

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

Viale delle Terme di Caracalla, 00153 Rome, Italy - Tel: (+39) 06 57051 - E-mail: codex@fao.org - www.codexalimentarius.org

Agenda Item 5

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COORDINATING COMMITTEE FOR CCAFRICA

24th Session

Proposed Draft Guidelines for Developing Harmonized Food Legislation for CCAFRICA Region

(At Step 3)

(Prepared by the Electronic Working Group chaired by Kenya and Co-chaired by Morocco and Senegal)

Codex Members and Observers wishing to submit comments, at Step 3, on this proposed draft (Appendix I) should do so as instructed in [CL 2022/02/OCS-CCAFRICA](#) available on the Codex webpage/Circular Letters 2022: <https://www.fao.org/fao-who-codexalimentarius/resources/circular-letters/pt/>

Introduction

During the 22nd session of the Codex Coordinating Committee for Africa (CCAFRICA22), Kenya made a presentation that outlined the importance of a model food law in closing food safety gaps in the region. Kenya reaffirmed the importance of having a harmonised food law for the CCAFRICA region and informed the meeting of their intention to prepare a proposal on this subject as well as a request to establish an Electronic Working Group (EWG) (REP17/AFRICA, Para 28).

CCAFRICA22 requested Kenya to prepare and submit a discussion paper together with a project document for consideration at its next session.

During the 23rd session of CCAFRICA, Kenya introduced the proposal prepared in agreement with CCAFRICA22, highlighting the long history of this topic within CCAFRICA, noting that the need for this work was timely considering the recent ratification of the Agreement establishing the African Continental Free Trade Area (AfCFTA), and requested CCAFRICA23 to initiate new work in this area.

There was broad support for this proposal and recognition of its timeliness and value. The Representative of FAO noting both the wide interest and potential difficulties indicated that in order to reflect these challenges, the intent of the work should be to prepare a set of guidelines that would support countries in drafting or revising/updating their national legislation relating to food safety and food control, thus supporting harmonization across the continent.

Terms of Reference

CCAFRICA23 agreed to:

- i) Start new work on a set of guidelines that would support countries in drafting or revising/updating their national legislation relating to food and food control;
- ii) Request Kenya to revise the project document in line with the discussion and to submit through the Codex Secretariat the revised project document to CAC43 for approval as a new work.
- iii) Establish an EWG, chaired by Kenya and co-chaired by Senegal and Morocco, working in English and French, with the terms of reference being to revise and submit the project document to CAC43 for approval of new work. CAC43 approved the new work proposal on guidelines for supporting the development of harmonised food laws for the CCAFRICA region.

Participation and methodology

The EWG undertook three rounds of consultations as follows:

- a) The First draft "Guidelines for supporting the development of harmonised food laws for the CCAFRICA region" was circulated to members and observers through the Codex forum on June 19th, 2020 for comments. Out of 27 participants, comments on the draft were received from two members (i.e. Morocco and Nigeria) and 5 observers (Egypt, USA, FIVS and ICBA, ICMSF), which were considered during the development of the second draft.

- b) The second draft was circulated on August 13th, 2020 and comments were received from two members (Morocco, and Nigeria) and 4 observers (i.e. Egypt, USA, FIVS and ICBA).
- c) After considering the comments from the second round, the third draft was developed and circulated on October 6th, 2021 for comments. Comments were received from 9 members and 3 observers i.e. Burkina Faso, Cape Verde, Eritrea, Mauritius, Morocco, Tanzania, Uganda, Senegal, Togo, FAO, USA, ICBA.

Summary of discussion

At CCAFRICA23, it was agreed that the proposed title 'Harmonised Food Law Guidelines for CCAFRICA Region' was prescriptive towards the development of food law and was not cognisant of diversity and sovereignty of the countries. It was also noted that the word/term "food law" was not in the spirit of the document. The proposed draft guideline focused on elements of improving food control systems and emphasized the role of risk analysis without giving specific reference to drafting of a food law. The first guide did not reflect the intended scope to develop harmonised guidelines for food legislation across the region and hence necessitated its redrafting.

The second draft, therefore, was to realign the document taking into account the concerns raised by the EWG. In addressing the concerns, the chair and the co-chairs' agreed to reorganise the structure of the document. This included revising the title, restructuring of the clauses and general structure to reflect on the intended purpose and scope of the document. In reorganising the document, the title was revised to read '**Guidelines for developing Harmonized Food Safety Legislation for CCAFRICA Region**' in line with the recommendation from CCAFRICA23 and comments from members and observers. The document was structured to include introduction, scope, purpose, Definitions, Principles for the development of food safety legislation, Structure and content of food safety legislation and roles and responsibilities of food safety stakeholders and general considerations.

The 3rd draft considered comments received from the EWG and developed the current document attached in Appendix 1.

Conclusions and recommendation

A significant amount of information and perspectives have been gathered during the three rounds of consultations with the EWG Members and observers and has formed the basis for the development of these guidelines.

The Chair and co-chairs of the EWG have completed the task in line with the terms of reference i.e. to develop a '**Guideline for developing Harmonized Food Safety Legislation for CCAFRICA Region**', and have also gather any additional issues that should be taken into consideration during the development of a this guideline.

The Committee is requested to consider the proposed draft Guideline for developing Harmonized Food Safety Legislation for CCAFRICA Region' in **Appendix I**.

APPENDIX I**Proposed Draft Guidelines for developing Harmonized Food Safety Legislation for the CCAFRICA Region****Table of Contents**

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SECTION 1 - INTRODUCTION

1. Food safety is an essential component of sustainable development and contributes towards improvement of public health, poverty reduction, increased food security, and environmental protection. Food safety legislation among CCAFRICA member countries face major challenges including but not limited to the extent that some existing legislation may be outdated, inadequate and fragmented. This may create lapses among food control enforcement agents and food business operators. Consequently, enforcement of food safety legislation becomes problematic, thus compromising efforts towards consumer protection against fraudulent practices and unsafe food products. This also results in production of substandard foods leading to rejections of exports from the region.
2. Globalization of food trade compels governments to develop food safety legislation that is aligned to regional and international standards, assure consumer safety and promote fair practices in food trade.
3. African governments are committed to promote and boost inter/intraregional 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 to ensure the protection of public health and facilitate fair practices in food trade. There are differences in the food safety legislation among CCAFRICA member countries with different regulatory frameworks which may affect regional and international food trade.
4. Guidelines for developing harmonized food safety legislation for the CCAFRICA region, have been developed to provide guidance to CCAFRICA member countries in development and/or updating their food safety legislation. This will enable member countries to strengthen their food legislation and food control systems as well as develop harmonized policies, standards and legal frameworks.
5. This document is developed in line with Codex texts and other relevant international documents.
6. It will contribute to regulation of the food chain to assure food safety while facilitating fair practices in food trade.
7. The guidelines may serve as a basis for development of national or regional Food Safety Legislation, to support Intra Africa trade as envisioned in the African Continental Free Trade Area (AfCFTA,2019) Agreement.
8. This guidelines provide for identification of relevant food safety stakeholders and outlines their roles and responsibilities for effective implementation of harmonized food safety legislation.
9. To attain a robust and effective food control system, there is a need for CCAFRICA member countries to enhance their capacities in laboratory infrastructure, human resources and conformity assessment procedures among others.
10. These guidelines should be used together with other existing Codex texts¹ and/or other relevant internationally recognized guidelines.

SECTION 2 - SCOPE

11. The scope of this guideline is to provide guidance to CCAFRICA members in developing or updating food safety legislation. The document covers guidelines on developing food safety legislations along the food chain including food traded nationally, regionally, and internationally.

SECTION 3 - PURPOSE

12. The purpose of this guidelines is to;
 - enable CCAFRICA member countries develop harmonized food safety legislations in order to strengthen science-based food control systems;
 - 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
 - promote an integrated approach to food safety along the entire food chain and facilitate intra-African food trade by creating a harmonized framework for the development of food safety legislations.

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 4 - DEFINITIONS

13. The following definitions are included to establish a common understanding of the terms used in this document unless the context otherwise requires:
- i. **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.
 - ii. **Food business operator (FBO):** The entity responsible for operating a business at any step of the food chain (CXC 1-1969).
 - iii. **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.
 - iv. **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.
 - v. **Food safety** means the assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use (CXC 1-1969)
 - vi. **Consumer** means persons and families purchasing and receiving food in order to meet their personal needs (CXS 1-1985).
 - vii. **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)
 - viii. **Risk Analysis** - a process consisting of three components: risk assessment, risk management and risk communication. (Codex Procedural Manual 27th edition 2019)
 - ix. **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)
 - x. **Food Safety** - the assurance that food and feed will not cause harm to the consumer when it is prepared or eaten according to its intended use (CXC 22R-1997)
 - xi. **Food Chain** - sequence of stages in the production, processing, distribution, storage and handling of a food and its ingredients from primary production to consumption (ISO 22000:2018)
 - xii. **Food Control System** - the integration of a mandatory regulatory approach with preventive and educational strategies that protect the whole food chain⁴
 - xiii. **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.

SECTION 5 – PRINCIPLES OF A FOOD SAFETY LEGISLATION

14. In developing and/or updating food safety legislation, member countries should be guided by the principles in these Guidelines and their legal drafting traditions.
15. It is recommended that the process of developing a food safety legislation should be open to consultation with stakeholders such as consumers, producers, food industry, consumers associations, NGOs, academia and research among others, while respecting legal requirements to protect confidential information as appropriate.
16. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time (WTO SPS agreement Article 5, para 7)

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

17. Parties should seek to obtain the scientific information necessary to reduce uncertainty and justify provisional measures
18. A national food safety legislation should be based on the following principles:

PRINCIPLE 1 - CONSUMER PROTECTION

19. Food safety legislation should have provisions for protecting the health of consumers as a top/primary priority.

PRINCIPLE 2 – THE FOOD CHAIN APPROACH

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

PRINCIPLE 3 - ROLES AND RESPONSIBILITIES

21. The administrative provisions of food safety legislation should clearly define roles and responsibilities of the stakeholders. These roles and responsibilities may be as follows:
 - a. The food business operators have the primary role and responsibility for managing the safety of their products and compliance with requirements relating to those aspects of food under their control.
 - 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 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 BASED LEGISLATION

22. Food safety legislation should be informed by sound scientific evidence. The legislation should make provisions for collecting and analysis of data, scientific information and evidence.

PRINCIPLE 5 - COOPERATION AND COORDINATION

23. The food safety legislation should provide for a mechanism for effective communication and coordination among the different institutions and organizations responsible for food safety along the food chain.

PRINCIPLE 6 – EQUIVALENCE

24. The principle of equivalence should be provided for in the food safety legislation. This recognition can apply at both the regional and international level. Mutual recognition, where applicable, should be applied to facilitate trade.

PRINCIPLE 7 - LEGAL/POLICY FRAMEWORK

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

PRINCIPLE 8 - HARMONISATION

26. When designing a food safety legislation, CCAFRICA member countries should aim at the harmonized approach to facilitate the Intra-African trade.
27. Codex texts, WTO recommendations and guidelines (SPS and TBT Agreements), where applicable, should be considered by CCAFRICA member countries when drafting/updating national food safety legislations in order to protect the health of consumers and ensure fair practices in food trade.

PRINCIPLE 9 - PRECAUTIONARY PRINCIPLE

28. The food safety legislation should have a provision for interim risk management measures, in special cases, where there is no information or an assessment of the available information reveals the possibility of adverse health effects, but where scientific uncertainty remains.
29. The measures adopted should be proportionate to the risk and not impose unnecessary restrictions on trade and shall not be applied indefinitely.

SECTION 6 – ELEMENTS OF FOOD SAFETY LEGISLATION

30. Food safety legislation should be consistent with the legal drafting traditions of CCAFRICA member countries upon which all other regulatory instruments are based. The regulatory instruments should be designed with the specific purpose of consumer health protection and/or the promotion of fair practices in food trade.

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. 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 must 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.

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

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

v. General 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, fairness and conflict of interest.

vi. Enabling Provisions

Depending on the country's legal tradition, 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); 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: 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 articles 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 tradition of the CCAFRICA member country. Such provisions may include; *repeal, savings, transition, entry into force and consequential amendments.*

REFERENCES⁶

1. Perspectives and guidelines on food safety legislation with a new model food law.
2. Patricia A. Curtis, An Operational text book guide to food laws and operations
3. Food Safety Management System. ISO 22000:2018
4. Food safety and standards act 2006 along with rules and regulation 2011. Commercial law publishers of India, PVT Limited
5. FAO/WHO Model food law www.fao.org/agn/food/pdf/food_law.pdf
6. Working Principles for Risk Analysis for Food Safety for Application by Governments (CXG 62-2007).
7. Principles and Guidelines for National Food Control Systems (CXG 82-2013).
8. Codex Alimentarius Commission Procedural Manual – e.g, definitions, risk analysis principles, Statements of Principle Concerning the Role of Science in the Codex Decision-Making Process and the Extent to which other Factors are taken into Account, and Statements of Principle Relating to the Role of Food Safety Risk Assessment
9. Principles for Food Import and Export Inspection and Certification (CXG 20-1995)
10. Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification (CXG 26-1997)
11. Guidelines for Food Import Control Systems (CXG 47-2003)
12. Guidelines for the Exchange of Information between countries on rejections of imported foods (CXG 25-1997)

⁶ The references are included for the purpose of transparency during drafting but would be removed when the guidelines are finalised

APPENDIX II**LIST OF PARTICIPANTS**

No.	MEMBER NAME/ OBSERVER NAME	PARTICIPANT NAME
1	Chairperson Kenya	Lucy Namu Kenya Plant Health Inspectorate Service
2	Co-Chair Senegal	Mame Diarra Faye Ministere de la Sante et L'action Sociale
3	Co-Chair Morocco	Abdelkarim Moujanni ONSSA
4	Kenya	Maryann Kindiki Kenya Bureau of Standards
		George Kiminza Kenya Bureau of Standards
		Lawrence Aloo National Public Health Laboratory, Kenya
		Josephine Natecho Simiyu Agriculture and Food Authority
5	Nigeria	Eva Edwards National Agency for Food & Drug Administration & Control, (NAFDAC)
6	Morocco	Khadiri Khadija Office National de Securite Sanitaire de produits
7	Mauritius	Shalini A. Neeliah Ministry of Agro-Industry and Food Security
8	South Africa	Malose Matlala Department of Health,
		Mr. E. J. Moruke Department of Agriculture, Land Reform and Rural Development,
9	Sierra Leone,	Josephine Mamusu Tarawali Sierra Leone Standards Bureau,
		Memunatu B Bah Sierra Leone Standards Bureau,
		James William-Sesay Sierra Leone Standards Bureau,
10	Rwanda	Emmanuel Munezero Rwanda National Industrial Research and Devel- opment Agency
11	Uganda	PAMELA AKWAP Uganda National Bureau of Standards,
		Charles Muyanja Makerere University, Uganda
		Hakim Mufumbiro Uganda National Bureau of Standards Uganda
		Moses Matovu Uganda National Bureau of Stand- ards Uganda
12	USA	USA Simone SooHoo Observer Organization International Council of Beverages Associations

13	France	Laura Gelezuinas Observer Organization FIVS
14	Egypt	Hanan Fouad Hamid Ibrahim Member Country Egyptian Organization for Standardization
15	South Africa	Lucia Anelich Observer Organization ICMSF