

A review of public health-related food laws in east and southern Africa

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Executive Summary

Food systems have a key role in promoting health and nutrition. National constitutions in many East and southern Africa (ESA) countries provide for a right to food or adequate nutrition and food law is increasingly important, given expanding food products, trade and risks to health.

This report presenting findings from a desk review of current food-related laws in the ESA region was commissioned by the Regional Network for Equity in Health in Southern Africa (EQUINET), through the Training and Research Support Centre (TARSC), in association with the East Central and Southern Africa Health Community (ECSA HC), and Zimbabwe's Ministry of Health and Child Care (MoHCC). The review documented and analysed provisions in food-related acts for 17 ESA countries, viz: Angola, Botswana, the Democratic Republic of Congo (DRC), Eswatini, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe. It aims to support policy dialogue and legal review of health-promoting food standards within countries and in the ESA region.

The review used secondary sources from searches of public domain online databases. For international standards, searches covered food safety and health-promoting standards, including their principles, rights and duties; the key food safety and health-promoting standards and provisions on key functions, governance, authorities and financing in UN agency treaties, guidance and model food law, and in ESA regional and African continental guidelines.

At national level, the acts examined covered public health, food standards and safety and consumer protection, as well as specific acts on fisheries, animal diseases, dairy products, meat safety, plant protection, biosafety and genetically modified organisms (GMOs). For each country, evidence was extracted on the scope, objectives and mission; principles, rights, duties and authorities, key areas of food safety; risk and standards; functions, mechanisms, and administration and governance and financing. The findings were used to identify areas of coverage and key gaps for updating ESA food law, citing potentially useful example provisions.

The international and regional standards outlined in *Section 3* provide reference and guidance on country-specific food laws such as in the food-related risks covered in the Codex Alimentarius Commission, food product standards, hygiene requirements, hazard analysis and critical control points (HACCP), food additives, packaging, labelling and food safety systems. There are established principles for national food law from WHO and FAO that include maximising risk reduction; addressing the farm to table continuum; using risk analysis establishing emergency procedures; transparency and science-based food control strategies; and ensuring positive interactions among all stakeholders.

The analysis of national food laws in the 17 ESA countries in *Section 4* indicates that, generally, the range of laws include measures to prevent and protect against public health risks related to a range of foods, providing for their safety for human consumption, and prohibiting the adulteration of food with meat, milk, fish, and water most commonly regulated in public health Acts. They set out duties for persons engaged in the production, processing, or sale of food, and to protect consumers, albeit with variability across countries in their scope and specificity and in how far they cover the full food chain. The laws also vary in the extent to which they explicitly include measures for risk assessment and analysis, and 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, regulation of promotion, advertisement and sale, and 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; food preparation under unsanitary conditions, inspection of food establishments, testing and recall. The acts cover the obligations of food operators and the authorities of state actors for ensuring food safety. Eight ESA countries have biosafety acts that establish national biosafety authorities and regulate activities related to GMOs. Only three countries include specific provisions on infant

foods, and there were limited specific provisions regulating ultra-processed and fortified foods, food supplements and additives and microbial standards in food.

In terms of functions and governance, ESA acts generally include provisions for setting of standards, monitoring, inspection, food-testing and disposal of unsafe foods, and for food labelling and consumer information. Few countries have provisions for risk assessment, scientific research, testing, and labelling of novel and GMO foods. These could be included in biotechnology standards being harmonised regionally by the African Organization for Standardization. Laws in only three countries provide for some form of health impact assessment. 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 implementing food-related functions. This variation suggests potential to assess the relative efficacy of board-administered as opposed to ministry-administered functions, as an area for follow up inquiry.

While the acts reflect varying legal traditions and there is evidence of some harmonisation in more recently enacted laws, there remains scope for further standardisation. The findings suggest that:

- a. Countries without public health acts (Angola, Madagascar and Mozambique) and those with old acts (Kenya, Malawi, Mauritius, and Uganda) could enact/update their public health law, including enabling provisions for food-related public health risks.
- b. Countries without food control acts (Malawi, Namibia, Lesotho and Eswatini) may consider developing these to create a more co-ordinated framework for the range of current and emergent risks and opportunities specifically related to food safety.
- c. Many countries have enacted dairy acts. Given the specific health risks of this sector, Botswana, Mauritius, Lesotho and Seychelles may be encouraged to develop such acts.
- d. ESA laws could more explicitly state the principle of ensuring risk assessment and response covering the entire food chain, as in newer ESA laws. While countries have adopted HACCP standards on a voluntary basis, they may consider incorporating these food control measures in their laws, as is the case in some other regions.
- e. ESA laws collectively provide protections in a range of food, human, animal and plant related health risks. With food processing and vending increasing in countries' informal sectors, there is need to test these provisions for applicability and operational implications in these sectors.
- f. With the rapid development of modern biotechnology applications in the food industry and the potential for cross-border transmission of GMO and other food risks, it is important for each country to formulate relevant policy and law and to include specific provisions related to food safety and harmonisation of policies and biosafety acts regionally.
- g. 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, drawing on measures such as those provided in tobacco control or on infant foods.
- h. ESA countries may further consider addressing other gaps identified, including the creation of a rapid alert system and procedures to deal with food-related emergencies and communication to producers, consumers and other players in the food chain. Generally, the existence of multiple laws, personnel and authorities call for review to reduce overlap and ensure the strengthened co-ordination provided by a multi-agency model in food law and its enforcement.

The report identifies specific legal clauses in ESA laws that may serve as useful text for law reform. Some countries have more recently enacted laws, such as Zimbabwe's Public Health Act (2018); Mauritius' Food Act (2022); Zimbabwe's Consumer Protection Act (2019); Zambia's Biosafety Act (2007) and Kenya's Biosafety Act (2009) that may also be useful sources of specific inputs for law reform. The guidance in the 2003 WHO/FAO Model Food law, as outlined in *Section 3*, and the specific standards contained in the Codex and International Health Regulations (IHR) can also inform processes for reform and for harmonising standards in the region.

1. Background

International, regional and national food laws are becoming increasingly important because of the globalisation of food trade, the introduction of new technologies in the food sector and the unprecedented need to protect consumers' health. The United Nations International Covenant on Economic, Social and Cultural Rights provides for the right to adequate food and freedom from hunger and obliges states to ensure these are met (UN, 1976). Legal debates regarding food safety and quality, the rights of consumers and the duties of states, corporations, food producers and food vendors are ongoing at international, regional and national levels.

Food systems have a key role in promoting health, nutrition and protection from disease. Food security and fortification have been matters for policy attention, as have food-related risks to health and the environment. The World Health Organization (WHO) established the One Health Initiative, a collaborative, multisectoral and transdisciplinary approach that works at local, regional, national and global levels to improve human and animal health by bringing together relevant sectors such as public health, veterinary, agricultural, environmental and others, around issues such as the control of zoonotic diseases (diseases that can spread between animals and humans). The One Health Initiative is also directed to manage pollution, such as in waste water plant irrigation, and to combat antimicrobial resistance resulting from the extensive use of antimicrobials in animal feed that can also lead to antibiotic resistance in humans. The spread of ultra-processed foods in East and southern Africa (ESA) countries also raises the spectre of a rise in non-communicable diseases, with as yet, relatively weak legal provisions and systems to manage new products (Loewenson et al., 2022).

National constitutions in many ESA countries provide for the right to food or adequate nutrition, to access food that is nutritionally adequate and safe, and specify state duties to ensure freedom from hunger in objectives or rights provisions – as in South Africa, Kenya, Malawi, Namibia, and Uganda (Mulumba et al., 2010). With significant variation in the scope and timing of the updating of food-related laws in ESA countries, the current context calls for the review of food and health related laws to identify gaps in relation to international standards and to update national laws and enable regional harmonisation. The ratification of the African Continental Free Trade Area in January 2021 by 37 African countries, creates a new single market for the African Union and increases the urgency to update and harmonise food laws, to facilitate cross border trade, increase availability and access to safe food and protect the health of consumers, according to the African Organisation for Regional Standardisation (ARSO) in 2021. Food standards for the African Continental Free Trade Area are being harmonised by ARSO, while the Codex Alimentarius is developing guidelines for harmonised food safety legislation for African countries, to support the harmonisation of food laws.

Given this situation, the Regional Network for Equity in Health in Southern Africa (EQUINET), commissioned a desk review of current food-related laws in the ESA region, through the Training and Research Support Centre (TARSC) and in association with the East Central and Southern Africa Health Community (ECSA HC) and Zimbabwe's Ministry of Health and Child Care (MoHCC). The review 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, viz: Angola, Botswana, the Democratic Republic of Congo (DRC), Eswatini, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe.

The work was implemented between September and December 2022 and aimed to support policy dialogue involving policy makers, officials, technical and non-state organisations, and legal review of health-promoting food standards at national and regional level. To achieve this, the work tabulated the provisions of international and national food laws, and synthesised evidence on key provisions in international standards, and the extent to which these are included in national laws. The review aimed to use this analysis to provide information on gaps to be addressed and to identify potential provisions that cover these gaps in specific ESA country laws or international standards, with the aim of covering food safety and standards and key food

management systems, paying attention to general and specific food-related risks and standards for health-promoting, governance, functions, administration and financing.

2. Methods

A desk review used secondary sources from searches of public domain online databases. For international standards, the searches covered food safety and health-promoting standards and included their principles, rights and duties; the key food safety and health-promoting standards; and provisions on key functions; governance; authorities; and financing. This information was obtained from international and regional agency websites. The sources and international standards included are shown in *Table 1*.

Table 1: International health-related food laws, acts and regulations reviewed

Source	Document name
INTERNATIONAL	
WHO	International health regulations, 2005
WHO/FAO	Model food law, 2003
FAO/WHO Food, Agriculture and Renewable Natural Resources Legislation Database (FAOLEX), ECOLEX and NATLEX databases	Assuring food safety and quality guidelines, 2003
FAO/WHO Codex Alimentarius Commission	Codex texts e.g. International food standards/guidelines/codes of practice on food fortification/nutrient addition, baby foods, labelling, etc.
FAO	International plant protection convention (IPPC), 2014
International Organization for Standardization (ISO)	ISO 22000:2018, Food safety management systems — Requirements for any organisation in the food chain
World Trade Organization (WTO)	SPS agreement, 1995
WTO	TBT agreement, 1995
World Organization for Animal Health (Founded as OIE)	WOAH international standards, 1968
International Trade Centre (ITC)	ITC standards map, 2013
IFC / World Bank	Guidelines on food safety and standards, 2007
REGIONAL	
European Commission	General food law 2002
European Commission	European Union's Food safety policy, 2002
WHO AFRO	Food safety and nutrition food law guidelines, 2002
Southern African Development Community (SADC)	Regional guidelines for the regulation of food safety in SADC, 2011
SADC	Regional school feeding guidelines, 2021
SADC	Minimum standards for food fortification, 2020
SADC	Protocol on trade SPS Annex and Article 16, 2014
COMESA	Mutual recognition framework, 2019
East African Community (EAC)	Common market protocol, 2009
AU-NEPAD	Continental Guidelines for harmonizing food safety standards, 2022

Key: FAO = Food and Agriculture Organization; FAOLEX – Food, Agriculture and Renewable Natural Resources Legislation Database; ECOLEX – an information service on environmental law operated jointly by FAO, International Union for Conservation of Nature and the UN Environment Programme; NATLEX – Online database of national labour, social security and related human rights legislation by the International Labour Organization (ILO); Organization for Economic Cooperation and Development; COMESA – Common Market for Eastern and Southern Africa; SPS – Sanitary and Phytosanitary Measures; TBT – Technical Barriers to Trade; WOH – World Organisation for Animal Health; and AU-NEPAD – African Union – New Partnership for Africa's Development.

Online legal databases were used to source national laws from the 17 ESA countries. These include the National Council for Law Reporting (Kenya Law), and the legal information institutes of Namibia (NamibLII), Zambia (ZLII), Zimbabwe (ZIMLII), Uganda (ULII), Southern Africa (SAFLII) and Tanzania (TanzLII). The review used the most recent laws in force. Where laws sourced were in French (in the Democratic Republic of Congo (DRC) and Madagascar), or Portuguese, (in Mozambique and Angola), where feasible the provisions were translated into

English using Google Translate. The national laws sourced included public and national health acts, food control regulations, standards acts, consumer protection laws, fisheries acts, animal diseases acts, milk and dairy products acts, meat safety regulations, plant protection acts and biosafety/GMO regulations. These laws were selected based on their relevance to the health dimensions of food systems and their availability in the 17 ESA countries. *Table 2* presents the laws sourced. Data extraction was used to tabulate the provisions and specific wordings of the international/regional and national food laws reviewed and these are presented in a separate document, as relevant.

Analysis of the international and regional food standards was implemented first, as a basis for checking the template design for the review of country laws. National laws were examined by comparing key elements of scope, objectives and mission; principles, rights, duties and authorities; key areas of food safety covered; risk and standards; functions; mechanisms; and administration; as well as governance and financing.

EQUINET provided a checklist of key areas to check for in the data extraction and analysis. Key areas were food safety; risk and standards, including ultra-processed foods; fortified foods; infant foods; food supplements and additives; microbial standards in food and antimicrobial resistance (AMR); novel and genetically modified foods; animal feeds and zoonotic risks; urban agriculture; food markets, businesses and premises; and food systems and marketing with pandemic risk. Key functions assessed included standard setting; research and development (including scientific assessments on microbiological and chemical hazards); health impact assessment; procedures for domestication of international and regional standards (Codex Alimentarius, International Health Regulations (IHR) (International Health Regulations 2005); publication and disclosure of advice and information – including for consumers – labelling and other consumer protection; controls on advertising and sponsorships; monitoring, inspection, testing and disposal; port health on food and food-related emergencies. Mechanisms and administration included national, provincial, district and community level mechanisms; roles and powers; laboratory and inspection services; co-ordination across state sectors; the roles of the private sector and of collaboration and relationships between these and public sector institutions, and community, community organisations and consumers.

From the findings, the review identified key gaps in ESA food law, areas for updating food-related laws with provisions from international standards and selected ESA country laws that may be useful in this, and areas of legal debate.

There were a number of **limitations**. With the review focusing on enabling acts, provisions in subsidiary legislation and by-laws were not covered. The data collected may thus not capture the complexity and comprehensiveness of food laws in the ESA countries; this could be addressed in more detailed follow up work on specific gaps identified by this review. In addition, the Google translate tool for laws in French or Portuguese may have distorted some information. For Angola, the DRC, Madagascar and Mozambique, specific public health acts could not be found and were substituted by their ratification of International Health Regulations (IHR), with limitations in evidence on specific measures, governance and funding. Despite these limitations, the report provides substantial information on the current legal standards and gaps to inform subsequent policy dialogue.

3. Findings: International and regional standards

Table 1 shows the health-related food standards included at international and regional level; this section summarises the provisions of these standards as a reference point for the review of national laws.

The **WHO International Health Regulations (IHR), 2005, have been** ratified and signed by all 17 ESA countries as WHO member states and are thus binding and have been domesticated in national law. These have provided a standard for public health law to *prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and are restricted to public health risks, and which avoid unnecessary*

interference with international traffic and trade. Specifically related to food, IHR Article 1e provides that competent authorities are *responsible for the supervision of the removal and safe disposal of any contaminated water or food...and any other contaminated matter from a conveyance* (WHO, 2005:Art1e). In relation to port health, the IHR sets out that where the source of a health risk relates to a food product, international travel or trade restrictions may apply to the food source and its export or import to or from other countries, with states to notify WHO if two of four criteria are met, viz: *serious impact; unusual/unexpected event; risk of international spread; risk of trade restrictions* (WHO 2005 Sec.6). The IHR also includes assessment of capacities to address cross-border risks relating to food, and for national laws to include port health powers and capacities relating to such food-related risks (WHO, 2005).

FAO and WHO have a number of joint standards. The **Codex Alimentarius Commission** is a joint FAO/WHO programme and is a compendium of internationally recognised standards, codes of practice, guidelines and recommendations related to food, that aims to protect consumers and facilitate trade. It includes standards for all foods provided to consumers including raw, semi-processed and processed foods and sets standards used in country-specific food law related to food quality, veterinary drug and pesticide residues, food additives and food contaminants. Codex recommendations have been used in national law in ESA countries, to harmonise food standards and remove technical barriers in cross-border food trade (FAO Nutrition Division, 2006).

The **FAO/WHO Food Safety and Quality Guidelines, 2003**, provides strategies to strengthen national food control systems to protect public health, prevent fraud and deception, avoid food adulteration and facilitate trade. The guidelines provide overarching principles of food control systems and give examples of possible infrastructures and approaches for national systems. They also cover food safety, food quality and consumer protection, elements of a national food control system, principles of and issues for food control and a national food control strategy, and organisational structures for national food control systems (FAO Nutrition Division, 2002). *Box 1* summarises the key principles provided that may then be reflected in provisions of national law, policy and practice.

Box 1: Principles of food control in the FAO/WHO food safety and quality guidelines

When seeking to establish, update, strengthen or otherwise revise food control systems, national authorities are guided to consider:

- **Maximising risk reduction** by applying the principle of prevention as fully as possible throughout the food chain.
- **Addressing the farm to table continuum**, that is, integrating prevention throughout the production, processing and marketing chain, through to consumption such as using a Hazard Analysis Critical Control Point system (**HACCP**), and not simply by sampling the final product. While producers and retailers may be responsible for this, states should audit their performance through monitoring, surveillance and enforcing standards.
- **Establishing priorities based on risk analysis and efficacy in risk management**; as a basis for food control measures:(i) risk assessment, hazard characterisation and risk identification and exposure assessment; (ii) risk management; and (iii) risk communication across the process to all interested parties.
- **Establishing emergency procedures** for dealing with particular hazards (e.g. recall of products).
- **Transparency and development of science-based food control strategies**, including how they communicate food safety information to the public, and take into account the costs of compliance (resources, personnel, and financial implications) ,as these are often ultimately passed on to consumers.
- **Establishing holistic, integrated initiatives** that target risks and impact on economic wellbeing.
- **Recognising that food control is a widely shared responsibility** that requires positive interaction among all stakeholders. (FAO Nutrition Division, 2002)

The **FAO International Plant Protection Convention (IPPC), 2014**, is a multilateral treaty aimed at fostering coordinated action to prevent and control the introduction and spread of pests of plants and plant products, and guides country plant protection law based on harmonised scientifically based phytosanitary measures (Parker and Namuth-Covert, 2014). In relation to food, it thus provides standards for pest control in food products, including those crossing country borders.

The **WTO Sanitary and Phytosanitary Measures (SPS) Agreement, 1995**, confirms the right of WTO member countries to apply measures to protect human, animal and plant life and health through regulating, testing, inspection, certification and approval procedures; packaging and labelling requirements standards and/or recommendations developed by the Codex Alimentarius (for food safety); the World Organization for Animal Health (OIE) and the IPPC (for plant health). The WTO Technical Barriers to Trade (TBT) Agreement requires that technical regulations on traditional quality factors, fraudulent practices, packaging and labelling imposed by countries, may not be more restrictive on imported products than they are on domestically produced products, and encourages use of international standards (FAO Nutrition Division, 2006).

The **World Organization for Animal Health (WOAH/ OIE)** sets standards on animal health and veterinary public health including animal-related food safety from farm to primary processing. The International Organization for Standardization (ISO) food standards addresses issues relevant to consumers including food safety, nutritional labelling, hygiene, food additives, and test methods. ESA countries are members of the ISO and use ISO standards as a basis for national standards.

There are also a number of regional health-related laws, as noted in *Table 1*.

The **WHO Food Safety and Nutrition Food Law Guidelines, 2002**, build upon international frameworks for specific application in African countries. The guidelines focus on the process for the development of new food laws to help those directly involved. The guidelines point to a need to address overlaps and duplication of responsibilities, such as where local authority by-laws govern their own areas of jurisdiction, given that food safety regulation is governed by various ministries and institutions, creating unnecessary complexity.(WHO AFRO, 2002). In its fundamentals on food law it includes guidance on:

- Consumer protection, in terms of protection of health and prevention of fraud, including in product labelling and consumer information.
- Setting the responsible ministry/authority, whether by establishing independent authority or a national standards organisation.
- International and regional harmonisation and trade. Specifically, the guidelines note that for African countries: *Whilst there will be a desire to provide a similar level of protection, it is likely that they will have to achieve a balance between developing legislation which shows a commitment to match the advanced requirements of, for example, the EU and the USA and the need to provide appropriate minimum standards for their domestic food supply. In recognition that with limited resources an interim approach might be needed, a dual system may be necessary which could include a licensing scheme for export premises linked to frequent inspections for compliance to, for example, the EU or USA requirements* (WHO AFRO, 2002: Sec17).

The **SADC Regional Guidelines for the Regulation of Food Safety** aim to support the harmonisation of sanitary and phytosanitary (SPS) measures in the region to both protect consumer health and promote trade in agrofood products. The guidelines specifically advise countries to *establish a National Food safety management Committee, Council or Forum as a multi-sectoral forum to develop clear national food safety management policies and strategies for the continuous improvement of the food safety management system* and that this should involve relevant government agencies, industry and consumer representatives, as well as other stakeholders along the food production continuum (SADC, Regional Guidelines for the Regulation of Food Safety, 2011:3). While similar guidelines were not found in either the East African community or the Common Market for Eastern and Southern Africa, these regional bodies do have regulations on the application of the WTO SPS measures noted earlier.

The **AU-NEPAD Continental Guidelines for Harmonizing Food Safety Standards**, published by the Africa Union Development Agency (AUDA) and the New Partnership for Africa's Development (NEPAD), seek to promote harmonisation of food safety standards in Africa, to:

- ensure a high level of protection of human health;
- ensure the free movement of safe food within and across countries on the continent;
- prioritise food safety as a major public health and trade concern;
- avoid use of SPS issues as trade barriers to impede free movement of food; and
- to improve collaboration and co-ordination among African food safety institutions.

The guidelines propose a continental Food Safety Regulation Agreement, and food safety mutual recognition agreements to be signed among African states for a joint food regulatory system and as a framework for national laws. They also encourage countries to join the African Organization for Standardization beyond the 2021 membership of 39 out of 55 countries and to set up a database of current laws (Fortin, 2022).

Given the food trade between the ESA region and high-income countries, the standards in the European Commission General Food Law were also reviewed. In 2002, the European Parliament and the Council adopted Regulation (EC) No 178/2002, laying down the general principles and requirements of food law (the General Food Law Regulation). It sets out an overarching and coherent framework for the development of food and feed legislation, at both European Union and national levels, setting general principles, requirements and procedures that underpin decision making in matters of food and feed safety and covering all stages of food, feed production and distribution (European Commission 2022a, b). Key features of the standards covered are summarised in *Box 2*.

Box 2: Key features of the European Commission General Food law

The law sets up the European Food Safety Authority (EFSA), which provides support for the scientific testing and evaluation of food and feed. It does not cover production on the farm for private use, or the handling of food at home. It includes provisions on:

- The **prohibition of sale of foods dangerous to health** in the short or long term, or unfit for consumption, taking into account the normal conditions of use and particular categories of consumers, including due to cumulative toxic effects.
- Food legislation to apply at **all stages of the food chain**, from production, processing, transport and from distribution to supply. In particular, food businesses must guarantee the traceability of food, feed and food-producing animals at all stages of production and distribution; immediately withdraw food or feed from the market and recall products already supplied if these are considered to be harmful to health, and inform the appropriate authorities and consumers where necessary.
- In situations where risk is identified following a health risk analysis, the adoption of **provisional precautionary measures consistent with a high level of health protection**.
- A **rapid alert system** to restrict the circulation of harmful food or its withdrawal from the market; actions taken to prevent, limit or impose specific conditions on the placing on the market or the eventual use of food or feed; and the rejection of a batch of imported food; with this information to be made available to the general public where appropriate.
- Food or feed presenting a serious and uncontrollable risk to health or the environment, with **emergency protective measures** that can include suspension of trade in or imports of the product, and a general crisis-management plan and unit to cover situations where the standard emergency protective measures are insufficient.
- Protection of consumers against fraudulent or deceptive practices in the food trade such as food adulteration (for example, horsemeat in beef products), and information for consumers to make informed choices about food.
- **Transparency, comprehensive risk communication and public access to information** submitted in support of a risk assessment process, and independence and robustness of submitted scientific studies.
- **Governance and scientific co-operation** between countries and with civil society and the European Parliament in the governance of EFSA, in its management board, and with recruitment of best independent experts in EFSA's work (European Commission 2002a, b).

Across the various documents, the international and regional standards discussed in this section set some key areas that may be expected to be covered in national law. These are listed below. To:

- a. Prevent, maximise risk reduction, protect against, control and provide a public health response to domestic and international risks to health, arising throughout the food chain in the production, processing, transport, distribution, marketing and advertising, through to consumption and storage, to assure a high level of protection of human health.
- b. Establish capacities, authorities and processes for risk assessment, analysis, management and communication in food safety and control of health-related food risks, prioritising prevention throughout the food chain and applying provisional precautionary measures where health risk is identified, taking into account the normal conditions of use, particular categories of consumers and cumulative toxic effects.
- c. Protect food-related human, animal and plant life and health through: regulating, testing, inspection, certification and approval procedures; packaging and labelling requirements, prevention of fraud and deception; avoidance of food adulteration in ways that are commensurate with public health risks, based on evidence and transparent decision making and information; and which avoid unnecessary interference with domestic and international traffic and trade and free movement of food.
- d. Enable a positive interaction across stakeholders, including in providing for consumer protection and information; producer and retailer responsibilities for food safety and risk communication and disclosure; and state duties and co-ordination across sectors to monitor, audit and enforce standards and communicate food safety information and measures to the public and stakeholders.
- e. Establish emergency procedures and a rapid alert system for dealing with and restricting circulation of particular food-related hazards and emergencies.
- f. Set the responsible authority, powers, capacities and resources nationally and as required for harmonised regional and international standards.
- g. Ensure capacities and resources for research and scientific co-operation.

4. Findings: National health-related food law

The national food laws reviewed across the 17 ESA countries are summarised *Table 2*. This section presents the key features relating to their scope, principles, rights, duties and authorities; areas of food safety; risk and standards; functions; administration; governance; and financing.

4.1 Objectives, principles, rights and duties

Public Health Acts or national health acts are found in all ESA countries (See *Table 2*) and set out objectives relating to the domestic protection of public health. They also integrate the international rights and duties in IHR 2005. For example, the Tanzania Public Health Act indicates that, *The International Health Regulations, 2005 adopted by the World Health Assembly shall apply in tandem with the provisions of this Act (Sec. 2)*. Public health acts are usually the umbrella health law in countries, and provide the wider enabling mechanisms, rights, duties and powers for other laws dealing with health-related food matters. Specifically, in relation to food and health, these acts provide for the prevention and suppression of disease including food-related disease, and the promotion of food safety. In this they include the:

- protection of foodstuffs and prohibition of the sale of adulterated food products; and
- establishment and powers of competent authorities to enact and enforce specific regulations for all foods.

The acts in Malawi, Kenya, Uganda, Tanzania, Zambia and Zimbabwe specifically cover milk and dairy products as well as meat and meat products. In some countries, e.g. Zimbabwe, infant foods are also covered in the Public Health Act. The Public Health Acts for Tanzania, Lesotho and Eswatini list food poisoning as a notifiable disease at national level. In Malawi, Eswatini, Lesotho, Zambia and Uganda, the Public Health Act includes specific provisions for protection of foodstuffs, water supplies, meat and milk. In Angola, DRC, Madagascar and Mozambique, no specific Public Health Acts were found, but these countries have ratified the IHR 2005.

Table 2: National health-related food laws, acts and regulations in the ESA region

Countries	Public health law	Food control / standards law	Standards law	Consumer protection law	Fishery-related law	Animal health law	Dairy related law	Meat/ live-stock law	Plant-related law	Other law
Angola	IHR, 2005			Consumer Protection Law, 2003		Animal Health Act, CAP No. 65 of 2004			Law No. 5/21 approving the Plant Health Act, 2021	
Botswana	Public Health Act, CAP 63:01 amended as Act 11 of 2013	Food Control Act 65:05 of 1993	Standards Act, CAP 43:07, 1995	Consumer Protection Act, CAP 42:07	Fish Protection Act, CAP 37:01, 1975	Diseases of Animals Act, CAP 37:01, 2008		Livestock and Meat Industries Act, CAP 36:03, 2007	Plant Protection Act, CAP 35:02, 2007	
DRC	IHR, 2005									
Eswatini	Public Health Act, 1969		Standards and Quality Act, 2003		The Protection of Freshwater Fish Act, 1937	The Animal Diseases Act, 1965	Dairy Act, 28/1968	Veterinary Public Health Act, 2013 (Act No. 17 Of 2013)	The Seeds and Plant Varieties Act, 2000 The Plant Health Protection Act, 2020	
Kenya	Public Health Act, CAP 242, 1921	Food, Drugs and Chemical Substances Act, CAP. 254 of 2013	Standards Act, Chapter 496	Consumer Protection Act, 2012 (No. 46 of 2012)	Fisheries Act, CAP 378, 1991, (revised 2012)	Control and Diseases of Animals Act, CAP 66:02, 2012	Dairy Industry Act (Act 336 of 2012)	Meat Control Act, CAP 356, 1977 (revised 2012)	Plant Protection Act, CAP 324, 1979	Biosafety Act, No. 2 of 2009
Lesotho	Public Health Order (No. 12 1970).					Stock Diseases, 1896				
Madagascar	IHR, 2005	Decree No. 93 –844		Order No. 8333/2001		Law No. 2000 – 018.	Decree No. 2011 – 588			Order No. 24657/2004
Malawi	Public Health Act, CAP 34:01 of 1948		Malawi Bureau of Standards Act, CAP 51:02, 2012	Consumer Protection Act, CAP 48:10 Competition and Fair Trading Act, 2000	Fisheries Conservation and Management Act, No.25, 1997	Control and Diseases of Animals Act, CAP 66:02, 1967	Milk and Milk Products Act, CAP 67:05, 1972	Meat and meat products Act, CAP 67:02	Seed Act, CAP 67:06 of 1997 Plant Protection Act, 2018	Biosafety Act, CAP 60:03 of 2007
Mauritius	Public health Act, CAP 277 of 1925	Food Act, 2022, Act No. 12 of 2022	Mauritius Standards Bureau Act, Act 12 of 1993	Fair Trading Act, 1980	Fisheries and Marine Resources Act, 2007, Act No. 27 of 2007	The Animal Diseases Act, Act 9,/ 1925		Meat Act, Act No. 54 of 1974	Seeds Act, 2013 (No. 10 of 2013) Plant Protection Act, 2006	Biosafety Act, Act No. 3 of 2004
Mozambique	IHR, 2005		Standards Act (Law Decree 02/93)	Decree No. 76/2009	Decree No. 17/2001	Ministerial Order No. 100/87				Ministerial Order No. 80/87 Plant Genetic Resources
Namibia	Public Health Act, Act No. 2 of 2015		Standards Act, Act, No. 18 of 2005		Marine Resources Act, Act, No. 27 of 2000	Animal Health Act No. 1 of 2011	Dairy Industry Act (Act 30 of 1961)	Meat industry Act, Act No. 12 of 1981	Plant Quarantine Act, No 7, 2008	Biosafety Act No.7 of 2006

Countries	Public health law	Food control / standards law	Standards law	Consumer protection law	Fishery-related law	Animal health law	Dairy related law	Meat/ live-stock law	Plant-related law	Other law
Seychelles	Public Health Act, 2015, Act 13 of 2015	Food Act, 2014 (Act 8 of 2014)	Seychelles Bureau of Standards Act, 2014 (No. 2 of 2014)	Consumer Protection Act, 2010 (Act 30 of 2010)	Fisheries Act, 2014 (Act 20 of 2014)	Animals (Diseases and Imports) Act, 1981			Plant Protection Act, 1996 (Chapter 171. A 1996)	
South Africa	National Health Act, 2003 (Act 61 of 2003)	Foodstuffs, Cosmetics and Disinfectants Amendment Act, 2007 (Act 54 of 1972, amended as Act 39 of 2007)	Standards Act, 2008 (Act 08 of 2008)	Consumer Protection Act (Act 68 of 2008)	Sea Fisheries Act, 1988 (Act 12 of 1988)	Animal Diseases Act, 1984 (Act 35 of 1984)	Dairy Industry Act (Act 30 of 1961 as amended by the Dairy Industry Laws Amendment Act, 1972?	Meat safety Act 40 of 2000	Plant Health (Phytosanitary), Bill B14-2021)	Genetically Modified Organisms Act 15 of 1997
Tanzania	Public Health Act, 2009 (No. 1 of 2010).	Tanzania, Food, Drugs and Cosmetics Act, 2003 (No. 1 of 2003).	The Standards Act, (Act No. 2 of 2009)	Fair Competition Act, 2003	The Fisheries Act, 2003, (Act No. 22 of 2003)	The Animal Diseases Act, 2003 (Act No. 17 of 2003)	Dairy Industry Act, 2004 (No 8 of 2004)	Meat Industry Act, 2006 (No. 10 of 2006)	The Plant Protection and Health Act, 2015	
Uganda	Public Health Act(Act 281 of 1935)	Food and Drugs Act (Act 278 of 1959)	The Uganda National Bureau of Standards Act, 1983 (CAP. 327,)	The Uganda Consumer Protection Regulations, 2019	Fish Act (CAP. 197, 1951)	The Animal Diseases Act (CAP 38, 1918)	Dairy Industry Act 2000 (CAP 85)		The Plant Protection and Health Act, 2015	
Zambia	Public Health Act (CAP. 22 of 1995)	Food and Drugs (1972)	Standards Act 2017 (No. 4 of 2017)	Competition and Consumer Protection Act, 2010	Fisheries Act, 2011	Animal Health Act, 2010	Dairy Industry Development Act, 2010		Plant Pests and Diseases Act, 1994 (CAP. 233, 1994)	Biosafety Act, 2007
Zimbabwe	Public Health Act (CAP 15–17, No. 11/2018)	Food and Standards Act, 2001	Food and Food Standards Act (CAP 15:04, 2001)	Consumer Protection Act, 2019	Parks and Wildlife Act (CAP 20:14), 1991	Animal Health Act, (CAP 36:02, 1988)	Dairy Act (CAP 18:08) Revised edition of Act No. 28 of 1937 amended by Act No. 22 of 2001.		Plant Pests and Diseases Act, 2001	
ESA countries with the relevant Act	13	11	13	13	13	16	10	8	13	8

The acts in these ESA countries also regulate buildings used to store foodstuffs and prohibit the use of food establishments for residential purposes. They prohibit the sale of unwholesome food and provide for the seizure of such food and set standards for foodstuffs, as discussed later. The acts give the primary responsibility for all matters connected with public health to the ministry and minister of health, but also provide for delegated functions and co-ordination with other authorities including local governments, veterinary and agricultural sectors and environmental sectors. More recent public health/national health law, such as those of Zimbabwe and South Africa, provide for community health system mechanisms and public roles, and for information to communities and other stakeholders.

Food standards and control acts with the specific objective of promoting food safety were identified in eleven ESA countries. While standards acts in the other six countries generally cover all product standards, specific food standards laws in Botswana, Kenya, Mauritius, Seychelles, South Africa, Tanzania, Uganda, Zambia and Zimbabwe set more specific standards and comprehensive control measures and mechanisms for food safety and food-related health risks. They regulate premises used for food storage and food processing, prohibit the sale of unwholesome, poisonous or adulterated food, and prohibit preparation for sale of food under unsanitary conditions. Generally, both food control and food standards acts set objectives to ensure the provision of clean, safe and wholesome food to consumers and elaborate the domestic principles to achieve this. For example, Botswana's Food Control Act, 1993 establishes a National Food Control Board, whose functions are to:

- promote and protect personal and public health by ensuring the provision of safe and wholesome food to consumers;
- prevent and protect against commercial fraud in connection with imported or domestically available or produced unsafe and potentially hazardous foods;
- give advice and assistance to councils in matters concerning food safety;
- promote or carry out research and investigation into food safety and control;
- prepare and publish reports, statistics and other information on food safety or control; and
- to appoint advisory and technical bodies to assist in food safety and control matters.

Some acts, such as Zimbabwe's Food and Food Standards Act, for example, include in their objectives importation and manufacture of foods for sale; prohibition of sale, importation and manufacture for sale, of food that is falsely described; and fixing of standards relating to food and matters incidental to it. Some countries include medicines and cosmetics in the same law with food standards and include herbal medicines, such as Tanzania's Food, Drugs and Cosmetics Act, 2003. The Mauritius Food Act of 2022, as a more recent food law, explicitly includes the objective to provide for the modernisation and consolidation of laws relating to the safety and nutritional quality of food.

In ESA countries with food standards or control acts, the responsible ministry is the health ministry. A few countries provide for a specific Food Control Board (e.g. Botswana) or Food and Drugs Authority (e.g. Tanzania), to regulate and implement the law's objectives. As discussed later, there are also some laws covering specific foods including fish, meat, and dairy products, and others covering specific issues that also affect foods, such as GMOs and biosafety, which are enforced by the ministry responsible for that sector.

In countries that do not have specific food standards laws and that provide for food standards in general standards acts, the responsible ministry is often the ministry of trade and industry, or the authority is delegated to a National Bureau of Standards.

General standards acts appear to be well harmonised in ESA countries, given international ISO and Codex guidelines. They provide for standard specifications, standards marks, testing services, samples and information, product certification, system certification, appointment of inspectors and internal auditors, offences and penalties, victimisation and regulations. However, these provisions are not specific to food. The implications of this for the effectiveness of protections against specific food-related health risks, as compared to countries that have specific food control laws, would need follow up inquiry.

The overarching public health and food standards/control legislation in ESA countries is complemented by a number of specific acts that provide for other areas identified in the international standards discussed in the previous section.

Consumer protection laws found in 13 ESA countries protect consumers against unfair trade practices and false/misleading advertisement, and are similar in scope. They define consumer rights, set rules for damage prevention and redress and make provisions for consumer rights promotion/protection institutions. In some countries, such as Botswana, Malawi and Zambia, the law provides for a Consumer Protection Office or Commission to oversee consumer protection. For example, the South Africa Consumer Protection Act states its scope as:

The Act shall promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection, to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to promote a consistent legislative and enforcement framework relating to consumer transactions and agreements, to establish the National Consumer Commission (Rep: South Africa, 2009: Sec. 55).

In these countries any consumer may lodge a complaint with the Office against an alleged unfair business practice. Of interest, the Mauritius Consumer Protection Act under the general safety requirements states that this shall not apply to: (a) *growing crops or things... and ... (b) water, food, animal feed or chemical fertiliser* (Rep: Mauritius, 1991: Sec. 3).

In 16 ESA countries, animal diseases acts provide for the prevention of the spread of diseases affecting animals and human beings, based on international animal health standards set by the OIE. The acts, under the minister responsible for agriculture, include in their objectives, surveillance, early detection, transparent notification and a rapid response in the event of disease outbreaks among terrestrial or aquatic animals, including zoonotic diseases. These Acts provide a legal basis for enacting and enforcing meat safety regulations and vary in their comprehensiveness. The Madagascar Livestock Act has a wide scope: *This law establishes the general framework for measures to promote animal production, preserve and improve the national biological heritage, protect animal health and veterinary public health, and develop trade* (Rep: of Madagascar, 2006: Sec. 1). The Zambia Animal Health Act has wide measures to control the introduction and spread of diseases, including to: *prohibit or prevent the introduction of any disease from such place into Zambia or any part of Zambia, and to: prohibit or regulate the entry and movement of any animal, animal product, animal by-product, article, or conveyance within or out of any part of Zambia named in the order* (Rep: Zambia, 2010: Sec. 12). Botswana's Livestock and Meat Industries Act covers a wide range of meat products, including: *the slaughter of domestic livestock, farmed game, wild game and poultry for human consumption, the control and operation of abattoirs, slaughter slabs, cold storage facilities, meat processing plants, cutting premises, canning plants and the marketing, grading and inspection of livestock, livestock products and other matters related thereto* (Rep: Botswana, 2006: Sec. 2).

Meat control acts in Botswana, Eswatini, Kenya, Malawi, Mauritius, Namibia, South Africa, and Tanzania provide for comprehensive cover of meat and animal product safety, abattoirs, import and export of livestock, meat and meat products. In Seychelles and Uganda, meat safety control is covered in different acts, while in Zimbabwe, this is found in the Public Health Act and in various by-laws. The meat act in ESA countries authorises the minister generally responsible for agriculture to regulate the meat industry, including responsibilities to inspect and control the operations of abattoirs and meat processing facilities to promote meat safety and safeguard public health.

Dairy acts are found in 11 ESA countries (See *Table 2*). these acts provide for the improvement and control of the dairy industry and its products under the health ministry in Madagascar and South Africa, or the minister for agriculture in Eswatini, Kenya, Malawi, Namibia, Uganda, Tanzania, Zambia and Zimbabwe. The dairy acts in Kenya, Tanzania, Zimbabwe, South Africa and Namibia are more comprehensive, and cover activities along the dairy value chain from farm to table, as indicated in the international standards discussed earlier. In contrast, Malawi's Milk

and Milk Products Act (1972) does not cover traceability, while the definition of milk refers to bovine sources and uses old terminology. Zambia, Tanzania, Kenya, Eswatini, Namibia and South Africa include in their law the establishment of a Dairy Board to provide permits and licences and regulate the industry.

Fisheries acts in 12 countries, as shown in *Table 2*, cover fisheries and marine products and activities. In Zimbabwe, fisheries are covered in terms of conservation in the Parks and Wildlife Act and, more generally as a food in public health and food standards law. The fish acts include objectives to protect, manage, use and develop fish resources in a manner that is consistent with ecologic and sustainable economic gains. While this law is largely concerned with wider objectives, it does include the processing, export and disposal of fish, and conditions for quality management and fish marketing that may be pertinent for health. For example, in Madagascar: *'Aquaculture establishments must implement good hygiene practices and good aquaculture practices in order to control hazards and prevent the introduction and spread of diseases'* (Rep: Madagascar 2018: Sec. 14). In Mauritius, where a fishery control officer is satisfied that any imported fish or fish product is unsuitable for human consumption, he may, after an order has been obtained from the Permanent Secretary of the health ministry *'cause the fish or the fish product to be forfeited and destroyed'* (Rep: Mauritius 2007: Sec. 22). Mozambique's Regulation of Inspection and Quality Assurance of Fishery Products defines adulterated fishery products which are prohibited from sale or use as those that: *Show characteristics of odour, flavour, colour and texture related to decomposition, ... and are contaminated with pathogenic microorganisms or their toxins at levels that pose a danger to the health of the consumer* (Rep: Mozambique 2001: Sec. 45).

Plant protection acts in 13 ESA countries are based on and cover clauses indicated in the IPPC and the International Standards for Phytosanitary Measures. The acts provide for the prevention of diseases destructive to plants and their spread and facilitate trade in plants, including plant inspection, restrictions on imports, importation of plants, examination and treatment of imported plants, plant quarantine stations, containment and eradication of pests, and plant exports. While they do not directly provide for the protection of human health, the phytosanitary measures for plant health they provide indirectly protect food safety and human health.

Biosafety/genetically modified organism regulations are found in eight ESA countries, while (See *Table 2*) Botswana, Eswatini, Lesotho, Seychelles, Tanzania, Uganda and Zimbabwe do not have biosafety acts. Where present, Biosafety/GMO acts are recent and were generally enacted after 2000. They cover the import, export, development, research, transit, contained use, release or placing on the market of any GMO, whether intended for release into the environment, for use as a pharmaceutical, for food, feed or processing. In addition to the usual inspection, monitoring and liability measures in other food standards laws, the biosafety acts include provisions for scientific advice and research on, risk assessment of and licensing of GMO products, as well as for their containers, packaging and specific labelling of GMO contents and their promotion, advertisement and sales. They also include specific measures for restoration and cessation orders, liability and redress. In most of the countries reviewed, the minister responsible for agriculture or environmental affairs is the principal administrator on all matters related to biosafety, sometimes delegated to a national biosafety authority and a biosafety fund. For example, the Zambia Biosafety Authority has duties related to GMOs to: *(b) 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* (Rep: Zambia 2007: Sec. 27).

In general, the food laws included in ESA countries do reflect measures to prevent and protect against the public health risks related to a range of foods, providing for safety for human consumption and prohibiting the adulteration of food with meat, milk, fish and water most commonly regulated in public health acts. Albeit with variability across countries in the scope and specificity of these protections, these set out duties for persons engaged in the production, processing or sale of food, and to protect consumers. Some countries, such as Tanzania's Public

Health Act, detail the provisions in the enabling act while others do not, or set more general provisions leaving the detail to subsidiary regulations. All ESA countries integrate the IHR provisions and collectively, across all the laws, include elements of food safety in production, import, export, transport, distribution and sale, and the laws provide areas of precise information, such as the requirements for food labels. The variability in the laws emerges in how far they explicitly cover the full extent of the food chain, including the range from processing, transport, distribution, marketing and advertising, through to consumption and storage. The laws also vary in the extent to which they explicitly include measures for risk assessment, risk analysis, management and communication in control of health-related food risks, and how far they take into account particular categories of consumers and any cumulative toxic effects. The more recent biosafety acts (not yet available in all ESA countries) provide more specific information on scientific advice and research, on regulation of the promotion, advertisement and sales, and measures for restoration and cessation, liability and redress. These measures may provide useful examples for other foods such as ultra-processed foods. The variability in scope across countries suggests potential benefit in the more active regional harmonisation of laws, as discussed further in *Section 5*.

4.2 Key areas of food safety, risks and standards covered

Public health acts in numerous ESA countries, such as Eswatini, Kenya, Lesotho, Malawi, Mauritius, Zimbabwe and Uganda, include general provisions on the prevention and management of public health risks, but also specific provisions on food, as noted in the previous section. The 1948 Malawi Public Health Act, while a very old law, includes provisions prohibiting the sale and manufacture of ‘unwholesome’ foods.

No person shall sell or expose for sale or bring into Malawi or into any market or have in his possession without reasonable excuse any food for man in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use, or any food for any animal which is in an unwholesome state or unfit for its use and any medical officer of health, veterinary officer, health inspector, or any administrative officer or police officer of or above the rank of a sub-inspector may seize any such food, and any magistrate, on the recommendation of a health officer or veterinary officer, may order it to be destroyed, or to be so disposed of as to prevent it from being used as food for man or animal as the case may be (Rep: of Malawi, 1948: Sec.106).

Kenya’s 1986 Public Health Act includes provisions for

taking and examination of samples of milk, dairy produce, meat or other articles of food and the removal or detention, pending examination or inquiry, of animals or articles which are suspected of being diseased or unsound or unwholesome or unfit for human consumption, and the seizure and destruction or treatment, or disposal so as not to endanger health, of any such article which is found to be unwholesome or unsound or diseased or infected or contaminated, and of diseased animals sold or intended or offered or exposed for sale for human consumption (Rep: of Kenya, 1986: Sec. 134)

More specific provisions for food safety and control of food-related risks are found in food standards and food control acts, such as those for Botswana, Kenya, Seychelles, South Africa, Mauritius, Tanzania and Uganda. These acts define foods as substances for human consumption as described, for example, in the 2022 Mauritius Food Act in *Box 3*. The food control/safety acts generally include provisions for food labelling and standards for premises used for food production and for food storage and processing. They include provisions prohibiting the sale of unwholesome, poisonous or adulterated food; of preparation of food under unsanitary conditions; or of substandard or poor-quality food and for food inspection, testing and recall. The laws empower the minister responsible for health, or in some cases the minister for agriculture, to make further specific regulations related to food control. For example, *Box 3* shows the specific areas regulated in the 2022 Mauritius Food Act, the ESA region’s most recently enacted food act.

Box 3: Provisions in the Mauritius Food Act, 2022

The Mauritius Food Act, 2022 is the most recent food act passed in the region. It classifies 'food' as:

any substance meant for human consumption; including drinks and bottled water; live shells; chewing gum and other products of similar nature and use; and substances used or intended for use as ingredients in the composition or preparation of food. The Act excludes from the definition of foods live animals; plants prior to harvesting; fodder or feed; cosmetics; drugs or medicine as defined in the Pharmacy Act; tobacco and tobacco products; narcotic or psychotropic substances, and dangerous drugs as defined in the Dangerous Drugs Act; and veterinary drugs for use in livestock feed (Sec. 2).

The Act includes provisions relating to:

- Conditions relating to the import of food;
- Registration of food business operators and their responsibilities;
- Authorised officers, food microbiologists and powers of authorised officers;
- Determination of the compliance of an article;
- Procurement, analysis and examination of samples;
- Remedy in respect of articles seized and their destruction or disposal;
- Liability for costs and expenses incurred for storage or destruction or other disposal of seized articles;
- Food recall;
- Improvement notices and prohibition orders;
- Power of entry; defence of due diligence; and time limit for prosecution;
- Presumptions: protection from liability; offences and regulations (Rep: of Mauritius, 2022: Sec. 6).

Public health and food standards/control acts largely cover the obligations of food operators and the authorities of state actors, and the processes necessary to ensure food safety and control risks. The acts generally empower the minister to establish the regulations, which set out the specific standards to be met. The Mauritius 2022 Food Act provides a comprehensive indication of the areas that may be covered by regulation, including:

- *the standard, composition, strength, potency, nutritional quality, weight, quantity, shelf-life or other property of any food article;*
- *prohibiting the addition of any specified substance to food, or of more than the specified quantity of a permissible substance to food;*
- *[allowing] the use of any substance as an ingredient of any food to prevent the consumer or purchaser from being deceived or misled as to its nutritional quality, quantity, character, value, composition, effect or safety, or to prevent damage to the health of the consumer/ purchaser;*
- *the carriage of food by motorised vehicles or non-motorised vehicles;*
- *the mode of labelling of packaged foods;*
- *prohibiting or regulating the sale, advertisement or importation of any article or novel food;*
- *prescribing requirements respecting the package of any food and the placing in food for sale or in packages of the food, any toy or other object;*
- *securing the observance of hygienic conditions and practices in connection with the carrying out of food business;*
- *securing that food is safe and meets microbiological standards;*
- *protecting and promoting the interest of consumers;*
- *prescribing fees; or*
- *prescribing anything which may be in the interest of public health and food safety in carrying out the provisions of the Act (Rep: of Mauritius, 2022: Sec. 24)*

As noted in the previous section, specific food-related health risks are also covered in other acts. The South Africa Meat Safety Act, 2000 covers a range of meat products, including those from domestic and game animals and specifying bovine, donkey, duck, farmed deer, fowl, goat,

goose, guineafowl, horse, kangaroo, mule, ostrich, partridge, pheasant, pig, pigeon, quail, rabbit, sheep, turkey, blesbok, blue wildebeest, buffalo, Burchell's zebra, crocodile, eland, elephant, gemsbok, gray rhebok, hippopotamus, impala, kudu, mountain reedbuck, springbok and zebra (Rep: of South Africa, 2000: Sch 1, Sec 1).

The dairy acts generally include standards along the dairy value chain. However, the Zambia Dairy Industry Development Act also has provisions that go beyond the development of the dairy industry with the inclusion of standards for: *processing of safe and wholesome high value milk products*. The Food Standards Act noted earlier, provides specific standards of regulation and the use of codes of practice (Rep: of Zambia, 2010: Sec. 26), specifying the products covered as: milk; milk products such as milk powder or dried or condensed milk contained in sealed containers; clarified butter, whey butter or other butter; cheese; cream or ice-cream; margarine or other butter substitute made from vegetable or animal fats. In relation to health, they include provisions for inspectors' powers; animal health risk assessment; transportation of milk and milk products; cleaning, and sanitising of utensils and equipment; manufacturing and processing; classes and standards; quality of milk and milk products; sampling and methods of analysis; dairy product containers; keeping of records by processors and distributors; safe and unsafe milk; import and export of milk and milk products; official markings; product recall; and consumer protection. South African provisions relating to milk and dairy products are specific and precise on the prohibition of the sale of milk with antibiotic residues higher than maximum limits, basing the latter on Codex standards (Rep: of South Africa, 1997: Sec. 4).

Novel foods are defined as those foods that *do not have a history of being safe for human consumption; and requires an assessment of its impact on human health* (Rep: of Mauritius, 2022: Sec. 2). In relation to **novel and genetically modified foods**, Biosafety acts in Kenya, Malawi, Mauritius, Namibia and South Africa have general provisions to regulate activities relating to GMOs and establish national biosafety authorities and biosafety funds, including but not specifically relating to foods. As noted earlier, Botswana, Eswatini, Lesotho, Seychelles, Tanzania, Uganda, and Zimbabwe do not have biosafety acts. The 2007 Zambia Biosafety Act captures the elements for which standards are included, viz: *the research, development, application, import, export, transit, contained use, release or placing on the market of any genetically modified organism whether intended for use as a pharmaceutical, food, feed or processing, or a product of a genetically modified organism; establish the National Biosafety Authority and prescribe its powers and functions; provide for the establishment of the Scientific Advisory Committee; provide for public participation, information and consultation in the field of biosafety; provide for a mechanism for liability and redress for any harm or damage caused to human and animal health, non-genetically modified crop, socio-economic conditions, biological diversity or the environment by any genetically modified organism or a product of a genetically modified organism; provide for the formation and registration of institutional biosafety committees* (Rep: of Zambia, 2007: Secs. 4 and 5). Notably, this act exercises the precautionary principle in risk assessment and non-use of GMOs in foods strategic for food security. Box 4 provides further information on specific areas relating to food safety covered in this act.

Box 4: Provisions in the Zambia Biosafety Act, 2007

The Zambia Biosafety Act, 2007 includes specific provisions for risk assessment and evaluation relating to GMOs affecting foods. Specifically, it explicitly refers to foods in provisions addressing:

- *any intentional introduction into the environment, of a genetically modified organism or a product of a genetically modified organism for any commercial purpose, food aid...* (Sec. 2)
- *the import, development, export, research, transit, contained use, release or placing on the market of any genetically modified organism whether intended for release into the environment, for use as a pharmaceutical, for food, feed or processing, or a product of a genetically modified organism* (Sec. 3)
- *Establishing and maintaining a data base on genetically modified organisms and products of genetically modified organisms intended for direct use as food or feed, or for research and production processing and make available such information to the public* (Sec. 5)

- Authority to *declare any genetically modified organism or product of a genetically modified organism intended as food or feed or for processing shall be imported only after it is subjected to a full risk assessment in accordance with this Act;* (Sec. 5)
- Not granting any approval for the importation, development, production, release into the environment or placing on the market of any genetically modified organism or product of a genetically modified organism relating to any crop or livestock of strategic importance to national food security, and authority for the Minister to list any strategic crop or livestock of national importance and food security (Sec. 11)
- Risk assessment to include for imported products of GMOs used for human or animal health and *observation to ensure that changes in food habits, nutrition and other factors that could conceivably modify the expected impacts are insignificant* (Rep: of Zambia, 2007, Sec. 27).

Zimbabwe is one of the few countries with specific provisions on infant foods. Its Public Health Act, 2018, provides for the minister to make regulations in respect of (a) encouraging and promoting the breastfeeding of infants; (b) standards of composition, quality or other properties of any infant food or feeding article whether published inside or outside Zimbabwe; (c) the sampling and testing of infant food and feeding items; (d) regulating or restricting the marketing and sale of infant food and feeding items, (e) regulating, restricting or prohibiting the production, sale, distribution or display of informational or educational material on infant food and feeding items or the feeding and nutrition of infants; (f) the promotion of the any infant food or feeding article by health workers; (g) offering salaries, wages, gifts, etc. to health workers directly or indirectly, by manufacturers/ sellers of infant food or feeding items; and the receipt of same by health workers. It also provides for the establishment of committees to operationalise the provisions, along with powers of entry, search, seizure, inspection and investigation to prevent, detect or investigate such offences (Rep: of Zimbabwe, 2018: Sec. 95).

Notably, none of the public health acts reviewed have specific provisions regulating ultra-processed and fortified foods, food supplements and additives, microbial standards in food, or urban agriculture. Malawi's Public Health Act provides that no manufacturer or distributor may sell products with misleading or fraudulent information and requires general and nutrition labelling for all processed foods intended for infants. The foods covered include, but are not limited to, corn and soy flours, infant formulas, milk products, fruit juices, margarine and cooking oils, peanut butters and various types of drinks and snacks. (Rep: Malawi, 2004: Sec.19). Provisions pertinent to these issues may also be found in trade law. For example, the Malawi Bureau of Standards Act of 2012 provides for the development and enforcement of standards relating to food additives, fortified foods and microbial limits on foods as a responsibility of the Minister of Trade and Industry (Rep: of Malawi, 2012).

In summary, while all ESA countries have laws that provide general duties to prevent harm to health and most have acts that: prohibit the sale of unwholesome, poisonous or adulterated foods; ensure food labelling; and provide for food safety in premises for food production, food storage and food processing; and for the inspection, testing and recall/disposal of substandard food. In contrast, other food-related health issues are more variably covered.

4.3 Functions, relating to food and health

As noted earlier, the public health acts and food control/standards acts include provisions for standard setting; monitoring, inspection, and testing of food and disposal of unsafe foods; for food labelling and information to consumers. However, fewer laws specify functions related to risk assessment across the food chain, as noted in the 2022 Mauritius Food Act for example, or for health impact assessment, as the 2018 Zimbabwe Public Health Act provides for. The current laws do, however, domesticate the international standards in the IHR, 2005, by integrating them into national law, as well as providing for port health.

Consumer protection law is present in 13 ESA countries and these laws include provisions on the publication and disclosure of advice and information, including for consumers and labelling. For example, South Africa's Consumer Protection Act, 2009, includes rights to disclosure and information in plain and understandable language: *For the purposes of this Act, a notice,*

document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort (Rep: of South Africa, 2009: Sec. 22).

The same act regulates product labelling and prohibits false information that misleads consumers, providing that a retailer of goods must not *offer to supply, display or supply any particular goods if the retailer knows, reasonably could determine or has reason to suspect that... A trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description* (Rep: of South Africa: Sec. 24). There are, however, less specific stipulated controls on advertising and sponsorships of foods that may be harmful to health, such as the advertising of sweetened or ultra-processed foods in media or near places frequented by children.

As noted earlier, the food standards and general standards acts provide for functions to set standards on food safety, including through the establishment of a board or bureau to carry out assessments for setting standards. For example, the South Africa Standards Act, 2008, provides for the *development, promotion and maintenance of standardisation and quality in connection with commodities and the rendering of related conformity assessment services* (Rep: of South Africa, 2008: Sec. 4). The acts include functions for specifying standards and marks, collection of samples, and testing services for product and system certification, supported by inspection and information services. In more general standards laws, such as the 2009 Tanzania Standards Act, the functions include undertaking *measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade* (Rep: of Tanzania, 2009: Sec. 4).

The scope of the related food specific laws (dairy, meat, fish) covered in earlier sections indicate similar general functions relating to monitoring, inspection, testing and disposal, as well as to port health relating to imported and exported foods, and responsibilities of authorities to inspect and control relevant operations. These laws generally provide for the regulation and control of the production, manufacture, processing, marketing, distribution and sale of the relevant products, as well as specific functions relevant to the product. For example, acts relating to meat standards include as, in this example from Malawi, the prescription of:

minimum standards to which carcasses, meat or meat products shall conform, whether as a condition of importation or exportation, or of sale within Malawi and for the seizure, detention, condemnation and destruction, either with or without compensation, of any carcasses, meat or meat product considered by any grader, inspector or other prescribed person to be unfit for human consumption, and to prescribe the manner of handling, transporting, storing and packing of any carcass, meat or meat products (Rep: of Malawi, 1975: Sec. 4).

Inspection and control of the operations of abattoirs and meat processing facilities are covered in specific meat related acts, such is in South Africa, where the Meat Safety Act 2000 provides that no person can import meat into the country without a permit issued by the national executive officer of the ministry and that:

The national executive officer may during working hours enter any abattoir in order to (a) inspect any activity or process carried out at the abattoir; (b) require the owner to produce any record, book or other document relating to the abattoir for inspection or for the purpose of obtaining copies thereof or extracts therefrom; and (c) examine, sample and test any animal, meat or animal product (Rep: of South Africa, 2000: Sec. 15).

The earlier discussion on biosafety acts points to provisions for risk assessment, scientific research, testing, and labelling of these products. While fewer ESA countries have such laws in place, the African Organization for Regional Standardization (ARSO) is in the process of harmonising standards related to biotechnology.

All ESA countries thus domesticate international standards, provide for labelling, publication and disclosure of information, and include provisions for monitoring, inspection, testing and disposal. Only Botswana, Tanzania and Zimbabwe include in their public health acts provisions for health impact assessment. The Zimbabwe Public Act 2018 has the following provisions: (c) *The projects and activities which require a health impact assessment to be conducted prior to licensing or implementation;* (d) *the procedure for conducting the health impact assessment;* (e) *The contents of a health impact assessment report;* and (g) *offences and penalties in relation to health impact assessments* (Zimbabwe Public Health Act 2018: Sec 32).

Controls on advertising and sponsorships are less well covered, except in relation to infant foods. The management of food-related emergencies is also less specifically covered, except in relation to cross border emergencies under the IHR, 2005. Food laws in five ESA countries (Botswana, Kenya, South Africa, Tanzania and Zimbabwe) include port health provisions specifically related to foods.

4.4 Mechanisms, administration, governance and financing

The mechanisms for implementing food standards include national, provincial, district and community level mechanisms, laboratory and inspection services, personnel capacities and measures for co-ordination across state sectors and with private and community actors.

As noted earlier, the public health acts provide the overall administrative and stakeholder mechanisms for public health issues including those relating to food and nutrition. They also deem the minister and ministry responsible for health as the principal authority in matters relating to public health, including to make relevant regulations and to respond to public health issues in pandemics. In most ESA countries, the functions and areas of standards referred to earlier are implemented directly by the health ministry but many also have boards appointed by the minister to involve stakeholders in providing advice to the health minister in matters related to public health.

Countries with separate food control and food standards acts (as shown in *Table 2*) may have separate boards that specifically deal with the health-related food matters and functions noted in earlier sections. These boards may also be advisory, as stated in the 1987 Seychelles Food Act, 1987, which provides for a Food Control Board to: *consider and advise the Minister on matters necessary for the administration of this Act including the making of regulations under this Act* (Rep: of Seychelles, 1987: Sec. 12). The board in this country is appointed by the Minister and is composed of government ministries dealing with matters related to food, food manufacturers, processors, retailers and consumers. The board may also co-opt relevant people to provide input to its meetings without voting rights (Rep: of Seychelles, 1987: Sec. 12).

In contrast, Tanzania has a separate authority with delegated powers to implement functions on food as covered in the enabling act, the Tanzania Food, Drugs and Cosmetics Act, 2003. The board, called the Tanzania Food and Drugs Authority, is an Executive Agency operating in accordance with the Executive Agencies Act, 1997, which specifies that the authority:

shall be the regulatory body for the products regulated under this Act, and shall in particular –

- (a) regulate all matters relating to quality, and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics;*
- (b) regulate in accordance with this Act, the importation, manufacture, labelling, marking or identification, storages promotion, sell and distribution of food, drugs, cosmetics, herbal drugs and medical devices or any materials or substances used in the manufacture of products regulated under this Act.* (Rep: of Tanzania, 2003: Sec. 5).

As noted earlier, countries that do not have specific food standards laws may also cover the role of standard setting in more general standards acts, guided by regional standards bodies such as the SADC Cooperation in Standardization, the SADC Cooperation in Legal Metrology, and AU-NEPAD continental guidelines for harmonising food safety standards (Fortin, 2022). The administrative structures in these acts include a bureau with executive powers, in some cases

delegating the authority to a board. For example, the 2012 Malawi Bureau of Standards Act establishes the Malawi Bureau of Standards and vests management and control of standards in a Malawi Standards Board (Rep: of Malawi, 2012).

The various specific laws and functions relating to animal health, meat, dairy and fish are usually directly administered by the responsible ministry as noted earlier, including as regards the setting of regulations for specific standards and practices, labelling and prevention of fraud, enabling the powers of inspectors, as well as risk assessment and analysis. Some acts empower the minister to set up a specific unit to implement these functions, such as the 1996 Seychelles Plant Protection Act that provides that the responsible Minister may, (a) *establish a unit of such number of persons as the Minister thinks necessary for the purpose of ensuring the effective implementation of this Act; (b) appoint an inspector who shall form part of the unit referred to in paragraph (a); and (c) appoint an authorised officer* (Rep: of Seychelles, 1996: Sec. 12).

Specific provisions for an inspectorate to monitor and implement the standards set and to ensure the performance of operators in the relevant food sectors are included in many laws. For example, the Namibia Dairy Industry Act, 1961, specifies the powers of inspectors and analytical and bacteriological experts:

Subject to the provisions of this Act, an inspector may at all reasonable times enter any premises, place, vehicle or vessel wherein or whereon any dairy produce intended for sale is produced, processed, manufactured, stored or carried, and may –

- (a) inspect any such premises, place, vehicle or vessel, any utensil, apparatus or equipment or any water or substance thereon or therein, used or reasonably suspected of being used in connection with dairy produce;*
- (b) for the purpose of inspection and of taking samples, open any package thereon or therein which contains or is reasonably suspected of containing dairy produce;*
- (c) examine or grade any dairy produce thereon or therein in whatever receptacle or package it may be contained, and, without payment, take so much thereof or of any article or substance used or reasonably suspected of being used in connection with dairy produce as he may reasonably require as a sample for the purpose of testing, grading or analysing or having such dairy produce, article or substance tested, graded or analysed, and may in his discretion notify any person who has an interest in such examination of the result thereof* (Rep of Namibia, 1961: Sec11).

As a further example, the 2003 Tanzania Fisheries Act includes the following on the prevention of commercial fraud as a form of consumer protection: *The Director shall establish and maintain effective systems to detect and prevent commercial fraud by requiring every batch and fish or fishery products placed on the market to have a sanitary mark showing- (a) common name and scientific name of fish species; (b) grade; (c) exact weight; (d) name, postal and physical address of processor; (e) date and place of manufacture; (f) the expiry date; and (g) origin of the product* (Rep: of Tanzania, 2003: Sec. 26).

The food laws in ESA countries all have provisions for the funding of their operation, generally through funds appropriated by parliament, and through penalties, levies or fines charged. The funds and assets covered by the laws may include fees for services rendered and other income, as for example, specified in Eswatini's Standards and Quality Act, 2003:

The funds and assets of the Authority shall consist of – (a) All monies or property that may be donated, lent, or otherwise granted to the Authority by the Government, any other Government, person or international organisation; (b) All property or investments otherwise acquired by or invested in the Authority and any money earned or accruing therefrom; (c) Any monies raised or borrowed by the Authority with the approval of the Minister (d) All other monies or property that may in any manner become payable to or vested in the Authority regarding any matter incidental to its purpose or functions (Kingdom of Eswatini, 2003: Sec11).

Levies and taxes on specific food products applied for public health, such as on sweetened beverages or foods, are generally covered in separate laws under ministries of finance and allocated from the consolidated revenue fund, or provided for as earmarked funds. Zimbabwe's 2018 Public Health Act raises a number of further options, shown in *Box 5* below.

Box 5: Public health funds in Zimbabwe's Public Health Act, 2018

Zimbabwe's 2018 Public Health Act empowers the Minister to establish one or more funds for public health purposes to ensure that public health services objectives and requirements are met as provided for in the constitution of the Fund. The Act empowers the Minister of Health, with the approval of the Minister of Finance, to raise resources for the public health funds from the following sources:

- (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;*
- (c) raise charges or fees for licences, assessments; inspections, penalties and other public health service charges and for services such as for health impact assessment public health inspections and other services;*
- (d) require contributions from companies, including those with high health risks; (e) impose financial penalties at prevailing market rates, for contraventions of health laws for financial gain;*
- (f) recover funds spent on public health emergencies and public health events from the Consolidated Revenue Fund (Rep: of Zimbabwe, 2018: Part X111,118).*

The following section discusses the variations and gaps in food standards enacted in ESA countries, as identified by the findings in this section, including in relation to the international and regional standards presented in *Section 3*.

5. Discussion: Coverage of and gaps in ESA food and health law

The ESA laws covered in *Table 2*, whose scope, objectives, standards, administration and resourcing are discussed in *Section 4*, indicate that many areas of international standards are covered across various, although as noted by WHO AFRO, their fragmentation across different local and central authorities and sectors is a challenge. Local authorities have their own by-laws governing their areas of jurisdiction, while food safety regulation comes under various ministries and institutions, making the process of implementation complex, with multiple potentially overlapping personnel and responsibilities involved in risk assessment, inspection and enforcement (WHO AFRO, 2002). As noted in the methods, the review covered the enabling acts, which largely set definitions, objectives, broad principles and areas for standards, as well as mechanisms for regulation, inspection and enforcement; assessment; control and resourcing; along with duties and powers. However, as detailed provisions and specific standards are covered by regulations under these acts, the review of which was not included in the scope of this work, legal provisions covered in this subsidiary legislation have not been captured. The review of specific regulations for specific food-related risks, processes or standards may be carried out as a follow up inquiry.

5.1 Key areas for law reform

The ESA food laws outlined in *Section 3* are crafted according to the legal traditions of each country's language and history. However there is evidence of common legal traditions in the earlier laws, while more recent laws clearly include the influence of harmonisation and standardisation reflected in international and regional standards. This section discusses the coverage and gaps in the laws, particularly with regard to key areas covered in the international and regional standards outlined in *Section 3*. While areas for law reform are identified from the legal analysis, it is noted that law reform is also driven by countries' adoption of updated food and nutrition policies and strategies.

In relation to the **prevention, maximising, risk reduction, protection against and control of a public health response to domestic and international risks to health arising throughout the food chain**, the findings in *Section 4* indicate that these areas are broadly covered in various acts. These include public health acts, food standards/safety and control acts and in some specific acts covering particular foods, food sources and risks, viz: dairy, meat, fish and plants. The update of public health law and general food standards acts may facilitate co-ordination and linkages across specific areas of law, and in a One Health approach, across the various sectors with responsibility for food laws.

Public health acts in ESA countries, particularly those with old acts (Kenya, Malawi, Mauritius, and Uganda) could be updated and, in the process, introduce enabling provisions for food-related public health risks including for mechanisms, powers, capacities and resource mobilisation. This can include applying a primary health care approach encouraging the involvement of communities with reference to the rights and duties central to health policy in ESA countries, ensuring that these are also applied to food issues. This may also support action on food issues at community, local, and national levels in a co-ordinated manner that involves all interested parties, as found, for example, in Zimbabwe's 2018 Public Health Act. It refers to many foods covered in other laws, but also specifically covers infant foods, and includes processes such as health impact assessment and codes of practice for specific health risks.

ESA countries without food control acts (Malawi, Namibia, Lesotho and Eswatini) may consider developing these to provide a more co-ordinated framework for the range of current and emergent risks and opportunities specifically related to food safety, explicitly linking other laws and sectoral authorities. Hence for example, these laws can refer to standards and processes for risk assessment and management for novel foods, ultra-processed and irradiated foods and food fortification, including provisions for regulation that covers specific consumer groups such as children.

Some ESA countries integrate areas relating to food health issues in broader public health/food standards or laws, such as meat-related hazards identified in Zimbabwe's Public Health Act, while others have established specific acts for these areas. Dairy acts are frequently specifically enacted, given the specific features and health risks of this sector. Notably, Botswana, Mauritius, Lesotho and Seychelles do not yet have dairy acts and may be encouraged to develop them.

ESA laws generally cover **risk assessment and control for protection of human health at different points in the food chain (production, processing, transport, distribution, marketing and advertising through to consumption and storage)**, particularly production, processing, retail and labelling. However, there is less coverage of risk assessment procedures, marketing, advertising and storage.

The enabling acts are general in their provisions, leaving the detail for specific areas of food processing and standards, hygiene, packaging and labelling, additives and pesticides, to the associated regulations to facilitate updates. ESA laws could, however, more explicitly state the principle of ensuring risk assessment and response across the entire food chain and enable the minister to set specific standards and measures in regulations and codes of practice, as in the newer ESA laws.

To achieve this, ESA countries have generally adopted HACCP standards from Codex and ISO with regard to food safety practices, although these are implemented on a voluntary basis. Other regions, such as the European Union have incorporated food control measures such as HACCP into their food laws. This could be achieved in the ESA region by including reference to duties and authorities for risk assessment and control across the food chain in their enabling acts, with subsidiary regulations providing for such as the HACCP and related standards and operational guidelines.

ESA laws collectively do provide **protections over a range of food-related health risks in human, animal and plant life and health**. In various laws and with some variability, as indicated in *Section 4*, they specify the regulation; testing, inspection, certification and approval procedures; packaging and labelling requirements, prevention of fraud and deception, and avoidance of food adulteration. They also prohibit the sale of poisonous, unwholesome or adulterated food, fraud in labelling, adherence to prescribed food standards and the conditions for preparation of food, although these require regulations that deal specifically with each sector and its specific conditions. The range of food laws also tends to focus on larger formal producers, ignoring the fact that food processing and vending is now also widely taking place in the informal sector. This means there is need to proof test the laws with regard to their applicability and operational implications in this sector.

For countries with older legislation, laws may need to take into account new public health risks. For example, only eight countries have biosafety laws that address novel and GMO foods, despite their rapid spread in the region, demonstrating an area for legal reform and harmonisation. With the rapid development of the application of modern biotechnology in the food industry and the potential for cross-border transmission of other food risks and GMOs, it is important that each country formulates policy and laws in this field. Harmonised policies and biosafety acts should also be enacted across the region, though it is noted that most ESA countries are signatories to the Cartagena Protocol on Biosafety. Notably, Zambia's 2007 Biosafety Act applies the precautionary principle in avoiding GMOs in areas strategic for food security. Other areas that need attention include the use of ionising radiation in food preservation, given that many ESA countries are importing foods from countries using these new technologies.

Few countries have specific standards on advertising and sponsorship relating to ultra-processed foods and sweetened beverages, despite their expanding uptake. There is need, beyond labelling such products, to address the drivers of risk in corporate practices such as advertising and sponsorships, particularly when targeting young children. New regulations could draw on legal measures provided for this in tobacco control laws, or provisions regulating infant foods.

The current food-related laws have limited coverage of **emergency procedures** and rapid alert systems for dealing with and restricting the circulation of acute food-related hazards and emergencies. Some countries include this in umbrella public health laws, including through the domestication of the IHR, and in civil protection laws, which are not covered in this review. However, this area is not well covered in specific food standards, safety and control laws, nor in the immediate use of resources by local authorities to meet such emergency needs, or their right to claim such costs against the producer/s' consolidated revenue. This is despite emerging evidence of pandemic risks related to livestock and food markets, trade disruption, food insecurity arising from emergency situations and states' constitutional duty to ensure freedom from hunger, including for vulnerable communities and during emergencies.

The laws variably cover **capacities and resources for research and scientific co-operation**. Evidence, transparent decision making and communication of information is key for setting and enforcement of standards, including for new food-related risks. Given the range of emergent areas and risks in food safety noted above, including in liberalised trade, more profile could be given to this in current law. Some laws enable the setting of codes of practice or regulation, which demands credible standards of independent evidence and review. This is particularly important if standards are to be set and operationalised in a manner that protects health without unnecessary interference with domestic and international traffic and trade and free movement of food, as indicated in the universal domestication of the IHR and Codex standards.

ESA countries vary in how they require evidence to be prepared for court proceedings, though most have incorporated a defined procedure within their food control acts. It is also common practice for countries to appoint suitably qualified scientists as 'analysts' who are capable of issuing evidence in court proceedings. Having these provisions and clear procedures in law minimises the risk that evidence will be successfully challenged in the court.

The ESA laws stipulate a range of **capacities, authorities and processes related to food safety** and set the responsible ministry is set as the authority for the enforcement of standards. However, this is sometimes delegated to a separate parastatal food (and drugs) authority or inspectorate. It would be useful to analyse the costs and benefits of retaining administration within a ministry versus a separate authority, across a number of dimensions (operational, capacities, resources, enforcement, co-ordination across sectors and actors), bearing in mind the need to avoid duplication and increase efficiency

The findings in *Section 4* suggest some gaps in ESA laws in their cover of communication to producers, consumers and others on food safety and control of health-related food risks; in explicitly prioritising prevention (versus mitigation) throughout the food chain; and in applying provisional precautionary measures where health risk is identified, taking into account the normal conditions of use, particular categories of consumers and cumulative toxic effects.

ESA laws broadly **set the responsible authority, powers, capacities and resources** nationally, and make explicit reference to international standards in the IHR and Codex. The provision for operationalising the laws from general revenue is present in all ESA countries, as is the collection of revenue from penalties and fees. Explicit ringfencing of revenue, from penalties and fees or from taxes on specific foods harmful to health to be used for health promotion and protection, is generally under the authority of the Ministry of Finance. However, in some ESA countries, the fines imposed, penalties or relative banding of penalties may need review to ensure they reflect prevailing market prices and the real costs of inspection and prosecution in court, and serve as an effective deterrent.

ESA countries are currently exploring new forms of innovative financing for health and these may also be enabled in law. Zimbabwe's 2018 Public Health Act was, for example, noted to allow the establishment of public health funds by the Minister of Health with the approval of the Minister of Finance, and for resources drawn from remedial actions and fees for assessment, services provided, contributions from companies – including those with high health risks – and recovery of funds used for emergencies from a consolidated revenue fund.

International standards call for laws to enable **positive interaction across stakeholders and for consumer protection and information**. These standards also call for laws to set producer and retailer responsibilities for food safety and risk communication and disclosure, along with state duties to co-ordinate across sectors, to monitor, audit and enforce standards and to communicate food safety information and measures to the public and stakeholders. One area for law reform could be to better co-ordinate and cross reference the functions of agencies involved in food safety to reduce overlap or gaps in activities, and to better utilise scarce public resources. ESA countries can review laws to ensure that they reflect a multiple agency model to food law and its enforcement, as for example in the One Health approach.

Section 4 provides specific legal clauses used in ESA laws that may serve as useful text for law reform processes. Some countries have more recently enacted laws, such as Zimbabwe's Public Health Act (2018), Mauritius' Food Act (2022), Zimbabwe's Consumer Protection Act (2019), and Kenya's Biosafety Act (2009). . These more recently enacted laws may also be useful sources for law reform. In addition, the guidance in the 2003 WHO/FAO Model Food law discussed in *Section 3*, and the specific international standards or practices contained in the Codex and IHR can also inform reform processes and assist in harmonising standards in the region.

5.2 Legal debates and implementation issues

While not a focus of this review, the issue of enforcement and implementation is relevant to any process of reform and operationalising of legal standards. Gaps and fragmentation of laws, weak involvement of stakeholders in their review, and poor communication of risks and measures, weakens implementation. This also leaves consumers vulnerable to unhealthy practices, as do inadequate institutional resources and capacities for risk assessment, inspection and control. Labelling laws may be well enforced, but without media and information outreach, consumers may not understand them and may be poorly organised to enforce them. Liberalised trade and

unregulated importation and production of substandard foods in ESA countries affects consumer health, but also undermines trade in food exports. The informal sector, which is often a significant producer and distributor of fresh and processed food products, including street foods for direct consumption, often lies outside the scope of much ESA food law, except in municipal by-laws and environmental standards.

Not having food safety policy in place, as for example in Malawi, weakens the case for and institutional drivers of strengthened or updated food safety-related legislation. Gaps in evidence and scientific capacities also affect the ability to make the case for legal reforms, especially for health impacts that may be unmonitored, or linked to chronic diseases that emerge over time.

The law itself may provide loopholes that are used to avoid implementation and prosecution, as indicated in the case of supplier warranties outlined in *Box 6*.

Box 6: Legal warranties as a defence against harmful food practices

A retailer who purchases food for manufacture or re-sale and requests for food compliance within the law is provided a warranty by the supplier, as provided for in the Seychelles Food Act 2014, Sec. 23, or the Tanzania, Food, Drugs and Cosmetics Act, 2003, Sec. 111. This warranty can be used as defence should the food be found not to meet legal requirements. However, a warranty defence of this nature can also be used by food businesses to avoid prosecution, when they should and may have recognised that the food might be substandard and harmful to health.

Involving all stakeholders in law reform, including processes for improving the understanding of laws and the adoption of co-ordinated and devolved multi-actor approaches to enforcement, increases compliance with the laws and regulations. However, there is potential for confusion if the various laws and authorities are not adequately linked, or if addressing issues requires following multiple channels and visiting multiple agencies. For example, Malawi's consumer authority, the Competition and Fair Trading Commission, oversees consumer issues related to trade and products under the Competition and Fair Trading Act, while the country's Consumer Protection Act has its own measures and mechanisms. This has the potential to confuse stakeholders as to which authority to use for complaints regarding food-related products. The clarity of evidence procedures, availability of laboratory capacity and technical personnel, also affect enforcement, including of standards for imported foods and the successful pursuit of relief in the courts.

The processes adopted in law reform thus offer an opportunity to review the institutional systems themselves, and their co-ordination, as well as the stakeholder and community understanding and surveillance systems needed for the effective implementation of laws. While many laws focus on risks, prohibitions and penalties, law reform also provides an opportunity to identify and provide for the principles, rights, capacities, multi-actor collaboration and understanding needed for health-promoting food systems.

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Acronyms

AU	African Union
AU-NEPAD	African Union – New Partnership for Africa’s Development
DRC	Democratic Republic of Congo
EAC	East African Community
ECSA HC	East Central and Southern Africa Health Community
EFSA	European Food Safety Authority
EQUINET	Regional Network for Equity in Health in Southern Africa
ESA	East and Southern Africa
EU	European Union
FAO	Food and Agriculture Organization
GMO	Genetically Modified Organism
HACCP	Hazard Analysis Critical Control Point
IHR	International Health Regulations
ILO	International Labour Organization
IPPC	International Plant Protection Convention
ISO	International Organization for Standardization
MoHCC	Ministry of Health and Child Care
NamibLII	Legal information institutes of Namibia
NEPAD	New Partnership for Africa’s Development
OIE	World Organization for Animal Health (also known as WOAH)
SADC	Southern African Development Community
SPS	Sanitary and Phytosanitary Measures
TARSC	Training and Research Support Centre
TBT	Technical Barriers to Trade
WHO	World Health Organization
WOAH	World Organization for Animal Health (also known as OIE)
WTO	World Trade Organization

Equity in health implies addressing differences in health status that are unnecessary, avoidable and unfair. In southern Africa, these typically relate to disparities across racial groups, rural/urban status, socio-economic status, gender, age and geographical region. EQUINET is primarily concerned with equity motivated interventions that seek to allocate resources preferentially to those with the worst health status (vertical equity). EQUINET seeks to understand and influence the redistribution of social and economic resources for equity-oriented interventions. EQUINET also seeks to understand and inform the power and ability people (and social groups) have to make choices over health inputs and their capacity to use these choices towards health.

EQUINET implements work in a number of areas identified as central to health equity in east and southern Africa, including

- Protecting health in economic and trade policy, in extractives
- Local production of health technologies
- Urban health and wellbeing
- Building universal, participatory, primary health care oriented health systems
- Equitable, health systems strengthening responses to pandemics
- Fair Financing of health systems
- Promoting public health law and health rights
- Social empowerment and action for health
- Monitoring progress on equity and equity analysis

EQUINET is governed by a steering committee involving institutions and individuals co-ordinating theme, country or process work in EQUINET from the following institutions:

TARSC, Zimbabwe; CWGH, Zimbabwe; University of Cape Town (UCT), South Africa; CEHURD Uganda; SEATINI, Zimbabwe; REACH Trust Malawi; Ifakara Health Institute, Tanzania; Lusaka District Health office Zambia; IWGSS; Malawi Health Equity Network, SATUCC and NEAPACOH

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