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**COLLEGE OF LAW AND MANAGEMENT STUDIES**  
**SCHOOL OF LAW**

**How safe is our food? A critical overview of the South  
African food safety legal framework**

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This mini-dissertation is submitted in partial fulfilment of the requirements for  
the degree of Master of Laws in Business Law.

**Supervisor: Dr C.E Stevens**

2023

# DECLARATION

I, **Noresha Govender** declare that:

- A. The research used in this dissertation, except where otherwise indicated, is my original research.
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- C. This dissertation is my own unaided work.
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Noresha Govender

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Date: 13/12/2023

## **DEDICATION**

This thesis is dedicated to my parents and sister who have given me their full support and encouragement throughout my studies. I owe everything to them and I am so thankful that they are part of my life. I also dedicate this dissertation to the memory of my late brother Lenny and my grandmother. I hope I have done you proud.

## **ACKNOWLEDGEMENTS**

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Lastly, to my beautiful sister Sainusha, I am thankful for your help, emotional support and encouragement that you have given me throughout my studies. Thank you for believing in me. You have been my rock and strength. You are truly an inspiration to me.

## **ABSTRACT**

Foodborne diseases such as listeriosis, food fraud and recall of food products have become a serious cause for concern. These food safety challenges have brought food safety concerns to the fore. Moreover, food safety challenges have severe consequences on people's health and the economy since the food industry contributes significantly to the South African economy. This thesis sought to address the central issue of food safety in South Africa. It has been highlighted that several food safety regulations and various regulatory bodies have been created in South Africa to deal with food safety. This thesis aimed to analyse the various regulations implemented by the South African Government to deal with food safety, the international food safety regulations and the current food safety challenges that exist in South Africa to assess the extent to which the South African legal framework regulates food safety and how effective have they been in addressing these food safety challenges. Further, the thesis aims to explore consumer rights and remedies under the Consumer Protection Act 68 of 2008 and provide a discussion of product liability and how businesses can be held accountable for unsafe food products.

The research has found that despite these food safety regulations and the international commitment to ensure food safety, there are frequent food safety outbreaks and a high incidence of foodborne diseases in South Africa. This means that food in South Africa is not very safe. The main findings of this thesis were that there is an ineffective enforcement of these regulations, a gap in food safety governance and lack of consumer awareness. Furthermore, it has found that food safety laws are complex and there is a lack of coordination between the DOH, DALRRD and the dtic who is responsible for ensuring and regulating food safety. The thesis argues that food safety is a shared responsibility and all stakeholders must play their part in improving food safety. Lastly, several recommendations have been provided to address these concerns and prevent future food safety risks.

## LIST OF ABBREVIATIONS

<b>CAC</b>	Codex Alimentarius Commission
<b>CODEX</b>	Codex Alimentarius (Standards)
<b>CPA</b>	Consumer Protection Act 68 of 2008
<b>DALRRD</b>	Department of Agriculture, Land Reform and Rural Development
<b>DOH</b>	Department of Health
<b>DSB</b>	Dispute Settlement Body (WTO)
<b>DTIC</b>	Department of Trade, Industry and Competition
<b>EHP</b>	Environmental Health Practitioners
<b>FAO</b>	Food and Agricultural Organization
<b>FAOLEX</b>	Food, Agriculture and Renewable Natural Resources Legislation Database
<b>FCD</b>	Foodstuffs, Cosmetics and Disinfectants Act
<b>FLAG</b>	Food Legislation Advisory Group
<b>FSI</b>	Food Safety Initiative
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GMO</b>	Genetically Modified Organisms
<b>IAFP</b>	International Association for Food Production
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IFSS</b>	Integrated Food Security Strategy for South Africa
<b>IHR</b>	International Health Regulations
<b>INFOSAN</b>	International Food Safety Authorities Network
<b>ISO</b>	International Organization for Standardization
<b>NCC</b>	National Consumer Commission
<b>NRCS</b>	National Regulator for Compulsory Specifications
<b>SA</b>	South Africa
<b>SABS</b>	South African Bureau of Standards
<b>SPS</b>	Sanitary and Phytosanitary
<b>TBT</b>	Technical Barriers to Trade
<b>UDHR</b>	Universal Declaration on Human Rights
<b>UN</b>	United Nations
<b>WHO</b>	World Health Organization
<b>WTO</b>	World Trade Organization

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## **KEY WORDS**

Food safety, governance, food safety regulations, food retail sector, South Africa, EHPS, Department of Health, Codex.

# CHAPTER 1

## INTRODUCTION

*An ounce of prevention is worth a pound of cure.*<sup>1</sup>

### 1.1 BACKGROUND

Food is one of the most essential things to human beings. People would not be able to survive without food. Most importantly, food has to be safe for human consumption. Food needs to be prepared and sold hygienically and safely. Whether buying a burger from a fast-food chain or a sandwich from a street vendor, how frequently do you think about how safe the food is to eat and how hygienically it was prepared? Many people do not question the safety of their food. The South African Constitution safeguards the right to food.<sup>2</sup> Food safety challenges have recently become a significant issue in South Africa. Foodborne diseases such as listeriosis, food fraud, and food products being recalled due to traces of glass found in those items have become a serious cause for concern.<sup>3</sup> These food safety challenges have brought food safety concerns to the fore. Furthermore, food safety challenges have severe consequences for people's health and the economy since the food sector contributes significantly to South Africa's economy.<sup>4</sup>

Before understanding what this dissertation will focus on, it is necessary to set out the definition of food safety. There are many ways in which food safety can be understood. Some authors argue that food safety is a level of safety and sanitation of foods from foodborne illnesses.<sup>5</sup> Food safety also refers to a number of standards that determine whether a food product is acceptable for sale.<sup>6</sup> In other words, food safety requires food to be safe for consumption and

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<sup>1</sup> B Franklin 'On the protection of towns from fire' available at <https://founders.archives.gov/documents/Franklin/01-02-02-002>, accessed on 31 March 2022.

<sup>2</sup> Section 27(1)(b) of the Constitution of the Republic of South Africa, 1996.

<sup>3</sup> 'McCain recalls food items after detecting traces of glass' Sunday World 16 March 2022 available at <https://sundayworld.co.za/news/mccain-recalls-food-items-after-detecting-traces-of-glass/>, accessed on 10 April 2022.

<sup>4</sup> S Boatema... et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 333-342.

<sup>5</sup> 'Food safety Essay: Importance of food safety' available at <https://www.cram.com/subjects/Food-Safety-Essay>, accessed 14 April 2022.

<sup>6</sup> 'Food Safety South Africa: What you need to know' available at <https://assurecloud.co.za/food-safety-south-africa-what-you-need-to-know/>, accessed on 14 April 2022.

free from contamination. The food retail sector plays the most critical role in food safety because this sector is responsible for manufacturing, supplying and distributing all food products within the South African borders.<sup>7</sup> The food retail sector provides people with their daily food supply. The most food safety challenges arise from this sector. The food retail sector is crucial to ensuring the safety of food, as it is the last point before food reaches the consumer.<sup>8</sup>

According to Sibanyoni,

“the outbreak of many foodborne diseases are due to contamination that occurs during food preparation within food service establishments.”<sup>9</sup>

The food retail sector comprises two main sectors: formal food retail sector and the informal food retail sector. The formal food retail sector includes large manufacturers and industries like Shoprite while the informal food sector involves street vendors and informal food stores.<sup>10</sup> It is important for us to understand what regulations South Africa has in place to ensure the safety of our food. Regulations to guarantee food safety did not exist in the past. Regardless of whether food was safe for human consumption, the various stakeholders in the food sector were allowed to participate in any food-related activity. Currently, the government is required to give the utmost importance to ensuring food safety. Through the implementation of various legislation, the government requires the various stakeholders in the food sector to follow standards, procedures and abide by regulations to ensure food safety.

One of the driving factors behind implementing these food safety regulations is the importance of providing consumers with accurate information regarding food products they buy and the assurance that the food they are consuming is safe.<sup>11</sup> The government has given the responsibility of regulating food safety to three central government departments: the Department of Trade, Industry and Competition (the DTIC), the Department of Health (DOH) and the Department of Agriculture, Land Reform and Rural Development (DALRRD).<sup>12</sup> These departments are responsible for implementing many appropriate food safety legislation,

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<sup>7</sup> S Boatema... et al ‘Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa’ (2019) 104 *Food Control* 333-342.

<sup>8</sup> Ibid.

<sup>9</sup> J J Sibanyoni... et al ‘Food safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa’ (2017) 73 *Food control* 1397-1406.

<sup>10</sup> Hungry Cities Partnership Discussion Paper 5 *Mapping the informal food economy of Cape Town, South Africa* (2016) 2.

<sup>11</sup> ‘Food regulation in South Africa-past, present and future’ available at [https://www.saafrust.org.za/wp-content/uploads/2018/12/presentation\\_2018\\_11\\_2\\_9\\_b.pdf](https://www.saafrust.org.za/wp-content/uploads/2018/12/presentation_2018_11_2_9_b.pdf), accessed on 29 April 2022.

<sup>12</sup> Ibid.

standards and rules.<sup>13</sup> Food safety legislation contains various provisions that prohibit the sale of certain food products, set out the safety procedures that must be followed, inspection requirements, consumer awareness, and how food products must be labelled. It also contains many other provisions to regulate food safety, including imposing criminal liability and penalties for those who violate any food safety provisions. This dissertation will highlight that regulating food safety is the responsibility of various departments through their particular units and regulatory bodies.

Boatema argues that businesses often find complying with these food safety standards and regulations a major challenge.<sup>14</sup> However, the topic of food safety is a matter of universal concern.<sup>15</sup> There are various international conventions that have been implemented to regulate food safety. This dissertation will primarily focus on food safety in South Africa. It will analyse the various regulations implemented by the government to deal with food safety, the international food safety regulations and the particular food safety challenges that currently exist in South Africa to assess the extent to which the South African legal framework regulates food safety and how effective have they been in addressing these food safety challenges.

## **1.2 RESEARCH PROBLEM**

Food safety is often not given much importance however, it is a serious area of concern for any country. It is essential to ensure that our food is safe and prepared hygienically. There are several food safety regulations and various regulatory bodies that have been created in South Africa to deal with food safety. Many consumers are unaware of these regulations and the rights and remedies available if they suffer any harm as a result of unsafe food. Based on the current state of food safety in South Africa, it is guaranteed that people suffer or will suffer from food poisoning.<sup>16</sup> This results from improper enforcement of existing food safety regulations and a lack of awareness around food safety. According to the World Health Organisation (WHO),

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<sup>13</sup> Ibid.

<sup>14</sup> S Boatema...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 336.

<sup>15</sup> Ibid.

<sup>16</sup> Food Advisory Consumer Services 'Food Poisoning' available at <https://foodfacts.org.za/food-poisoning/>, accessed on 15 April 2022.

“human actions are the leading cause of food contamination during food preparation in food service establishments since there is non-adherence to good hygiene practices.”<sup>17</sup>

In other words, unsafe food and cross-contamination of food are frequently caused by a lack of understanding about food safety as well as a lack of skills and training for food handlers and workers in the food sector.<sup>18</sup>

The South African food safety regulations is a competent legal framework to regulate the different aspects of food safety, ranging from the labelling of food products to promoting the safety of meat and animal products. Consumers must know the extent to which these regulations regulate the safety of food and how successful these regulations have been in addressing food safety challenges. A recent example of a food safety challenge in South Africa was the listeriosis outbreak which caused severe constraints on the healthcare and food retail sector.<sup>19</sup> Despite these regulations and the international commitment to ensure food safety, there are frequent food safety issues in South Africa. Stats SA reported that,

“A study conducted in 2011 found that there were 2500 cases of foodborne diseases reported and majority of these cases were children.”<sup>20</sup>

There is a gap in food safety governance that has to be addressed. Poor knowledge about food safety risks and hygienic food handling by consumers is also considered a contributing factor to these challenges. This dissertation seeks to address these problems and provide recommendations.

### **1.3 LITERATURE REVIEW**

A literature review essentially summarises research already conducted on a subject matter and highlights the gaps that may be addressed by future research.<sup>21</sup> Recently, South Africa has been facing a food safety crisis. Based on the research, the thesis submits that food safety in South

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<sup>17</sup> World Health Organisation ‘Foodborne diseases’ available at [https://www.who.int/foodsafety/areas\\_work/foodborne-diseases/en/](https://www.who.int/foodsafety/areas_work/foodborne-diseases/en/), accessed on 15 April 2022.

<sup>18</sup> J Sibanyoni...et al ‘Food safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa’ (2017) 73 *Food control* 1406

<sup>19</sup> S Boatema...et al ‘Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa’ (2019) 104 *Food Control*.

<sup>20</sup> Statistics South Africa ‘Census 2011: Statistical release. The South Africa I know, the home I understand’ available at <https://www.statssa.gov/publications/P03014/P030142011.pdf>, accessed on 15 April 2022.

<sup>21</sup> University of Edinburgh ‘Literature Review’ available at <https://www.ed.ac.uk/institute-academic-development/study-hub/learning-resources/literature-review>, accessed on 22 May 2022.

Africa is a neglected topic in academic research however, there are a few recent studies that focus on the current state of food safety in South Africa and the regulation of food safety.<sup>22</sup> This literature review aims to analyse existing research on the current state of food safety regulation in South Africa.

Food safety is an essential public health function.<sup>23</sup> The current laws relating to food safety in South Africa provide the fundamental standards and rules that various stakeholders in the food sector must follow to ensure that food is safe. It is the government's responsibility to ensure the safety of the people within its borders. South Africa plays an active role in the international sphere and as a result, South Africa has an international obligation to ensure food safety within its borders. According to Boatemaa, food safety remains a struggle for developing countries like South Africa.<sup>24</sup> It is often argued that the government is not doing enough to ensure the safety of food.<sup>25</sup> It is important for us to have a good understanding of the current state of food safety in South Africa. The thesis will reveal that food safety regulation is a comprehensive issue, and raises several concerns amongst countries. International conventions obligate South Africa to regulate food safety within its borders.

Lin argues that economic globalisation has significantly changed the way food is produced globally and as a result, foodborne diseases have become globalised.<sup>26</sup> He argues that various international organisations such as the Codex Alimentarius Commission and WHO were established with the responsibility of regulating food safety globally.<sup>27</sup> Mutukumira and Jukes affirm that the government is under an obligation to ensure the safety of food.<sup>28</sup> They also argue that developing countries need to develop effective food safety control systems that will address the safety of food and they conclude that various international food safety regulations enhance national food safety control systems and ensure that developing countries put measures in place to address food safety.<sup>29</sup> However, these studies do not focus in particular

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<sup>22</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control*.

<sup>23</sup> The Restaurant Voice 'Food safety initiative: World Health Organisation (WHO) food safety as a public health function' available at <https://restaurant.org.za/food-safety-intitiative/>, accessed on 29 April 2022.

<sup>24</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 334.

<sup>25</sup> Ibid.

<sup>26</sup> C F Lin 'Global food safety: exploring key elements for an international regulatory strategy' (2010) 51 *Virginia Journal of International Law Association* 640.

<sup>27</sup> Ibid.

<sup>28</sup> A N Mutukumira & D J Jukes 'The development of national food safety control systems in Sub-Saharan Africa-issues and opportunities' (2003) *Food Africa, Congress centre/palais de congress Yaounde, Cameroon* 3.

<sup>29</sup> Ibid.

on South Africa. As such, Boatemaa argues that food safety should be regulated through a centralised food safety control system.<sup>30</sup>

Boatemaa further states that these national departments are required to regulate food safety internationally and incorporate the various international food safety standards and codes of practice into South Africa's food safety law.<sup>31</sup> Mokoatle highlights the role that the municipality plays in enforcing food safety regulations.<sup>32</sup> He states that local municipalities in South Africa, through Environmental Health Practitioners, are responsible for ensuring that food premises comply with food safety regulations, they must report back on any non-compliance with food safety regulations and take enforcement action against food premises that do not comply with these regulations.<sup>33</sup> Boatemaa argues that foodborne diseases such as listeriosis, food fraud, expired products and ambiguous food origins are some challenges affecting food safety in South Africa.<sup>34</sup> While Olanya and others argue that parasitic diseases, salmonella and other bacteria are responsible for making food unsafe for consumption.<sup>35</sup> Furthermore, the authors argue that these foodborne illnesses cause most of the fatalities in South Africa.<sup>36</sup> Sibanyoni states that the majority of these foodborne diseases affect children.<sup>37</sup>

Some authors have identified gaps in the governance of food safety in South Africa.<sup>38</sup> It is acknowledged that managing food safety has not been easy for the South African Government as they experience overlap and differing roles. Boatemaa and others emphasise that one of the gaps that exist is that there is confusion as to who is responsible for managing food safety risks.<sup>39</sup> Further, Mokoatle is of the view that there is a lack of effective enforcement of food safety regulations by local municipalities, lack of follow-up on food premises and no action is

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<sup>30</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 333.

<sup>31</sup> Ibid.

<sup>32</sup> M C Mokoatle, T T Sigudu & T Morse 'Enforcement of food safety regulations: a review of municipality records' (2016) *University of Johannesburg* available at <https://core.ac.uk/download/pdf/54193541.pdf>, accessed on 20 May 2022.

<sup>33</sup> Ibid.

<sup>34</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 337.

<sup>35</sup> O M Olanya ... et al 'Cost estimation of listeriosis (*listeria monocytogenes*) occurrence in South Africa in 2017 and its food safety implications' (2019) 102 *Food Control* 234.

<sup>36</sup> Ibid.

<sup>37</sup> J J Sibanyoni & P A Tshabalala 'Food Safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa' (2017) 73 *Food Control* 1401.

<sup>38</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 340.

<sup>39</sup> Ibid.

taken against food retailers for non-compliance.<sup>40</sup> Olanye and others acknowledge a lack of rigorous food safety regulations.<sup>41</sup> Also, Lin states that there are gaps in international food safety regulations since there are outbreaks of foodborne illnesses globally despite the regulations in place and there is a need for reform.<sup>42</sup> Also, Sibanyoni affirms that there are gaps in food safety governance by raising the point that there is a lack of food safety awareness and training of food handlers in food service establishments.<sup>43</sup>

The authors have a common theme that there is inadequate training and knowledge of food safety by consumers and food handlers in the South African food retail sector. Several authors have questioned the food safety awareness of food handlers. Sibanyoni highlights the current state of food safety awareness by food handlers in South Africa.<sup>44</sup> He conducted a study into school feeding programmes to assess food handler's knowledge and awareness of food safety. He concluded that inadequate food safety knowledge by food handlers' results in unsafe food. He argues that there is a lack of food safety knowledge and training of food handlers in public school feeding schemes, in the Mpumalanga area.<sup>45</sup> Also, Boatemaa affirms a lack of food handling and hygiene training for food handlers.<sup>46</sup> She states that consumers must be educated and made aware of food safety and hygiene.<sup>47</sup> Mkhungo and others assessed the food safety knowledge and practices of households in selected areas of Kwa-Zulu Natal.<sup>48</sup> He states that most food safety challenges arise from homes since there is generally a lack of food safety knowledge and skills for handling food hygienically.<sup>49</sup> He also affirms a gap in food safety knowledge with a high risk of foodborne outbreaks in South Africa.<sup>50</sup>

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<sup>40</sup> M C Mokoatle, T T Sigudu & T Morse 'Enforcement of food safety regulations: a review of municipality records' (2016) *University of Johannesburg* available at <https://core.ac.uk/download/pdf/54193541.pdf>, accessed on 20 May 2022.

<sup>41</sup> O M Olanya...et al 'Cost estimation of listeriosis (*listeria monocytogenes*) occurrence in South Africa in 2017 and its food safety implications' (2019) 102 *Food Control* 233.

<sup>42</sup> C F Lin 'Global food safety: exploring key elements for an international regulatory strategy' (2010) 51 *Virginia Journal of International Law Association* 637.

<sup>43</sup> J J Sibanyoni & P ATshabalala 'Food Safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa' (2017) 73 *Food Control* 1399.

<sup>44</sup> *Ibid.*

<sup>45</sup> J J Sibanyoni & P ATshabalala 'Food Safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa' (2017) 73 *Food Control* 1403.

<sup>46</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 338.

<sup>47</sup> *Ibid.*

<sup>48</sup> M C Mkhungo...et al 'Food safety knowledge and microbiological hygiene of households in selected parts of Kwa-Zulu Natal, South Africa' (2018) 7(2) *Italian Journal of Food Safety*.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

Only one writer goes on to provide solutions to the issue of food safety, which include effective enforcement of existing food safety regulations. However, these recommendations are not very extensive. Some authors focus only on the formal food retail sector. This dissertation will address this gap by focusing on the formal and informal food sectors. In this literature review, the authors provide useful insights into the issues relating to food safety in general and do not specifically pay attention to discussing the food safety regulations in South Africa. Hence, this dissertation aims to address the gaps in the current research. This dissertation aims to provide a detailed and critical discussion of the food safety regulations in South Africa to assess its effectiveness in addressing current food safety challenges. Also, it will discuss the international food safety framework and provide recommendations for improving food safety in South Africa.

#### **1.4 RESEARCH AIMS**

This section highlights the aims and objectives that this dissertation seeks to achieve. This dissertation aims to critically analyse how the South African legal framework regulates food safety. To achieve this aim, this dissertation will provide an overview of South African food safety regulations. Also, this dissertation explores the food safety challenges experienced in South Africa and the international food safety regulations. This dissertation will highlight the effectiveness of these food safety regulations in addressing food safety challenges. Furthermore, this dissertation explores the consumer rights and remedies afforded by the Consumer Protection Act 68 of 2008. This dissertation will elaborate on these gaps that exist in the regulation of food safety and discuss how they impact food safety in South Africa. Lastly, it will provide recommendations to address these concerns and prevent future food safety risks.

#### **1.5 RESEARCH QUESTIONS**

This dissertation aims to analyse the current food safety regulations in South Africa. Further, it will look at some of the food safety challenges experienced in South Africa. This dissertation will highlight some of the shortcomings experienced in the food sector pertaining to food safety and hygiene. It will also focus on South Africa's international obligation to ensure food safety. This dissertation seeks to answer the questions that arise in the analysis of South African food

safety regulations and how these regulations can address food safety challenges. The following questions will guide the research for this dissertation. To achieve the purpose of this dissertation, the following questions need to be answered:

### **1.5.1 Main Research question**

The main research question that this dissertation sought to answer is: To what extent does the South African legal framework regulate food safety?

### **1.5.2 Sub Research questions**

The following sub-research questions sought to be answered by this dissertation:

- To what extent does the international legal framework regulate food safety?
- What are the current food safety regulations in South Africa?
- What particular impediments is the South African institutional and legal framework facing with regards to food safety, with particular focus on the Consumer Protection Act 68 of 2008?

## **1.6 RESEARCH METHODOLOGY**

Research methodology is essential because it focuses on the research design, data collection methods, and methods of analysis used in the research for this dissertation.<sup>51</sup> Due to Covid-19 and lockdown constraints, the methodology that will be used in this dissertation is desktop-type research. This dissertation will draw heavily on South African legislation and previous research conducted on food safety in South Africa.

A qualitative approach will be adopted to analyse the data gathered from this research. The qualitative approach is appropriate for this dissertation because it is literacy data and the data already exist. The purpose of this research was to consider food safety legislation and existing research on food safety by various authors to gain a wide understanding of food safety in South Africa. This research comprises of various primary and secondary sources which will give an overview of the South African legal framework regulating food safety and the current food safety challenges. These sources are best suited for this type of research. The sources that will be relied on include:

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<sup>51</sup> 'What is research methodology? (Why it's important and types)' available at <https://www.indeed.com/career-advice/career-development/research-methodology>, accessed on 10 May 2022.

### **1.6.1 Primary Sources**

This dissertation will rely on primary sources which include various legal texts, legislation and case law, such as South Africa's food safety legislation, the Constitution of the Republic of South Africa, 1996, international food safety standards and national food safety policies and standards.

### **1.6.2 Secondary sources**

Secondary sources include but are not limited to academic books, textbooks, journal articles, web articles, YouTube videos, online newspaper articles, unpublished theses, internet sources and website documents. Secondary sources will also include previous research conducted on food safety in South Africa in both print and electronic formats.

## **1.7 LIMITATIONS OF THIS DISSERTATION**

This dissertation explores how the South African legal framework regulates food safety. While food safety is a serious matter that needs to be regulated in every country, this dissertation will only focus on the South African legal framework. In addition, this dissertation will only focus on particular international conventions. This means that this dissertation will only focus on international conventions that regulate food safety and impose an obligation on South Africa to ensure the safety of food within its borders. Furthermore, this dissertation is aware of the broad nature of food safety; however it will not discuss the regional legal framework on food safety.

## **1.8 CHAPTER OUTLINE**

This dissertation will be structured in a clear and concise manner. Each chapter will provide an in-depth discussion of the various aspects relating to food safety such as the South African food safety regulations, food safety challenges and the international food safety framework. This dissertation will be structured as follows:

### **Chapter 1: Introduction of this Dissertation**

Chapter one is an introductory chapter to this dissertation. This chapter will provide a background to this dissertation. This chapter provides an overview of the research aims,

questions and methodology. Lastly, this chapter will outline how this dissertation will be structured.

## **Chapter 2: Discussion of the International food safety legal framework**

This chapter will provide an extensive analysis of the international framework that regulates food safety. This chapter will focus on various international agreements, standards and organisations such as the CODEX Alimentarius Commission, World Health Organization, Food and Agriculture Organization. This chapter will highlight the significant fact that South Africa has an international obligation to ensure the safety of food within its borders. Lastly, this chapter will discuss to what extent South Africa has complied with its international obligations pertaining to food safety.

## **Chapter 3: Discussion of the South African food safety legal and institutional framework**

Following the previous chapter, this chapter will explain the food safety regulations in South Africa to determine the extent of implementing regulations to govern food safety. This chapter will focus on the Constitution<sup>52</sup> and various other legislation and policies that have been implemented to address food safety in South Africa. It will discuss the role that the government plays in governing food safety.

## **Chapter 4: Current food safety challenges in South Africa and a discussion of the Consumer Protection Act 68 of 2008**

Chapter four provides an in-depth discussion of the various food safety challenges that South Africa encountered. This chapter will focus on various food safety risks such as foodborne diseases, food fraud, expired products, etc. This chapter will critically analyse the effectiveness of the South African food safety regulations in addressing food safety challenges. Also, this Chapter will provide an overview of the Consumer Protection Act 68 of 2008. This chapter will explore the consumer rights and remedies afforded to consumers under the Consumer Protection Act 68 of 2008. This chapter will explain product liability under the Consumer law.

## **Chapter 5: Findings, Recommendations and Conclusion**

This final chapter will provide the findings and recommendations of this dissertation. The recommendation that this dissertation aims to highlight is that there is a need for more effective

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<sup>52</sup> Constitution of the Republic of South Africa, 1996.

enforcement of current food safety regulations to prevent future food safety risks. This chapter will also provide further recommendations on food safety.

## **1.9 CONCLUSION**

This chapter focused on introducing the main research topic of this dissertation which is food safety regulations in South Africa. It provided a background to this dissertation. This chapter gives the reader an idea of how this dissertation will be done and how the research will be conducted. Therefore, the chapters to follow will provide an in-depth analysis and discussion of the various aspects pertaining to food safety in South Africa.

## CHAPTER 2

# INTERNATIONAL FOOD SAFETY LEGAL FRAMEWORK

### 2.1 INTRODUCTION

Food is one of the most common items that are traded internationally.<sup>53</sup> It is important to ensure that food is safe for consumers and of high quality. Unsafe food has a global impact on people's wellbeing and safety, countries economic growth, and market access.<sup>54</sup> An increase in international food trade means an increase in food safety issues such as food-borne diseases.<sup>55</sup> Food safety is important because it is closely linked to agriculture, international trade and human health.<sup>56</sup> Food safety issues have a negative effect on consumers and the global market, and as such, there is a need for international food safety regulations.<sup>57</sup> Therefore, to avoid the hazards caused by unsafe food, various international organisations have enacted regulations and standards to ensure food safety. Further, particular international organisations have been established to specifically focus on food safety. In other words, the international community has taken the initiative to implement regulations to ensure safe food. According to Garcerant,

“The desire of the world for a better food culture, fair trade and healthier living has resulted in the adoption of these international food safety regulations.”<sup>58</sup>

Additionally, increased contaminated food and food-borne diseases globally contributed to enacting these international food safety regulations.<sup>59</sup> These international organisations also control the production of food as well as how it should be labelled and transported. These

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<sup>53</sup> J C Buzby & L Mitchell 'Food safety and Trade: Regulations, risks and reconciliation' 1 November 2003, available at <https://www.ers.usda.gov/amber-waves/2003/november/food-safety-and-trade-regulations-risks-and-reconciliation/>, accessed on 3 May 2023.

<sup>54</sup> Food and Agriculture Organization of the United Nations Food and Nutrition Paper 76 *Assuring Food Safety and Quality. Guidelines for Strengthening National Food Control Systems* (2003) 3.

<sup>55</sup> United States Department of Agriculture Agricultural Economic Report No. 828 *International Trade and Food Safety: Economic Theory and Case Studies* (2003) 1.

<sup>56</sup> Ibid.

<sup>57</sup> Food and Agriculture Organization of the United Nations Food and Nutrition Paper 76 *Assuring Food Safety and Quality. Guidelines for Strengthening National Food Control Systems* (2003) 4.

<sup>58</sup> I P Garcerant 'International Food Law and Regulation: A Review' (2017), available at [https://www.researchgate.net/publication/317098565\\_International\\_Food\\_Law\\_and\\_Regulation\\_A\\_Review](https://www.researchgate.net/publication/317098565_International_Food_Law_and_Regulation_A_Review), accessed on 20 April 2023.

<sup>59</sup> United Nations 'World Food Safety Day: Why improving food safety is important', available at <https://www.un.org/en/observances/food-safety-day>, accessed on 3 May 2023.

international organisations' primary duty is to keep an eye on the safety and hygiene of food.<sup>60</sup> By ensuring effective food safety globally, these international organisations also improve food security and human health.<sup>61</sup> In order to fully understand the South African food safety legal framework, it is imperative to start by understanding the international food safety legal framework. This chapter will critically discuss the extent to which the international legal framework regulates food safety. It will provide a detailed discussion of the international food standards. Also, this chapter examines the regulation of food safety through particular international organisations. Finally, this chapter concludes by discussing the importance of these regulations.

## 2.2 THE UNITED NATIONS

The United Nations (UN), which was set up in 1945, is an international organisation with 193 member states.<sup>62</sup> According to Van der Meulen, the UN is the world's largest and most significant international organisation, with nearly every country being a member.<sup>63</sup> In other words, the UN can be considered the 'guardian' of the international community. The UN is based in New York, where it carries out most of its functions.<sup>64</sup> The UN is responsible for maintaining international peace among member states and the rest of the world.<sup>65</sup> Hence, the UN deals with issues that pose a threat to international peace. The mission of the UN is to uphold international peace, security, and equal human rights for all.<sup>66</sup> The UN is made up of various organs that each perform a particular function for the UN.<sup>67</sup> For example, the General Assembly of the UN is responsible for fulfilling the principles of the UN.<sup>68</sup> It conducts work that will benefit humanity and helps its member states resolve issues they may be experiencing. As a result, the UN will also have a role in regulating food safety.<sup>69</sup>

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<sup>60</sup> 'Indian and international food laws' 10 June 2022, available at <https://blog.ipleaders.in/indian-and-international-food-laws/>, accessed on 21 April 2023.

<sup>61</sup> United Nations 'World Food Safety Day: Why improving food safety is important', available at <https://www.un.org/en/observances/food-safety-day>, accessed on 3 May 2023.

<sup>62</sup> United Nations 'About us', available at <https://www.un.org/en/about-us>, accessed on 5 May 2023.

<sup>63</sup> B Van der Meulen 'The global arena of food law: emerging contours of a meta-framework' (2010) 3(4) *Erasmus Law Review* 219.

<sup>64</sup> United Nations 'About us', available at <https://www.un.org/en/about-us>, accessed on 5 May 2023.

<sup>65</sup> *Ibid.*

<sup>66</sup> Article 1 of the United Nations Charter, 1945.

<sup>67</sup> R Muftau 'The United Nations at 70: the journey so far' (2016) 7(3) *Journal of Education and Practice* 155.

<sup>68</sup> *Ibid.*

<sup>69</sup> United Nations 'World Food Safety Day: Why improving food safety is important', available at <https://www.un.org/en/observances/food-safety-day>, accessed on 3 May 2023.

The UN places a responsibility on member states to promote people's rights. To give more effect to promoting and protecting such rights, the Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly.<sup>70</sup> In terms of this Declaration, everyone has the right to safe food,<sup>71</sup> and the UN has a responsibility to promote this right. Additionally,

“The UN through its Sustainable Development Goals establishes to achieve the objective of ending hunger, improving nutrition and ensuring food security.”<sup>72</sup>

Through this goal, the UN aims to provide all people with access to safe and nutritious food. The UN has made several efforts to promote this right and the proper access to safe food. However, it is argued that the UN has not achieved this goal because hunger levels are increasing, there is a lack of food security and food is unsafe for people.<sup>73</sup> The UN has highlighted the importance of food safety by enabling programmes and other measures to address hunger and food insecurity worldwide. This can also be seen by the UN declaring a particular day to be observed as World Food Safety Day.<sup>74</sup>

This event aims to attract awareness of food safety issues globally, and it seeks to encourage states to take steps to prevent food safety issues and to ensure the safety of food as it is consumed. Food safety, in the view of the UN, is a shared responsibility.<sup>75</sup> In other words, the UN argues that it is not only the responsibility of the government to ensure food safety, but businesses and consumers must also participate in ensuring food safety. The UN also provides awareness and educational programmes to encourage food safety. The UN has created sub-organisations such as the World Health Organization (WHO), Food and Agriculture Organization (FAO) and Codex Alimentarius Commission to deal specifically with food safety, healthcare and food security.<sup>76</sup> These international organisations will be discussed below.

## **2.3 THE WORLD HEALTH ORGANIZATION**

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<sup>70</sup> Universal Declaration of Human Rights, GA Res 217 A (III), UN Doc A/810 (10 December 1948).

<sup>71</sup> Ibid.

<sup>72</sup> United Nations Department of Economic and Social Affairs ‘Make the SDGS a reality’, available at <https://sdgs.un.org/>, accessed on 5 May 2023.

<sup>73</sup> United Nations ‘Global issues: Food’, available at <https://www.un.org/en/global-issues/food>, accessed on 5 May 2023.

<sup>74</sup> United Nations ‘World Food Safety Day: Why improving food safety is important’, available at <https://www.un.org/en/observances/food-safety-day>, accessed on 3 May 2023.

<sup>75</sup> Ibid.

<sup>76</sup> United Nations ‘UN Family of Organizations’, available at <https://www.un.org/en/model-United-nations/un-family-organizations>, accessed on 6 May 2023.

The World Health Organization (WHO) is one of the most significant global actors responsible for regulating food safety. The health, safety and well-being of all people are at the forefront of the WHO's mission. As alluded to earlier, the UN established the WHO in 1948 to keep track of global health trends, advance universal health, preserve world security, and helping the weakest members of society.<sup>77</sup> In order to improve the health, wellbeing and future for all, the WHO is composed of various member states working together. To enhance its efforts towards better health and safety, the WHO has collaborated with several international organisations and states.<sup>78</sup> The functions and power of the WHO are given by its constitution, which is called the International Health Regulation.<sup>79</sup> In terms of the International Health Regulation, the WHO has the power to identify and respond to global public health concerns and risks.<sup>80</sup> In other words, the WHO can discover any risk that threatens public health and take steps such as regulation to prevent these risks. As mentioned previously, food safety poses a risk to public health and therefore, the WHO has the mandate to eradicate and deal with food safety issues.<sup>81</sup>

As such, the WHO uses science in its work to improve health worldwide and has made several efforts to improve food safety and raise awareness about it.<sup>82</sup> The WHO addresses and deals with food safety by:

- “(1) providing scientific advice to the CODEX Alimentarius Commission so that it can assist in developing international food safety standards,
- (2) Promoting food safety awareness and safe food handling through programmes,
- (3) Argues for food safety to be taken into account in national policies,
- (4) Keeps track of global food safety issues such as foodborne diseases,
- (5) Tests technologies and processes used in food production and
- (6) Evaluates food control systems and determines areas for development.”<sup>83</sup>

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<sup>77</sup> World Health Organization ‘who we are’, available at <https://www.who.int/about/who-we-are>, accessed on 6 May 2023.

<sup>78</sup> J Schlundt ‘Institutions involved in food safety: World Health Organization (WHO)’ (2014) in Y Motarjemi (ed) *Encyclopaedia of Food Safety* (2014) 359.

<sup>79</sup> A B Suthar ... et al ‘Lessons learnt from implementation of the International Health Regulations: a systematic review’ (2018) 96(2) *Bulletin World Health Organisation* 110.

<sup>80</sup> Article 2 of the International Health Regulations, 2005.

<sup>81</sup> World Health Organization ‘Food safety’, available at <https://www.who.int/news-room/fact-sheets/detail/food-safety>, accessed on 6 May 2023.

<sup>82</sup> World Health Organization ‘Our work’, available at <https://www.who.int/our-work>, accessed on 6 May 2023.

<sup>83</sup> World Health Organization ‘Food safety’, available at <https://www.who.int/news-room/fact-sheets/detail/food-safety>, accessed on 6 May 2023.

Firstly, the WHO consists of the Nutrition and Food Safety Department, which is obligated to deal with food safety and nutrition issues.<sup>84</sup> This department manages food safety events and develops guidelines by working with states to reduce foodborne diseases.<sup>85</sup>

The WHO has developed an online forum called the Food Safety Community of Practice which allows professionals from all over the world to communicate with each other about food safety issues, share and learn information relating to food safety.<sup>86</sup> The WHO is of the view that governments, businesses and consumers should work together to ensure food safety and made it a priority. Further, the WHO has created the Global Foodborne Infections Network which has the role of detecting and preventing foodborne infections.<sup>87</sup> Through this network, professionals are trained to detect and respond to these foodborne infections. The WHO has also created the five keys to safer food manual that raises awareness about food safety and provides food safety education to businesses and consumers.<sup>88</sup> According to this manual,

“The Five keys to safer food includes: separating raw and cooked foods to prevent contamination, using clean water and raw materials, storing food at the right temperatures, cooking food thoroughly to prevent pathogens and keeping the preparation area clean to prevent cross-contamination.”<sup>89</sup>

To promote food safety awareness, the WHO has created a book with instructions on educating people about food safety so that governments can use it as a guideline when developing their own food safety awareness programmes.<sup>90</sup> Additionally, the WHO created the Technical Advisory Group who is tasked with the responsibility of drafting the Global Food Safety Strategy.<sup>91</sup>

This strategy aims to create more robust food safety systems, address the issues of foodborne diseases and ensure safe and healthy food is accessible to all.<sup>92</sup> Ghaffari and others argue that

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<sup>84</sup>World Health Organization ‘Nutrition and Food safety: about us’, available at <https://www.who.int/teams/maternal-newborn-child-adolescent-health-and-ageing/maternal-health/about/nutrition-and-food-safety#:~:text=About%20us,child%20malnutrition%2C%20overweight%20and%20obesity>, accessed on 6 May 2023.

<sup>85</sup> Ibid.

<sup>86</sup> World Health Organization ‘Food Safety Community of Practice’, available at <https://www.whofoodsafety.org/>, accessed on 6 May 2023.

<sup>87</sup> Ibid.

<sup>88</sup> World Health Organization ‘Five keys to safer food manual’ 15 May 2006, available at [https://apps.who.int/iris/bitstream/handle/10665/4354/9789241594639\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/4354/9789241594639_eng.pdf), accessed on 6 May 2023.

<sup>89</sup> Ibid.

<sup>90</sup> M Ghaffari ... et al ‘Effectiveness of a health intervention based on WHO food safety manual in Iran’ (2020) 20(1) *BMC Public Health* 401.

<sup>91</sup> D Wu, C Elliott and Y Wu ‘Food safety strategies: The one health approach to global challenges and China’s actions’ (2021) 3(24) *China CDC Wkly* 507-513.

<sup>92</sup> Ibid.

the WHO has been effective in promoting food safety education and the food safety guidelines developed by the WHO has been effective in raising people's knowledge of food safety.<sup>93</sup> Mensah and others argue that the WHO has been performing its functions with regards to food safety.<sup>94</sup> Further, they have been supporting states in improving their national food safety laws.<sup>95</sup> This thesis is of the view that the WHO has been effective to some extent in addressing food safety concerns. The WHO is the only international organisation that has taken several initiatives to improve food safety globally. The WHO is constantly developing plans to advance food safety worldwide.<sup>96</sup> However, there is still a large number of foodborne diseases<sup>97</sup> globally.<sup>98</sup> It is argued that more support should be given to developing and least-developed countries by the WHO to prevent food safety issues. The WHO should focus more on assisting countries in improving their national food safety systems. Lastly, this thesis suggests that more food safety awareness and education programmes should be held in developing and least-developed countries because they are more severely affected by food safety issues.

## 2.4 THE FOOD AND AGRICULTURE ORGANISATION OF THE UNITED NATIONS

The UN created the Food and Agriculture Organisation of the UN (FAO) in 1945 with the aim of eliminating hunger and food insecurity, as well as to raise standards of living, encourage nutrition, and promote sustainable development.<sup>99</sup> As its name suggests, the FAO's work is centred around food systems, agriculture, forestry and fishery. The FAO's mission is to ensure that sufficient, safe and good quality food is accessible to all.<sup>100</sup> The FAO is considered a specialised agency of the UN.<sup>101</sup> To achieve its purpose, the FAO has the following functions:

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<sup>93</sup> M Ghaffari ... et al 'Effectiveness of a health intervention based on WHO food safety manual in Iran' (2020) 20(1) *BMC Public Health* 401.

<sup>94</sup> P Mensah...et al 'Public health and food safety in the WHO African region' (2012) 12(4) *African Journal of Food, Agriculture, Nutrition and Development* 6319.

<sup>95</sup> Ibid.

<sup>96</sup> K Fukuda 'Food safety in a globalized world' (2015) 93(4) *Bulletin World Health Organization* 212.

<sup>97</sup> Examples of these foodborne diseases include, Salmonella, E.coli, listeriosis, campylobacter, norovirus, botulism etc.

<sup>98</sup> H Lee & Y Yoon 'Etiological agents implicated in foodborne illness worldwide' (2021) 41(1) *Food Science of Animal Resources* 1-2. AH Havelaar... et al 'World Health Organization global estimates and regional comparisons of the burden of foodborne disease in 2010' (2015) 12(12) *PLoS Med* 3.

<sup>99</sup> Food and Agriculture Organization of the United Nations 'About FAO', available at <https://www.fao.org/about/en/>, accessed on 6 May 2023.

<sup>100</sup> I P Garcerant 'International Food Law and Regulation: A Review' (2017), available at [https://www.researchgate.net/publication/317098565\\_International\\_Food\\_Law\\_and\\_Regulation\\_A\\_Review](https://www.researchgate.net/publication/317098565_International_Food_Law_and_Regulation_A_Review), accessed on 20 April 2023.

<sup>101</sup> J Mayne 'Review of marketing and agricultural economics' (1948) 16(11) *AgEcon* 617.

- “(1) Monitoring global trends in food security and agriculture,
- (2) Supports member states when they are developing and improving their food and agricultural policies,
- (3) Gather and provide information,
- (4) Provide advice on food and agricultural matters and
- (5) Create norms and guidelines relating to food and agriculture.”<sup>102</sup>

Also, the FAO strives to resolve hunger, nutritional and food-related issues worldwide and provide its members with technical assistance.<sup>103</sup> The FAO assists both developing and developed countries and aims to eradicate poverty, enhance food systems, and improve agricultural, forestry and fishing practices.<sup>104</sup>

The FAO serves as a neutral and unbiased ground for countries to meet and discuss issues, share information or negotiate legal frameworks.<sup>105</sup> Like the WHO, the FAO’s work is based on science. The FAO plays an active role in dealing with food safety globally and it aims to improve the safety of food along the food chain. The FAO oversees the entire food chain, making it easier to ensure food is safe and it is responsible for detecting and resolving food safety concerns that emerge from the food production chain.<sup>106</sup> In other words, the FAO is best equipped to deal with food safety because it controls all aspects of food production. For example, the FAO has taken several initiatives to improve food safety globally by establishing the Food Safety and Quality Unit which is in charge of supporting and improving food safety systems worldwide.<sup>107</sup> This unit is at the forefront of the FAO’s efforts towards food safety. This unit provides scientific advice on food safety, improves food safety management, develops global food safety standards, and tackles food safety issues.<sup>108</sup>

Furthermore, the unit tests new technology and shares information about food safety issues among member states so that they can develop national food safety systems. The FAO argues

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<sup>102</sup> Article 1 of the Constitution of the United Nations Food and Agriculture Organization, 1945.

<sup>103</sup> W Kenton ‘Food and Agriculture Organization (FAO): Role and Initiatives’, available at <https://www.investopedia.com/terms/f/food-agriculture-organization-fao.asp>, accessed on 6 May 2023.

<sup>104</sup> Ibid.

<sup>105</sup> B Van der Meulen ‘The global arena of food law: emerging contours of a meta-framework’ (2010) 3(4) *Erasmus Law Review* 220.

<sup>106</sup> ‘Food standards save lives’ available at <https://reliefweb.int/report/world/food-standards-save-lives>, accessed on 6 May 2023.

<sup>107</sup> FAO ‘Food safety and quality’, available at <https://www.fao.org/food-safety/en/>, accessed on 6 May 2023.

<sup>108</sup> Ibid.

that states must create and strengthen national food control systems to assure food safety.<sup>109</sup> In other words, the FAO assists in establishing national food control systems. Hence, the FAO provides guidelines for strengthening national food control systems.<sup>110</sup> So, these guidelines are voluntary but they help improve food safety and guide member states. Additionally, the FAO assists countries in drafting their food safety laws. According to the FAO Strategic Priorities for Food Safety, which are part of the Strategic Framework 2022-31, food safety is considered a top priority.<sup>111</sup> Further, the FAO promotes food safety legislation and guidelines that are based on scientific information, and in order to provide scientific advice on food safety for the Codex Alimentarius Commission as well as implement policies, it cooperates with the WHO through specialised committees such as Joint FAO and WHO Expert Committee on Food Additives.<sup>112</sup> The research has shown that the FAO works with other international organisations to strengthen food safety globally.<sup>113</sup>

In particular, food and agricultural businesses are provided support.<sup>114</sup> The FAO provides guidelines to tackle current and future food safety issues. The FAO has established the Right to Food Guidelines to assist states in the implementation of the right to food.<sup>115</sup> According to Guideline 9.3,

“Member states are motivated to take measures which will incorporate institutional procedures for food safety into their national laws, eliminate gaps in the legislative framework relating to food, as well as encourage states to adopt food safety standards that are based on science with a view to establishing standards concerning labelling, packaging and advertising food products and it should be founded on international food safety standards.”<sup>116</sup>

Furthermore, Guideline 9.7 states that member countries are encouraged to take measures to protect consumers from false and misleading labelling, packaging, advertising or selling of foodstuffs.<sup>117</sup> Member states must ensure sufficient information about products, as well as make provision for remedies for unsafe food in accordance with the WTO, to accommodate

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<sup>109</sup> Food and Agriculture Organization of the United Nations Food and Nutrition Paper 76 *Assuring Food Safety and Quality. Guidelines for Strengthening National Food Control Systems* (2003).

<sup>110</sup> Ibid.

<sup>111</sup> FAO *Safe food for everyone – FAO’s work on food safety; science, standards and good practices* (2023), available at <https://doi.org/10.4060/cc4347en>, accessed on 6 May 2023.

<sup>112</sup> Ibid.

<sup>113</sup> FAO ‘Food safety and quality’, available at <https://www.fao.org/food-safety/en/>, accessed on 6 May 2023.

<sup>114</sup> FAO ‘The Future of food and agriculture- Trends and challenges’ *Rome*, available at <https://www.fao.org/3/i6583e.pdf>, accessed on 7 May 2023.

<sup>115</sup> Food and Agriculture Organization of the United Nations Right to Food Guidelines, 2004.

<sup>116</sup> Guideline 9.3 of FAO Right to Food Guidelines, 2004.

<sup>117</sup> Guideline 9.7 of FAO Right to Food Guidelines, 2004

the choice of the customer.<sup>118</sup> Lastly, the FAO has developed FAOLEX, a database containing policies, legislation and laws based on agriculture, food and natural resources.<sup>119</sup> This allows for legal knowledge and laws relating to food safety to be easily obtained.

## 2.5 THE JOINT FAO/WHO FOOD STANDARDS PROGRAMME

The Joint FAO/WHO Food Standards Programme, established in 1962, is a collaboration between the WHO and FAO with the goal of fostering fair food trade and safeguarding consumer health.<sup>120</sup> This programme is made up of the Codex Alimentarius Commission and four risk assessment bodies.<sup>121</sup> These risk assessment bodies essentially take the form of joint FAO/WHO committees, and they are in charge of conducting risk assessments and providing information based on science to the Codex Alimentarius Commission (CAC) so that it can create international food standards.<sup>122</sup> This programme lifts some of the burden off international organisations liable for ensuring food safety and it simplifies the work of the CAC. The Joint FAO/WHO Food Standards Programme is executed by the CAC.<sup>123</sup> This programme allows collaboration between the World Trade Organization (WTO) and the CAC. It allows for states to harmonise their food laws and adopt international food standards, which will ease international trade.<sup>124</sup> This programme is recognised by the WTO as a body responsible for reducing trade barriers and developing international food standards.

## 2.6 CODEX ALIMENTARIUS

Codex Alimentarius is one of the main initiatives taken by the international community to resolve food safety issues and to protect people's health. When talking about international food safety and food standards, the first thing that should come to mind is Codex Alimentarius. The

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<sup>118</sup> Ibid.

<sup>119</sup> United Nations Convention to Combat Desertification 'Food, Agriculture and Renewable Natural Resources Legislation Database (FAOLEX)', available at <https://www.unccd.int/resources/knowledge-sharing-system/food-agriculture-and-renewable-natural-resources-legislation>, accessed on 6 May 2023.

<sup>120</sup> B Van der Meulen 'The global arena of food law: emerging contours of a meta-framework' (2010) 3(4) *Erasmus Law Review* 220.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> FAO 'Introduction to Codex Alimentarius Commission (CAC)' available at <https://www.fao.org/3/x7354e/X7354e04.htm#:~:text=to%20do%20this,-.4.1%20INTRODUCTION,%22%20or%22food%20law%22>, accessed on 6 May 2023.

<sup>124</sup> World Trade Organisation 'The WTO and the FAO/WHO Codex Alimentarius', available at [https://www.wto.org/english/thewto\\_e/coher\\_e/wto\\_codex\\_e.htm](https://www.wto.org/english/thewto_e/coher_e/wto_codex_e.htm), accessed on 13 June 2023.

Codex Alimentarius is a set of accepted international food standards, recommendations, and codes of conduct.<sup>125</sup> In other words, Codex Alimentarius are global food standards and codes which aim at protecting human health while promoting fair food trade and facilitating international trade.<sup>126</sup> It comprises a wide range of international guidelines and standards dealing with various aspects of food safety and food production.<sup>127</sup> Codex Alimentarius is a global reference point to food safety standards, which translates to ‘food code’ and is at the forefront of food safety globally.<sup>128</sup>

Prior to the establishment of Codex standards, there were conflict between various food safety laws.<sup>129</sup> Hence, Codex Alimentarius harmonises international food standards and provides a common ground for these standards, making it easier for food businesses and states to follow them.<sup>130</sup> These Codex standards are necessary because they resolve conflicts relating to international trade which poses as a trade barrier. Further, Codex Alimentarius are common food safety standards which states can follow without any issue about which food standards to follow or any conflict with national food safety laws.<sup>131</sup> Food produced per these Codex standards is safe and of good quality to be traded or consumed. Additionally, it provides consumers with the assurance and confidence that such food is safe to their health. Codex Alimentarius serves as a model for states when they are developing their own food safety laws.<sup>132</sup>

## 2.6.1 THE CODEX ALIMENTARIUS COMMISSION

The international community saw it necessary to create an organisation or commission responsible for creating and maintaining these Codex international food standards. Therefore,

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<sup>125</sup> FAO ‘Food Standards save lives’, available at <https://www.fao.org/fao-who-codexalimentarius/en/>, accessed on 6 May 2023.

<sup>126</sup> ‘National and International Food Regulatory Agencies’, available at <https://gcwgandhinagar.com/econtent/document/1587534075Unit%20III%National%20and%20International%20Food%20Reulatory%20Agencies.pdf>, accessed on 7 May 2023.

<sup>127</sup> D Downing ‘Codex Alimentarius’ (1997) 7(2) *Journal of Nutritional & Environmental Medicine* 76.

<sup>128</sup> C Heggum ‘Codex Alimentarius’ in J.W Fuquay, P.F Fox & H Roginski *Encyclopedia of Dairy Science* (2002) 463.

<sup>129</sup> ‘Food safety: Everything about Codex Alimentarius’, available at <https://www.fooddocs.com/post/codex-alimentarius>, accessed 8 May 2023.

<sup>130</sup> B Burlingame & M Pineiro ‘The essential balance: Risks and benefits in food safety and quality’ (2007) 20 *Journal of Food Composition and Analysis* 141

<sup>131</sup> J Lee ... et al ‘Codex Alimentarius commission on ensuring food safety and promoting fair trade: harmonisation of standards between Korea and codex’ (2021) 30(9) *Food Science and Biotechnology* 1153.

<sup>132</sup> B Van der Meulen ‘The global arena of food law: emerging contours of a meta-framework’ (2010) 3(4) *Erasmus Law Review* 232.

the WHO and the FAO collaborated to create the Codex Alimentarius Commission (CAC) in 1962.<sup>133</sup> The CAC creates and coordinates these international food standards or guidelines called Codex Alimentarius.<sup>134</sup> Also, the CAC has the function of promoting consumer protection, managing work related to food standards and amending food standards. The CAC is closely connected to the UN, FAO and WHO. They provide assistance and scientific advice to the CAC, which helps it perform its functions. The European Union and 188 member nations make up the 189 members of the CAC.<sup>135</sup> Additionally, non-government organisations and other international organisations are part of the CAC, however, they only enjoy observer status.<sup>136</sup> The CAC is governed by a legal document called Procedural Manual.<sup>137</sup>

This manual is regarded as the constitution of the CAC and sets out the functions of the CAC and the process for creating standards and principles.<sup>138</sup> The CAC is essentially made up of three parts, namely the secretariat, executive committee and subsidiary bodies.<sup>139</sup> Further, the CAC has created particular committees that have specific functions. General Subject Committee is responsible for creating standards that deal with general aspects like food hygiene, food labelling, etc.<sup>140</sup> Other committees, such as the Commodity Committee is responsible for creating standards that deal with specific foods, e.g., fruits and vegetables. The Commission also raises awareness about food safety globally and encourages states to adopt these Codex standards and develop their food safety laws.<sup>141</sup> Since its establishment, the CAC has made a great effort by creating several global guidelines, standards and codes of practice dealing with different aspects of food.

The CAC is considered one of the most successful international organisations responsible for ensuring food safety.<sup>142</sup> The CAC is able to easily adapt to new challenges. However, Millstone

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<sup>133</sup> FAO 'Understanding Codex' 2015, available at <https://www.fao.org/3/i5667e/i5667e.pdf>, accessed on 7 May 2023.

<sup>134</sup> E Kimbreli 'What is Codex Alimentarius' (2000) 3(4) *AgBioForum* 197.

<sup>135</sup> FAO 'Codex Alimentarius: Members', available at <https://www.fao.org/fao-who-codexalimentarius/about-codex/members/en/>, accessed on 7 May 2023.

<sup>136</sup> Ibid.

<sup>137</sup> FAO 'Understanding Codex' 2015, available at <https://www.fao.org/3/i5667e/i5667e.pdf>, accessed on 7 May 2023.

<sup>138</sup> Codex Alimentarius Commission *Procedural Manual* (Rome 2010, 19<sup>th</sup> ed.).

<sup>139</sup> J Lee ... et al 'Codex Alimentarius commission on ensuring food safety and promoting fair trade: harmonisation of standards between Korea and codex' (2021) 30(9) *Food Science and Biotechnology* 1151-1170.

<sup>140</sup> Ibid 1153.

<sup>141</sup> The CAC raises awareness about food safety through the World Food Safety Day which encourages states to focus on food safety. Also, the CAC partners with UN Industrial Development Organization (UNIDO) and other organizations to support and assist developing and least-developed countries to adopt codex standards and participate in standard setting.

<sup>142</sup> A Randell 'Codex Alimentarius: How it all began' (1995) 13(14) *Food Nutr. Agric* 36.

and Van Zwanenberg argue that the CAC and its subsidiary bodies have no statutory basis.<sup>143</sup> The thesis agrees with the above argument. Since these standards are not legally enforceable and voluntary, the CAC and its subsidiary bodies have no legal responsibilities and cannot be held legally accountable. Further, the thesis argues that the CAC focuses more on facilitating trade than ensuring food safety and protecting the health of consumers.<sup>144</sup> Developed countries are favoured over developing countries. Developing and least-developed countries find it challenging to participate in Codex.<sup>145</sup> It is argued that these countries are provided very little assistance to participate in the CAC and adopt codex standards because they lack the resources and facilities to do so.

## 2.6.2 CODEX FOOD STANDARDS

Codex food standards are addressed to food producers and other businesses involved in food production or food trade. The aim of these food standards is to make sure that food remains safe in the supply chain until they reach consumers. These Codex food standards cover all types of food, such as raw and processed foods and different aspects of food safety and production, such as labelling, pesticides, food hygiene, etc.<sup>146</sup> These standards create a mutual understanding of food safety aspects for businesses, states and consumers. Codex food standards are created through a negotiating process among members of the CAC.<sup>147</sup> The procedure of creating these standards are done through a few steps such as members submitting proposals, draft standard revised and submitted to CAC etc.<sup>148</sup> Codex Alimentarius consists of food standards that deal with specific foods and food standards that cover general matters.

According to Van der Meulen, typically, there are two kinds of Codex standards namely, general/horizontal standards and commodity/vertical standards.<sup>149</sup> General/horizontal standards are food standards that deal with general aspects of food and apply to all types of

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<sup>143</sup> E Millstone & P Van Zwanenberg 'The evolution of food safety policy-making institutions in the UK, EU and Codex Alimentarius' (2003) 36(6) *Social Policy & Administration*.

<sup>144</sup> S Halabi 'The Codex Alimentarius Commission, Corporate influence, and International trade' (2015) 41(2) *American Journal of Law and Medicine* 24.

<sup>145</sup> C Wieck & J H Grant 'Codex in motion: Food safety standard setting and impacts on developing countries' agricultural exports' (2021) 20(1) *EuroChoices* 39.

<sup>146</sup> B Burlingame & M Pineiro 'The essential balance: Risks and benefits in food safety and quality' (2007) 20 *Journal of Food Composition and Analysis* 141

<sup>147</sup> Codex Alimentarius Commission *Procedural Manual* (Rome 2010, 19<sup>th</sup> ed.).

<sup>148</sup> *Ibid.*

<sup>149</sup> B Van der Meulen 'The global arena of food law: emerging contours of a meta-framework' (2010) 3(4) *Erasmus Law Review* 234.

food e.g. food additives, food hygiene. Vertical/commodity standards are food standards that deal with specific food products.<sup>150</sup> An example of a general standard is the “General Standard for Food Additives”.<sup>151</sup> Regarding this standard, only under certain conditions will food additives be allowed to be used in food products. These conditions include, good manufacturing practice, protecting the nutritional standard of food and enhancing its quality.<sup>152</sup> An example of a commodity standard is the “CODEX Standard for Canned Salmon”, which deals with various aspects of the production of canned salmon.<sup>153</sup> Codex food standards have no legal effect, and they are not legally binding.<sup>154</sup> In other words, these standards are completely voluntary and states can choose to comply with them.

However, countries are encouraged to endorse these international food standards because they ensure food safety and assist states in developing their own food safety laws.<sup>155</sup> Mahajan explains that these international food safety standards help reduce trade costs and make trade more transparent.<sup>156</sup> The FAO has acknowledged that Codex Alimentarius has had a significant impact on food businesses and consumers.<sup>157</sup> These standards serve as a common reference point which ensures international harmonisation. They create a common understanding about food safety among states. Furthermore, Van der Meulen argues that although the codex standards are non-binding, they help develop unified food nomenclature and impacts the drafting of national food laws.<sup>158</sup> However, Millstone and Van Zwanenberg argue that these codex standards are not considered law and the advice given by the joint committees to the CAC which assists them in developing these standards, are bias which makes these standards also bias.<sup>159</sup> Also, these codex standards somehow prevent national regulators from exercising their discretion when creating food standards.<sup>160</sup>

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<sup>150</sup> ‘Codex Alimentarius Commission (CAC)’, available at <https://byjus.com/free-ias-prep/codex-alimentarius-commission-cac/>, accessed on 7 May 2023.

<sup>151</sup> Codex General Standard for Food Additives (GSFA, Codex STAN 192-1995).

<sup>152</sup> Ibid.

<sup>153</sup> Codex Standard for Canned Salmon (Codex STAN 3-1981).

<sup>154</sup> B Van der Meulen ‘The global arena of food law: emerging contours of a meta-framework’ (2010) 3(4) *Erasmus Law Review* 235.

<sup>155</sup> Ibid.

<sup>156</sup> R Mahajan ... et al ‘Global food safety: determinants are Codex standards and WTO’s SPS food safety regulations’ (2014) 11(2) *Journal of Advances in Management Research* 178.

<sup>157</sup> FAO ‘Understanding Codex’ 2015, available at <https://www.fao.org/3/i5667e/i5667e.pdf>, accessed on 7 May 2023.

<sup>158</sup> B Van der Meulen ‘The global arena of food law: emerging contours of a meta-framework’ (2010) 3(4) *Erasmus Law Review* 235.

<sup>159</sup> E Millstone & P Van Zwanenberg ‘The evolution of food safety policy-making institutions in the UK, EU and Codex Alimentarius’ (2003) 36(6) *Social Policy & Administration*.

<sup>160</sup> R Pereira ‘Why would International administrative activity be any less legitimate? – A study of the Codex Alimentarius Commission’ (2008) 9(11) *German Law Journal* 1694.

This means that national regulators have to follow codex standards because they are a common reference point for food safety instead of creating standards that address their specific concerns. The thesis disagrees with the argument that these standards are biased because the advice provided is based on scientific advice and information gathered. The advice is not based on the personal opinions of these joint committees. The research is of the view that these codex standards play a pivotal role in creating international harmonisation and ensuring food safety globally. Furthermore, the thesis argues that although these standards are not legally enforceable, they serve as a model when developing national food laws and they are much easier food safety standards to follow. If businesses comply with codex standards, then they will have access to most global markets. Lastly, the thesis is of the view that these codex standards should be made into law and legally binding. This will allow for uniform food safety standards to be used around the world, and all businesses will be obligated to comply with these standards. It will ensure that all food products are produced in the same way which would in turn ensure food safety.

### **2.6.3 THE GUIDELINES OR CODES OF PRACTICE**

Besides developing food standards, the CAC also develops guidelines and codes of practice.<sup>161</sup> These guidelines and codes are voluntary and are advisory. In other words, they serve as suggestions to food businesses and states. These guidelines help to interpret the codex food standards.<sup>162</sup> The codes of practice essentially explain the Codex guidelines to its members, businesses and consumers. An example of a code of practice is “Code of Hygienic Practices”.<sup>163</sup> This code of practice applies to all foods, and it lays down eight hygienic principles namely, primary production, training of workers, consumer awareness, personal hygiene, maintenance, etc.<sup>164</sup>

## **2.7 THE WORLD TRADE ORGANIZATION**

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<sup>161</sup> E Kimbreli ‘What is Codex Alimentarius’ (2000) 3(4) *AgBioForum* 199.

<sup>162</sup> J Lee ... et al ‘Codex Alimentarius commission on ensuring food safety and promoting fair trade: harmonisation of standards between Korea and codex’ (2021) 30(9) *Food Science and Biotechnology* 1151-1170.

<sup>163</sup> Recommended International Code of Practice – General Principles of Food Hygiene CAC/RCP 1-1969, Rev 3-1997, Amd. (1999).

<sup>164</sup> Recommended International Code of Practice – General Principles of Food Hygiene CAC/RCP 1-1969, Rev 3-1997, Amd. (1999).

The demand for a specific organisation to regulate international trade gave rise to the creation of the World Trade Organization (WTO). The organization came into effect on 1 January 1995.<sup>165</sup> The WTO is the only international organisation that deals with all aspects relating to international trade. It is a member-orientated organisation, and its members consist of states.<sup>166</sup> It aims to lessen trade barriers and ensure smooth trade between states.<sup>167</sup> The General Agreement on Tariffs and Trade (GATT) regulated international trade prior to the creation of the WTO.<sup>168</sup> The Uruguay negotiating rounds of GATT ending in 1994 gave rise to the establishment of the WTO.<sup>169</sup> Many of the trade rules contained in GATT were later incorporated into the WTO agreements. The WTO agreements cover aspects such as trade in goods, services and intellectual property and the WTO has various functions and roles to perform.<sup>170</sup> Firstly, the WTO serves as a negotiating forum for states as it allows states to negotiate about trade issues or agreements.<sup>171</sup> The WTO also provides trade laws and rules through WTO agreements and it assists in resolving disputes between member states relating to trade. It does so through a separate body called the Dispute Settlement Body (DSB) created specifically to handle dispute settlement among WTO members.<sup>172</sup>

The WTO agreements are at the heart of this organization. These WTO agreements contain all the trade rules that must be followed by member states when trading and states are required to accept these agreements. In terms of the WTO's single undertaking principle, once a state has accepted one WTO agreement, they have to accept all other WTO agreements.<sup>173</sup> In other words, when a member state signed the agreement establishing the WTO, they became bound to the annexes to that agreement. WTO agreements are legally enforceable on all member states.<sup>174</sup>

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<sup>165</sup> World Trade Organization 'The WTO', available at [https://www.wto.org/english/thewto\\_e/thewto\\_e.htm#:~:text=The%20World%20Trade%20Organization%20\(WTO,and%20ratified%20in%20their%20parliaments,](https://www.wto.org/english/thewto_e/thewto_e.htm#:~:text=The%20World%20Trade%20Organization%20(WTO,and%20ratified%20in%20their%20parliaments,) accessed on 7 May 2023.

<sup>166</sup> E Schlemmer 'International Trade Law' in C Gevers...et al 2 ed *International Law* (2020).

<sup>167</sup> I P Garcerant 'International Food Law and Regulation: A Review' (2017), available at [https://www.researchgate.net/publication/317098565\\_International\\_Food\\_Law\\_and\\_Regulation\\_A\\_Review,](https://www.researchgate.net/publication/317098565_International_Food_Law_and_Regulation_A_Review) accessed on 20 April 2023.

<sup>168</sup> E Schlemmer 'International Trade Law' in C Gevers...et al 2 ed *International Law* (2020).

<sup>169</sup> Ibid.

<sup>170</sup> Article 2 of the Marrakesh Agreement Establishing the World Trade Organization, 1994.

<sup>171</sup> Article 3(2) of the Marrakesh Agreement Establishing the World Trade Organization, 1994.

<sup>172</sup> Article 2 of the Understanding on rules and procedures governing the settlement of disputes (Annex 2 of the WTO Agreement), 1995.

<sup>173</sup> WTO 'How the negotiations are organized', available at [https://www.wto.org/english/tratop\\_e/dda\\_e/work\\_organ\\_i\\_e.htm#:~:text=Principles,agreed%20until%20everything%20is%20agreed%20E2%80%9D,](https://www.wto.org/english/tratop_e/dda_e/work_organ_i_e.htm#:~:text=Principles,agreed%20until%20everything%20is%20agreed%20E2%80%9D) accessed on 7 May 2023.

<sup>174</sup> Article 2(2) of the Marrakesh Agreement Establishing the World Trade Organization, 1994.

Food safety has an impact on international trade. Thus, the WTO deals with food safety. The WTO acknowledges that it is important for animal, human and plant health to be protected by states through proper trade regulations even though they may pose as trade barriers.<sup>175</sup> There are two main WTO agreements dealing with issues linked to food safety: the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)<sup>176</sup> and the Agreement on Technical Barriers to Trade (TBT Agreement).<sup>177</sup> In terms of Article 20 of GATT, states are allowed to limit trade in order to protect human, animal or plant health however, this limitation should not be discriminatory or unnecessarily limit trade.<sup>178</sup> Lastly, the WTO hosts several forums among its members to discuss food safety issues relating to trade.<sup>179</sup>

### **2.7.1 The Agreement on the Application of Sanitary and Phytosanitary Measures**

The SPS Agreement was one of the first WTO agreements created. This agreement came into existence in 1994 during the Uruguay round of negotiations.<sup>180</sup> This agreement specifically focuses on international food safety and aims to encourage trade, promote food safety standards while protecting human health.<sup>181</sup> It is aimed at preventing abuse of food safety measures, or using them as an excuse to restrict trade. In simple terms, the application of measures for food safety, animals, plants and human health are covered by the SPS Agreement.<sup>182</sup> All WTO Members are legally bound to the SPS agreement and are obligated to follow the rules.<sup>183</sup> The SPS Agreement distinguishes between SPS measures that will be permitted, e.g. those that protect human health and SPS measures that will not be allowed because they restrict trade. SPS measures provide consumers with the assurance that their food is safe.

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<sup>175</sup> P Van den Bossche & W Zdouc *The Law and Policy of the World Trade Organisation Text, Cases and Materials* 5 ed (2021) 851.

<sup>176</sup> WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>177</sup> WTO Agreement on Technical Barriers to Trade, 1995

<sup>178</sup> Article 20 of the General Agreement on Tariffs and Trade, 1947.

<sup>179</sup> WTO 'International Forum on Food Safety and Trade', available at [https://www.wto.org/english/tratop\\_e/sps\\_e/faowhowtoapril19\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/faowhowtoapril19_e.htm), accessed on 7 May 2023.

<sup>180</sup> WTO 'Understanding the WTO Agreement on Sanitary and Phytosanitary Measures', available at [https://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm), accessed on 7 May 2023.

<sup>181</sup> P C Athukorala & S Jayasuriya 'Food Safety Issues, Trade and WTO rules: A developing country perspective' (2003) 26(9) *The World Economy* 1395.

<sup>182</sup> Article 1 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>183</sup> Preamble of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

Generally, SPS measures are considered trade barriers, but SPS measures that aim at protecting human, animal and plant life are allowed to be implemented within this agreement.<sup>184</sup> If they meet certain requirements and are capable of doing so under exceptional circumstances, WTO member states will be entitled to develop their own SPS measures.<sup>185</sup> These requirements are set out in Article 2 of the SPS agreement. In terms of Article 2 of the SPS Agreement, a member state may develop a SPS measure provided that:

- “(1) it protects human, animal or plant health and life,
- (2) is based on science and scientific principles,
- (3) is managed with enough scientific evidence,
- (4) does not unjustly discriminate between members with similar conditions and
- (5) is not used as a disguised limitation on international trade.”<sup>186</sup>

Moreover, the WTO, through this agreement, encourages member states to establish their SPS measures or standards on internationally recognised standards.<sup>187</sup> The SPS Agreement recognises three important international organisations responsible for creating international standards and guidelines. The CAC and the International Office of Epizootics are recognised by the WTO for food safety and animal health.<sup>188</sup> To establish standards concerning plant health, the WTO recognises the International Plant Protection Convention.<sup>189</sup> SPS measures that are founded on international standards are compatible with the WTO and are based on science.<sup>190</sup> However, scientific principles must be followed when WTO members create their own SPS measures. Such SPS measures need to be founded on science and scientific evidence and principles are needed to support SPS measures.<sup>191</sup> This Agreement requires SPS measures to be transparent and non-discriminatory towards other states.

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<sup>184</sup> WTO ‘Understanding the WTO Agreement on Sanitary and Phytosanitary Measures’ available at [https://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm), accessed on 12 May 2023.

<sup>185</sup> Article 2(1) of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>186</sup> Article 2 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>187</sup> Article 3 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>188</sup> Preamble and Article 3(4) of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>189</sup> Ibid.

<sup>190</sup> Article 3(2) of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>191</sup> WTO ‘Understanding the WTO: The agreements standards and safety’, available at [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm), accessed on 7 May 2023.

Only as far as is necessary for the protection of human health and food safety should such a measure apply.<sup>192</sup> In other words, these measures should not be more restrictive on trade than required.<sup>193</sup> Athukorala and Jayasuriya explain that compliance with SPS measures by states should be seen as a means of improving food safety and consumer protection globally rather than a trade barrier.<sup>194</sup> If member states wish to deviate from the standards created by these international organisations, then their standards must be supported by scientific evidence. Furthermore, the *EC – Hormones (US)* dealt with an SPS measure by the European Communities that restricts the import of meat products treated with hormones from the USA.<sup>195</sup> The Appellate Body (AB) dealt with the issue of states adopting SPS measures that result in higher sanitary protection than those based on international standards.<sup>196</sup> The AB held that adopting such measures are an exception.<sup>197</sup> Further, it noted that SPS measures based on international standards must exactly match the international standards.<sup>198</sup>

Available information can be used if there is insufficient scientific evidence to adopt a SPS measure.<sup>199</sup> States are required to notify the WTO and other states about their SPS measures and give states enough time to adjust to these measures.<sup>200</sup> The SPS Agreement also promotes transparency by requiring a state creating a SPS measure to provide enough information to other states in order for them to establish whether such a measure is permitted by the SPS agreement.<sup>201</sup> The agreement provides a mechanism that resolves disputes among states arising from SPS measures. This agreement provides developing and least-developed countries technical assistance to help them adapt to SPS measures.<sup>202</sup> However, Athukorala and Jayasuriya argue that developing countries lack infrastructure, policies, resources and monetary means to effectively deal with SPS measures and developed countries do not help them.<sup>203</sup> Further, they argue that certain provisions of this agreement is problematic.<sup>204</sup>

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<sup>192</sup> Article 2(2) of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>193</sup> Article 5(6) of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>194</sup> P C Athukorala & S Jayasuriya 'Food Safety Issues, Trade and WTO rules: A developing country perspective' (2003) 26(9) *The World Economy* 1397.

<sup>195</sup> European Communities – Measures Concerning Meat and Meat products (Hormones), WT/DS26/29.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> Article 5(7) of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>200</sup> Article 7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>201</sup> A T Guzman 'Food fears: Health and safety at the WTO' (2004) 45 *Virginia Journal of International Law* 9.

<sup>202</sup> Article 9 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1995.

<sup>203</sup> P C Athukorala & S Jayasuriya 'Food Safety Issues, Trade and WTO rules: A developing country perspective' (2003) 26(9) *The World Economy* 1397.

<sup>204</sup> *Ibid.*

Similarly, Henson and Loader argue that developing countries lack scientific expertise and awareness about SPS measures and how to implement them.<sup>205</sup> Lastly, Silverglade argues that

“The SPS agreement does not do much to resolve food safety issues because it merely provides ways in which states can be exempted from other state’s food safety laws.”<sup>206</sup>

The thesis agrees with the argument that developing and least-developed countries are not able to effectively deal with SPS measures. Although, this agreement provides these countries with technical assistance, special and differential treatment and the DSB gives special attention to these countries and their issues, they are still unable to effectively implement the SPS Agreement.<sup>207</sup> These provisions of the SPS Agreement fail to take into consideration the needs of developing countries and the agreement does not require developed countries to provide assistance to these countries.<sup>208</sup> It’s argued that these countries need access to the markets in developed countries to use SPS measures.

The thesis suggests that the WTO should review and amend the SPS Agreement to resolve these issues. The SPS Agreement should establish better means to include developing countries which will give consideration to their needs. At the same time, developed countries can help developing countries by providing technical assistance. Unnevehr and Roberts argue that the SPS Agreement has improved transparency and has made an impact on ensuring food safety globally.<sup>209</sup> The thesis disagrees with the argument raised by Silverglade, referred to earlier. SPS Agreement goes beyond exempting states from food safety laws. Notably, it allows states to create SPS measures to protect human life and ensure food safety. Also, it ensures states comply with international standards like codex standards. This agreement is able to give member states the right to adopt SPS measures while effectively promoting trade.<sup>210</sup> The recognition of codex standards in the SPS Agreement signifies the importance of these standards in resolving trade and food safety issues.

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<sup>205</sup> H Spencer & R Loader ‘Impact of Sanitary and Phytosanitary standards on developing countries and the role of the SPS agreement’ (1999) 15(3) *Agribusiness* 355-369.

<sup>206</sup> B A Silverglade ‘The WTO agreement on Sanitary and Phytosanitary measures: Weakening food safety regulations to facilitate trade?’ (2000) 55(4) *Food and Drug Law Journal* 517.

<sup>207</sup> F G Santeramo & E Lamonaca ‘On the trade effects of bilateral SPS measures in developed and developing countries’ (2022) 45 3113.

<sup>208</sup> M Wagner ‘Interpreting the SPS Agreement: Navigating risk, scientific evidence and regulatory autonomy’ in S Lester & B Mercurio (eds) *Research Handbook on WTO Dispute Settlement* (2016) 19.

<sup>209</sup> L Unnevehr & D Roberts ‘Food safety and quality: Regulations, trade and the WTO’ 2004 *Agricultural Policy Reform and the WTO* 516.

<sup>210</sup> G Lukasz *Regulating Health and Environmental Risks under the WTO Law. A critical analysis of the SPS Agreement* (2010) 50.

## 2.7.2 The Agreement on Technical Barriers to Trade

The TBT agreement came into existence in 1995 when the WTO was established.<sup>211</sup> Technical standards and measures for the protection of human health and the environment are important, but they can also be barriers to trade.<sup>212</sup> According to the WTO,

“The TBT agreement aims to ensure that technical regulations, standards and assessment procedures are not discriminatory and they do not unnecessarily limit trade.”<sup>213</sup>

In other words, the TBT agreement seeks to prevent or prohibit any technical measure or rule that intends to limit trade. By doing so, this WTO agreement removes any barriers to international trade and allows it to run smoothly. Additionally, the TBT agreement sets out barriers to trade that are allowed to be used by member states provided that they are for a valid purpose, such as protecting human life and the environment.<sup>214</sup> It gives states the power to create technical measures that will protect interests such as people’s health, the environment, and animals provided that these measures are not unnecessary barriers to trade.<sup>215</sup>

However, this agreement clearly states that these technical measures created by states must be fair, transparent and non-discriminatory to avoid states from using these measures as a defence for protectionism.<sup>216</sup> The TBT Agreement partially addresses food safety by allowing for the standardization of specifications for things like packaging and food labelling.<sup>217</sup> The TBT Agreement supplements the SPS agreement. This means that the TBT Agreement also provides for the protection of human and animal health but it allows for additional technical measures/standards that states can create and which is not covered by the SPS Agreement.<sup>218</sup> Further, states are obligated to inform the WTO about any new technical requirements or standards they have created. This will allow for other member states to be informed when they are trading. The thesis argues that the TBT Agreement deals with food safety to a limited extent

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<sup>211</sup> WTO ‘Technical barriers to trade’, available at [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm), accessed on 8 May 2023.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> WTO ‘Technical Information on Technical barriers to trade’ available at [https://www.w.org/english/tratop\\_e/tbt\\_e/tbt\\_info\\_e.htm](https://www.w.org/english/tratop_e/tbt_e/tbt_info_e.htm), accessed on 10 May 2023

<sup>215</sup> Article 2(2) of the WTO Agreement on Technical Barriers to Trade, 1995.

<sup>216</sup> E N Wijkstrom & D McDaniels ‘Improving regulatory governance: International standards and the WTO TBT Agreement’ (2013) 47(5) *Journal of World Trade* 1013-1046.

<sup>217</sup> B Van der Meulen ‘The global arena of food law: emerging contours of a meta-framework’ (2010) 3(4) *Erasmus Law Review* 224.

<sup>218</sup> WTO ‘Technical Information on Technical barriers to trade’ available at [https://www.w.org/english/tratop\\_e/tbt\\_e/tbt\\_info\\_e.htm](https://www.w.org/english/tratop_e/tbt_e/tbt_info_e.htm), accessed on 10 May 2023

because it only focuses on technical standards and regulations. This Agreement recognises the CAC as a body responsible for creating international standards, and it encourages the use of its standards. The thesis is of the view that one advantage of this agreement is that it requires technical rules that protect particular interests should not be more restrictive on foreign goods than on goods manufactured locally.

## **2.8 THE INTERNATIONAL FOOD SAFETY AUTHORITIES NETWORK**

The establishment of the International Food Safety Authorities Network (INFOSAN) has been prompted by the need for communication among states on food safety issues and prevent food safety emergencies. INFOSAN was established jointly by the FAO and WHO in 2004.<sup>219</sup> As its name suggests, INFOSAN is an international network of authorities specialising in food safety from different countries. In other words, where food safety emergencies occur, it acts as an international network enabling rapid exchange of information between member states.<sup>220</sup> INFOSAN aims to prevent global food safety issues such as foodborne diseases and improve food safety systems.<sup>221</sup> This network is jointly managed by the FAO and WHO.

Furthermore, it allows for the sharing of data and information about food safety issues.<sup>222</sup> It allows food safety authorities worldwide to collaborate.<sup>223</sup> It helps detect food safety issues and inform the world about them. Also, it helps states to build their capacity so that they can effectively respond to emergencies related to food safety.<sup>224</sup> Additionally, it provides training to members and prepares them to deal with food safety emergencies. The INFOSAN validates any information before sharing it.<sup>225</sup> INFOSAN collaborates with various international

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<sup>219</sup> FAO 'Food safety and quality: International Food safety authorities Network (INFOSAN)', available at <https://www.fao.org/food-safety/emergencies/infosan/en/>, accessed on 8 May 2023.

<sup>220</sup> Ibid.

<sup>221</sup> C J Savelli ... et al 'The FAO/WHO International Food Safety Authorities Network in Review, 2004-2018: Learning from the past and looking to the future' (2019) 16(7) *Foodborne Pathogens and Disease* 481.

<sup>222</sup> J Spink...et al 'Global perspectives on food fraud: results from a WHO survey of members of the International Food Safety Authorities Network (INFOSAN)' (2019) 12 *npj Science of Learning Food* 3.

<sup>223</sup> WHO 'FAO/WHO International Food Safety Authorities Network (INFOSAN)' available at <https://www.who.int/groups/fao-who-international-food-safety-authorities-network-infosan/about>, accessed on 10 May 2023.

<sup>224</sup> Ibid.

<sup>225</sup> C J Savelli ... et al 'The FAO/WHO International Food Safety Authorities Network in Review, 2004-2018: Learning from the past and looking to the future' (2019) 16(7) *Foodborne Pathogens and Disease* 483.

networks, regional and national commissions to strengthen their responsibilities.<sup>226</sup> Savelli and others argue that while INFOSAN prevents food safety issues and saves lives, more accessible ways of sharing information is needed within INFOSAN.<sup>227</sup> The thesis argues that members must actively participate in INFOSAN for it to function effectively.

## **2.9 INTERNATIONAL ORGANIZATION FOR STANDARDIZATION**

When discussing international food safety laws, it is necessary to consider the International Organization for Standardization (ISO) created in 1947 and operates as an intergovernmental organisation.<sup>228</sup> The ISO comprises of national standards bodies representing a particular country instead of member states. It is in charge of creating and issuing international standards for various products.<sup>229</sup> In other words, it creates common standards for products that promote international trade and ensure that products are safe and quality. These ISO standards cover various aspects such as food, agriculture, healthcare, etc. If a product satisfies the requirements set out in the ISO standard, then such a product will be certified and the product will be regarded as ISO certified. Businesses are encouraged to follow these standards when producing products. The ISO has developed standards to deal with food safety. In particular, ISO 22000 is an ISO standard created to improve food safety.<sup>230</sup> This standard sets out the requirements needed for a food safety management system. It requires food safety risks and hazards to be identified and assessed by food businesses. Lastly, businesses must be able to control these food safety risks to ensure food safety.

## **2.10 INTERNATIONAL ASSOCIATION FOR FOOD PROTECTION**

Founded in 1911, the International Association for Food Protection (IAFP) is a non-profit organisation.<sup>231</sup> The IAFP consists of several food safety professionals working together

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<sup>226</sup> C J Savelli, J Simpson & C Mateus 'Exploring the experiences of members of the International Food Safety Authorities Network: An interpretative Phenomenological analysis' (2021) 84(10) *Journal of Food Protection* 1684.

<sup>227</sup> CJ Savelli & C Mateus 'Exploring the International Food Safety Authorities Network as a community of practice: Results from a global survey of network members' (2021) 84(2) *Journal of Food Production* 271.

<sup>228</sup> ISO 'About us', available at <https://www.iso.org/about-us.html>, accessed on 8 May 2023.

<sup>229</sup> Ibid.

<sup>230</sup> C Escanciano & M L Santos-Vijande 'Reasons and constraints to implementing an ISO 22000 food safety management system: Evidence from Spain' (2014) 40 *Food Control* 50.

<sup>231</sup> International Association for Food Protection 'Advancing food safety worldwide', available at <https://www.foodprotection.org/>, accessed on 9 May 2023.

through a panel to interchange information about food safety with an aim of improving food safety globally and protecting global food supply.<sup>232</sup> The IAFP comprises different professionals such as teachers, quality control officers and government workers who all work towards ensuring food safety.<sup>233</sup> This association allows states to be informed about any scientific or technical information or development relating to food safety. Lastly, the IAFP educates member states about food safety and it has published two journals which provides information about food safety in order to ensure food protection.<sup>234</sup>

## 2.11 CONCLUSION

These international organisations have made a significant effort in regulating and ensuring food safety globally. Overall, by ensuring safer food, these international organisations are ensuring better human health and food security for everyone. The existence of these global food safety laws provide consumers with the assurance that the food they consume is safe. They provide technical assistance to countries in need to assist them in addressing food safety issues. Businesses and governments must abide by these international food safety laws. These international food safety regulations serve as guidelines for states to follow when developing their food safety laws.

The next chapter will show how South Africa has used these international regulations in developing its food safety laws. Additionally, South Africa is obligated to follow regional food safety laws such as the Food Safety Strategy for Africa<sup>235</sup> however, regional food safety regulations are beyond the scope of this dissertation, and it will not be discussed. The next chapter will elaborate on the initiatives the South African government took by providing a detailed discussion of South African food safety laws. Lastly, national food safety laws should harmonise with these international food safety regulations.

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<sup>232</sup> Rapid Microbiology ‘International Association for Food Protection (IAFP)’, available at <https://www.rapidmicrobiology.com/supplier/international-association-for-food-protection-iafp>, accessed on 9 May 2023.

<sup>233</sup> ‘International Association for food protection’ available at <https://cfsec.swoogo.com/conference/IAFP>, accessed on 10 May 2023.

<sup>234</sup> Ibid.

<sup>235</sup> New Vision ‘Food Safety Strategy for Africa launched’, available at <https://www.newvision.co.ug/category/news/food-safety-strategy-for-africa-launched-135864>, accessed on 8 May 2023.

# CHAPTER 3

## SOUTH AFRICAN FOOD SAFETY LEGAL AND INSTITUTIONAL FRAMEWORK

### 3.1 INTRODUCTION

Food safety is a particularly crucial issue that governments should address and ensure the implementation of appropriate legal framework to safeguard consumers and the economy.<sup>236</sup> Unsafe food and the lack of a transparent food safety legal and institutional framework also have an impact on the economy.<sup>237</sup> Notably, several countries such as China, Australia and Canada have created national laws to regulate food safety.<sup>238</sup> South Africa is one of those countries that considers food safety as a serious matter. As indicated in the previous chapter, South Africa is under an international obligation to develop and sustain its legal framework that will regulate food safety. Furthermore, despite the existence of international food safety regulations, food safety challenges are prevalent in South Africa. Resultantly, important that current food safety regulations are updated and where needed, legislation and policies are enacted to give effect to the country's obligations.

As such, the government has created and amended several food safety regulations through legislation and policies. Implementing and harmonising food safety regulations are essential in South Africa to protect people from food safety risks. Ragona and Mazzocchi state these food safety regulations aim to protect people's health and prevent food-related illnesses.<sup>239</sup> These regulations ensure good quality food products and protect consumers by requiring businesses to comply with their rules.<sup>240</sup> These laws cover various aspects of food safety, such as food labelling, hygiene and product standards. Moreover, compliance with these food safety laws

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<sup>236</sup> Food and Agriculture Organization of the United Nations Food and Nutrition Paper 76 *Assuring Food Safety and Quality. Guidelines for Strengthening National Food Control Systems* (2003) 3.

<sup>237</sup> Ibid.

<sup>238</sup> 'Food safety laws around the world', available at <https://phshygiene.com/food-safety/food-safety-laws-around-the-world/>, accessed on 30 September 2023.

<sup>239</sup> M Ragona & M Mazzocchi 'Food safety regulation, economic impact assessment and quantitative methods' (2008) 21(2) *The European Journal of Social Science Research* 145.

<sup>240</sup> 'Food Safety South Africa: What you need to know' available at <https://assurecloud.co.za/food-safety-south-africa-what-you-need-to-know/>, accessed on 14 April 2022.

provides South Africans with the assurance that their food is produced in a hygienic manner and it is safe to eat.

The government is obligated to ensure that everyone within its borders have access to safe and nutritious food.<sup>241</sup> Various government departments are responsible for overseeing food safety regulations and ensuring food safety in South Africa.<sup>242</sup> Understanding what regulations are in place in South Africa to ensure food safety is imperative. Hence, this chapter aims to look at the extent to which the South African legal framework regulates food safety. In other words, this chapter focuses on the various food safety regulations and policies established for food safety in South Africa. Further, this chapter looks at the role of the South African government in ensuring food safety and provides a critical discussion of these regulations.

### **3.2 THE ROLE AND RESPONSIBILITIES OF THE SOUTH AFRICAN GOVERNMENT IN ENSURING FOOD SAFETY**

The government is responsible for protecting the health of people and the economy, as food safety impacts the economy and people's health.<sup>243</sup> This responsibility entails that the government give significant importance to regulating food safety within its borders. Food safety cannot be regulated by a single government department because it affects various sectors of the economy. Accordingly, the dissertation has identified three government departments responsible for regulating food safety in South Africa, namely, the Department of Trade, Industry and Competition (the dtic), the Department of Health (DOH) and the Department of Agriculture, Land Reform and Rural Development (DALRRD).<sup>244</sup> The dissertation will provide a detailed discussion of each of these departments.

As previously discussed, the food retail sector plays an important role in food production. Thus, the various stakeholders of this sector have a pivotal role in ensuring food safety. One of the

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<sup>241</sup> Consumer Goods Council of South Africa 'Regulatory aspects of food safety in the context of small, medium and micro-enterprises' available at <https://www.cgcsa.co.za/wp=content-uploads/2020/06/DoH-REGULATORY-ASPECTS-OF-FOOD-SAFETY-Mr-Matlala.pdf>, accessed on 28 July 2023. Section 27 of the Constitution of the Republic of South Africa, 1996

<sup>242</sup> 'Regulation of food safety and quality in South Africa' available at <https://foodfacts.org.za/regulation-of-food-safety-and-quality-in-South-africa/#:~:text=The%20National%20Department%20of%20Health%20requires%20that%20all%20foodstuffs%20shall,sale%20and%20importation%20of%20foodstuffs>, accessed 28 July 2023.

<sup>243</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 339.

<sup>244</sup> 'Food regulation in South Africa-past, present and future' available at [https://www.saafrust.org.za/wp-content/uploads/2018/12/presentation\\_2018\\_11\\_2\\_9\\_b.pdf](https://www.saafrust.org.za/wp-content/uploads/2018/12/presentation_2018_11_2_9_b.pdf), accessed on 29 April 2022.

main responsibilities of the government is to create and enforce food safety laws. Before the government can enact or amend any food safety regulation or legislation, it is advised by a specialised body called the Food Legislation Advisory Group (FLAG).<sup>245</sup> FLAG was established to provide advice about food laws and food-related issues to the government in order to assist them in enacting such laws.<sup>246</sup> This group is made up of a variety of members such as academics, researchers.<sup>247</sup> Firstly, the DOH is responsible for protecting people's health in South Africa, and it has established the Food Control Unit which is in control of ensuring food safety in South Africa.<sup>248</sup> The DOH plays the most important role in ensuring food safety in South Africa.

The Food Control Unit has several functions, which include developing and implementing food safety laws such as the Foodstuffs, Cosmetics and Disinfectants Act (FCD Act)<sup>249</sup> and the National Health Act.<sup>250</sup> The DOH deals only with the safety and hygiene of ready-to-eat food products.<sup>251</sup> This department promotes food safety awareness and educates consumers and food businesses about food safety and hygiene through several programmes. Food handlers and various stakeholders are trained and educated about food hygiene and safety.<sup>252</sup> However, Sibanyoni argues that many food handlers in school nutrition programmes lack knowledge about food safety and proper training on handling food hygienically.<sup>253</sup> Also, this Unit serves as the national contact point for Codex and INFOSAN and supports port and municipal health services.<sup>254</sup>

As its name suggests, the Department of Trade, Industry and Competition (the dtic) is responsible for regulating and overseeing trade, such as exports and imports in South Africa. Through the National Regulator for Compulsory Specifications (NRCS), the dtic regulates food

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<sup>245</sup> The Restaurant Voice 'World Health Organisation (WHO) - food safety as a public health function' available at <https://restaurant.org.za/food-safety-initiative>, accessed on 3 August 2023.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> National Department of Health 'Food Control', available at <https://www.health.gov.za/food-control/>, accessed on 13 August 2023.

<sup>249</sup> Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, as amended by Act 39 of 2007.

<sup>250</sup> National Health Act 61 of 2003.

<sup>251</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 339.

<sup>252</sup> SANews 'SA commemorates World Food Safety Day' available at <https://www.sanews.gov.za/south-africa/sa-commemorates-world-food-safety-day>, accessed on 13 August 2023.

<sup>253</sup> JJ Sibanyoni, P Tshabalala & FT Tabit 'Food safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa' (2016) 73(1) *Food Control* 10.

<sup>254</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 341.

safety and controls canned and frozen food products.<sup>255</sup> It also deals with frozen and processed meat and fish products, irrespective of whether they were produced in South Africa. The dtic enforces the Standards Act and oversees the SABS which is responsible for ensuring food products comply with certain standards in order to ensure its safety and quality.<sup>256</sup> Further, the NRCS acts as the enquiry point for the WTO Agreement on Technical Barriers to Trade.

All agricultural products and related agricultural matters are dealt with by the DALRRD. The Food Safety and Quality Assurance Unit within the DALRRD is responsible for ensuring food safety through the implementation of several legislation such as the Agricultural Products Standards Act<sup>257</sup>, Meat Safety Act<sup>258</sup>, Liquor Products Act<sup>259</sup>, Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act<sup>260</sup> etc. In simple terms, this Unit is responsible for ensuring the quality and safety of animal and agricultural products in South Africa. Furthermore, it acts as a national enquiry point for the SPS Agreement. These departments can only ensure food safety on a national level. There is a need to ensure food safety and compliance with these regulations at a provincial and local level. Hence, provincial and local government departments, through various actors such as environmental health practitioners (EHPs) are responsible for ensuring food safety within their specific areas.

In other words, each local municipality has EHPs who enforce food safety regulations and ensure food safety.<sup>261</sup> They perform many functions such as enforcing the FCD Act, conducting inspections of food premises etc. Mokoatle and others argue that EHPs do not entirely enforce food safety regulations, they act inconsistently, and there is a lack of effective record keeping by them.<sup>262</sup> Also, Wright and others argue that there is a shortage of EHPs in South Africa.<sup>263</sup> However, this research argues that EHPs have too many responsibilities and this could be the reason why they are unable to perform their functions effectively. In essence, each of these

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<sup>255</sup> Consumer Goods Council of South Africa 'Regulatory aspects of food safety in the context of small, medium and micro-enterprises' available at <https://www.cgcsa.co.za/wp=content-uploads/2020/06/DoH-REGULATORY-ASPECTS-OF-FOOD-SAFETY-Mr-Matlala.pdf>, accessed on 28 July 2023.

<sup>256</sup> The Standards Act 8 of 2008.

<sup>257</sup> Agricultural Product Standards Act 119 of 1990.

<sup>258</sup> Meat Safety Act 40 of 2000.

<sup>259</sup> Liquor Products Act 60 of 1989.

<sup>260</sup> Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1984.

<sup>261</sup> D Pretorius & V De Klerk 'Developing and implementing food safety mechanism: Summary of FSN forum discussion no.39 from 30 June to 23 July 2009', available at [https://www.fao.org/fileadmin/user\\_upload/fsn/docs/SUMMARY\\_food\\_safety\\_mechanisms.pdf](https://www.fao.org/fileadmin/user_upload/fsn/docs/SUMMARY_food_safety_mechanisms.pdf), accessed on 23 August 2023.

<sup>262</sup> M Mokoatle, T T Sigudu & T Morse 'Enforcement of food safety regulations: a review of municipality records' (2016) University of Johannesburg available at <https://core.ac.uk/download/pdf/54193541.pdf>, accessed on 20 May 2023.

<sup>263</sup> C Y Wright, A Mathee & M A Oosthuizen 'Challenging times for environmental health in South Africa: The role of the Environmental Health Research Network' (2014) 104(1) *South African Medical Journal* 2078.

departments has a specific body or unit that is responsible for implementing food safety laws within their sector. These units play a significant role in ensuring food safety. Lastly, these departments examine all food products to ensure they comply with food safety regulations before they are made available and sold to consumers.

### **3.3 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996**

To overcome the injustices of the past, such as apartheid and address the inequality issues that it caused, the South African Government developed and adopted the Constitution.<sup>264</sup> The Constitution is regarded as the supreme law of South Africa.<sup>265</sup> This means that all laws must be consistent with the Constitution to be valid. The Constitution aims to protect vulnerable groups, e.g. the poor and those disadvantaged by apartheid.<sup>266</sup> It provides everyone with equal rights and opportunities with the objective of creating a democratic and equal society. Brand and Heyns state that the Constitution is a transformative piece of law that ultimately aims to promote freedom, equality and dignity.<sup>267</sup> It pays particular attention to ensuring that every person has the right to basic needs such as water, healthcare and food. It recognises and protects socio-economic rights under the Bill of Rights (BOR).<sup>268</sup>

The socio-economic rights which are guaranteed by the Constitution are in line with South Africa's international commitments and international human rights laws as contained in the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR).<sup>269</sup> The government plays a significant role in promoting and realising these socio-economic rights.<sup>270</sup> Additionally, the courts have a duty to promote the values of the BOR and uphold these rights when interpreting a law.<sup>271</sup> Everyone needs food to survive, and having safe and sufficient food eliminates hunger and improves nutrition. Having access to food ensures better health, well-being and lives for people. The right to food is an important socio-economic right that everyone

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<sup>264</sup> The Constitution of the Republic of South Africa, 1996.

<sup>265</sup> Section 2 of the Constitution of the Republic of South Africa, 1996.

<sup>266</sup> M S Kende 'The South African Constitutional Court's embrace of socio-economic rights: A comparative perspective' (2003) 6(1) *Chapman Law Review* 138.

<sup>267</sup> D Brand & C Heyns *Socio-economic Rights in South Africa* (2005) 6.

<sup>268</sup> Chapter 2 of the Constitution of the Republic of South Africa, 1996.

<sup>269</sup> S Liebenberg 'The International Covenant on Economic, Social and Cultural Rights and its implications for South Africa' (1995) 11 *South African Journal on Human Rights* 359.

<sup>270</sup> Section 7(2) of the Constitution of the Republic of South Africa, 1996.

<sup>271</sup> Section 39(2) of the Constitution of the Republic of South Africa, 1996.

should be entitled to. Therefore, the Constitution guarantees this right. In other words, the right to food is safeguarded by the Constitution.<sup>272</sup>

The right to food is considered a legal entitlement which people, specifically the poor, can enforce against the government and society, and it ensures that sufficient attention is given to this socio-economic right.<sup>273</sup> The right to food is entrenched in three sections of the Constitution. Firstly, in terms of the Constitution,

“Section 27(1)(b) – Everyone has the right to have access to sufficient food and water;

Section 27(2) – The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”<sup>274</sup>

The right mentioned in section 27(1)(b) means that it must be possible for people to get food for themselves and food must be affordable. This section specifically mentions sufficient food, which means that everyone is entitled to food that is enough to satisfy their hunger, basic needs and nutritional requirements.

In simple terms, section 27(1)(b) explains that everyone has the right to have access to a sufficient amount of basic food and nutrition. By including this right in the Constitution, the government is highlighting the need and importance of improving the quality of people’s lives in South Africa.<sup>275</sup> One shortcoming of this right is that it does not guarantee the right to safe food. Also, the Constitution does not specifically deal with food safety. The government has the duty to implement and protect the right of access to sufficient food.<sup>276</sup> Moreover, the government is prevented from interfering in this right. This right must be respected and fulfilled by the state.<sup>277</sup> Section 27(2) of the Constitution requires the government to take steps that are reasonable and within its means to realise the right to have access to sufficient food.

This section places a positive duty on the government to create and implement reasonable legislation and policies to realise the right to have access to sufficient food in light of available resources and that this right must be progressively realised.<sup>278</sup> They must ensure that people have enough food to eat by implementing food laws, controlling food import, and managing

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<sup>272</sup> Section 27(1)(b) of the Constitution of the Republic of South Africa, 1996.

<sup>273</sup> D Brand & C Heyns *Socio-economic Rights in South Africa* (2005) p3.

<sup>274</sup> Section 27 of the Constitution of the Republic of South Africa, 1996

<sup>275</sup> L Nevondwe & K O Odeku ‘An overview of the constitutional right to food under the South African Constitution’ (2014) 5(1) *Mediterranean Journal Of Social Sciences* 764.

<sup>276</sup> Section 7(2) of the Constitution of the Republic of South Africa. 1996

<sup>277</sup> Ibid.

<sup>278</sup> D Brand ‘Between availability and entitlement: the Constitution, Grootboom and the right to food’ (2003) 7(1) *Law, Democracy and Development* 6.

food production.<sup>279</sup> The state must ensure that everyone can access food and that such food is safe and nutritious.<sup>280</sup> The government must have strategies to realise this right. Nkrumah argues that the government has been unable to fulfil its obligations due to lack of resources, and the right to food is not adequately protected and enforced by our courts.<sup>281</sup> The thesis agrees with this argument since it can be seen by the lack of court cases regarding the right to food and food safety. It is suggested that the courts should pay more attention to protecting this right and the state should raise awareness about it.

Secondly, according to Section 28(1)(c) of the Constitution,

“Every child has the right to basic nutrition, shelter, basic health care services and social services.”<sup>282</sup>

In essence, this section affords every child with the right to basic food and nutrition. Children are the most vulnerable groups of people, and the government must ensure that children have food and proper nutrition which will ensure a better future for these children. This section emphasises the importance of vulnerable groups such as children having access to food because they are not capable of providing food for themselves. The South African government has made an effort to realise this right through programmes such as the National School Nutrition Programme.

In terms of section 35(2)(e) of the Constitution:

“Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.”<sup>283</sup>

In simple terms, every prisoner has the right to adequate nutrition and food. Section 35(2)(e) makes specific mention of adequate nutrition which means that prisoners have the right to food that has nutritional value, good quality and is appropriate for their health and well-being. Prisoners are considered vulnerable because they cannot provide their own food.<sup>284</sup> Hence, the

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<sup>279</sup> L Nevondwe & K O Odeku ‘An overview of the constitutional right to food under the South African Constitution’ (2014) 5(1) *Mediterranean Journal Of Social Sciences* 765.

<sup>280</sup> L R Horton ‘Food from developing countries: steps to improve compliance’ (1998) 53 *Food and Drug Law Journal* 145.

<sup>281</sup> B Nkrumah ‘Opening Pandora’s Box: A legal analysis of the right to food in South Africa’ (2019) 52(1) *De Jure Law Journal* 2226.

<sup>282</sup> Section 28(1)(c) of the Constitution of the Republic of South Africa, 1996.

<sup>283</sup> Section 35(2)(e) of the Constitution of the Republic of South Africa, 1996.

<sup>284</sup> B Nkrumah ‘Opening Pandora’s Box: A legal analysis of the right to food in South Africa’ (2019) 52(1) *De Jure Law Journal* 2228.

government is responsible for ensuring they have the right of access to food. The case of *Wary Holdings v Stalwo*<sup>285</sup> dealt with the right to food. The case dealt with the legality of subdividing and selling land identified as agricultural land in the Subdivision of Agricultural Act 70 of 1970.<sup>286</sup> The court held that the government has a duty not to violate any person's right to food and will be in breach of this right if it fails to promote access to agricultural land.<sup>287</sup> As mentioned earlier, very few court cases dealt with this right.

Furthermore, the right to have access to safe food for everyone is necessary as it ensures better health. Therefore, this research suggests that section 27(1)(b) of the Constitution should be amended to include safe food. Further, it argues that the Constitution is one of the world's most inclusive and progressive laws because it guarantees its people several human rights, which many other countries do not. Although the Constitution does not deal with food safety, the government has enacted several legislation and policies to regulate and ensure food safety in South Africa which will be discussed below.

## **3.4 THE FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT 54 OF 1972, AS AMENDED BY ACT 39 OF 2007 (FCD ACT)**

### **3.4.1 Introduction**

The Foodstuffs, Cosmetics and Disinfectants Act is one of the main legislation that deals with food safety in South Africa as it governs various aspects relating only to foodstuffs, cosmetics and disinfectants. The DOH is responsible for implementing this Act.<sup>288</sup> In order to guarantee food safety, the FCD Act ensures that all foodstuffs are safe for consumption and not harmful to human health.<sup>289</sup> Since its enactment, the FCD Act has afforded some regulatory control over food products. The purpose of the FCD Act is:

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<sup>285</sup> *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) SA 337 (CC).

<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.*

<sup>288</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 339.

<sup>289</sup> FAO 'FAOLEX Database: Foodstuffs, Cosmetics and Disinfectants Act' available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOCO85626/>, accessed on 15 June 2023.

“To control the sale, manufacture, exportation and importation of foodstuffs, cosmetics and disinfectants and provide for other related matters.”<sup>290</sup>

In other words, the FCD Act determines when a foodstuff, cosmetic or disinfectant is safe to be sold, produced or imported.

The Act sets out standards and requirements that must be complied with by businesses before these products are produced, sold or imported. It also aims to prevent the use of certain methods and ingredients in these products and to prevent businesses from using information that misleads consumers. The Act prohibits certain products from being sold, manufactured or imported which may be harmful to human health.<sup>291</sup> Most importantly, the FCD Act allows for regulations to be created that will regulate various issues relating to foodstuffs, cosmetics and disinfectants.

### **3.4.2 Specific sections of the FCD Act**

Food products are regulated under the FCD Act. In particular, the Act defines a food product or otherwise known as a foodstuff, to be:

“Any article or substance which is normally eaten or drunk by humans, or which is manufactured or sold for human consumption, and includes any part of any such article or substance, or any substance used or intended to be used as a part of any such article or substance.”<sup>292</sup>

The FCD Act prohibits any person from the selling, manufacturing or importing any foodstuff which contains or has been treated with a prohibited substance,<sup>293</sup> contains or has been treated with a substance more than that is allowed by regulation,<sup>294</sup> where the sale of such a foodstuff is forbidden by regulation<sup>295</sup> or which does not conform with any standards relating to composition, quality, strength or other attributes set out by regulation.<sup>296</sup>

Further, this Act prohibits any person from selling, producing or importing any foodstuff that is contaminated, decayed or impure or which is considered by regulation to be harmful or

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<sup>290</sup> Preamble of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, as amended by Act 39 of 2007.

<sup>291</sup> Section 2 of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, as amended by Act 39 of 2007.

<sup>292</sup> Section 2 of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, as amended by Act 39 of 2007.

<sup>293</sup> Section 2(1)(a)(i) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>294</sup> Section 2(1)(a)(ii) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>295</sup> Section 2(1)(a)(iv) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>296</sup> Section 2(1)(a)(iii) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

dangerous to the health of humans<sup>297</sup> or which contains or has been treated with a substance that is contaminated, impure or decayed or substance which is considered by regulation to be harmful or dangerous to the health of humans.<sup>298</sup> Hence, if a person sells, manufactures or imports any such foodstuffs then he/she will be guilty of an offence. It will also amount to an offence if any person sells, imports or produces any foodstuff that contains or has been treated with a substance not found in such a foodstuff when it is in a normal and sound condition<sup>299</sup> or has been treated in a way that conceals its bad quality or damaged condition<sup>300</sup> or with the intent to deceive, any substance has been added to increase the volume of such a foodstuff<sup>301</sup> or with the intent to affect its nutritive value, any substance has been removed from such a foodstuff.<sup>302</sup>

The above will not amount to an offence if a foodstuff:

- “1) contains or has been treated with a substance that is not harmful to human health, its presence is necessary to produce such a foodstuff as an article of commerce and it does not intent to deceive the buyer by increasing volume or decreasing its quality, or
- 2) contains, but not greater than allowed by regulation, a foreign substance which is always present in such a foodstuff as a result of the process of its collection, or
- 3) from which a substance has been removed and such removal was necessary to manufacture the foodstuff as a fit product for sale.”<sup>303</sup>

In terms of section 3 of the FCD Act, it is considered an offence if a person sells any foodstuff which is a combination or mixture of various foodstuffs or a blend of the same foodstuffs belonging to different grades, other than in a packaging containing a label which complies with the necessary regulations and which clearly states that the foodstuff is a mixture or blend and sets out the names or grades of the foodstuffs used in the mixture unless such a foodstuff with labels is directly delivered to the buyer.<sup>304</sup> It can be understood from this provision that there are certain requirements that must be met before a mixed or blended foodstuff is sold.

Businesses are not allowed to use methods, processes or containers that are prohibited when manufacturing or selling foodstuffs.<sup>305</sup> False advertising and misleading information used to

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<sup>297</sup>Section 2(1)(b)(i) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>298</sup> Section 2(1)(b)(ii) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>299</sup> Section 2(1)(c)(i) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>300</sup> Section 2(1)(c)(iv) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>301</sup> Section 2(1)(c)(ii) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>302</sup> Section 2(1)(c)(iii) of the FCD Act 54 of 1972, as amended by Act 39 of 2007

<sup>303</sup> Section 2(2) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>304</sup> Section 3 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>305</sup> Section 4 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

describe or advertise a food product is prejudicial and harmful to consumers because consumers are unaware of what is actually contained in a product. This Act deals with the issue of false and misleading information and advertising. In terms of section 5 of the FCD Act, it amounts to an offence if a person publishes a false or misleading advertisement about a food product or describes a food product in a misleading or false manner with regards to its quality, ingredients, or sells or imports such a food product.<sup>306</sup> A person will not be liable of an offence for selling, importing or manufacturing foodstuffs in certain circumstances and it is regarded as special defences that a person may rise.<sup>307</sup> These circumstances include the following:

- “(1) if a person can prove that the foodstuff in question was not used, sold, imported or manufactured for consumption by humans.
- (2) if a person can prove that the foodstuff was imported in terms of a written warranty and issued to him/her or his/her employer.
- (3) if a person can prove that he/she had no reason to doubt/suspect that the foodstuff in question was a prohibited item at any given time
- (4) if a person can prove that he/she sold the foodstuff in the same condition as he/she had received and that he/she had no reason to suspect that the foodstuff was in any other condition other than in which he/she received it, and
- (5) if a person can prove that he/she was not the one selling the foodstuff in the advert and he/she did not know that advertisement was false or misleading.”<sup>308</sup>

The FCD Act also provides for vicarious liability.<sup>309</sup> The Minister of Health is authorised by this Act to develop regulations which would regulate various issues relating to foodstuffs.<sup>310</sup> These regulations could deal with any matter relating to foodstuffs, such as prohibiting certain substances in food products, regulating labelling or storage of food, duties of inspectors, etc. Lastly, this Act clarifies that any manufacturer or packer who sold a foodstuff in a seal package with a label that does not comply with the Act, is considered to have manufactured or packed that foodstuff.<sup>311</sup> Such a manufacturer or packer will be convicted unless he/she can prove that he/she did not manufacture or pack the foodstuff.<sup>312</sup> Alternatively, he/she can prove that the

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<sup>306</sup> Section 5(1) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>307</sup> Section 6 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>308</sup> Ibid.

<sup>309</sup> Section 8(1) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>310</sup> Section 15 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>311</sup> Section 9(1) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>312</sup> Ibid.

deterioration of foodstuff after it left his/her possession is the reason for the non-compliance with the Act.<sup>313</sup>

### **3.4.3 Enforcement, offences and penalties for the violation of the FCD Act**

As mentioned earlier in this chapter, the DOH is responsible for administrating and overseeing the FCD Act and other health-related legislation. However, provincial and local health authorities have the responsibility and power to enforce the FCD Act.<sup>314</sup> It is crucial to understand that the onus lies on manufacturers, sellers and importers to comply with the provisions of the FCD Act. This Act specifically recognises and authorises inspectors to enforce this Act.<sup>315</sup> Additionally, it sets out the powers and functions of these inspectors.<sup>316</sup> In terms of section 11 of the FCD Act:

“An inspector has the power at all reasonable times, to enter any premises where a foodstuff is or is suspected to be manufactured, sold, packed, labelled or where any other activity is or is suspected to be conducted.”<sup>317</sup>

Furthermore, inspectors have the following duties at such premises: (1) to inspect or search the premises and take samples of any foodstuffs found or any product or substance suspected to be used or connected with the manufacture or packing of any foodstuff or connected to any activity relating to such foodstuffs,<sup>318</sup> (2) to make copies or take extracts from any document or statement found at the premises and which makes reference to or is suspected to make reference to any such foodstuff,<sup>319</sup> (3) to command the owner, possessor or person in charge of the premises to provide any information concerning any foodstuff,<sup>320</sup> (4) to measure, weigh, count, seal any foodstuffs or its packaging and seal any door or opening leading to such foodstuffs,<sup>321</sup> (5) to command the owner, possessor or person in charge of the premises to provide an explanation of any information contained in a document or statement,<sup>322</sup> (6) seize any foodstuff,

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<sup>313</sup> Ibid.

<sup>314</sup> Food Advisory Consumer Service ‘Regulation of Food safety and quality in South Africa’ available at <https://foodfacts.org.za/regulation-of-food-safety-and-quality-in-south-africa>, accessed on 17 August 2023.

<sup>315</sup> Section 10 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>316</sup> Section 11 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>317</sup> Section 11(1) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>318</sup> Section 11(1)(a) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>319</sup> Section 11(1)(d) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>320</sup> Section 11(1)(b) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>321</sup> Section 11(1)(c) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>322</sup> Section 11(1)(e) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

document or product which serves as proof of a violation of the FCD Act<sup>323</sup> and (7) inspect any process conducted in such premises relating to any foodstuffs.<sup>324</sup>

The Act also recognises analysts in charge of examining and analysing any samples of foodstuffs.<sup>325</sup> In terms of this Act, a person is considered to have committed an offence if he/she:

- “(1) prevents or impedes an inspector from performing his duties and obligations vested in him by this Act,
- (2) retakes or tampers with any sample or foodstuff obtained or prevents an inspector extracting or seizing a sample or other article,
- (3) falsely represents himself as an inspector,
- (4) falsely uses any document, certificate or warranty that is connected to any foodstuff,
- (5) refuses to provide any information or an explanation relating to an issue that is demanded by the inspector or provides misleading information after the seal put by the inspector on the foodstuff is broken.”<sup>326</sup>

There are several penalties laid out in the FCD Act. In simple terms, this refers to the punishment that is given to those people who have committed an offence in terms of this Act. The type of penalty given to an offender under this Act will depend on how many times such a person has been convicted. It must be noted that where a penalty has been determined for a violation of the FCD Act, the person convicted of such a violation should only be liable for that determined penalty.<sup>327</sup> If a person has violated the FCD Act for the first time then he/she will be liable to pay a fine not exceeding R400 or be imprisoned for a period not exceeding 6 months or to both imprisonment and a fine.<sup>328</sup>

If it is a person’s second conviction then he/she will be liable to pay a fine not exceeding R800 or be imprisoned for a period not exceeding 12 months or to both a fine and imprisonment.<sup>329</sup> Moreover, if a person has violated this Act for the third time then he will be liable to pay a fine not exceeding R2000 or face imprisonment for a period not exceeding 2 years or to both penalties.<sup>330</sup> The thesis is of the view that the penalties imposed by this Act are quite lenient

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<sup>323</sup> Section 11(1)(h) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>324</sup> Section 11(1)(f) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>325</sup> Section 12 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>326</sup> Section 17 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>327</sup> Section 18(2) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>328</sup> Section 18(1)(a) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>329</sup> Section 18(1)(b) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>330</sup> Section 18(1)(c) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

and this section of the Act suggests that a person is likely to be convicted more than once. It is recommended that harsher penalties should be imposed for a first conviction as this will deter people from contravening the Act.

### **3.5 THE REGULATIONS TO THE FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT GOVERNING FOOD SAFETY**

The regulations to the FCD Act essentially supplement the FCD Act. These regulations contain rules and requirements that aim to enforce particular provisions of the FCD Act. As mentioned earlier in this chapter, the Minister of Health has the power to make regulations under this Act.<sup>331</sup> There are several regulations to the FCD Act however, two important regulations are discussed below.

#### **3.5.1 Regulations relating to the labelling and advertising of foodstuffs (R146 of 01 March 2010)**

Labels on food products are necessary because they inform the buyer of what is contained in food products and it helps them make better choices. This regulation focuses on the advertising and labelling of foodstuffs in South Africa. Notably, this regulation enforces the false and misleading advertising provision of the FCD Act, and it ensures better transparency of food products. This regulation aims to regulate the advertising and labels on foodstuffs, e.g., what information should be on a label, etc.<sup>332</sup> It aims to protect consumers from false or misleading information. In other words, this regulation provides for exactly what has to be on the label when a business sells a food product and what must be included in advertisements of food products which are targeted at consumers.<sup>333</sup> This regulation makes it clear that food businesses are required to ensure that every foodstuff that they sell, import or manufacture is labelled in accordance with this regulation.<sup>334</sup>

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<sup>331</sup> Section 15 of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>332</sup> M Matlala 'Regulations related to labelling and advertising of foodstuffs (No. R146 of 1 March 2010)', available at <https://www.cgcsa.co.za/wp-content/uploads/2020/09/NDoH-PRESENTATION-on-R146-by-Mr.-M.-Matlala>, accessed on 20 August 2023.

<sup>333</sup> N Koen... et al 'Food and nutrition labelling: the past, present and the way forward' (2016) 29(1) *South African Journal of Clinical Nutrition* 17.

<sup>334</sup> Regulation 2 of the Regulations relating to the labelling and advertising of foodstuffs (No.R146 of 1 March 2010).

All foodstuffs should not be advertised by any person in any manner which consists of any information, reference or declaration not allowed on a label in terms of this regulation.<sup>335</sup> Food manufacturers and businesses are required to have all information related to the requirements of this regulation. Further, all information on a label must be clear, easily legible, indelible and in English or any other official South African language.<sup>336</sup> Labels on pre-packed food products must be placed securely so that it cannot be easily removed from the package. This regulation also specifies the size of font that should be used on labels and the statements that are not allowed to be included on a label. A label should consist of the name of the product, name of the manufacturer or seller, country of production, ingredients, storage instructions, directions on how to use the product and the net of the packaging.<sup>337</sup>

The date of expiry or production must be marked on the foodstuff.<sup>338</sup> Warning signs must be clearly indicated on the product. Regulation 13 prohibits the use of certain words and statements when advertising food products. Furthermore, Regulations 16-44 provide detailed and specific requirements that must be met by food businesses for each aspect of food product labels. These regulations are important to ensuring food safety because they prevent food fraud. This regulation has been amended several times to include additional requirements on labelling. Currently, the DOH is working on passing a draft regulation relating to the labelling and advertising of foodstuffs.<sup>339</sup> The draft regulation R3337 of 2023 aims to address current issues in the market, such as lifestyle diseases and unhealthy eating. This regulation will ensure that labelling of foodstuffs are done in such a manner that it will promote healthy living.

This regulation will limit what can be shown on labels in the front of food products, e.g. no competitions or celebrities should be on the label. Also, company logos must be displayed in the front of foodstuffs, and food products should not be marketed to children.<sup>340</sup> If this regulation is passed, it will completely change how foodstuffs are labelled and marketed in South Africa. However, it is argued that if this regulation is passed, then it will have a

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<sup>335</sup> Regulation 3 of the Regulations relating to the labelling and advertising of foodstuffs (No.R146 of 1 March 2010).

<sup>336</sup> Regulation 7 of the Regulations relating to the labelling and advertising of foodstuffs (No.R146 of 1 March 2010).

<sup>337</sup> Regulation 9 and 10 of the Regulations relating to the labelling and advertising of foodstuffs (No.R146 of 1 March 2010).

<sup>338</sup> Regulation 12 of the Regulations relating to the labelling and advertising of foodstuffs (No.R146 of 1 March 2010).

<sup>339</sup> Draft Regulations relating to the labelling and advertising of foodstuffs (No. R3337 of 21 April 2023).

<sup>340</sup> I Opperman 'Impact of new food labelling and advertising regulations', *The Citizen* 7 July 2023 available at <https://amp.citizen.co.za/business/personal-finance/new-food-labelling-advertising-draft-regulations-south-africa-latest/>, accessed on 20 August 2023.

significant impact on food businesses, it will increase costs for businesses and consumers and it might lead to many food companies leaving the market.<sup>341</sup> The thesis argues that these regulations are not properly enforced and are too complex to comply with.

### **3.5.2 Regulations governing general hygiene requirements for food premises, the transport of food and related matters (R638 of 22 June 2018)**

To ensure food safety in South Africa, it is imperative to ensure that food is handled hygienically and free of any bacteria or germs before it reaches the consumer. Hence, these regulations were created to ensure hygiene when food is handled, stored and transported. These regulations set out hygiene requirements and standards that must be met by any person or business when handling, storing and transporting food.<sup>342</sup> These regulations aim to prevent foodborne diseases and illnesses. It sets out the requirements businesses must follow to ensure hygienic food. In terms of these regulations, every food premises or any place that handles food in South Africa must have a certificate authorising them to handle and sell food.<sup>343</sup> This certificate is called a certificate of acceptability.<sup>344</sup> Food premises and businesses are required to apply for this certificate in writing to a local health practitioner.

An inspector is then required to request information from the business and conduct an inspection of the premises.<sup>345</sup> If the local health practitioner is satisfied, then the certificate will be issued. These regulations set out the steps that are followed when issuing a certificate of acceptability and the rules pertaining to this certificate. Any person or business handling food is required to comply with the requirements and standards provided by these regulations.<sup>346</sup> If an inspector after conducting an inspection of the premises is of the view that such a place causes a health risk, then the local health practitioner can issue a written notice prohibiting the

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<sup>341</sup> Y Robbertse & B Versfeld 'Regulations on food labelling and advertising' available at <https://www.webberwentzel.com/News/Pages/regulations-on-food-labelling-and-advertising.aspx>, accessed on 20 August 2023.

<sup>342</sup> UNEP-LEAP 'Regulations governing general hygiene requirements for food premises, the transport of food and related matters (No. R638 of 2018)' available at <https://leap.unep.org/countries/za/national-legislation/regulations-governing-general-hygiene-requirements-food-2>, accessed on 20 August 2023.

<sup>343</sup> Regulation 3 of the Regulations governing general hygiene requirements for food premises, the transport of food and related matters (No. R638 of 2018).

<sup>344</sup> Ibid.

<sup>345</sup> Ibid.

<sup>346</sup> Regulation 5 & 6 of the Regulations governing general hygiene requirements for food premises, the transport of food and related matters (No. R638 of 2018).

use of this premises.<sup>347</sup> Requirements relating to the packaging of food is also contained in these regulations. Further, food is prevented from being stored on the floor and food storage places must be kept clean and hygienic. Food handlers are required to wear protective uniforms and have several duties to perform, such as washing their hands, covering their mouth when coughing, and handling food hygienically, etc.<sup>348</sup> Lastly, vehicles used to transport food must be clean, dustproof and free of any contaminated objects.<sup>349</sup>

### **3.6 THE HEALTH ACT 63 OF 1977**

As previously mentioned, food safety is closely interlinked with human and animal health. The Health Act<sup>350</sup> was established with the objective of ensuring public health services in South Africa.<sup>351</sup> The DOH is in charge of implementing this Act. In relation to food safety, this Act provides provisions governing the hygiene of food. Further, this Act gives the Minister of Health the power to create regulations governing food hygiene, transportation of food, etc.<sup>352</sup> This Act has now been repealed by the National Health Act 61 of 2003.

### **3.7 THE STANDARDS ACT 8 OF 2008**

As its name suggests, the Standards Act<sup>353</sup> deals with the creation, implementation and promotion of national standards. National Standards are necessary for businesses in the food industry as it allows for the production of good quality and safe food products. This Act is overseen by the dtic. This Act aims to provide for the continuation of the SABS (South African Bureau of Standards) as an organisation responsible for creating, promoting and maintaining the South African National Standards.<sup>354</sup> One of their objects include establishing the enquiry point in South Africa to sustain the notification system in terms of the WTO TBT Agreement.<sup>355</sup> The SABS also provides for certification of food products and product testing

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<sup>347</sup> Regulation 4 of the Regulations governing general hygiene requirements for food premises, the transport of food and related matters (No. R638 of 2018).

<sup>348</sup> Regulation 11 of the Regulations governing general hygiene requirements for food premises, the transport of food and related matters (No. R638 of 2018).

<sup>349</sup> Regulation 13 of the Regulations governing general hygiene requirements for food premises, the transport of food and related matters (No. R638 of 2018).

<sup>350</sup> The Health Act 63 of 1977.

<sup>351</sup> Preamble of the Health Act 63 of 1977.

<sup>352</sup> Section 35 of the Health Act 63 of 1977.

<sup>353</sup> The Standards Act 8 of 2008.

<sup>354</sup> Preamble of the Standards Act 8 of 2008.

<sup>355</sup> Section 4(2)(h) of the Standards Act 8 of 2008.

to ensure that they comply with these standards. This Act establishes the board of the SABS.<sup>356</sup> This board is responsible for overseeing the SABS and this organisation also outlines the steps for issuing standards and the national norm for creating them.

### **3.8 THE INTERNATIONAL HEALTH REGULATIONS ACT 28 OF 1947**

In line with its international obligations, South Africa enacted the International Health Regulations Act<sup>357</sup> to adopt and give effect to the International Health Regulations<sup>358</sup>, which was adopted by the WHO assembly. South Africa must ensure the safety of food at all food premises within its borders. This Act is implemented by the DOH.<sup>359</sup> This Act deals with hygiene and food safety matters at ports, airports and vessels. This Act controls the authorisation of food premises that are responsible for producing and manufacturing food for public usage and consumption at ports, airports, on aircrafts and vessels.<sup>360</sup> All food at these food premises must be handled and kept in a way that prevents it from getting contaminated. In terms of this Act, food sampling, inspection and approval of these food premises must be conducted by provisional and local health authorities.<sup>361</sup> Every airport and port should be given an effective plan on how to remove and deal with food products that are contaminated or hazardous to people's health.<sup>362</sup> Additionally, if there is a disease or public health issue in South Africa, the DOH is required to inform the WHO within 24 hours.<sup>363</sup>

### **3.9 THE AGRICULTURAL PRODUCT STANDARDS ACT 119 OF 1990**

The Agricultural Product Standards Act<sup>364</sup> was enacted with the aim of ensuring the safety and quality of agricultural products. The Act governs most agricultural products such as meat, fresh produce, dairy products etc. According to the preamble of the Agricultural Product Standards Act,

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<sup>356</sup> Section 6 of the Standards Act 8 of 2008.

<sup>357</sup> International Health Regulations Act 28 of 1974.

<sup>358</sup> World Health Organization, International Health Regulations, 2005.

<sup>359</sup> South African Government 'International Health Regulations Act 28 of 1974' available at [https://www.gov.za/sites/default/files/gcis\\_document/201504/act-28-1974.pdf](https://www.gov.za/sites/default/files/gcis_document/201504/act-28-1974.pdf), accessed on 10 August 2023.

<sup>360</sup> Article 14(2) of the International Health Regulations Act 28 of 1974.

<sup>361</sup> Ibid.

<sup>362</sup> Article 14(3) of the International Health Regulations Act 28 of 1974.

<sup>363</sup> Article 3 of the International Health Regulations Act 28 of 1974.

<sup>364</sup> Agricultural Product Standards Act 119 of 1990.

“The purpose of this Act is to manage the sale and export of certain agricultural products and associated products and to manage the sale of imported agricultural products.”<sup>365</sup>

In essence, this Act sets out quality and safety standards that agricultural products must comply with to control the sale and export of these products. This Act is implemented by the DALRRD. If an agricultural product does not meet the standards set out in the Act, then such a product can be prohibited from being sold, imported or exported.<sup>366</sup>

The Minister of Agriculture, Land Reform and Rural Development is authorised to forbid the sale or export of such a product.<sup>367</sup> The products can be inspected or sampled to ensure its safety and quality.<sup>368</sup> Also, businesses are prevented from using misleading descriptions on their agricultural products. Most importantly, agricultural products are required to be sold and exported in accordance with their grade and they must comply with their relevant standards and requirements. This Act is supplemented by regulations and there is a set of regulations for each agricultural product that sets out their relevant standards and requirements. Example: the Regulations regarding the grading, packing and marketing of eggs sets out the standards, grade and requirements that must be complied with for eggs to be sold or exported.<sup>369</sup> This research argues that this Act is quite complex and not in accordance with international food standards.

### **3.10 SUBSEQUENT LEGISLATION DEALING WITH FOOD SAFETY**

As indicated earlier in this chapter and with the above discussions, several legislation have been enacted to deal with food safety in South Africa. However, it is quite challenging to provide a detailed discussion of all food safety legislation. It must be noted that each legislation was enacted to deal with a specific aspect of food safety and quality. Genetically modified organisms (GMOs) are generally quite harmful to the environment and human health.<sup>370</sup> However, the Genetically Modified Organisms Act<sup>371</sup> provides for the safe use of genetically modified organisms. The purpose of this Act is to lay down measures promoting responsible development, manufacturing, use and application of GMOs as well as ensuring that activities

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<sup>365</sup> Preamble of the Agricultural Product Standards Act 119 of 1990.

<sup>366</sup> Section 3 and 4 of the Agricultural Product Standards Act 119 of 1990.

<sup>367</sup> Ibid.

<sup>368</sup> Section 3A of the Agricultural Product Standards Act 119 of 1990.

<sup>369</sup> Regulations regarding the Grading, Packing and Marketing of Eggs destined for sale in the Republic of South Africa (R.725 of 2011) GN 725 of GG 34596 16/9/2011; 4.

<sup>370</sup> A S Bawa & K R Anilakumar ‘Genetically modified foods: safety, risks and public concerns- a review’ (2013) 50(6) *Journal of Food Science and Technology* 1044.

<sup>371</sup> Genetically Modified Organisms Act 15 of 1997.

related to GMOs are conducted in such a way as to avoid possible adverse effects on the environment.<sup>372</sup> Further, the Act ensures that GMOs themselves do not pose a threat to the environment and it provides methods for the notification of activities involving GMOs.<sup>373</sup>

It also establishes a council that is in charge of overseeing various aspects relating to GMOs. Mayet argues that the GMO Act does not provide for public participation, and the provision dealing with liability is problematic.<sup>374</sup> The thesis agrees with this argument because the Act does not allow for the public to fully participate since they are only allowed to provide comments, and the Act holds the user of a GMO liable instead of those who developed the GMO. It is crucial to ensure that all meat and animal-related products are safe for consumption. The Meat Safety Act<sup>375</sup> deals with all aspects relating to meat and animal products, such as developing meat safety schemes, slaughtering, importing of these products, etc. This Act aims to provide measures to promote the safety of animal and meat products, establish national standards for abattoirs and regulate meat imports and exports.<sup>376</sup>

It requires that a national executive officer who has specific duties to fulfil must be appointed.<sup>377</sup> In terms of the Act, only an abattoir can be used to slaughter animals.<sup>378</sup> By ensuring quality and safe raw materials such as fresh produce, the producer ensures safer food products. Hence, another statute enacted to ensure food safety is the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act.<sup>379</sup> The objective of this Act is to establish regulations concerning the registration of fertilisers, farm feeds, sterilisation plants and certain agricultural remedies as well as regulate imports, use, disposal and sales of fertilisers, farm feeds and seeds.<sup>380</sup> Lastly, this Act has an impact on sustainable farming and it can have an adverse effect on human health if it is used in an imprudent manner.<sup>381</sup>

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<sup>372</sup> Section 1 of the Genetically Modified Organisms Act 15 of 1997.

<sup>373</sup> Ibid.

<sup>374</sup> M Mayet 'Analysis of South Africa's GMO Act of 1997' *BioWatch South Africa* 2000, available at [https://acbio.org.za/wp-content/uploads/2022/3/SA\\_GMO\\_Leg\\_short.pdf](https://acbio.org.za/wp-content/uploads/2022/3/SA_GMO_Leg_short.pdf), accessed on 15 August 2023.

<sup>375</sup> Meat Safety Act 40 of 2000.

<sup>376</sup> Preamble of the Meat Safety Act 40 of 2000.

<sup>377</sup> Section 2 of the Meat Safety Act 40 of 2000.

<sup>378</sup> Section 7 of the Meat Safety Act 40 of 2000.

<sup>379</sup> Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1984.

<sup>380</sup> Preamble of Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1984.

<sup>381</sup> R H Khwidzhili & S H Worth 'Evaluation of policies promoting sustainable agriculture in South Africa' (2017) 45(2) *South African Journal of Agricultural Extension* 2480.

### 3.11 POLICY INTERVENTIONS TO ENSURE FOOD SAFETY IN SOUTH AFRICA

In addition to food safety legislation and regulations in South Africa, the government has also attempted to create policy interventions on food safety. It is imperative to understand the policy interventions and national policies that the South African government has created and implemented to ensure food safety. Food safety policy interventions can include any programmes, policies, schemes or initiatives created by the government to ensure food safety. To improve collaboration between government departments responsible for food safety and their response to foodborne diseases, the Policy Guidelines on National Food Safety Alerts and Official Product Recalls were developed.<sup>382</sup> The current food safety legislation does not specifically deal with recalls of food products. Hence, this policy guideline provides guidance on how food product recalls and food safety alerts should be handled, the responsibility of the DOH in this regard and how the DOH can keep a record of these recalls.<sup>383</sup>

In terms of this guideline, food safety alerts are issued to request consumers to return food products that are unsafe for consumption.<sup>384</sup> Any food product that poses a risk to people's health must be recalled. The National School Nutrition Programme is an example of a policy intervention programme which aims to ensure food security and safety for learners in South Africa.<sup>385</sup> It is a programme that is run by the government with the goal of providing every learner with a safe and nutritious meal which would in turn improve learning at schools.<sup>386</sup> Additionally, the government provides support to public schools so that they can run this programme. Mafugu argues that there is a lack of monitoring of this programme in schools.<sup>387</sup> The thesis agrees with this argument because since food handlers are not regularly monitored, they sometimes use unsafe food products and food is prepared in an unhygienic manner which may result in contamination and learners falling ill.

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<sup>382</sup> Department of Health *Policy Guidelines: National food safety alerts and official food product recalls in South Africa* (2004).

<sup>383</sup> Ibid 5.

<sup>384</sup> Ibid 6.

<sup>385</sup> 'National School Nutrition Programme' available at [https://static.pmg.org.za/180627KZN\\_Nutrition.ppt](https://static.pmg.org.za/180627KZN_Nutrition.ppt), accessed on 16 August 2023.

<sup>386</sup> Ibid.

<sup>387</sup> T Mafugu 'Challenges encountered in a South African school nutrition programme' (2021) 10(1) *Journal of Public Health Research* 1982.

The Food Safety Initiative (FSI) was created by the Consumer Goods Council of South Africa.<sup>388</sup> This initiative aims to promote food safety by providing guidance and assistance to businesses to help them comply with food safety laws.<sup>389</sup> It also provides a space for stakeholders to discuss and ensure the implementation of food safety legislation, policies and other measures.<sup>390</sup> The Integrated Food Security Strategy for South Africa (IFSS)<sup>391</sup> is a national policy or strategy established to ensure that every South African gets access to nutritious, safe and sufficient food.<sup>392</sup> This strategy allows for coordination among several government departments to achieve its purpose. In order to achieve its goal of eliminating hunger and improving nutrition, the IFSS sets out seven strategies.<sup>393</sup> IFSS through Strategy Three deals with improving food safety in South Africa.<sup>394</sup>

The DOH, together with the dtic and DALRRD, are in charge of overseeing the strategy.<sup>395</sup> This strategy looks at improving food safety through promoting food safety education for everyone, improving nutrition training and food security in homes, assist interventions or programmes that are focused on vulnerable groups of people and improving food monitoring mechanisms.<sup>396</sup> Drimie and Ruysenaar argue that the IFSS does not clearly set out the responsibilities of each department, which creates confusion.<sup>397</sup> Further, Koch argues that the IFSS lacks the power to be implemented.<sup>398</sup> The South African government passed the National Food and Nutrition Security Policy in 2018.<sup>399</sup> This policy seeks to address the flaws of the IFSS. This policy has a similar objective to IFSS which is to ensure access and affordability of safe and nutritious food for all.<sup>400</sup> This policy seeks to create an advisory committee called the

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<sup>388</sup> CGCSA ‘Food Safety Initiative’ available at <https://www.cgcsa.co.za/service-offering/food-safety-initiative>, accessed on 14 August 2023.

<sup>389</sup> Ibid.

<sup>390</sup> Ibid.

<sup>391</sup> National Department of Agriculture *The Integrated Food Security Strategy for South Africa* (2002).

<sup>392</sup> Ibid 6.

<sup>393</sup> Strategy 1: improving food production in households. Strategy 2: improving income opportunities. Strategy 3: improving food safety and nutrition. Strategy 4: increasing safety nets. Strategy 5: improving information management system. Strategy 6: capacity building. Strategy 7: stakeholder dialogue.

<sup>394</sup> National Department of Agriculture *The Integrated Food Security Strategy for South Africa* (2002) 13.

<sup>395</sup> Ibid 31.

<sup>396</sup> Food and Agriculture Organisation of the United Nations ‘FAOLEX Database: Integrated Food Security Strategy For South Africa, available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC149624>, accessed on 16 August 2023.

<sup>397</sup> S Drimie & S Ruysenaar ‘The Integrated Food Security of South Africa: an institutional analysis’ (2010) 49(3) *Agrekon* 336.

<sup>398</sup> J Koch International Policy Centre for Inclusive Growth (Country Study No.21) *The food security policy context in South Africa* (2011).

<sup>399</sup> Department of Agriculture, Forestry and Fisheries *The National Policy on Food and Nutrition Security for the Republic of South Africa* (2014) (GN 637 IN GG 37915 of 22 August 2014).

<sup>400</sup> Ibid 6.

National Food and Nutrition Security Advisory Committee.<sup>401</sup> This committee will be responsible for overseeing this policy.

Most importantly, this policy suggests that a centralised food safety control system should be created and a specific body should be created that will be tasked with the responsibility of developing a food safety policy for South Africa.<sup>402</sup> A particular shortcoming of the policy interventions on food safety in South Africa is that no single national policy deals specifically with food safety. The thesis argues that it is problematic because these national policies create a fragmented approach to ensuring food safety in South Africa.

### 3.12 CONCLUSION

It can be seen from this chapter that the South African government has taken several initiatives to regulate food safety within its borders. The thesis is of the view that the government has created a solid legal and policy framework for regulating food safety. While the government is mainly responsible for ensuring food safety through regulations and policies, it cannot fully protect people from food safety risks. On the other hand, it is also the responsibility of consumers to be aware of food safety issues and regulations so that they can protect themselves.<sup>403</sup> These South African food safety regulations are considered quite complex laws.<sup>404</sup> The effectiveness of these food safety regulations are quite debatable. Further, the situation of food safety in South Africa is increasingly changing, and the fragmented food safety policies have resulted in the departments responsible for food safety being unable to efficiently manage these changes.

The next chapter will look at some of the current food safety challenges in South Africa and provide a detailed discussion of the rights and remedies that consumers have available to them in terms of the Consumer Protection Act.<sup>405</sup> Lastly, further shortcomings of the South African food safety legal and institutional framework will be discussed in the concluding chapter.

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<sup>401</sup> H M Nkwana 'The implementation of the National Food and Nutrition Security Policy in South Africa' (2015) 23(4) *Administratio Publica* 279.

<sup>402</sup> Department of Agriculture, Forestry and Fisheries *The National Policy on Food and Nutrition Security for the Republic of South Africa* (2014) (GN 637 IN GG 37915 of 22 August 2014) 17.

<sup>403</sup> S Boatemaa...et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 338.

<sup>404</sup> N Sunley 'Food regulation in South Africa- Past, present and future available at [https://www.saafo.org.za/wp-content/uploads/2018/12/presentation\\_2018\\_11\\_29\\_b.pdf](https://www.saafo.org.za/wp-content/uploads/2018/12/presentation_2018_11_29_b.pdf), accessed on 3 August 2023.

<sup>405</sup> Consumer Protection Act 68 of 2008.

# CHAPTER 4

## CURRENT FOOD SAFETY CHALLENGES IN SOUTH AFRICA AND A DISCUSSION OF THE CONSUMER PROTECTION ACT 68 OF 2008

### 4.1 INTRODUCTION

From the recall of contaminated canned food to the listeriosis outbreak, there has been an increase in food safety challenges in South Africa recently.<sup>406</sup> As discussed in the previous chapters, food safety challenges are a growing concern in South Africa and continue to cause several challenges despite food safety regulations and government efforts. The government and international regulatory authorities are finding it difficult to cope with increased food safety risks.<sup>407</sup> The impact of food safety challenges on the SA government needs to be understood. A food safety challenge is regarded as a risk that affects a food's safety and quality. Examples of food safety risks include, food fraud and contamination.<sup>408</sup>

These food safety challenges are more prevalent in developing countries like South Africa. The reasons for this are that developing countries do not have effective food safety systems, risky perishable foods are mostly consumed in these countries and they lack of economic resources and adequate infrastructure.<sup>409</sup> As mentioned previously, food safety risks are caused by various factors such as, lack of hygiene, poor food handling, and increased food trade, etc.<sup>410</sup>

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<sup>406</sup> N Sikhakhane 'Food Safety Day reflection – SA grapples with food-borne disease, cholera and poor service delivery' *Daily Maverick Online* 08 June 2023 available at <https://www.dailymaverick.co.za/article/2023-06-08-food-safety-day-reflection-sa-grapples-with-food-borne-disease-and-cholera-and-poor-service-delivery/>, accessed on 1 October 2023.

<sup>407</sup> AO Foluke *Access to safe food in South Africa as a human rights imperative* (unpublished thesis, University of the Western Cape, 2015) 14.

<sup>408</sup> Z Gizaw 'Public health risks related to food safety issues in the food market: a systematic literature review' (2019) 68(24) *Environmental Health and Preventative Medicine* available at <https://doi.org/10.1186/s12199-019-0825-5>, accessed on 2 October 2023.

<sup>409</sup> B Marthi 'Food safety challenges in developing countries: the Indian situation' (1999) 10(4) *Food Control* 244.

<sup>410</sup> S B Abegaz 'Food safety Practices and associated factors in food operators: A cross-sectional survey in the students' cafeteria of Woldia University, North Eastern Ethiopia' 2022 *International Journal of Food Science* 9.

Food safety challenges are considered harmful to consumers' health because they expose them to various hazards.<sup>411</sup> Hence, consumers must have rights and remedies they can rely on when they fall victim to a food safety risk. Moreover, many consumers in South Africa are unaware of their rights and the remedies afforded to them by the Consumer Protection Act (CPA).<sup>412</sup> These consumer rights and remedies seek to relieve consumers who have fallen victim to food safety risks. Further, these consumer rights and remedies protect consumers from deceitful businesses and suppliers.<sup>413</sup> This chapter looks at the current impediments faced by the South African legal and institutional framework in relation to food safety. This chapter will provide an in-depth discussion of the current food safety challenges that South Africa is encountering. Also, this chapter will focus on the CPA by discussing the consumer rights and remedies afforded to consumers under the CPA. Lastly, the CPA's enforcement of consumer rights and product liability will be explained in this chapter.

## **4.2 CURRENT FOOD SAFETY CHALLENGES IN SOUTH AFRICA**

### **4.2.1 Foodborne diseases and outbreaks**

Foodborne diseases are a serious food safety challenge in South Africa.<sup>414</sup> Moreover, there is a considerable burden of foodborne diseases and outbreaks.<sup>415</sup> It has a substantial impact on the health of consumers, and it is the leading cause of mortalities globally.<sup>416</sup> According to the WHO,

“It is estimated that at least 1 in 10 people in the world fall ill due to foodborne diseases.”<sup>417</sup>

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<sup>411</sup> Z Gizaw ‘Public health risks related to food safety issues in the food market: a systematic literature review’ (2019) 24(68) *Environmental Health and Preventative Medicine*.

<sup>412</sup> Consumer Protection Act 68 of 2008.

<sup>413</sup> N Seedat *The regulation of the sale of skin lightening creams in South Africa* (unpublished LLM thesis, University of KwaZulu Natal, 2019) 65.

<sup>414</sup> S Boatema et al ‘Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa’ (2019) 104 *Food Control* 339.

<sup>415</sup> WHO ‘Food safety’ available at <https://www.who.int/news-room/fact-sheets/detail/food-safety>, accessed on 4 October 2023.

<sup>416</sup> A M Shonhiwa et al ‘A review of foodborne diseases outbreaks reported to the outbreak response unit, national institute for communicable diseases, South Africa, 2013-2017’ (2019) 79(S1) *International Journal of Infectious Diseases* 1.

<sup>417</sup> WHO ‘Food safety’ available at <https://www.who.int/news-room/fact-sheets/detail/food-safety>, accessed on 4 October 2023.

In essence, foodborne diseases refer to any disease that is toxic or infectious in nature and which is contracted by consuming contaminated food.<sup>418</sup> They are caused by several factors such as, poor food handling, contamination, parasites, bacteria, etc. There is a wide range of foodborne diseases e.g., *Campylobacter*, salmonella and *E.coli*.<sup>419</sup> The most vulnerable to foodborne diseases are developing countries.<sup>420</sup> Developing countries are vulnerable to these diseases because of inadequate hygiene, lack of awareness about food safety and insufficient basic resources such as clean water.<sup>421</sup> Also, they are most vulnerable due to their fragmented food safety regulations, poor food storage and ineffective implementation of existing food safety legislation.<sup>422</sup>

The listeriosis outbreak was a serious foodborne disease outbreak in South Africa.<sup>423</sup> Food safety concerns gained attention due to this outbreak. Further, the listeriosis outbreak highlights the consequences and seriousness of food safety challenges.<sup>424</sup> Listeriosis is regarded as a foodborne disease that results from the consumption of foods contaminated with bacteria called *L. monocytogenes*.<sup>425</sup> During 2017-2018, 1060 cases of listeriosis and 216 deaths were reported in South Africa.<sup>426</sup> The outbreak originated from processed meat products, e.g. polony produced by Tiger Brands Limited at two of their factories.<sup>427</sup> This was the largest and deadliest listeriosis outbreak ever recorded.<sup>428</sup> Most deaths from listeriosis were in infants and pregnant

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<sup>418</sup> 'Food-borne Disease' available at <https://www.sciencedirect.com/topics/food-science/food-borne-disease>, accessed on 4 October 2023.

<sup>419</sup> Other foodborne diseases and illnesses include, Norovirus, *Clostridium perfringens*, *Toxoplasma gondii* and *Shigella*. 'Foodborne germs and illnesses' available at <https://www.cdc.gov/foodsafety/foodborne-germs.html>, accessed on 4 October 2023.

<sup>420</sup> Fuchs ... et al 'Actors in Private Food Governance: The legitimacy of retail standards and multistakeholder initiatives with civil society participation' *Springerlink* available at <https://www.springerlink.com/content/m237228605223463/full-text.pdf>, accessed on 5 October 2023.

<sup>421</sup> O A Odeyemi 'Public health implications of microbial food safety and foodborne diseases in developing countries' (2016) 60 *Food & Nutrition Research* available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5103665/#>, accessed on 6 October 2023.

<sup>422</sup> WHO 'WHO's first ever global estimates of foodborne diseases find children under 5 account for almost one third of deaths' *WHO* 3 December 2015 available at <https://www.who.int/news/03-12-2015-who-s-first-ever-global-estimates-of-foodborne-diseases-find-children-under-5-account-for-almost-one-third-of-deaths>, accessed on 6 October 2023.

<sup>423</sup> M Louw & M Van der Merwe 'Asymmetry in food safety information- the case of the 2018 Listeriosis outbreak and low-income, urban consumers in Gauteng, South Africa' 2020 *Agrekon*.

<sup>424</sup> L J Unnevehr 'Addressing food safety challenges in rapidly developing food systems' (2022) 53(4) *Agricultural Economics* 535.

<sup>425</sup> S Boatema... et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 339.

<sup>426</sup> J Fri ...et al 'Listeriosis outbreak in South Africa: A comparative analysis with previously reported cases worldwide' (2020) 8(1) *Microorganisms* 135.

<sup>427</sup> *Ibid*.

<sup>428</sup> L Korsten 'What led to world's worst listeriosis outbreak in South Africa' *The Conversation* 12 March 2018 available at <https://theconversation.com/what-led-to-world-worst-listeriosis-outbreak-in-south-africa-92947>, accessed on 5 October 2023.

women.<sup>429</sup> This indicates that vulnerable people are at risk for foodborne diseases. The government shut down these factories and recalled these products.<sup>430</sup> A court case in the form of a class action lawsuit was brought against Tiger Brands Limited on behalf of the victims of the listeriosis outbreak and their families.<sup>431</sup> This lawsuit intends to hold Tiger Brands liable for the outbreak by seeking damages for the victims.<sup>432</sup>

The plaintiffs argued that these food manufacturers have a duty to make sure that their products are not contaminated by taking reasonable steps.<sup>433</sup> However, they failed to do so. Notably, this is the only court case dealing with food safety in South Africa. This lawsuit is ongoing, and little progress has been made to compensate for the losses. Despite the seriousness of this outbreak and its impact, the victims have had no recourse to justice. Another foodborne disease reported in South Africa is Salmonella. An outbreak of salmonella was reported in 2019 among a group of children in North West Province.<sup>434</sup> They had contracted salmonella through the National School Nutrition Programme. It was reported that the samp was contaminated due to poor food preparation.<sup>435</sup> Other cases of salmonella were reported around Durban in 2018.<sup>436</sup> More than 30 people, including children, were hospitalised after contracting salmonella from contaminated eggs.<sup>437</sup> Other foodborne diseases were found in rural areas in South Africa.<sup>438</sup> These outbreaks highlight the severe effect these foodborne diseases have on consumers and the SA economy. These diseases have a major impact on the health care system, food trade, people's health and socioeconomic development.<sup>439</sup>

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<sup>429</sup> About 42% of the listeriosis cases reported were infants. OM Olanya 'Cost estimation of listeriosis (*Listeria monocytogenes*) occurrence in South Africa in 2017 and its food safety implications' (2019) 102 *Food Control* 233.

<sup>430</sup> L Thomas 'Outbreak of Listeriosis in South Africa associated with processed meat' 2020 *The New England Journal of Medicine* 633.

<sup>431</sup> 'Court says listeriosis class action lawsuit against Tiger Brands will go ahead' *The Citizen* 3 December 2018 available at <https://amp.citizen.co.za/news/south-africa/court-says-listeriosis-class-action-lawsuit-against-tiger-brands-will-go-ahead/>, accessed on 6 October 2023. Case number 12835/2018.

<sup>432</sup> Case number 12835/2018.

<sup>433</sup> *Supra*.

<sup>434</sup> T W Motladiile ... et al 'Salmonella food- poisoning outbreak linked to the National School Nutrition Programme, North West province, South Africa' (2019) 34(1) *South African Journal of Infectious Diseases* 134.

<sup>435</sup> *Ibid*.

<sup>436</sup> W Knowler 'Imported eggs suspected in Durban's Salmonella outbreak' *TimesLive* 9 November 2018 available at <https://www.timeslive.co.za/amp/news/consumer-live/2018-11-09-imported-eggs-suspected-in-durbans-salmonella-outbreak/>, accessed on 8 October 2023.

<sup>437</sup> *Ibid*.

<sup>438</sup> The study found foodborne diseases such as E.coli, cholera and salmonella present in rural villages. Z Khanya, S Ghuman & F Haffejee 'Food-borne disease prevalence in rural villages in the Eastern Cape, South Africa' (2018) 10(1) *African Journal of Primary Health Care & Family Medicine* 1796.

<sup>439</sup> WHO 'Food safety' available at <https://www.who.int/news-room/fact-sheets/detail/food-safety>, accessed on 4 October 2023.

## 4.2.2 Food fraud and food mislabelling

Incidences of food fraud have increased in SA recently.<sup>440</sup> Food fraud is a serious food safety concern in South Africa.<sup>441</sup> The FAO describes,

“Food fraud as any suspected intentional action committed when a food business operator intentionally decides to deceive customers about the quality or content of the food they are buying in order to gain undue advantage, usually economic for themselves.”<sup>442</sup>

In simple terms, food fraud occurs when food businesses deceive consumers about the quality or ingredients of products they buy. Furthermore, food fraud is a deceptive method used by food manufacturers or businesses to gain profits.<sup>443</sup> Food fraud has an adverse impact on the economy, the trust of consumers and public health in South Africa. It is dangerous to the health of consumers because consumers are unaware of what is actually put in such food products. Food businesses tend to replace expensive ingredients with cheaper ingredients in these products. Businesses typically commit food fraud to increase their profits. Some of these issues are more prevalent in the informal sector (spaza shops, street food vendors).

In terms of South African law, food fraud is illegal, and it will amount to a criminal offence if a food business or manufacturer is found engaging in food fraud.<sup>444</sup> Multiple cases of food fraud have been reported in South Africa.<sup>445</sup> Mislabelling of food products is considered food fraud. An incident of food mislabelling in SA is the mislabelling of meat products and the removal of the country of origin from the packaging of food products.<sup>446</sup> It has been reported that several meat products, such as burgers, deli meats and sausages, contain ingredients which are not disclosed on the labels and packaging of these products.<sup>447</sup> For example it was found

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<sup>440</sup> A O Foluke *Access to safe food in South Africa as a human rights imperative* (unpublished thesis, University of the Western Cape, 2015) 14.

<sup>441</sup> Ibid.

<sup>442</sup> FAO ‘Food fraud: Intention, detection and management’ available at <https://www.fao.org/3/cb2863en/cb2863en.pdf>, accessed on 4 October 2023.

<sup>443</sup> M Nkosi ‘How food fraud endangers public health’ *Daily maverick* 7 October 2020 available at <https://www.dailymaverick.co.za/opinionista/2020-10-07-how-food-fraud-endangers-public-health>, accessed on 3 October 2023.

<sup>444</sup> Section 5(1) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>445</sup> K E Decernis ‘What food fraud scandals are on the 2019 horizon’ *Foodfocus* 4 February 2019 available at <https://www.foodfocus.co.za/home/Industry-Topics/Risk-and-governance/What-food-fraud-scandals-are-on-the-2019-horizon#:~:text=South%20Africa%20has%2015%20reported,the%20tip%20of%20the%20iceberg>, accessed on 3 October 2023.

<sup>446</sup> ‘Food fraud trending in 2020’ available at <https://www.factssa.com/news/food-fraud-trending-in-2020/>, accessed on 5 October 2023.

<sup>447</sup> D M Cawthorn ... et al ‘A high incidence of species substitution and mislabelling detected in meat products sold in South Africa’ (2013) 32(2) *Food control* 443.

that beef burgers contain water buffalo and soya instead of beef.<sup>448</sup> This means that consumers are purchasing and eating these products under the impression that it only contain beef when, in fact, contained other undeclared ingredients such as soya and buffalo. In 2019, it was reported that melamine was added to certain milk products, olive oil was substituted with cheaper quality oil and banned food colourants were used in certain food products.<sup>449</sup> Such ingredients cause health risks for consumers.

‘Fake food’<sup>450</sup> is another serious food safety risk in South Africa. Many food products are produced to replicate other food products in the market, or they are produced with unknown substances.<sup>451</sup> These fake foods are usually sold in informal shops like spaza shops in poorer communities. As a result, these poor communities are hugely impacted, and it poses a health risk to them.<sup>452</sup> In Johannesburg CBD, several shops and supermarkets mostly occupied by foreigners have been caught selling fake food products.<sup>453</sup> Examples of these fake food products sold in South Africa include, bottled water, eggs, rice and bread.<sup>454</sup> Also, selling expired products is considered food fraud. There is a large number of illegal foodstuff producers in South Africa who do not follow food safety regulations. Unfortunately, the majority of South Africans buy these products because they are cheaper, convenient, and they are unaware of their health implications. The government needs to clamp down on these stores selling fake food and harsher penalties should be given to food businesses that engage in food fraud. Lastly, to avoid becoming a victim of food fraud, consumers should always check a product thoroughly before purchasing it to ensure that it is of good quality and free from harmful substances.

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<sup>448</sup> Ibid.

<sup>449</sup> ‘Food fraud trending in 2020’ available at <https://www.factssa.com/news/food-fraud-trending-in-2020/>, accessed on 5 October 2023.

<sup>450</sup> Fake food is not defined in South African law however it is a term commonly used on social media to describe foodstuffs which consists mainly of a mixture of food additives not usually consumed on its own or foodstuffs produced and sold to replicate other brand names.

<sup>451</sup> M Nkosi ‘Fake foods sold in unregulated SA spaza shops pose massive threats to public health’ The Daily Maverick 23 October 2023 available at <https://www.dailymaverick.co.za/opinionista/2023-10-23-fake-foods-sold-in-unregulated-sa-shops-pose-massive-threats-to-public-health/>, accessed on 2 November 2023.

<sup>452</sup> T Mbonane ‘Fake food’ epidemic in South Africa: A growing food safety/public health issue?’ (2019) 3(2) *Southern African Journal of Public Health* 30.

<sup>453</sup> S Sithole ‘Fake food on the rise in Gauteng’ *IOL* 14 August 2023 available at <https://www.iol.co.za/the-star/news/fake-food-on-the-rise-in-gauteng-e059a8b6-bb6f-4195-aed2-7c610b772f723>, accessed on 2 October 2023.

<sup>454</sup> ‘These are the 14 ‘fake foods’ currently being investigated by the government’, available at <https://businesstech.co.za/news/lifestyle/268999/these-are-the-14-fake-foods-currently-being-investigated-by-the-government/>, accessed on 4 October 2023.

### 4.2.3 Expired food products and product recalls

According to law, all food products in South Africa must contain an expiry date or best before date.<sup>455</sup> Expiry dates are important because they determine the quality and safety of products.<sup>456</sup> When a food product expires, the product declines in taste and quality. Understanding the concept of an expiry date and its implications can be a bit confusing for consumers.<sup>457</sup> It is often confused with a best before date. According to Regulations no. R3287 of the FCD Act,

“an expiry date or use by date refers to a date which signifies the end of the estimated period under the stated storage conditions, after which the product probably will not have the quality attributes normally expected by the consumer and after which date the food should not be regarded as marketable.”<sup>458</sup>

Whereas best before dates are dates that indicate the product is no longer in good quality. Best before dates relate not to safety, but to the quality of the product and they are placed on non-perishable products.<sup>459</sup>

Not all expired food products are unsafe to eat. Expiry or use by dates are placed on perishable food items.<sup>460</sup> Expired perishable food products such as, milk and meat products are unsafe for consumption because it is dangerous to human health and can lead to death.<sup>461</sup> Hence, these food products cannot be sold as it is illegal.<sup>462</sup> However, non-perishable food products that are shelf stable products such as, canned foods are safe to eat and to be sold.<sup>463</sup> More often than not, consumers assume that the food products they purchase are not expired; hence, they do not bother to check the expiry dates. However, this is not always the case. Some businesses in SA

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<sup>455</sup> Regulation 8 of the Regulations relating to the labelling and advertising of foodstuffs (No.R3287 of 14 April 2023).

<sup>456</sup> ‘Is the expiry date of food important’, available at <https://abantpack.com/en/is-the-expiry-date-of-food-important/>, accessed on 20 October 2023.

<sup>457</sup> W Knowler ‘Fake food likely a hoax- and here’s which ‘expired’ items you can safely eat’ *Times live* 31 August 2018 available at <https://www.timeslive.co.za/amp/news/consumer-live/201808-31-fake-food-likely-a-hoax-and-heres-which-expired-items-you-can-safely-eat/>, accessed on 2 October 2023.

<sup>458</sup> Regulation 1 of the Regulations relating to the labelling and advertising of foodstuffs (No.R3287 of 14 April 2023).

<sup>459</sup> L Jackson ‘Where can I report expired food and what must I know before I do?’ *FoodFocus* 30 January 2020 available at <https://www.foodfocus.ca.za/home/industry-opics/food-safety/Where-can-I-report-expired-food-and-what-must-i-know-BEFORE-I-do>, accessed on 2 October 2023.

<sup>460</sup> Ibid.

<sup>461</sup> W Knowler ‘Fake food likely a hoax- and here’s which ‘expired’ items you can safely eat’ *Times live* 31 August 2018 available at <https://www.timeslive.co.za/amp/news/consumer-live/201808-31-fake-food-likely-a-hoax-and-heres-which-expired-items-you-can-safely-eat/>, accessed on 2 October 2023.

<sup>462</sup> Section 2(1)(b)(i) of the FCD Act 54 of 1972, as amended by Act 39 of 2007.

<sup>463</sup> W Knowler ‘Actually, its perfectly legal to sell most food after it has expired’ *Times Live* 3 September 2018 available at <https://www.timeslive.co.za/amp/news/consumer-live/2018-09-03-actually-its-perfectly-legal-to-sell-most-food-after-it-has-expired/>, accessed on 2 October 2023.

have been reported to be selling food products that have already expired. Recently, stores rented by foreign nationals in Johannesburg CBD were reported to have been selling expired food products and fake goods.<sup>464</sup> These stores were raided by the SAPS through Operation Shanela, and these goods were seized.<sup>465</sup>

Moreover, the informal food sector is poorly monitored, and hence, these shops often sell expired products or the expiry dates are removed. In one incident, retail stores such as Diamond Cash and Carry and Five Star Supermarket in the Makana Municipality were found guilty of selling and stocking expired food products.<sup>466</sup> If consumers buy and consume these food items, they can fall ill due to food poisoning. In other words, these fake foods have a serious impact on public health. These informal shops are unregulated, lack oversight, and create an environment where fake food is sold without remorse or consideration of its negative effects. Recently, in Vredefort, two children died after consuming expired food bought from a local tuck-shop.<sup>467</sup> In another incident, after eating biscuits from a local spaza shop, one child has passed away, and another is critically ill.<sup>468</sup> It is suspected that these biscuits were expired.

Many stores in the formal food sector have been found selling expired food products. In 2017, there were reports of expired food items, such as, salami sticks stocked on the shelves of a Pick n Pay store in Walmar Park.<sup>469</sup> Another food safety issue in South Africa is that businesses remove or tamper with expiry or best before dates on food products and sell these expired items. It is harmful to consumers, and it is illegal.<sup>470</sup> In 2014, the National Consumer Commission found that at least 84 retailers, including Spar and Shoprite, were found to have tampered with or removed expiry dates on food items such as, baby formula and meat

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<sup>464</sup> S Sithole 'Fake food on the rise in Gauteng' *IOL* 14 August 2023 available at <https://www.iol.co.za/the-star/news/fake-food-on-the-rise-in-gauteng-e059a8b6-bb6f-4195-aed2-7c610b772f723>, accessed on 2 October 2023.

<sup>465</sup> Ibid.

<sup>466</sup> 'Times up for shops that sell expired goods – municipality' *Grocott's Mail* 13 April 2023 available at <https://grocotts.ru.ac.za/2023/04/12/times-up-for-shops-that-expired-goods-municipality/?amp=1>, accessed on 2 October 2023.

<sup>467</sup> N Ngubeni 'Children's death probed after lack of proper oversight at spaza shops' *News24* 20 October 2023 available at <https://www.news24.com/news24/community-newspaper/vista/childrens-death-probed-after-lack-of-proper-oversight-at-spaza-shops-20231020>, accessed on 25 October 2023.

<sup>468</sup> 'Another kid dies from allegedly consuming biscuits from a spaza shop' *SABC News* 20 October 2023 available at <https://www.sabcnews.com/sabcnews/886492-2/>, accessed on 25 October 2023.

<sup>469</sup> G Koen 'Poisoning risk from expired food' *BizCommunity* 20 July 2017 available at <https://www.bizcommunity.com/Article/196/306/164954.html>, accessed on 2 October 2023.

<sup>470</sup> Regulation 12 of the Regulations relating to the labelling and advertising of foodstuffs (No.R146 of 1 March 2010).

products.<sup>471</sup> In 2018, Checkers in Bryanston was found tampering with expiry dates on fish products.<sup>472</sup> They had replaced older labels with new labels and expiry dates.<sup>473</sup> Notwithstanding, the responsibility of food manufacturers or retailers to ensure food products are not expired, there is a responsibility on consumers to check the expiration dates on products before they purchase them.

Also, it is advised that if a consumer finds an expired product in a store, they should inform the business so that the product can be removed as this will prevent harm to others. There has been a rise in food product recalls in South Africa recently.<sup>474</sup> Product recalls are essentially a request to consumers from businesses and manufacturers to return a product due to some safety issue that it has, and which is harmful to the consumer. Usually, defective products are recalled. During May 2023, Woolworths had recalled their brand of chicken viennas due to cross-contamination of milk protein.<sup>475</sup> Also, Pioneer Foods recalled certain Liquifruit apple juices due to chemical contamination.<sup>476</sup> In another incident, Mccain SA recalled their frozen beans and Spar branded stir-fry because they had traces of glass pieces.<sup>477</sup>

Food product recalls are quite concerning for consumers and it is harmful. In some situations where consumers have already consumed the product before it is recalled or were unaware of the recall by the company. It is also harmful to consumers when food businesses fail to recall products that are contaminated or unsafe. This was seen in the listeriosis outbreak where many food businesses continued selling the meat products despite the recall.<sup>478</sup> However, Anelich argues that product recalls are a good business practice because it ensures consumers are

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<sup>471</sup> K Madisa 'Chain stores caught tampering with food labels: Report' *Sowetan Live* 13 August 2014 available at <https://www.sowetanlive.co.za/amp/business/2014-08-13-chain-stores-caught-tampering-with-food-labels-reports/>, accessed on 3 October 2023.

<sup>472</sup> W Knowler 'Fishy 'sell-by' date at Checkers' *Times Live* 10 September 2018 available at <https://www.timeslives.co.za/amp/news/consumer-live/2018-09-10-fishy-sell-by-date-at-checkers/>, accessed on 25 October 2023.

<sup>473</sup> Ibid.

<sup>474</sup> N Thukwane 'From hair relaxer, baby powder to cars, here are some of the year's product recalls' *News24* 09 September 2022 available at <https://www.news24.com/news24/bi-archive/product-recalls-in-south-africa-in-2022-2022-9>, accessed on 3 October 2023.

<sup>475</sup> 'Woolworths recalls chicken viennas in South Africa and Botswana' *BizCommunity* 19 May 2023 available at <https://www.bizcommunity.com/Article/196/306/238583.html>, accessed on 3 October 2023.

<sup>476</sup> Pioneer Foods 'Pioneer announces recall of certain 100% apple juice products under the liquifruit brand in SA, Botswana, Namibia and Ceres Brand exports' available at <https://pioneerfoods.co.za/2021/10/20/pioneer-foods-announces-recall-of-certain-100-apple-juice-products-under-the-liquifruit-brand-in-SA-Botswana-Namibia-and-Ceres-Brand-exports>, accessed on 3 October 2023.

<sup>477</sup> C Mahamba 'Mccain SA recalls products-may contain small pieces of glass' *IOL* available at <https://www.iol.co.za/the-star/news/mccain-sa-recalls-products-may-contain-small-pieces-of-glass-7fe5b0a6-8fd8-4978-a070-3032e8e66cd6>, accessed on 3 October 2023.

<sup>478</sup> A Ngalo & S Payne 'Class action suit seeks to have Tiger Brands by the tail' *Daily Maverick* 13 April 2018, available at <https://www.dailymaverick.co.za/article/2018-04-13-listeriosis-update-class-action-suit-seeks-to-have-tiger-brands-by-the-tail/>, accessed on 2 October 2023.

protected and not exposed to food safety risks by removing contaminated food products from the market.<sup>479</sup> The thesis agrees with this argument because it protects consumers and keeps them informed about the safety of their food. However, the downside to food product recalls is that it indicates the ineffectiveness and failure of food manufacturers and suppliers to ensure food safety. Also, it indicates non-compliance with food safety rules and regulations by food businesses.

### **4.3 THE CONSUMER PROTECTION ACT 68 OF 2008 (CPA)**

There was a need for an extensive consumer protection law in South Africa as existing laws were outdated.<sup>480</sup> Hence, the CPA was enacted in 2008 with the objective of ensuring consumer protection and regulating the conduct of retailers and suppliers that deal with goods and services.<sup>481</sup> The aim of the CPA is:

“To promote a fair, accessible and sustainable marketplace for consumer products and services, establish national norms and standards relating to consumer protection, promote responsible consumer behaviour and prohibit certain unfair marketing and business practices.”<sup>482</sup>

In essence, the CPA advances consumer welfare while promoting fair business practices, eliminating disadvantages consumers experience, advancing consumer awareness and protecting consumers from unfair and deceptive trade conduct.<sup>483</sup>

This Act is an extensive law which places consumer protection at the forefront.<sup>484</sup> It applies to all transactions within SA which involve goods and services only.<sup>485</sup> In respect of this Act, ‘goods’ refers to items that are marketed for human consumption.<sup>486</sup> Therefore, the food industry and related matters such as food safety is covered within the scope of this Act. Worker

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<sup>479</sup> D Masiwa ‘Pioneer Foods: Mzansi concerned about food safety’ Food for Mzansi 8 December 2021 available at <https://www.foodformzansi.co.za/pioneer-foods-mzansi-concerned-about-food-safety/>, accessed on 3 October 2023.

<sup>480</sup> W Jacobs, P N Stoop & R Van Niekerk ‘Fundamental consumer rights under the *Consumer Protection Act of 2008: A critical overview and analysis*’ (2010) 13(3) *PELJ* 303.

<sup>481</sup> FAO ‘FAOLEX Database: Consumer Protection Act, 2008’ available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC104524/>, accessed on 7 October 2023.

<sup>482</sup> Preamble of the Consumer Protection Act 68 of 2008.

<sup>483</sup> Section 3 of the Consumer Protection Act 68 of 2008.

<sup>484</sup> J Barnard ‘Consumer rights of the elderly as vulnerable consumers in South Africa: some comparative aspects of the Consumer Protection Act 68 of 2008’ (2015) 39(3) *International Journal of Consumer Studies* 223.

<sup>485</sup> Section 5 of the Consumer Protection Act 68 of 2008.

<sup>486</sup> Definitions of the Consumer Protection Act 68 of 2008.

explains that the CPA is necessary to prevent businesses from exploiting consumers.<sup>487</sup> In this case, given the situation of food safety and food fraud in SA, there is a need for the CPA. Most importantly, the CPA provides extensive consumer rights and corresponding obligations for businesses, suppliers or retailers.

### 4.3.1 Consumer rights

As previously mentioned, the CPA provides fundamental consumer rights to all consumers in SA and in the context of the thesis these must be discussed.<sup>488</sup> Firstly, the CPA provides consumers with rights concerning the delivery and supply of goods and services.<sup>489</sup> It is implied from every transaction covered under the CPA:

“that the supplier must deliver the goods on the agreed date and time or at a reasonable time at the agreed place for delivery and at the expense of the supplier.”<sup>490</sup>

Otherwise, the agreed place for delivery will be the supplier’s business premise or residence if there is no business premise.<sup>491</sup> Until delivery is accepted by the consumer, the supplier will be responsible for the goods.<sup>492</sup> Upon delivery, the goods shall be examined by the consumer who is entitled to do so.<sup>493</sup> If the goods or services are not delivered by the supplier in conformance with this provision, then the consumer has various remedies that the consumer can rely on.<sup>494</sup> According to section 20(2)(a-d) of the CPA,

“If the supplier delivers goods in terms of an agreement emerging from direct marketing or delivers goods that were not examined by the consumer, or delivers a mixture of goods rejected by the consumer, then the consumer is entitled to return the goods and be refunded the price of the goods.”<sup>495</sup>

Secondly, consumers have the right to disclosure of information.<sup>496</sup> In respect of this right, a consumer is entitled to be provided information in plain and understandable language.<sup>497</sup> This

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<sup>487</sup> T Woker ‘Why the need for consumer protection legislation? A look at some of the reasons behind the promulgation of the National Credit Act and the Consumer Protection Act’ (2010) 31(2) *Obiter* 231.

<sup>488</sup> Chapter 2 of the Consumer Protection Act 68 of 2008.

<sup>489</sup> Section 19 of the Consumer Protection Act 68 of 2008.

<sup>490</sup> Section 19(2)(a)(i-iii) of the Consumer Protection Act 68 of 2008.

<sup>491</sup> Section 19(2)(b) of the Consumer Protection Act 68 of 2008.

<sup>492</sup> Section 19(2)(c) of the Consumer Protection Act 68 of 2008.

<sup>493</sup> Section 19(5) of the Consumer Protection Act 68 of 2008.

<sup>494</sup> Section 20(2) of the Consumer Protection Act 68 of 2008.

<sup>495</sup> Section 20(2)(a-d) of the Consumer Protection Act 68 of 2008.

<sup>496</sup> Part D of the Consumer Protection Act 68 of 2008.

<sup>497</sup> Section 22 of the Consumer Protection Act 68 of 2008.

means that consumer agreements should be drafted in plain and unambiguous language and that allows consumers to make better choices.<sup>498</sup> Any document, notice or representation must be in the form set out by the CPA.<sup>499</sup> Alternatively, if there is no form prescribed, then plain language must be used as it will allow an average consumer to be able to understand its content.<sup>500</sup> In line with earlier discussions on food labels and food safety, the CPA protects consumers from product labels and trade descriptions that are misleading or have been tampered with.<sup>501</sup> All persons are prohibited from using a trade description on a product, knowing that it is more likely to mislead the customer or tamper or remove such a description in a manner that may mislead the customer.<sup>502</sup> This provision of the CPA is relatively important to food safety. For example: if a food product such as a chocolate states that the country of origin is Belgium but the product is actually produced in South Africa, then the trade description of this product is considered misleading to consumers.

A retailer cannot sell or supply a product if he/she knows that a trade description on the product is likely to be misleading to a consumer or if it was tampered with.<sup>503</sup> Moreover, a producer, importer, supplier or packager is under an obligation to disclose any genetically modified ingredients present in a product.<sup>504</sup> A consumer has the right to fair and responsible marketing.<sup>505</sup> Jacobs and others argue that this right aims to create fair business practices concerning marketing.<sup>506</sup> In respect of section 29 of the CPA:

“Producers, retailers, importers and distributors are prohibited from marketing goods in a manner that is misleading, fraudulent or deceptive or in a way that is reasonably likely to imply a false or misleading representation concerning those goods.”<sup>507</sup>

Simply put, this provision of the CPA prevents food businesses or producers from marketing products in a way that is false, deceptive or misleading to the consumer.<sup>508</sup> Furthermore, suppliers are prevented from representing goods to consumers in a manner that is false,

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<sup>498</sup> W Jacobs, P N Stoop & R van Niekerk ‘Fundamental consumer rights under the Consumer Protection Act 68 of 2008: A critical overview and analysis’ (2010) 13(3) *PELJ* 329.

<sup>499</sup> Section 22(1)(a) of the Consumer Protection Act 68 of 2008.

<sup>500</sup> Section 22(1)(b) of the Consumer Protection Act 68 of 2008.

<sup>501</sup> Section 24 of the Consumer Protection Act 68 of 2008.

<sup>502</sup> Section 24(2)(a-b) of the Consumer Protection Act 68 of 2008.

<sup>503</sup> Section 24(3)(a)(i-ii) of the Consumer Protection Act 68 of 2008.

<sup>504</sup> Section 24(6) of the Consumer Protection Act 68 of 2008.

<sup>505</sup> Part E of the Consumer Protection Act 68 of 2008.

<sup>506</sup> W Jacobs, P N Stoop & R van Niekerk ‘Fundamental consumer rights under the Consumer Protection Act 68 of 2008: A critical overview and analysis’ (2010) 13(3) *PELJ* 334.

<sup>507</sup> Section 29(a-b) of the Consumer Protection Act 68 of 2008.

<sup>508</sup> *Ibid.*

misleading or deceptive.<sup>509</sup> This intends to induce the consumer to buy the product. For example, certain healthy food products claim to be gluten-free when they in fact contain gluten.<sup>510</sup>

Another important right a consumer is entitled to is fair value, good quality and safe goods.<sup>511</sup> According to section 55(2)(a-d) of the CPA,

“Every consumer has the right to receive goods that are: (1) reasonably suitable for the purpose which it is intended, (2) of good quality, in good working condition and free of defects, (3) will be useable and durable for a reasonable period of time and (4) comply with standards under the Standards Act, 1993 or other regulations.”<sup>512</sup>

Essentially, consumers are entitled to products that are reasonably suitable, good quality, safe and durable. Notably, food products in respect of this provision of the CPA must also comply with food safety regulations such as the FCD Act. It must be noted that this consumer right will not apply where the consumer was aware of the defective product but nevertheless accepted it.<sup>513</sup> The CPA also implies a warranty of quality.<sup>514</sup> In respect of this warranty, producers, importers, distributors and retailers in every transaction warrant or guarantee that the products supplied adhere to the requirements outlined above except where the goods have been altered.<sup>515</sup>

Additionally, the CPA provides remedies to consumers where they have been provided with goods that do not adhere to these requirements or where the goods are not of good quality and unsafe.<sup>516</sup> In this situation, the consumer will be entitled to return the goods to the supplier within six months of delivery of the goods.<sup>517</sup> The supplier is required to either refund the purchase price or repair or replace the defective product.<sup>518</sup> If, within three months after the repair, a repaired product shows a defect then the supplier must replace the product or refund the purchase price.<sup>519</sup> This Act provides additional remedies to consumers which are discussed

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<sup>509</sup> Section 41(1)(a-c) of the Consumer Protection Act 68 of 2008.

<sup>510</sup> K Smith ‘Navigating misleading food marketing’ *Obesity Action* Spring 2023 available at <https://www.obesityaction.org/resources/navigating-misleading-food-marketing>, accessed on 9 October 2023.

<sup>511</sup> Chapter 2 Part H of the Consumer Protection Act 68 of 2008.

<sup>512</sup> Section 55(2)(a-d) of the Consumer Protection Act 68 of 2008.

<sup>513</sup> Section 55(6)(a-b) of the Consumer Protection Act 68 of 2008.

<sup>514</sup> Section 56 of the Consumer Protection Act 68 of 2008.

<sup>515</sup> Section 56(1) of the Consumer Protection Act 68 of 2008.

<sup>516</sup> Section 56(2) of the Consumer Protection Act 68 of 2008.

<sup>517</sup> Ibid.

<sup>518</sup> Section 56(2)(a-b) of the Consumer Protection Act 68 of 2008.

<sup>519</sup> Section 56(3)(a-b) of the Consumer Protection Act 68 of 2008.

later in this chapter.<sup>520</sup> Suppliers are accountable to consumers for goods and services that they supply and they have various responsibilities towards consumers.<sup>521</sup> Moreover, consumers have the right to redress and be heard.<sup>522</sup>

This right entails that:

“if a consumer has exercised any right under the CPA, then the supplier should not discriminate against the consumer, penalise the consumer or take any action to change or cancel a transaction with the consumer.”<sup>523</sup>

The CPA provides various redress mechanisms that consumers can approach if they have a consumer dispute or to enforce their rights.<sup>524</sup> The CPA creates a rights approach to deal with the issue of food safety.<sup>525</sup> In other words, the CPA provides consumers with various rights that they can use to protect themselves from food safety issues. The provisions of the CPA align with the Constitution and South Africa’s international commitments as outlined in Chapter 2 of the dissertation. The CPA promotes consumer awareness by providing support through the NCC to consumer protection groups that are in charge of promoting rights, consumer advice, and education.<sup>526</sup>

All consumers should be aware of these rights and how to enforce them against food producers and retailers. Also, the government needs to promote these rights and educate consumers about available redress mechanisms to prevent consumers from being disadvantaged by food producers and businesses and to make consumers aware of their rights. Batchelor and Chetty argue that the CPA is a progressive law that will provide victims of food safety issues with appropriate relief if correctly applied.<sup>527</sup> The thesis argues that despite the CPA’s initiative to promote consumer awareness, many South African consumers are unaware of their consumers rights, how to enforce them, and how they can seek redress.

### **4.3.2 Product Liability**

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<sup>520</sup> Section 69 of the Consumer Protection Act 68 of 2008.

<sup>521</sup> Chapter 2 Part I of the Consumer Protection Act 68 of 2008.

<sup>522</sup> Chapter 3 Part A of the Consumer Protection Act 68 of 2008.

<sup>523</sup> Section 68(1)(a-d) of the Consumer Protection Act 68 of 2008.

<sup>524</sup> Section 69 of the Consumer Protection Act 68 of 2008.

<sup>525</sup> A O Foluke *Access to safe food in South Africa as a human rights imperative* (unpublished thesis, University of the Western Cape, 2015).

<sup>526</sup> Section 77 of the Consumer Protection Act 68 of 2008.

<sup>527</sup> BL Batchelor & N Chetty ‘Food product liability and its implications for consumer protection in South Africa: An exposition of the listeriosis crisis’ (2020) 34(3) *Speculum Juris* 34.

It is imperative for a food producer or retailer to be held liable if a consumer is provided with defective or unsafe food products because such goods are harmful to the consumer. Prior to the CPA, if a consumer suffered harm due to a defective or unsafe good then the consumer could only have a claim against the supplier or retailer under contract or delict law.<sup>528</sup> However, this is very problematic and disadvantageous to consumers. Hence, the enactment of the CPA introduced a new regime of product liability.<sup>529</sup> However, the common law product liability still remains in force.<sup>530</sup> Product liability in terms of this Act aims to protect consumers from harm caused by defective goods.<sup>531</sup> According to section 61(1)(a-c) of the CPA:

“The producer or importer, distributor or retailer of any goods is liable for any harm caused wholly or partly as a consequence of: (1) supplying unsafe goods, (2) a product failure, defect or hazard in any goods or (3) inadequate instructions or warnings provided to the consumer with regards to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on part of the producer, importer, distributor or retailer, as the case may be.”<sup>532</sup>

In other words, a producer, importer, distributor or retailer will be strictly liable for the harm caused by defective products or by providing insufficient instructions about a hazard.

They will be responsible for the harm suffered by the consumer due to selling such products. This provision gives rise to strict liability, which means that the producer, importer, distributor or retailer will be held liable regardless of who was at fault.<sup>533</sup> These parties may be liable for damages under product liability even if they were not negligent or did not intend to cause harm.<sup>534</sup> In terms of this section, they can be jointly and severally liable.<sup>535</sup> Harm in respect of this section includes:

“economic loss or death, injury or illness of a person, loss or damage to property.”<sup>536</sup>

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<sup>528</sup> C Gower ‘Product liability: A changing playing field?’ (2011) 32 *OBITER* 522.

<sup>529</sup> *Ibid.*

<sup>530</sup> J Neethling, J M Potgieter & P J Visser *Law of Delict* 7<sup>th</sup> ed (2014) 172.

<sup>531</sup> H Barter ‘Product Liability Laws in South Africa: Understanding your legal obligations’ *Barter Mckellar* 20 April 2023 available at <https://www.bartermckellar.law/commercial-law-explained/product-liability-laws-in-south-africa-understanding-your-legal-obligations?format=amp>, accessed on 9 October 2023.

<sup>532</sup> Section 61(1)(a-c) of the Consumer Protection Act 68 of 2008.

<sup>533</sup> Section 61(1) of the Consumer Protection Act 68 of 2008.

<sup>534</sup> *Ibid.*

<sup>535</sup> Section 61(3) of the Consumer Protection Act 68 of 2008.

<sup>536</sup> Section 61(5)(a-d) of the Consumer Protection Act 68 of 2008.

To avoid liability under this section of the Act, they may raise several defences. Firstly, if any public regulation is solely responsible for a defect, hazard, or unsafe product<sup>537</sup> or if the defect characteristic did not exist when the good was supplied to another party in the supply chain, then they will not be held liable.<sup>538</sup> Where a defect or hazard is entirely caused by the fact that one of the parties in the supply chain complied with instructions given by another, then they will not be liable.<sup>539</sup>

Also, they can raise the defence that expecting a retailer to discover a defect or hazard is unreasonable.<sup>540</sup> Further, they will not be liable if the matter is instituted more than three years after the harm has taken place or the earliest time at which the customer knew about the material facts of the harm.<sup>541</sup> In respect of food safety, this provision of the CPA is important as it allows victims of food safety issues to hold unscrupulous food businesses accountable for harm caused by defective or unsafe food products. For example, a consumer has a peanut allergy and purchases a cereal that has no warning of the use of peanuts even though peanuts have been used in the product. Then, relying on this section, the consumer can hold the cereal producer or retailer liable if he/she has an allergic reaction to the cereal because they provided inadequate warning to consumers about this hazard. Batchelor and Chetty explain that this product liability shifts the burden to food producers and businesses to ensure their products are safe for consumers.<sup>542</sup> Lastly, the thesis agrees with the above argument because this provision of the CPA safeguards the rights of consumers by providing them with legal recourse when encountering issues of food safety and quality.

### **4.3.3 Remedies under the CPA**

One of the main objectives of this Act is to provide efficient consumer dispute resolution and effective redress for consumers.<sup>543</sup> To achieve this objective, the CPA provides various remedies that consumers can use to enforce and protect their rights. In other words, the Act provides several redress mechanisms that consumers can use to resolve a dispute or enforce their rights. Firstly, a consumer can refer the matter or dispute to the Consumer Tribunal if the

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<sup>537</sup> Section 61(4)(a) of the Consumer Protection Act 68 of 2008.

<sup>538</sup> Section 61(4)(b)(i) of the Consumer Protection Act 68 of 2008.

<sup>539</sup> Section 61(4)(b)(ii) of the Consumer Protection Act 68 of 2008.

<sup>540</sup> Section 61(4)(c) of the Consumer Protection Act 68 of 2008.

<sup>541</sup> Section 61(4)(d)(i-iv) of the Consumer Protection Act 68 of 2008.

<sup>542</sup> B L Batchelor & N Chetty 'Food product liability and its implications for consumer protection in South Africa: An exposition of the listeriosis crisis' (2020) 34(3) *Speculum Juris* 33.

<sup>543</sup> Section 3(1)(h) of the Consumer Protection Act 68 of 2008.

CPA permits.<sup>544</sup> If the supplier is subject to the jurisdiction of an applicable ombud, then the consumer can refer the matter to this ombud.<sup>545</sup> If this is not applicable, then:

“the consumer can refer the matter or dispute to a provincial consumer court with jurisdiction<sup>546</sup> or an applicable industry ombud<sup>547</sup> or an alternative dispute resolution agent<sup>548</sup> or lodge a complaint with the National Consumer Commission.”<sup>549</sup>

If all other available remedies in respect of national legislation have been exhausted then, the consumer can approach a court with jurisdiction.<sup>550</sup>

In simple terms, approaching the court should be a matter of last resort, and the consumer must exhaust the other redress mechanisms contained in the CPA. This section is problematic, and consumers are confused about whether they can approach the courts without exhausting the other remedies. The courts have cleared some of this confusion. In the case of *Motus Corporation (Pty) Ltd v A Wentzel*, the respondent approached the court to cancel a vehicle credit agreement and request a refund of the price.<sup>551</sup> The appellant argued that in terms of section 69(d) of the CPA, the respondent could not approach the court because it did not exhaust the other remedies.<sup>552</sup> The court held:

“Section 69(d) should not be read as excluding the right of consumers to approach the court in order to obtain redress. Our courts have always had jurisdiction to resolve such claims and there is no particular reason why the section should preclude a consumer, at their election, from pursuing that avenue of relief until they have approached other mechanisms.”<sup>553</sup>

Being unable to approach the court first is time-consuming for consumers seeking urgent relief, and it violates a consumer’s constitutional right to redress.<sup>554</sup> Further, Dinnie argues that requesting a consumer to exhaust the other remedies before approaching the court will delay the adjudication of the matter.<sup>555</sup> But, on the other hand, approaching a court is relatively

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<sup>544</sup> Section 69(a) of the Consumer Protection Act 68 of 2008.

<sup>545</sup> Section 69(b) of the Consumer Protection Act 68 of 2008.

<sup>546</sup> Section 69(c)(ii) of the Consumer Protection Act 68 of 2008.

<sup>547</sup> Section 69(c)(i) of the Consumer Protection Act 68 of 2008.

<sup>548</sup> Section 69(c)(iii) of the Consumer Protection Act 68 of 2008.

<sup>549</sup> Section 69(c)(iv) of the Consumer Protection Act 68 of 2008.

<sup>550</sup> Section 69(d) of the Consumer Protection Act 68 of 2008.

<sup>551</sup> *Motus Corporation (Pty) Ltd trading as Zambezi Multifranchise and Another v A Wentzel* [2021] 3 ALL SA 98 (SCA).

<sup>552</sup> *Ibid.*

<sup>553</sup> *Ibid.*

<sup>554</sup> Section 34 of the Constitution, 1996.

<sup>555</sup> D Dinnie ‘The Consumer Protection Act and exhaustion of remedies’ *Norton Rose Fulbright Blog Network* 15 August 2022 available at <https://www.financialinstitutionslegalsnapshot.com/2022/08/the-consumer-protection-act-and-exhaustion-of-remedies/>, accessed on 8 October 2023.

expensive and using other enforcement mechanisms might be simpler, cheaper and more convenient for consumers. As mentioned above, a consumer may refer a dispute to an alternative dispute resolution agent who can either be an industry ombud or ombud with the same jurisdiction as the supplier or a provincial consumer court or a mediator.<sup>556</sup> If such an agent cannot resolve the dispute, then the matter must be referred to the National Consumer Commission (NCC).<sup>557</sup> If the dispute is resolved, then the resolution must be noted as an order and handed to the Tribunal to be made a consent order and it may include order for damages.<sup>558</sup>

The CPA establishes the NCC to achieve its objectives, receive and resolve consumer complaints, report to the Minister, and ensure compliance with the CPA by businesses.<sup>559</sup> Furthermore, if a consumer refers a matter to the court, then the court can make an order altering or stopping a conduct that conflicts with the CPA or an order set out in the Act.<sup>560</sup> Also, the court may award damages that it considers just and equitable.<sup>561</sup> Besides these remedies that consumers have available to them, a food supplier or business can also be held liable in respect of common or criminal law.<sup>562</sup> Moreover, if a supplier or retailer is convicted of an offence in respect of the Act for disclosing personal information then such a person or business will be held accountable for a fine or imprisonment for a term not exceeding ten years or both.<sup>563</sup> Alternatively, if a person or business is found guilty of another offence in respect of the Act then such a person will be liable to a fine or imprisonment for a term not exceeding one year or both.<sup>564</sup>

The Consumer Tribunal can enforce an administrative fine to an amount not exceeding R 1 million or 10% of their annual turnover which is greater against a business for prohibited conduct.<sup>565</sup> Although some of these institutions are entrusted with this obligation, it is highly dubious why certain food safety issues have not been investigated and why food businesses that violate food safety laws have not been prosecuted. Woker argues that consumers are finding it difficult to enforce their rights through these mechanisms and she suggests that the

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<sup>556</sup> Section 70(1)(a-d) of the Consumer Protection Act 68 of 2008.

<sup>557</sup> Section 70(2) of the Consumer Protection Act 68 of 2008.

<sup>558</sup> Section 70(3)-(4) of the Consumer Protection Act 68 of 2008.

<sup>559</sup> Section 3(2) of the Consumer Protection Act 68 of 2008.

<sup>560</sup> Section 76(1)(a-b) of the Consumer Protection Act 68 of 2008.

<sup>561</sup> Section 76(1)(c) of the Consumer Protection Act 68 of 2008.

<sup>562</sup> J Luterek 'The impact of the Consumer Protection Act- Part 4' *FoodFocus* available at <https://www.foodfocus.co.za/home/legislation/legal-Eagle/The-impact-of-the-Consumer-Protection-Act-Part-4>, accessed on 8 October 2023.

<sup>563</sup> Section 111(1)(a) of the Consumer Protection Act 68 of 2008.

<sup>564</sup> Section 111(1)(b) of the Consumer Protection Act 68 of 2008.

<sup>565</sup> Section 112 of the Consumer Protection Act 68 of 2008.

NCC should be in charge of resolving disputes.<sup>566</sup> Du Preez argues that these various redress mechanisms create confusion and forum-shopping for consumers.<sup>567</sup> Further, Naude and Stadler argue that the CPA is not flawlessly drafted because there are certain consumer rights in the CPA that have no remedies to enforce them.<sup>568</sup> Lastly, the research argues that although the CPA has several redress mechanisms and has placed several responsibilities on suppliers and businesses to ensure consumer protection, it has not been able to effectively address food safety issues in SA.

#### 4.4 CONCLUSION

This chapter has discussed some of the current food safety challenges in SA and it has explored the various consumer rights and remedies. This chapter identified that the food safety regulations in South Africa have been inadequate and ineffective in addressing food safety challenges. The arguments provided necessitate the need for South Africa to overcome these food safety challenges. Notably, the CPA improves consumer protection and ensures ethical behaviour by food businesses and suppliers.<sup>569</sup> While these consumer rights and remedies are necessary, it is crucial for consumers to be made aware and educated about these rights and how to use these remedies. There are multiple reasons why the South African legal and institutional framework has not been effective in addressing food safety risks. The next chapter examines some of these reasons and it discusses the findings of this research. Lastly, it will provide recommendations on how food safety can be improved in South Africa.

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<sup>566</sup> T Woker 'Evaluating the role of the National Consumer Commission in ensuring that consumers have access to redress' (2017) 29(1) *South African Mercantile Law Journal* 16.

<sup>567</sup> M L Du Pleez 'The Consumer Protection Bill: A few preliminary comments' 2009 *TSAR* 81.

<sup>568</sup> T Naude & E de Stadler 'Innovative Orders' under the South African *Consumer Protection Act* 68 of 2008' (2019) 22(1) *PELJ* 1727.

<sup>569</sup> M Van der Merwe 'The important influence of the Consumer Protection Act on the food industry' *SERR Synergy* 11 December 2019 available at <https://serr.co.za/the-important-influence-of-the-consumer-protection-act-on-the-food-industry>, accessed on 8 October 2023.

## **CHAPTER 5**

### **FINDINGS, RECOMMENDATIONS AND CONCLUSION**

#### **5.1 INTRODUCTION**

The previous chapters have provided a concrete discussion of the South African and international food safety legal and institutional framework and the current state of food safety in South Africa. This chapter provides a detailed discussion of the findings of the thesis, and it provides recommendations on how food safety can be improved in South Africa.

#### **5.2 FINDINGS**

This section provides a discussion of the findings of the thesis. As previously indicated, the thesis sought to answer an important question which is to what extent does the South African legal framework regulate food safety. In other words, the dissertation aimed to critically analyse the extent to which the South African legal and institutional framework regulates food safety. The thesis saw it necessary to do so because the analysis of the food safety legal and institutional framework in South Africa is a neglected area of academic research. Moreover, many consumers and food businesses are unaware of the food safety regulations in South Africa. Chapter one of the dissertation provided an overview of how the dissertation will be structured and key research focus. This chapter introduced to the reader the importance of food safety in South Africa, through a critical analysis of some of the prevalent literature on the topic. Simply put, food must be safe and prepared hygienically, since unsafe food has economic and health implications.

Having established the background and core focus of the thesis, the second chapter sought to answer the question: to what extent does the international legal framework regulate food safety. This chapter focused on the international food safety legal and institutional framework. After having analysed the relevant primary and secondary sources, the research found that various international organisations deal with food safety. These organisations consider food safety a serious global issue, and they regard science as playing a pivotal role in ensuring food safety.<sup>570</sup>

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<sup>570</sup> Chapter 2 Page 16.

The research has found that although there are several international organisations responsible for ensuring food safety, through the analysis of the relevant legal framework, they have shown to a large extent to work in harmony and coherence rather than contradicting each other. As such, chapter two provided a succinct overview of the WHO, UN and FAO and their several efforts to improve food safety and raise food safety awareness. As noted in chapter two, most importantly, the CAC created international food standards called Codex standards which, provide rules that food businesses should follow to ensure food safety. The research found that Codex standards are not legally binding, but they are necessary for ensuring food safety because they serve as a model for national laws.<sup>571</sup> Moreover, from an international trade perspective, international organisations, such as the WTO recognise the importance of these codex standards and food safety.

The thesis found that the WTO acknowledged the importance of animal, human and plant health to be protected by states through proper trade regulations, even though they may pose as trade barriers.<sup>572</sup> Thus, the WTO allows states to create SPS measures to protect human health. However, the dissertation found that the SPS Agreement fails to take into consideration, the difficulties that developing countries face in the international markets.<sup>573</sup> Further, it was found that ensuring food safety is quite costly for countries especially developing countries.<sup>574</sup> The dissertation noted that international food safety laws set out rules that states need to follow when developing their food safety laws rather than regulating food companies.<sup>575</sup> Furthermore, the thesis found that countries cannot cope with the various laws implemented by these organisations and there is insufficient collaboration between states to implement international standards.<sup>576</sup>

Chapter three of the dissertation analysed the current food safety regulations in South Africa, with particular focus on the food safety legal and institutional framework. As such, the South African food safety regulations and the role of the government in ensuring food safety was analysed. After analysing the relevant legal framework, the thesis found that the South African government had enacted several food safety legislation and policies to regulate food safety. The research identified the FCD Act as the primary food safety legislation, which regulates the

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<sup>571</sup> Chapter 2 Page 25.

<sup>572</sup> Chapter 2 Page 28.

<sup>573</sup> Chapter 2 Page 31.

<sup>574</sup> Chapter 2 Page 33.

<sup>575</sup> B Van der Meulen 'The global arena of food law: emerging contours of a meta-framework' (2010) 3(4) *Erasmus Law Review* 240.

<sup>576</sup> Chapter 2 Page 32.

sale, manufacture and import of foodstuffs. There are other legislation that deals with other aspects of food safety, such as meat products, agricultural products.<sup>577</sup> It is difficult for consumers and food companies to recognise which regulations to follow and who can be approached when there is a food safety issue. This creates gaps and a lack of coherence among those departments responsible for food safety.<sup>578</sup> Moreover, food businesses find it time consuming to comply with food safety laws.<sup>579</sup> In this respect, the thesis found that food safety regulations are mostly outdated and complex.

There are various government departments responsible for overseeing food safety. Notably, the thesis found that while South Africa has made a significant effort in regulating food safety, the South African food safety institutional framework is also fragmented.<sup>580</sup> Unfortunately, food safety is not made a priority by the government. Sometimes, there are overlapping functions between government departments. Also, the thesis found that food safety regulations are not effectively enforced by these departments. It can be seen that despite the existence of these food safety laws and policies, there are still many food safety challenges in South Africa.

Thus, implementing these laws involves too much cost and the government does not have enough resources. The dissertation found a lack of coordination between the relevant government departments.<sup>581</sup> The formal food sector is fairly well regulated despite the food safety issues. However, the research found that the informal sector is not regulated, and as a result, most food safety issues arise from this sector.<sup>582</sup> There is no formal set-up to assist informal businesses in registering their business. There are too few EHPs in South Africa and current EHPs are overwhelmed with responsibilities.<sup>583</sup> There is a lack of training among food handlers and no specific regulation dealing with food handlers.<sup>584</sup> Furthermore, food businesses and manufacturers are not properly monitored. Notably, these several food safety regulations create confusion and it is difficult for EHPs to manage compliance with these regulations.

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<sup>577</sup> Chapter 3 Page 53/54

<sup>578</sup> Chapter 3 Page 39.

<sup>579</sup> C Mukumba *An analysis of the Southern Africa's food safety standards within the broader framework set by the WTO's SPS Measures: A South African Case Study* (unpublished LLM Thesis, University of the Witwatersrand, 2011) 42.

<sup>580</sup> Chapter 3 Page 58.

<sup>581</sup> Chapter 3 Page 39.

<sup>582</sup> The informal food sector is self-regulated. Chapter 4 Page 6. S Boatema... et al 'Awakening from the listeriosis crisis: Food safety challenges, practices and governance in the food retail sector in South Africa' (2019) 104 *Food Control* 339.

<sup>583</sup> Chapter 3 Page 38.

<sup>584</sup> J J Sibayoni & P A Tshabalala 'Food safety knowledge and awareness of food handlers in school feeding programmes in Mpumalanga, South Africa' (2017) 73 *Food Control* 1400.

The fourth chapter identified and discussed the particular impediments the South African institutional and legal framework is facing with regards to food safety, with particular focus on the Consumer Protection Act 68 of 2008. The rights and remedies under the CPA, product liability and recourse mechanisms under CPA were also examined.<sup>585</sup> Some current challenges in South Africa include, foodborne diseases, food fraud and product recalls. The research has found that foodborne diseases are a significant food safety concern and developing countries are more vulnerable to foodborne diseases.<sup>586</sup> It was noted that food safety challenges have a serious impact on consumers and the economy.<sup>587</sup> Furthermore, the government cannot cope with these food safety issues. In light of these challenges and dangers, the CPA provides consumers with various rights and remedies.<sup>588</sup> As mentioned in the previous chapter, many consumers are unaware of their rights, remedies, and how they can enforce them.<sup>589</sup>

The thesis acknowledges that, for the most part, consumers are unaware of what is included in a food product because they depend on the information provided by food businesses. Further, the research found that children, women and people from low-income households are more vulnerable to food safety risks.<sup>590</sup> Hence, many consumers do not have the financial resources to enforce their rights and take legal action against unscrupulous food businesses. Amplifying the unawareness, the dissertation has found a lack of investigations of food outbreaks and food safety issues.<sup>591</sup> It was found that food fraud is more prevalent in the informal food sector because informal food businesses are not regulated, and they are not properly monitored. Notwithstanding the rise in food safety concerns, the lack of prosecution of food businesses that do not comply with food safety regulations was highlighted. Lastly, the thesis found that the redress mechanisms provided by the CPA are confusing to consumers, and they find it challenging to approach the courts.<sup>592</sup>

### **5.3 RECOMMENDATIONS**

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<sup>585</sup> Chapter 4 Page 72/74.

<sup>586</sup> Chapter 4 Page 61.

<sup>587</sup> Chapter 4 Page 62.

<sup>588</sup> Chapter 2 of the Consumer Protection Act 68 of 2008.

<sup>589</sup> Chapter 4 Page 72.

<sup>590</sup> Chapter 4 Page 64/65

<sup>591</sup> Ibid.

<sup>592</sup> Chapter 4 Page 76.

As shown above, the thesis sought to identify these particular issues. Having arrived at these findings, the thesis proposes the following recommendations, specifically aimed at addressing the shortcomings:

### **5.3.1 Role of the relevant international organisations in food safety**

Codex standards are important because they contribute to food safety and international food trade. Hence, these standards should be made into law and legally binding on states and states should be encouraged to adopt these standards and adhere to it. Collaboration between the relevant international organisations should be improved so that food safety can be strengthened globally. States should work closely with these organisations to exchange information, harmonise food safety laws and provide assistance where necessary. International organisations like the WHO should improve their surveillance and response to food safety concerns. They should provide more assistance to developing countries to help them address food safety issues and provide the necessary infrastructure support and encourage collaboration on national and regional food safety networks.

### **5.3.2 Role of the South African Government in food safety**

The government plays a crucial role in regulating food safety in South Africa. The current food safety laws are effective on paper, but they must be properly enforced and implemented for them to be effective in addressing food safety concerns. In other words, the government must effectively enforce food safety regulations in both the formal and informal food sectors. Since, effective enforcement of food safety regulations prevents consumers from being exploited by food businesses. Moreover, these laws will not serve their purpose if they are not effectively enforced. The government must clearly outline who is responsible for what in terms of food safety regulations. This will prevent confusion for food businesses, and they will know who to approach if they have an issue. Also, they should strengthen food safety laws and ensure that these laws can address current issues. The government must improve food safety surveillance and coordination among the relevant government departments.<sup>593</sup> Courts should play a more

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<sup>593</sup> 'WHO urges food system changes to improve food safety' *Food safety News* 31 January 2023 available at <https://www.foodsafetynews.com/2023/01/who-urges-food-systems-changes-to-improve-food-safety/>, accessed on 20 August 2023.

active role in addressing disputes relating to food safety issues and harsher punishments should be imposed on food businesses that contravene the CPA and other food safety regulations. This will deter food businesses from violating food safety laws. More resources should be invested into ensuring food safety by the government. A specific food safety policy should be created by the government to address existing food safety issues.

### **5.3.3 Improving and promoting consumer awareness about food safety**

Government departments and local municipalities need to take more action through programmes and workshops to promote consumer awareness and educate consumers about food safety risks. These programmes should target vulnerable groups such as low-income households and children. Consumers should be aware of their consumer rights and the redress mechanisms available under the CPA. Consumers should always inspect a food product before they purchase it to ensure that it is safe. Also, they should ensure safe and hygienic food handling and preparation at home. More resources and funds must be invested into these programmes. The government, through local municipalities, can conduct workshops for food business employees and street food vendors to educate and train them about hygienic food handling and preparation. Further, social media and other digital means e.g. TV, radio can be used to raise awareness about food safety.

### **5.3.4 The need for a specific food safety body**

The government departments responsible for food safety in South Africa are overwhelmed with responsibilities and they cannot specifically focus on food safety. Also, there are several food safety regulations that need to be enforced. Thus, a separate food safety body or agency should be created to enforce and inspect food safety laws.<sup>594</sup> This agency will be specifically responsible for overseeing food safety in South Africa. This authority will reduce costs, improve coordination and reduce some burden on the DOH, DALRRD and the dtic.<sup>595</sup> It will

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<sup>594</sup> B Versfeld & Z Ngcobo 'Food safety in South Africa and the need for an appointed regulator' Webber Wentzel 6 July 2021 available at [https://www.webberwentzel.com/news/pages/food-safety-in-South-Africa-and-the-need-for-an-appointed-regulator.aspx?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_term=food-Drugs-Healthcare-Life-Sciences&utm\\_content=articleoriginal&utm\\_campaign=article](https://www.webberwentzel.com/news/pages/food-safety-in-South-Africa-and-the-need-for-an-appointed-regulator.aspx?utm_source=mondaq&utm_medium=syndication&utm_term=food-Drugs-Healthcare-Life-Sciences&utm_content=articleoriginal&utm_campaign=article), accessed on 20 August 2023.

<sup>595</sup> Ibid.

also improve consumer protection and create a single contact point for businesses in the food sector.

### **5.3.5 Prospect of the constitutional right to have access to safe food**

Section 27(2)(c) of the Constitution should be amended to include access to ‘safe’ food. Ensuring everyone has access to safe food is important because it ensures better health for consumers. Access to safe food is a basic human right and it guaranteed in terms of international law.<sup>596</sup> By including the right to have access to safe food in the Constitution, it will encourage food safety in South Africa and it will place a stricter obligation on the government to ensure food safety.

### **5.3.6 Role of law enforcement and food inspectors (EHPS) in ensuring food safety**

As mentioned briefly, law enforcement and food inspectors should clamp down on informal street food vendors and illegally occupied, shops such as spaza shops and supermarkets, who are the source of food fraud and other food safety issues in South Africa.<sup>597</sup> They should conduct frequent raids in both the formal and informal sector and seize any food products that do not comply with food safety regulations and are unsafe for human consumption. This will deter other food businesses from selling harmful food products to consumers. Local authorities such as health inspectors must inspect food premises e.g. restaurants regularly to ensure that they comply with food safety regulations. EHPs are vital in ensuring food safety on the ground and more should be employed to monitor the food industry.

### **5.3.7 Preventing the import of unsafe food products**

Many fake food products which are unsafe are being imported into the country. These goods are then sold to consumers in the informal sector. To prevent the import of unsafe food products, custom officials should confiscate any unsafe foodstuff that is being imported into

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<sup>596</sup> Universal Declaration of Human Rights, GA Res 217 A (III), UN Doc A/810 (10 December 1948).

<sup>597</sup> W Knowler ‘Fake food likely a hoax- and here’s which ‘expired’ items you can safely eat’ *Times live* 31 August 2018 available at <https://www.timeslive.co.za/amp/news/consumer-live/201808-31-fake-food-likely-a-hoax-and-heres-which-expired-items-you-can-safely-eat/>, accessed on 2 October 2023.

South Africa. This will prevent the consumer market from becoming a dumping site for fake and illegal food products. Also, the government can impose stricter regulations relating to the import of food products.

### **5.3.8 Role of business sector in food safety**

Food businesses should train their employees on proper food handling and hygiene regularly, and they should develop internal food safety rules that will ensure the safety of their products. Also, businesses can incentivise employees who correctly adhere to food safety rules. These businesses should ensure better transparency regarding what is used in food products so that consumers are made aware of the products they consume. In other words, food businesses should provide clear and correct information to consumers about their products on labels.

### **5.3.9 Improving food safety in the informal food sector**

Most food safety challenges arise in the informal food sector. The government should create regulations to govern the informal food sector, which will require them to adhere to food safety and hygiene standards and to have a license to operate. Informal food businesses should collaborate with the local municipalities to improve food safety. The government should set up an agency within local municipalities to assist informal businesses in obtaining licences and train them on safe and hygienic food handling. Also, government can provide incentives to informal businesses to encourage them to adhere to food safety laws.

## **5.4 CONCLUSION**

The dissertation, through the analysis of primary and secondary sources sought to answer several questions about the safety of food in South Africa. The dissertation has illustrated that there has been several incidents that has raised concerns over the safety of food in South Africa. This is due to various reasons, such as ineffective enforcement of food safety laws, fragmented institutional framework and lack of consumer awareness. Food safety is a shared responsibility and therefore, the government, local municipalities, consumers and the various stakeholders in the food industry must play their part in ensuring and improving food safety in South Africa.

Lastly, this chapter has provided recommendations that can be followed to improve the food safety legal and institutional framework in South Africa.

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Miss Noresha Govender (218005823)  
School Of Law  
Pietermaritzburg

Dear Miss Noresha Govender,

**Original application number:** 00017650

**Project title:** How safe is our food? A critical overview of the South African food safety legal framework.

### Exemption from Ethics Review

In response to your application received on 29 June 2022, your school has indicated that the protocol has been granted **EXEMPTION FROM ETHICS REVIEW**.

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

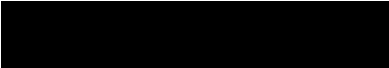
In case you have further queries, please quote the above reference number.

**PLEASE NOTE:**

Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,

  
Mr Matthew Blain Kimble  
obo Academic Leader Research  
School Of Law

**UKZN Research Ethics Office**  
Westville Campus, Govan Mbeki Building  
Postal Address: Private Bag X54001, Durban 4000  
Website: <http://research.ukzn.ac.za/Research-Ethics/>

Founding Campuses:  Edgewood  Howard College  Medical School  Pietermaritzburg  Westville

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