

REPUBLIC OF KENYA



TWELFTH PARLIAMENT

FIFTH SESSION

THE SENATE

THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND
FISHERIES

REPORT ON THE CONSIDERATION OF THE COFFEE BILL,

(SENATE BILLS No. 22 of 2020)

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| COMMITTEE | Agriculture |
| CLERK AT THE TABLE | I. Mwangi |

Clerk's Chambers
Parliament Buildings,
NAIROBI

JULY, 2021

Approved
[Signature]
21/7/21

Forwarded & recommended
for processing for approval
19/07/2021
By DC-EG.

RT. Hon Speaker
You may approve for
tabling.
[Signature]
19/07/21

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ABBREVIATIONS

| | | |
|--------|---|--|
| AFA | - | Agriculture and Food Authority |
| CCMMAA | - | Commercial Coffee Millers and Marketing Agents Association |
| CECM | - | County Executive Committee Member |
| CEO | - | Chief Executive Officer |
| CMA | - | Capital Markets Authority |
| COG | - | Council of Governors |
| CS | - | Cabinet Secretary |
| CSRISC | - | Coffee Subsector Reforms Implementation Standing Committee |
| KALRO | - | Kenya Agricultural and Livestock Research Organization |
| KCPA | - | Kenya Coffee Producers Association |
| KCTA | - | Kenya Coffee Traders Association |
| NCCFK | - | National Coffee Cooperative Federation of Kenya |
| NCE | - | Nairobi Coffee Exchange |
| PS | - | Principal Secretary |

PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Senate Standing Committee on Agriculture, Livestock and Fisheries was constituted on Wednesday, 24th June, 2020 during the Fourth Session of the Twelfth (12th) Parliament pursuant to the provisions of standing order 187 (1) of the Standing Orders of the Senate which states:

“Unless otherwise provided by any written law or these Standing Orders, the Senate Business Committee shall, in consultation with Parliamentary Parties, nominate Senators who shall serve on a Select Committee.”

Mandate of the Committee

The Standing Committee on Agriculture, Livestock and Fisheries is mandated under the Second Schedule to the Standing Orders to consider all matters relating to agriculture, irrigation, livestock, fisheries development and veterinary services.

Oversight

In executing its mandate, the Committee oversees the following Government Departments and agencies, namely-

- i. The State Department of Agriculture;
- ii. The State Department of Livestock;
- iii. The State Department for Fisheries; and
- iv. The State Department of Irrigation.

Membership of the Committee

The Committee is comprised of the following members-

- | | |
|-------------------------------------|---------------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - Chairperson |
| 2. Sen. Enoch Wambua, MP | - Vice-Chairperson |
| 3. Sen. Kipchumba Murkomen, EGH, MP | |

4. Sen. (Canon) Naomi Jillo Waqo, MP
5. Sen. (Dr.) Michael Malinga Mbito, MP
6. Sen. (Eng.) Ephraim Maina, EBS, MP

7. Sen. Justice (Rtd.) Madzayo Stewart Mwachiru, MP
8. Sen. Issa Juma Boy, MP

Secretariat of the Committee

The Committee secretariat is comprised of –

- | | |
|----------------------|---------------------------|
| 1. Ms. Carol Kirorei | - Clerk Assistant |
| 2. Ms. Regina Munyao | - Legal Counsel |
| 3. Ms. Njeri Manga | - Media Relations Officer |
| 4. Ms. Mary Nyawira | - Audio Officer |
| 5. Mr. Godana Mamo | - Serjeant-At-Arms |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the consideration of the Coffee Bill, (Senate Bills No. 22 of 2020).

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 213 (6), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the consideration of the Coffee Bill (Senate Bills No. 22 of 2020) for consideration by the House.

Signed.....



.....

Date17/7/2021.....

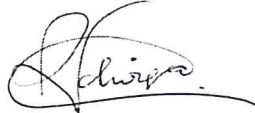


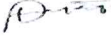

SEN. PETER NJERU NDWIGA, EGH, M.P.

CHAIRPERSON

**THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK &
FISHERIES**

**REPORT ON THE CONSIDERATION OF THE COFFEE BILL, (SENATE
BILLS No. 22 of 2020)**

MEMBERS' ADOPTION LIST

| NO | NAME | SIGNATURE |
|----|--|---|
| 1. | Sen. Njeru Ndwiga, EGH, MP Chairperson |  |
| 2. | Sen. Enoch Wambua, MP Vice-Chairperson |  |
| 3. | Sen. (Canon) Naomi Waqo, MP |  |
| 4. | Sen. Kipchumba Murkomen, EGH, MP |  |
| 5. | Sen. (Dr.) Michael Mbito, MP | |
| 6. | Sen. Issa Juma Boy, MP |  |
| 7. | Sen. Justice (Rtd.) Stewart Madzayo, MP | |
| 8. | Sen. (Eng.) Ephraim Maina, EBS, MP | |

EXECUTIVE SUMMARY

The Coffee Bill, (Senate Bills No. 22 of 2020) sponsored by the Chairperson, Standing Committee on Agriculture, Livestock & Fisheries, Sen. Njeru Ndwiga, EGH, M.P. was read a First Time in the Senate on Tuesday, 11th May, 2021 and thereafter stood committed to the Standing Committee on Agriculture, Livestock and Fisheries.

The object of the Bill is to provide for the development and regulation of the coffee industry in Kenya. The Bill proposes to reorganize the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority (AFA) to the Coffee Board of Kenya. The Bill further seeks to transition the research of coffee currently undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organization (KALRO) to the Coffee Research Institute (CRI).

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Standing Committee on Agriculture, Livestock and Fisheries invited interested members of the public to submit their views on the Bill through advertisements in The Standard and The Daily Nation newspapers on Thursday, 13th May, 2021. The Committee received written submissions from various stakeholders in the coffee sub sector and also held virtual meetings with Senators from coffee growing counties, the Council of Governors, the Coffee Sub Sector Reforms Implementation Standing Committee, coffee farmers, processors and traders to receive their submissions on the Bill.

Chapter One of this report contains an overview of the Bill setting out its salient provisions. Chapter Two of the report documents the submissions received from stakeholders. Chapter Three contains the Committee observations and finally, Chapter Four contains the Committee Recommendations.

1.0. INTRODUCTION

1.1. Overview of the Bill

The object of the Coffee Bill (Senate Bills No. 22 of 2020) is to provide for the development and regulation of the Coffee industry in Kenya. The Bill proposes to reorganize the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority (AFA) to the Coffee Board of Kenya. The Bill further seeks to transition the research of coffee currently undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organization (KALRO) to the Coffee Research Institute (CRI).

Part II-The Coffee Board of Kenya

Clause 3 of the Bill establishes the Coffee Board of Kenya and provides that the Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Clause 4 of the Bill states that the headquarters of the Board shall be in Nairobi City County and that it may establish such branches in Kenya as it may consider necessary for the efficient performance of its functions.

Functions of the Board

Clause 5 provides for the functions of the Board to-

- (a) enter into contracts;

- (b) manage, control and administer the assets of the Board;
- (c) receive gifts, grants, donations or endowments made to the Board and make disbursement therefrom in accordance with the provisions of this Act;
- (d) subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Board's funds not immediately required for the purposes of this Act, as it may determine; and
- (e) operate a bank account into which all monies received by the Board shall be paid in the first instance and out of which all payments made by the Board shall be made.

The Board of Directors

Clause 6 of the Bill makes provision for the composition of the board of directors as follows-

- (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 for the time being responsible for trade or a representative nominated by the Principal Secretary in writing;
- (d) two persons of the opposite gender, representing smallholder coffee growers nominated by the Council of County Governors;
- (e) two persons of the opposite gender representing plantation coffee growers nominated by the Council of County Governors;
- (f) one person nominated by the Institute;
- (g) two persons representing an association of farmers' coffee nominated by the Cabinet Secretary; and
- (h) a chief executive officer appointed under section 14 who shall be an ex-officio member of the Board.

Clause 7 provides for the qualifications for appointment as a member of the board of directors as follows-

- (a) holds a degree from a university recognized in Kenya;
- (b) has three years' experience in the coffee sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

The board members are to serve for a term of three years' renewable for one further term.

Functions of the Board

Clause 10 provides for the functions of the Board to include-

- (a) regulate and promote the development of the coffee industry;
- (b) consider applications for the issuance of permits and licences under the Second Schedule to this Act;
- (c) register coffee dealers;
- (d) make recommendations to the Cabinet Secretary for, and oversee the implementation of strategies, plans and policy for the coffee sector;
- (e) collect, collate and maintain a data base and disseminate information on the coffee industry;
- (f) conduct local and international coffee market intelligence and promotional activities including the application of the Kenya Coffee Mark of Origin;
- (g) establish linkages with various government agencies, the Institute and other research institutions for the development of the coffee industry;
- (h) put in place a framework for the capacity building and interaction of various players in the coffee industry;
- (i) promote the development of regional appellations for Kenyan coffee;

- (j) develop and enforce the coffee industry standards and industry code of practice in collaboration with the Kenya Bureau of Standards;
- (k) maintain and cause to be published an up to date register of coffee dealers, coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in the country; and
- (l) coordinate capacity building activities for players in the coffee value chain.

The Bill further provides that the board of directors shall, in the performance of their functions under this Act, consult and collaborate with the Council of County Governors.

CEO

Clause 14 provides that for a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the board of directors. The qualifications of the CEO are provided as follows-

- (a) holds a degree in agriculture, business, law, administration or other relevant degree from a university recognized in Kenya;
- (b) has at least five years' experience in a position of management; and
- (c) meets the requirements of Chapter Six of the Constitution.

Clause 15 of the Bill sets out the functions of the CEO as follows-

- (a) be responsible for the day to day management of the affairs of the Board;
- (b) manage the funds, property and affairs of the Board;
- (c) be responsible for the management of the staff of the Board;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Board;
- (e) cause to be prepared for the approval of the board of directors—
 - (i) the strategic plan and annual plan of the Board; and

- (ii) the annual budget and audited accounts of the Board;
- (f) perform such other duties as may be assigned to him or her by the board of directors.

Clause 17 of the Bill also provides for a corporation secretary to be appointed by the board of directors whose qualifications are as follows-

- (a) holds a degree from a recognized university;
- (b) is registered under the Certified Public Secretaries of Kenya Act;
- (c) is a member of good standing of the Institute of Certified Public Secretaries of Kenya established under section 3 of the Certified Public Secretaries of Kenya Act;
- (d) has at least seven years' experience in a similar position; and
- (e) meets the requirements of Chapter Six of the Constitution.

Duties of the corporation secretary

The corporation secretary shall be the secretary to the Board and shall —

- (a) provide guidance to the board of directors on their duties and responsibilities and on matters of governance;
- (b) ensure timely preparation and circulation of Board and committee papers and minutes;
- (c) maintain and update the register of conflicts of interest; and
- (d) ensure that the annual returns and any other statutory documents required to be filed are promptly filed with the relevant authorities.

PART III – ROLE OF COUNTY GOVERNMENTS

Clause 23 of the Bill provides the role of each county government to-

- (a) implement the National Government policy relating to coffee;

- (b) maintain an up to date register of coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in that county;
- (c) consider applications for the certificates, permits and licenses enumerated under the second schedule to this Act;
- (d) enforce national and county legislation on coffee industry code of practice, policies and guidelines on corporate governance in coffee growers' institutions;
- (e) offer extension services on coffee production and primary processing;
- (f) inspect nurseries, pulping stations, warehouses, millers and roasters located within their respective counties;
- (g) in collaboration with law enforcement agencies, enhance security in coffee growing areas; and
- (h) monitor and report incidences of pests and disease outbreaks to the Board and take action in collaboration with the Board and other relevant government agencies.

(2) A county executive committee member may impose such levies and fees as may be necessary for the registration and issuance of licences or the provision of services in accordance with the respective county legislation and such standards as may be prescribed by the Cabinet Secretary under this Act.

(3) The Cabinet Secretary shall, in consultation with the Board and the county executive committee members prescribe standards and guidelines for the setting of levies and fees by county executive committee members under subsection (2).

Clause 24 allows counties to enact county specific legislation on matters relating to registration, permits and licences.

Licensing of coffee operations

Clause 25 provides that a person shall not operate a –

- (a) pulping station or carry out hulling activities;

(b) coffee growers' mill; or

(c) coffee roaster unless the person has applied for, and obtained a licence from the respective county government in which the operation is to be undertaken.

(2) An applicant for a licence under subsection (1) shall submit an application in the prescribed form together with the prescribed fees to the respective county executive committee member for consideration.

(3) The county executive committee member shall consider the application and may issue to the applicant a licence in accordance with the respective county legislation.

PART IV – REGULATORY PROVISIONS

Registration

Clause 26 provides that a person or entity shall not carry out the business of a coffee grower, nursery operator, cooperative society, coffee association or coffee estate unless such person is registered by the respective county government in which the business is to be undertaken. It further provides that a county government shall not charge any fees for the registration of an applicant.

The Bill further provides that each county government shall keep and maintain the register for statistical purposes. A register shall include—

- (a) the name of the coffee grower, nursery operator, cooperative society, coffee association or coffee estate;
- (b) the location, size and parcel number of the land on which the business is located; and
- (c) such other information as the Board may prescribe.

The Bill further provides that each county government shall submit to the Board a copy of the register.

Licensing

Clause 27 provides that a person who intends to perform any function under this Act for which a licence or a permit is required shall submit to the relevant licencing authority specified in the Second Schedule –

- (a) an application for a licence or permit, in the prescribed form;
- (b) such information as may be prescribed; and
- (c) the prescribed fees.

(2) A licencing authority shall consider an application within such period, not exceeding fourteen days, as may be prescribed in the respective legislation, and may –

- (a) grant an application for a licence or permit unconditionally;
- (b) grant the application subject to conditions specified in the respective licensing legislation; or
- (c) refuse the application.

(3) A licensing authority shall inform the applicant of its decision under subsection (2) within fourteen days of the decision.

(4) Where a licensing authority refuses to grant an application, the licensing authority shall, in its notification under subsection (3), specify the reasons for the refusal.

(5) A licensing authority shall, at least thirty days before granting a new licence under this Act, give notice of the proposed grant by notice in the Gazette and in such other manner as the authority may determine.

(6) The licensing authority shall, in issuing the notice under subsection (5)—

- (a) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;
- (b) state the purpose and the date for which the licence is proposed to be issued;
and

- (c) invite objections to the proposed grant of licence and direct that such objections be lodged with the licensing authority within fourteen days from the date of the notice.

(7) The licensing authority shall consider any objection submitted to it under subsection (6) and may grant the licence applied for subject to such terms and conditions as the licensing authority shall consider appropriate.

(8) A licence issued under this Act shall not be transferable.

(9) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the coffee or coffee product, whichever is greater, or to imprisonment for a term not exceeding two years or both.

PART V – FINANCIAL PROVISIONS

Clause 32 provides that the funds and assets of the Board shall comprise of-

- (a) such monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such monies as may be payable to the Board pursuant to this Act or any other written law;
- (c) such gifts as may be donated to the Board; and
- (d) monies from any other source granted, donated or lent to the Board.

The Bill further provides for preparation of annual estimates of revenue and expenditure three months before the commencement of each financial year and their submission to the Cabinet Secretary for tabling in the National Assembly and the Senate. The Board is also mandated to keep books of accounts in relations to its undertakings, funds, activities and property as the Cabinet secretary may approve from time to time and shall submit the same to the Auditor General within three months after the end of each financial year. The Board is also to submit its annual report to the Cabinet Secretary.

PART VI – COFFEE RESEARCH INSTITUTE OF KENYA

Clause 37 establishes the Coffee Research Institute whose headquarters shall be in Kiambu County. The Board may establish such branches in Kenya as it may consider necessary for the efficient performance of its functions.

The management of the Institute shall vest in a board whose term is four years' renewable once and membership is set out in **clause 40** as follows-

- (a) a chairperson of the board appointed by the President by notice in the Gazette;
- (b) the chairperson of the Board appointed by the President under section 6 (1) (a);
- (c) the Principal Secretary responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;
- (d) the Principal Secretary for matters relating to finance or a representative nominated by the Principal Secretary in writing;
- (e) the Secretary to the Science Commission appointed under paragraph 6 of the Second Schedule to the Science and Technology Act or a representative nominated by the Secretary in writing;
- (f) one person representing coffee growers nominated by the Cabinet Secretary;
- (g) one person nominated by Commission on University Education representing the universities nominated by the Cabinet Secretary; and
- (h) a chief executive officer appointed in accordance with section 47 who shall be an ex-officio member of the board.

Clause 43 provides the functions of the Institute as follows-

- (a) advise the National and county governments on the resource requirements for coffee research;
- (b) prioritize areas for, and co-ordinate, coffee research including research in coffee diseases;

(c) develop appropriate systems to promote balanced, diversified and sustained coffee development and to optimize coffee production through adaptive and investigative research;

(d) disseminate, in collaboration with the Board, the Kenya Agricultural and Livestock Research Organization established under the Kenya Agricultural and Livestock Research Organization Act and other organizations, knowledge, information and application of research findings in relation to coffee; and

(e) facilitate the use of improved production technology and establish adequate feedback systems from agricultural producers in order to achieve and maintain national self-sufficiency and export capacities in agricultural products.

For the purpose of carrying out its functions, the Institute shall—

(a) make policy recommendations to the Cabinet Secretary on coffee research;

(b) identify production, policy, market, processing and utilization constraints in the coffee industry and prepare short and long-term research programmes within the framework of the national agricultural research system;

(c) identify and disseminate, in collaboration with other relevant agencies, appropriate systems of mechanization and technology options to improve coffee production and provide answers to foreseeable problems facing coffee;

(d) collaborate with the extension and education services and other organizations, agencies and institutions including schools, technical institutions and universities, public or private, to disseminate research results and technologies;

(e) provide grants to research institutes and persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute;

- (f) organize, design and carry out on-station and on-farm research for coffee;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) establish and maintain regular contact with regional and international agricultural research centres to ensure the rapid introduction, evaluation and use of coffee improved technology;
- (i) establish platforms for the purposes of sharing research information, advancing research and transfer of technology and dissemination of information relating to advancements made in coffee research;
- (j) conduct annual reviews of research results and ensure performance improvement in the field of agricultural research;
- (k) make available to the Science Commission annual reports on research and development activities carried out by or under the auspices of the Institute; and
- (l) perform such other functions as the Board shall determine.

Clause 47 of the Bill provides that there shall be a CEO of the Institute competitively recruited and appointed by the board who shall be responsible for the day to day management of the affairs of the Institute. A person is qualified for appointment as a CEO if the person-

- (a) is a citizen of Kenya;
- (b) holds a degree in agriculture, crops science or business administration from a university recognized in Kenya;
- (c) holds a postgraduate degree or its equivalent from a university recognized in Kenya; and
- (d) has at least five years' experience at senior management level in agricultural science; policy formulation; policy-oriented research and analysis; and management of human resource and finance.

The CEO shall serve for a term of five years' renewable for a further term of five years.

PART VII – FINANCIAL PROVISIONS OF THE INSTITUTE

Clause 53 provides that the funds and assets of the Institute shall comprise of-

- (a) such monies or assets as may accrue to or vest in the Institute in the course of the exercise of its powers or the performance of its functions under this Act including proceeds from patents;
- (b) two and a half percent of monies collected from the sale of coffee;
- (c) such monies as may be payable to the Institute pursuant to this Act or any other written law;
- (d) such gifts as may be donated to the Institute; and
- (e) monies from any other source granted, donated or lent to the Institute.

The board of the institute also has powers to raise or borrow money and to invest. The Bill further provides that the Institute shall prepare estimates three months before the commencement of each financial year and shall keep books of account of all its undertakings, funds, activities and property to be forwarded to the Auditor General within three months after the end of the financial year. The Board must also submit its annual report, balance sheets and other statements of account to the Cabinet Secretary.

PART VIII – MISCELLANEOUS PROVISIONS

Clause 60 provides that the Board shall arbitrate disputes arising between any parties under the Act. A party who is not satisfied with the decision of the Board may, within thirty days, appeal to a Court of competent jurisdiction.

Clause 61 provides that the Institute's CEO may request any person to furnish the Institute with such information or to produce such documents or records as the chief executive officer deems necessary and relevant for the performance of the functions of the Organization. A person who refuses or fails, without reasonable cause to comply with such a request, or makes false statements shall be liable, on conviction, to a fine

not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Clause 62 provides that pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution shall be limited with respect to information whose disclosure is, in the opinion of the board of the Institute, likely to prejudice the integrity of research or any intellectual property rights held by the Institute.

(2) An officer, member of staff, or agent of the Institute shall not disclose information acquired under this Act except with the written consent of the board of the Institute.

(3) A person who receives information in contravention of subsection (2) shall not disclose or publish the information.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Penalties

Clause 64 provides that-

(1) A person who commits an offence under this Act for which no penalty is provided is liable, on conviction, to a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the coffee or coffee products or, to imprisonment for a term not exceeding six months, or to both.

(2) Where an offence under this Act is committed by a partnership, company, association or co-operative society, every person who at the time when the offence was committed—

(a) was director, partner or officer;

(b) had knowledge or should have had knowledge of the commission of the offence; and

(c) did not exercise due diligence to ensure compliance with this Act, commits an offence and is liable for the offence as if they had committed the offence, unless they prove that the act or omission constituting the offence took place without their knowledge, consent or connivance and that they exercised diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions as director, partner or officer concerned as aforesaid and to all the circumstances.

Regulations

Clause 66 provides that the Cabinet Secretary may, in consultation with the Board, make Regulations—

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of the provisions of this Act.

The First Schedule provides for the conduct of business and affairs of the Board of Directors or the Board of the Institute.

The Second Schedule provides for various licences and their respective issuing authorities.

1.2. Committal of the Bill to the Standing Committee on Agriculture Livestock and Fisheries

The Coffee Bill (Senate Bills No. 22 of 2020) was read a First Time in the Senate on Tuesday, 11th May, 2021. The Bill was thereafter committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard newspapers on Thursday, 13th May, 2021.

The Committee met virtually with the following stakeholders in the coffee sub sector-

1. Senators from coffee growing counties;
2. The Council of Governors;

3. The Coffee Subsector Reforms Implementation Standing Committee (CSRISC);
 4. The Coffee Estate Processors Association;
 5. Kenya Coffee Traders Association (KCTA);
-
6. National Coffee Cooperative Federation of Kenya (NCCFK); and
 7. Nairobi Coffee Exchange.

The Committee also received written submissions from the following-

1. Kenya Coffee Producers Association (KCPA);
2. Nature Kenya;
3. Commercial Coffee Millers and Marketing Agents Association (CCMMAA);
4. David Thirinja, Chairman, Tigania North F.C.S.;
5. Michael Kiprotich Kurgat, Marketing Professional and coffee farmer, Chepkitar F.C.S.; and
6. Daniel Rop, Farmer Kericho County.

At its 136th Sitting held on 24th June, 2021 and its 137th Sitting held on 29th June, 2021, the Committee considered the submissions received from the various stakeholders. The Committee thereafter held a Report Writing Retreat between 15th and 19th July, 2021 in Naivasha, Nakuru County, where it considered and approved proposed amendments and adopted its report.

2.0. SUBMISSIONS

2.1. Submissions from Senators from coffee growing counties

At its 130th Sitting held on 27th May, 2021 on the Zoom online meeting platform, the Standing Committee on Agriculture, Livestock and Fisheries met with Senators from coffee growing counties to receive their views on the Bill. The Senators proposed the following-

1. Under section 25, on licensing of coffee operations, there was need for amendment to provide for a time limit for the issuance of licenses;
2. Under clause 59, there was need for amendment to expressly provide for the end of the Financial Year as June, so as to harmonize the financial calendar with audits and tabling of reports;
3. Under clause 60, the Board should not sit as a quasi-judicial body. Further, the words “court of competent jurisdiction” were ambiguous. There was need for amendment to provide for the specific court for lodging of appeals;
4. Under clause 62, on limitation of the right to access to information needed to be amended as an Act cannot limit the Constitution;
5. There was further need for provision of quality assurance under the Bill; and
6. There was need for harmonization of the Bill with the Ministry’s Coffee Bill.

2.2. Submissions from the Council of Governors

At its 131st Sitting held on 28th May, 2021 on the Zoom online meeting platform, the Standing Committee on Agriculture, Livestock and Fisheries met with the Agriculture and Cooperatives Committee of the Council of Governors chaired by Hon. (Dr.) James Nyoro, to receive their views on the Bill. The COG commended the Senate for coming up with such a reformative Bill. However, in order to ensure that the County Governments were able to effectively and efficiently implement the Act in the development and regulation of the coffee sector in Kenya, the Council of Governors proposed the following amendments-

| CLAUSE | PROVISION OF THE BILL | PROPOSED AMENDMENT | JUSTIFICATION |
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| Long title | AN ACT of Parliament to provide for the regulation, development and promotion of the Coffee industry, and for connected purposes | Amend to read as follows: <u>AN ACT of Parliament to provide for the establishment of the Coffee Board of Kenya, Coffee Research Institute, and role of the national and county governments and for the regulation of the coffee industry, and for connected purposes.</u> | To align the long title of the Bill to the provisions of the Fourth Schedule to the Constitution which has clearly provided for the functions of the National and County Governments in the agriculture sector. |
| 6: Board of Directors | 6(1) 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)... (c)... (f) one person nominated by the Institute; | Amend by deleting clause 6(1)(f) and substituting with the following new clause 6(1)(f) to read as follows: 6(1) 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)... (c)... <u>(f) Two persons nominated by the Council of County Governors who should have relevant knowledge in the coffee sub sector to represent the interests of the County Governments;</u> | To provide for the representation of the Coffee growing counties in the Board of Directors given that agriculture is a devolved function. |
| 10. Functions of the Board. | (1) The board of directors shall— (a) regulate and promote the development of the coffee industry; (b) ... (c) ... | Amend functions (k)(l) and introduce new functions immediately after (l) to read as follows: <u>Functions of the Board</u> | To align the functions of the Board to the Fourth Schedule of the Constitution which gives the National Government the mandate of development of |

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| | <p>(k) maintain and cause to be published an up to date register of coffee dealers, coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in the country; and</p> <p>(l) coordinate capacity building activities for players in the coffee value chain.</p> | <p>10(1). The Board shall—</p> <p>(a) regulation and promotion the development of the coffee industry;</p> <p>(b)...</p> <p>(c)...</p> <p>(k) <u>maintain and cause to be published an up to date register of coffee dealers, coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in the country;</u></p> <p>(l) <u>undertake capacity building activities and provide advisory services for players along the coffee value chain;</u></p> <p>(m) <u>undertake technology transfer and technical assistance to the counties on matters relating to coffee;</u></p> <p>(n) conduct surveillance, inspections and enforce compliance to relevant policies, standards and related legislation;</p> <p>(o) co-ordinate inter-agency representation to international coffee fora to promote Kenya coffee for increased market share; and</p> | <p>agriculture policy, standards and international trade.</p> |
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| | | (p) arbitrate disputes arising between parties under this Act. | |
| 23. Functions of County Governments | <p>23. (1) Each county government shall—</p> <p>(a) implement the National Government policy relating to coffee;</p> <p>(b) maintain an up to date register of coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in that county;</p> <p>(c) consider applications for the certificates, permits and licenses enumerated under the second schedule to this Act;</p> <p>(d) enforce national and county legislation on coffee industry code of practice, policies and guidelines on corporate governance in coffee growers' institutions;</p> <p>(e) offer extension services on coffee production and primary processing;</p> <p>(f) inspect nurseries, pulping stations, warehouses, millers and roasters located within their respective counties;</p> <p>(g) in collaboration with law enforcement agencies, enhance security in coffee growing areas; and</p> <p>(h) monitor and report incidences of pests and disease outbreaks to the Board and take action in collaboration with the Board and</p> | <p>Amend by deleting the entire clause 23(1) and replace with the following new Clause 23(1) as the functions of the County Governments as follows:</p> <p><u>Functions of County Governments</u></p> <p>23. (1) Each county government shall—</p> <p>(a) implement the National Government policy relating to coffee;</p> <p>(b) <u>develop and regulate the development of the coffee industry within the county;</u></p> <p>(c) <u>register and maintain a register of coffee players within the county including coffee growers, nursery operators, millers, warehouses, pulping stations, roasters, coffee cooperative societies, coffee associations, and coffee estates;</u></p> <p>(d) <u>issue the coffee nursery operator certificates;</u></p> <p>(e) <u>issue pulping station licence, milling licence, roasters licence and warehouse licence;</u></p> | <p>This is to align the provisions of the Bill to the provisions of Part 2 sections 1 and 7 of the Fourth Schedule to the Constitution in regards to the mandates of County Governments which includes the development and regulation of agriculture and trade including markets, trade licenses and fair trading practices.</p> <p>Therefore, in order to develop and adequately regulate the Coffee industry, County Governments should play a central role as per the dictates of the Fourth Schedule of the Constitution.</p> |

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| | other relevant government agencies. | <p>(f) <u>regulate the movement of coffee through issuance of movement permits for buni, parchment and clean coffee within the county and from the county to warehouses;</u></p> <p>(g) enforce national and county legislation on coffee industry code of practice, policies and guidelines on corporate governance in coffee growers' institutions;</p> <p>(h) offer and co-ordinate extension services on coffee production and primary processing;</p> <p>(i) inspect nurseries, pulping stations, warehouses, millers and roasters located within their respective counties;</p> <p>(j) in collaboration with law enforcement agencies, enhance security in coffee growing areas; and</p> <p>(k) monitor and report incidences of pests and disease outbreaks to the Board and take action in collaboration with the Board and other relevant government agencies.</p> | |
| 25. Licencing of coffee operations | <p>25 (1) A person shall not operate a –</p> <p>(a) pulping station or carry out hulling activities;</p> | Amend to by introducing the following new licenses immediately after 25(1)(c) to read as follows: | This is to align the provisions of the Bill to the provisions of Part 2 sections 1 and 7 of the Fourth |

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| | (b) coffee growers' mill; or (c) coffee roaster | 25(1) A person shall not operate a— | Schedule to the Constitution in regards to the mandates of County |
| | unless the person has applied for, and obtained a licence from the respective county government in which the operation is to be undertaken. | (a) pulping station or carry out hulling activities; (b) coffee growers' mill; (c) coffee roaster, <u>(d) commercial mill; or</u> <u>(d) Warehouse.</u> unless the person has applied for, and obtained a licence from the respective county government in which the operation is to be undertaken. | Governments which includes the development and regulation of agriculture and trade including markets, trade licenses and fair trading practices. |
| 26. Registration. | 26. (1) A person or entity shall not carry out the business of a coffee grower, nursery operator, cooperative society, coffee association or coffee estate unless such person is registered by the respective county government in which the business is to be undertaken. (2) A county government shall not charge any fees for the registration of an applicant under subsection (1). | Amend to read as follows: 26. (1) A person or entity shall not carry out the business of a coffee grower, nursery operator, cooperative society, coffee association or coffee estate unless such person is registered by the respective county government in which the business is to be undertaken. (2) A county government <u>may not</u> charge any fees for the registration of an applicant under subsection (1). | To give discretion to the respective County Governments on matters charging of registration fees. |
| 27. Licensing. | 27. (1) A person who intends to perform any function under this Act for which a licence or a permit is required shall submit to the relevant licencing authority specified in the Second Schedule — | Amend by introducing a new clause immediately after clause 27(9) to read as follows: 27(10). The Board and county governments shall share amongst themselves, information on the | To address of the teething issues facing the coffee industry in Kenya which has continued to negatively affect farmers' earnings |

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| | (2)... | persons registered or licensed under this Act. | from the sale of their coffee. |
| | (9) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the coffee or coffee product, whichever is greater, or to imprisonment for a term not exceeding two years or both. | (11) A holder of a coffee buyer's licence, or any other entity associated with such holder, shall not be licensed as a commercial miller, broker, roaster, agent or warehouse operator. (12) A buyer's licence shall not authorize the buyer to engage in direct sale. (13) A holder of a commercial miller's licence, or any other entity associated with such holder, shall not be licensed as a buyer, broker, roaster, agent or warehouse operator. | |
| 40. Membership of Board of the Institute. | 40. (1) The management of the Institute shall vest in a board consisting of— (a) a chairperson of the board appointed by the President by notice in the Gazette; (b)... | Amend by introducing a new Clause to read as follows: 40. (1) The management of the Institute shall vest in a board consisting of— (a) a chairperson of the board appointed by the President by notice in the Gazette; (b).. <u>(i) Two persons nominated by the Council of County Governors and appointed by the Cabinet Secretary to represent the interest of the County Governments.</u> | To provide for the representation of the County Governments in the Board of the Institute. This will assist in the prioritization of the research as per the County needs. |

2.3. Submissions from the Coffee Sub-sector Reforms Implementation Standing Committee (CSRISC)

The Coffee Sub-sector Reforms Implementation Standing Committee (CSRISC) attended a meeting held on 28th May, 2021. The Chairman of the Committee, Prof. Joseph Kieyah, PhD. submitted the following proposed amendments-

| CLAUSE | CURRENT PROVISION | PROPOSED AMENDMENT | JUSTIFICATION |
|------------------|--|---|--|
| Long title | AN ACT of Parliament to provide for the regulation, development and promotion of the Coffee industry, and for connected purposes | AN ACT of Parliament to provide for establishment of the Coffee Board of Kenya, and the Coffee Research Institute, and to provide for the role of the national and county governments for the regulation, development and promotion of the Coffee industry, and for connected purposes. | To be specific on the Purpose/object of the Bill |
| 2 Interpretation | Certain necessary terms are missing in definitions or not sufficiently defined | Insertion of new definitions. These are: “auction” “auction levy” “Authority” “agent” “association” “bid” “broker” “buyer” “buyers levy” “clean coffee” “clearing house” “clearing and settlement” | Align the definitions with the published Crops (Coffee)(General) Regulations 2019 and Capital Markets (Coffee Exchange) Regulations, 2020 (hereinafter referred to as the regulations) |

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| | | “coffee business” “coffee dealer” “coffee development” “coffee miller” “coffee milling” “coffee research” “coffee roaster” “coffee sales proceeds” “coffee standards” “coffee year” “Com.mittee” “co-operative society” “county government” “cupping centre” “direct sale” “direct settlement system” “digitalization” “estate” “inspector” “licensing authority” “liquorer” “liquoring” “milling statement” “out-turn statement” “primary processing” “prompt date” “pulping station” “sale” “sales catalogue” “secondary processing” | |
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| | | <p>“small holder”</p> <p>“sweepings”</p> <p>“Tribunal”</p> | |
| | | <p>“warrant”</p> <p>“warehouse”</p> <p>“warehouse operator”</p> <p>“warehouse receipt”</p> | |
| <p>New</p> <p>Object and purpose of the Bill</p> | <p>New clause</p> | <p>3. Enumerate the object and purpose of the Act specifically as follows:</p> <p>(a) establish a framework for the regulation of the coffee subsector.</p> <p>(b) provide for a regulatory framework for the registration, licensing, issuance of permits, issuance of certificates, production, processing, quality assurance, coffee trading, marketing, payment system and credit finance;</p> <p>(c) provide for enforcement of the regulatory framework and coffee standards in the subsector;</p> <p>(d) delineate the roles of the National and County Governments in the coffee subsector and recognize agriculture as a devolved function under the Constitution;</p> <p>(e) provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships;</p> | <p>To give an overview of why the law was enacted, the specific objectives the Bill aims to achieve and the mischief it intends to cure in the coffee subsector.</p> |

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| | | <p>(f) promotion of vertical integration of the coffee value chain for purposes of achieving economies of scale and managing risk;</p> <p>(g) promote evidence based coffee research for the development of the subsector;</p> <p>(h) promote farmer-based associations or platforms for representation of farmers' interests;</p> <p>(i) provide a framework for the establishment of a coffee stabilization fund;</p> <p>(j) establishment a framework for the provision of sustainable funding for the subsector;</p> <p>(k) provide for the establishment of a dispute resolution mechanism in the coffee sub sector, and</p> <p>(l) provide a framework for the engagement of the Kenya Government and international fora.</p> | |
| 6 (Now 7) Board of directors | <p>6. (1) The management of the Board shall vest in a board of directors consisting of—</p> <p>(a) a chairperson appointed by the President by notice in the Gazette;</p> <p>(b) the Principal Secretary responsible for agriculture or a representative nominated by the Principal Secretary in writing;</p> | <p>6. Proposal to amend the composition of the Board to consist of</p> <p>(a) ... (as before)</p> <p>(b) ... (as before)</p> | <p>To align with the provisions of Mwongozo and ensure all players along the value chain have been represented in the Board</p> |

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| | <p>(c) the Principal Secretary for the time being responsible for trade or a representative nominated by the Principal Secretary in writing;</p> <p>(d) two persons of the opposite gender, representing smallholder coffee growers nominated by the Council of County Governors;</p> <p>(e) two persons of the opposite gender representing plantation coffee growers nominated by the Council of County Governors;</p> <p>(f) one person nominated by the Institute;</p> <p>(g) two persons representing an association of farmer's coffee nominated by the Cabinet Secretary; and</p> <p>(h) a chief executive officer appointed under section 14 who shall be an ex-officio member of the Board.</p> | <p>(c) consider amendment to the other provisions in this sub section to include-</p> <p>(i) Principal Secretary in charge of cooperatives or the Commissioner for Co-operatives</p> <p>(ii) the Principal Secretary for the time being responsible for finance or a representative nominated by the Principal Secretary in writing;</p> <p>(iii) two persons of the opposite gender, representing smallholder coffee growers nominated by the Council of County Governors;</p> <p>(iv) one person representing coffee estate growers nominated by the Council of County Governors;</p> <p>(v) one person nominated by the Council of County Governors who should have relevant knowledge in the coffee sub sector;</p> <p>(iv) one person representing the Attorney General;</p> <p>(h) .. (as before)</p> | <p>The membership should not exceed the proposed number under Mwongozo which provides or 7-9 members</p> |
| <p>10 (Now 11) Functions of the Board</p> | <p>10. (1) The board of directors shall—</p> <p>...</p> <p>(b) consider applications for the issuance of permits and licences under the second schedule to this Act;</p> <p>...</p> | <p>(a) ... (as before)</p> <p>NEW (b) issue registration certificates for agents, licences for independent coffee cupping laboratories, liquorers, warehouse operators and buyers, movement permits for purchased clean coffee, and</p> | <p>For clarity on the certificates, licences and permits that are to be issued by the Board as stipulated in the regulations.</p> <p>To enhance the functions of the Board</p> |

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| | <p>(d) make recommendations to the Cabinet Secretary for, and oversee the implementation of strategies, plans and policy for the coffee sector;</p> <p>...</p> | <p>regulate imports and exports of coffee;</p> | <p>so as to ensure development and promotion of the coffee</p> |
| | <p>(f) conduct local and international coffee market intelligence and promotional activities including the application of the Kenya Coffee Mark of Origin;</p> <p>(l) coordinate capacity building activities for players in the coffee value chain.</p> | <p>(c) undertake the registration of coffee dealers;</p> <p>(d) make recommendations to the Cabinet Secretary for, and oversee the implementation of policies strategies, plans and funding models for the coffee sector;</p> <p>(e) ... as before</p> <p>(f) conduct national and international coffee market intelligence and surveys to inform promotional and branding strategies including the application of the Kenya Coffee Mark of Origin;</p> <p>(g) ... (as before)</p> <p>(h) develop and implement a framework for the capacity building of relevant players in the coffee industry;</p> <p>(i) ... (as before)</p> <p>(j) ... (as before)</p> | <p>sector.</p> |

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| | | <p>(k) ... (as before)</p> <p>(l) undertake capacity building activities and provide advisory services for players along the coffee value chain;</p> <p>(m) undertake technology transfer and technical assistance to the counties on matters relating to coffee;</p> <p>(n) conduct surveillance, inspections and enforce compliance to relevant policies, standards and related legislation; and</p> <p>(o) co-ordinate inter-agency representation to international coffee fora to promote Kenya coffee for increased market share.</p> <p>(p) arbitrate disputes arising between parties registered or licensed by the Board under this Act.</p> | |
| 14 (Now 15) Chief executive officer. | <p>(2) A person is qualified for appointment under subsection (1) if the person—</p> <p>(a) holds a degree in agriculture, business, law, administration or other relevant degree from a university recognized in Kenya;</p> | <p>(2) A person is qualified for appointment under subsection (1) if the person—</p> <p>(a) holds a degree in agriculture, business, law, administration or other relevant degree from a university recognized in Kenya;</p> | To align with the provisions of Mwongozo |

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| | (b) has at least five years' experience in a position of management; and (c) meets the requirements of Chapter Six of the Constitution. | (b) has at least ten years' knowledge and experience in the coffee subsector; (c) has served in a position of senior management for a period of at least five years; and (d) meets the requirements of Chapter Six of the Constitution | |
| Role of County Governments, Regulatory Provisions, Financial Provisions, and Coffee Research Institute | Part III, Part IV, Part V, and Part VI | Part III Coffee Research Institute Part IV Functions of County Governments Part V Registration and Licensing Part VI Production and Processing | These parts are rearranged for better flow on functions of national government entities and county governments and a new section on production and processing added. |
| 27 (Previously 40) Membership of the Board of Coffee Research Institute | | (e) the Principal Secretary for matters relating to trade or a representative nominated by the Principal Secretary in writing; (g) one person representing the Chief Executive Officer of the Kenya Phytosanitary Plant Health Services; (h) one person representing smallholder coffee growers nominated by the Council of County Governors; (i) one person representing coffee estate growers | To upgrade the qualifications for the Board chairman and members and add representation of coffee growers. |

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| | | <p>nominated by the Council of County Governors</p> <p>On qualifications:</p> | |
| | | <p>(3) A person is qualified for appointment as a chairperson of the board of the Institute if that person—</p> <p>(a) holds a doctorate degree in economics, agriculture, business, law, administration or other relevant degree from a university recognized in Kenya; and</p> <p>(b) has at least five years' experience in the coffee sector.</p> | |
| <p>30 (Previously 43)</p> <p>Functions of the Institute</p> | | <p>(2) For the purpose of carrying out its functions under subsection (1), the Institute shall—</p> <p>(a) undertake policy and social-economic analysis and make recommendations to the Cabinet Secretary on coffee research;</p> <p>(b) identify production, policy, market, processing and utilisation constraints in the coffee industry and prepare short and long-term demand driven participatory research programmes;</p> <p>(e) undertake the production and supervision of quality coffee planting materials by the Institute and the authorised nursery operators;</p> <p>(f) provide competitive grants to research institutes and persons desirous of carrying out research and training</p> | <p>To provide for some functions more specifically</p> |



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| | | <p>programs which address value chain priorities and are consistent with the national research priorities and plans of the Institute;</p> | |
| | | <p>(h) support and promote the training and capacity building in relation to coffee research;</p> <p>(m) the lead agency in coffee breeding in the developing a climate resilient coffee crop and in leading the scientific effort to strengthen Kenya coffee's resistance to diseases and pests;</p> <p>(n) the lead agency in developing production, processing and other technologies and practices that contribute towards climate change adaption, resilience and mitigation;</p> <p>(o) the custodian of the Kenyan Coffee Genome and the primary instrument for making modern genomics resources available to researchers working across the coffee production chain;</p> <p>(p) the premier national and regional institute in research into and development of new coffee varieties and improvement of existing varieties;</p> <p>(q) to facilitate the use of improved production and processing technologies and to establish adequate feedback systems from coffee farmers and processors in order to achieve the highest</p> | |

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| | | <p>possible quality of coffee in Kenya;</p> <p>(r) the principal platform for providing in an accessible form timely and usable form scientific information and advisory services to actors in the whole coffee production chain through field visits, radio programmes, demonstration farms, publications and modern technology tools such as social media;</p> <p>(s) conduct market research and analysis and disseminate information on its findings to relevant stakeholders;</p> <p>(t) organize national and regional bi-annual conference with coffee producers, processors and key stakeholders to share research findings and receive feedback.</p> | |
| 34 Chief Executive Officer of the Institute | Qualifications | (b) holds a minimum doctorate degree in agriculture, crops science, economics or business administration or its equivalent from a university recognised in Kenya; and | To upgrade the qualifications of the Chief Executive Officer |
| 44 (Previously 25) Licensing of Coffee Operations | Licensing | <p>(1) A person shall not operate a—</p> <p>(a) pulping station or carry out hulling activities;</p> <p>(b) coffee growers' mill;</p> | To align with the coffee regulations on licensing |

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| | | (c) commercial mill; | |
| | | (d) warehouse; or | |
| | | (e) coffee roaster, | |
| Part V Registration and licensing | Sections 45 to 80 Registration, issuance of licences and permits and conditions attendant thereto | Functions of the Board, County Governments and the Capital Markets Authority on registration, issuance of licences and permits and conditions attendant thereto specifically provided for | To align with the coffee regulations |
| Part VIII Quality Assurance | New | 82 (1) The Board and county governments shall collaborate in the enforcement of coffee industry standards along the value chain, for purposes of quality assurance. (2) The Board, in consultation with an accredited university of higher learning, and industry stakeholders, may develop a training curriculum, conduct examinations and jointly issue certificates for coffee liquorers. (3) The Board may enter into a memorandum of understanding with an accredited university in the training and administration of liquorers' examinations. (4) A person certified as a liquorer shall apply for a practicing licence to the Board to offer liquoring services. | Coffee quality assurance standards and enforcement provided for. |

(5) The Board shall, in collaboration with county governments, establish cupping centers in the counties for the purpose of coffee quality analysis and capacity building.

(6) Coffee quality analysis at the cupping centers shall be carried out by certified liquorers.

(7) Quality Assurance officers from the Board shall carry out assessments on coffee quality maintenance at any premises that handles coffee along the value chain.

(8)The Board shall be at liberty to sample coffee at any stage of the value chain to ascertain permissible pesticides residue levels for compliance with set national and international standards.

(9)The Board in consultation with county governments shall monitor maintenance of pesticide spraying records by coffee growers to enforce compliance with the permissible pesticides residue levels in coffee beans.

(10)The Board and county governments shall inspect coffee storage bags, wholesalers, suppliers, manufacturers and importers to check against potential contamination and samples of such coffee bags shall be subjected to relevant tests for possible contaminants.

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| | | (11)The Institute shall conduct periodic surveillance on the application of pesticides to ensure compliance with set standards and best practices. | |
| Inspectors | New | <p>83(1)The Board and county governments shall appoint and gazette inspectors for the enforcement for the provisions of this Act.</p> <p>(2)The Board and the county governments, shall separately or jointly conduct inspections of coffee farms, coffee nurseries, pulping stations, coffee mills, warehouses, cupping laboratories, roasters or coffee buyers' vessels transporting coffee to ascertain compliance with the requirements of this Act.</p> <p>(3) A smallholder, a grower, a pulping station operator, a transporter, a miller, a warehouse operator or a buyer shall accord an inspector access and necessary assistance for effective inspection.</p> <p>(4)A person who fails to accord an inspector access to premises and information commits an offence.</p> | Appointment of inspectors and |
| Coffee imports and exports | New | <p>84 (1) All coffee imported to Kenya shall conform to the Kenya coffee standards.</p> <p>(2) Coffee, which does not conform to the Kenya coffee standards shall be destroyed upon an order of a court of competent jurisdiction obtained in proceedings</p> | |

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| | | instituted by the Board with due notice to the importer, and the import and permit of the owner may be suspended and subsequently cancelled. | |
| Surveillance | New | <p>85(1)The Board and county governments shall jointly or separately conduct periodic surveillance among growers, pulping stations, millers, roasters, processing plants, warehousing facilities, transporters, retail outlets, border points, and buyers' premises to assess the degree of compliance with the coffee industry policy, standards, code of practice and regulatory framework.</p> <p>(2)The Board and the county governments shall share surveillance reports for purposes of compliance and enforcement.</p> | |
| 86(Previously 32) Funds of the Board | | <p>Added (2) The Cabinet Secretary may, in consultation with the Board and the Institute and by Notice in the <i>Gazette</i>, impose a 2% levy based on export import value to be remitted by coffee buyers to the Board to support the coffee industry.</p> <p>(3) The levy imposed under subsection (2) shall be apportioned as follows—</p> <p>(a) 1% to the Institute;</p> <p>(b) 0.5% to the Board for regulatory and coffee promotion purposes; and</p> <p>(c) 0.5% to the coffee growing County Governments for</p> | To provide for a levy and the apportionment of the same. |

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| | | coffee development as conditional grants | |
| Part X (Previously VIII) Section 93 Digitalization | Miscellaneous Provisions New | Amended to read General Provisions. (1) The Board, county governments, every licence holder, certificate holder and service provider shall digitalize and automate their operations for efficient service delivery and information dissemination. (2) The digitalization process shall ensure— (a) multiple parties can access a common system; (b) flow of data takes place seamlessly across the value-chain without corruption; (c) the system is safe and secured and protected against unauthorized entry or access; (d) access to the system is properly regulated and monitored with adequate mechanisms for continued integrity; and (e) the records are not lost, destroyed or tampered with, and in the event of any loss or destruction, sufficient back-up | To align with the coffee regulations |

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| | | <p>is available in a secure place.</p> <p>(3) The digitalization referred to in sub-section (1) shall require the conversion of the entire value chain into a digital platform based on automation, computerization, integration across the value-chain and digital instrument usage including weigh scales, digital scanners, storage and inventory management.</p> | |
| Section 94 Sharing of information | New | Provision on sharing of information between the Board and County Governments | To align with the coffee regulations and enhance harmony in regulation of the coffee industry. |
| Sections 95, 96 and 97 | Request for Information | Provided separate provisions for request for information by the Coffee Research Institute, the Board and the County Governments and obligation to provide correct information. | To strengthen information sharing, enhance harmony in the regulation of the coffee industry and align with the coffee regulations. |
| Section 101 | Regulations | <p>(1) The Cabinet Secretary may, in consultation with the Board and county governments, make Regulations—</p> <p>(a) ... (as before)</p> <p>(b) the forms to be used in the application for registration, licensing, permits, the notification to the direct settlement system provider, contracts and related activities;</p> <p>(c)... (as before)</p> | To align with the coffee regulations |

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| | | <p>(d) any fee or levy which may be charged for anything done under this Act;</p> <p>(e) the regulation of contracts and enforcement of contractual obligations between growers, processors and other players in the coffee industry;</p> <p>(f) the nomination of the members of the Board;</p> <p>(g) the manner in which persons to represent growers shall be nominated;</p> <p>(h) the forms prescribing the terms to be met by persons holding certificates, licenses and permits;</p> <p>(i) the manner in which coffee shall be traded where applicable and the manner of storage, bulking, packing and roasting;</p> <p>(j) the manner of payment of the coffee sales proceeds to growers and their service providers;</p> <p>(k) regulating the nursery operations, pulping, milling, warehousing and transportation of coffee;</p> <p>(l) the services to be provided to growers;</p> <p>(m) the manner of grading and classification of coffee under this Act;</p> <p>(n) the capping of costs charged by service providers along the value chain, and</p> | |
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| | (o) without prejudice to any provision in this section, anything which under this Act may be prescribed. | |
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2.4. Submissions from Kenya Coffee Traders Association (KCTA)

At its 133rd Sitting held on 3rd June, 2021 on the Zoom online meeting platform, the Standing Committee on Agriculture, Livestock and Fisheries met with Kenya Coffee Traders Association to receive their views on the Bill. Ms. Mette-Marie Hensen, the Chairperson of the Kenya Coffee Traders Association gave submission: as follows-

1. There is a lack of analysis on the operation of the value chain;
2. Constitution of the Board's board of directors should be reviewed to incorporate representatives from the trade industry, from the millers, and from the counties;
3. The role of the county governments who have a great responsibility in the Bill and should be clearly supported by the national government;
4. The Bill was unclear on national policy on coffee;
5. That a national structure for fees and levies be provided so as to prevent overregulation through suggested enactment of county specific laws on coffee which could potentially create avenues for exploitation, leading to diminished value of the produce;
6. If licensing of many supply chain actors is to be moved to county level, as per the Second Schedule to the Bill, the counties must be adequately prepared on how to carry out the licensing; and
7. There was need for harmonization of all legislation touching on the coffee sub-sector to avoid confusion among stakeholders and prevent erosion of value of the coffee sector and panic amongst stakeholders and overseas supporters of Kenyan coffee.

2.5. Submissions from National Coffee Co-operative Federation of Kenya (NCCFK)

At its 133rd Sitting held on 3rd June, 2021 on the Zoom online meeting platform, the Standing Committee on Agriculture, Livestock and Fisheries met with National Coffee Co-operative Federation of Kenya to receive their views on the Bill. The Chairperson, Mr. Francis Ngone gave submissions on behalf of the NCCFK as follows-

1. The Ministry of Agriculture has not done enough to enhance the operationalization of the Crops (Coffee) (General) Regulations, 2019 and the Capital Markets (Coffee Exchange Regulations, 2020 developed by the Coffee Taskforce to adequately address the issues of the ailing coffee sub sector;
2. The Bill fails to make provision for the Capital Markets Authority and its functions for enhanced transparency and accountability;
3. The Bill is not clear on prohibition of multi-licensing, parallel directorships and cross ownership of shares in commercial milling companies, marketing agencies, coffee brokers and coffee buying companies so as to eliminate potential conflicts of interest;
4. There is need for provisions on the establishment, structure and regulation of the direct settlement system (DSS) as provided under Regulation 54(1) of the Crops (Coffee) (General) Regulations, 2019;
5. There is need to incorporate the Third Schedule to the Crops (Coffee) (General) Regulations, 2019 (15) which provides that licensed growers' societies shall only seek credit from regulated financial institutions upon approval by the growers;
6. The Bill reverts the milling function to the Coffee Board as opposed to the counties thus opposing the devolution of the agriculture function;
7. On composition of the Board, the Bill should be amended to provide for three members representing co-operative societies where coffee is grown and two members representing plantation coffee growers of registered estates associations.

2.6. Submissions from the Commercial Coffee Millers and Marketing Agents

Association (CCMMAA)

The Commercial Coffee Millers and Marketing Agents Association (CCMMAA) submitted a written memorandum to the Committee proposing the following amendments to the Bill-

1. That clause 6 of the Bill on composition of the Board be amended to allow independent participation of industry stakeholders. The current provision grants the government a hand to influence fully the activities of the Board through direct nomination of all the members either through the Council of Governors, the institute or the Cabinet Secretary;
2. Clause 7 requires all the Board to be a university graduate. Majority of the farmers are not university graduates and hence the requirement is not favourable to a lot of them who have great experience in the coffee sector;
3. Clause 10 (1) which provides for application of the Kenya Coffee Mark of Origin imposes costs including costs on compliance and audit. When this is made mandatory, then it only increases that cost of production;
4. Under Part III on the role of the county governments in the issuance of licenses being pulping station, warehouse and coffee roaster's licences, there is need for clarity as to which licences these are;
5. Clause 23 (1) provides that "each county government shall implement the National Government policy relating to coffee" however, there is no National Government policy in place and hence the need to develop one;
6. The introduction of county legislations infers that each county may formulate its own rules and regulations. The effect is multiplicity of laws, which shall hinder coffee business and increasing the costs of operations that may eventually be pushed back to the farmer;
7. There is need to maintain the independence of the cooperative movement;
8. Clause 21(1)(f) provides for inspection of nurseries, pulping stations, roasters and warehouses located within their respective counties. The scope of inspection is unclear. The suited persons to carry out inspections on the processes are the Coffee Board of Kenya and the Coffee Research Institute;

9. Clause 23 (2) provides that A county executive committee member may impose levies and fees for registration and issuance of licences. Imposition of levies by county executive committee at county level shall mean different levies for similar licences and would be prohibitive to trade;
10. Clause 24 which provides that t each county government may enact county specific legislation setting out theb) criteria for the issuance of permits and licences by applicant within the respective county may create restrictions on the inter-county movement of the coffee;
11. The Bill does not provide the requirements for setting up the independent cupping lab. It does not show the qualification requirements for the cupper and how the disputes related to results variance shall be handled;
12. The Bill should be amended to provide for Central issuance of the license by the Coffee Board and the counties to support the Board functions;
13. The Bill fails to provide for the Coffee Marketing Agents Licence. Marketing is a core function in the coffee value chain therefore the licence should be included in the Bill;
14. Clause 26 on registration of coffee associations should be deleted as it threatens the existence of Cooperative movement which is hedged on the law that restricts the movement of small holder farmers from one form of association to another; and
15. Clause 53 (b) which provides that the funds of the Institute shall comprise of b) two and half percent of monies collected from the sale of coffee should be deleted as it reintroduces the levies that had been scrapped by the government. The implication is that the take home amount by the farmer continues to shrink.

2.7. Submissions from Nature Kenya

Nature Kenya – the East African Natural History Society submitted a written memorandum to the Committee proposing the following amendments to the Bill-

1. That clause 6 on composition of the Board be amended to include the Principal Secretary responsible for environment or a representative nominated by the PS in writing, and persons representing civil society organization engaged in

2.9. Submissions from Mr. Daniel Thirinja

Mr. Daniel Thirinja, Chairman, Tigania North Farmers' Cooperative Society, submitted a written memorandum to the Committee proposing the following amendments to the Bill-

1. That clause 6(1)(d) and (e) be amended as follows-

(d) Two persons of the opposite gender representing and elected by smallholder coffee growers.

(e) Two persons of opposite gender representing and elected by plantation coffee growers.

Smallholder and plantation coffee growers should be allowed to elect their own representatives and the Council of Governors should not be allowed to decide on behalf of coffee growers.

2. That a new clause 6(1)(f) be included to read as follows-

(f) One person of either gender who shall have knowledge and experience in the coffee sector, representing and nominated by the council of Governors

The Council of Governors should be allowed to nominate one person of either gender with knowledge and experience in coffee Sector to represent the council of Governors, the same way the national Government is represented by Principal Secretary.

2.10. Submissions from the Kenya Coffee Producers Association (KCPA)

The Kenya Coffee Producers Association submitted a written memorandum to the Committee proposing the following amendments to the Bill-

1. That the coffee exchange be licenced and regulated by the Coffee Board as the Capital Markets Authority has no experience in coffee trading;
2. That the Bill should provide for the definition of association and the Act under which is registered;
3. That the qualifications of the Chairperson of the Board be amended to read-
 - i. Holder of a degree from a university recognized in Kenya;

- ii. Five years' experience in the coffee industry;
- iii. Active coffee farmer; and
- iv. Meets the requirement of Chapter 6 of the Constitution.

4. That the criteria for selection of farmer representatives be included in the Bill as follows-

a) The representatives should be appointed by bonafide farmer organization;

b) Nomination must meet the following criteria-

- The organization must be dully registered and have been in existence for at least 8 years (provide proof of existence for the last eight years).
- The organization must have a national outlook, with membership across the regions where coffee is grown
- The organization shall provide evidence of nomination process.

c) The nominating farmer organization will nominate 12 nominees of both gender and pass to the cabinet secretary and Council of Governors for to seek 6 representatives from the 12.

d) include a recall clause by the nominating farmer organization- the farmer organization shall free to recall the nominee to the board who doesn't meet the expectation of the organization.

e) The 12 Nominees shall be nominated based on the following:

- Regional balance-farmer representatives from cooperatives shall be derived from Central, Eastern, Rift valley, western/Nyanza regions.

f) Based on the above, there will be 4 representatives from cooperatives societies, one representative from large estates and one from medium and small estates; who must be a degree holder from university recognized in Kenya and meet the requirements of chapter 6 of the Constitution.

5. That the Bill should provide entrenchment of a farmer representative/ association in law as follows-

- There shall be Kenya Coffee Producers Act to bring together coffee farmers in cooperative, small, medium and large estates.

6. That functions of producer organizations be included as follows-

- a) Engage coffee board, county governments and other relevant ministries to enhance coffee production;
 - b) Work in collaboration with the board and the county government and other relevant ministries for promotion of coffee;
 - c) Engage relevant ministries to ensure farmers interests are well represented;
 - d) Be involved in management of all estate organization dealing with coffee;
 - e) To nominate farmers' representatives in the state organizations dealing with coffee;
 - f) Engage various ministries to ensure farmers interests are well represented;
 - g) Be involved in management of all state organization dealing with coffee;
 - h) Nominate farmers' representatives in the state organization to ensure equity, a national face and gender consideration;
 - i) Maintain data base of its members
7. The Funds of the organization shall include-
 - a) Subscription remittances from the membership of the association facilitated by the board and the coffee exchange;
 - b) Donations from development partners; and
 - c) 0.5% to support coffee farmers to run the organization collected from sale of coffee.
 8. That there is need for the Bill to establish the Nairobi Coffee Exchange (NCE);
 9. That there is need for a provision stating that the Board shall collaborate with other industry stakeholders, both private and public;
 10. That provision of the office of the Chief Executive Officer and the Company Secretary should be harmonized as they are competing functions;
 11. That imposition of levies and fees by the counties be deleted as it amounts to double taxation of farmers;
 12. That the Bill should define the Coffee research institute and harmonize provisions with the KALRO Act, 2013;

13. That the criteria for appointment of the Chairperson of the Board be included in the Bill;
14. That clause 53(b) providing for that the funds and assets of the Institute shall comprise of two and a half percent of monies collected from the sale of coffee be deleted;
15. That there is need for a review of all Acts and Regulations to be affected by the Bill including the AFA Act, 2013, the KALRO Act, 2013, the Crops (Coffee) (General) Regulations, 2019 and the Capital Market (Coffee Exchange) Regulations, 2020;
16. That section 22 and 44 of the First Schedule be amended to avoid possible conflicts of interest as no board members should be involved in any private business of the Board;
17. That licencing of the coffee auction is not defined in the Second Schedule. The Board should issue the coffee auction licence.

2.11. Advisory Note from the Capital Markets Authority on

The Capital Markets Authority (CMA) submitted an Advisory Note to the Committee on the role of CMA in regulation of Commodities Exchanges including Coffee Exchange in Kenya. The Advisory Note highlighted the following-

1. Kenya envisages to position itself as a centre of excellence in spot commodities markets in agriculture, energy, minerals and metals supported by national derivatives exchanges to stimulate development and economic transformation in the country. This Vision has been articulated in the Vision 2030 Development Strategy, the Northern Corridor Integration Projects (NCIP) Summit of Heads of States/Governments Presidential Directives (2014) and the 'Big 4' Agenda. Therefrom, a comprehensive and stakeholder driven policy framework was developed to guide the implementation process and includes: the Capital Markets Master Plan (2014-2023), Commodities Exchange Feasibility Study Report (2015), Capital Markets Authority Policy Framework on the Development of Commodities Markets in Kenya (2016) the Presidential National Task Force on Coffee Sub-Sector Reforms (2016) as well as the Joint Cabinet Memorandum on

the Establishment of Commodities Exchanges in Kenya (2016) submitted by the Cabinet Secretaries for National Treasury and Planning; Industry, Investment and Trade; and Agriculture, Livestock and Fisheries;

2. Consequently, the Capital Markets (CM) Act was amended vide the Finance Act (2016) to expand its mandate to regulate Spot Commodities Markets in line with regional integration initiatives as well as the national policy frameworks;
3. The supervision of spot commodities markets by the securities markets regulator is common international practice evidenced in various jurisdictions including EAC countries (Rwanda, Uganda, Tanzania, Kenya) and the African Union countries (Nigeria, Malawi, Ethiopia), India and Mauritius, amongst others;
4. In addition, the National Treasury and Planning, in consultation with the National Taskforce on establishment of a Commodities Exchange in Kenya, the Coffee Sub-Sector Reforms Implementation Committee (CSIC) and the Ministry of Agriculture, Livestock, Fisheries and Cooperatives jointly developed the Capital Markets (Commodity Markets) Regulations, 2020, the Capital Markets (Coffee Exchange) Regulations, 2020, Warehousing Receipts System Act, 2019 and Warehousing Receipt System Regulations, 2021 to support the establishment of structured commodities trading in Kenya via the development of a Warehousing Receipt System and establishment of fully fledged Commodities Exchange(s);
5. The need to develop structured mechanisms for commodities trading in Kenya is supported by the recognition that the country's smallholder farmers face several challenges related to existing market inefficiencies manifested in the form of supply chain inadequacies, constrained access to credit, inefficient price discovery, volatility and poor market access which leads to high production and marketing costs as well as low competitiveness;
6. Currently operating commodities exchanges include the Mombasa Tea Auction (trading as East Africa Tea Trade Association - EATTA) and Nairobi Coffee Exchange (NCE) that have long been regulated by the Agriculture and Food Authority (AFA);

7. Seven main factors impede trading on agricultural commodity trading platforms in Kenya. They are:

- a) limited success in attracting financial institutions' commitment to the platforms;
 - b) the failure of the platforms to offer contracts that respond to unmet trader needs, especially those seeking mechanisms for hedging quality, price and delivery risk i.e. commodity forwards and futures;
 - c) the inability of the platforms to reduce the transaction costs of exchange;
 - d) the potential for conflict of interest among brokers who also act as off-market traders;
 - e) the potential for market manipulation - when risks associated with trading on the platform are involve information asymmetry between buyers and sellers; and
 - f) actors trading in thin markets are forced to absorb high fixed costs due to limited trading volumes leading to unprofitable trading platforms;
 - g) weak governance systems and enforcement regimes.
8. Evidently, there is a need for a more open, efficient and adequately regulated commodities markets covering a wider range of products. It entails development of markets for commodities on the back of improved post-harvest management solutions, harmonization of grading systems, regional trade standards and policies, development of Warehouse Receipt Systems which include certification of warehouses, warehouse receipt financing as well as market linkages through secure and transparent trading platforms such as commodity exchanges;
9. The modernization of commodities markets in Kenya as articulated in the cabinet/executive directives require the transformation of the current business models. In order to realize this, Kenya will need to develop a facilitative environment for the introduction of effective commodity exchanges including
- a) a readiness of financial and banking firms to fulfil commodity exchange transactions and to lend to actors in the sector;

- b) a strong demand/supply and willingness among actors in the industry to pay for risk-shifting instruments i.e. forwards and futures;
 - c) market supervision and governance entities that are perceived to be trustworthy, impartial and decisive in their approach to resolving contract disputes between market participants, based on clearly defined rules of behavior for participating on the exchange;
 - d) transparent rules governing the behavior of brokers;
 - e) a robust collateral management and settlement system that builds participant confidence and
 - f) vibrant spot markets with large trade volumes.
10. To achieve this, redesigning the institutional framework is necessary, rather than have production, warehousing, trading and marketing activities bundled in one eco-system, it has become apparent that there is need to develop three distinct, but interlinked, eco systems to enhance competitiveness of the sector as well as introduce structured commodities trading effectively and efficiently in Kenya. These ecosystems include the production value chain, the warehousing ecosystem and the commodities exchange ecosystem;

Commodities Exchanges (including Coffee Exchange) Being Regulated by CMA

11. There is a need for an effective Commodities' Regulator to oversee operations and check potential market manipulation hence the designation of the Capital Markets Authority as the Regulator;
12. The Capital Markets (Commodity Markets) Regulations 2020 is the overarching regulatory framework for commodity exchanges in Kenya. The following should be noted:
- a) That the law does not limit any entity from establishing a commodities exchange. As such, there can be many different commodity exchanges operating so long as they are deemed viable.
 - b) What will be traded on the exchange are the negotiable warehouse receipts.

- c) The CMA's jurisdiction focuses on the regulatory oversight of the exchange business operations and not on the commodities it is trading which is the responsibility of the various line ministries. In this regard, supervision is targeted on governance, conduct of business – including risk management and investor protection.

Justification for having commodity exchanges being regulated by CMA

13. The justification for having commodity exchanges being regulated by CMA are as follows-

- a) Whilst there are peculiarities within the production value chains of various commodities that may necessitate particular regulatory interventions, the core function of any exchange (centralized trading platform) is generic in nature which is to ensure fair and orderly trading and the efficient dissemination of price information. Hence, it would be counter intuitive to have different regulatory regimes govern the operations of different trading platforms, yet their business⁴ operations are similar. Nevertheless, the law provides flexibility towards addressing trading peculiarities in various commodities by obligating exchanges to develop their rules framework governing trading. In addition, the country has adequate capacity and experience on regulating exchanges through the CMA, hence no need for establishing a new regulator. Finally, allowing for different regulatory regimes will bring about regulatory arbitrage within the various commodity sectors operating exchanges potentially compromising risk management, investor protection and financial stability.
- b) Spot commodity exchanges can by design be specialized in raw produce or agricultural products at various levels of value addition. The scope of agricultural products may cover already processed food (such as fruit juices and pork bellies). In many cases the commodities exchange reviewed across the continent and African continent trade underlying assets beyond agricultural produce, including minerals, metals and

energy. Very frequently commodities exchanges expand their line of business to include trading of derivatives of the underlying assets. Effectively most commodities exchanges trade both underlying commodities and their derivatives (options and futures) as they seek economies of scale and more transparent pricing models. Experienced jurisdictions have therefore made national policy decisions to place the overall oversight mandate of commodities exchanges to the securities (capital markets) regulators. This would also help avoid fragmentation of commodities exchange where specific commodities are each assigned to the MDAs related to the specific sector.

- c) To benchmark market regulation in the areas of risk management, corporate governance, technological safeguards, and investor protection practices against regulatory prescriptions for other asset classes to improve the level of trust amongst the markets' current and prospective participants.
- d) To bring in institutional participation in Kenya's commodity markets (along with other institutional investors such as pension funds, insurance, treasury investments - when allowed). This will bring in rich liquidity in contracts that will enable more cost-effective hedging and will contribute to improving overall market efficiency. Furthermore, institutions such as fund managers can also help make the process of price discovery more efficient with their robust research/analytic capabilities.
- e) To enhance new product segments, such as commodity options on futures (Commodity derivatives) which are important for all major businesses and corporates to manage price risks. The NSE derivatives exchange was launched in July 2019 and can trade both financial and commodity derivatives. This will contribute towards enhancing the market competitiveness of an economy and is therefore an important pillar in the financial landscape of Kenya as a major economy in the region. In addition, the development of these products will contribute towards the

goal of developing Nairobi as a regional and international financial center.

On commodities not being securities

14. Purchasing commodities on a centralized exchange is to buy goods at a set price to be delivered later or as an investment activity. These commodities are traded on a centralized exchange based on negotiable collateralized warehouse receipts (WR). Negotiable, meaning that the receipts are freely transferable which facilitates access to credit by making them eligible as collateral for loans as well as facilitation of exchange trading without requiring the physical transfer of goods, and collateralized, meaning that the WRs are backed by the real commodity secured in an exchange approved and accredited warehouse.
15. The Warehouse Receipt System Act provides that warehouse receipts issued under the Act are negotiable and therefore may be traded on a secondary market. It is this secondary market that the Authority intends to regulate with settlement being the physical delivery of the commodity which will be undertaken at the warehouse in which the goods are stored.
16. The Warehouse Receipt is a type of documentation used in the commodities market to guarantee the quantity and quality of a particular commodity being stored within an approved facility. The Warehouse Receipt also provides the exchange with documentation that the goods authorized for sale are available for transfer to a buyer. Commodities exchange trading therefore occurs based on the integrity of the Warehouse Receipt as the real commodity will be delivered after the transaction concludes. This therefore makes the trading of a Warehouse Receipt a contract between the seller and buyer binding the seller to provide the real commodity as per documented specifications later to the buyer once payment is received.
17. There is an opportunity in the coffee subsector to upgrade the Coffee Warrants to Negotiable Warehouse Receipts. Lastly, there is an opportunity for player at the Commodity of Coffee Exchange to develop commodity or Coffee futures

which are purely financial instruments whose mandate for regulation is vested with the Capital Markets Authority.

3.0 COMMITTEE OBSERVATIONS

The Committee made the following observations-

1. There is need to align the Bill with the recommendations of National Coffee Taskforce Report and recommendations of other stakeholders in the coffee sub-sector.
2. The Committee invited the Ministry of Agriculture, Livestock, Fisheries and Cooperatives to a meeting scheduled for 29th June, 2021 to submit its views on the Bill. However, vide a letter reference number MOALF&C/SDCDAR/AD/VOL II, dated 8th June, 2021, the Ministry informed the Committee that it had its own Coffee Bill before the National Assembly and thus would not attend the meeting;
3. Over the years, the coffee industry has greatly deteriorated, resulting in some instances, to the uprooting of coffee bushes by farmers. The farmers have not received adequate returns for their produce as a result of impediments to competitive trade. As a result, there is a need to streamline coffee trading structures in order to maximize returns to the farmer. In light of this, there is need to strengthen the operations of the coffee exchange.
4. That the creation of the office of the CEO and the corporation secretary of the Board results in parallel roles and functions which would likely create conflict in their performance;
5. The coffee sub-sector is majorly farmer-driven. The Bill as drafted lacks adequate representation of farmers in the board of the Institute. Therefore, there is need for further representation in the board;
6. Noting that there are several bodies mandated to licence various activities along the coffee value chain, automation of services offered by the licencing authorities is necessary for efficiency and coordination;
7. The coffee sub-sector has been marred by theft of coffee and other illegal activities. There is therefore need to monitor the movement of clean coffee within and outside the county;
8. The Coffee Research Foundation was transformed upon the enactment of the Kenya Agricultural and Livestock Research Organization Act, 2013 to the

Coffee Research Institute under the KALRO. This change resulted in decreased funding for research and diminished focus on coffee research;

9. In order to position Kenyan coffee in the international market, there is need to monitor and maintain high standards in coffee production. As such, there is need to provide for regulation and enforcement of these standards;

4.0. COMMITTEE RECOMMENDATIONS

The Committee recommends as follows:

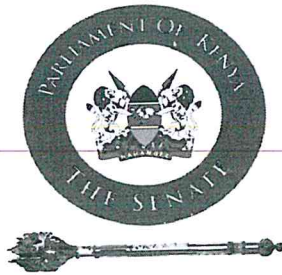
1. That the long title be amended to reflect the objects of the Bill and a new clause be inserted to provide for the objects of the Bill;
2. That the Bill be amended to enrich the functions of the Coffee Board of Kenya to include among others, dispute resolution mechanisms;
3. That the provision on appointment and functions of the corporation secretary be deleted;
4. That the Part on the role of the county governments be amended to broaden the functions of the county governments;
5. That the membership of the Board of the Coffee Research Institute be amended to enhance farmers' representation;
6. That the functions of the Coffee Research Institute be broadened for better performance of its duties;
7. That a provision on coffee development levy and its apportionment be provided for;
8. That the clause providing for the powers of the Cabinet Secretary to make regulations be amended to include specific provisions on various aspects;
9. That a provision regulating movement of coffee be provided for under the Bill and that a further provision be made for the county executive committee member to monitor and prescribe guidelines for movement of coffee;
10. That a provision on automation of operations of the Board and county governments be added to the Bill for efficient delivery of services and dissemination of information in the coffee sub-sector;
11. That new Parts be inserted in the Bill to provide for-
 - (a) coffee production and processing;
 - (b) coffee marketing and trading; and
 - (c) quality assurance.
12. That the Second Schedule to the Bill be amended to streamline licences issued by various issuing authorities; and
13. That the Bill proceeds to the next stage in the legislative process.

APPENDICES

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| APPENDIX I | Minutes of the Committee Deliberations |
| APPENDIX II | Committee Stage amendments to the Bill |
| APPENDIX III | The Coffee Bill, (Senate Bills No. 22 of 2021) |
| APPENDIX IV | Copies of the Newspaper advertisements on 13 th May, 2021 |

APPENDIX I

Committee Minutes



MINUTES OF THE 130TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON THURSDAY, 27TH MAY, 2021, AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.

PRESENT

1. Sen. Peter Njeru Ndwiga, EGH, MP - Chairperson
2. Sen. (Canon) Naomi Jillo Waqo, MP
3. Sen. Issa Juma Boy, MP
4. Sen. (Dr.) Michael Mbito, MP

ABSENT WITH APOLOGY

1. Sen. Enoch Wambua, MP - Vice-Chairperson
2. Sen. Kipchumba Murkomen, EGH, MP
3. Sen. (Eng.) Ephraim Maina, MP
4. Sen. Justice (Rtd.) Stewart Madzayo, MP

IN ATTENDANCE

1. Sen. Mutula Kilonzo Junior, MP
2. Sen. Agnes Kavindu Muthama, MP
3. Sen. Okong'o Omogeni, SC, MP
4. Sen. Charles Kibiru, MP

SECRETARIAT

1. Ms. Carol Kirorei - Clerk Assistant *(Taking Minutes)*
2. Ms. Regina Munyao - Legal Counsel
3. Ms. Njeri Manga - Media Relations Officer
4. Ms. Mary Nyawira - Audio Officer

MIN. NO. 87/2021

PRELIMINARIES

The Chairperson called the meeting to order at 11.10 a.m. followed by a word of prayer.

MIN. NO. 88/2021

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Issa Boy Juma, MP and seconded by Sen. (Dr.) Michael Mbito, MP-

1. Preliminaries
 - a) Prayer

- b) *Adoption of the Agenda*
2. Meeting with Senators from coffee growing counties to discuss the Coffee Bill, 2020
 3. Any other business.
 4. Date of Next Meeting
 5. Adjournment.

MIN. NO. 89/2021

MEETING WITH SENATORS FROM COFFEE GROWING COUNTIES TO DISCUSS THE COFFEE BILL, 2020

The Chairperson welcomed the Senators from coffee growing counties to the meeting and informed them that the purpose of the meeting was to receive their views on the Coffee Bill, 2020 sponsored by the Committee. He then welcomed the Legal Counsel to brief the Members on the provisions of the Bill. The Senators gave the following proposals-

1. Under clause 60, the Board should not sit as a quasi-judicial body. Further, the words "court of competent jurisdiction" were ambiguous. There was need for amendment to provide for the specific court for lodging of appeals;
2. Under clause 62, on limitation of the right to access to information needs to be amended as an Act cannot limit the Constitution;
3. Under clause 59, there was need for amendment to provide for the end of the Financial Year as June so as to harmonize with audits and tabling of reports;
4. Under section 25, on licensing of coffee operations, there was need for amendment to provide for a time limit for the issuance of licenses;
5. There was further need for provision of quality assurance under the Bill.

Following deliberations, it was agreed that the draft harmonized Bill incorporating the Committee Bill and the Ministry's Bill be shared with the Members for their information. The Chairperson further extended an invitation to the Senators to attend a meeting with the Council of Governors to discuss the Bill scheduled to be held on Friday, 28th May, 2021 at 11.00 a.m.

MIN. NO. 90/2021

DATE OF NEXT MEETING

The next meeting would be held on Friday, 28th May, 2021 at 11.00 a.m.

MIN. NO. 91/2021

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.17 a.m.



SIGNED:.....
(CHAIRPERSON)

DATE:.....18/6/2021.....



MINUTES OF THE 131ST SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON FRIDAY, 28TH MAY, 2021, AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.

PRESENT

- | | | |
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| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Sen. Enoch Wambua, MP | - | Vice-Chairperson |
| 3. Sen. Issa Juma Boy, MP | | |
| 4. Sen. (Dr.) Michael Mbito, MP | | |

ABSENT WITH APOLOGY

1. Sen. Kipchumba Murkomen, EGH, MP
2. Sen. (Canon) Naomi Jillo Waqo, MP
3. Sen. (Eng.) Ephraim Maina, MP
4. Sen. Justice (Rtd.) Stewart Madzayo, MP

IN ATTENDANCE

1. Sen. Agnes Kavindu Muthama, MP

THE SENATE

IN ATTENDANCE

- | | |
|--|--------------------------------|
| 1. Hon. (Dr.) James Nyoro Committee | - COG Chairperson, Agriculture |
| 2. Ms. Mary Nzomo | - CEC Agriculture, Trans Nzoia |
| 3. Mr. Julius Rotich | - CEC Agriculture, Uasin Gishu |
| 4. Mr. Benson Loktari | - COG Secretariat |
| 5. Mr. Robert Kiteme | - COG Secretariat |
| 6. Mr. Kizito Wangalwa | - COG Secretariat |
| 7. Mr. Mussolini Kithome | - COG Secretariat |
| 8. Prof. Joseph Kieyah, PhD | - Chairperson, CSISC |
| 9. Ms. Olivia Simiyu | - CSISC |
| 10. Ms. Susan Maira | - CSISC |
| 11. Mr. Matthew Mukisu | - CSISC |
| 12. Sen. Okong'o Omogeni, SC, MP | |

SECRETARIAT

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|--------------------------|---|-------------------------|
| 1. Ms. Josephine Kusinyi | - | Principal Legal Counsel |
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| 2. Ms. Carol Kirorei | - | Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Sombe Toona | - | Legal Counsel |
| 5. Ms. Njeri Manga | - | Media Relations Officer |
| 6. Mr. Philip Bwambok | - | Audio Officer |

MIN. NO. 92/2021 **PRELIMINARIES**

The Chairperson called the meeting to order at 11.10 a.m. followed by a word of prayer.

MIN. NO. 93/2021 **ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Issa Boy Juma, MP and seconded by Sen. (Dr.) Michael Mbiti, MP-

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*
2. Meeting with the Council of Governors and the Coffee Sub-Sector Reforms Implementation Standing Committee to discuss the Coffee Bill, 2020
3. Any other business.
4. Date of Next Meeting
5. Adjournment.

MIN. NO. 94/2021

**MEETING WITH THE COUNCIL OF GOVERNORS
AND THE COFFEE SUB-SECTOR
IMPLEMENTATION STANDING COMMITTEE TO
DISCUSS THE COFFEE BILL, 2020**

The Chairperson welcomed the Council of Governors and the Coffee Sub-sector Implementation Standing Committee. He then welcomed the Chairperson, Agriculture and Cooperatives Committee of the Council of Governors to make his remarks.

Hon. (Dr.) James Nyoro made the following remarks-

1. He expressed gratitude to the Committee for drafting the Bill and for continued cooperation with the Council of Governors;
2. As agreed at the conference held in October, 2020 in Mombasa between the Council and the Standing Committee on Agriculture, Livestock & Fisheries, there was serious need to safeguard agriculture as a devolved function with a focus in its transformation;
3. Inter-governmental agriculture forum is slated to begin in July, 2021 for cooperation between the national and county government in implementation of the agriculture function;
4. On coffee, the status quo cannot continue, there is need for urgent reform and implementation of the same. There is also need for additional investment thus need for a system to bring various stakeholders in the industry together;
5. The re-introduction of the Coffee Board with redefined structures in line with devolution is an important feature of the Bill;
6. The re-introduction of the Coffee Research Institute is another plus of the Bill;

7. The COG is uncomfortable with the Ministry's handling of the coffee sub-sector, and have raised concern on the lack of involvement of the COG in the development of the Ministry's Coffee Bill;
8. The COG is uncomfortable with the Ministry's Bill as it removes county government functions and places the same under the mandate of the Board thus creating a conflict and competition between the two;
9. County governments have devoted resources for the implementation of the Coffee General Regulations, 2019, yet the Ministry's Bill shall invalidate the provisions of the Regulations;
10. There is concern that there is no cooperation between the Ministry and the CSISC on coffee issues yet they are both domiciled in the national government. In this regard, the Council is contemplating court proceedings on discrepancies that are likely to gravely affect county government functions.

In response, the Committee clarified that the function of the legislature is to legislate, as such therefore, the Committee shall proceed with its Bill despite the Ministry's Bill. The Chairperson then invited the Chairperson of the Coffee Sub Sector Reforms Implementation Standing Committee (CSRISC) to brief the meeting on proposed amendments to the Coffee Bill, 2020.

Prof. Joseph Kieyah gave the following proposed amendments to the Bill-

1. The long title be amended to read *"AN ACT of Parliament to provide for establishment of the Coffee Board of Kenya, and the Coffee Research Institute, and to provide for the role of the national and county governments for the regulation, development and promotion of the Coffee industry, and for connected purposes."*
2. That clause 2 be amended by inserting new definitions including- *"auction", "auction levy", "Authority", "agent", "association", "bid", "broker", "buyer", "buyers levy", "clean coffee", "clearing house", "clearing and settlement", "coffee business", "coffee dealer", "coffee development", "coffee miller", "coffee milling", "coffee research", "coffee roaster", "coffee sales proceeds", "coffee standards", "coffee year", "Committee", "co-operative society", "county government", "cupping centre", "direct sale", "direct settlement system", "digitalization", "estate", "inspector", "licensing authority", "liquorer", "liquoring", "milling statement", "out-turn statement", "primary processing", "prompt date", "pulping station", "sale", "sales catalogue", "secondary processing", "small holder", "sweepings", "Tribunal", "warrant", "warehouse", "warehouse operator", and "warehouse receipt"*
3. That a new clause 3 be inserted to read as follows-
 3. Enumerate the object and purpose of the Act specifically as follows:
 - (a) *establish a framework for the regulation of the coffee subsector.*
 - (b) *provide for a regulatory framework for the registration, licensing, issuance of permits, issuance of certificates, production, processing, quality assurance, coffee trading, marketing, payment system and credit finance;*

- (c) provide for enforcement of the regulatory framework and coffee standards in the subsector;
- (d) delineate the roles of the National and County Governments in the coffee subsector and recognize agriculture as a devolved function under the Constitution;
- (e) provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships;
- (f) promotion of vertical integration of the coffee value chain for purposes of achieving economies of scale and managing risk;
- (g) promote evidence based coffee research for the development of the subsector;
- (h) promote farmer-based associations or platforms for representation of farmers' interests;
- (i) provide a framework for the establishment of a coffee stabilization fund;
- (j) establishment a framework for the provision of sustainable funding for the subsector;
- (k) provide for the establishment of a dispute resolution mechanism in the coffee sub sector, and
- (l) provide a framework for the engagement of the Kenya Government and international fora.

Rationale: To give an overview of why the law was enacted, the specific objectives the Bill aims to achieve and the mischief it intends to cure in the coffee sub sector.

4. That Clause 6 be amended on composition of the Board to include-
 - i) Principal Secretary in charge of cooperatives or the Commissioner for Cooperatives
 - (ii) the Principal Secretary for the time being responsible for finance or a representative nominated by the Principal Secretary in writing;
 - (iii) two persons of the opposite gender, representing smallholder coffee growers nominated by the Council of County Governors;
 - (iv) one person representing coffee estate growers nominated by the Council of County Governors;
 - (v) one person nominated by the Council of County Governors who should have relevant knowledge in the coffee sub sector;
 - (iv) one person representing the Attorney General;

Rationale: to align with the provisions of Mwongozo and ensure all players along the value chain have been represented in the Board.

5. That clause 10 on the functions of the Board be amended as follows-

NEW (b) issue registration certificates for agents, licences for independent coffee cupping laboratories, liquorers, warehouse operators and buyers,

movement permits for purchased clean coffee, and regulate imports and exports of coffee;

(c) undertake the registration of coffee dealers;

(d) make recommendations to the Cabinet Secretary for, and oversee the implementation of policies strategies, plans and funding models for the coffee sector;

(f) conduct national and international coffee market intelligence and surveys to inform promotional and branding strategies including the application of the Kenya Coffee Mark of Origin;

(h) develop and implement a framework for the capacity building of relevant players in the coffee industry;

(l) undertake capacity building activities and provide advisory services for players along the coffee value chain;

(m) undertake technology transfer and technical assistance to the counties on matters relating to coffee;

(n) conduct surveillance, inspections and enforce compliance to relevant policies, standards and related legislation; and

(o) co-ordinate inter-agency representation to international coffee fora to promote Kenya coffee for increased market share.

(p) arbitrate disputes arising between parties registered or licensed by the Board under this Act.

6. That clause 14(2) on the qualifications of the CEO be amended to read as follows-

(2) A person is qualified for appointment under subsection (1) if the person—

- (a) holds a degree in agriculture, business, law, administration or other relevant degree from a university recognized in Kenya;
- (b) has at least ten years' knowledge and experience in the coffee subsector;
- (c) has served in a position of senior management for a period of at least five years; and
- (d) meets the requirements of Chapter Six of the Constitution

7. That parts III, IV and IV be rearranged and a new Part VI – Production and Processing be included in the Bill.

8. That Clause 27 on membership of the Board of the Coffee Research Institute be amended to upgrade the qualifications for the Board chairman and members and add representation of coffee growers;
9. That clause 30 on the functions of the institute be amended to provide as follows-
 - (2) For the purpose of carrying out its functions under subsection (1), the Institute shall—
 - (a) undertake policy and social-economic analysis and make recommendations to the Cabinet Secretary on coffee research;
 - (b) identify production, policy, market, processing and utilisation constraints in the coffee industry and prepare short and long-term demand driven participatory research programmes;
 - (c) undertake the production and supervision of quality coffee planting materials by the Institute and the authorised nursery operators;
 - (d) provide competitive grants to research institutes and persons desirous of carrying out research and training programs which address value chain priorities and are consistent with the national research priorities and plans of the Institute;
 - (e) support and promote the training and capacity building in relation to coffee research;
 - (f) the lead agency in coffee breeding in the developing a climate resilient coffee crop and in leading the scientific effort to strengthen Kenya coffee's resistance to diseases and pests;
 - (g) the lead agency in developing production, processing and other technologies and practices that contribute towards climate change adaption, resilience and mitigation;
 - (h) the custodian of the Kenyan Coffee Genome and the primary instrument for making modern genomics resources available to researchers working across the coffee production chain;
 - (i) the premier national and regional institute in research into and development of new coffee varieties and improvement of existing varieties;
 - (j) to facilitate the use of improved production and processing technologies and to establish adequate feedback systems from coffee farmers and processors in order to achieve the highest possible quality of coffee in Kenya;
 - (k) the principal platform for providing in an accessible form timely and usable form scientific information and advisory services to actors in the whole coffee production chain through field visits, radio programmes, demonstration farms, publications and modern technology tools such as social media;
 - (l) conduct market research and analysis and disseminate information on its findings to relevant stakeholders;
 - (m) organize national and regional bi-annual conference with coffee producers, processors and key stakeholders to share research findings and receive feedback.
10. That clause 34 on the qualifications of the CEO of the Institute be amended to read as follows-
 - (a) holds a minimum doctorate degree in agriculture, crops science, economics or business administration or its equivalent from a university recognised in Kenya; and

Rationale: To upgrade the qualifications of the Chief Executive Officer.

11. That clause 44 on licensing of coffee operations be amended to read as follows-

(1) A person shall not operate a—

(f) pulping station or carry out hulling activities;

(g) coffee growers' mill;

(h) commercial mill;

(i) warehouse; or

(j) coffee roaster,

Rationale: To align with the coffee regulations on licensing
12. That Part V on registration and licensing be amended to align it to the provisions of the Coffee Regulations.

13. That Part VIII on Quality Assurance be amended to provide for coffee quality assurance standards and enforcement.

14. That a new provision be included to provide for inspectors.

15. That a new provision on Coffee imports and exports and surveillance be included.

16. That Clause 86 on Funds of the Board be amended to add-

The Cabinet Secretary may, in consultation with the Board and the Institute and by Notice in the Gazette, impose a 2% levy based on export import value to be remitted by coffee buyers to the Board to support the coffee industry.

(3) The levy imposed under subsection (2) shall be apportioned as follows—

(a) 1% to the Institute;

(b) 0.5% to the Board for regulatory and coffee promotion purposes; and

(c) 0.5% to the coffee growing County Governments for coffee development as conditional grants

17. That clause 93 on digitalization be amended to align with provisions of the Regulations;

18. That a new clause 94 be included to strengthen information sharing, enhance harmony in the regulation of the coffee industry and align with the coffee regulations;

19. That clause 101 be amended to align with provisions of the Regulations;

MIN. NO. 95/2021

DATE OF NEXT MEETING

The next meeting would be held on Monday, 31st May, 2021 at 10.00 a.m.

MIN. NO. 96/2021

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.17 p.m.

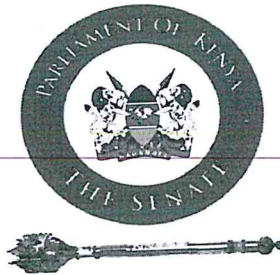


SIGNED:.....

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(CHAIRPERSON)

DATE:.....18/6/2021.....



MINUTES OF THE 132ND SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON MONDAY, 31ST MAY, 2021, AT 10.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.

PRESENT

1. Sen. Peter Njeru Ndwiga, EGH, MP - Chairperson
2. Sen. Issa Juma Boy, MP
3. Sen. (Dr.) Michael Mbito, MP

ABSENT WITH APOLOGY

1. Sen. Enoch Wambua, MP - Vice-Chairperson
2. Sen. (Canon) Naomi Jillo Waqo, MP
3. Sen. Kipchumba Murkomen, EGH, MP
4. Sen. (Eng.) Ephraim Maina, MP
5. Sen. Justice (Rtd.) Stewart Madzayo, MP

SECRETARIAT

1. Ms. Carol Kirorei - Clerk Assistant (*Taking Minutes*)
2. Ms. Njeri Manga - Media Relations Officer
3. Ms. Joyce Chelang'at - Audio Officer

MIN. NO. 97/2021

PRELIMINARIES

The Chairperson called the meeting to order at 10.10 a.m. followed by a word of prayer.

MIN. NO. 98/2021

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Issa Boy Juma, MP and seconded by Sen. (Dr.) Michael Mbito, MP-

1. Preliminaries
 - a) Prayer
 - b) Adoption of the Agenda
2. Meeting with the CS, Ministry of Agriculture, Livestock, Fisheries & Cooperatives to discuss the Coffee Bill, 2020
3. Any other business.
4. Date of Next Meeting
5. Adjournment.



MINUTES OF THE 133RD SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON THURSDAY, 3RD JUNE, 2021, AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Sen. Enoch Wambua, MP | - | Vice-Chairperson |
| 3. Sen. Issa Juma Boy, MP | | |
| 4. Sen. (Dr.) Michael Mbiti, MP | | |

ABSENT WITH APOLOGY

1. Sen. (Canon) Naomi Jillo Waqo, MP
2. Sen. Kipchumba Murkomen, EGH, MP
3. Sen. (Eng.) Ephraim Maina, MP
4. Sen. Justice (Rtd.) Stewart Madzayo, MP

IN ATTENDANCE

1. Sen. Agnes Muthama, MP
2. Sen. Cleophas Malala, MP

IN ATTENDANCE

- | | | |
|--|---|---|
| 1. Mr. Daniel Mbithi | - | CEO, Nairobi Coffee Exchange |
| 2. Mr. Adrian Atugi Association | - | Chairman, Coffee Estate Processors |
| 3. Ms. Mette Marie Hensen Association | - | Chairperson, Kenya Coffee Traders |
| 4. Mr. Joseph Kosgey | - | National Coffee Cooperatives Union |
| 5. Mr. Francis Ngone Federation | - | Chairperson, National Coffee Cooperatives |

SECRETARIAT

- | | | |
|---|---|--------------------------------|
| 1. Ms. Carol Kirorei <i>Minutes)</i> | - | Clerk Assistant <i>(Taking</i> |
| 2. Ms. Lucy Radoli | - | Legal Counsel |
| 3. Ms. Njeri Manga | - | Media Relations Officer |
| 4. Mr. Philip Bwambok | - | Audio Officer |
| 5. Ms. Hellen Irungu | - | Intern, Legal Services |

MIN. NO. 102/2021

PRELIMINARIES

The Chairperson called the meeting to order at 11.05 a.m. followed by a word of prayer.

MIN. NO. 103/2021

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Issa Boy Juma, MP and seconded by Sen. Enoch Wambua, MP-

1. Preliminaries
 - a) Prayer
 - b) Adoption of the Agenda
2. Meeting with the coffee farmers, processors and traders to discuss the Coffee Bill, 2020
3. Any other business.
4. Date of Next Meeting
5. Adjournment.

MIN. NO. 104/2021

MEETING WITH COFFEE FARMERS, PROCESSORS & TRADERS TO DISCUSS THE COFFEE BILL, 2020

The Chairperson informed the meeting that the Coffee Bill, (Senate Bills No 22 of 2020) had been read a First Time in the Senate and that the purpose of the meeting was to receive submissions on the Bill from various stakeholders. He then invited the guests to present their submissions.

Kenya Coffee Traders Association

Ms. Mette-Marie Hensen, the Chairperson of the Kenya Coffee Traders Association gave submissions as follows-

1. There is a lack of analysis on the operation of the value chain;
2. Constitution of the Board should be reviewed to incorporate representatives from the trade industry;
3. The role of the county governments who have a great responsibility in the Bill and should be clearly supported by the national government;
4. The Bill is unclear on national policy on coffee;
5. Further written submissions would be submitted to the Committee.

In response the Committee noted that agriculture was a fully devolved function under the Constitution, hence the larger chunk of responsibilities had been given to the

National Coffee Co-operative Federation of Kenya

Mr. Francis Ngone briefed the Committee as follows-

1. The National Coffee Co-operative Federation is an apex body with membership composed of Coffee Co-operative Unions in Kenya, whose main objectives are-
 - i. Promotion of welfare and socio-economic interest of coffee producers in Kenya;
 - ii. To act as the principal mouthpiece of the small-scale coffee producers in Kenya;

- iii. To provide advocacy, advice and protect members against adverse legislation.
2. The Ministry of Agriculture has not done enough to enhance the operationalization of the Crops (Coffee) (General) Regulations, 2019 and the Capital Markets (Coffee Exchange Regulations, 2020 developed by the Coffee Taskforce to adequately address the issues of the ailing coffee sub sector;
 3. The Bill fails to make provision for the Capital Markets Authority and its functions for enhanced transparency and accountability;
 4. The Bill is not clear on prohibition of multi-licensing, parallel directorships and cross ownership of shares in commercial milling companies, marketing agencies, coffee brokers and coffee buying companies so as to eliminate potential conflicts of interest;
 5. There is need for provisions on the establishment, structure and regulation of the direct settlement system (DSS) as provided under Regulation 54(1) of the Crops (Coffee) (General) Regulations, 2019;
 6. There is need to incorporate the Third Schedule to the Crops (Coffee) (General) Regulations, 2019 (15) which provides that licensed growers' societies shall only seek credit from regulated financial institutions upon approval by the growers;
 7. The Bill reverts the milling function to the Coffee Board as opposed to the counties thus opposing the devolution of the agriculture function;
 8. On composition of the Board, the Bill should be amended to provide for three members representing co-operative societies where coffee is grown and two members representing plantation coffee growers of registered estates associations.

Nairobi Coffee Exchange

Mr. Daniel Mbithi, the Chairperson of the Nairobi Coffee Exchange stated that-

1. There is another Coffee Bill developed by the Ministry of Agriculture being processed and whether the two Bills would be harmonized;
2. The Bill is in tandem with the provisions of the Regulations developed by the Coffee Taskforce; and
3. That direct sales should be provided for in the Bill.

Coffee Estates and Processors Association

Mr. Adrian Atugi, Chairman Coffee Estates and Processors Association stated that the farmers be empowered as per the Coffee Taskforce recommendations, and be allowed to sell their coffee, that markets be opened up for the benefit of the farmers.

MIN. NO. 105/2021

ANY OTHER BUSINESS

1. Statement on the state of the Mumias Sugar Company Ltd.

The Committee deliberated on the Statement on the state of Mumias Sugar Company Ltd. and its impending takeover/resuscitation sought by Sen. Cleophas Malala, MP. Sen. Malala requested the Committee to expedite its consideration of the Statement as the takeover by an investor was imminent and was likely to be concluded within a weeks' time, thus the Statement would likely be overtaken by events.

Following deliberations, the Committee resolved to meet with the KCB Management, the Receiver Manager, Mumias Sugar Company Ltd. and the CS, Ministry of Agriculture, Livestock & Fisheries on Wednesday, 9th June, 2021 to deliberate on the Statement.

MIN. NO. 106/2021

DATE OF NEXT MEETING

The next meeting would be held on Wednesday, 9th June, 2021 at 11.00 a.m.

MIN. NO. 107/2021

ADJOURNMENT

There being no other business, the meeting was adjourned at 11.50 a.m.



SIGNED:.....

(CHAIRPERSON)

DATE:..... 18/6/2021.....