

POLICY BRIEF 48

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Updating public health-related food laws in east and southern Africa

This brief aims to inform policy dialogue on the protection of health in food law in east and southern Africa (ESA). A desk review in 2022 documented and analysed the features and provisions of health-related food laws, focusing primarily on enabling acts in the 17 countries of the ESA region covered by EQUINET. Referring to key provisions in international standards, this brief explores the extent to which these standards are included in ESA national laws. It provides information on gaps to be addressed and potential provisions that cover these gaps, with particular attention to general and specific food-related risks, and standards for health-promoting, governance and functions. The brief proposes areas for law reform to cover the range of health issues in current food systems. It calls for regional dialogue to harmonise food standards across ESA countries. Links to specific laws and standards are provided in the brief and the references for countries to more directly refer to source materials for law reform.

Food systems and public health

Food systems have a key role in promoting health and nutrition. National constitutions in many east and southern Africa (ESA) countries include the right to food or to adequate nutrition. A context of an expanding range and content of foods being produced, marketed, traded and consumed in the region calls for attention to current food standards. The health benefits of promoting certain foods and the risks to health from some novel, genetically modified and ultra-processed foods call for standards that protect public health, within and across countries. Current food-related laws in ESA countries vary in their scope, and in when they were last updated. The ratification of the African Continental Free Trade Area in January 2021 by 37 African countries creating a new single market in the African Union (AU) increases the urgency to update and harmonise food laws. Responding to this, a desk review was implemented in 2022 of current food-related laws in the ESA region. The review provided information on gaps to address, including in relation to international standards, and provisions that could cover these gaps. It aimed to support policy dialogue and legal review in countries and at regional level.

International and regional health-related food standards

International standards relevant to health and food are found in various legal instruments, including: the 2005 World Health Organisation (WHO) International Health Regulations, providing for capacities and port health measures relevant to cross border trade in foods; the Codex Alimentarius, providing standards for all foods provided to consumers; and the Food and Agriculture Organisation (FAO) 2014 International Plant Protection Convention on control of pests in food products. The World Trade Organisation (WTO) Sanitary and Phytosanitary Agreement and WTO Technical Barriers to Trade Agreement give countries rights to apply food safety measures, while requiring that these be not more restrictive on traded products than those produced domestically. WHO AFRO, Southern African Development Community (SADC) and AU have also produced guidelines for food safety and for harmonising food safety standards.

The FAO/WHO Food Safety and Quality Guidelines, 2003, provide strategies and principles for national food control systems to protect public health, while as a key trading partner, the European Union has developed a General Food law Regulation for that region.

Box 1 overleaf summarises the key areas covered in these international and regional standards.

Box 1: Key principles and areas covered in regional and international food standards

- Protect health by preventing, maximising risk reduction, controlling and provide a public health response to domestic and international risks to health throughout the food chain, covering production, processing, transport, distribution, marketing and advertising, through to consumption and storage.
- Establish capacities, authorities and processes for assessment, analysis, management and communication of health-related food risks. Prioritise prevention throughout the food chain and apply provisional precautionary measures where health risk is identified, taking into account the normal conditions of use, particular categories of consumers and cumulative toxic effects.
- Protect food-related human, animal and plant health through: procedures for regulating, testing, inspecting, certifying and approving foods, including packaging and labelling requirements, prevention of fraud and deception; and avoidance of food adulteration that raises public health risks. Base measures on evidence, transparent decision making and information; avoiding unnecessary interference with domestic and international trade and movement of food.
- Enable a positive interaction across stakeholders, including in providing for consumer protection and information; for producer and retailer responsibilities for food safety and risk communication and disclosure; and for state duties and co-ordination across sectors to monitor, audit and enforce standards and to communicate information and measures to the public and stakeholders.
- Establish emergency procedures and a rapid alert system for dealing with and restricting circulation of particular food-related hazards and emergencies.
- Set the responsible authority, powers, capacities and resources nationally, and as required for harmonised regional and international standards.
- Ensure capacities and resources for research and scientific co-operation.

Food laws in ESA countries: areas covered and gaps

The detail of the laws covered in the 17 ESA countries reviewed is presented in the background report that was used as the source for this brief. Beyond national constitutions, health-related protections are found in Public Health Acts, as the umbrella legislation for domestic protection of public health and inclusion of the rights and duties in the International Health Regulations; in Food standards laws, and specific acts of parliament covering fisheries, dairy, meat, livestock and plants, and in laws for biosafety and consumer protection. Only enabling Acts were reviewed, and specific details maybe found in by-laws and regulations.

Generally, the range of laws include measures to prevent and protect against the risks to public health related to a range of foods and measures for safe human consumption of foods. The laws prohibit the adulteration of food. Meat, milk, fish, and water are the most commonly regulated foods. ESA laws set out duties for persons engaged in the production, processing, or sale of food, and include measures to protect consumers.

General gaps: ESA countries vary in how far their laws cover the full food chain, and in how far they explicitly include measures for risk assessment and analysis, and for management and communication in the control of health-related food risks. Newer Biosafety Acts, not available in all ESA countries, provide more specific information on scientific advice and research, and regulate the promotion, advertisement and sale of food-related biosafety risks. There are gaps in ESA laws in measures for restoration and cessation, liability and redress.

In terms of key areas of food safety and risks covered, most countries include provisions for food labelling; standards for premises used for food production, storage and processing; as well as provisions prohibiting the sale of unwholesome, poisonous or adulterated food. They also control food preparation under unsanitary conditions, include inspection of food establishments, and testing and recall of unsafe foods. ESA countries generally cover in law the obligations of food operators and the authorities of state actors for ensuring food safety.

There are gaps in the risks covered: Not all ESA countries have Biosafety Acts, leading to gaps in regulating novel and genetically modified (GM) foods. Only three countries have specific provisions on infant foods, and there were limited specific provisions regulating ultra-processed and fortified foods, food supplements and microbial standards.

In terms of functions and governance, the Acts in ESA countries generally include authorities to set, monitor and inspect food standards, and to test for and dispose of unsafe foods. They include food labelling and consumer information. In all ESA countries, the health ministry/minister is the principle public health authority, but food-related authorities also lie with ministers of trade, industry and agriculture. Some countries have separate parastatal authorities and/or boards for food-related functions.

Gaps in functions and governance: Few ESA countries have legal provisions for risk assessment, scientific research, testing, and labelling of novel and GM foods. A process is underway by the African Organization for Standardization to harmonise biotechnology standards that could include provisions for these new food related risks. Laws in only three countries provide for some form of health impact assessment. It is unclear whether board-administered as opposed to ministry-administered functions more effective. This is an area for follow up inquiry, taking advantage of the variation on this in the region.

Addressing gaps in health-related food law in the ESA region

The acts in ESA countries reflect varying legal traditions and enforcement capacities. Proposals for law reform need to take this into account. However, the increasing movement of food across national borders and transnational involvement in food production, trade and marketing also calls for food laws to be harmonised in the region. The findings suggest options to address gaps that individual ESA countries may apply if needed, after assessing how far their current laws meet the key areas of international and regional principles and standards noted in *Box 1*.

1. Countries without or with old Public Health Acts would benefit from enacting or updating their public health law, including enabling provisions for food-related public health risks in the process. Zimbabwe's 2018 Public Health Act as a recently enacted public health law may be used to provide useful clauses, including on areas such as infant foods, health impact assessment and applying financial levies to incentivize controls and raise resources for food safety programmes. For example, Section 32 of Zimbabwe's Public Health Act empowers the health minister to identify *projects and activities which require a health impact assessment to be conducted prior to licensing or implementation; and the procedure for conducting the health impact assessment*, and in Section 118, the Act empowers the health minister with approval of the finance minister to
 - (a) *require those who cause harm to health including through products, emissions, processes or activities, to pay from their own resources for the ensuring and sustaining interventions to remedy them;*
 - (b) *identify companies that may be offered tax incentives or rebates for taking actions that reduce public health risks or promote health.*
2. Countries without Food Standards Acts or Food Control Acts could develop this law to create a more co-ordinated framework for the range of current and emergent risks and opportunities related to food safety. The 2022 Mauritius' Food Act provides a recently enacted example, with comprehensive provisions and clauses for countries reforming their food law to consider.
3. Whether in the Public Health Act or Food Standards Act, the law in ESA countries could more explicitly state the principle of ensuring risk assessment and response covering the entire food chain, as in newer laws. While countries have adopted Hazard Analysis Critical Control Point (HACCP) standards on a voluntary basis, they may consider incorporating these food control measures in law, as is the case in other regions globally.
4. On specific risks, countries that do not have them could consider enacting Dairy Acts, given the specific health risks of this sector. The rapid development of modern biotechnology applications in the food industry and the potential for cross-border transmission of GM and other food risks implies that each country will need to formulate relevant policy and law for

this, in Food Control and Biosafety Acts, and to harmonise law on this in the region. Zambia's Biosafety Act (2007) and Kenya's Biosafety Act (2009) may be useful sources of specific inputs for this area of law reform. For example, in Zambia's Biosafety Act Section 27, The Biosafety Authority has duties to:

prohibit the import, development, research on, transit, contained use, release or placing on the market of any genetically modified organism or a product of a genetically modified organism, if it contains any characteristic or trait which poses any risk to human and animal health, non-genetically modified crop, the environment and biological diversity.

5. Few countries have specific standards on advertising and sponsorships regarding ultra-processed foods, despite their expanding uptake. There is need to regulate drivers of risk such as advertising and sponsorships, particularly to protect young people. This can draw on similar measures in other laws, such as those provided in tobacco control or on infant foods.
6. ESA countries may consider addressing other gaps identified. These include creating a rapid alert system and procedures to deal with food-related emergencies, as well as duties for communication to producers, consumers and other players in the food chain. Zimbabwe's Consumer Protection Act (2019) and South Africa's 2009 Consumer Protection Act provide useful provisions on duties to consumers, including in the latter for consumers to lodge complaints with authorities.
7. With food processing and vending increasingly in informal sectors, there is need to test legal provisions for their applicability and to identify operational implications in these sectors.
8. In review processes, there is an opportunity to reduce fragmentation in multiple laws, personnel and authorities, to reduce overlap, and ensure strengthened co-ordination, given the multi-agency approach required to implement and enforce food laws.

These proposals point to areas that may be helpful in processes for governments, parliaments and stakeholders in taking forward law reform at national level. The importance of this area and the cross-border nature of many aspects of food systems suggest also a need for regional policy dialogue on harmonised regional standards. While both national and regional processes require technical information, the process of law reform itself offers an opportunity to engage stakeholders and strengthen awareness, dialogue and consensus on the rights, duties, and choices that ensure health promoting food practices. Such a process for law reform can widen knowledge of the law and support its implementation.

Selected references

The full background information, legal analysis of international standards, national laws, specific legal provisions and links to useful laws that this brief is based on can be found in:

Kasapila W (2023) A review of public health-related food laws in east and southern Africa, LUANAR with TARSC, ECSAHC and MoHCC, EQUINET Discussion paper 129, EQUINET, Harare <https://equinetafrica.org/sites/default/files/uploads/documents/EQ%20ESA%20Food%20law%20review%20Jan2023.pdf>

Further useful regional resources are

1. World Health Organization (WHO) Regional Office for Africa (2002) 'Food safety and nutrition food law guidelines' (2002) WHO AFRO, Brazzaville <https://www.afro.who.int/publications/food-safety-and-nutrition-food-law-guidelines>
2. Food and Agriculture Organization (FAO)/WHO Food Safety and Quality Guidelines (2003), FAO, Rome
3. Africa Union Development Agency (AUDA), New Partnership for Africa's Development (NEPAD) (2021) Continental Guidelines for Harmonizing Food Safety Standards, Johannesburg
4. SADC (2011) 'Regional Guidelines for the Regulation of Food Safety in SADC,' SADC, Gaborone, Botswana <https://silo.tips/download/regional-guidelines-for-the-regulation-of-food-safety-in-sadc-member-states>

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