unsafe food.	55.	<p>Any person who commits an offence in terms of sections 48 to 52 shall on conviction–</p> <ul style="list-style-type: none"> (a) where such failure or contravention does not result in injury, with fine a fine not exceeding..... or with imprisonment for a term not exceeding; or both such fine and imprisonment; (b) where such failure or contravention results in a non-grievous injury, with fine a fine not exceeding..... or with imprisonment for a term not exceeding; or both such fine and imprisonment; (c) where such failure or contravention results in a grievous injury with fine a fine not exceeding..... or with imprisonment for a term not exceeding; or both such fine and imprisonment; (e) where such failure or contravention results in death, , with fine a fine not exceeding..... or with imprisonment for a term not exceeding; or both such fine and imprisonment.
Compensation in case of injury or death of consumer	56.	<p>(1) The court may direct a person who contravenes the provisions of this Act resulting in the injury or death of a consumer, to pay compensation to the victim or the legal representative of the victim, a sum–</p> <ul style="list-style-type: none"> (a) not less than in case of death;

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		<p>(b) not exceeding in case of grievous injury; and</p> <p>(c) not exceeding in all other cases of injury:</p> <p>(2) (a) Compensation ordered under sub section (1) shall be paid as soon as practicable and in no case later than six months from the date of occurrence of the incident:</p> <p>(b) Despite sub paragraph (2) (a) in case of death, an interim relief shall be paid to the next of the kin within thirty days of the incident.</p> <p>(3) Where any person is held guilty of an offence leading to grievous injury or death, the court may cause the name and place of residence of the person held guilty, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.</p> <p>(4) The court may on the conviction of any person under this Section, in addition to any other penalty which it may lawfully impose, order—</p> <p>(i). the cancellation of any licence issued under this Act;</p> <p>(ii) the re-call of food from market,</p> <p>(iii) that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in possession of the convicted person be forfeited, and upon such order being made such articles and things may be disposed of as the court may direct.</p>
<p>Offences by Food Business Operators.</p>	<p>57.</p>	<p>(1) Where an offence under this Act has been committed by a food business operator, every person who at the time the offence was in charge</p>

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		<p>of, and responsible to, the food business operator for the conduct of the business of the food business operator, as well as the food business operator, shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly:</p> <p>(2) Where a food business operator has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch or unit, nominated by the food business operator as responsible for food safety, shall be liable for contravention in respect of such establishment, branch or unit:</p> <p>(3) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if that person proves that the offence was committed without that their knowledge or that he or she exercised all due diligence to prevent the commission of such offence.</p> <p>(4) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a food business operator and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the food business operator, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> <p>(5) For the purpose of this section-</p> <p>(a) " company" means a body corporate and includes a firm or other association of individuals; and</p> <p>(b) "director", in relation to a firm, means a partner in the firm.</p>

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<p>General Penalty</p>	<p>58.</p>	<p>(1) A person who commits an offence under this Act for which no specific penalty is provided shall no conviction be liable–</p> <ul style="list-style-type: none"> (a) in the case of a first offence to a fine not exceeding shillings or to imprisonment for a term not exceeding ... years, or to both such fine and imprisonment; (b) in case of a subsequent offence, to a fine not exceeding shillingsand or to imprisonment for a term not exceeding ... years, or to both such fine and imprisonment. <p>(2) In any prosecution under this Act the summons shall state the particulars of the offence or offences alleged and also the name of the prosecutor and shall not be made returnable in less than fourteen days from the date on which it was served</p>
<p>Regulations</p>	<p>59.</p>	<p>(1) The Cabinet Secretary may after consultations with the Board make regulations-</p> <ul style="list-style-type: none"> (a) declaring any food or class of food is adulterated if any prescribed substances or class of substances is present therein or has been added thereto or extracted therefrom; (b) respecting- <ul style="list-style-type: none"> (i) the labelling and packing and the offering, exposing and advertising for sale any food or food article; (ii) the size, dimensions, and other specifications of packages of food and food articles; (iii) the sale or the conditions of sale of any food; (iv) the use of any substance,as an ingredient in any food to prevent the consumer or purchaser from being

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		<p>deceived or misled as its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;</p> <ul style="list-style-type: none">(e) prescribing standards of composition, strength, potency, purity, quality or other property of any food or food article(f) respecting the importation or exportation of food or food articles in order to ensure compliance with this Act;(g) respecting the method of preparation, preservation, packing, storing, conveying and testing of any food in the interests of, or for the prevention of injury to the health of the consumer or purchaser;(h) respecting the carriage of goods subject to the provisions of this Act, including the licensing of vehicles used in such carriage;(i) requiring the person who sells food, to maintain such books and records as the Board considers necessary for the proper enforcement and administration of this Act;(j) providing the analysis of food or food articles for the purposes of this Act or for any other purpose and prescribing a tariff of fees to be paid for such analysis and for prescribing the methods of analysis;(k) providing the taking of samples of any article for the purposes of this Act or for any other purpose;(l) exempting any food or food article from all or any of the provisions of this Act and prescribing the conditions of such exemption(l) respecting the procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories;(m) respecting the manner in which and the procedure subject to which risk analysis, risk assessment, risk communication and risk management shall be undertaken.
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		<ul style="list-style-type: none"> (n) Designation of official laboratories and reference laboratories a) Appointment of food inspectors b) Guidelines for inspection, certification and validation. c) Regulations on registration of FBOs (all) d) Regulations on traceability of food e) Regulations for food vendors, compliance with food safety requirements f) Regulations for registration of novel foods, food derived from biotechnology g) Rules for the advertising of food h) Regulations on food recalls i) Regulations for importation including Schedule of intended import, j) Regulations for sanitary conditions for the preparation, processing storage, handling of food <p>(1) The Cabinet Secretary after consultation with the Board, may make regulations generally for carrying out any of the purposes of this Act.</p>
<p>Repeal and savings.</p>	<p>60.</p>	<p>(1) With effect from such date as the Cabinet Secretary may appoint in this behalf, the statutory provisions specified in the Third Schedule stand repealed.</p> <p>(2) Despite subsection (1), a repeal under this section shall not affect-</p> <ul style="list-style-type: none"> (a) the previous operations of the statutory provisions under repeal or anything duly done or suffered thereunder; or (b) any right, privilege, obligation or liability acquired, accrued or incurred under any of the statutory provisions under repeal; or (c) any penalty, forfeiture or punishment incurred in respect of any offences

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		<p>committed against the statutory provisions under repeal; or</p> <p>(d) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.</p> <p>(3) If there is any other law for the time being in force corresponding to this Act, the same shall upon the commencement of this Act, stand repealed</p> <p>(4) Notwithstanding the repeal of the aforesaid statutory provisions a licence issued under any such statutory provision, which is in force on the date of commencement of this Act, shall continue to be in force till the date of its expiry for all purposes, as if it had been issued under the provisions of this Act.</p>
Reports of food safety issues	61.	
Amendments to other Legislation	62.	(to be provided by the ministries)

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SCHEDULES

FIRST SCHEDULE: Control Functions and Responsible Institution.

Domestic Food Control

Function	Type of FBO	Responsible Agency	Enabling Legislation
Registration of FBOs in Primary Production	Dairy	Kenya Dairy Board	Cap 336
	Meat Animals and Bee	DVS;	Cap 356
	Fish	Kenya Fishery Service	Fisheries Act
	Crop	AFA	Crops Act; AFA Act
Registration of Principal FBOs	Dairy	KDB; KEBS;	Cap 336; Cap 496
	Meat, Poultry Products and Honey	DVS KEBS	Cap 356 Cap 496
	Fish	KEBS KFS	Cap 496 Fisheries Act
	Crop	KEBS AFA KEPHIS	Cap 496 AFA Act; KEPHIS Act
	Other Processed Foods & Beverages	KEBS	Cap 496
Initial verification of Food Safety Management Systems implemented by FBOs	Dairy	KDB; KEBS;	Cap 336 Cap 496
	Meat, Poultry Products and Honey	DVS KEBS	Cap 356 Cap 496
	Fish	KEBS KFS	Cap 496 Fisheries Act
	Crop	KEBS AFA KEPHIS	Cap 496 AFA Act KEPHIS Act
	Processed Foods & Beverages	KEBS	Cap 496
Risk Based Inspection Plans and Procedures	Dairy	KDB; KEBS; Public Health	
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS	

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		Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	
	Other Processed Foods & Beverages	KEBS Public Health	
Planned surveillance inspections/audits of FBOs	Dairy	KDB; KEBS; Public Health	
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	
	Other Processed Foods & Beverages	KEBS Public Health	
Integrated Official Controls	-	The Office of the Food Safety Controllers	This Act
Provision of clear documentation of enforcement and sanctions	Dairy	KDB; KEBS; Public Health	Cap 336 Cap 496 Cap 242
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	
	Other Processed Foods & Beverages	KEBS Public Health	
Notification of FBOs for non-compliance	Dairy	KDB; KEBS;	

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		Public Health	
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	
	Other Processed Foods & Beverages	KEBS Public Health	
Enforcement and Verification of Corrective and Preventive Action.	Dairy	KDB; KEBS; Public Health	
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	
	Other Processed Foods & Beverages	KEBS Public Health	
Provision of guidelines on sampling Techniques		The Office of the Food Safety Controllers Lead Agencies	
Verification of Traceability systems implemented by FBOs	Dairy	KDB; KEBS; Public Health	
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	

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	Other Processed Foods & Beverages	KEBS Public Health	
Mechanisms for withdrawal and recall	Dairy	KDB; KEBS; Public Health	
	Meat, Poultry Products and Honey	DVS KEBS Public Health	
	Fish	KEBS KFS Public Health	
	Food of Plant Origin	KEBS AFA KEPHIS Public Health	
	Other Processed Foods & Beverages	KEBS Public Health	
Ensuring informal street food venders are subjected to official food control.	All Foods and Beverages for public consumers	Public Health County Governments	
	Dairy	KDB	
Food Safety Inspection of Hotels, Restaurants and Household.	All Foods and Beverages for public consumers	Public Health	

Schedule for Import Food Control

Function	Type of FBO	Responsible Agency	Enabling Registrations
Registration of Food Importers	Dairy	KDB; KEBS;	This Act Lead Agencies enabling legislations
	Meat, Poultry Products and Honey	DVS KEBS	
	Fish	KEBS KFS	
	Crop	KEBS AFA KEPHIS	
	Other Processed Foods & Beverages	KEBS	
	Dairy	KDB;	

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Development and publishing of Food imports requirements.		KEBS;	
	Meat, Poultry Products and Honey	DVS KEBS	
	Fish	KEBS KFS	
	Crop	KEBS AFA KEPHIS	
	Other Processed Foods & Beverages	KEBS	
Development of risk based Food import control programs	All Foods	The Office of the Food Safety Controllers	
Establishment of Notification System for imported Foods consignments	All Foods	The Office of the Food Safety Controllers & Lead Agencies	
Facilitate collaboration among agencies involved at border control points involved in food Import control		The Office of the Food Safety Controllers	

Food Export Control

Function	TYPE of FBO	Responsible Agency	Enabling Registrations
Registration and licensing of Food Exporters	Dairy	KDB;	
	Meat, Poultry Products and Honey	DVS	
	Fish	KFS	
	Crop	AFA KEPHIS	
	Other Processed Foods & Beverages	PUBLIC OF HEALTH	
Establish a coordination mechanism where	All	The office of Food Safety Controller	

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Multiple Lead agencies licensing Food exports.			
Certification of Food Exports	Dairy	KDB;	
	Meat, Poultry Products and Honey	DVS	
	Fish	KFS	
	Crop	AFA KEPHIS	
	Other Processed Foods & Beverages	PUBLIC HEALTH	
Control of Fraud in issuance of Food Export Certification.	Dairy	KDB;	
	Meat, Poultry Products and Honey	DVS	
	Fish	KFS	
	Crop	AFA KEPHIS	
	Other Processed Foods & Beverages	PUBLIC OF HEALTH	