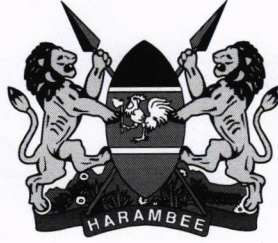


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Approved
18th May 2022

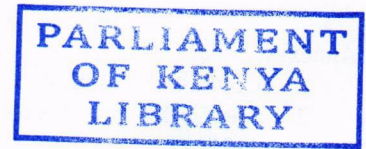
Hon. Speaker

REPUBLIC OF KENYA

Recommended for approval for tabling
TWELFTH PARLIAMENT

EG
17/05/22

SIXTH SESSION



THE SENATE

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE COFFEE BILL, (SENATE BILLS No. 22 of 2020)

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

May, 2022

DC-EG
Recommended & Forwarded for Approval
17/05/22

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ABBREVIATIONS

AFA	-	Agriculture and Food Authority
CRI	-	Coffee Research Institute
KALRO	-	Kenya Agricultural and Livestock Research Organization

PREFACE

Mr. Speaker Sir,

Establishment of the Committee

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

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

Mandate of the Committee

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

Oversight

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

- i. The State Department for Crops Development and Agricultural Research;
- ii. The State Department for Livestock;
- iii. The State Department for Fisheries, Aquaculture and the Blue Economy; and
- iv. The State Department for Irrigation.

Membership of the Committee

The Committee is comprised of the following Members-

1. Sen. Peter Njeru Ndwiga, EGH, MP - **Chairperson**
2. Sen. Enoch Wambua, MP - **Vice-Chairperson**
3. Sen. Kipchumba Murkomen, EGH, MP
4. Sen. (Canon) Naomi Jillo Waqo, MP
5. Sen. (Dr.) Michael Malinga Mbiti, MP
6. Sen. (Eng.) Ephraim Maina, EBS, MP
7. Sen. Justice (Rtd.) Madzayo Stewart Mwachiru, MP
8. Sen. Issa Juma Boy, MP

Secretariat of the Committee

The Committee secretariat is comprised of –

- | | |
|-----------------------|---------------------------|
| 1. Ms. Carol Kirorei | - Clerk Assistant |
| 2. Mr. David Angwenyi | - Clerk Assistant |
| 3. Ms. Regina Munyao | - Legal Counsel |
| 4. Mr. Tiyan Joseph | - Research Officer |
| 5. Ms. Njeri Manga | - Media Relations Officer |
| 6. Ms. Mary Nyawira | - Audio Officer |
| 7. Mr. Alex Mutuku | - Serjeant-At-Arms |
| 8. Mr. Godana Mamo | - Serjeant-At-Arms |


Acknowledgement

The Committee wishes to thank the Office of the Speaker and the Office of the Clerk of the Senate for the support extended to it in the consideration of the amendments proposed by the National Assembly.

Mr. Speaker Sir,

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

Signed.....





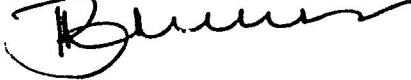

..... Date.....17/05/2022.....

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

CHAIRPERSON

MEMBERS' ADOPTION LIST

REPORT ON THE CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE COFFEE BILL, (SENATE BILLS NO. 22 OF 2020)

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

EXECUTIVE SUMMARY

The Coffee Bill, (Senate Bills No. 22 of 2020) sponsored by Sen. Peter Njeru Ndwiga, EGH, MP, was read a First Time in the Senate on Tuesday, 11th May, 2021. Subsequently, the Bill, stood committed to the Standing Committee on Agriculture, Livestock and Fisheries pursuant to standing order 134 (5) of the Senate Standing Orders.

The Senate passed the Bill on Thursday, 5th August, 2021 and it was thereafter forwarded to the National Assembly for concurrence. The National Assembly passed the Bill with amendments on Wednesday, 13th April, 2022.

During the Sitting of the Senate held on Wednesday, 4th May, 2022, the Speaker reported Messages from the National Assembly on the approval, with amendments, of the Coffee Bill, 2020. The Speaker directed the Committee to deliberate on the amendments to the Bill and report to the Senate.

At its 172nd Sitting held on Friday, 13th May, 2022, the Committee considered the amendments and made comments as contained in Chapter Two of this report. The Committee thereafter made its recommendation that the Senate rejects the amendments passed by the National Assembly to the Coffee Bill, (Senate Bills No. 22 of 2020).

1 INTRODUCTION

1.1 Background on the Coffee Bill, (Senate Bills No. 22 of 2020)

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

Part II-The Coffee Board of Kenya

Clause 2 of the Bill establishes the Coffee Board of Kenya.

The Board of Directors

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

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

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

- (a) holds a degree from a university recognized in Kenya

- (b) has three years' experience in the coffee sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

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

Functions of the Board

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

- (a) regulate and promote the development of the coffee industry;
- (b) consider applications for the issuance of permits and licences under the second schedule to this Act;
- (c) register coffee dealers;
- (d) make recommendations to the Cabinet Secretary for, and oversee the implementation of strategies, plans and policy for the coffee sector;
- (e) collect, collate and maintain a data base and disseminate information on the coffee industry;
- (f) conduct local and international coffee market intelligence and promotional activities including the application of the Kenya Coffee Mark of Origin;
- (g) establish linkages with various government agencies, the Institute and other research institutions for the development of the coffee industry;
- (h) put in place a framework for the capacity building and interaction of various players in the coffee industry;
- (i) promote the development of regional appellations for Kenyan coffee;
- (j) develop and enforce the coffee industry standards and industry code of practice in collaboration with the Kenya Bureau of Standards;
- (k) maintain and cause to be published an up to date register of coffee dealers, coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in the country; and
- (l) coordinate capacity building activities for players in the coffee value chain.

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

CEO

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

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

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

- (a) be responsible for the day to day management of the affairs of the Board;
- (b) manage the funds, property and affairs of the Board;
- (c) be responsible for the management of the staff of the Board;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Board;
- (e) cause to be prepared for the approval of the board of directors—
 - (i) the strategic plan and annual plan of the Board; and
 - (ii) the annual budget and audited accounts of the Board; and
- (f) perform such other duties as may be assigned to him or her by the board of directors.

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

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

Duties of the corporation secretary

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

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

PART III – ROLE OF COUNTY GOVERNMENTS

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

- (a) implement the National Government policy relating to coffee;
 - (b) maintain an up to date register of coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in that county;
 - (c) consider applications for the certificates, permits and licenses enumerated under the second schedule to this Act;
 - (d) enforce national and county legislation on coffee industry code of practice, policies and guidelines on corporate governance in coffee growers' institutions;
 - (e) offer extension services on coffee production and primary processing;
 - (f) inspect nurseries, pulping stations, warehouses, millers and roasters located within their respective counties;
 - (g) in collaboration with law enforcement agencies, enhance security in coffee growing areas; and
 - (h) monitor and report incidences of pests and disease outbreaks to the Board and take action in collaboration with the Board and other relevant government agencies.
- (2) A county executive committee member may impose such levies and fees as may be necessary for the registration and issuance of licences or the provision of services in accordance with the respective county legislation and such standards as may be prescribed by the Cabinet Secretary under this Act.
- (3) The Cabinet Secretary shall, in consultation with the Board and the county executive committee members prescribe standards and guidelines for the setting of levies and fees by county executive committee members under subsection (2).

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

Licensing of coffee operations

Clause 25 provides that a person shall not operate a –

- (a) pulping station or carry out hulling activities;
- (b) coffee growers' mill; or
- (c) coffee roaster unless the person has applied for, and obtained a licence from the respective county government in which the operation is to be undertaken.

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

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

PART IV – REGULATORY PROVISIONS

Registration

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

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

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

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

Licensing

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

- (a) an application for a licence or permit, in the prescribed form;
 - (b) such information as may be prescribed; and
 - (c) the prescribed fees.
- (2) A licencing authority shall consider an application within such period, not exceeding fourteen days, as may be prescribed in the respective legislation, and may –
- (a) grant an application for a licence or permit unconditionally;
 - (b) grant the application subject to conditions specified in the respective licensing legislation; or
 - (c) refuse the application.
- (3) A licensing authority shall inform the applicant of its decision under subsection (2) within fourteen days of the decision.
- (4) Where a licensing authority refuses to grant an application, the licensing authority shall, in its notification under subsection (3), specify the reasons for the refusal.
- (5) A licensing authority shall, at least thirty days before granting a new licence under this Act, give notice of the proposed grant by notice in the Gazette and in such other manner as the authority may determine.
- (6) The licensing authority shall, in issuing the notice under subsection (5)—
- (a) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;
 - (b) state the purpose and the date for which the licence is proposed to be issued; and
 - (c) invite objections to the proposed grant of licence and direct that such objections be lodged with the licensing authority within fourteen days from the date of the notice.
- (7) The licensing authority shall consider any objection submitted to it under subsection (6) and may grant the licence applied for subject to such terms and conditions as the licencing authority shall consider appropriate.
- (8) A licence issued under this Act shall not be transferable.
- (9) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the coffee or coffee product, whichever is greater, or to imprisonment for a term not exceeding two years or both.

PART V – FINANCIAL PROVISIONS

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

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

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

PART VI – COFFEE RESEARCH INSTITUTE OF KENYA

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

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

- (a) a chairperson of the board appointed by the President by notice in the Gazette;
- (b) the chairperson of the Board appointed by the President under section 6 (1) (a);
- (c) the Principal Secretary responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;
- (d) the Principal Secretary for matters relating to finance or a representative nominated by the Principal Secretary in writing;
- (e) the Secretary to the Science Commission appointed under paragraph 6 of the Second Schedule to the Science and Technology Act or a representative nominated by the Secretary in writing;
- (f) one person representing coffee growers nominated by the Cabinet Secretary;
- (g) one person nominated by Commission on University Education representing the universities nominated by the Cabinet Secretary; and

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

Clause 43 provides the functions of the Institute as follows-

- (a) advise the National and county governments on the resource requirements for coffee research;
- (b) prioritize areas for, and co-ordinate, coffee research including research in coffee diseases;
- (c) develop appropriate systems to promote balanced, diversified and sustained coffee development and to optimize coffee production through adaptive and investigative research;
- (d) disseminate, in collaboration with the Board, the Kenya Agricultural and Livestock Research Organization established under the Kenya Agricultural and Livestock Research Organization Act and other organizations, knowledge, information and application of research findings in relation to coffee; and
- (e) facilitate the use of improved production technology and establish adequate feedback systems from agricultural producers in order to achieve and maintain national self-sufficiency and export capacities in agricultural products.

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

- (a) make policy recommendations to the Cabinet Secretary on coffee research;
- (b) identify production, policy, market, processing and utilization constraints in the coffee industry and prepare short and long-term research programmes within the framework of the national agricultural research system;
- (c) identify and disseminate, in collaboration with other relevant agencies, appropriate systems of mechanization and technology options to improve coffee production and provide answers to foreseeable problems facing coffee;
- (d) collaborate with the extension and education services and other organizations, agencies and institutions including schools, technical institutions and universities, public or private, to disseminate research results and technologies;
- (e) provide grants to research institutes and persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute;
- (f) organize, design and carry out on-station and on-farm research for coffee;

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

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

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

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

PART VII – FINANCIAL PROVISIONS OF THE INSTITUTE

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

- (a) such monies or assets as may accrue to or vest in the Institute in the course of the exercise of its powers or the performance of its functions under this Act including proceeds from patents;
- (b) two and a half percent of monies collected from the sale of coffee;

(c) such monies as may be payable to the Institute pursuant to this Act or any other written law;

(d) such gifts as may be donated to the Institute; and

(e) monies from any other source granted, donated or lent to the Institute.

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

PART VIII – MISCELLANEOUS PROVISIONS

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

Clause 61 provides that the Institute's CEO may request any person to furnish the Institute with such information or to produce such documents or records as the chief executive officer deems necessary and relevant for the performance of the functions of the Organization. A person who refuses or fails, without reasonable cause to comply with such a request, or makes false statements shall be liable, on conviction, to a fine not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

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

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

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

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

Penalties

Clause 64 provides that-

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

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

(a) was director, partner or officer;

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

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

Regulations

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

(a) prescribing anything that may be prescribed under this Act; and

(b) generally for the better carrying out of the provisions of this Act.

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

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

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

The Coffee Bill, (Senate Bills No. 22 of 2020) sponsored by Sen. Peter Njeru Ndwiga, EGH, MP, was read a First Time in the Senate on Tuesday, 11th May, 2021. Subsequently, the Bill stood committed to the Standing Committee on Agriculture, Livestock and Fisheries pursuant to standing order 134 (5) of the Senate Standing Orders.

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

The Committee met virtually with a number of stakeholders and also received written submissions on the Bill through the Office of the Clerk of the Senate. The Committee considered the submissions received and tabled its Report together with amendments to the Bill in the Senate.

The Senate passed the Bill, with amendments, on Thursday, 5th August, 2022, which was thereafter sent to the National Assembly for concurrence. Pursuant to standing order 156 of the Senate Standing Orders, the Bill was forwarded to the National Assembly together with a message requesting the concurrence of the National Assembly. The National Assembly passed the Bill with amendments on Wednesday, 13th April, 2022.

During the Sitting of the Senate held on Wednesday, 4th May, 2022, the Speaker reported Messages from the National Assembly on the approval (with amendments) of the Coffee Bill, (Senate Bills No. 22 of 2020). The Speaker directed the Committee to deliberate on the amendments to the Bill and report to the Senate.

At its 172nd Sitting held on Friday, 13th May, 2022, the Committee considered the amendments passed by the National Assembly to the Bill.

2 CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE BILL

At its 172nd Sitting held on Friday, 13th May, 2022, the Committee considered the amendments passed by the National Assembly as summarized below-

CLAUSE 2

Clause 2 of the Bill is amended—

(a) by inserting the following definitions in their proper alphabetical sequence—

- No. 17 of 1989.
- “auction levy” means such fee per sixty-kilogram bag of coffee sold at the Exchange as shall be determined by the Cabinet Secretary responsible for matters relating to finance payable by coffee growers to the Exchange;
- “Authority” means the Capital Markets Authority established by the Capital Markets Authority Act;
- “buni” means coffee dried in the fruit or cherry but does not include hulled buni, also referred to as clean coffee, heavy buni or light buni;
- “coffee plantation” means any large area of land or group of contiguous areas of land under the same management on which coffee is grown and produced for sale;
- “co-operative society” means a co-operative society registered under the Co-operative Societies Act, Cap. 490;
- “Fund” means the Coffee Stabilization Fund established under section 58A;
- “grower miller” means a grower who mills own parchment or buni or its members’ coffee and includes an individual farmer, co-operative society, union, association, estate or any other legal entity;
- “large scale coffee grower” means a person cultivating coffee in a parcel of land above fifty acres;
- “medium scale coffee grower” means a person cultivating coffee in a parcel of land of between ten and fifty acres;
- “small scale coffee grower” means a grower cultivating coffee in a parcel of land of less than ten acres;
- “secondary market” means a post-auction transaction of clean coffee between a licensed buyer or roaster and any other party for the purpose of local sale or export;
- “secondary processing” means parchment de-husking, polishing, grading and packaging of clean coffee beans;

“smallholder” means a grower cultivating coffee in a small parcel or in small parcels of land and who does not possess his or her own pulping station;

(b) by deleting the definition “direct settlement system”;

(c) by amending the definition “estate” by deleting the word “five” appearing immediately after the words “not being less than” and substituting therefor the word “ten”

Resolution: Not agreed to.

CLAUSE 3

Clause 3 of the Bill is amended—

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

“(b) provide a regulatory framework for the registration, licensing, issuance of permits, issuance of certificates, production, processing, quality assurance, coffee trading, marketing and credit finance;

(ba) provide for enforcement of the regulatory framework and coffee standards in the subsector;

(bc) provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships;

(bd) promote farmer-based associations or platforms for representation of farmers’ interests;

(be) provide a framework for the establishment of a Coffee Stabilization Fund;”

Resolution: Agreed to.

CLAUSE 6

Clause 6 of the Bill amended by inserting the following new paragraphs immediately after paragraph (d)—

“(da) determine the provisions to be made for capita and recurrent expenditure and for the reserves of the Board;

(db) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate in furtherance of the purpose for which the Board is established;”

Resolution: The Committee agreed to the proposed clause (da) but rejected the proposed clause (db) as this is already provided for under clause 6(2) of the Bill.

NEW CLAUSE

THAT, the Bill is amended by inserting the following new Clause immediately after Clause 6—

Authority to raise or borrow money.

6A. The Cabinet Secretary may, after consultation with the Cabinet Secretary responsible for finance, authorize the Board to raise or borrow such sums of money to finance its operations as it may think fit and the Board may secure the repayment of such sums.

Resolution: Agreed to.

Clause 9 of the Bill is amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) holds a relevant university degree from a recognized university in Kenya.”

Resolution: Agreed to.

CLAUSE 7

Clause 7 of the Bill is amended —

(a) in sub clause (1) —

(i) by inserting the following new paragraphs immediately after paragraph (c) —

“(ca) the Principal Secretary responsible for co-operatives or a representative nominated by the Principal Secretary in writing;

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

(ii) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) one person nominated by the umbrella body representing large scale coffee growers;”

(iii) by deleting paragraph (h) and substituting therefor the following new paragraph—

“(h) two persons of the opposite gender elected by small-scale coffee growers through their unions;”

(b) in sub clause (2) by deleting the words “subsection (1) (d), (e), (f) and (g)” and substituting therefor the words “subsection (1) (d), (e), (f), (g) and (h)”.

Resolution: Agreed to.

CLAUSE 8

Clause 8 of the Bill is amended by deleting clause 8 and substituting therefor the following new clause-

Qualification for appointment.	<p>8. A person shall be qualified for appointment as a member of the Board if that person-</p> <ul style="list-style-type: none">(a) in the case of a person appointed under section 7 (1) (a) (e) and (f), holds a degree from a university recognized in Kenya;(b) in the case of a person appointed under section 7 (1) (d), (g) and (h), holds a Kenya Certificate of Secondary Education or its equivalent;(c) has three years' experience in the coffee sector; and(d) meets the requirements of Chapter Six of the Constitution.
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Resolution: Agreed to.

CLAUSE 9

Clause 9 of the Bill is amended –

- (a) by renumbering the existing provision as subsection (1);
- (b) by deleting the words “section 6 (1) (d), (e), (f) and (g)” and substituting therefor the words “section 7 (1) (d), (e), (f), (g) and (h)”;
- (c) by inserting the following new subsection immediately after subsection (1) –
“(2) The persons appointed under section 7 (1) (a), (d), (e), (f), (g) and (h) shall be appointed at different times but not more than six months shall lapse between one appointment and the other in the case of a vacancy in the Board”.

Resolution: Agreed to.

CLAUSE 11

Clause 11 of the Bill is amended in subclause (1) by deleting paragraph (c).

Resolution: Agreed to.

NEW CLAUSE 17A

The Bill be amended by inserting the following new Clause immediately after Clause 17—

Corporation Secretary. **17A.** (1) There shall be a Corporation Secretary who shall be the Secretary to the Board.

(2) The terms and conditions of service of the Corporation Secretary shall be determined by the Board.

Resolution: Not agreed to.

CLAUSE 25

Clause 25 of the Bill be deleted.

Resolution: Not agreed to.

CLAUSE 26

Clause 26 of the Bill be amended by deleting Clause 26 and substituting therefor the following new clause—

Licenses issued by the Board. **26.** The following licences shall be issued by the Board—

(a) a coffee buyer's licence, authorizing the holder to—

(i) buy or deal in clean coffee produced in Kenya or to import clean coffee from outside Kenya, and to process, in Kenya for local sale or export, coffee of any country of origin; and

(ii) deal in roasting, blending and packaging coffee for the local market or for export.

(b) a commercial coffee miller's licence authorizing the holder to conduct the business of milling and marketing of coffee;

- (c) a grower miller's licence, authorizing the grower to mill and market his or her own coffee;
- (d) a warehouseperson's licence, authorizing the holder to conduct the business of warehousing coffee;
- (e) independent cupping laboratory licence, authorizing the holder to offer coffee quality analysis services;
- (f) a coffee roaster's licence authorizing the holder to buy at the auction or secondary market, roast or grind and package clean coffee for local sale or export and for importing clean coffee for value addition either for local sale or for export.
- (g) coffee liqueur's licence;
- (h) processed coffee import permit;
- (i) clean coffee movement permit for exports;

NEW CLAUSES

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 26—

Licenses issued by county governments.

26A. (1) The following licences shall be issued by the respective county government—

- (a) pulping station licence authorizing the holder to operate a pulping station and may undertake hulling;
- (b) coffee nursery certificate;
- (c) warehouse licence;
- (d) parchment permit from the county of origin; and

(e) clean coffee movement permit from the county of origin.

(2) A person intending to carry out any of the activities listed in section 26A shall apply for and obtain a licence or permit from the respective county government in which the operation is undertaken.

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

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

Registration by the Board.

26B. (1) The Board shall register warehousepersons, coffee buyers, commercial coffee millers, grower millers, independent cupping laboratories, coffee roasters, coffee liqueurs, processed coffee importers, clean coffee importers, marketing agents, coffee bags suppliers, and certification companies.

(2) The Board shall issue a certificate of registration upon registration of the applicants.

(3) The Board shall not charge any fee for the registration of an applicant under subsection (1).

(4) Registration of the players under this section shall only be done once.

(5) The Board shall maintain a register of all registered players and share the register with the respective county government.

(6) All registered players shall complete and submit to the Board annual returns as shall be specified in regulations under this Act.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration by the county government.

26C. (1) A person shall not carry out the business of a pulping station, coffee nursery operator, parchment movement from one county to another, warehouse or clean coffee movement from one county to another unless such person is registered by the respective county government in which the business is undertaken.

(2) A county government shall not charge any fees for the registration of an applicant under subsection (1).

(3) Each county government shall keep and maintain the register under subsection (1) for statistical purposes.

(4) A register under subsection (3) shall include—

(a) the name of the pulping station operator, coffee nursery operator, warehouse, parchment mover or clean coffee mover;

(b) the location, size and parcel number of the land on which the business is located; and

(c) such other information as the Board may prescribe.

(5) Each county government shall submit to the Board a copy of the register under subsection (3).

Registration by co-operative societies.

26D. (1) A smallholder coffee grower shall have the freedom to register with the co-operative society, association or company to which he or she delivers coffee.

(2) The directors of a coffee co-operative shall serve for a maximum period of two three-year terms.

No. 12 of 1997.

(3) In electing directors under this section, a co-operative society shall ensure that not more than two thirds of the members are of one gender and that nominees for the Board meet the requirements of Chapter Six of the Constitution.

(4) Notwithstanding the provisions of any other law, every coffee factory may, by resolution of its members in the Annual General Meeting, apply for registration as a co-operative society under the Co-operatives Societies Act.

(5) Every producer co-operative society, association or company, coffee plantation and nursery operator shall register with the county government by supplying such particulars as shall be prescribed in Regulations made under this Act.

(6) Where a person starts growing coffee at any time after the commencement of this Act, such person shall, within six months register with—

(a) a co-operative society, association or company in accordance with subsection (1) if such a person is a small scale grower; or

(b) his or her respective county government in accordance with provisions of this Act if such a person is a plantation grower or a co-operative society.

(7) The co-operative society, association, company and the county government shall each maintain a register for the purpose of this section and shall record the particulars supplied in accordance with this section.

(8) The county government shall share the data captured in this section with the Board on an annual basis.

(9) Where a co-operative society, association, company or the county government has

reasonable cause to believe that a person whose particulars are recorded has ceased to be a grower, it may, after giving that person written notice by registered post of its intention to do so, remove the name of such person from the register.

(10) The register referred to in subsection (7) shall be proof that a person is a registered coffee grower and a co-operative society shall furnish the county government with particulars of all registered coffee growers in such manner as the county government may prescribe.

Prohibition of certain acts without a licence.

26E. (1) No person shall buy, sell, mill, warehouse, export or otherwise deal in or transact any business in coffee unless he or she is a holder of a current licence issued by the licensing authority for that purpose.

(2) This section shall not apply to—

(a) any person who purchases coffee for consumption or for planting on his or her land;

(b) any grower who mills coffee produced by such grower.

(3) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any licence granted commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(4) Where a person is convicted of an offence under this section, the court may order that any licence issued to such person be suspended for the subsequent coffee year or for such period as the Cabinet Secretary may, by Regulations, prescribe.

Resolution: Not agreed to.

CLAUSE 34

Clause 34 of the Bill be amended in subclause (2) by deleting the word "sub-regulation" and substituting therefor the word "subsection".

Resolution: Agreed to.

CLAUSE 35

Clause 35 of the Bill be amended by deleting Clause 35 and substituting therefor the following new Clause—

Revocation or alteration of
a licence or permit.

35. A licensing authority may revoke, alter or suspend a licence or permit issued under this Act if in its opinion—

- (a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence or permit holder or any employee of the licence or permit holder; or
- (b) a condition of the licence or permit has been contravened or not complied with.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 35—

Surrender of licence or
permit.

35A. (1) The holder of a licence or permit which is revoked shall immediately surrender it to the Board.

(2) A licence or permit holder may at any time surrender the licence or permit to the Board and the licence or permit shall cease to have effect immediately.

Resolution: Agreed to.

CLAUSE 37

Clause 37 of the Bill be amended by deleting Clause 37 and substituting therefor the following new Clause—

Appeals to the High Court. **37.** (1) An applicant for or holder of a licence or permit who is aggrieved by a decision of the

licensing authority may appeal to the High Court on or in respect of—

(a) the grant, refusal, renewal, variation or revocation; or

(b) the conditions imposed on the grant, renewal or variation, of a licence or permit.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

Resolution: Agreed to.

CLAUSE 38

Clause 38 of the Bill be deleted.

Resolution: Not agreed to.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 42—

Branding and geographical indications.

42A. The Board shall promote and register all coffees produced in Kenya in accordance with geographical or regional markers styled as 'Authentic Mark of Origin.'

Coffee development.

42B. (1) The Cabinet Secretary may, on the advice of the Board, make policies and take steps to ensure that the coffee farmers receive appropriate technologies, credit, farm inputs and marketing support.

(2) The Board shall conduct training programs aimed at strengthening the capacities of county officers in terms of knowledge and skills in coffee production, processing technologies and marketing for different types of coffee.

(3) The Board shall, in consultation with the relevant standards bodies, coffee stakeholders, county governments and research institutions,

develop the Kenya Coffee Production Standards and formulate a binding Code of Good Coffee Practice.

(4) Where a farmer has entered into an agreement with an organization representing the interest of such farmer, the Board and every dealer in coffee shall respect and enable the carrying out of the terms of such agreement, including the remission to such organization of any contributions that may, pursuant to such agreement, be deductible from the farmer.

Primary processing of coffee

42C. (1) The primary processing of coffee shall be carried out at a pulping station or by a grower's co-operative society or other association of growers under a pulping station licence.

(2) The pulping station licence may include authority to undertake hulling of own parchment or buni.

(3) The huller shall be registered with the county government and such registration information shared with the Board.

Appointment of millers.

42D. (1) Coffee milling shall only be conducted at premises that are specified under the licence issued by the Board.

(2) Every coffee factory shall, by resolution of its members in Annual General Meeting, designate a registered miller for its parchment coffee.

(3) The manager of every coffee factory shall, within two months of the end of the crop year, call a meeting of outgrowers to choose the registered miller referred to in subsection (2) from amongst at least three millers invited to make representations to the outgrowers.

(4) The county executive committee member responsible for coffee shall attend or designate a representative to attend the meeting referred to subsection (3).

(5) Each registered miller participating in the meeting to choose a miller shall make all disclosures necessary to enable farmers make an informed decision.

(6) A miller shall be a bailee of all parchment received for milling and shall be responsible for any loss or damage to the coffee in his or her custody.

(7) The milling losses allowable under this section shall be capped at nineteen percent of coffee milled.

(8) The Cabinet Secretary may, by Regulations and upon submission of empirical evidence, vary the milling losses allowable under subsection (7).

(9) Every resolution made under this section shall, within fourteen days, be filed with the Board and copied to the relevant department of the county government and to the Commissioner of Co-operatives.

(10) Any person involved in the management of a coffee factory who contravenes the provisions of this section commits an offence.

(11) For the better carrying out of the provisions of this section, the Cabinet Secretary may by regulations, prescribe the manner for the appointment and remuneration of millers and for composition and attendance at the annual general meetings at which such millers are appointed.

Resolution: Agreed to.

CLAUSE 45

Clause 45 of the Bill be amended by—

- (a) in subclause (2) by deleting the words “and the direct settlement system provider”;
- (b) by deleting subclause (8).

Resolution: Not agreed to.

CLAUSE 46

Clause 46 of the Bill deleted and substituted therefor with the following new clause—

Coffee trading.

46. (1) Kenyan coffee shall be offered for sale through—

(a) auction in the Exchange; or

(b) direct sales.

(2) All direct coffee sales shall be subject to price competition at the Exchange whereby the direct sale price shall serve as the reserve price.

(3) Where the coffee referred to in subsection (2) fetches a higher price at the Exchange than the direct sale price offered, the prospective direct sale buyer shall have the right of first refusal to buy the coffee at the Exchange price.

(4) Despite subsection (3), if the prospective direct sales buyer refuses to buy the coffee at the Exchange price, the coffee shall be sold to the person who makes the best offer above the reserve price at the Exchange.

(5) A buyer, a roaster, or a grower miller licensed by the relevant licensing authority, or a broker appointed by the grower, may trade at an exchange in accordance with this Act and any other laws governing trade in an exchange.

(6) A holder of a miller’s marketing licence commits an offence if he or she participates by himself or herself or by his or her agent in the buying of coffee.

Resolution: Agreed to.

CLAUSE 48

Clause 48 of the Bill be amended by deleting Clause 48 of the Bill and substituting therefor the following new Clause—

Application as coffee exchange. **48.** (1) A person shall not carry on the business of a coffee exchange unless the person has applied for approval and has been licensed as a Coffee Exchange by the Authority in accordance with the Capital Markets Act.

Cap. 485A.

(2) The Exchange shall be a body corporate, registered under the Companies Act.

No. 17 of 2015.

(3) The functions of the Exchange shall be to—

- (a) manage the auction floor, the central sample room and the information registry;
- (b) maintain records relating to coffee sales, coffee samples and sweepings;
- (c) avail sales catalogues to interested parties in accordance with the Capital Markets Act; and
- (d) carry out such other function as the Cabinet Secretary for the time being responsible for matters relating to finance may prescribe.

(4) The funds of the Exchange shall consist of—

- (a) auction levy;

- (b) registration fees payable by a coffee buyer, a roaster, a grower miller or broker;
- (c) government grants and donations made to the Exchange;
- (d) any interest from fixed deposits;
- (e) monies from a source approved by the Exchange; and
- (f) sample fee.

Resolution: Not agreed to.

CLAUSE 54

Clause 54 of the Bill be amended by—

- (a) numbering the existing provision as subclause (1);
- (b) inserting the following subclauses immediately after subclause (1)—

“(2) In this section, “anti-competitive conduct” means any act, conduct, practice or behaviour by the Exchange organizer or any other licensee operating at the Exchange, individually or in concert with others that directly or indirectly impedes, frustrates, undermines or reduces competition at the Exchange.

(3) For the purpose of subsection (2), “anti-competitive conduct” includes but is not limited to margin squeeze, market sharing, transfer pricing, abuse of dominance, preferential contracts that give advantageous terms to affiliates and partners relative to competitors, imposition of unfair purchase or selling conditions or other, predatory practices, application of dissimilar conditions to equivalent transactions with other trading parties and other conduct that undermine competitive operations of the Exchange.

(4) The Cabinet Secretary for the time being responsible for matters relating to finance may make regulations for the implementation of this section.”

Resolution: Agreed to.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 54—

Classification of coffee.

54A. (1) Where a miller draws a sample of coffee for the purpose of grading the coffee, the miller shall within seven days of such grading notify the grower to whom the coffee belongs of the classification of the coffee.

(2) Any grower who is aggrieved by classification of his or her coffee under subsection (1) may, within fourteen days of the notification, appeal against such classification to the Board.

Promotion of coffee.

54B. (1) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, put in place programmes for the establishment of special economic zones in the coffee sub-sector.

(2) The Board may co-ordinate coffee stakeholders, including county governments, growers and buyers at the national and international events for the purpose of promoting Kenya coffee.

(3) A county government in the coffee growing areas may, separately or in unison with the Board, support coffee growers' participation in local and international coffee promotion and marketing events.

No lending by millers and marketing agents.

54C. (1) A coffee miller and a marketing agent shall not lend to farmers on interest.

(2) A miller or marketing agent who contravenes the provision of subsection (1) commits an offence

(3) Any miller or marketing agent convicted of an offence under subsection (2) shall have his or her licence revoked or

suspended for such duration as the Cabinet Secretary may, by regulations, determine.

Loans against growers' assets.

54D. (1) The interest rate on borrowing by factory management against growers' assets held in trust by the coffee factories and coffee co-operative societies shall be capped at five per cent per annum.

(2) A factory or society shall not contract any loans or advances under subsection (1) except with the support of a resolution in an Annual General Meeting passed by a majority of the growers to that effect.

(3) Any factory or society that contravenes the provisions of subsection (1) commits an offence and any loans borrowed in contravention of this provision shall be statutorily converted into personal loans of the officials of the offending factory or society.

(4) Nothing in this section shall be interpreted as prohibiting coffee farmers from directly borrowing money from banks or any government established funds against their deliveries of cherry, parchment and clean coffee.

Resolution: Not agreed to. The Committee further resolved that the Council of County Governors be included in the consultation in New Clause 54(B) (1).

CLAUSE 58

Clause 58 of the Bill be amended by—

(a) inserting the following paragraph immediately after the introductory statement—

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

(b) renumbering the existing paragraphs (a), (b), (c), (d), (e) as (b), (c), (d), (e), (f), respectively.

Resolution: Agreed to.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after Clause 58—

Coffee Stabilization Fund. 58A. (1) There is established a Fund to be known as the Coffee Stabilization Fund which shall be managed by the Board.

(2) The Fund shall consist of—

(a) monies appropriated by the National Assembly;

(b) monies from any source approved by the Board;

(c) grants and donations made to the Board.

(3) The Board shall apply the monies received into the Fund to—

(a) income and price stabilization; and

(b) any investments that further the objective of stabilizing the prices paid to farmers.

Resolution: Agreed to.

CLAUSE 63

The Bill be amended by deleting Clause 63 and substituting therefor the following new Clause—

Financial Year of the Board. 63. The financial year of the Board shall be the period of twelve months ending on the 30th June of every year.

Resolution: Agreed to.

CLAUSE 67

Clause 67 of the Bill be amended—

(a) in subclause (1)

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

“(f) one person nominated by the umbrella body of estate coffee growers;”

(b) by deleting subclause (3) and substituting therefor the following new subclause—

“(3) A person is qualified for appointment as chairperson of the Board of the Institute if that person holds a master’s degree in agriculture, crops science, or other relevant degree from a university recognized in Kenya.”

Resolution: Agreed to.

CLAUSE 70

Clause 70 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (e)—

“(ea) issue certified coffee seeds or seedlings for multiplication in coffee nurseries to coffee growers or for export;”

Resolution: Not agreed to.

CLAUSE 74

Clause 74 of the Bill amended in subclause (3) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) holds a master’s degree in agriculture or crops science from a university recognized in Kenya;”

Resolution: Agreed to.

CLAUSE 80

Clause 80 of the Bill amended by—

(a) inserting the following paragraph immediately after the introductory statement—

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

(b) renumbering the existing paragraphs (a), (b), (c), (d), (e) as (b), (c), (d), (e), (f), respectively.

Resolution: Agreed to.

CLAUSE 84

THAT, Clause 84 of the Bill amended in subclause (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) a statement showing in detail the assets and liabilities of the Institute;”

Resolution: Agreed to.

CLAUSE 85

Clause 85 of the Bill be amended—

- (a) in subclause (1) by deleting the words “balance sheet and such other statements of accounts” and substituting therefor the words “statements of account”;
- (b) in subclause (2) by deleting the words “balance sheet and statements” and substituting therefor the words “statements of account”;
- (c) in subclause (3) by deleting the words “balance sheet and statements” and substituting therefor the words “statements of account”;

Resolution: Agreed to.

NEW CLAUSE

The Bill be amended by inserting the following new Clause immediately after Clause 87—

Conflict of laws. **87A.** If any conflict arises between the provisions of this Act and any other Act with respect to the regulation of coffee, the provisions of this Act shall prevail.

Resolution: Not agreed to.

NEW CLAUSE

The Bill Bill amended by inserting the following new Clause immediately after Clause 91—

Offences and penalties. **91A.** (1) A person commits an offence if the person—

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

(2) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years, or to both.

(3) A person who is convicted of an offence under this Act shall in addition to any other penalty have his or her licence

or registration suspended or cancelled for such a period as the Board may decide.

Resolution: Agreed to.

CLAUSE 92

The Bill be amended by deleting Clause 92 and substituting the following new Clause—

General
penalty.

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

(2) Where the person convicted under this section is also a licence or permit holder under this Act, the licensing authority may, in addition, cancel such person's licence.

Resolution: Agreed to.

NEW CLAUSE

The Bill amended by inserting the following new Clause immediately after Clause 92—

Offences
relating to
body
body
corporate.

92A. If an offence under this Act is committed by a body corporate, any other association of individuals or cooperative society, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

- (a) the act or omission constituting the offence took place without the person's knowledge; or
- (b) the person took reasonable steps to prevent the commission of the offence.

Resolution: Agreed to.

CLAUSE 94

The Bill be amended by deleting Clause 94 and substituting therefor the following new Part—

PART XIA- PROVISIONS ON DELEGATED LEGISLATION

Regulations. **94.** (1) The Cabinet Secretary may, in consultation with the Board and county governments, make Regulations—

- (a) prescribing anything that may be prescribed under this Act; and

(b) generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make Regulations to provide for—

- (a) the regulation of the processing, importation and exportation of coffee and coffee products;
- (b) the forms to be used in the application for registration, licensing, permits, contracts and related activities;
- (c) the process of application for registration, licensing and related activities;
- (d) any fee or levy which may be charged for anything done under this Act;
- (e) the regulation and enforcement of contracts between growers, processors and other players in the coffee industry;
- (f) the process of nomination of members to the Board
- (g) the conditions for the issuance of certificates, licenses and permits under this Act;
- (h) the trade, storage, bulking, packing and roasting of coffee;
- (i) the regulation of nursery operations, pulping, milling, warehousing and transportation of coffee;
- (j) value addition of coffee exports and imports;
- (k) the grading and classification of coffee;
- (l) the imposition of costs charged by service providers along the value chain and payment of coffee sales proceeds to growers and their service providers; and
- (m) anything required to be prescribed under this Act;

(3) For the purposes of Article 94(6) of the Constitution—

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2013

- (a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;
- (b) the principles and standards applicable to the regulations made under this section are those

set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Resolution: Agreed to.

CLAUSE 96

The Bill amended by deleting Clause 96 and substituting therefor the following new Clause—

Transfer of assets and liabilities. **96.** All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Coffee Directorate of the Agriculture and Food Authority and the Coffee Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Institute, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.

Resolution: Not agreed to.

CLAUSE 102

The Bill be amended by deleting Clause 102 and substituting therefor the following new Clause—

Consequential amendments. **102.** The Crops Act is amended —
No. 16 of
2013.

- (a) in section 14(1) by deleting paragraph (a); and
- (b) in Part 1 of the First Schedule by deleting the expression “Coffee.....*Coffea* spp.”

Resolution: Agreed to.

NEW CLAUSE

The Bill be amended by inserting the following new Clause immediately after Clause 102—

Consequential amendments. **102A.** The Co-operative Societies Act is amended —
No. 12 of
1997.

- (a) in section 43—

- (i) by numbering the existing provision as subsection (1);
 - (ii) by inserting the following new subsection—
“(2) Despite subsection (1), a coffee cooperative society shall not lend to farmers on interest.”
- (b) In section 44—
- (i) by numbering the existing provision as subsection (1);
 - (ii) by inserting the following new subsections—
“(2) The interest rate on borrowing by factory management against growers’ assets held in trust by coffee co-operative societies shall be capped at five per cent per annum.
(3) A factory or society shall not contract any loans or advances under subsection (1) except with the support of a resolution in an Annual General Meeting passed by a majority of the growers to that effect.”

Resolution: Agreed to.

SECOND SCHEDULE

The Bill amended by deleting the Second Schedule and substituting therefor the following new Schedule—

SECOND SCHEDULE (s. 11, s. 23, s. 26, s. 26A, s.27, s. 28, s. 32, s.67)

LICENCE, PERMIT OR CERTIFICATE

No.	Type of Licence/Permit or Certificate	Issuing Authority
1.	Coffee buyer’s licence	Board
2.	Independent cupping laboratory licence	Board
3.	Warehouseperson’s licence	Board
4.	Coffee liqueur’s licence	Board
5.	Processed coffee import permit	Board
6.	Clean coffee movement permit for exports	Board
7.	Commercial coffee miller’s licence	Board
8.	Coffee roaster’s licence	Board
9.	Grower miller’s licence	Board
10.	Marketing agent licence	Board
11.	Coffee nursery certificate	County government
12.	Warehouse licence	County government
13.	Pulping station licence	County government
14.	Parchment permit from the county of origin	County government

15. Clean coffee movement permit from the county of origin County government
 16. Coffee exchange licence Capital Markets Authority
 17. Broker's licence Capital Markets Authority
- Resolution:** Not agreed to.

3 COMMITTEE RECOMMENDATIONS

Pursuant to standing order 159 (4) of the Senate Standing Orders, the Committee recommends that the Senate rejects the proposed amendments passed by the National Assembly to the Coffee Bill, (Senate Bills No. 22 of 2020).

ANNEX 1

Committee Minutes



MINUTES OF THE 172ND SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON FRIDAY, 13TH MAY, 2022, AT 12.00 P.M. ON THE ZOOM ONLINE MEETING PLATFORM.

PRESENT

- | | | |
|--------------------------------------|---|-------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Sen. Enoch Wambua, MP | - | Vice- Chairperson |
| 3. Sen. (Canon) Naomi Jillo Waqo, MP | | |
| 4. Sen. Issa Juma Boy, MP | | |

ABSENT WITH APOLOGY

1. Sen. (Eng.) Ephraim Maina, EBS, MP
2. Sen. Kipchumba Murkomen, EGH, MP
3. Sen. Justice (Rtd) Stewart Madzayo, MP
4. Sen. (Dr.) Michael Mbito, MP

SECRETARIAT

- | | | |
|-----------------------|---|---|
| 1. Ms. Carol Kirorei | - | Clerk Assistant |
| 2. Mr. David Angwenyi | - | Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Happy | - | Fiscal analyst |
| 5. Mr. Tiyan Joseph | - | Researcher |
| 6. Mr. Alex Mutuku | - | Sargent at arms |

MIN. NO. 79/2022

PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.00 p.m. followed by a word of prayer.

MIN. NO. 80/2022

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. (Canon) Naomi Jillo Waqo, MP and seconded by Sen Enoch Wambua, MP -

1. Preliminaries
 - a) *Prayer*
 - b) *Adoption of the Agenda*

2. Consideration of the National Assembly amendments to the Coffee Bill, (Senate Bills No. 22 of 2020)
3. Any other business.
4. Date of Next Meeting
5. Adjournment.

MIN. NO. 81/2022

**CONSIDERATION OF THE NATIONAL ASSEMBLY
AMENDMENTS TO THE COFFEE BILL, (SENATE
BILLS NO. 22 OF 2020)**

The Legal Counsel presented the proposed Committee stage amendments to the Coffee Bill, (Senate Bills No. 22 of 2020) as follows-

1. Clause 2

Proposal: THAT Clause 2 of the Bill is amended—

(d) by inserting the following definitions in their proper alphabetical sequence—

“auction levy” means such fee per sixty-kilogram bag of coffee sold at the Exchange as shall be determined by the Cabinet Secretary responsible for matters relating to finance payable by coffee growers to the Exchange;

No. 17 of 1989. “Authority” means the Capital Markets Authority established by the Capital Markets Authority Act;

“buni” means coffee dried in the fruit or cherry but does not include hulled buni, also referred to as clean coffee, heavy buni or light buni;

“coffee plantation” means any large area of land or group of contiguous areas of land under the same management on which coffee is grown and produced for sale;

“co-operative society” means a co-operative society registered under the Co-operative Societies Act, Cap. 490;

“Fund” means the Coffee Stabilization Fund established under section 58A;

“grower miller” means a grower who mills own parchment or buni or its members’ coffee and includes an individual farmer, co-operative society, union, association, estate or any other legal entity;

“large scale coffee grower” means a person cultivating coffee in a parcel of land above fifty acres;

“medium scale coffee grower” means a person cultivating coffee in a parcel of land of between ten and fifty acres;

“small scale coffee grower” means a grower cultivating coffee in a parcel of land of less than ten acres;

“secondary market” means a post-auction transaction of clean coffee between a licensed buyer or roaster and any other party for the purpose of local sale or export;

“secondary processing” means parchment de-husking, polishing, grading and packaging of clean coffee beans;

“smallholder” means a grower cultivating coffee in a small parcel or in small parcels of land and who does not possess his or her own pulping station;

(e) by deleting the definition “direct settlement system”;

(f) by amending the definition “estate” by deleting the word “five” appearing immediately after the words “not being less than” and substituting therefor the word “ten”

Resolution: Not agreed to.

2. Clause 3

Proposal: THAT Clause 3 of the Bill is amended—

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

“(b) provide a regulatory framework for the registration, licensing, issuance of permits, issuance of certificates, production, processing, quality assurance, coffee trading, marketing and credit finance;

(ba) provide for enforcement of the regulatory framework and coffee standards in the subsector;

(bc) provide a framework for interlinkages amongst state agencies, regulators and players along the coffee value chain including the public private partnerships;

(bd) promote farmer-based associations or platforms for representation of farmers’ interests;

(be) provide a framework for the establishment of a Coffee Stabilization Fund;”

Resolution: Agreed to.

3. Clause 6

Proposal: THAT Clause 6 of the Bill amended by inserting the following new paragraphs immediately after paragraph (d)—

“(da) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;

(db) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate in furtherance of the purpose for which the Board is established;”

Resolution: Not agreed to as this is already provided for under clause 6(2) of the Bill.

4. Clause 6

Proposal: THAT, the Bill is amended by inserting the following new Clause immediately after Clause 6—

Authority to raise or borrow money.

6A. The Cabinet Secretary may, after consultation with the Cabinet Secretary responsible for finance, authorize the Board to raise or borrow such sums of money to finance its operations as it may think fit and the Board may secure the repayment of such sums.

Resolution: Not agreed to.

5. Clause 7

Proposal: THAT the Bill be amended in Clause 7 as follows—

(c) in sub clause (1) –

(iv) by inserting the following new paragraphs immediately after paragraph (c) –

“(ca) the Principal Secretary responsible for co-operatives or a representative nominated by the Principal Secretary in writing;

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

(v) by deleting paragraph (e) and substituting therefor the following new paragraph-

“(e) one person nominated by the umbrella body representing large scale coffee growers;”

(vi) by deleting paragraph (h) and substituting therefor the following new paragraph-

“(h) two persons of the opposite gender elected by small-scale coffee growers through their unions;”

(d) in sub clause (2) by deleting the words “subsection (1) (d), (e), (f) and (g)” and substituting therefor the words “subsection (1) (d), (e), (f), (g) and (h)”.

Resolution: Agreed to.

5. Clause 8

Proposal: That Clause 8 of the Bill is amended by deleting clause 8 and substituting therefor the following new clause-

- Qualification for appointment.
- 8.** A person shall be qualified for appointment as a member of the Board if that person-
- (e) in the case of a person appointed under section 7 (1) (a) (e) and (f), holds a degree from a university recognized in Kenya;
 - (f) in the case of a person appointed under section 7 (1) (d), (g) and (h), holds a Kenya Certificate of Secondary Education or its equivalent;
 - (g) has three years' experience in the coffee sector; and
 - (h) meets the requirements of Chapter Six of the Constitution.

Resolution: Agreed to.

6. Clause 9

Proposal: That Clause 9 of the Bill is amended –

- (d) by renumbering the existing provision as subsection (1);
- (e) by deleting the words “section 6 (1) (d), (e), (f) and (g)” and substituting therefor the words “section 7 (1) (d), (e), (f), (g) and (h)”;
- (f) by inserting the following new subsection immediately after subsection (1) –
“(2) The persons appointed under section 7 (1) (a), (d), (e), (f), (g) and (h) shall be appointed at different times but not more than six months shall lapse between one appointment and the other in the case of a vacancy in the Board”.

Resolution: Agreed to.

7. Clause 9

Proposal: THAT, Clause 9 of the Bill is amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph–
“(a) holds a relevant university degree from a recognized university in Kenya.”

Resolution: Not agreed to.

8. Clause 11

Proposal: THAT Clause 11 of the Bill be amended in subclause (1) by deleting paragraph (c).

Resolution: Agreed to.

9. New Clause 17A

Proposal: THAT the Bill be amended by inserting the following new Clause immediately after Clause 17—

Corporation Secretary. 17A. (1) There shall be a Corporation Secretary who shall be the Secretary to the Board.

(2) The terms and conditions of service of the Corporation Secretary shall be determined by the Board.

Resolution: Not agreed to.

10. Clause 25

Proposal: THAT Clause 25 of the Bill be deleted.

Resolution: Not agreed to.

11. Clause 26

Proposal: THAT Clause 26 of the Bill be amended by deleting Clause 26 and substituting therefor the following new clause—

Licenses issued by the Board. 26. The following licences shall be issued by the Board—

(j) a coffee buyer's licence, authorizing the holder to—

(i) buy or deal in clean coffee produced in Kenya or to import clean coffee from outside Kenya, and to process, in Kenya for local sale or export, coffee of any country of origin; and

(ii) deal in roasting, blending and packaging coffee for the local market or for export.

(k) a commercial coffee miller's licence authorizing the holder to conduct the business of milling and marketing of coffee;

(l) a grower miller's licence, authorizing the grower to mill and market his or her own coffee;

(m) a warehouseperson's licence, authorizing the holder to conduct the business of warehousing coffee;

- (n) independent cupping laboratory licence, authorizing the holder to offer coffee quality analysis services;
- (o) a coffee roaster's licence authorizing the holder to buy at the auction or secondary market, roast or grind and package clean coffee for local sale or export and for importing clean coffee for value addition either for local sale or for export.
- (p) coffee liqueur's licence;
- (q) processed coffee import permit;
- (r) clean coffee movement permit for exports;

Resolution: Agreed to.

12. New Clause 26A

Proposal: THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 26—

NEW CLAUSE 26A

Licenses issued by county governments.

26A. (1) The following licences shall be issued by the respective county government—

- (f) pulping station licence authorizing the holder to operate a pulping station and may undertake hulling;
- (g) coffee nursery certificate;
- (h) warehouse licence;
- (i) parchment permit from the county of origin; and
- (j) clean coffee movement permit from the county of origin.

(2) A person intending to carry out any of the activities listed in section 26A shall apply for and obtain a licence or permit from the respective county government in which the operation is undertaken.

(3) An applicant for a licence or permit under subsection (1) shall submit an application in the

prescribed form together with the prescribed fees to the respective county executive committee member for consideration.

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

Resolution: Agreed to.

13. New Clause 26B

Proposal: THAT clause 26B of the Bill be amended in the Registration Board-

NEW CLAUSE 26B

Registration by the Board.

26B. (1) The Board shall register warehousepersons, coffee buyers, commercial coffee millers, grower millers, independent cupping laboratories, coffee roasters, coffee liqueurs, processed coffee importers, clean coffee importers, marketing agents, coffee bags suppliers, and certification companies.

(2) The Board shall issue a certificate of registration upon registration of the applicants.

(3) The Board shall not charge any fee for the registration of an applicant under subsection (1).

(4) Registration of the players under this section shall only be done once.

(5) The Board shall maintain a register of all registered players and share the register with the respective county government.

(6) All registered players shall complete and submit to the Board annual returns as shall be specified in regulations under this Act.

(7) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding

three years or to a fine not exceeding five million shillings or to both.

Resolution: Agreed to.

14. New Clause 26C

Proposal: THAT clause New Clause 26 C of the Bill be amended to capture—

NEW CLAUSE 26C

Registration by the county government.

26C. (1) A person shall not carry out the business of a pulping station, coffee nursery operator, parchment movement from one county to another, warehouse or clean coffee movement from one county to another unless such person is registered by the respective county government in which the business is undertaken.

(2) A county government shall not charge any fees for the registration of an applicant under subsection (1).

(3) Each county government shall keep and maintain the register under subsection (1) for statistical purposes.

(4) A register under subsection (3) shall include—

(a) the name of the pulping station operator, coffee nursery operator, warehouse, parchment mover or clean coffee mover;

(b) the location, size and parcel number of the land on which the business is located; and

(c) such other information as the Board may prescribe.

(5) Each county government shall submit to the Board a copy of the register under subsection (3).

Resolution: Agreed to.

15. New Clause 26D

Proposal: THAT new clause 26D of the Bill be amended in—

NEW CLAUSE 26D

Registration by
operative societies.

No. 12 of 1997.

co- 26D. (1) A smallholder coffee grower shall have the freedom to register with the co-operative society, association or company to which he or she delivers coffee.

(2) The directors of a coffee co-operative shall serve for a maximum period of two three-year terms.

(3) In electing directors under this section, a co-operative society shall ensure that not more than two thirds of the members are of one gender and that nominees for the Board meet the requirements of Chapter Six of the Constitution.

(4) Notwithstanding the provisions of any other law, every coffee factory may, by resolution of its members in the Annual General Meeting, apply for registration as a co-operative society under the Co-operatives Societies Act.

(5) Every producer co-operative society, association or company, coffee plantation and nursery operator shall register with the county government by supplying such particulars as shall be prescribed in Regulations made under this Act.

(6) Where a person starts growing coffee at any time after the commencement of this Act, such person shall, within six months register with—

(c) a co-operative society, association or company in accordance with subsection (1) if such a person is a small scale grower; or

(d) his or her respective county government in accordance with provisions of this Act if such a person is a plantation grower or a co-operative society.

(7) The co-operative society, association, company and the county government shall each maintain a register for the purpose of this section

and shall record the particulars supplied in accordance with this section.

(8) The county government shall share the data captured in this section with the Board on an annual basis.

(9) Where a co-operative society, association, company or the county government has reasonable cause to believe that a person whose particulars are recorded has ceased to be a grower, it may, after giving that person written notice by registered post of its intention to do so, remove the name of such person from the register.

(10) The register referred to in subsection (7) shall be proof that a person is a registered coffee grower and a co-operative society shall furnish the county government with particulars of all registered coffee growers in such manner as the county government may prescribe.

Resolution: Agreed to.

16. New Clause 26E

Proposal: THAT new clause 26E of the Bill be amended in –

NEW CLAUSE 26E

Prohibition of certain acts without a licence.

26E. (1) No person shall buy, sell, mill, warehouse, export or otherwise deal in or transact any business in coffee unless he or she is a holder of a current licence issued by the licensing authority for that purpose.

(2) This section shall not apply to—

(c) any person who purchases coffee for consumption or for planting on his or her land;

(d) any grower who mills coffee produced by such grower.

(3) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any licence granted commits an

offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(4) Where a person is convicted of an offence under this section, the court may order that any licence issued to such person be suspended for the subsequent coffee year or for such period as the Cabinet Secretary may, by Regulations, prescribe.

Resolution: Not agreed to.

17. New Clause 34

Proposal: THAT Clause 34 of the Bill be amended in subclause (2) by deleting the word “sub-regulation” and substituting therefor the word “subsection”.

Resolution: Agreed to.

18. Clause 35

Proposal: THAT Clause 35 of the Bill be amended by deleting Clause 35 and substituting therefor the following new Clause—

Revocation or alteration of a licence or permit. **35.** A licensing authority may revoke, alter or suspend a licence or permit issued under this Act if in its opinion—

(c) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence or permit holder or any employee of the licence or permit holder; or

(d) a condition of the licence or permit has been contravened or not complied with.

Resolution: Agreed to.

19. New Clause

Proposal: THAT, the Bill be amended by inserting the following new Clause immediately after Clause 35—

NEW CLAUSE 35A

Surrender of licence or permit. **35A.** (1) The holder of a licence or permit which is revoked shall immediately surrender it to the Board.

(2) A licence or permit holder may at any time surrender the licence or permit to the

Board and the licence or permit shall cease to have effect immediately.

Resolution: Agreed to.

20. Clause 37

Proposal: THAT the Bill be amended in Clause 37 by deleting Clause 37 and substituting therefor the following new Clause—

NEW CLAUSE 37 (1)

Appeals to the High Court. 37. (1) An applicant for or holder of a licence or permit who is aggrieved by a decision of the licensing authority may appeal to the High Court on or in respect of—

(c) the grant, refusal, renewal, variation or revocation; or

(d) the conditions imposed on the grant, renewal or variation, of a licence or permit.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

Resolution: Agreed to.

21. Clause 38

Proposal: THAT Clause 38 of the Bill be deleted.

Resolution: Not agreed to.

22. New clause

Proposal: That the Bill be amended by inserting the following new Clauses immediately after Clause 42—

NEW CLAUSE 42A

Branding and geographical indications.

42A. The Board shall promote and register all coffees produced in Kenya in accordance with geographical or regional markers styled as 'Authentic Mark of Origin.'

Coffee development.

42B. (1) The Cabinet Secretary may, on the advice of the Board, make policies and take steps to ensure that the coffee farmers receive

appropriate technologies, credit, farm inputs and marketing support.

(2) The Board shall conduct training programs aimed at strengthening the capacities of county officers in terms of knowledge and skills in coffee production, processing technologies and marketing for different types of coffee.

(3) The Board shall, in consultation with the relevant standards bodies, coffee stakeholders, county governments and research institutions, develop the Kenya Coffee Production Standards and formulate a binding Code of Good Coffee Practice.

(4) Where a farmer has entered into an agreement with an organization representing the interest of such farmer, the Board and every dealer in coffee shall respect and enable the carrying out of the terms of such agreement, including the remission to such organization of any contributions that may, pursuant to such agreement, be deductible from the farmer.

Primary processing of coffee

42C. (1) The primary processing of coffee shall be carried out at a pulping station or by a grower's co-operative society or other association of growers under a pulping station licence.

(2) The pulping station licence may include authority to undertake hulling of own parchment or buni.

(3) The huller shall be registered with the county government and such registration information shared with the Board.

Appointment of millers.

42D. (1) Coffee milling shall only be conducted at premises that are specified under the licence issued by the Board.

(2) Every coffee factory shall, by resolution of its members in Annual General Meeting, designate a registered miller for its parchment coffee.

(3) The manager of every coffee factory shall, within two months of the end of the crop year, call a meeting of outgrowers to choose the registered miller referred to in subsection (2) from amongst at least three millers invited to make representations to the outgrowers.

(4) The county executive committee member responsible for coffee shall attend or designate a representative to attend the meeting referred to subsection (3).

(5) Each registered miller participating in the meeting to choose a miller shall make all disclosures necessary to enable farmers make an informed decision.

(6) A miller shall be a bailee of all parchment received for milling and shall be responsible for any loss or damage to the coffee in his or her custody.

(7) The milling losses allowable under this section shall be capped at nineteen percent of coffee milled.

(8) The Cabinet Secretary may, by Regulations and upon submission of empirical evidence, vary the milling losses allowable under subsection (7).

(9) Every resolution made under this section shall, within fourteen days, be filed with the Board and copied to the relevant department of the county government and to the Commissioner of Co-operatives.

(10) Any person involved in the management of a coffee factory who contravenes the provisions of this section commits an offence.

(11) For the better carrying out of the provisions of this section, the Cabinet Secretary may by regulations, prescribe the manner for the appointment and remuneration of millers and for composition and attendance at the annual general meetings at which such millers are appointed.

Resolution: Agreed to.

23. Clause 45

Proposal: That Clause 45 of the Bill be amended by—

- (c) in subclause (2) by deleting the words “and the direct settlement system provider”;
- (d) by deleting subclause (8).

Resolution: Not agreed to.

24. Clause 46

Proposal: That Clause 46 of the Bill be deleted and substituted therefor with the following new clause—

Coffee trading.

46. (1) Kenyan coffee shall be offered for sale through—

- (c) auction in the Exchange; or
- (d) direct sales.

(2) All direct coffee sales shall be subject to price competition at the Exchange whereby the direct sale price shall serve as the reserve price.

(3) Where the coffee referred to in subsection (2) fetches a higher price at the Exchange than the direct sale price offered, the prospective direct sale buyer shall have the right of first refusal to buy the coffee at the Exchange price.

(4) Despite subsection (3), if the prospective direct sales buyer refuses to buy the coffee at the Exchange price, the coffee shall be sold to the person who makes the best offer above the reserve price at the Exchange.

(5) A buyer, a roaster, or a grower miller licensed by the relevant licensing authority, or a broker appointed by the grower, may trade at an

exchange in accordance with this Act and any other laws governing trade in an exchange.

(6) A holder of a miller's marketing licence commits an offence if he or she participates by himself or herself or by his or her agent in the buying of coffee.

Resolution: Agreed to.

25. Clause 48

Proposal: That Clause 48 of the Bill be amended by deleting Clause 48 of the Bill and substituting therefor the following new Clause—

Application as coffee exchange. **48.** (1) A person shall not carry on the business of a coffee exchange unless the person has applied for approval and has been licensed as a Coffee Exchange by the Authority in accordance with the Capital Markets Act.

Cap. 485A.

(2) The Exchange shall be a body corporate, registered under the Companies Act.

No. 17 of 2015.

(3) The functions of the Exchange shall be to—

- (e) manage the auction floor, the central sample room and the information registry;
- (f) maintain records relating to coffee sales, coffee samples and sweepings;
- (g) avail sales catalogues to interested parties in accordance with the Capital Markets Act; and
- (h) carry out such other function as the Cabinet Secretary for the time being responsible for matters relating to finance may prescribe.

(4) The funds of the Exchange shall consist of—

- (g) auction levy;
- (h) registration fees payable by a coffee buyer, a roaster, a grower miller or broker;
- (i) government grants and donations made to the Exchange;
- (j) any interest from fixed deposits;
- (k) monies from a source approved by the Exchange; and
- (l) sample fee.

Resolution: Not agreed to.

26. Clause 54

Proposal: That Clause 54 of the Bill be amended by—

- (c) numbering the existing provision as subclause (1);
- (d) inserting the following subclauses immediately after subclause (1)—

“(2) In this section, “anti-competitive conduct” means any act, conduct, practice or behaviour by the Exchange organizer or any other licensee operating at the Exchange, individually or in concert with others that directly or indirectly impedes, frustrates, undermines or reduces competition at the Exchange.

(3) For the purpose of subsection (2), “anti-competitive conduct” includes but is not limited to margin squeeze, market snaring, transfer pricing, abuse of dominance, preferential contracts that give advantageous terms to affiliates and partners relative to competitors, imposition of unfair purchase or selling conditions or other, predatory practices, application of dissimilar conditions to equivalent transactions with other trading parties and other conduct that undermine competitive operations of the Exchange.

(4) The Cabinet Secretary for the time being responsible for matters relating to finance may make regulations for the implementation of this section.”

Resolution: Agreed to.

27. New Clause

Proposal: That the Bill be amended by inserting the following new clauses immediately after clause 54—

NEW CLAUSE 54A

Classification of coffee.

54A. (1) Where a miller draws a sample of coffee for the purpose of grading the coffee, the miller shall within seven days of such grading notify the grower to whom the coffee belongs of the classification of the coffee.

(2) Any grower who is aggrieved by classification of his or her coffee under subsection (1) may, within fourteen days of the notification, appeal against such classification to the Board.

NEW CLAUSE 54B

Promotion of coffee.

54B. (1) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, put in place programmes for the establishment of special economic zones in the coffee sub-sector.

(2) The Board may co-ordinate coffee stakeholders, including county governments, growers and buyers at the national and international events for the purpose of promoting Kenya coffee.

(3) A county government in the coffee growing areas may, separately or in unison with the Board, support coffee growers' participation in local and international coffee promotion and marketing events.

NEW CLAUSE 54C

No lending by millers and marketing agents.

54C. (1) A coffee miller and a marketing agent shall not lend to farmers on interest.

(2) A miller or marketing agent who contravenes the provision of subsection (1) commits an offence

(3) Any miller or marketing agent convicted of an offence under subsection (2) shall have his or her licence revoked or

suspended for such duration as the Cabinet Secretary may, by regulations, determine.

NEW CLAUSE 54D

Loans against growers' assets.

54D. (1) The interest rate on borrowing by factory management against growers' assets held in trust by the coffee factories and coffee co-operative societies shall be capped at five per cent per annum.

(2) A factory or society shall not contract any loans or advances under subsection (1) except with the support of a resolution in an Annual General Meeting passed by a majority of the growers to that effect.

(3) Any factory or society that contravenes the provisions of subsection (1) commits an offence and any loans borrowed in contravention of this provision shall be statutorily converted into personal loans of the officials of the offending factory or society.

(4) Nothing in this section shall be interpreted as prohibiting coffee farmers from directly borrowing money from banks or any government established funds against their deliveries of cherry, parchment and clean coffee.

Resolution: Not agreed to. The Committee further resolved that the Council of County Governors be included in the consultation in New Clause 54(B) (1).

28. Clause 58

Proposal: That Clause 58 of the Bill be amended by—

(c) inserting the following paragraph immediately after the introductory statement—

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

(d) renumbering the existing paragraphs (a), (b), (c), (d), (e) as (b), (c), (d), (e), (f), respectively.

Resolution: Agreed to.

29. New Clause

Proposal: That the Bill be amended by introducing new clause new clause 58A-

NEW CLAUSE 58A

Coffee Stabilization
Fund.

58A. (1) There is established a Fund to be known as the Coffee Stabilization Fund which shall be managed by the Board.

(2) The Fund shall consist of—

(d) monies appropriated by the National Assembly;

(e) monies from any source approved by the Board;

(f) grants and donations made to the Board.

(3) The Board shall apply the monies received into the Fund to—

(c) income and price stabilization; and

(d) any investments that further the objective of stabilizing the prices paid to farmers.

Resolution: Agreed to.

30. Clause 58

Proposal: That the Bill be amended by deleting Clause 63 and substituting therefor the following new Clause—

Financial Year of the Board.

63. The financial year of the Board shall be the period of twelve months ending on the 30th June of every year.

Resolution: Agreed to.

31. Clause 67

Proposal: That Clause 67 of the Bill be amended—

(c) in subclause (1)

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

“(f) one person nominated by the umbrella body of estate coffee growers;”

(d) by deleting subclause (3) and substituting therefor the following new subclause—

“(3) A person is qualified for appointment as chairperson of the Board of the Institute if that person holds a master’s degree in agriculture, crops science, or other relevant degree from a university recognized in Kenya.”

Resolution: Agreed to.

32. Clause 70

Proposal: That Clause 70 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (e)—

“(ea) issue certified coffee seeds or seedlings for multiplication in coffee nurseries to coffee growers or for export;”

Resolution: Not agreed to.

33. Clause 74

Proposal: That Clause 74 of the Bill amended in subclause (3) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) holds a master’s degree in agriculture or crops science from a university recognized in Kenya;”

Resolution: Agreed to.

34. Clause 80

Proposal: That Clause 80 of the Bill amended by—

(c) inserting the following paragraph immediately after the introductory statement—

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

(d) renumbering the existing paragraphs (a), (b), (c), (d), (e) as (b), (c), (d), (e), (f), respectively.

Resolution: Agreed to.

35. Clause 84

Proposal: That Clause 84 of the Bill amended in subclause (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) a statement showing in detail the assets and liabilities of the Institute;”

Resolution: Agreed to.

36. Clause 85

Proposal: That Clause 85 of the Bill be amended—

(d) in subclause (1) by deleting the words “balance sheet and such other statements of accounts” and substituting therefor the words “statements of account”;

(e) in subclause (2) by deleting the words “balance sheet and statements” and substituting therefor the words “statements of account”;

(f) in subclause (3) by deleting the words “balance sheet and statements” and substituting therefor the words “statements of account”;

Resolution: Agreed to.

37. New Clause

Proposal: That the Bill be amended by inserting the following new Clause immediately after Clause 87—

NEW CLAUSE 91A

Conflict of laws. **87A.** If any conflict arises between the provisions of this Act and any other Act with respect to the regulation of coffee, the provisions of this Act shall prevail.

Resolution: Not agreed to.

38. New Clause

Proposal: That the Bill amended by inserting the following new Clause immediately after Clause 91—

NEW CLAUSE 91A

Offences and penalties. **91A.** (1) A person commits an offence if the person—

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

(2) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years, or to both.

(3) A person who is convicted of an offence under this Act shall in addition to any other penalty have his or her licence or registration suspended or cancelled for such a period as the Board may decide.

Resolution: Agreed to.

39. New Clause

Proposal: That the Bill be amended by deleting Clause 92 and substituting the following new Clause—

NEW CLAUSE 92

General penalty. **92.** (1) A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or a fine not exceeding twice the value of the coffee or coffee products or, to imprisonment for a term not exceeding six months, or to both.

(2) Where the person convicted under this section is also a licence or permit holder under this Act, the licensing authority may, in addition, cancel such person's licence.

Resolution: Agreed to.

40. New Clause

Proposal: That the Bill amended by inserting the following new Clause immediately after Clause 92—

NEW CLAUSE 92A

Offences relating to body corporate. **92A.** If an offence under this Act is committed by a body corporate, any other association of individuals or cooperative society, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

(c) the act or omission constituting the offence took place without the person's knowledge; or

(d) the person took reasonable steps to prevent the commission of the offence.

Resolution: Agreed to.

41. Clause 94

Proposal: That the Bill be amended by deleting Clause 94 and substituting therefor the following new Part—

PART XIA- PROVISIONS ON DELEGATED LEGISLATION

Regulations. **94.** (1) The Cabinet Secretary may, in consultation with the Board and county governments, make Regulations—

(c) prescribing anything that may be prescribed under this Act; and

- (d) generally for the better carrying out of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make Regulations to provide for—
- (n) the regulation of the processing, importation and exportation of coffee and coffee products;
 - (o) the forms to be used in the application for registration, licensing, permits, contracts and related activities;
 - (p) the process of application for registration, licensing and related activities;
 - (q) any fee or levy which may be charged for anything done under this Act;
 - (r) the regulation and enforcement of contracts between growers, processors and other players in the coffee industry;
 - (s) the process of nomination of members to the Board
 - (t) the conditions for the issuance of certificates, licenses and permits under this Act;
 - (u) the trade, storage, bulking, packing and roasting of coffee;
 - (v) the regulation of nursery operations, pulping, milling, warehousing and transportation of coffee;
 - (w) value addition of coffee exports and imports;
 - (x) the grading and classification of coffee;
 - (y) the imposition of costs charged by service providers along the value chain and payment of coffee sales proceeds to growers and their service providers; and
 - (z) anything required to be prescribed under this Act;

(3) For the purposes of Article 94(6) of the Constitution—

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No. 23 of 2013

- (c) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;

(d) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Resolution: Agreed to.

42. Clause 96

Proposal: That the Bill amended by deleting Clause 96 and substituting therefor the following new Clause—

Transfer of assets and liabilities. **96.** All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Coffee Directorate of the Agriculture and Food Authority and the Coffee Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Institute, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.

Resolution: Agreed to.

43. Clause 102

Proposal: That the Bill be amended by deleting Clause 102 and substituting therefor the following new Clause—

Consequential amendments. **102.** The Crops Act is amended —
No. 16 of
2013.

(c) in section 14(1) by deleting paragraph (a); and
(d) in Part 1 of the First Schedule by deleting the expression
“Coffee.....*Coffea*
spp.”

Resolution: Agreed to.

44. New Clause

Proposal: That the Bill be amended by inserting the following new Clause immediately after Clause 102—

NEW CLAUSE 102A

Consequential amendments. **102A.** The Co-operative Societies Act is amended —
No. 12 of
1997.

- (c) in section 43—
- (iii) by numbering the existing provision as subsection (1);
 - (iv) by inserting the following new subsection—
“(2) Despite subsection (1), a coffee cooperative society shall not lend to farmers on interest.”
- (d) In section 44—
- (iii) by numbering the existing provision as subsection (1);
 - (iv) by inserting the following new subsections—
“(2) The interest rate on borrowing by factory management against growers’ assets held in trust by coffee co-operative societies shall be capped at five per cent per annum.
(3) A factory or society shall not contract any loans or advances under subsection (1) except with the support of a resolution in an Annual General Meeting passed by a majority of the growers to that effect.”

Resolution: Agreed to.

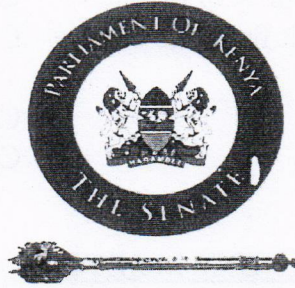
45. Second Schedule

Proposal: That the be Bill amended by deleting the Second Schedule and substituting therefor the following new Schedule—

SECOND SCHEDULE (s. 11, s. 23, s. 26, s. 26A, s.27, s. 28, s. 32, s.67)

LICENCE, PERMIT OR CERTIFICATE

No.	Type of Licence/Permit or Certificate	Issuing Authority
1.	Coffee buyer’s licence	Board
2.	Independent cupping laboratory licence	Board
3.	Warehouseperson’s licence	Board
4.	Coffee liqueur’s licence	Board
5.	Processed coffee import permit	Board
6.	Clean coffee movement permit for exports	Board
7.	Commercial coffee miller’s licence	Board
8.	Coffee roaster’s licence	Board
9.	Grower miller’s licence	Board
10.	Marketing agent licence	Board
11.	Coffee nursery certificate	County government
12.	Warehouse licence	County government



MINUTES OF THE 173RD SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON TUESDAY, 17TH MAY, 2022, AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.

PRESENT

- | | | |
|--|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP | - | Chairperson |
| 2. Sen. Enoch Wambua, MP | - | Vice-Chairperson |
| 3. Sen. Issa Juma Boy, MP | | |
| 4. Sen. (Dr.) Michael Mbito, MP | | |
| 5. Sen. Justice (Rtd.) Stewart Madzayo, MP | | |

ABSENT WITH APOLOGY

1. Sen. Kipchumba Murkomen, EGH, MP
2. Sen. (Eng.) Ephraim Maina, EBS, MP
3. Sen. (Canon) Naomi Jillo Waqo, MP

SECRETARIAT

- | | | |
|-----------------------|---|---|
| 1. Ms. Carol Kirorei | - | Clerk Assistant |
| 2. Mr. David Angwenyi | - | Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Mr. Tiyan Joseph | - | Serjeant-At-Arms |
| 4. Ms. Njeri Manga | - | Media Relations Officer |

MIN. NO. 84/2022

PRELIMINARIES

The Chairperson called the meeting to order at 11.06 a.m. followed by a word of prayer.

MIN. NO. 85/2022

ADOPTION OF THE AGENDA

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

1. Preliminaries
 - a) Prayer
 - b) Adoption of the Agenda
2. Consideration and adoption of Reports-

- a) Report on consideration of the Sugar Bill, (National Assembly Bills No. 68 of 2019); and
- b) Report on the National Assembly amendments to the Coffee Bill (Senate Bills No. 22 of 2020)
- 3. Any other business
- 4. Date of Next Meeting
- 5. Adjournment.

MIN. NO. 86/2022

CONSIDERATION AND ADOPTION OF REPORTS

- 1. The Committee considered the Report on the consideration of the Sugar Bill (National Assembly Bills No. 68 of 2019). The Report was adopted as presented after being proposed by Sen. Michael Mbito, MP and seconded by Sen. (Dr.) Issa Boy Juma, MP.
- 2. The Committee considered the Report on the consideration of the National Assembly amendments to the Coffee Bill (Senate Bills No. 22 of 2020). The Report was adopted as presented after being proposed by Sen. Issa Boy Juma, MP and seconded by Sen. (Dr.) Michael Mbito, MP.

MIN. NO. 87/2022

DATE OF NEXT MEETING

The next meeting would be held on Thursday, 19th May, 2022 at 11.00 a.m.

MIN. NO. 88/2022

ADJOURNMENT

There being no other business, the meeting was adjourned at 11.28 a.m.

SIGNED:.....



(CHAIRPERSON)

DATE:.....13/5/2022.....

ANNEX 2

The Coffee Bill, (Senate Bills No. 22 of 2020) as passed by the Senate, with amendments, on 5th August, 2020