

APPENDIX IV**PROPOSED DRAFT GUIDELINES FOR DEVELOPING HARMONIZED FOOD SAFETY LEGISLATION
FOR THE CCAFRICA REGION****(STEP 5/8)****SECTION 1 - INTRODUCTION**

- (i) Food safety is an essential component of sustainable development and contributes towards protection of public health, poverty reduction, food security, and safeguarding the environment. Food safety legislation in CCAFRICA member countries faces significant challenges including but not limited to, inadequately addressing current and emerging food safety issues, being fragmented in different government institutions and low investment for effective implementation. This may create lapses among food control enforcement agents and food business operators. Consequently, enforcement of food safety legislation has some difficulties, hence compromising efforts towards consumer protection against fraudulent practices and unsafe food products. Such enforcement challenges result in production and trade of substandard food products leading to rejections of products in the national, regional and international markets.
- (ii) Globalization of food trade compels governments to develop legislation that is aligned to regional and international standards that protect consumer health, ensure fair practices in food trade and promote integrated and innovative food safety systems.
- (iii) African governments are committed to promoting and boosting inter/intra-regional trade in agricultural commodities as emphasized in the Malabo Declaration commitment of June 2014. In this regard, it is important to harmonize food safety policies, standards and legislation as well as build the capacity of competent authorities and relevant stakeholders to ensure the protection of public health and facilitate fair practices in food trade. Food safety legislation varies among CCAFRICA member countries, and existing differences in regulatory frameworks can have negative impacts on regional and international food trade.
- (iv) Guidelines for developing harmonized food safety legislation for the CCAFRICA region, have been developed to provide guidance to CCAFRICA member countries on development and/or updating their food safety legislation. This will enable member countries to strengthen their food safety legislation and food control systems as well as develop harmonized policies, standards and legal frameworks.
- (v) These guidelines are developed in line with Codex texts and other relevant regional and international documents.
- (vi) These guidelines contribute to regulation of the food chain to assure food safety while facilitating fair practices in food trade.
- (vii) These guidelines serve as a basis for development of national or regional food safety legislation, to support Intra African and international trade as envisioned in the African Continental Free Trade Area (AfCFTA, 2019) Agreement.
- (viii) These guidelines provide for the identification of stakeholders concerned with food safety and define their roles and responsibilities for effective implementation of harmonized food safety legislation.
- (ix) To attain a robust and effective food control system, there is a need for CCAFRICA member countries to invest in verification capabilities that provide the assurance of compliance to food safety legislation such as human resources, information and communication technologies (ICT) and laboratory infrastructure among others.
- (x) These guidelines should be used together with other existing Codex texts¹ and/or other relevant national, regional and internationally recognized documents.

SECTION 2 - SCOPE

1. The scope of these guidelines is to provide guidance to CCAFRICA member countries in developing or updating food safety legislation along the food chain including food traded nationally, regionally, and internationally.

¹ Principles and Guidelines for National Food Control Systems (CXG 82-2013); General Principles of Food Hygiene (CXC 1-1969); Principles for Food Import and Export Inspection and Certification (CXG 20-1995); Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations (CXG 19-1995); Principles and guidelines for the exchange of information between importing and exporting countries to support the trade in food (CXG 89-2016); Principles and Guidelines for Monitoring the Performance of National Food Control Systems (CXG 91-2017); Guidelines for Food Import Control Systems (CXG 47-2003).

SECTION 3 - PURPOSE

2. The purpose of these guidelines is to;

- i. enable CCAFRICA member countries to develop harmonized food safety legislation in order to strengthen science and risk-based food control systems;
- ii. provide the general concepts and principles governing food safety legislation that will lead to the establishment of well-coordinated national and regional food control systems; and
- iii. promote an integrated approach to food safety along the entire food chain and facilitate intra-African and international food trade.

SECTION 4 - DEFINITIONS

3. The following definitions are included to establish a common understanding of the terms used in this document unless the context otherwise requires:

- i. **Competent Authority** – the government authority or official body authorized by the government that is responsible for setting of regulatory food safety requirements and/ or for the organization of official controls including enforcement (CXC 1-1969)
- ii. **Consumer** means persons and families purchasing and receiving food in order to meet their personal needs (CXS 1-1985).
- iii. **Equivalence**: the capability of different inspection and certification systems to meet the same objectives (CXG 26-1997)
- iv. **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 manufacture, preparation or treatment of “food” but does not include cosmetics or tobacco or substances used only as drugs (Codex Procedural Manual)
- v. **Food business**: means any undertaking, whether for profit or not, public or private, carrying out any of the activities related to any stage of production, processing and distribution of food².
- vi. **Food business operator (FBO)**: The entity responsible for operating a business at any step of the food chain (CXC 1-1969).
- vii. **Food chain**: Production to consumption continuum including, primary production (food-producing animals, plants/crops, feed), harvest/slaughter, packing, processing, storage, transport, and distribution to the point of consumption (CXC 61-2005).
- viii. **Food control**: A mandatory regulatory activity of enforcement by national or local authorities to provide consumer protection and ensure that all food during production, handling, storage, processing and distribution are safe, wholesome and fit for human consumption; conform to food safety and quality requirements; and are honestly and accurately labelled as prescribed by the law³.
- ix. **Food Control System** - the integration of a mandatory regulatory approach with preventive and educational strategies that protect the whole food chain⁴
- x. **Food safety** is the assurance that food will not cause adverse health effects to the consumer when it is prepared and/or eaten according to its intended use (CXC 1-1969)
- xi. **Legislation** includes acts, regulations, requirements or procedures, issued by public authorities, related to foods and covering the protection of public health, the protection of consumers and conditions of fair trading. (CXG 47-2003)
- xii. **Official control** - any form of control that the competent authority performs for the verification of compliance with food law, including animal health and animal welfare rules⁵.

² Food control system assessment tool, FAO/WHO 2019.

³ Food control system assessment tool, FAO/WHO 2019.

⁴ Food control system assessment tool, FAO/WHO 2019

⁵ Food control system assessment tool, FAO/WHO 2019

⁷ Working Principles for Risk Analysis for Food Safety for Application by Governments (CXG 62-2007).

⁸ Equivalence refers to Article 4 of the WTO SPS Agreement and as outlined in Decision on the Implementation of Article 4 of the agreement on the Application of SPS Measure (Equivalence) (G/SPS/19/Rev. 2)

- xiii. **Requirements** are the criteria set down by the competent authorities relating to trade in foodstuffs covering the protection of public health, the protection of consumers and conditions of fair trading. (CXG 47-2003)
- xiv. **Risk** - a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard (s) in food (Codex Procedural Manual: Definitions of Risk Analysis Terms Related to Food Safety).
- xv. **Risk Analysis** - a process consisting of three components: risk assessment, risk management and risk communication. (Codex Procedural Manual))
- xvi. **Risk assessment** means a scientifically based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization. (Codex Procedural Manual)
- xvii. **Risk management** means the process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair trade practices, and, if needed, selecting appropriate prevention and control options. (Codex Procedural Manual)
- xviii. **Risk communication** means the interactive exchange of information and opinions throughout the risk analysis process concerning risk, risk-related factors and risk 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. (Codex Procedural Manual)

SECTION 5 – PRINCIPLES OF A FOOD SAFETY LEGISLATION

- 4. In developing and/or updating food safety legislation, member countries should be guided by the principles in these Guidelines and by their legal drafting, practices, and be cognizant of the needs of the country.
- 5. It is recommended that the process of developing and /or updating a food safety legislation should be open to public consultation with all stakeholders while respecting legal requirements to protect confidential information as appropriate.
- 6. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information. Member countries should seek to obtain the scientific information necessary to reduce uncertainty and justify provisional measures.
- 7. A national food safety legislation should be based on the following principles:

PRINCIPLE 1 - PROTECTION OF CONSUMERS' HEALTH

- 8. Food safety legislation should have provisions for protecting the health of consumers as a primary priority.

PRINCIPLE 2 – THE FOOD CHAIN APPROACH

- 9. The food safety legislation should cover the entire food chain from primary production to consumption.

PRINCIPLE 3 - ROLES AND RESPONSIBILITIES

- 10. The administrative provisions of food safety legislation should clearly define roles and responsibilities of the stakeholders including but not limited to the following: governments, FBOs, consumers, academia and research. Examples of the roles and responsibilities may include the following:
 - a. The FBOs at all stages of the food chain under their control shall ensure that foods satisfy the requirements of food legislation which are relevant to their activities and shall verify that such requirements are met.
 - b. The government has the role and responsibility to establish and maintain up to date legal requirements and verify that food business operators comply with food safety legislation.
 - c. Consumers have a role and responsibility in managing food safety risks including products under their control and where appropriate they should be provided with information on how to achieve this.
 - d. Academic and research institutions have a role in contributing to a food safety legislation, as they are a source of expertise to support the risk based and scientific foundation of such a system.

PRINCIPLE 4 – SCIENCE AND RISK BASED APPROACH TO LEGISLATION

- 11. Food safety legislation should be informed by sound scientific evidence following the risk analysis approach.

12. The legislation should make provisions for collecting data, scientific information and evidence. In formulating legislation, there should be focus on a risk-based approach.⁷
13. Risk analysis should be applied consistently; open, transparent and documented; evaluated and reviewed as appropriate in the light of newly generated scientific data⁷

PRINCIPLE 5 - COOPERATION AND COORDINATION

14. The food safety legislation should provide for a mechanism for transparent and effective communication and coordination among the different institutions and organizations responsible for food safety along the food chain. Further, food safety legislation should have provisions to support food safety education, communication and training.

PRINCIPLE 6 – EQUIVALENCE⁸

15. The principle of equivalence should be provided for in the food safety legislation of CCAFRICA member countries. Mutual recognition, where applicable, should be applied to facilitate trade.

PRINCIPLE 7 - POLICY FRAMEWORK

16. Food safety legislation should be part of a robust national policy framework, and mechanisms for its regular review and updates should be provided for.

PRINCIPLE 8 - HARMONIZATION

17. When designing a food safety legislation, CCAFRICA member countries should aim at the harmonized approach to facilitate intra-African and international trade and protect consumer health
18. When drafting/updating national food safety legislation, CCAFRICA member countries should consider relevant Codex texts as well as WTO principles, as appropriate.
19. In absence of specific national food safety regulations, Codex texts may be considered.

SECTION 6 – ELEMENTS OF FOOD SAFETY LEGISLATION

20. Food safety legislation should be consistent with the national legal drafting practices of a member country of CCAFRICA upon which all other regulatory instruments/ subsidiary legislation are based.
21. The regulatory instruments should be designed with the specific purpose of protection of consumer health and/or the promotion of fair practices in food trade.
22. The food safety legislation should have the following elements:

i. Title

The food safety legislation should have a title which reflects the scope and purpose of the proposed legislation.

Examples:

- a) *An Act or a legislation of Parliament to make provision for the management of food safety ----- and for connected purposes*
- b) *Food safety Act/legislation on food safety*

ii. Citations/Introduction/preamble

The food safety legislation should contain an introductory statement that explains the purpose and implementation of the law.

Example: An Act of Parliament to make provision for the management of food safety matters.

iii. Interpretation of terms

It should provide a list of key terms and their definitions as used in the body of the legislation. The definitions should be aligned to internationally accepted texts as well as ensuring their clarity and without ambiguity.

iv. Objective of the food safety legislation

The legislation should state clear objectives including the role of risk analysis. The objectives should include ensuring the safety of food intended for human consumption, prevention and control of food-borne diseases, facilitation of food trade and contribution to the development of the agri-food sector/system.

Example: The objectives of this Act are to provide for —

- a) *management of safety of food of plant and animal origin including food-borne infections, contaminants, food-borne zoonoses and residues in food,*
- b) *establishment and regulation of facilities that process food,*
- c) *sanitary standards of food processing establishments*

v. *Guiding principles*

The legislation should provide basic guidelines that will ensure the objectives of the law are achieved without introducing new challenges or conflict with existing legislation. The principles outlined in Section 5 may be considered as guiding principles in drafting the food safety legislation.

Other considerations may include, but not limited to integrity, impartiality, accountability, transparency fairness and conflict of interest especially in implementation of official food controls.

vi. *Enabling Provisions*

Depending on the country's legal practices, food safety legislation should define the nature and the limits of the powers to be exercised under it and designate the competent authorities in whom those powers are to be vested. The powers vested in the government or executive authority under these enabling provisions should relate to the formulation of rules for the implementation of the law and for the intervention of the authority in order to ensure that the laws and its accompanying regulations are being observed.

vii. *Administrative Provisions*

The legislation should contain a category of provisions that set up administrative structure(s) to carry out the activities necessary to enforce the law. For example, the law may establish single or multiple Food Safety Agency(ies); integrated food safety agency(ies) communication and coordination authority and/or any other appropriate agency.

viii. *Substantive Provisions*

The legislation should contain provisions relating to safety of food in the entire food chain. These include but are not limited to: risk based preventive approaches; food control requirements such as licensing, risk analysis, inspection, certification, monitoring and surveillance, hygiene requirements, prevention of fraudulent activities; food business operators' responsibilities, labelling, traceability and recall, import and export controls among others. The food safety legislation should make provision for a mechanism to facilitate performance of official controls e.g. fees, levies and charges for official control services rendered

ix. *Enforcement Provisions*

The legislation should make provisions for ensuring compliance. This should include administrative actions, sanctions, seizure, inspection, prohibition and prosecution among others by enforcement agencies.

x. *Offences and fines*

The legislation should provide and list the specific offences it covers, either by reference or in the sections providing for fines and penalties.

xi. *Regulations*

The legislation should have provisions for the development of regulations and other measures to support its implementation. The regulations should be guided by objectives of the Act.

xii. *Miscellaneous provisions:*

The food safety legislation should make provisions for efficient implementation once the law comes into effect depending on the legal practice of the CCAFRICA member country. Such provisions may include *repeal, savings, transition, entry into force and consequential amendments*.