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Rt. Hon. Speaker
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APPROVED
RT. HON. SEN
AMASON J. KINGI

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - SECOND SESSION

THE SENATE

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE COFFEE BILL, 2023 (SENATE BILLS NO. 10 OF 2023)

PAPERS LAID	
DATE	23/11/2023
TABLED BY	Sen. Mwangi Wahome
COMMITTEE	Agriculture
CLERK AT THE TABLE	Kavata M.

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

NOVEMBER, 2023

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LIST OF ABBREVIATIONS/ACRONYMS

AFA	-	Agriculture and Food Authority
COG	-	Council of Governors
MOA	-	Ministry of Agriculture
CECM	-	County Executive Committee Member
CEO	-	Chief Executive Officer
KARI	-	Kenya Agricultural and Livestock Research Organization
CBO	-	Coffee Board of Kenya
KALRO	-	Kenya Agricultural and Livestock Research Organization
KEPHIS	-	Kenya Plant Health Inspectorate
KCPA	-	Kenya Coffee Producers Association
CEPA	-	The Coffee Estates Processors Association
NCEGA	-	Nyamira Coffee Growers Estate
CRTF	-	Coffee Reforms Task Force
CSRISC	-	Coffee Sub-Sector Reforms Standing Committee
KEPROBA	-	Kenya Export Promotion and Branding Agency

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Standing Committee on Agriculture, Livestock and Fisheries is established under standing order 228(3) of the Senate Standing Orders and is mandated to consider all matters relating to agriculture, irrigation, livestock, fisheries development and veterinary services.

In undertaking its mandate, the Committee oversees the following State Departments:

1. Ministry of Agriculture and Livestock Development;
    i. The State Department for Crops Development and;
    ii. The State Department for Livestock Development
2. Ministry of Sanitation, Water and Irrigation
    i. The State Department for Irrigation
3. Ministry of Mining and Blue Economy and Fisheries
    i. State Department for Blue Economy and Fisheries

The Committee also oversees the following State Agencies among others-

a. Agriculture and Food Authority (AFA);
b. Agricultural Finance Corporation (AFC);
c. Agricultural Development Corporation (ADC);
d. Kenya Seed Company (KSC);
e. Kenya Plant Health Inspectorate Services (KEPHIS);
f. Kenya Agricultural and Livestock Research Organization (KALRO);
g. Kenya Veterinary Vaccine Production Board (KVVPB);
h. Kenya Veterinary Board (KVB);
i. Kenya Meat Commission (KMC);
j. Kenya Dairy Board (KDB);
k. Kenya Leather Development Council (KLDC);
l. Kenya Fisheries Service (KFS);
m. Kenya Fish Marketing Authority (KFMA);
n. Kenya Marine and Fisheries Research Institute (KEMFRI);
o. Kenya Fishing Industries Corporation; and
p. National Irrigation Board (NIB).

The Committee further work closely with the Council of Governors (CoG), and the County Assemblies Forum (CAF) and non-state actors including among others-

a. Kenya Private Sector Alliance (KEPSA);
b. Agricultural Council of Kenya (AgCK)
c. Food and Agriculture Organization (FAO);
d. Kenya National Farmers' Federation (KENAFF);
e. Centre for Agriculture and Bioscience International (CABI); and
f. Agricultural Industry Forum (AIF).

MEMBERSHIP OF THE COMMITTEE

The Committee is comprised of –

1. Sen. James Kamau Murango, MP - **Chairperson**
2. Sen. Alexander Munyi Mundigi, MP - **Vice-Chairperson**
3. Sen. Moses Otieno Kajwang', MP
4. Sen. Enoch Kiio Wambua, CBS, MP
5. Sen. Daniel Kitonga Maanzo, MP
6. Sen. Beth Kalunda Syengo, MP
7. Sen. Wahome Wamatinga, MP
8. Sen. Allan Kiprotich Chesang, MP
9. Sen. David Wafula Wakoli, MP

CHAIRPERSONS FOREWORD

Mr. Speaker Sir,

The Coffee Bill, 2023 seeks 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 being undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya. The Bill further seeks to transition the research of coffee currently being undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organization to the Coffee Research Institute.

Mr. Speaker Sir,

The Coffee Bill, 2023 was published on 10th March 2023 and read for the first time in the Senate on Tuesday, 11th April 2023 and thereafter the Bill stood committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 15th June 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

In total, the Committee received written submissions from twenty - two (22) stakeholders namely: The Coffee Reforms Task Force (CRTF)/Coffee Sub-Sector Reforms Standing Committee (CSRISC), The Kenya Plant Health Inspectorate (KEPHIS), Chepkube Farmers Society, Farmers Society, Farmers Society, Farmers Society, Farmers Society, Farmers Society, Baringo County Cooperative Union, Bungoma County Cooperative Union, Council of Governors (COG), Ministry of Agriculture (MOA), Kiambu Coffee Growers Association, Kipkelion , Kenya Coffee Producers Association, Kipkelion District Coffee Association , Baringo County Cooperative Union, Machakos Farmers Union, Mount Elgon Farmers' Cooperative , Muranga Farmers' Cooperative Union, Nyamira Estates Coffee Association, Kenya Coffee Producer Association (KCPA) , Kenya Coffee Producers Association, Office of the President and the Coffee Summit organized by the Office of the Deputy President.

Oral and written submissions were also received from 13 groups in the following areas: Bungoma County farmers and stakeholders, Kirinyaga County farmers and stakeholders, Nyeri County farmers and stakeholders, Kipkelion County farmers and stakeholders, Embu County farmers and stakeholders, Muranga County farmers and stakeholders, and Kericho County farmers and stakeholders. This was during the public participation carried out by the Committee in various Counties.

Mr. Speaker Sir,

Summary of Committee Observations

1. The Coffee Directorate under the Agriculture and Food Authority is supposed to manage the development of the coffee subsector. However, the Coffee subsector has continued to face innumerable challenges including but not limited to minimal research in coffee, late payment of coffee farmers, lack of clarity on who between the national government and the county government is supposed to carry out various functions related to the Coffee Industry.

2. From the comprehensive public participation which was undertaken by the Committee, it was clear that there is an urgent need to reorganize the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya.

3. Research is an integral part of the Coffee sector and therefore the importance of establishing a robust research institute to deal with the emerging issues in the coffee sector cannot be gainsaid.

4. The Cooperative movement is an important component of the coffee industry that cannot be overlooked. It is therefore important to streamline and regulate the activities of the cooperative societies to ensure that farmers are not exploited.

5. Article 40 of the constitution guarantees every person the right to own property, either individually or in association with others. Currently, it's not clear when the proprietary rights of the coffee pass from the farmer to a third party. This should be well articulated in the law in order to protect the proprietary rights of a coffee farmer. The ideal position is that proprietary rights should only pass after the farmer receives payment.

6. That, the coffee value chain has been exploited by a few individuals and cartels. The issues of poor and delayed coffee sales returns have been rampant. There is therefore a need to establish a system where farmers will receive the proceeds of sale of coffee promptly. In this regard, the aspect of Direct settlement system as provided for in the Bill, received overwhelming support. The system proposes to remit proceeds of sale of coffee directly to the farmers.

7. The mode of nomination of farmers representative to the Board was not agreeable to most of the stakeholders. It was felt that farmers should be allowed to elect or nominate their representatives. Equally, the Council of County Governors opined that they should also be given a free hand to nominate their representative to the Board. The Bill should be amended to captured these concerns.

8. There has been rising cases of coffee theft and cherry hawking, to stem on this vice, it is important to put in safeguard measures. This will be achieved by having growers registered to a pulping station for purposes of identification and delivery of coffee.

9. The milling of coffee has for a long time remained a mystery to the farmers, the process needs to be made transparent by allowing farmers to competitively retain a miller and to be present or have a representative during the milling process. This will enhance accountability, including that of the milling losses and the coffee grades. Currently, millers don't involve the coffee growers in the milling and auction process.

10. The reintroduction of the coffee development levy is essential for purposes of funding different aspects in the coffee sector. For farmers to realise better returns, the Board must invest in Marketing of coffee especially in the international markets. Consequently, the percentage of allocation of the proposed Coffee Development Levy needs to be reviewed to capture the marketing aspect. The Levy should also be paid and disbursed through the direct settlement system for transparency and accountability.

11. Agriculture being a devolved function, the roles of each level of government should be well spelled out.

12. A dispute resolution mechanism should be clearly set out to assist in settling of disputes emanating from the coffee Sector, in the first instance.

13. The Coffee Research Institute should be renamed to include the training aspect for purposes of sharing research finding with students and other stakeholders in the industry.

14. Although the Mwongozo guidelines recommend that the minimum qualification for Board members should be at least a university degree, in the case of the farmers representatives, it was felt that, the qualification should be lowered to accommodate farmers who might lack rich educational background but possess a wealth of experience.

15. The reintroduction of direct sales was termed as revolutionary because it will open up alternative channel for trading coffee which will create competition and hence better returns. However, to ensure that farmers are not exploited, there was a need to put in safeguard measures by subjecting a sample of any coffee designated for direct sale through the coffee exchange for price and quality discovery.

16. Finally, several provisions of the Bill create an offence but fail to prescribe the penalty. This needs to be rectified.

Summary of Committee Recommendations

The Committee having reviewed the Coffee Bill, 2023 (Senate Bills No. 10 of 2023) recommends that the House approves the Bill together with the proposed amendments.

Mr. Speaker Sir,

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty during and after the public participation which made the consideration of the Bill successful.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment. Lastly, I wish to thank the stakeholders who sent their memoranda and appeared before the Committee to present their comments on the Bill.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to standing order 148 (1), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on The Coffee Bill, 2023

Signed.. Date..21/11/2022........................

SEN. JAMES KAMAU MURANGO, MP,

CHAIRPERSON,

<u>STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES</u>

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON THE COFFEE BILL, 2023 (SENATE BILLS NO. 10 OF 2023)

We, the undersigned Members of the Senate Standing Committee on Agriculture, Livestock, and Fisheries, do hereby append our signatures to adopt this Report –

	Name	**Designation**	**Signature**
1.	Sen. James Kamau Murango, MP	Chairperson	
2.	Sen. Alexander Munyi Mundigi, MP	Vice-Chairperson	
3.	Sen. Moses Otieno Kajwang', MP	Member	
4.	Sen. Enoch Kiio Wambua, CBS, MP	Member	
5.	Sen. Daniel Kitonga Maanzo, MP	Member	
6.	Sen. Beth Kalunda Syengo, MP	Member	
7.	Sen. Wahome Wamatinga, MP	Member	
8.	Sen. Allan Kiprotich Chesang', MP	Member	
9.	Sen. David Wafula Wakoli, MP	Member	

CHAPTER ONE

1.1. Background

The Agriculture and Food Authority Act was passed in 2013 and it consolidated all laws on regulation and promotion of agriculture. The Crops Act which was also passed in 2013 consolidated and repealed various statutes relating to crops; to provide for the growth and development of agricultural crops.

As a result of the foregoing, the Coffee Directorate under the Agriculture and Food Authority is supposed to manage the development of the coffee subsector. However, the Coffee subsector has continued to face innumerable challenges including but not limited to minimal research in coffee, late payment of coffee farmers, lack of clarity on who between the national government and the county government is supposed to carry out various functions related to the Coffee Industry.

In a bid to stem the problems above, the government has taken various measures including establishing a Kshs. 3 Billion Cherry Advance Revolving Fund; effecting the Crops (Coffee) (General) Regulations; and moving the regulation of Nairobi Coffee Exchange to the Capital Markets Authority.

Due to the foregoing, in 2023, the Senate Standing Committee on Agriculture proceeded to develop the Coffee Bill which was eventually published on 10th March, 2023. The Bill was read a First Time in the Senate on Wednesday 11th April, 2023 and thereafter the Bill stood committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration. The Bill as published is attached to this Report as ***Appendix 2***.

Coffee is the second most traded commodity in the world after oil, this makes the coffee industry a very crucial sector to the Kenyan economy. Coffee export is the fifth foreign exchange earner after tourism, tea, horticulture and remittances from Kenyans in the Diaspora. Kenya was Africa's fifth-largest coffee producer in 2020.

Coffee is one of the most strategic cash crops contributing to Kenya's economic growth. The total area under coffee production is estimated to be over 160,000 hectares, about one third of which is the plantation sector and the rest are under small holder sector. 70% of Kenyan coffee is produced by smallholders, and an estimated 800,000 growers, mainly smallholder farmers, are involved in coffee growing. Consequently, the potential of the Kenya coffee sector has not been fully exploited. Currently, coffee production stands at about one million bags per year. Most Kenyan farmers who own less than 300 coffee trees and produce less than 2 kilos of cherry per tree (per year) have remained among the poorest in the world – earning less than Ksh 5,000 per month.

Collaboration between the national and county governments has given greater focus to the coffee sub-sector in the counties, through increased resource allocation for improved production and productivity. This is expected to change the future outlook of coffee to a more profitable enterprise and, thus, promote the sustainability of the coffee industry.

A thorough revival of the coffee sector in Kenya will require a multi – faceted approach since there are several components that complement the sector. A different system for funding and managing research for coffee in Kenya is needed. An evaluation of alternative models should be carried out to determine options to improve outcomes. Furthermore, there is need to reassess the legislation governing the sector and ensure that the different governing and implementing bodies are streamlined and clear role definition is carried out.

1.2. Object of the Bill

The principle 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 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 to the Coffee Research Institute.

1.3. Overview of the Bill

PART I

1. This part provides for the interpretation clause under clause 2. Further, the Bill under clause 3 sets outs the objects of the Bill which include: to promote a globally competitive coffee industry, provide for framework on registration and licencing of various players in the industry and to delineate the roles of the National and county Government in regards to the coffee Sector.

Part II-The Coffee Board of Kenya

2. Clause 4 of the Bill **establishes the Coffee Board of Kenya** whose headquarters shall be in Nairobi City County, additionally other branches may be established anywhere in Kenya.
3. Under Clause 7 the Bill provides that the Board shall **be managed by a board of directors** made up as follows-
   (a) a chairperson appointed by the President by notice in the *Gazette*;
   (b) the Principal Secretary responsible for agriculture;
   (c) the Principal Secretary for the time being responsible for trade;
   (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) one person representing an association of coffee farmers nominated by the Cabinet Secretary;
   (h) one person nominated by the cooperative society representing the largest number of small-scale coffee associations in Kenya; and
   (i) a chief executive officer appointed under section 15 who shall be an *ex-officio* member of the Board.
4. Clause 8 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 will serve for a term of three years' renewable for one further term.
5. Under clause 11 the functions of the Board include -
   (a) to 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) develop and enforce the coffee industry standards and industry code of practice in collaboration with the Kenya Bureau of Standards;
(j) 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;
(k) coordinate capacity building activities for players in the coffee value chain and
(l) arbitrate over disputes arising between parties registered or licenced by the board.

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.

6. Clause 15 of the Bill provides for the position of **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.

PART III – ROLE OF COUNTY GOVERNMENTS

7. The Bill under clause23 sets the role of the County Government to include-
   (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) regulate the movement of coffee through the issuance of movement permits for *buni,* parchment and clean coffee within the county and from the county to warehouses situated outside the county;

(h) in collaboration with law enforcement agencies, enhance security in coffee growing areas; and

(i) 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.

8. Further, it provides that 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.

9. under 23(3) the Bill obligates the Cabinet Secretary, in consultation with the Board and the county executive committee members to prescribe standards and guidelines for the setting of levies and fees by county executive committee members.

10. Clause 26 sets a requirement for persons operating a-

    (a) pulping station or carry out hulling activities;

    (b) coffee growers' mill; or

    (c) coffee roaster unless the person

    to have applied for, and obtained a licence from the respective county government in which the operation is to be undertaken.

PART IV – REGULATORY PROVISIONS

Registration

11. 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.

12. 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

13. Clause 27 makes it a prerequisite for a person who intends to perform any function under this Act for which a licence or a permit is required to 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.
14. The Bill further sets the criterion and timelines for issuance of a licence by lincencing authorities as specified under the second schedule.
15. Under clause 27(9)- (11) the Bill sets conditions for holders of various licences as follows-
    (a) The holder of a coffee buyer's licence or an entity associated with a holder of the licence shall not carry on the business of a commercial miller, broker, roaster, agent or warehouse operator.
    (b) A buyer's licence shall not be construed as authorizing a person to engage in direct sale of coffee or coffee products.
    (c) A holder of a commercial miller's licence or any other entity associated with such holder shall not carry on the business of a buyer, broker, roaster, or agent.
16. Clause 28 provides that the capital market shall issue the following licences-
    (a) coffee exchange licence authorising a person to conduct the business of a coffee exchange;

(b) a broker's licence authorising a person to offer clean coffee for sale at an exchange on behalf of the grower.

17. Clause 32 makes it a prerequisite for a person transporting clean coffee to possess a licence and a permit issued by the relevant licensing authority.
18. Clause 32 (5) obligates the county executive committee member to monitor the movement of cherry and parchment coffee between farms and stores and the movement of clean coffee and hulled buni to the market.

PART V – PRODUCTION AND PROCESSING

19. Clause 38 of the Bill sets the role of the Institute in regards to production and processing as follows-
    (a) in collaboration with the county governments, to disseminate coffee production and processing technologies;
    (b) undertake the propagation of coffee planting materials;
    (c) in collaboration with the county governments, to supervise nursery operators undertaking the business of propagating planting materials;
    (d) issue certified coffee seeds or seedlings for multiplication in coffee nurseries to coffee growers or for export;
    (e) map out areas suitable for coffee production in Kenya; and
    (f) undertake capacity building for the county governments and other players on coffee production and processing.
20. Clause 39 prohibits importation of planting materials unless a person is registered by the Board. In this aspect, the Board will work in collaboration with the Kenya Plant Health Inspectorate Service.
21. Further the institute will work in collaboration with the respective County executive committee member to undertake analysis of farm inputs.
22. Under clause 41 a co-operative society comprising coffee growers shall keep and maintain a register of coffee growers and the number of coffee trees planted or uprooted by each of its members. The register shall be submitted to the respective CECM annually.
23. Further, the CECM is obliged to keep and submit to the Board a register of area under coffee cultivation and information regarding uprooted coffee in the county.
24. Under Clause 42, the Board shall keep and submit to the CECM a register of certification schemes and operators, and monitor compliance with the coffee standards.

25. Clause 43 provides that processing of coffee shall be carried out at designated, standard approved facilities and in accordance with the National Standards and Industry Code of Practice.
26. Under clause 44 the Board shall establish coffee traceability system which shall be complied with by all pulping and coffee mills, further every contract for milling coffee must be in writing.
27. Further, under the clause a Commercial miller is required to -
    (a) ensure that a grower is given reasonable notice to be present during milling process;
    (b) take out comprehensive insurance cover against fire, theft, and other risks for all coffee in its possession and custody;
    (c) account for mill spillage or sweepings and all other coffee by- products to the growers and the Board;
    (d) digitize its operations to ensure weight precision, timely dissemination of information and protection of growers' data;
    (e) submit returns on coffee received and milled to the Board and the respective county government; and
    (f) comply with the prescribed standard coffee grades.
28. Clause 45 permits bulk parchment of coffee or Buni of the same quality and characteristics to attain millable quantities. Further a coffee miller may present samples for independent quality analysis before delivery of parchment to a miller.

PART VI – COFFEE TRADING AND MARKETING

29. Clause 46 of the Bill provides that Kenya Coffee may be offered for sale through—
    (a) auction in the Exchange;
    (b) direct sales; or
    (c) such other method as the Cabinet Secretary may prescribe.
30. Clause 47 provides that a licensed coffee grower may undertake direct sale of coffee and may, for this purpose, sell own clean coffee to a licensed roaster for local value addition and sale. In this regard, the price at which a licensed coffee grower offers coffee for sale shall bear a favorable comparison to the price at an exchange.
31. Clause 48 of the Bill establishes a coffee Exchange which shall be a body cooperate registered under the Companies Act for purposes of trading coffee.
32. The Functions of the Coffee Exchange Shall be to-

(a) manage the auction floor, the central sample room, the information registry and the direct settlement system; and

(b) maintain records relating to coffee sales, coffee samples and sweepings;

33. Clause 48(4) provides that the proceeds of the sale of coffee at the Exchange shall be deposited in a direct settlement system established in accordance with the Capital Markets Authority Act and in this regard, a broker or agent appointed by growers and other service providers shall not receive coffee sale proceeds on behalf of the growers.

34. Clause 51 provides that all Coffee shall be Stored in warehouses licenced by the respective county governments. The clause further sets the requirement and standards of ware houses.

35. The Bill obligates any person who blends any or various grades of coffee produced in Kenya with any other coffees produced outside Kenya to declare the percentage of Kenyan coffee in the blend.

PART V – QUALITY ASSUARANCE

36. Clause 55 provides that the Board and the respective county executive committee members shall collaborate in the enforcement of coffee industry standards along the value chain for purposes of quality assurance. In fulfilling these obligations, they shall-

(a) in collaboration institutions of higher learning, and other stakeholders develop curriculum, conduct examination and issue certificates for liquors. Further, a person shall not offer liquoring services unless they are certified and poses a licence;

(b) issue liquorer's licence;

(c) in collaboration with the respective county executive committee members, establish cupping centers in the counties for the purpose of conducting coffee quality analysis and capacity building;

(d) shall carry out assessments on coffee quality maintenance at any premises in which the processing of coffee is carried out along the value chain;

(e) sample coffee at any stage of the value chain to ascertain permissible pesticides residue levels for compliance with set national and international standards;

(f) in collaboration with county governments, monitor application of pesticides and inspect coffee storage bags to check against potential contamination.

37. The Board and the respective county executive committee members shall appoint inspectors for the enforcement of the provisions of this Act and may, separately or jointly, conduct inspection of coffee farms, coffee nurseries, pulping stations, coffee

mills, warehouses, cupping laboratories, roasters or coffee buyers' vessels transporting coffee to monitor compliance with the requirements of this Act.

38. Clause 57 sets a requirement on all coffee imports to conform with the coffee standards and adhere to safety and health standards. Further the Board shall upon issuing a notice and obtaining an order of a court, destroy any coffee which does not conform to Kenyans standards.

PART V – FINANCIAL PROVISIONS

39. Clause 58 of the Bill 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 it 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.

PART VI – COFFEE RESEARCH INSTITUTE OF KENYA

40. Clause 64_establishes the Coffee Research Institute whose headquarters shall be in Kiambu County. It further provides that the Board may establish such branches in Kenya as it may consider necessary.

41. The management of the Institute shall vest in a board whose term is four years' renewable once with the following membership as set out in clause 67 -
   (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 estate coffee growers nominated by the Cabinet Secretary;

(g) one person representing small scale coffee growers nominated by the Council of the County governors.

(h) one person nominated by Commission on University Education representing the universities nominated by the Cabinet Secretary; and

(i) a chief executive officer appointed in accordance with section 47 who shall be an ex-officio member of the board.

42. Clause 70 sets out 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

43. Clause 74 of the Bill provides for the position of CEO of the Institute who shall be competitively recruited and appointed by the board and shall be responsible for the day-to-day management of the affairs of the Institute. The Bill sets out the qualification for appointment as a CEO as follows-

(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.

44. 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

45. Clause 80 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 it 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.

PART VIII – MISCELLANEOUS PROVISIONS

46. Clause 87 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 appeal to a Court of competent jurisdiction.
47. The Bill under clause 88 obligates the Board and each CECM to automate their operations for efficient delivery of services and to disseminate of information on the coffee sector.
48. Clause 89 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 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.
49. Clause 90 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.
50. Clause 92 provides for a general penalty on any offence committed under the Act.
51. Clause 94 gives powers to the Cabinet Secretary, in consultation with the Board, to make regulations make Regulations.
52. Clause 95 of the Bill transitions staff, rights and obligations, funds and assets, legal proceedings which were vested on AFA OR KALRO to the CBK AND CRI.
53. The First Schedule provides for the conduct of business and affairs of the Board of Directors or the Board of the Institute.
54. The Second Schedule provides for various licences that will be issued and their respective issuing authorities.

CHAPTER TWO

2.1. OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.1.1. Introduction

The Committee proceeded to undertake public participation on the Bill pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Thursday, 15th June 2023 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as ***Appendix 3***.

Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

In response to the advertisement and invitations, the Committee received written submissions from twenty - two (22) stakeholders namely: Ministry of Agriculture and Livestock Development (MOALD), Council of Governors (COG), The Kenya Plant Health Inspectorate (KEPHIS), The Coffee Reforms Task Force (CRTF)/Coffee Sub-Sector Reforms Standing Committee (CSRISC), Chepkube Farmers Society, Baringo County Cooperative Union, Bungoma County Cooperative Union, Kiambu Coffee Growers Association, Kenya Coffee Producers Association, Kipkelion District Coffee Association, Baringo County Cooperative Union, Machakos Farmers Union, Mount Elgon Farmers' Cooperative, Muranga Farmers' Cooperative Union, Nyamira Estates Coffee Association, Kenya Coffee Producer Association (KCPA), Kenya Association of Manufacturers (KAM), Farmers' Cooperative Union, Coffee Estates and Processors Association (CEPA), Chief of Staff and Head of Public Service and the Coffee Summit held by the Office of the Deputy President.

The detailed submissions by the stakeholder, organized clause-by-clause, is set out in a matrix attached as ***Appendix 4***.

Oral and written submissions were also received from 13 groups in the following Counties: Bungoma County farmers and stakeholders, Kirinyaga County farmers and stakeholders, Nyeri County farmers and stakeholders, Kericho County farmers and stakeholders, Embu County farmers and stakeholders, Muranga County farmers and stakeholders and Bomet County farmers and stakeholders.

This was during the physical public participation carried out. Additionally, copies of the stakeholder submissions on the Bill are attached collectively as ***Appendix 5***.

2.1.2. Ministry of Agriculture and Livestock Development (MOALD)

The Ministry, through a memorandum to the committee proposed the following amendments to the Bill:

Clause 2 - Interpretation of terms: Amend definition of coffee "grower" to mean any person who cultivates, processe4s own coffee, value adds and markets own coffee in Kenya and may for purposes of licensing, include co-operative societies, unions, associations, estates and companies. Other terms include Exchange agents.

The Committee accepted this proposal.

Interpretation of terminologies: Some of the terms used lack clarity. Interpretation of the words auction, coffee dealer and coffee auction.

The Committee rejected this proposal. This is because the Bill already defines the word "Auction "to mean the Auction system under which clean coffee is offered for sale at a coffee Exchange".

The Committee accepted the proposal to redefine the word "coffee dealer" and "coffee grower"

Board of Directors: There lacks clarity on how the appointments to the Board will be done. It should be amended to indicate that the Cabinet Secretary will indicate the rules to be used when appointing the Board members. Amend the words "directors" that appear after the word "Board".

The committee rejected this proposal because the Bill specifies the bodies that will nominate members to the Board.

There should be a Managing Director who will be responsible for the day to day running of the Board. The duties of the Board should be removed from the day to day running activities.

The Bill under clause 16 provides for the position of the chief executive officer and sets the responsibilities of the office therein.

Establishment of the Coffee Exchange: The establishment and proposed functions of the Coffee Exchange are not clarified in terms of the source of funds .it should be amended to include the statement that the funds to run the Coffee exchange will be from: The coffee levy, auction levy, registration fees, government grants and interest from fixed deposits.

The committee partially accepted this proposal. The provisions of the Bill should clearly stipulate that an exchange is a private entity that will only be licenced by the capital markets authority. And therefore, it does not require any funding from the Government.

Prohibition against blending: This should be amended to indicate: Blending with imported coffee. The clause as it currently is actually providing on actions against labelling and does not prohibit blending.

Clause 53 obligates any person who blends Kenyan coffee with coffee from outside Kenya to declare the percentage of any blended coffee.

Amend to substitute the word "Chief Executive Officer with "Managing Director "

The Committee rejected this proposal since the Mwongozo guidelines provide for the position of the Chief Executive Officer.

Provision for a Company Secretary that shall be a Secretary to the Board.

The rejected this proposal.

2.1.3. Submissions from the Kenya Plant Health Inspectorate (KEPHIS)

The organization, through a memorandum to the committee proposed the following on the bill:

Quality Assurance: Currently the Bill requires for one to apply for and obtain a Phytosanitary certificate from the Kenya Plant Health Inspectorate Service. Amend the Bill to read: "has had the consignment inspected and obtained a Phytosanitary Certificate from the Kenya Plant Health Inspectorate Service".

The Committee accepted this proposal for KEPHIS to issue a Phytosanitary Certificate after inspection.

The Bill further states that the Institute shall conduct periodic surveillance on the application of pesticides to ensure compliance with set standards and best practices. Replace the word "Institute" with "Proposed addition to the Section. Include a clause on the role of Kenya Plant Health Inspectorate Service in the issuance of Plant Import permit (PIP).

The Committee accepted this proposal.

Proposed addition to the Schedule Second on licence, permit or certificate. Amend to include Plant Import Permit and Phytosanitary Certificate.

The Committee rejected this proposal since Clause 5(1) (b) provides that an importer shall adhere to the safety standards prescribed under this Act and any other written law.

2.1.4. Council of Governors (COG)

The Council of Governors, through a memorandum to the committee proposed the following on the bill:

Composition of the Board: There needs to be adequate representation in the Board. They recommended that nomination of coffee farmers be done by the respective farmer organizations. Amend Clause 7 by deleting clause 7(1)(c)(d)(e), (f) and (g) substituting with the following new clauses 7(1)(c)(d)(e), (f) and (g) to read as follows: The Board shall consist of- A farmer representing smallholder coffee growers; One person of the nominated by the umbrella body representing plantation coffee growers; Two persons-of—the—opposite gender and with knowledge and experience in coffee sub-sector nominated by the Council of Governors; one person nominated by the association of large scale coffee farmers and one person nominated by the Institute.

The Committee resolved that the COG to nominate two members to the Board. The nominees need not to be representatives of a farmers' organization but must have experience in management in the coffee sector.

Licensing of coffee operations: Commercial milling is a trade within the County hence the respective County Governments are best placed to issue this license. This is in compliance with section 7 of Part 2 of the Fourth Schedule to the Constitution which devolved Trade development and regulation, including-trade licences.

The Committee accepted this proposal to have warehouse and commercial millers licenced by the respective County Governments.

Membership of the Board: To provide for clarity with regards to nomination of representatives of farmers as well as provide for the representation of the County Governments in the Council of the Institute. This will assist in the prioritization of the research as per the County needs.

The Committee accepted this proposal in regards to having one nominee nominated by COG. The nominees need not to be representatives of a farmers' organization but must have experience in management in the coffee sector.

Regulations: These reforms ensure conformity to Articles 6(2) and 89 of the Constitution as well as the Fourth Schedule which requires to two levels of government to consult and cooperate. Amend to read as follows: The Cabinet Secretary may, in consultation with the Board and Council of County Governors, make Regulations.

The Committee accepted the proposal to provide for consultation.

Licence, permit or certificates: To align to the provisions of section 7 of Part 2 of the Fourth Schedule of the Constitution. Amend by replacing the word "Board" and replacing with the word "County Government" to read as follows: Commercial coffee miller's licence to be issued by the County government.

The Committee accepted the proposal.

Provisions of the Fourth Schedule: Given that agricultural services have been devolved to County Governments as per the provisions of Part 2 of the Fourth Schedule of the Constitution and that trade development and regulation excluding regulation of the professions are county functions, there is need for Parliament to ensure that legislations being developed strictly adheres to the provisions of the Constitution especially articles 6(2), 189 and Fourth Schedule. This is to ensure that the County Governments are empowered to discharge their constitutional responsibilities and effectively provide services to mwananchi.

2.1.5. Office of the President

The Office of the President through a memorandum to the committee proposed the following on the bill:

Interpretation and definitions: The interpretation is scanty and does not capture many terms that are applicable in coffee. There is a need to define all the relevant terms. These include the word: "association". This is too general and dangerous because anybody can associate and do coffee business. The term small holder growers should be deleted from definition as it will kill the cooperatives. The term auction talks of more exchanges other than the Central Auction system. We should be clear of the exchange. The central auction is well known and has an history and sufficient for our coffee not financial instruments. The term Authority should be defined since it is playing a role but not defined. The term broker should not refer to the party to sell coffee for the farmers but to offer that sells coffee at the exchange not an exchange. Coffee belongs to the farmer, but broker only offers it to buyers on behalf. The term Estate is proposed to be a minimum of 2.5 acres of coffee. The term Exchange should specifically refer to the Nairobi Coffee Exchange. The term grower should confine to the owner of coffee. Entities not growing coffee should not qualify. On the interpretation of coffee sales proceeds, proposals request that we leave out the money through the direct sale. Direct sale should only be between a grower and an overseas buyer since selling locally is subject to abuse. Primary processing needs to capture other primary processing methods including drying of Buni Coffee since processing has evolved. The term secondary processing should only confine itself to milling and grading of coffee since the rest is tertiary processing. The term small holder should refer to a person cultivating not a grower. A grower is an estate or cooperative.

The Committee partially approved this proposal.

Representation at the Coffee Board of Kenya: The directors are not objectively nominated/appointed and too much governments representation and influence. Representation of stakeholders is key. Clause 10 does not say how a director shall be replaced after losing office. Clause 17(a) the resignation letter addressed to the chairman of the board.

The Committee rejected this proposal the board is made up of 4 members from the national government and five members from other stake holders.

Role of county governments: Small coffee growers in the proposal are representing cooperative societies not small coffee growers. The 2 persons should have country representation and the 2 Planters to have country representation. For the members of the Board, experience in agriculture, business, law should be allowed and not just coffee sector.

The Committee rejected this proposal farmers will be nominated through the cooperatives societies where they are registered.

Amendment of various clauses: Clause 10 should be amended to read 'death "not "dies". On the Functions of the board, add to Conduct market research and analysis and disseminate information on its findings to relevant stakeholders. Company secretary should be provided for in the law as it is the world best practice.

The Committee rejected this proposal, research is one of the functions of the Board and the research institute. The position of company secretary is not necessary.

Clause 23(1)(g): The issuance of movement permits does not recognize liberalization. This is a liberalized economy with investors allowed to compete.

The Committee rejected this proposal. Regulation of movement of coffee is essential to curb coffee theft.

Clause 23(2)(3) Setting of levies should be centralized to avoid abuse since county governments have semi autonomy. For uniformity.

The Bill provides that levies will be set in consultation with the cabinet secretary.

The Committee rejected this proposal since Counties have different needs and therefore there is need to allow flexibility. Clause 23(3) provides for safeguards.

Clause 25(2) Return of the application fee is retrogressive. This was abolished in the past.

The committee rejected this proposal.

Clause 26(1) Counties are registering and Coffee board is registering all dealers. But the dealer is not defined. Define the dealer for clarity.

The Committee accepted this proposal.

Clause 26(4) Reference to the Board is misleading because it's about county governments. The reference should be re-cast.

The Committee rejected this proposal. Registration will be done at the county level.

Clause 27(1)(a) the period of 14 days to decide on a permit is too long. It is not facilitative to business. Clause 27(5), Gazettement period should be scrubbed or shortened to 7 days to facilitate business. Including agricultural licenses in this requirement is inappropriate. 30 days is too long and doesn't serve any useful purpose.

The Committee rejected this proposal. The timelines given are sufficient.

Clause 27(9) Commercial miller is a new term and is not defined, a definition for clarity should be provided.

The Committee accepted this proposal.

Clause 28, 29, 30 on licensing by the capital markets authority and the board are mixed up and confusing. Expunge capital markets.

The Committee rejected this proposal.

Clause 34(1) The clause should have aligned the license year to the crop year which is October to September, to avoid overlaps.

The Committee accepted this proposal.

Clause 37, the introduction of the Cabinet Secretary in the licensing process is hanging because it had not been mentioned. It needs to be captured in the body.

The Committee accepted the proposal and amended the Clause by deleting it and replacing with a new clause.

Clause 28 (a) coffee exchange should be amended to the Nairobi coffee exchange.

The Committee accepted this proposal.

Clause 41(1)(2) Grower (Estate and society) both to be included.

The Committee rejected this proposal. This is already captured in the Bill.

Clause42(2) this should be amended to end to remove authority and replace with scheme to read "Seek certification with certification schemes" not authority.

The committee rejected this proposal, licencing will be done by the relevant licencing authorities.

Clause 42(9) should be amended to read "Provide proof of certified coffees".

The Committee rejected this proposal.

Clause 43 should be amended to read …". coffee standards" not "national standards.

The Committee rejected this proposal.

Clause 42(8)(9) talks about a miller preparing a catalogue but it's not indicated that a miller will be selling coffee.

The Committee accepted this proposal.

Coffee trading and marketing: Clause 46(2), delete……such other methods.

The Committee accepted this proposal.

Clause 48(2) Exchange should be established under the law as a subsidiary of the Board.

The committee rejected this proposal.

Clause 48(1)(2), the body corporate known as Coffee exchange is ambiguous since there are many exchanges. Remove the capital Markets Authority (CMA) and propose that the Nairobi coffee exchange to be established by an act of parliament managed under coffee board of Kenya.

The Committee accepted this proposal.

Clause 48(4), contradicts the definition of sales proceeds by leaving out the direct sales money.

The Committee rejected this proposal as the proceeds of sale will be deposited in a direct settlement system established in accordance with the Capital Markets Act.

Clause 51(2) the statement should stop at" Act.

The Committee rejected this proposal.

Clause 51(3) should amend to read…" Conform to standards prescribed by this act". Reference to KEBS is misleading.

The Committee rejected this proposal.

Clause 53(1): Green coffee that is Blended is not supposed to be re – exported so as to preserve the integrity of Kenya coffee.

The Committee rejected this proposal.

Clause 52(1)(b), certificate of quality is not defined, or its purpose given.

The Committee accepted this proposal.

Clause 52(1) Interchange a and b.

The Committee rejected this proposal.

Clause 52(2) Delete the words "Buyer license"

The Committee accepted this proposal.

Quality Assurance: Clauses 55,56,57 are poorly arranged and contain input for regulations not law.

The Committee rejected the proposal.

Financial Provisions: Clause 59 funding of the board is poor and insufficient and difficult to get the funds from exporters. The 2% of the value of the coffee traded at the coffee exchange and direct sales to be remitted to the board by the DSS is insufficient and difficult to implement.

The Committee accepted this proposal and amended the Bill to include appropriation by the National Assembly.

Clause 68: the reference to clause 40 is irrelevant and inconsistent since the clause talks of something different.

The Committee accepted this proposal.

Clause 80-86, the institute has a lot of functions but is insufficiently funded. Enough money is needed for research work.

The Committee accepted this proposal and amended the Bill to include appropriation by the National Assembly...

Clause 94, the clause is inconsistent with clause 23(2)(3) which allows counties to set levies.

The Committee accepted this proposal and amended the clause accordingly.

Clause 96 should amend to read "were vested with Coffee board of Kenya then transferred to AFA.

The Committee rejected this proposal the functions had already been transitioned to AFA. The Bill provides that for transition in respect to coffee sector.

Clause 99 replace Authority with Board

The Committee rejected this proposal.

Transitional Provisions: Clause 100 should give priority to members of staff who belonged to the Coffee Board before AFA was established because that is how it has been in AFA. Shall be recalled and given options to remain in AFA or join Coffee Board.

Warehouseman's license should be defined. The Agent license is not mentioned in the schedule. The term Commercial mill should be defined. The term Roaster should be included in the definitions. On the Movement permit, the word parchment should be removed.

The Committee rejected this proposal. The bill provides for staff who are working under the coffee directorate.

Interpretations: Certain necessary terms are missing in definitions or not sufficiently defined. Insertion of the following new definitions: "Authority" (to mean Capital Markets Authority "coffee roaster" (as a separate licence from "buyer") "coffee miller", "cupping centre", "liquorer", "inspector", "milling statement", "warrant", "warehouse receipt". Align the definitions with the published Crops (Coffee)(General) Regulations 2019 and Capital Markets (Coffee Exchange) Regulations, 2020 (hereinafter referred to as the regulations)

The committee partially accepted this proposal.

Objects: The rationale is 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. The Bill should consider including the following objects: establish a framework for the regulation of the coffee subsector, 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; provide for enforcement of the regulatory framework and coffee standards in the subsector; provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships; promote farmer-based associations or platforms for representation of farmers' interests; provide a framework for the establishment of a coffee stabilization fund; establishment a framework for the provision of sustainable funding for the subsector.

The Committee partially accepted this proposal.

Functions of the Board: The aim of the proposed amendment is for clarity on the certificates, licences and permits that are to be issued by the Board as stipulated in the regulations and to enhance the functions of the Board so as to ensure development and promotion of the coffee sector. The following functions should be included: 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; undertake capacity building activities and provide advisory services for players along the coffee value chain;

The committee rejected this proposal. The licencing roles are aligned with the functions of the National Government and the County government as provided in the Constitution.

Chief Executive Officer: The purpose of this amendment is to align the proposed role of the CEO with the provisions of Mwongozo.

The Committee accepted this proposal.

Licensing of coffee operations: The aim of this amendment is to align with Coffee (General) Regulations on licensing which were heavily negotiated and thus should be considered so as to maintain the status quo. Consider amending subsection (1) to read as follows: A person shall not operate a pulping station or carry out hulling activities; coffee growers' mill; commercial mill warehouse; or coffee roaster.

The Committee accepted this proposal

Sales Catalogue: The purpose of the amendment is to align with the definition in the Bill which defines the Sales catalogue as "a standard document prepared by a coffee miller, or an appointed broker in consultation with an exchange and growers, for sale of clean coffee at the exchange". Giving the commercial millers control in preparation of sales catalogue may perpetuate conflict of interest at the coffee exchange to the disadvantage of coffee growers.

The Committee accepted the proposal to define a sales catalogue.

Functions of the Coffee Research Institute : The amendment is to provide for some functions of the institute to include;: undertake policy and social-economic analysis and make recommendations to the Cabinet Secretary on coffee research; support and promote the training and capacity building in relation to coffee research; additional functions to be considered include : be the premier national and regional institute in research into and development of new coffee varieties and improvement of existing varieties; 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; organize national and regional bi-annual conference with coffee producers, processors and key stakeholders to share research findings and receive feedback.

The committee partially accepted this proposal to capture the training aspect.

Qualification of the CEO of the Coffee Research Institute: To enhance the qualifications of the Chief Executive Officer, the Bill proposes the amendment of subsection (3)(b) to read as follows: holds a minimum doctorate degree in agriculture, crops science, economics or business administration or its equivalent from a university recognized in Kenya;

Checks and balances: To provide checks and balances on over borrowing/spending. This section gives Coffee Board of Kenya powers to raise or borrow money in consultation with the Cabinet Secretary in charge of Agriculture. On certain heavy borrowing, the institute need to seek approval of the Cabinet Secretary and not just consultation. Add a clause in section 81 that allows approval of the Cabinet Secretary in charge of Agriculture in the case of heavy borrowing.

The committee rejected this proposal.

Surveillance: Consider including the following: 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. The Board and the county governments shall share surveillance reports for purposes of compliance and enforcement.

The committee rejected this proposal as its already covered in the Bill under 11(m) and 55(9),

Sharing of information: This amendment seeks to align with the coffee regulations and enhance harmony in regulation of the coffee industry. Provision on sharing of information between the Board and County Governments.

The committee rejected this proposal. This is already provided for in the Bill under clause 88.

2.1.6. The Kenya Coffee Producers Association (KCPA)

The organization, through a memorandum to the committee proposed the following on the bill:

Interpretation of terms: Coffee grower: Definition of grower is limiting the grower to do only primary coffee production. It leaves out that grower can process own coffee, value add and market his own coffee. Review the definition of the grower to read - ''grower" means any person who cultivates, processes own coffee, value adds and markets own coffee in Kenya and may for purposes of licensing, include co- operative societies, unions, associations and estates and companies;

The Committee accepted this proposal. The definition of coffee grower was enhanced by inserting the words is linked to a licensed pulping

Coffee warrant: What if the last endorsee is the grower' representative/service provider this will therefore mean the service provider will be the owner of the coffee. This should be redefined to reflect the grower as the owner of the coffee at the warehouse. For coffee sold under the terms of ex- warehouse, - the bill should provide the definition to reflect the level at which ownership is transferred from the grower to the buyer.

The Committee rejected this proposal. The Committee will retain this definition. The ownership of coffee is not retained at the warehouse. The Bill defines "coffee warrant" as an instrument prepared by the warehouseman of which the person named therein, or the last endorsee thereof, shall for all purposes be deemed to be the owner of the coffee to which it relates. Under Clause 49(2) ownership changes after the sale.

Broker: Coffee Broker to be enshrined within the framework of Coffee Board of Kenya. The rationale is to have the CBK which has the industry knowledge regulate the brokers and coffee exchange. Farmers appreciate the introduction of brokers in the Coffee Exchange for improved price discovery. However, the concern is that CMA has no capacity from its formation to oversight the coffee/commodity brokerage.

If CMA must regulate coffee trading, then there is need for a transition period for both Coffee Exchange and brokers to the threshold of regulation by CMA

The Committee accepted this proposal by redefining the word broker.

Buyer: Having the buyer also as an importer poses a danger of having undisclosed blended coffee finding its way to the coffee exchange as Kenyan coffee (traceability challenges). Separate buyer and importer Review the definition of the buyer.

The Committee rejected this proposal.

Direct Sale: There is need to provide clarity on the regulation of direct sales since there is no clarity on how the exchange is coming in to regulate direct sales.

The Committee accepted this proposal.

Composition of the Board members: The board is made up of even number of board members. This is un usual in board composition. Smallholder farmer produce over 60% of the coffee production and deserve more representation in the board. The rationale of nominating farmers' representatives in the board is not clear/farmers' representatives being nominated as government appointees is not right. The term plantation is also not defined. The board shall comprise of seven (7) coffee farmer representatives elected from the different coffee growing regions and as per set categories as follows – 5 from smallholder farmers, (central, rift valley, eastern, western and nyanza regions) 1 from large estates, 1 from small and medium estate – elections will be conducted as per the regulations/ guidelines set out. The term plantation should further be defined.

The Committee partially accepted this proposal and amended the composition of the Board and further observed that it's not possible to have 7 farmers in the Board as this will push the membership to beyond the recommended membership under the mwongozo guidelines.

Vacation of Board members: Vacation of board member by physical infirmity is discriminatory. Vacation of office by recall is not considered. Physical infirmity should be defined. Redefine the clause to include: The growers will have power through a resolution to recall members of the board who does not meet the objectives of the growers. The recall power will be excised on the following instances: When a member is convicted of a criminal offence in a Kenyan court of law, When the member is declared bankrupt by a Kenyan Court of law, When the member ceases to represent the interests for which he/she was elected to the Board. The Bill should provide for development of recall guidelines on farmers' representative.

The Committee rejected this proposal since the word infirmity is used in its ordinary sense.

References to cooperatives: References to cooperatives alone is discriminatory while there are other smallholder growers' organization allowed for purpose of registrations e.g., companies, associations. Depending on the performance of the cooperative society, union, association, 10% may be sufficient for some and insufficient for others. The clause should be reviewed to read –to maintain the current 20% for office operations. Reference should be made to all the registered small holder coffee growers and not cooperative societies only. The bill should provide a transition period of five years of progressive efforts to move from twenty percent to ten percent. During the five years' period, there will be guidelines on poor performance, operation costs e.g., salaries and wages, repairs and maintenance etc.

The Committee rejected this proposal.

Sample size: The current practice of sample size is 250gm and is adequate for quality analysis and therefore no technical grounds for increasing the sample size to 500gms. Independent analysis before delivery to the miller- creates a gap in that the miller can doubt/dispute the source of the analyzed coffee The sample size for quality analysis should remain at 250gms. Also review the clause to read as follows – upon delivery of coffee for milling, the miller shall draw a pre-milling analysis sample of not more than 500gm and formally share as follows - 250gm for pre-milling analysis and 250gm for the grower's independent quality analysis for comparison purposes with the results from commercial miller. The miller shall provide pre-milling analysis report upon delivery of coffee for milling and before the grower leaves the millers premises. Also provide an actionable reconciliation mechanism to protect the farmers where the pre – milling analysis reports between the commercial miller and independent quality results are considerably different. The bill should provide acceptable variation/standard range.

The Committee rejected this proposal and retain it as is in the Bill 500g for parchment and 250g for clean coffee.

Competitive procurement: competitive procurement is not defined. The bill should make a provision for development of regulations for competitive procurement or align with or refer to the provisions of procurement act.

The Committee rejected this proposal because this is provided for by the public procurement and asset disposal Act.

Charges for delivery of services: The person who communicates to DSS provider on charges and nature of commercial services is not defined. Coffee is traded in dollars and the bill is silent on this. The Bill needs to define the person who communicates to DSS provider on charges and nature of commercial services. The DSS provider is limited to trading currency and conversion is the responsibility of the growers.

The Committee rejected this proposal.

Roaster, sale and value addition: Roaster, sale and value addition not defined in the bill. Since growers can do value addition of own coffee, then there should be no legal provision for the growers to sell clean coffee directly to the roaster. Provide definitions of sale, roaster and value addition. Roaster should be limited to sale of value-added coffee to both local and international markets. Roaster should only buy coffee from the exchange.

The committee rejected this proposal because it was not necessary.

Commercial Millers: It is not clear why the broker is appointed in consultation with the commercial miller. Definition of commercial miller is also not provided.

The Committee accepted this proposal.

Warehouse offenses: A person who operates a warehouse contrary to this Act commits an offence. No recourse clause is provided - it is difficult to implement/enforce such a law. Include a recourse clause to facilitate enforcement/implementation of the law.

The Committee accepted the proposal for and amended Clause 51 (6) to impose a fine.

Imports and Export levy: We are discouraging exports and promoting imports by having the same amount of import and export levies Import levy should be higher than export levy to promote exports and discourage imports. A two percent levy on exports and a five percent levy *on imports.*

The committee rejected this proposal because it's against international trade laws.

Representation to the Coffee Research Institute: The selection criteria for farmers is not clear. Why are farmer representatives nominated as government appointees? Farmers are the consumers of the research findings and should therefore drive research. Even number of board members is unusual for board composition. The CRI Board shall comprise of the following: Three (3) member representing coffee farmer , 2 small holder coffee farmers, 1 Estate farmer), One (1) member representing subject matter specialists in coffee from KALRO, One (1) member representing the Coffee Board of Kenya , One (1) member representing the Ministry responsible for Agriculture (MOA), One (1) member representing National Research Council for Science, Technology and Innovation and One (1) member representing the Ministry responsible for Finance

The Committee accepted this proposal in terms of the mode of appointment of farmers representatives.

Infirmity: the clause on infirmity by a board member is not clearly defined. The scope of infirmity should be defined.

The Committee resolved to reject this proposal. The term 'Infirmity "as a word has been used in its ordinary meaning so there is no need to redefine.

Vacation of office: Section 69- Vacation of board member- the vacation by recall is not provided for . The growers will have power through a resolution to recall members of the board who does not meet the objectives of the growers. The recall power will be excised on the following instances: When a member is convicted of a criminal offence in a Kenyan court of law, When the member is declared bankrupt by a Kenyan Court of law, When the member ceases to represent the interests for which he/she was elected to the Board. The Bill should make provisions for development of recall guidelines.

The Committee rejected this proposal

Co- option of Board members: Provision for co-opting board members should be demand driven but subject to budget allocation. The clause should be reviewed to reflect that cooption of board member is demand driven and subject to budget allocation.

The committee rejected this proposal. The clause provides that the Board "may" meaning that its optional.

Pre- milling gaps: Section 44(5)- does not capture the gaps at milling level that exposes farmers to losses/coffee traceability strategies to protect the farmer. This includes potential exchange of coffee or loss because the farmer does not get a pre-milling analysis report upon delivery of coffee for milling/exaggerated milling losses. The pre milling analysis report should show the cup quality/profile of the coffee delivered for milling, the quantity, the milling losses, moisture content the grade among other parameters. Coffee processing shall be subjected to traceability and integrity standards including the following aspects and others that may be introduced by CBK. Pre-milling analysis report – all growers shall be provided with a pre-milling analysis report upon delivery of parchment to the mill that captures the following; - weight of coffee delivered, moisture content, milling losses, date of delivery, grading, cup quality and any further information and or guideline that may be provided by the Coffee Board of Kenya.

The Committee rejected this proposal. Clause 44 provides that a grower or their representative to be present during the milling process, further clause 45 provides for independent quality analysis.

Legislations that will be repealed by the Bill: The Bill does not list the legislations that are being repealed. This leaves a significant legal gap given the existing conflict between the current operational Crops Act 2013 and the Coffee General regulation 2019 and capital market (coffee exchange) regulations 2020. On coffee trading, the same oversight is observed by establishing Coffee Board and Coffee Research Institute without repealing Crops Act 2013, AFA Act 2013 and KARLO Act 2013 respectively under which these institutions are established. The bill should provide the legislations that will be repealed by the Bill.

Transition provisions: Transition provisions not provided – e.g., stakeholders with existing licenses, what will happen if the bill is enacted? The bill should have transition provisions.

The Committee rejected this proposal because part XII already provides for transition

Reserve price setting: The Bill does not make provisions on coffee valuation to guide the farmers on reserve price setting yet majority of farmers are not involved during reserve price setting. Majority of the farmers also lack capacity to understand reserve price setting and therefore to engagement their legal representative on reserve price setting. The bill should make legal provisions for reserve price setting for both direct sales and coffee traded through the auction. The regulator should be tasked to provide guidelines for reserve price setting through enlisting among other factors there of – international coffee prices and trends thereof, seasonality of coffee production globally, competitiveness of the Kenyan coffee market and quality aspects of the coffee being traded among other factors. Make provisions for market information sharing with the farmers to help them understand market trends. The bill should also make provisions for extension services to farmers to understand coffee valuation and farmer involvement in reserve price setting.

Define the person who communicates to DSS provider on charge and nature of commercial services. The DSS provider is limited to trading currency and conversion is the responsibility of the growers.

The Committee resolved to reject this proposal because Clause 50 provides for preparation of sales catalogue. Clause 2 defines sales catalogue

2.1.7. Coffee Reforms Task Force (CRTF)/Coffee Sub-Sector Reforms Standing Committee (CSRISC)

The Task Force through a memorandum to the committee proposed the following on the bill:

The Coffee Sub-Sector Reforms Standing Committee (CSRISC) was appointed by H. E the President vide Gazette Notice No 7512 on 25th September, 2020 to play an oversight and strategic role towards implementation of Coffee Reforms aimed at full revitalization of the coffee subsector.

The Coffee Subsect of Implementation Committee (2016-2020) (CSIC) was appointed (Vide Gazette Notice Number 7745 dated 30th September, 2016) to implement the recommendations contained in the Task Force Report.

CSRISC, is the successor to CSIC, seeks the safeguarding the reforms and negotiated provisions contained in the Coffee (General) Regulations, 2019 and the Capital Markets (Coffee Exchange) Regulations, 2020.

The Court in a judgment delivered on 28th July, 2017 declared the first set of Regulations known as the Coffee (General)Regulations, 2016 to be void and directed those new regulations be formulated with further extensive consultations with stakeholders.

CSIC undertook further extensive public participation and reviewed the Coffee (General) Regulations 2016 and formulated the Crops (Coffee) (General)Regulations, 2019 which were gazetted on 1st July, 2019 and the Capital Markets (Coffee Exchange) Regulations, 2020.

The underlying principal for the reform process is the recognition of property rights of the coffee farmer i.e. coffee belongs to the coffee grower along the value chain until the coffee is sold and money paid to the grower. All other service providers along the value chain are agents of the coffee growers.

The coffee reforms are anchored on the Task Force Report on the Coffee Sub Sector Reforms. The report highlights the recommendations on coffee reforms based on the following eight main pillars—

1. Coffee Sub-Sector Legal Reforms;
2. Coffee Sub-Sector Subsidy Programme;
3. Establishment of Coffee Cherry Advance Payment Scheme;
4. Modernization of Nairobi Coffee Exchange (NCE);
5. Youth Involvement in Coffee Sub-sector and Promotion of Local Coffee Consumption of Kenyan Coffee
6. Audit of Debts and Debt Waivers

Efficient payment system: The Regulations contain some of the key reforms which include the introduction of a transparent and efficient payment and settlement of coffee sales proceeds otherwise known as the Direct Settlement System (DSS).

Reforms at the Nairobi Coffee Exchange: Modernization of the Nairobi Coffee Exchange and the transfer of the exchange to the regulatory ambit of the Capital Markets Authority (CMA) from the Agriculture and Food Authority (AFA). This is in line with the Vision 2030 Development Strategy, the Northern Corridor Integration Projects (NIP) and the Capital Markets Master Plan (2014-2023). These provided the policy direction that resulted in the amendments introduced to the Capital Markets Act No 485A of 2016 which mandated the Authority to regulate spot commodity trading including agricultural commodities.

Interpretations and Definitions: Insertion of the following new definitions. “Authority” (to mean Capital Markets Authority) “coffee roaster” (as a separate licence from “buyer”) “coffee miller” “cupping center” “liquorer” “inspector” “milling statement” “warrant” “warehouse receipt. The proposal is to align the definitions with the published Crops (Coffee)(General) Regulations 2019 and Capital Markets (Coffee Exchange) Regulations, 2020 (hereinafter referred to as the regulations)

The Committee accepted this proposal. The above terminologies should all be defined because these terms are used interchangeably in the Bill.

Objects of the Bill: The aim of the amendments is 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.

Proposed amendments: establish a framework for the regulation of the coffee subsector. 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; provide for enforcement of the regulatory framework and coffee standards in the subsector; provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships; promote farmer-based associations or platforms for representation of farmers’ interests; provide a framework for the establishment of a coffee stabilization fund; establishment a framework for the provision of sustainable funding for the subsector.

The Committee accepted this proposal.

Board of Directors: To align with the provisions of Mwongozo and ensure all players along the value chain have been represented in the Board. The membership should not exceed the proposed number under Mwongozo which provides or 7-9 members. Consider including the following— Principal Secretary in charge of cooperatives or the Commissioner for Co-operatives; the Principal Secretary for the time being responsible for finance or a representative nominated by the Principal Secretary in writing; one person representing coffee estate growers nominated by the Council of County Governors; one person nominated by the Council of County Governors who should have relevant knowledge in the coffee sub sector.

The Committee accepted this proposal to align the board membership with the mwongozo guidelines.

Functions of the Board: Consider including the following functions to undertake capacity building activities and provide advisory services for players along the coffee value chain. delete (b) and (c) and insert the following new 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;

The Committee accepted this proposal to amend the Bill to include Marketing as a function of the Board.

Position of the Chief Executive Officer: Changes need to be made to align to the Mwongozo Act. The following ate the proposed changes: A person is qualified for appointment under subsection (1) if the person— holds a degree in agriculture, business, law, administration or other relevant degree from a university recognized in Kenya; has at least ten years' knowledge and experience in the coffee subsector; has served in a position of senior management for a period of at least five years; and meets the requirements of Chapter Six of the Constitution.

This Committee accepted this proposal to capture qualification and experience in the coffee sector.

Licensing of coffee operations: Proposed amendments to align with Coffee (General) Regulations on licensing which were heavily negotiated and thus should be considered so as to maintain the status quo. Consider amending subsection (1) to read as follows—A person shall not operate a pulping station or carry out hulling activities; coffee growers' mill; commercial mill; warehouse; or coffee roaster.

The Committee accepted this proposal.

Establishment and functions of the Nairobi Coffee Exchange: Changes to align with the coffee regulations and the Capital Markets Act. Define Authority in the interpretation section to mean the Capital Markets Authority. Consider amending 48(1) and (2) to remove reference to a specific entity to read: person shall not carry on the business of a coffee exchange unless he has applied for approval and has been licensed as a coffee exchange by the Authority in accordance with the Capital Markets Act.

The Committee amended Clause 48(1) (2) by deleting and substituting with new clauses 48(1) and (2).

Sales catalogue: Clause 50 does not recognize the role of the grower miller in the preparation of sales catalogue and only refers to the commercial miller. Grower miller should be included in the preparation of the sales catalogue. Consider amending to read: "A grower miller, or an appointed broker in consultation with the commercial miller, shall prepare a sales catalogue in consultation with the exchange and growers for all the coffee in a licensed warehouse in accordance with this Act" Giving the commercial millers control in preparation of sales catalogue may perpetuate conflict of interest at the coffee exchange to the disadvantage of coffee growers.

To align with the definition in the Bill which defines the Sales catalogue as "a standard document prepared by a coffee miller, or an appointed broker in consultation with an exchange and growers, for sale of clean coffee at the exchange".

The Committee accepted to define a sales catalogue and to amend by deleting Clause 50 (1) and substituting with a new clause.

Coffee Development Levy: These amendments are to align with the regulations which provide for all payments and disbursements through the direct settlement system. Consider amending to read: 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 through the direct settlement system for the development of the coffee industry. The levy imposed under subsection (2) shall be apportioned as follows— 1% to the Institute; 0.5% to the Board for regulatory and coffee promotion purposes; and 0.5% to the coffee growing County Governments for coffee development as a conditional grant.

The Committee amended the clause by redistributing the levies and by adding the aspect of marketing.

Board of the Coffee Research Institute: Rationale for the amendment is to upgrade the qualifications for the Board chairman and members and add representation of coffee growers. Consider the following members—the Principal Secretary for matters relating to trade or a representative nominated by the Principal Secretary in writing; one person representing the Chief Executive Officer of the Kenya Phytosanitary Plant Health Services; one person representing smallholder coffee growers nominated by the Council of County Governors; one person representing coffee estate growers nominated by the Council of County Governors. Consider amending subsection (3) to read as follows— A person is qualified for appointment as a chairperson of the board of the Institute if that person - holds a doctorate degree in economics, agriculture, business, law, administration or other relevant degree from a university recognized in Kenya; and has at least five years' experience in the coffee sector.

The Committee partially accepted the proposal to amend the sub clause to read as follows "a person is qualified for appointment as a chairperson of the Council of the Institute if that person holds a Master's degree in crop research or a related field from a university recognized in Kenya and has three years' experience in the coffee sector

Functions of the Coffee Research Institute: The proposed amendments are to provide for some functions more specifically attuned to the CRI. Consider redrafting to read as follows—For purposes of carrying out its functions under subsection (1) the Institute shall— undertake policy and social-economic analysis and make recommendations to the Cabinet Secretary on coffee research; support and promote the training and capacity building in relation to coffee research; Consider Including the following functions-be the premier national and regional institute in research into and development of new coffee varieties and improvement of existing varieties; 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; organize national and regional bi-annual conference with coffee producers, processors and key stakeholders to share research findings and receive feedback.

The Committee accepted the proposal by including the training one of the functions of the Institute.

Office of the Chief Executive Officer: The amendments are to enhance the qualifications of the Chief Executive Officer Consider amending subsection (3)(b) to read as follows— holds a minimum doctorate degree in agriculture, crops science, economics or business administration or its equivalent from a university recognized in Kenya.

The Committee rejected the proposal.

Borrowing by the Coffee Board: This section gives Coffee Board of Kenya powers to raise or borrow money in consultation with the Cabinet Secretary in charge of Agriculture. On certain heavy borrowing, the institute need to seek approval of the Cabinet Secretary and not just consultation. Add a clause in section 81 that allows approval of the Cabinet Secretary in charge of Agriculture in the case of heavy borrowing. To provide checks and balances on over borrowing/spending.

The Committee rejected this proposal.

Surveillance: Consider including the following—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. The Board and the county governments shall share surveillance reports for purposes of compliance and enforcement.

The committee rejected this proposal as its already covered in the Bill under 11(m) and 55(9),

Digitization: The aim of the amendment is to align with the coffee regulations. 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.

The committee rejected this proposal. This is already provided for in the Bill under clause 88.

Provision on sharing of information: 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.

The committee rejected this proposal. This is already provided for in the Bill under clause 88. The Bill also provides for sharing information on registration and licencing between the Board and the County Governments.

Regulations: These seek to provide for consultation with the county governments The Cabinet Secretary may, in consultation with the Board and county governments, make Regulations– Clause 94(2) (h), the word 'trade' can also mean Cabinet Secretary doing regulations for Coffee Exchange which is already under CS-National Treasury. Clause 94(2) (k), need express reference to Capital Markets Regulations that provide for DSS for coffee sales proceeds settlement. If left open, the Cabinet Secretary can issue regulations that violate provisions on DSS under Capital Markets Act. Amend Section 94(2) (h) and Section 94(2) (k) to remove the word 'trade' and for the bill to expressly provide for DSS for coffee sales proceeds settlement as provided under Capital Market Act.

The Committee accepted the proposal to provide for consultation with the County Governments.

2.1.8. The Coffee Estates Processors Association (CEPA)

The organization, through a memorandum to the committee proposed the following on the bill:

Preamble: The preamble as drafted doesn't include other specific major areas the bill targets. The preamble is not descriptive of the holistic role of the Bill. The Bill preamble should include production, marketing, coffee trading, value addition and financing.

The Committee rejected this proposal the long title as drafted is sufficient.

Interpretations: The Description of Agent includes their registration by the Board. The Agents are required to be registered by the Board. There are no provisions providing the process for registration of Agents by the Board in the Bill. Provide a specific clause dealing with the process for registration of Agents by the Board and requirement for guarantee.

The committee rejected this proposal on the interpretation of the word 'Agent". because Clause 29 already provides that the Board shall licence Agents. Clause 27provides for the application of licences while Clause 94 (2) provides that the CS shall in the regulations, the forms to be used.

Description of Association the Bill utilizes "Coffee Association" and not 'Association". Utilizing "Association" and the description "Coffee Association" inconsistently will bring confusion in interpretation. Change the definition of association to include 'Coffee Association' in order to cover other entities registered under different entities of law.

The Bill doesn't consider a situation where there could be registration of an "association" through Company Limited by Guarantee, Trusts, etc. It excludes a situation where there could be registration of an "association" through Company Limited by Guarantee, Trusts, etc.

The committee rejected this proposal, the Bill defines an association to mean a registered group and therefore it does not prescribe the mode of registration.

Clean Coffee: The industry terminology for clean coffee is "green bean" The industry terminology for clean coffee is "green bean" To change this definition to read "green bean" instead of "clean coffee" To ensure the replacement of all mentions of "clean coffee" with "green bean.

The Committee rejected this proposal because it was not necessary.

Coffee grower: is a person who cultivates coffee in Kenya and may for purposes of licensing, include a co- operative society, coffee union, association and estate. The addition of "for purposes of Licensing" suggests that the coop societies, unions etc are also growers. The definition should only be specific to who qualifies as a "coffee grower". Delete the "and may for purposes of Licensing, include a co- operative society, coffee union, association and estate".

The Committee rejected this proposal because it will lock out the other stakeholders from benefitting from direct sales. There are people who want to grow their own coffee and sell it on their own. The committee amended the definition of the word coffee grower by inserting the words "is linked to a licenced pulping station," immediately after the words "coffee in Kenya";

Parchment": Include a provision defining parchment to comprehensively define Parchment. Proposal to include the new definitions. Include the definition as: Parchment means "the product obtained from the process of removal of coffee pulp from cherry fermentation, washing and drying to the coffee standard moisture content".

The Committee rejected this proposal because the word 'parchment "is used in its ordinary sense and hence there is no need for re- definition.

Various Sections provide for Coffee Roasters or Roasters including their licensing under Section 25, but there is no definition of a "Coffee Roaster". Include definition of a Coffee Roaster. "Coffee Roaster" means a person who uses processes to create different coffee roasts for local or export markets.

The Committee rejected this proposal because the word 'coffee roaster "is used in its ordinary sense and hence there is no need for re- definition.

The Coffee Board of Kenya: Section 4 Establishes the board as a body corporate with perpetual succession capable of suing and being sued. Is this proposed institution now independent of AFA noting provisions of the Agriculture and Food Authority, No. 13 of 2013 that describe it under First Schedule as a "former institution". 1. Transition arrangements required based on the independence of the proposed Coffee board of Kenya from AFA. 2. Amendment to the AFA Act. 1. Include the transitional provisions in the Bill, as highlighted within this memorandum. 2. Draft proposed amendment to the AFA Act. 3. Provide timelines for the above two proposals.

Powers of the Coffee Board: The Board may, if it considers it necessary, create or take part in the creation of, become a member of, or associate with a body or corporation designed to assist or promote the coffee industry. The Board may incorporate or acquire shares in another entity in relation to promotion of the coffee sector. Further interrogation of this provision is needed in order to create requisite scenarios that would require its utilization by the Board.

The Committee accepted this proposal and resolved to delete the power given to the board to create a body. Further the Bill under clause 102 deletes coffee from list of scheduled crops in the Crops Act.

Provisions for the Board of Directors: The proposed Board has 11 Members. The provision needs to be revised in order to have a pragmatic and farmer-oriented outlook, for efficiency and adequate representation. At least 7 farmers for regional and gender balance. In order for the Board to have a farmer-oriented outlook, it should be constituted as follows: 1. Chairman 2. PS Agriculture 3. PS Trade 4. 1 Representative of the farmer cooperative with the highest total production. 5. 2 Appointees from the Small Holders (Cooperatives) 6. 2 appointees from Small and Medium Estate farmers, and from Plantation farmers 7. 1 Appointee representing the CR Institute 8. 1 CS Agriculture Nominee (Farmer) 9. 1 Council of Governors Appointee (Farmer) 10. C.E.

The committee reworked the membership of the Board.

Appointment of the C.E.O: The CEO appointed under Section 15 to be an ex- officio member of the Board. Section 7(2) should provide a time frame of 30 days for gazettement for board members under (1)(d), (e), (f) and (h) Section 7(2) has missed out CS Gazette Appointment of Board Member under 1(h)

The Committee accepted the proposal to provide for CS to Gazette.

Functions of the Board: These are to be performed in consultation and collaboration with the Council of County Governors. This provision grants the Board various powers and obligations in respect to the coffee industry as the main regulator. There is concern about having double regulation of the coffee sector by: The Ministry of Agriculture (through AFA) and the Capital Markets Authority - through the regulations under the CMA Act. Further, we have more conflicting regulations on marketing by the County Governments, AFA and the CMA. We propose the following additions to the functions of the Board: To take over the regulation and licensing of the existing Nairobi Coffee Exchange, regulation of Marketing and Trading, provide for the management and regulation of the consolidated Coffee Development Fund, proposed under Part V of the Bill. 4, develop an online and mobile platform for remote licensing and registration - either online or via USSD - at the Board and County level.

The Committee rejected this proposal.

Coopting of members: The Board of Directors may co-opt to sit in the committees such other persons whose knowledge and skills are necessary for the performance of the functions of the Board. The Board can coopt other persons with special skills. The Board may request the COG, Small Holders and Plantation Associations to provide names of such persons. We propose that the Board be granted the power to request the COG, Small Holders and Plantation Associations to provide names of such persons, within this provision.

The Committee opted to reject this proposal as it's not tenable. Retain the clause as it is as this is too prescriptive.

Levies charged by the County Government: Counties may charge levies and fees. We require greater safeguards than those in subsection (3) in order not to have County Governments overcharge for levies and fees. We propose that maximum fees, levies and charges be standardized under the Act and adopted by the County Governments in their local laws.

The Committee rejected this proposal since this would go against devolution and freedom of each County. The Counties should be left to decide.

Regulatory provisions: All persons carrying out any business of coffee shall be registered by the respective county government. No fees should be charged for registration. A register must be kept for statistical purposes with their name, location, size and parcel number of the land on which the business is located and any such other information the Board prescribes. Each county government shall submit a copy of the Register to the Board. Proposal is for fees, levies and charges to be standardised under the Act and adopted by the County Governments as is in their local laws. Proposal is for fees, levies and charges to be standardised under the Act and adopted by the County Governments as is in their local laws.

Licences: There are specific coffee exchange licenses to be issued by CMA. There is concern about having double regulation of the coffee sector by the Ministry of Agriculture (through AFA) and the Capital Markets Authority - through the regulations under the CMA Act. Further, we have more conflicting regulations on marketing by the County Governments, AFA and the CMA. We propose the replacement of the "CMA Act CAP

485A and Regulations" with "the Coffee Board of Kenya" in this Bill. We also propose that the licensing powers granted to the "Authority" or "Capital Markets Authority" be instead granted to the Coffee to the Board

The Committee rejected this proposal. the issue of licencing was negotiated between different stakeholders.

Traceability and disclosures: Section 44 should end after sub-section 2. Subsections (3), (4) and (5) should be a new and separate section - potentially Section 44A, as they do not relate to coffee traceability and disclosures.

The Committee accepted the proposal to renumber the clause.

Proposal on the new Coffee Development Fund: To have a more efficient, responsive and farmer-oriented distribution of funds. To have a more efficient, responsive and farmer-oriented distribution of funds. Creation of a consolidated Coffee Development Fund, managed and regulated by the Board.

This proposal is already provided for under the financial provisions.

Coffee trading and marketing: Provides for ways through which Kenyan coffee may be sold. That is by: Auction, Direct sales or such other methods prescribed by the Cabinet Secretary. Creation of a provision for the issuance of a Marketing and Trading Licence - in order to allow national associations to consolidate their county chapter licences and permits. Creation of a provision for the issuance of a Marketing and Trading Licence, issued by the Board.

The rejected this proposal. The Bill provides for coffee growers to include association and cooperatives.

Coffee exchange: The establishment of the Coffee Exchange, regulated by the CMA. There is concern about having double regulation of the coffee sector by the Ministry. Proposal is that the Nairobi Coffee Exchange be restructured and regulated. The new Nairobi Coffee Exchange will: Manage the auction floor, the information registry and the direct settlement system for sales under the Nairobi Coffee Exchange, maintain records relating to coffee sales, samples and sweepings, avail sales catalogues to interested parties.

The Committee partially accepted this proposal and redrafted the clause.

Prohibition against blending: The title and marginal notes inaccurately creates an offence of blending as opposed to the offence being the failure to declare. The section notes on a first reading imply that blending is illegal altogether. The marginal notes and list of clauses should be amended to read "Requirement for declaration of blending" or "Prohibition against blending where there is no declaration." The Board may withdraw the License (s) of the offending party.

Clause 53 obligates any person who blends Kenyan coffee with coffee from outside Kenya to declare the percentages in the blended coffee.

The Coffee Development Levy: The manner of use of the conditional grant needs to be specified. The CS should come up with regulations for the use of the conditional grant. Priority for utilization should be extension services and road maintenance.

The Committee rejected this proposal since the Bill provides for the grants to be used for development.

Creation of the Coffee Research Institute: Creation of this new institute. It is not clear the relationship between this institute and the formerly existing institute that exists under the Kenya Agricultural and Livestock Research Organization. transitional provisions should be drafted.

The Committee rejected this proposal as Part XII provides for transitional provisions.

Dispute resolution: Provision doesn't not provide for methods of lodging disputes, period of resolution of disputes and the entity within the Board to listen to the dispute. The ADR clause should be comprehensive within the Bill in order for it to be effective. It is proposed that the Bill provide a Schedule in respect to methods of lodging disputes, period of resolution of disputes and the entity to be constituted within the Board to listen and determine such disputes.

The Committee accepted the proposal for the Cabinet Secretary in consultation with the COG appoint of a dispute resolution committee member on need basis. Min of 3 members and a max of 5

Digitization proposal: Creation of digital systems to automate the Board and CEC operations within the coffee sector. The provision does not provide specifically for how the system is to be developed and by whom. The provision should also set out how farmers would have access to data/information within this system - especially outside of mainstream digital platforms and streams the provision should create a joinder of operations between the Board and the Ministry of ICT, and mobile service providers to find a way to involve farmers in the digitization of the systems. Examples: Access of information through USSD.

The Committee rejected this proposal as the Bill provides that the Board and the CEC shall automate their operations and shall ensure multiple parties can access it.

Limitation on the right to information: Section 90 deals with the provision allows the Board to decide which information can be disclosed - creating a limitation to the right to access information. The Information disseminated should be in accordance with the Constitution and the Access to Information Act, 2016.

This is well captured in the Bill, by outlining the nature and the extend of limitation of the right to information.

Penalties: Section 92 outlines penalties for the offences for which no penalty has been delineated. The provision does not specify which fine to apply, between Kshs. 20,000 and 2x the value of coffee/coffee products - to assist in distinguishing which of the two fines is attracted. The provision should include the statement "whichever is higher."

The Committee amended the Clause in sub clause (4) by deleting the words "a fine of" and substituting therefor with the word "not more than fifty".

Regulation: The Cabinet Secretary has the power, in consultation with the Board, to make regulations prescribing anything under the Act or be generally for the better carrying out of the Act's provisions. Power of the CS to create regulations. The Bill should make provisions for the timelines within which the CS should enact regulations.

Transitional provisions : Reorganizing the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agricultural and Food Authority (AFA) to the Coffee Board of Kenya to reflect the following: Repeal the Agricultural and Food Authority Act sections relating to this Bill from the date of commencement and operation of this Act, repeal the first part of the First Schedule of the AFA Act that includes the Coffee Board of Kenya as one of the "former institutions" repealed by a repealed act or revoked legal notice, stipulate the rights and obligations of AFA that were vested in the Authority that will be transferred to the Coffee Board, draft and propose Coffee Board of Kenya Regulations that provide regulation and processes of the board, repeal the Coffee Regulations or amend them to reflect the changes made by this Bill., provide for the forms to be used in the application processes provided for in the Act, registration, licensing, permits, contracts and any other requirements, transition the research of coffee currently undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organization to the Coffee Research Institute under this Bill, provide more information regarding the extent of disclosures that can be made regarding the research undertaken by the Institute, provide for the processes of the Institute with regard to: funding procedure, provide for requirements for intellectual property registration by the Institute, Amendment of the CMA Act CAP 485A and Regulations to delete provisions for the issuance of the Coffee Exchange.

The Bill transitions the functions of the coffee directorate from AFA to the Coffee Board of Kenya. The Bill also removes coffee from the purview of the Crops Act by deleting coffee from the list of scheduled crops.

To provide for what a registered person or institution can or cannot do vis a vis a licenced institution.

This is provided for under clause 27.

Amend the section to provide a time frame of 30 days for Gazettement for Board Members under section 1d, e, f, g, and h.

The Committee accepted this proposal because section 7 (2) has missed out CS Gazette appointment of Board Member under 1(h).

Amend to delete section 44 (3) (4) and (5) because there is confusion on two legal issues with Section 44.

The Committee resolved to consider this proposal to rectify the error. The Clause provides for two separate issues.

Amend by inserting a new Clause 44A that will contain the content of subsections 44 (3) (4) and (5) as they do not relate to coffee traceability disclosures.

The Committee resolved insert a new Clause 44A and 44B (1) and (2).

2.1.9. Dr. Irungu Maina, Head of Coffee Division, Murang'a County Government

Dr. Irungu Maina, through a memorandum to the committee proposed the following on the bill:

Parchment coffee: He requested that the coffee auction levels should include buni and parchment. Direct sale should also include parchment i.e a farmer need not to sell his coffee in milled form. We have cases where the estates get coffee buyers for coffee in parchment form. Liquoring should include analysis of parchment coffee. A farmer with no coffee mill should be able to sell his own parchment in the auction even if he doesn't have a coffee mill.

Licencing: Coffee buyers need to be licensed by the board not counties.

Definitions: The aspect of definition of a coffee farmer. The coffee farmer definition should also include a self-help group, a trust or any other group that is registered by the government or its agencies.

The Committee rejected this proposal.

Definition of coffee processing: Secondary processing involves dehusking, polishing and grading. Roasting, making of instant coffee and packaging are termed as tertiary processing while brewing is final processing.

The Committee rejected this proposal.

Board representation: 75% of coffee is produced by cooperatives. They should have TWO representatives in the board whereas the small estates and large estates should each have a representative.

The Committee rejected this proposal because its already captured in the Bill.

2.1.10. Nyamira Coffee Growers Estate (NCEGA)

The organization, through a memorandum to the committee proposed the following on the bill:

Definitions: "certification" to be included defined and the certifying bodies given

The Committee rejected this proposal.

Coffee Board of Kenya: There is no direct involvement of growers. It all about government and its appointees. A political process that will not deliver. This is misadvised and will not be understood by the growers. The proposal is to have zonal and elective representation.

The Committee rejected this proposal. The farmers have 3 representatives in the Board.

Devolved agriculture: agriculture is a devolved sector. County governments cannot be obligated to implement national government policies. That is not even the essence of devolution. Counties should be left to operate and take advantage of their uniqueness. This article invokes old mentality before devolution and tends to create overlaps, conflicts and confusion.

Role of proposed Coffee Board: The role of the board then is limited to research and advisory.

The Committee rejected this proposal.

Role of county governments: The proposed Bill assumes that county government are the junior to the national government, whereas it is the counties who are the custodians of their growers' coffee and on their behalf. The national government can only play a facilitative role. The two roles should be spelt out clearly to avoid conflicts.

Decline of coffee volumes: The growing of coffee cannot be regulated especially now when it is on a decline.

General provisions: The bill seeks to regulate and control a coffee sector that is in the ICU without boldly coming out to talk about financing, input availabity and costs, the dilapidated primary processing infrastructure, roads, water, power, marketing, and so on.

Technical support of counties: The Coffee Board of Kenya and the coffee research institute can provide their specialist services but for technical support of counties through a robust coffee extension services.

2.1.11. Chepkube Farmers' Cooperative Society Limited in Mt. Elgon

The Society, through a memorandum to the committee proposed the following in their submissions on the bill:

Unstable prices: During these years, farmers earned averagely kshs. 80/= per kilo of cherry. This year however, the price reduced to an average of kshs. 40/= per kilo of cherry courtesy of two major cartels at the NCE when we anticipated an increase of up to over kshs. 120/= per kilo of cherry. Further the cost of production per kilo of cherry is kshs 70/= on average. At this rate a coffee farmer makes a huge loss of over kshs. 30/= per kilo of cherry thereby making coffee crop farming more of charity than business hence untenable / sustainable. However, the coffee draft bill is silent on the causes and their remedy of perpetual underpayment to coffee farmers year in and year out. Thus, making them very impoverished lot indeed and have nothing to be proud or show off.

These are at Cooperative Society and Nairobi Coffee Exchange level (NCE): Those who are charged with the responsibility of safeguarding coffee farmers interests seem to have joined the looting and have taken no action amid numerous complaints from farmers every passing day.

Trading in parchment coffee: For the farmers to ensure they get their hard-earned coffee proceeds without fears that they could have been short changed, their coffee be bought by

Millers as parchment at factory level where any interested farmer (s) can witness such sales as opposed to the grower delivering their coffee parchment to the miller with attendant losses. The farmer has no control over prices once delivered at the coffee factory / millers. Since its envisaged there would be many millers trooping to societies to purchase parchment, such parchment should be sold to a miller offering the best price and in cash. Once parchment is sold as aforesaid, the Grower will have nothing to do with the millers, the marketers and auction and therefore, complaints / lamentations about delayed or underpayment of their hard-earned coffee proceeds shall cease once and for all

Late payment of proceeds: The farmers shall also receive their coffee proceeds promptly instead of waiting for over six (6) months or so.

Autonomy of Coffee Societies: The Cooperative Societies should be left to manage their own coffee affairs devoid of being micro managed by County Cooperatives Officers including auditing function because they abate corruption in coffee factories instead of providing oversight roles to assist coffee farmers.

Increased licensing of coffee farmers: The Government should license as many coffee buyers / exporters as possible, preferably over 200 (two hundred) to create competition in coffee buying / export business. This shall avoid lamentations and benefit the farmer who feel short changed by the cartels at the NCE.

Disbandment of coffee cartels: Currently the buying of clean milled coffee at the Nairobi Coffee Exchange is done by about 11 buyers and also 11 (eleven) marketers. These companies are in turn owned by two (2) major multinationals which create monopolistic tendencies / cartelism who control nearly 59% of the coffee sales in Kenya and as a result, manipulate coffee market forces hence the underpayment to farmers yearly. Alternatively, the Nairobi Coffee Exchange (NCE)) should be restructured to do away with cartels who have impoverished the already poor farmers for decades.

Role of the county governments: Where applicable, there should be a section between paragraphs 23 – 25 to provide for the barring of County Cooperative Officers from interfering with the running of Cooperative Societies since they add totally no value to the coffee value chain from the farm to the coffee exchange. Cooperative offices should be abolished to say the least.

Licensing: Under this part, between paragraph 28 – 37, there should be provisions for the Capital Markets Authority to licence as many as possible preferably not less than 200 players at the proposed Coffee Exchange to create competitive environment. This would benefit the farmer as opposed to the current about 11 (eleven) major buyers who call the shots at the current Nairobi Coffee Exchange (now Coffee Exchange) but whose beneficial owners are two multinationals. These two multinationals are the ones who pay farmers peanuts and whose prices are below the cost of producing 1 (one) kilo of cherry.

Coffee trading and marketing: Between paragraphs 46 – 56, there should be paragraphs anchored into Law: To provide for millers to buy coffee parchment in cash from cooperative societies upon tendering / application and the highest bidders awarded the tenders but not vice – versa. This will ensure the farmer gets her / his coffee proceeds promptly besides having a say in the his / her coffee pricing process contrary to the current situation where the grower / cooperative society or a farmer has totally no say in coffee pricing chain. The coffee farmer should be allowed to sale his / her coffee to whoever offers the best price to him/her but not restricted / barred through draconian legislations. This trend should be stopped through the proposed bill. Unless and until our above proposals are anchored into Law, the draft bill once enacted into Law shall be of no use to us coffee farmers since the same underpayment / short changed at the mills and the coffee exchange shall continue unabated while farmers continue complaining year in year out.

The Committee took note of these comments and noted that most of the issues had already been captured in the Bill.

2.1.12. Kimilili Constituency in Bungoma County Farmers and Stakeholders

Coffee farmers and stakeholders recommend the following aspects to be incorporated in the Bill: -

Research: Adequate research should be carried out on the appropriate coffee varieties and this should be cascaded down to the farmers.

Board representation: For the representation of the Board, it should be farmers and not outsiders.

Decentralization: The Coffee Research Institute should be decentralized.

Cartels that currently run the coffee sector should be disbanded.

Debt: Currently, coffee factories have huge debts that they have had over the years. This should be written off.

Extension services are non – existent. These should be revived and entrenched at the grassroots and county levels.

Taxes: The proposed taxes to be levied are too many and confusing. Can they be amalgamated into one tax?

Education and sensitization: There should be scheduled forums for sensitization of farmers and these forums should be entrenched into the operations of the coffee sector.

The Committee took note of these comments and noted that most of the issues had already been captured in the Bill.

2.1.13. Submissions from Kipkelion Farmers and Stakeholders

Coffee farmers and stakeholders recommend the following aspects to be incorporated in the Bill: -

The Kipkelion Farmers and Stakeholders comprise of over 60,000 farmers, 100 cooperatives and 60 Estates.

Revival of Coffee Boards: Revival of the Coffee Boards, Coffee Research Institute and other relevant Boards in the sector is key to harmonizing farmers marketing value chai as well as harnessing the economies of scale.

Representation in the Coffee Regulatory Bodies: In the proposed Coffee Board and Coffee Research Institute, one position for all coffee farmers is not adequate. There is too much representation from the Government.

Sustainability: The farmers proposed the creation of a body within the sector that is solely responsible and focuses on sustainability.

Commodities Fund: This is to be added to the Bill so that it covers sustainability. Currently coffee farmers have nowhere to borrow from.

Representation at the Nairobi Coffee Exchange: Farmers need to be involved in the pricing negotiations for coffee at the NCE.

Coffee pricing: Coffee fluctuation prices are controlled by cartels. The people who determine the prices are not representing the farmers.

Licensing: Who will provide the permit for roasted coffee to move from one county to another. There is no provision for roasted coffee, only clean coffee.

Coffee catalogue: The input on the coffee catalogue does not consult the farmers. The Coffee board is not accessible to local farmers and there are too many regulatory bodies.

Strategies should be boosted and incorporated to increase local consumption of coffee.

Cherry hawking: This should be discouraged at all costs. Strict penalties should be enforced.

Coffee mills: The available mills are mostly faulty and in a deplorable state. They are not fully operational or utilized.

Regulation of coffee mills: There should be some regulation and streamlining of coffee mills.

The Coffee Research Centre in Kipkelion has stalled. It is not fully operational; it is further not facilitated and thus it has not grown over the years

Reinstatement of the Revolving Fund for the coffee farmers.

Coffee unions to be revived and all coffee to be sold through these unions.

Trading fee: Proposal for the government to chip in and match and cushion farmers from international price fluctuations

More research to be done on coffee varieties grafting can be done to improve varieties.

The acreage under coffee farming should be increased,

Directors to the coffee board: Appointment of directors of the coffee board should be on a consultative and inclusive forum. There is no representation from the CEC.

Education of farmers: Coffee farmers need education and sensitization. The mentality that Kenyan coffee is of low quality is a falsehood being peddled and being used to fleece farmers.

Movement permits: movement permits should cover movement within and outside the county authorities. This will address the scenario dealing with some counties that may not have mills.

Direct Settlement Scheme: This mode of payment should be made optional. Since this is elongating the value chain. It should be made optional for a start.

Levies: The county government is not getting anything in the form of levies. The proposed levies are all channelled towards the National Government. The proposal is for the cess to be given to the county government.

The Committee took note of these comments and noted that most of the issues had already been captured in the Bill.

2.1.14. Submissions from Kirinyaga County Farmers and Stakeholders

Coffee farmers and stakeholders recommend the following aspects to be incorporated in the Bill: -

Coffee value chain: The current coffee value chain is being exploited by a few individuals and cartels. The proceeds from the value chain do not reach the local farmers. The local farmers earn peanuts while the final export coffee product goes for the equivalent of Ksh, 9,000/=

Definitions: The Bill needs to give clarity to some of the definitions which may be misinterpreted. The term "Association "is ambiguous as to whether it Is a coffee Association or Coffee Farmers union. It can be misused by cartels. The Bill also needs to give clarity to the word 'Buyer". It restricts the farmers and the real buyer. Why are we restricting the coffee arena to a few companies? The term 'coffee grower" is not exhaustive and not well defined. The term "coffee grower can only sell to a roaster" is restrictive. The coffee farmer can be a roaster, or a marketer.

This is already catered for in other submissions in the Bill.

Direct Settlement Scheme: Payment of proceeds through the Direct Settlement Scheme, (DSS) should stay. Payment should be made in the same currency whether it is foreign currency. Hence this payment method should be retained.

Composition of the Board: Representation at the Board are not inclusive. Cooperatives have only been given one seat at the board and yet they are the majority in the sector, comprising 66%. They should be given between 3-4 seats and furthermore there should have been consultation on the same.

Market sourcing: We need clarity on how this will be carried out. How will we look for the market? how will the coffee tourism be carried out? what will be the procedures/

Sale of coffee: The Bill outlines that the sale of coffee is to be done through Auction, Direct System or as approved by the Cabinet Secretary. This is too restrictive.

Role of Capital Markets Authority: The Capital Markets Authority (CMA) has been handed some roles. Most of the laws should be managed by the Coffee Board. There is no need to involve the CMA.

The role of Marketing has already been catered for in other sections of the Bill. The role of Marketing is also clearly defined in the Bill.

Dissemination of market information: Let this dissemination be done in an open and transparent manner. let all the information be done on the open online public portal dissemination of information should be done in a public hub, currently this information is shrouded in secrecy.

Proposed levies: The farmers proposed the distribution of the suggested levies to be as follows: of the proposed 2%, 1 % should be to the institute, 0.5% should be to the Board, and 0.5% should be to the County Government. Let the distribution be done as per the county of origin only.

Investing in coffee: The decision to invest in coffee should not be left to the Governor. let farmers through the institute also have the liberty to pursue investment options.

Inputs for coffee: the cost of production for coffee is too prohibitive. coffee fertilizer should be brought to the cooperative societies. subsidies for fertilizer should also be made available.

Section 44: Let the farmers be guided by budget approved at the AGM. Do not restrict and cap it at 10%. Also let the guidance be based on the Cooperatives Act.

Section 34: On the coffee auction, let it be open

Section 47: Direct Sales, should be allowed. On monthly returns, if the farmers get a direct buyer, let the ales be done daily. do not restrict the sales to monthly.

Section 49: On the management of the public portal should be done in a professional and real time manner

Qualifications: Section 8 for the qualifications requires one to have a degree. This should be amended and instead replaced with the co-operative Act. Members representing Cooperative societies be increased to more than half of the Board membership. The Qualification of members representing Cooperative societies in the Board be in line with the qualifications set in section 28 of the cooperatives Societies Act. Section 9 be amended to increase the term from 3 to 5 years as is the current term of AFA Board members.

The Committee accepted this proposal to amend the qualifications to indicate that the qualification should be the ability to read and write. Mwongozo code provides for minimum qualifications of Board members to have a university degree. However, these are representatives of Cooperative societies who are elected in accordance with the

Cooperative Societies Act. The proposal is for the Bill to follow the Cooperative Societies Act.

The Committee further resolved to retain the term for Board members to 3 years.

Sale of coffee abroad: Coffee farmers should be allowed to sell their produce abroad if they are willing to do. They should be allowed to sell their produce directly so as to remove the existence of cartels. This chain should be decentralized.

Parchment: The inclusion of parchment coffee is not inserted in the Bill. It is a key area that involves a lot of small-scale farmers. Farmer should have the liberty to sell under parchment.

Pricing: The farmers proposed that the 50 kg bag of coffee should be sold for Ksh. 1,023/=.

Use of cooperatives: Cooperative societies are defunct and farmers are not benefiting from this. The same should be revived and streamlined.

Election of Directors: The farmers asked to know and sleeked clarification on how the election of directors of the board will be carried out since now it has been changed from the rotation method.

Economies of scale: This is currently lacking and as a result farmers are unable to benefit from quantities.

Ease of markets: Coffee farmers are currently struggling to get market for their produce. There are no structures and therefore farmers are fleeced into selling produce to unscrupulous middle men.

10% may be sufficient for some and insufficient for others. The clause should be reviewed to read –to maintain the current 20% for office operations. Reference should be made to all the registered small holder coffee growers and not cooperative societies only.

The Committee resolved to reject this proposal.

2.1.15. Baringo County Cooperative Union and Bungoma County Cooperative Union

The Unions, through a response to the committee outlined the following in their submissions on the bill:

Amend to substitute the name Plantation Farmers with Estate Farmers.

The Committee accepted this proposal to amend this Clause to substitute the name Plantation Farmers with Estate Farmers. This is because over 70% of coffee is produced by smallholder farmers and this should reflect in the composition of the Board.

Amend also to increase membership of the Estate farmers and Smallholder farmers in the Board.

The Committee accepted this proposal to amend to increase membership of Estate Farmers and Small Holder Farmers in the Board. An Estate is defined as that which is over 5 acres. Anything less is Smallholder. The Committee further proposed amendment to the size of Estate and Smallholder to 10 acres or more for Plantation and less than 10 acres to Smallscale. The proposed amendment is to have 1 nominee from the Estate farmers, 2 nominees for Smallholders and 1 nominee from the Council of Governors. The justification is that there are too many PS and the Chairman is already appointed by the CS. Reduce the number of PS to 2, one for Agriculture and one for Trade. 70% of production is done on small scale so they need adequate representation.

Require the Chief Executive Officer to possess experience in the coffee sector.

The Committee rejected this proposal. Experience of management is relevant irrespective of the field.

2.1.16. Submissions from Inoi Farmers' Cooperative Society

Coffee Society recommend the following aspects to be incorporated in the Bill: -

Requirement of a degree should be replaced with qualifications as guided by the Cooperatives Act and Cooperative Societies By- Laws.

The Committee resolved to accept this proposal and this is already covered as per the comments above.

Term of Appointment: The term limit for the members of the Board should be increased from 3 years to 5 years.

The Committee resolved to reject this proposal as this is already covered as per the comments above.

The Coffee Board to take over roles under the Capital Markets Authority. This will enable the Board to take over its full regulatory role.

The Committee resolved to accept this proposal. This is to centralize the coffee regulation and regulatory role.

The Coffee Board to carry out promotional activities to farmers on market processes.

The Committee resolved to ignore this proposal since the Bill already provides for the marketing of Coffee in part 4.

Capital Markets Authority does not have coffee sector representation making it lack legitimacy in the coffee sector.

The Committee resolved to reject this proposal since the issue of CMA is already catered for in the Bill.

Cooperative Society to be guided by the Cooperative Act Cap 490 on the aspect of imposing fees, since the particular Clause is a contravention of the Cooperatives Act.

The Committee resolved to accept this proposal.

Trading of Coffee to start at the point of parchment. This will give the grower liberty to control his produce, encourage local consumption and encourage direct sale. This is the only way to protect the farmers as dealing in clean coffee forces the farmers to go to the millers.

The Committee resolved to accept this proposal and amend to indicate that the sale of coffee should start at the parchment stage

2.1.17. Submissions from Kenya Association of Manufacturers:

Amend the licencing regime in the Bill by harmonizing and centralizing the issuance and management of the issuance of licences.

The Committee may consider this proposal. Currently coffee general regulations and Capital Markets coffee regulations provide for licencing of exchange by the Capital Markets.

Proposal for the development of a National Government Policy.

The Committee rejected this proposal since under Clause 11, the Board may make recommendations for the policy and strategies to the Cabinet Secretary.

Proposal for the creation of uniform guidelines by the Cabinet Secretary to standardize the operations of the coffee industry.

The Committee opted to reject this proposal and retain the Clause as it is since Counties have different needs and there is need to allow for flexibility. The law gives Counties the power and authority to set their specific guidelines.

2.1.18. Coffee Farmers' Cooperative Union

It is not clear what role the coffee dealer plays and this is likely to cause ambiguity and conflict of roles with the broker.

This part of the roles has been dealt with in the previous submissions of the Bill. The Bill defines a coffee dealer as a person registered by the Board, County Government or authority to deal in coffee as provided for in the Act.

Amend sub section 1 to include commercial miller and warehouse, to align with the coffee regulations.

The Committee accepted to consider this proposal to include warehouse and commercial millers licence which will be issued by the Counties. This will align with the Coffee General Regulations on licensing.

2.1.19. Chief of Staff and Head of Public Service

For clarity on the certificates, licences and permits that are issued by the Boards stipulated in the regulations

The second schedule already provides for a schedule of licences and the licencing bodies.

Include ten years' experience of Senior Management in the Coffee Sector in accordance with the Mwongozo Code.

The Committee rejected this proposal to retain the experience at 10 years.

2.1.20. Submissions from Songonyet Farmers' Cooperative Society:

Amend to provide for issuance of movement permits for buni, parchment and clean coffee within and outside the country of origin.
The Committee accepted this proposal.

10% may be sufficient for some and insufficient for others. The clause should be reviewed to read –to maintain the current 20% for office operations. Reference should be made to all the registered small holder coffee growers and not cooperative societies only.

The Committee resolved to reject this proposal.

2.1.21. Submissions from Barichu Farmers' Cooperative Society

Delete Clause 38 (2) as this will kill the spirit of Cooperatives

The Committee resolved toreject this proposal as this Clause provides for Soil mapping and analysis to determine nutritional requirements for coffee production and not cooperatives.10% may be sufficient for some and insufficient for others. The clause should be reviewed to read –to maintain the current 20% for office operations. Reference should be made to all the registered small holder coffee growers and not cooperative societies only.

A meeting of choosing the miller should be held within 2 months at the end of the crop year.

The Committee resolved to reject this proposal. This is something that can be agreed on at society level.

2.1.22. Submissions from Kabare Coffee Farmers' Cooperative Society

Amend Section 41 of the Bill to be deleted because the provision is discriminatory to cooperative societies since other groups like coffee estates which also grow coffee are excluded.

The Committee resolved to retain the Clause as it is since Clause 26 provides for the registration of all coffee dealers.

10% may be sufficient for some and insufficient for others. The clause should be reviewed to read –to maintain the current 20% for office operations. Reference should be made to all the registered small holder coffee growers and not cooperative societies only.

The Committee resolved to reject this proposal and retain the Clause as it is at 10%

2.1.23. General Comments

Mathira North Farmers

Reasons that have contributed to poor coffee harvest:

1. **Poor coffee Husbandry -** Since coffee farmers do not have other stable sources of income, they practice intercropping to increase on income.

2. **Poor Sales -** Due to crop husbandry, there is reduced output per given area that is of low quality. This combination fetches low prices in the market translating to poor cherry rate per kilogram
3. **Poor weather -** Recently crop growing areas have witnessed semi-arid conditions leading to poor yield. Average production per tree recorded a significant drop that ultimately affected the entire delivery to our coffee society.
4. **Heavy Debts -** The poor deliveries due to low production does not fetch sufficient revenue to farmers and cater for factory operations. The coffee Society has an operation cost equivalent to 20% of the total amount generated through coffee sales to take care of her expenses. The remaining 80% is shared among members who happen to be the coffee farmers. However, the 20% cannot meet the overall operational cost of the coffee Society which has led to borrowing from banks and failing to pay her creditors on time.
5. **Coffee Hawking -** There is a ready market for coffee despite its illegality. As the main source of income within the area, people have opted to sell their coffee to hawkers on cash basis for their family upkeep. Hawking is an economic disaster in the area. In the year 2014, 23 staff members were rendered redundant by the Society whom we have not yet paid their terminal benefits/gratuities.
6. **Closure of factories -** The society was forced to close down 4 sister factories and reduced them collecting centers of coffee beans. Due to shortcoming of funds most staff members resigned after remaining unpaid for 7years
7. **Insecurity -** Due to availability of ready market for coffee beans, cases of coffee theft have been on the increase in farms, a vice committed even by young children and has escalated to the factory level.
8. **Early Staff Retirement -** Low delivery due to poor production has made the society not to pay her employees their dues. A majority of them have lost confidence with us.
9. **School Drop Out -** Many school going children may drop out of school leading to an increase in bursary applications eating into county government revenue or harambees as the small amount fetched daily on coffee sold only caters for the day's family up-keep. Members used to get school fees through advances offered by The Society or banks' soft loans. The banks have also lost confidence with farmers and therefore cannot advance any money to them at all.
10. **Poor Economy Locally and the Entire County -** Most coffee bought by the middlemen is transported to the neighboring county of Kirinyaga thereby denying revenue to our country. The rest of the coffee is sold to other societies denying Ruguru ward the much-needed revenue for future development.
11. **Lack of Paying our members/poor rates -** Due to coffee hawking, poor weather, and low production, financial institutions have lost faith with the society. Some banks have even threatened to auction The Society's assets. This may make those members who were loyal to the society lose confidence and sell their coffee to the middlemen thereby leading to closure of the society.

Kirima – Kurima Farm – Nyeri (Small scale coffee farmers)

The farmer raised the following issues -

1. Low coffee production due to lack of inputs/low quality inputs.
2. Theft of coffee at night in the shambas by the youth, of weight in the factories by manipulation of measures of coffee within factory premises.
3. Interference of grades by factory staffs which result to overall low grades of coffee, causing a good farmer to lose income.
4. Recording of fortified grades and weights resulting to loss of income to farmer.
5. Collusion of factory elected leaders with coffee buyers/Auctioneers
6. Factory maintenance cost increased in order to benefit factory leaders at the cost of the farmer.
7. Money received in bank as payment to farmer is first loaned to the factory leaders and then the share is given to farmers. Loans to officials are never repaid back.
8. Out of a payment of approximately 170ksh per kg to factory's account only about 60-70 Kshs paid is to the farmer. The balance is always misused and shared by officials.
9. Most fertilizers issued to farmers is mixed with chalk. The government should undertake inspection or verification of fertilizer.
10. **Hawking of stolen coffee in villages -** Stolen coffee is bought by hawkers at a higher price than the factory price. Hawkers pay cash at hand. This makes the farmer to sell to the same market/hawker. Today's price of dried coffee (buni) at the factory is 80ksh/kg and from hawkers' price is 150ksh/kg. Leaving the farmer with no option but to sell to the hawker. This poses a great danger since buyers don't require these supplies to prove their source coffee, if coffee is from the farmer they will buy and if it's from a thief they will also buy higher than the factory. Such kind of illegal businesses is fueling crime, consumption of illegal alcohol and all kinds of drugs. The stolen coffee fuel selling of illegal alcohol and drugs since all the money they earn is used at the pubs for drinking. Because of that youth engage in drugs and never maintain their families.
11. **Coffee Societies** - Coffee societies have also contributed to losses due to the way they manage the farmers income. This happens when they require bank loans on behalf of the farmers without their approval. The loans acquired end up accumulating big interest which directly affect farmers income.

Peter Lutukenyi

The4 views from Peter Lutukenyi, a coffee farmer in Sirisia were as follows:

a. Introduction of term limits to the Society Management officials where some have been in office since the early 90s;

b. Employment of Field extension officers to be visiting and guiding farmers so as to produce best quality coffee; and

c. Direct payment to farmers be emphasized.

Kaagari South Coffee Farmers' Co-operative Society

The society gave the following views:

a) current management/ supervisory committee is in a conspiracy to sell the lands earmarked for the construction of the factory in Kawanjara Sub-location.
b) The sale of all these properties were not supported by any public advertisement as required by law pertaining to disposal of public property and no information has been availed on the sale proceeds.
c) There have been no elections of the management/supervisory committee for this society for many years. The current team came in office before the corona outbreak.
d) The partly incomplete office building is built on a plot allocated to the society by the then local authority. to primarily empower the coffee farmers of Kagaari South Co-operative Society.
e) The registered members of the society were in agreement and had their individual contributions deducted from their respective payout so as to meet the cost of the construction of this office building.
f) There has also been substantial amount of money advanced to the society by some local financial institutions for the purpose of completing this office building. We need urgent assistance to establish the amount so far advanced to the society towards the building and completion of this office building.
g) **We also request a thorough audit inspection for the entire operation of the society regarding its general operations. This may require the expertise of an "Anti-corruption Audit Team"**

JOSEPH M. GITHUI

He proposes the following—

a) Cash crops need to have direct sales from the processing factories so as to minimize unnecessary deductions of farmer proceeds.
b) Ministry of agriculture should work hand in hand with the farmers at the grassroot.

c) The ministry should assist the farmers in soils testing.
d) The ministry should help the farmers in obtaining modern species of those crops so that they have higher yields.
e) Comparatively the value of the shilling since the 1970's is always depreciating. The government should do something about it.
f) The price of both crops should not be less than at least Kshs 100 for a kilo.
g) Since Kenya is agricultural country, coffee and tea are the only foreign exchange earner and so the government should make sure that the farmers is assisted to keep his/her morale up.

KASEMBELI NASIVUMA

a) Improve coffee societies infrastructure;
b) Strengthen extension field services to assist coffee farmers;
c) Ensure certified coffee seeds;
d) Ensure soil testing to know refund fertilizers;
e) Value addition before sale;
f) Cherry fund – to assist farmers;
g) Direct Settlement System (DSS) to be operationalized and eliminate loss of farmers money and pilferage of farmers money;
h) Address the issue of coffee smuggling;
i) Trim the powers of AFA under the ministry since we are reviving coffee board;
j) Transparency and disclosure of coffee purchase prices at the auction;
k) County governments to vote funding awards coffee farming;
l) County governments to vote funding awards coffee farming;
m) Institute guaranteed minimum coffee payment;
n) Eliminate cash payments;
o) Identify areas which urgently need factories and reduce the distance of service delivery by farmers; and
p) Provide email addresses or farmers to submit the written memorandum of soft copy.

Giakanja Farmers' Co-Operative Society Limited

This society's challenges are. That—

a. Farm input-government to offer subsidies to all farm inputs and channel them to the nearest N.C.P.B;
b. Lack of knowledge of Good Agriculture Practice; Climate changes time to tiome like that year 2022-2023;
c. Lack of funds due to poor coffee prices in the coffee Auction Market;

d. Debts and loans of the society should be paid by the Government and rebuild the society once more;
e. The Guarantee Minimum Return should be set by the Government to uplift the farmers' morals; and
f. Agricultural Officers should inspect the coffee farms before coffee seasons began.

Kiandu Coffee Factory

Their views are that—

a. The problems affecting coffee farmers directly are the following;
    a. Cost of NEMA certificate is very high totaling to about Kshs. 120,000 per annum Electricity bills for processing coffee is high
    b. Coffee milling and marketing charges are extremely high for example, milling 500 bbags of Mbuni you pay approximately Kshs. 450,000
    c. Cost of export bags should be left to exporters only
    d. Parliament should enact new rules to safe guard single factory societies which are performing well for years or be semi-autonomous to the mother society and run their own budget. The role of supervision to be left with the mother society.

NYERI TOWN MP

The comments from the Nyeri Town MP areas follows -

a. The inclusion of both the term coffee dealer and coffee broker is entrenching cartels a lifeline;
b. The objects of the bill are ambiguous and the outcome cannot be tangibly measured;
c. The Bill has nothing on stabilizing coffee prices;
d. The Bill has nothing on sector funding for production, inputs and processing;

e. The Bill has nothing on value addition;
f. The Bill wants the coffee farmer to fund the agencies it is creating;
g. 70% of Kenyan coffee is produced by small holder farmers this should be reflected in the representation in decision making bodies;
h. Sales catalogues preparation for presentation to coffee exchange should be limited to coffee owners;
i. Glower millers should be allowed to export their produce without incurring other levies/costs;
j. The power of boards to borrow is an open cheque book while the financiers are farmers. This power has been abused in the past. The KPCU is fresh in

the minds of farmers, the power to borrow must be limited or subjected to oversight by parliament; and

k. Offenders under this act should not have option of a fine. This sector has been pilfered with impunity because the looters deal in big money and can afford any fine. Make it deterrent by mandatory time in jail.

Githiru Farmers Coop Society Ltd

The cooperative puts forth the following views on the Bill. That—

a. The government introduces a very strong and effective coffee act/law;
b. Coffee farmers be saved from coffee cartels and middle men;
c. The government assits the coffee farmers by governing the high cost of imputs;
d. Coffee products should not be sold through the Nairobi Coffee Auction which does not help the farmer hence exploits the farmer;
e. A Coffee farmer representative be allowed to accompany his/her coffee selling process at all levels from the factory during the process of their coffee sales; and
f. The management committee be given more powers to be involved in direct sales throughout during negotiations.

Njuriga Farmers' Cooperative Society

The following views were made—

a. The subsidy fertilizer be brought to the society level. To be paid with the products of the next presiding year;
b. Farmers be mobilized. Farmers should get kshs 100 and above mgr;
c. A farmer should be getting bonuses for his/her products;
d. Digital weighing machines be installed and the old machines be renovated with new models;
e. CCTVs be installed in factories and have a mulika mwizi;
f. The youth coffee farmers be provided with humus and fertilizer to motivate them;
g. Nappier grass be provided to feed cattle to provide humus for coffee quality; and
h. Cherry money be provided to be paid in dollar etc so that the society/factory can change the dollar etc into Kshs.

Baragwi Coffee Farmers Okoa Mukulima Initiative

Their views are that—

a) Farmers feel it is fair and competitive if each individual factory is allowed to be appointing its own miller and marketer. This should be done at the factory level;
b) Farmers feel it is fair for each factory to manage financial operations independently by— ordering and paying of farm inputs, employment of factory workers, purchasing of coffee processing materials and factory repairs;
c) Members to decide about the produce (kgs) of cherry needed for one to participate in voting the leaders;
d) Members to determine a specified time to serve when elected as a factory director or any other elected office; and
e) Each member who attends a general meeting to be treated to lunch allowance without discrimination.

2.1.15. Nyeri County Farmers and Stakeholders:

f) Coffee farmers and stakeholders recommend the following aspects to be incorporated in the Bill: -
g) Inputs for coffee: Subsidized fertilizers for the farmers should be a priority. the cost of production for coffee is too prohibitive.
h) Decentralization: Milling and Marketing should be brought closer to the farmers. Currently farmers have to travel long distances to get these services. This is not good in the preservation process of the produce.
i) Prompt payments; Payment to coffee farmers can in some instances take too long up to one and a half years. Payment period should be shortened and standardized. Payment should further be made promptly upon delivery of coffee to the millers. Thereafter what happens between the millers and the marketer should not affect the farmer.
j) Composition of the Board: The current proposed composition will see estate farmers dominated by the county and national governments. Why does the Bill only have 3 slots for their representation in the board? The proposal is for there to be 7 members of farmers and regional representative to the board. Farmers to have 5 slots, Estates to have 3 slots, and 1 slot to go to the highest coffee producers' society.
k) Cherry Advance: This payment is meant for the coffee farmers but it is not getting to the intended recipients because of bureaucracy. The process should be streamlined.
l) Commodity Fund: Famers are currently being asked to bring title deeds in order to get the Commodity Fund. This is a huge detriment to the farmers. This aspect of

title deeds should be removed and the cherry of the farmers should be used as collateral.

m) Audit Reports: These should be published on a regular pre-determined basis and in open forums.

n) Soil and tree quality: As per section 38 of the proposed Bill, there should be mandatory and periodic soil testing. Furthermore, the age of the fruit trees should be pre-determined and should be a mandatory figure, this will ensure the aspect of quality control.

o) Licences: There is a general lack of milling and marketing licences in Othaya. This has severely constrained development in the sector.

p) Finally, there should be stiffer penalties for those who contravene the laid down rules and legislations.

2.1.24. Resolutions from the Coffee Summit Hosted by the Office of the Deputy President

The Committee noted the contents of the resolutions and it was guided by some of the proposals in making their resolutions. The resolutions from the Coffee Summit are attached as ***Appendix 6.***

2.1.25. Submission from the joint meeting with the Departmental Committee on Agriculture and Livestock in the National Assembly

The Committee had a retreat with the Departmental Committee on Agriculture and Livestock in the National Assembly on 13th October, 2023 where they discussed and agreed on the clauses on the Coffee Bill, 2023 and a matrix was prepared. The matrix is attached as ***Appendix 7.***

CHAPTER THREE

3.1. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1.1. COMMITTEE OBSERVATIONS

The Committee made the following observations:

1. That the Coffee Directorate under the Agriculture and Food Authority is mandated to manage the development of the coffee subsector. However, the Coffee subsector has continued to face innumerable challenges including but not limited to minimal research in coffee, late payment of coffee farmers, lack of clarity on who between the national government and the county government is supposed to carry out various functions related to the Coffee Industry;

2. That there is an urgent need to reorganize the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya;

3. That the research is an integral part of the Coffee sector and therefore the importance of establishing a robust research institute to deal with the emerging issues in the coffee sector cannot be gainsaid;

4. That the Cooperative movement is an important component of the coffee industry that cannot be overlooked. It is therefore important to streamline and regulate the activities of the cooperative societies to ensure that farmers are not exploited;

5. That Article 40 of the constitution guarantees every person the right to own property, either individually or in association with others. Currently, it's not clear when the proprietary rights of the coffee pass from the farmer to a third party. This should be well articulated in the law in order to protect the proprietary rights of a coffee farmer. The ideal position is that proprietary rights should only pass after the farmer receives payment;

6. That the coffee value chain has been exploited by a few individuals and cartels. The issues of poor and delayed coffee sales returns have been rampant. There is therefore a need to establish a system where farmers will receive the proceeds of sale of coffee promptly. In this regard, the aspect of Direct settlement system as provided for in the Bill, received overwhelming support. The system proposes to remit proceeds of sale of coffee directly to the farmers;

7. That the mode of nomination of farmers representative to the Board was not agreeable to most of the stakeholders. It was felt that farmers should be allowed to elect or nominate their representatives. Equally, the Council of County Governors opined that they should also be given a free hand to nominate their representative to the Board. The Bill should be amended to captured these concerns;

8. That there has been rising cases of coffee theft and cherry hawking, to stem on this vice, it is important to put in safeguard measures. This will be achieved by having growers registered to a pulping station for purposes of identification and delivery of coffee;

9. That the milling of coffee has for a long time remained a mystery to the farmers, the process needs to be made transparent by allowing farmers to competitively retain a miller and to be present or have a representative during the milling process. This will enhance accountability, including that of the milling losses and the coffee grades. Currently, millers don't involve the coffee growers in the milling and auction process;

10. That the reintroduction of the coffee development levy is essential for purposes of funding different aspects in the coffee sector. For farmers to realise better returns, the Board must invest in Marketing of coffee especially in the international markets. Consequently, the percentage of allocation of the proposed Coffee Development Levy needs to be reviewed to capture the marketing aspect. The Levy should also be paid and disbursed through the direct settlement system for transparency and accountability;

11. That Agriculture being a devolved function, the roles of each level of government should be well spelled out;

12. That a dispute resolution mechanism should be clearly set out to assist in settling of disputes emanating from the coffee Sector, in the first instance;

13. That the Coffee Research Institute should be renamed to include the training aspect for purposes of sharing research finding with students and other stakeholders in the industry;

14. That although the *Mwongozo* guidelines recommend that the minimum qualification for Board members should be at least a university degree, in the case of the farmers representatives, it was felt that, the qualification should be lowered to accommodate farmers who might lack rich educational background but possess a wealth of experience;

15. That the reintroduction of direct sales was termed as revolutionary because it will open up alternative channel for trading coffee which will create competition and hence better returns. However, to ensure that farmers are not exploited, there was a need to put in safeguard measures by subjecting a sample of any coffee designated for direct sale through the coffee exchange for price and quality discovery; and

16. Finally, several provisions of the Bill create an offence but fail to prescribe the penalty. This needs to be rectified.

3.1.2. COMMITTEE RECOMMENDATIONS

The Committee having reviewed the Coffee Bill, 2023 (Senate Bills No. 10 of 2023) recommends that the House approves the Bill together with the proposed amendments.

LIST OF APPENDICES

Appendix 1	Minutes of the Standing Committee on Agriculture, Livestock and Fisheries
Appendix 2	The Coffee Bill, 2023 (Senate Bills No. 10 of 2023)
Appendix 3	Committee Stage Amendments
Appendix 4	Advertisement published in the *Daily Nation* and *Standard* newspapers on June 15th 2023
Appendix 5	Matrix of the submissions received by the Committee on each clause of the Bill and on general matters relating to the Bill and
Appendix 6	Copies of stakeholder submissions on the Bill
Appendix 7	Copy of Coffee Conference Resolutions
Appendix 8	Matrix on Joint Meeting with the Departmental Committee on Agriculture and Livestock