



AUGUST 3, 2021

MEETING REPORT FOR THE MINISTERIAL
TASKFORCE RETREAT TO INCORPORATE
COMMENTS BY THE HEALTH TEAM INTO
THE DRAFT FOOD SAFETY BILL 202

LAKE NAIVASHA RESORT

CHARITY MUTEGI
Naivasha 26 to 27 July 2021

Background

Since 2019, the government of Kenya (GOK) has been working to review the food safety policy and develop a food safety bill. Due to a parallel process sponsored by a private member on a Kenya Food and Drugs Authority Bill, the process derailed and participation from the health team members of the taskforce became sub-optimal along the way. Vide a joint memorandum signed by the PS Crops Development and Agricultural Research, Health and Livestock (Attached), Parliament guided that health reviews the draft food safety bill developed by the rest of the taskforce members and incorporate comments, after which the bill was to be tabled in parliament for further direction. The two-day meeting was therefore aimed at receiving comments from the health members of the taskforce and to incorporate them into the draft food safety bill.

Key Observations

- There was a commitment by the co-chairs to put the health of the citizens first and ensure that in addition to health, trade was not stifled by the outcome of the ongoing process.
- Susan Koki from the Public Health division recommended the inclusion of security personnel in the taskforce to address issues of bioterrorism.
- There were a few concerns raised by Dr Ogato, co-chair for health, that included: the executive order by the President to make food safety a public health function and how the task force would address the directive; the concern as to whether the bill is anchored on the existing 2013 food safety policy since the one in progress had not yet been approved.
- Members settled down to working on the food safety bill after all matters raised by Dr Ogato were addressed.
- There was consensus that the food safety law should be viewed as the mother law from which the relevant agencies with a food safety mandate can make reference to and guide in the improvement/drafting of sector laws.
- There was significant debate on whether the coordination mechanism should take the form of a ministerial council or the office of the food safety controller as proposed in the bill. While members retained the proposal of the office of the food safety controller, the health team requested for more time to engage their management on the best approach.
- It was agreed that matters to do with feed needed to be included in the bill.
- The matter on where the Office of the Food Safety Controller would be domiciled was cascaded to PS/Cabinet level.
- While there was active debate by members of the taskforce, there was no significant shift in the spirit of the draft for the clauses that had been covered within the two-day meeting (up to clause 19).
- Members could not complete the assignment within the two days and proposed another two days to enable them conclude the task. The recommended dates were 4 and 5 August 2021.

Itinerary

Monday, 25 July 2021

The first session started with individual introductions from participants and their affiliations. The meeting objectives were presented by Peter Owoko. The session proceeded with remarks from both co-chairs.

- Remarks by Lucy Njenga of MoALFC: Lucy emphasized on the role of government to ensure that food is safe for its people and that both Cabinet Ministers were in full support of the taskforce. She further reiterated on the need for all ministries to work together towards meeting the objective. Lucy highlighted the importance of the bill in protecting the citizens and opening the country for international trade.
- Remarks by Dr Julius Ogato of MoH: He noted that the Ministry of Health acknowledges that food safety is a basic human right to have access to safe and healthy food. He referred to Resolution WHA 75.3 2020 that recognized that food safety is a public health priority. The resolution acknowledges that the government should develop food safety policies that take into consideration all stages of the supply chain and provide adequate resources to improve national food safety systems. Julius emphasized that the government is responsible for development of food safety law, and it should provide resources for its implementation.
- Remarks by Susan Koki Head of Department, Public Health. Susan urged members to engage with each other proactively. She noted that the taskforce should include other relevant agencies such as the National Biosafety Authority, the Ministry of Defense and Environment.

After the remarks by the co-chairs members took a break and this was followed by two presentations:

- Presentation on the overview of Draft Food Safety Bill by Beatrice Nyamwamu joint secretariat member from MoALFC.
- Presentation by Ms Brenda Obura on key issues that needed to be addressed in the new food safety bill (Annex 2).

Highlights of the plenary discussions on Day 1

- The taskforce emphasized the need to have a clear direction on the deliverable for the retreat which was defined by the MOU between the two ministries. Members agreed to use relevant sections of the KFDA draft bill to enrich the food safety draft bill.
- Members noted that there was lack of clarity on where the back stopped for the food safety controller. There was need to ensure he was not taking over the mandate of competent agencies.
- There was noted to be conflict between Public Health Act, Food Safety Bill and KFDA bill regarding functions of food inspectors that required to be resolved.
- Discussions ensued on whether to have a new bill or to review or amend CAP 254 and members agreed to proceed with the food safety bill.
- There was a suggestion to include a clause on feed safety regulations. The plenary agreed that the bill covers feeds issues and include a definition for “feed” in the interpretation section.

- Members welcomed the idea of establishing an Office of Food Safety Controller. The taskforce discussed about the need for a board to provide oversight of the office.
- The rest of the session involved going through each clause on the draft Food Safety Bill and recommending revision, addition, or removal (Appendix 2). By the end of the day, the team and covered 9 clauses.

Tuesday, 27 July 2021

A significant amount of time was spent on making considerations for a board, a proposal that had initially been done away with.

Highlights from plenary on day 2

- The task force re-introduced the board for oversight over the office of the food safety controller. The board would comprise of 7-9 members with representatives from Treasury, MOH, Ministry of Trade and Industry, MoALFC, Attorney General (AG), Council of Governors (COG), producers, private sector, consumer, and independent expert with skills in food safety matters. The board would hold at least one meeting per quarter with a quorum of 2/3 of the members and would hire staff to carry out functions necessary for the proper discharge of the mandate.
- Questions about where the office of the Office of Food Safety Controller would be domiciled were raised. Members recommended that the cabinet ministers and PSs of MOH and MoALFC would advise how the office would be funded and where it would be domiciled.
- It was proposed that functions of the office of the food safety controller include establishment of food safety related conflict resolution mechanism.
- Members agreed that the Office of Food Safety Controller could contract for specific food safety services including laboratory services.
- There were numerous overlaps on functions of the existing National Food Safety Coordination Committee (NFSCC) and others that were already covered in the proposed law (especially by the office of the food safety controller and the advisory committee). Members of the NFSCC were to be incorporated in the committees proposed in the bill.
- It was noted that lead agencies in the First Schedule of the bill and their roles were not covered exhaustively.
- The issue of overlaps had still not been dealt with, and required a review of existing laws which was proposed to be done before concluding the bill.
- There was also an observation that some of the food safety functions that were being proposed for the food safety controller were being done by various agencies, and hence the need to review the controller's functions to avoid conflict/duplication.
- It was agreed that the food safety law be referenced as the mother law to guide sector laws.

By the end of the day 2, members had managed to deliberate until clause 19 of the draft food safety bill.

Next cause of Action

The co-chairs directed that members convene another meeting to complete review of the remaining 20 clauses in view of the strict deadlines provided for the process.

LIST OF ATTEDANTS FOR THE RETREAT ON FOOD SAFETY BILL JULY 2021

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Appendix 1

PROGRAMME

Time	Activity	Responsible	Session Chair
Monday: 26th July 2021			
8.00 – 8.30am	Arrival and registration		
8.30 – 9.00 am	<ul style="list-style-type: none"> • Opening prayer • Introductions • Retreat Objectives 	Secretariat	Lucy Njenga
9.00 – 10.00 am	Opening Remarks – Co Chairs		
10.00 – 10.30 am	Tea Break		
10.30 – 11.00 am	Overview; Draft Food Safety Bill 2021 <ul style="list-style-type: none"> • Presentation • Plenary 	Secretariat - MoALFC	
11.00 – 12.00 am	Overview; Kenya Food And Drug Authority 2019 issues for consideration into Food Safety Bill <ul style="list-style-type: none"> • Presentation • Plenary 	Secretariat - MoH	
12.00 - 1.00 pm	consideration of Kenya Food and Drug Authority 2019 issues – incorporation into the Food Safety Bill	Secretariat	
1.00 - 2.00 pm	Lunch		
2.00 - 4.00 pm	consideration of Kenya Food and Drug Authority 2019 issues – incorporation into the Food Safety Bill	Secretariat	Dr. Julius Ogato
4.00 - 4.30 pm	Tea Break		
4.30 - 5.30 pm	consideration of Kenya Food and Drug Authority 2019 issues – incorporation into the Food Safety Bill	Secretariat	
End of Day 1			
Tuesday: 27th July 2021			
8.00 – 8.30am	Arrival and Registration		
8.30 – 10.00 am	consideration of Kenya Food and Drug Authority 2019 issues – incorporation into the Food Safety Bill	Secretariat	Dr. Julius Ogato
10.00 – 10.30 am	Tea Break		
10.30 – 1.00 am	Finalization of the Food Safety Bill	Secretariat	
1.00 - 2.00 pm	Lunch		
2.00 - 4.00 pm	Presentation of the Harmonized Food Safety Bill 2021	Secretariat	Lucy Njenga
4.00 - 4.30 pm	Tea Break		
4.30 - 5.30 pm	Development of Next steps	Secretariat	
End of Day 2			
28th July 2021 – Travel to Nairobi			

Appendix 2.

Food Safety Bill Clauses recommendations

Clause	Recommendation
2	Redefine: “Cabinet Secretary” to mean cabinet secretary responsible with matters relating to food safety. “Street vended food “: use with FAO definition street vended food
3(d)	Revised to: “provide for a mechanism for the coordination and accountability in the implementation of food safety regulatory functions”
4	Revised to: “This Act shall apply to every entity in the public and private food business”.
5 (d)	Revised to: “promotion of economic growth and development by promoting GAP GMP, GHP fair trade practices and sound food regulatory foundation for domestic and international trade”.
6	Recommendations: <ul style="list-style-type: none"> • Strengthen the objects of the Office of Food Quality Controller • The office will have both coordination and implementation functions • Include a clause on conflict resolutions among agencies
6 (c)	Removed
6 (a to e)	Lawyers will advise on how to revise these sub sections
7	Include a function on designation of laboratories
7(b)	Revised to: “establish a network among lead agencies with the aim to facilitate a scientific cooperation framework by coordinating activities, the exchange of expertise and information, and implementation of food safety policies and best practices”
7 (f)	Removed
7 (g)	Revised to: “where necessary disseminate, in collaboration with the lead agencies and County Governments, information and advice to consumers to enable them make informed choices”
7 (c, m, o and p)	Recommended to merge and revise
8	Revised to: “The food safety Controller may authorize Third Parties to undertake specific food safety services in order to achieve the objects of the Act”.
11 (1)	Revised to: “The competent agencies shall put in place measures to ensure that routine food controls performed at the level of Food Business Operators, imported, exported or re-exported are planned, managed and implemented in a way that ensures safety of the food products placed on the market”
11 (2)	Revised to: “In absence of such measures in Sub Section (1), shall be gazette by the Cabinet Secretary on recommendation by the Controller after consultation with the County Governments, lead agencies and relevant stakeholders”
12 (3)	Moved to functions of controller
13	Revised to: “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 Public Service Commission”

15 (2)	Change to: "A Scientific Committee shall be composed of up to ten scientists with relevant qualifications and experience, whose term of appointment will be three-years, which may be renewed".
15(6)	Revised to: "The Scientific Committee shall provide an opinion by consensus"
15 (7)	Added as a new clause: "Quorum of 2/3 of the committee for a meeting"
15 (8)	Revised as: The representatives of the Office of Food Safety Controller may attend the meetings the purposes of clarification for the matters under consideration
16	Revised to: "The County Governments shall implement and enforce food safety control measures within their counties including"....
17 (2)	Include definition of CEC in the interpretation section
18 (2)	Change to: "The designation of laboratories under subsection (1), shall be in accordance to regulations prescribed under this Act"