

## REGULATORY TRENDS IN FOOD SECURITY AND FOOD SAFETY:- EXAMINING POTENTIAL AREAS FOR COUNTY POLICY AND LEGISLATION

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### **Kenya lost Kshs. 2.1 Billion to maize disease last year**

‘About 26,000 hectares of maize was affected by lethal necrosis disease last year.

The Director of Crop Protection at the Ministry of Agriculture has said.”

*The Star Newspaper, Tuesday July 2 2013 at page 3*

### **Introduction**

Food security has traditionally been understood to mean the availability of adequate food stocks in times of need. According to the World Food Summit Plan of Action of 1996, "Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”

Nutrition, safety, and cultural appropriateness of food are also necessary elements for the realization of the human right to food, a socioeconomic right recognized at Article 43 (1) (c) of the Constitution of Kenya and numerous binding and non-binding legal instruments, including the *International Covenant on Economic, Social and Cultural Rights*. The *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* set out government responsibilities with regard to nutrition and food safety in order to realize the right to food, and confirmed that food safety is an essential component of food security.

Food safety has traditionally focused on the food processing sector and on inspections of finished products to assess compliance with established requirements. Increasingly, this traditional approach to food safety is being recognized as an inadequate means of ensuring food safety because it involves action only after the harmful food has already been produced, leading to the search for other strategies to ensure safe food.

A "*food chain approach*"-which looks holistically at the myriad steps and the different actors that contribute to the production of food - is designed to answer the weaknesses of traditional food safety systems. The food chain approach consists of regulatory and non-regulatory measures implemented at appropriate points in the food chain (from pre-production up to the point of sale) in order to ensure that food meets prevailing norms. An important feature of the food chain approach is that it incorporates the view that all participants in the food chain, from primary producers to processors to traders, share the responsibility for the supply of safe and nutritious food.

Given the Constitutional functions of County Governments on trade development (including the regulation of markets) and licensing /control of undertakings that sell food to the public, counties are expected to develop cogent regulatory and non-regulatory measures to ensure safe food. This contribution attempts to identify county policy and strategies on food safety.

### **Approaches to regulatory development on food safety**

Globalization and dramatic increases in the volume of trade over the last decade, including trade in food, have made food safety an issue of global concern. New technologies allow food products to travel farther and stay fresh longer, paradoxically posing an increased risk of the spread of biological, chemical, and physical food hazards. Governments have continually improved their means of detection, investigation, and control of these potential threats. Increasing populations, however, are placing greater demands on world food systems, especially in urban areas, where higher population densities increase the risks of food-borne disease.

In many countries, Kenya being a very good example, food contamination problems have weakened consumer confidence. While some outbreaks were accidental and unforeseen, others could have been predicted and avoided through proper monitoring and early warning mechanisms and controls. Furthermore, although some sectors of the food chain

are routinely subject to more preventive action and oversight (such as slaughterhouses and dairies), others are less so. Greater sophistication and improved access to information are also leading to increased consumer demands for safer food.

In light of these developments, there has been a growing recognition that the traditional pattern of food safety enforcement- ex post facto controls on the finished product (which can still be seen in many sectors in Kenya) - is not satisfactory for a variety of reasons. First, if the product has already reached the marketplace, ex post controls mean taking remedial action after the harm from unsafe food has already taken place. Not only is this course of action unacceptable conceptually (since food safety enforcement should seek to prevent harm), but it can also lead to greater costs - in health care, lost worker time, and product recalls.

Second, end-product testing entails an enormous waste of resources. By the time an unsatisfactory product is discovered, most of the resources needed to produce and prepare it have already been expended on its harvest, processing, preparation, packaging, and labeling. Clearly, removing the product earlier would cost less, and problems could have been avoided altogether through a greater focus on prevention of contamination throughout the food chain.

Third, ex post facto controls create an unfair burden by placing responsibility on government authorities rather than on the actors who actually produce and distribute the unsafe product. Although the government has an obligation to protect the health of consumers (in order to realize the rights to health and food, for instance), private actors also has a role to play. There is growing acknowledgement that private actors should bear more responsibility for providing safe food.

Recognition of the weaknesses of the current system has led to a number of changes in the food safety area. More countries have shifted the focus of enforcement from a system

of purely government-run inspections to a system of *government oversight* that monitors controls established and implemented by food businesses themselves. In many jurisdictions, legislation now requires companies to implement their own food safety systems, which government authorities then audit and certify.

Inspectors function less like enforcers and more like extension agents (ministry staff members who travel to farms to work with farmers and livestock owners), in this case educating business owners and helping companies implement their own food safety controls and comply with established standards. Of course, some kind of legally implemented enforcement and penalty system is still required, but the conceptual shift has been dramatic. In many cases, food policies, and even food legislation, state unequivocally that the primary responsibility for placing safe food on the market lies with the food producers themselves.

Even the changes just reviewed have not been sufficient to guarantee safe food. If pesticides have contaminated the product beforehand or if adulterants or contaminants can still affect the product in the supermarket, restaurant, or home, effective controls at the level of processing or preparing the food are worth little.

Safe food requires a comprehensive food chain approach, covering all inputs and steps in the life of a food, from its primary production to its processing, packaging, labeling, transport, storage, preparation, handling, and sale. All these functions are within the domain of county governments.

### **International Context**

As part of ongoing efforts to improve food safety systems, the food chain approach has been gaining greater currency at the international level in the last several years. In 2002, the *Committee on World Food Security of the Food and Agriculture Organization of the United Nations (FAO)* requested a background document on the approach. The following

year, the FAO Committee on Agriculture issued its *Strategy for a Food Chain Approach to Food Safety and Quality: A Framework Document for the Development of Future Strategic Direction*.

This Strategy included a FAO definition of the food chain approach, general background information, and a framework for the development of a food chain approach to food safety. FAO reformulated the Strategy in 2005, in part to extend the food chain approach to cover the question of nutrition. The 128th session of the FAO Council, FAO's intercessional governing body, endorsed the new Strategy.

In addition to the two FAO Strategies, other recent international documents reflect the importance of coordination with the animal-and plant-health areas to improve control throughout the food chain. The FAO Council, at the same 128th session, specifically called attention to the standard-setting work of the *Codex Alimentarius Commission* (Codex, for food safety issues); *the Office international des epizooties* (OIE, or *World Organization for Animal Health*, for animal health issues); and the *International Plant Protection Convention* (IPPC, for plant health issues). In so doing, the FAO Council recognized that food safety and animal and plant health are inextricable.

Safe food cannot be guaranteed unless one begins on the farm, where crops are grown and animals or fish are raised for food. In other words, one must start where the food chain begins. Codex itself recently referred to the standards of the OIE and the IPPC in its *Principles for Traceability/Product Tracing as a Tool within a Food Inspection and Certification System*, adopted at its July 2006 session. This again reflects the importance of coordination among the food safety, animal health, and plant health areas.

Other international organizations have recognized the importance of an interface between food safety and subject areas formerly regulated in discrete sectors. For instance, the *OIE Working Group on Animal Production Food Safety* (which includes FAO, the

World Health Organization, and Codex representatives) has drawn up a detailed work program for the development of standards on animal-production food safety, focusing on food safety measures applicable at the farm level.

Since OIE veterinary experts and Codex food safety experts tend to work mainly separately, a high priority of the joint working group is to review OIE and Codex standards in order to identify gaps and duplications and to develop procedures for the establishment and mutual recognition of common standards.

Finally, in 2005, a new standard of the *International Organization for Standardization (ISO)* specified the new requirements for food safety management systems throughout the food chain. The ISO 22000 series of standards for food safety management systems are designed to be applied by food businesses and other commercial entities in the food chain and are consistent with the principles of food safety developed by Codex.

Despite being divided into organizations mirroring in many respects the sectoral agencies existing at the national level (e.g., a food safety department in the ministry of health and a separate veterinary services department in the ministry of agriculture), the international community is making efforts to integrate tasks and mandates in order to improve food safety across the food chain.

There is increasing recognition that the best outcomes are guaranteed not by having animal health officers focus only on animal production, environmental experts only on environmental contamination, and public health officers only on food hygiene. Rather, organizations and governments are recognizing that integration and collaboration are key to an effective food chain approach.

### **Characteristics of the Approach**

The concept of the food chain approach has a natural appeal and a natural logic. Foods progress through a series of steps from the farm or the sea to the plate, as should the

control of their safety. According to the two FAO Strategies (which are the main international expressions of the approach), the food chain approach can be described as having four principal characteristics.

First, it is holistic, addressing food safety in the entire food chain. Since food safety hazards may be introduced at any stage of the food chain, adequate control at every point in the chain is essential.

Second, the food chain approach is preventive, answering the weakness noted earlier - that in many sectors food safety systems have tended to be reactive, taking action to remove a food product only after it has been produced or even after it has caused harm to human health. By contrast, with the food chain approach, controls are directed more at preventing food hazards than enforcing standards after the fact.

Thus, the approach embraces existing preventive codes of practice such as *Good Agricultural Practices (GAP)*, *Good Manufacturing Practices (GMP)*, *Good Hygiene Practices (GHP)*, and the *Hazard Analysis and Critical Control Point (HACCP)* system. All of these are designed to prevent food-borne hazards from entering the food chain in the first place.

Third, the food chain approach is risk-based, meaning that resources are allocated to combat the hazards that pose the greatest threat to public health, and where the potential gains from preventive action are greatest.

Integrating risk analysis into the food chain approach not only places the system on a sound scientific basis, but also helps to eliminate unnecessary controls, which are characteristic of ex post facto inspection systems. For greater efficiency, controls take place at the points in the chain where they are most effective at assuring the desired

outcome-a sufficient supply of safe and nutritious food that matches the cultural requirements of the intended market.

The fourth and final characteristic of the food chain approach is that it posits food safety as a *shared responsibility*, assured through the combined efforts of all the private and governmental actors participating in the food chain. Whether shared responsibility means joint responsibility or the allocation of partial responsibility at distinct points in the chain is an open question, discussed in further detail below.

### **Areas for County Legislative Action**

#### **Establish a County Coordinating Mechanism or Institution**

The first key area for legislative action is to create a new coordination mechanism or institution. At the moment, Kenya suffers from overlaps and gaps in coverage arising from weak collaboration and weak communication among existing ministries. The problem is expected to worsen given the transfer of food safety functions to the Counties. The solution should be for county governments to create a coordinating mechanism with representation from the various departments involved in food safety, or from all institutions and agencies involved in the food chain.

This body can also have representation from national government .This body would have responsibility for risk assessment and risk communication, and would coordinate food control activities. Different units or actors might be empowered to take action at different parts of the food chain, but always under the umbrella of the coordinating body.

One major advantage of creating a centralized institution is that resources, staff, and equipment can be pooled. Rather than several small or ill-equipped laboratories distributed across the various sectors (e.g., animal health, plant health, and food safety), one institution can combine all of these under one roof.

### **Cover all Sectors and all Steps**

The second area for legislative action is to ensure that all sectors, all temporal steps, all activities, and all foods are covered. That is, the legislation should not omit any part of the chain—beginning when an animal or a crop starts on the farm, in the aquaculture facility, or in the field, and continuing until the product becomes a food for human consumption. Sectoral regulation will still exist, but each sector must be addressed comprehensively.

For example, in the area of animal feed, legislation should begin with the manufacture or import of raw materials or animal feeds; address the accreditation of feed production plants; cover the use of specific feed materials and products; and regulate the evaluation, authorization, labeling, sale, and use of feed. Similarly, for food of animal origin, comprehensive legislation would include registration of farms; rules for care and feeding of animals; an animal identification system; and, as noted above, rules for slaughter, transport, food preparation, and handling.

For food hygiene, legislation should cover, among other things, construction of buildings; training of food personnel; additives, flavorings, packaging, and irradiation; and limits on contaminants and residues of pesticides and veterinary medicines in food. The key is that control takes place under the aegis of the coordination mechanism or centralized institution, while legal provisions or other interagency agreements cover the borderlines of the various sectors.

Whether all of these provisions are contained in one law, in just a few laws, or in a series of sectoral laws is not important. There does not necessarily have to be one enormous *Food Safety Law* covering the gamut of activities from farm to fork. Non-lawyers often complain that legislative frameworks are not *integrated*, or that they are *fragmented*. The layman's dream is of a single law covering the entire subject area, the way there can be a comprehensive food policy. *But in the legislative area, this is often neither practical nor*

*desirable*. A massive and comprehensive law covering the entire food chain would still have to be broken down into individual chapters covering the discrete topics of animal feeds, veterinary drugs, pesticides, and so forth.

Such a law would be unwieldy and probably unwise: because an area such as food safety is subject to scientific advancements, any developments in one sector might require a reexamination of the entire law. It is time-consuming and impractical to ask the legislature to revisit the law every couple of years to keep pace with developing scientific knowledge. With smaller sectoral laws, changes can be made in one area without opening up the entire law to review and scrutiny.

### **Incorporate Prevention and a Risk-Based Approach**

- ✓ The third area for legislative action will be to enact provisions that incorporate prevention and a risk-based orientation into the legal framework. There are a number of ways this might be achieved. First, lawmakers might expand requirements of food traceability. Food traceability legislation requires the identification and tracking of animals as well as the labeling and identification of foods and their ingredients. Legal provisions generally compel food businesses to establish a system to trace all animals, foods, or elements of foods back one step and forward one step in the food chain.
- ✓ The legislation also contains information requirements, stating that businesses must keep certain kinds of records and convey them to the food authorities, either on a regular basis or upon demand.
- ✓ Traceability can serve a number of objectives: facilitating tracking for food safety reasons, differentiating products for marketing purposes, reducing information costs for consumers desiring to know more about a food product, regaining consumer confidence and product reputation after an outbreak, decreasing costs to companies faced with product recalls, and generally improving the management of food supplies. The present discussion concerns only the first objective, i.e., the use

of traceability to enable food producers and regulators to quickly identify the point in the food chain where a food safety problem has occurred. This enables quick corrective action as well as rapid recall if a food presents a risk to human health.

- ✓ Although traceability does not in itself make food safe, by facilitating product recalls it can prevent further illness in unaffected populations. It can also function as a deterrent, since companies may fear liability costs if they can be easily identified. At present, food traceability applies only to certain kinds of foods. In order to enhance prevention, the scope of food traceability regulations may need to be expanded (although there will be associated cost implications).

#### **Harmonization of standards**

- ✓ Another possible area for legislative action will be *harmonization of standards*, since an effective system of prevention depends on setting uniform standards with which actors in the food chain can comply. Without harmonization of standards, it would be necessary to apply different measures at different places in the same food chain to arrive at the correct outcome (namely, safe food). Eliminating multiple standards and multiple controls streamlines enforcement and allows developing countries, small enterprises, and others to enter the market with at least a semblance of free competition. As a general matter, clear and harmonized standards enable participants in the market to know what the applicable requirements are.
- ✓ Another possible way of incorporating a preventive and risk-based approach is to enact legislation on biosecurity, which draws together the policy and regulatory frameworks for risk management across the different sectors of food safety, animal life and health (including fisheries), and plant life and health. Lately, there has been increasing work at the international level on biosecurity, which aims to manage biological risks in the three sectors mentioned above while simultaneously protecting the environment and contributing to its sustainable use. Embracing biosecurity in order to effectively implement a food chain approach will at a

minimum ensure the sharing of resources and approaches to risk management in the biosecurity sectors.

### **Key Concerns**

- ✓ For developing countries like Kenya, the main disadvantage of implementing a safe food safety system will be the potential cost. Implementation may, hiring more staff to carry out more inspections, and providing more training and education. It may also require implementing a more comprehensive system of food traceability.
- ✓ Another problem is that our products do not meet international food safety standards; they will have reduced trade access to global food markets. This calls for increased participation in the development of international standards elaborated under the auspices of the SPS Agreement and the main standard-setting bodies (Codex, the IPPC, and the OIE). Better standards do not necessarily lead to safer food, however, if countries cannot enforce them. Countries in particular have limited resources, and generally lack the technical and institutional capacity to cope with food-borne threats to public health.

### **Conclusion**

- ✓ The well structured food safety system reduces the incidence of food-borne disease outbreaks. This contribution presents a few suggestions for county legislative implementation. From the analysis, county governments are the centers of development of a safe food system.
- ✓ They have a resolute responsibility to adopt cogent framework that will ensure safe food in our table. Of course, there are many open questions, in particular about how to guarantee continuity of oversight in system and whether the costs of implementation will be prohibitive.