

Evaluation of Food Safety and Quality Regulations in Nigeria

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Abstract

Ensuring high level of food safety and quality is necessary to provide adequate protection for consumers. Unsafe and poor quality food products have dire negative impacts on the economy and public well-being, which justifies government intervention in every country to ensure food safety. This study doctrinally interrogates the legal and institutional framework for food safety and quality in Nigeria with a view to ascertain whether extant laws and regulatory institutions put in place to regulate food safety and quality in the country are adequate.

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1. Introduction

Since ancient time, producers of food products have attempted to alter lower the quality of their products and still obtain good prices for them by adding worthless substances or by withholding the addition of valuable substances into the product, such as by adding water to wine, skimming cream from milk and adding chalk to bread.¹ Hence regulation became necessary, the public interest, to govern what could or could not be added to food products to protect consumers from unsafe food products. Such regulation is justifiable considering that consumers do not possess much information about products but invariably rely on the information provided by producers regarding the composition and other aspects of the products they buy and consume.² The food processing industry has an important role in ensuring the good health and well-being of consumers.

The major aim of businesses is to maximise profit such that at times scant attention is paid to the issue of safety and quality of goods. Long ago, Adam Smith recognised that “in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer.”³ According to Aniagolu, JSC:

...it is often the unhappy lot of consumers to be inflicted with shoddy and unmerchantable goods by some pretentious manufacturers, entrepreneurs, shady middlemen and unprincipled retailers whose avowed interest seems only, and always, to be to maximise their profits leaving honesty a discounted and shattered commodity.⁴

Thus, to safeguard public health, a strong and up-to-date regulatory framework for the regulation of food quality and safety, from production and through the supply chains, is essential. Furthermore, in today's globalised world with rapid movement of persons and goods, many countries depend heavily on import of food products. This increases the need for regulation to ensure that food products imported into or exported from a nation meets basic international standards in terms of quality and safety.

In developing countries, food security could pose serious challenges to the regulation of food quality because food scarcity creates a serious dilemma of availability versus quality. However, unsafe and poor quality food products have dire negative impacts on the economy and public well-being, thereby justifying government intervention.⁵ While agreeing that regulation of food product safety and quality is justifiable, an important issue is what form an efficient regulation would take. Generally, commentators appear to agree that product regulation is achieved through certification and labelling requirements. Antie posits that providing information about quality through product certification and labelling would be a natural way for a regulator to intervene.⁶ Ogus also states that the instruments governing food supply can be categorised as information regulation.⁷ Information regulation, also called food labelling regulation, is involved with the view to provide all relevant information about the true description of food such as the place or origin, its ingredient and the way in which the food is produced.⁸ It provides information that represents a material fact in order to enable consumers to make

¹ Marc T Law, “History of Food and Drug Regulation in the United States” <http://eh.net/encyclopedia/history-of-food-and-drug-regulation-in-the-united-states/> accessed 23 November 2019.

² Akerlof A George, “The Market for ‘Lemons’: Quality Uncertainty and the Market Mechanis” [1970] (84)(3) *Quarterly Journal of Economics* 488.

³ See R. N. Campbell, A.S. Skinner and W.B. Todd (ed.), *Adam Smith: An Inquiry into the Nature and Causes of the Wealth of Nations*, (Indianapolis: Liberty Classics, 1981) p. 660.

⁴ *Nigerian Bottling Company Ltd. v. Constance Ngonadi* [1985] 1 NWLR (Pt 4) 739 at 753.

⁵ John K Horowitz, “Regulating Safety and Quality Standards in Food Marketing, Processing and Distribution” [1996] (78) (5) *American Journal of Agricultural Economics* 1261.

⁶ John M. Antie, “Efficient Food Safety Regulation in the Food Manufacturing Sector” [1996] (78) (5) *American Journal of Agricultural Economics*, 1242.

⁷ Anthony I. Ogus, *Regulation: Legal Form and Economic Theory* (London: Hart Publishing 2004) 194.

⁸ Mircea Enachescu Dauthy, “Quality Control/Quality Assurance and International Trade; Good Manufacturing Practices; Hygienic

the right choice when buying food products. Nyor¹ argues that food regulation is achieved essentially by means of registration since products whether locally manufactured or imported is expected to have undergone the registration process.

Herschdoerfer argues that although government has made concerted effort to ensure the supply of safe and good quality food, misbranded foods or foods that cause harm sometimes enter the food distribution chain.² Whenever a misbranded food is detected or a harmful substance is detected in food, government regulatory agencies take the necessary action such as administrative action to protect consumer against violations.³ Such administrative actions according to Nyor⁴ involve power of seizure, confiscation and destruction of sub-standard goods and products, sealing up of factories, which are found to produce sub standard or defective goods and products, etc.

This article evaluates the legal and institutional framework for food safety and quality regulation in Nigeria with view to determining the adequacy or otherwise of the extant food control laws. The study focuses mainly on applicable legal instruments and their enforcement for the control of food quality Nigeria.

The paper is divided into four parts. Following this introduction which is the first part is the second part which deals with the legal framework for food quality regulation in Nigeria. The extant food control laws in the country are highlighted and their key provisions analysed. In the third part of the paper, the mechanisms adopted by the relevant agencies for the enforcement of food regulations in the country are discussed. Part four is the conclusion.

2. Legal Framework for Food Quality Regulation in Nigeria

The food industry in Nigeria is highly regulated.⁵ The country operates a multiple agency food safety control system which is mostly sectoral.⁶ Food safety legislation is also fragmented between the three tiers of government: federal, state and local governments. The relevant statutes include the Criminal Code;⁷ the Penal Code;⁸ the Food and Drugs Act;⁹ the Standards Organisation of Nigeria Act;¹⁰ National Agency for Food and Drug Administration and Control Act;¹¹ the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act;¹² the National Drug Law Enforcement Agency Act;¹³ the Federal Competition and Consumer Protection Act.¹⁴ The key provisions of these statutes are highlighted in the following paragraphs.

2.1 The Criminal Code and the Penal Code

As part of the offences against public health, these two principal penal statutes contain provisions prohibit and prescribe punishment for any persons who:

- (a) sells or is in possession with intent to sell as food or drink things which are noxious or unfit for food or drink;¹⁵
- (b) sells adulterated or adulterates with intent to sell noxious food or drinks;¹⁶

The punishment for the two offences under the Criminal Code is a term of imprisonment for one year while under the Penal Code the punishments are terms of imprisonment which may extend to two years for the offence in paragraph (a) and one year in the case of the offence in paragraph (b).

The inadequacy of the provisions and the inefficiency of their enforcement necessitated the enactment of specific regulations for food safety. For example, neither the Criminal Code nor the Penal Code defines the

Requirements; Hazard Analysis and Critical Control Points (HACCP)" [1995] (119) *FAO Agricultural Series Bulletin* <www.fao.org/3/V5030E/V5030E00.htm#contents> 3 accessed 2 November 2019.

¹ J. T. Nyor, "The Role of Regulatory Agencies in Food Quality Control in Nigeria" [2014] (1) *SCSR Journal of Agribusiness* 4. See also Jane Ezirigwe, "Much Ado about Food Safety Regulation in Nigeria" [2018] (9) *Afe Babalola University Journal of Sustainable Development Law & Policy*, p. 126.

² S. M. Herschdoerfer, *Quality Control in the Food Industry* (University of Michigan: Academic Press 1972) p. 312.

³ *Ibid*

⁴ Nyor (n 9) p. 5

⁵ Nigerian Institute of Advanced Legal Studies, *Communiqué of NIALS Roundtable on Food and Drug Law* [8 March 2012] (32) <www.nailsedu.ng/index.php/2015-12-10-05-04/roundtables/169.roundtable-on-food-and-drug-law-8th-march-2012> accessed 25 November 2019.

⁶ Yetunde Oni, 'National and International Food Safety Governance: Nigerian Perspective' paper delivered at the First Nigerian Food Safety and Investment Forum, Eko Hotel & Suites, Victoria Island, Lagos, 7-8 February 2017) <http://fsif.nqi.nigeria.org/docs/d1/NAFDAC.pdf> accessed 26 November 2019.

⁷ Cap. C38, Laws of the Federation of Nigeria (LFN) 2004, applicable in the southern states only.

⁸ Applicable in the northern states only.

⁹ Cap. F32, LFN, 2004.

¹⁰ No. 14 of 2015 which repealed Cap. S9, LFN, 2004.

¹¹ No. 15 of 1993; Cap. N1, LFN, 2004.

¹² No. 25 of 1999; Cap. C34, LFN, 2004.

¹³ Cap. N30, LFN, 2004.

¹⁴ No. 1 of 2018.

¹⁵ S. 243 (1) Criminal Code; s. 187 Penal Code.

¹⁶ S. 243 (2) Criminal Code; s. 184, Penal Code.

terms “adulterate” and “noxious” and as observed by a commentator, it will be difficult to secure a conviction under sections 243 and 244 of the Criminal Code because of the requirement of guilty knowledge.¹

2.2 The Food and Drugs Act

This is unarguably the principal legislation on food and drugs in Nigeria. It regulates the manufacture, importation, distribution, sale and advertisement of processed or packaged food, drugs, cosmetics and medical devices. In relation to food safety, section 1 of the Act prohibits the sale, importation, manufacture or storage of articles of food which contain poisonous or harmful substance, or is unfit for human consumption or consists in whole or in part of any filthy, disgusting, rotten or diseased substance. It also prohibits the same acts with respect to any food which is adulterated as well as the manufacturing, storage or sale of food under insanitary condition.²

Section 5 of the Act prohibits various misleading practices relating to packaging, labelling, treatment, processing and advertisement of food and other regulated products while section 8 prohibits the importation of such products not certified by the makers as conforming with an approved standard or code of practice relating to such a product. The penalty for contravention of the provisions of the Act or regulations made under it is a fine of not less than fifty thousand Naira or imprisonment for a term not exceeding two years or both.³

While the Food and Drugs Act improved on the provisions of the Criminal and Penal Codes, with time, the penalty provisions became unrealistic and inadequate to deter offenders and therefore required strengthening.

2.3 The Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act

This law was enacted essentially to increase the penalty provision in the Food and Drugs Act. Section 1 of the Act provides that:

Notwithstanding anything to the contrary in the Constitution of the Federal Republic of Nigeria 1999 or any other enactment or law, any person who:

- (a) produces, imports, manufactures, sells, distributes or is in possession of; or
- (a) sells or displays for the purpose of sale; or
- (a) aids or abets any person to produce, import, manufacture, sell, distribute or display for the purpose of sale, any counterfeit, adulterated, banned or fake, substandard or expired drug or unwholesome processed food, in any form whatsoever, commits an offence under this Act and shall, accordingly be punished as specified in this Act.

Section 2 of the Act prohibits hawking, selling or displaying for sale any drug or poison in any place not duly licensed or registered for that purpose including any market, kiosk, motor park, road-side stall, bus, ferry or any other means of transportation.

Any person who commits an offence under section 1 is liable on conviction to a fine not exceeding ₦500,000.00 or imprisonment for a term of not less than 5 years but not more than 15 years or both fine and imprisonment. An offence under section 2 attracts a fine not exceeding ₦500,000.00 or imprisonment for a term not less than 2 years or both.⁴ The parity of the fines for the two offences (manufacturing, selling, displaying for sale or being in possession of counterfeit, adulterated, banned or fake drugs and selling drugs, even genuine drugs in prohibited places) cannot be justified and has been attributed to oversight on the part of the draftsman.⁵

Although no conflict has been observed between the provisions of the Act and the Constitution of the Federal Republic of Nigeria, it is doubtful that if such a conflict occurs, the courts will accord supremacy to the provisions of the Act instead of the Constitution which is the grundnorm.⁶ The courts have been consistent in upholding that the Constitution is supreme and binding on all authorities and persons throughout the Federal Republic of Nigeria and that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.⁷

2.4 The Food, Drugs and Related Products (Registration, etc) Act

Section 1 of this Act provides that no processed food shall be manufactured, imported, exported, advertised, sold or distributed in Nigeria unless it has been registered in accordance with the provisions of the Act or regulations made under the Act. It is an offence for any person to contravene any of the provisions of the Act or any regulation made under it and any person who does so shall be liable on conviction to a fine of ₦50,000.00 or

¹ C. O. Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria*, 2nd edn. (Ibadan: Spectrum Books Ltd., 1980) p. 78.

² S. 6 of the Food and Drugs Act.

³ *Ibid*, s. 17.

⁴ S. 3, Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act.

⁵ Felicia Monye, *Law of Consumer Protection* (Ibadan: Spectrum Books, 2003) p. 73

⁶ Emmanuel I. Amah “Nigeria—The Search for Autochthonous Constitution” *Beijing Law Review* (2017) [8], 141–158. <https://doi.org/10.4236/blr.2017.81008>.

⁷ See s. 1(1) and (3) of the Constitution of the Federal Republic of Nigeria (as amended). See the cases of *Abacha & Ors v. Fawehinmi* (2000) 6 NWLR (Pt.660)228, SC; *F.B.N. Plc v. T.S.A. Ind. Ltd.* (2010) 15 NWLR (Pt. 1216) 247 SC; *National Union of Electricity Employees v. Bureau of Public Enterprises* [2010]7 NWLR (Pt. 1194) 538, SC.

imprisonment for a term not exceeding two years or to both fine and imprisonment in the case of an individual and a fine not exceeding ₦100,000.00 in the case of a body corporate.

2.5 The National Agency for Food and Drug Administration and Control Act

This Act creates the National Agency for Food and Drug Administration and Control (NAFDAC) charged with the responsibility of regulating the manufacture, importation, advertisement, distribution and sale of food and other regulated products.¹ Through mandates conferred on it by other statutes, NAFDAC enforces other food and drugs control law.²

The Act does not create substantive offences, however, the Governing Council of the Agency,³ is empowered, subject to the approval of the Minister of Health, to make regulations inter alia generally for the purpose of carrying out or giving full effect to the provisions of the Act. Any person who contravenes the provisions of any regulation made under the Act is guilty of an offence and liable on conviction to the penalties specified in the regulations. Where no penalty has been specified, the offender shall be liable to a fine of ₦50,000.00 or imprisonment for a term of one year or both.⁴

2.6 The Standards Organisation of Nigeria Act

This Act establishes the Standards Organisation of Nigeria (SON) charged with responsibility for prescribing and maintaining standards in quality and measurements of both locally manufacture and imported goods, including food products. Section 3(1) of the Act, establishes for the organisation the Standards Council of Nigeria. The functions of the council are to advise the Federal Government generally on the national policy on standards, standards specification, quality control and metrology; designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria; provide the necessary measures for quality control of raw materials and products in conformity with the standard specification; authorise the recognition and registration of quality certification bodies, inspection bodies, testing laboratories, calibration laboratories and qualified personnel related to these activity area operating legally.⁵ The functions of SON include organising tests and ensuring compliance with standards designated and approved by the council as well as registration of all manufactured products distributed, marketed and consumed throughout Nigeria and compile Nigerian Industrial Standard Specifications.⁶ Conformity with NIS specifications is mandatory for all locally manufactured products and certain specified goods imported into Nigeria.

In the discharge of its statutory mandate, SON has established the Mandatory Compliance Assessment Programme (MANCAP) and the Standards Organisation of Nigeria Compliance Assessment Programme (SONCAP) to ensure that all locally manufactured goods and goods imported into the country are of good quality and safe. The programmes are aimed at ensuring that products purchased by consumers offer value for money while guaranteeing safety of life and environment and preventing dumping of unsafe, substandard and counterfeited products in our markets.

MANCAP applies to all locally manufactured goods which are required to comply with the relevant NIS specifications. Where a product meets the requirement of the relevant NIS specifications or other specified standards, on the application by the manufacturer, SON's MANCAP Certificate of Conformity is issued for the product with a copy of MANCAP NIS logo. The MANCAP NIS logo and certificate's number must be affixed to the smallest unit pack of the product before being introduced into the Nigerian market. MANCAP certificate is renewable on three yearly basis subject to satisfactory yearly surveillance conformity report.⁷

SONCAP applies to certain enumerated products imported into Nigeria, excluding second hand goods,⁸ and involves product certification to ensure that all imports of the regulated products meet the relevant NIS specifications or other acceptable standards. SONCAP certificate is a mandatory customs clearance document and any import of a regulated product without it will be subjected to delays and possibly denied entry.

If any item of manufacture which does not comply with the relevant industrial standard is sold or delivered to any person with a view to its being sold to the public, the manufacturer of the item; and (b) any person who

¹ The regulated products under the Act are drugs, cosmetics, medical devices, detergent, bottled water and chemicals. See s. 30, NAFDAC Act.

² These include the Food and Drugs Act, the Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act and the Food, Drugs and Related Products (Registration, etc.) Act.

³ Established under s. 2 of the Act.

⁴ S. 25 (2) NAFDAC Act.

⁵ S. 4 SON Act.

⁶ Ibid, s. 5.

⁷ For details of the objectives and requirement of the programme, see Standard Organisation of Nigeria "Mandatory Conformity Assessment Programme (MANCAP)" <https://son.gov.ng/mancap-mark>, accessed 5 November 2019.

⁸ See Standard Organisation of Nigeria "SON Conformity Assessment Programme (SONCAP)" https://son.gov.ng/soncap_service, accessed 5 November 2019.

CAP in Brief, a publication of the Standards Organisation of Nigeria, p.5.

imports or is concerned with the importation of the item that does not comply with such standard, shall be guilty of an offence and shall be liable on conviction as follows:

- (i) in the case of the manufacturer to a fine of not less than 20% of the value of the product or ₦2m (two million Naira), whichever shall be higher, or to imprisonment for a term not less than 3 years or to both such fine and imprisonment;
- (ii) in the case of a seller to a fine of not less than 15% of the value of the product or ₦1m (one million Naira), whichever shall be higher, or imprisonment for a term not less than 2 years or to both such fine and imprisonment;
- (iii) in the case of an importer to a fine not less than 20% CIF per shipment or ₦2m (two million Naira), whichever shall be higher, or imprisonment for a term not less than 2 years or to both such fine and imprisonment.¹

Furthermore, any person other than the permitted manufacturer who sells or exposes for sale or uses for the purpose of advertising any material or document on or in which is portrayed an industrial standard resembling or purporting to be any of the Nigerian Industrial Standards (NIS) or certification mark resembling a mark issued under the Act; shall be guilty of an offence and on conviction liable to a fine not exceeding ₦1m (one million Naira) or to imprisonment for a period not exceeding two years or both fine and imprisonment.²

2.7 Federal Competition and Consumer Protection Act 2018

The Federal Competition and Consumer Protection Act (FCCPA) 2018, among other things, repealed the Consumer Protection Council Act, 1992³ and established the Federal Competition and Consumer Protection Commission (FCCPC) and the Federal Competition and Consumer Protection Tribunal (FCCPT).⁴ The Commission is responsible for the administration and enforcement of the provisions of the Act and any other enactment with respect to competition and protection of consumers. With respect to product safety, the Commission is conferred with powers, among other things, to regulate and seek ways and means of removing or eliminating from the market, hazardous goods; encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers; and cause all imported goods to be registered for traceability whenever the need arises. It is mandated to ensure the adoption of appropriate measures to guarantee that goods and services are safe for intended or normally safe use. The Commission is empowered to resolve disputes or complaints, issue directive and apply sanctions where necessary.⁵ It can compel persons involved in the manufacture, importation, distribution and sale of goods to comply with the provisions of the Act.⁶

The Tribunal has adjudicatory powers to hear appeals or review any decision of the Commission taken in the course of the implementation of the Act, as well as appeals from or review of any decision of the powers sector specific regulatory authorities in respect of competition and consumer protection matters.⁷

FCCPA guarantees the rights of consumers to safe and good quality goods, including food products.⁸ Act imposes a duty on the manufacturer or distributor of a product, who has become aware of any unforeseen hazard, to notify the public and cause the product to be withdrawn from the market. Failure to do so attracts a penalty of ₦50,000.00 fine or imprisonment for five years or both.⁹ In addition to criminal sanctions, a consumer who suffers injury or loss arising from defective goods is entitled to obtain civil redress from the Commission or a court of competent jurisdiction.

2.8 Federal and State Ministries and Departments

The states have the State Ministries of Health and Agriculture as well as Local Government Departments of Health and Agriculture at the local government level. The local Government Areas are usually responsible for street-vended foods, *bukas*, catering establishments, local abattoirs and traditional markets.¹⁰ There are also state laws on sanitation in most states in Nigeria, especially as regards cleaning abattoirs and the general environment. These laws come in different forms, such as State Environmental Protection Laws, State Environmental Sanitation Authority Laws, State Rural Water and Sanitation Agency Laws, State Waste Management Laws, Environmental and Waste Management Laws, State Rural Water Supply and Sanitation Agency Laws, state

¹ S. 26 (2), SON Act.

² Ibid, s 26 (1)

³ Cap 25, LFN 2004.

⁴ S. 39 of FCCPA.

⁵ S. 17, FCCPA.

⁶ Ibid, s. 18.

⁷ Ibid. s. 47.

⁸ Ibid, ss. 130 – 131.

⁹ Ibid, s. 9.

¹⁰ Jane Omojokun, "Regulation and Enforcement of Legislation on Food Safety in Nigeria" in Hussaini Makun (ed), *Mycotoxin and Food Safety in Developing Countries* (London: Intech Open 2013) 257.

Environmental Pollution Control Laws, and in one way or the other impact on food safety and quality.¹

3. Enforcement of Food Safety and Quality regulations in Nigeria

From the discussion in the foregoing paragraphs, a number of agencies have been identified that have roles in the enforcement of food safety regulations. These are NAFDAC, SON and FCCPC. These regulatory bodies adopt a number of techniques in the discharge of their functions. These include rule making, administrative actions, criminal actions, and provision of civil remedies.

3.1 Rule Making

The statutes establishing the agencies empower their governing bodies to make regulations and guidelines for the effective implementation and operation of the provisions of the statutes.² Although, regulations made by these bodies are usually subject to the approval of the appropriate minister, once so approved acquire the force of law. For example, the Governing Council of NAFDAC has, in the exercise of this power and with the approval of the Minister of Health, made and published a number of regulations.³ The power of delegated legislation enables the agencies to make regulations on important technical matters that could not have been captured in the principal statute.

3.2 Administrative (Regulatory) Action

The agencies are empowered by the laws establishing them to enforce the provisions of the laws and regulations through the following:

3.2.1 Entry and Inspection of Premises

An officer of any of the agencies can, in the course of his duty, at any reasonable time enter (if need be by force) any premises in which he or she reasonably believes that any article to which the laws or regulations apply is manufactured, prepared, preserved, packaged, stored or sold.⁴ Without such powers, it will be difficult for enforcement officers to catch offenders in the act.

3.2.2 Power of Seizure

An officer of the agencies upon being satisfied that the quality, purity or potency of any product is detrimental or hazardous to life, property and the national economy, seize and detain such products for a reasonable time until such defect is corrected.⁵

3.2.3 Power to Revoke Certification Marks and Cancel Registration

By section 25(3) of SON Act, the Organisation may revise, reallocate or revoke any permit of certification marks issued to a manufacturer and such revision, reallocation or revocation of permit shall be notified in the Federal Gazette. Similarly, NAFDAC agency reserves the power to cancel the registration of any food, drug, product, cosmetic or medical devices if it is found that the ground on which it was registered was false or incomplete.⁶

3.2.4 Power to Seal Up Premises and Recall Hazardous Products

The agencies have powers to seal up premises where any product that is detrimental or hazardous to life, property and the national economy is being manufactured or stored.⁷ They also have the power to recall such hazardous products.⁸

3.3 Criminal Action

Subject to the provision of section 174 of the Constitution of Nigeria⁹ (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in a court of law), any officer of both NAFDAC and SON may, with the consent of the Attorney-General of the Federation, conduct criminal proceedings in respect of offences under the Acts or regulations made under the Acts.¹⁰

3.4 Consumer Complaints and Civil Remedy

As a matter of practice, both NAFDAC and SON receive and investigate consumer complaints. In resolving

¹ Ezirigwe (n 9) p. 1.

² See sections 12 and 23 of SON Act; section 12 NAFDAC Act and section 163 of FCCPA.

³ These include the Pre-Packaged Food, Water and Ice (Labelling) Regulations 2019 which repealed and replaced the Pre-Packaged Food (Labelling) Regulations 2005 and Bottled Water Labelling Regulations 1996 SI 8 of 1996; Bottled Water (Advertisement) Regulations, SI 17 of 1995; Food Product Registration Regulations, SI 7 of 1996; Non-nutritive Sweeteners in Food Products Regulations, SI 11 of 1996; Food Products (Advertisement) Regulation, SI 15 of 1994 and SI 13 of 1996; Food Grade (Table or Cooking) Salt Regulations, SI 15 of 1996.

⁴ NAFDAC Act, s 24(1) and SON Act 2015, s 30.

⁵ NAFDAC Act, s 21(1)(j) and SON Act 2015, s 29(1)(a).

⁶ Food, Drugs and Related Products (Registration, etc) Act, s 4(1)(a)-(e).

⁷ SON Act 2015, s 29(1)(d).

⁸ SON Act 2015, s 46.

⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹⁰ NAFDAC Act, s. 26(1) and SON Act, s. 34(3).

such complaints an erring manufacturer of supplier may be order to cushion any damage occasioned to a consumer by his act or omission through refund or replacement of defective products.

By section 148 of FCCPA, a consumer may seek to enforce any right under the Act by bringing a complaint to the Commission or institution action in an appropriate court. The Commission can on its own accord proceed against an undertaking that acts in violation of the provisions of the Act. Commission has powers to make order for the payment of compensation to an injured consumer as well as for the repair or replacement of defective goods or the refund of the price. The Commission can also refer the matter to a court of competent jurisdiction.¹ The FCCPT has the power to hear appeals or review any decision of the Commission taken in the course of the implementation of the provisions of the Act.² The order, ruling or judgment of the Tribunal is binding on the parties and can be registered with the Federal High Court for the purpose of enforcement.³ A party who is not satisfied with the ruling, order of judgment of the Tribunal can appeal against such ruling, order or judgment to the Court of Appeal.

4. Conclusion

Evidently, there is adequate legislation and agencies for the regulation of food safety in Nigeria but there a lot of similarities in the subject matters covered by some of the statutes. This creates an overlap in the functions of the administering agencies. The subject matters covered by the Food and Drugs Act and the NAFDAC Act are the same, except perhaps for the inclusion of chemicals and detergent powder in the latter. The likely consequences of these overlaps include unnecessary duplication of functions, which may sometimes result in conflicts between agencies.⁴ For example, NAFDAC and SON appear to have concurrent jurisdictions in matters relating to processed food articles. Such products are routinely required to be registered by NAFDAC and to bear NAFDAC registration numbers even as they also bear the NIS logo and certificate numbers.

The multiplicity of statutes regulating food and drugs in the country can also result in the problem of choice of the statute under which an alleged offender may be prosecuted. To obviate this obvious problem, it is suggested that the relevant statutes be streamlined and consolidated, where necessary. It is, therefore, hereby recommended that the provisions of the Food and Drugs Act, NAFDAC Act, the Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provisions) Act, and the Food, Drugs and Related Product (Registration, etc.) Act be consolidated into a single, comprehensive food and drugs statute for the country with NAFDAC as the administering agency.

Ideally, products under the specific control of NAFDAC should have been excluded from the regulatory ambit of SON, to avoid overlaps in the functions of the two relevant agencies. The SON Act should continue to regulate products standards generally but should not apply to food and drugs, which should be covered by the food and drugs statute.

Furthermore, the activities of the state ministries and local government authorities in the control of the safety and quality of unprocessed food should be streamlined. Food hazards happen more at the local or grass root level and therefore stringent measures should be enforced to curb them by empowering the local authorities to prosecute offenders, which would compel manufacturers, sellers, retailers and consumers to adhere to standards.

Finally, the regulatory agencies should accord priority to public enlightenment in the area of food safety. Where members of the public are unaware of the laws put in place to protect them from food hazards they cannot take advantage of the redress mechanism put in place to help them when their rights are infringed upon.

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¹ FCCPA, s. 150(4)(c).

² FCCPA, s. 47(1)(a).

³ FCCPA, s. 54.

⁴ O. Ajai, "Caveat Venditor: Consumer Protection Decree No. 66 of 1992 Arrives in the Nigeria Market Place" (1992/93) *Current Law Review*, p. 23.

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