

REGULATION OF FOOD SAFETY AND QUALITY IN MAINLAND TANZANIA: EXAMINATION OF LEGAL AND INSTITUTIONAL CHALLENGES

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Abstract

In Tanzania, there are several laws that regulate and control food safety and quality. The laws have established institutions that are responsible for regulating and controlling the safety and quality of the food. They include the Tanzania, Food Drugs and Cosmetics Act, the Standards Act, the Atomic energy Act, the Meat Industry Act, the Dairy Industry Act, the Fisheries Act, the Sugar Industry Act and the Cashewnut Industry Act. Notably, due to the recent amendments of the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act by the Finance Act 2019, food safety and quality is regulated by the Standards Act and no longer the Tanzania Food, Drugs and Cosmetics Act.

Despite this plethora of the laws and institutions, presence of foods which are not safe for human consumption remains a common phenomenon. This Article provides an analysis of the existing legislative framework for regulation and control of food safety and quality in Tanzania. In doing so, the Article shows the legal and institutional challenges; these include multiplicity of laws and institutions, understaffing, inadequate resources (funds), lack of awareness on the part of consumers which results in poor enforcement and lack of

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specific penalties for violating provisions on food safety and quality. Lastly, the Article provides recommendations for the effective regulation of food safety and quality in Tanzania.

Keywords: *Food, Food Safety, Food Quality, Regulation, Law*

1. INTRODUCTION

Food safety and quality in Mainland Tanzania has become of enormous concern. People get infected with food borne diseases¹ (ranging from diarrhea to cancer), after eating contaminated food that contains harmful bacteria, viruses, parasites or chemical substances.² This has led to health problems and even deaths.³

¹ The magnitude of food borne diseases (FBD) is not known because there is no established system for its surveillance and investigation hence most FBD cases go undiagnosed and unreported. Since awareness of good hygiene practices by many people is still low and vaccines for most food borne diseases are not available, the magnitude of the problem is likely to be high. See, Tanzania Food and Drugs Authority, "Guidelines for Investigation and Control of Foodborne Diseases", at p.1, available at <http://egatest.go.tz/tfda-new/uploads/publications/en1554370070-Guidelines%20for%20Investigation%20and%20Control%20of%20Food%20Borne%20Diseases.pdf> (accessed 25th March 2019).

²The Ministry of Agriculture, Livestock and Fisheries reported presence of aflatoxins in 274 maize samples obtained from Morogoro in the Eastern Zone, Shinyanga in the Western Zone, Manyara in the Northern Zone, Iringa, Mbeya and Rukwa in the Southern Highlands and Ruvuma in the Southern Zone. See, The Ministry of Agriculture, Livestock and Fisheries, "Country and Economic Assessment for Aflatoxin Contamination and Control in Tanzania: A Supplement to the 2012 Report, June 2016" at p. 22, available at <https://www.aflatoxinpartnership.org/sites/default/files/201806/Tanzania%20Supplemental%20Aflatoxin%20Situational%20Analysis%20Report%20%2018%20July%202016.pdf> (accessed 30th March 2019).

³ The United Republic of Tanzania, Controller and Auditor General of the United Republic of Tanzania, "Performance Audit Report on the Management of Inspection and Surveillance at Food Processing Plants and Ports Entry in Tanzania", National Audit Office, March 2014, xii. See also the pilot study conducted by TFDA on the assessment of food-borne diseases conducted in

Tanzania has laws and institutions that regulate and control food safety and quality.⁴ Currently, the Standards Act, as amended by the Finance Act, 2019⁵ regulates and controls the safety and quality of food in Tanzania.⁶ Before coming into force of the Finance Act, 2019, the Tanzania Food, Drugs and Cosmetics Act,⁷ regulated the safety and quality of food in Mainland Tanzania.⁸ Despite this plethora of the laws and institutions, presence of unsafe foods in Tanzanian markets is a common phenomenon.⁹ The situation is further confirmed by the report of

Dodoma, Singida and Manyara regions which showed that there had been incidences of deaths resulting from unsafe food affecting over 1,000 people.

⁴ Such laws include the Tanzania Food Drugs and Cosmetics Act, No. 1 of 2003; the Standards Act, No. 2 of 2008; the Dairy Industry Act, No. 8 of 2004; Fisheries Act No. 22 of 2003; the Sugar Industry Act, Cap 251 [R. E. 2002]; the Local Government (District Authorities) Act, Cap 287 [R. E. 2002]; the Local Government (Urban Authorities) Act, Cap 288 [R. E. 2002]; Public Health Act No. 1 of 2009; the Cashewnut Industry Act, no 18 of 2009; the Atomic Energy Act, No. 7 of 2003; The Government Chemist Laboratory Authority Act, No. 8 of 2016.

⁵ Act No. 8 of 2019.

⁶ See Part vii and viii, *Ibid*.

⁷ Act No. 1 of 2003.

⁸ Section 5, *Ibid*.

⁹ For instance, in one case the TFDA seized five tons of expired and substandard goods including foods not fit for human consumption, worth Tshs. 200/- million (approximately to 90,700 USD). See, Abdallah H., *TFDA Yakamata Bidhaaza Shs. 200 Milioni*, Mwananchi Newspaper, Wednesday, 11th May 2016, p. 32; In another case, the TFDA Lake Zone (office) destroyed foods, cosmetics and drugs worth Tshs. 171/- million (approximately to 77,700 UDS) and among the foods/goods destroyed including carbonated/tin milk, human drugs, hard liquor, biscuits, juice for being substandard and that some of such goods had expired. See Ngollo J., "*TFDA Yateketeza Bidhaaza Shs. 171 Milioni*", *Mwananchi Newspaper*, 19th May 2016, p. 2; See, In other incidents, the TFDA closed down the Get Well Medics Pharmacy which was engaged in juice making contrary to TFDA Act and a TFDA officer impounded 470 bottles of juices and 300 empty bottles in an unlicensed factory. See The Guardian Reporter, 'TFDA Shuts Down Pharmacy in Mwanza', *Guardian News Paper*, 19th May 2016, p. 2; In Arusha region, about eight tones of what was described as expired cow meat and pork imported illegally in Tanzania, were seized and destroyed by the Minister of Fisheries and Livestock. See, the Guardian Reporter, "Operation Nzagamba: Eight Tonnes of Bad Meat Destroyed", *Guardian Newspaper*, 25th March 2019, p. 1.

the Controller and Auditor General (CAG) of the United Republic of Tanzania¹⁰ which reveals the existence of food products not suitable for human consumption. This observation was corroborated by the pilot study conducted by TFDA which found that there had been incidences of death resulting from unsafe food affecting over 1,000 people.¹¹ Also there has been public outcry on the presence of streams with poisonous substances flowing in the cities like Dar es Salaam city and the water from such streams has been used for watering vegetables which are sold for human consumption. For instance, the reports indicated that there is presence of poisonous substances in streams flowing from PuguKinyamwezi dump, while the said water is used for watering vegetables grown alongside the said streams and such vegetables are sold in Dar es Salaam markets.¹²

The main purpose of this Article is to explore, albeit briefly, the regulation and control of food safety and quality in Mainland Tanzania. Hence, the Article examines the legal and institutional challenges in regulation and control of food safety and quality in Mainland Tanzania. At the end of the paper, it is sought to suggest the possible solutions for the effective regulation and control of food safety and quality in Tanzania.

¹⁰ The United Republic of Tanzania, Controller and Auditor General of the United Republic of Tanzania, "Performance Audit Report on the Management of Inspection and Surveillance at Food Processing Plants and Ports Entry in Tanzania", March 2014, p. xii.

¹¹ *Ibid.*

¹² Lissa, C., *Maji Yenye Sumu Yatumika Kumwagilia Mboga Dar es Salaam*, Uhuru Newspaper, Friday 28th April 2017, p. 4.

2. THE HISTORICAL DEVELOPMENT ON REGULATION AND CONTROL OF FOOD SAFETY AND QUALITY IN MAINLAND TANZANIA

The Mainland Tanzania¹³ was initially colonized by Germany following the Berlin Conference of 1884-1885 and later it became a Trust Territory under the United Nations under the British rule. Both German and British colonial rule in Africa shared a similar aim, the profitable exploitation of raw materials.¹⁴ During the Germany rule in Tanganyika, much effort was put to the matters relating to land and labour for the German plantation economy¹⁵ and nothing better was done in the area of regulation of food safety and quality. During the era of the British rule, the British colonial government applied laws that were applicable in England before 1920 in Tanganyika.¹⁶ In addition, different laws were enacted by the British colonial government. Among them, are the laws on regulation of food safety and quality, and include the Food and Drugs Ordinance,¹⁷ and the Meat Hygiene Ordinance.¹⁸ The former was enacted for the purpose of regulating the safety and quality of food and drugs while the later sought to regulate the safety and quality of meat.

¹³When Mainland Tanzania was colonized by Germany, it was given the name of *Deutsche-Ostafrika*. Later during the British colonial regime, it was renamed Tanganyika and when Tanganyika United with Zanzibar in 1964; it became the United Republic of Tanzania.

¹⁴Neal S., A Colonial Dilemma: "British Policy and the Colonial Economy of Tanganyika 1918-1938", M.A. Thesis, Australian National University, 1981, p. 15.

¹⁵Bode B. and Wu D., "The Legacy of Underdevelopment, Poverty and Inequality in Tanzania: A Case Study of Morogoro", paper presented to CARE International in Tanzania, January 2011, p. 8.

¹⁶ This was enhanced through the introduction of the Tanganyika Order in Council (TOC) of 1920 that allowed the Common Law, Equity and Statutes of General Application that was in force in England before 22nd July 1920 to be applicable in Tanganyika.

¹⁷Cap 93, above note 17, at p. 4.

¹⁸Cap 432, above note 18, at p. 4.

With the aid of the Judicature and Applications of Laws Ordinance (JALO),¹⁹ upon independence,²⁰ Tanganyika inherited and adopted most of the laws enacted by the British colonial authorities including the Food and Drugs Ordinance and the Meat Hygiene Ordinance. The Food and Drugs Ordinance and the Meat Hygiene Ordinance were administered under the Ministries responsible for health and Livestock Development respectively. These two laws were subjected to some amendments and they continued to be the main laws that regulated the safety and quality of food, drugs until 1976, when they were repealed and replaced by the Food (Control of Quality) Act²¹ and the Pharmaceutical and Poisons Act.²² The Food (Control of Quality) Act, established the National Food Control Commission²³ that was responsible for food control activities²⁴ in Mainland Tanzania whereas the Pharmaceutical and Poisons Act established the Pharmacy Board²⁵ that was responsible for regulating the safety and quality of drugs. In 2003, the Tanzania Food, Drugs and Cosmetics Act²⁶ was enacted.

It established TFDA which was mandated to *inter alia*, to regulate and control the safety and quality of food. Furthermore, there has been a proliferation of statutes which also established several institutions that regulate the safety and quality of food in Mainland Tanzania.²⁷ Among them is the Standards Act which established

¹⁹See Section 9, 11 and 14 of Act No. 8 of 1962.

²⁰Tanganyika attained independence on 9th December 1961.

²¹ See Section 64, Cap 344 [R. E. 2002].

²² See Section 74, Cap 219 [R. E. 2002].

²³See Section 4 (1), Cap 344, above note 21.

²⁴See Section 5, Cap 344, above note 21.

²⁵See Section 3, Cap 219, above note 22.

²⁶Act No. 1, above note 1, at p. 2.

²⁷ For example, the Tanzania Food Drugs and Cosmetics Act, No. 1 of 2003; the Standards Act, No. 2 of 2008; the Dairy Industry Act, No. 8 of 2004; Fisheries Act No. 22 of 2003; the Sugar Industry Act, Cap 251 [R. E. 2002]; the Local

TBS as the custodian and an overseer of observance of standards in commodities in Tanzania.²⁸ In July 2019 the Finance Act,²⁹ came into force with some changes on issues relating to regulation and control of food safety and quality in Mainland Tanzania. Notably, it *inter alia*, amended the Tanzania Food, Drugs and Cosmetics Act and the Standards Act. The amendments transferred all issues relating to regulation and control of food safety and quality to TBS.³⁰ Therefore, to date, TBS is the overall in charge of food safety and quality in Mainland Tanzania and TMDA (the former TFDA) is the overall in charge of the safety and quality of drugs, herbal drugs, medical devices and poisons.

3. THE LEGAL CHALLENGES

3.1 Multiplicity of Legal Agencies

The legal framework on food safety and quality in Mainland Tanzania involves multiplicity of legal agencies governed by several pieces of legislation scattered in different government ministries, departments and institutions. It has created an existence of fragmented forum. For a long time, the Mainland Tanzania legal framework on food safety and quality has led to inadequate coordination of standard setting mandates, insufficient coordination of enforcement mandates and inadequate coordination of policy issues and sometimes it is difficult to know

Government (District Authorities) Act, Cap 287 [R. E. 2002]; the Local Government (Urban Authorities) Act, Cap 288 [R. E. 2002]; Public Health Act No. 1 of 2009; the Cashewnut Industry Act, no 18 of 2009; the Atomic Energy Act, No. 7 of 2003; The Government Chemist Laboratory Authority Act, No. 8 of 2016.

²⁸See Section 3 (1) and (2), Act No. 2 of 2009.

²⁹ Act No. 8, above note 5, at p. 2.

³⁰See Section 30, *Ibid*, which repealed Part III of the Tanzania Food, Drugs and Cosmetics Act, 2003 on regulation of food safety and quality.

which regulator is responsible for which category of food.³¹ The existence of multiple agencies has promoted poor coordination, inter-institutional conflicts and ineffectiveness due to functional overlap and unnecessary duplication of functions which has resulted to unnecessary increase of cost of compliance and enforcement.³² The author managed to interview one importer of industrial juice who lamented much on various fees chargeable by different regulatory bodies which increases the cost of compliance and has caused some unscrupulous business persons to avoid compliance of the law by importing food products through unofficial entry ports. The importer lamented that:

*...angalieninamnawatanzaniatunavyoibiwa...
hatahukonjewanatushangaasana
...kilaidarainajiamuliatukujianzishiavimirijavyapesa
...mara TFDA ...mara TBS... mara TAEC ... this is
too much jamani ...kuchajiwatanzaniadola 250
inspection fee for every import transaction is totally
unfair ...niwazihizigharamazitamuathirimlaji ...*³³

³¹ See Mosha J.S.C., "Development of a National Strategy for Food Control: The Experience of Tanzania", Paper Presented at a Conference on Effectiveness of Food Control Systems: Practical Approaches for the African Region, Organized by FAO, at FAO Headquarters in Rome, Italy on 24th January 2005, p. 53.

³² See for example, Tanzania Food, Drugs and Cosmetics (Fees and Charges) Regulations 2015, GN No. 464 of 2015 which provides various fees chargeable by TFDA for various services rendered by TFDA; TBS Fees Structures as approved by TBS Board of Directors in relation to the fees chargeable under the Standards (Tested Products) Regulations 2009, GN No 404 of 2009; The Standards (Certifications) Regulations 2009, GN No. 406 of 2009; and The Standards (Compulsory Batch Certification of Imports) Regulations, 2009, GN No. 405 of 2009; Local Government Authorities' By-Laws which empowers Local Government Authorities (LGA) with powers to collect revenues to dealers of food in their areas of jurisdictions; just to mention a few.

³³ An importer of the industrial juice, Interview by author (December 2018, Dar es Salaam).

The free translation of the above quotation is:

...See how the government has been thieving against Tanzanians. Even foreigners view us with astonishment. Each governmental department decides to create its own sources of income. You have TFDA, you have TBS, then you hear about TAEC! This is too much guys! Charging Tanzanians US\$250 as an inspection fee for every import transaction is totally unfair. It is clear that these costs affect the ultimate consumer.

In addition, it is possible for one agency to think that other actors have already acted and relax while no any agency which has acted. Furthermore, the regulation and control of food safety and quality by both TFDA and TBS led to occurrence of confusions and overlapping of powers between the two institutions to the extent of coming up with a decision to prepare and sign a Memorandum of Understanding (MOU) between the two institutions on demarcation of powers between them in relation to regulation and control of food safety and quality.³⁴

The Blueprint for Regulatory Reforms to Improve the Business Environment in Tanzania *inter alia*, gives an overview of the overlaps in the functions between TBS and TFDA.³⁵It further

³⁴ TFDA Director of Food Safety, Interview by author, (July 2018, Dar es Salaam).

³⁵ There are concerns from a cross section of stakeholders in the private sector on the apparent conflicting overlaps in relation to food safety control system between TBS and TFDA. As noted in the analysis of the law above, TFDA is responsible for regulating food safety and quality. The Directorate of Food Safety in TFDA conducts laboratory testing services and market surveillance on pre-packaged products. This task is likely to bring conflicting overlaps with the TBS, which is also mandated to conduct lab test for products, including food products. Although it has been argued that TFDA tests are only limited to

proposes that, de-regulation does not mean absence of regulations but reforms which should lead to a smart regulatory framework, which is more effective in protecting the well-being and livelihood of members of the community.³⁶ The existence of multiplicity of institutions that regulate and control food safety and quality necessitated the Parliament to amend the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act. The Parliament intended to get rid of the conflict that existed between TFDA and TBS in relation to regulation and control of food safety and quality. Hence, the Finance Act, 2019 which came into force in July 2019, *inter alia*, amended the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act. Due to such amendments, TBS is *inter alia* mandated to regulate and control food safety and quality³⁷ and TFDA which is renamed as TMDA³⁸ is mandated to regulate and control the safety and quality of drugs, herbal drugs, medical devices and poisons.³⁹ However, the amendments have not addressed the positions of other laws which also deal with food safety and quality in Mainland

food safety and TBS tests focus only on quality, but in practice there is no fundamental difference between these tests. The other concern is with regard to the registration of a product. The permit for registering a product is issued by TFDA which the certificate of quality is issued by TBS. Although these requirements are meant to serve different purposes, they both require the authorities to take the same sample to the same laboratory. It is this respect that complaints have been raised that this procedure is unnecessary as it is duplicative. When it comes to import and export permits, both TBS and TFDA take samples to the laboratory for testing before issuing permits. Such process could be undertaken by one of the two agencies. See, The United Republic of Tanzania, The Ministry of Industry and Trade, "Blueprint For Regulatory Reforms to Improve the Business Environment", April, 2017, p. 21.

³⁶ The United Republic of Tanzania, The Ministry of Industry and Trade, "Blueprint For Regulatory Reforms to Improve the Business Environment", April, 2017, p. xiii.

³⁷ See Part VII of Act No. 8, above note 5, at p. 2.

³⁸ See Section 25, *ibid*.

³⁹ See Section 23, *ibid*.

Tanzania. Hence, multiplicity of laws on food safety and quality still exists.

3.2 The Finance Act, 2019 and Multiplicity of Legal Agencies

The Finance Act, 2019 amends the Standards Act, 2009 by adding Part VIA that contains provisions regarding food.⁴⁰ The provisions regarding food address several issues relating to registration and composition of food; importation of food; milk, milk products and milk substitutes; premises for slaughter of animals and sale of meat; and food hygiene.

TBS as a sole overseer of quality control and promotion of standardization in all products is mandated to regulate and control registration and composition of food. A person cannot carry out any business relating to manufacture, import, distribute, sell or expose for sale pre-packaged food if such food or food product is not registered by TBS. This is expressly stated by the Finance Act, 2019 that:

No person shall manufacture, import, distribute, sell or expose for sale pre-packaged unless that food or food product has been registered by the Bureau.⁴¹

However, several pieces of legislation in various segments of food chain scattered in different government Ministries, departments and institutions still regulate and control food safety and quality in Mainland Tanzania. For instance, it is a mandatory requirement under the Atomic Energy Act⁴² to obtain a radioactivity analysis

⁴⁰ See Section 18, *ibid*.

⁴¹ See Section 21A (1), Act No. 8, above note 5, at p. 2.

⁴² Act No. 7 of 2003.

certificate from Tanzania Atomic Energy Commission (TAEC) before manufacturing, importing or exporting any foodstuffs intended for human consumption.⁴³ One cannot manufacture, import or export foodstuffs without obtaining a radioactivity analysis certificate from TAEC in relation to the foodstuff intended to be manufactured, imported or even exported even if he/she has already been granted with a food registration/importation certificate by TBS. Further, the provisions of the Atomic Energy Act require the provisions relating to control of radioactivity in foodstuffs to be read together with the provisions of the Tanzania Food, Drugs and Cosmetics Act⁴⁴ and that TAEC in consultation with TFDA and other competent institutions shall establish a system designated for the control of radioactivity in foodstuffs.⁴⁵ Notably, the Finance Act, 2019 has repealed all provisions relating to food in the Tanzania Food, Drugs and Cosmetics Act. Unfortunately, there is no any provision in the Finance Act, 2019 which directs that any reference in any written law to the Tanzania Food, Drugs and Cosmetics Act on matters of food to be construed as reference to the Standards Act. The Finance Act, 2019 only requires reference in any written law to TFDA be construed as reference to TMDA. It is stated by the Finance Act, 2019 that:

Unless the context requires otherwise, any reference in any written law to the “Tanzania Food, Drugs and Cosmetics Authority or by its acronym “TFDA” shall be construed as reference to “Tanzania Medicines and Medical Devices Authority or by its acronym TMDA”.⁴⁶

⁴³See Section 30, *ibid.*

⁴⁴See Section 28, *ibid.*

⁴⁵See Section 29, *ibid.*

⁴⁶See Section 40, *ibid.*

On the basis of the above provision, it means that, the Atomic Energy Act still makes reference to TMDA which has no more powers to deal with issues relating to food safety and quality in Mainland Tanzania. As a matter of law, TAEC in consultation with TMDA and other competent institutions shall establish a system designated for the control of radioactivity in foodstuffs while TMDA does not have powers to deal with issues relating to food safety and quality any more.

Moreover, there are other laws that regulate and control the quality and/or safety of food in specific areas. For example, the Fisheries Act⁴⁷ and the Regulations made thereunder regulate and control the fishing industry in Tanzania. They control and regulate the quality and standard of fish and fishery products intended for human consumption. The Fisheries Act and the Regulations made thereunder *inter alia*, regulate and control issues relating to registration and importation of fish and fishery products in Tanzania. For example, in order to be able to import fish or fishery products in Tanzania, one must apply and be issued with an import permit by the Fishery Division in the Ministry responsible for fisheries.⁴⁸ Also, in order to be able to export fish or fishery products, an exporter must apply for and be issued with an export licence from the Director of Fisheries.⁴⁹ Moreover, the Fisheries Act and its Regulations prohibit placing of the fish or fishery products on the market without a Health Certificate or Sanitary Certificate issued by a Fish Inspector.⁵⁰ The fish inspectors are mandated to inspect fish markets and other places which deal with selling of fish or fishery products. On the other hand, the Finance

⁴⁷Act No. 22 of 2003.

⁴⁸See Regulation 91 (a), (b) and (c) of the Fisheries Regulations 2009, GN No. 308 of 2009.

⁴⁹Regulation 13 (3) and 95, *ibid*.

⁵⁰Regulation 75 (1), (2) and (3), *ibid*.

Act, 2019 mandates TBS to regulate and control importation of food by restricting importation of food unless the food importer is registered by TBS. It is expressly stated that:

No person shall, on or after the appointed day, carry on the business of an importer of food unless he is registered by the Bureau under section 21J as an importer of food.⁵¹

In addition, the Finance Act, 2019 regulates and controls food hygiene including fish and fishery products by mandating Minister responsible for Industry and Trade to make Regulations regarding food hygiene.⁵² The Regulations, *inter alia*, regulate and control the sale of food for human consumption; and the manufacture, transport, storage, packaging, marking, exposure for sale, service or delivery of food intended for human consumption.⁵³ On that basis, one cannot carry out any business relating to importation or exportation of fish or fishery products without being registered by TBS and the Fishery Division in the Ministry of Livestock and Fisheries. Also, both TBS and the Ministry of Livestock and Fisheries deal with regulation of food hygiene in terms of fish and fishery products. Unfortunately, there are no cross references among the related provisions of the Fisheries Act and the Regulations made thereunder and the Finance Act, 2019 on registration and importation/exportation fish and fishery products or regulation of food hygiene in terms of fish and fishery products. This may create confusion and unnecessary overlap of powers between TBS which operates under the Ministry of Industry and Trade and the Ministry of Livestock and Fisheries. This is because, both the Finance Act, 2019 and the Fisheries Act do not

⁵¹See Section 21 I (1), Act No. 8, above note 5, at p. 2.

⁵²See Section 21Q (1), *ibid*.

⁵³See Section 21 Q (1), (a) and (b), *ibid*.

make reference to each other on any aspect relating to regulation and control of exportation/importation of fish and fishery products or regulation and control of food hygiene including fish and fishery products. This may, on one hand cause unnecessary bureaucracy in doing business and, on the other, increase the cost of compliance and enforcement. This may cause some of the business persons to avoid compliance of the law because of unnecessary bureaucratic processes which are created by the law and the cost of compliance.

Further, the Dairy Industry Act⁵⁴ and the Regulations made thereunder, regulate the dairy industry in Mainland Tanzania, including regulation and control of milk and milk products. The Dairy Industry Act and its Regulations *inter alia* regulate and control issues relating to registration and importation/exportation of milk and milk products. It establishes Tanzania Dairy Board (TDB) which *inter alia* regulates and controls the safety and quality of milk and milk products intended for human consumption. It is a mandatory requirement under the Dairy Industry Act for any person who wants to deal with a business relating to milk or milk products to be registered by TDB.⁵⁵ One must be registered by TDB in order to be able to carry out any business of milk or milk products either as a producer, processor, marketing agent, importer, exporter, dairy inputs supplier, manufacturer or importer and retailer. The Dairy Industry Act mandates TDB to appoint inspectors and in collaboration with TFDA to conduct inspections to all dairy facilities as dairy farms, plants, kiosks, parlours and other similar facilities.⁵⁶ Unfortunately, the Dairy Industry Act makes reference to TFDA which is no longer in existence. TFDA is

⁵⁴Act No. 8 of 2004.

⁵⁵See Section 17, above note 5, at p. 2.

⁵⁶See Section 10 (s), *ibid* and the regulations of the Dairy Industry (Duties and Powers of the Inspectors and Analysts) Regulations of 2007.

replaced by TMDA⁵⁷ which has no powers to deal with issues relating to regulation and control of food safety and quality.⁵⁸ Furthermore, the Finance Act, 2019 requires any reference in any written law to TFDA be construed as reference to TMDA.⁵⁹ This may cause confusion as TMDA which replaces TFDA has no powers to deal with issues relating to regulation and control of food safety and quality in Mainland Tanzania including safety and quality of milk and milk products. It is TBS that is mandated to regulate and control issues relating to safety and quality of milk and milk products.⁶⁰

The Meat Industry Act⁶¹ and its Regulations regulate and control the meat industry in Mainland Tanzania. They provide for the proper management of the meat industry in order to ensure quality of the meat and meat products intended for human consumption. The Meat Industry Act, *inter alia*, addresses issues relating to registration and importation/exportation of meat or meat products. It establishes the Tanzania Meat Board (TMB) which is, *inter alia*, responsible to ensure stakeholders' compliance in the meat industry with the national or international meat and meat products standards in collaboration with other quality control institutions and to perform regulatory activities in the meat industry in accordance

⁵⁷See Section 25, *ibid*, which amends the Tanzania Food, Drugs and Cosmetics Act, 2003 and deleting the words "Tanzania Food and Drugs Authority" or its acronym "TFDA" and substituting for them the words "Tanzania Medicines and Medical Devices Authority" or its acronym "TMDA".

⁵⁸See Section 23, *ibid*, which amends the long title by deleting the words "food, drugs, medical devices, cosmetics and substituting for them the words "medicines, medical devices".

⁵⁹See Section 40, *ibid*, which provides that, "unless the context requires otherwise, any reference in any written law to the "Tanzania Food and Drugs Authority or by its acronym "TFDA" shall be construed as reference to Tanzania Medicines and Medical Devices Authority or by its acronym "TMDA".

⁶⁰See Section 21L and 21M, *ibid*.

⁶¹Act No. 10 of 2006.

with the provisions of the Meat Industry Act.⁶² The Meat Industry Act mandates TMB to register all livestock producers, traders or livestock market operators and it prohibits a person from carrying any of such businesses without being registered and issued with a licence by TMB.⁶³ Further, TMB is mandated to issue registration certificates⁶⁴ to stakeholders in the meat industry such as meat processors, meat and meat products distributors, meat and meat products importers or exporters, retailers, meat input suppliers, manufacturers, meat and meat products marketing agents and abattoirs. In order to be able to do any of these businesses, one must apply and be issued with a registration certificate by TMB.

On the other hand, TBS regulates the safety and quality of food including meat and meat products. One cannot do any business relating to manufacture, import, distribute, sell or expose for sale pre-packaged food unless that food or food product has been registered by TBS.⁶⁵ The Finance Act, 2019 which *inter alia*, mandates TBS to regulate and control the safety and quality of meat and meat products. It *inter alia*, provides for regulation and control of premises for slaughter of animals and sale of animals and sale of meat.⁶⁶ Unfortunately, there is no cross referencing of the provisions of the Meat Industry Act and the Standards Act as amended by the Finance Act, 2019 on regulation and control of meat industry in terms of the safety and quality of meat and meat products intended for human consumption. This may cause some difficulties in determining the clear demarcation of powers between TBS and TMB in terms of registration and issuance of certificates to persons who want to carry out any business relating

⁶²See Section 10 (c) and (e), *ibid.*

⁶³See Section 17 (1), (2) and (3), *ibid.*

⁶⁴See Section 16 (4) (d), *ibid.*

⁶⁵See Section 21A, Act No. 8, above note 5, at p. 2.

⁶⁶See Section 21N, 21O and 21P, *ibid.*

to meat and meat products in Mainland Tanzania. This is because one may think that, he is statutorily required to obtain a certificate from TBS as the overall in charge of food safety and quality while such person is also required to obtain other certificates from TMB.

The Cashewnut Industry Act⁶⁷ and the Regulations made thereunder regulate and control the cashewnut industry in Mainland Tanzania. They regulate cashewnut production, grading, processing and marketing and kernels. The Cashewnut Industry Act establishes the Cashewnut Board of Tanzania (CBT) which is mandated to regulate and control the quality of cashewnuts, kernels and cashewnut by-products.⁶⁸ Cashewnut is defined as raw cashewnut after harvesting⁶⁹ and thus the Cashewnut Industry Act, *inter alia*, regulates cashewnuts as food as per definition of food under the Standards Act⁷⁰ as amended by the Finance Act.⁷¹ The Cashewnut Industry Act prohibits a person from carrying out any business relating to cashewnuts, either as a buyer, processor, importer, exporter or warehouse owner or operator without being registered by CBT.⁷² Furthermore, a registered cashewnut dealer is required to apply for a licence from CBT in order to be able to carry out any business relating to cashewnuts, either as a buyer, processor, importer, exporter or warehouse owner or operator.⁷³ TBS is also mandated to regulate and control the safety and

⁶⁷Act No. 18 of 2009.

⁶⁸See Section 5 (2) (b), *ibid*.

⁶⁹ See Section 2 (1), *ibid*.

⁷⁰ See Section 16, Act No. 8 above note 5, at p. 2, which defines food as any substance whether processed, semi-processed or raw which is intended for human consumption, and includes drinks, chewing gum and any substance which has been used in the manufacture, preparation or treatment of food but does not include cosmetics, tobacco or substance used only as drugs.

⁷¹ Act No. 8 of 2019.

⁷²See Section 12 (1), *ibid*.

⁷³See Section 15 (1), *ibid* and Regulation 29 (2) (b) of the Cashewnut Industry Regulations, 2009.

quality of cashewnut and cashewnut by-products. Hence, a person who wants to carry out any business in terms of processing, importing or exporting cashewnut or cashewnut by-products must be registered by TBS.⁷⁴ Unfortunately, there are no cross references among the related provisions of the Cashewnut Industry Act and the Standards Act as amended by the Finance Act, 2019 in relation to regulation and control of the safety and quality of cashewnuts and cashewnut by-products. This again may create confusion and overlapping of powers between TBS and CBT in terms of registration requirements and this also may cause unnecessary bureaucracy in relation to business and increase of cost of compliance and enforcement.

The Sugar Industry Act⁷⁵ regulates and controls the importation and exportation of sugar and sugar by-products. It establishes SBT with overall responsibility of regulating the sugar industry and it is, *inter alia*, mandated to prescribe and or enforce the quality standards for sugarcane, sugar, sugar by-products and any materials from which sugar can be manufactured.⁷⁶ The Sugar Industry Act mandates SBT to register or licence sugarcane growers, manufacturers of sugar and sugar by-products, sugar importers and exporters, and industrial users of sugar and sugar plants.⁷⁷ It is prohibited for a person to engage in the business of growing sugarcane, manufacturing sugar or sugar by-products, importing or exporting sugar and sugar by-products without being registered by SBT and or be issued with a licence by SBT. On the other hand, TBS is mandated by the Standards Act as amended by the Finance Act, 2009 to regulate and control the safety and

⁷⁴See Part IVA of Act No. 8 of 2019.

⁷⁵Cap 251 [R. E. 2002].

⁷⁶See Section 4 (1) (h), *ibid*.

⁷⁷See Section 4 (2) (b), *ibid*.

quality of food including sugar and sugar by-products.⁷⁸ One cannot carry out any business relating to sugar and sugar by-products without being registered by TBS. Unfortunately, there is no cross references among the provisions of the Sugar Industry Act and the Standards Act as amended by the Finance Act, 2019 in terms of registration requirements. Neither the Sugar Industry Act nor the Standards Act as amended by the Finance Act, 2019 make reference to each other in terms of registration requirement by all stakeholders in the sugar industry.

Therefore, it is the intention of the Finance Act, 2019 which *inter alia*, amended the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act in order to get rid of existence of multiplicity of institutions that regulate and control food safety in Mainland Tanzania. It has managed to remove the tag of war that existed between TFDA and TBS on regulation of food safety and quality in Mainland Tanzania. Unfortunately, the type of the food control system being implemented under the current Tanzanian food safety and quality legal framework is still governed by different pieces of legislation in various segments of food chain scattered in different government ministries, government departments and government institutions. There are laws which regulate and control the safety and or quality of specific foods and there is no cross references among the related provisions with the Standards Act as amended by the Finance Act, 2019. This has resulted to the existence of unnecessary bureaucracy in relation to business and increase of unnecessary cost of compliance and enforcement in terms of registration requirements and application of licences.

⁷⁸See Part IVA of Act No. 8, above note 5, at p. 2.

3.3 Absence of Provisions for Penalties in the Primary Law

It is unfortunate that most of the provisions of the Finance Act, 2019 that amended the Standards Act do not provide the sanctions for contravening its provisions serve for only one provision which provides that:

Any person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.⁷⁹

As a matter of practice, no penalty may be imposed to a person who has contravened the provision of a particular law unless that law provides the penalty to be imposed against that person. Unfortunately, all provisions in the Finance Act, 2019 which deal with regulation and control of food safety and quality, do not provide the penalties for offences committed under it⁸⁰ except the above mentioned provision. Furthermore, the Finance Act, 2019 requires the part that amends the Standards Act to be read together with the Standards Act.⁸¹ The Standards Act provides for the general penalty for a person who contravenes the provisions of the Standards Act in case no specific penalty is provided for that offence. It is stated by the Standards Act that:

Where a person contravenes any of the provisions of this Act for which no specific penalty is provided, commits an offence and on conviction, shall be liable to imprisonment for a term not less than two years or

⁷⁹See Section 21P (5), *ibid.*

⁸⁰See Sections 21D (1); 21E (2); 21K (2); 21M (2); and 21N (2), *ibid.*

⁸¹See Section 14, *ibid.*

to a fine not less than fifty million shillings and not exceeding one hundred million shillings or to both.⁸²

In addition the Standards Act provides that:

On a second or subsequent conviction of any person for an offence committed under this Act, that person shall be liable to imprisonment for a term not less than three years or to a fine not less than fifty million shillings and not exceeding one hundred million shillings or to both.⁸³

Moreover, it is stated by the Standards Act that:

On the conviction of any person for an offence under this Act, the court may, in addition to any other penalty which may be imposed, order the confiscation of all or any part of the goods in respect of which the offence was committed, and all goods so confiscated shall be disposed of in the manner which the court directs.⁸⁴

On that basis, it means that any person who contravenes any of the provisions of the Part VII of the Finance Act, 2019 which amended the Standards Act and no specific penalty is provided, shall be liable to suffer the general penalty under the Standards Act regardless of the nature and gravity of the offence committed. This is dangerous as some of the offences in relation to food safety and quality are minor compared to the general penalty under the Standards Act. Before coming into force of the Finance

⁸²See Section 27 (1), Act No. 2, above note 28, at p. 5.

⁸³See Section 27 (2), *ibid.*

⁸⁴See Section 27 (3), *ibid.*

Act, 2019, Tanzania Food, Drugs and Cosmetics Act was the main legislation that regulated and controlled food safety and quality in Mainland Tanzania. It provided the penalty for contravening any of its provisions in relation to food safety and quality serve for few ones where the general penalty applied. For example, it was an offence to manufacture for sale, sell, offer, supply or import any product, without having the registration licence from TFDA. The penalty was provided by the Tanzania Food, Drugs and Cosmetics Act by stating that:

Any person who contravenes the provisions of this section relating to the manufacture, importation or wholesale of products regulated under this Act, commits an offence and upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.⁸⁵

Also it was a mandatory requirement for any premise that is used for the manufacture, sale, sell, supply or store products regulated under the Tanzania Food, Drugs and Cosmetics Act to be registered by TFDA and a person who uses the premise for sale, sell, supply or store products regulated by the Tanzania Food, Drugs and Cosmetics Act commits an offence. The Tanzania Food, Drugs and Cosmetics Act provided the penalty by stating that:

Any person who contravenes or fails to comply with this section, commits an offence and upon conviction is liable to a fine not exceeding five million shillings

⁸⁵Section 22 (3) of the Act No. 1, above note 7, at p. 2 and Regulation 20 (1) of the Tanzania Food, Drugs and Cosmetics (Marketing of Foods and Designated Products for Infants and Young Children) 2013, GN No. 60 of 2013.

or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.⁸⁶

Moreover, it was an offence under the Tanzania Food, Drugs and Cosmetics Act for a person to manufacture for sale, sell, offer, supply or import any product regulated by the Tanzania Food, Drugs and Cosmetics Act without having a licence or permit from TFDA. The Tanzania Food, Drugs and Cosmetics Act provided the penalty by stating that:

Any person who contravenes the provisions of this section relating to the manufacture, importation or wholesale of products regulated under this Act, commits an offence and upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.⁸⁷

Furthermore, the Tanzania Food, Drugs and Cosmetics Act provided the penalty for a person who is convicted for selling adulterated food to consumers. It was stated by the Tanzania Food, Drugs and Cosmetics Act that:

Any person who contravenes any of the provisions of subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term not more than six months or to both such fine and imprisonment.⁸⁸

⁸⁶Section 18 (4), Act No. 1, *ibid.*

⁸⁷See Section 22 (3), *ibid.*

⁸⁸See Section 30 (3), *ibid.*

The Tanzania Food, Drugs and Cosmetics Act also designated the act of using a vehicle for transportation of meat without been approved by TFDA as an offence and the penalty was provided by the Tanzania Food, Drugs and Cosmetics Act that:

Any person who contravenes this section is guilty of an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.⁸⁹

The Tanzania Food, Drugs and Cosmetics Act also provided the penalty for a person who failed to comply with the provisions relating to labeling of products. It was an offence under the Tanzania Food, Drugs and Cosmetics Act for a person to sale or supply a product regulated under the Tanzania Food, Drugs and Cosmetics Act in a container or package which is not labeled in accordance with Tanzania Food, Drugs and Cosmetics (Food Labeling) Regulations, 2006. The Tanzania Food, Drugs and Cosmetics Act stated that:

Any person who contravenes the provisions of subsection (2), commits an offence and upon conviction shall be liable (a) if such a person is an individual to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than three months or to both such fine and imprisonment; and(b) if such a person is an association or body corporate to a fine of not less than three million shillings.⁹⁰

⁸⁹Section 43 (5), *ibid*.

⁹⁰Section 92 (3), *ibid* and Regulation 15 of the Tanzania Food, Drugs and Cosmetics (Food Hygiene) Regulations 2006, GN No. 114 of 2006.

The Tanzania Food, Drugs and Cosmetics Act also designated the act of obstructing TFDA inspector from performing his statutory responsibilities in ensuring compliance of the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Regulations made there under as an offence. In addition the Tanzania Food, Drugs and Cosmetics Act provided the penalty that:

Any person who: (a) willfully delays or obstructs an inspector in the exercise of his powers under this section; or (b) refuses or fails without reasonable excuse, to give any information which he is lawfully required to give under this section; or (c) gives any information which is false in a material particular or which he reasonably believes to be untrue; commits an offence and upon conviction is liable to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than three months or to both such fine and imprisonment.⁹¹

The Finance Act, 2019 which, *inter alia*, amended the provisions of the Standards Act provides the room for the Minister of Industry and Trade to make Regulations and Rules on different matters relating to food safety and quality. It mandates the Minister of Trade and Industry to make Regulations regarding composition of food,⁹² Regulations relating to milk, milk products and milk substitutes,⁹³ Regulations regarding slaughter and butchery facilities⁹⁴ and Regulations regarding food hygiene.⁹⁵ Probably, the

⁹¹Section 106 (3), Act No. 1, *ibid*.

⁹²See Section 21B (1) and (2), Act No. 8, above note 5, at p. 2.

⁹³See Section 21L (1), *ibid*.

⁹⁴See Section 21O (1), *ibid*.

⁹⁵See Section 21Q, (1) and (2), *ibid*.

Parliament intended to give discretion to the Minister for Industry and Trade, while making Regulations, to provide the penalties for offences committed under the Standards Act as amended by the Finance Act, 2019. This provides the room for the Regulations to provide penalties which are not real in terms of the nature and kind of the offence committed by being too severe or too lenient. The Finance Act, 2019 contains general statements that the Minister may make the Regulations that he/she may deem fit to achieve the purpose of the Finance Act, 2019 in relation to regulation and control of food safety and quality. It is stated by FAO/WHO Report that:

Because no penalty may be imposed except by virtue of legal authority, food laws contain provisions delegating to an executive authority the power to sanction as well as to take preventive measures in the public interest. It goes without saying that the limits of such powers and the conditions governing their exercise must be laid down with precision in the basic law. Offences must be defined, along with the nature and limits of the penalties that may be imposed, together with the procedures for such imposition once the commission of an offence has been duly established. The law may also outline other necessary measures for the protection of the public, such as the seizure and confiscation of suspect food or the recall of products.⁹⁶

⁹⁶FAO/WHO “Food Safety and Nutrition Food Law Guidelines”, at p. 41, available at <https://www.afro.who.int/sites/default/files/2017-06/Food%20Safety%20and%20Nutrition%20Food%20Law%20Guidelines.pdf> (accessed 21st October 2019).

Unfortunately, the provisions of the Finance Act, 2019 which amended the Standards Act provide for offences without stating the penalty to be imposed to a person who is convicted of such offences. Ordinarily, it is expected for the laws which provide for offences to provide also the penalties in terms of the minimum and maximum penalty as it used to be under the provisions of the Tanzania Food, Drugs and Cosmetics Act. Otherwise, the requirement that the limits of such powers and the conditions governing their exercise must be laid down with precisions in the basic law.⁹⁷

In addition, the Finance Act, 2019 fails to provide for compounding of offences in case the offender is ready to pay a fine than to be prosecuted in a court of law. Compounding is defined as an act of settling a matter by a money payment, in lieu of other liabilities.⁹⁸ The advantage of the law to allow compounding of offences is to avoid long processes, time wastage and costs which are normally involved in determination of cases by the courts of law. Compounding of offences could be of assistance to TFDA (now TBS) against persons who are alleged to have committed offences under the Tanzania Food, Drugs and Cosmetics Act (now the Standards Act as amended by the Finance Act, 2019) and who are ready to pay fines rather than being prosecuted in court. As a matter of practice, neither the owner of the food products nor the regulatory authority that can deal with food products which are the subject to a case that is pending in court until the court delivers its judgment. This is disadvantageous to the owner of the food products as the food products may be damaged or loose quality while waiting for the case to be determined. In addition, it is possible for the case to take long

⁹⁷ FAO/WHO "Food Safety and Nutrition Food Law Guidelines", *ibid*.

⁹⁸ Black's Law Dictionary, Free Online Legal Dictionary, 2nd ed., at p. 304, available at <https://thelawdictionary.org/adequacy/> (accessed 05th June 2019).

time due to its complexity and also it is possible for the regulatory authority to lose the case on grounds of technicalities of the law or lack of sufficient evidence while consumers have already been affected by the food products supplied by that person. Furthermore, compounding of offences is possible only when the person who is alleged to have contravened the law is ready to pay the fine. Therefore, presence of provisions relating to compounding of offences can assist avoidance of cumbersome and costly legal processes which may end up in acquitting the accused person while the health of food consumers has been affected.

4 INSTITUTIONAL CHALLENGES

Ordinarily, compliance of the law depends much on the effective enforcement of such law. TFDA was statutorily responsible for regulation and control of all food products domestically manufactured or imported from other countries, the task which is now performed by TBS. Unfortunately for a long period of time the laws on food safety and quality have not been enforced accordingly by the food safety and quality regulatory bodies. For instance, the CAG Report provides that, there is inadequate registration of food processing plants, premises and transportation facilities and that, there was no assurance that all food processing plants were licensed or registered hence, not captured in the TFDA's register of food processing plants.⁹⁹ Since the register contained only census for inspections, thus there was a risk of having food processing plants which were not operating food safely.¹⁰⁰ Furthermore, the Report discovered presence of several

⁹⁹ The United Republic of Tanzania, Controller and Auditor General of the United Republic of Tanzania, "General Report on the Performance and Specialized Audits for the Period Ending 31st March 2018", March 2018, p. 32.

¹⁰⁰ *Ibid.*

slaughter facilities that were not registered contrary to the requirement of the law and they were operating in unhygienic conditions and the risk is big for the consumers to be supplied with the meat that is not safe. The same is reported in relation to the transportation of meat from slaughter facilities by unapproved motor vehicles by the relevant authorities and that they transported meat in unhygienic conditions such as being dirty and dusty and sometimes, the meat was transported by motorcycles that may cause contamination of the meat.¹⁰¹

Also, there is inadequate and inefficient inspection of food processing plants, premises and entry points. The enforcing agents have not been able to conduct regular, effective and efficient inspections in such places. According to the CAG Report, such enforcement organs have not effectively and efficiently conducted inspections in order to protect the safety and quality of food intended for human consumption. The Report provides that, all high risk food processing plants were not inspected and that, the failure to inspect the high risk food processing plants which produce food products such as fish and their products, milk and its products, meat and its products, processed vegetables, composite foods and spices, subjected consumers to risks of diseases associated with such food products, in case the uninspected plants violated food safety standards.¹⁰²

Furthermore, the CAG Report reveals absence of TBS inspectors at the border stations which were taken as sample and such areas included Borega, Kogaja, Kilongwe and Gorogonja in Mara region; Bukoba and Kemonondo ports in Kagera region; Kisese, Kitobo and Chumvini in Kilimanjaro region and Kigombe, Kipumbwi, Mkwaja, Kwale – Jasini, Chongoleani, Sahare, Mwambani, Dumi and

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*, pp. 34 - 35.

Mnyanjani in Tanga Region.¹⁰³ The danger of absence of TBS inspectors at such border stations poses a big risk of importation of food products which are not safe for human consumption or the food products which do not meet the established quality standards. Further, the CAG Report noted that, during the period of the audit, some importers managed to pass goods worth USD 1,944,499 through the ports of entry with forged permits without being detected.¹⁰⁴ As stated by the CAG Report, ports of entry for the importation of foodstuffs were not effectively inspected, hence, creating a high risk of importing substandard foodstuffs in the country; which could endanger health of consumers.¹⁰⁵ This shows a clear picture of how the effective and efficient inspections of food products manufactured locally or imported from other countries has been a big challenge to our food safety and quality regulatory bodies.

TBS also conducts inspections for the imported food products through TBS inspectors or any appointed public servants under the Standards Act. All imported food products should be inspected by the TBS inspectors or appointed public servants under the Standards Act before such food products are allowed to enter Tanzanian markets. Two Ministries namely, the Ministry of Health, Community Development Gender, Elderly and Children (MoH) under the Public Health Act and the Ministry of Livestock and Fisheries (MoL) under the Fisheries Act are also mandated to conduct inspections. They engage in food safety inspection operations as well as food hygiene control in order to ensure that the food supplied to consumers is safe and is supplied in hygienic environment. Hence, it was/is possible to find inspectors from TFDA, TBS, MoH and MoL at the border stations who conduct

¹⁰³ *Ibid*, p. 37.

¹⁰⁴ *Ibid*, p. 52.

¹⁰⁵ *Ibid*, p. xvii.

inspections for the imported goods including food products.

However, the effective enforcement of the existing laws on food safety and quality has been hampered by several reasons, including difficulties in controlling importation of food products due to the nature of the country. Tanzania is a big country compared with all other East African countries, containing a total area of 945,087 km² bordered by the Indian Ocean and six countries.¹⁰⁶ The borders of some of the neighboring countries go through some great lakes¹⁰⁷ that are located in Tanzania. Hence, different means of transport are used for the importation of food products in Tanzania which include marine transport, surface transport and air transport. There are many official ports of entry for the imported food products¹⁰⁸ which can be controlled by the enforcing authorities.

Also there are several unmanaged and or unofficial ports of entry such as Lake Victoria, the porous border from Mtukula to Morongo, Tarakea to Holili, the border with Kenya and the Indian ocean coastline and some of the food products are imported through those porous borders by dishonest/unscrupulous business persons.¹⁰⁹ The regulatory authorities have no capacity in terms of human resources and funds to control all unofficial ports of entry for being many and the country is so huge and the

¹⁰⁶Tanzania is bordered by Uganda and Kenya to the North; Malawi, Mozambique and Zambia to the South; Democratic Republic of Congo (DRC), Burundi and Rwanda to the West; and the Indian Ocean in the Eastern part with a total boundary length of 4,826 km of which 1,424 km is coastline.

¹⁰⁷Lake Victoria is shared with Kenya and Uganda; Lake Tanganyika, with Rwanda, Democratic Republic of Congo (DRC) and Zambia; and Lake Nyasa, with Malawi.

¹⁰⁸ See, TFDA, "TFDA Zone Offices", available at http://imis.tfda.go.tz/index/?q=tfda_zones (accessed 12th June 2018).

¹⁰⁹ TFDA Director of Food Safety in Dar es Salaam, Interviewed by the author, (July 2018, Dar es Salaam).

only remedy available to the regulatory authorities is to conduct regular inspections and post market surveillance for the food products placed in markets.

In addition, there is a problem of lack of awareness on the part of consumers. About 600 million people are estimated to suffer from foodborne diseases every year and out of that, about 420,000 people die from such foodborne diseases which are mainly caused by consumption of unsafe foods by food consumers who lack awareness on food safety.¹¹⁰ Low level of food safety knowledge is a result of lack of training course and awareness programme on food safety related issues.¹¹¹ Customer awareness of food hygiene will drive a better hygienic food service business.¹¹² The majority of the food consumers are not aware of various matters on food safety and quality.¹¹³ They are ignorant on their right to complain or even where to take their grievances in case one is affected after consuming the food which is not safe for human consumption. Most of the food consumers have no knowledge on how to determine whether the food supplied to them is safe for human consumption or not. For instance, it is difficult for consumers to detect the amount of pesticides residues in the raw farm produced crops, vegetables and fruits placed in

¹¹⁰TFDA Director General, "Deaths Caused by Foodborne Diseases as per 2015 WHO Statistics", available at <http://www.tumainimedia.com/index.php/template/item/199-watu-milioni-600-huugua-kwa-kula-chakula-kisicho-salama> (accessed 04th December 2018).

¹¹¹Yacobb H. Y., and Tahir B., "Assessment of Food Safety Knowledge, Attitudes and its Quality in Students Canteens at Duhok University, 2015", *Iranian Journal of Health, Safety and Environment*, Vol. 3, No. 4, (June 2016), pp. 626 - 632 at p. 627.

¹¹²Sienny T. and Serli W., "The Concern and Awareness of Consumers and Food Service Operators Towards Food Safety and Food Hygiene in Small and Medium Restaurants in Surabaya Indonesia", *International Food Research Journal*, Vol. 17, No. 3, (October 2010), pp. 641-650 at p. 642.

¹¹³ Thirty (30) Food Consumers, Interview by author, (August 2018, Dar es Salaam, Mwanza and Arusha).

the markets. The sellers themselves are not aware of such pesticides residues and even if they are aware, they cannot educate consumers on presence of pesticide residues in the food products they sell in order to protect their business. Many consumers lack knowledge on the safety and quality of pre-packaged foods and how to determine that such pre-packaged foods are safe for human consumption.

Moreover, residues of pesticides or heavy metals are not detectable by ordinary consumers either before or after consumption and that sellers of food products are unlikely to provide information about food hazards and hence consumers have to rely on credence attributes like food being inspected to meet certain standards or organically produced or having a geographical identity associated with Good Agricultural Practices.¹¹⁴

Ordinarily, provision of education on food safety and quality to all stakeholders in the food business including consumers is necessary. That is why FAO believes that, an increasingly important role for food control systems is the delivery of information, education and advice to stakeholders across the farm-to-table continuum and these activities include the provision of balanced factual information to consumers.¹¹⁵ The provision of education on food safety and quality to consumers will raise awareness to consumers and enable consumers to purchase food products with care in order to purchase only safe and quality food products.

¹¹⁴Alphonse R. and Alfnes F., "Consumer Willingness to Pay for Food Safety in Tanzania: An Incentive – Aligned Conjoint Analysis", *International Journal of Consumer Studies*, Vol. 36, No. 4, (2012), pp. 394 – 400 at p. 394.

¹¹⁵FAO/WHO, "Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems", 2003, p. 9.

The education on food safety and quality can be provided through different means such as food labeling and using of media. Food labeling enables consumers to be aware of various matters such as expiry date, ingredients and safe temperature storage. Hence, the education on food safety and quality that is provided by the food safety and quality regulatory bodies through different media such as televisions, radio stations, newspapers and national exhibitions¹¹⁶ does not reach many food consumers.

5 CONCLUSIONS AND RECOMMENDATIONS

The area of food safety and quality is among the areas that are highly regulated in Mainland Tanzania. This is evidenced by presence of several laws that regulate and control food safety. Such laws have established several institutions that regulate and control food safety and quality generally or specifically in terms of specific category of food. Hence, the Tanzanian legal framework on food safety and quality involves multiple agencies scattered in different government ministries, departments and institutions. Notably, the current amendment of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act by the Finance Act 2019, intended to cure the problem of existence of multiple agencies and it has transferred all regulatory powers of food safety and quality from TFDA to TBS. Unfortunately, the amendments have not touched other food safety and quality regulatory laws such as the

¹¹⁶ The TFDA Communication and Public Education Unit Manager gave an example of the food education that was provided to owners of schools in Mwanza on how to safely store the food in their schools for such food to remain safe. He also gave another example of the food education that was provided to small scale food processors in Tabora and Njombe on the laws, regulations and guidelines on food safety and quality. He further gave another example of the food education that was provided to grain processors in Dodoma after TFDA discovered the presence of toxic fungi (aflatoxin) in maize and groundnuts. (The interview was conducted in July 2018, at TFDA Headquarters in Dar es Salaam).

laws that established other bodies like TAEC, TDB, TMB, SBT and CBT. Hence, presence of multiplicity of institutions/agencies on food safety and/or quality has resulted to functional overlap of the institutions, unnecessary bureaucracy in doing business and increase of cost of compliance and enforcement. All these may have negative effect on the effective regulation and control of food safety and quality. Furthermore, the Finance Act, 2019 which amended the provisions of the Tanzania Food, Drugs and Cosmetics Act and Standards Act fails to provide the penalty for offences committed under its provisions. That being the case, it means that one has to suffer the general penalty as provided by the Standards Act or the Minister for Industry and Trade to provide the penalty under the Regulations made by him/her. This position is quite different from the position under the Tanzania Food, Drugs and Cosmetics Act, where for every offence committed, the penalty was also provided. This is dangerous because ordinarily, offences must be defined in the primary law, along with the nature and limits of the penalties that may be imposed, together with the procedures for such imposition once the commission of an offence has been duly established.

Furthermore, the existing laws on food safety and quality are not enforced effectively. In other words, the food safety and quality regulatory bodies do not effectively enforce the laws on food safety and quality in Mainland Tanzania. This is due to the nature of the country and the geographical position of the country where it is difficult to control importation of food products in the country. The food products from outside the country enter Tanzania through official and unofficial ports of entry. Furthermore, lack of awareness on the part of consumers and shortage of staffs, equipments and funds has acted as a bar for the effective enforcement of the laws on food safety and quality by the food safety and quality regulatory bodies.

This paper recommends that, all laws that deal with food safety and quality in Mainland Tanzania be harmonized for there to be cross referencing of the provisions that serve the same purpose in terms of registration and licencing in order to remove all unnecessary duplication of functions and ease compliance and enforcement of the laws. Moreover, the laws on food safety and quality should be amended for the food safety and quality regulatory bodies to recognize the certificates issued by TBS as the board that is overseer of food safety and quality in Mainland Tanzania in all matters relating to food safety and quality. In other words, the laws that establish different food safety and quality regulatory bodies should be amended to the extent of dealing with promotion, management and development of the industry where the law applies and leave all issues in relation to safety and quality to TBS.

Furthermore, the provisions of the Finance Act, 2019 which amended the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act be amended for the purpose of providing the penalty for the designated offences in terms of the minimum and maximum penalty as it used to be in most of the provisions of the Tanzania Food, Drugs and Cosmetics Act. For example, sections 21D, 21 (E) (2), 21 (K) (2), 21 (M) (2), 21 (N) (2) be amended in order to provide the penalty for offences designated within the Finance Act, 2019 like one of the sections in the Finance Act, 2019 which provides that:

Any person who contravenes this section commits an offence and shall be liable on conviction to a fine not less than one hundred thousand shillings or to

imprisonment for a term not exceeding three months or to both such fine and imprisonment.¹¹⁷

In addition, the penalties should be designated in accordance with the nature and gravity of the offences committed, taking into consideration the nature of the food business carried out by the person alleged to have committed an offence.

In addition, this study recommends for the amendment of the provisions of the Finance Act, 2019 which amended the Standards Act in order to allow compounding of offences by TBS against the persons who have admitted the offences, accepted to pay the fine and filled the compounding form. This will help TBS to avoid long and cumbersome legal procedures which are involved in prosecuting a case and which may end up in favour of the person who is prosecuted on different grounds including technicality grounds and lack of sufficient evidence. This may have devastating effects in protection of food safety and quality within the country.

TBS and other regulatory authorities should regularly and frequently provide education to consumers, manufacturers, processors, producers, importers and exporters of food products. The education on food safety and quality can be provided through television, radio, newspapers, seminars and national exhibitions. Also the government should allocate more budget to TBS and other food safety and quality regulatory bodies in order to strengthen their capacity of enforcing the laws on food safety and quality effectively and efficiently. In addition, the government should employ more skilled staffs to TBS and other food safety and quality regulatory bodies. Adequate number of skilled and

¹¹⁷See Section 21 (P) (5) of Act No. 8 of 2019.

professional staffs enables the institution to ensure compliance of the laws by all stakeholders in the food industry in terms of registration, certification, licencing, issuance of permits and carrying out of inspection and post market surveillance. Having adequate number of skilled staffs at all official ports of entry will enable the institutions to effectively control importation of food products.