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*Bat SNA
1/12/2021*



REPUBLIC OF KENYA

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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FIFTH SESSION (2021)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE CROPS (COFFEE) (GENERAL)
(AMENDMENT) REGULATIONS, 2021

(Legal Notice No. 104 of 2021)

DECEMBER 2021			
THE NATIONAL ASSEMBLY PAPERS LAID			
DATE: - 1 DEC 2021		DAY: WED	
TABLED BY:	CHAIRPERSON - DELEGATED LEGISLATION		
CLERK-AT THE TABLE:	M. W. ANJIKU		

The Directorate of Audit, Appropriations & other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.



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ABBREVIATIONS

LN	Legal Notice
SO	Standing Order
RIA	Regulatory Impact Assessment
RMA	Regulatory making Authority

CHAIRPERSON'S FOREWORD

The Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives, in exercise of the powers conferred by section 40 of the Crops Act (*No. 18 of 2013*), made the Crops (Coffee) (Amendment) Regulations, 2021. The Regulations were made *vide LN No. 104 of 2021* published in the Kenya Gazette on the 2nd July, 2021.

The Regulations were submitted to the Clerk of the National Assembly on 23rd September, 2021 and tabled before the House on 6th October, 2021.

The Committee scrutinised the Legal Notice and took note that the Regulations were published in the gazette on 2nd July, 2021, submitted to the Clerk, National Assembly on 23rd September, 2021 and laid in the House on 6th October, 2021 hence were out of the statutory timelines set out in section 11(1) and thus ceased to have effect on 29th July, 2021, by operation of law, pursuant to section 11(4) of the Statutory Instruments Act, 2013.

The Committee further noted that the Regulation Making Authority did not conduct public participation nor stakeholder engagements on the amendment regulations and had submitted to the National Assembly documents on the public participation exercise conducted in 2018 before the primary regulations were approved in 2019. The public participation and stakeholder engagements therefore appear to be for the principal regulations and not the current (amendment) regulations that seek to amend the principal regulations. The National Coffee Federation of Kenya, being a key player in the coffee industry and having not been consulted, has further opposed the notice terming it illegal.

The publication of the Regulations therefore goes against Article 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act.

The Committee also established that there was no evidence that a Regulatory Impact Assessment was conducted on the amendment regulations. What was provided by the Ministry was the Regulatory Impact Assessment report of the Crops (Coffee General) Regulations published in 2019. Another Impact Assessment ought to have been done as the amendment Regulations affects all licensees and have implications on other persons who may desire to apply for a license.

The Regulations are also inconsistent with section 40 of the Crops Act, which requires the Cabinet Secretary while making regulations to do it in consultation with the Agriculture and Food Authority and the County Governments. This contravenes Article 259 (11) of the Constitution which provides that when consultation is required then an action can only be taken after that consultation, hence ought to have been demonstrated in the enactment clause of the regulations, so as to conform to section 40 of the Crops Act and section 13 (a) and (h) of the Statutory Instruments Act.

Having examined the Crops (Coffee) (Amendment) Regulations, 2021 (*LN No. 104 of 2021*) in line with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), the Crops Act (*No. 18 of 2013*), pursuant to which they are made, the Committee resolved to recommend to the House **to annul the Regulations in entirety** for noncompliance with the Constitution and the relevant statutes.

Committee on Delegated Legislation: Report on the Consideration of the Crops (Coffee) (Amendment) Regulations, 2021, published vide Legal Notice Number 104 of 2021.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b), it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Crops (Coffee) (Amendment) Regulations, 2021, (LN No. 104 of 2021).**

HON. WILLIAM KASSAIT KAMKET, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to scrutinize statutory instruments submitted to the National Assembly for consideration. The Committee is expected to consider in respect of any statutory instrument whether it is in, conformity with the Constitution, the Act pursuant to which it is made or other relevant written laws and the Standing Orders.
2. The Committee, during scrutiny is guided by the principles of good governance, rule of law and in particular considers whether the statutory instrument-
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiati Constituency

KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

Members

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

Orange Democratic Movement

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. William Kamoti, M.P.

Rabai Constituency

Orange Democratic Movement

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

The Hon. Jennifer Shamalla, M.P.
Nominated
Jubilee Party

The Hon. Munene Wambugu, M.P.
Kirinyaga Central Constituency
Jubilee Party

The Hon. Patrick Mariru, M.P.
Laikipia West Constituency
Jubilee Party

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated
Wiper Democratic Movement – Kenya

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Mr. Mohamed Jimale
Clerk Assistant II (Team Leader)

Ms. Ruth Mwihaki Gakuya
Clerk Assistant II

Mr. Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Fiona Musili
Research Assitant II

Ms. Noelle Chelangat
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Mr. Mureithi Theuri
Parliamentary Intern

2.0 CONSIDERATION OF THE CROPS (COFFEE) (AMENDMENT) REGULATIONS, 2021 (LN NO. 104 OF 2021)

2.1 Introduction

5. The Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives in exercise of the powers conferred by section 40 of the Crops Act (*No. 18 of 2013*), made the Crops (Coffee) (Amendment) Regulations, 2021. The Regulations were published in the Gazette *vide LN No. 104 of 2021* on the 2nd July, 2021.
6. The Regulations were submitted to the Clerk of the National Assembly on 23rd September, 2021 and tabled before the House on 6th October, 2021.

2.2 Scrutiny of the Instrument

7. The Committee considered the Crops (Coffee) (Amendment) Regulations, 2021 to check its conformity with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Crops Act (*No. 18 of 2013*), pursuant to which they are made and the Statutory Instruments Act, 2013 (*No. 23 of 2013*), which regulates the making, scrutiny and publication of the Regulations.

2.3 Summary of the Regulations

8. The Crops (Coffee) (General) (Amendment) Regulations, 2021 gives effect to section 40 of the Crops Act and seek to amend the Crops (Coffee) (General) Regulations, 2019 to make provision for extension of the marketing licenses existing as at 1st July 2021 until the 30th June 2022. The principal Regulations as approved by the National Assembly had a clear transition provision at regulation 46 that the licenses existing at the commencement of the Regulations were [only] to remain valid until their expiry, and that any subsequent licenses were to be issued under the current regulations, which have clear procedures for application and issuance of licenses. The license which were in force were all saved to continue operation but only for the unexpired term.

3.0 COMMITTEE FINDINGS

9. The Committee examined the Crops (Coffee) (General) (Amendment) Regulations, 2021, in line with the Constitution, The Interpretations and General Provisions Act (*Cap 2*), the Crops Act, and the Statutory Instruments Act (*No 23 of 2013*) and made a number of observations as analyzed hereunder and which informed its resolutions.

3.1 Statutory Timelines

10. The Regulations were published in the gazette on 2nd July, 2021, *vide* Legal Notice No 104 of 2021, submitted to the Clerk, National Assembly on 23rd September, 2021 and laid in the House on 6th October, 2021 hence were out of the statutory timelines set out in section 11(1) and ceased to have effect on 29th July, 2021, by operation of law.

3.2 Consultation / Public participation

11. According to the Explanatory Memorandum submitted to the Committee, the Ministry demonstrated that consultations were done while preparing the Regulations, with key stakeholders whose input were considered before finalization of the Regulations. Some

Committee on Delegated Legislation: Report on the Consideration of the Crops (Coffee) (Amendment) Regulations, 2021, published vide Legal Notice Number 104 of 2021.

of the key stakeholders indicated to have been consulted are Ministry of Agriculture, Livestock and Fisheries most significantly the Coffee Directorate under Agriculture and Food Authority, the Ministry of Industrialization, Trade and Cooperatives, The National Treasury and Planning, Coffee Cooperative Societies and Unions, Coffee Farmers, the Capital Markets Authority, the Attorney General and the Nairobi Coffee Exchange.

12. However, the dates on the attendance lists reflect that the public participation was conducted in 2018 before the principal regulations were approved in 2019. The public participation and stakeholder engagements therefore appear to be for the principal regulations and not the current regulations that seek to amend the principal regulations.
13. The National Coffee Cooperative Federation of Kenya, one of the stakeholders in the coffee subsector, vide a letter dated 24th August, 2021 wrote to the Clerk of the National Assembly raising concerns that the Regulations as published had led to clawing back on progress in the ongoing reforms in the coffee sector and that the amendments had not gone through the due process of public participation.
14. The federation claimed that the amendment has unfortunately resulted to clawing back of the progressive legal reforms in the Coffee sector.
15. The Regulation making authority by failing, ignoring and/or refusing to conduct public participation therefore contravened Article 10 and 118 of the constitution and sections 5, 5A and the schedule to, the Statutory Instruments Act, 2013.

3.3 Regulatory Impact Assessment

16. Section 6 of the Statutory Instruments Act provides that regulatory Impact Assessment should be done and a statement forwarded alongside the Regulations where they are likely to impose significant costs on the community or a part of the community. The extension of licenses through the amendments would have significant economic impact on all persons and players in the coffee industry hence required a regulatory impact assessment, in this case for coffee licensees.
17. The report that was provided by the Ministry is that of the Crops (Coffee General) Regulations, 2019 which appear to be that of the principal regulations. Another Impact Assessment ought to have been conducted as this affects all licensees. This was not done as there is no report or statement on the same.

3.4 Inconsistency with the Crops Act

18. Section 40 of the Crops Act requires the Cabinet Secretary responsible for Agriculture, Livestock, Fisheries and Cooperatives while making regulations, to do it in consultation with the Agriculture and Food Authority and the County Governments for the better carrying out of the objects of the Act. This ought to have been expressly demonstrated at the enactment clause of the Regulations.
19. The omission or failure to consult the said authorities contravenes Article 259 (11) of the Constitution, section 40 of the Crops Act and section 13 (a) and (h) of the Statutory Instruments Act.

4.0 COMMITTEE RECOMMENDATION

20. Having examined the **Crops (Coffee) (Amendment) Regulations, 2021** published vide (LN No. 104 of 2021 in line with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), and the Crops Act (No. 18 of 2013), pursuant to which they are made, **the Committee recommends that the House annuls in entirety the said Statutory Instrument** for noncompliance with the Constitution and the relevant Statutes.

Signed..........

Date..........

THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)

ANNEXURES

- 1. Adoption List**
- 2. Legal Notice Number (*L.N. No. 104 of 2021*)**
- 3. Committee Minutes**
- 4. Letter from the National Coffee Federation of Kenya**

MINUTES OF THE 62ND SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY 23RD NOVEMBER, 2021 AT 10:00 A.M. IN THE COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT

1. **The Hon. Kassait Kamket, M.P.** - **Chairperson**
2. **The Hon. Muriuki Njagagua, M.P.** - **Vice chairperson(virtual attendance)**
3. The Hon. George Murugara, M.P.
4. The Hon. Munene Wambugu, M.P.
5. The Hon. Martha Wangari, M.P.
6. The Hon. Kamoti Mwamkale, M.P.
7. The Hon. Abdi Tepo, M.P. (*virtual attendance*)
8. The Hon. Robert Gichimu, M.P. (*Virtual attendance*)
9. The Hon. Edith Nyenze, M.P. (*Virtual attendance*)

ABSENT WITH APOLOGY

1. The Hon. Sammy Seroney, M.P.
2. The Hon. Patrick Mariru, MP.
3. The Hon. Gideon Mulyungi, M.P.
4. The Hon. Alice Wahome, M.P.
5. The Hon. Waihenya Ndirangu, M.P.
6. The Hon. Cecily Mbarire, MGH, M.P.
7. The Hon. Jennifer Shamalla, M.P.
8. The Hon. Robert Mbui, M.P.
9. The Hon. (Dr.) Wilberforce Oundo, M.P.
10. The Hon. Daniel Maanzo, M.P.
11. The Hon. Ronald Tonui, M.P.
12. The Hon. Timothy Wanyonyi, M.P.
13. The Hon. Nicholas Tindi Mwale, M.P.
14. The Hon. William Cheptumo, M.P.

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Ruth M. Gakuya - Clerk Assistant II
2. Mr. Wilson Dima Dima - Principal Legal Counsel
3. Mr. Josephat Motonu - Fiscal Analyst I
4. Ms. Noelle Chelagat - Media Relations
5. Mr. Charles Ayari - Superintendent of Electronics (Audio)
6. Mr. Bismarck Lumumba - Pupil

7. Ms. Dorothy Yatich - Pupil
8. Mr. Mureithi Theuri - Intern

MIN.NO. /NA/CDL/2021/306

PRAYER AND PRELIMINARIES

The Chairperson commenced the meeting at 10.20a.m with the Prayer.

MIN.NO. /NA/CDL/2021/307

ADOPTION OF THE AGENDA

The Committee unanimously adopted the Agenda having been proposed by Hon. Martha Wangari, M.P and Seconded by Hon. George Murugara, M.P.

MIN.NO./NA/CDL/2021/308

**CONSIDERATION OF THE CROP (COFFEE)
(GENERAL) (AMENDMENT) REGULATIONS 2021,
LN NO.104/2021**

The Committee was informed that –

1. the Crops (Coffee) (General) (Amendment) Regulations, 2021, were made by the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives pursuant to section 40 of the Crops Act, (*No. 16 of 2013*), published in the gazette *vide* Legal Notice No.104 of 2021 and submitted to the Clerk, National Assembly on 7th October, 2021.
2. The Regulations seek to;
 - a) To make provision for extension of the marketing licenses existing as at 1st July 2021 until the 30th of June 2022;
 - b) To give effect to section 40 of the Crops Act; and
 - c) To provide for a transparent and timely clearing and settlement of coffee proceeds to the growers and service providers, the collection and maintenance of data related to coffee, the improvement of coffee standards, increased production and the regulation of the coffee industry in Kenya.

Committee Observations:

The Committee observed that -

1. Statutory Timelines

the Regulations were published in the gazette on the 2nd July, 2021, *vide* Legal Notice No 104 of 2021, submitted to the Clerk, National Assembly on 6th October, 2021 and laid in the House on the same date being out of the statutory timelines set out in section 11(1) and hence ceased to have effect on the 29th of July, 2021, by operation of law.

2. Consultation / Public participation

The Explanatory Memorandum submitted to the Committee by the Ministry indicated that consultations were done while preparing the Regulations, with the input from the key stakeholders being considered before finalization of the Regulations. The key stakeholders indicated as having been consulted included the Ministry of Agriculture, Livestock and Fisheries most significantly the Coffee Directorate under Agriculture and Food Authority, the Ministry of Industrialization, Trade and Cooperatives, The National Treasury and Planning, Coffee Cooperative Societies and

Unions, Coffee Farmers, the Capital Markets Authority, the Attorney General and the Nairobi Coffee Exchange.

However, the dates on the attendance lists reflect that the public participation was conducted in 2018 before the primary regulations were approved in 2019. The public participation and stakeholder engagements therefore appear to be for the primary regulations and not the current regulations that seek to amend the primary regulations.

3. The National Coffee Federation of Kenya, a key player in the coffee industry wrote to the Clerk of the National Assembly vide a letter dated 24th August, 2021 raising concerns that the regulations were published without having undergone due process of public participation and opposed the Notice terming it as illegal. The federation further claimed that the amendment did not undergo public participation as required by law and has resulted to clawing back of the progressive legal reforms in the Coffee sector which were developed by the National Task Force on Coffee Sub Sector Reforms appointed by H.E the president in 2016.

This was against Article 10 and 118 of the constitution and section 5 of the Statutory Instruments Act.

4. Regulatory Impact Assessment.

Section 6 of the Statutory Instruments Act provides that regulatory Impact Assessment should be and a statement alongside the Regulations as they are likely to impose significant costs on the community or a part of the community in this case coffee licences.

The Regulatory Impact Assessment report provided by the Ministry was that of the principal regulations being amended, that is, the Crops (Coffee) (General) Regulations, 2019. Given that the regulations affect all licencees, another Impact Assessment ought to have been conducted. The Ministry did not provide any evidence of the same.

5. Inconsistency with the Crops Act.

The regulations state that the Cabinet Secretary responsible for Agriculture, Livestock, Fisheries and Cooperatives made the regulations which contravenes the Act in section 40 which states that the Cabinet Secretary may, in consultation with the Agriculture and Food Authority and the County Governments make regulations for the better carrying out of the objects of the Act. This contravenes Article 259 (11) of the Constitution of Kenya, section 40 of the Crops Act and section 13 (a) and (h) of the Statutory Instruments Act.

Committee Recommendation

Having examined the conformity of the Crops (Coffee) (General) (Amendment) Regulations, 2021 published *vide* (Legal Notice No, 104 of 2021) with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), pursuant to which they are made, **the Committee annulled the regulations in their entirety** for noncompliance with the Constitution and the relevant Statutes. The decision to annul was proposed by Hon. George Murugara, M.P. and seconded by Hon Robert Gichimu, M.P.

The Committee was informed that,-

1. Legal Notice Number 217 of 2021 is issued in accordance with Section 10 of the Excise Duty Act, 2015.
2. The Inflationary adjustment is expected to be undertaken every year on 1st October. Section 10 of the Excise Duty Act, 2015 requires the Commissioner-General of the Kenya Revenue Authority, by notice in the Gazette, to adjust the specific rate of excise duty every two years to take into account inflation in accordance with the formula specified in Part I of the First Schedule to that Act.
3. The Adjustment of Rates for Inflation in Legal Notice No.217 is based on the average inflation rate of 2020/2021 financial year which is at (4.97%) on the specific rates of duty on excisable goods listed in the First Schedule to the Act.
4. Excise Duty is levied on products such as beers, wines, spirits, and cigars, among others, which is deemed harmful to citizens. As a corrective measure, the revenues generated by such products are re-invested to address the effects of usage.
5. The average rate of inflation for the financial year 2020/21 as determined and published by the Kenya National Bureau of Statistics (KNBS) from 1st July, 2020 to 30th June, 2021 period was **4.97%**.
6. Section 10 of the Excise Duty Act, 2015 empowers the Commissioner General of the Kenya Revenue Authority to make adjustment on the specific excise duty rates in the First Schedule every year using the formula:
A (1 + B); Where,
 - i. **A** is the rate of excise duty on the day immediately before the adjustment day.
 - ii. **B** is the adjustment factor for the adjustment day calculated as the average rate of monthly inflation of the preceding financial year.The Adjustment Factor for the financial year 2020/21 was determined at **4.97%**.
7. The main objective of *Legal Notices Number 217 of 2021* therefore is to use a formula to actualize the specified inflation adjustment of a specific rate of excise duty. Using a 4.97 percent inflation rate, the formula was applied precisely to the items in the legal notice.

Committee Recommendation

Having examined the Adjustment of Rates for Inflation Regulations Order, 2021 published *vide* (Legal Notice No, 217 of 2021) against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (No. 23 of 2013), and the Excise Duty Act, Excise Duty Act, 2015 pursuant to which it is made, **the Committee approved in its entirety the Adjustment of Rates for Inflation Order 2021**, published *vide* Legal Notice No, 217 of 2021

having been proposed and seconded by Hon. Martha Wangari, M.P. and Hon. Munene Wambugu, M.P. respectively.

MIN.NO. /NA/CDL/2021/310 ANY OTHER BUSINESS

Pending Business before the Committee

1. Members were informed that the retreat scheduled for November 25-28, 2021 in Mombasa had been rescheduled to 2 – 5 December, 2021 and the following business would be considered:-
 - i. Proposed amendments to the Breast Milk Substitutes (Regulations and Controls) (General) Regulations, 2021
 - ii. The Public Finance Management (National Roads Toll Fund) Regulations, 2021
2. The Ministry of Devolution had requested for a rescheduling of the proposed retreat to consider the Development of Regulations on County Government Act 2012 and the Intergovernmental Relations Act, 2012 to a later date due to unforeseen circumstances. The Committee resolved to reschedule the activity to a later date.

MIN.NO. /NA/CDL/2021/311 ADJOURNMENT

The meeting was adjourned at 11:05 a.m. Next meeting will be held on Notice.

Signed.....



Date.....

01/12/2021

**HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

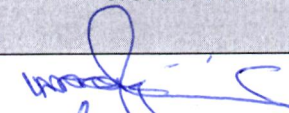
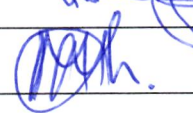
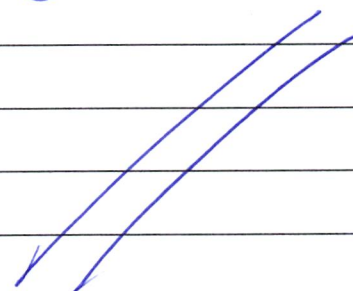
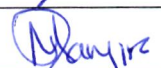
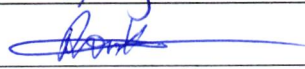
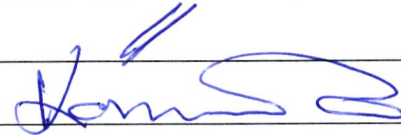
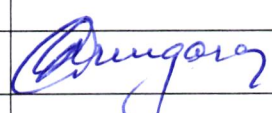
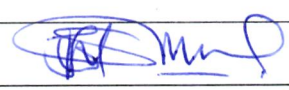

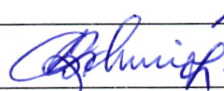


Adoption of the Report on the Consideration of the **COMMITTEE ON DELEGATED LEGISLATION**

ADOPTION LIST

Adoption of the Report on the Consideration of the Crops (Coffee) (General) (Amendment) Regulations, 2021 (Legal Notice Number 104 of 2021).

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 30/11/2021 VENUE: 2ND FLOOR, CONTINENTAL HOUSE.

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Cecily Mbarire, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Robert Mbui, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Ronald Kiprotich Tonui, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	
12.	Hon. Gideon Mulyungi, MP	
13.	Hon. George Gitonga Murugara, MP	
14.	Hon. Jennifer Shamalla, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Patrick Kariuki Mariru, MP	
17.	Hon. (Dr.) Wilberforce Oundo, MP	
18.	Hon. Abdi K. Tepo, MP	
19.	Hon. Edith Nyenze, MP	
20.	Hon. Robert Githinji Gichimu, MP	
21.	Hon. Sammy Seroney, MP	
22.	Hon. Tindi Mwale, MP	
23.	Hon. William Cheptumo, M.P	

THE NATIONAL ASSEMBLY

12TH PARLIAMENT - FIFTH SESSION (2021)

COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE REGISTER

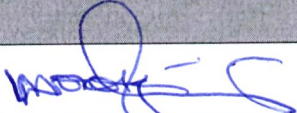
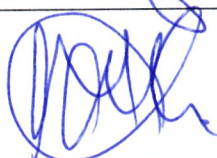
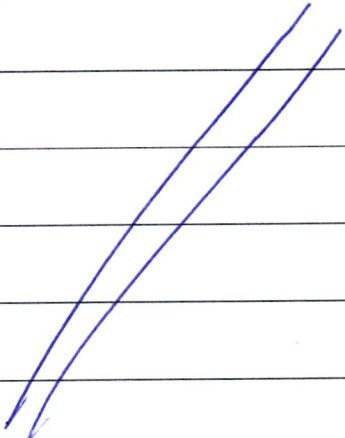
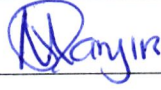
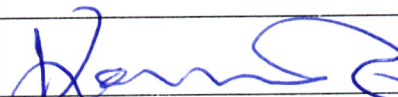
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


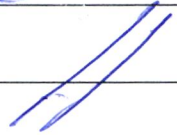

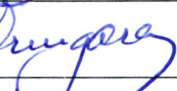




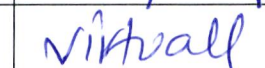

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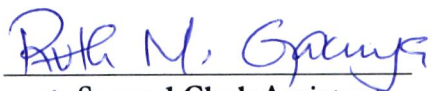
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Time Ended: 12: PM

AGENDA Consideration and adoption of the Report on
Offices (General) (Amendment) Regulations, 2021


	HON. MEMBER	SIGNATURE	
1.	Hon. Kassait Kamket, MP (Chairperson)		
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)		
3.	Hon. Waihenya Ndirangu, MP		
4.	Hon. Robert Mbui, MP		
5.	Hon. Alice Wahome, MP		
6.	Hon. Cecily Mbarire, MGH, MP		
7.	Hon. Daniel Maanzo, MP		
8.	Hon. William Cheptumo, MP		
9.	Hon. Martha Wangari, MP		
10.	Hon. Timothy Wanyonyi, MP		
11.	Hon. William Kamoti, MP		

	HON. MEMBER	SIGNATURE
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Tonui, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. Gideon Mulyungi, MP	
16.	Hon. Edith Nyenze, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. (Dr.) Wilberforce Oundo, MP	
21.	Hon. Robert Gichimu, MP	
22.	Hon. Sammy Seroney, MP	
23.	Hon. Tindi Mwale, MP	

Submitted by: 
 Second Clerk Assistant

Signature: 

Date: 01/12/2021

Approved by: 
 Director Audit, Appropriations & Other Select Committees

Date: 01/12/2021

REPUBLIC OF KENYA




MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES
OFFICE OF THE CABINET SECRETARY

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NAIROBI

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Alkuma
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Ref. No. MOALF/CS/ADM/43

 THE NATIONAL ASSEMBLY PAPERS LAID ON THE TABLE	
DATE: 05 OCT 2021	
TABLED BY:	09/21
CLERK-AT THE-TABLE:	

3rd September, 2021

Mr. Michael Sialai, EBS,
Clerk of the National Assembly
Parliament Buildings,
NAIROBI

Handwritten notes: "abe no", "receipt", "reference", "to committee", "14/9/21"

Dear Clerk,

RE: THE CROPS (COFFEE) (AMENDMENT) REGULATIONS 2021

The above subject matter refers.

Following the enactment of the Crops Act 2013, the Ministry of Agriculture, Livestock, Fisheries and Co-operatives drafted the Crops (Coffee) (General) Regulations 2019 for the coffee sub-sector, the Regulations went through all the legislative procedures, were published in the *Kenya Gazette* (attached- folio 1) and acceded to by the National Assembly Committee on Delegated Legislation.

The Ministry recently reviewed the Regulations to facilitate smooth transitioning & operations and consequently published a gazette notice on the amendment of **Section 46** of the Regulations (Attached-folio 2). The purpose of the amendment was to ensure Coffee Marketing Agents are able to fulfill their contractual obligations before transiting into Coffee Brokers as espoused in the new legislation.

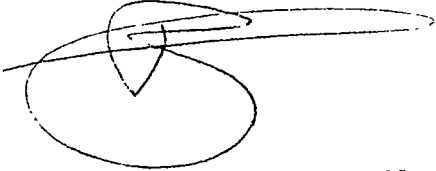
In line with the provisions of the Statutory Instruments Act, please find attached the said regulations, gazette notices, together with the requisite statutory documents for consideration by the National Assembly Committee on Delegated Legislation.

- a. Explanatory Memorandum on the General Regulations, 2021
- b. Public Participation Report
- c. The attendance lists of the Public Participation
- d. Regulatory Impact Assessment on the Regulations

13 SEP 2021

- e. Kenya Gazette Notice Special Issue Vol. CXIX No.148,
- f. Kenya Gazette Notice Special Issue No.185 Published on 30th August 2021, and
- g. Certificate of Compliance

Yours *Sincerely*

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a long, horizontal stroke extending to the right.

**Hon. Peter Munya, EGH
CABINET SECRETARY**

Encls.

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SPECIAL ISSUE

707

Kenya Gazette Supplement No. 132

2nd July, 2021

(Legislative Supplement No. 52)

LEGAL NOTICE NO. 104

THE CROPS ACT, 2013

(No. 16 of 2013)

IN EXERCISE of the powers conferred by section 40 of the Crops Act, 2013, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives makes the following Regulations—

THE COFFEE (GENERAL) (AMENDMENT) REGULATIONS, 2021

1. These Regulations may be cited as the Coffee (General) (Amendment) Regulations, 2021. Citation.

L.N. 102/2019.

2. Regulation 46 of the Coffee (General) Regulations, 2019, is amended by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) notwithstanding the provisions of paragraphs (a) and (b), all marketing licenses existing as at 1st July, 2021, shall remain valid until the 30th June, 2022.

Dated the 23rd June, 2021.

PETER G. MUNYA,

Cabinet Secretary for Agriculture,

Delegated



**DOCUMENTS AS PER THE STATUTORY INSTRUMENTS
ACTS, 2013**


Explanatory Memorandum on Crops (Coffee) (General) (Amendment) Regulations, 2019 1

Public Participation on The Coffee Regulations 2
- Attendance Lists

Regulatory Impact Assessment of The Regulations... 3

Kenya Gazette 4

Certificate of Compliance 5

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CLERK-AT THE-TABLE:	Samuel Kalama		

13th September, 2021





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receipts reports
14/9/21*

REPUBLIC OF KENYA

**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
CO-OPERATIVES**

**EXPLANATORY MEMORANDUM ON COFFEE GENERAL AND
EXCHANGE REGULATIONS, 2019**

AND

**REPORT ON COFFEE STAKEHOLDERS CONSULTATIVE MEETINGS
ON THE PROPOSED COFFEE REGULATIONS.**


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 OCT 2021	DAY: Wednesday
TABLED BY:	<i>LOA</i>
CLERK-AT THE-TABLE:	<i>Samuel Kalama</i>

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ABBREVIATIONS

AFA	Agriculture Food Authority
AG	Attorney General
CAN	Calcium Ammonium Nitrate
CAP	Cherry Advance System
CDU	Central Depository Unit
CEC	County Executive Committee
CEX	Commodity Exchange
CMA	Capital Market Authority
CD	Coffee Directorate
CoG	Council of Governors
Coop Bank	Cooperative Bank of Kenya
CSIC	Coffee Sector Implementation Committee
CRI	Coffee Research Institute
ICT	Information Communication Technology
CCE	Kenya Cooperative Coffee Exporters
DSS	Direct Settlement System
KCCD	Kenya Cooperative Coffee Dealers
KCTA	Kenya Coffee Traders Association
KES	Kenya Shilling
KCPA	Kenya Coffee Producers Association
KPCU	Kenya Planters Cooperative Union
MOALF	Ministry of Agriculture Livestock Fisheries
MOU	Memorandum of Association
NCE	Nairobi Coffee Exchange
NPK	Nitrogen Phosphorous (Kalium) Potassium
NSE	Nairobi Securities Exchange
SCAE	Specialty Coffee Association of Europe
STABEX	Stabilization Fund
PS	Principal Secretary
WRS	Warehouse Receipt System

**EXPLANATORY MEMORANDUM TO THE CROPS (COFFEE) (GENERAL) REGULATIONS,
2019**

PART I

Name of the Statutory Instrument	The Crops (Coffee) (General) Regulations 2019
Name of the Parent Act:	The Crops Act, 2013
Enacted Pursuant to	Section 40 Crops Act No 16 of 2013
Name of Ministry	Agriculture, Livestock, Fisheries and Irrigation
Department	State Department of Crops Development
Agency	Agriculture and Food Authority (Coffee Directorate)
Gazetted on	2019
Tabled on	2019

PART II

1.The Purpose of the Crops (Coffee) (General) Regulations, 2019

The object and purpose of the Regulations is to give effect to section 40 of the Crops Act, 2013, provide for licences to be issued by the licensing authorities, the obligations of licence holders and service providers and the protection and regulation of their interests along the coffee value chain,, the recognition of the grower of coffee as the owner of coffee until the coffee is sold and paid for, and the protection of growers' rights along the value chain.

The Regulations also provide for a transparent and timely clearing and settlement of coffee proceeds to the growers and service providers, the collection and maintenance of data related to coffee, the improvement of coffee standards, increased production, and the regulation of the coffee industry in Kenya.

2.Legislative Context

The Crops Act, 2013 empowers the Cabinet Secretary responsible for matters related to agriculture to make regulations necessary or convenient for carrying out or giving effect to the Act. The Crops (Coffee) (General) Regulations, 2019 are therefore issued to give effect to the provisions of the Act.

3.Policy Background

The Kenyan Government has always taken cognizance of the strategic role the coffee industry plays towards economic empowerment of the people. Currently the coffee industry contributes

about KShs.20 billion to the national economy and it is grown by over 700,000 smallholder farmers and about 3,200 estates spread across 31 counties. However, in the last two decades the industry has encountered a number of challenges which have eroded its economic importance to the national economy and loss of job opportunities. Some of the challenges in the subsector include; high cost of production, obsolete coffee processing technology, fluctuating coffee prices, aging coffee community, low farmer's earnings from coffee despite its premium quality, delayed coffee payments, mismanagement and inefficiencies in cooperatives, restrictive coffee laws among others. The challenges have resulted to a decline in land under coffee and production to about 40,000 tons compared the highest production of 128,926 tons in 1988/89.

In light of these challenges and given the economic, social and political importance of coffee in the national economy, His Excellency the President, Uhuru Kenyatta, appointed the National Task Force on Coffee Sub-Sector Reforms on 4th March 2016. The mandate of the Task Force was to review the entire coffee value chain and identify areas requiring interventions such as production, processing and marketing of coffee; examine the existing policy, institutional, legislative and administrative structures and systems in the coffee industry; and recommend comprehensive reforms among other key issues. The Taskforce submitted its report to the President on 10th June, 2016.

One of the key recommendations of the National Task Force Report was to undertake review of the existing coffee industry legislation and align them to the Crops Act, 2013 and the Constitution 2010. In line with this recommendation the Cabinet Secretary for Agriculture published the Coffee (General) Regulations, 2016 as Legal Notice No. 120 in Kenya Gazette Supplement No. 105 dated 27th June 2016. These Regulations were challenged in court and subsequently a High Court judgment was delivered in Nairobi dated 28th July, 2017. The Judgment, among others, declared the said rules as unlawful mainly due to lack of adequate public participation and consultations, and further ordered the Cabinet Secretary Ministry of Agriculture to ensure that lawful regulations were promulgated speedily.

Pursuant to this judgment, the Coffee General Regulations of 2016 were revised after extensive consultations with farmers and other key stakeholders, culminating with the Coffee General Rules, 2019.

The promulgation of the Regulations will be critical to the regulation and revival of the coffee industry resulting in stability and great benefit to coffee farmers, service providers and other key stakeholders along the coffee value chain. Due to its widespread nature, the revived coffee industry will contribute higher incomes to farmers, offer employment to youth, and contribute towards agro-processing and trade. All these contributions will go a long way towards the achievement of the Jubilee Government Big Four agenda and the agriculture sector development strategy.

Before the enactment of the Crops Act, 2013, the coffee sector was regulated by the now repealed Coffee Act. The regulations that are currently in force were formulated under the

repealed Coffee Act. There is need to align these existing regulations to the Crops Act, 2013 and also the Constitution which devolved agriculture to county governments. Further, the current Regulations have exceeded the time limit set by section 21 of the Statutory Instruments Act which provides that a statutory instrument stands automatically revoked after ten years of its commencement; the regulations currently in use were enacted in 2002. Notably, section 42 (2) of the Crops Act provides that subsidiary legislation issued under the repealed law such as the Coffee Act would only continue to be in force up to 30th June 2013. There is therefore a lacuna in law in the coffee subsector.

4. Consultations Outcome

The Crops (Coffee) (General) Regulations, 2019 have taken into account the views of the key personnel at the Ministry of Agriculture Livestock and Fisheries most significantly the Coffee Directorate under Agriculture and Food Authority, the Ministry of Industrialization, Trade and Cooperatives, the National Treasury and Planning, coffee co-operative societies and unions, coffee farmers, the Capital Markets Authority, the Attorney General and the Nairobi Coffee Exchange.

Extensive consultations were held with other key stakeholders in the coffee industry. Twenty five public meetings/workshops were held between October 2017 and November 2018 spread across the various counties and involved the participation of farmers (both small scale and large scale), Co-operative society and Union officials, various service providers, millers and marketing agents and traders, researchers and national government officials, Governors, County Executive Members in charge of agriculture, cooperatives and Trade, and other county government officials. Consultations were also held with members of parliament from coffee growing areas and the Senate Committee on Agriculture, the National Assembly Committee on Delegated Legislation, the Senate Committee on Delegated Legislation, banks and other public institutions. Written memoranda were also received from various stakeholders. A report detailing the list, venue, dates and details of the consultations is annexed to this memorandum.

The views received from the consultations were considered in preparing the final version of the Regulations. The analysis of the views and opinions expressed during the consultations indicated that about 85% of the proposals contained in these Regulations mainly in regard to coffee production, processing, quality assurance, licensing were agreeable to most stakeholders. For the remaining set of regulations which were contested, a phased approach has been adopted to ensure these regulations are implemented in a period of one year to give affected stakeholders time to adjust and to ensure there will be no disruptions in the sub-sector.

The stakeholder consultation process was spearheaded by the Coffee Sector Implementation Committee (CSIC).

5. Guidance

The Ministry of Agriculture, Livestock, Fisheries and Irrigation most significantly the Coffee Directorate, the management of the Nairobi Coffee Exchange, and county governments will sensitize their officers for adherence to the objectives of accountability and efficiency in the management of the coffee sub sector. The National government will offer capacity building and technical assistance to county governments where requested.

The Coffee Directorate and county governments together with other stakeholders in the industry will organize and roll out a farmer/public awareness and information campaign to educate the coffee farmers on the new regulations and the changes that will occur.

The Ministry will also engage key stakeholders such as Parliament, the National Treasury and Planning, the Capital Markets Authority and the Ministry of Industrialization, Trade and Co-operatives whose participation and cooperation remains instrumental in the successful implementation of the key aspects of these Regulations.

6. Impact Assessment

An impact assessment was undertaken by Tegemeo Institute of Agricultural Policy and Development of Egerton University and the outcome of the assessment is outlined below.

6.1 The impact on Fundamental Rights and Freedoms

The Regulations are pro-growers and in particular they emphasize the property rights and freedoms of coffee farmers to their property. The Regulations clearly states that coffee belong to the farmers until it is sold, and the farmers as the property owners, have a right to choose whom to do business with. This is a fundamental shift to align the Regulations with Article 40 and 43 the Constitution. These Regulations also address the fundamental rights of farmers to just and timely pay-outs for their coffee and the management of farmer institutions such as cooperatives. However, in order to enjoy economies of scale and joint processing and marketing, small scale farmers are forced to be members of coffee cooperatives in their locality. This may subject them to exploitation especially when such co-operatives are inefficient. This may lead to violations of their rights and freedoms, but the Regulations have provided an option of such farmers to consider forming and being licenced as alternative associations. The full regulatory impacts to these Regulations are elaborated in the attached regulatory impact report.

6.2 The impact on the Private Sector

Coffee production, processing and marketing are essentially private sector business. The Regulations clearly recognizes and promotes this principal. The implementation and enforcement

of the Regulations will lead to a more vibrant coffee subsector from production to consumption.

This will generate many positive benefits to the coffee farmers, service providers and other private sector players. The envisaged positive impacts such as higher incomes, business growth, value addition and employment are elaborated in the impact report attached to this memorandum.

6.3 The impact on the public sector

The Regulations will ensure that there is better regulation in the sub-sector and this will create the necessary stability which is an impetus for investments, growth, job creation, social order and security. Furthermore, the delineation of roles and functions between the National and County governments will align the sub-sector to the constitutional requirements while promoting service delivery. Growth in the sub-sector will also enhance public revenue from licences, fees and taxes thereby contributing towards the growth and development. Nevertheless, for the growth in the subsector to be fully realised, the public sector will be required to offer support to the industry in form of inputs, extension, training and capacity building. This will require allocation of more budgetary resources especially in the period immediately after the approval of these Regulations.

7. Review of the Regulations

The Ministry of Agriculture, Livestock and Fisheries shall monitor the application and compliance to the Crops (Coffee) (General) Regulations, 2019. This will be done through the reports and of returns prepared at regular intervals. In addition, the implementers of the Regulations will carry out regular monitoring and evaluation of the specific provisions of these Regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

Contact Person

The contact person at the Ministry of Agriculture, Livestock and Fisheries is the Cabinet Secretary, Mr. Kiunjuri, or Ms. Isabella Nkonge, Interim Director General of the Coffee Directorate.

**EXPLANATORY MEMORANDUM TO THE CAPITAL MARKETS ACT(COFFEE EXCHANGE)
REGULATIONS, 2019**

PART I

Name of the Statutory Instrument:	The Capital Markets (Coffee Exchange) Regulations, 2019.
Name of the Parent Act:	The Capital Markets Act, Cap 485A
Enacted Pursuant to:	Section 12 (1)(ka) of Cap 485A
Name of the Ministry/ Department:	National Treasury and Planning and Capital Markets Authority
Gazetted on:, 2019
Tabled on:, 2019

PART II

1.The Purpose of the Capital Markets (Coffee Exchange) Regulations, 2019

The purpose of the Regulations is to provide for the establishment of coffee exchanges, guidelines, directives, principles and conditions for trading of clean coffee at an exchange; and ensure the trading is conducted in a secure, stable and transparent manner in an environment of fair competition.

2. Legislative Context

The Finance Act, 2016 amended the Capital Markets Act and empowered the Capital Markets Authority to manage commodity exchanges including spot commodities. Coffee is one of the key spot commodities in the country and it is currently traded at the Nairobi Coffee Exchange, an auction center managed by the Agriculture and Food Authority (AFA) in line with the Crops Act, 2013. Coffee is also sold through direct sale known as the second window. Under the Coffee Exchange Regulations, 2019 provision is made for incorporation of the exchange and for regulation by the Capital Markets Authority in compliance with the requirements set under the Capital Markets Act, 2016. The Act empowers the Cabinet Secretary in charge of Finance to

formulate rules and regulations as may be necessary to regulate, inter alia, spot commodity trading and commodity markets.

3. Policy Background

The coffee industry plays an important role in the social-economic development of Kenya. About 700, 000 families are involved in coffee production and draw their livelihood from coffee earnings. A total of approximately 114,500 Ha of land is dedicated to coffee production.

Auctioning as one of the modes of selling Kenya coffee which began in the 1930s. The Nairobi Coffee Exchange (NCE) was established under the Coffee Rules as a system for auctioning coffee and was initially run by Coffee Auctions Limited (KCA) as the manager/auctioneer. KCA was a subsidiary of the Coffee Board of Kenya (now Coffee Directorate). The Board was the statutory body with the mandate to regulate and also market Kenya coffee. Later the marketing function of the Board was removed through amendment of the Coffee Act in 2001.

Whereas the Nairobi Coffee Exchange Trading Rules 2012 and the Coffee (General) Rules 2012 established the Management Committee of the Exchange, NCE itself has remained an amorphous entity, under the Agriculture and Food Authority (AFA).

The Coffee Sub Sector Implementation Committee (CSIC) has made efforts to upgrade the operations of the Exchange, incorporate it as a legal entity, and have it regulated under the Capital Markets Authority in line with the recommendations of the National Task Force of Coffee Sub sector reforms. The roadmap to the transformation of NCE have been hampered by the NCE's lack of legal status. The Exchange's lack of legal status has also hampered its ability to undertake other statutory obligations.

The purpose of the Coffee Exchange Regulations, 2019 is to provide general principles for coffee exchanges to enable them to fulfil the requirements for exchanges set by the Capital Markets Act. The Regulations give a guidance on the rules and obligations exchanges should formulate and adopt, issues of coffee sampling, procedures of selling coffee at the auction, settlement of coffee sales proceeds and resolution of disputes relating to coffee trade and to align the management of the Exchange to the amendments made to the Capital Markets Act, 2016 that brought commodity exchanges under the regulation of the Capital Markets Authority.

4. Consultations Outcome

The Capital Markets Authority is represented at CSIC. Initially, CSIC formulated the amendments as the Nairobi Coffee Exchange Rules, 2019 taking into account the views of the key stakeholders. These included personnel at the Nairobi Coffee Exchange, the Ministry of Agriculture Livestock and Fisheries most significantly the Coffee Directorate under Agriculture Food Authority, the National

Treasury and Planning and the Capital Markets Authority who are versed with the operational aspects of the Exchange. Other key stakeholders that were consulted include the Office of the Attorney General and Department of Justice, Coffee Co-operative Societies, estates and individual coffee farmers. Many coffee farmers expressed shock that NCE which handles coffee auctions was not a corporate entity. It was also difficult to incorporate NCE because shareholding structure and value of shares were difficult to determine. NCE proposed that the CMA formulates general regulations to guide all exchanges. CSIC was guided by the Kenya Commodity Exchange Feasibility Report prepared by Stalwart Management Consultancy Limited submitted to the Ministry of East African Affairs, Commerce and Tourism. CSIC also benchmarked with the East African Tea Traders Association and the tea auction ecosystem in Mombasa.

As detailed in the Explanatory Memorandum to the Crops (Coffee) (General) Regulations, 2019, extensive joint consultations were held with farmers and other key stakeholders in the coffee industry where both the Coffee General Regulations, 2019 and the Coffee Exchange Regulations, 2019 were presented and discussed. Twenty five public meetings/workshops were held between October 2017 and November 2018 spread across the various counties, and involved the participation of farmers (both small scale and large scale), Co-operative society and Union officials, service providers, millers, marketing agents and traders, researchers and national government officials, Governors, County Executive Members in charge of agriculture, cooperatives and Trade, and other county government officials. Consultations were also held with members of parliament from coffee growing areas and the Senate Committee on Agriculture, the National Assembly Committee on Delegated Legislation, the Senate Committee on Delegated Legislation, banks and other public institutions. Written memoranda were also received from various stakeholders. A report detailing the list, venue, dates and details of the consultations is annexed to this memorandum.

The stakeholder consultation process was spearheaded by the Coffee Sub Sector Implementation Committee (CSIC).

5. Guidance

The Capital Markets Authority is the body mandated by law to regulate spot commodity trading including the trading in coffee at NCE. However, the Ministry of Agriculture Livestock and Fisheries most significantly the Coffee Directorate under AFA regulates the production, processing and direct sales of the coffee as well as the licensing of many of the players in the coffee value chain including some of those who come to the trading floor. Consequently, both CMA and AFA will sensitize their officers on the new regulations for adherence to the objectives of accountability and efficiency in the management of the Exchange and the smooth transition to the new order. The Ministries will also engage key stakeholders such as Parliament, the National Treasury and Planning, the Capital Markets Authority and the Ministry of Industry, Trade and Co-operatives whose participation and cooperation remains instrumental in the successful implementation of the key aspects of these Regulations.

6. Impact Assessment

An impact assessment was undertaken by Tegemeo Institute of Agricultural Policy and Development of Egerton University and the outcome of the assessment was that the reform of the coffee sector will have a positive impact in the coffee industry. These Regulations also address the fundamental rights of farmers to just and timely pay-outs for their coffee sold at the exchange and are therefore farmer-centric. The establishment of coffee exchange as a commodity exchange will enable the coffee sub-sector to have a transparent spot market where price discovery will be made. Secondly, the establishment of the exchange will be in line with global commodity trading and will allow the exchange to be under the CMA oversight. The incorporation of the exchange as legal entity will allow it to have mandate to conduct its business and adhere to other statutory obligations.

The fundamental rights of coffee farmers and other stakeholders will not be infringed upon as they will continue to have a choice of either offering their coffee to the exchange or sell through direct sales, as is the case at the moment. It is anticipated that when fully functional the exchange will be able to attract more private sector players and investments. This will offer the much needed competition, transparency, better prices and eventually lead to development and use of the advanced commodity trading instruments such as warehouse receipts and futures.

The Regulations will ensure that there is better regulation in the coffee trade and this will create the necessary stability and impetus for investments, growth, job creation and eventually the development of coffee commodity exchanges in the country. The lessons learned from the coffee exchange will be vital in the formulation of regulations for other commodities and development of commodity exchanges.

7. Review of the Regulations

The Capital Markets Authority shall license coffee exchanges and brokers and monitor the application and compliance to the Capital Markets (Coffee Exchange) Regulations, 2019. This will be done through the reports prepared at regular intervals. In addition, the implementers of the Regulations will carry out regular monitoring and evaluation of the specific provisions of these Regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

8. Contact Person

The contact person at the National Treasury and Planning is the Cabinet Secretary, Mr. Henry Rotich, or the Chief Executive of the Capital Markets Authority, Mr. Paul M. Muthaura

REPORT ON COFFEE STAKEHOLDERS CONSULTATIVE MEETINGS ON THE PROPOSED COFFEE REGULATIONS.

EXECUTIVE SUMMARY

One of the recommendations of the National Task Force Report on Coffee Reforms was to undertake a review of the existing coffee industry Regulations and align them to the devolved agriculture sector, the Crops Act, 2013 and the Constitution 2010. The Coffee (General) Regulations, 2016 were published as Legal Notice No. 120 in Kenya Gazette Supplement No. 105 dated 27th June 2016. These Regulations were challenged in court and subsequently a High Court judgment was made in Nairobi dated 28th July, 2017. The Judgment, among others, declared the said rules as unlawful mainly due to lack of adequate public participation and consultations.

It is noted that, prior to this ruling the National Taskforce on Coffee Reforms had consulted with the following public institutions, namely; Agriculture and Food Authority, Nairobi Coffee Exchange, Commodity Fund, Export Processing Zone, Capital Market Authority, Kenya Roads Boards, Coffee Research Institute, cooperative societies and unions together with their leaders and farmer members. The Task Force had also received forty seven (47) memoranda from thirty one (31) coffee growing counties, who included the coffee cooperative societies, companies, individuals and public institutions.

After the ruling, and in line with the Statutory Instruments Act of 2013, the Coffee Subsector Implementation Committee engaged the experts and coffee stakeholders through extensive consultations to review and improve the proposed Coffee General Regulations, 2016. Expert advice on addressing issues raised in the court ruling was sought from the Attorney General Office, The National Treasury, Parliament, State Departments of Agriculture and Cooperatives, State Corporations, County Governments, Tegemeo Institute of Agriculture Policy, Nairobi Coffee Exchange (NCE), East Africa Tea Trades Association (EATTA), Boresha Initiative, Ethiopian Coffee Authority, the International Coffee Organization(ICO) and individuals where need arose.

The committee wrote in advance to the County Governments with requests to invite and facilitate stakeholders to attend the consultative meetings at centralized venues. The stakeholders who were not able to attend were given a second chance at a venue of their choice. Additionally, the committee sent invitations through the State Departments of Cooperatives and Agriculture,

websites, emails, radio announcements, media interviews, and press releases encouraging those with interest to attend meetings or submit reports and memoranda.

During the consultative meetings, the stakeholders were taken through the draft Coffee General Regulations and the Exchange Rules and were given adequate time to present their views and discuss the draft at the venues and dates indicated in this report. The stakeholders included; farmers, county and national government officials, societies, unions, traders and lobby groups. A total of twenty five (25) consultative meetings were held in which 2087 participants from the 31 coffee growing regions attended.

Consultations were also held with the Senate Standing Committee on Agriculture, Livestock and Fisheries, members of Senate and of Parliament (MPs) from coffee growing regions and Committees on Delegated Legislation of National Assembly and the Senate. The feedback from the consultative meetings, memoranda, review of reports on benchmarking and press releases were considered in compiling this report and the key issues requiring further interrogation were discussed during the committee meetings and incorporated while drafting the regulations. This report provides an overview of the issues discussed during the consultative meetings towards fulfilling the High Court judgment on *The Coffee (General) Regulations, 2016* in Nairobi dated 28th July, 2017.

1.0 Introduction

The Coffee Sub-sector was once a steady and reliable source of livelihood for Kenyans and enjoyed prominence due to its premium quality yet the industry is currently bedeviled by a lot of challenges. Following the unprecedented challenges, the President appointed a National Taskforce on Coffee Subsector Reforms vide Gazette Notice 1332 of 4th March 2016 to review the entire coffee value chain and identify required interventions. The Taskforce on completion of its mandate presented a comprehensive report with detailed recommendations on interventions needed to transform the coffee subsector to a vibrant industry.

The President on 30th September 2016 appointed the Coffee Sector Implementation Committee (CSIC) through the Gazette Notice No. 7745 to coordinate the implementation of coffee the reforms recommended in the Report which were grouped under 8 key pillars namely: Coffee Legal Reforms, Coffee Subsidy Program, Establishment of Coffee Cherry Advance Payment System, Modernization of Nairobi Coffee Exchange (NCE), Youth Involvement in Coffee Sub-sector and

Promotion of Local Coffee Consumption, Institutional Support, Marketing of Kenyan coffee and Coffee Audit of Debts and Debt Waivers.

2.0 The Coffee (General) Regulations, 2016

- a) Soon after the gazettelement of *The Coffee (General) Regulations, 2016* published as Legal Notice No. 120 in Kenya Gazette Supplement No. 105 dated 27th June 2016, three parties of the coffee stakeholders challenged the Regulations in court. The judgment was on two consolidated judicial review applications where the applicants were, the Council of County Governors and Mr. Harrison Munyi in his capacity as the chairman of New National Farmers' Association who had moved to court seeking:
 - b)) An order of Prohibition directed against the 1st and 2nd Respondents, prohibiting them and their agents, employees and servants from implementing *The Coffee (General) Regulations, 2016* published as Legal Notice No. 120 in Kenya Gazette Supplement No. 105 dated 27th June 2016
 - c) An order of Certiorari to remove and bring to this honorable Court for purpose of quashing and to quash *The Coffee (General) Regulations, 2016* published as Legal Notice No. 120 Kenya Gazette Supplement No. 105 dated 27th June 2016.
 - d) An order of Certiorari to quash the report of National Task Force on Coffee Sub-Sector Reforms contained in Kenya Gazette Notice supplement Notice No. 105, legislative supplement No. 49, legal notice No. 120 Gazetted on 27th April 2016.
 - d) An order of Prohibition to prohibit the 1st, 2nd and 3rd Respondents implementing a report of National Task Force on Coffee Sub-Sector Reforms, contained in Kenya Gazette Supplement Notice No. 105, Legislative Supplement No. 49, and Legal Notice No. 120. Gazetted on 27th April 2016 till the Applicant's application herein is heard and determined.

In the High Court judgment in Nairobi dated 28th July, 2017, Justice G .V. Odunga having considered the applications made the following orders:

- a) A declaration that *The Coffee (General) Regulations, 2016* published as Legal Notice No. 120 in Kenya Gazette Supplement No. 105 dated 27th June 2016 are unlawful.
- b) An order compelling the 1st Respondent to ensure that lawful regulations are promulgated within 30 days of the first sitting of the next Parliament.
- c) In default of compliance, an order of Prohibition shall be issued directed against the 1st and 2nd Respondents, prohibiting them and their agents, employees and servants from implementing *The Coffee (General) Regulations, 2016* published as Legal Notice No. 120 in Kenya Gazette Supplement No. 105 dated 27th June 2016.
- d) In further default, an order of Certiorari shall issue removing into this Court for purpose of quashing and quashing *The Coffee (General) Regulations, 2016* published as Legal Notice No.120 in Kenya Gazette Supplement No. 105 dated 27th June 2016.
- e) Additionally, and in default an order of Certiorari shall issue to quash the report of National Task Force on Coffee Sub-Sector Reforms contained in Kenya Gazette Notice supplement Notice No. 105, legislative supplement No. 49, legal notice No. 120 Gazetted on 27th June 2016.
- f) Similarly, in default an order of Prohibition to prohibit the 1st, 2nd and 3rd Respondents implementing a report of National Task Force on Coffee Sub-Sector Reforms, contained in

g) As this was public interest litigation, there will be no order as to costs.

In pursuant of this judgment, the Coffee Subsector Implementation Committee started stakeholders' consultations who included experts and diverse groups of stakeholders and individuals in the coffee industry. The consultations took cognizance of the specific areas of concern that were raised in court by the ex-parte applicants, and in particular, the county governments, coffee growers' associations' organizations and any other issues that arose from the consultations. The consultations involved office discussions, visits, and plenary meetings.

The Committee also received written memoranda sent or delivered in hard copies, press releases and from the electronic media. The inputs from the stakeholders were incorporated in the Regulations, and the revised Regulations availed in hard copies or emailed to the respective stakeholders for further input or comment through Agriculture and Food Authority and Ministry of Agriculture and Irrigation websites.

The Committee conducted stakeholder's consultation meetings from 23rd October 2017 twenty five (25) venues selected on the basis of centrality, population of stakeholders and area under coffee to discuss issues noted that required consensus. The issues raised were considered when making amendments to the Coffee (General) Regulations, 2016 and in the Nairobi Coffee Exchange Rules 2012. A total of 2087 attended the consultations who included; farmers, society committee members, coffee unions, estates, associations, traders, county and national government officials, service providers and other commodity officials and associations.

The Committee consulted the East African Tea Traders Association (EATTA) based in Mombasa twice to get clarity on how the Nairobi Coffee Exchange can be modernized using the EATTA Auction model, initiating Direct Settlement System (DSS) and incorporation of the exchange to be a body corporate. Additionally, the Committee consulted Tea Brokers East Africa, Stanbic Bank and Equity Bank who provide brokerage and DSS services to the tea industry. In its second visit to EATTA, the Committee was in the company of two stakeholders in the coffee sub sector, namely Nairobi Coffee Exchange (NCE) and the Kenya Coffee Producers Association to help them on better understanding of the direct settlement system for the tea industry and its application in the coffee sub sector.

Additionally, the Committee consulted Members of Parliament from coffee growing area to give their views of the Coffee General Regulations and the Nairobi Coffee Exchange Rules, Parliament Secretariat and Committee on Delegated Legislation on the requirements to legislate the Regulations and Rules. Below is a summary of issues noted, recommendations and comments.

3.0 Consultation with Government Ministries, Institutions and Private Sector

The committee sourced advice from the following sources that enriched knowledge on drafting *The Coffee (General) Regulations, 2016 and the Exchange Rules*.

NO	Name of institutions	Issue Consulted on
1.	State Department of Agriculture /Agriculture and Food Authority	Crops Act 2013 in relation to Coffee (General) Regulations.

2.	Attorney General	Legal opinion on interpretation and response to issues raised in the court cases.
3.	Parliament Secretariat for Committee on Delegated Legislation	Legislation requirements on fulfillment on court directive on stakeholders' participation.
4.	Members of Parliament from coffee growing counties	National and county governments role in promoting coffee productivity and the proposed regulations
5.	State Department of Cooperatives	Cooperatives Act, Regulations and Coffee Cooperatives Development, issues relating to coffee production, processing, marketing, value addition and corporate governance.
6.	The National Treasury	Funding of coffee subsidy and establishment of stabilization fund. Incorporation of the Coffee Exchange
7.	Council of Governors	Devolved functions of county governments and collaborations in revitalizing the coffee sector.
8.	Tegemeo Institute of Agriculture Policy	Impact assessment on Coffee General Regulations.
9.	County governments	Role of national and counties governments on devolved functions related to coffee and corroboration between the two levels of government
10.	KALRO - Coffee Research Institute	Revitalization of the industry increase coffee production and quality.
11.	Capital Markets Authority	Exchange Rules, Operations of exchange and Direct Settlement System, licensing of players
12.	Nairobi Coffee Exchange	Coffee (General) Regulations, Exchange Regulations upgrading, modernization of Coffee Exchange and coffee marketing
13.	East Africa Tea Traders Association	Experience on the Tea industry model on Direct Settlement System Operationalization of DSS and its ecosystem
14.	Kenya Tea Development Agency	Small farmers aggregation under the DSS Digitization of the data capture and management, information dissemination
15.	ICT Authority	Data management through digitization of coffee cooperative societies to enhance efficiency and transparency.
16.	Ethiopian coffee industry	Regulatory framework, cash payment system, modernization of the commodity exchange, warehousing system and the best practices in coffee trade.
17.	International Coffee Organization	International marketing, standards and regulations governing coffee trade.
18.	Boresha Initiative	Advocacy and lobbying for farmers interests
19.	Senate Standing Committee on Agriculture	The proposed Coffee General Regulations and Exchange Rules.

20	Parliament Committees on Delegated Legislation	Procedures to legislate coffee regulations as stipulated in Statutory Instruments Act
21	Stalwart Management Consultancy Ltd	Kenya Commodity Exchange Feasibility Study.
22	Nairobi Coffee Exchange Management Committee	Operationalization of the Exchange Regulations and the DSS, and licensing by CMA
23	Kenya Coffee Producers Association	Security of coffee, DSS operations and farmer representation
24	Council of Governors	Shared functions, licensing and corporation in implementation of the Regulations
25	Inter-Governmental Relations Technical Committee and Ministry Of Devolution	Resolution of the disputes between the two levels of government on licensing and other functions.

2.0 Stakeholders Consulted, Venues and Dates

- The following stakeholders who included farmers, county and national government officials, societies, unions, traders and parliamentarians, associations and consultants in various disciplines as need arose were consulted in the venues and dates indicated below.

Venue	Date	Counties/Group	Contact	Attendance
Agriculture and Food Authority Headquarters	23.10.2017	All Coffee Stakeholders meeting at AFA head office, Nairobi.	Invitation through the Gazette and press releases.	123
Naivasha-Enashipae	29.01.2018 30.01.2018	Governors and their CECs from coffee growing counties.	Invitation by letters and press releases	52
Nairobi-Azure	21.02.2018	Chief Executive Committee Members and Chief Officers from coffee growing counties,	Invitation by letters	62
CRI Kenya Coffee College-Ruiru	28.02.2018	National Coffee Cooperative Union members.	Invitation by letters	43
Mabanga Agricultural Training Centre Bungoma County	02.05.2018	Bungoma, Kakamega, Busia, Trans Nzoia, West Pokot.	Invitation by letters	63
Nakuru Agricultural Training Centre	02.05.2018	Bomet, Nandi, Kericho, Nakuru, Baringo, Uasin Gishu.	Invitation by letters.	47
Chuka-Tharaka	02.05.2018	Embu, Tharaka Nithi,	Invitation by	54

Venue	Date	Counties/Group	Contact	Attendance
Nithi County		Meru.	letters.	
Kisii Agricultural Training Centre	03.05.2018	Kisii, Nyamira, Migori, Homa Bay.	Invitation by letters.	123
CRI Kenya Coffee College-Ruiru	03.05.2018	Kiambu, Machakos, Makueni.	Invitation by letters.	98
Kerugoya-Kirinyaga County	03.05.2018	Kirinyaga, Muranga and Nyeri.	Invitation by letters.	115
CRI Kenya Coffee College-Ruiru	04.05.2018	Millers, warehousemen, marketing agents, traders, Nairobi Coffee Exchange, farmer associations.	Invitation by letters.	71
Murang'a (Union Hall)	08.05.2018	Murang'a.	Invitation by letters.	80
Nyeri (YMCA)	08.05.2018	Nyeri.	Invitation by letters.	48
Trans Nzoia	28.5.2018	Trans Nzoia and West Pokot	Invitation by letters.	87
Nandi Hills	28.5.2018	Nandi county	Invitation by letters.	136
Mombasa	28-29 th May 2018	East Africa Tea Traders Association (EATTA Benchmarking with tea industry, tea brokers, a buyer representative and the auction	Visit by Committee	15
	and 28 th May 2019		Visit by Committee, NCE and KCPA	20
Mombasa	29 th May 2018	Stanbic and Equity Banks	Visit by Committee	5
Nairobi – Intercontinental Hotel	13.6.2018	Senators and Members of Parliament in coffee growing region invitation by letters	Invitation by letters	31
Kipkelion Coffee Mills, Kericho County	29 th June 2018	Senator, Members of Parliament, Members County Assembly, County Executive Committee Members, union leaders and individual coffee farmers	Invitation by letters	669
Kutus, Kirinyaga County	30 th June 2018	All coffee stakeholders in Kirinyaga County through press release	Invitation by letters and Radio announcement	140

Venue	Date	Counties/Group	Contact	Attendance
Nairobi-Intercontinental Hotel	1 st August 2018	Committee on Delegated Legislation of National Assembly	Invitation by letters	30
Parliament Buildings	5 th July 2018	Senate Committee on Agriculture	Invitation by letters	9
Mombasa-Whitesands Hotel	26 th -29 th September 2018	Committee on Delegated Legislation of the National Assembly	Invitation by letters	10
CPA Room, Parliament Buildings	14 th November 2018	Senate Standing Committee on Delegated Legislation	Invitation by Senate	11
Naivasha Simba Lodge	29 th April to 1 st May 2019	NCE, Kenya Coffee Producers Association (KCPA), COG and IGRTC	Invitation by letters	15
TOTAL 25				2,157

5.0 Key Issues Noted from the Consultative Meetings.

	Regulation/Rule	Issue raised	Proposed recommendations	How the issue has been addressed
1.	Regulation 2 Definition of grower	Recognition of cooperative society, coffee farmer and estate as grower is not in the Crops Act. Remove the word association in the definition of grower as this will encourage amorphous groups.	Amend the Crops Act 2013 to include definition of grower Amend the Regulation to remove reference to associations	Definition of grower as the person who cultivates coffee is appropriate and retained in the regulation Associations retained and definition made clearer as they were intended to accord growers the constitutional right of association.

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
2.	Regulation 5(c) County Government function to issue pulpung station license	Process of licensing of pulpung station by Counties will be very cumbersome. Some Counties submitted there should be no licensing. Grower as the owner of coffee should be free to deal with it as he/she deems fit	The National and County Governments can collaborate in licensing.	Issuance of pulpung station licenses is a devolved function of the Counties. Capacity building of Counties is recommended. Regulation retained- County to issue the pulpung station licence
3.	Second Schedule: Pulpung station licensing requirement of 2 acres or 20,000kg of cherry annual production.	Licensing of farmers to operate pulpung station (2 acres or 20,000kg cherry will weaken the cooperatives. Some counties submitted that classification of growers by their land size should be deleted. Cooperatives should not be given monopolies.	All the counties and traders recommended that the earlier requirement of 5 acres be maintained.	Amended the regulations to retain licensing of pulpung stations at a minimum of 5 acres or 20,000kgs cherry annual production.
4.	Third Schedule: Obligation of license holder:- The 85:15 rule of capping cooperative societies' expenses at maximum 15% of the net and payment to farmers Minimum of 85%.	The capping of cooperative societies expenses at maximum of 15% of the net earnings from coffee sales and payment to farmers a minimum of 85% cannot be achieved uniformly across the societies due to differences in production and operational capacities.	Retain the 80:20 ratio until productivity increases and society data capture by State Department of Cooperatives is finalized and implemented. Currently the 20% caters for only society expenses from net sales received. The State Department of Cooperatives should strive to enforce the 80:20 ratio Circular	Amended the Third Schedule to incorporate 80:20 ratio as it is currently effected through a Circular from the Commissioner for Cooperatives. The 20% is to be on gross sales and include factory operations, milling, and warehousing and brokerage fees expenses.
5.	Regulation 25 of Coffee General Regulation repeated in Coffee Exchange Regulations Rule 43 of NCE Rules Direct settlement system (DSS)	DSS was regarded as good initiative in some Counties as it will reduce the timelines for coffee payments. However the concept of DSS was received with mixed reaction from sections of farmers in Nyeri, Kirinyaga and Tharaka Nithi Counties as to its	DSS will address delayed payments, bring transparency and eliminate unnecessary players in the value chain. Consider addressing the issue of 14 days within which to remit farmers proceeds currently done by the marketing agents and	Removed Rule 25 of General Regulations and retained it under Rule 38 in the Exchange Regulations. NCE Rules substantially amended. The previous CDU terminology was rephrased to read DSS for clarity and more understanding. The DSS was found to

Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
	value, while the marketing agents have reservations regarding its effective implementation.	ability of societies to pay farmers without delays. Marketing agents, traders said issue was not delay in payments. Recommended the development of a coffee policy and strategy to increase production.	have value and is retained with a proviso for a transition period of one year for establishment of the necessary infrastructure and capacity building of growers.
	Some participants were concerned that the DSS will lengthen the coffee chain as it is not clear on the timelines for payment to the farmers; currently the law stipulates 14 calendar days payment after an auction. Concerns that the Regulation may not provide safety of proceeds as it are not guaranteed in the DSS.	Pilot the DSS before rolling it out.	A transitional period of one year has now been provided for to enable finalization of the processes necessary for DSS and digitization of systems to be put in place. Provision added for the DSS provider to remit coffee proceeds to the growers and their service providers within 10 working days of an auction. The body and the 3 rd schedule of the Exchange Regulations have obligations for the DSS provider including safety of records and deposits.
	Stakeholders need a clarification on the administration fee in the DSS and who will bear the cost.		The CSIC benchmarked with tea industry clearing and settlement system to establish its operation, security features and cost structure. The Committee noted that DSS providers in the Tea Industry make money through overnight lending hence nil transactions processing costs.
	Involvement of commercial banks in the lending business will weaken the rural SACCOs.	Considerations of the rural SACCOs who serve a majority of the members and have farmers' profiles in the disbursement of	The provision is made for licensed financial institutions and SACCOs are among financial institutions.

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
			proceeds to farmers.	
		The DSS service will weaken and kill the Coffee cooperatives.	Considerations for the DSS to facilitate coffee cooperatives recovery of advances and inputs lend to members	The regulations provide that coffee cooperatives submit accurate and timely claims to the DSS provider through the exchange for settlement.
		Payment of individual member by DSS not possible for now.	Payment from DSS should be done to the cooperative society and not to the smallholder farmers directly. However, estate growers can be paid immediately DSS is activated.	Payment via DSS for members of cooperative societies will be progressively done as growers' data is supplied by cooperatives to DSS. A transition period is provided for.
		Who will Sign a Contract with DSS?		The contract with DSS to be signed by NCE and appointed Commercial Banks. Millers will sign agreements with respective growers for milling and brokers will sign agreements for brokerage services and relaying of sales information to the DSS. Milling agreement and contractual obligations of licence holders and service providers are now provided for in the Schedules
		The regulations have not addressed the dispute under DSS		Disputes under the General Regulations shall be handled using alternative disputes resolution mechanisms with final recourse to the courts (R.40). However those that involve trading may be referred to the Capital Markets Tribunal established under the

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
				Capital Markets Act. See Rules 32 and 43 of the Exchange Regulations. The term 'contracted' added to include the DSS in dispute resolution under Rule 40 of the General Regulations.
		Some section of growers do not want to be included in the DSS	Introduce participating and non-participating growers to give growers options	Transition period is provided for to enable parties to put the systems in place.
6.	Regulation 10(c)) Grower miller to perform marketing function.	The farmers expressed mixed reaction on role of marketing agent being shifted to miller.	Traders and some farmers would like the marketing agent function retained in the regulations.	The function of grower miller expanded in the regulations and in the schedules to include the option to own coffee. Broker introduced as an option for sale of coffee at the exchange and agent introduced as an option to offer coffee under direct sale. The Exchange, and the DSS also have a role in marketing to protect growers' interests.
		Growers and grower millers will be too many to participate in the auction floor	Introduce a broker to perform the role of agent for the growers who opt to use an agent	Defined the word broker and agent. Introduced them in the regulations.
		The remittance by marketing agents is currently efficient without delays if the 14 days regulation is enforced.		The proposed period for remittance is reduced to five working days.
		Not all millers have sufficient volumes to access the auction noting that there may be small mills established	Introduce minimum tonnage to access the auction by millers marketing coffee.	The Regulations have provided that the Exchange will be regulated by CMA and develop rules for fair and properly supervised trading practices approved by CMA and ensure that reasonable access to the auction is given to all licence

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
				holders. The exchange is proposed to be progressively upgraded to deal with more licence holders.
		Need to competitively identify Marketing agents to enhance competition.	Millers to advertise for competition at least more than five to be evaluated.	Cooperative societies to appoint millers and other service providers competitively as provided by the Schedules and Rule 22 of the General Regulations. Criteria for society to choose a miller are given and obligations are provided under the Third Schedule.
		Change of financial regulations to pave way for commodity exchanges to be under Capital Market Authority.	Millers to publish their milling tariffs and other charges per year.	Publication of tariffs and other charges by millers is provided for in the regulations.
7.	Regulation 16 Third Schedule Obligations of licensees	Why regulate farmers- service providers contracts some of which include providing financial services.		Amended the Regulations/Schedules to emphasize that only regulated financial institutions are authorized to provide financial services. This is provided for in the 3 rd Schedule of the General Regulations.
8.	Regulation 22(4) Commercial miller to ensure that grower or representative is given reasonable notice to be present at the milling process	What constitutes reasonable notice Difficult to implement		To retain the provision. The duty of the miller is to give reasonable notice of the milling time to the grower to promote transparency when milling and marketing coffee. Grower has the option to attend or not to attend once notified.
9.	Rule 40(7) Noted bids of coffee offered in auction hall.	Noted coffee reoffered for sale at a subsequent auction might fetch lower prices.	Negotiation working well but need to involve the grower.	Rule retained for transparency under Rule 25 of the General Regulations, with provision for disclosure of reserve price on the trading floor for confirmed bids and

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
				where no competitive offers are given on the trading floor after disclosure coffee to be withdrawn and re-offered for sale at a subsequent auction.
10.	Licensing of local roaster.	The proposal of introducing the local roaster licenses to attract youth welcomed Rule 24(1) may provide loophole that can be exploited by unscrupulous persons who regulate this local roaster? Coffee theft may increase.	To address mechanism in licensing local roasters, coffee for roasting to be sold by licensed millers.	Retain roaster's license and allow sourcing of clean coffee from grower miller and the exchange.. Introduced roaster obligations under the 3 rd schedule of the General Regulations to tighten control.
11.	Quality assurance	Grading of coffee to involve the farmer as there are cases of swapping coffee grades without the notice of farmers.	Farmers to be present when coffee being milled, cupped and graded to enhance transparency.	Retained regulation 22(4) that require the miller to notify the grower on the date of the milling of the coffee and added obligations of miller to include timely submission of milling and out turn statements.
		Cooperative do not have qualified liquorers The regulations do not address the quality of coffee; majority of the farmers having pulping unit licenses produce low quality coffee.	Cooperatives to have qualified liquorers. There is also a need to have a capacity building on coffee quality and grading in cooperatives.	There is provision in the regulations (22(9) for growers to do prior independent sample analysis to curb swapping and National and County governments to collaborate in establishment of coffee cupping laboratories.
12.	Digitization of coffee cooperatives and information sharing.	The ICT status of cooperatives is very limited and the few who have ICT facilities have low capacity to manage them.	Counties to assist in procuring, installing computers and digital weigh scale as well as training of users.	Introduced a transition period of one year to accord growers and their service providers time to establish the requisite ICT infrastructure as spelled out Rule 38 of the General Regulations.
		Farmers lack real time information to make decisions.	Sharing of key coffee information like auction prices, potential market is recommended.	Digitization is provided for under Rule 38 of the General Regulations to facilitate information sharing. Upgrading of the

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed	
		There are too many organizations collecting farmers' information/data Management system.	Establish a centralized data management platform.	exchange is meant to address this concern and among the functions of an exchange is dissemination of market information to growers.	
13.	Warehouse Receipt System (WHRS).	There were concerns of how warehouse receipt system is to operate and the fear of using it for multiple borrowing.	There is need to establish system to track borrowing when Warehouse Receipt System becomes operational.	Retained and developed mechanisms for operationalizing the WRS in Coffee Exchange.	
14.	Nairobi Coffee Exchange (NCE) legal status.	Strengthening the NCE is long overdue	CSIC to fast track the modernization of the NCE	NCE Rules changed to Coffee Exchange Regulations to provide general guidelines for coffee exchanges. One of the requirements is incorporation and regulation by CMA.	
		NCE should copy the model of East Africa Tea Trade Association which is owned by producers to control the brokers (marketing agents).	This will enhance competition.		
		Who will monitor the receipts of sales proceeds as proposed by Rule 43 and 44.	Insure that the receipts of sales proceeds process is transparent.		Rules revised. DSS provides transparency in the coffee sales transactions and payment of proceeds. Exchange and DSS provider given obligations under the general regulations (R.25(10))
		Reduce government representation in the board of NCE.	Ensure the NCE Board is farmer centric.		The Coffee Exchange Regulations provide for coffee exchanges to be corporate entities under the Capital Markets Act and other relevant laws and their basic requirements.

	Regulation/ Rule	Issue raised	Proposed recommendations	How the issue has been addressed
15.	Borrowing on behalf of coffee growers from authorized and regulated financial institutions (3 rd Schedule of General Regulations).	The borrowing from the miller/marketing agent should not be curtailed as they offer unsecured loans with relative ease. There was a feeling that marketing agent /miller understand the farmers better and there is guarantee loan recovery from the proceeds.	The financing model of miller/agent to be optional to the grower but should be transparent.	Retain regulation which requires that millers lend under regulated entities under 3 rd Schedule (B11)-Miller to establish regulated subsidiary company to provide credit facilities to grower associations
16.	Coffee security Regulation 4 and 5.	Security of coffee is a concern now that the coffee is being harvested. How will the security of coffee be dealt with.	The Agriculture Food Authority (Coffee Directorate) to increase field inspection and compliance staff and the Counties to complement.	This is indeed a County and National Government function. Counties to be involved in capacity building and supported to enforce the Regulations.
17.	Assumption of risk Rule 47 of NCE Rules.	The provision states that the coffee remains with the farmer until it is paid for and this will introduce extra costs to the farmer which were initially borne by the warehouseman.		The property right of the coffee is vested in the farmer until the purchaser pays the farmer even though the warehouseman has custody of the coffee.
18.	Licensing under the General Regulations	Agriculture is a devolved function and national government should cede county functions and licensing to county governments	Share functions according to the Constitution	General Regulations amended. County functions: Registration of growers and growers' institutions, issuance of nursery certificates, pulping station, milling, warehouse and roaster's licences and movement permits for coffee until purchase. National Government functions: Licences for buyers, liquerers, cupping labs, warehouseman, permits for purchased coffee, and imports and exports.

6.0 General Issues Noted From Meetings and Memoranda

The following were the general issues, noted, suggested or expressed by stakeholders during the consultation meetings which have been considered when drafting *The Coffee (General) Regulations, 2018*.

a) Consultations.

Stakeholders thanked the government through H.E the President for recognition plight of coffee farmers, appointing the National Taskforce on Coffee Reforms and the Coffee Sector Implementation Committee. The stakeholders particularly the farmers would like the spirit of holding consultations, farmer educating and sensitization to be sustained in future for a better understanding of the regulations and the impact after they are legislated.

b) Gender and Youth Empowerment.

The stakeholders requested that both women and youth be included in the entire coffee value chain as recommended in the Taskforce Report. They suggested that an affirmative action be put in place to effect their appointment to respective committees. The stakeholders noted that youth prefer quick payments and any intervention like the cherry advance can attract them into coffee business. They recommended the committee to explore on how other countries involve the youth in the coffee chain.

c) Miller's tariffs:

Farmers are suspicious of the tariffs set by millers as they are unrealistic and think that millers may be swapping coffee samples. They proposed that all coffee tariffs needs to be standardized and publicized for transparency.

d) Subsidized Farm Inputs:

Farmers noted that accessibility and affordability of farm inputs is necessary to increase coffee production. They further noted that the current fertilizer procurement and distribution is cumbersome and time consuming and would like a review of the process. They suggested that counties pool resources together to secure the affordable fertilizer for coffee farmers.

e) Coffee Varieties:

Stakeholders from Busia and Siaya were concerned that Robusta coffee has not been covered by the taskforce in the report yet it is one of the varieties of coffee as set out in the 5th Schedule of the *The Coffee (General) Regulations, 2016*. Farmers are concerned on non-availability of Ruiru 11 coffee seedling in most of the counties and when its available, the cost per kilogram is high. It was explained that Coffee Research Institute is not receiving funds from the National Government to produce the seedlings. The County and National Governments were requested to fund the production and subsidize price of coffee seedlings to farmers.

f) Capacity Building:

Majority of the farmers and staff in the coffee subsector lack basic skills to produce and manage coffee at processing level and expressed the urgency of training farmers staff and management committees in the cooperative societies as one of the interventions to increase production.

g) Coffee value chain competitiveness:

The Kenyan coffee value chain has lost its competitiveness to others sectors like real estate, tea, dairy, avocados, macadamia etc. In order to reverse the threats, there is need to support increased production, coffee subsidy and introduce coffee price stabilization fund.

h) Stabilization of the Cooperative Societies:

It was noted that some farmers migration from one cooperative society to another that is destabilizing societies especially where farmers were given farm inputs and loans decided to abscond. The stakeholders' proposals were that an integrated data management system be put in place and societies formulate by-laws that enhance good corporate governance and the county governments enforce the compliance.

i) Coffee working group:

Stakeholders recommended the formation of County Coffee working Groups at county level to assist in formulating county coffee policies and guidelines for implementation of any reforms in the sector. It was proposed that small and medium coffee estates be encouraged to form associations so as to benefit from economies of skills.

j) National Coffee Strategy:

There were concerns that the coffee subsector lacks a national coffee development strategy to address the coffee issues. Such a strategy would provide an enabling environment to coordinate production and marketing of coffee.

k) Coffee Revolving Fund and Minimal Price

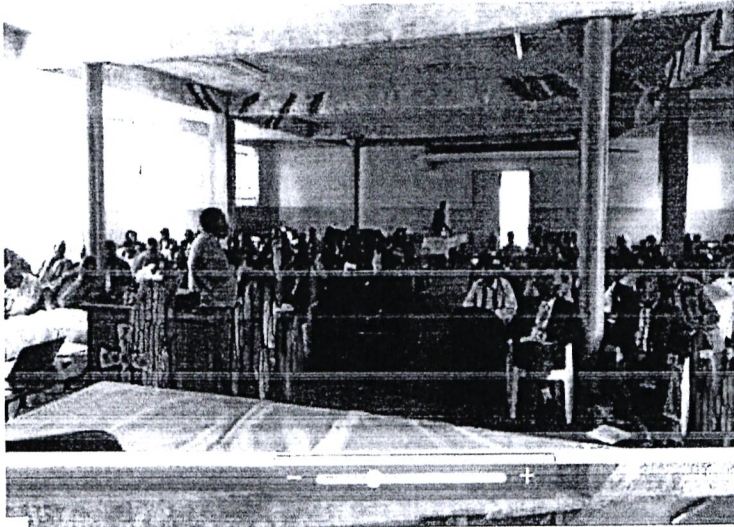
Stakeholders request the national and county governments to initiate a coffee revolving fund to stabilize the coffee prices and for procurement of inputs. Farmers would like to have a guaranteed minimal price per kilogram of cherry set by the government than is to be cushioned through a price stabilization fund.

7.0 Annexes

Annex 1: Stakeholders Consultations Meetings Photos

The following photos were taken in some of the venues where the committee met stakeholders.

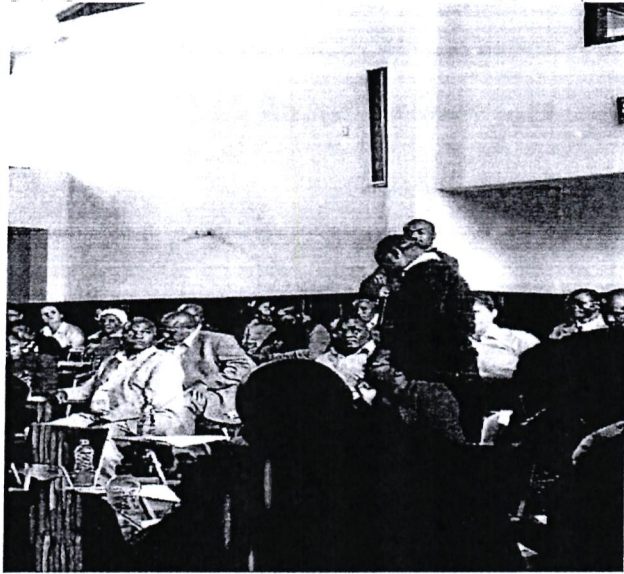
Chairman of CSIC Prof. Kieyah addressing stakeholders in Kerugoya, Kirinyaga



Coffee traders at CRI Kenya Coffee College presenting their submissions on the Regulations



Coffee stakeholders following the presentation of regulations in Nakuru



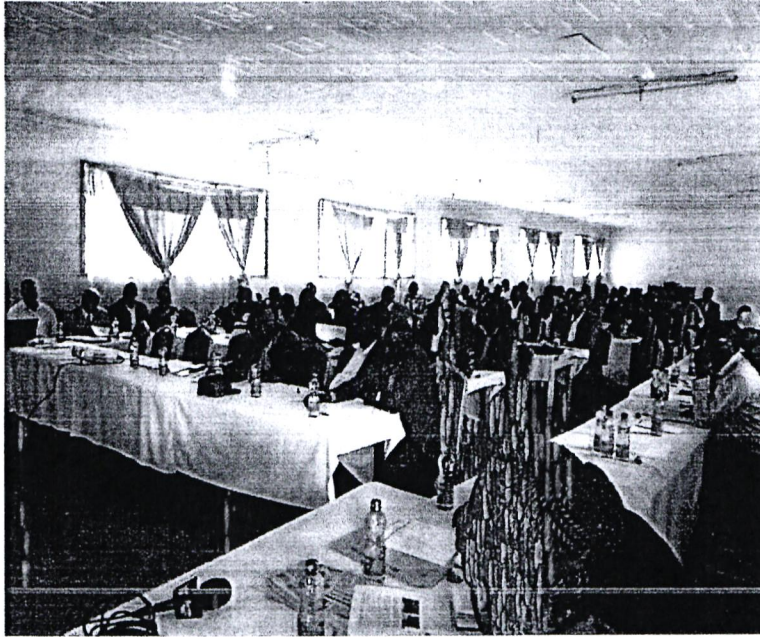
Coffee stakeholders from Kiambu, Machakos and Makueni Participating in the meetings to review the Coffee General Regulations.



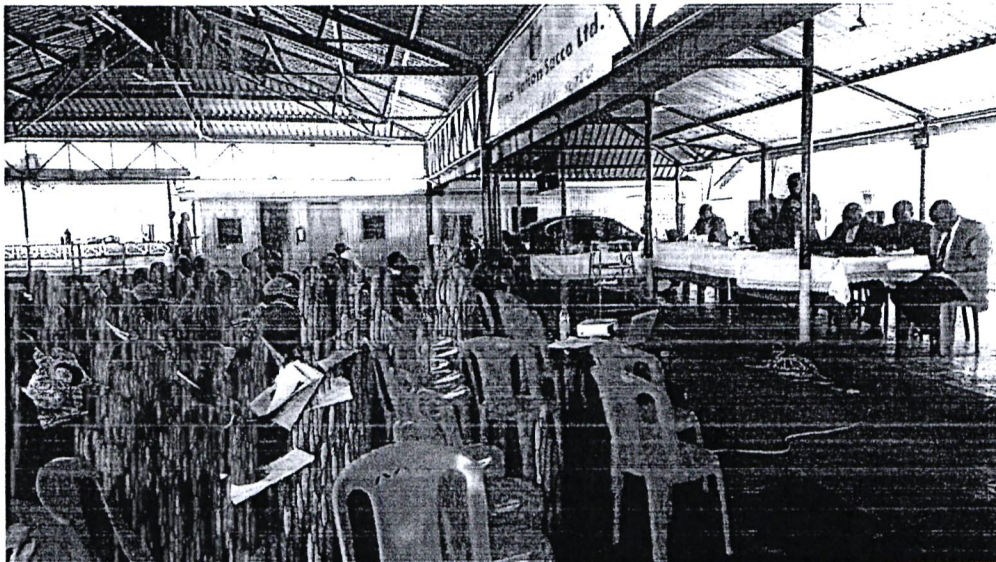
Stakeholders attending validation meetings in Kisii



Stakeholders attending a validation meeting in Bungoma



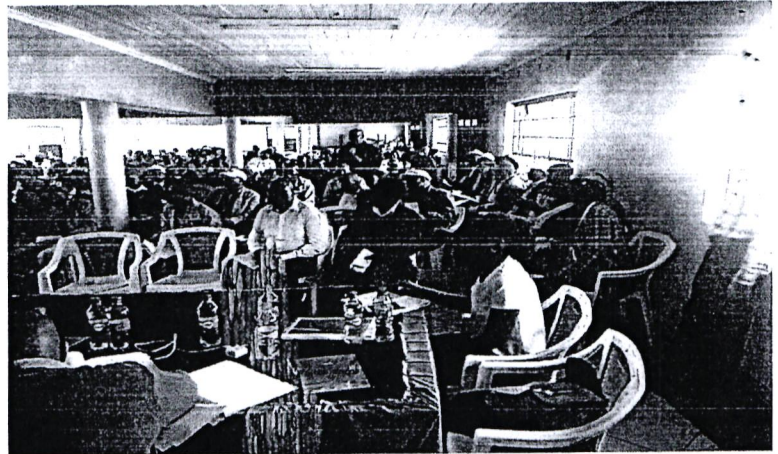
Coffee stakeholders attending a validation meeting in Chuka-Tharaka Nithi



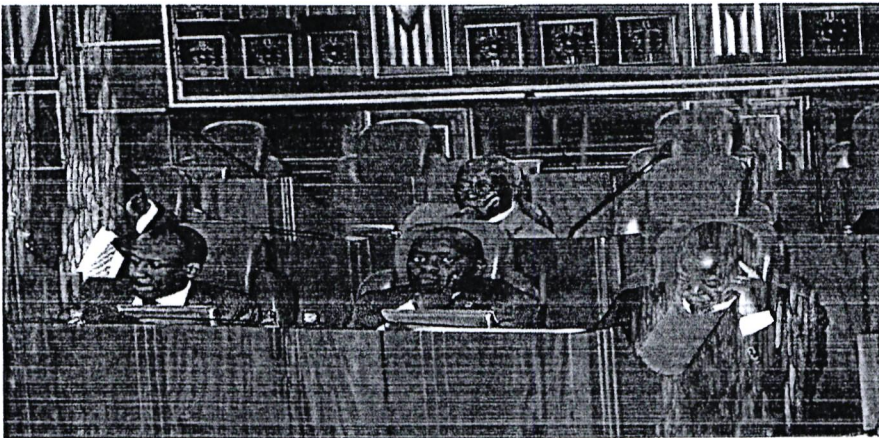
Prof. Kieyah (Above and below) addressing Coffee stakeholders attending a validation meeting in Kipkelion-Kericho



Hon. Gichimu, MP for Gichugu (below and above) and some CSIC Members and stakeholders attending a validation meeting in Kutus-Kerinyaga



CSIC members' consultative meeting with Members of Senate Standing Committee on Agriculture at Parliament Buildings



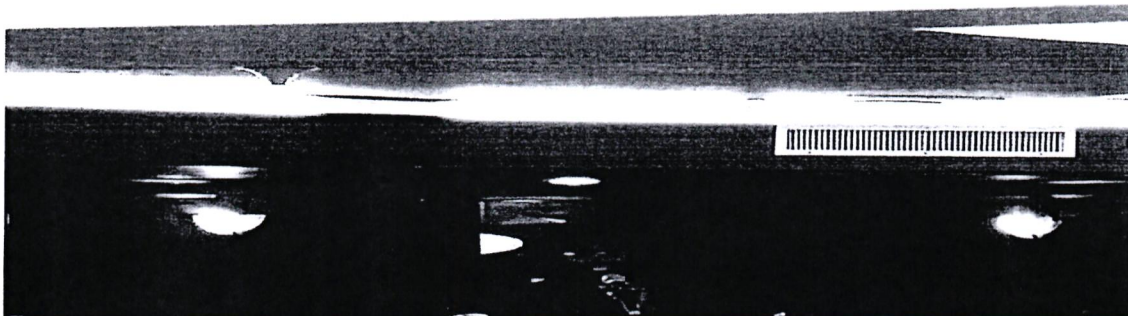
CSIC consulting with Counsel from National Assembly



Hon. Gladys Shollei and Prof. Kieyah (below) and in a consultative meeting with Delegated Committee of Parliament on Coffee General Regulations



Mrs Mary Mungai addressing the National Coffee Platform Stakeholders in Nairobi.



COG members making a presentation to CSIC and County Executive Officers




SAROVA WHITESANDS
BEACH RESORT & SPA
MOMBASA



**JOINT RETREAT FOR CSIC AND COMMITTEE ON DELEGATED LEGISLATION ON COFFEE REGULATIONS, 2018
AND COFFEE EXCHANGE RULES, 2018 AT SAROVA WHITESANDS BEACH RESORT & SPA, MOMBASA
25TH - 29TH SEPT 2018**

Annex 2: Consultative Meeting with Governors from Coffee Growing Counties on the Implementation of Coffee Sub-Sector Reforms 29-30th January 2018.

Role of County Governments in Implementing Coffee Reforms

The aim of the presentation was to highlight the key areas of interest that County Governments can support the coffee reform agenda. The reforms would heavily depend on the level of harmonization of the functions by the two levels of governments in the coffee subsector.

Coffee Legislation

The thematic area focused on legislation and the Memorandum of Understanding (MOU). The following issues were discussed—

1. The view of the county governments with regard to the sharing of licensing and licenses between the counties and AFA/National government.
2. The view of the county governments on the distribution of the functions between the county governments and AFA/National government.
3. The views of the county governments with regard to the MOU.
4. Other areas of cooperation to be included/amended in the MOU.
5. The view of the county governments on payment system of coffee proceeds directly to farmers through Direct Settlement System.
6. The view of the County Governments on the reform of the trading system at the coffee exchange and the change to Commodities Exchange.

The following proposals were agreed upon—

- (a) The funding obligations provided for under clause 4.1 of the MoU- it was resolved that the clause be deleted as it was ambiguous;
- (b) The specific functions of the signatories to the MoU were not clear- it was agreed that the MoU will act as a framework for engagement with the counties which will enter into specific contractual agreements with the signatories on coffee matters relating to the signing county;
- (c) The members agreed that the specific governors of each of the coffee growing counties be signatories to the MoU.
- (d) Members adopted division of functions between the National government and the county government.

It was proposed that the National Government/AFA be only issuing liquoring and independent cupping licenses and the counties to issue other licenses. Another proposal was for the national government to issue trader's license, and the commercial milling and commercial warehouseman's license because the latter two usually operate across several counties.

Cross cutting Issues.

- a) Development of national coffee policy and strategy
- b) Environmental issues
- c) Youth involvement in coffee along the value chain
- d) County legislation along the coffee value chain

Annex 3: Response -Kirinyaga County Co-Op Union Memorandum Dated 27th July 2016

Grower Definition:

They challenged the recognition of the individual coffee grower as the grower of coffee. However, the provision is in line with the Constitution which recognizes and protects individual/private property rights under Article 40. Coffee belongs to the person who grows it. This protection includes Co-ops where they grow their own coffee crop. Any other person is a service provider under a contract for service.

However, the rules also recognize Co-ops as an association of coffee growers. See the definition of association where cooperatives are included.

Therefore, it is not correct to state that the Co-operative society is not recognized as a grower at all in the regulations. It has not only been correctly defined as an association of growers, it is further recognized as a grower for purposes of obtaining a grower miller's licence.

Pulping Station

There was no intention to commercialize pulping. The term "commercial" was removed

Obligations of Pulpers

1. **Digitization:** The country is moving towards digitization of services in this IT age. Gradual change is envisaged in digitization and credible, transparent record keeping, security for coffee is required.
2. **Borrowing:** The proposed cherry advance will take care of the growers' need for funds. They are not being deprived of finances, they are changing from borrowing through the Co-op to getting direct advances. The regulation of money lending financial institutions is now introduced.

Movement Permits

The purpose of the permits is to curb coffee theft and to ensure that only owners of coffee their authorized agents move coffee. The intention of nearest miller was to cut down on heavy transport costs. However, to ensure that quality of the coffee is maintained by the miller, the rules have been amended to provide for competitive procurement of miller and other service providers by cooperatives and other entities representing growers.

Pooling of Farmers for Marketing

There was a misunderstanding. The intention was to enable two or more growers who qualify to get a licence, to be able to join together for purposes of economies of scale to apply to the licensing authority for one licence to carry any of the activities for which a licence is issued, such as pulping, milling, roasting etc. There is no affront to the right to property. Rather, the provision expands the right to property and the freedom of association to enable growers to enjoy these rights jointly.

Direct Settlement System

The role of Direct Settlement System (DSS) is to receive and separate money payable to respective payees and pay them directly. This is why it is important to agree on payments for services at the commencement of the service contracts. CDU is now renamed DSS. Time of one year from the operationalization of the Rules has now been allowed to put the DSS support systems in place.

DSS provider will not be one bank but several accredited banks, that meet the given criteria for selection and the grower can appoint his/her preferred bank for these purposes. CMA role in the operations of the exchange including the DSS are enhanced in the revised rules.

Annex 4: Traders Memorandum presented at Coffee Research Institute on 4 May 2018.

THIRD SCHEDULE

1) RULE 16

Pulping Stations Licenses

- a) No authority to handle farmers money as payments will be done by DSS (CDU)
- b) Limiting borrowing from financial institutions on actualization of DSS.

2) RULE 21

- a) Authorization of pulping stations to hull coffee parchment and buni.
- b) Digitalization of weighing machines

3) RULE 24

- c) Authorizing societies to do direct sale and selling coffee for local roasting

4) RULE 25

- a) **Concern:** Removal of Marketing Agency remove but from the above their role still remains

Their role has been transferred to Millers, brokers(optional), agents(optional) DSS, collateral manager, NCE and warehousemen.

5) RULE 25 (5) AND (6) contradicts Rule 22 (13), 25 (1-4) and Rule 7 (j) and (k)

6) Collateral manager- the General Rules and NCE trading rules are in conflict with this rule.

7) Rule 10 and Rule 32 (5) and (6) on liquorer licensing

Rules 22 warehousing the intention is ok but logistics required to implement may make it difficult to implement.

9) NCE Trading Rules

a) Receipt Of Sales Proceeds –Who will monitor sales proceeds Rule 44

b) What marginal money? Rule 43 (15) (b) who does it apply to? – Who absorbs the cost of the above commitments?

(These concerns have been addressed in amendments)

c) Proposed Regulations and Trading Rules are meant to address the sales proceeds and settlement of proceeds and by so doing created loopholes to be exploited for the detriment of the sector as the role are spread across institutions thus adding bureaucracies.

d) What role is the NCE envisaged to play? NCE given too much functions and in its current status cannot be expected to perform any better but creates a mega bureaucracy experienced in the past. (Obligations of an exchange have been added in the body of the Regulations)

e) Rules 54 of NCE entrenches it as a regulator.

A Bill of Lading contains proprietary/confidential information which most exporters will find difficult to share with the NCE?

(General guidelines for incorporation of exchanges and operations have been given)

10) General Comments

- a) Need to have a sound coffee policy which has been the hindrance. (National Coffee Policy being developed)
- b) Sector beset by old rules which increase cost of doing business (Regulations are important to create predictability and a level playing field)
- c) New regulations should be thought through putting into account the impact in the industry but not for knee jacking as the case is presently.
- d) The regulator is weak in enforcing the regulations

Annex 5: Commercial Coffee Millers and Marketing Agents Association

Thematic Area	Issues	Propose Forward	Way
Rule 7(3) , 2 and Rule 24(1) and 2	Obligation of pulping license has introduces a loop hole that can be exploited by unscrupulous persons. The Combination of these rules allows illegal activities to thrive	Other legal entities are allowed Constitutionally. Enforcement to prevent abuse.	
CDU	Is the CDU settlement account held by the grower or can also be held on behalf of the grower?	Initially, accounts to be on behalf of grower until the systems are fully in place.	
Obligations of License holder vis Warehouse man's Obligation:	Is it practical to expect the warehouseman to play quasi regulatory role? Are they expected to be answerable to the grower without any contractual obligations	Obligations of warehouseman in schedule 3 are introduced. They are implied in every service contract.	
Eighth Schedule:	This schedule is a direct copy of the Bollore logistics warehouse warrant, their company structure included. Other warehouse have different organizations structure	Companies are free to modify the form.	
Requirement relating to Coffee Milling	As per the current proposal the former role of the marketing agency is now seemingly split amongst millers, direct settlement provider, NCE, warehouse man, clearing house and collateral manager (most of whom) have no contractual obligations to grower. How will these new institutions be financed? Who will absorb the	Obligations introduced for service providers in the Coffee General Regulations.	

	resulting additional cost.	
	Rule 22(5) & (6) contradicts rule 22(13), 25(1),(2),(3),(4) and 7(j) and (k)	Amendments have addressed the concerns
	Rule 22(4) might be very difficult to implement	Notice to grower is not difficult to give.
Licensing	Rules 10(b) and Rules 32(3) and (5) amongst others, introduce a new holder "Liquourer" who are required to renew their license annually	Annual changed to three years subject to capacity
	Who will monitor the receipts of sale proceeds as proposed by rule 44. What margin monies are referred to under rule 43(15)b and who does apply to?	Exchange, DSS provider given roles to monitor under the regulation of CMA. Penalties introduced for traders and roasters who default.
	As proposed rules have placed numerous roles and responsibilities on NCE most of which they are ill suited. Placing all these functions under one body will create mega bureaucracy and based on past experience with similar institutions, stakeholders know exactly what to expect	Roles are now shared and obligations are introduced with penalties for default. The exchange will be regulated by CMA.

Annex 6 : Press: Issues Raised in Standard Newspaper Dated 23rd May 2018

An article contained in the Standard newspaper dated 23rd April 2018 raised a number of issues related to the ongoing reforms in the coffee industry among other sub sector issues.

The following clarifications are accorded-

No	Issue Raised	Response
	Foreigners tighten grip on coffee trade as farmers lose	Under the national trade laws Kenya is an open economy and foreign firms are free to invest in Kenya and bring in the much-needed foreign exchange. Foreign investors are subjected to equal treatment like any other local investor along the coffee value chain. There isn't any form of discrimination against local firms or foreign firms. Foreigners have do not have any undue advantage over the local firms so as to have a grip on coffee trade.
2.	Multinationals (6) tilting commodity prices leaving small holder farmers to earn peanuts.	Multinational or foreign firms to compete for coffee at an open bidding process where those who offer the highest prices buy the coffee. Provision is made in both the General and the Exchange Regulations for the exchange to give access to all persons licensed to trade.
3.	Coffee prices at auction only a fraction of the of the market	The coffee prices realized at the Kenya action are among the highest prices when compared with other mild Arabica of countries such as Colombia, Guatemala which produce

No	Issue Raised	Response
	prices –	similar mild coffees. The % of the earnings remitted to farmers depends on the farmers' productivity and the efficiency and economies (or diseconomies) at the same growers' institutions.
4.	Coffee pricing committee	The Government recommended establishment of a coffee pricing committee which was rejected by farmers and the reviewed regulations no longer contain the committee. Nevertheless, its objective was to give growers indicative prices based on global price trends, local price trends and the quality of coffee on offer. It was intended to disseminate information to enable grower negotiate better when undertaking direct sales or fixing of reserve prices. Sharing of market information is now given as a responsibility of the exchange.
5.	Control of value chain from bean to the consumers' table through sub subsidiaries of multinational controlling 70% of the beans.	The licensing of players has clearly articulated that certain license categories cannot be held by one company e.g a trader cannot be a commercial miller, warehouseman, broker or agent a cannot be a coffee dealer (exporter). These provisions have been made for separation of roles. None of the licensed companies is allowed to handle the coffee at its cherry stage but they await such coffee at the milling or marketing stage at which growers voluntarily contract the service providers competitively. The performance of coffee dealers/exporters at the auction is depended on their market access abilities and financial muscle to pay for coffee purchased.
6.	Too much regulation has in the coffee sector has erected unnecessary barriers to entry which is a perfect environment for price manipulation.	The regulatory framework ensures respective players keep to their roles and comply with the coffee standards and the industry code of practice. It is because of this that Kenya coffee is of the highest quality in the world and continues to attract premium prices. Recent efforts to open up cherry buying was declined.
7.	Farmers getting the shortest end of the stick as their producer reaches the market with multiple prices	Farmers in Kenya continue to receive among the highest coffee prices globally. The millers and marketing agents' services summed up amount to not more than 3% of the gross sales - on average. The handling of the net 97% of the auction gross sales depends on the growers' institutions governance structures. Efficient societies pay up to 95% of the 97% net sales from the marketing agents.

No	Issue Raised	Response
8.	Two of every three beans produced from Kenya in 2016/2017 were bought by multinationals	The coffee produced in Kenya is sold through the NCE or direct sales. Growers are free to sell their coffee at any of the traditional, specialty or emerging markets and the Coffee Directorate should always facilitate such sales. However, there are a number of large global companies which have invested for a long time and deal in substantial volumes of coffee from all the global coffee production countries. The companies do not directly source for coffee but have established networks. Nevertheless, growers can clinch lucrative direct sales with thousands of roasters situated in coffee consuming countries (Germany, USA) provided they organize themselves into large units which can sustain the supply.
9.	Delay of coffee payments for a whole year.	The delays in the release of coffee payments is systemic as coffee takes almost 9 months from flowering to cherry ripening, then the primary processing takes 3 months, the secondary milling takes about a month, the marketing begins in January to about May every year. Unlike tea, coffee is paid for after an average of not less than 6 months. The National Task Force on coffee reforms has proposed a cherry advance model to help reduce the systemic delays. The Meru county government is piloting the cash model whose success will inform other County Governments. The Regulations have now proposed faster and more transparent payments through the DSS.
10.	Scramble for Kenya coffee is still alive	Kenya coffee is unique in its quality and produces a superior cup. It is used for blending coffees from other origins which may of different qualities. To protect the Kenya coffee Regulations now propose that any person who blends Kenya coffee with other coffees must declare the percentage of the Kenya coffee in that blend.
	Coffee thefts at growers' institutions	The Task Force Report established that coffee thefts were a problem affecting cooperative societies and made a number of recommendations - take up of insurance cover, CCTV installations, enhancing guards, alarms installation, avoidance of parchment accumulation. Security is a responsibility of growers who should liaise with the security agencies and take the said security measures.
12.	Central Depository Unit(CDU)	The purpose of the proposed CDU, now renamed Direct Settlement System (DSS), is to ensure transparency and efficiency in receipt of coffee sales, settlement and disbursement of coffee proceeds. In addition, the DSS will shorten the value chain and eliminates the need for prohibitive requirement of USD 12 million bank guarantees as security for millers. The DSS will enable the grower miller to access the auction without requirements for a guarantee as they will not handle coffee funds. Growers without a milling license may access the auction through brokers or

No	Issue Raised	Response
		<p>undertake direct sale. The DSS guarantees prompt payment to coffee growers including all service providers within five working days.</p> <p>The DSS, does not lock out the cooperative societies but shall ensure timely and efficient release of coffee proceeds and recovery of any financial obligations.</p>
13.	Suspension of proposed Coffee Regulations 2016 after gazettelement for public participation	<p>The High court suspended the previously proposed regulations after gazettelement in 27th June 2016 following litigations by three parties. A High court ruling made on 28th July 2017 directed that further consultations are held and the regulations promulgation process is completed. The Coffee Sector Implementation Committee (CSIC) consulted stakeholders and have since reviewed the regulations and incorporated the stakeholders' views. The Committee further conducted stakeholder validation meetings from May 2018 to Niovenber 2018 which have informed further amendments to both the Coffee General and Exchange Regulations.</p>
14.	Shortening of value chain and difficult in the licensing process	<p>The Task Force report recommended the scrapping of the commercial marketing agent (CMA) licence and transfer of the CMA role to the miller, broker and the proposed DSS. The DSS will receive proceeds and recover the growers' financial obligations and convey the net to the growers' accounts on the 80:20 as proposed in the new regulations. The DSS eliminates the prohibitive bank guarantee which many growers could not raise and therefore were not able to access the auction.</p>
15.	Farmers to receive 40% of the selling price advance for cherry deliveries.	<p>The Task Force report acknowledged the systemic delays in coffee payments and proposed cash payments against cherry delivery at 40% of the selling price or Ksh15/kg cherry whichever is the higher. The recommendation is intended to ensure farmers carry on with their lives without financial handicap and that the systemic delays are shortened.</p>
16.	Smallholder farmers have limited capacity to process and market their coffee -farmers with less than 1500 bushes can only access markets through a cooperative society, a miller and a marketing agent.	<p>Small holder coffee growers are organized into cooperative societies so as to have them enjoy economies of scale. The coffee is wet processed at the primary factories and conveyed to grower owned mills or commercial mills for secondary processing in readiness for marketing. Growers collectively bargain for competitive prices at the auction or through direct sales. Growers who own 5 acres of mature coffee (2700 bushes) are free to obtain a coffee estate license to wet process and market their own coffee. Now the requirement has added 20,000 Kgs annual coffee production as an alternative qualification. % acres is retained.</p>
17.	Meager earnings by growers from the coffee growing business.	<p>Amount of earnings by growers depend on their productivity, efficiency of the cooperative society, the quality of coffee and the prevailing market prices. Most of the time farmers with high productivity high quality with efficiently managed societies break even. These are the factors which ought to</p>

No	Issue Raised	Response
		be addressed.
18.	Cash crop plunge over the years	The reform measures are intended to encourage growers to increase coffee production.
19.	National Task Force recommendations	H.E. the Head of State appointed a National Task Force which conducted a study and made a number of recommendations which are aimed at addressing various challenges facing the coffee industry. Some of the recommendations seek to address systemic delays in coffee payments, coffee marketing, high cost of production, and poor governance at growers' institutions.
20.	Highest coffee grades by pass the auction - 15% of coffee leaving mills for the export market, leaving lower grades for the auction	The Coffee General Rules and the Coffee Exchange Trading Rules allow growers to access the overseas markets directly or through their appointed commercial marketing agent (CMA). The CMA most of the time accesses the overseas markets on the behalf of the farmer and with the farmers approval through direct sales contracts. The direct sales prices are always higher than the auction. The Direct sales contracts are registered with the Coffee Directorate.
21.	Control of value chain from farm to warehousing and export.	The Coffee Regulations 2002 restrict companies in the business of milling from obtaining the marketing licences. Companies in the business of milling or marketing cannot be also coffee dealers (exporters). This ensures separation of roles and eliminates conflict of interest.

Annex 7: Newspaper Articles in Daily Nation of 3rd April 2018

1. Introduction

The two articles contained comments on various issues regarding the ongoing coffee sub sector reforms. Following is a response on the various issues raised on the separate dates: -

3 rd April 2018 Article		
No	Issue	Comments
1.	Coffee monthly payments rejected as proposed by the task force report	The Task Force Report has taken cognizance of the systemic delays in coffee payments and proposed advance or initial payments to shorten such delays. Such payments are again not mandatory in the regulations being proposed.
2.	Implementation of contentious reforms /issues	The Coffee Sub Sector undertook consultations on the contentious issues such as establishment of the coffee pricing committee and it was removed and appropriate amendments have been introduced to the proposed coffee regulations
3.	Implementation of cash model in Meru County.	The implementation of the cash model in Meru is an initiative of the county whose objective is address the systemic delays in coffee payments. The County Government leadership has fully consulted and walked with coffee cooperative societies and coffee estates who are in agreement. The Meru initiative

3 rd April 2018 Article		
No	Issue	Comments
		is also voluntary. The Meru County leadership resonates with the Task Force report and CSIC thinking.
4.	Comparison of the envisaged coffee industry cash model with the Tea Model	The Tea model has served the Tea industry well and other sub-sector such Dairy, Macadamia, and Bananas have adopted the cash model and they are doing well. It is only in coffee where the average age of a farmer is over 65 years.
5.	Article states ' <i>The Coffee Directorate should wait for harmonization of contentious reforms before implementing them</i> ' by Harrison Munyi	The Coffee sub sector Reforms are not being undertaken by the Coffee Directorate. It is the Coffee Sub Sector Implementation Committee (CSIC) which is driving the reforms in line with the recommendations contained in Task Force Report and feedback from past consultations. The CSIC was appointed by H.E the Head of State.
6.	Agreeing on all reforms	The CSIC has carried out validation consultative meetings in West, Central Rift, Mt Kenya and all coffee growing counties in Kenya and shared the amended regulations. This has gone a long way towards ensuring that most issues are agreed upon.

Annex 8: Press Release: A Joint Statement by Chairmen of Embu County Coffee Co-Operatives; in Daily Nation of 6th April 2018

The following were the responses from Coffee Sector Implementation Committee (CSIC) on the various issues raised;

Coffee Sector Implementation Committee's Response

	Issue	Committee's Response
1.	Reference to the Coffee Rules 2016	Reference to the said Rules may imply that the same Rules are being upheld. The Rules have substantially been reviewed following further consultations and feedback from stakeholders. Now we have a revised set of Coffee General Regulations for 2018 which are subject to ongoing stakeholder consultations. The meetings took place in May 2018 in the coffee growing regions.
2.	Conservatory orders made by the Nyeri Court in 2016	There were two other related cases filed in Nairobi High Court in which a judgment was given in July 2017 which required the parties to engage in further consultations in the making of the coffee rules. This judgement was communicated to the High Court in Nyeri. Since then the committee has conducted various stakeholder consultations in compliance with the court order, a process which is now

		completed. The petitioners in the cases are some of the stakeholders whose responses to the proposed regulations were captured on newspaper articles and taken into account by CSIC..
3.	Appointment of the Coffee Sub Sector Implementation Committee(CSIC)	The CSIC was appointed not only to implement the Task force report but has a broader mandate which includes consideration of contentious issues raised by stakeholders. In its consultations, the committee has engaged all the stakeholders along the coffee value chain without bias.
4.	Consultations for regulations validation	The CSIC has not targeted friendly groups but sought to consult stakeholders along the entire value chain during the validation of the reviewed regulations. West, Central and Eastern coffee growing regions were targeted for the validation exercise.
5.	Publication of the Nairobi Coffee Exchange Trading Rules in February 2018	The Committee has not published the revised Nairobi Coffee Exchange Rules as construed in the advert. The rules have been reviewed and validated by stakeholders. They have also been presented to the relevant Committees of Parliament for perusal and approval before such publication can be done.
6.	Permitting alternative groups to operate cherry processing activities	One of the objectives of the review was to align the regulations to the Constitution and other applicable laws and the Constitution guarantees freedom of association to all Kenyans including growers. In order to preserve the public order and promote collective arrangement for farmers, the central role of farmer's cooperatives is acknowledged. Additionally, the regulator has been empowered by the amended regulations to curb coffee theft and other malpractices.
7.	Central Depository Unit (CDU).	The purpose of the proposed CDU, now renamed Direct Settlement System (DSS), is to ensure transparency and efficiency in receipt of coffee sales, settlement and disbursement of coffee proceeds. In addition, the DSS will shorten the value chain and it eliminates the need for prohibitive requirement of USD 12 million bank guarantee as security for grower millers. The DSS will enable grower miller to access the auction without requirements for a guarantee. The DSS guarantees prompt payment to coffee growers including all service providers once the relevant information is furnished to the DSS provider through the exchange.
8.	Coffee Pricing Committee(CPC)	In the revised regulations, the Committee has removed the proposed coffee pricing committee in response to submission by stakeholders.
9.	Unique role played by Cooperative societies	The Committee acknowledges that cooperative societies play a key role beyond primary coffee processing. The reforms are not in any way diminishing these roles of cooperative societies such as advancing school fees and medical expenses against anticipated sales. The societies shall therefore

		continue with these roles and through the DSS such moneys will be recovered and remitted to the societies accounts. In this regard the societies will continue to prepare the Payment Calculation requests (PCR) to enable processing of payments to the coffee growers and their service providers.
10	County Governments to mobilize Growers for Coffee Marketing	This was one of the contentious issues and the rule 24(2) was amended by removing it. However the committee recognizes the Constitutional mandate vested in the Counties in regard to Agriculture and Cooperative Management and have provided for the functions of each level of government in the General Regulations.

General Observation

The committee notes that the issues raised by the Embu Union chairpersons as concerns have been addressed since 2016 and much is being implemented as recommended in eight pillars of the Task Force Report. The committee encouraged Embu Cooperatives societies' continued participation in the consultations and validation of the regulations.

Annex 9: Consultative Meetings County Executive Committee Members, Chief Officers and County Directors of Agriculture, County Directors of Cooperatives from Coffee Growing Counties on 21st February 2018

An Overview of:

- a) The Draft Coffee (General) Regulations, 2018
- b) The Draft Nairobi Coffee Exchange Rules, 2018

Purpose of the Review

The purpose of the review of the Regulations is to:

- (a) to give effect to section 40 of the Crops Act, 2013;
- (b) to provide for licences to be issued by the licensing authorities;
- (c) to provide for the obligations of licence holders and service providers, and the protection and regulation of their interests along the value chain;
- (d) recognize the grower of coffee as the owner of coffee until the coffee is sold and paid for;
- (e) provide for protection of growers' rights along the value chain;
- (f) provide for a transparent and timely clearing and settlement of coffee sales proceeds to the growers and service providers;
- (g) provide for the collection and maintenance of data related to coffee;
- (h) ensure improvement of coffee standards, increased production and support; and
- (i) regulate the coffee industry in Kenya.

Key Highlights of the Coffee General Regulations

Part 1 – Preliminary

This part contains the preliminary provisions of the Regulations including the citation and commencement, interpretation and purpose of the Regulations.

Part II – Functions of the Authority and the County Governments

- Regulations 4 and 5 clearly spell out the roles of the Agriculture and Food Authority vis-à-vis the County governments. The Authority shall issue coffee trade and manufacturing licenses, develop and promote strategies for the coffee industry and develop the coffee industry standards and code of practice. The county governments shall issue licenses for coffee nurseries, pulping stations, and local roasters, issue movement permits, offer extension services and register coffee growers for data collection among others.

Part III – Registration and Licensing

This Part contains provisions on registration of growers, registration of dealers, types of licenses to be issued by the County Government and the Authority, licensing procedures, duration of licenses, and obligations of licensees as well as provisions relating to movement permits and dispute resolution on licensing.

Licenses/Certificates proposed to be issued by County Governments include:

- a) Registration of growers
- b) Coffee nursery certificate
- c) Pulping station license
- d) Miller's licenses
- e) Warehouse licence
- f) Coffee roaster's license
- g) Movement permit for coffee before purchase

Licenses/Certificates proposed to be issued by AFA

- a) Warehouseman's license
- b) Coffee liquorer license
- c) Independent cupping laboratory license
- d) Coffee buyer' license
- e) Coffee import permit
- f) Movement permits for purchased clean coffee
- g) Registration of direct sales contracts,
- h) Certificate of Origin and certificate of quality

Part IV – Production and Processing

- This part relates to notification of planting or uprooting coffee; development and enforcement of a coffee industry code of practice and standards on coffee production, processing and marketing; certification of Kenyan coffee; guidelines on seedlings and requirements on milling to ensure maximum production of high quality coffee in Kenya. KARLO or its authorized agents are to issue certified coffee seeds or seedlings. Others to obtain certification from relevant statutory bodies. The role of NACOSTI is acknowledged.

Part V - Coffee Trading and Marketing

- a) This part contains provisions relating to coffee trading, direct sales, management of the Coffee Auction, preparation of sales catalogues, coffee warehousing, export and import of coffee.

- b) Coffee shall be traded through auction at the Exchange and direct sales. Persons with access to the auction are coffee traders, local roasters and grower millers. Brokers who may be appointed by the grower for sale of coffee at the exchange. Agents may also be appointed for direct sale. This will reduce the number of players in the value chain and also allow the farmer to participate in the process. Marketing agent's license is abolished. The appointment of the broker and the agent is optional.
- c) Proceeds of the sale of coffee by auction shall be deposited in the Direct Settlement System managed by the Exchange and this will eliminate delays in payment to the farmers and also create transparency in the auction process.

Part VI - Quality Assurance

Provision of inspections by the Authority and the County Government on coffee farms, mills, warehouses among others, prohibition against removal of labels or seals from packets of coffee and surveillance within coffee growing counties. The Authority and county governments shall collaborate in the enforcement of coffee industry standards along the value chain, for purposes of quality assurance. The Authority may develop training curriculums, conduct examinations and jointly issue certificates for coffee liquorers, in consultation with accredited universities of higher learning, and industry stakeholders. The Authority is given liberty to inspect and to sample coffee at any stage of the value chain for analysis to ascertain the pesticides residue levels and ascertain quality.

Part VII – General Provisions

This part contains provisions on dispute resolution between persons licensed or registered under these regulations, prohibition of alteration of licenses and certificates, information sharing, a general penalty for contravention with the Regulations and transitional provisions.

4.0 Certificate and License Fees

Category	Amount (KES.) USD	Payment
Application Forms	Nil	Licensing Authority
Growers Registration	Nil	County Government
Nursery Certificate	KES 1,000	County Government
Pulping Station licence	KES 1,000	County Government
Grower's miller licence	KES 10,000	County Government
Commercial Coffee Millers licence Over 10,000MT CC	USD ,2,000	County Governments
5000-9,999MT CC	USD 1,000	
3,000-4,999	USD750	

Less than 3000MT CC/NEW	USD500	
Roaster's Licence		County Government
Over 1000 Bags	KES10,000	
500- 999 bags	KES 7,500	
100 - 499 bags	KES 5,000	
Less than 100 Bags /New	KES 2,500	
Coffee Commercial Warehouse Licence Over 200,000 bags 50,000- 99,000 bags Less than 50,000bags /New	USD 1,000 USD 750 USD 500	County Government
Buyer Over 10,000 bags annual purchases 5,000 – 9,999 bags annual purchases 1,000 – 4,999 bags annual purchases Less than 1000 bags purchases/New licence	USD 500 USD 350 USD 250 USD 100	Authority
Parchment/Buni coffee movement permit (per leaf)	Free	County Government
Clean coffee movement permit from County of origin (per leaf)	KES100	County Government
Clean coffee movement permit for coffee exports (per leaf)	USD 1	Authority
Late application fee	10% of the license fees	Licensing authority
Independent Cupping Center	KES 20,000	Authority
Liquorer's practicing licence fees	KES 2,000	Authority
Processed coffee import permit	Ksh10,000	Authority
Warehouse man's licence	Ksh 2,000	Authority

APPLICATION, LICENSING AND ANNUAL FEES FOR COFFEE EXCHANGES AND COFFEE BROKERS UNDER THE COFFEE EXCHANGE REGULATIONS

Coffee Exchange

Application fees..... Kshs. 2,500

Licensing fees (once).....Kshs. 2,500,000/-

Annual regulatory fees.....Kshs. 2,500,000/-

Coffee Broker

Application fees.....Kshs. 2,500/-
Licensing fees (once)..... Kshs. 50,000/-
Annual regulatory fees..... .Kshs. 50,000/-

Issues Arising on:

Licensing

- a) County representatives indicated that they wanted all the licenses/certificates except trading, liquoring and cupping licence to be issued by the Counties
- b) Some county representatives felt that the licenses were too many and could be combined into one business permit/license allowing the licensee to pulp, mill, roast coffee and establish restaurants

Other Subsequent Proposals

- a) Issuance of warehouseman and milling licenses by AFA but subject to clearance by counties and sharing of license fees.
- b) Remove the express prohibition against sale of cherry and parchment trading (amend rules 22 (4) and (5)).
- c) Central Depository Unit to be renamed Centralized Settlement System (CSS) as it is not a depository by a settlement system for coffee proceeds of sale. Changed to Direct Settlement System.
- d) Registration of dealers by the Authority (Rule 7(5)) and submission of returns by dealers Authority was proposed by AFA, but was not agreed by the County Governments. It is a unresolved issue.

Annex 10: Consultative Meeting with National Coffee Cooperative Union Ltd on 28th February, 2018 at Coffee Research Institute (Ruiru)

The NACCU presentation emphasized on:

- a) Ensuring that there are small scale coffee farmer focused laws and regulations are governing the coffee sub sector.
- b) The need for the government to address coffee subsidy program to jumpstart increased production of coffee and requested for support for at least 2 years.
- c) The current coffee processing facilities require rehabilitation, staff capacity building and security to stop frequent coffee thefts.
- d) Farmers requested the Government to support the establishment cherry advance payment system and allocation of adequate funds.

- e) The farmers support the modernization of Nairobi Coffee Exchange (NCE) and networking it to the counties on real time and having a representation in the NCE upon its transformation into a body corporate.
- f) The industry should start appreciating the involvement of youth and women in implementation of reforms recognize them in decision making along coffee value chain and having a succession plan for takeover from the aging coffee farmers. Women requested for automatic membership to Unions based on family coffee farms. So as to reap benefits of training, subsidy, and cherry advances leadership roles directly.
- g) Farmers requested the national and county government to allocate adequate funds in their annual budgets to facilitate production, processing, marketing, value addition and promotion of local coffee consumption.
- h) The Unions would like the national and county governments to support institutions involved in coffee research, service delivery to farmers, enforcing regulations and infrastructure development.
- i) The farmers would like to have a coffee minimum guarantee price which should be above the documented cost of production to address the fluctuation of prices.
- j) The unions appeal for removal of the one billion shilling security guarantee to grower marketers so that they can actively participate in coffee marketing.
- k) The unions appeal to Ministry of Agriculture, Livestock Development and Fisheries through AFA to included union representatives in sector working groups, marketing of coffee and for benchmarking with successful models coffee actors in and outside Kenya.
- l) The national and county governments to address the governance concerns in coffee cooperative societies where non-performing entities can be de-registered or merged.

Recommendations:

- 1) CSIC to embark on capacity building farmers and unions along the value chain through training and sensitization on various issues of their concern.
- 2) The stimulus for farmers to support coffee reforms is prompt payment to farmers which can be through cherry advance payment, provision of stabilization funds and input subsidy programs.
- 3) Coffee cooperative societies and unions should be empowered to trade locally and externally by ensuring that the General Coffee Regulations are farmer centric.
- 4) The unions advocate the establishment of coffee cupping units in the counties/region for quality assessment and stakeholder training to appreciate quality of products offered to the markets. They requested CSIC and county governments to fund the initiative.
- 5) The CSIC to establish a farmers empowerment financing model to facilitate access credit, NHIF and payment to farmers
- 6) The national and county governments to address leadership and governance issues in coffee cooperative societies and unions which are contributing squabbles that affect coffee production and marketing.
- 7) The participants requested the county and national government to fund coffee extension services and ensure that the regulation on cherry hawking/trading is enforced to avoid coffee thefts.

Annex 11: Consultative Meeting with Alliance of Women in Coffee (AWIC) Kenya Chapter and Youth on 28th February, 2018 at Coffee Research Institute (Ruiru)

a) Alliance of Women in Coffee

AWIC is an affiliate of International Women in Coffee Alliance and has membership from women across the coffee value chain in Kenya. AWIC supports establishment of farmers' forum free of participation by marketers, traders and have a gender perspective and youth succession angle in coffee. AWIC focuses on empowering women to produce premium coffee for specialty markets. AWIC requested amendments of the regulations to have one stop shop for all coffee licenses to enable women participate in coffee business as well as reducing current cost of licenses. It also requests for automatic membership of women into the Unions based on family ownership of Coffee.

b) Youth in Coffee

The youth would like to be involved in the coffee subsector implementation in the areas of technology adoptions in doing business and value addition. There is need to capacity build the youth and give them exposure inside and outside the country on various aspects as well as having youth mentorship programs. The youth request to be allocated at least 20% of position in the societies, unions and coffee subsector institutions so as to articulate their ideas on coffee and policy formulation favorable to them. They would also like to be supported to engage in the area of Carbon trading through the coffee bushes

A youth Mr. Peter Ndua from Ngewa of Komothai in Kiambu who resides in the United States of America reported that some youth groups have formed a group which is exploring the marketing of coffee in the U.S. He informed that there is a high demand of traceable coffees which is fetching premium coffee in the AGOA market as branded coffee. He emphasized the need to venture into the digital world of Facebook, twitter, instagram, whats up, SMS in promoting coffee agenda. The youth can be involved in actualizing the coffee reforms initiative.

c) Resolutions

- a) Farmers through NACCU agreed to support the implementation coffee reforms.
- b) National and county government to provide adequate funds to support coffee subsidy programs in their annual budgets.
- c) AFA to remove the Bank Guarantee of one billion shilling paid by the grower marketers which has been a dis-incentive for them to participate in the Auction.
- d) The General Coffee Regulations should address the issues on conflict of interest where marketing agents retain farmer's coffee for unspecified durations.
- e) CSIC to assist in promoting and strengthening NACCU as it is a lobby group for farmers on coffee matters.
- f) In order to create sanity in the coffee cooperative sector, the participants support the establishment of a central coffee database at the national and county level.

Annex 12: Lessons Learnt Study Visits, Conferences and Exhibitions

The committee visited Ethiopia, Mexico, USA, and Netherlands and interacted with coffee farmers, exporters, dealers and consumers and Kenyans in the Diaspora and exchanged views. The views arising from these interactions informed the committee during the deliberations when implementing the reforms and drafting the regulations. Some of the issues captured during the interactions include:

1) Ethiopia Coffee Industry

The overall objective of the study was to evaluate and compare the Kenya Coffee industry practices with those of Ethiopia. This comparative evaluation is expected to trigger innovative approaches of reforming Kenya's coffee production and marketing situation.

- a) The effect of climate change in some producing countries such as Brazil has resulted in decreased coffee production. The world should prepare to mitigate on a major impact of climate change expected from 2020 to 2040.
- b) The parameters considered for coffee to qualify for specialty coffee include soils, husbandry and processing practices.
- c) The demand and sale of certified coffee is on the increase. However, traders are willing to pay more for the coffee and people they know hence the need to create and sustain trading relationships.
- d) It was reported that coffee producers have not been offering quality coffees to consumers.
- e) The market forecast indicates a surplus in coffee supplies in 2017/18.
- f) The specialty coffee chapters are currently in 33 countries and demand for the coffee is growing at 15 % annually.
- g) The secret to sustaining the specialty market is to create scarcity by supplying little coffee of high quality.

2) Africa Fine Coffee Association meeting in Ethiopia

Observations and Lessons from the Conference

- a) The International Coffee Organization compiles market outlook reports for countries to customize and utilize in projecting coffee pricing in the coffee trade.
- b) Large cooperatives in Ethiopia are allowed by the government to export coffee directly.
- c) A global coffee platforms are Colombia, Ethiopia, Uganda and Tanzania where stakeholders along the coffee chain converge to deliberate of coffee issues of concern and beneficial to all.

d) The Kenya delegation in the conference agreed to initiate the Kenya Coffee Platform.

3) Recommendations

a) The Coffee Directorate and Coffee Research Institute should customize the International Coffee Organization market outlook reports and advise farmers and the trade regularly.

b) Kenya should collaborate with the Ethiopian government through an MOU when modernizing the NCE and where possible engage the expertise not available in Kenya.

c) There is need to regularly review coffee regulations.

d) The AFCA Kenya Chapter chairman and AFA Coffee Directorate as a matter of priority should initiate the formation of Kenya Coffee Platform.

e) The committee plan of action to implement the issues noted during the visit and conference proceedings is summarized below;

	Activity	Action	Responsibility
1	Production of planting materials	Research to work closely with farmer organizations and farmers to enhance seed productions and top working	KALRO Coffee Research Institute
2	Promote Sustainable coffee production	Undertake research geared towards sustainable coffee production	KALRO Coffee Research Institute
3	Planting shade coffee	Repackage information on shading to inform the farmers on the types of shade trees, spacing and pruning	KALRO Coffee Research Institute
4	Branding of Kenya coffee	Characterization of Kenya coffee flavours based geographical /indications locations market branded coffee.	KALRO Coffee Research Institute, trade and Coffee Directorate(AFA)
5	Cherry Advance payment	Introduce cherry advance payment to cooperative societies	State Department of Cooperatives, State Department of Crop

			Development, (commodities Fund) & Cooperative societies
6	Promoting local coffee consumption	<p>-Legislate buying of coffee by retail traders</p> <p>-Liberalize Buni marketing to encourage local coffee roasting and consumption.</p>	<p>-AFA Coffee Directorate</p> <p>-State department of cooperatives and cooperative societies</p>
7	Coffee certification	Analyze certification programs in place, the market outlets and advice the farmers regularly.	AFA Coffee Directorate
8	Develop a concept notes for inclusion in the MOU	<p>Develop a concept note on:</p> <p>-Exchange of germ plasma materials for breeding drought and disease resistant varieties,</p> <p>-Mass propagation of elite varieties through tissue culture</p> <p>-Effect of shade trees on coffee physiology</p> <p>-Mapping of geographical indications to facilitate branding of coffee.</p>	The KALRO Coffee Research Institute
9	Technology transfer	Package and disseminate new and existing technologies for immediate use by farmers and extension staff.	<p>The KALRO Coffee Research Institute,</p> <p>State department of cooperatives and cooperative societies</p>
10	Memorandum of Understanding (MOU)	Develop an MOU for cooperation with Ethiopia	<p>-State department of Agriculture</p> <p>-Ministry of Foreign Affairs</p>
11	Market outlook information	Provide market outlook reports and advice farmers and the trade regularly.	<p>The KALRO Coffee Research Institute and</p> <p>AFA Coffee Directorate</p>
12	Collaboration with Ethiopia Commodity Exchange.	Collaborate with the Ethiopian government when modernizing the NCE.	State Department of Agriculture

13	Direct Sale of Coffee	Review coffee regulation on coffee marketing to facilitate grower marketing agents access direct sale markets.	AFA Coffee Directorate
14	Kenya Coffee Platform	Initiate the formation of Kenya Coffee Platform.	AFCA Kenya Chapter Chairman State Department of Agriculture
15	Alternative methods of processing coffee	Research on the benefits of dry verses washed coffee in collaboration with the trade.	KALRO Coffee Research Institute
16	Upgrade processing technology	Relook at the coffee harvesting , processing and drying procedures and equipment	The KALRO Coffee Research Institute
16	Modernizing NCE	Modernize the operations of the NCE and improve the trading environment	AFA Coffee Directorate
17	Enhance flow of market information	Initiate the dissemination of market information in real-time	AFA Coffee Directorate and CE
18	Review trading rules at NCE	Introduce and enforce rules to prohibits collusion at NCE	AFA Coffee Directorate
19	Warehousing of coffee	Coordinated and regulated the Warehousing of coffee.	AFA Coffee Directorate
20	Coding samples	Adapt a coding system where the identity of the sample, sellers and buyers are known after sale.	AFA Coffee Directorate and CE
21	Improve sample room operations	Expand the sample room and regulate the maximum time for their disposal to avoid congestion.	AFA Coffee Directorate and CE
22	Liberalize Coffee Auction	-Increase number of auction days. -Introduce an auction day for local roaster.	AFA Coffee Directorate and CE
23	Farmer capacity building	Embark on farmer capacity building so to enable them operate under free market situation	The national and county governments
24	Licensing	Review the licensing in coffee chain to reduce them to a minimal	State Department of Agriculture, AFA, Coffee Directorate

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The key issues for fast tracking include:

a) Risk transfer

Farmers in Kenya bore all the risks in the coffee business unlike in Ethiopia. There is an urgent need to address mismanagement in Cooperatives Societies introduce cherry advance payment, embrace prompt payment, and facilitate data management to ensure traceability.

b) Promote sustainable coffee production

This involves regular supply of certified planting materials, introduction and management of shade trees, timely and appropriate use of inputs, availing cost effective processing technologies and involvement of the youth in coffee business.

c) Establishment of an effective data and information management system:

- (i) Establish an ICT network to facilitate easy access to information for planning and business management.
- (ii) Develop a data management platform to enhance efficiency and transparency in coffee trade
- (iii) Operationalize the warehouse receipting system

d) Upgrading of NCE

- (i) Upgrade the NCE soft and hardware
- (ii) Initiate the transition of NCE to a commodity exchange
- (iii) Provide timely information on market outlook

e) Operationalize the Coffee Rules and Regulations

- (i) Finalize and operationalize coffee regulations for ease of doing business
- (ii) Formulation of regulations to actualize the establishment of central depository unit.
- (iii) Hold consultative meetings with stakeholders when reviewing coffee regulations.

f) Financing the coffee sub-sector

- (i) Identify and engage financiers to provide affordable credit to the coffee sub-sector.
- (ii) Develop instruments required to initiate cherry advance payment.

3. Trade Exhibition at Amsterdam - Netherlands

The overall objective of participating at the **Specialty Coffee Association (SCA) of Europe** event was to promote Kenya coffee to the coffee roasters and green coffee traders so as to retain and grow Kenya's market share.

a) Lessons Learned

- (i) Need for common funding or pooling of resources will ensure consistency in the approach in the approach used for the marketing of Kenya coffee.
- (ii) Disjointed and inconsistency in the marketing of Kenya coffee not effective for the common good of the country.
- (iii) Demand for Kenya coffee mainly the specialty grades – although demand for lower grades and naturals emerging in the Middle East.
- (iv) Markets emerging for honey coffee, semi washed coffee and alternative methods for processed ripe cherries.
- (v) Diversification in the use of coffee by products including – moderately dried coffee pulps and leaves for making coffee drinks.
- (vi) Kenya has not changed its coffee marketing strategy in line with the changing trends in the International market. This includes direct relationships between the coffee producers and consumers and publicity of Kenya coffee as a unique brand.

b) Recommendations

- (i) Develop the Kenya marketing strategy to ensure the story about Kenya coffee is told to bring out its uniqueness and cultural diversity.
- (ii) Explore and conduct research on the alternative uses of coffee by products for energy drinks souvenirs.
- (iii) Explore the emerging alternatives in the primary processing of Kenya coffee – semi washed, honey coffee and fully ripe cherry sun drying.
- (iv) Ensure the Kenya booth represents the face of Kenya by ensuring that all exhibitors convey a common message for marketing of Kenya as a brand.
- (v) It is recommended that, Kenya book for World of Coffee 2019 space early enough to facilitate securing of strategic location and allow adequate time for preparations
- (vi) There is need to strengthen the cupping activity during exhibitions since consumers/buyers always make conclusive purchase decision after looking at the available alternatives depending on quality. Well profiled coffee samples are therefore required in any exhibition.
- (vii) Kenya coffee is still highly regarded round the world and it is important for Kenya to market it as that.

Annex 13: Issues Raised by COG on the Coffee General and Coffee Exchange Regulations, 2019 and Response by AFA

1. Introduction

Following a memorandum by the CoG and an advisory letter by the Attorney General on Sugar, the Authority proposed amendments to the Coffee General Regulations, 2019 as follows

NO	ISSUE RAISED BY THE COG	MINISTRY/ AFA POSITION	Remarks
1.	4(2)(a) is amended to enable Counties issue coffee commercial milling and warehousing licences	Under part II dealing with FUNCTIONS OF THE AUTHORITY AND COUNTY GOVERNMENTS the new clause 5(2)(a) is amended and has ceded the issuance of both grower and commercial milling to county governments ,	Complied with the AG advisory

NO	ISSUE RAISED BY THE COG	MINISTRY/ AFA POSITION	Remarks
2.	5(a), (b) and (c) County functions are amended to include the issuance commercial milling, coffee roasting and warehousing.	The new clause above addresses this concern as well by ceding the issuance of milling, roaster, warehousing licences to county governments	Complied with the AG advisory.
3.	Clause 8(1) provides for application of licences to the County Governments or Authority. Should be amended to remove the authority making licences a sole mandate of the county governments	The clause is amended to provide for application of licences to the licensing authority which in this case also includes the county governments receiving applications from commercial and grower millers, roasters, warehouse owners,	Complied with the AG advisory.
4.	Clause 10(1) on licensing be amended to introduce commercial milling and commercial warehousing licences by the County Governments and remove the Authority(AFA) from issuance of the same under 10(2).	The clause is amended to cede the milling, warehouses, roasting licences issuance to county governments	Complied with the AG advisory. Warehouseman licence introduced as a professional licence issued by AFA
5.	Clause 11(3) be amended to Empower counties to revoke milling and warehousing licences and the Authority to revoke traders' licences	The clause 10(3) is amended to provide for revocation of licences by the licensing authority which includes the county governments	To ensure counties revoke licences which they issue
6.	Clause 15(1) amended to mandate county governments to be the sole licensees and to issue all movement permits except the import and export permits.	The clause amended to enable county governments to move parchment, buni coffee to mills and to move clean from the county to warehouses	Complied with AG advisory
7.	Clause 28 be amended to transfer the licensing of warehouses to County Governments	The clause 28 is amended to cede the issuance of warehouse licences to county governments	To comply with the AG advisory Warehouseman's licence to be issued by AFA

CONCLUSION

The devolution of agriculture under the Constitution of Kenya and the Crops Act takes cognizance of functions exclusively for counties, functions exclusively for the national government and functions which are shared by the two levels. The national government takes cognizance of the requirement for collaboration, consultation and coordination between the two levels of government.

The licensing authority definition in the Crops Act is explicit as it refers to either the County governments or the Authority as the case may be.

23^d May 2019

Annex 14: Report of Engagement with State Agencies, NCE and KCPA on 29th April to 1st May 2019 on the Coffee General Regulations and Coffee Exchange Regulations, 2019

Introduction

The retreat was called to address the issues and concerns raised by some stakeholders on the Coffee General Regulations, 2019 and the Coffee Exchange Regulations, 2019.

The retreat was attended by representatives from the Nairobi Coffee Exchange, and the Kenya coffee Producers Association, both of whom had written to the Cabinet Secretary in charge of Agriculture and raised some issues regarding the draft regulations. Others who attended the retreat were representatives from the Ministry of Devolution, Ministry of Agriculture, the Council of Governors (COG), Agriculture and Food Authority (AFA), State Department for Co-operative Development, Intergovernmental Relations Technical Committee, Boresha Maisha, and the members of CSIC.

A. Issues Raised on the Coffee Exchange Regulations, 2019

NO	CLAUSE	ISSUE	RESOLUTION/RESPONSE BY CSIC
1.	Licensing of NCE and brokers by CMA.	What is the value of placing NCE and brokers under regulation of CMA rather than AFA?	Move informed by policy direction and is done with wide consultation. Value is market supervision, better governance, transparency and price discovery mechanisms, etc.
2.	Multiple licensing authorities for NCE, brokers, grower millers and roasters	What is the value? Can it all be done by AFA for close monitoring?	Licensing authorities are in accordance with the law (Constitution, devolution, CMA, Crops). Exchange given mandate to develop its own rules to help monitor trading
3.	NCE incorporation through share holding	Guarantee preferred	Amended Rule 4(3) to give discretion to CMA to give exemption in writing
4.	Coffee sample	Limited to 9 kgs. Allow Exchange to determine sample size.	Limitation removed

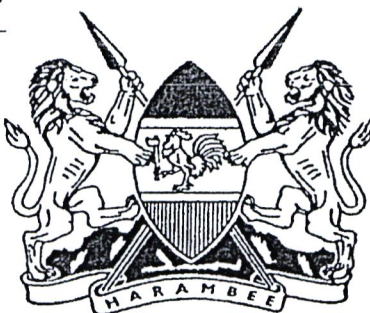
5.	Definition of Grower miller	The definition of grower to be harmonized with the contents in the Coffee General Regulations, 2019	Definition is aligned
		Licensed Grower miller to access the auction and offer the coffee to the market.	Licensed grower miller has access to the exchange and direct sale.
		Introduce a threshold for grower miller to qualify for licence.	Exchange will determine the volume and lot sizes in consultation with millers or the appointed brokers.
6.	Coffee Miller	Is commercial miller allowed to sell growers' coffee?	No. Broker (auction) or agent (direct sale) performs that function for growers who are not millers.
7.	Sample fee	Clarify whether sample fee is revenue for the exchange or remitted to growers.	Rule 24(2) deleted. Sample fees not to be part of the revenue of the exchange.
		Coffee sample money should not be revenue for the exchange as it belongs to growers. Should be paid to growers through the DSS.	Amended. Sale proceeds shall be remitted to growers by DSS
8.	Sales catalogue	Include broker in preparation.	Appointed broker included in Rule 35(1).
9.	Licensing of coffee brokers	There is no licensing schedule	A licensing fee schedule for brokers is provided for in the Exchange Regulations
10.	Dispute resolution relating to coffee trade	Introduce mechanism of dispute resolutions for infringed party to the trading floor Option of having committee appointed by the minister to settle the dispute/tribunal	Any aggrieved party over licensing is given right to appeal to the Capital Markets Tribunal. The same is now extended to parties aggrieved on the trading floor or on reference samples when the party is dissatisfied with the decision of the exchange or the licensing authority. (Rules 32 and 43).

B. Issues Raised on the Coffee General Regulations, 2019

1.	Broker	Introduce a schedule on broker	To be done by AFA
2.	Agent	Not licensed. Regulation required.	Agent has contractual obligations in 3 RD schedule. Introduced registration by AFA.
3.	Definition of agents, brokers and grower miller	Harmonize the definition in the two regulations	Already done.
		Provide the agents and grower millers to present the coffee in the auction.	Appointed brokers and grower millers present coffee at the auction.
		Let commercial millers access the auction.	Commercial millers do not access the auction.
4.	Definition of licensing authority	Remove the CMA and substitute with the Authority and the county government	Removed CMA in the definition section as it is not mentioned in the Crops Act.
5.	Inspector	The definition does not include a county inspector	A county inspector is appointed and gazette by the county public service board and hence no need to provide for it.
6.	Definition of dealer	Include the activity of roasting	Included
7.	Management of the auction	Should be left to the trading rules of the exchange.	The DSS is a new concept and provisions on its functionality in the regulations are necessary.
8.	Sale catalogue 26(1)	Include the broker ...in Consultation with Commercial Miller	Done
9.	Coffee sample definition	Not provided for.	Now provided for.
10.	Registration of coffee growers	Function of the county but address the applicability role of National government on standardization.	Provided for registration of dealers by AFA according to the Crops Act for standardization, and registration of growers as a county government function.
11.	Movement permit for clean coffee	To originate from the county –this is function of the National government. How	Movement permits to be issued by county governments except for purchased clean coffee which will be issued by AFA

		will it be actualized?	
12.	Limitation of coffee licence sec 11(1),(4)	Include roaster licence holders	Roaster now included
13.	Monthly returns by millers	Returns on milling losses undefined. Should be provided to form a basis for comparison of average milling losses between commercial and grower millers	Both the commercial and the grower miller are under obligation to provide statements on milling losses and to share all milling statements with the Authority and county government.
14.	Issue of security of the coffee	Specifically provide the functions of the national government and the county government especially in prevention of coffee theft	Rules 4 and 5 amended to reinstate the specific functions of the two levels of governments as per earlier drafts.
15.	DSS	Who appoints the DSS provider- the grower or the exchange?	The Exchange appoints the DSS provider. The grower or the grower's representative provide all relevant information on the grower to the DSS provider through the exchange. Also see 3 rd schedule.
16.	DSS	The growers to be sensitized on the DSS -remarks by KCPA	Noted
17.	Representation of farmers in apex bodies	NACCU,KCP ,SEPA	Noted

SPECIAL ISSUE



THE KENYA GAZETTE

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(Registered as a Newspaper at the G.P.O.)

Vol. CXIX—No. 149

NAIROBI, 9th October, 2017

Price Sh. 60

GAZETTE NOTICE NO. 9975

COFFEE SECTOR IMPLEMENTATION COMMITTEE

EXTENSION OF TERM

IT IS notified for general information of the public that H.E. the President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces, has extended the term of the Coffee Sector Implementation Committee, for a period of one (1) year, with effect from the 10th October, 2017. The Committee shall submit its final report to H.E. the President on 10th October, 2018.

1. The Committee consists of the following—

Joseph Kieyah (Prof.)—(*Chairman*);

Members:

Principal Secretary, State Department for Agriculture.
Principal Secretary, the National Treasury.
Principal Secretary, State Department for Co-operatives.
Solicitor-General.
Council of Governors.
Andrew Karanja (Dr.).
Susan Maira (Ms.).
Muthoni Thiongo.
Robert Thuo.
Paul Kukubo.
Clement Kiteme—(*Joint Secretary*).

2. The Terms of Reference of the Committee are to:

- (a) Co-ordinate and provide strategic leadership in implementation of the Coffee sub-sector reforms.
- (b) Develop a road map and action plan for the revival of coffee sub-sector focusing on production, value addition and marketing.
- (c) Review the current regulatory framework for the sector and propose changes to align it to current and future needs.
- (d) Perform any other function necessary to ensure effective co-ordination of the ongoing coffee reforms and realization of its objectives.

3. The Committee may co-opt other members whose skills and experience is necessary for the performance of its functions.

4. The Secretariat is based at the NHIF Building, Wing B, 16th Floor.
Dated the 6th October, 2017.

JOSEPH K. KINYUA.

Chief of Staff and Head of the Public Service.

GAZETTE NOTICE NO. 9976

**THE CONSTITUTION OF KENYA
THE COUNTY GOVERNMENTS ACT**

(No. 17 of 2012)

MURANG'A COUNTY

APPOINTMENT

IT IS notified for general information that the Governor, Murang'a County pursuant to part 2 of the Fourth Schedule of the Constitution of Kenya and section 6 (5) as read together with section 30 (1) (L) of the County Governments Act, has appointed a Caretaker Committee to manage water resources, water and sanitation services and all matters incidental thereto within Murang'a County consisting of the following members—

Benson Githinji Mwangi—(*Chairman*);

Members:

County Executive Committee Member, Water and Irrigation.
County Executive Committee Member, Finance and Economic Planning.
Chief Officer, Supply Chain and Projects Implementation.
Joseph Nyutu Ngugi.
Maribe Wa Mwangi Maribe,
Rebecca Wanjiru Mwicigi.
Fredrick Kihuna Munyua.
Catherine Wairimu Mugo—(*Secretary*).

effective immediately, the Boards of the various water companies within Murang'a County shall cease to exercise any control of water resources, water and sanitation services.

WA IRIA MWANGI.

Governor, Murang'a County.



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GAZETTE NOTICE NO. 9973

THE CROPS ACT
(No. 16 of 2013)

DRAFT COFFEE (GENERAL) REGULATIONS, 2017

REQUEST FOR COMMENTS ON THE DRAFT REGULATORY IMPACT ASSESSMENT REPORT AND ON THE DRAFT COFFEE (GENERAL) REGULATIONS, 2017

The Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries is in the process of promulgating Coffee (General) Regulations, 2017, as provided under section 40 of the Crops Act.

The Act requires consultation with the county governments and the public/other stakeholders to give their comments prior to enactment and implementation of regulations.

In compliance with the provisions of the Crops Act and the Statutory Instruments Act (No. 23 of 2013), the Ministry announces to the public the availability of draft Coffee (General) Regulations, 2017 and draft Regulatory Impact Statement.

The main objective of the draft Coffee (General) Regulations, 2017 is to provide for the regulation, promotion and development of the Coffee Industry in Kenya.

The Regulatory Impact Statement contains detailed information on the Coffee (General) Regulations, 2017. The draft Regulatory Impact Statement will also be subjected to independent expert review as to its adequacy.

The Constitution, Crops Act and the Statutory Instruments Act provide that the public participates in the decision-making process through submission of comments to the Ministry. It is in this spirit that we request the public to participate by submitting their comments to the Ministry through the provided address. The Ministry thereafter, will draft the final Coffee (General) Regulations, 2017 based on adequacy, socio-economic considerations and comments received by the public.

After all considerations and following approval of Parliament, the Ministry shall publish the draft Coffee (General) Regulations, 2017 which shall apply to all aspects of the Coffee Industry.

All interested persons should submit written comments on the draft Coffee (General) Regulations, 2017 and the draft Regulatory Impact Statement using the prescribed public comments form within fourteen (14) days from the date of publication of this Gazette Notice.

The draft Coffee (General) Regulations, 2017 and the draft Regulatory Impact Statement as well as public comments form can be

accessed through the following websites: www.agricultureauthority.go.ke; www.kilimo.go.ke. The draft Coffee (General) Regulations, 2017 and draft Regulatory Impact Statement are also available on request at the Coffee Directorate offices, located on 10th Floor, Coffee Plaza during normal working hours.

There shall be a public forum on 23rd October, 2017 to discuss the draft Coffee (General Regulations), 2017 and comments received to be held at Agriculture and Food Authority Offices (AFA), Tea House, Naivasha Road, off Ngong Road, Nairobi starting at 9.00 a.m.

Send your written comments to either:

The Principal Secretary, State Department of Agriculture, Ministry of Agriculture, Livestock and Fisheries, Kilimo House, Cathedral Road, Box 30028, Nairobi;

or by e-mail: psagriculture@kilimo.go.ke

The Director-General, Agriculture and Food Authority, Tea House, Naivasha Road, off Ngong Road, P.O. Box 37962-00100, Nairobi;

or by e-mail: info@agricultureauthority.go.ke

Dated the 2nd October, 2017.

WILLY BETT,

Cabinet Secretary for Agriculture, Livestock and Fisheries.

GAZETTE NOTICE NO. 9974

THE COUNTY GOVERNMENTS ACT
(No. 7 of 2012)

THE COUNTY ASSEMBLY OF ISIOLO
SPECIAL SITTING

PURSUANT to the provisions of Standing Order 27 (4) of the County Assembly of Isiolo Standing Orders, the Speaker of the County Assembly of Isiolo gives notice to Members of the County Assembly and general public that a special sitting of the County Assembly of Isiolo as follows:

Friday, 6th October, 2017 Afternoon Session at 4.30 p.m. at the County Assembly Chambers.

The business before the County Assembly on the special sitting is to consider the Report of Committee on Appointment.

Dated the 5th October, 2017.


HUSSEIN HALAKE ROBA,

Speaker to the County Assembly.

[5499

PUBLIC PARTICIPATION MEETINGS

- The Attendance Lists

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 OCT 2021	DAY: Wednesday
TABLED BY:	LOM
CLERK-AT THE-TABLE:	Samuel Kalama

11/11/11

STAKEHOLDERS CONSULTED, VENUES AND DATES

The following stakeholders who included farmers, county and national government officials, societies, unions, traders and parliamentarians, associations and consultants in various disciplines as need arose were consulted in the venues and dates indicated below.

Venue	Date	Counties/Group	Contact	Attendance
Agriculture and Food Authority Headquarters	23.10.2017	All Coffee Stakeholders meeting at AFA head office, Nairobi.	Invitation through the Gazette and press releases.	123
Naivasha-Enashipae	29.01.2018 30.01.2018	Governors and their CECs from coffee growing counties.	Invitation by letters and press releases	52
Nairobi-Azure	21.02.2018	Chief Executive Committee Members and Chief Officers from coffee growing counties,	Invitation by letters	62
CRI Kenya Coffee College- Ruiru	28.02.2018	National Coffee Cooperative Union members.	Invitation by letters	43
Mabanga Agricultural Training Centre Bungoma County	02.05.2018	Bungoma, Kakamega, Busia, Trans Nzoia, West Pokot.	Invitation by letters	63
Nakuru Agricultural Training Centre	02.05.2018	Bomet, Nandi, Kericho, Nakuru, Baringo, Uasin Gishu.	Invitation by letters.	47
Chuka-Tharaka Nithi County	02.05.2018	Embu, Tharaka Nithi, Meru.	Invitation by letters.	54
Kisii Agricultural Training Centre	03.05.2018	Kisii, Nyamira, Migori, Homa Bay.	Invitation by letters.	123
CRI Kenya Coffee College- Ruiru	03.05.2018	Kiambu, Machakos, Makueni.	Invitation by letters.	98
Kerugoya-Kirinyaga County	03.05.2018	Kirinyaga, Muranga and Nyeri.	Invitation by letters.	115
CRI Kenya Coffee College-Ruiru	04.05.2018	Millers, warehousemen, marketing agents, traders, Nairobi Coffee Exchange, farmer associations.	Invitation by letters.	71
Murang'a (Union Hall)	08.05.2018	Murang'a.	Invitation by letters.	80
Nyeri (YMCA)	08.05.2018	Nyeri.	Invitation by letters.	48
Trans Nzoia	28.5.2018	Trans Nzoia and West Pokot	Invitation by letters.	87

Venue	Date	Counties/Group	Contact	Attendance
Nandi Hills	28.5.2018	Nandi county	Invitation by letters.	136
Mombasa	28-29 th May 2018	East Africa Tea Traders Association (EATTA Benchmarking with tea industry, tea brokers, a buyer representative and the auction.	Visit by Committee	15
	28 th May, 2019		Visit by Committee, NCE and KCPA	20
Mombasa	29 th May 2018	Stanbic and Equity Banks	Visited by Committee	5
Nairobi – Intercontinental Hotel	13.6.2018	Senators and Members of Parliament in coffee growing region invitation by letters	Invitation by letters	31
Kipkelion Coffee Mills, Kericho County	29 th June 2018	Senator, Members of Parliament, Members County Assembly, County Executive Committee Members, union leaders and individual coffee farmers	Invitation by letters	669
Kutus, Kirinyaga County	30 th June 2018	All coffee stakeholders in Kirinyaga County though press release	Invitation by letters and Radio announcement	140
Parliament building	5 th July 2018	Senate Committee on Agriculture	Invitation by letters	9
Nairobi- Intercontinental Hotel	1 st August 2018	Committee on Delegated Legislation of National Assembly	Invitation by letters	30
Mombasa- Whitesands Hotel	26 th -29 th September 2018	Committee on Delegated Legislation of the National Assembly	Invitation by letters	10
CPA Room, Parliament Buildings	14 th November 2018	Senate Standing Committee on Delegated Legislation	Invitation by Senate	11
Naivasha Simba Lodge	29 th April to 1 st May 2019	NCE, Kenya Coffee Producers Association (KCPA), COG and IGRTC	Invitation by letters	15
TOTAL 27				2,157

COFFEE SUB-SECTOR IMPLEMENTATION COMMITTEE

CONSULTATIVE MEETINGS ON VALIDATION OF COFFEE INDUSTRY REGULATIONS AND TRADING RULES, 2018

3RD MAY, 2018

FARE REFUND - KIAMBU - KSH-110DD

	Name	Id No.	Tel. No.	County	Institution/Grower No.	Signature
1.	Andrew Kibuka	131594	071577725	MKS	0219	
2.	Dase N. Njiru	1115558	071559712	MKS	Polymony	
3.	FRED WINTURA		07173444	KIAMBU		
4.	Peter Karanja	1115558	07252221	KIAMBU	Budama A. G. 2018	
5.	Terma Gathara	10715558	072608854	KIAMBU	" "	
6.	Kimani Mwangi	171038	072276510	KIAMBU	" "	
7.	Martin Kibuka	1460576	073336605	MACHAKOS	PF 0159	
8.	Miriam M. Mwangi	112228	071164684	KIAMBU	Kapony	
9.	Samuel Kibuka	137512	072280270	KIAMBU	Flights Kg.	
10.	Joseph Mwangi	3111881	07250282	KIAMBU	Flights Kg.	
11.	Stephen Kibuka	127249	072280270	KIAMBU	Thirika	
12.	Richard Mwangi	150432	072280270	KIAMBU	Mwangi's Kg.	
13.	James Mwangi	1186385	071722272	KIAMBU	Mwangi's Kg.	
14.	James Kibuka	301599	07250282	KIAMBU	Mwangi's Kg.	
15.	George Mwangi	05348	072280270	KIAMBU	KIAMBU	
16.	Mwangi Mwangi	071722272	072280270	KIAMBU	Mwangi's Kg.	
17.	Benedict Mwangi	2566261	071527362	MACHAKOS	KIAMBU	
18.	Samuel Mwangi	5067600	072874570	MACHAKOS	KIAMBU	

UD NO TEL. COUNTY COOPERATIVE SIGNATURE

UD NO	TEL.	COUNTY	COOPERATIVE	SIGNATURE
19.	5042449	NIKS	NIMITABANI	[Signature]
20.				
21.	720048	NIKS	Katungu	[Signature]
22.	726788	NIKS	Jende	[Signature]
23.	502203	NIKS	MUSILILI	[Signature]
24.	152200	NIKS	MUSILILI	[Signature]
25.	132200	NIKS	MUSILILI	[Signature]
26.	1051818	NIKS	KESUGU	[Signature]
27.	3953420	NIKS	Katungu	[Signature]
28.	301817	NIKS	Katungu	[Signature]
29.	6051362	NIKS	NIMITABANI	[Signature]
30.	1725049	NIKS	Katungu	[Signature]
31.	74572249	NIKS	Katungu	[Signature]
32.	10969772	NIKS	MUSILILI	[Signature]
33.	4891513	NIKS	MUSILILI	[Signature]
34.	022010	NIKS	MUSILILI	[Signature]
35.	1007207	NIKS	MUSILILI	[Signature]
36.	1437816	NIKS	MUSILILI	[Signature]
37.	1072254	NIKS	MUSILILI	[Signature]
38.	1070119	NIKS	MUSILILI	[Signature]
39.	5127731	NIKS	MUSILILI	[Signature]
40.	0220904	NIKS	MUSILILI	[Signature]
41.	294623	NIKS	MUSILILI	[Signature]
42.	2351168	NIKS	MUSILILI	[Signature]
43.	346500	NIKS	MUSILILI	[Signature]
44.	620778	NIKS	MUSILILI	[Signature]
45.	400300	NIKS	MUSILILI	[Signature]
46.		NIKS	MUSILILI	[Signature]
47.	0203529	NIKS	MUSILILI	[Signature]
48.	771815	NIKS	MUSILILI	[Signature]
49.	183517	NIKS	MUSILILI	[Signature]
50.	02268427	NIKS	MUSILILI	[Signature]
51.	4438062	NIKS	MUSILILI	[Signature]

	JAMBE	ID NO	TEL NO	COUNTY	COOPERATIVE	SIGNATURE
52.	DAVID N. MBITHI	5885524	0734918594	MACHAKOS	KAKUYUNI	[Signature]
53.	KEVIN K. KUMAR	3365992	0721965064	K.B.V	KATHAKA	[Signature]
54.	S. N. KUMAR	3340444	0729715000	K.B.V	ASSERVAH COMMUNITY	[Signature]
55.	ANDERSON W. MURUGU	4423347	0722403102	K.B.V	Ng'anda Karamitha	[Signature]
56.	Charles N. Muthia	2985268	0716219000	MACHAKOS	Kasungu	[Signature]
57.	SAMUEL K. K.	5871100	0710409977	M.K.S	Kafuyu	[Signature]
58.	Joseph Mwangi	0572225	0737094032	M.K.S	Milatare	[Signature]
59.	Nicholas Mwangi	0700152	0721511321	M.K.S	Kulalema	[Signature]
60.	Justus N. Mwangi	6267354	0777554785	M.K.S	Kulalema	[Signature]
61.	Charles Mwangi	0702207	0710120895	M.K.S	Kulalema	[Signature]
62.	Joseph Mwangi	1173405	0715010222	M.K.S	M. Mwangi	[Signature]
63.	Joseph Mwangi	08910295	0703782872	K.B.V	RUTHO	[Signature]
64.	Alexander K.	5099257	072166176	K.B.V	Shukalla	[Signature]
65.	Joseph Mwangi	3473224	0726002020	K.B.V		[Signature]
66.	Moses Mwangi	1995181	0797970814	M.K.S	Jamako	[Signature]
67.	Peter Kibara	17465102	0725720744	KUMBUA	Kulalema	[Signature]
68.	Joseph Mwangi	723822	0722077777	MACHAKOS	Kumataki	[Signature]
69.	Joseph Mwangi	140002	0722077777	M.K.S	Kasungu	[Signature]
70.	Joseph Mwangi	5923401	0707466466	M.K.S	Kasungu	[Signature]
71.	Joseph Mwangi	0723871	0720727777	M.K.S	Kasungu	[Signature]
72.	Joseph Mwangi	2755571	0720727777	M.K.S	Kasungu	[Signature]
73.	Joseph Mwangi	0322819	0720410211	MACHAKOS	Wendak Farm	[Signature]
74.	Joseph Mwangi	16612256	0722241515	K.B.V	Kasungu	[Signature]
75.	Joseph Mwangi	7242902	0737205777	Kasungu	Kasungu	[Signature]
76.	Joseph Mwangi	18219415	0726070011	K.B.V	TRUTH GROUP - MACHAKOS	[Signature]
77.	Joseph Mwangi	3107282	0722316527	K.B.V	Ng'anda Karamitha	[Signature]
78.	Joseph Mwangi	3111700	0716219000	K.B.V	Ng'anda Karamitha	[Signature]
79.	Joseph Mwangi	723822	0716077777	MACHAKOS	Ng'anda Karamitha	[Signature]
80.	Joseph Mwangi	0223513	0720197105	M.K.S	Kasungu	[Signature]
81.	Joseph Mwangi	11831257	0721346161	K.B.V	K.B.V	[Signature]
82.						
83.						
84.						



NATIONAL COFFEE CO-OPERATIVE FEDERATION OF KENYA

P.O BOX 6 -60200, MERU-KENYA

TEL: 0721 342269/0726 575406/0722 937900

EMAIL: info@naccu.co.ke

WEBSITE: www.naccu.co.ke

Our Ref:..Naccfk/vol.1/02/2021

Date: 24/08/2021

Mr. Michael Sialai
The Clerk, National Assembly
Parliament Buildings
P.O. Box 41842- 00100
Nairobi
Kenya



1 DD on 1/2021
27/08/21

Attention: Chairperson of Committee on Delegated Legislations

2 SIMANE
Please deal
from
31/8/21

Dear Sir,

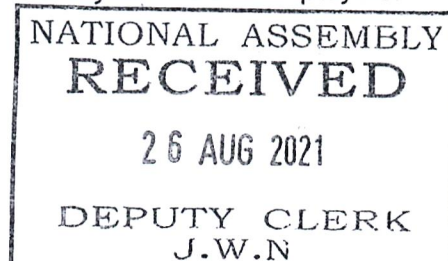
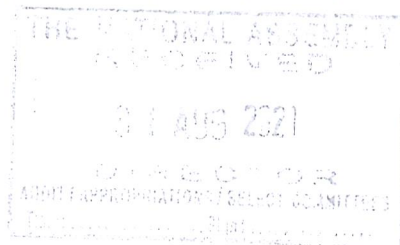
RE: ILLEGAL NOTICE NO.104 BY CABINET SECRETARY FOR AGRICULTURE LIVESTOCK, FISHERIES AND CO-OPERATIVES.

The National Coffee Federation of Kenya is an umbrella body representing all the Coffee Co-operative unions across the Country. It draws its membership from all 31 coffee growing counties in Kenya. The federation was formed to enable members synergize their efforts when addressing common challenges as well as enabling them seize opportunities in production, processing and marketing of coffee among other areas of common interest.

We bring to your attention **Legal Notice No.104 dated 2nd July 2021 under Kenya Gazette Supplement No.132**, which was introduced by the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives where he introduced **The Coffee (General) (Amendment) Regulations, 2021** which is attached for your ease of reference.

This amendment has unfortunately resulted to clawing back of the progressive legal reforms in the coffee sector which were developed by **The National Task Force on Coffee Sub Sector Reforms appointed by H.E the President in 2016**. The National Taskforce engaged all players in the sector, examined the challenges and recommended, **in a report**, comprehensive and transformative strategies. Leaders of our Federation were part of this taskforce membership.

We would like to bring to your attention that the Cabinet Secretary's amendment has not undergone the due process of public participation nor has any coffee sector players.



We demand that this notice be declared illegal and that the due process be followed in case of any amendment required a process which should fully involve the Senate since Agriculture is a devolved function by the constitution of Kenya.

We have attached various letters from the farmers and the Federation for your ease of reference.

Yours sincerely



Francis Ngone
AG. CHAIRMAN, NATIONAL COFFEE FEDERATION OF KENYA

Encl.

Hon. Njeru Ndwiga
Chairman,
Senate Agriculture Committee
Parliament Buildings
Nairobi

H.E Martin Wambora
Chairman, Council of Governors
Delta Corner, 2nd Floor, Opp PWC
Chiromo Road, Off Waiyaki Way
Nairobi

Mr. Jeremiah M. Nyegenye
The Clerk of the Senate
Parliament Buildings
Nairobi

Prof. Joseph Kieyah
Chairman
Coffee Sub- Sector Reforms Implementation Committee
Office of The President.
Nairobi

□