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THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

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REPORT ON:

THE FOOD AND FEED SAFETY CONTROL CO-ORDINATION BILL  
(*NATIONAL ASSEMBLY BILL NO. 21 OF 2023*)

 THE NATIONAL ASSEMBLY	
DATE: 03 AUG 2023	DAY: <u>Thursday</u>
TABLED BY:	Hon. John Mutunga MP Chairperson
CLERK-AT-THE-TABLE:	Anne Shubiko

CLERK'S CHAMBERS  
DIRECTORATE OF DEPARTMENTAL COMMITTEES  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST 2023

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## LIST OF ABBREVIATIONS AND ACRONYMS

UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
NOPEU	-	National Ordinary People Empowerment Union
AFA	-	Agriculture and Food Authority
USD	-	United States Dollar
CAADP	-	Comprehensive Africa Agricultural Development Programme
EU	-	European Union
FAO	-	Food and Agriculture Organization
KEBS	-	Kenya Bureau of Standards
APHRC	-	African Population and Health Research Centre
TV	-	Television
NTV	-	Nation Television
FSSAI	-	Food Safety and Standards Authority of India
CFIA	-	Canadian Food Inspection Agency
WHO	-	World Health Organization
WTO	-	World Trade Organization
IPPC	-	International Plant Protection Convention
SPS	-	Sanitary and Phytosanitary protocol
CoG	-	Council of Governors
KEBS	-	Kenya Bureau of Standards
PCPB	-	Pest Control Products Board
NBA	-	National Biosafety Authority
NEMA	-	National Environment Management Authority
KEPHIS	-	Kenya Plant Health Inspectorate Service
KAM	-	Kenya Association of Manufacturers
NEMA	-	National Environment Management Authority

## LIST OF ANNEXURES

1. Report adoption Schedule
2. Minutes
3. Copy of the newspaper advertisement on public participation
4. Letter inviting stakeholders for meetings with the Committee
5. Stakeholder submissions

## CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committees on Agriculture and Livestock on its consideration of the Food and Feed Safety Control Co-ordination Bill (*National Assembly Bill No. 21 of 2023*) which was published on 24<sup>th</sup> May 2023. The Bill went through the First Reading on 6<sup>th</sup> June 2023 and was thereafter committed to the Departmental Committee on Agriculture and Livestock for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has thirty-four (34) clauses and seeks to provide for coordination of public institutions involved in the control of food and feed safety; to establish the Office of the Food Safety Controller and to provide for the role of county governments in food safety and feed safety. This is aimed at ensuring the supply of safe food and feed safety. Food safety is a critical function of both the national and county governments in the fulfilment of consumer protection as provided in the Constitution. The Bill will ensure that food is safely produced, distributed, processed, marketed and prepared for human consumption.

Following placement of advertisements in the print media on Monday, 12<sup>th</sup> June 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received two (2) memoranda from Nature Kenya and Kenya Association of Manufacturers.

The Committee also invited stakeholders vide letter REF: NA/DDC/A&L/2023/041 dated 5<sup>th</sup> July 2023 for a stakeholders' engagement meeting on the Bill which was held in the Mini Chamber, County Hall, Parliament Buildings on 26<sup>th</sup> July 2023 with six (6) stakeholders making oral presentations before the Committee.

Majority of the stakeholders were of the view that there are currently no laws in place to deal with food and feed safety and the existing measures are ineffective to carry out the role. They observed that some amendments need to be made to the Bill so as to align it to other statutes and the Constitution and to make the law effective.

They averred that the role of the Controller needs to be clearly outlined in the Bill so that it doesn't interfere with the mandate of competent authorities. The role of the Controller should be co-ordination of competent authorities and not oversight of food businesses.

In considering the Bill, Members observed that the legislation was timely because the Food Safety Controller will provide oversight to competent authorities and this will encourage the authorities to properly execute their mandate hence adherence to standards.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Kimani Ichung'wah, MP, Leader of the Majority Party, Members of the Departmental Committee on Health for the contribution that they made on the Bill and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and Secretariat who made useful contributions towards consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Food and Feed Safety Control Co-ordination Bill (*National Assembly Bill No. 21 of 2023*).

It is my pleasure to report that the Committee has considered the Food and Feed Safety Control Co-ordination Bill (*N.A. Bill No. 21 of 2023*) and has the honor to report back to the National Assembly with the recommendation that the Bill be approved with amendments as reported by the Committee.

Hon. (Dr.) John Kanyuithia Mutunga, M.P.  
Chairperson, Departmental Committee on Agriculture and Livestock

## PART ONE

### 1 PREFACE

#### 1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
  - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
  - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - iv. ***To study and review all the legislation referred to it;***
  - v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
  - viii. *To examine treaties, agreements and conventions;*
  - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - xi. *To examine any questions raised by Members on a matter within its mandate.*

#### 1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider, agriculture, livestock, food production and marketing.
3. In executing its mandate, the Committee oversees the Ministry of Agriculture and Livestock Development.

### 1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Agriculture and Livestock was constituted by the House on 27<sup>th</sup> October 2022 and comprises of the following Members:

#### **Chairperson**

Hon. (Dr.) John Kanyuithia Mutunga, MP  
Tigania West Constituency  
**UDA Party**

#### **Vice-Chairperson**

Hon. Brighton Leonard Yegon, MP  
Konoin Constituency  
**UDA Party**

Hon. Sabina Wanjiru Chege, CBS, MP  
Kitutu Chache North Constituency  
**Jubilee Party**

Hon. Ferdinand Kevin Wanyonyi, MP  
Kwanza Constituency  
**Ford Kenya Party**

Hon. Geoffrey Makokha Odanga, MP  
Matayos Constituency  
**ODM Party**

Hon. Justice Kipsang Kemei, MP  
Sigowet/Soin Constituency  
**UDA Party**

Hon. Jared Okello Odoyo, MP  
Nyando Constituency  
**ODM Party**

Hon. Lawrence Mpuru Aburi, MP  
Tigania East Constituency  
**NOPEU Party**

Hon. David Kiplagat, MP  
Soi Constituency  
**UDA Party**

Hon. Gabriel Gathuka Kagombe, MP  
Gatundu South Constituency  
**UDA Party**

Hon. Monicah Muthoni Marubu, MP  
Lamu County  
**Independent Member**

Hon. Pamela Njoki Njeru, MP  
Embu County  
**UDA Party**

Hon. Patrick Kibagendi Osero, MP  
Borabu Constituency  
**ODM Party**

Hon. Peter Kalerwa Salasya, MP  
Mumias East Constituency  
**ODM Party**

Hon. Yussuf Mohamed Farah, MP  
Wajir West Constituency  
**ODM Party**

#### 1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Ms. Laureen Omusa Wesonga  
Clerk Assistant I/Head of Secretariat

Mr. Victor Kanda Kilimo  
Clerk Assistant III

Mr. Ahmednoor Hassan Sheikh  
Clerk Assistant III

Ms. Brigitta Mati  
Legal Counsel I

CPA. Robert Ng'etich  
Fiscal Analyst II

Mr. David Ng'eno  
Research Officer II

Ms. Sheila Chebotibin  
Senior Serjeant-At-Arms

Ms. Noelle Chelagat  
Media Relations Officer II

Mr. Gerald Kadede  
Legal Counsel II

Ms. Lilian Aluga  
Public Relations Officer III

Mr. Muhumed Shillow  
Research Officer III

Mr. Richard Sang  
Serjeant-at-Arms

Mr. Kelvin Sekani  
Audio Officer III

## PART TWO

### 2 BACKGROUND OF FOOD AND FEED SAFETY REGULATIONS IN KENYA

#### 2.1 INTRODUCTION

6. Food safety is a crucial component of food security that assures food supply that is free from anything that may cause harm and illness. The World Bank estimates that developing countries lose about USD 95 Billion in productivity and an additional USD 15 Billion in medical treatment annually due to foodborne illnesses.
7. In Kenya, foods for export or for the formal market are the only ones subjected to inspections and testing, yet more than 80% of food is traded in the informal markets. It is for this reason that the CAADP review report 2021, by the African Union ranked the country poorly on the indicators that measure the impact of food safety on public health and trade.
8. Kenya has a history of epidemic outbreaks such as Rift Valley Fever, cholera and aflatoxin that led to loss of lives and economic downturn that was majorly attributed to inadequate measures to enhance food safety.

#### 2.2 SITUATIONAL ANALYSIS

9. Kenya misses a huge market of meat and meat products in the European market because it does not have a competent authority that is responsible throughout the food chain to implement effective inspection and guarantee credible public health and animal health attestations in the health certificate to accompany meat and meat products that are destined for the EU.
10. Kenya does not have a functional food safety surveillance system, with only a handful of food safety professionals and accredited laboratories. The multi-agency approach in food safety has become a hindrance in managing issues owing to some overlapping mandates, lack of coordination and under-resourcing. This has led to agencies that don't implement their mandates, leaving food safety issues unaddressed.
11. This state of affairs continues to expose Kenyans to the consumption of food contaminated with wastewater/soil toxins, aflatoxin, pesticide residues, heavy metals or artificial ripening agents. Furthermore, cooked foods and raw foods sold on the roadside get contaminated with automotive exhaust fumes.
12. Poverty is an underlying factor, as the majority of consumers consider price rather than hygiene, enabling the unhygienic practices in food handling to thrive.
13. Despite the Food Safety Policy (2013) aiming for the creation of an integrated food control system, a National Food Safety Authority and the harmonization of agency mandates; no progress has been made on these policy objectives. The Agricultural Policy, 2021 also seeks to harmonize food safety standards and regulations.
14. Aflatoxin, a known carcinogen of the liver, is triggered by fungi due to inappropriate pre-harvest or post-harvest handling of produce such as exposure to moisture. Its endemic high levels in cereals, nuts and tubers (maize, millet, sorghum, groundnuts, cassava, animal products, animal feeds) has been linked to bad agricultural practices, lack of sensitization and inadequate detection & surveillance. A study by FAO consultant found that the farmers neither have the knowledge of the dangers of aflatoxin nor the techniques to prevent its growth.

15. The Uganda border is another inlet for aflatoxin-contaminated maize and the recent TV exposé offered some insight into how untested agricultural imports are smuggled into the country.
16. Further, water pollutants such as heavy metals, industrial effluent, agricultural inputs and raw sewage discharge in water bodies is a concern. A study on the toxicity of pesticides to human cells found that "8 formulations out of 9 were up to one thousand times more toxic than their active ingredients"; fungicides and roundup being the most toxic. Farm produce in Kenyan markets has been found to have high pesticide residues.
17. Unscrupulous practices by traders of perishable foods have been reported in Nairobi. The NTV documentary titled the "Red Alert" detailed how chemicals are used to preserve agricultural produce: sodium metabisulfite in meat, fruits and vegetables; transglutaminase to bind meat; and calcium carbide for ripening fruits.
18. According to a survey in Kajiado, Kirinyaga and Nairobi, eight (8) out of ten (10) breadwinners were concerned about food safety, citing pesticides and poor sanitation. APHRC paints a worse picture of the food safety situation in Nairobi slums.

### 2.3 COMPARATIVE ANALYSIS

19. In **South Africa**, the food control section in the Department of Health oversees food safety. The functions of the Department include: administering food legislation; creating awareness in the food industry to consumers; audit and support port health and municipal health services in relation to law enforcement; monitoring, awareness and other activities; co-ordinate routine and specific food monitoring programmes; and attend to food safety alerts.
20. In **India**, the Food Safety and Standards Authority of India (FSSAI) established under the Food Safety and Standards Act, 2006 is mandated to handle food-related issues in various Ministries and Departments. FSSAI was created to formulate science-based standards for food and to regulate their manufacture, storage, distribution, sale and import for the realization of safe and wholesome food.
21. The Safe Food for Canadians Act, 2012 coordinates food control in **Canada**. Health Canada, a federal department responsible for helping Canadians maintain and improve their health, works with food industry stakeholders to establish policies, regulations and standards related to the safety and nutritional quality of foods sold in Canada. It also assesses the Canadian Food Inspection Agency's (CFIA) activities which itself is responsible for enforcing the food safety policies and standards that Health Canada sets.

## PART THREE

### 3 OVERVIEW OF THE FOOD AND FEED SAFETY CONTROL CO-ORDINATION BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2023)

#### 3.1 INTRODUCTION

22. Articles 43(1)(c) and 46(1)(c) of the Constitution require the government to protect public health and provide food of acceptable quality.
23. Through the Food and Nutrition Security Policy, 2011 and the National Food Safety Policy, 2013, the government formed a National Food Safety Coordination Committee to coordinate the harmonization of all the relevant acts and create awareness about the impact of food safety. The policies aimed to review the legal, institutional and regulatory framework, infrastructure and capacity. They further aimed to create a food safety coordination law and a National Food Safety Authority that is hoped to be the basis for an integrated food control system.
24. The responsibility of keeping food safe in Kenya is shared by 3 ministries, 7 agencies and 21 acts. Key laws that deal with food safety include the Public Health Act; Food, Drugs and Chemical Substances Act; and the Standards Act.
25. The Acts related to food and feed safety are: the Public Health Act; the Licensing Laws (Repeals and Amendment) Act; the Agriculture Act; the Agriculture Produce Act; the Seed and Plant Varieties Act; the Suppression of Noxious Weeds Act; the Biosafety Act; the Food Drugs and Chemical Substances Act; the Breast Milk Substitutes Act; the Standards Act; the Meat Control Act; the Animal Diseases Act; the Fertilizers and Animal Foodstuffs Act; the Agriculture and Food Authority Act; the Crops Act; the KEPHIS Act; the Plant Protection Act; the Pest Control Products Act, the Veterinary Surgeons and Paraprofessionals Act; and the Dairy Industry Act.
26. The Food and Feed Safety Control Co-ordination Bill, 2023 is a government sponsored Bill that seeks to provide for coordination of public institutions for the control of food and feed safety; establish the Office of the Food Safety Controller; and provide for the role of county governments in food and feed safety.
27. The Bill further seeks to ensure that there is supply of safe food and feed to consumers. It provides that food safety is a critical function of both the national and county governments in fulfilment of consumer protection as provided in Article 46 of the Constitution.
28. The Bill seeks to ensure that food is safely produced, distributed, processed, marketed and prepared for human and animal consumption.

### **3.2 REVIEW OF THE BILL**

The Bill has thirty-four (34) clauses and has the following provisions:

#### **Part I: Preliminary**

29. Clauses 1 to 5 of the Bill provide for preliminary provisions, that is the short title, interpretation of terms as used in the Bill, objects, application of the Bill and the guiding principles.
30. The clauses provide that the Bill shall apply to every competent authority and every person conducting food business or feed business.

#### **Part II: Office of the Food Safety Controller**

31. Clauses 6 to 9 of the Bill provide for establishment of the Office of the Food Safety Controller as a body corporate with perpetual succession, common seal and capable of suing and being sued, acquiring and disposing property and perform such acts as may be performed by body corporates. It also provides for the appointment of the Controller by the President with the approval of Parliament and the qualifications and functions of the Controller.
32. Clauses 10 to 15 of the Bill further provide for vacancy in the Office of the Controller, removal from office, staff of the Office of the Controller, remuneration of the Controller, delegation by the Controller and protection from personal liability.

#### **Part III: Food Safety and Feed Safety by County Governments**

33. Clause 16 of the Bill provides functions of county government in relation to food and feed safety by providing for each county government to prepare an annual food and feed safety report at least thirty days before the end of a financial year and submit the report to the Controller.

#### **Part IV: Food Safety and Feed Safety Control and Coordination**

34. Clauses 17 to 21 of the Bill provide for the Office of the Controller in consultation with competent authorities and county governments to develop and review a multi-annual control plan as a basis and mechanism for official control. Verification of mechanism to enforce food and feed safety requirements, overlaps in functions of competent authorities, audit of food and feed safety mechanism, verification of audit to ascertain whether the system established provides accurate certification, inspection and validation.
35. Clauses 22 to 27 provide for risk analysis, traceability, designation of a laboratory as a reference laboratory for confirmatory testing, preparation and submission of report on food and feed safety by every competent authority at least thirty days before the end of a financial year and the appointment and powers of compliance officers.

#### **Part V: Financial Provisions**

36. Clauses 28 to 31 of the Bill provide for funds of the Office of the Controller which consist of moneys appropriated by Parliament, any grants, gifts, donations or other endowments and such other funds as may accrue to the Office in the performance of its actions. Investment of the funds, annual estimates and accounts and audit of the funds.

## Part VI: Miscellaneous Provisions

37. Clause 32 of the Bill provides that the Act supersedes other Acts such that where there is a conflict between the provisions of this Act and any other written law with regards to the powers and functions of the Controller then the Act prevails.
38. Clause 33 of the Bill provides for powers of the Cabinet Secretary in consultation with the Controller to make regulations to give effect to the Act.
39. Clause 34 provides for consequential amendments as specified in the Second Schedule.

## Schedules to the Bill

40. **First Schedule: Provides the list of Competent Authorities**
41. **Second Schedule: Provides for consequential amendments to the following acts:** the Public Health Act (*Cap 242*); the Food, Drug and Chemical Substance Act (*Cap 254*); the Dairy Industry Act (*Cap 336*); the Fertilizer and Animal Foodstuffs Act (*Cap 345*); the Pest Control Products Act (*Cap 346*); the Meat Control Act (*Cap 356*); the Standards Act (*Cap 496*); the Biosafety Act (*No. 2 of 2009*); the Kenya Plant Health Inspectorate Service Act (*No. 54 of 2012*); the Agriculture and Food Authority Act (*No. 13 of 2013*); the Fisheries Management and Development Act (*No. 35 of 2016*); the Water Act (*No. 43 of 2016*); and the Health Act (*No. 21 of 2017*). Amendments to the acts provide for the role of the Controller and implementation of multi-annual control plan by agencies under the Act.
42. The Bill confers on the Cabinet Secretary powers to make regulations and does not limit any fundamental rights and freedoms.
43. The Bill affects functions of county governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning county governments.
44. The Bill is a Money Bill within the meaning of Article 114 of the Constitution.

## PART FOUR

### 4 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

45. Following the call for memoranda from the public through placement of adverts in the print media on Monday, 12<sup>th</sup> June 2023 and vide a letter REF: NA/DDC/A&L/2023/041 dated 5<sup>th</sup> July 2023 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- i. Council of Governors
- ii. Kenya Bureau of Standards
- iii. State Department for Public Health and Professional Standards
- iv. State Department for Crop Development
- v. Pest Control Products Board
- vi. National Biosafety Authority
- vii. State Department for Livestock Development
- viii. Kenya Plant Health Inspectorate Service
- ix. Nature Kenya
- x. Kenya Association of Manufacturers

46. The stakeholders submitted as follows:

#### 4.1 COUNCIL OF GOVERNORS

In a meeting with the Committee held on Wednesday, 26<sup>th</sup> July 2023, Ms. Mary Mwiti, Chief Executive Officer, CoG proposed the following amendments to the Bill:

##### Clause 16

47. Amend sub-clause 16(2) to read as follows, "*Each county government shall at least thirty days before the end of a financial year, prepare an annual report on the state of food safety and feed safety in the respective county and submit the report to the respective county governor and a copy to the Controller*". To provide clarity in the handling of the food and feed safety report.

##### Committee's Observation/Recommendation

The Committee rejected their proposal because the governor shall be in-charge of the preparation of the report and therefore it makes no sense for the report to be submitted to them.

48. Insert the following new sub-clause 16(3), "*The respective county governor shall submit the report to the county assembly*".

##### Committee's Observation/Recommendation

The proposal was not adopted by the Committee because it is expected that the executive shall work with the county assemblies during preparation of the report.

##### Clause 20

49. Amend sub-clause 20(3) to read as follows, "*Upon conducting an audit under sub-section (1), the Controller shall prepare an audit report and submit the audit report to the Cabinet Secretary responsible for the competent authority and all the county governors*". For effective implementation of the report at the county level.

### **Committee's Observation/Recommendation**

This proposal was adopted by the Committee.

#### **Clause 33**

50. Amend sub-clause 33(1) to read as follows, "*The Cabinet Secretary in consultation with the Controller and county governments, may make regulations for better carrying into effect this Act*". To provide for intergovernmental consultation in the making of regulations.

### **Committee's Observation/Recommendation**

Their proposal was not adopted by the Committee because regulations are prepared by the regulating authority. County governments can give their views on the regulations during public participation.

#### **First Schedule**

51. Amend by inserting the following new paragraph 11, "*Respective departments of the county governments*". To include county governments as competent authorities.

### **Committee's Observation/Recommendation**

This proposal was rejected because there are so many departments in counties that deal with food and feed safety in counties. Adding them to the list will make the work of the Food Safety Controller cumbersome as they will have so many institutions to oversight. Additionally, county departments are not recognized internationally.

## **4.2 KENYA BUREAU OF STANDARDS**

In a meeting with the committee held on Wednesday, 19<sup>th</sup> July 2023, Ms. Esther Ngari, Ag. Managing Director, KEBS proposed the following amendments to the Bill:

#### **Clause 18**

52. Amend sub-clause 18 (1) to read as follows "*the controller shall verify that a competent authority has mechanisms to enforce food and feed safety in accordance with Kenya Standards.*" This is to comply with the Standards Act.

### **Committee's Observation/Recommendation**

This proposal was rejected because Kenyan Standards comply with international standards. The amendment will reduce competitiveness of Kenyan produce in the international market.

53. Amend the clause by deleting sub-clause 18 (2) in its entirety. This will prevent duplication of roles and serve the object of the Bill which is to provide for coordination of competent authorities.

### **Committee's Observation/Recommendation**

This proposal was rejected because the Food and Safety Controller needs to verify compliance of the listed items by competent authorities in order to effectively discharge their mandate.

#### **Clause 24**

54. Amend sub-clause 24 (1) to read as follows "*the controller in consultation with relevant competent authorities shall designate laboratories as reference laboratories for confirmatory testing*". The purpose is to have more than one laboratory as reference laboratories.

#### **Committee's Observation/Recommendation**

The Committee rejected this proposal because the provision as provided in the Bill serves the intended purpose.

#### **Clause 27**

55. Amend the Bill by deleting the clause in its entirety. This is to eliminate duplication of roles because the responsibilities are already vested in the competent authority.

#### **Committee's Observation/Recommendation**

The Committee did not adopt this proposal because compliance officers should be able to carry out inspections when there is need.

### **4.3 STATE DEPARTMENT OF PUBLIC HEALTH AND PROFESSIONAL STANDARDS**

In a meeting with the Committee held on Wednesday, 26<sup>th</sup> July 2023, the Principal Secretary, Ms. Mary Muriuki, HSC proposed the following amendments to the Bill:

#### **Clause 4**

56. Amend by deleting the words "*and every person conducting food business or feed business*" and substituting therefor with "*This act shall apply to every competent authority*". This is in line with the objects of clause 3 to coordinate the function of competent authorities and not the conduct of both food and feed business.

#### **Committee's Observation/Recommendation**

This proposal was adopted by the Committee since the Food Safety Controller is mandated to coordinate competent authorities.

#### **Clause 5**

57. Amend paragraph (a) by deleting the words "*life and*" and replacing it therefor with "*The protection of human health*." This is because human life is implied in the protection of human health.

#### **Committee's Observation/Recommendation**

The Committee adopted this proposal.

#### **Clause 9**

58. Amend sub-clause (d) to read as follows, "*liaise with competent authorities to identify and advise on policy gaps and inadequate regulation of food safety and feed safety official control*." The Controller is mandated to coordinate competent authorities responsible for official control of food and feed safety.

#### **Committee's Observation/Recommendation**

This proposal was adopted by the Committee.

59. Amend sub-clause (e) to read as follows "*assess the adequacy of food safety and feed safety emergency preparedness and make recommendations to the relevant competent authority*." Preparedness is in relation to food and feed safety.

#### **Committee's Observation/Recommendation**

This proposal was rejected because food preparedness should not be limited to emergencies. This proposal will be limiting.

60. Amend sub-clause (i) to read as follows, "*perform such other duties as may be necessary to ensure coordination of food safety and feed safety official control*". Ensuring food and feed safety is the responsibility of food business operators, competent authorities regulate and verify systems for compliance to requirements.

**Committee's Observation/Recommendation**

This proposal was adopted by the Committee.

**Clause 18**

61. Amend sub-clause (1) to read as follows, "*The Controller shall verify that a competent authority has mechanisms to enforce the requirements of food and feed safety*". Verification by the Controller is an assessment of the competent authorities' ability to enforce the food and feed requirements which could be in a regulation or standard. The Controller should not impose use of standards.

**Committee's Observation/Recommendation**

This proposal was rejected because Kenyan Standards comply with international standards. The amendment will reduce competitiveness of Kenyan produce in the international market.

62. Amend sub-clause (2) by deleting paragraphs (a), (c), (d) and (e) and substituting with the following paragraphs: "*(a) Inspection procedures; (c) Food handlers' health and personal hygiene certification; and (e) Requirements and procedures for issuance of license, certificates and permits*". Verification is an act of assessing.

**Committee's Observation/Recommendation**

This proposal was rejected because the Food and Safety Controller needs to verify compliance of the listed items by competent authorities in order to effectively discharge their mandate.

**Clause 22**

63. Delete the clause in its entirety. This is for the reason that it is outside the object and scope of the Bill.

**Committee's Observation/Recommendation**

The Committee did not adopt this proposal because it is providing for risk analysis and therefore will play an important role in the Act.

**First Schedule**

64. Amend the Schedule to include county government as one of the competent authorities. This is to align the Bill to the Fourth Schedule of the Constitution.

**Committee's Observation/Recommendation**

This proposal was rejected because there are so many departments in counties that deal with food and feed safety in counties. Adding them to the list will make the work of the Food Safety Controller cumbersome as they will have so many institutions to oversight. Additionally, county departments are not recognized internationally.

## Second Schedule

### Public Health Act Cap 242

65. Amend Section 10A (1) to read as follows, "*where the Director General for Health determines that there is an overlap in its functions and the function of any other public institution in relation to food safety, the Director General for Health may request the controller to advise taking cognizance of mandates of competent authorities.*"

#### Committee's Observation/Recommendation

This proposal was not adopted by the Committee because it is a repetition. When seeking advice, cognizance of the competent authority will definitely be taken.

66. Amend Section 10A (2) by adding the following words immediately after the word "advise" "*taking cognizance of mandates of competent authorities.*"

#### Committee's Observation/Recommendation

This proposal was not adopted by the Committee because it is a repetition. When seeking advice, cognizance of the competent authority will definitely be taken.

### Food Drugs and Chemical Substances Act Cap 254

67. Amend Section 27B (1) by adding the following words immediately after the word "advise," "*taking cognizance of mandates of competent authorities.*"

#### Committee's Observation/Recommendation

This proposal was not adopted by the Committee because it is a repetition. When seeking advice, cognizance of the competent authority will definitely be taken.

68. Amend Section 27B (2) by adding the following words immediately after the word "advise," "*taking cognizance of mandates of competent authorities.*"

#### Committee's Observation/Recommendation

This proposal was not adopted by the Committee because it is a repetition. When seeking advice, cognizance of the competent authority will definitely be taken.

### Health Act, 2017

69. Amend the Bill to expunge provisions of amendments to the Act. The reason for this is that the Act does not have direct provisions on food safety.

#### Committee's Observation/Recommendation

This proposal was rejected by the Committee because there are provisions on food safety in the Health Act.

#### 4.4 STATE DEPARTMENT FOR CROP DEVELOPMENT

In a meeting with the Committee held on Wednesday, 26<sup>th</sup> July 2023, Mr. Peter Owoko, Head of Policy submitted as follows on behalf of the State Department, THAT:

70. Food safety in Kenya is a collective responsibility of various agencies under different ministries and is regulated by various laws. The key ministries are the Ministry of Agriculture and Livestock Development, the Ministry of Health, the Ministry of Mining, Blue Economy and Maritime Affairs and the Ministry of Investments, Trade and Industry.
71. The Food Safety Policy of 2013 provided for the review of existing food safety legislative framework and creating of a body to direct and coordinate all Government activities in food safety in close collaboration with all relevant Governmental and non-governmental sectors.
72. Currently, coordination of food and feed safety is done by the National Food Safety Coordinating Committee comprising of the Ministry of Health and the Ministry of Agriculture and Livestock Development. However, the committee lacks the legal mandate to handle committee matters and is therefore very ineffective.
73. The Food and Feed Safety Control Co-ordination Bill, 2023 will provide coordination and oversight mechanism among institutions that deal with food safety control. Review of existing statutes will establish a coordination requirement with the regulatory agencies and align them with the requirement that food business operators take responsibility of the food they handle, existence of gaps and the devolved system of government.
74. Coordination of regulatory agencies, enforcement of existing legislation and accountability by all along the value chain, which the Bill seeks to provide, will enhance food safety in Kenya food.

#### 4.5 PEST CONTROL PRODUCTS BOARD

In a meeting with the committee held on Wednesday, 26<sup>th</sup> July 2023, Dr. Esther Kimani, Chief Executive Officer, Pest Control Products Board proposed the following amendments to the Bill:

##### **Clause 2**

75. Amend definition of "Cabinet Secretary" to mean, "*the Cabinet Secretary responsible for food safety*". This is for clarity.

##### **Committee's Observation/Recommendation**

This proposal was rejected by the Committee because the definition provided in the Bill is sufficient. An Executive Order will provide the Ministry in which the Office of the Food Safety Controller will be domiciled.

##### **Clause 33**

76. Amend sub-clause (1) by providing that the competent authorities shall be consulted during making of regulations.

##### **Committee's Observation/Recommendation**

This proposal was not adopted because regulation making is a mandate of the regulating authority. Competent authorities can give their views on the regulations during public participation.

77. Amend the Schedule by including Veterinary Medicine Directorate in the list of competent authorities because it is responsible for matters animal health products including pesticides and drugs for use in animals.

**Committee's Observation/Recommendation**

This proposal was adopted by the Committee.

**4.6 NATIONAL BIOSAFETY AUTHORITY**

In a meeting with the Committee held on Wednesday, 26<sup>th</sup> July 2023, Mr. Moses Sande, Director Legal, proposed the following amendments to the Bill:

**Clause 2**

78. Amend definition of the word "feed" to include feed for animals which are not consumed as food.

**Committee's Observation/Recommendation**

This proposal was not adopted by the Committee because the definition provided in the Bill is sufficient.

**Clause 33**

79. Amend sub-clause (1) to include a requirement that the Cabinet Secretary shall consult the relevant competent authority before making any Regulations.

**Committee's Observation/Recommendation**

This proposal was not adopted because regulation making is a mandate of the regulating authority. Competent authorities can give their views on the regulations during public participation.

**4.7 STATE DEPARTMENT FOR LIVESTOCK DEVELOPMENT**

In a meeting with the Committee held on Wednesday, 26<sup>th</sup> July 2023, Dr. Christopher Wanga, Director, Livestock Policy Research and Regulations made the following presentation on behalf of the State Department, THAT:

80. The existing food safety policy and laws have failed to harmonise operations of the different actors and agencies mandated to ensure food safety in Kenya. This has hampered effective coordination of food safety in the country leading to persistent lapses in food control.

81. The Bill provides for the separate regulation of food safety away from regulation of medicines as guided by the SPS Agreement of WTO and other international standard setting bodies.

82. The Bill will address the challenges in food safety regulation devoid of any business interests and is backed by a sound Food Safety Policy.

#### 4.8 KENYA PLANT HEALTH INSPECTORATE SERVICE

In their memorandum, KEPHIS proposed the following amendments to the Bill:

##### **Clause 5**

83. Amend paragraph (e) to specify the trade practice that is being promoted.

##### **Committee's Observation/Recommendation**

This amendment was not adopted by the Committee because it is not necessary.

##### **Clause 16**

84. Amend the clause to provide clarity with regards to the function of county governments to enhance food and feed safety that meet the standards of cross border trade (International trade). This is to ensure inspection of the food and feed in compliance with the international market requirements.

##### **Committee's Observation/Recommendation**

This proposal was rejected because it is a mandate of the competent authorities.

##### **Clause 19**

85. Amend the clause to provide for solutions for overlap of mandates between competent authorities and county governments. This serves the purpose of providing recourse for overlap of functions.

##### **Committee's Observation/Recommendation**

This proposal was rejected by the Committee as there is no possibility for overlap of functions because this is provided in the Constitution and other statutes.

##### **Clause 22**

86. Amend the clause by providing clarity since sub-clause (1) is talking about food and feed therefore having no link with sub-clauses (2) and (3). The clauses conflict with the role of the Controller.

##### **Committee's Observation/Recommendation**

This proposal was not adopted by the Committee because it is not necessary.

87. Amend sub-clause (4) to include the county governments.

##### **Committee's Observation/Recommendation**

This proposal was not adopted by the Committee because it is a function of the Food Safety Controller and the competent authorities.

##### **Second Schedule**

88. Amend by inserting new paragraph (mb) after paragraph C of KEPHIS act of 2012 as (ca) to read as follows, "*implement multi annual control plan safety program conducted on the produce or products of plant origin.*"

##### **Committee's Observation/Recommendation**

This proposal was not adopted by the Committee because it expands the scope of the Bill.

#### 4.9 NATURE KENYA

In their memorandum dated 26<sup>th</sup> June 2023, Nature Kenya proposed the following amendments to the Bill:

##### Clause 5

89. Amend sub-clause (g) to read as follows, "*promotion of sustainable production, processing and handling of food and feeds.*"

##### Committee's Observation/Recommendation

This proposal was adopted by the Committee.

90. Amend sub-clause (h) to read as follows, "*protection of human life and health: animal life and health: and property.*" This is to encompass biodiversity conservation and ecosystems safeguards that ensure ecosystem health is maintained as well as human health.

##### Committee's Observation/Recommendation

This proposal was adopted by the Committee.

##### Clause 16

91. Amend sub-clause (1) (a) to read as follows, "*(i) Promote integrated natural resource management considering Ecosystem Based Approaches; and (ii) Promote organic farming, minimize the use of chemical fertilizers and regulate the use of pesticides.*" The Bill should outline the key standard practices that are to be promoted by the County Governments to enhance compliance.

##### Committee's Observation/Recommendation

This proposal was not adopted by the Committee because it will expand the scope of the Bill.

##### First Schedule

92. Amend the Schedule by including National Environment Management Authority (NEMA) in the list of competent authorities because NEMA deals with enforcement on compliance on environmental and biodiversity safeguards among other functions.

##### Committee's Observation/Recommendation

This proposal was rejected because NEMA does not qualify to be one of the competent authorities.

#### 4.10 KENYA ASSOCIATION OF MANUFACTURERS

In their memorandum, KAM proposed the following amendments to the Bill:

##### Clause 2

93. Amend definition of "*Controller*" so as to clearly define who the controller is and under which ministry or agency of the Government they are domiciled and to clarify whether the office of the controller will report directly to the President as the appointing authority or the Cabinet Secretary responsible for food safety.

##### Committee's Observation/Recommendation

This proposal was rejected by the Committee because the definition provided in the Bill is sufficient.

94. Delete definition for Cabinet Secretary because the role of the Food and Feed Safety Controller is overarching and offers a guiding role in the performance of official controls by competent authorities. It is therefore important that the office is domiciled above ministries so that the role is not left to one ministry.

**Committee's Observation/Recommendation**

This proposal was rejected by the Committee because the definition provided in the Bill is sufficient. An Executive Order will provide the Ministry in which the Office of the Food Safety Controller will be domiciled.

**Clause 4**

95. Amend by deleting the clause because it can cause duplication of roles between the Office of the Controller and competent authorities.

**Committee's Observation/Recommendation**

This proposal was rejected because the Act shall apply to persons conducting food or feed business through the competent authorities.

**Clause 16**

96. Amend paragraph 16(1)(b) to providing that the food and feed safety license be issued by a single national entity or clarify the type of licence to be issued under paragraph (b).

**Committee's Observation/Recommendation**

The Committee rejected this proposal because the Fourth Schedule to the Constitution assigns the role of licensing businesses that sell food to county governments.

**Clause 19**

97. Amend the clause to provide clarity on how the duplication and conflicting regulation will be resolved.

**Committee's Observation/Recommendation**

The Committee did not adopt this proposal because the details can be provided in regulations.

98. Amend by reducing the number of competent authorities to a manageable number like five by merging the mandates.

**Committee's Observation/Recommendation**

This proposal was not adopted by the Committee because each competent authority has its mandate supported by an act of Parliament and it is therefore not possible to merge the mandates.

**Clause 21**

99. Amend sub-clause 21(1) to provide clarification on the compensation mechanism.

**Committee's Observation/Recommendation**

The Committee rejected this proposal because it can be covered in regulations and standard operating procedures.

**Clause 24**

100. Amend sub-clause 24(1) so as to include a mechanism to compel the government to build more public testing laboratories. The designated official testing laboratories criteria for designation should be made clear and qualified by KENAS-17025.

**Committee's Observation/Recommendation**

These proposals were rejected by the Committee because it will expand the scope of the Bill. All the laboratories used by competent authorities have gone through the necessary approvals.

**Clause 27**

101. Amend the Bill by deleting the clause.

**Committee's Observation/Recommendation**

The Committee did not adopt this proposal because compliance officers should be able to carry out inspections when there is need.

102. Amend by deleting sub-clause 33(2) or harmonising the proposed regulations with already existing national regulations.

**Committee's Observation/Recommendation**

This proposal was rejected because it is necessary to put in place regulations to operationalise this Act.

103. Amend the Schedule by harmonising the competent authorities.

**Committee's Observation/Recommendation**

This proposal was not adopted by the Committee because each competent authority has its mandate supported by an act of Parliament and it is therefore not possible to merge the mandates.

## PART FIVE

### 5 COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee observed that enacting the Food and Feed Safety Control Co-ordination Bill (*National Assembly Bill No. 21 of 2023*) into law will bring several potential benefits to the country, including:

1. Having a legal and policy framework that will provide for the coordination of agencies that deal with food and feed safety.
2. Food and feed safety in the country has been under several government agencies and this has reduced efficiency in this area. The Office of the Food Safety Controller will coordinate food and feed safety control in Kenya.

## PART SIX

### 6 COMMITTEE RECOMMENDATION

The Committee having reviewed the Food and Feed Safety Control Co-ordination Bill (*National Assembly Bill No. 21 of 2023*) recommends that the House approves the Bill with amendments as proposed in the Schedule in Part Seven of this report.

## PART SEVEN

### 7 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

#### CLAUSE 4

1. THAT clause 4 of the Bill be amended by deleting the words "*and every person conducting food business or feed business*".

#### Justification

To limit the scope of the Bill to regulation of competent authorities by the Controller.

#### CLAUSE 5

2. THAT clause 5 of the Bill be amended—
  - (a) in sub-clause (a) by deleting the words "*life and*".

#### Justification

Regulation of human health encompasses protection of human life.

- (b) By inserting the following new sub-clauses immediately after sub-clause (f)

*"(g) promotion of sustainable production, processing and handling of food and feeds; and  
(h) protection of animal health"*

#### Justification

To provide for biodiversity conservation and ecosystem safeguards.

- (c) By deleting the word "*and*" immediately after words "*feed business*" in sub-clause (e).

#### Justification

For proper punctuation of the clause.

#### CLAUSE 9

3. THAT clause 9 of the Bill be amended—
  - (a) in sub-clause (d), by deleting the words "*in*" and substituting therefor the word "*of*" and inserting the words "*official control*" immediately after the words "*feed safety*".

#### Justification

To limit the scope to exercise of official control by the Controller.

- (a) in sub-clause (i), by inserting the words "*coordination of official control of*" immediately before the words "*food safety*".

**Justification**

To limit the scope to exercise of official control by the Controller.

**CLAUSE 20**

4. THAT clause 20 of the Bill be amended in sub-clause (3) by inserting the words "*and each County Governor*" immediately after the phrase "*competent authority*".

**Justification**

For inclusion of county governments in the transmittal of the audit report prepared by the Controller.

**CLAUSE 27**

5. THAT clause 27 of the Bill be amended in paragraph (b) by inserting the word "*of*" immediately after the words "*makes copies*".

**Justification**

To correct a typographical error.

**FIRST SCHEDULE**

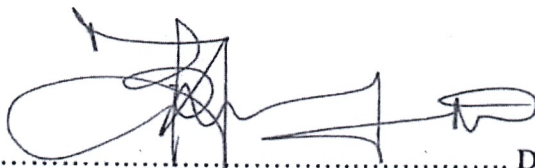
6. THAT the First Schedule of the Bill be amended by inserting the following new paragraph—

*"11. Veterinary Medicines Directorate".*

**Justification**

For inclusion of the Veterinary Medicines Directorate as a competent authority as it is responsible for animal health products such as pesticides and drugs. The Veterinary Medicines Directorate is established under section 39 of the Veterinary Surgeons and Veterinary Para-professionals Act, No. 29 of 2011.

SIGNED.....



DATE.....

3 / 8 / 2023

HON. (DR.) JOHN KANYUTHIA MUTUNGA, MP

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK.

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