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*Pat SWA
26/11/19*

PARLIAMENT OF KENYA





THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-THIRD SESSION

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

THE TEA BILL, 2018 (Senate Bill No. 36)

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|  THE NATIONAL ASSEMBLY PAPERS LAID | |
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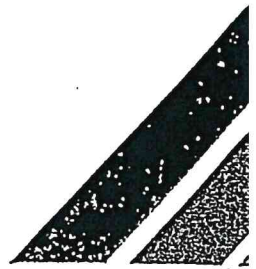


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CHAIRPERSON'S FOREWORD

This report contains the Departmental Committee on Agriculture and Livestock proceedings on its consideration of The Tea Bill, 2018 (Senate Bill No. 36). The Tea Bill, 2018 (Senate Bill No. 36) is a Senate Bill sponsored by Senator Aaron Cheruiyot that was transmitted to the National Assembly for consideration.

The Bill provides for the regulation, development and promotion of the tea industry. It establishes the Tea Board of Kenya. It provides for its functions, powers, membership and its administration. It also has regulatory provisions on the role of national and county governments, registration, licensing, and dissemination of market information.

The Crops Act (No. 16 of 2013) repealed the Tea Act (Cap. 343) in its Second Schedule whereas the First Schedule of the Agriculture and Food Authority Act (No. 13 of 2013) abolished the defunct Tea Board of Kenya. In its place and in place of other crops is the Agriculture and Food Authority Act (No. 13 of 2013) which establishes the Agriculture and Food Authority.

Although the establishment of the Agriculture and Food Authority had been hoped to centrally address the challenges of farmers of various crops, this has not been the case and farmers have pointed out to challenges they were experiencing in the growth and development of various crops that had previously been separately regulated.

The Committee, pursuant to Article 118 of the Constitution and standing order 127(3), called for invitation of Memoranda through the Print Media which were to be submitted on or before 3rd September, 2019. Furthermore, there were public hearings to receive comments on the bill from stakeholders on 14th October, 2019 in Konoin Constituency, Kericho County.

The Committee received memoranda from the East African Tea Trade Association; the Kenya Tea Development Agency (KTDA); the Kenya Tea Growers' Association (KTGA). The Committee also gathered views from the tea farmers in Konoin Constituency, Kericho County in a public hearing that the Committee conducted.

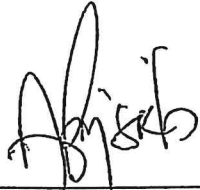
The Committee analysed the memoranda and views received and will be proposing amendments to the Bill.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the facilitation accorded to it in execution of its mandate during consideration of the Tea Bill, 2018

(Senate Bill No. 36). I also wish to thank the Members of the Committee who made valuable contributions and the Secretariat who facilitated the production of this report.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of standing order 127, it is my pleasant privilege and honour to present to the House the report of the Committee on its consideration of The Tea Bill, 2018 (Senate Bill No. 36).

Signed



HON. ADAN HAJI ALI SHEIKH, MP
(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

Date

26/11/2018

PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the Fifteen Departmental Committees of the National Assembly established by Standing Order 216 and mandated to: -
 - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (c) study and review all legislation referred to it;
 - (d) study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House;
 - (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
 - (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation

2. The Departmental Committee on Agriculture and Livestock deals with matters concerning; Agriculture, Livestock, Irrigation, Fisheries, Development, Production and Marketing. In discharge of its mandate, the Committee oversees the following: -
 - a) The State Department for Crops Development and Agricultural Research
 - b) The State Department for Livestock
 - c) The State Department for Fisheries, Aquaculture and the Blue Economy
 - d) The State Department for Irrigation

1.2 COMMITTEE MEMBERSHIP

3. The Membership of the Committee comprises the following Members: -

Hon. Adan Haji Ali, MP.

Mandera South Constituency – Jubilee Party (Chairperson)

Hon Emmanuel Wangwe, MP.
Navakholo Constituency – Jubilee Party (Vice-Chairperson)

Hon. Maison Leshoomo, MP.
Samburu County – Jubilee Party

Hon. Ferdinard Wanyonyi, MP.
Kwanza Constituency – Orange Democratic Movement

Hon. Florence Mutua, MP.
Busia County – Orange Democratic Movement

Hon. Simba Arati, MP.
Dagoretti Constituency – Orange Democratic Movement

Hon. Francis Munyua Waititu, MP.
Juja Constituency – Jubilee Party

Hon. Silas Kipkoech Tiren, MP.
Moiben Constituency – Jubilee Party

Hon. Yegon Brighton Leonard, MP.
Konoin Constituency – Jubilee Party

Hon. Gabriel Kago Mukuha, MP.
Githunguri Constituency – Jubilee Party

Hon. John Paul Mwirigi, MP.
Igembe South – Independent Member

Hon. Dr. John Kanyuithia Mutunga, MP.
Tigania West Constituency – Jubilee Party

Hon. Adan Haji Yussuf, MP.
Mandera West Constituency – Economic Freedom Party

Hon. Janet Jepkemboi Sitienei, MP.
Turbo Constituency – Jubilee Party

Hon. Dr. Daniel Kamuren Tuitoek, MP.
Mogotio Constituency – Jubilee Party

Hon. Fred Ouda, MP.
Kisumu Central Constituency – Orange Democratic Movement

Hon. Joyce Kamene, MP.
Machakos County – Wiper Democratic Party

Hon. Justus Makokha Murunga, MP.
Matungu Constituency - Amani National Congress

Hon. Silvanus Osoro Onyiego, MP.
South Mungirango Constituency – Kenya National Congress

1.3 COMMITTEE SECRETARIAT

4. The Parliamentary Service Commission Committee has deployed the following officers from various directorates and departments to serve the Departmental Committee on Agriculture and Livestock:

Mr. Ahmad Kadhi
Clerk Assistant I – Head of Secretariat

Mr. Alex Mutuku
Sergeant At Arms I

Mr. Salem Lorot
Legal Counsel II

Ms. Faith Makena
Sergeant At Arms II

Mr. Nicodemus Maluki
Clerk Assistant III

Mr. John Ngugi
Audio Officer III

Mr. Robert Ngetich
Fiscal Analyst III

Mr. Eric Kariuki
Research Officer III

Ms. Deborah Ghati
Media Relations Officer

2.0 INTRODUCTION

5. The Tea Bill, 2018 (Senate Bill No. 36) sponsored by Senator Aaron Cheruiyot, Chairperson of the Senate Ad hoc Committee on the Tea Sector in Kenya, is a Senate Bill that was committed to the Committee on June 26, 2019. The Bill originates from the Senate, read a First Time on Wednesday, June 26, 2019. Following the First Reading in the National Assembly, it stood committed, pursuant to standing order 127 (1), to the Departmental Committee on Agriculture and Livestock for facilitation of public participation.
6. In the memorandum of objects and reasons of the Bill, Senator Aaron Cheruiyot indicates that the principal object of the Bill is to liberalise the tea industry. He indicates that this will be done through the reorganisation of the tea industry by transitioning of the regulatory and

commercial roles currently undertaken by the Agriculture and Food Authority to the Tea Regulatory Authority of Kenya. The Senator also indicates that agriculture plays a vital role in the economy of most county governments. He states that it is the leading industrial crop in terms of its contribution to the country's GDP. It is therefore important that the tea industry is regulated and supported in terms of policy and law.

2.1 PROVISIONS OF THE BILL

7. The Tea Bill, 2018 provides for the regulation, development and promotion of the tea industry. It establishes the Tea Board of Kenya. It provides for its functions, powers, membership and its administration. It also has regulatory provisions on the role of national and county governments, registration, licensing, and dissemination of market information.

8. Clause 3 of the Bill provides for the establishment of the Tea Board of Kenya. Clause 5 of the Bill provides for the functions of the Board. It provides that the Board shall—

- (a) Regulate and promote the development of the tea industry;
- (b) Co-ordinate the activities of individuals and organizations within the tea industry;
and
- (c) Facilitate equitable access to the resources, facilities and benefits of the tea industry by all interested parties.

9. Further, the Board shall—

- (a) Make recommendations to the Cabinet for the formulation of policies, plans and strategies for the regulations of the tea sector;
- (b) In consultation with the relevant county governments—
 - (i) Register and regulate the operations of tea growers and processors;
 - (ii) Register commercial tea nurseries and green leaf transporters;
 - (iii) License tea dealers and processors;
 - (iv) License managing factories and their agents; and
 - (v) License tea brokers
- (c) Provide advisory services on tea production and quality enhancement;
- (d) Collect and analyse statistics related to, and maintain a database for the tea industry; and
- (e) Co-ordinate the prioritization of—
 - (i) Research; and
 - (ii) Ensure the efficient utilization of available funds.

10. Clause 7 of the Bill provides for the composition of the Board. Clause 7(1) provides that the management of the Board shall vest in a Board of Directors consisting of –
- (a) a chairperson appointed by the President by notice in the Gazette;
 - (b) the Principal Secretary responsible for agriculture or a representative nominated by the Principal Secretary in writing;
 - (c) the Principal Secretary responsible for trade or a representative nominated by the Principal Secretary in writing;
 - (d) two persons of either gender, nominated by the Council of County Governors;
 - (e) four persons, two of either gender, representing small-holder tea growers from the east and west of the tea growing areas;
 - (f) one person representing plantation tea growers;
 - (g) one person representing tea traders;
 - (h) a chief executive officer appointed in accordance with section 13 who shall be an ex officio member of the Board.
11. Clause 7(2) of the Bill provides that the Cabinet Secretary shall appoint the members under subsection (1) (d), (e), (f) and (g) by notice in the Gazette. These are two persons of either gender, nominated by the Council of County Governors; four persons, two of either gender, representing small-holder tea growers from the east and west of the tea growing areas; one person representing plantation tea growers; one person representing tea traders respectively.
12. Clause 7(3) of the Bill provides that a person shall not be appointed to be a chairperson of the Board of Directors unless that person holds at least a degree or its equivalent in any discipline from an institution recognized in Kenya and has relevant experience in the tea sector.
13. Clause 8 of the Bill provides that the persons appointed under section 7(1) (a), (d) (e), (f), and (g) shall serve for a term of three years renewable for one further term.
14. Part III of the Bill contains the regulatory provisions. Clause 20 provides for the role of national and county governments. It provides that each county governments shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for the development of tea grown within the county, disease control, markets, and cooperative societies within the county and soil and water conservation. It also provides that in order to achieve the objects and purposes of the Act, the national and county governments shall provide an enabling environment for the development of the tea sector.

15. Clause 21 of the Bill provides that every tea grower shall register with a processor and that every processor shall keep or cause to be kept for statistical purposes, a register of all tea growers registered.
16. Clause 22 of the Bill provides that a person shall not export, import, market or process tea or tea products unless that person has applied for and obtained a licence from the Board. It also provides that this does not apply to the export, import or marketing of any tea consisting of a sample or parcel not exceeding ten kilograms or tea processed for consumption on ships, aeroplanes or any other international carrier. It further provides a penalty for contravention of this provision: fine not exceeding 1 million shillings or twice the value of the tea or tea products whichever is greater or imprisonment for a term not exceeding two years or both. Finally, it provides that the Board may revoke a licence issued to a person if that person contravenes the conditions upon which the licence is issued.
17. Clause 23 of the Bill provides that a licence issued under the Act shall be in a form prescribed by the Board, and shall be renewable upon expiry of three years.
18. Clause 24 of the Bill provides that the Board shall carry out market research and analysis and disseminate information on its findings to all stakeholders.
19. Part V of the Bill provides for miscellaneous provisions. Clause 30 provides that the Board shall arbitrate disputes arising between any parties under the Act. It further provides that a party who is not satisfied with the decision of the Board may, within thirty days, appeal to a Court of competent jurisdiction.
20. Clause 31 of the Bill provides for the protection of members of the Board and staff from liability on acts or omissions done or made in good faith and without negligence in the performance or exercise of their duties.
21. Clause 32 of the Bill provides for the general penalty. It provides for a general penalty of a fine of not less than 20,000 shillings or a fine not exceeding twice the value of the tea or tea products or to imprisonment for a term not exceeding six months, or to both.
22. Clause 32(2) of the Bill provides that where an offence under the Act is committed by a partnership, company, association or cooperative society, every person who at the time when the offence was committed—

Farmers Association, KTDA and ministry officials. In the afternoon, the Committee proceeded to Mogogosiek Tea Factory for a site visit and meeting farmers thereafter.

42. The Members of the public had been invited through a newspaper advertisement to submit their comments on the Tea Bill. The following stakeholders submitted their comments:

- i) The East African Tea Trade Association;
- ii) The Kenya Tea Development Agency (KTDA);
- iii) The Kenya Tea Growers' Association (KTGA);

3.2 Public hearing at Konoin Constituency, Kericho County

43. The Committee conducted public hearing on 14th October, 2019 in Konoin Constituency, Kericho County where it gathered views from tea farmers in Konoin.

44. TESTEFA proposed that the tea auction should be done where farmers are and not in Mombasa in order to encourage transparency and accountability. They also proposed a forensic audit of KTDA financial accounts.

45. Farmers raised concerns about the tea auction in Mombasa which they felt was not transparent and that the auction in Mombasa is congested. They proposed that tea auction should be conducted in a place where tea is produced. They also indicated that the auction process is so quick and does not allow constructive negotiation allowing exploitation and collusion against farmers.

46. A farmer noted that 90% of Konoin area is covered with tea plantation and urged the Committee to look at the challenges bedeviling the tea sector in order to rescue it from collapsing. He proposed that tea should be regulated since it is the second income earner to the country.

47. A farmer cast aspersions on KTDA and proposed that it should be investigated.

48. The farmers called upon the DCI and EACC to investigate Mogogosiek Tea Factory for allegations of corruption within the factory.

49. The farmers proposed that the election of factory directors should be based on one man one vote as opposed to the number of shares that a farmer has so as to avoid large scale farmers

electing themselves and give an opportunity a small scale farmer to be elected a representative of the farmers in the factory.

50. The farmers indicated that tea is the main support to farmers in the region as maize which used to be resourceful is no longer doing well because of army worm.
51. The farmers indicated that the cost of production of tea is very high compared to the returns that farmers get. They therefore proposed that tea fertilizers should be subsidized. They pointed out that procurement of tea fertilizers was fraudulent and proposed that this should be investigated.
52. The farmers proposed that factory directors should be reduced from seven to two to reduce cost of administration.
53. The farmers proposed that Tea Research should be re-instated as it was before being taken to Kenya Agricultural Livestock Research Organisation (KALRO).
54. The farmers proposed that geographical indication done by Kenya Industrial Property Institute should guide in determining tea prices.
55. The farmers proposed nomination of an MP to Parliament to represent the welfare of tea farmers.
56. The farmers proposed that the post of CEO in KTDA should not be permanent but contractual.
57. The farmers complained that private tea factories were not paying bonuses and recommended that they should be compelled to pay.
58. The farmers proposed that factory reserve funds should be used to pay farmers when bonus payout is low.
59. The farmers complained that the cost of factory production was high owing to high cost of electricity, labor, and wood fuel. They indicated that on average, a factory uses Ksh. 6-9 million per month on electricity.

60. The farmers indicated that there was no scientific evidence to suggest that tea produced in the west region was of poor quality. They reiterated that tea produced in the west region was of high quality but designed by fraudulent players to have little returns.
61. The farmers proposed representation of farmers in private tea factory entities.
62. The farmers complained that the the 2.5% management fee charged by KTDA on factories was too much. They indicated that factories were paying a lot of money to KTDA as agent's fees and this needed to be relooked at as it comprises one of the highest expenditure by factories. They also indicated that salaries to KTDA staff were very high and that the staff of KTDA were cronies of factory and KTDA leadership.
63. Farmers complained that their tea leaves were of high quality but they were still told they are of poor quality and paid low returns.
64. A farmer submitted that they invited KTDA to help them market and protect their tea produce but that they had been frustrated and felt underpaid by KTDA.
65. Farmers noted that previous tea task-force reports have not been implemented and recommended that they should be implemented.
66. Farmers proposed the disbandment of the KTDA and re-introduction of the Tea Board of Kenya. They also proposed that the CEO and Company Secretary of KTDA should be removed from office.

3.2 Matrix of submission from the public

67. The table below indicates the proposed amendments from the stakeholders to various clauses together with the justifications for the amendments. The Committee's recommendations on whether it agrees to the proposed amendment or rejects it is in the last column of the matrix.

| CLAUSE | STAKEHOLDER | PROPOSED AMENDMENT & JUSTIFICATION | COMMITTEE'S RECOMMENDATIONS |
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| 2 | Kenya Tea Growers' | Amend the definition of the term "Managing Factory | The Committee agreed to the proposed amendment by deleting the definition of |

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| | <p>Association (KTGA)</p> | <p>Processor” to read “a factory registered by the Board to process tea or tea products”</p> <p><i>Justification:</i></p> <p>The definitions are ambiguous and create confusion. The definition is unclear. Tea manufacturing starts with the processing of green leaf at the factory. A tea factory is the same as a tea processor so no need to have separate definitions</p> | <p>the term “managing factory” and retaining the definition of the term “processor”. The two terms “managing factory” and processor” have the same meaning.</p> |
| | <p>Kenya Tea Development Agency (KTDA)</p> | <p>The definitions of the terms managing factory and processor should be merged into one and have one definition of factory rather than two as below:</p> <p>“Factory” means a factory registered by the Board to process tea or tea products</p> | <p>The Committee agreed to the proposed amendment by deleting the definition of the term “managing factory” and retaining the definition of the term “processor”. The two terms “managing factory” and processor” have the same meaning.</p> |
| | <p>Stakeholders Submission</p> | <p>Definition of tea broker is erroneous as it defines the tea brokers as ‘<i>a person who negotiates the purchase or sale of tea between tea growers and buyers</i>’. A tea broker usually negotiates sale/ purchase of tea between producers and</p> | <p>The proposed amendment is agreed to. Therefore, the definition of the term “broker” is deleted and substituted therefor with the new definition as follows—</p> <p>“broker” means a person who negotiates the purchase or sale of tea between tea growers and processors and</p> |

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| | | <p>buyers</p> <p>Delete and substitute clause 2 (c) in the schedule with ‘ A broker means; ‘a person or company or firm who negotiates the purchase or sale of tea between tea producers and buyers’</p> | <p>buyers;</p> |
| | | <p>Definition of Managing Factory- Should be Management agent and not managing Factory as there are no stakeholders referred to as managing factory in the Tea value chain.</p> <p>Amend the definition of managing Factory to Management agent as follows;</p> <p>“Management agent” means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services in production, leaf transportation, processing, financial, and</p> | <p>The proposed amendment is rejected for the following reasons:</p> <p>(i) The Committee has proposed the deletion of the term “managing factory” since the term “processor” suffices;</p> <p>(ii) The proposed new definition of the term “management agent” has not been used in the Bill and there needs to have substantive provisions in the Bill for there to be a need to define it.</p> <p>The term “management agent” was a term in the repealed Tea Act. It was defined as follows—</p> <p>“management agent” means any person, co-operative society, marketing board or company established under any written law, that is appointed through a specific management contract or agreement by another person or company to perform or offer professional services in specific functions of production, processing or marketing of tea but does not include a buyer, broker or packer of tea;</p> |

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| | | related services; | The repealed Tea Act had substantive provisions on management agents under sections 24 to 29 providing for registration of management agents, certificate of registration of a management agent, compliance with the rules and regulations, supply of additional information, publication of names and particulars, transferability of licence or registration and annual return for management agent. |
| 5 | Kenya Tea Growers' Association (KTGA) | <p>Amend clause 5(2) to read as follows—</p> <p>5(2) Without prejudice to the generality of subsection (1), the Board shall—</p> <p>(a) make recommendations to the Cabinet Secretary for the formulation of policies, plans and strategies for the regulation of the tea sector;</p> <p>(b) license tea dealers and processors;</p> <p>(c) license manufacturing factories and their agents;</p> <p>(d) license tea brokers</p> <p>Amend Clause 5(2) (b) (i) to read</p> <p>(b) in consultations with the relevant county government—</p> <p>(i) register and regulate the</p> | <p>The Committee agrees to the proposed amendments.</p> <p>The amendment seeks to remove the aspect of the Board consulting the relevant county governments to license tea dealers and processors; license managing factories and their agents; and license tea brokers.</p> <p>It proposes that the Board consults with the relevant county governments when it registers and regulates the operations of tea growers and processors; and registers commercial tea nurseries and green leaf transporters.</p> |

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| | | <p>operations of tea growers and processors;</p> <p>(ii) register commercial tea nurseries and green leaf transporters</p> <p>Renumber clauses 5(2) (c) to (e) to above to 5(2) (e) to (f)</p> <p>Renumber clause 5(2) (b) (i) and (ii) above to 5(2) (g)</p> <p>Justification:</p> <p>The functions at 5(2) (b) (ii)- (v) should solely be the mandate of the Board.</p> <p>Where it is relevant for the views of the counties to be considered, there is already representation of counties in the Board.</p> | |
| | <p>Stakeholders Submission</p> | <p>Insert clause 5(2) (g) to read</p> <p>“The Board shall promote Kenyan tea and facilitate access to new markets”</p> <p>Insert clause 5(2) (h) to read:</p> <p>“Ensure the efficient utilization of available</p> | <p>The Committee agreed to the proposed amendment to clause 5(2) (g).</p> <p>The Committee rejected the proposed insertion of clause 5(2) (h) but proposed that clause 5(2) (e) (ii) should be amended to specify that the funds are Board’s.</p> <p>The Committee rejected the proposed importation of section 12 of the Crops</p> |

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| | | <p>funds”</p> <p>Import section 12 of the Crops Act and insert as clause 5(2) (1) to read:</p> <p>“The Board may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of scheduled crops—</p> <p>(a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;</p> <p>(b) credit guarantee;</p> <p>(c) affordable farm-inputs including quality seeds, planting materials and market linkage;</p> <p>(d) technical support including research and extension services;</p> <p>(e) infrastructural support including physical infrastructure development, financial and market</p> | <p>Act.</p> |
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| | | <p>information;</p> <p>(f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local</p> <p>Justification:</p> <p>There are several functions of AFA that were required by the Crops Act to be undertaken by the relevant Authority for the benefit of the scheduled crops thereunder which we propose to be undertaken by the Board to enable the tea sector retain similar benefits that were accruing from the Crops Act.</p> | |
| | | <p>Insert clause 24 as 5(2)(i) as a function of the Board to read:</p> <p>“The Board shall carry out market research and disseminate such information to all stakeholders”</p> <p>Justification:</p> <p>There are several functions of AFA that were required by the Crops Act to be undertaken by the relevant</p> | <p>The Committee agrees to the proposed amendment. Clause 24 provides that the Board shall carry out market research and disseminate such information to all stakeholders. Clause 24 should rightly be one of the functions of the Board.</p> |

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| | | <p>Authority for the benefit of the scheduled crops thereunder which we propose to be undertaken by the Board to enable the tea sector retain similar benefits that were accruing from the Crops Act.</p> | |
| | <p>The East African Tea Trade Association</p> | <p>Amend clause 5(1) (c) by deleting “interested parties” and replace it with “tea industry players”</p> <p>Justification:</p> <p>This provision will ensure that all industry players access the resources available for the sector and further equitable development of the sector throughout the tea-growing regions</p> | <p>The Committee rejected the proposed amendment since the use of the term “interested parties” is inclusive and includes all tea industry players.</p> |
| | <p>Stakeholders Submission</p> | <p>Insert clause 5(2) (g) to read</p> <p>“The Board shall promote Kenyan tea and facilitate access to new markets”</p> <p>Insert clause 5(2) (h) to read:</p> <p>“Ensure the efficient utilization of available funds”</p> <p>Import section 12 of the</p> | <p>The Committee agreed to the proposed amendment to clause 5(2) (g).</p> <p>The Committee rejected the proposed insertion of clause 5(2) (h) but proposed that clause 5(2) (e) (ii) should be amended to specify that the funds are Board’s.</p> <p>The Committee rejected the proposed importation of section 12 of the Crops Act.</p> |

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| | | <p>growing areas and representing Kenya Tea Authority Agency (KTDA);</p> <p>(g) two persons of either gender representing the traders</p> | <p>in the repealed Tea Act.</p> <p>The Committee rejected the proposed amendment since traders already have one representative and an increase in the number in the Board will be in contravention of the prescribed 7 to 9 members under the Mwongozo Code of Governance for State Corporations.</p> |
| | Kenya Tea Development Agency (KTDA) | <p>Amend clause 7</p> <p>The Board composition/membership to be amended as follows:</p> <p>(e) to read “three persons, of which two of either gender, representing small-holder tea growers tea from the east and west of the tea growing areas and representing Kenya Tea Authority Agency (KTDA);</p> <p>(g) two persons of either gender representing the traders</p> | <p>The Committee rejected the proposed amendment for the following reasons—</p> <ul style="list-style-type: none"> (i) Representation of the tea growers suffices; (ii) The Bill does not provide for management agents who existed in the repealed Tea Act; (iii) Traders already have one representative and an increase in the number in the Board will be in contravention of the prescribed 7 to 9 members under the Mwongozo Code of Governance for State Corporations. |
| | Rosemary Owino | <p>The representative from the Ministry of Trade under clause 7(1) (c) be replaced with a representative from the National Treasury</p> | <p>The Committee agreed to the proposed amendment.</p> |

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| | | <p>Delete and substitute clause 7(1) (d) with ‘two persons of either gender with knowledge and experience in the tea sector, nominated by the Council of County Governors’</p> <p>Justification:</p> <p>i) A representative from the National Treasury which is a key ministry in funding and management of state corporations is missing in Board of the proposed Tea Board of Kenya;</p> <p>ii) In order to ensure that the Board has necessary mix of skills, the person nominated by the COG should have necessary experience in the tea sector</p> | |
| | <p>Stakeholders Submission</p> | <p>Membership of the Board</p> <p>- A representative from the National Treasury which is a key ministry in the funding and</p> | <p>The Committee agreed to the proposed amendment.</p> |

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| | | <p>management of state corporations is missing in Board of the proposed Tea Board of Kenya</p> <p>- In order to ensure that the board has necessary mix of skills, the persons nominated by the COG should also have some experience in the tea sector</p> <p>Amend clause 7 by adding the following :-</p> <p>7(1)(i) the Principal Secretary responsible for the National Treasury or a representative nominated by the Principal Secretary in writing'</p> <p>Delete and substitute clause 7(1)(d) with 'Two persons of either gender with knowledge and experience in the tea sector, nominated by the Council of County Governors'</p> | |
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| 9 | Rosemary Owino | <p>Add the following clauses:</p> <p>(9h) otherwise fails to comply with the requirements of Chapter six of the Constitution;</p> <p>(9i) is convicted of an offence involving dishonesty or fraud.</p> <p>Justification:</p> <p>The Bill omits the requirements of chapter six of the Constitution</p> | <p>The Committee agreed to the proposed amendment to insert a new paragraph (h) but rejected the proposed insertion of the new paragraph (i) because paragraph (d) provides for the ground of vacation of office of conviction of a criminal offence and being sentenced to a term of imprisonment of not less than six months. This ground suffices and is broader unlike the restrictive one which is proposed.</p> |
| | Stakeholders Submission | <p>Vacation of office</p> <p>The Bill omits the requirements of Chapter 6 of the constitution</p> <p>Amend clause 9 of the bill by adding the following:-</p> <p>- (9h) 'otherwise fails to comply with the requirements of Chapter Six of the Constitution;</p> <p>(9i) 'Is convicted of an offence involving dishonesty or fraud'</p> | <p>The Committee agreed to the proposed amendment to insert a new paragraph (h) but rejected the proposed insertion of the new paragraph (i) because paragraph (d) provides for the ground of vacation of office of conviction of a criminal offence and being sentenced to a term of imprisonment of not less than six months. This ground suffices and is broader unlike the restrictive one which is proposed.</p> |
| 10 | Rosemary Owino | <p>Add the following under clause 10(2)</p> <p>(f) arbitrate in any dispute related to the tea industry referred to it;</p> <p>(g) promote and advise on strategies for value addition</p> | <p>Although the Committee noted that the stakeholder had referred to clause 10(2) instead of clause 5(2), it party agreed and partly rejected the proposed amendment.</p> <p>The Committee agreed to the proposed three additional functions as follows—</p> <p>(i) Advise the national government</p> |

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| | | <p>and product diversification</p> <p>(h) establish and enforce standards on production, transportation, packaging, blending, storage, preservation of tea and tea products;</p> <p>(i) for purposes of planning, enhancing harmony and equity in the sector-</p> <p>(i) advise the national government on levies, fees and import or export duties on tea;</p> <p>(ii) advise the county governments on agricultural cess and fees;</p> <p>(j) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of government.</p> <p>Amend clause 10(2) (b) by deleting subclauses (iv) and (v) and inserting a new clause 10(2) (j) as follows—</p> <p>“License tea brokers, auction organizers, management agents, packers and</p> | <p>on levies, fees and import or export duties on tea;</p> <p>(ii) Advise the county governments on agricultural cess and fees ;</p> <p>The Committee rejected the proposed amendments to license tea brokers, auction organizers, management agents, packers and warehousemen for the following reasons—</p> <p>(i) Auction organizers, management agents, packers and warehousemen, though having been in the repealed Tea Act, are not provided for in the Bill;</p> <p>(ii) The Bill provides for the licensing of tea brokers;</p> <p>(iii)It will necessitate subsequent amendments to the Bill to provide for the registration of the buyer, exporter, importer, broker and warehouseman.</p> |
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| | | <p>warehousemen”</p> <p>Justification:</p> <p>The amendment has omitted some critical functions of the Board like arbitration, value addition, enforcement of standards, regulation of some critical market players at the export point, promotion and market access of tea</p> | |
| 13(3) | Stakeholders Submission | <p>Qualification of the chief Executive Officer</p> <p>The Bill has omitted some of the qualifications prescribed under the Mwongozo Code of governance for state corporations, 2015 from the requirements to be met by the Chief Executive Officer</p> <p>Add the following clauses:-</p> <p>(3c) Meet the requirements of Chapter Six of the Constitution</p> | The Committee agreed to the proposed amendment. |
| 14 | Rosemary Owino | <p>Amend clause 14(3) as follows—</p> <p>(3c) meet the requirements of chapter six of the Constitution;</p> <p>(3d) meet the requirements of the fit and proper test.</p> | The Committee noted that the stakeholder meant to refer to clause 13(3) of the Bill. The Committee agreed to the proposed amendment to insert paragraph (c) but rejected the proposed insertion of paragraph (d) since it is not clear what the fit and proper test means. |

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| 23 | Rosemary Owino | <p>Amend clause 23(4) by deleting “determined by the Cabinet Secretary in consultations with the Authority” and replacing it with “the percentage of the application of the monies under subsection 3 shall be as follows—</p> <p>(a) carry out the functions and operations of the Board- 70%;</p> <p>(b) tea research activities and programmes- 30%</p> <p>Justification:</p> <p>Under clause 23(4), the word “Authority” has not been deleted and replaced with “Board”</p> | <p>The Committee rejected the proposed amendment since it did not refer to a correct clause in the Bill and after perusal there was no other provision to which the amendment could be applicable to.</p> |
| | Stakeholders Submission | <p>Form of Licence</p> <p>A licence is one of the key tools that is used for enforcing regulations and standards by the regulator as well as ensuring a level playing field and law and order. The proposed period of 3 years for renewal of licenses will make enforcement of regulations, local and international standards more difficult and ineffective. The period of validity of licenses should</p> | <p>The Committee rejected the proposed amendment.</p> |

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| | | <p>be one year.</p> <p>Clause 23 be amended by deleting the words 'upon the expiry of three years' and substituting them with 'annually'</p> | |
| 24 | Rosemary Owino | <p>Amend clause 24 by deleting and substituting clause 24(2) with</p> <p>"The Board shall, within a period of three months after the end of each financial year, submit to the Cabinet Secretary a report of the operations of the Board during such year, and annual financial statements and such other statements of accounts as the Cabinet Secretary shall require</p> <p>Delete and substitute the words "balance sheet" in clause 24(2) with "financial"</p> <p>Justification:</p> <p>-The period of preparation and presentation of financial statements is prescribed in the PFM Act 2012 and PFM Regulations 2015 and cannot be varied in the proposed Tea Act</p> | <p>The Committee agreed to the proposed amendment but noted that the amendment incorrectly referred to clause 24 instead of clause 28 of the Bill.</p> |

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| | | <p>-The Constitution requires the Auditor-General to prepare the Auditor-General's report 6 months after the end of the financial year and it is therefore not feasible to present it together with financial statements after 3 months</p> <p>-Financial statement are prepared in accordance with the International Public Sector Accounting Standards (IPSAS) and the term "Balance Sheet" is no longer used</p> | |
| | Stakeholders Submission | <p>Clause 24 should be moved to the section on the functions</p> <p>Amend clause 24 by deleting it in its entirety</p> <p>Amend clause 5 (2) by inserting a new sub-clause (k) as follows:</p> <p><i>"Carry out market research and analysis and disseminate such information to tea industry stakeholders";</i></p> | The Committee agreed to the proposed amendment. |
| 25 | Rosemary Owino | Delete and substitute the words "Balance Sheet and" in clause 25(1a) with "statement of Financial Position" | The Committee noted that the stakeholder referred to a wrong clause in the amendment but agreed to the substance of the amendment of replacement of the term "balance sheet" |

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| | | <p>Justification:</p> <p>Financial statement are prepared in accordance with the International Public Sector Accounting Standards (IPSAS) and the term “Balance Sheet” is no longer used.</p> <p>Delete and substitute the words “Authority” with “Board” in clause 25(1), (1a), (2), (3) and (4)</p> <p>Justification:</p> <p>The word “Authority” in some clause has not been deleted and replaced with “Board”</p> | with “financial statement”. |
| | Stakeholders Submission | <p>The clause has omitted monies appropriated by parliament for the purposes of the Board</p> <p>Add clause 25(e) ‘such monies as may be appropriated by Parliament for the purposes of the Board’</p> | The Committee agreed to the proposed amendment but recommends deletion of “Parliament” and substituting therefor “National Assembly”. |
| 26 | Rosemary Owino | <p>Delete the whole of clause 26</p> <p>Justification:</p> <p>Clause 26 is repeated</p> | The Committee rejected the proposed amendment since the clause is not repeated. |

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| 28 | Rosemary Owino | <p>Delete and substitute the words “Authority” with “Board” in clause 28(1), & (2)</p> <p>Justification:</p> <p>The word “Authority” has not been deleted and replaced with “Board”</p> | The Committee rejected the proposed amendment since the word “Authority” has not been used in the clause. |
| | Stakeholders Submission | <p>Annual Report and Publication</p> <p>-The period for preparation and presentation of financial statements is prescribed in section 101(4) the Public Finance Management (PFM) Act 2012 and PFM Regulations 2015 and cannot be varied in the proposed Tea Act.</p> <p>-Article 229(4) of the Constitution of Kenya requires the Auditor-General to audit financial statements and give a report 6 months after the end of the financial year and it is therefore not feasible to present it together with financial statements after 3 months.</p> <p>-Financial statement are prepared in accordance with the International Public Sector Accounting</p> | The Committee agreed to the proposed amendment. |

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| | | <p>Standards (IPSAS Accrual) and the term 'Balance Sheet' is no longer used</p> <p>-Delete and substitute clause 28(1) with 'The Board shall, within a period of three months after the end of each financial year, submit to the Cabinet Secretary a report of the operations of the Board during such year, and annual financial statements and such other statements of accounts as the Cabinet Secretary shall require.</p> <p>-Delete and substitute the words 'Balance sheet and' in clause 28(2) with 'Financial'</p> <p>Delete and substitute the words 'Balance sheet and' in clause 28(3) with 'Financial'</p> | |
| 30 | Kenya Tea Growers' Association | <p>Delete "shall" and replace with "may"</p> <p>Delete the time limit of "thirty days" and rephrase the section to read</p> <p>"A party who is not satisfied with the decision of the Board may seek alternative Dispute</p> | The Committee recommends that clause 30(1) of the Bill be deleted. |

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| | | <p>enhancing the fine to a maximum of Kshs. 500,000 and imprisonment to a term not exceeding one (1) year to give the court wider discretion while sentencing depending on the gravity of the offence committed.</p> <p>-These provisions are currently provided for in Section 37 of the Crops Act, 2013.</p> <p>Delete and substitute clause 32(1) with 'A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both.</p> | |
| 33 | Stakeholders Submission | <p>Regulations</p> <p>-The clause has omitted some critical aspects of regulations which are important for the effective regulation of the tea industry.</p> <p>-These provisions are</p> | The Committee agreed to the proposed amendment. |

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| | | <p>currently provided for under Section 40 of the Crops Act, 2013 and should be included in the bill as they are critical for the tea industry. Successful implementation of the Tea Act once enacted will be enhanced by providing support through complimentary subsidiary legislation.</p> <p>-Add clause 33(2)(f) Rules for ensuring tea safety including transportation, processing and market standards of tea</p> <p>-33(2)(g) submission of returns and reports by the holders of licences and registrations under this Act;</p> <p>-33(2)(h) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;</p> <p>-33(2)(i) Regulations for licensing and registration of tea dealers;</p> <p>-33(2)(j) rules and regulations of any organization dealing with tea and tea products, made by any such organization to</p> | |
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| | | <p>be in conformity with the provisions of this Act;</p> <p>-33(2)(k) standards, and the manner of grading and classification of made tea products under this Act;</p> | |
| PART V | Stakeholders Submission | <p>Miscellaneous provisions</p> <p>The Bill has not provided for provisions for expeditious resolution of dispute in the tea industry especially for the tea growers who may not have resources to go court.</p> <p>Provisions for expeditious resolution of disputes between growers and other players is currently provided for under Section 41 of Crops Act, 2013.</p> <p>Add clause 34 A as follows:-</p> <p>‘For the purposes of ensuring expeditious resolution of disputes arising between growers and tea dealers, the Cabinet Secretary shall make rules to provide the procedure for mediation of such disputes.’</p> | |
| | PART VI: TRANSITIONAL PROVISIONS. | | |
| 39 | Stakeholders Submission | <p>Staff</p> <p>-Clauses 39; Bill do not</p> | The Committee rejected the proposed amendment for the following reasons: |

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| | | <p>properly transit all the staff of the former Tea Board of Kenya to the new Board as it refers to persons who were staff of the Agriculture and Food Authority dealing with the teas sector shall on the appointed day become members of staff of the Board.</p> <p>The clause should therefore be amended to include all the staff of the former Tea Board of Kenya who became staff of AFA upon the commencement of Crops Act and AFA Act including those currently offering common services as AFA HQ instead of persons dealing with the tea sector.</p> <p>The staff of the former TBK who were previously undertaking the common support functions of Finance and Administration, Audit, Legal, Human Resource, Public Relations, ICT and Procurement are currently lending the same support as interim staff at AFA headquarters. This staff should therefore be transited back to the new Board because these</p> | <p>(i) Section 11 of the First Schedule of the Agriculture and Food Authority Act (No. 13 of 2013) provided for transitional provisions of staff who were in the defunct Tea Board of Kenya under the repealed Tea Act;</p> <p>(ii) The Tea Board of Kenya is non-existent and the Bill cannot purport to transit them into the Board established in the Bill.</p> |
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| | <p>services will be required in the new establishment.</p> <p>Under the current set up of AFA the directorates including Tea Directorate majorly consists of only the technical functions with all common support services derived from AFA headquarters.</p> <p>In order to provide for any staff who may not wish to re-join the new establishment; Insert a new clause under clause 39 to provide for the same.</p> <p><i>-Amend clause 39 and substituting with the following: -</i></p> <p><i>“A person who, immediately before commencement of the Crops Act 2013 and AFA Act was an officer or member of staff of the former Tea Board of Kenya, not being then under notice of dismissal or resignation or retirement, shall on the appointed day and subject to subsection (2), become an officer or member of staff of the Board on current or improved terms and</i></p> | |
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| | | <p><i>conditions of service;</i></p> <p>Insert and additional clause 39(2) as follows;</p> <p><i>A person who does not intend to become an officer or member of staff of the Board shall within a period of fourteen days from the appointed day; give notice in writing to the Board and such person shall be deemed not to have become such an officer or member of staff under subsection (1) but to have retired from the service of the former board on the day preceding the appointed day.</i></p> | |
| 35A | Stakeholders Submission | <p>- There is no provision in the Bill for transiting the funds, assets, other property, rights and duties of the former Tea Board of Kenya to the new Board. The same became vested, imposed and enforceable on AFA upon the commencement Crops Act and AFA Act. The Bill should be amended to include a clause should be amended to transits the funds, assets, and other property, rights, powers, liabilities and duties with</p> | |

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| | | <p>respect to tea which are currently vested in, imposed on or enforceable against AFA to the new Board on the appointed day.</p> <p>-Further, funds, assets, and other property acquired since the commencement of Crops Act and AFA Act relating to tea and vested on AFA need to be also transited to the new Board.</p> <p>-Insert a new clause 35 A (1) as follows;</p> <p><i>'All funds, assets, and other property, moveable and immovable which immediately before the commencement of the Crops Act and Agriculture and Food Authority Act were vested in the former Tea Board of Kenya shall, by virtue of this paragraph, vest in the Board'</i></p> <p>-Insert a new clause 35A (2) as follows;</p> <p><i>'All funds, assets, and other property, moveable and immovable which have been acquired after commencement of the Crops Act and Agriculture and</i></p> | |
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| | | <i>Food Authority Act relating to tea and were vested on Agriculture and Food Authority shall, by virtue of this paragraph, vest in the Board'</i> | |
| SCHEDULES | Stakeholders Submission | <p><u>Conduct of the business of the Board</u></p> <p>The quorum for the conduct of the business of the Board had been set as 5 members in the original Bill. Given that the composition and the number of the board members has now changed, the quorum should be set as 2/3 of the board members in line with the best practice</p> <p><i>Amend clause 1(5) under the schedule by deleting the word 'five' before the word 'members' and replacing it with 'two thirds of the'</i></p> | The Committee rejected the proposed amendment. |

2.2 COMMITTEE OBSERVATIONS

68. The Crops Act (No. 16 of 2013) repealed the Tea Act (Cap. 343) in its Second Schedule whereas the First Schedule of the Agriculture and Food Authority Act (No. 13 of 2013) abolished the defunct Tea Board of Kenya. In its place and in place of other crops is the Agriculture and Food Authority Act (No. 13 of 2013) which establishes the Agriculture and Food Authority.
69. Although the establishment of the Agriculture and Food Authority had been hoped to centrally address the challenges of farmers of various crops, this has not been the case and farmers have pointed out to challenges they were experiencing in the growth and development of various crops that had previously been separately regulated.
70. The terms “managing factory” and “processor” in clause 2 of the Bill bring ambiguity in the Bill and there needs to be clarity both on their definition and application in the Bill.
71. The definition of the term “broker” in clause 2 of the Bill does not incorporate negotiation of the purchase of sale of tea between tea growers and processors on one hand and buyers on the other hand.
72. The functions of the Board in clause 5(2) (b) (iii), (iv) and (v) of the Bill on licensing tea dealers and processors, managing factories and their agents, and tea brokers fall within the sole ambit of the Board.
73. The Board needs to be provided with additional functions under clause 5 of the Bill as follows—
- (a) to promote Kenyan tea and facilitate access to new markets;
 - (b) to advise the national government on levies, fees and import or export duties on tea;
 - (c) to advise the county governments on agricultural cess and fees;
 - (d) to carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments.
74. The membership of the Board under clause 7 of the Bill should be amended—
- (a) to replace the Principal Secretary responsible for trade with the Principal Secretary responsible for National Treasury;
 - (b) to specify that the two persons to be nominated by the Council of County Governors under clause 7(1) (d) shall have knowledge and experience in the tea sector.
75. Clause 9 of the Bill which provides for vacation of office by a member of the Board should be amended to insert failure to comply with the requirements of Chapter six of the Constitution as an additional ground.

76. The qualification of the Chief Executive Officer in clause 13 should be enhanced from a relevant degree to a degree in Agriculture and a Master's Degree in agriculture, business management or finance.
77. Clause 14 of the Bill does not provide for failure to meet the requirements of Chapter six of the Constitution as one of the grounds for vacancy for a chief executive officer.
78. Clause 20(1) of the Bill should be amended to specify that the county government shall implement the national government policies on markets within the county since this is not made clear in the Bill.
79. Clause 21(1) of the Bill needs to provide for the processors where tea growers deliver green leaf or purple leaf instead of the current provision where every tea grower registers with a processor without making it specific.
80. Clause 24 of the Bill which provides for the Board's function of carrying out market research and analysis and disseminating information on its findings to all stakeholders should be deleted and provided for under one of the functions of the Board in clause 5 of the Bill.
81. Clause 25 of the Bill does not provide as one of the sources of funds for the Board monies as may be appropriated by the National Assembly for the purposes of the Board.
82. Financial statements are prepared in accordance with the International Public Sector Accounting Standards (IPSAS) and the term "Balance Sheet" is no longer used; therefore, there was a need to amend provisions in Part IV of the Bill providing for financial provisions to correct this.
83. Clause 30(1) of the Bill provides that the Board shall arbitrate disputes arising between any parties under the Act; however, this compulsory arbitration may be challenged by the parties in dispute hence should be deleted.
84. Clause 32 of the Bill which provides for penalties proposes a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the tea or tea products or to imprisonment for a term not exceeding six months, or to both. These penalties are not punitive and they need to be enhanced.

85. The matters which could be provided for under regulations as provided in clause 33(2) needs to be expanded to include areas that have not been provided for.

5.0 COMMITTEE RECOMMENDATIONS

86. The Committee having considered the Tea Bill, 2019 therefore recommends as follows:

1. Clause 2 of the Bill should be amended by—
 - (a) deleting the definition of the term “managing factory”;
 - (b) deleting the definition of the term “broker” and substituting therefor the following new definition—

“broker” means a person who negotiates the purchase or sale of tea between tea growers and processors and buyers;

Justification:

- (i) The terms “managing factory” and “processor” in clause 2 of the Bill bring ambiguity in the Bill and there needs to be clarity both on their definition and application in the Bill;
 - (ii) The definition of the term “broker” in clause 2 of the Bill does not incorporate negotiation of the purchase or sale of tea between tea growers and processors on one hand and buyers on the other hand.
2. Clause 5 of the Bill should be amended in subclause (2)—
 - (i) in paragraph (b) by deleting subparagraphs (iii), (iv) and (v);
 - (ii) by inserting the following new paragraphs immediately after paragraph (b)—

“(ba) license tea dealers and processors;

(bb) license processors and their agents;

(bc) license tea brokers.”
 - (iii) by deleting paragraph (e) and substituting therefor the following new paragraphs—

“(e) carry out market research and analysis and disseminating information on its findings to all stakeholders;

(f) promote Kenyan tea and facilitate access to new markets;

(g) advises the national government on levies, fees and import or export duties on tea;

(h) advises the county governments on agricultural cess and fees;

(i) ensures the efficient utilization of available Board’s funds;

(i) carries out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments.”

Justification:

The amendments provide additional functions to the Board which enhance the role of the Board and consolidates the function of the Board which appeared elsewhere in the Bill.

3. Clause 7 of the Bill should be amended in subclause (1)—

(a) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) two persons of either gender with knowledge and experience in the tea sector nominated by the Council of County Governors;”

Justification:

- (i) A representative from the National Treasury which is a key ministry in funding and management of state corporations is missing in the proposed Tea Board of Kenya;
- (ii) In order to ensure that the Board has necessary mix of skills, the person nominated by the Council of County Governors should have necessary experience in the tea sector.

4. Clause 9 of the Bill should be amended by inserting the following new paragraph immediately after paragraph (a)—

“(ab) fails to satisfy the requirements of Chapter six of the Constitution;”

Justification:

This is in line with the Constitutional requirements of Chapter six of the Constitution.

5. Clause 13 of the Bill should be amended by deleting subclause (3) and substituting therefor the following new subclause—

“(3) A person is not qualified for appointment under subsection (1) unless the person—

- (a) holds a Bachelor’s degree in agriculture;
- (b) holds a Master’s degree in agriculture, business management or finance; and
- (c) has at least five years’ experience in a position of management.”

Justification:

The amendments seek to specify the degrees that a chief executive officer should have attained in order to effectively manage the day to day operations of the Board.

6. Clause 14 of the Bill should be amended by inserting the following new paragraph immediately after paragraph (a)—

“(ab) fails to satisfy the requirements of Chapter six of the Constitution;”

Justification:

This is in line with the Constitutional requirements of Chapter six of the Constitution.

7. Clause 16 of the Bill should be amended in subclause (4) by deleting the words “the annual returns and any other” appearing in paragraph (e).

Justification:

The Board is a State Corporation. Therefore, it does not file annual returns.

8. Clause 20 of the Bill should be amended in subclause (1) by inserting the words “within the county” immediately after the word “markets” in paragraph (c).

Justification:

To provide clarity on the role of the counties as per the Fourth Schedule of the Constitution.

9. Clause 21 of the Bill should be amended in subclause (1) by inserting the words “where tea growers deliver green leaf or purple leaf” at the end of the subclause.

Justification:

The amendment seeks to provide for registration of tea growers in areas where they deliver green leaf or purple leaf. This will ensure that there is proper distribution and effective regulation of the sector.

10. Clause 23 of the Bill should be amended by deleting the word “shall” appearing immediately after the words “by the Board, and” and substituting therefor the word “may”.

Justification:

Renewal of licences is a discretionary exercise subject to the provisions of the Act and any conditions upon it.

11. Clause 25 of the Bill should be amended by—

- (a) renumbering the existing paragraphs as (b), (c), (d), and (e);
- (b) inserting the following paragraph—

“(a) such monies as may be appropriated by the National Assembly;”

Justification:

Monies as appropriated by the National Assembly had been omitted as one of the sources of funds for the Board.

12. Clause 27 of the Bill is amended in clause (1) by deleting the term “balance sheet” in paragraph (a) and substituting therefor the word “statement”.

Justification:

Financial statements are prepared in accordance with the International Public Sector Accounting Standards (IPSAS) and the term “Balance Sheet” is no longer used.

13. Clause 28 of the Bill is amended—

- (a) in subclause (1) by deleting the words “balance sheet” appearing immediately after the words “and the annual” and substituting therefor the word “statement”;
- (b) in subclause (2) by deleting the words “balance sheet” appearing immediately after the words “publish the report,” and substituting therefor the word “statement”;
- (c) in subclause (3) by deleting the words “balance sheet and” appearing immediately after the words “submit to Parliament the reports,”.

Justification:

Financial statements are prepared in accordance with the International Public Sector Accounting Standards (IPSAS) and the term “Balance Sheet” is no longer used.

14. Clause 30 of the Bill should be amended by—

- (i) deleting subclause (1);
- (ii) renumbering the existing subclause .

Justification:

Compulsory arbitration may be challenged by the parties in dispute hence should be deleted.

15. The Bill should be amended by inserting the following new clause immediately after clause 31—

Offences
penalties.

and 31A. A person who—

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Board in exercise of the powers or the performance of the functions of the Board under this Act;
- (b) willfully obstructs a member of the Board or an employee or agent of the Board in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Board in exercise of the powers or the performance of the functions of the Board under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years or to both.

Justification:

The Bill had not made provision for a number of important offences which would have the effect of enabling the Board run effectively.

16. Clause 32 of the Bill should be amended by deleting subclause (1) and substituting therefor the following new subclause—

“(1) A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both.”

Justification:

Clause 32 of the Bill which provides for penalties proposes a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the tea or tea products or to imprisonment for a term not exceeding six months, or to both. These penalties are not punitive and they need to be enhanced.

17. Clause 33 of the Bill should be amended in subclause (2) by inserting the following new paragraphs immediately after paragraph (e)—

- “(f) tea safety including transportation, processing and market standards of tea;
- (g) submission of returns and reports by the holders of licences and registrations under this Act;
- (h) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;
- (i) regulations for licensing and registration of tea brokers;
- (j) standards, and the manner of grading and classification of made tea products under this Act;”

Justification:

The amendment seeks to expand the areas that the regulations would cover in order to effectively regulate the tea industry.

ANNEX 1

MINUTES

MINUTES OF THE 45TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK HELD ON MONDAY 19TH NOVEMBER 2019 IN THE CONFERENCE ROOM, 3RD FLOOR, ENGLISHPOINT MARINA AT 9.30 AM

PRESENT

1. Hon. Emmanuel Wangwe, MP. Vice- Chairperson
2. Hon. Dr. Daniel Kamuren Tuitoek, MP
3. Hon. Dr. John Kanyuithia Mutunga, MP
4. Hon. Justus Makokha Murunga, MP
5. Hon. Adan Haji Yussuf, MP
6. Hon. John Paul Mwirigi, MP.
7. Hon. Yegon Brighton Leonard, MP
8. Hon. Fred Ouda, MP.
9. Hon. Joyce Kamene, MP.

APOLOGIES

1. Hon. Adan Haji Ali, MP. Chairperson
2. Hon. Ferdinard Wanyonyi, MP.
3. Hon. Simba Arati, MP.
4. Hon. Francis Munyua Waititu, MP.
5. Hon. Silas Kipkoech Tiren, MP
6. Hon. Janet Jepkemboi Sitienei, MP
7. Hon. Gabriel Kago Mukuha, MP
8. Hon. Silvanus Osoro Onyiego, MP
9. Hon. Maison Leshoomo, MP.
10. Hon. Florence Mutua, MP.

COMMITTEE SECRETARIAT

1. Mr. Ahmad Kadhi - Clerk Assistant 1
2. Mr. Salem Lorot - Legal Counsel
3. Mr. John Ng'ang'a - Audio Officer
4. Mr. Alex Mutuku - Sergeant At- Arms
5. Mr. Moses Musembi - Office Assistant
6. Mr. Sakana Ole Saoli - Intern

MIN.NO. DC/A&L/253/2019: PRELIMINARIES

The Chairperson called the meeting to order at Fourty minutes past Nine O'clock. Proceedings began with prayers and introductions.

**MIN.NO. DC/A&L/254/2019: CONSIDERATION OF THE REPORT ON
THE TEA BILL, SENATE BILL 2018**

The Members present deliberated on the report and thereafter made the following resolutions;

1. The Crops Act (No. 16 of 2013) repealed the Tea Act (Cap. 343) in its Second Schedule whereas the First Schedule of the Agriculture and Food Authority Act (No. 13 of 2013) abolished the defunct Tea Board of Kenya. In its place and in place of other crops is the Agriculture and Food Authority Act (No. 13 of 2013) which establishes the Agriculture and Food Authority.
2. Although the establishment of the Agriculture and Food Authority had been hoped to centrally address the challenges of farmers of various crops, this has not been the case and farmers have pointed out to challenges they were experiencing in the growth and development of various crops that had previously been separately regulated.
3. The terms “managing factory” and “processor” in clause 2 of the Bill bring ambiguity in the Bill and there needs to be clarity both on their definition and application in the Bill.
4. The definition of the term “broker” in clause 2 of the Bill does not incorporate negotiation of the purchase of sale of tea between tea growers and processors on one hand and buyers on the other hand.
5. The functions of the Board in clause 5(2) (b) (iii), (iv) and (v) of the Bill on licensing tea dealers and processors, managing factories and their agents, and tea brokers fall within the sole ambit of the Board.
6. The Board needs to be provided with additional functions under clause 5 of the Bill as follows—
 - (a) to promote Kenyan tea and facilitate access to new markets;
 - (b) to advise the national government on levies, fees and import or export duties on tea;
 - (c) to advise the county governments on agricultural cess and fees;
 - (d) to carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments.
7. The membership of the Board under clause 7 of the Bill should be amended—

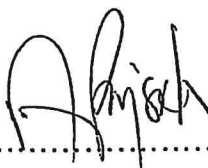
- (a) to replace the Principal Secretary responsible for trade with the Principal Secretary responsible for National Treasury;
 - (b) to specify that the two persons to be nominated by the Council of County Governors under clause 7(1) (d) shall have knowledge and experience in the tea sector.
8. Clause 9 of the Bill which provides for vacation of office by a member of the Board should be amended to insert failure to comply with the requirements of Chapter six of the Constitution as an additional ground.
 9. The qualification of the Chief Executive Officer in clause 13 should be enhanced from a relevant degree to a degree in Agriculture and a Master's Degree in agriculture, business management or finance.
 10. Clause 14 of the Bill does not provide for failure to meet the requirements of Chapter six of the Constitution as one of the grounds for vacancy for a chief executive officer.
 11. Clause 20(1) of the Bill should be amended to specify that the county government shall implement the national government policies on markets within the county since this is not made clear in the Bill.
 12. Clause 21(1) of the Bill needs to provide for the processors where tea growers deliver green leaf or purple leaf instead of the current provision where every tea grower registers with a processor without making it specific.
 13. Clause 24 of the Bill which provides for the Board's function of carrying out market research and analysis and disseminating information on its findings to all stakeholders should be deleted and provided for under one of the functions of the Board in clause 5 of the Bill.
 14. Clause 25 of the Bill does not provide as one of the sources of funds for the Board monies as may be appropriated by the National Assembly for the purposes of the Board.

15. Financial statements are prepared in accordance with the International Public Sector Accounting Standards (IPSAS) and the term "Balance Sheet" is no longer used; therefore, there was a need to amend provisions in Part IV of the Bill providing for financial provisions to correct this.
16. Clause 30(1) of the Bill provides that the Board shall arbitrate disputes arising between any parties under the Act; however, this compulsory arbitration may be challenged by the parties in dispute hence should be deleted.
17. Clause 32 of the Bill which provides for penalties proposes a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the tea or tea products or to imprisonment for a term not exceeding six months, or to both. These penalties are not punitive and they need to be enhanced.
18. The matters which could be provided for under regulations as provided in clause 33(2) needs to be expanded to include areas that have not been provided for.

The Committee gave instructions to the Legal Counsel to draft the necessary amendments for its consideration.

MIN.NO. DC/A&L/255/2019: ADJOURNEMENT

The Vice - Chairperson adjourned the meeting at fifty minutes past six O' Clock to Monday 18th November, 2019 at 2.30 am.

Signed.....

**HON. EMMANUEL WANGWE, MP
(VICE – CHAIRPERSON)**

Date.....26/11/2019



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

MEMBERS ATTENDANCE SCHEDULE

DATE: 26/11/2019 START: END:

VENUE:

AGENDA: AGRI-YOUTH SE REPORT - (A.A. KALLA)

| NAME | TITLE | SIGNATURE |
|-------------------------------------|------------------|--------------------|
| Hon. Adam Haji Ali, MP. | CHAIRPERSON | |
| Hon. Emmanuel Wangwe, MP. | VICE-CHAIRPERSON | <i>[Signature]</i> |
| Hon. Maïson Lechoomo, MP. | | |
| Hon. Ferdinand Wanyonyi, MP. | Member | <i>[Signature]</i> |
| Hon. Florence Mputaa, MP. | | |
| Hon. Simba Arari, MP. | | |
| Hon. Francis Muriyua Waititu, MP. | | |
| Hon. Silas Kipkoech Turen, MP. | Member | |
| Hon. John Paul Mwirigi, MP. | Member | <i>[Signature]</i> |
| Hon. Adam Haji Yussuf, MP. | | |
| Hon. Janet Jepkenési Siringel, MP. | | |
| Hon. Gabriel Kago Mwakulia, MP. | | |
| Hon. Daniel Kamuren Tuitok, MP. | Member | <i>[Signature]</i> |
| Hon. Fred Oucha, MP. | Member | <i>[Signature]</i> |
| Hon. Joyce Kunene, MP. | Member | <i>[Signature]</i> |
| Hon. Yegen Brighten Leonard, MP. | Member | <i>[Signature]</i> |
| Hon. Dr. John Nanyutha Mutunga, MP. | Member | <i>[Signature]</i> |
| Hon. Silvanus Osono Onyego, MP. | Member | <i>[Signature]</i> |

ANNEX 2

ADOPTION LIST