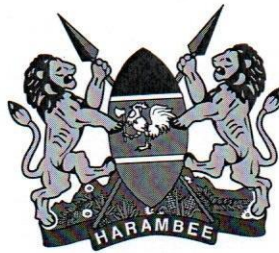


REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THIRD SESSION

THE SENATE

COG
Recommended for approval
for tabling.
EP
27/03/19

Rt. Hon. Speaker
You may approve for
tabling.
27/03/19

THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE CONSIDERATION OF TEA BILL, (SENATE BILLS No. 36 of 2018)

Approved

27/3/2019

Clerk's Chambers

Parliament Buildings,

NAIROBI

MARCH, 2019

PAPERS LAID	
DATE	28/03/2019
TABLED BY	Senate Majority Leader
COMMITTEE	-
PLACE AT THE TABLE	CM

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ABBREVIATIONS

AFA	-	Agriculture and Food Authority
COG	-	Council of Governors
EATTA	-	East African Tea trade Association
KALRO	-	Kenya Agricultural & Livestock Research Organization
KAM	-	Kenya Association of Manufacturers
KTGA	-	Kenya Tea Growers Association
KTDA	-	Kenya Tea Development Agency
KUSTO	-	Kenya Union of Small-scale Tea Owners

PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Senate Standing Committee on Agriculture, Livestock and Fisheries was constituted on Thursday, 14th December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of standing order 218 (1) of the Senate Standing Orders which states:

There shall be Select Committees to be designated Standing Committees which shall be nominated by the Senate Business Committee in consultation with parliamentary parties at the commencement of every Parliament.

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.*

Standing order 218 (4) provides that Standing Committees may, in dealing with the matters assigned to them under the Second Schedule, scrutinize the resolutions of the Senate (including adopted Committee Reports), petitions and formal undertakings given by the National Executive and examine-

- a) *whether or not such resolutions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within a reasonable time;*
- b) *whether or not legislation or subsidiary legislation passed by the Senate has been operationalized and, where operationalized, the extent to which such operationalization has taken place;*

Oversight

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

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

Membership of the Committee

The Committee is comprised of the following members-

1. Sen. Peter Njeru Ndwiga, MP - **Chairperson**
2. Sen. (Dr.) Lelegwe Ltumbesi, MP - **Vice - Chairperson**
3. Sen. Naomi Jillo Waqo, MP
4. Sen. (Dr.) Michael Malinga Mbiti, MP
5. Sen. Wario Golich Juma, MP
6. Sen. Madzayo Stewart Mwachiru, MP
7. Sen. Naomi Shiyonga, MP
8. Sen. Moses Otieno Kajwang' MP
9. Sen. (Dr.) Ochilo Ayacko, MP

Secretariat of the Committee

The Committee secretariat is comprised of –


1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. Mitchell Otoro - Legal Counsel
3. Mr. David Ng'eno - Research Officer
4. Mr. Washington Otiato - Media Relations Officer
5. Mr. Philemon Okinda - Sergeant-At-Arms

Acknowledgement

The Committee wishes to thank the Office of the Speaker of the Senate and the Office of the Clerk of the Senate for the support extended to it in the consideration of the Tea Bill (Senate Bills No. 36 of 2018).

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 Tea Bill, (Senate Bills No. 36 of 2018) for consideration by the House.

Signed.......... Date.....20/03/19.....

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

CHAIRPERSON

EXECUTIVE SUMMARY

The Tea Bill, (Senate Bills No. 36 of 2018) sponsored by Sen. Aaron Cheruiyot, M.P., was read a First Time in the Senate on 5th December, 2018. Thereafter, the Bill stood committed to the Standing Committee on Agriculture, Livestock and Fisheries pursuant to standing order 140 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 20th February, 2019.

The Committee received oral submissions at the Public Hearings held on Thursday 28th February 2019 in the Tsavo Ballroom, Kenyatta International Convention Centre, Nairobi. The Committee also received a number of written submissions delivered through the Office of the Clerk of the Senate.

At its 36th Sitting held on 14th March, 2019, the Committee considered submissions on the Bill as contained in Chapter Two of this report. The Committee thereafter made its observations summarized in Chapter Three of this Report and its recommendations and amendments on the Bill as contained in Chapter Four of the Report.

1 INTRODUCTION

1.1 Background on the Tea Bill (Senate Bills No. 36 of 2018)

The object and reasons of this Bill is to liberalize the tea industry. This will be done through the reorganization of the tea industry by the separation of the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority (AFA).

Currently the directorate under AFA is mandated to license tea manufacturing factories; to register buyers, brokers, packers, management agents and any other person dealing in tea; and promote Kenya tea in both the local and the international markets.

The Bill was informed by findings of the *Ad hoc* Committee on Tea that was established by a Senate Resolution on 14th March 2018 to identify factors that have led to tea farmers receiving disproportionate returns from tea despite the resources and time they put into tea production. The Committee's terms of reference included to find other challenges that required urgent intervention to ensure that the critical sector thrives for the benefit of Kenyan economy and to recommend specific legislative and policy interventions to address the problems facing the tea sector in Kenya.

The Bill establishes an Authority known as the Tea Regulatory Authority of Kenya whose functions are to;

- (a) regulate, develop and promote the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry; and
- (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties
- (d) initiate the formulation of policies and make rules to regulate the industry in consultation with cabinet secretary;
- (e) register and regulate the operations of tea growers and processors;
- (f) license tea dealers and processors;
- (g) provide advisory services on tea production and quality enhancement;
- (h) collect and analyze statistics related to, and maintain a database for the tea industry;
- (i) co-ordinate the prioritization of research and utilization of the Fund; and
- (j) arbitrate in any dispute related to the tea industry referred to it under section 27

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

The Tea Bill, (Senate Bills No.36 of 2018) was published on 13th November, 2018 and read a First Time in the Senate on 5th December, 2018. The Bill was thereafter committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard newspapers on 20th February, 2019.

1.3 Public participation

The Committee received oral submissions at the Public Hearings held on Thursday, 28th February, 2019 in the Tsavo Ballroom, Kenyatta International Convention Centre, Nairobi. The Committee also received a number of written submissions delivered through the Office of the Clerk of the Senate. The Committee considered the submissions received from the public at its 36th Sitting held on 14th March, 2019.

2 SUBMISSIONS

2.1 Submissions from the Ministry of Agriculture, Livestock and Fisheries

The Ministry of Agriculture, Livestock and Fisheries submitted its written memorandum on 28th February, 2019 through the Office of the Clerk of the Senate and proposed the following-

Clause	Comments	Proposal
Preamble	<p>This introductory part fails to provide a clear objective of why the Bill is required as done in the Crops and AFA Act, 2013</p> <p>The Bill also gives proposed Authority functions of development and promotion instead of sticking to regulatory roles</p>	<p>Development and promotion are normally best done by national and county governments</p> <p>A regulator sometimes does targeted external promotion in foreign counties</p>
Clause 4	There is no clear justification why the proposed Authority Headquarters is based in Kericho County.	For equity, normally the headquarters of such a national institution should be in Nairobi.
Clause 5(1)(c)	It is not clear how as regulator the authority will be facilitating equitable access to benefits	As a re-distribution measure, such a function can only be properly performed by the national government e.g. taxation levels, tax reliefs, exemptions, etc.
Clause (5) (2) (a)	Constitutionally the Authority is not mandated to be initiating formulation of policies and rules. That is a function of the national government in a consultative process as guided in the various legal provisions.	
Clause	Registration of tea growers is a function of processors and county governments as	It is not appropriate for a regulator to be registering

5(2)(b)	provided in the Crops Act, 2013.	farmers and if it were so, then it would call for amendments to the Crops Act.
Clause 5	This whole clause is not clear how it relates to section 11(3) of the AFA Act which provides that each of the Directorates is an internationally recognized entity (Competent Authority)	The clause allows presence of two laws that contradict each other.
Clause 5(2)(h)	Function of research is already a mandate of the national government i.e. Kenya Agriculture and Livestock Research Organization	The Bill contravenes the KALRO Act on agricultural research.
Clause 5(2)(i) and 26	Function of the arbitration of disputes is not appropriate for the Authority to carry out in case of a dispute with the Authority itself or where the dispute between parties is based on a decision by the Authority.	Arbitration should be a function of an independent arbitration tribunal for disputes among licensees/ dealers/growers and the Authority where need be. Currently common practice is the legal provision where Ministry is the arbitrator or appoints a Tribunal.
Clause 6	The composition of the proposed Board contravenes Mwongozo Policy and the State Corporations Act because: <ul style="list-style-type: none"> Majority (7) of the Board members are to be COG nominees making the Authority more of counties as opposed to a national government 	It is important to ensure compliance with Mwongozo, State Corporations Act and the Public Finance Management Act on the establishment of a national government entity.

	<p>outfit</p> <ul style="list-style-type: none"> • Membership of 10 exceeds maximum of 9 as guided by Mwongozo; • The Bill has omitted the mandatory membership of the Attorney General and National Treasury 	
Clause 12	The bill indicates that the CEO shall be the secretary to the Board in contravention to Mwongozo on the need to have a company secretary.	There is need for more consultations with AFA and other stakeholders
Clause 31	The Bill has no clause on transition. How and who will ascertain the rights and obligations vested in the tea sector. This section is also silent on how staff will transition.	

2.2 Submissions from the Council of Governors (COG)

The Council of Governors (COG) submitted its written memorandum through the Office of the Clerk of the Senate on 1st March, 2019 and gave the following proposed amendments to the Bill:

Clause	Provision of the Bill	Proposed amendment	Justification
5 Functions of the Authority	5(2) Without prejudice to the generality of subsection (1) the Authority shall	Amend by deleting clause 5(2) (b) to (d) entirely	Agriculture development has been devolved to County Governments under the Fourth Schedule of the

	<p>(b) register and regulate the operations of tea growers and processors;</p> <p>(c) license tea dealers and processors</p> <p>(d) license managing factories and their agents</p>		<p>Constitution. Also part 2 section 7 of the Schedule gives the County Governments the mandate of trade development and regulation including markets and licensing.</p> <p>This therefore means that registration of tea growers, licensing of tea dealers and processors of managing factories and their agents is a county mandate as such it is against the Constitution for the Bill to purport to assign the Authority these mandate.</p>
5	<p>Functions of the Authority</p>	<p>Amend Clause 5 by inserting a new clause 5A to provide for the following:</p> <p>Functions of county Governments</p> <p>5A. County governments shall—</p> <p>(a) register and regulate the</p>	<p>The proposed provisions align the Bill to the requirement of the Constitution that mandates county governments to develop agriculture and trade including markets, trade licences and fair-trading</p>

		<p>operations of tea growers and processors within the county</p> <p>(b) licence tea dealers and processors within the county</p> <p>(c) licence managing factories and their agents within the county.</p>	practices
18: Licensing	18(1) A person shall not export, import, market or process tea or tea products unless he has applied for and obtained a license from the Authority	Under clause 18 (1) insert "respective county government immediately after the word "Authority"	Under the Fourth Schedule of the Constitution, it is the national and county governments to regulate the development of international and local trade respectively. It therefore amounts to breach of the Constitution to only refer to the Authority yet county governments have the mandate to issue trade licenses.
29(2)	29(2) Without prejudice to the generality of subsection (1) the Cabinet Secretary may make	Amend to read: 29(2) Without prejudice to the generality of subsection (1) the Cabinet	Agriculture has been fully devolved under the Constitution, it is imperative that the Cabinet Secretary

	Regulations to prove for:	Secretary in consultation with the County Governments may make Regulations to provide for...	consults County Governments in the development of the regulation as its implementation has a direct impact on how the counties will undertake their functions as provided for under the Fourth Schedule of the Constitution
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2.3 Submissions from the Kenya Association of Manufacturers (KAM)

Kenya Association of Manufacturers (KAM) promotes trade and investment, upholds standards, encourages the formulation, enactment and administration of sound policies that facilitate a competitive business environment and reduce the cost of doing business. It submitted memoranda on the Tea Bill on 11th March, 2019 and proposed the following-

Provision in the Bill	Proposal/Recommendation	Justification
Clause 2 Interpretation	<p>Proposal to amend by adding new clause.</p> <p>a. Replace the word “Authority” and replace it with the word “Board means the Tea Board of Kenya established under section 3”</p> <p>b. Add the words “Broker” means a person who negotiates the purchase or sale of tea between tea growers and buyers.” after the words “section 6”</p> <p>c. Add the words “Managing factory” means a factory appointed to process green leaf into made</p>	<p>The word broker and managing factory have been mentioned in the Bill but have not been defined. This will ensure that there is clarity on the meaning of the words.</p>

	<p>tea.” after the word “section 18” As follows;</p> <p><i>Board” means the Tea Board of Kenya established under section 3”</i></p> <p><i>“Broker” means a person who negotiates the purchase or sale of tea between tea growers and buyers.</i></p> <p><i>“Managing factory” means a factory appointed to process green leaf into made tea.</i></p>	
<p>Clause 3. (1) There is hereby established an Authority known as the Tea Regulatory Authority of Kenya.</p>	<p>Proposal to amend the clause by;</p> <p>a. Replacing the word “Tea Regulatory Authority of Kenya” with the word “Tea Board of Kenya’ to read as follows; <i>There is hereby established the Tea Board of Kenya”</i></p>	<p>This is to ensure there is no overlap between this Bill and the Crops in the regulation of Tea</p>
<p>Clause 4. (1) The headquarters of the Authority shall be in Kericho County</p>	<p>Proposal to amend the clause by;</p> <p>a. Replacing the word “Kericho County” with the word “Nairobi City County” to read as follows; <i>The Headquarters of the Board shall be in Nairobi City County</i></p>	<p>Since Tea is a crop grown in different parts of the country, we propose the headquarters to be in a central place (Nairobi City County) easily accessible to all stakeholders in the Tea Industry.</p>
<p>Clause 5. (1) The Authority shall perform the following functions—</p> <p>(a) regulate, develop and promote the tea industry;</p>	<p>Proposal to amend the clause by;</p> <p>a. Deleting the clause “regulate” before the word “develop” to read as follows; <i>Develop and promote the tea industry.</i></p>	<p>This is to ensure there is no overlap between The crops Act and this Bill. Where the Crops clearly states that its role will be to regulate schedule crops</p>
<p>Clause 5. (1) The Authority shall perform the following functions—</p>	<p>Proposal to amend the clause by;</p> <p>a. Add new clause “Promotion of Tea.” after</p>	<p>Incorporate the provisions of Section 8 of the Crops Act into the Bill as a Schedule or a</p>

<p>5 (2) (b) register the operations of tea growers and processors;</p> <p>Clause 5 (2) Without prejudice to the generality of subsection (1), the Authority shall</p>	<p>(a) clause 5(1)(d) to read as follows; (d) <i>Promotion of Tea</i></p> <p>b. Remove the word “regulate” to read as follows;</p> <p><i>5(2) (b) register the operations of tea growers and processors;</i></p> <p>c. Add the following new clauses after the word “section 26” as follows;</p> <p>a) <i>facilitate marketing and distribution of tea through monitoring and dissemination of market information,</i></p> <p>b) <i>identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion of activities on tea; and</i></p> <p>c) <i>ensuring stable consumer supply</i></p> <p>d) <i>Identify foreign markets for Kenyan tea</i></p> <p>e) <i>establish linkages with various governments agencies and re-establish the Tea Research Institute as an independent research centre for Kenyan tea</i></p> <p>f) <i>promote the production, marketing and processing of tea.</i></p> <p>g) <i>facilitate the adoption of technology in the sector for sustainability</i></p> <p>h) <i>support the setting up of sustainable standards for the sector</i></p> <p>i) <i>devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade,</i></p> <p>j) <i>promote and advise on strategies for value addition prior to the export of tea from Kenya;</i></p>	<p>new section to import the benefits of the Crops Act in facilitating the promotion of the sector.</p> <p>There is more that this Bill can provide to promote players in the value chain of the Tea Industry.</p>
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<p>Clause 5(2) (c) licence tea dealers and processors;</p>	<p><i>k) recommend general industry agreements</i></p> <p>Proposal to amend the clause by ;</p> <p><i>Deleting the word "processors": to read as follows;</i></p>	<p>This is because clause 5(2) b already provides for register and regulate the operations of tea growers and processors</p>
<p>Clause 5. (c) facilitate equitable. access to the benefits and resources of the tea industry by all interested parties.</p>	<p>There is need for clarity in this clause</p>	<p>The Bill should clarify the benefits and resources being equitably shared among interested parties. This is considering that most of the interested parties the Tea Industry are private institutions.</p>
<p>Clause 5(2)(i) arbitrate in any dispute related to the tea industry referred to it under section 26.</p>	<p>Proposal to delete this clause</p>	<p>The Crops Act already provides for arbitration, where the Cabinet Secretary is expected to come up with a rule to guide on arbitration of issues around schedule crops.</p>
<p>6 (1) The management of the Authority shall vest in a Board which shall consist</p>	<p>Proposal to amend the clause by;</p> <p>a. add new clauses as follows;</p> <p><i>(f) the Principal Secretary for</i></p>	<p>This is to ensure that the views of all stakeholders are clearly represented.</p>

of:	<p><i>the time being responsible for Industry or a person deputed by him/her in writing;</i></p> <p>(g) <i>One person nominated by the manufacturing industry to represent manufacturers and processors of tea;</i></p> <p>(h) <i>One person nominated by the Kenya Tea Growers Association (KTGA);</i></p>	
Clause 6. (1) (e) a Chief Executive Officer appointed in accordance with section 9 who shall be an ex- officio member of the Board.	<p>Proposal to amend the clause by</p> <p>a. replace the words “section 9” with the words “section 12” to read as follows;</p> <p>(e) <i>a Chief Executive Officer appointed in accordance with section 12 who shall be an ex-officio member of the Board.</i></p>	This is to correct an error in referring to the right section.
Clause 17(1) Every tea grower shall register with a processor	<p>Proposal to amend by;</p> <p>a. add a new clause to read as follows;</p> <p>(3) <i>in the case of tea grower, register with the tea factory to which the person delivers green leaf, by supplying such particulars as the Authority may prescribe in sub section (2);</i></p>	This will give support the access of economies of scale through the facilitation and the management of growers for effective operations of the sector

<p>New Clause on Registration of growers' associations</p>	<p>Proposal to amend the Bill by ; a. Add a new clause as follows ;</p> <p>Registration of growers' associations</p> <p><i>The Authority shall maintain a register of all entities registering smallholder growers, in such form as it may determine, and shall enter in the register—</i></p> <p>(a) <i>the full names of the Tea factory;</i></p> <p>(b) <i>the date of submission of annual returns of registered growers by the Tea factory;</i></p> <p>(c) <i>the particulars of numbers of registered growers, area planted with Tea or variations of these particulars; and</i></p> <p>(d) <i>any other particulars the Authority may deem necessary.</i></p>	<p>This is necessary for monitoring of tea growers' associations. This was mirrored from the Crops Act.</p>
<p>New Clause on Incentives to growers</p>	<p>Proposal to amend the Bill by;</p> <p>a. Add a new Clause as follows;</p> <p>Incentives to growers</p> <p>(1) <i>The Cabinet Secretary shall, on the advice of the Authority, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.</i></p> <p>(2) <i>The Authority may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of Tea along the value chain —</i></p>	<p>This proposal is supposed to support players in the Tea value chain through incentives. This was mirrored from the Crops Act.</p>

	<ul style="list-style-type: none"> (a) credit assistance including provision of equipment for land preparation (b) and other non-monetary assistance; (c) credit guarantee; (d) affordable farm-inputs including quality seeds, planting materials and market linkage; (e) technical support including research and extension services; (f) infrastructural support including physical infrastructure development, financial and market information; (g) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local (h) pest and disease control; (i) post-harvest facilities and technologies including storage, processing, distribution and transport facilities; (j) tax exemptions including tax breaks and duty waivers on the import of farm inputs and farm machinery. 	
<p>Clause 18 (1) A person shall not export, import, market or process tea or tea products unless he has applied for and obtained a licence from the Authority.</p>	<p>Proposal to amend this clause by</p> <ul style="list-style-type: none"> a. Deleting the word “market” as follows; <ul style="list-style-type: none"> (1) <i>A person shall not export, import or process tea or tea products unless he has applied for and obtained a licence from the Authority.</i> 	<p>This clause if passed as is, will restrict the small scale sell by the informal sector who are a key driver of this economy.</p>
<p>Clause 19</p> <p>A licence issued under this Act shall be in such form</p>	<p>Proposal to amend the clause by ;</p> <ul style="list-style-type: none"> a. By replacing the word “annually” and replace with the word “after a 	<p>Annual renewal will a pose a challenge, especially for the SMEs. Therefore, the need to</p>

<p>as the Authority may prescribe, and shall be renewable annually.</p>	<p>period of three years” after the word renewable as follows;</p> <p><i>A licence issued under this Act shall be in such form as the Authority may prescribe, and shall be renewable after a period of three years.</i></p> <p>Proposal to amend this clause and include the application process and the conditions for licensing.</p>	<p>review the period for renewal of licences.</p> <p>There is need for harmonization of licencing in the Tea Industry.</p> <p>The Bill is silent of this process and the conditions thereof, this would be abused where licences may be revoked or denied without any basis. Therefore, the need to have clear conditions for the process of applying / revoking a licence.</p>
<p>Clause 21 Funds of the Authority</p>	<p>Proposal to amend the clause by</p> <p>a. Adding new clauses as follows;</p> <p>(2) <i>The funds of the authority shall be used by the Authority in the furtherance or exercise of any function or power of the Authority and for any other lawful purpose approved by the Board</i></p> <p>(3) <i>The Authority shall, from time to time, make rules for the better management of the funds in the best interest of the tea industry.</i></p>	<p>The new clause will ensure there are clear accountability mechanisms for the Funds of the Authority.</p>
<p>Clause 26</p> <p>(1) The Authority shall arbitrate disputes arising between any parties under this Act.</p> <p>(2) A party who is not satisfied with the decision of the Authority may, within thirty days, appeal</p>	<p>Proposal to delete the clause</p>	<p>The Crops Act already provides for arbitration, where the Cabinet Secretary is expected to come up with a rule to guide on arbitration of issues around schedule crops.</p> <p>AFA will be a more independent entity to</p>

to a Court of competent jurisdiction.		deal with disputes and it will be better place to handle arbitration as opposed to the Board in this Bill.
Clause 29(2) The regulation of contracts between growers, processors and other players in the tea industry.	Proposal to amend this clause by deleting this clause.	The Competition Authority has the mandate to regulate fair trade agreement, which will cover contracts or agreement between growers, processors and other players in the tea industry. therefore, this clause will cause an overlap
The Bill does not provide for Registered packers.	Proposal for the Bill to consider registered packers.	This is because they are players in the tea value chain and are not recognized/registered under this Bill.

2.4 Submissions from Agriculture Food and Authority (AFA)

The Agriculture food and Authority (AFA) submitted its memoranda on tea Bill and gave proposed amendments as captured in the matrix below.

PART	CLAUSE NO & CONCERN	PROPOSED AMENDMENTS	REMARKS
PREAMBLE	Title	The Bill should also provide for the specific roles of the County Governments and the preamble should be amended to also include "To make specific roles of National and County Governments".	To take into account Schedule 4 of the Constitution of Kenya.
PART I - PRELIMINARY	Interpretation	Proposed Tea Regulatory Authority be changed to Tea Board of Kenya.	Prior to commencement of AFA, the Tea Board of Kenya which was established in 1950 was an internationally recognized brand. The

			Tea Task Force Report of 2016 has proposed that the tea industry should revert back to the Tea Board of Kenya. This is the practice in other leading world producers of tea such as the Tea Board of Sri-Lanka, Tea Board of India.
		Amend interpretation clause to include definitions of Key value chain players and activities such as Tea Brokers, Warehousemen, Management Agents, Auction, Tea Packers and Auction Organizer, Buyer, Exporters, Importers, export, import, made tea etc.	The definitions will provide clarity as to the entities and activities being regulated under the Act and avoid ambiguity.
PART II - ESTABLISHMENT OF THE AUTHORITY	4. Headquarters	Delete clause 4 which proposes that the headquarters of Authority be located in Kericho County.	The headquarters should be in a Central place as tea value chain players are widespread (growers in the East and West of Rift and traders concentrated in Mombasa). The former Tea Board of Kenya had constructed offices in Nairobi which were financed using funds from the tea industry players. It will therefore, not be prudent to spend resources renting other premises or building other premises in Kericho to house the headquarters.
	5. Functions	Amend clause on registration of growers to take into account Counties.	Agriculture being a devolved function under the Constitution

			of Kenya, regulation of tea growers to be assigned to Counties.
		Add the following new clauses to the functions of the Authority; d) Establish and monitor compliance with standards along the tea value chain. e) Promote and monitor tea trade in Kenya. f) Regulation of all aspects of tea trade. g) Prescribe the maximum period within which farmers are to be paid for green leaf delivered and penalties for delayed payments.	To provide for the regulation of activities and entities that may have been omitted in the Bill such as tea warehousemen and tea packers, auction organizer. Tea being an export crop promotion of tea in the local and international markets is an important function that has been left out. The same case applies to other developmental functions.
		On clause 5 (h) - Separate prioritization of research and utilization of the fund as two different activities to be carried out by the proposed Authority.	To provide clarity.
		Amend Clause 5 (f) as it is a County function.	This can be amended by including capacity building to the Counties and technology transfer as one of the functions.
	5. Board of the Authority	Amend clause 6 on constituting of the Board of the Authority as follows: <ul style="list-style-type: none"> • Two (2) Members each from the opposite Gender representing smallholder tea farmers (one from East and One from West of Rift); • Two County Executive Committee Members each from the opposite Gender nominated by the County 	Tea is grown in 19 Counties in Kenya. The proposal to have Seven Members from the top seven tea growing Counties is limiting and does not take into account Gender and Geographical representation as per the requirements of the Constitution.

		<p>governments of the tea growing Counties (one from East and One from West of Rift);</p> <ul style="list-style-type: none"> • One (1) Member representing Tea Trade; • One (1) Member representing plantation producers; • Principal Secretary Agriculture (1) and Principal Secretary Treasury (1); • One Member of the female gender nominated by the Cabinet Secretary. 	<p>Further, Kenya Bureau of Standards is not charged with the responsibility of maintaining statistics the same is done by Kenya National Bureau of Statistics.</p> <p>Proposed representation in the Board does not cover the entire value chain. For example, representation of the Tea Trade has not been included.</p> <p>The proposed Authority/Board is a State Corporation under the National Government (Ministry of Agriculture) and will be primary undertaking functions of the national government. The role of appointing Board Members should lie with the Cabinet Secretary and not with the Council of Governors as the proposed institution is not a County Government institution.</p> <p>The number of Board Members should also be aligned with the Mwongozo Code of Governance (Max of 9 Members).</p>
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	7. Powers of the Board	Under clause 7 (e) replace the statement with “open such bank account as may be necessary “ Under clause 7 add a provision to provide for an overarching provision to undertake any activity necessary for fulfillment of the Boards mandate.	As is best practice to take into account any additional activity that may be required to be undertaken by the Board but may have been overlooked.
	11. Appointment of Chief Executive Officer	Amend the role of the Secretary to the Board to be assigned to the Corporation Secretary Clause 11(2) in line with Mwongozo. Clause 11 (3) (b) Experience for appointment to the position of CEO should be at least 10 years in a Senior Management position.	In line with good corporate governance practice and the provisions of Mwongozo Code of Governance for State Corporations, the role of the Secretary to the Board and the Chief Executive officer should be separate.
	12. Vacation of office	Add a new 2 additional provisions to clause 12. “In case of dishonesty or fraud” “Fails to comply with Chapter Six of the Constitution”	To take into account Constitutional provisions.
	14. Authentication Common Seal of the Authority	Add under clause 14 (2) to provide for the authentication of the seal to also be done by the Corporation Secretary.	For operational efficiency as the Board is not an executive board and is not involved in the day to day management of the organization.
	15. Signing Authority	Delete clause.	It would not be practical for Board Members to sign all letters and instruments written or made by or on behalf of the Authority on a day to day basis as the Board Members are not executive and they are not involved in the day to day management of

<p>PART III - REGULATORY PROVISIONS</p>	<p>17. Registration</p>	<p>a) Amend clause 17 (1) to read</p> <p>“Every tea grower shall, register with the tea factory to which he delivers green leaf, by supplying such particulars as the Authority may, in regulations, prescribe.</p> <p>Add the following additional clauses to clause 17</p> <p>1) The tea processor shall maintain a register for the purposes of this Part and shall record therein the particulars supplied in accordance with this section.</p>	<p>the organization.</p> <p>In order to be able to deal effectively with the malpractices of tea green leaf diversion commonly referred to as “tea hawking” the provision for registration of tea growers need to be enhanced as proposed;</p>
		<p>i. Any change in the particulars supplied by a grower for purposes of Registration in accordance with subsection (1) shall be notified to the Authority or the tea factory in writing, without undue delay.</p> <p>ii. The register referred to in subsection (3) shall be <i>prima facie</i> proof of the fact that a person is a registered tea grower and the processor shall furnish the Authority with particulars of all registered tea growers in such manner as the Authority may prescribe.</p> <p>iii. After the commencement of this section, any grower who carries on Business as such without being registered in accordance with this section or</p>	

		<p>knowingly or recklessly supplies false particulars, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one Hundred Thousand or imprisonment for a term not exceeding one year or to both.</p>	
		<p>The following additional provisions are proposed under clause 17 (2);</p> <p>Under clause 17 (2) Add a new provision (d) “any other information as may be prescribed by the Authority from time to time.</p> <p>17 (3) to be amended to read</p> <p>(3) (a) “Every dealer in tea shall register with the Authority”</p> <p>A new clause (3) (b) dealer shall not deal in tea unless that person has been registered with the Authority”.</p>	<p>To make provisions for registration of commercial tea nurseries and green leaf transporters by County governments and submission of statistical returns.</p> <p>Registration of green leaf transporters will assist in dealing with green leaf diversion malpractices.</p> <p>To strengthen the provision on dealing with tea without being registered.</p> <p>In addition it should be made an offence to deal with tea without a license and to vary the terms and conditions of the license without approval from authority.</p>
REGULATORY PROVISIONS	18 Licensing	<p>It is proposed that the provisions on manufacturers be separated from the provisions on dealers.</p> <p>The following additional to enhance the provisions on</p>	<p>Clause 18 leaves out a crucial aspect of licensing of tea factories processors.</p>

		<p>licensing of processors are proposed;</p> <ol style="list-style-type: none"> 1) A person shall not manufacture or process a scheduled crop product for sale except under and in accordance with a licence issued under this Act. 2) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee. 3) The Authority may, after consultation with the county executive- <ol style="list-style-type: none"> a. issue a manufacturing licence, in accordance with this Act; b. refuse to issue the licence on any ground which may appear to the licensing authority to be sufficient and inform the applicant in writing of the reasons thereof; c. cancel, vary or suspend any licence if in the findings of the Authority, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing or processing entities. 4) A manufacturing licence issued under this section shall, in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry 	
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		<p>out the business of packing and blending a crop product.</p> <p>5) A person who manufactures a scheduled crop for sale in contravention of this Act;</p> <ul style="list-style-type: none"> a) buys, sells, offers for sale, transports or b) has possession of a scheduled crop which to the person's knowledge or belief has been grown, manufactured or processed otherwise than in accordance with this Act; is from a non - registered grower or dealer such crop, commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both. <p>6) If a person is in possession or has control of scheduled crop for which the person is unable to account to the satisfaction of a person authorized under this Act, such scheduled crop shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.</p> <p>7) If a person is convicted of an offence under this section, the court shall order that any scheduled crop and any vehicle, vessel or other conveyance in relation to</p>	
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		which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or other conveyance, the court sees good reason, to be recorded by it in writing, not to do so.	
FINANCIAL PROVISIONS	19. Dissemination of Market information	Clause 19 be moved to the clause dealing with functions of the Authority and the dissemination of market information to include all stakeholders in the tea industry.	For consistency as it's a function of the Authority.
	23. Establishment of the Fund	Delete clause 23	Clause 23 (3) (a) provides that the fund should provide credit facilities to tea growers and processors. We propose that the same be deleted since there are other institutions mandated to provide credit facilities such as the Commodities Fund under AFA Act and the Agriculture Finance Corporation.
	23 (3) (b)	Amend clause 23 (3) (b) which reads conduct research and replace with "carry out market research including capacity building on value addition at County and National level". After deleting (a), (b) becomes (a)	To provide clarity and include functions that have been omitted.
		Amend clause 23 (3) (c) which reads carry out operations of the Authority as follows "Carry out the functions and operations of the Authority"	To provide clarity
		Clause 23 (4) delete "determined by the Cabinet Secretary in consultations with the Authority" and replace with	

		<p>“the percentage of the application of the monies under subsection 3 shall be as follows;</p> <p>(a): Capacity building on value addition at County and National level - 30%:</p> <p>(b): Carry out tea market research, promotion and development - 20%:</p> <p>(c): Carry out the functions and operations of the Authority - 20%:</p> <p>(d): Tea Research activities and programmes - 30%.</p>	
	25. Accounts and Audit	Delete clause 25 (4)	It is the role of the Kenya National Audit Office (KENAO)
	30. Penalties	Clause 30 (1) provides for a general penalty clause and provides for a minimum fine of 20,000 Kshs. We propose that the same be amended to provide for a maximum penalty of up to 1 million Shillings and imprisonment of 2 years as is common practice as some of the offences are serious and should attract higher penalties	To provide for a penalty that will be a sufficient deterrent since the law prescribes a maximum not the minimum.
	31.Regulations	<p>Amend clause 31 to include the following additional provisions;</p> <p>1. The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act, or for prescribing anything which is to be prescribed under this Act.</p> <p>Without prejudice to the generality of the foregoing,</p>	In order for the proposed institution to be an effective regulator for the tea industry. The provisions which have been omitted in the Bill are currently being undertaken by AFA-TD.

		<p>regulations made under this section may provide for-</p> <ol style="list-style-type: none"> 1) regulation and controlling the method of blending, packaging and labelling of specified tea for purposes of traceability; 2) Regulation of tea imports and exports; 3) Regulation of all aspects of tea trade; 4) Regulation of the periods for which licences and registration certificates shall be issued; 5) Forms and fees to be paid for anything to be done under this Act; 6) Rules for ensuring safety including handling, transportation, processing and market standards of tea and tea products; 7) rules and regulations of any organization dealing with tea and tea products, made by any such organization to be in conformity with the provisions of this Act and other relevant laws; 8) submission of returns and reports by tea processors and dealers under this Act; 9) standards, and the manner of grading and classification of made tea products under this Act; 10) the formula for the pricing of greenleaf; 11) the regulation of standard industry agreements; 12) Regulations for licensing and registration of tea 	
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		processors and dealers.	
PART VI - TRANSITIONAL PROVISIONS	Rights and Obligations 33	Amend clause 33 to read “All rights, obligations and contracts which immediately before the coming into operation of this Act, were vested in the Agriculture and Food Authority with regard to tea shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Authority”.	The word tea has been omitted from the transitional provisions.
	Staff 34 (1)	Amend clause 34 (1) to read “ A person who, was an officer or Member of Staff of the former Tea Board of Kenya, immediately before commencement of the Crops Act, 2013 and the Agriculture and Food Authority Act, not being then under notice of dismissal or resignation or who has since then not ceased employment with the Agriculture and Food Authority shall, on the appointment day and subject to subsection (2), become an Officer or Member of Staff of the Authority on current or improved terms and conditions of service.	To provide clarity and take into account Staff Members who have retired or since then left the organization.
	34 (2)	Delete” or the company” Delete “the former Board” and replace with “Agriculture and Food Authority”	The word company is misplaced as the Act does not create a company.
	34 (3)	Delete “The Cabinet Secretary” and replace with “the Authority”	The same is an administrative matter which can be carried out by the Authority.
	35 (a) Assets and Liabilities	Delete (a) and replace with: (a) (i) all funds, assets, and other property, moveable and immovable which, immediately before the commencement of the Crops Act and the Agriculture and Food Authority Act, were	The clause does take into account funds assets and property which were acquired after the coming into effect of AFA with respect to tea and should be amended.

		<p>vested in the former Tea Board of Kenya shall, by virtue of this paragraph, vest in the Authority;</p> <p>(a) (ii) all funds, assets, and other property, moveable and immovable relating to tea which, immediately before the appointed day were vested in AFA, shall by virtue of this paragraph, vest in the Authority;</p>	
		<p>Delete (c) and replace with:</p> <p>all rights, powers, liabilities and duties relating to tea whether arising under any written law or otherwise, which immediately after the commencement of the Crops and AFA Acts were vested in, imposed on or enforceable by or against AFA with respect to tea shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.</p>	<p>To provide clarity to the transitional provisions.</p>
SCHEDULE S 15	Conduct of the Business of the Board	(5) Quorum to conduct the Board Business should be at least 2/3 not a minimum of 5.	In line with best corporate governance practice.
MEMORANDUM OF OBJECTS AND REASONS	PARA 1	<p>Amend the first sentence as follows:</p> <p>The principle object of the Bill is to enhance the tea industry regulatory efficiency and effectiveness, improve service delivery, provide for adequate funding of the Authority functions, tea industry development, reclaim the internationally known brand of the Tea Board of Kenya internationally renowned brand in line with other key tea producing countries as well enhance the tea industry</p>	In line with the recommendations of the Tea Taskforce Report of 2016 should the proposal to amend the proposed Authority to Tea Board of Kenya be taken on board.

	competitiveness.	
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2.5 Submissions from East African Tea trade Association (EATTA)

The East African Tea Trade Association (EATTA) is a voluntary membership organization that brings together Tea Producers, Buyers, Brokers, Packers and Warehousemen, affording them a disciplined environment in which to interact commercially, and to promote the best interests of the trade in Africa. EATTA presented proposed amendments to the Tea Bill as shown in the matrix below.

Clause in the Tea Bill (Draft gazetted November 2018)	Proposed Review	Rationale
2. Definitions of “Authority” and “Board”	There is proposed to have a Board rather than an Authority	A Board will function more effectively and inclusively manage the sector rather than an authority which is perceived to be mainly regulatory
“Processor “Means a person registered by the authority to process tea or tea products; “tea”	Delete	Definition introduces multiple registration regimes and presents a lack of clarity on the scope of the roles of packers, growers etc.
3.(1) There is established an authority known as the TEA regulatory Authority of Kenya.	Review to read “There shall be established the Tea Board of Kenya”	
4(1) The headquarters of the authority shall be in Kericho County	Edit to read “the Headquarters shall be in Nairobi County”	It is acknowledged that Nairobi is a central location in reference to the tea growing areas in Kenya. Further there is already infrastructure set up in Nairobi with resources from tea producers /farmers

<p>5 (1) The Authority shall perform the following functions— Regulate ,develop and promote the tea industry</p>	<p>Delete the word regulate</p>	<p>It was noted that the main objects of the Crops Act include the minimization of Regulation of the crops sub-sectors. It would be contrary to this objective to mandate the Board to "regulate" the sector. It is acknowledged that the Board should manage the sector and facilitate its development to be in line with the spirit of the Crops Act.</p>
<p>Functions of the Authority 5</p>	<p>Review to read “Functions of the Board” Insert a clause “Promotion of scheduled crops” to read <i>In addition to the functions stipulated under any other law, the Authority shall-</i> <i>Formulate general and specific policies for the development of tea;</i> <i>facilitate marketing and distribution of tea through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion of activities on tea;</i> <i>enjoin the ministry responsible for transportation and communication to effect an efficient, regular and economical means of</i></p>	<p>Incorporate the provisions of Section 8 of the Crops Act into the Bill as a Schedule or a new section to import the benefits of the Crops Act in facilitating the promotion of the sector</p>

transporting tea, for purposes of reducing marketing costs and ensuring stable consumer supply
Identify foreign markets for Kenyan tea
establish linkages with various governments agencies and re-establish the Tea Research Institute as an independent research centre for Kenyan tea designed to
promote the production, marketing and processing of tea.
facilitate the adoption of technology in the sector for sustainability
facilitate the setting up of sustainable standards for the sector
devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade,
establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of tea to ensure health and proper trading
promote and advise on strategies for value addition prior to the export of tea from Kenya;
recommend general industry

	<i>agreements between farmers and other players in the tea sector</i>	
<p>Functions of the Authority</p> <p>5. (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties</p>	Clarify or delete this clause	<p>The clause should either be reviewed to define the benefits and resources and interested parties OR in the alternative...delete this clause as it presents several ambiguities with scope of beneficiaries benefits or interested parties. Notably, the producers and the players in the tea are private enterprises engaging in business and cannot be compelled by the Bill to contribute some welfare or other benefit to interested parties</p>
5 (2) (b) register the operations of tea growers and processors	Delete 'regulate'	
<p>Functions of the Board</p> <p>5 (2) (c) licence tea dealers and processors;</p>	Delete 'processors'	<p>The processors are covered under clause 5.2 (c). It is acknowledged that there is benefit to licensing of tea dealers. This would include the registration of farmers which has been going on unregulated and has resulted in the country</p>

		overproducing tea.
5.(2) (h) coordinate prioritization of research and utilization of available funds; and	Insert “Support the Tea research Institute (TRI) to undertake research	The TRI has historically been charged with this function and under better management and involvement of stakeholders, it worked effectively for the sector. The KALRO act will require amendment to remove TRI and set it up under Tea Board with defined subscribers
5.(2) (i) arbitrate in any dispute related to the tea industry referred to under section 26	Delete this clause	There are already bodies with capacity to arbitrate on disputes in the sector. The Board as constituted will not have effective capacity to operate as tribunal
6 (1) The management of the authority shall vest in a Board which shall consist of: a Chairperson appointed by the President the Principal secretary for the time being responsible for agriculture or a person deputed by him/her in writing; seven persons nominated by council of governors, representing top seven tea growing counties as per the records held at the Kenya Bureau of Statistics as at the date of nomination; one person nominated by association representing the largest number of tea growers	Edit to read, a Chairperson appointed by the President Principal secretary responsible for agriculture Two members nominated by the council of governors to represent tea growing counties Two persons with knowledge and experience as will be beneficial to the Board, nominated by factories to represent smallholder tea producers One person nominated by registered tea parkers One person nominated by the cabinet secretary who possess such knowledge and experience as the cabinet secretary	It was noted that in the former TBK chair was elected from among the members of the Board. On discussion it was noted that the Presidential Appointee should have certain qualifications relevant to tea

<p>in the country; a chief executive officer appointed in accordance with section 9 who shall be an <i>ex-officio</i> member of the Board</p>	<p>considers beneficial to the Board One person nominated by Kenya Tea development agency (KTDA) One person nominated by the Kenya Tea growers Association (KTGA) One person nominated by the East African Tea Trade Association (EATTA) A Chief Executive officer to be an <i>ex-officio</i> member of the Board</p>	
<p>6(1) (c) seven persons nominated by the council of governors, representing the top seven tea growing counties as per records held at the Kenya bureau of statistics as at the date of nomination</p>	<p>Add “ persons with such knowledge and experience as will be beneficial to the Board” after.... two persons</p>	
<p>6.(1) (e) Chief executive Officer appointed in accordance with Section 9 who shall be an <i>ex-officio</i> member of the Board</p>	<p>Edit to read “..... section 12....”</p>	<p>Provisions relating to the qualifications of CEO ate in Clause 12</p>
<p>6.(2) a person shall not be appointed to be a chairperson or a member of the Board under subsection 1(c) and 1(d) unless that person holds at least a degree or its equivalent in any discipline from a recognized institution and has demonstrable experience in the tea sector</p>	<p>Replace demonstrable with “relevant”</p>	
<p>14.(1) the common seal of the authority shall be Common Seal kept in the custody of the chief executive Officer or</p>	<p>Delete this clause to avoid the bureaucracy of requiring Board Authority for every instance of use of the seal</p>	<p>There is sufficient protection of the seal because there is requirement for</p>

such other persons as the board may direct, and shall not be used except by the order of the Board		authentication of seal by the signatures of the CEO and the Chairperson at clause 14(2)
PART III REGULATORY PROVISIONS 17(1)	Replace “processor” with “manufacturer”	Processor is proposed to be deleted above
S.17(1) Every tea grower shall register with a processor	Insert the provisions of Section 14(1)(b) of the Crops act into this section	Section 14 is on freedom to register and provides: (b) in the case of tea grower, register with tea factory to which the person delivers green leaf, by supplying such particulars as the Authority may, by regulations, prescribe. This will facilitate the management and facilitation of growers for effective operations of the sector.
PART II REGULATORY PROVISIONS 17	INCORPORATE SECTIONS 4, 6, 12, AND 5 OF Crops act into part III of the Tea Bill	Sections 4 (Guiding Principles) and 6 (Role of National and County governments in development of crops) outline guiding principles and the responsibilities of the county and national governments in the management and promotion of crops and should be adopted for tea. Section 12 and 15 touch on incentives and registration of growers respectively. It is key to incorporate the beneficial provisions of the Crops Act.
18. (1) A person shall not	Delete “market” from the clause	The inclusion of marketing

export, import, market or process tea or tea products unless he has applied for and obtained a licence from Authority		in the clause will serv to restrict handling of tea locally; it will discourage many other players e.g. Village kiosks, supermarkets from handling tea
19. Licence issued under this Act shall be in such a form of licence as authority may prescribe, and shall be renewable annually	Review period of renewal	It was proposed to stipulate 3 years for renewal of licence on the rationale that there are existing challenges that will be associated with annual renewal and many obstacles arising from the frequency of annual renewal. This should be aligned to the proposals in the Tea Regulations
26.(1) the Authority shall arbitrate disputes arising between any parties under this Act	Delete this clause	The Board will not be capable of effectively handling disputes as highlighted above.... The board may facilitate alternative dispute resolution between players e.g. KTDA and farmers
s.29. Regulations (2) without prejudice to generality of subsection(I), the cabinet Secretary may make Regulations for the (a) regulation of the processing, importation and exportation of tea and tea products	Delete “regulation” and review to read provide for...” the processing of tea and tea products.”	As indicated above, it is in the spirit of the Crops Act to minimize regulation. Providing for regulation of processing will highly likely present impediments to the operations of the sector.
29.(2)(e) the regulations of contracts between growers, processors and other players	Delete the clause	It is contrary to the Competition Act. This is private matter to be agreed

in the tea industry		between the parties and should not be regulated. Privity of contract and freedom to contract should apply to agreements between growers and other players
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2.6 Submissions from the Kenya Tea Development Agency (KTDA)

Kenya Tea Development Agency Limited was incorporated on 15th June, 2000 as a private company under (CAP 486) of the laws of Kenya, becoming one of the largest private tea management agencies to manage the smallholder tea sector. It sells tea on behalf of small-scale tea growers through the Mombasa Auction. KTDA has expressed its support the Tea Bill (Senate Bills No.36 of 2018) in principle to the extent that it has purposed to alienate tea from the Agriculture and Food Authority (AFA) and to create an autonomous Tea Authority to regulate the tea industry. However, it has proposed the following amendments in the Bill-

1. MEMORANDUM OF OBJECTS AND REASONS

The principle object of the Bill is to liberalize the tea industry. This will be done through the reorganization of the tea industry by transitioning of the regulation; and commercial roles currently undertaken by the Agriculture and Food Authority to the Tea Regulatory Authority of Kenya.

Observation

The Liberalization & Restructuring of The Tea Industry was successfully implemented in the year 2000. This has fostered the growth of the tea sector in Kenya for the last twenty years.

The tea sector is almost entirely composed of private sector players. We welcome any further improvements that will make the tea industry even more competitive efficient and rewarding.

2. PART 1 I-ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

3 (1) There is hereby established an Authority known as the Tea Regulatory Authority of Kenya

Proposal

It should be renamed "The Tea Board of Kenya"

Comment

The Tea Board that was established under the repealed Tea Act was much more successful in delivering on its mandate of regulating and controlling the growing, manufacture, sales and export of tea.

Secondly, our two main competitors, India and Sri Lanka, have powerful Tea Boards that regulate and foster the development of the crop in those countries.

Section 4 (1) The headquarters of the Authority shall be in Kericho County

Comments

It is acknowledged that Nairobi is a central location in reference to the tea areas of East and West of Rift and the Tea Trade Auction centre in Mombasa.

Further, the current AF A is housed in building constructed using resources from tea producers/farmers, and this would thus be the headquarters of the Tea Board.

Section 5 (1) Functions of the Authority

Section 5 (1) c facilitate equitable access to the benefits and resources of the tea industry; by all interested parties.

Proposal

The statement is not clear what equitable access to the benefits, resources and who the interested parties are. This should be defined.

Under the functions provided in section 5 (2) (d), the meaning of the words *managing factory* should be provided.

In addition to the "Functions of the Authority" provided in section 5 of the Tea Bill, we propose to include the following:

The functions of the Board in particular, but without prejudice to the generality of the foregoing include:

1. the Board will licence tea growers to ensure that the tea is grown only in suitable areas and ensure that growers have manufacturing facilities for their tea once it matures
2. the Board will license tea manufacturing factories to ensure that the new tea factories have sufficient leaf from their own estates and would not create over-capacity in a given area or interfere with any established system by "poaching" farmers who may already be delivering leaf to an already established factory in the same area".
3. the Board will regulate and control tea cultivation, processing, pests and diseases and to carry out investigation of and research into all matters relating to the tea industry;
4. the Board will place more emphasis on its role of advertising Kenya tea and increasing its sale by efforts to extend existing markets and exploiting new markets, and matters incidental thereon
5. to encourage consumption of tea in the domestic market and to educate the general public, the Board will enhance its effort of promotion of exhibitions for the display of tea and the process for manufacture thereof and the provision of the facilities thereto
6. the regulation, control and improvement of the cultivation and processing of tea;
7. to regulate and control tea cultivation, processing, pests and diseases and to carry out investigation of and research into all matters relating to the tea industry;
8. the promotion of exhibitions for the display of tea and the processes for manufacture thereof and the provision of the facilities thereto;
9. the collection and dissemination of statistics and other information relating to tea and its production, distribution and consumption

"It shall be the duty of the Board in exercise of its powers and in the performance of its functions to act in such manner as appears to it best calculated to promote the tea industry in Kenya".

Section 5 (2) to co-ordinate the prioritization of research and utilization of available funds;

Proposal

The activities of the current Tea Directorate and TRI have been hampered by lack of adequate funding to carry out their mandate of regulation of the tea industry and research respectively. In the absence of adequate government funding, a mechanism should be put in place to fund such activities by industry stakeholders such as contributions at a rate agreed by relevant industry stakeholders.

Section 6. (1) The management of the Authority shall vest in a Board which shall consist of

- (a) a chairperson appointed by the President;*
- (b) the Principal Secretary for the time being responsible for agriculture or a person depute by him in writing*
- (c) seven persons nominated by the Council of Governors, representing the top seven tea growing counties as per the records held at the Kenya Bureau of Statistics as at the date nomination;*
- (d) one person nominated by the association representing the largest number of tea growers in the country*
- (e) a Chief Executive Officer appointed in accordance with section 9 who shall be an ex-officio member of the Board.*

Proposal

The Board composition/ membership should be as follows:

- a) The Chairman, who will be elected by the members of the Board and appointed by the President or Cabinet secretary from among the members of the Board;
- b) the Principal Secretary, Ministry of Agriculture;
- c) The Principal Secretary, Ministry of Trade;
- d) 1 (one) member appointed by the cabinet secretary to represent tea trade sector in consultation with the tea trade;

- e) 3 (three) members appointed by the cabinet secretary after consultation with the organization representing smallholder tea growers;
- f) 2 (two) members appointed by the cabinet secretary after consultation with the organization representing plantation tea growers;
- g) the Chief Executive, Tea Board of Kenya
- h) 1 (one) member appointed by the cabinet secretary to represent Nyayo Tea Zones Development Corporation;
- i) Not more than 2 (two) members to be appointed by the Cabinet Secretary with advice from the Board who possess knowledge and experience of benefit to the Board.
- j) 2 (two) persons appointed by the cabinet secretary in consultation by the Council of Governors

Proposal

The following to be included:

The membership in the Tea Board of Kenya will be based on fair and equitable representation of the stakeholders in the tea industry.

The Board may co-opt to serve on it any person or persons whose assistance or advice it may require, but a person so co-opted shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum".

PART III-REGULATORY PROVISIONS

Section 17 (1) Every tea grower shall register with a processor.

Proposal

Insert the provisions of Section 14(1) (b) of the Crops Act into this Section, in addition to the following

1. Every tea grower shall, upon the commencement of this section, register with the tea factory to which he delivers green leaf, by supplying such particulars as the Board may, in regulations, prescribe.
2. Upon the commencement of this section, every tea grower licensed by the Board or its agent shall be deemed to be a registered tea grower.
3. Provided that where the particulars supplied to the Board by such grower for purposes of licensing do not meet the requirements of any regulations prescribed under subsection (1), the grower shall comply with such requirements.
4. where a person starts growing tea at any time after the commencement of this section, such person shall, within six months register with a tea factory in accordance with subsection (1).
5. Any change in the particulars supplied by a grower for purposes of registration in accordance with subsection (1) shall be notified to the Board or the tea factory in writing, without undue delay.
6. The tea factory shall maintain a register for the purposes of part and shall record therein the particulars supplied in accordance with this section
7. Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be grower, it may, after giving that person written notification by registered post of its intention to do so, remove the name of such person from the register.
8. 8. The register referred to in subsection (5) shall be prima facie proof of the fact that a person is a registered tea grower and the factory shall furnish the Board with particulars of all registered tea growers in such manner as the Board may prescribe.

9. After the commencement of this section, any grower who carried on business as such without being registered in accordance with this section or knowingly or recklessly supplies false particulars, shall be guilty of an offence

Section 19. A licence issued under this Act shall be in such Form of licence. The form as the Authority may prescribe, and shall be renewable annually.

Proposal

Review period of renewal

Comments

Period of renewal be set at 3years to avoid the unnecessary bureaucracy associated with annual renewal of licenses. However, the fees in regards to the license may be paid annually.

PART V- MISCELLANEOUS PROVISIONS

Section 28 - Penalties

Proposal

Delete this clause

Comments

This clause is ambiguous as there is no definition and/ or provision of what constitutes an offence for there to be a provision of a penalty. The offence has to be stated and its penalty defined.

Secondly, under the Companies Act, offences committed by the company and individuals within the company are clearly defined.

Section 29.(2)(c) –the regulation of contracts between growers, processors and other players in the tea industry.

Proposal

Delete this clause

Comments

It is contrary to the Competition Act. This is a private matter to be agreed between the parties and should not be regulated. Privacy of contract and freedom to contract should apply to agreements between growers and other players.

CROPS ACT 2013

Section(s): 4, 6, 8, 12, 14 1 (b), 15, 19 and .26

Proposal

The following clauses in the Crops Act to be included in the Tea Bill:

1. Section 4 which provides for the principles guiding both national and county governments in the management and administration of agricultural land.
2. Section 6 which provides for development of the scheduled crops by the national and county governments.
3. Section 8 which provides for status and promotion of scheduled crops.
4. Section 12 which provides for incentives to growers.
5. Section 14 1(b) which provides for registration of growers with the tea factor where they deliver green leaf.
6. Section 15 which provides for registration of growers associations
7. Section 19 which provides for the offense of illegal manufacture and/ or possession of a scheduled crop and include the requirement to register parcel of land with one factory and to deliver the crop from the parcel to that factory
8. Section 26 which provides for enforcement of the provisions of the Crops Act by the county officers and crop inspectors stationed in each county

Comments

There should be confirmation of the status of tea should it be deleted from the list of scheduled crops in the Crops Act, 2013.

Deletion of the term "Tea" from the First schedule of the Crops Act has the effect of hindering tea from enjoying the protection of the law and status accorded to scheduled crops. Should the proposed Tea Bill be passed into law, the provisions of the Crops Act, 2013 will no longer apply to Tea. Therefore these clauses should be included to the Tea Bill before "Tea" is deleted from the Crops Act, 2013.

2.7 Submissions from the Kenya Tea Growers Association (KTGA)

The Kenya Tea Growers Association (KTGA) comprises large scale commercial tea growers from five tea growing Counties in Kenya. It submitted contributions to the Tea Bill and proposed as indicated in the matrix below;

Clause in the Tea Bill (Draft Gazetted November 2018)	Proposed Review	Rationale
2. Definitions of "Authority" and "Board"	There is proposed to have a Board rather than an Authority	A Board will function more effectively and inclusively manage the sector rather than an Authority which is perceived to be mainly regulatory
2. Processor" means a person registered by the Authority to process tea or tea products; "tea"	Delete	Delete this definition as it introduces multiple registration regimes and presents a lack of clarity on the scope of the roles of packers, growers, etc.

2. Interpretation:	<p>Insert</p> <p>"Broker" means a person who negotiates the purchase or sale of tea between tea growers and buyers.</p> <p>Managing factory" means a factory appointed to process green leaf into made tea.</p>	Terms in use under Section 5 (2) (d) and (e) of the Bill.
3. (1) There is hereby established an Authority known as the Tea Regulatory Authority of Kenya.	Review to read "There shall be established the Tea Board of Kenya	
4. (1) The headquarters of the Authority shall be in Kericho County. (2) The	Edit to read "The Headquarters of the Board shall be in Nairobi County	It is acknowledged that Nairobi is a central location in reference to the tea growing areas in Kenya. Further, there is already infrastructure set up in Nairobi with resources from tea producers/farmers
5(1)The Authority shall perform the following functions- (a) regulate, develop and promote the tea industry;	Delete the word "regulate"	It was noted that the main objects of the Crops Act include the minimization of Regulation of the crops sub-sectors.
5. Functions of the Authority	<p>Review to read "Functions of the Board"</p> <p>Insert a clause "Promotion of scheduled crops." to read</p> <p>In addition to the functions stipulated under any other law, the Authority shall-</p> <p>a) formulate general and specific policies for the development of tea;</p> <p>b) facilitate marketing and distribution of tea through monitoring and dissemination</p>	Incorporate the provisions of Section 8 of the Crops Act into the Bill as a Schedule or a new section to import the benefits of the Crops Act in facilitating the promotion of the sector

	<p>of market information, including</p> <ul style="list-style-type: none"> c) identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion activities on tea; d) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting tea, for purposes of reducing marketing costs and e) ensuring stable consumer supply; f) Identify foreign markets for Kenyan tea; g) establish linkages with various governments agencies and re-establish the Tea Research Institute as an independent research centre for Kenyan tea designed to h) promote the production, marketing and processing of tea. i) facilitate the adoption of technology in the sector for sustainability j) facilitate the setting up of sustainability standards for the sector k) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, l) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, 	
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	<p>preservation, conservation and transportation of tea to ensure health and proper trading;</p> <p>m) promote and advise on strategies for value addition prior to the export of tea from Kenya;</p> <p>n) recommend general industry agreements between farmers and other player sector</p>	
<p>Functions of the Authority 5. (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties.</p>	<p>Clarify or Delete this clause</p>	<p>The Clause should either be reviewed to define benefits and the resources and interested parties OR in the alternative ... delete this clause as it presents several ambiguities with the scope of beneficiaries, benefits or the interested parties. Notably, the producers and players in tea are private enterprises engaging in business and cannot be compelled by the Bill to contribute some welfare or other benefit to interested parties.</p>
<p>5(2) (b) register and regulate the operations of tea growers and processors;</p>	<p>Delete 'regulate'</p>	

<p>Functions of the Board 5(2) (c) licence tea dealers and processors;</p>	<p>Delete "Processors"</p>	<p>The processors are covered under clause 5.2. (c). It is acknowledged that there is benefit to licensing of tea dealers. This would include the registration of farmers which has been going on unregulated and has resulted in the Country overproducing tea</p>
<p>5. (2) (h) co-ordinate the prioritization of research and utilization of available funds;</p>	<p>Insert "Support the Tea Research Institute to undertake tea and research"</p>	<p>The TRI has historically been charged with this function and under better management and involvement of stakeholders, it worked effectively for the Sector. The KALRO Act will require amendment to remove TRI and set is up under the Tea Board with defined subscribers.</p>
<p>5(2) (i) arbitrate in any dispute related to the tea industry referred to it under section 26.</p>	<p>Delete this clause</p>	<p>There are already bodies with capacity to arbitrate on disputes in the sector. The Board as constituted will not have effective capacity to operate as a tribunal</p>
<p>S. 6. (1) The management of the Authority shall vest in a Board which shall consist of: (a) a chairperson appointed by the President;</p>		<p>It was noted that the former TBK Chair was elected from among the Members of the Board. On discussion it was noted that the Presidential Appointee should have certain qualifications relevant to tea</p>
<p>6 (1) The management of the Authority shall vest in a Board which shall consist of: (a) a chairperson</p>	<p>Edit to read, • A chairperson appointed by the President;</p>	

<p>appointed by the President;</p> <p>(b) the Principal Secretary for the time being responsible for agriculture or a person deputed by him in writing;</p> <p>(c) seven persons nominated by the Council of Governors, representing the top seven tea growing counties as per the records held at the Kenya Bureau of Statistics as at the date of nomination;</p> <p>(d) one person nominated by the association representing the largest number of tea growers in the country;</p> <p>(e) a Chief Executive Officer appointed in accordance with section 9 who shall be an ex-officio member of the Board.</p>	<ul style="list-style-type: none"> • Principal Secretary responsible for Agriculture • Two members nominated by the Council of Governors to represent the tea growing Counties • Two persons with such knowledge and experience as will be beneficial to the Board, nominated by factories to represent smallholder tea producers • One person nominated by registered tea packers • One person nominated by the Cabinet Secretary who possess such knowledge and experience as the Cabinet Secretary considers beneficial to the Board • One person nominated by the Kenya Tea Development Agency (KTDA) • One person nominated by the Kenya Tea Growers Association (KTGA) • One person nominated by the East African Tea Trade Association (EATIA) • A Chief Executive Officer to be an ex-officio member of the Board 	
<p>6(1)(c) seven persons nominated by the Council of Governors, representing the top seven tea growing counties as per the records held at the Kenya Bureau of Statistics as at the date of nomination;</p>	<p>Add "persons with such knowledge and experience as will be beneficial to the Board" after ... two persons</p>	
<p>6. (1) (e) a Chief Executive Officer appointed in</p>	<p>Edit to read " ... section 12"</p>	<p>the provisions relating to the qualifications of the</p>

accordance with section 9 who shall be an ex-officio member of the Board.		CEO are in Clause 12
6(2) A person shall not be appointed to be a chairperson or member of the Board under subsection 1 (c) and 1 (d) unless that person holds at least a degree or its equivalent in any discipline from a recognized institution and has demonstrable experience in the tea sector.	Replace demonstrable with "relevant"	
14. (1) The common seal of the Authority shall be kept in the custody of the Chief Executive Officer or such other person as the Board may direct, and shall not be used except by order of the Board.	Delete this clause to avoid the bureaucracy of requiring Board authority for every instance of use of the seal.	There is sufficient protection of the seal because there is a requirement for authentication of seal by the signatures of the CEO and the Chairperson at Clause 14(2)
PART III REGULATORY PROVISIONS 17(1)	Replace "processor" with "manufacturer"	Processor is proposed to be deleted above.
S. 17. (1) Every tea grower shall register with a processor.	Insert the provisions of Section 14(1) (b) of the Crops Act into this Section.	Section 14 is on Freedom to register and provides: (1) (b) in the case of tea grower, register with the tea factory to which the person delivers green leaf, by supplying such particulars as the Authority may, by regulations, prescribe. This will facilitate the management and facilitation of growers for effective operations of the sector
PART III REGULATORY	Incorporate Section 4,6, 12 and 15 of Crops Act into part III of the	Sections 4 (Guiding Principles) and 6 (Role of

PROVISIONS 17	Tea Bill	national and county governments in development of crops) outline the guiding principles and the responsibilities of the county and national governments in the management and promotion of crops and should be adopted for tea. Section 12 and 15 touch on incentives and registration of growers respectively. It is key to incorporate the beneficial provisions of the Crops Act.
18. (1) A person shall not export, import, market or process tea or tea products unless he has applied for and obtained a licence from the Authority.	Delete "market" from the clause	The inclusion of marketing in the clause will serve to restrict handling of tea locally; it will discourage many other players e.g. village kiosks, supermarkets from handling tea.
19. A licence issued under this Act shall be in such Form of licence as the Authority may prescribe, and shall be renewable annually .	Review period of renewal	It was proposed to stipulate 3years for renewal of license on the rationale that there are existing challenges that will be associated with annual renewal and many obstacles arising from the frequency of annual renewal. This should be aligned to the proposals in the Tea Regulations.
21. Funds of the Authority	Insert: (1) The funds of the authority shall be used by the Authority in the furtherance or exercise of any function or power of	Current provision under the Crops Act (Section 10) prescribes the usage of the funds collected by the authority. Stakeholders should

	<p>the Authority and for any other lawful purpose approved by the Board</p> <p>(2) The Authority shall, from time to time, make rules for the better management of the funds in the best interest of the tea industry.</p>	<p>consider whether there are specific industry needs that can be outlined under this section in regard to utilization of funds</p>
<p>26. (1) The Authority shall arbitrate disputes arising between any parties under this Act.</p>	<p>Delete the clause</p>	<p>The Board will not be capable of effectively handling disputes as highlighted above..</p>
<p>S. 29 Regulation generality of subsection (I), the Cabinet Secretary may make Regulations to provide for the (a) regulation of the processing, importation and exportation of tea and tea products;</p>	<p>delete "regulation" and review to read</p> <p>.....provide for " ... the processing of tea and tea products."</p>	<p>As indicated above, it is in the spirit of the crops Act to minimize regulation. Providing for regulation of processing will highly likely present impediments to the operations of the sector.</p>
<p>29. (2) (e) the regulation of contracts between growers, processors and other players in the tea industry.</p>	<p>Delete the clause</p>	<p>It is contrary to the Competition Act. This is private matter to be agreed between the parties and should not be regulated. Privity of contract and freedom to contract should apply to agreements between growers and other players</p>

2.8 Written Submissions from Private Citizens

2.8.1 Submission from Stephen Muriuki

Mr. Stephen Muriuki of contact no. 0712 181905 of Jomo Kenyatta University gave his submissions on Tea Bill 2018 and proposed the following;

- a) That section 2 (c) of the bill should clarify how borrowing or lending will be done
- b) The section 4(2) be deleted. The Authority may establish branches at any place Kenya.

He proposes there should be one office of the Authority in Kenya.

- c) Section 12(3) requirements for one to be C.E.O should be a degree
- d) To promote tea consumption in Kenya, KTDA should lower tea prices for PF1 at factory gate.

2.8.2 Submission from Stephen Maina Githiga

Mr Stephen Maina Githiga, Chairman Kiru Tea factory submitted that he supported the proposals by both KTDA and KTGA on Senate Tea Bill 2018 and in addition, he proposed the following;

- a) Tea sector contributes 4% of the GDP hence the Bill should contribute more funds for research and marketing, just like there are funds for such in the Ministry of Tourism
- b) The Bill should avoid including operational issues like cost stricter, payment mode and contracts between KTDA and factory.

3 COMMITTEE OBSERVATIONS

1. Submissions received from Members of the public despite amendments are in support of the Tea Bill (Senate Bills No. 36 of 2018) in principle to the extent that it has purposed to alienate tea from the Agriculture and Food Authority (AFA) and to create an autonomous Tea Authority to regulate the tea industry;
2. Submissions received from the public propose that the Authority headquarters be in Nairobi as opposed to Kericho for easy accessibility for farmers;
3. Submissions received from the public propose that the Tea Regulatory Authority be renamed “The Tea Board of Kenya”;
4. The Committee observed that private tea factories did not submit their views on the Tea Bill, (Senate Bills No. 36 of 2018); and
5. The Tea Research Institute, an important institution in the Tea Sub Sector, did not submit any views on the Bill.

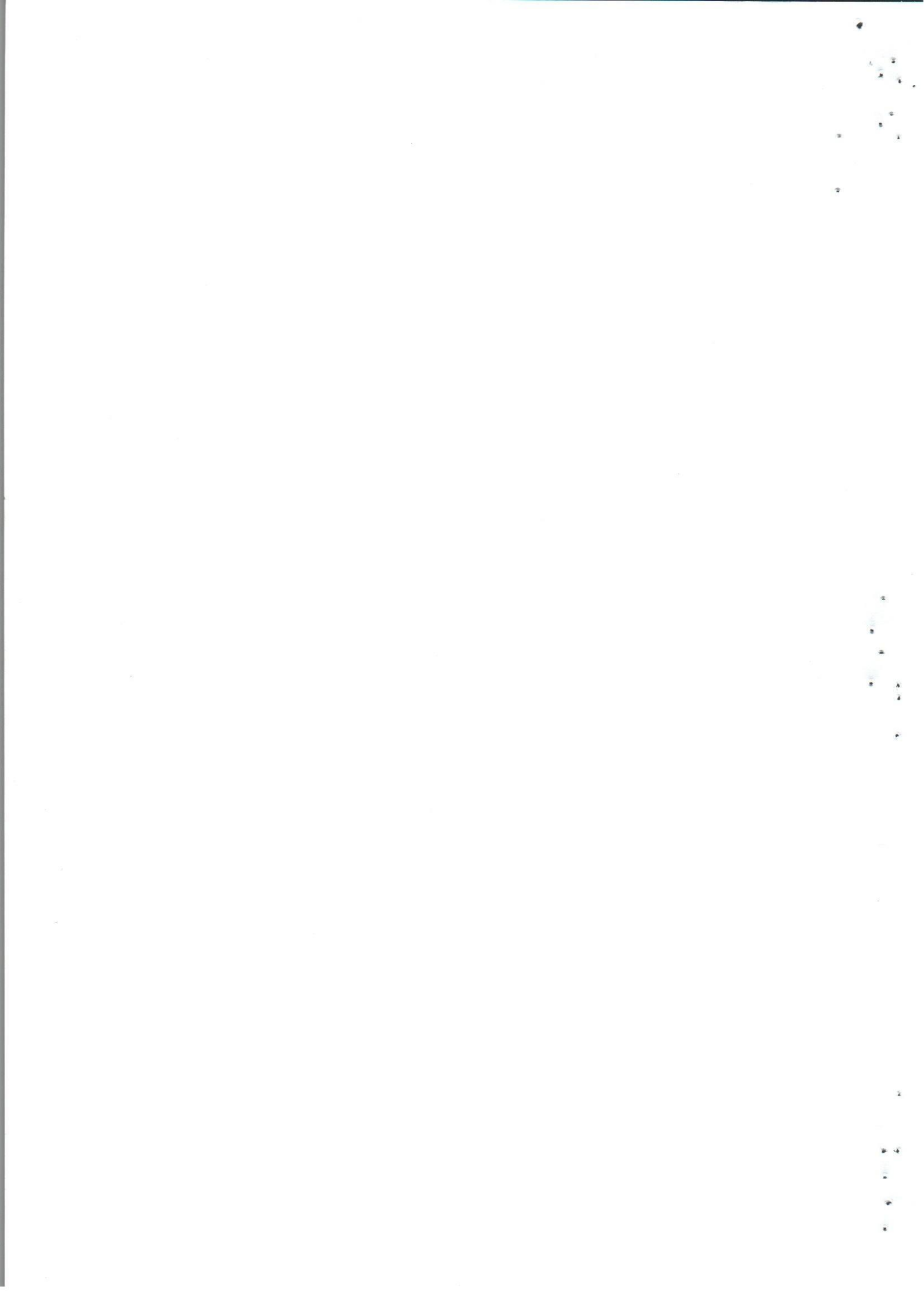
4 COMMITTEE RECOMMENDATIONS

The Committee recommends that the Bill be amended as follows-

1. The Tea Regulatory Authority be replaced with the Tea Board of Kenya;
2. The Headquarters of the Board be situated in Nairobi;
3. The Membership of the Board to include the Permanent Secretary in-charge of trade, two persons nominated by the Council of Governors, representatives of small-holder tea growers from the East and West, a representative of large-scale tea growers and a representative of tea traders;
4. The Board to be required to recruit a Corporation Secretary;
5. The minimum qualifications of the Chief Executive to the Board, be capped at a degree level and not master's degree as proposed in the Bill;
6. The regulatory functions of the Board be carried out in consultation with the relevant county governments;
7. The functions of the National and County Governments with regard to the tea sector, be clearly outlined;
8. A levy be introduced in the Bill to cater for emerging issues within the tea sector; and
9. The staff working within the tea directorate in the Agriculture and Food Authority be transited into the proposed Tea Board of Kenya.

APPENDICES

1. The Tea Bill, (Senate Bills No. 36 of 2018);
2. Committee Stage Amendments to the Tea Bill, 2018
3. Daily Nation and The Standard Newspaper advertisements of the 2nd and 3rd of March, 2019.
4. The Minutes of the 30th, 34th, 36th, 37th and 39th Sitting;



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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2018

NAIROBI, 13th November, 2018

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THE TEA BILL, 2018
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**SCHEDULE—CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD**

THE TEA BILL, 2018

A Bill for

AN ACT of Parliament to provide for the regulation, development and promotion of the tea industry, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Tea Act, 2018.

Short title.

2. In this Act—

Interpretation.

“Authority” means the Tea Regulatory Authority of Kenya established under section 3;

“Board” means the Board of the Authority constituted under section 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“dealer” means an exporter, importer or marketer registered under the Act;

“financial year” means the financial year of the Authority as provided for under section 25;

“licence” means a licence granted under section 18;

“processor” means a person registered by the Authority to process tea or tea products;

“tea” means the plant or part of the plant of the species known botanically as *camellia spp* or of any inter-specific hybrid involving this species or of any progeny of such hybrid;

“tea grower” a person who grows or cultivates tea in Kenya, or a person who manages, controls or cultivates land in Kenya upon which tea is grown;

“tea product” means any product, extract or substance obtained or derived from tea by any treatment or process.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

3. (1) There is hereby established an Authority known as the Tea Regulatory Authority of Kenya.

Establishment of the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

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

4. (1) The headquarters of the Authority shall be in Kericho County. Headquarters

(2) The Authority may establish branches at any place in Kenya.

5. (1) The Authority shall perform the following functions— Functions of the Authority.

- (a) regulate, develop and promote the tea industry;
 - (b) co-ordinate the activities of individuals and organizations within the tea industry; and
 - (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties.
- (2) Without prejudice to the generality of subsection (1), the Authority shall—
- (a) in consultation with the Cabinet Secretary, initiate the formulation of policies and make rules to regulate the tea industry;
 - (b) register and regulate the operations of tea growers and processors;
 - (c) licence tea dealers and processors;
 - (d) licence managing factories and their agents;
 - (e) licence tea brokers;
 - (f) provide advisory services on tea production and quality enhancement;

- (g) collect and analyze statistics related to, and maintain a database for the tea industry;
- (h) co-ordinate the prioritization of research and utilization of available funds; and
- (i) arbitrate in any dispute related to the tea industry referred to it under section 26.

6. (1) The management of the Authority shall vest in a Board which shall consist of—

Board of the Authority.

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary for the time being responsible for agriculture or a person deputed by him in writing;
- (c) seven persons nominated by the Council of Governors, representing the top seven tea growing counties as per the records held at the Kenya Bureau of Statistics as at the date of nomination;
- (d) one person nominated by the association representing the largest number of tea growers in the country;
- (e) a Chief Executive Officer appointed in accordance with section 9 who shall be an *ex-officio* member of the Board.

(2) A person shall not be appointed to be a chairperson or member of the Board under subsection 1(c) and 1(d) unless that person holds at least a degree or its equivalent in any discipline from a recognized institution and has demonstrable experience in the tea sector.

(3) The appointment of the chairperson under subsection (1) (a) and members under subsections (1) (c) and 1 (d) shall be by notice in the *Gazette* and such appointment shall be for a term of three years renewable for one further term.

7. A person shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (b) becomes an officer, agent or member of staff of the Authority;

- (c) resigns in writing, addressed, in the case of the chairperson to the President and in the case of any other member, to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

8. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

Powers of the Board.

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

(2) The Board may, if it considers it necessary, create or take part in the creation of, become a member of, or associated with a body or corporation designed to assist or promote the tea industry.

(3) The Board may establish and make contributions to a pension, superannuation or medical fund for the benefit of employees and may require such employees to contribute to the fund.

(4) The Board may by order authorize a member or an employee to exercise on its behalf such of its powers or the performance of any of the functions of the Authority under this Act as it may from time to time specify.

9. (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Committees of the Board.

(2) The Board may co-opt into the membership of committees established under subsection (1), other persons whose knowledge and skills are necessary for the functions of the Board.

10. The Board may by resolution delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Delegation by the Board.

11. The Remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

Remuneration of members of the Board.

12. (1) The Chief Executive Officer shall be competitively recruited and appointed by the Board.

Chief Executive Officer.

(2) The Chief Executive Officer shall be the secretary to the Board and shall be responsible for the day to day management of the affairs of the Authority.

(3) A person shall not qualify for appointment under subsection (1) unless such person has at least—

- (a) a masters degree from a university recognized in Kenya; and
- (b) five years experience in a position of senior management.

13. The Board may employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act and upon such terms and conditions of service as the Board may determine.

Staff of the Authority.

14. (1) The common seal of the Authority shall be kept in the custody of the Chief Executive Officer or such other person as the Board may direct, and shall not be used except by order of the Board.

Common Seal of the Authority

(2) The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairperson and the Chief Executive Officer:

Provided that the Board shall, in the absence of the Chairperson or the Chief Executive Officer nominate one member of the Board to authenticate the common seal of the Authority on behalf of either the Chairperson or the Chief Executive Officer, as the case may be.

15. All letters and instruments written or made by or on behalf of the Authority, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the Chairperson and the Chief Executive Officer:

Signing Authority.

Provided that the Board shall, in the absence of the Chairperson or the Chief Executive Officer, nominate one member of the Board to sign the letters and instruments on behalf of either the Chairperson or the Chief Executive Officer, as the case may be.

16. The business and affairs of the Board shall be conducted in accordance with the First Schedule.

Conduct of
business of the
Board.

PART III—REGULATORY PROVISIONS

17. (1) Every tea grower shall register with a processor.

Registration.

(2) Every processor shall keep or cause to be kept for statistical purposes, a register of all tea growers registered with under subsection (1) specifying—

- (a) the name of the grower;
- (b) the location, size and parcel number of the land on which the tea is grown; and
- (c) the variety of tea grown.

18. (1) A person shall not export, import, market or process tea or tea products unless he has applied for and obtained a licence from the Authority.

Licensing.

(2) 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 tea or tea products whichever is greater or to imprisonment for a term not exceeding two years or both.

(3) The Authority may revoke a licence issued to a person under subsection (1) if such a person contravenes the conditions upon which the licence is issued.

19. A licence issued under this Act shall be in such form as the Authority may prescribe, and shall be renewable annually.

Form of licence.

20. The Authority shall carry out market research and disseminate such information to processors and dealers.

Dissemination of market information.

PART IV—FINANCIAL PROVISIONS

21. The funds and assets of the Authority shall comprise of—

Funds of the Authority.

- (a) such monies or assets as may accrue to or vest in the Authority 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 Authority pursuant to this Act or any other written law;
- (c) such gifts as may be donated to the Authority; and
- (d) monies from any other source granted, donated or lent to the Authority.

22. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

Annual Estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned.

(3) The annual estimates prepared by the Board under subsection (2) shall be submitted to the Cabinet Secretary for tabling in Parliament.

23. (1) The Authority shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the Cabinet Secretary may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General—

Accounts and Audit.

- (a) a balance sheet showing in detail the assets and liabilities of the Authority; and

(b) such other statements of accounts as the Cabinet Secretary may approve.

(2) The accounts of the Authority shall be examined, audited and reported upon annually by the Auditor-General in accordance with the Public Audit Act.

(3) The Authority shall submit to the Auditor-General all books and accounts of the Authority, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Authority such information and explanation as he may consider necessary for the performance of his duties.

(4) The expenses incurred in and incidental to the auditing of the accounts of the Authority shall be met by the Authority.

24. (1) The Authority shall, within a period of three months after the end of the financial year or within such longer period as the Cabinet Secretary may approve, submit to the Cabinet Secretary a report of the operations of the Authority during such year, and the yearly balance sheet and such other statements of account as the Cabinet Secretary shall require, together with the Auditor-General's report thereon.

Annual report and publication.

(2) The Authority shall, if the Cabinet Secretary so requires, publish the report, balance sheet and statements submitted to him under subsection (1) in such manner as the Cabinet Secretary may specify.

(3) The Cabinet Secretary shall lay before Parliament the reports, balance sheet and statements submitted under subsection (1), within a period of fourteen days of the receipt of the reports and statements or, if Parliament is not sitting, within fourteen days of the commencement of its next sitting.

25. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each financial year.

Financial year of the Authority.

PART V—MISCELLANEOUS PROVISIONS

26. (1) The Authority shall arbitrate disputes arising between any parties under this Act.

Arbitration of disputes.

(2) A party who is not satisfied with the decision of the Authority may, within thirty days, appeal to a Court of competent jurisdiction.

27. Liability shall not attach to the Authority or to any of its member, officer, agent or staff for loss or damage incurred by a person as a result of an act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed by or conferred under this Act.

Protection of members and staff from liability.

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

Penalties.

(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 shall be liable for the offence as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance and that he exercised diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions as director, partner or officer concerned as aforesaid and to all the circumstances.

29. (1) The Cabinet Secretary may, upon consultation with the Authority, make Regulations—

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 tea and tea products;
- (b) the forms to be used in the application for registration, licensing, contracts and related activities;
- (c) the process of application for registration, licensing and related activities;
- (d) any fee which may be charged for anything done under this Act; and
- (e) the regulation of contracts between growers, processors and other players in the tea industry.

30. The Crops Act is amended by deleting—

- (a) paragraph (b) of section 14(1); and
- (b) the term “tea” appearing in Part 1 of the First Schedule.

Consequential amendments.

No. 16 of 2013

PART VI—TRANSITIONAL PROVISIONS

31. All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the Agriculture and Food Authority with respect to the tea sector shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Authority as the case may be.

Rights and obligations.

32. On or after the appointed day, all actions, suits or legal proceedings pending by or against the Agriculture and Food Authority in relation to the tea sector shall be carried on or prosecuted by or against the Authority, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

Legal proceedings.

33. Any reference to the Agriculture and Food Authority in any written law or in any contract, document or instrument of whatever nature, in relation to tea, shall, on the commencement of this Act, be read and construed as a reference to the Authority.

Reference to written laws.

34. (1) All directions, orders and authorizations given, or licenses or permits issued, or registrations made by the

Previous authorizations.

Agriculture and Food Authority in relation to tea, and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made by the Authority as the case may be, under this Act.

35. (1) In this Part—

Interpretation.

“appointed day” means the day this Act comes into operation

SCHEDULE

s. 16

CONDUCT OF BUSINESS AND AFFAIRS OF THE
AUTHORITY

1. (1) The Board shall meet at least once in every three months to conduct the business of the Board of Authority.

Meetings of the Board.

(2) The Chairperson shall convene the ordinary meetings of the Board at the premises of the Authority.

(3) Despite the provisions of sub-paragraph (1), the Chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Authority.

(4) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the Secretary.

(5) The quorum for the conduct of the business of the Board shall be five members.

(6) The Chairperson shall preside at every meeting of the Board at which he is present and in his absence, the members of the Board present shall elect one person from their number to preside over the meeting of the Board and he shall have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of

Disclosure of interest.

consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The principle object of the Bill is to liberalize the tea industry. This will be done through the reorganization of the tea industry by transitioning of the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Tea Regulatory Authority of Kenya.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

Agriculture plays a vital role in the economy of most county governments. It is the leading industrial crop in terms of its contribution to the country's GDP. It is therefore important that the tea industry is regulated and supported in terms of policy and law.

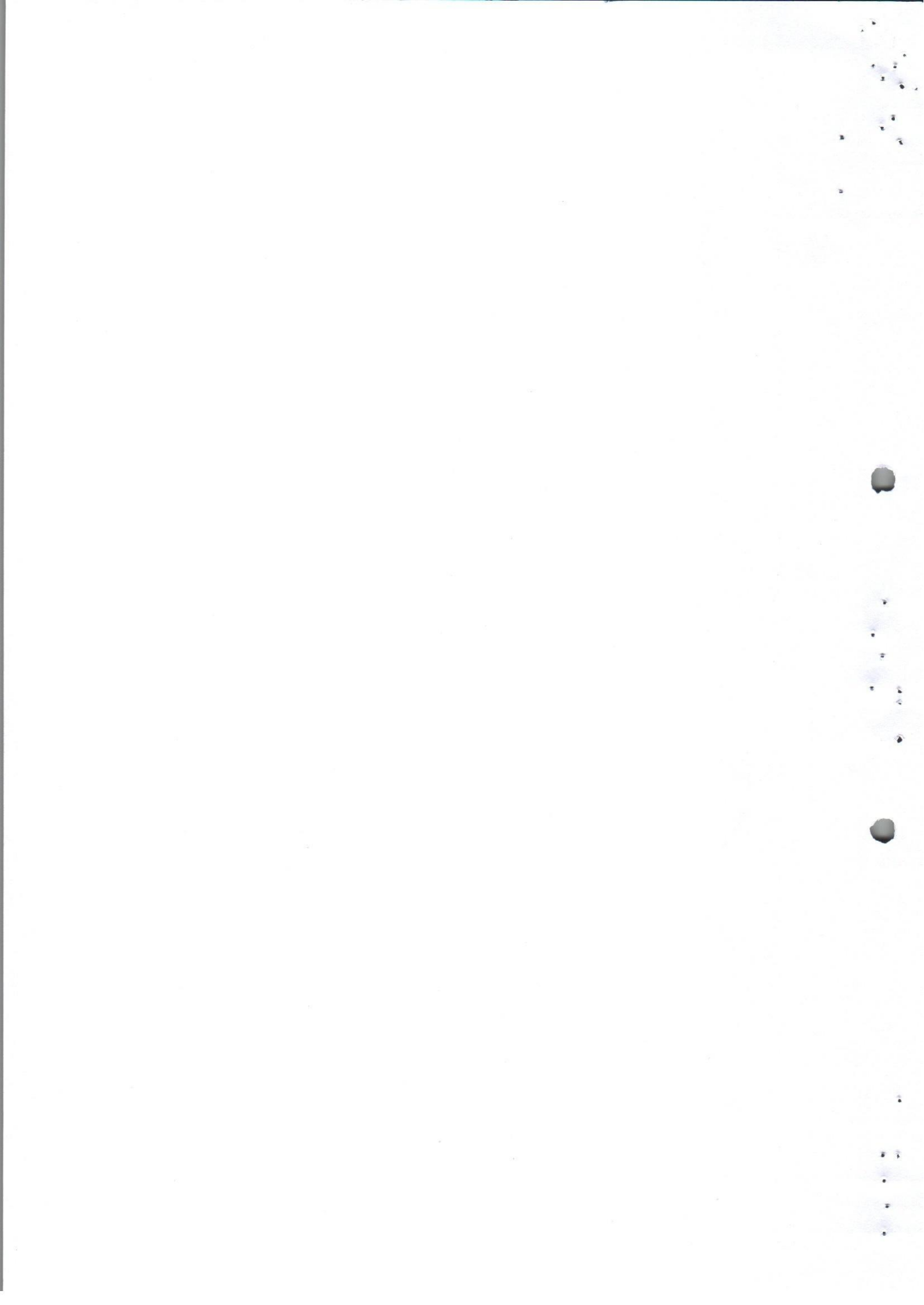
This Bill therefore affects the economic growth of most counties and the country as a whole and is as such a Bill concerning county governments.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 26th October, 2018.

AARON CHERUIYOT,
Chairperson, Ad-hoc Committee on Tea.



18th March, 2019

The Clerk of the Senate
Parliament Buildings
NAIROBI

**COMMITTEE STAGE AMENDMENTS TO THE TEA BILL, SENATE BILLS
NO. 36 OF 2018**

NOTICE is given that Sen. Njeru Ndwiga, Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, intends to move the following amendments to the Tea Bill, Senate Bills No. 36 of 2018, at the Committee Stage-

PART II

THAT Part II of the Bill be deleted and substituted therefor with the following new Part-

PART II – THE TEA BOARD OF KENYA

Establishment
of Board.

3. (1) There is established a Board, to be known as the Tea Board of Kenya, which shall consist of-

- (a) A chairperson appointed by the President;
- (b) the Principal Secretary for the time being 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 either gender, nominated by the Council of County Governors;
- (e) four persons, two of either gender, representing small-holder tea growers tea from the east and west of the tea growing areas;
- (f) one person representing plantation tea growers;
- (g) one person representing tea traders;
- (h) a Chief Executive Officer appointed in accordance with section 12 who shall be an *ex-officio* member of the Board.

Signing Authority.

15. All letters and instruments written or made by or on behalf of the Board, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the Chief Executive Officer or in the absence of the Chief Executive Officer, a person authorized by the Board.

Conduct of business of the Board.

16. The business and affairs of the Board shall be conducted in accordance with the First Schedule.

NEW CLAUSE 16A

THAT the following new clause be inserted immediately after clause 16-

Role of national and county governments

16A. (1) The Board, on behalf of the national government, shall be responsible for licensing and charging of levies.

(2) Levies charged by the Board shall not exceed ten per centum of the gate value of the tea produce and shall be charged in consultation with the Cabinet Secretary.

(3) The county governments shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

- (a) development of crops grown within the county;
- (b) disease control;
- (c) markets;
- (d) cooperative societies within the county;
- (e) soil and water conservation.

(4) In order to achieve the objects and purposes of this Act, it is the duty of the national and county governments to provide an enabling environment for the development of the tea sector.

CLAUSE 17

THAT clause 17 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c) -

(d) any other information as may be prescribed by the Board

CLAUSE 18

THAT clause 18 of the Bill be amended by-

- (a) deleting the word "Authority" appearing at the end of sub-clause (1) and substituting therefor the word "Board";
- (b) inserting the following new sub-clause immediately after sub-clause (1)-
 (1A) Sub-section (1) shall not apply to the export, import or marketing of any tea consisting of a sample or parcel not exceeding ten kilograms or tea processed for consumption on ships, aero planes or other international carriers.
- (c) deleting the word "Authority" appearing at the beginning of sub-clause (3) and substituting therefor the word "Board".

CLAUSE 19

THAT clause 19 of the Bill be deleted and substituted with the following new clause-

- (1) A licence issued under this Act shall be in a form prescribed by the Board, and shall be renewable after a period of three years;
- (2) Notwithstanding sub-section (1), any fees payable to the Board shall be paid annually.

CLAUSE 20

THAT clause 20 of the Bill be deleted and substituted with the following new clause-

20. The Board shall carry out market research and disseminate such information to all stakeholders.

CLAUSE 21

THAT clause 21 of the Bill be deleted and substituted therefor with the following new clause-

Funds of the Board.

21. 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

CLAUSE 22

THAT the Bill be amended-

- (a) in sub-clause (1) by deleting the word “Authority” appearing immediately after the words “expenditure of the” and substituting therefor the word “Board”; and
- (b) in sub-clause (2) by deleting the word “Authority” appearing immediately after the words “expenditure of the” and substituting therefor the word “Board”;

CLAUSE 23

THAT the Bill be amended -

- (a) by deleting the word “Authority” appearing at the beginning of sub-clause (1) and substituting therefor the word “board”;
- (b) in sub-clause (1) by deleting the word “Authority” appearing at the end of paragraph (a) and substituting therefor the word “board”;
- (c) in sub-clause (2) by deleting the word “Authority” appearing immediately after the words “accounts of the” and substituting therefor the word “board”;
- (d) by deleting sub-clause (3) and substituting therefor the following new sub-clause-
(3)The Board shall submit to the Auditor-General all books and accounts of the Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Board such information and explanation as he may consider necessary for the performance of his duties.
- (e) by deleting sub-clause (4)

NEW CLAUSE 34A

THAT the following new clause be inserted immediately after clause 34-

Staff.

34A. Any person who, at the commencement of this Act, is a member of staff of the Agriculture and Food Authority dealing with the tea sector shall on the appointed day, become a member of staff of the Board on the same or improved terms and conditions of service as may be specified by the Cabinet Secretary.

CLAUSE 2

THAT clause 2 of the Bill be amended by –

- (a) deleting the definition of the word “Authority”;

(b) deleting the definition of the word "Board" and substituting therefore the following new meaning-

"Board" means the Tea Board of Kenya established by section 3;

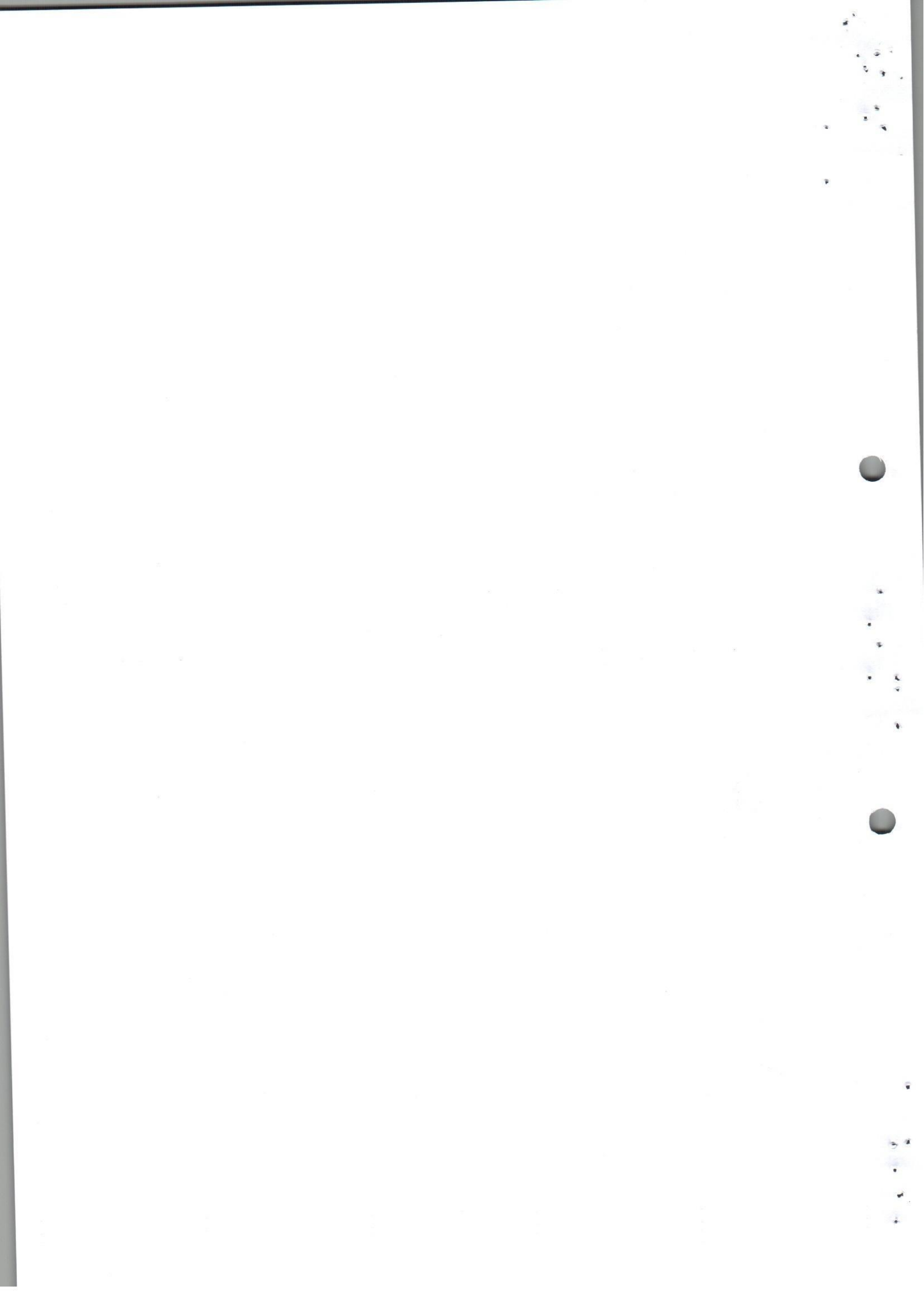
(c) inserting the definitions of the following words in their proper alphabetical order-

"broker" means a person who negotiates the purchase or sale of tea between tea growers and buyers;

"gate value" means the market value of tea products minus the expenses incurred in marketing and distribution;

"managing factory" means a factory appointed to process green leaf into made tea;

Sen. Njeru Ndwiga,
*Chairperson, Standing Committee on Agriculture,
Livestock and Fisheries.*





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P. O. Box 1125 - 30100, Eldoret, Kenya
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Mob: 0736 493555; Fax: +254 53 206 3257

OFFICE OF THE VICE CHANCELLOR

INTER-UNIVERSITY TRANSFER

University of Eldoret wishes to announce to the 2018 KCSE candidates who have been placed by KUCCPS in other institutions but wish to transfer their applications are invited to fill vacancies in the following programs.

SCHOOL OF AGRICULTURE & BIO TECHNOLOGY	
	CODE
1 Bachelor of Science in Agriculture	1114122
2 Bachelor of Science in Apparel and Fashion Design	1114217
3 Bachelor of Science in Food Science and Nutrition	1114191
SCHOOL OF BUSINESS AND MANAGEMENT SCIENCES	
	CODE
1 Bachelor of Commerce	1114151
2 Bachelor of Hotel and Hospitality Management	1114222
3 Bachelor of Tourism Management	1114157
SCHOOL OF ECONOMICS	
	CODE
1 Bachelor of Arts in Economics	1114646
SCHOOL OF EDUCATION	
	CODE
1 Bachelor of Education Science	1114137
2 Bachelor of Education (Home Science and Technology)	1114362
3 Bachelor of Education Arts	1114135
4 Bachelor of Education in Special Needs (Secondary School Option)	1114155
5 Bachelor of Education in Technical Education	1114331
6 Bachelor of Physical Education & Recreation	1114315
7 Bachelor of Education (Agricultural Education Science)	1114416
SCHOOL OF ENGINEERING	
	CODE
1 Bachelor of Engineering in Mechanical and Production Engineering	1114718
2 Bachelor of Engineering in Civil and Structural Engineering	1114616
3 Bachelor of Engineering in Agricultural and Biosystems Engineering	1114121
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	CODE
1 Bachelor of Environmental Science	1114213
2 Bachelor of Environmental Planning and Management	1114229
SCHOOL OF NATURAL RESOURCE MANAGEMENT	
	CODE
1 Bachelor of Science in Forest Resources and Utilization	1114330
2 Bachelor of Science in Natural Resource Management	1114348
3 Bachelor of Science in Wildlife Conservation and Management	1114143
SCHOOL OF SCIENCE	
	CODE
1 Bachelor of Science	1114120
2 Bachelor of Science in Microbiology	1114279
3 Bachelor of Science in Biotechnology and Biosafety	1114359
4 Bachelor of Science in Analytical Chemistry with Computing	1114114
5 Bachelor of Science in Biochemistry	1114112
6 Bachelor of Science in Actuarial Science	1114107
7 Bachelor of Science in Applied Statistics with Computing	1114164
8 Bachelor of Science in Information Technology	1114232
9 Bachelor of Science in Computer Science	1114115

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REPUBLIC OF KENYA



TWELFTH PARLIAMENT
THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The Tea Bill (Senate Bills No. 36 of 2018) was read a First Time in the Senate on 5th December, 2018 and was thereafter committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries now invites interested members of the public to submit their views on the Bill. The views may be submitted in the following manner-

1. Public Hearings shall be held on **Thursday, 28th February, 2019 from 11:00 a.m. to 1:00 p.m. at the Tsavo Ballroom, KICC Building, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand-delivered to the **Office of the Clerk/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **csenate@parliament.go.ke**, to be received on or before **Thursday, 28th February, 2019 at 5.00 p.m.**

The Bill may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.

COUNTY GOVERNMENT OF KILIFI



OFFICE OF THE COUNTY SECRETARY

VACANCIES ANNOUNCEMENT: EXTENSION

The County Government of Kilifi in accordance with article 235 of the constitution and section 56 of the County Government Act of 2012, wishes to recruit competent and qualified persons to fill in the following positions in the County Public Service Board.

S/NO	JOB TITLE	NUMBER OF VACANT POSITIONS
1	Chair Person of the Board	1
2	Members of the Board	5
3	Secretary of the Board	1

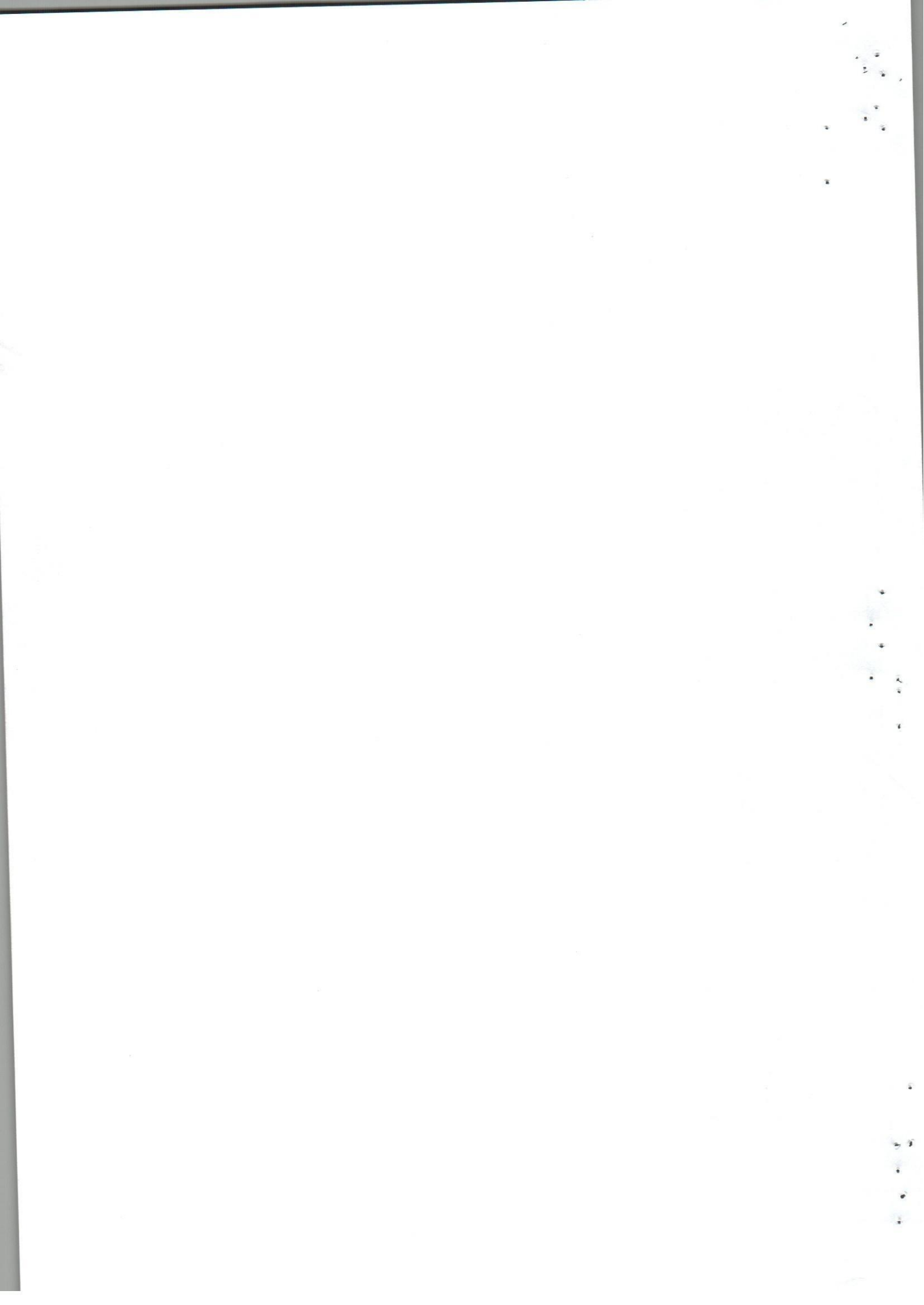
Qualified and interested candidates should visit our website: www.kilifi.go.ke for application guidelines, detailed job descriptions and specifications.

All applicants should attach and submit their applications with an updated CV indicating the names and contacts of three (3) referees, a copy of their national identity card, copies of academic and professional certificates, relevant testimonials and the application for employment form (KCPSB 001) which can be downloaded from our website obtained from the Kilifi County Public Service Board Offices. Applications should reach the below address on or before **5th March, 2019.**

THE COUNTY SECRETARY,
KILIFI COUNTY GOVERNMENT,
P.O BOX 519-80108,
KILIFI.

Applicants are advised to clearly specify the position applied for on the top left side of the envelope. Kilifi County is an equal opportunity employer. Women and physically challenged persons are encouraged to apply.

Those who had applied earlier need not re-apply.



**MINUTES OF THE THIRTIETH SITTING OF THE STANDING COMMITTEE
ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON TUESDAY, 19TH
FEBRUARY, 2019 IN THE GROUND FLOOR BOARDROOM, RED CROSS
BUILDING AT 11.00 A.M.**

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Naomi Jillo Waqo, MP
3. Sen. (Dr.) Ochilo Ayacko, MP
4. Sen. Naomi Shiyonga, MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. Justice (Rtd.) Stewart Madzayo, MP
3. Sen. Moses Kajwang', MP
4. Sen. (Dr.) Michael Malinga Mbito, MP
5. Sen. Golich Juma Wario, MP

IN ATTENDANCE

1. Sen. Aaron Cheruiyot - Sponsor of the Tea Bill, 2018

SENATE

IN ATTENDANCE

1. Ms. Josephine Kusinyi - Principal Legal Counsel
2. Mr. Crispus Njogu - Clerk Assistant
3. Ms. Carol Kirorei - Clerk Assistant
4. Mr. David Ng'eno - Research Officer
5. Mr. Philemon Okinda - Serjeant-At-Arms
6. Ms. Maureen Kweyu - Intern, Audio Office

SENATE

MIN. NO. 13/2019

PRAYER

The Chairperson called the meeting to order at 11.25 a.m. followed by a word of prayer.

MIN. NO. 14/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Naomi Waqo, MP.

MIN.NO. 15/2019 **CONSIDERATION OF THE TEA BILL, 2018**

The Sponsor of the Bill, Sen. Aaron Cheruiyot thanked the Committee for extending an invitation to him to attend the meeting and for its support on the Tea Bill, 2018. He briefed the Committee as follows:

1. That there is currently was a unique period in the country where despite agricultural crops such as tea, coffee, sugar and cotton thriving in the farms, this does not translate to better returns for the farmers, and that it was crucial that the Senate finds solutions to the problem;
2. That the *Ad hoc* Committee on Tea was established by a Senate Resolution on 14th March, 2018, to investigate the challenges affecting the tea sector in Kenya. The Committee visited six (6) counties and held public hearings with various stakeholders including:
 - a) Kenya Tea Growers Association;
 - b) Ministry of Agriculture;
 - c) Ministry of Industry, Trade and Cooperatives;
 - d) The Office of the Attorney General;
 - e) Kenya Tea Development Authority (KTDA).
3. That from the public hearings it emerged that farmers feel alienated by the KTDA;
4. That from the submissions received during the public hearings, Parliament erred in consolidating agricultural board and authorities and placing them under the Agriculture and Food Authority (AFA);
5. That there is need for a strong regulator to set the rules in the tea industry so as to ensure that benefits trickle down to the farmer;
6. That the Tea Bill, 2018 proposes to remove tea from the ambit of AFA by establishing the Tea Regulatory Authority;

7. That there are challenges of funding in AFA, moreso for tea research, and that research is not current, the last data from research being before the creation of AFA;
8. That the Tea Regulatory Authority shall be managed by a Board whose membership shall consist of a Chairperson appointed by the President, the Principal Secretary for Agriculture, seven (7) persons nominated by the Council of Governors, one (1) person nominated by the association representing the largest number of tea growers in the country, and a Chief Executive Officer;
9. That the Bill does not provide for the funding of the Tea Regulatory Authority. Provision of the funding would result in the Bill being a "Money Bill" which can only be introduced in the National Assembly. Therefore, once the Bill passes the Senate, the funding component shall be included at the National Assembly;
10. That if the Tea Bill, 2018 is successful, other crops that are not doing well under AFA may also be removed from the ambit of the Authority to promote the respective industries and promote the welfare of farmers.

Members raised the following concerns on the provisions of the Bill-

1. There is need for the headquarters of the Authority to be accessible to farmers in both the eastern and western tea growing areas. Therefore consideration should be made to have two offices one in the western region i.e. Kericho and another office in the eastern region e.g. Nyeri or Kirinyaga;
2. That there is a general move from government regulation to professional regulation to ensure promotion of various sectors;
3. That the Authority requires unfettered access to funding to ensure it remains independent and carries out its functions efficiently;

4. That the seven (7) nominees of the Council of Governors may not be representative of the common "*mwananchi*";
5. That the transitional provisions fail to make provision for employees currently performing duties under the tea directorate of the AFA.

It was agreed that the concerns of the Committee would be considered and necessary changes would be made accordingly. The meeting was informed that Public Hearings on the Tea Bill, 2018 would be held on **Thursday, 28th February, 2019** in the Tsavo Ballroom, KICC from 11.00 a.m.

MIN. NO. 16/2019 ANY OTHER BUSINESS

Committee Activities

1. The Committee was informed of the scheduled visit to the South Nyanza Sugar Co. Ltd., Migori County to undertaken between Thursday, 28th February, 2019 and Saturday, 2nd March, 2019. Members were urged to attend;
2. The Committee resolved that a follow up joint meeting to seek a common strategy and interventions for the ailing cotton industry with the Standing Committee on Tourism, Trade and Industrialization, the Ministry of Agriculture & Irrigation, Ministry of Industry, Trade and Cooperatives be arranged;
3. The Committee resolved to undertake a follow up visit to the Kenya Meat Commission.

MIN. NO. 17/2019 DATE OF NEXT MEETING

The next meeting will be held on Thursday, 21st February, 2019 at 11.00 a.m.

MIN. NO. 18/2019 ADJOURNMENT

The Sitting was adjourned at 1.00 p.m.

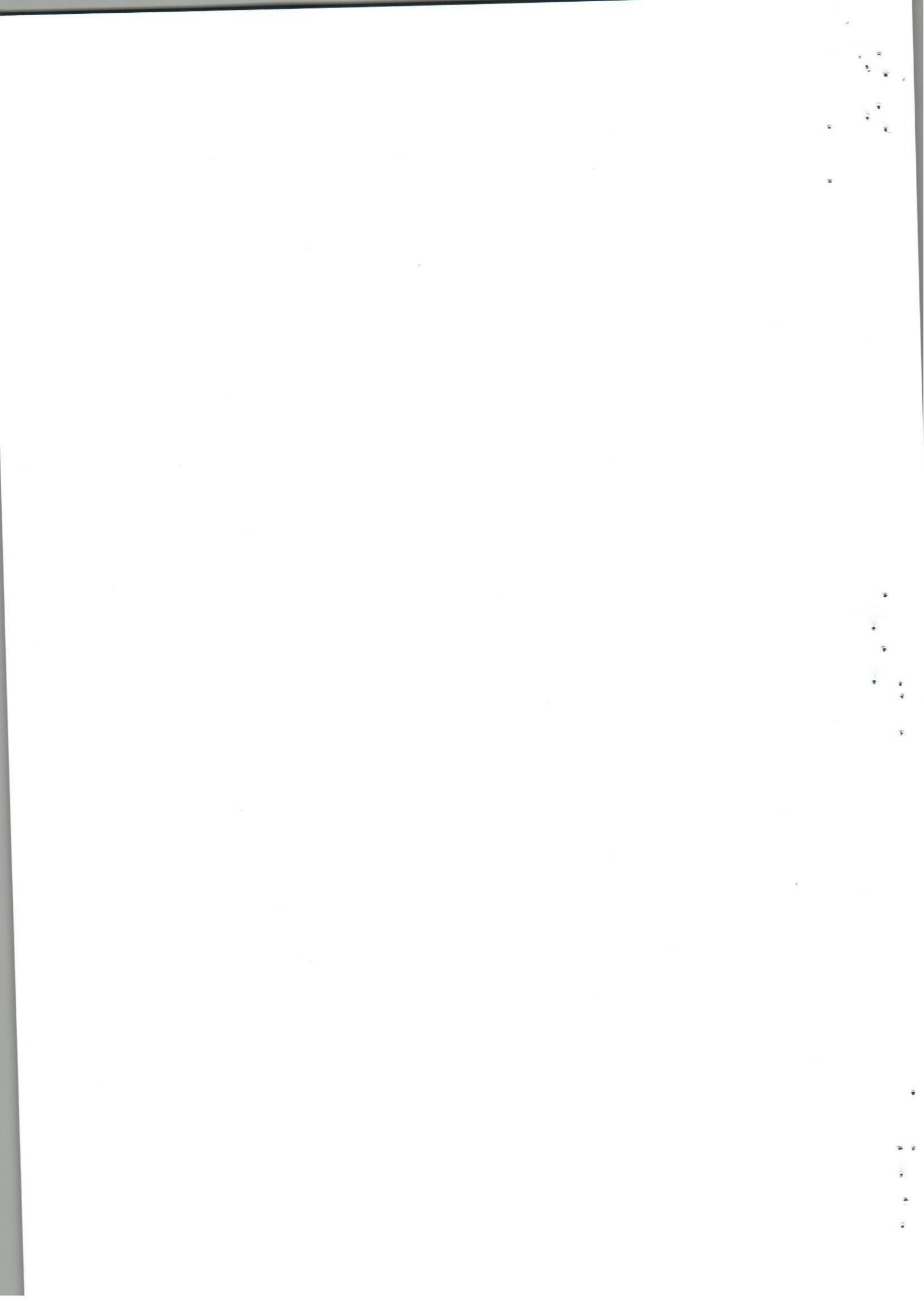
SIGNED:

Schwiga

(CHAIRPERSON)

DATE:

20/3/19



MINUTES OF THE THIRTY FOURTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON THURSDAY, 28TH FEBRUARY, 2019 IN THE TSAVO BALLROOM, KICC BUILDING AT 11.00 A.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
3. Sen. Naomi Shiyonga, MP
4. Sen. Naomi Jillo Waqo, MP
5. Sen. (Dr.) Ochilo Ayacko, MP - Ag. Chairperson

ABSENT WITH APOLOGY

1. Sen. Golich Juma Wario, MP
2. Sen. Justice (Rtd.) Stewart Madzayo, MP
3. Sen. Moses Kajwang', MP
4. Sen. (Dr.) Michael Malinga Mbitto, MP

IN ATTENDANCE

SENATE

1. Sen. Aaron Cheruiyot, MP - Sponsor of the Tea Bill, 2018
2. Sen. Sam Ongeru, MP - Senator, Kisii County

IN ATTENDANCE

SENATE

1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. David Ng'eno - Research Officer
3. Ms. Sombe Toona - Legal Counsel
4. Mr. Philemon Okinda - Serjeant-At-Arms
5. Ms. Maureen Kweyu - Audio Officer

MIN. NO. 35/2019

PRELIMINARIES

The Chairperson called the meeting to order at 11.10 a.m. followed by a word of prayer. He then led in a self-introductory session of Members present.

MIN. NO. 36/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. Naomi Shiyonga, MP.

MIN.NO. 37/2019

PUBLIC HEARINGS ON THE TEA BILL, 2018

Sen. (Dr.) Ochilo Ayacko welcomed Members of the public to the Senate, noting that the Senate was concerned with matters relating to the counties. He informed the meeting that pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries invited the public to give their views on the Tea Bill, (Senate Bills No. 36 of 2018) which was read a First Time in the Senate on 5th December, 2018.

He informed the meeting that during the Second Session, the *Ad hoc* Committee on Tea was established by a Senate Resolution passed on 14th March, 2018, to investigate the challenges affecting the tea sector in Kenya and to submit a Report to the Senate within five months, with specific legislative and policy interventions to address the problems facing the tea sector in Kenya. The Committee visited six (6) counties including Kisii, Nyamira, Bomet, Kericho, Murang'a and Embu counties and received views various tea stakeholders.

He added that the Tea Bill, 2018 sponsored by Sen. Aaron Cheruiyot, MP, emanated from the extensive work and findings of the *Ad hoc* Committee on Tea. He informed the meeting that after the receipt of submissions on the Bill, the Committee would prepare a report and where appropriate and necessary, may propose amendments to the Senate during the Committee of the Whole House. He then invited submissions from the members of the public present.

Submissions on the Tea Bill, (Senate Bills No. 36 of 2018)

Peter Kanyago Chairman KTDA Holdings Ltd.

Mr. Kanyago, informed the meeting that a written memorandum had been submitted to the office of the Clerk of the Senate. He informed the meeting that KTDA supports the Bill but proposes the following changes:

1. That the Authority should be renamed to "The Tea Board of Kenya" which was more effective in regulating the tea sector which is the principal function of the Bill;
2. The Headquarters of the Board should be in Nairobi. Nairobi is a central location and the current AFA is housed in a building constructed from tea resources and should therefore be the headquarters of the Board.
3. KTDA produces 60 per cent of Kenyan tea, therefore, representation to the Board should be proportionate to the production of tea.
4. Board should license tea growers and tea manufacturing factories ensure its grown in only suitable areas and farmers have facilities once tea matures;
5. Board should encourage domestic consumption of tea as one of its functions;
6. Clause 5(2)(h) which provides for the function of the Board to coordinate the prioritization research and the utilization of available funds should be amended to ensure that activities by industry stakeholders such as contributions at a rate agreeable to the stakeholders. This is to address the challenge of lack of adequate funding by the government;
7. Clause 6(1) which provides for the membership of the Board has under-representation of the Sub Sector stakeholders. There is therefore need to revise the membership of the Board to include more stakeholders;

8. Clause 17(1) which provides for registration of tea growers be amended by inserting section 14(1)(b) of the Crops Act as it requires farmers to submit crops at the factory that they have registered;
9. That clause 19 which provides for issuance of licenses and their renewal annually be amended to have renewal every three(3) years;
10. Clause 28 which provides for penalties be deleted as it proposes penalties for offences not explicitly stated in the Bill; or alternatively have the offences clearly defined under the Bill;
11. Clause 29(2)(b) which makes provision for the Cabinet Secretary to make regulations on the form of contracts be deleted as there are existing laws governing contracts;

Linda Oluoch - Kenya Tea Growers Associations (KTGA)

Ms. Oluoch informed the meeting that the KTGA had submitted a written memorandum to the Senate with its comments on the Bill. She however highlighted the proposals of the KTGA as summarized below:

1. That there be established a Tea Board rather than an Tea Regulatory Authority;
2. That the spirit of Crops act be adopted by the Bill;
3. That the word “regulate” under clause 5(2)(b) be deleted;
4. That clause 17 be amended to import provisions of section 4 of the Crops Act;
5. That the functions of the Board be amended to include “to establish linkages with various government agencies”;
6. Tea Research Institute (TRI) has been custodian of tea research for over 50 years; there is therefore need to incorporate its extensive research and ensure effective governance of the TRI under the Board;
7. That section 8 of the Crops Act be imported into the Bill.

Mr. Joel Chepkwony - Chairperson of Kericho Tea Growers

Mr. Chepkowony made the following remarks:

1. That Tea Board of Kenya replace the Tea Regulatory Authority;
2. Sessional Paper 2 of 1999 on Liberalization of the Tea Industry be incorporated, and there is need for private factories to be supported;
3. That there have been discrimination in payments to farmers by KTDA.

Mr. Chege Kirundi – Chairperson, Tea Factory KIRI

Mr. Chege stated that there is need for a contract on governing of the Tea Sub Sector as there is need for transparency and clarity for the farmers. He added that the KTDA is seen as an association representing the farmers but in practice there arises conflict of interest. There is therefore need for this to be revised under the Bill. Focus must be made on the returns to the grower.

Joseph Karanu - Kenya Union of Small scale Tea owners (KUSTO)

Mr. Karanu stated that focus needs to be made on the welfare of farmers and that they should be the ultimate beneficiaries. KTDA is assumed to be the representative of the farmers but directors are factory directors. Farmer issues are not addressed by KTDA. He informed the meeting that KUSTO has submitted a memorandum and urged the Committee to consider its proposals to enrich the Bill. He further urged the Committee to include provisions to ensure wealth accumulated by KTDA is shared to farmers around the country and that mechanisms be put in place to audit KTDA.

Mr. Githika – Chairperson Githeru Tea Factory

Mr. Githika stated that he supported the Bill noting that the Tea Sector contributes 4 per cent of the GDP of the country therefore the government should be more supportive of the sector. He added that the Bill should allocate

specific funds for marketing and promotion of the Tea industry as is the practice in other countries such as Sri Lanka which has a tea ministry.

He opined that operational issues e.g. contracts should not be introduced through the Bill.

Mr. Gichoki Kimani from Ikumbi

Mr. Gichoki stated that he supports the views submitted by the KTDA.

He proposed amendment to clause 6(1)(c) nominating seven members nominated by the Council of Governors, to provide that the Members should be a tea stakeholder or grower and may be affiliated to any factory within the county. He further stated that processing factories should be declared as Export Processing Zones (EPZs).

Dennis Gitaka - Eastern Produce Kenya, Nandi

He informed that the Crops Act has substantive provisions on the role of the county and national government. He proposed the Incorporation of section 6 of the Crops Act into the Bill; as well as incorporation of research under section 8 of the Crops Act. In addition, benefits to growers and farmers should be incorporated in the Bill for a clear way forward for the industry.

Stephen Muriuki - JKUAT

Mr. Muriuki proposed that clause 12(3)(a) be amended to delete the requirement that the CEO of the Board have a masters degree. He proposed that a degree should suffice. He further proposed that clause 4(2) be amended to have the Headquarters of the Authority in Nairobi and to further provide that branches may be put up in any place in Kenya.

Mr. John Waweru

Mr. Waweru stated that there is equality in the provision of payments to farmers by KTDA noting that KTDA is an agent of farmers who have chosen it. He added that KTDA only receives only 2.5% as agency fees and that a factory is paid according to its quality and quantity of tea.

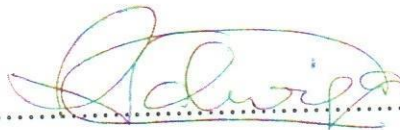
MIN. NO. 38/2019 **DATE OF NEXT MEETING**

The next meeting would be on notice.

MIN. NO. 39/2019 **ADJOURNMENT**

The Sitting was adjourned at 1.04 p.m.

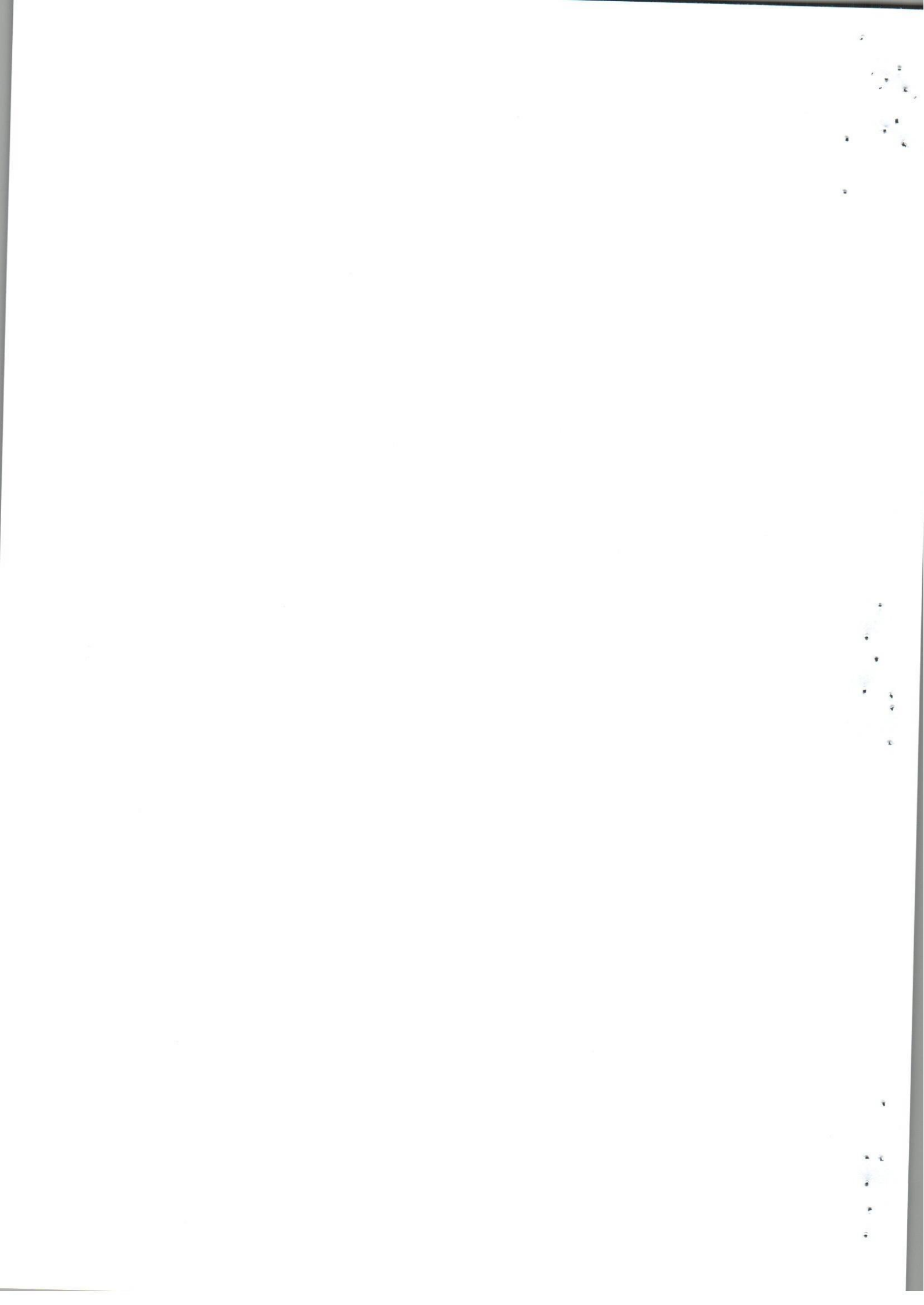
SIGNED:.....



(CHAIRPERSON)

DATE:.....

20/3/19



MINUTES OF THE THIRTY SIXTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON THURSDAY, 14TH MARCH, 2019 IN THE GROUND FLOOR BOARDROOM, RED CROSS BUILDING AT 11.00 A.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. (Dr.) Ochilo Ayacko, MP
3. Sen. Justice (Rtd.) Stewart Madzayo, MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. Naomi Shiyonga, MP
3. Sen. Naomi Jillo Waqo, MP
4. Sen. Golich Juma Wario, MP
5. Sen. Moses Kajwang', MP
6. Sen. (Dr.) Michael Malinga Mbito, MP

IN ATTENDANCE

SENATE

- | | | |
|--------------------------|---|-----------------|
| 1. Ms. Josephine Kusinyi | - | Legal Counsel |
| 2. Ms. Carol Kirorei | - | Clerk Assistant |
| 3. Ms. Maureen Kweyu | - | Audio Officer |

MIN. NO. 46/2019

PRELIMINARIES

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

MIN. NO. 47/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Justice (Rtd.) Stewart Madzayo, MP and seconded by Sen. (Dr.) Ochillo Ayacko, MP.

The Legal Counsel informed the meeting that the Committee was in receipt of submissions from the following-

1. Ministry of Agriculture, Livestock & Fisheries;
2. Kenya Tea Development Authority (KTDA);
3. Kenya Tea Growers Association (KTGA);
4. Kenya Association of Manufacturers (KAM);
5. East African Tea Trade Association (EATTA);
6. The Agriculture and Food Authority (AFA);
7. The Council of Governors;

She then presented the submissions received as summarized below:

LONG TITLE

Proposal: That the long title be amended to include:

“To make specific roles of National and County governments”

Rationale:

The provision will take in to account schedule 4 of the Constitution.

Resolution: Not agreed to.

CLAUSE 2

Proposal: Substitute “Tea Regulatory Authority” with “Tea Board of Kenya”

Rationale: The Tea Board of Kenya established in 1950 was an internationally recognised brand. The Tea Taskforce Report of 2016 proposed the reintroduction of the Tea Board of Kenya. Other leading world producers of Tea have adopted Tea Boards e.g Sri-Lanka and India. A Board would be better placed to more inclusively manage the sector rather than an authority which is perceived as regulatory.

Resolution: Agreed to.

Proposal: Delete the definition “processor”

Rationale: This introduces a person registered by the multiple registration regimes and Authority to process tea. It presents a lack of clarity on the scope of the roles of packers, growers, etc.

Resolution: Not agreed to.

Proposal: Amend interpretation clause to include definitions of key value chain players and activities such as Tea brokers, Warehousemen, Management Agents, Auction, Tea Packers and Auction Organiser, Buyer, Exporters, Importers, Export, import, made tea etc

Rationale: The definitions will provide clarity as to the entities and activities being regulated under the Act and avoid ambiguity.

Resolution: Not agreed to.

Proposal: Insert the following new definitions—

“managing factory” means a factory appointed to process green leaf in to made tea.

“broker” means a person who negotiates the purchase or sale of tea between tea growers and buyers

Rationale: The word broker and managing factory have been mentioned in the Bill in clause 5 (2) (d) and (e) of the Bill respectively, but have not been defined. This will ensure that there is clarity on the meaning of the words.

Resolution: Agreed to.

CLAUSE 3

Proposal: Substitute “Tea Regulatory Authority of Kenya” with “Tea Board of Kenya”

Rationale: India and Srilanka who are Kenya’s two main competitors maintain the term “Tea Board” for their regulators.

Resolution: Agreed to.

CLAUSE 4

Proposal: Substitute “Kericho” with “Nairobi”

Rationale: The headquarters should be central to all tea value chain players. Growers are located in the East and West of the Rift Valley while the traders are concentrated in Mombasa. The former Tea Board of Kenya had constructed offices in Nairobi using funds collected from tea industry players therefore use of the buildings would be a prudent use of resources.

Resolution: Agreed to.

CLAUSE 5

Proposal: Amend clause 5 (1) (a) by deleting the word “regulate”

Rationale: The main objects of the Crops Act include the minimization of Regulation of the crops sub-sectors. It would be contrary to this objective to mandate the Authority to "regulate" the sector. It is acknowledged that the Authority should manage the sector and facilitate its development to be in line with the spirit of the Crops Act. This also ensures there is no overlap between the Crops Act and this Bill. The Crops under section 13 clearly states that the Authority therein will regulate all scheduled crops.

Resolution: Not agreed to.

Proposal: Insert the following new clause 5 (1) (d)—

“Promotion of tea”

Incorporate the provisions of Section 8 of the Crops Act into the Bill as a Schedule or a new section to import the benefits of the Crops Act in facilitating the promotion of the tea sector. The proposed section provides—

8. Promotion of scheduled crops

In addition to the functions stipulated under any other law, the Authority shall—

- (a) formulate general and specific policies for the development of scheduled crops specified in the First Schedule;
- (b) facilitate marketing and distribution of scheduled crops through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market

matching and overseas market intelligence and promotion activities on scheduled crops;

(c) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting scheduled crops, for purposes of reducing marketing costs and ensuring stable consumer supply;

(d) promote the establishment of wholesale markets in identified major centres of the country;

(e) promote the establishment of agricultural produce collection centres in viable areas to serve as buying stations of farm products, packaging houses, pick-up points and meeting places of farmers' and growers' cooperatives;

(f) establish linkages with various governments and private research institutions for the conduct of studies and researches designed to promote the production, marketing and processing of scheduled crops;

(g) in consultation with the National Biosafety Authority, advise the government on the introduction, safe transfer, handling and use of genetically modified species of plants and organisms in the country;

(h) conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;

(i) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;

(j) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of scheduled crops by means of inter-trading or intra-trading among the established wholesale markets;

- (k) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;
- (l) ensure secure domestic food supply for the country;
- (m) formulate policies and guidelines on dealing with other crops;
- (n) promote and advise on strategies for value addition prior to the export of crops from Kenya;
- (o) recommend general industry agreements between farmers and processors of scheduled crops;
- (p) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and
- (q) perform any other relevant function.

Resolution: Agreed to.

Proposal: Amend clause 5 (1) (c) to create clarity.

Rationale: Re-distribution measures can only be properly performed by the National government e.g taxation levels, tax reliefs, exemptions etc. The Bill should clarify the benefits and resources being equitably shared among interested parties. This is considering that most of the interested parties in the Tea Industry are private institutions. The Clause should either be reviewed to define benefits and the resources and interested parties or in the alternative, delete this clause as it presents several ambiguities with the scope of beneficiaries, benefits or the interested parties. Notably, the producers and players in tea are private enterprises engaging in business and cannot be compelled by the Bill to contribute some welfare or other benefit to interested parties.

Resolution: Not agreed to.

Proposal: Delete 5 (2) (a)

Rationale: Constitutionally the authority is not mandated to be initiating formulation of policies and rules. That is a function of the National Government in a consultative process as guided in the various legal provisions.

Resolution: Not agreed to.

Proposal: Amend 5 (2) (b) to have tea growers registered by counties.

Rationale: Agriculture is a devolved function and therefore tea growers should be regulated and registered by counties.

Resolution: Agreed to with further amendment that the Authority shall license in consultation with the counties.

Proposal: Amend 5 (2) (b) by deleting the word “regulate”; Delete clause 5 (2) (b)

Rationale: Agriculture development is devolved under the Fourth schedule of the Constitution.

Resolution: Not agreed to.

Proposal: Amend 5 (2) (c) by deleting the word “processors”

Rationale: It is acknowledged that there is benefit to licensing of tea dealers. This would include the registration of farmers which has been going on unregulated and has resulted in the Country overproducing tea.

Resolution: Not agreed to.

Proposal: Delete clause 5 (2) (c)

Rationale: Part 2 section 7 of the Fourth Schedule gives county governments the mandate of trade development and regulation including markets and licensing.

Resolution: Not agreed to.

Proposal: Define the words “managing factory” under clause 5 (2) (d)

Resolution: Agreed to.

Proposal: Amend clause 5 (2) (d) by deleting “processors”

Rationale: This is because clause 5(2) (b) already provides for the registration and regulation of the operations of tea growers and processors.

Resolution: Not agreed to.

Proposal: Delete clause 5 (2) (d)

Rationale: Part 2 section 7 of the Schedule gives county governments the mandate of trade development and regulation including markets and licensing.

Resolution: Not agreed to.

Proposal: Delete 5 (2) (f). Substitute with “provide capacity building to county governments and technology transfer”

Resolution: Not agreed to.

Proposal: Under county functions insert “provide advisory services on tea production and quality enhancement”.

Rationale: Crop husbandry is a county function under the Constitution.

Resolution: Agreed to.

Proposal: Amend 5 (2) (h) to separate research from utilisation of available funds.

Rationale: To provide for clarity

Resolution: Agreed to.

Proposal: Amend 5 (2) (h) by inserting “support the Tea Research Institute to undertake tea research”

Rationale: The TRI was historically charged with this function. Under better management and involvement of stakeholders, it worked effectively for the Sector. The KALRO Act will require amendment to remove TRI and set is up under the Tea Board with defined subscribers.

Tea sector contributes 4% of the GDP and therefore more funds should be channelled to research and marketing if tea.

Resolution: Not agreed to.

Proposal: Delete clause 5 (2) (h)

Rationale: The clause contradicts the provisions of the KALRO Act since Kenya Agriculture & Livestock Research Organisation (KALRO) is already mandated to carry out research.

Resolution: Not agreed to.

Proposal: Amend clause 5 (2) (h) to include a funds line to the proposed Authority by the relevant stakeholders.

Rationale: The activities of the current Tea Directorate and TRI have been hampered by lack of adequate funding to carry out their mandate of regulation of the tea industry and research respectively. In the absence of adequate government funding, a mechanism should be put in place to fund such activities by industry stakeholders such as contributions at a rate agreed by relevant industry stakeholders.

Resolution: Agreed that a levy be introduced in the Bill.

Proposal: Delete clause 5 (2) (i) and 26

Rationale: The proposed Authority lacks capacity to operate as a tribunal. Arbitration should be carried out by an independent arbitration tribunal in case of a dispute arising from the Authority's decision. The Crops Act already provides for arbitration, where the Cabinet Secretary is expected to come up with a rules to guide on arbitration of issues around schedule crops. The current practice is to have the Ministry as an arbiter or for the Ministry to appoint an arbiter.

Resolution: Agreed to.

Proposal: Insert the following additional functions under clause 5 (2) (a)—

- (j) Establish and monitor compliance with standards along the tea value chain.
- (k) Promote and monitor tea trade in Kenya
- (l) Regulation of all aspects of tea trade
- (m) Prescribe the maximum period within which farmers are to be paid for green leaf delivered and penalties for delayed payments

Rationale: The provisions will regulate activities and entities omitted in the Bill such as tea warehousemen, tea packers and auction organisers.

Resolution: Agreed to.

Proposal: Amend clause 5 (2) by inserting the following new paragraphs after paragraph (i)—

- (j) licence tea growers to ensure that the tea is grown only in suitable areas and ensure that growers have manufacturing facilities for their tea once it matures;
- (k) licence tea manufacturing factories to ensure that the new tea factories have sufficient leaf from their own estates and would not create over capacity in a given area or interfere with any established system by “poaching” farmers who may already be delivering leaf to an already established factory in the same area.
- (l) Regulate and control tea cultivation, processing, pests and diseases and carry out investigation of and research in to all matters relating to the tea industry
- (m) Place more emphasis on its role of advertising Kenya tea and increasing its sale by efforts to extend existing markets and exploiting new markets, and matters incidental thereon
- (n) Encourage consumption of tea in the domestic market and educate the general public
- (o) Enhance its efforts of promotion of exhibitions for the display of tea and the process for manufacture thereof and the provision of facilities thereto.
- (p) The regulation, control and improvement of the cultivation and processing of tea
- (q) Regulate and control; tea cultivation, processing, pests and diseases and carryout investigation of and research into all matters relating to the tea industry.
- (r) Promote exhibitions for the display of tea and the process for manufacture thereof and the provision of the facilities thereto

(s) the collection and dissemination of statistics and other information relating to tea and its production, distribution and consumption.

Exercise its power and in the performance of its functions to act in such manner as appears to it best calculated to promote the tea industry in Kenya.

Resolution: Not agreed to.

Proposal: Substitute clause 5 (2) with—

In addition to the functions stipulated under any other law, the Authority shall—

- (a) formulate general and specific policies for the development of tea;
- (b) facilitate marketing and distribution of tea through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion activities on tea;
- (c) identify local supply demand, domestic, market matching and overseas market intelligence and promotion activities on tea
- (d) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting tea, for purposes of reducing marketing costs and ensuring stable consumer supply;
- (e) ensure stable consumer supply
- (f) Identify foreign markets for Kenyan tea;
- (g) establish linkages with various governments agencies and re-establish the Tea Research Institute as an independent research centre for Kenyan tea designed to promote the production, marketing and processing of tea.
- (h) Promote the production, marketing and production of tea
- (i) facilitate the adoption of technology in the sector for sustainability

- (j) facilitate the setting up of sustainability standards for the sector
 - (k) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade,
 - (l) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of tea to ensure health and proper trading;
 - (m) promote and advise on strategies for value addition prior to the export of tea from Kenya;
- recommend general industry agreements between farmers and other players in the tea sector

Resolution: Not agreed to.

Proposal: Incorporate the provisions of Section 8 (Promotion of scheduled crops) of the Crops Act into the Bill as a Schedule or a new section to import the benefits of the Crops Act in facilitating the promotion of the sector.

Resolution: Agreed to.

Proposal: Amend either section 11 (3) of the Agriculture and Foods Authority Act or the proposed clause 5.

Rationale: The Agriculture and Food Authority Act under section 11 (3) gives each directorate international recognition empowered to represent Kenya internationally.

Resolution: Agreed to.

Proposal: Insert the following new clause after clause 5—

Functions of county Governments

5A. County governments shall—

- (a) register and regulate the operations of tea growers and processors within the county
- (b) licence tea dealers and processors within the county
- (c) licence managing factories and their agents within the county.

Rationale: The proposed provisions align the Bill to the requirement of the Constitution that mandates county governments to develop agriculture and trade including markets, trade licences and fair-trading practices.

Resolution: Not agreed to.

CLAUSE 6

Proposal: Delete and substitute clause 6 (1) on constituting of the Board as follows-

- Two (2) Members each from the opposite Gender representing smallholder tea farmers (one from East and One from West of Rift);
- Two (2) County Executive Committee Members each from the opposite Gender nominated by the County governments of the tea growing Counties (one from East and One from West of Rift);
- One (1) Member representing Tea Trade;
- One (1) Member representing plantation producers;
- Principal Secretary Agriculture; and
- Principal Secretary Treasury (1);
- One (1) Member of the female gender nominated by the Cabinet Secretary.

Rationale: Clause 6 (c) limits the representation of Tea growing counties by reserving seats at the Board to the top seven tea growing Counties yet tea is grown in 19 counties in Kenya. Clause 6 (c) does not take into account Gender and Geographical representation as per the requirements of the Constitution. Proposed representation in the Board does not cover the entire value chain. For example, representation of the Tea Trade has not been included. The number of Board Members should also be aligned with the Mwongozo Code of Governance (Max of 9 Members)

Proposal: Insert the following new paragraphs—

- (f) the Principal Secretary for the time being responsible for Industry or a person deputed by him/her in writing;

(g) One person nominated by the manufacturing industry to represent manufacturers and processors of tea;

(h) One person nominated by the Kenya Tea Growers Association (KTGA);

Rationale: This will ensure the views of the stakeholders are clearly represented.

Proposal: Board members should be appointed by the Cabinet Secretary and not council of governors.

Rationale: The proposed Authority/Board is a State Corporation under the National Government (Ministry of Agriculture) and will be primary undertaking functions of the national government.

Proposal: Amend the composition of the Board as follows:-

- a) The Chairman, who will be elected by the members of the Board and appointed by the President or Cabinet secretary from among the members of the Board;
- b) the Principal Secretary, Ministry of Agriculture;
- c) The Principal Secretary, Ministry of Trade;
- d) 1 (one) member appointed by the cabinet secretary to represent tea trade sector in consultation with the tea trade;
- e) 3 (three) members appointed by the cabinet secretary after consultation with the organization representing smallholder tea growers,
- f) 2 (two) members appointed by the cabinet secretary after consultation with the organization representing plantation tea growers,
- g) the Chief Executive, Tea Board of Kenya
- h) 1 (one) member appointed by the cabinet secretary to represent Nyayo Tea Zones Development Corporation;
- i) Not more than 2 (two) members to be appointed by the Cabinet Secretary with advice from the Board who possess knowledge and experience of benefit to the Board.

- (j) 2 (two) persons appointed by the cabinet secretary in consultation by the Council of Governors.

Proposal: Reduce the membership of Council of Governors nominees; Reduce membership of the Board to a maximum of 9; include AG and the National Treasury.

Rationale: To ensure compliance with Mwongozo, state corporation Act and Public Finance Management (PFM) Act.

Resolution: Not agreed to. The Board shall consist of:

- (a) A chairperson appointed by the President;
- (b) the Principal Secretary for the time being 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 either gender, nominated by the Council of County Governors;
- (e) four persons, two of either gender, representing small-holder tea growers tea from the east and west of the tea growing areas;
- (f) one person representing plantation tea growers;
- (g) one person representing tea traders;
- (h) a Chief Executive Officer appointed in accordance with section 12 who shall be an ex-officio member of the Board.

CLAUSE 7

Proposal: Insert the following additional paragraphs under clause 7—

(da) in case of fraud or dishonesty

(de) Fails to comply with Chapter Six of the Constitution”?

Rationale: To take into account Constitutional provisions.

Resolution: Not agreed to.

CLAUSE 8

Proposal: Amend clause 8 (e) to read “open such bank account as may be necessary”

Resolution: Not agreed to.

Proposal

Insert a new clause 8 (f) to provide for an overarching provision to undertake any activity necessary for fulfilment of the Board’s mandate.

Rationale: It is best practice to take into account any additional activity that may be required to be undertaken by the Board but may have been overlooked.

Resolution: Not agreed to.

CLAUSE 12

Proposal: Amend Clause 12 (2) to assign only day to day running to the Chief Executive officer and reserve the role of the Secretary to the Board to the Corporation Secretary.

Rationale: In line with good corporate governance practice and the provisions of Mwongozo Code of Governance for State Corporations, the role of the Secretary to the Board and the Chief Executive officer should be separate.

Resolution: Agreed to.

Proposal: Clause 12 (3) (b) substitute 5 years with 10years.

Resolution: Not agreed to.

Proposal: Under clause 12 (3) (a) delete the word “masters”

Resolution: Agreed to.

CLAUSE 14

Proposal: Delete clause 14 (1)

Rationale: to avoid the bureaucracy of requiring Board authority for every instance of use of the seal. There is sufficient protection of the seal because

there is a requirement for authentication of seal by the signatures of the CEO and the Chairperson at Clause 14(2).

Resolution: Agreed to.

Proposal: Amend clause 14 (2) by inserting Corporation Secretary.

Rationale: For operational efficiency as the Board is not an executive board and is not involved in the day to day management of the organization.

Resolution: Agreed to.

CLAUSE 15

Proposal: Delete clause 15

Rationale: It would not be practical for Board Members to sign all letters and instruments written or made by or on behalf of the Authority on a day to day basis as the Board Members are not executive and they are not involved in the day to day management of the organization.

Resolution: Agreed to with additional amendments to allow a person authorized by the Board to sign.

CLAUSE 17

Proposal: Substitute clause 17 (1) with—

“Every tea grower shall, register with the tea factory to which he delivers green leaf, by supplying such particulars as the Authority may, in regulations, prescribe.”

Resolution: Not agreed to.

Proposal: Under clause 17 (1) substitute “processor” with “manufacturer”.

Insert the provisions of section 14 (1) (b) of the Crops Act on freedom to register

Rationale: This will facilitate the management and facilitation of growers for effective operations of the sector.

Resolution: Not agreed to.

- (d) Upon the commencement of this section, every tea grower licensed by the Board or its agent shall be deemed to be a registered tea grower:
- (e) Provided that where the particulars supplied to the Board by such grower for purposes of licensing do not meet the requirements of any regulations prescribed under subsection (1), the grower shall comply with such requirements.
- (f) Where a person starts growing tea at any time after the commencement of this section, such person shall, within six months register with a tea factory in accordance with subsection (1).
- (g) Any change in the particulars supplied by a grower for purposes of registration in accordance with subsection (1) shall be notified to the Board or the tea factory in writing, without undue delay.
- (h) The tea factory shall maintain a register for the purposes of this part and shall record therein the particulars supplied in accordance with this section.
- (i) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be grower, it may, after giving that person written notification by registered post of its intention to do so, remove the name of such person from the register.
- (j) The register referred to in subsection (5) shall be prima facie proof of the fact that a person is a registered tea grower and the factory shall furnish the Board with particulars of all registered tea growers in such manner as the Board may prescribe.
- (k) After the commencement of this section, any grower who carried on business as such without being registered in accordance with this section or knowingly or recklessly supplies false particulars, shall be guilty of an offence.

Resolution: Not agreed to.

Proposal: Insert the following new clauses after clause 17 (2)

(3) Every dealer in tea shall register with the Authority”

(4) A dealer shall not deal in tea unless that person has been registered with the Authority”.

Rationale: To strengthen the provisions on dealing with tea without being registered.

Resolution: Not agreed to.

Proposal: Insert a new clause 17 A—

17A. Registration of growers’ associations

The Authority shall maintain a register of all entities registering smallholder growers, in such form as it may determine, and shall enter in the register—

- (a) the full names of the Tea factory;
- (b) the date of submission of annual returns of registered growers by the Tea factory;
- (c) the particulars of numbers of registered growers, area planted with Tea or variations of these particulars; and
- (d) any other particulars the Authority may deem necessary.

Rationale: This is necessary for monitoring of tea growers’ associations. This was mirrored from section 16 of the Crops Act.

Resolution: Not agreed to.

Proposal: Insert new clause on incentives to growers—

Incentives to growers

- (1) The Cabinet Secretary shall, on the advice of the Authority, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.
- (2) The Authority may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of Tea along the value chain —

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local
- (g) pest and disease control;
- (h) post-harvest facilities and technologies including storage, processing, distribution and transport facilities;
- (i) tax exemptions including tax breaks and duty waivers on the import of farm inputs and farm machinery.

Rationale: This is proposal is supposed to support players in the Tea value chain through incentives. This was mirrored from section 12 of the Crops Act.

Resolution: Not agreed to.

CLAUSE 18

Proposal: It should be made an offence to deal with tea without a license and to vary the terms and conditions of the license without approval from Authority.

Rationale: To strengthen the provisions on dealing with tea without being registered.

Resolution: Agreed to.

Proposal: the provisions on manufacturers be separated from the provisions on dealers. Insert the following additional sub-clauses immediately after subclause (1) on licensing of processors—

- (1) A person shall not manufacture or process a scheduled crop product for sale except under and in accordance with a licence issued under this Act.
- (2) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee.
- (3) The Authority may, after consultation with the county executive-
 - (a) issue a manufacturing licence, in accordance with this Act;
 - (b) refuse to issue the licence on any ground which may appear to the licensing authority to be sufficient and inform the applicant in writing of the reasons thereof;
 - (c) cancel, vary or suspend any licence if in the findings of the Authority, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing or processing entities.
- (4) A manufacturing licence issued under this section shall, in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending a crop product.
- (5) A person who manufactures a scheduled crop for sale in contravention of this Act;
 - (a) buys, sells, offers for sale, transports or
 - (b) has possession of a scheduled crop which to the person's knowledge or belief has been grown, manufactured or processed otherwise than in

CLAUSE 20

Proposal: Amend clause 20 to provide that dissemination of market information include all stakeholders in the tea industry.

Resolution: Agreed to.

PART III

Proposal: Insert the following sections of the Crop Act—

- (a) Section 4 (Guiding Principles)
- (b) Section 6 (Role of national and county governments in development of crops) outline the guiding principles and the responsibilities of the county and national governments in the management and promotion of crops.
- (c) Section 12 and 15 touch on incentives and registration of growers respectively.

Rationale: It is key to incorporate the beneficial provisions of the Crops Acts.

Resolution: Agreed to (b).

CLAUSE 21

Proposal: Insert the following new sub clauses under clause 21—

- (2) The funds of the authority shall be used by the Authority in the furtherance or exercise of any function or power of the Authority and for any other lawful purpose approved by the Board
- (3) The Authority shall, from time to time, make rules for the better management of the funds in the best interest of the tea industry.

Rationale: This is currently Section 10 under the Crops Act. The provision prescribes the usage of the funds collected by the authority. Stakeholders should consider whether there are specific industry needs that can be outlined under this section in regard to utilization of funds.

This provision ensures that there are clear accountability mechanisms for the funds of the Authority.

Resolution: Agreed to with further amendments.

CLAUSE 23

Proposal: Delete clause 23

Rationale: Clause 23 (3) (a) provides that the fund should provide credit facilities to tea growers and processors. We propose that the same be deleted since there are other institutions mandated to provide credit facilities such as the Commodities Fund under AFA Act and the Agriculture Finance Corporation

Resolution: Not agreed to.

Proposal: Amend clause 23 (3) (b) which reads conduct research and replace with "carry out market research including capacity building on value addition at County and National level". After deleting (a), (b) becomes (a)

Rationale: To provide clarity and include functions that have been omitted.

Resolution: Not agreed to.

Proposal: Amend clause 23 (3) (c) which reads carry out operations of the Authority" as follows "Carry out the functions and operations of the Authority"

Rationale: To provide clarity.

Resolution: Not agreed to.

Proposal: Clause 23 (4) delete "determined by the Cabinet Secretary in consultations with the Authority" and replace with "the percentage of the application of the monies under subsection 3 shall be as follows;

(a): Capacity building on value addition at County and National level - 30%:

(b): Carry out tea market research, promotion and development - 20%:

(c): Carry out the functions and operations of the Authority - 20%:

(d): Tea Research activities and programmes - 30%.

Rationale: To provide clarity

Resolution: Not agreed to.

Proposal: Delete clause 23 (4)

Rationale: It is the role of the Kenya National Audit Office (KENAO).

Resolution: Agreed to but the rationale is incorrect.

CLAUSE 26

Proposal: Delete clause 26 (Arbitration of disputes).

Rationale: The proposed Authority will be incapable of effectively handling disputes as highlighted above between any parties under this Act. The Crops Act already provides for arbitration, where the Cabinet Secretary is expected to come up with a rules to guide on arbitration of issues around scheduled crops. AFA will be a more independent entity to deal with disputes and it will be better place to handle arbitration as opposed to the Board in this Bill.

Resolution: Agreed to.

CLAUSE 28

Proposal: Clause amended to provide for a maximum penalty of up to 1 million Shillings and imprisonment of 2 years as is common practice as some of the offences are serious and should attract higher penalties.

Rationale: To provide for a penalty that will be a sufficient deterrent since the law prescribes a maximum not the minimum.

Resolution: Agreed to.

Proposal: Delete clause 28 (penalties).

Rationale: This clause is ambiguous as there is no definition and/or provision of what constitutes an offence for there to be a provision of a penalty. The offence has to be stated and its penalty defined. Secondly, under the

Companies Act, offences committed by the company and individuals within the company are clearly defined.

Resolution: Not agreed to.

Proposal: Amend clause 29 to include the following additional provisions;

1. The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act, or for prescribing anything which is to be prescribed under this Act.

2. Without prejudice to the generality of the foregoing, regulations made under this section may provide for-
 - (a) regulation and controlling the method of blending, packaging and labelling of specified tea for purposes of traceability;
 - (b) Regulation of tea imports and exports;
 - (c) Regulation of all aspects of tea trade;
 - (d) Regulation of the periods for which licences and registration certificates shall be issued;
 - (e) Forms and fees to be paid for anything to be done under this Act;
 - (f) Rules for ensuring safety including handling, transportation, processing and market standards of tea and tea products;
 - (g) rules and regulations of any organization dealing with tea and tea products, made by any such organization to be in conformity with the provisions of this Act and other relevant laws;
 - (h) submission of returns and reports by tea processors and dealers under this Act;
 - (i) standards, and the manner of grading and classification of made tea products under this Act;
 - (j) the formula for the pricing of green leaf;
 - (k) the regulation of standard industry agreements;

- (1) Regulations for licensing and registration of tea processors and dealers.

Rationale: In order for the proposed institution to be an effective regulator for the tea industry. The provisions which have been omitted in the Bill are currently been undertaken by AFA-TD.

Resolution: Not agreed to.

Proposal: Delete clause 29

Rationale: It is contrary to the Competition Act. This is a private matter to be agreed between the parties and should not be regulated. Privacy of contract and freedom to contract should apply to agreements between growers and other players. The Bill should not interfere with contracts between KTDA and Factories.

Resolution: Not agreed to.

Proposal: Under clause 29 (2) Insert "in consultation with county governments" immediately after "Cabinet Secretary"

Rationale: Agriculture is fully devolved and any regulation's implementation has a direct impact on how the counties will undertake their functions under the Fourth schedule of the Constitution.

Resolution: Agreed to.

Proposal: Under clause 29 (2) (a) delete "the regulation of"

Rationale: It is in the spirit of the Crops Act to minimize regulation. Providing for regulation of processing will highly likely present impediments to the operations of the sector.

Resolution: Not agreed to.

Proposal: Delete clause 29 (2) (e)

Rationale: It is contrary to the Competition Act. This is private matter to be agreed between the parties and should not be regulated. Privity of contract and freedom to contract should apply to agreements between growers and other players. Further, the Competition Authority has the mandate to regulate fair

trade agreement, which will cover contracts or agreement between growers, processors and other players in the tea industry. Therefore this clause will cause an overlap.

Resolution: Not agreed to.

CLAUSE 31

Proposal: Amend clause 31 to read “All rights, obligations and contracts which immediately before the coming into operation of this Act, were vested in the Agriculture and Food Authority with regard to tea shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Authority”.

Rationale: The word tea has been omitted from the transitional provisions.

Proposal: Insert a clause on transition.

Resolution: Not agreed to.

Proposal: Insert a clause on transition.

Rationale: This will explain how and who will ascertain the rights and obligations vested in the tea sector and provide for staff transition.

Resolution: Agreed to.

CLAUSE 34

Proposal: Amend clause 34 (1) to read “ A person who, was an officer or Member of Staff of the former Tea Board of Kenya, immediately before commencement of the Crops Act, 2013 and the Agriculture and Food Authority Act, not being then under notice of dismissal or resignation or who has since then not ceased employment with the Agriculture and Food Authority shall, on the appointment day and subject to subsection (2), become an Officer or Member of Staff of the Authority on current or improved terms and conditions of service.

Rationale: To provide clarity and take into account staff members who have retired or since then left the organizations.

Resolution: Agreed to with redrafting of the wording.

Proposal: Delete "or the company"; Delete "the former Board" and replace with "Agriculture and Food Authority"

Rationale: The word company is misplaced as the Act does not create a company.

Resolution: Not agreed to.

Proposal: Under clause 34 (3) delete "The Cabinet Secretary" and replace with "the Authority.

Rationale: The same is an administrative matter which can be carried out by the Authority.

Resolution: Not agreed to.

CLAUSE 35

Proposal: Delete (a) and replace with:

(a) (i) all funds, assets, and other property, moveable and immovable which, immediately before the commencement of the Crops Act and the Agriculture and Food Authority Act, were vested in the former Tea Board of Kenya shall, by virtue of this paragraph, vest in the Authority;

(a) (ii) all funds, assets, and other property, moveable and immovable relating to tea which, immediately before the appointed day were vested in AFA, shall by virtue of this paragraph, vest in the Authority;

Rationale: The clause does take into account funds assets and property which were acquired after the coming into effect of AFA with respect to tea and should be amended.

Resolution: Not agreed to.

Proposal: Delete (c) and replace with:

all rights, powers, liabilities and duties relating to tea whether arising under any written law or otherwise, which immediately after the commencement of the Crops and AFA Acts were vested in, imposed on or enforceable by or against AFA with respect to tea shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.

Rationale: To provide clarity to the transitional provisions.

Resolution: Not agreed to.

SCHEDULE

Proposal: Amend clause (5) of the schedule on quorum to conduct the Board Business to at least 2/3 not a minimum of 5.

Rationale: This is in line with best corporate governance practice.

Resolution: Not agreed to.

MEMORANDUM OF OBJECTS AND REASONS

Proposal: Amend the first sentence as follows:

The principle object of the Bill is to enhance the tea industry regulatory efficiency and effectiveness, improve service delivery, provide for adequate funding of the Board functions, tea industry development, reclaim the internationally renowned brand of the Tea Board of Kenya in line with other key tea producing countries as well enhance the tea industry competitiveness.

Rationale: This will be in in line with the recommendations of the Tea Taskforce Report of 2016 should the proposal to amend the proposed Authority to Tea Board of Kenya be taken on board.

Resolution: Not agreed to.

Proposal: Insert the following sections of the Crops Act in to the Tea Bill—

4. Guiding principles

- (f) establish linkages with various governments and private research institutions for the conduct of studies and researches designed to promote the production, marketing and processing of scheduled crops;
- (g) in consultation with the National Biosafety Authority, advise the government on the introduction, safe transfer, handling and use of genetically modified species of plants and organisms in the country;
- (h) conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
- (i) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;
- (j) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of scheduled crops by means of inter-trading or intra-trading among the established wholesale markets;
- (k) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;
- (l) ensure secure domestic food supply for the country;
- (m) formulate policies and guidelines on dealing with other crops;
- (n) promote and advise on strategies for value addition prior to the export of crops from Kenya;
- (o) recommend general industry agreements between farmers and processors of scheduled crops;

- (p) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and
- (q) perform any other relevant function.

12. Incentives to growers

(1) The Cabinet Secretary shall, on the advice of the Authority, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.

(2) The Authority may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of scheduled crops—

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local
- (g) pest and disease control;
- (h) post harvest facilities and technologies including storage, processing, distribution and transport facilities;
- (i) tax exemptions including tax breaks and duty waivers on the import of farm inputs and farm machinery

14. Freedom to register

Rationale: Tea packers are players in the tea value chain and are not recognized or registered under this Bill.

Resolution: Not agreed to.

MIN. NO. 49/2019

DATE OF NEXT MEETING

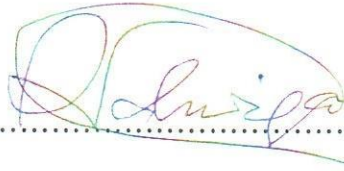
The next meeting will be held on Thursday, 21st February, 2019 at 10.00 a.m.

MIN. NO. 50/2019

ADJOURNMENT

The Sitting was adjourned at 1.04 p.m.

SIGNED:.....



(CHAIRPERSON)

DATE:.....

20/3/19

MINUTES OF THE THIRTY SEVENTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON TUESDAY, 19TH MARCH, 2019 IN THE FIRST FLOOR BOARDROOM, RED CROSS BUILDING AT 10.00 A.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. (Dr.) Ochilo Ayacko, MP
3. Sen. Justice (Rtd.) Stewart Madzayo, MP
4. Sen. Naomi Jillo Waqo, MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. Naomi Shiyonga, MP
3. Sen. Golich Juma Wario, MP
4. Sen. Moses Kajwang', MP
5. Sen. (Dr.) Michael Malinga Mbitto, MP

IN ATTENDANCE

- | | | |
|--------------------------|---|-----------------|
| 1. Ms. Josephine Kusinyi | - | Legal Counsel |
| 2. Ms. Carol Kirorei | - | Clerk Assistant |
| 3. Mr. Abdikani Ibrahim | - | Audio Officer |

SENATE

MIN. NO. 51/2019

PRELIMINARIES

The Chairperson called the meeting to order at 10.15 a.m. followed by a word of prayer.

MIN. NO. 52/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Justice (Rtd.) Stewart Madzayo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP.

The Legal Counsel presented the draft amendments to the Tea Bill, 2018 as follows-

PART II

THAT Part II of the Bill be deleted and substituted therefor with the following new Part-

PART II - THE TEA BOARD OF KENYA

Establishment
of Board.

3. (1) There is established a Board, to be known as the Tea Board of Kenya, which shall consist of-

- (a) A chairperson appointed by the President;
- (b) the Principal Secretary for the time being 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 either gender, nominated by the Council of County Governors;
- (e) four persons, two of either gender, representing small-holder tea growers tea from the east and west of the tea growing areas;
- (f) one person representing plantation tea growers;
- (g) one person representing tea traders;
- (h) a Chief Executive Officer appointed in accordance with section 12 who shall be an

ex-officio member of the Board.

(2) A person shall not be appointed to be a chairperson of the Board unless that person holds at least a degree or its equivalent in any discipline from a recognized institution and has relevant experience in the tea sector.

(3) The appointment of the chairperson under subsection (1) (a) and members under subsections (1)(d), (1)(e), (1)(f), and 1(g) shall be by notice in the *Gazette* and such appointment shall be for a term of three years renewable for one further term.

Incorporation
of Board.

4. The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

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

Headquarters.

5. (1) The headquarters of the Authority shall be in Nairobi County.

(2) The Board may establish branches at any place in Kenya.

Vacation of 6. A person shall cease to be a member of the
Office. Board if such person-

- (a) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (b) becomes an officer, agent or member of staff of the Authority;
- (c) resigns in writing, addressed, in the case of the chairperson to the President and in the case of any other member, to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

Functions of 7. (1) The Board shall perform the following
the Board. functions-

- (a) regulate, develop and promote the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry; and
- (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties.

(2) Without prejudice to the generality of subsection (1), the Board shall-

- (a) in consultation with the Cabinet Secretary, initiate the formulation of

policies and make rules to regulate the industry;

(b) in consultation with the relevant county governments-

(i) register and regulate the operations of tea growers and processors;

(ii) register commercial tea nurseries and green leaf transporters;

(iii) license tea dealers and processors;

(iv) license managing factories and their agents; and

(v) license tea brokers.

(c) provide advisory services on tea production and quality enhancement;

(d) collect and analyze statistics related to, and maintain a database for the tea industry;

(e) co-ordinate the prioritization of-

(i) research; and

(ii) utilization of available funds.

Powers of the Board

8. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to-

(a) enter into contracts;

(b) manage, control and administer the assets of the Authority;

(c) receive gifts, grants, donations or endowments made to the Board and make disbursement therefrom in accordance with the provisions of this Act;

(d) subject to the approval of the Cabinet

Secretary for the time being responsible for matters relating to finance, invest any of the Board's funds not immediately required for the purposes of this Act, as it may determine; and

- (e) operate a bank account into which all monies received by the Board shall be paid in the first instance and out of which all payments made by the Board shall be made.

(2) The Board may, if it considers it necessary, create or take part in the creation of, become a member of, or associated with a body or corporation designed to assist or promote the tea industry.

(3) The Board may establish and make contributions to a pension, superannuation or medical fund for the benefit of employees and may require such employees to contribute to the fund.

(4) The Board may by order authorize a member or an employee to exercise on its behalf such of its powers or the performance of any of the functions of the Board under this Act as it may from time to time specify.

Committees of
the Board.

9. (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt into the membership of committees established under subsection (1), other persons whose knowledge and skills are necessary for the functions of the Board.

Delegation by the Board. **10.** The Board may by resolution delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Remuneration of members of the Board. **11.** The Remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

Chief Executive Officer. **12.** (1) The Chief Executive Officer shall be competitively recruited and appointed by the Board.

(2) The Chief Executive Officer shall be responsible for the day to day management of the affairs of the Board.

(3) A person shall not qualify for appointment under subsection (1) unless such person has at least-

- (a) a relevant degree from a university recognized in Kenya; and
- (b) five years experience in a position of management.

Staff of the Authority. **13.** The Board may employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act and upon such terms and conditions of service as the Board may determine.

Common Seal of the Board. **14.** The affixing of the common seal of the Board shall be authenticated by the signature of the Chief Executive Officer or a person designated by the Board.

Signing
Authority.

15. All letters and instruments written or made by or on behalf of the Board, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the Chief Executive Officer or in the absence of the Chief Executive Officer, a person authorized by the Board.

Conduct
business
of the Board.

16. The business and affairs of the Board shall be conducted in accordance with the First Schedule.

NEW CLAUSE 16A

THAT the following new clause be inserted immediately after clause 16-

Role
of
national and
county
governments

16A. (1) The Board, on behalf of the national government, shall be responsible for licensing and charging of levies.

(2) Levies charged by the Board shall not exceed ten per centum of the gate value of the tea produce and shall be charged in consultation with the Cabinet Secretary.

(3) The county governments shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

- (a) development of crops grown within the county;
- (b) disease control;
- (c) markets;
- (d) cooperative societies within the county;

- (e) soil and water conservation.

(4) In order to achieve the objects and purposes of this Act, it is the duty of the national and county governments to provide an enabling environment for the development of the tea sector.

CLAUSE 17

THAT clause 17 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c) -

- (d) any other information as may be prescribed by the Board

CLAUSE 18

THAT clause 18 of the Bill be amended by-

- (a) deleting the word "Authority" appearing at the end of sub-clause (1) and substituting therefor the word "Board";
- (b) inserting the following new sub-clause immediately after sub-clause (1)-

(1A) Sub-section (1) shall not apply to the export, import or marketing of any tea consisting of a sample or parcel not exceeding ten kilograms or tea processed for consumption on ships, aero planes or other international carriers.

- (c) deleting the word "Authority" appearing at the beginning of sub-clause (3) and substituting therefor the word "Board".

CLAUSE 19

THAT clause 19 of the Bill be deleted and substituted with the following new clause-

- (1) A licence issued under this Act shall be in a form prescribed by the Board, and shall be renewable after a period of three years;

(2) Notwithstanding sub-section (1), any fees payable to the Board shall be paid annually.

CLAUSE 20

THAT clause 20 of the Bill be deleted and substituted with the following new clause-

20. The Board shall carry out market research and disseminate such information to all stakeholders.

CLAUSE 21

THAT clause 21 of the Bill be deleted and substituted therefor with the following new clause-

Funds of the Board. **21.** 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

CLAUSE 22

THAT the Bill be amended-

- (a) in sub-clause (1) by deleting the word "Authority" appearing immediately after the words "expenditure of the" and substituting therefor the word "Board"; and
- (b) in sub-clause (2) by deleting the word "Authority" appearing immediately after the words "expenditure of the" and substituting therefor the word "Board";

CLAUSE 23

THAT the Bill be amended -

- (a) by deleting the word "Authority" appearing at the beginning of sub-clause (1) and substituting therefor the word "board";
- (b) in sub-clause (1) by deleting the word "Authority" appearing at the end of paragraph (a) and substituting therefor the word "board";
- (c) in sub-clause (2) by deleting the word "Authority" appearing immediately after the words "accounts of the" and substituting therefor the word "board";
- (d) by deleting sub-clause (3) and substituting therefor the following new sub-clause-

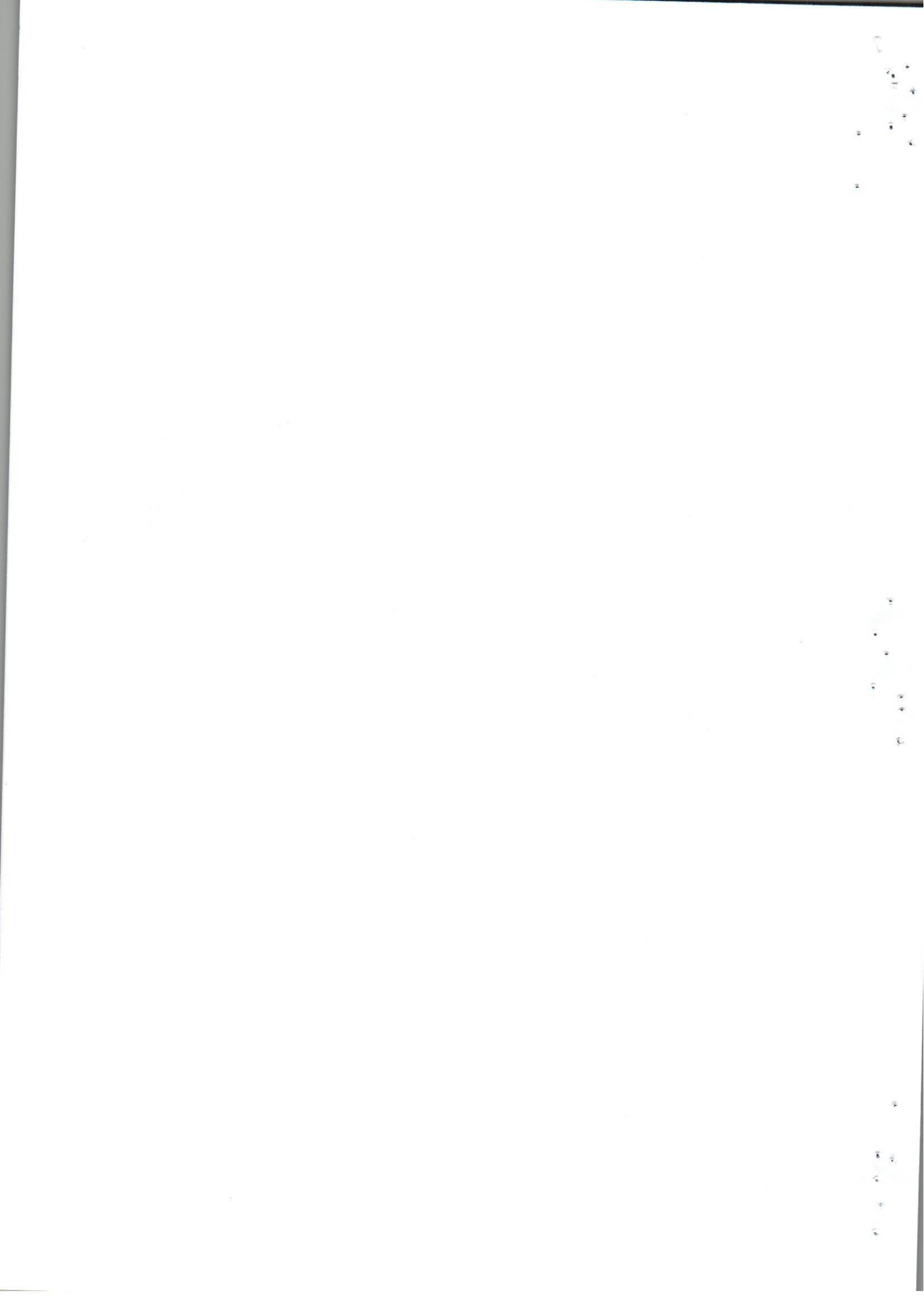
(3)The Board shall submit to the Auditor-General all books and accounts of the Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Board such information and explanation as he may consider necessary for the performance of his duties.

- (e) by deleting sub-clause (4)

NEW CLAUSE 34A

THAT the following new clause be inserted immediately after clause 34-

Staff. **34A.** Any person who, at the commencement of this Act, is a member of staff of the Agriculture and Food Authority dealing with the tea sector shall on the appointed day, become a member of staff of



MINUTES OF THE THIRTY NINETH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON WEDNESDAY, 20TH MARCH, 2019 IN THE GROUND FLOOR BOARDROOM, RED CROSS BUILDING AT 4.00 P.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Justice (Rtd.) Stewart Madzayo, MP
3. Sen. Naomi Jillo Waqo, MP
4. Sen. (Dr.) Ochilo Ayacko, MP
5. Sen. Moses Kajwang', MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. (Dr.) Michael Malinga Mbito, MP
3. Sen. Naomi Shiyonga, MP
4. Sen. Golich Juma Wario, MP

IN ATTENDANCE

1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Maureen Kweyu - Research Officer

SENATE

MIN. NO. 61/2019 PRAYER

The Chairperson called the meeting to order at 4.15 p.m. followed by a word of prayer.

MIN. NO. 62/2019 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP.

MIN. NO. 63/2019

**CONSIDERATION AND ADOPTION OF THE REPORT
ON CONSIDERATION OF THE TEA BILL, 2018**

Members were taken through the Report on the consideration of the Tea Bill, (Senate Bills No. 36 of 2018). The Committee adopted the Report after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Stewart Madzayo, MP.

MIN. NO. 64/2019

ANY OTHER BUSINESS

1. Meeting with the Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries

Members were informed that the meeting with the Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries scheduled to be held on Thursday, 21st March, 2019 has been postponed to Tuesday, 26th March, 2019.

The Committee resolved to seek further information from the Ministry on the following:

1. The status of implementation of the Kenya Livestock Insurance Programme (KLIP);
2. Interventions made by the Ministry to revive the Cashew Nut Sub Sector; and
3. The roadmap towards the privatization of sugar companies and transitional arrangements for the same.

2. County Visits

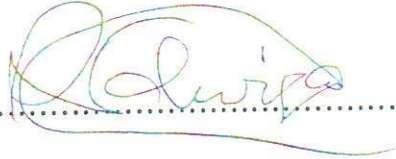
The Committee resolved to undertake County Visits to Kilifi County to look into challenges facing

MIN. NO. 66/2019

ADJOURNMENT

There being no other business the Sitting was adjourned at 4.45 p.m.

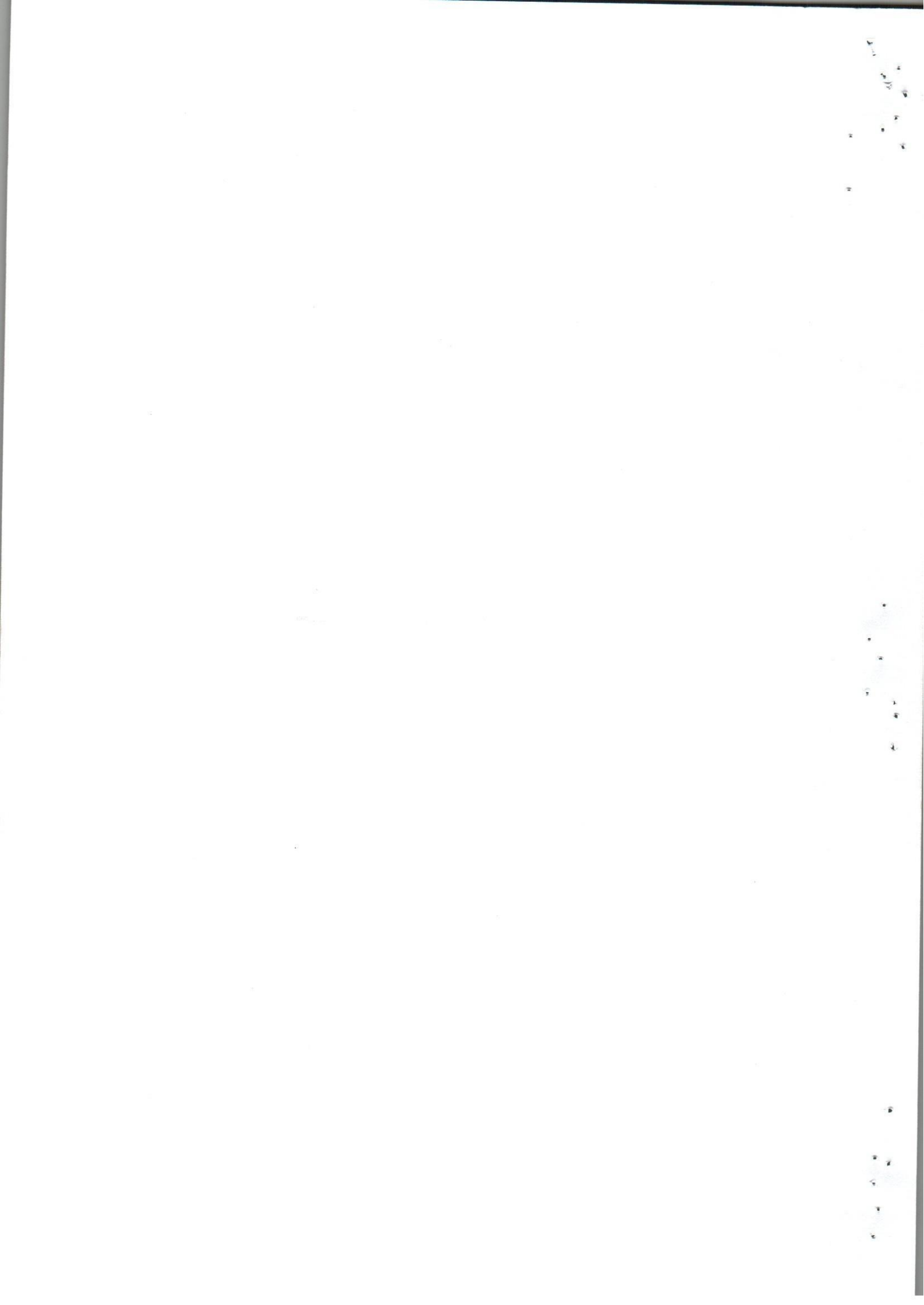
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20/3/19



MINUTES OF THE THIRTY FOURTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON THURSDAY, 28TH FEBRUARY, 2019 IN THE TSAVO BALLROOM, KICC BUILDING AT 11.00 A.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
3. Sen. Naomi Shiyonga, MP
4. Sen. Naomi Jillo Waqo, MP
5. Sen. (Dr.) Ochilo Ayacko, MP - Ag. Chairperson

ABSENT WITH APOLOGY

1. Sen. Golich Juma Wario, MP
2. Sen. Justice (Rtd.) Stewart Madzayo, MP
3. Sen. Moses Kajwang', MP
4. Sen. (Dr.) Michael Malinga Mbito, MP

IN ATTENDANCE

SENATE

1. Sen. Aaron Cheruiyot, MP - Sponsor of the Tea Bill, 2018
2. Sen. Sam Ongeru, MP - Senator, Kisii County

IN ATTENDANCE

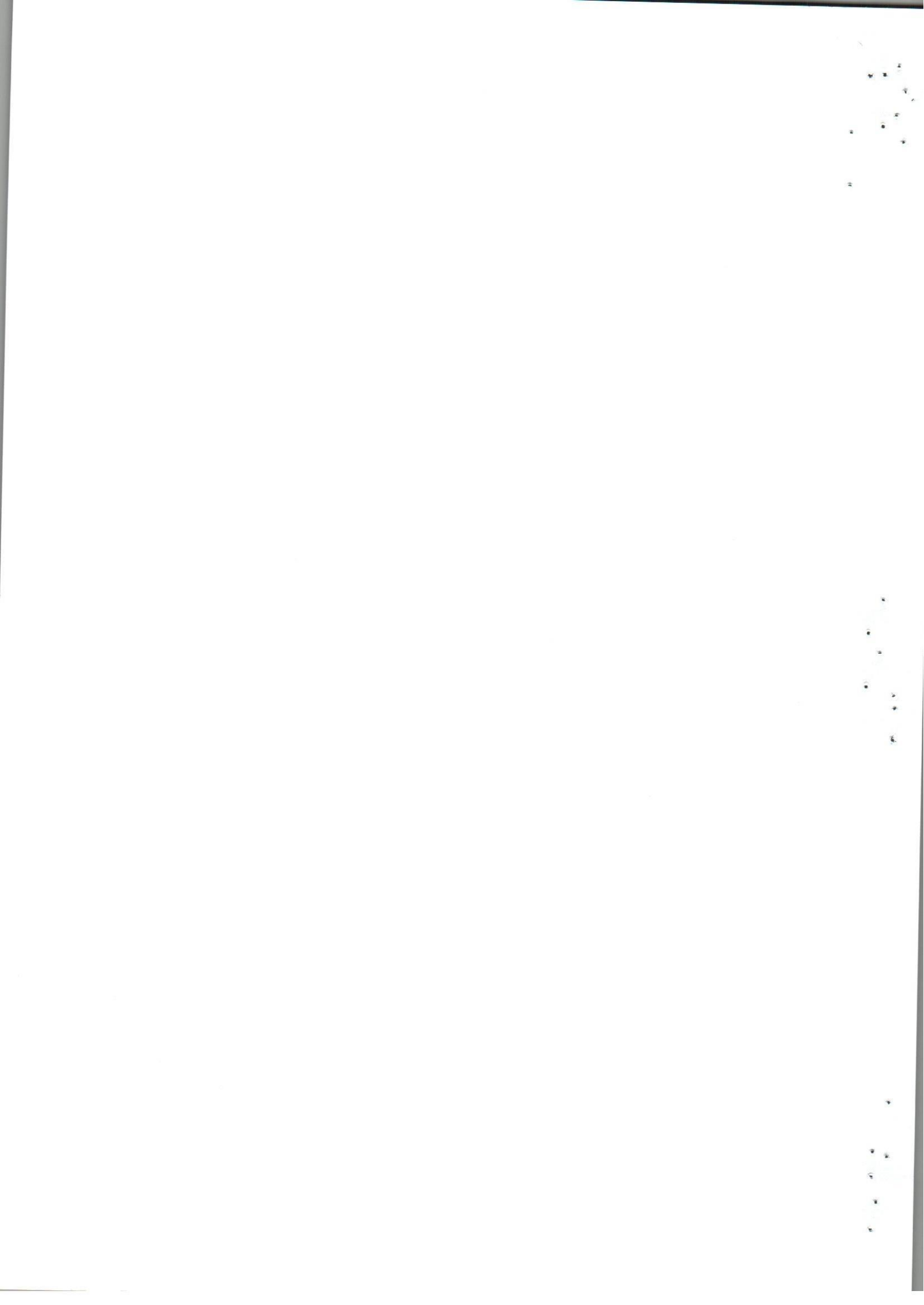
SENATE

1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. David Ng'eno - Research Officer
3. Ms. Sombe Toona - Legal Counsel
4. Mr. Philemon Okinda - Serjeant-At-Arms
5. Ms. Maureen Kweyu - Audio Officer

MIN. NO. 35/2019

PRELIMINARIES

The Chairperson called the meeting to order at 11.10 a.m. followed by a word of prayer. He then led in a self-introductory session of Members present.



MIN. NO. 36/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. Naomi Shiyonga, MP.

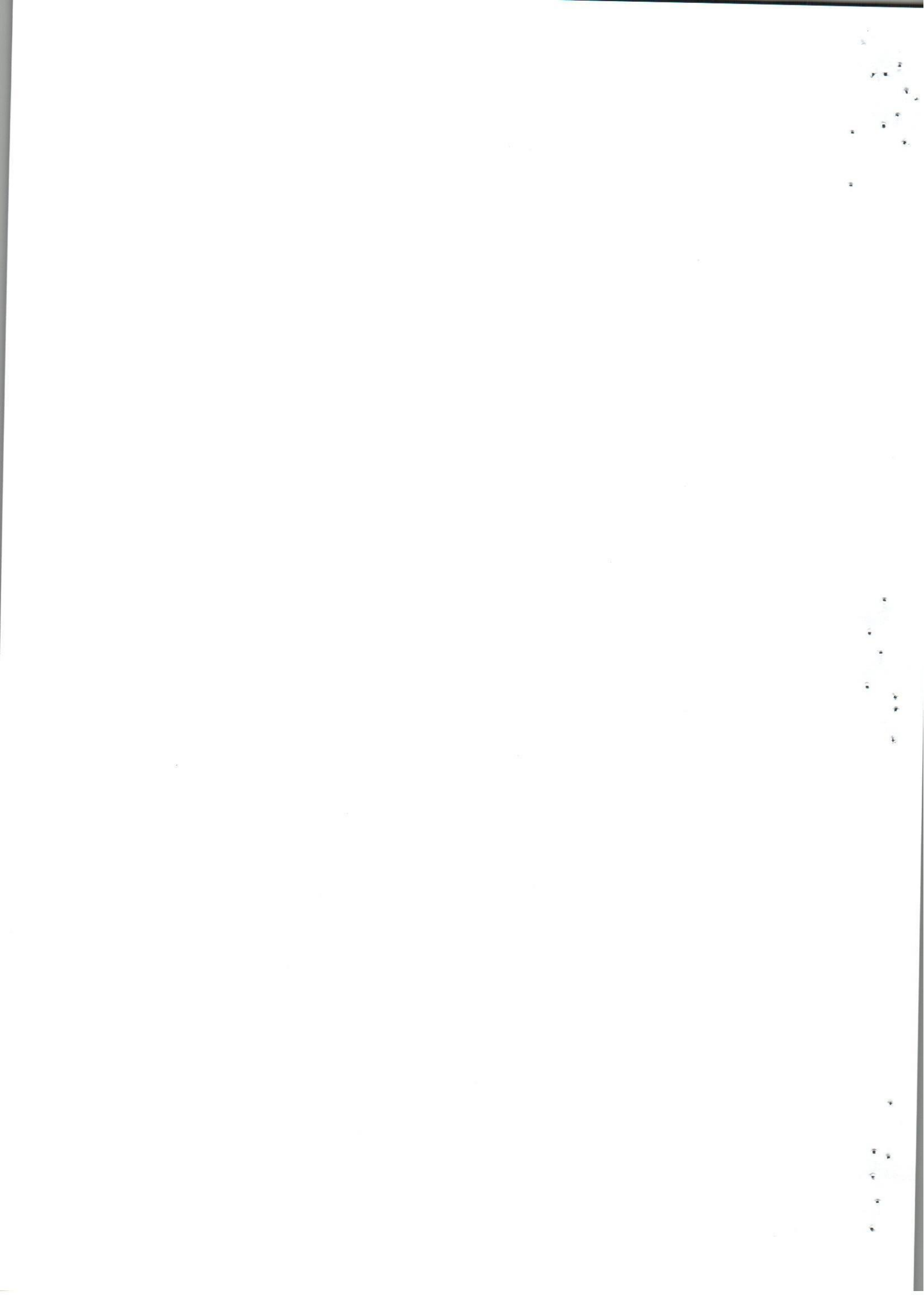
MIN.NO. 37/2019

PUBLIC HEARINGS ON THE TEA BILL, 2018

Sen. (Dr.) Ochilo Ayacko welcomed Members of the public to the Senate, noting that the Senate was concerned with matters relating to the counties. He informed the meeting that pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 140(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries invited the public to give their views on the Tea Bill, (Senate Bills No. 36 of 2018) which was read a First Time in the Senate on 5th December, 2018.

He informed the meeting that during the Second Session, the *Ad hoc* Committee on Tea was established by a Senate Resolution passed on 14th March, 2018, to investigate the challenges affecting the tea sector in Kenya and to submit a Report to the Senate within five months, with specific legislative and policy interventions to address the problems facing the tea sector in Kenya. The Committee visited six (6) counties including Kisii, Nyamira, Bomet, Kericho, Murang'a and Embu counties and received views various tea stakeholders.

He added that the Tea Bill, 2018 sponsored by Sen. Aaron Cheruiyot, MP, emanated from the extensive work and findings of the *Ad hoc* Committee on Tea. He informed the meeting that after the receipt of submissions on the Bill, the Committee would prepare a report and where appropriate and necessary, may propose amendments to the Senate during the Committee of the Whole House. He then invited submissions from the members of the public present.



Submissions on the Tea Bill, (Senate Bills No. 36 of 2018)

Peter Kanyago Chairman KTDA Holdings Ltd.

Mr. Kanyago, informed the meeting that a written memorandum had been submitted to the office of the Clerk of the Senate. He informed the meeting that KTDA supports the Bill but proposes the following changes:

1. That the Authority should be renamed to "The Tea Board of Kenya" which was more effective in regulating the tea sector which is the principal function of the Bill;
2. The Headquarters of the Board should be in Nairobi. Nairobi is a central location and the current AFA is housed in a building constructed from tea resources and should therefore be the headquarters of the Board.
3. KTDA produces 60 per cent of Kenyan tea, therefore, representation to the Board should be proportionate to the production of tea.
4. Board should license tea growers and tea manufacturing factories ensure its grown in only suitable areas and farmers have facilities once tea matures;
5. Board should encourage domestic consumption of tea as one of its functions;
6. Clause 5(2)(h) which provides for the function of the Board to coordinate the prioritization research and the utilization of available funds should be amended to ensure that activities by industry stakeholders such as contributions at a rate agreeable to the stakeholders. This is to address the challenge of lack of adequate funding by the government;
7. Clause 6(1) which provides for the membership of the Board has under-representation of the Sub Sector stakeholders. There is therefore need to revise the membership of the Board to include more stakeholders;

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Mr. Joel Chepkwony - Chairperson of Kericho Tea Growers

Mr. Chepkowony made the following remarks:

1. That Tea Board of Kenya replace the Tea Regulatory Authority;
2. Sessional Paper 2 of 1999 on Liberalization of the Tea Industry be incorporated, and there is need for private factories to be supported;
3. That there have been discrimination in payments to farmers by KTDA.

Mr. Chege Kirundi – Chairperson, Tea Factory KIRI

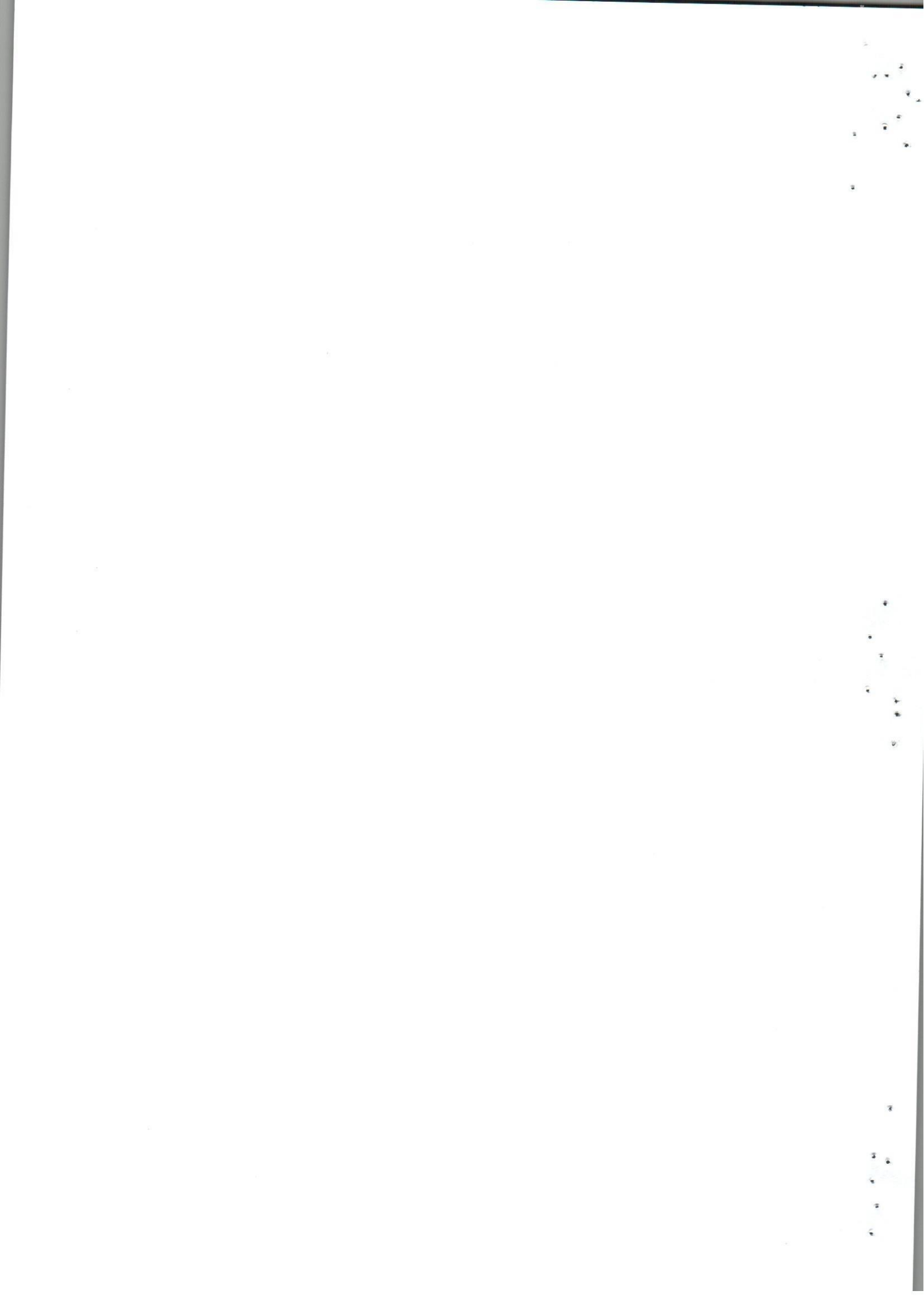
Mr. Chege stated that there is need for a contract on governing of the Tea Sub Sector as there is need for transparency and clarity for the farmers. He added that the KTDA is seen as an association representing the farmers but in practice there arises conflict of interest. There is therefore need for this to be revised under the Bill. Focus must be made on the returns to the grower.

Joseph Karanu - Kenya Union of Small scale Tea owners (KUSTO)

Mr. Karanu stated that focus needs to be made on the welfare of farmers and that they should be the ultimate beneficiaries. KTDA is assumed to be the representative of the farmers but directors are factory directors. Farmer issues are not addressed by KTDA. He informed the meeting that KUSTO has submitted a memorandum and urged the Committee to consider its proposals to enrich the Bill. He further urged the Committee to include provisions to ensure wealth accumulated by KTDA is shared to farmers around the country and that mechanisms be put in place to audit KTDA.

Mr. Githika – Chairperson Githeru Tea Factory

Mr. Githika stated that he supported the Bill noting that the Tea Sector contributes 4 per cent of the GDP of the country therefore the government should be more supportive of the sector. He added that the Bill should allocate



specific funds for marketing and promotion of the Tea industry as is the practice in other countries such as Sri Lanka which has a tea ministry. He opined that operational issues e.g. contracts should not be introduced through the Bill.

Mr. Gichoki Kimani from Ikumbi

Mr. Gichoki stated that he supports the views submitted by the KTDA.

He proposed amendment to clause 6(1)(c) nominating seven members nominated by the Council of Governors, to provide that the Members should be a tea stakeholder or grower and may be affiliated to any factory within the county. He further stated that processing factories should be declared as Export Processing Zones (EPZs).

Dennis Gitaka - Eastern Produce Kenya, Nandi

He informed that the Crops Act has substantive provisions on the role of the county and national government. He proposed the Incorporation of section 6 of the Crops Act into the Bill; as well as incorporation of research under section 8 of the Crops Act. In addition, benefits to growers and farmers should be incorporated in the Bill for a clear way forward for the industry.

Stephen Muriuki - JKUAT

Mr. Muriuki proposed that clause 12(3)(a) be amended to delete the requirement that the CEO of the Board have a masters degree. He proposed that a degree should suffice. He further proposed that clause 4(2) be amended to have the Headquarters of the Authority in Nairobi and to further provide that branches may be put up in any place in Kenya.

Mr. John Waweru

Mr. Waweru stated that there is equality in the provision of payments to farmers by KTDA noting that KTDA is an agent of farmers who have chosen it. He added that KTDA only receives only 2.5% as agency fees and that a factory is paid according to its quality and quantity of tea.

MIN. NO. 38/2019 **DATE OF NEXT MEETING**

The next meeting would be on notice.

MIN. NO. 39/2019 **ADJOURNMENT**

The Sitting was adjourned at 1.04 p.m.

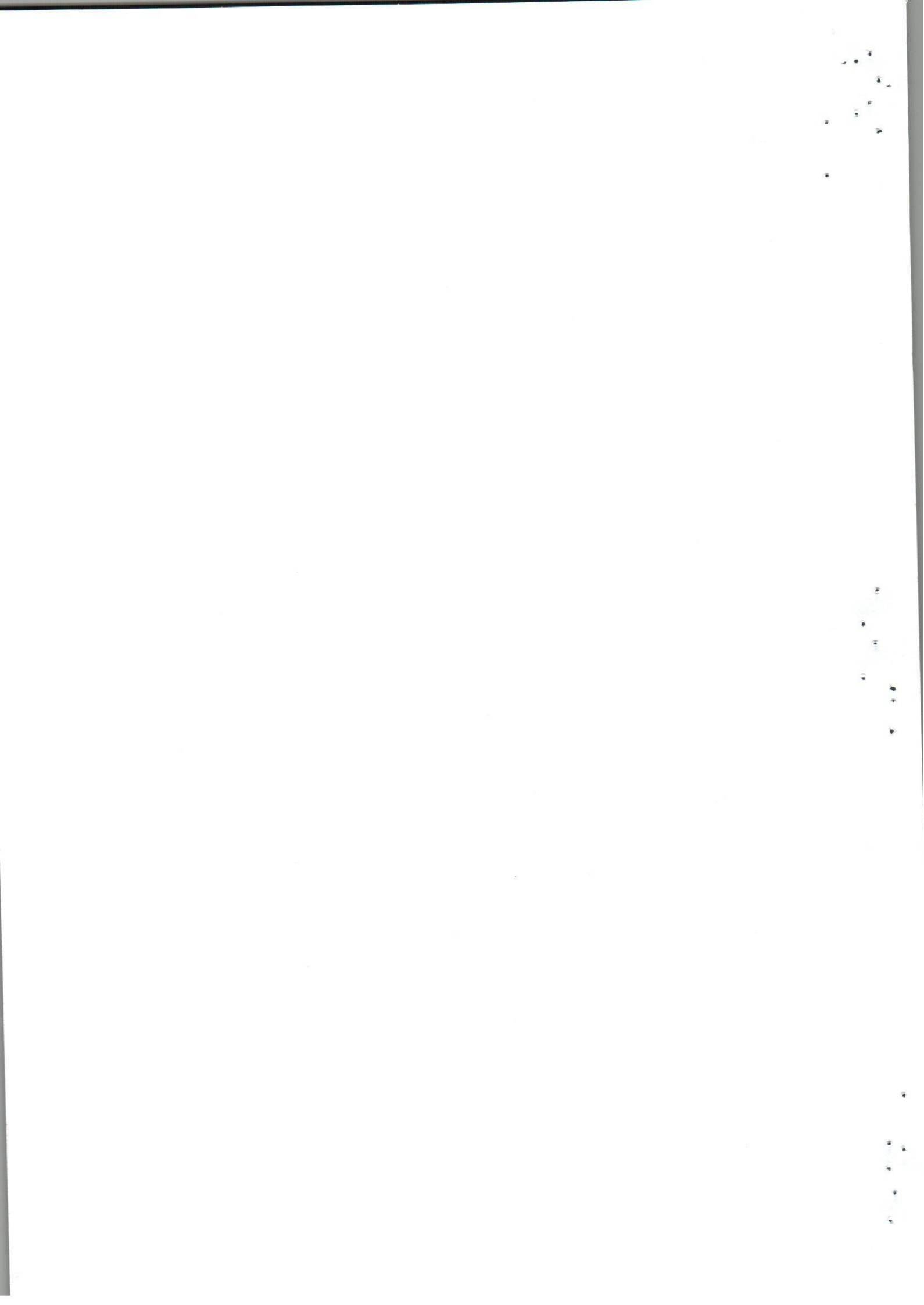
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20/3/19



MINUTES OF THE THIRTY SIXTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON THURSDAY, 14TH MARCH, 2019 IN THE GROUND FLOOR BOARDROOM, RED CROSS BUILDING AT 11.00 A.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. (Dr.) Ochilo Ayacko, MP
3. Sen. Justice (Rtd.) Stewart Madzayo, MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. Naomi Shiyonga, MP
3. Sen. Naomi Jillo Waqo, MP
4. Sen. Golich Juma Wario, MP
5. Sen. Moses Kajwang', MP
6. Sen. (Dr.) Michael Malinga Mbito, MP

IN ATTENDANCE

SENATE

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|--------------------------|---|-----------------|
| 1. Ms. Josephine Kusinyi | - | Legal Counsel |
| 2. Ms. Carol Kirorei | - | Clerk Assistant |
| 3. Ms. Maureen Kweyu | - | Audio Officer |

MIN. NO. 46/2019

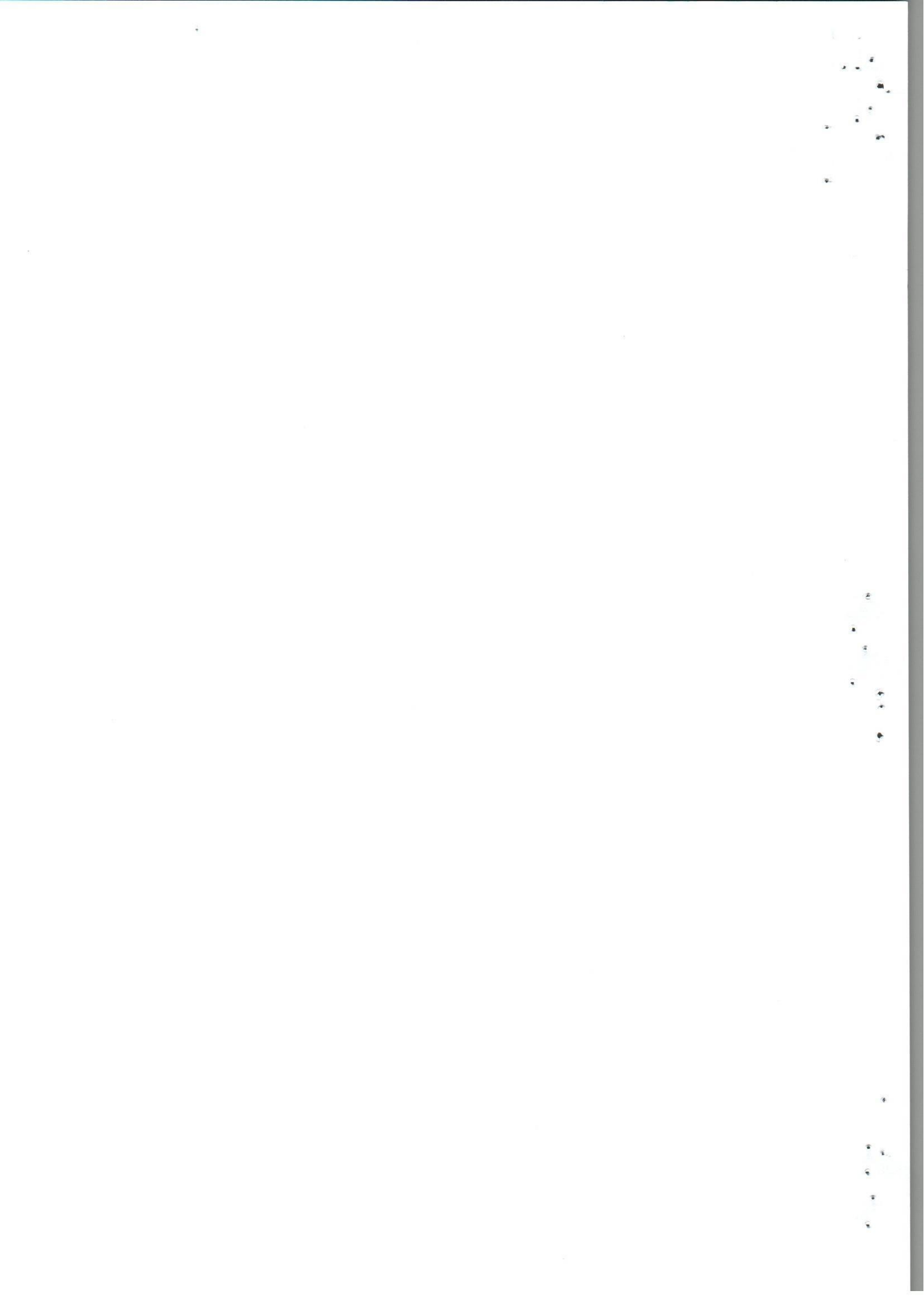
PRELIMINARIES

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

MIN. NO. 47/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Justice (Rtd.) Stewart Madzayo, MP and seconded by Sen. (Dr.) Ochillo Ayacko, MP.



The Legal Counsel informed the meeting that the Committee was in receipt of submissions from the following-

1. Ministry of Agriculture, Livestock & Fisheries;
2. Kenya Tea Development Authority (KTDA);
3. Kenya Tea Growers Association (KTGA);
4. Kenya Association of Manufacturers (KAM);
5. East African Tea Trade Association (EATTA);
6. The Agriculture and Food Authority (AFA);
7. The Council of Governors;

She then presented the submissions received as summarized below:

LONG TITLE

Proposal: That the long title be amended to include:

“To make specific roles of National and County governments”

Rationale:

The provision will take in to account schedule 4 of the Constitution.

Resolution: Not agreed to.

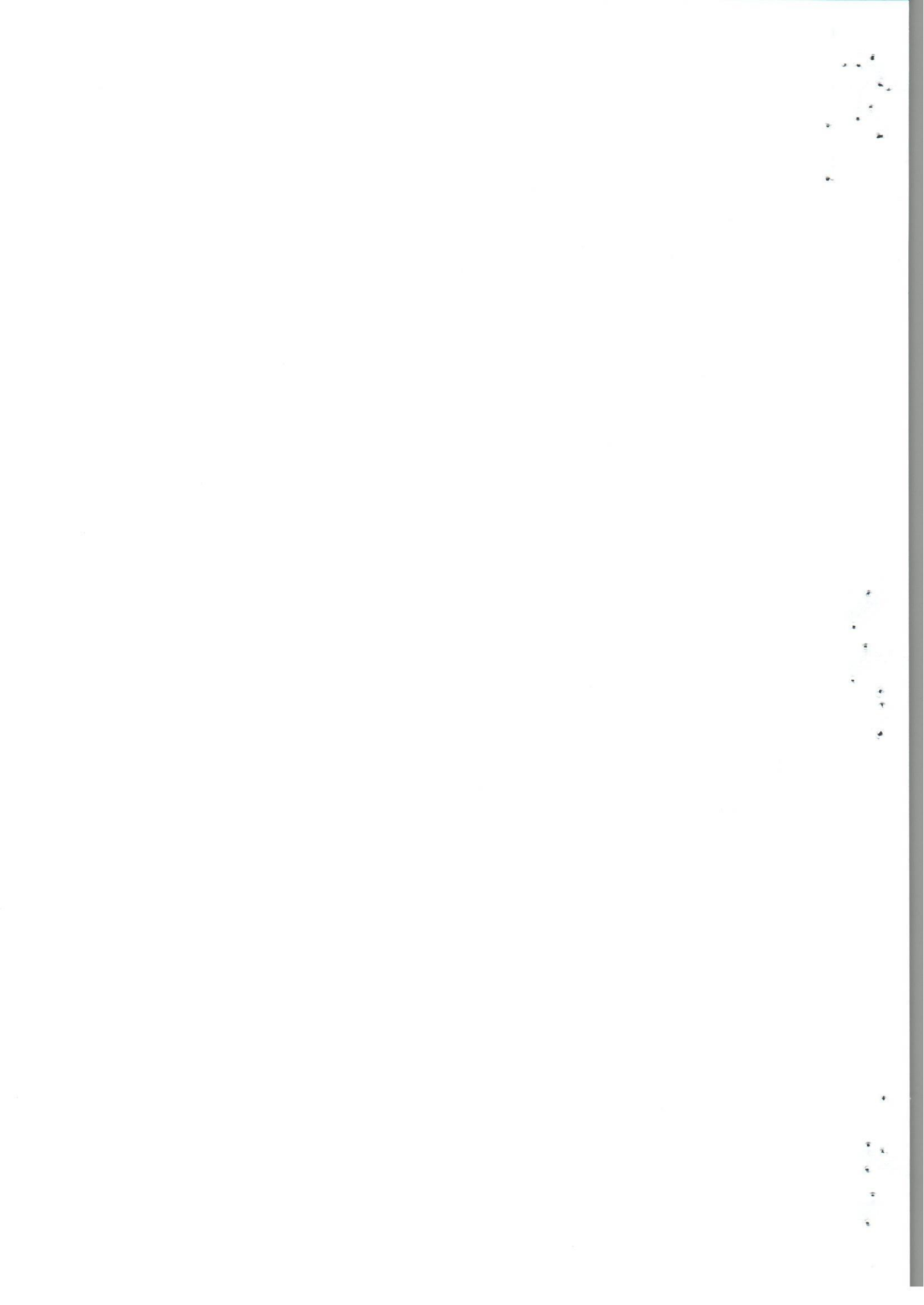
CLAUSE 2

Proposal: Substitute “Tea Regulatory Authority” with “Tea Board of Kenya”

Rationale: The Tea Board of Kenya established in 1950 was an internationally recognised brand. The Tea Taskforce Report of 2016 proposed the reintroduction of the Tea Board of Kenya. Other leading world producers of Tea have adopted Tea Boards e.g Sri-Lanka and India. A Board would be better placed to more inclusively manage the sector rather than an authority which is perceived as regulatory.

Resolution: Agreed to.

Proposal: Delete the definition “processor”



Rationale: This introduces a person registered by the multiple registration regimes and Authority to process tea. It presents a lack of clarity on the scope of the roles of packers, growers, etc.

Resolution: Not agreed to.

Proposal: Amend interpretation clause to include definitions of key value chain players and activities such as Tea brokers, Warehousemen, Management Agents, Auction, Tea Packers and Auction Organiser, Buyer, Exporters, Importers, Export, import, made tea etc

Rationale: The definitions will provide clarity as to the entities and activities being regulated under the Act and avoid ambiguity.

Resolution: Not agreed to.

Proposal: Insert the following new definitions—

“managing factory” means a factory appointed to process green leaf in to made tea.

“broker” means a person who negotiates the purchase or sale of tea between tea growers and buyers

Rationale: The word broker and managing factory have been mentioned in the Bill in clause 5 (2) (d) and (e) of the Bill respectively, but have not been defined. This will ensure that there is clarity on the meaning of the words.

Resolution: Agreed to.

CLAUSE 3

Proposal: Substitute “Tea Regulatory Authority of Kenya” with “Tea Board of Kenya”

Rationale: India and Srilanka who are Kenya’s two main competitors maintain the term “Tea Board” for their regulators.

Resolution: Agreed to.

CLAUSE 4

Proposal: Substitute “Kericho” with “Nairobi”

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Rationale: The headquarters should be central to all tea value chain players. Growers are located in the East and West of the Rift Valley while the traders are concentrated in Mombasa. The former Tea Board of Kenya had constructed offices in Nairobi using funds collected from tea industry players therefore use of the buildings would be a prudent use of resources.

Resolution: Agreed to.

CLAUSE 5

Proposal: Amend clause 5 (1) (a) by deleting the word "regulate"

Rationale: The main objects of the Crops Act include the minimization of Regulation of the crops sub-sectors. It would be contrary to this objective to mandate the Authority to "regulate" the sector. It is acknowledged that the Authority should manage the sector and facilitate its development to be in line with the spirit of the Crops Act. This also ensures there is no overlap between the Crops Act and this Bill. The Crops under section 13 clearly states that the Authority therein will regulate all scheduled crops.

Resolution: Not agreed to.

Proposal: Insert the following new clause 5 (1) (d)—

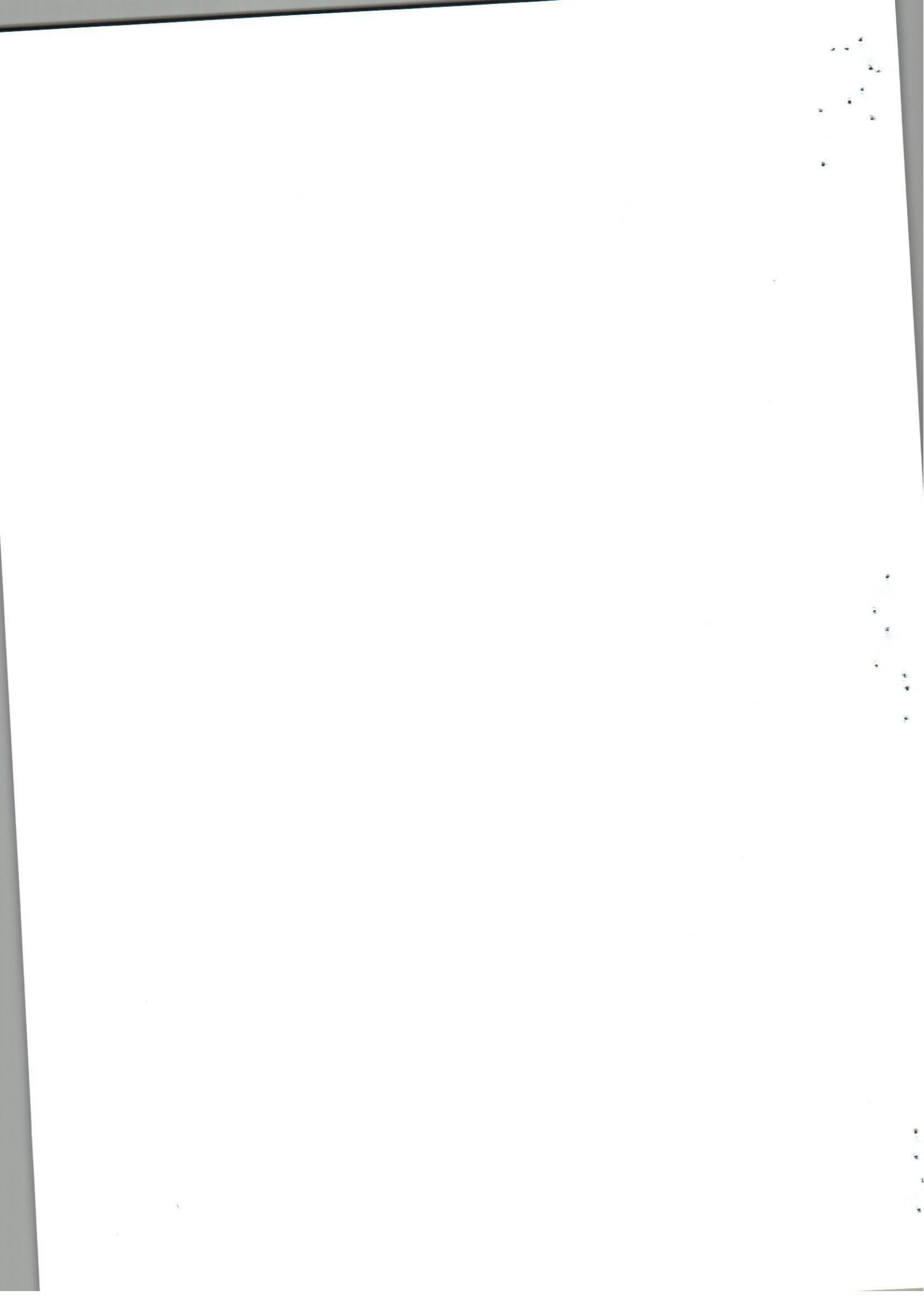
"Promotion of tea"

Incorporate the provisions of Section 8 of the Crops Act into the Bill as a Schedule or a new section to import the benefits of the Crops Act in facilitating the promotion of the tea sector. The proposed section provides—

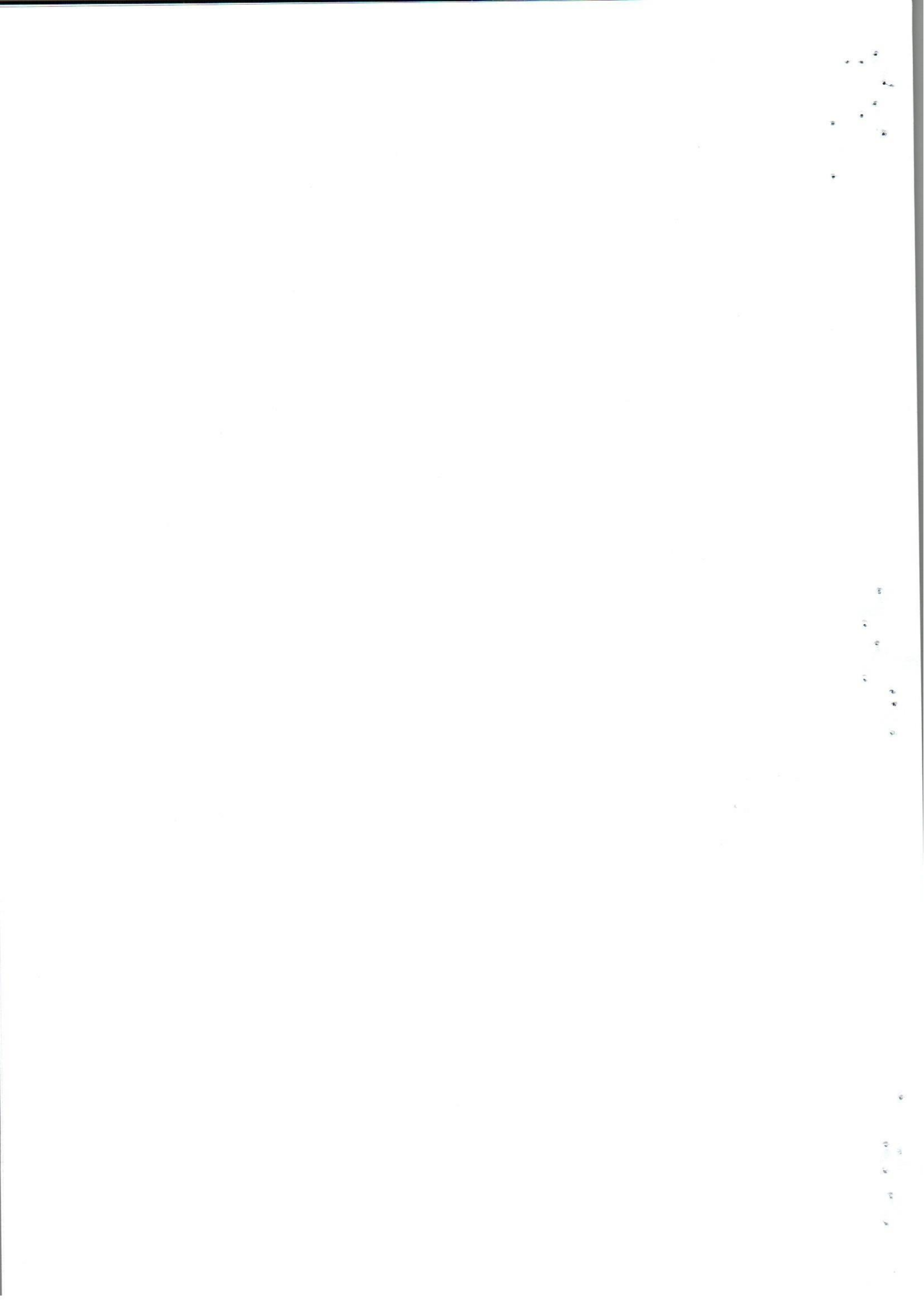
8. Promotion of scheduled crops

In addition to the functions stipulated under any other law, the Authority shall—

- (a) formulate general and specific policies for the development of scheduled crops specified in the First Schedule;
- (b) facilitate marketing and distribution of scheduled crops through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market



- matching and overseas market intelligence and promotion activities on scheduled crops;
- (c) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting scheduled crops, for purposes of reducing marketing costs and ensuring stable consumer supply;
 - (d) promote the establishment of wholesale markets in identified major centres of the country;
 - (e) promote the establishment of agricultural produce collection centres in viable areas to serve as buying stations of farm products, packaging houses, pick-up points and meeting places of farmers' and growers' cooperatives;
 - (f) establish linkages with various governments and private research institutions for the conduct of studies and researches designed to promote the production, marketing and processing of scheduled crops;
 - (g) in consultation with the National Biosafety Authority, advise the government on the introduction, safe transfer, handling and use of genetically modified species of plants and organisms in the country;
 - (h) conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
 - (i) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;
 - (j) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of scheduled crops by means of inter-trading or intra-trading among the established wholesale markets;



Rationale: Constitutionally the authority is not mandated to be initiating formulation of policies and rules. That is a function of the National Government in a consultative process as guided in the various legal provisions.

Resolution: Not agreed to.

Proposal: Amend 5 (2) (b) to have tea growers registered by counties.

Rationale: Agriculture is a devolved function and therefore tea growers should be regulated and registered by counties.

Resolution: Agreed to with further amendment that the Authority shall license in consultation with the counties.

Proposal: Amend 5 (2) (b) by deleting the word "regulate"; Delete clause 5 (2) (b)

Rationale: Agriculture development is devolved under the Fourth schedule of the Constitution.

Resolution: Not agreed to.

Proposal: Amend 5 (2) (c) by deleting the word "processors"

Rationale: It is acknowledged that there is benefit to licensing of tea dealers. This would include the registration of farmers which has been going on unregulated and has resulted in the Country overproducing tea.

Resolution: Not agreed to.

Proposal: Delete clause 5 (2) (c)

Rationale: Part 2 section 7 of the Fourth Schedule gives county governments the mandate of trade development and regulation including markets and licensing.

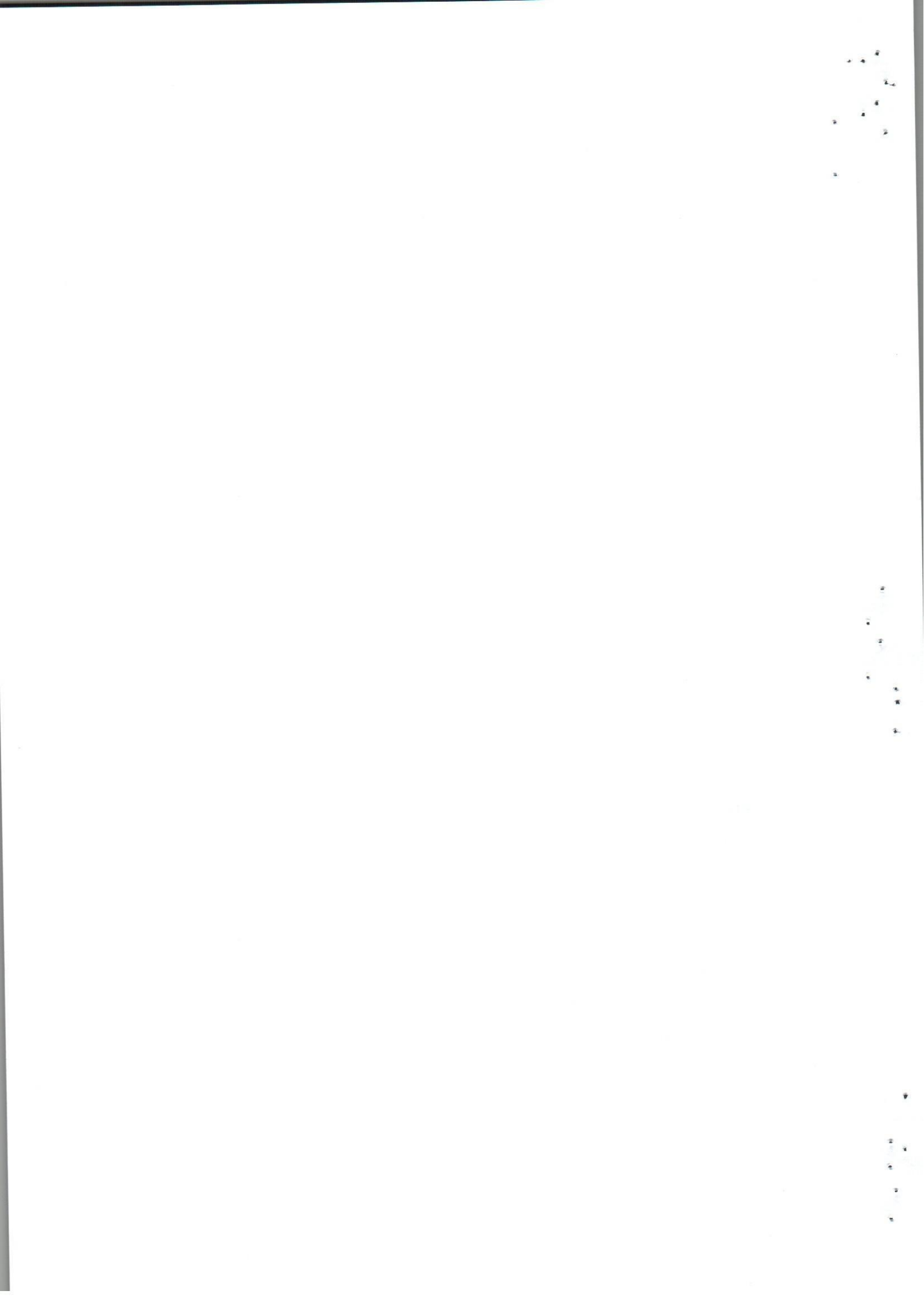
Resolution: Not agreed to.

Proposal: Define the words "managing factory" under clause 5 (2) (d)

Resolution: Agreed to.

Proposal: Amend clause 5 (2) (d) by deleting "processors"

Rationale: This is because clause 5(2) (b) already provides for the registration and regulation of the operations of tea growers and processors.



Resolution: Not agreed to.

Proposal: Delete clause 5 (2) (d)

Rationale: Part 2 section 7 of the Schedule gives county governments the mandate of trade development and regulation including markets and licensing.

Resolution: Not agreed to.

Proposal: Delete 5 (2) (f). Substitute with “provide capacity building to county governments and technology transfer”

Resolution: Not agreed to.

Proposal: Under county functions insert “provide advisory services on tea production and quality enhancement”.

Rationale: Crop husbandry is a county function under the Constitution.

Resolution: Agreed to.

Proposal: Amend 5 (2) (h) to separate research from utilisation of available funds.

Rationale: To provide for clarity

Resolution: Agreed to.

Proposal: Amend 5 (2) (h) by inserting “support the Tea Research Institute to undertake tea research”

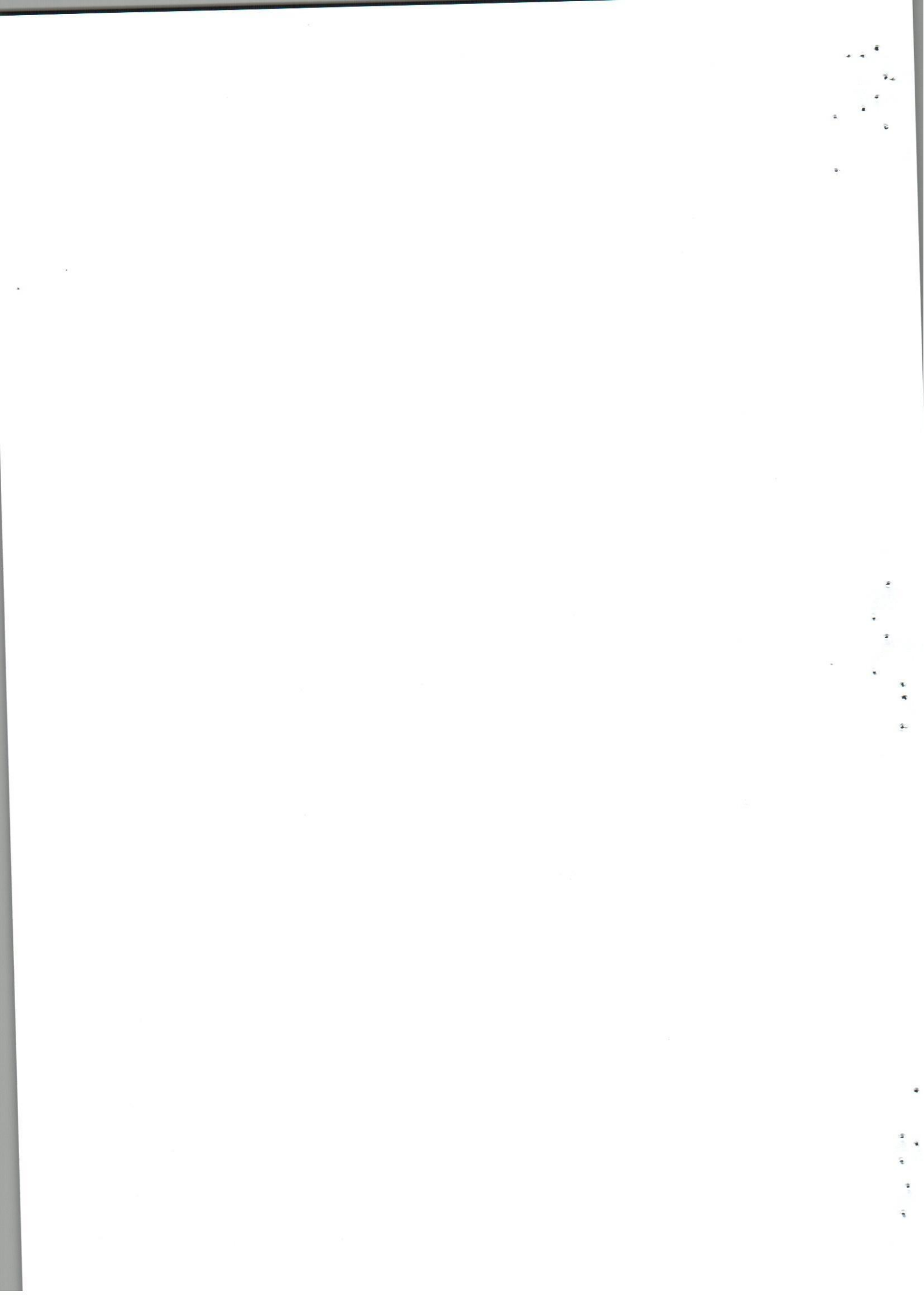
Rationale: The TRI was historically charged with this function. Under better management and involvement of stakeholders, it worked effectively for the Sector. The KALRO Act will require amendment to remove TRI and set is up under the Tea Board with defined subscribers.

Tea sector contributes 4% of the GDP and therefore more funds should be channelled to research and marketing if tea.

Resolution: Not agreed to.

Proposal: Delete clause 5 (2) (h)

Rationale: The clause contradicts the provisions of the KALRO Act since Kenya Agriculture & Livestock Research Organisation (KALRO) is already mandated to carry out research.



Resolution: Not agreed to.

Proposal: Amend clause 5 (2) (h) to include a funds line to the proposed Authority by the relevant stakeholders.

Rationale: The activities of the current Tea Directorate and TRI have been hampered by lack of adequate funding to carry out their mandate of regulation of the tea industry and research respectively. In the absence of adequate government funding, a mechanism should be put in place to fund such activities by industry stakeholders such as contributions at a rate agreed by relevant industry stakeholders.

Resolution: Agreed that a levy be introduced in the Bill.

Proposal: Delete clause 5 (2) (i) and 26

Rationale: The proposed Authority lacks capacity to operate as a tribunal. Arbitration should be carried out by an independent arbitration tribunal in case of a dispute arising from the Authority's decision. The Crops Act already provides for arbitration, where the Cabinet Secretary is expected to come up with a rules to guide on arbitration of issues around schedule crops. The current practice is to have the Ministry as an arbiter or for the Ministry to appoint an arbiter.

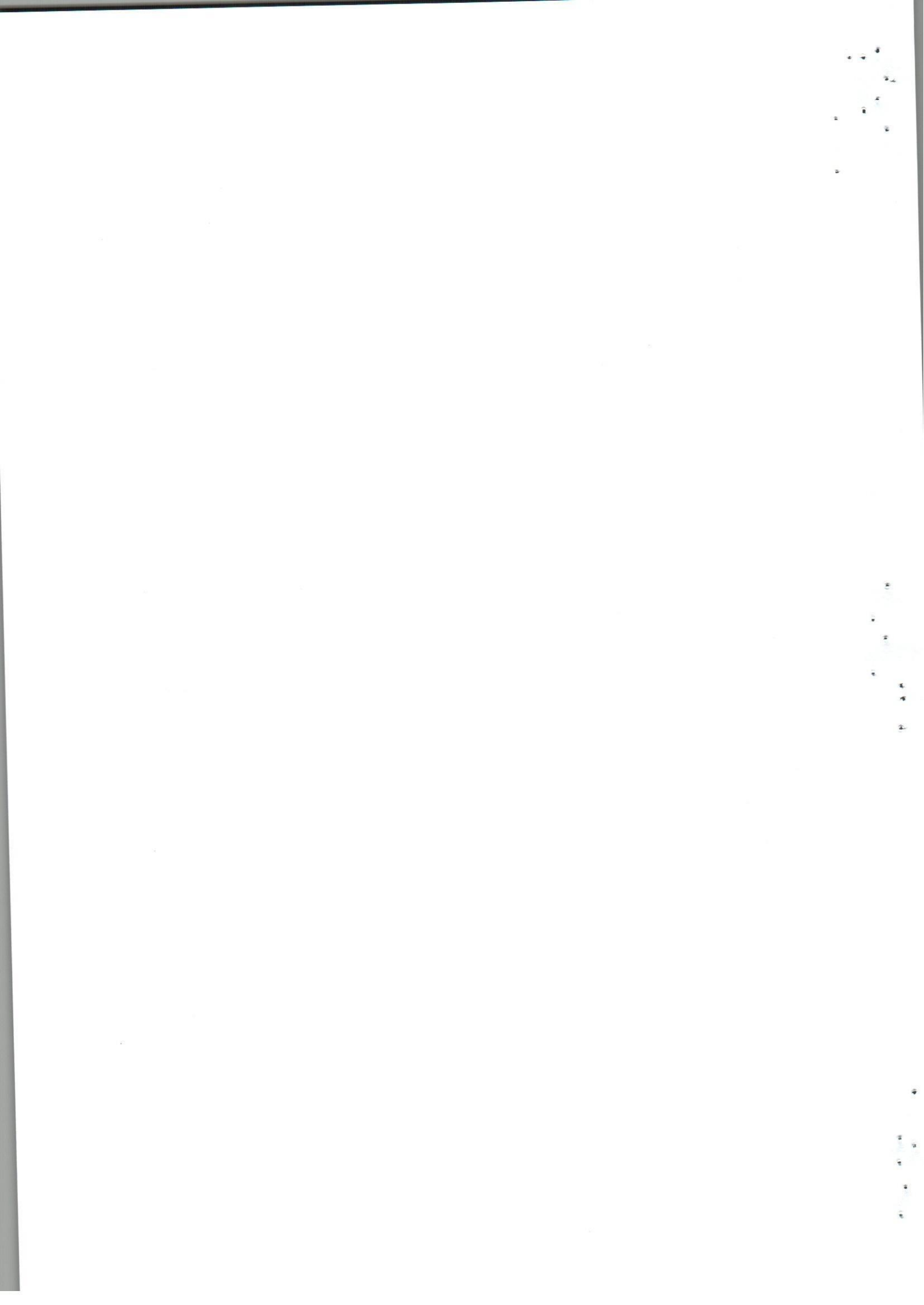
Resolution: Agreed to.

Proposal: Insert the following additional functions under clause 5 (2) (a)—

- (j) Establish and monitor compliance with standards along the tea value chain.
- (k) Promote and monitor tea trade in Kenya
- (l) Regulation of all aspects of tea trade
- (m) Prescribe the maximum period within which farmers are to be paid for green leaf delivered and penalties for delayed payments

Rationale: The provisions will regulate activities and entities omitted in the Bill such as tea warehousemen, tea packers and auction organisers.

Resolution: Agreed to.



Proposal: Amend clause 5 (2) by inserting the following new paragraphs after paragraph (i)—

- (j) licence tea growers to ensure that the tea is grown only in suitable areas and ensure that growers have manufacturing facilities for their tea once it matures;
- (k) licence tea manufacturing factories to ensure that the new tea factories have sufficient leaf from their own estates and would not create over capacity in a given area or interfere with any established system by “poaching” farmers who may already be delivering leaf to an already established factory in the same area.
- (l) Regulate and control tea cultivation, processing, pests and diseases and carry out investigation of and research in to all matters relating to the tea industry
- (m) Place more emphasis on its role of advertising Kenya tea and increasing its sale by efforts to extend existing markets and exploiting new markets, and matters incidental thereon
- (n) Encourage consumption of tea in the domestic market and educate the general public
- (o) Enhance its efforts of promotion of exhibitions for the display of tea and the process for manufacture thereof and the provision of facilities thereto.
- (p) The regulation, control and improvement of the cultivation and processing of tea
- (q) Regulate and control; tea cultivation, processing, pests and diseases and carryout investigation of and research into all matters relating to the tea industry.
- (r) Promote exhibitions for the display of tea and the process for manufacture thereof and the provision of the facilities thereto



(s) the collection and dissemination of statistics and other information relating to tea and its production, distribution and consumption.

Exercise its power and in the performance of its functions to act in such manner as appears to it best calculated to promote the tea industry in Kenya.

Resolution: Not agreed to.

Proposal: Substitute clause 5 (2) with—

In addition to the functions stipulated under any other law, the Authority shall—

- (a) formulate general and specific policies for the development of tea;
- (b) facilitate marketing and distribution of tea through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion activities on tea;
- (c) identify local supply demand, domestic, market matching and overseas market intelligence and promotion activities on tea
- (d) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting tea, for purposes of reducing marketing costs and ensuring stable consumer supply;
- (e) ensure stable consumer supply
- (f) Identify foreign markets for Kenyan tea;
- (g) establish linkages with various governments agencies and re-establish the Tea Research Institute as an independent research centre for Kenyan tea designed to promote the production, marketing and processing of tea.
- (h) Promote the production, marketing and production of tea
- (i) facilitate the adoption of technology in the sector for sustainability



- (j) facilitate the setting up of sustainability standards for the sector
 - (k) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade,
 - (l) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of tea to ensure health and proper trading;
 - (m) promote and advise on strategies for value addition prior to the export of tea from Kenya;
- recommend general industry agreements between farmers and other players in the tea sector

Resolution: Not agreed to.

Proposal: Incorporate the provisions of Section 8 (Promotion of scheduled crops) of the Crops Act into the Bill as a Schedule or a new section to import the benefits of the Crops Act in facilitating the promotion of the sector.

Resolution: Agreed to.

Proposal: Amend either section 11 (3) of the Agriculture and Foods Authority Act or the proposed clause 5.

Rationale: The Agriculture and Food Authority Act under section 11 (3) gives each directorate international recognition empowered to represent Kenya internationally.

Resolution: Agreed to.

Proposal: Insert the following new clause after clause 5—

Functions of county Governments

5A. County governments shall—

- (a) register and regulate the operations of tea growers and processors within the county
- (b) licence tea dealers and processors within the county
- (c) licence managing factories and their agents within the county.

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- (j) 2 (two) persons appointed by the cabinet secretary in consultation by the Council of Governors.

Proposal: Reduce the membership of Council of Governors nominees; Reduce membership of the Board to a maximum of 9; include AG and the National Treasury.

Rationale: To ensure compliance with Mwongozo, state corporation Act and Public Finance Management (PFM) Act.

Resolution: Not agreed to. The Board shall consist of:

- (a) A chairperson appointed by the President;
- (b) the Principal Secretary for the time being 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 either gender, nominated by the Council of County Governors;
- (e) four persons, two of either gender, representing small-holder tea growers tea from the east and west of the tea growing areas;
- (f) one person representing plantation tea growers;
- (g) one person representing tea traders;
- (h) a Chief Executive Officer appointed in accordance with section 12 who shall be an ex-officio member of the Board.

CLAUSE 7

Proposal: Insert the following additional paragraphs under clause 7—

(da) in case of fraud or dishonesty

(de) Fails to comply with Chapter Six of the Constitution”?

Rationale: To take into account Constitutional provisions.

Resolution: Not agreed to.



CLAUSE 8

Proposal: Amend clause 8 (e) to read "open such bank account as may be necessary"

Resolution: Not agreed to.

Proposal

Insert a new clause 8 (f) to provide for an overarching provision to undertake any activity necessary for fulfilment of the Board's mandate.

Rationale: It is best practice to take into account any additional activity that may be required to be undertaken by the Board but may have been overlooked.

Resolution: Not agreed to.

CLAUSE 12

Proposal: Amend Clause 12 (2) to assign only day to day running to the Chief Executive officer and reserve the role of the Secretary to the Board to the Corporation Secretary.

Rationale: In line with good corporate governance practice and the provisions of Mwongozo Code of Governance for State Corporations, the role of the Secretary to the Board and the Chief Executive officer should be separate.

Resolution: Agreed to.

Proposal: Clause 12 (3) (b) substitute 5 years with 10years.

Resolution: Not agreed to.

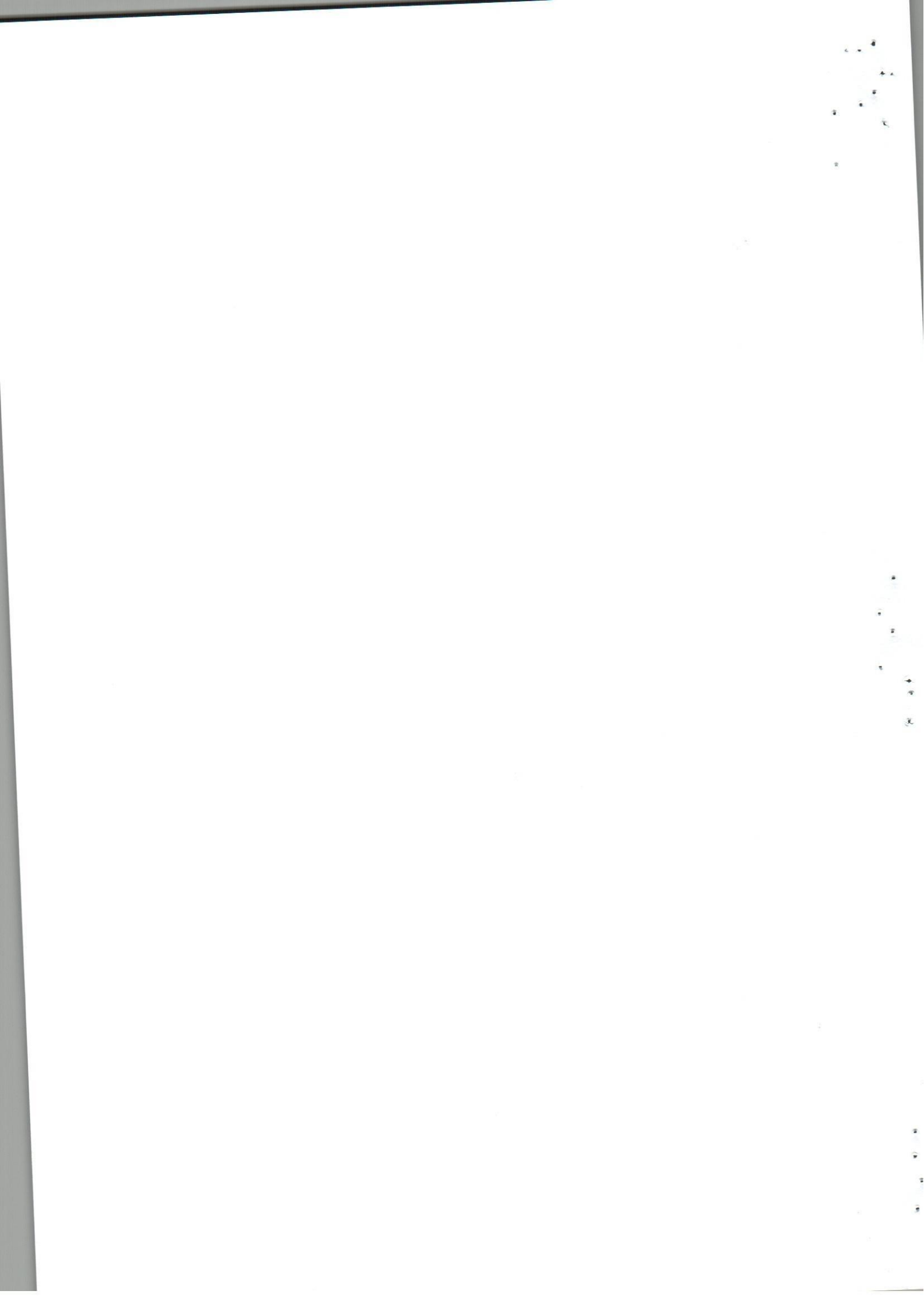
Proposal: Under clause 12 (3) (a) delete the word "masters"

Resolution: Agreed to.

CLAUSE 14

Proposal: Delete clause 14 (1)

Rationale: to avoid the bureaucracy of requiring Board authority for every instance of use of the seal. There is sufficient protection of the seal because



there is a requirement for authentication of seal by the signatures of the CEO and the Chairperson at Clause 14(2).

Resolution: Agreed to.

Proposal: Amend clause 14 (2) by inserting Corporation Secretary.

Rationale: For operational efficiency as the Board is not an executive board and is not involved in the day to day management of the organization.

Resolution: Agreed to.

CLAUSE 15

Proposal: Delete clause 15

Rationale: It would not be practical for Board Members to sign all letters and instruments written or made by or on behalf of the Authority on a day to day basis as the Board Members are not executive and they are not involved in the day to day management of the organization.

Resolution: Agreed to with additional amendments to allow a person authorized by the Board to sign.

CLAUSE 17

Proposal: Substitute clause 17 (1) with—

“Every tea grower shall, register with the tea factory to which he delivers green leaf, by supplying such particulars as the Authority may, in regulations, prescribe.”

Resolution: Not agreed to.

Proposal: Under clause 17 (1) substitute “processor” with “manufacturer”.

Insert the provisions of section 14 (1) (b) of the Crops Act on freedom to register

Rationale: This will facilitate the management and facilitation of growers for effective operations of the sector.

Resolution: Not agreed to.

Proposal: Insert the following additional sub-clauses after sub-clause 17 (1)—

- 1) The tea processor shall maintain a register for the purposes of this Part and shall record therein the particulars supplied in accordance with this section.
 - i. Any change in the particulars supplied by a grower for purposes of Registration in accordance with subsection (1) shall be notified to the Authority or the tea factory in writing, without undue delay.
 - ii. The register referred to in subsection (3) shall be prima facie proof of the fact that a person is a registered tea grower and the processor shall furnish the Authority with particulars of all registered tea growers in such manner as the Authority may prescribe.
 - iii. After the commencement of this section, any grower who carries on Business as such without being registered in accordance with this section or knowingly or recklessly supplies false particulars, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one Hundred Thousand or imprisonment for a term not exceeding one year or to both.

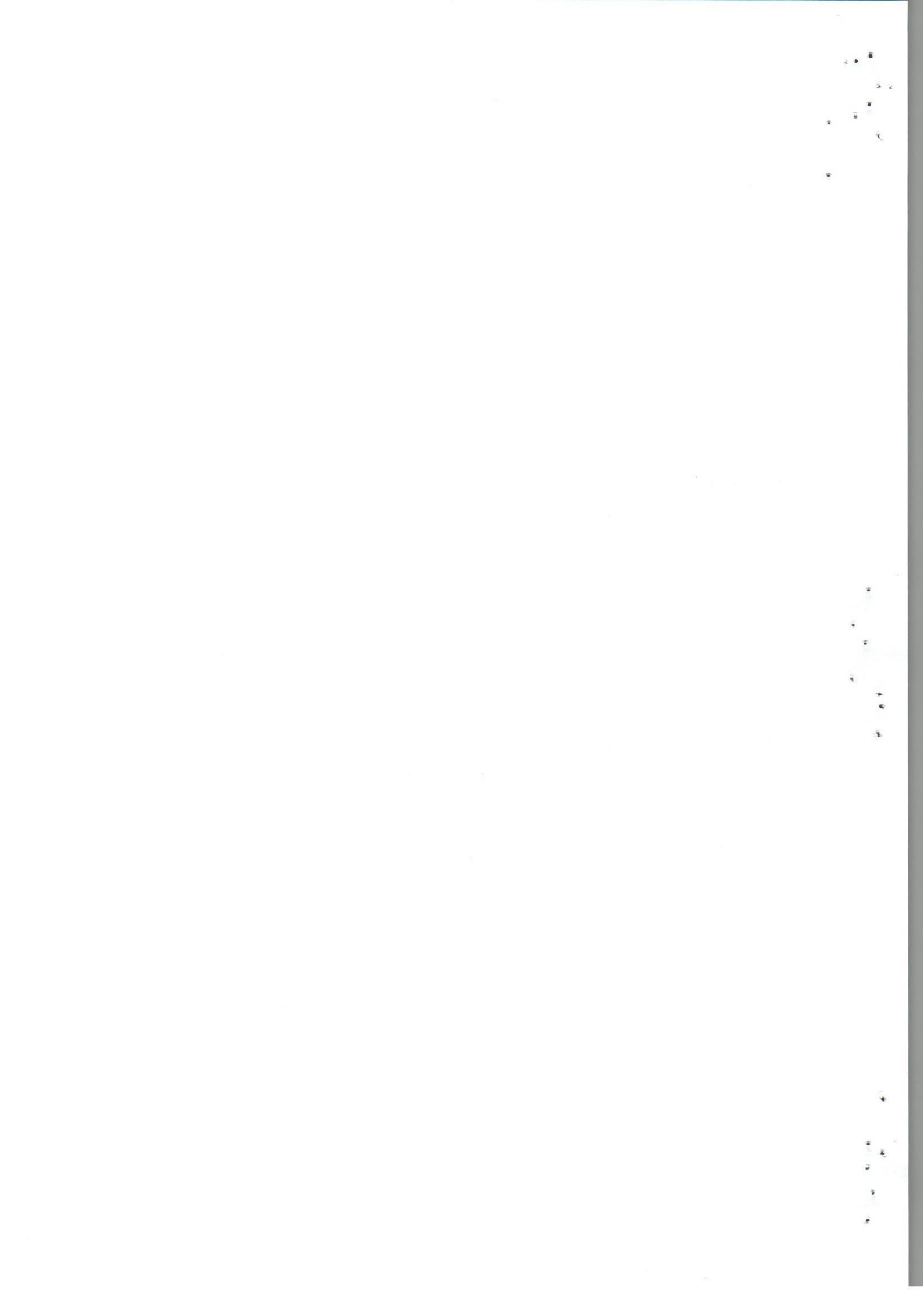
Rationale: In order to be able to deal effectively with the malpractices of tea green leaf diversion commonly referred to as “tea hawking” the provision for registration of tea growers need to be enhanced as proposed;

Resolution: Not agreed to.

Proposal: Insert clause 17 (2) (d) that states “any other information as may be prescribed by the Authority from time to time.

Resolution: Agreed to without the words “from time to time”.

Proposal



Insert clause 17 (3) to make provision for registration of commercial tea nurseries and green leaf transporters by County governments and submission of statistical returns.

Rationale

Registration of green leaf transporters will assist in dealing with green leaf diversion malpractices.

Resolution: Agreed to.

Proposal: Insert a new clause 17 (3)—

(3) in the case of tea grower, register with the tea factory to which the person delivers green leaf, by supplying such particulars as the Authority may prescribe in sub section (2);

Rationale: This will give support the access of economies of scale through the facilitation and the management of growers for effective operations of the sector.

Resolution: Not agreed to.

Proposal: Substitute clause 17 (1) with the following—

- (1) Every smallholder grower, for purposes of accessing economies of scale, shall have the freedom—
 - (a) in the case of coffee growers, register with the co-operative society to which the person delivers coffee;
 - (b) in the case of tea grower, register with the tea factory to which the person delivers green leaf, by supplying such particulars as the Authority may, by regulations, prescribe
- (c) Every tea grower shall, upon the commencement of this section, register with the tea factory to which he delivers green leaf, by supplying such particulars as the Board may, in regulations, prescribe.

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- (d) Upon the commencement of this section, every tea grower licensed by the Board or its agent shall be deemed to be a registered tea grower:
- (e) Provided that where the particulars supplied to the Board by such grower for purposes of licensing do not meet the requirements of any regulations prescribed under subsection (1), the grower shall comply with such requirements.
- (f) Where a person starts growing tea at any time after the commencement of this section, such person shall, within six months register with a tea factory in accordance with subsection (1).
- (g) Any change in the particulars supplied by a grower for purposes of registration in accordance with subsection (1) shall be notified to the Board or the tea factory in writing, without undue delay.
- (h) The tea factory shall maintain a register for the purposes of this part and shall record therein the particulars supplied in accordance with this section.
- (i) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be grower, it may, after giving that person written notification by registered post of its intention to do so, remove the name of such person from the register.
- (j) The register referred to in subsection (5) shall be prima facie proof of the fact that a person is a registered tea grower and the factory shall furnish the Board with particulars of all registered tea growers in such manner as the Board may prescribe.
- (k) After the commencement of this section, any grower who carried on business as such without being registered in accordance with this section or knowingly or recklessly supplies false particulars, shall be guilty of an offence.

Resolution: Not agreed to.

Proposal: Insert the following new clauses after clause 17 (2)

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(3) Every dealer in tea shall register with the Authority”

(4) A dealer shall not deal in tea unless that person has been registered with the Authority”.

Rationale: To strengthen the provisions on dealing with tea without being registered.

Resolution: Not agreed to.

Proposal: Insert a new clause 17 A—

17A. Registration of growers’ associations

The Authority shall maintain a register of all entities registering smallholder growers, in such form as it may determine, and shall enter in the register—

- (a) the full names of the Tea factory;
- (b) the date of submission of annual returns of registered growers by the Tea factory;
- (c) the particulars of numbers of registered growers, area planted with Tea or variations of these particulars; and
- (d) any other particulars the Authority may deem necessary.

Rationale: This is necessary for monitoring of tea growers’ associations. This was mirrored from section 16 of the Crops Act.

Resolution: Not agreed to.

Proposal: Insert new clause on incentives to growers—

Incentives to growers

- (1) The Cabinet Secretary shall, on the advice of the Authority, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.
- (2) The Authority may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of Tea along the value chain —

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- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local
- (g) pest and disease control;
- (h) post-harvest facilities and technologies including storage, processing, distribution and transport facilities;
- (i) tax exemptions including tax breaks and duty waivers on the import of farm inputs and farm machinery.

Rationale: This proposal is supposed to support players in the Tea value chain through incentives. This was mirrored from section 12 of the Crops Act.

Resolution: Not agreed to.

CLAUSE 18

Proposal: It should be made an offence to deal with tea without a license and to vary the terms and conditions of the license without approval from Authority.

Rationale: To strengthen the provisions on dealing with tea without being registered.

Resolution: Agreed to.

Proposal: the provisions on manufacturers be separated from the provisions on dealers. Insert the following additional sub-clauses immediately after subclause (1) on licensing of processors—

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- (1) A person shall not manufacture or process a scheduled crop product for sale except under and in accordance with a licence issued under this Act.
- (2) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee.
- (3) The Authority may, after consultation with the county executive-
 - (a) issue a manufacturing licence, in accordance with this Act;
 - (b) refuse to issue the licence on any ground which may appear to the licensing authority to be sufficient and inform the applicant in writing of the reasons thereof;
 - (c) cancel, vary or suspend any licence if in the findings of the Authority, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing or processing entities.
- (4) A manufacturing licence issued under this section shall, in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending a crop product.
- (5) A person who manufactures a scheduled crop for sale in contravention of this Act;
 - (a) buys, sells, offers for sale, transports or
 - (b) has possession of a scheduled crop which to the person's knowledge or belief has been grown, manufactured or processed otherwise than in

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CLAUSE 20

Proposal: Amend clause 20 to provide that dissemination of market information include all stakeholders in the tea industry.

Resolution: Agreed to.

PART III

Proposal: Insert the following sections of the Crop Act—

- (a) Section 4 (Guiding Principles)
- (b) Section 6 (Role of national and county governments in development of crops) outline the guiding principles and the responsibilities of the county and national governments in the management and promotion of crops.
- (c) Section 12 and 15 touch on incentives and registration of growers respectively.

Rationale: It is key to incorporate the beneficial provisions of the Crops Acts.

Resolution: Agreed to (b).

CLAUSE 21

Proposal: Insert the following new sub clauses under clause 21—

- (2) The funds of the authority shall be used by the Authority in the furtherance or exercise of any function or power of the Authority and for any other lawful purpose approved by the Board
- (3) The Authority shall, from time to time, make rules for the better management of the funds in the best interest of the tea industry.

Rationale: This is currently Section 10 under the Crops Act. The provision prescribes the usage of the funds collected by the authority. Stakeholders should consider whether there are specific industry needs that can be outlined under this section in regard to utilization of funds.

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Rationale: To provide clarity

Resolution: Not agreed to.

Proposal: Delete clause 23 (4)

Rationale: It is the role of the Kenya National Audit Office (KENAO).

Resolution: Agreed to but the rationale is incorrect.

CLAUSE 26

Proposal: Delete clause 26 (Arbitration of disputes).

Rationale: The proposed Authority will be incapable of effectively handling disputes as highlighted above between any parties under this Act. The Crops Act already provides for arbitration, where the Cabinet Secretary is expected to come up with a rules to guide on arbitration of issues around scheduled crops. AFA will be a more independent entity to deal with disputes and it will be better place to handle arbitration as opposed to the Board in this Bill.

Resolution: Agreed to.

CLAUSE 28

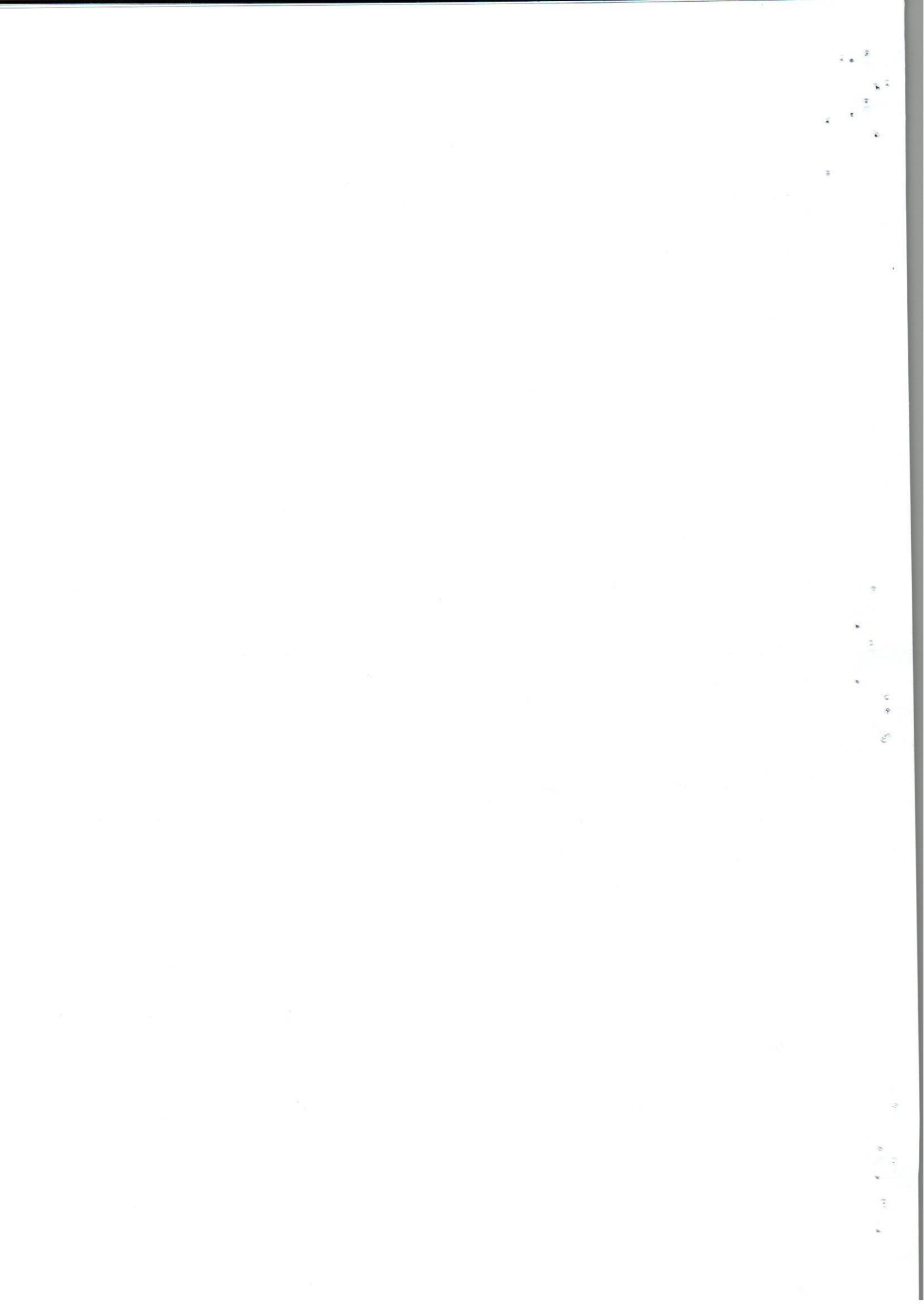
Proposal: Clause amended to provide for a maximum penalty of up to 1 million Shillings and imprisonment of 2 years as is common practice as some of the offences are serious and should attract higher penalties.

Rationale: To provide for a penalty that will be a sufficient deterrent since the law prescribes a maximum not the minimum.

Resolution: Agreed to.

Proposal: Delete clause 28 (penalties).

Rationale: This clause is ambiguous as there is no definition and/or provision of what constitutes an offence for there to be a provision of a penalty. The offence has to be stated and its penalty defined. Secondly, under the



trade agreement, which will cover contracts or agreement between growers, processors and other players in the tea industry. Therefore this clause will cause an overlap.

Resolution: Not agreed to.

CLAUSE 31

Proposal: Amend clause 31 to read “All rights, obligations and contracts which immediately before the coming into operation of this Act, were vested in the Agriculture and Food Authority with regard to tea shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Authority”.

Rationale: The word tea has been omitted from the transitional provisions.

Proposal: Insert a clause on transition.

Resolution: Not agreed to.

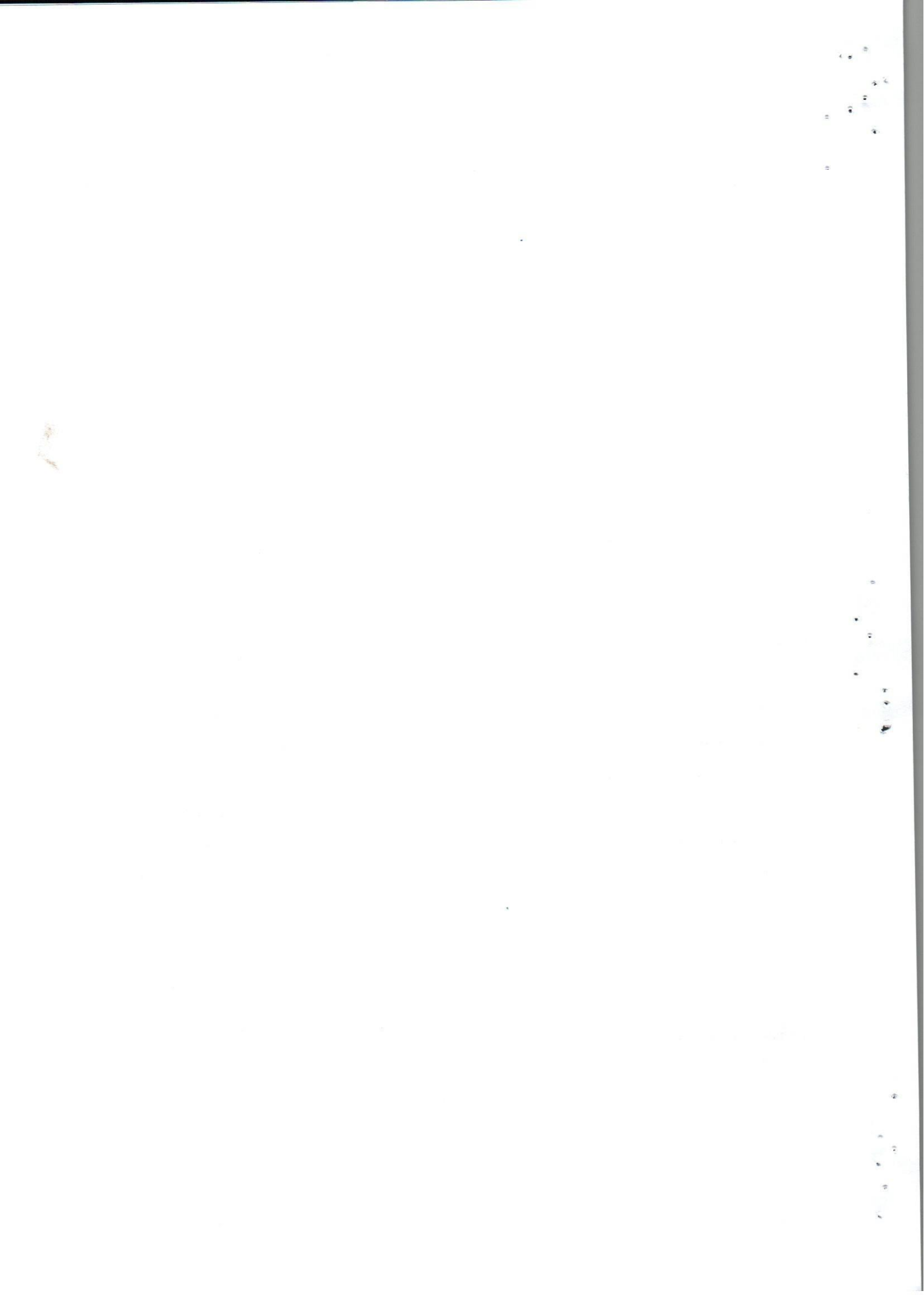
Proposal: Insert a clause on transition.

Rationale: This will explain how and who will ascertain the rights and obligations vested in the tea sector and provide for staff transition.

Resolution: Agreed to.

CLAUSE 34

Proposal: Amend clause 34 (1) to read “ A person who, was an officer or Member of Staff of the former Tea Board of Kenya, immediately before commencement of the Crops Act, 2013 and the Agriculture and Food Authority Act, not being then under notice of dismissal or resignation or who has since then not ceased employment with the Agriculture and Food Authority shall, on the appointment day and subject to subsection (2), become an Officer or Member of Staff of the Authority on current or improved terms and conditions of service.



all rights, powers, liabilities and duties relating to tea whether arising under any written law or otherwise, which immediately after the commencement of the Crops and AFA Acts were vested in, imposed on or enforceable by or against AFA with respect to tea shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the Authority.

Rationale: To provide clarity to the transitional provisions.

Resolution: Not agreed to.

SCHEDULE

Proposal: Amend clause (5) of the schedule on quorum to conduct the Board Business to at least 2/3 not a minimum of 5.

Rationale: This is in line with best corporate governance practice.

Resolution: Not agreed to.

MEMORANDUM OF OBJECTS AND REASONS

Proposal: Amend the first sentence as follows:

The principle object of the Bill is to enhance the tea industry regulatory efficiency and effectiveness, improve service delivery, provide for adequate funding of the Board functions, tea industry development, reclaim the internationally renowned brand of the Tea Board of Kenya in line with other key tea producing countries as well enhance the tea industry competitiveness.

Rationale: This will be in in line with the recommendations of the Tea Taskforce Report of 2016 should the proposal to amend the proposed Authority to Tea Board of Kenya be taken on board.

Resolution: Not agreed to.

Proposal: Insert the following sections of the Crops Act in to the Tea Bill—

4. Guiding principles

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The national government and county governments shall be guided by the following principles in the management and administration of agricultural land—

- (a) has a communal function and land ownership has a social responsibility;
- (b) land owners and lessees of agricultural land, being stewards, have the obligation to cultivate the lands they own or lease and make the land economically productive on a sustainable and environmentally friendly manner;
- (c) subject to Article 40(3) of the Constitution, the State may acquire land for public purpose or in the public interest;
- (d) pursuant to Article 66 of the Constitution, the State may regulate use of any land in the interest of public order, public morality, public health or land use planning.

6. Role of national and county governments in development of crops

(1) Pursuant to the Fourth schedule of the Constitution—

- (a) the Authority, on behalf of the national government, shall be responsible for licensing and charging of levies and breeder royalties on all scheduled crops on condition that the total sum of the levies charged by the Authority shall not exceed ten per centum of the gate value of the produce;
- (b) the county governments will implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—
 - (i) development of crops grown within the county;
 - (ii) plant disease control;
 - (iii) markets;
 - (iv) cooperative societies within the county;



(v) soil and water conservation.

(2) In order to achieve the objects and purposes of this Act, it is the duty of the national and county governments to provide an enabling environment for the development of the crop subsector.

(3) The national and county governments shall determine and promote the implementation of agricultural policies and measures in a manner designed to promote, support and enhance productivity in the crop subsector.

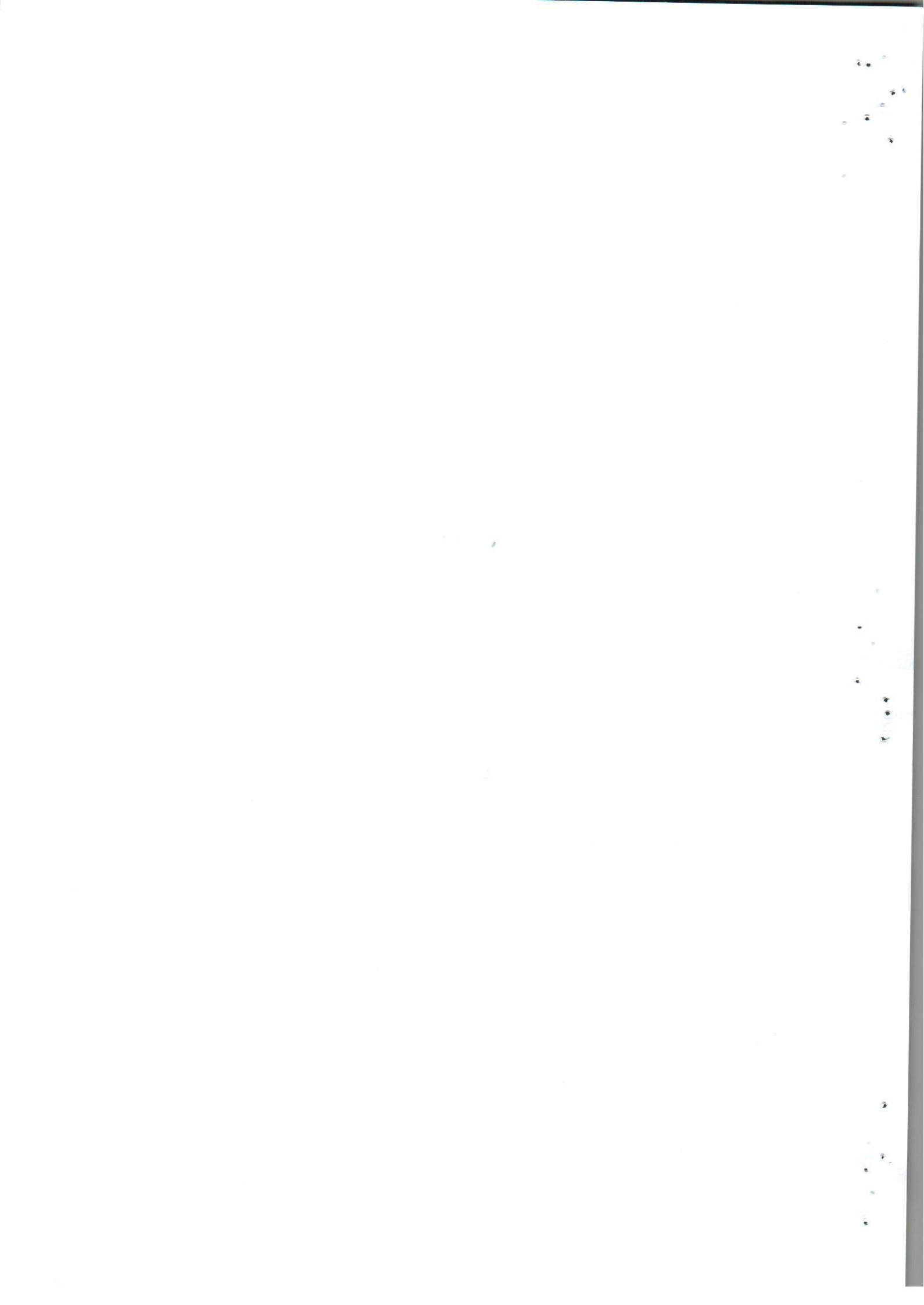
8. Promotion of scheduled crops

In addition to the functions stipulated under any other law, the Authority shall—

- (a) formulate general and specific policies for the development of scheduled crops specified in the First Schedule;
- (b) facilitate marketing and distribution of scheduled crops through monitoring and dissemination of market information, including identification of the local supply-demand situation, domestic market matching and overseas market intelligence and promotion activities on scheduled crops;
- (c) enjoin the Ministry responsible for transportation and communications to effect an efficient, regular and economical means of transporting scheduled crops, for purposes of reducing marketing costs and ensuring stable consumer supply;
- (d) promote the establishment of wholesale markets in identified major centres of the country;
- (e) promote the establishment of agricultural produce collection centres in viable areas to serve as buying stations of farm products, packaging houses, pick-up points and meeting places of farmers' and growers' cooperatives;



- (f) establish linkages with various governments and private research institutions for the conduct of studies and researches designed to promote the production, marketing and processing of scheduled crops;
- (g) in consultation with the National Biosafety Authority, advise the government on the introduction, safe transfer, handling and use of genetically modified species of plants and organisms in the country;
- (h) conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
- (i) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;
- (j) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of scheduled crops by means of inter-trading or intra-trading among the established wholesale markets;
- (k) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;
- (l) ensure secure domestic food supply for the country;
- (m) formulate policies and guidelines on dealing with other crops;
- (n) promote and advise on strategies for value addition prior to the export of crops from Kenya;
- (o) recommend general industry agreements between farmers and processors of scheduled crops;



- (p) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and
- (q) perform any other relevant function.

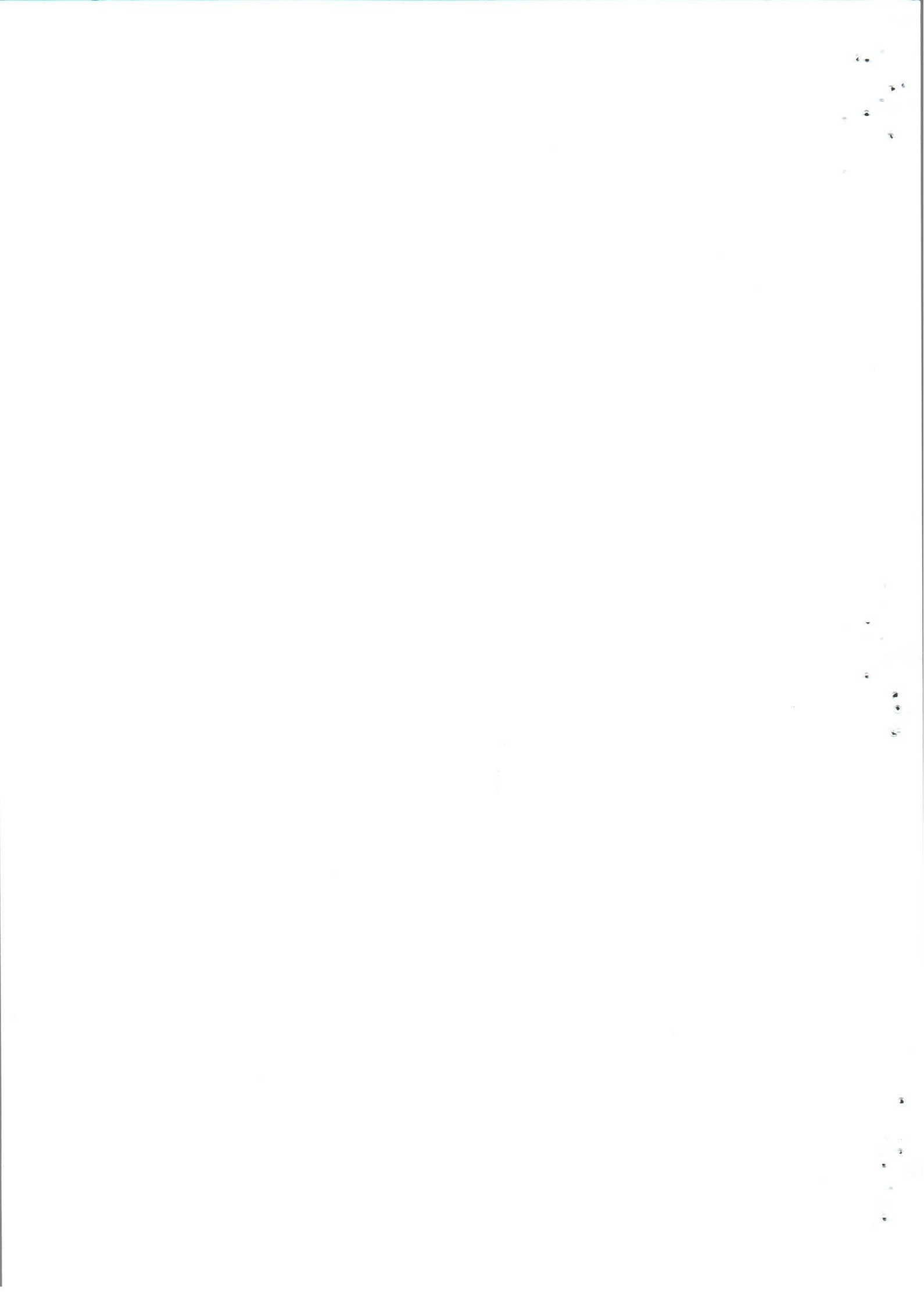
12. Incentives to growers

(1) The Cabinet Secretary shall, on the advice of the Authority, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.

(2) The Authority may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of scheduled crops—

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local
- (g) pest and disease control;
- (h) post harvest facilities and technologies including storage, processing, distribution and transport facilities;
- (i) tax exemptions including tax breaks and duty waivers on the import of farm inputs and farm machinery

14. Freedom to register



(1) Every smallholder grower, for purposes of accessing economies of scale, shall have the freedom—

(b) in the case of tea grower, register with the tea factory to which the person delivers green leaf, by supplying such particulars as the Authority may, by regulations, prescribe;

15. Registration of growers' associations

The Authority shall maintain a register of all entities registering smallholder growers, in such form as it may determine, and shall enter in the register—

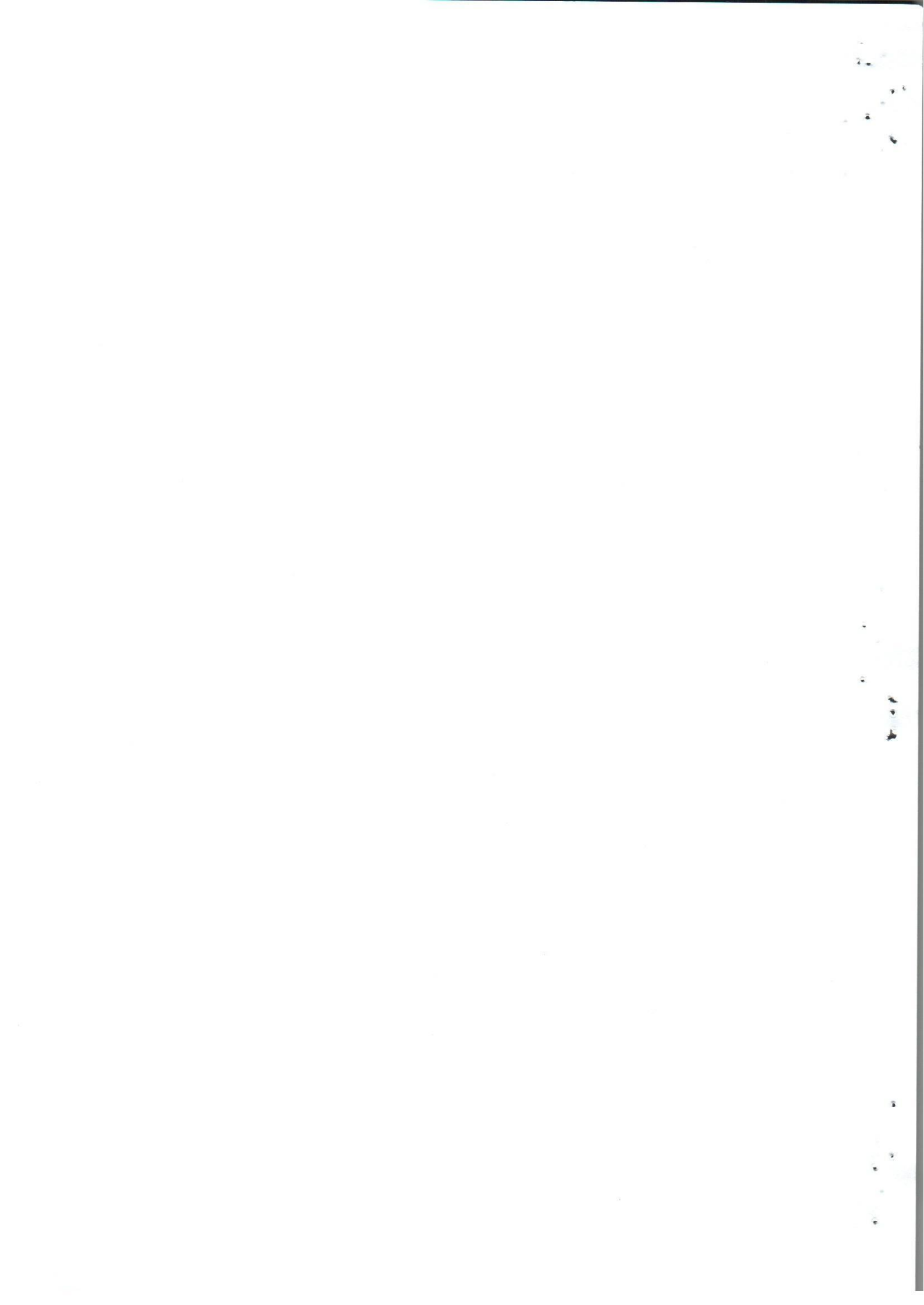
- (a) the full names of the scheduled crop factory;
- (b) the date of submission of annual returns of registered growers by the scheduled crop factory;
- (c) the particulars of numbers of registered growers, area planted with scheduled crop or variations of these particulars; and
- (d) any other particulars the Authority may deem necessary.

19. Illegal manufacture, possession, etc.

(1) A person who—

- (a) manufactures a scheduled crop for sale in contravention of this Act;
- (b) buys, sells, offers for sale, transports or has possession of a scheduled crop which to the person's knowledge or belief—
 - (i) has been grown, manufactured or processed otherwise than in accordance with this Act;
 - (ii) is from a non-registered grower or dealer of such crop, commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.

(2) If a person is in possession or has control of scheduled crop for which the person is unable to account to the satisfaction of a person authorized under



this Act, such scheduled crop shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.

(3) If a person is convicted of an offence under this section, the court shall order that any scheduled crop and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or other conveyance, the court sees good reason, to be recorded by it in writing, not to do so.

26. Appointment of county officers

(1) The Authority shall, in respect of each county, appoint an officer to be stationed in the county for purposes of this Act.26 of the Crops Act in to the Tea Bill

(2) The Authority shall delegate such exercise of its powers and such performance of its functions to the officer appointed under subsection (1) as shall be necessary in the discharge of its mandate in that county.

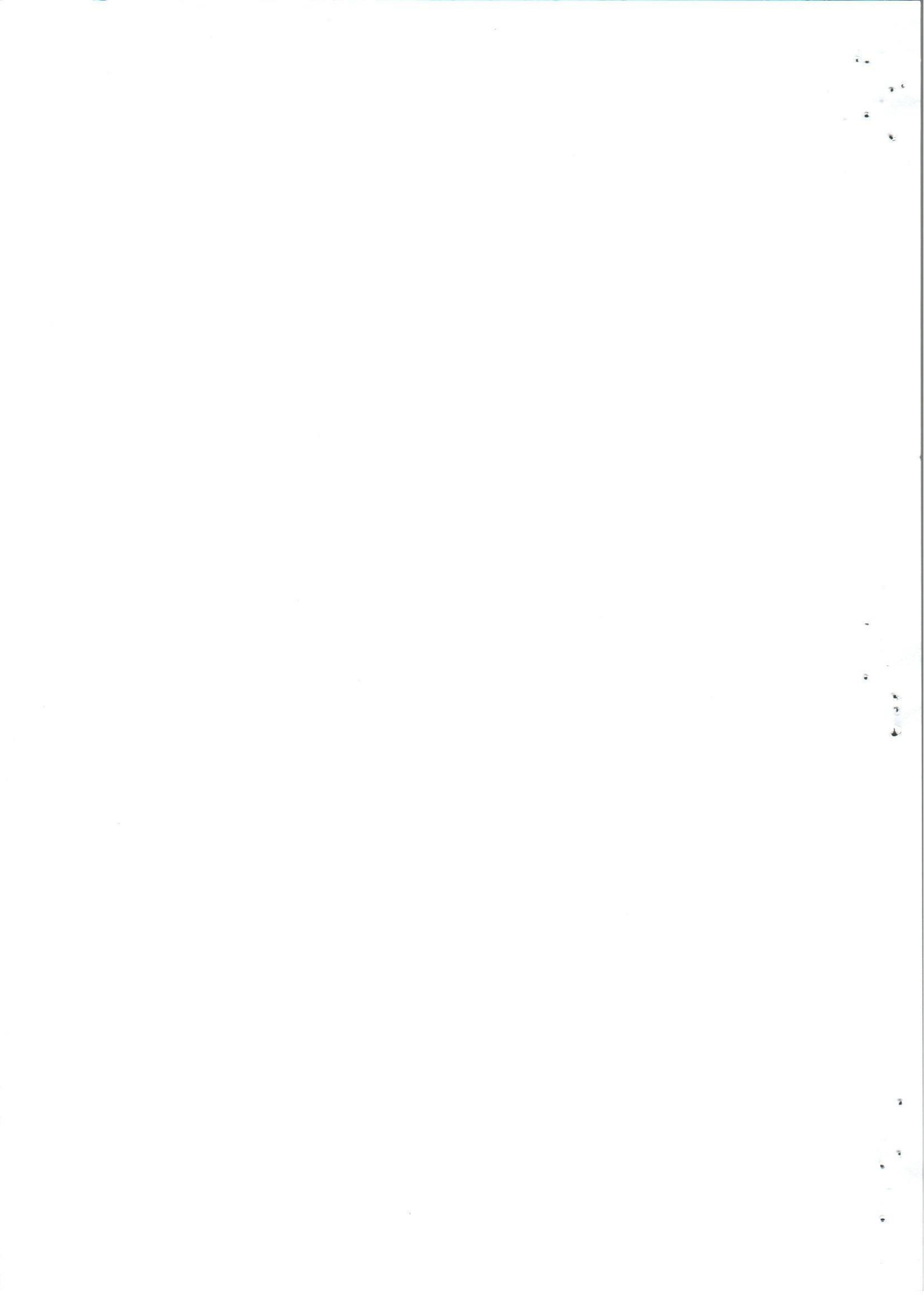
(3) An officer appointed under subsection (1) shall be deemed to be an inspector for purposes of this Act, and shall exercise such powers and perform such functions as an inspector may exercise or perform under this Act.

(4) A county officer appointed under subsection (1) shall liaise with the county executive committee in the discharge of its functions.

Rationale: Deletion of the term “Tea” from the First schedule of the Crops Act has the effect of hindering tea from enjoying the protection of the law and status accorded to scheduled crops. Should the proposed Tea Bill be passed into law, the provisions of the Crops Act, 2013 will no longer apply to Tea. Therefore these clauses should be included to the Tea Bill before “Tea” is deleted from the Crops Act, 2013.

Resolution: Not agreed to.

Proposal: Provide for registration of tea packers



Rationale: Tea packers are players in the tea value chain and are not recognized or registered under this Bill.

Resolution: Not agreed to.

MIN. NO. 49/2019

DATE OF NEXT MEETING

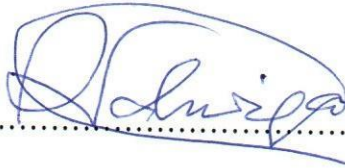
The next meeting will be held on Thursday, 21st February, 2019 at 10.00 a.m.

MIN. NO. 50/2019

ADJOURNMENT

The Sitting was adjourned at 1.04 p.m.

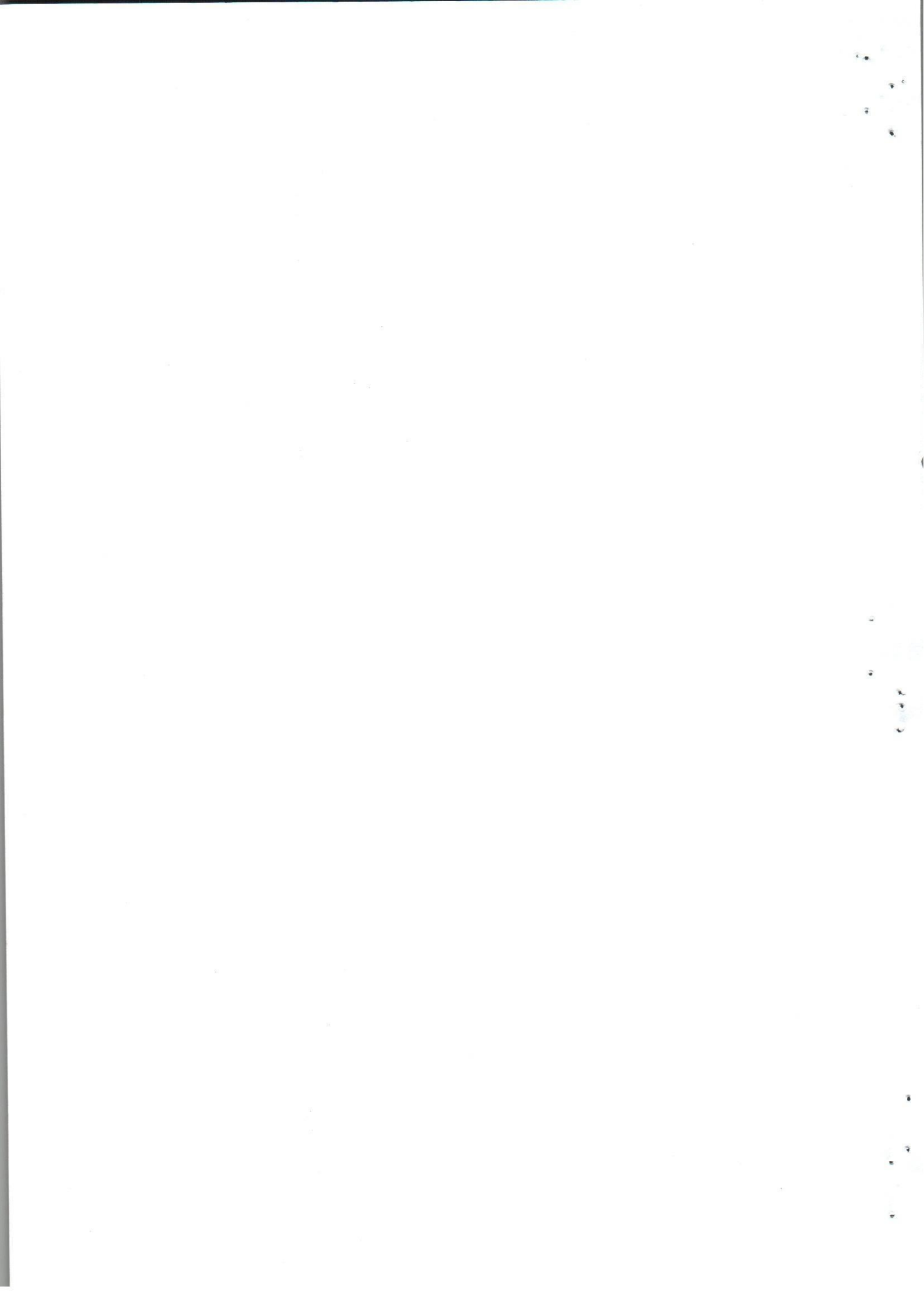
SIGNED:.....



(CHAIRPERSON)

DATE:.....

20/3/19



MINUTES OF THE THIRTY SEVENTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON TUESDAY, 19TH MARCH, 2019 IN THE FIRST FLOOR BOARDROOM, RED CROSS BUILDING AT 10.00 A.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. (Dr.) Ochilo Ayacko, MP
3. Sen. Justice (Rtd.) Stewart Madzayo, MP
4. Sen. Naomi Jillo Waqo, MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. Naomi Shiyonga, MP
3. Sen. Golich Juma Wario, MP
4. Sen. Moses Kajwang', MP
5. Sen. (Dr.) Michael Malinga Mbiti, MP

IN ATTENDANCE

1. Ms. Josephine Kusinyi - Legal Counsel
2. Ms. Carol Kirorei - Clerk Assistant
3. Mr. Abdikani Ibrahim - Audio Officer

SENATE

MIN. NO. 51/2019

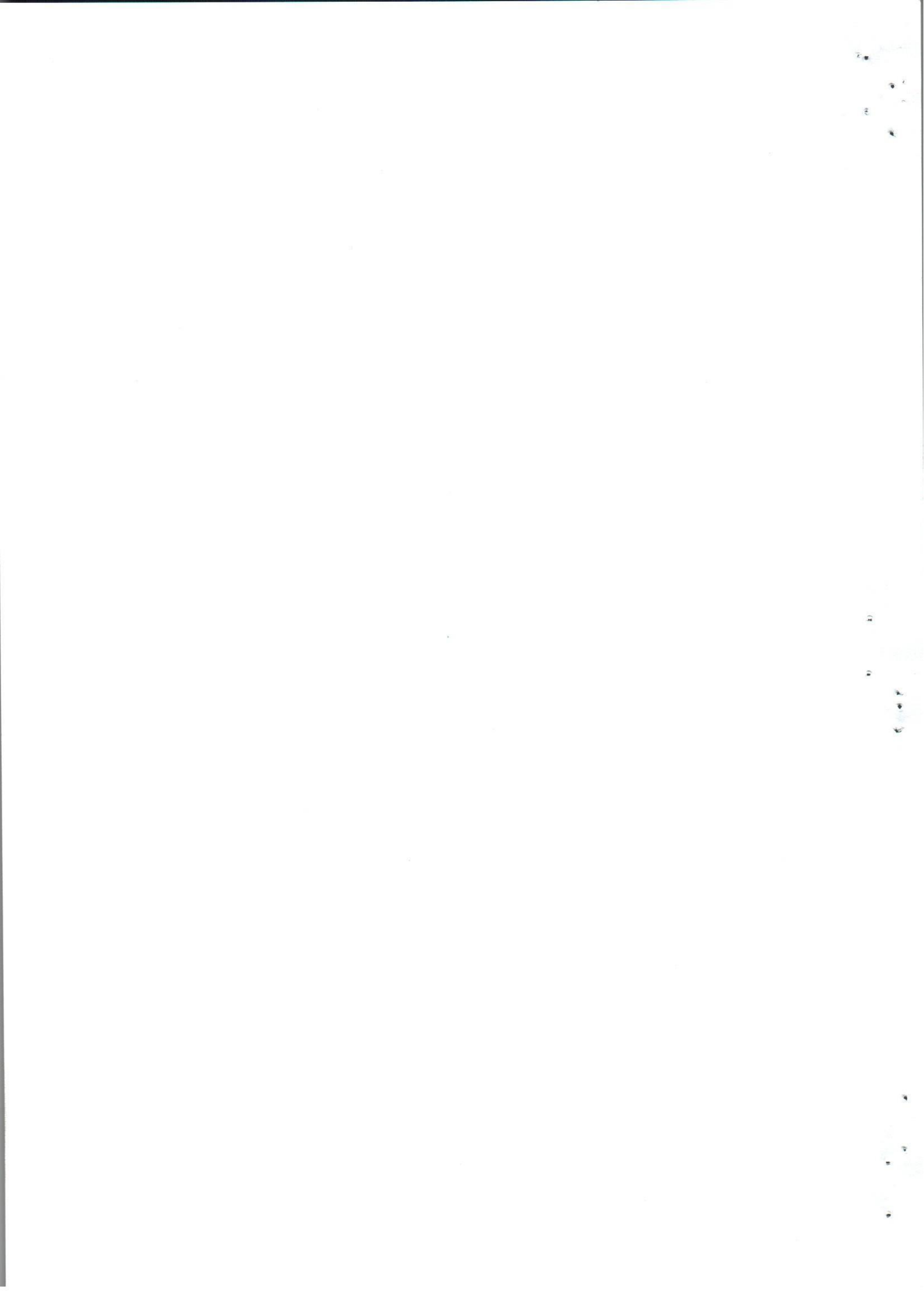
PRELIMINARIES

The Chairperson called the meeting to order at 10.15 a.m. followed by a word of prayer.

MIN. NO. 52/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Justice (Rtd.) Stewart Madzayo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP.



The Legal Counsel presented the draft amendments to the Tea Bill, 2018 as follows-

PART II

THAT Part II of the Bill be deleted and substituted therefor with the following new Part-

PART II – THE TEA BOARD OF KENYA

Establishment
of Board.

3. (1) There is established a Board, to be known as the Tea Board of Kenya, which shall consist of-

- (a) A chairperson appointed by the President;
- (b) the Principal Secretary for the time being 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 either gender, nominated by the Council of County Governors;
- (e) four persons, two of either gender, representing small-holder tea growers tea from the east and west of the tea growing areas;
- (f) one person representing plantation tea growers;
- (g) one person representing tea traders;
- (h) a Chief Executive Officer appointed in accordance with section 12 who shall be an



ex-officio member of the Board.

(2) A person shall not be appointed to be a chairperson of the Board unless that person holds at least a degree or its equivalent in any discipline from a recognized institution and has relevant experience in the tea sector.

(3) The appointment of the chairperson under subsection (1) (a) and members under subsections (1)(d), (1)(e), (1)(f), and 1(g) shall be by notice in the *Gazette* and such appointment shall be for a term of three years renewable for one further term.

Incorporation
of Board.

4. The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

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

Headquarters.

5. (1) The headquarters of the Authority shall be in Nairobi County.

(2) The Board may establish branches at any place in Kenya.



Vacation of 6. A person shall cease to be a member of the
Office. Board if such person-

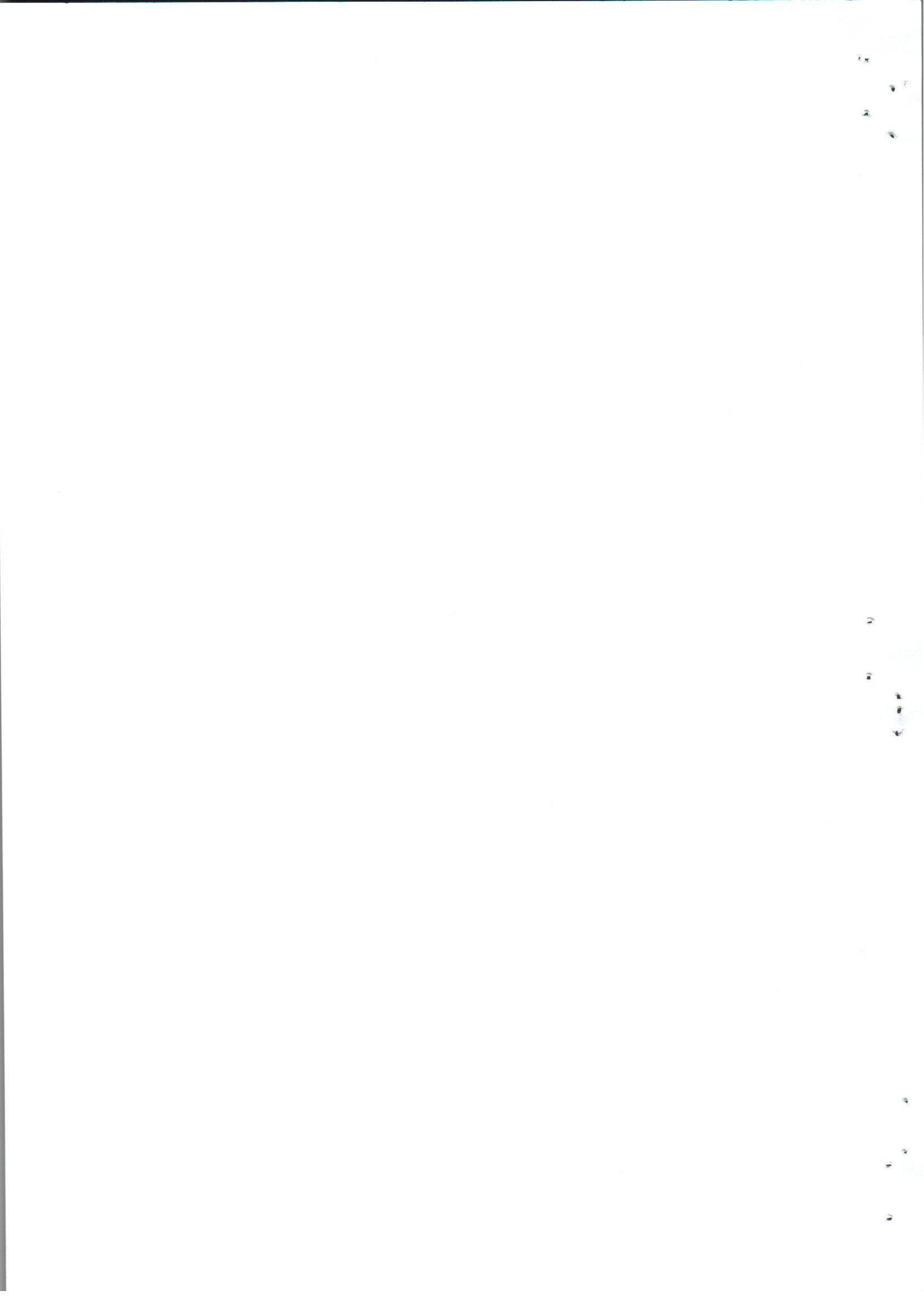
- (a) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (b) becomes an officer, agent or member of staff of the Authority;
- (c) resigns in writing, addressed, in the case of the chairperson to the President and in the case of any other member, to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

Functions of 7. (1) The Board shall perform the following
the Board. functions-

- (a) regulate, develop and promote the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry; and
- (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties.

(2) Without prejudice to the generality of subsection (1), the Board shall-

- (a) in consultation with the Cabinet Secretary, initiate the formulation of



policies and make rules to regulate the industry;

- (b) in consultation with the relevant county governments-
 - (i) register and regulate the operations of tea growers and processors;
 - (ii) register commercial tea nurseries and green leaf transporters;
 - (iii) license tea dealers and processors;
 - (iv) license managing factories and their agents; and
 - (v) license tea brokers.
- (c) provide advisory services on tea production and quality enhancement;
- (d) collect and analyze statistics related to, and maintain a database for the tea industry;
- (e) co-ordinate the prioritization of-
 - (i) research; and
 - (ii) utilization of available funds.

Powers of the Board

8. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to-

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority;
- (c) receive gifts, grants, donations or endowments made to the Board and make disbursement therefrom in accordance with the provisions of this Act;
- (d) subject to the approval of the Cabinet

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Secretary for the time being responsible for matters relating to finance, invest any of the Board's funds not immediately required for the purposes of this Act, as it may determine; and

- (e) operate a bank account into which all monies received by the Board shall be paid in the first instance and out of which all payments made by the Board shall be made.

(2) The Board may, if it considers it necessary, create or take part in the creation of, become a member of, or associated with a body or corporation designed to assist or promote the tea industry.

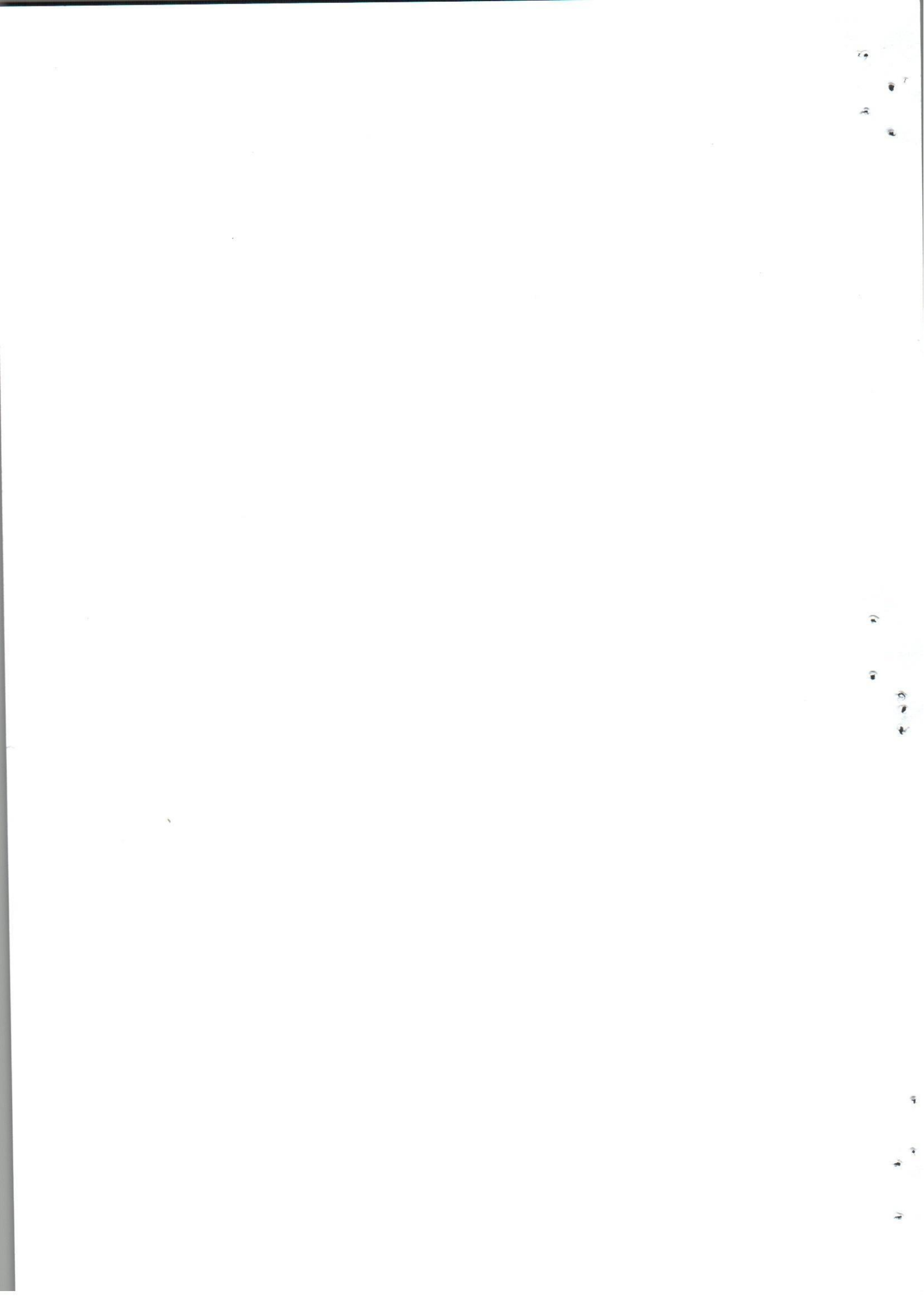
(3) The Board may establish and make contributions to a pension, superannuation or medical fund for the benefit of employees and may require such employees to contribute to the fund.

(4) The Board may by order authorize a member or an employee to exercise on its behalf such of its powers or the performance of any of the functions of the Board under this Act as it may from time to time specify.

Committees of
the Board.

9. (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt into the membership of committees established under subsection (1), other persons whose knowledge and skills are necessary for the functions of the Board.



Delegation by the Board. **10.** The Board may by resolution delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Remuneration of members of the Board. **11.** The Remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

Chief Executive Officer. **12.** (1) The Chief Executive Officer shall be competitively recruited and appointed by the Board.

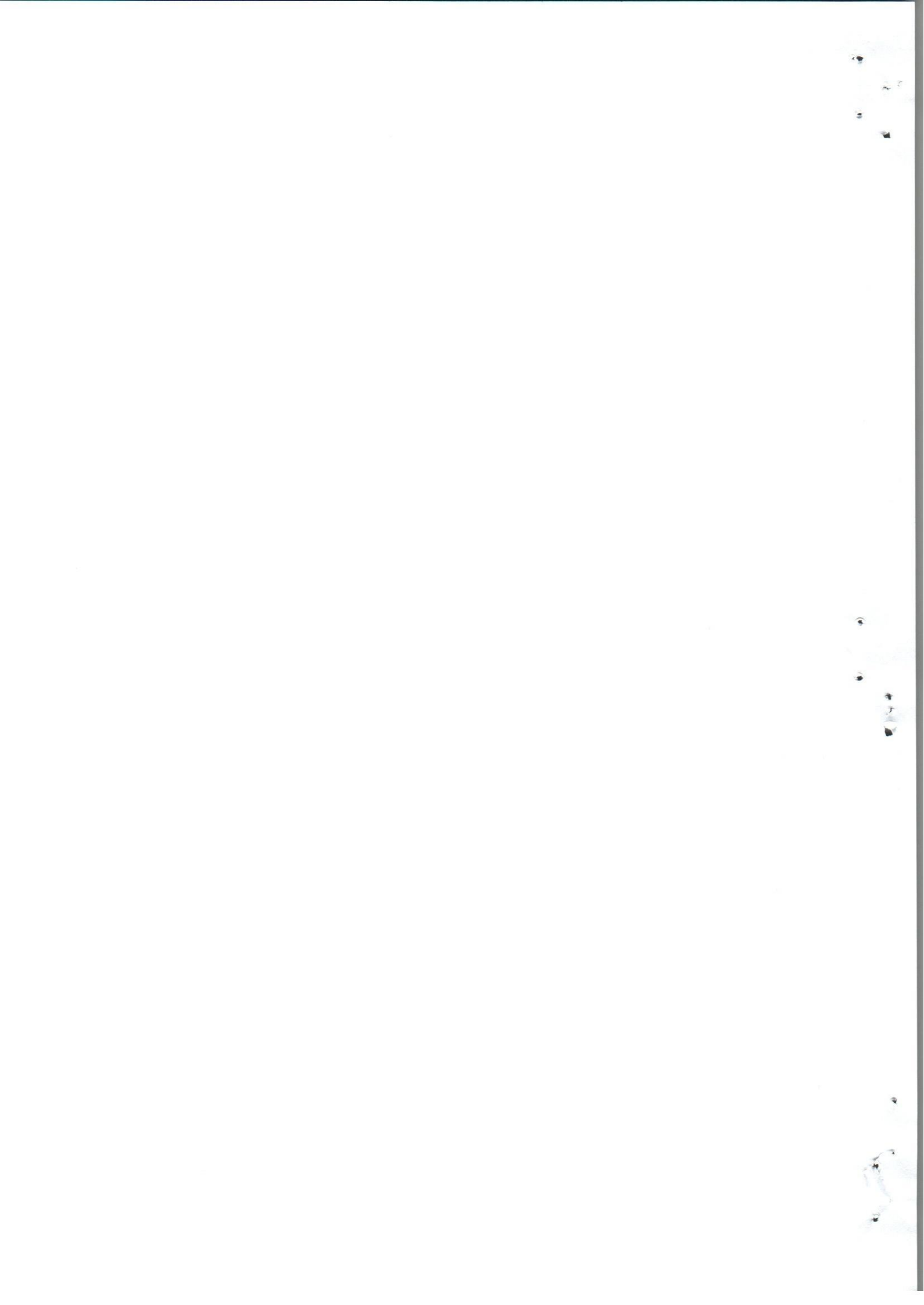
(2) The Chief Executive Officer shall be responsible for the day to day management of the affairs of the Board.

(3) A person shall not qualify for appointment under subsection (1) unless such person has at least-

- (a) a relevant degree from a university recognized in Kenya; and
- (b) five years experience in a position of management.

Staff of the Authority. **13.** The Board may employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act and upon such terms and conditions of service as the Board may determine.

Common Seal of the Board. **14.** The affixing of the common seal of the Board shall be authenticated by the signature of the Chief Executive Officer or a person designated by the Board.



Signing
Authority.

15. All letters and instruments written or made by or on behalf of the Board, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the Chief Executive Officer or in the absence of the Chief Executive Officer, a person authorized by the Board.

Conduct of
business of
the Board.

16. The business and affairs of the Board shall be conducted in accordance with the First Schedule.

NEW CLAUSE 16A

THAT the following new clause be inserted immediately after clause 16-

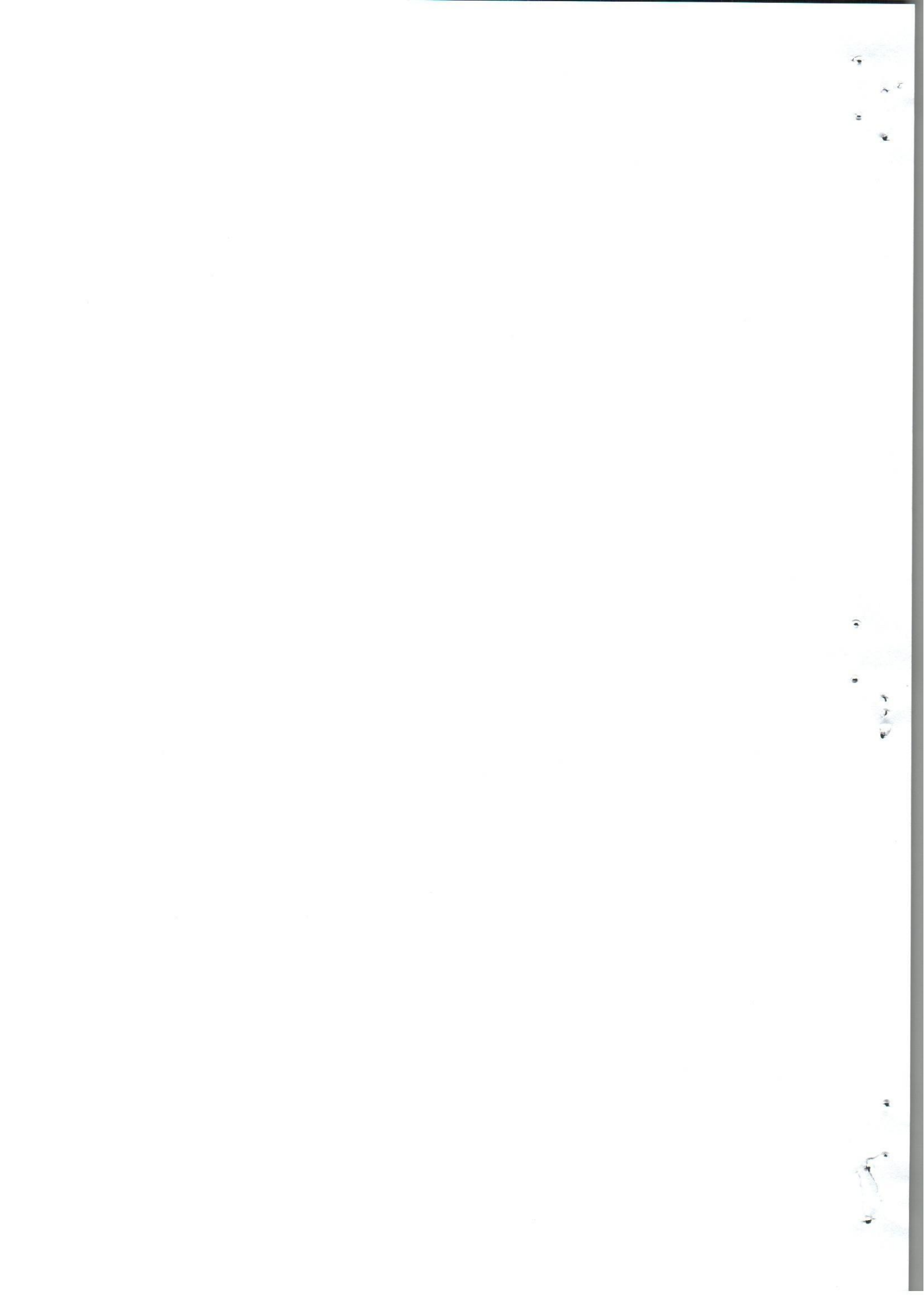
Role of
national and
county
governments

16A. (1) The Board, on behalf of the national government, shall be responsible for licensing and charging of levies.

(2) Levies charged by the Board shall not exceed ten per centum of the gate value of the tea produce and shall be charged in consultation with the Cabinet Secretary.

(3) The county governments shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

- (a) development of crops grown within the county;
- (b) disease control;
- (c) markets;
- (d) cooperative societies within the county;



(e) soil and water conservation.

(4) In order to achieve the objects and purposes of this Act, it is the duty of the national and county governments to provide an enabling environment for the development of the tea sector.

CLAUSE 17

THAT clause 17 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c) -

(d) any other information as may be prescribed by the Board

CLAUSE 18

THAT clause 18 of the Bill be amended by-

- (a) deleting the word "Authority" appearing at the end of sub-clause (1) and substituting therefor the word "Board";
- (b) inserting the following new sub-clause immediately after sub-clause (1)-

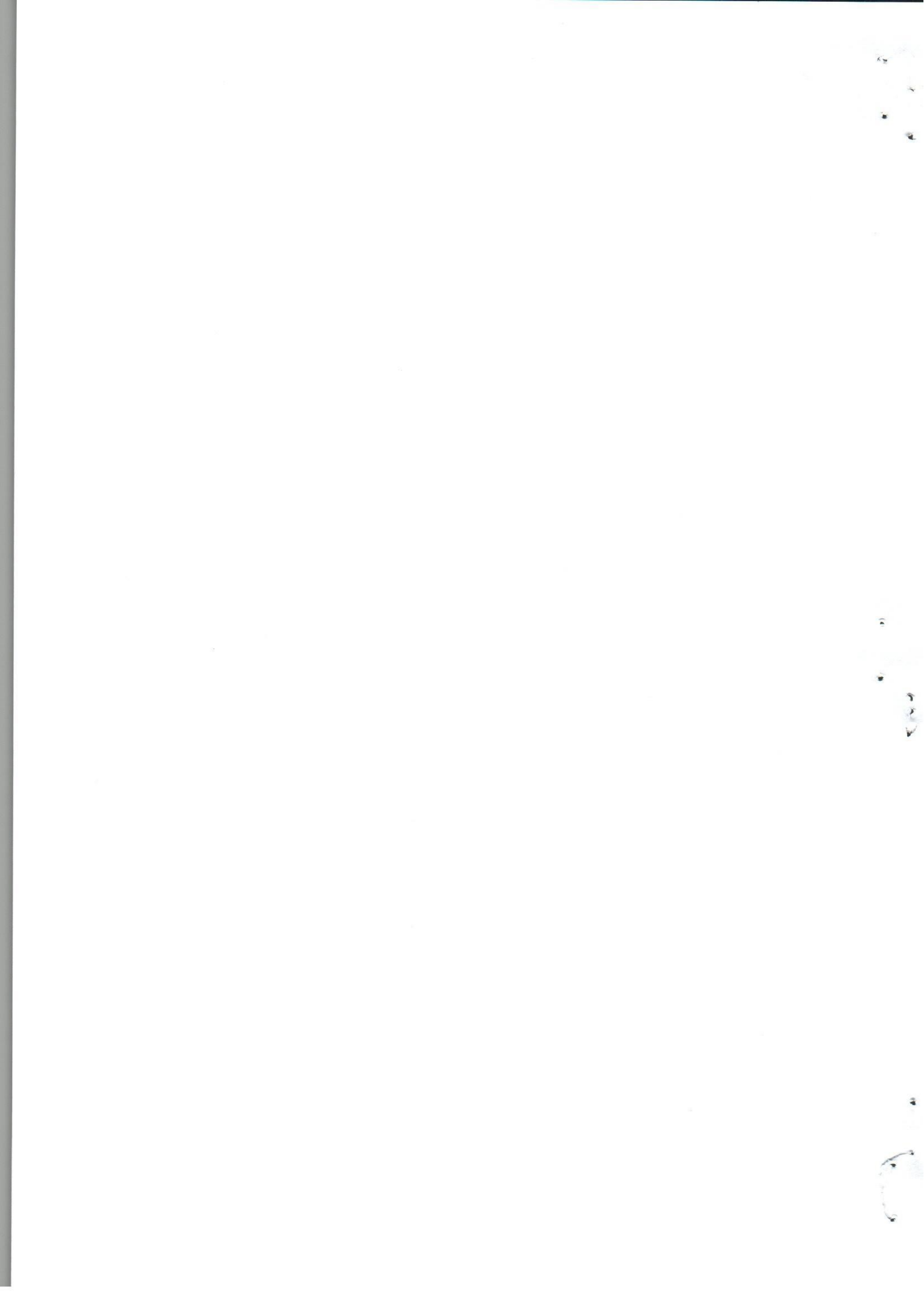
(1A) Sub-section (1) shall not apply to the export, import or marketing of any tea consisting of a sample or parcel not exceeding ten kilograms or tea processed for consumption on ships, aero planes or other international carriers.

- (c) deleting the word "Authority" appearing at the beginning of sub-clause (3) and substituting therefor the word "Board".

CLAUSE 19

THAT clause 19 of the Bill be deleted and substituted with the following new clause-

- (1) A licence issued under this Act shall be in a form prescribed by the Board, and shall be renewable after a period of three years;



(2) Notwithstanding sub-section (1), any fees payable to the Board shall be paid annually.

CLAUSE 20

THAT clause 20 of the Bill be deleted and substituted with the following new clause-

20. The Board shall carry out market research and disseminate such information to all stakeholders.

CLAUSE 21

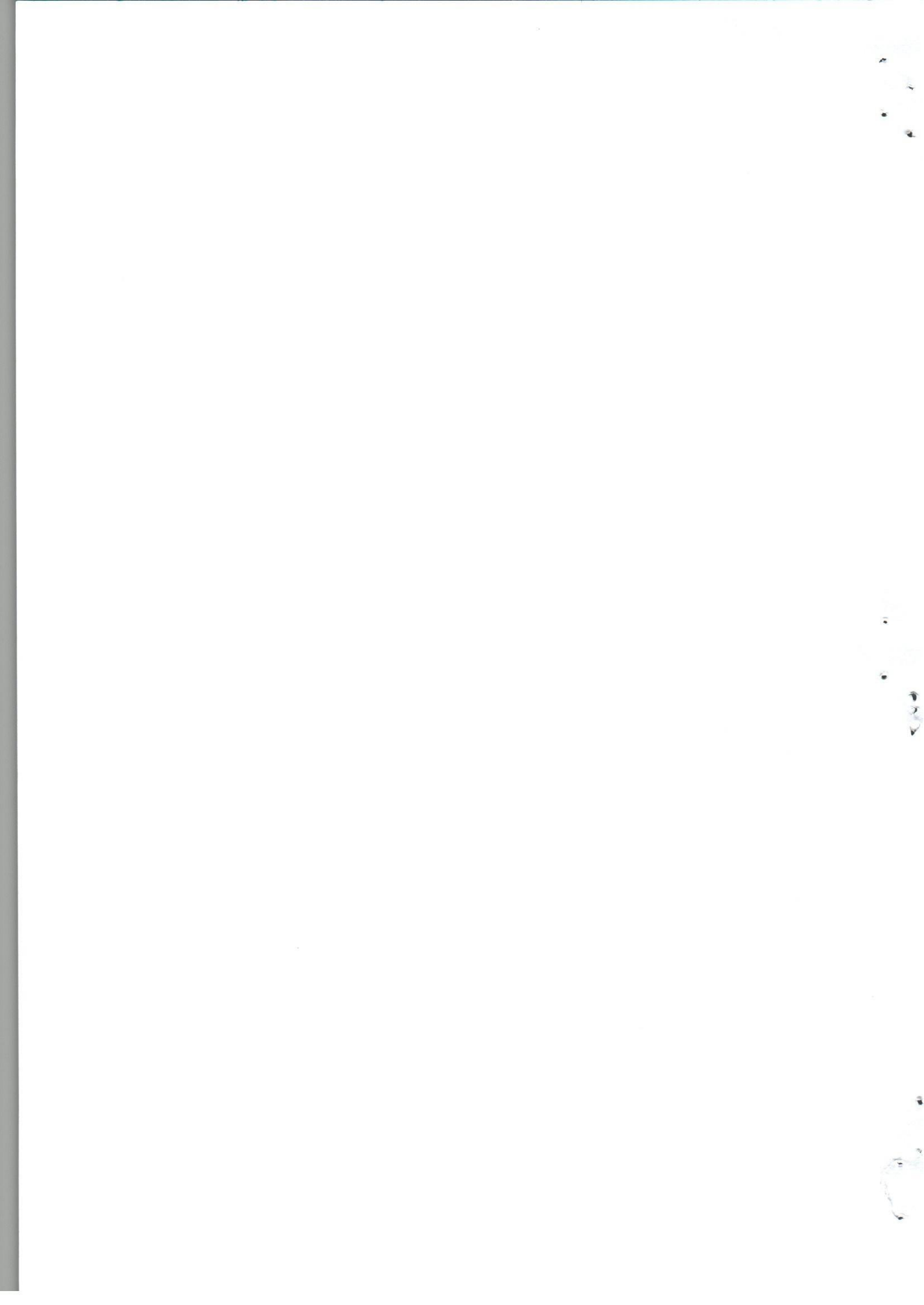
THAT clause 21 of the Bill be deleted and substituted therefor with the following new clause-

Funds of the Board. **21.** 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

CLAUSE 22

THAT the Bill be amended-



- (a) in sub-clause (1) by deleting the word "Authority" appearing immediately after the words "expenditure of the" and substituting therefor the word "Board"; and
- (b) in sub-clause (2) by deleting the word "Authority" appearing immediately after the words "expenditure of the" and substituting therefor the word "Board";

CLAUSE 23

THAT the Bill be amended -

- (a) by deleting the word "Authority" appearing at the beginning of sub-clause (1) and substituting therefor the word "board";
- (b) in sub-clause (1) by deleting the word "Authority" appearing at the end of paragraph (a) and substituting therefor the word "board";
- (c) in sub-clause (2) by deleting the word "Authority" appearing immediately after the words "accounts of the" and substituting therefor the word "board";
- (d) by deleting sub-clause (3) and substituting therefor the following new sub-clause-

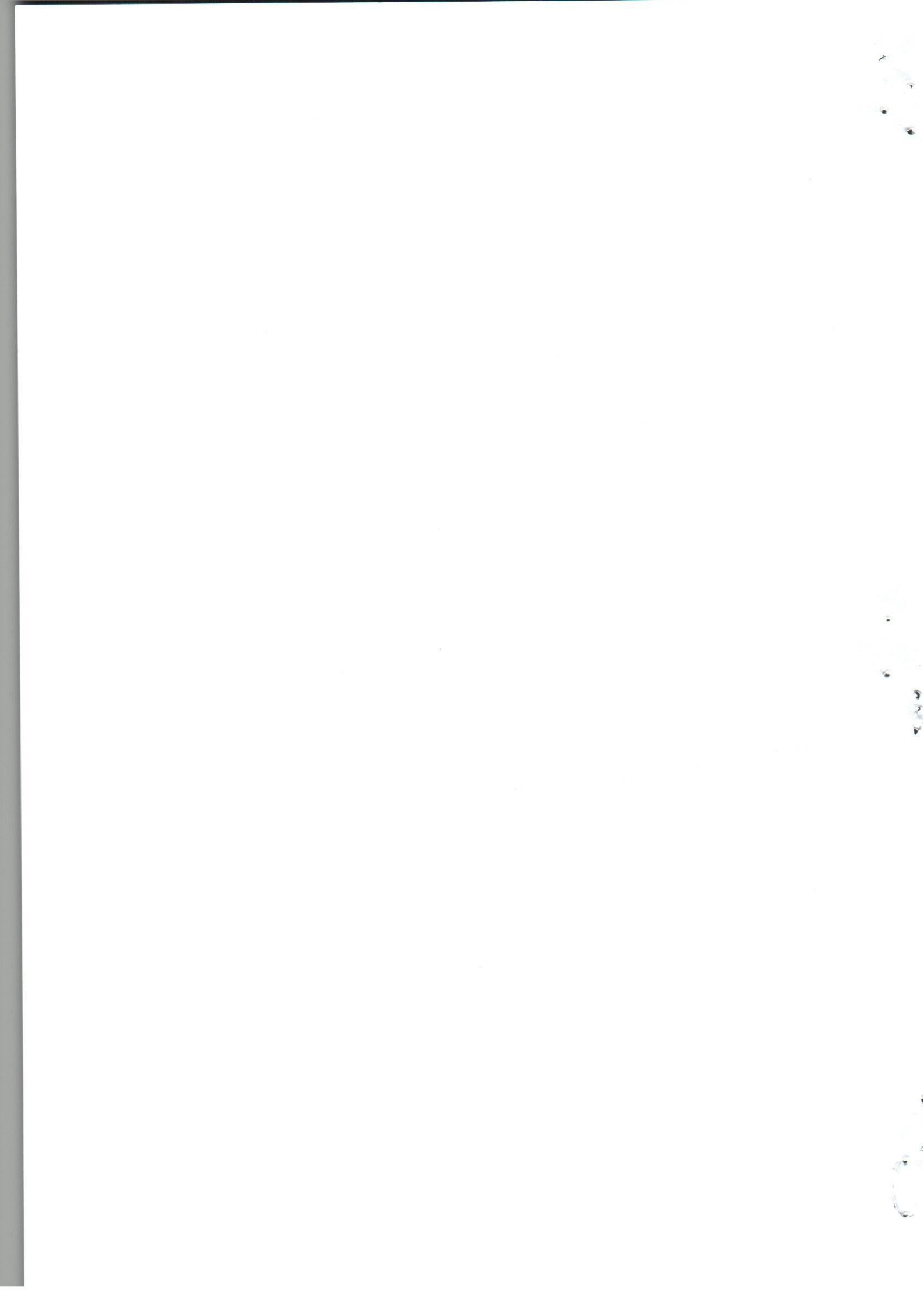
(3)The Board shall submit to the Auditor-General all books and accounts of the Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Board such information and explanation as he may consider necessary for the performance of his duties.

- (e) by deleting sub-clause (4)

NEW CLAUSE 34A

THAT the following new clause be inserted immediately after clause 34-

Staff. **34A.** Any person who, at the commencement of this Act, is a member of staff of the Agriculture and Food Authority dealing with the tea sector shall on the appointed day, become a member of staff of



the Board on the same or improved terms and conditions of service as may be specified by the Cabinet Secretary.

CLAUSE 2

THAT clause 2 of the Bill be amended by -

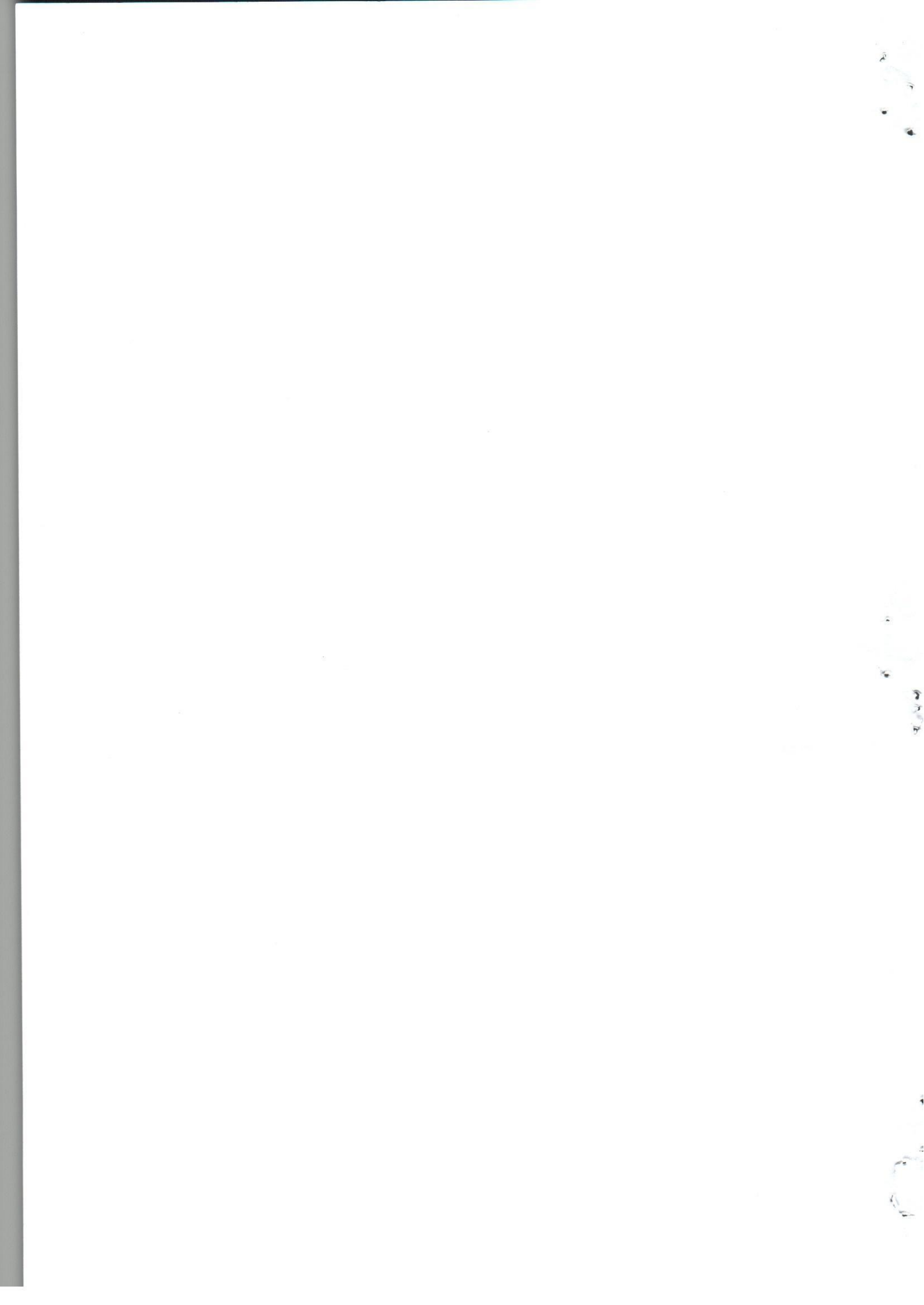
- (a) deleting the definition of the word "Authority";
- (b) deleting the definition of the word "Board" and substituting therefore the following new meaning-
 - "Board" means the Tea Board of Kenya established by section 3;
- (c) inserting the definitions of the following words in their proper alphabetical order-
 - "broker" means a person who negotiates the purchase or sale of tea between tea growers and buyers;
 - "gate value" means the market value of tea products minus the expenses incurred in marketing and distribution;
 - "managing factory" means a factory appointed to process green leaf into made tea;

Members proposed that the Corporation Secretary be introduced but not as the secretary to the Board. Members thereafter adopted the amendments as presented after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Justice (Rtd.) Stewart Madzayo, MP.

MIN. NO. 54/2019

DATE OF NEXT MEETING

The next meeting will be held on Tuesday, 19th March, 2019 at 11.00 a.m.



MIN. NO. 55/2019 ADJOURNMENT

The Sitting was adjourned at 10.55 a.m.

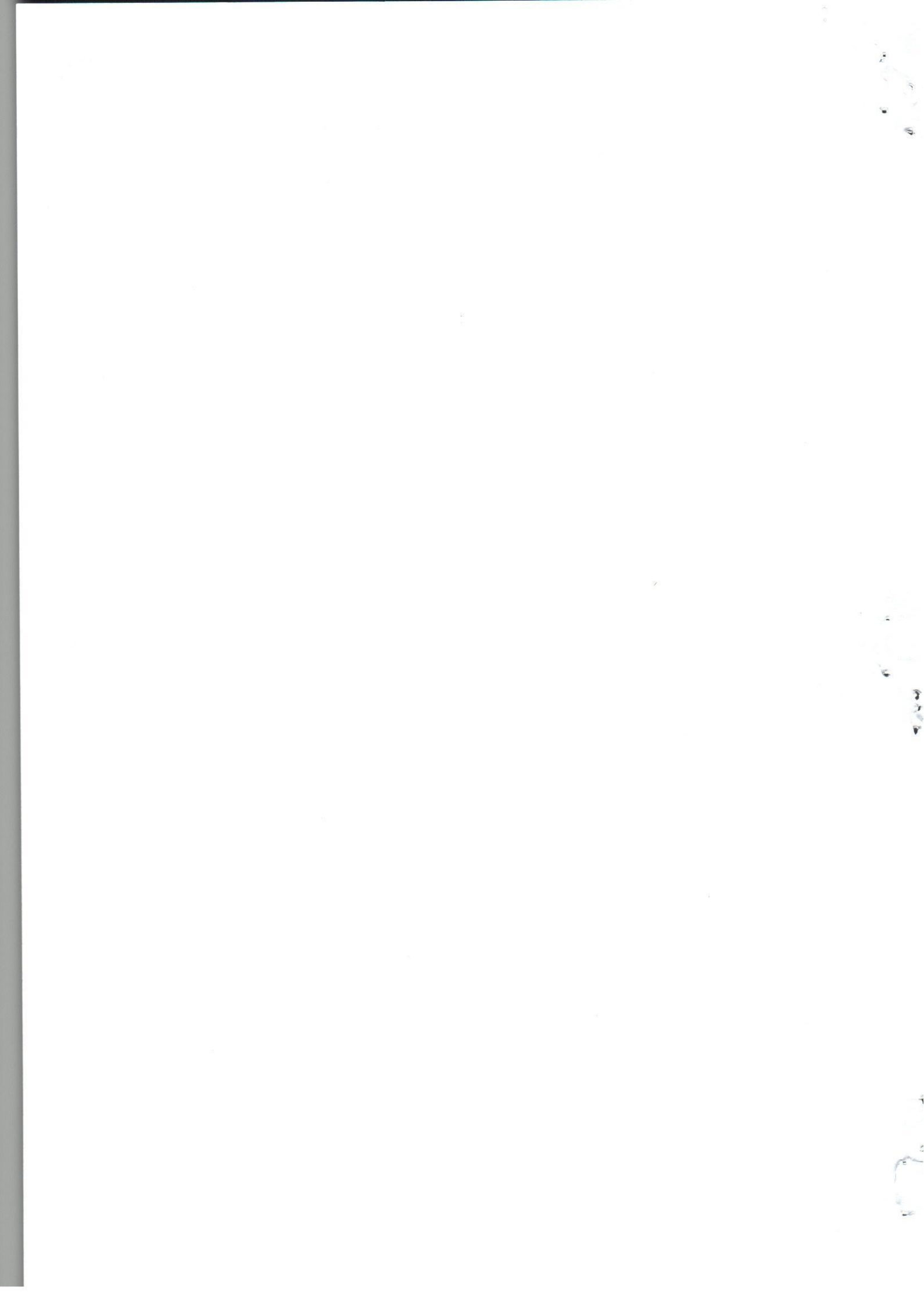
SIGNED:.....

A handwritten signature in blue ink, appearing to read 'Dhwipa', written over a dotted line.

(CHAIRPERSON)

DATE:.....

20/3/19



MINUTES OF THE THIRTY NINETH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON WEDNESDAY, 20TH MARCH, 2019 IN THE GROUND FLOOR BOARDROOM, RED CROSS BUILDING AT 4.00 P.M.

PRESENT

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Justice (Rtd.) Stewart Madzayo, MP
3. Sen. Naomi Jillo Waqo, MP
4. Sen. (Dr.) Ochilo Ayacko, MP
5. Sen. Moses Kajwang', MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. (Dr.) Michael Malinga Mbito, MP
3. Sen. Naomi Shiyonga, MP
4. Sen. Golich Juma Wario, MP

IN ATTENDANCE

1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Maureen Kweyu - Research Officer

SENATE

MIN. NO. 61/2019 PRAYER

The Chairperson called the meeting to order at 4.15 p.m. followed by a word of prayer.

MIN. NO. 62/2019 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP.

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MIN. NO. 63/2019

**CONSIDERATION AND ADOPTION OF THE REPORT
ON CONSIDERATION OF THE TEA BILL, 2018**

Members were taken through the Report on the consideration of the Tea Bill, (Senate Bills No. 36 of 2018). The Committee adopted the Report after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Stewart Madzayo, MP.

MIN. NO. 64/2019

ANY OTHER BUSINESS

1. Meeting with the Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries

Members were informed that the meeting with the Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries scheduled to be held on Thursday, 21st March, 2019 has been postponed to Tuesday, 26th March, 2019.

The Committee resolved to seek further information from the Ministry on the following:

1. The status of implementation of the Kenya Livestock Insurance Programme (KLIP);
2. Interventions made by the Ministry to revive the Cashew Nut Sub Sector; and
3. The roadmap towards the privatization of sugar companies and transitional arrangements for the same.

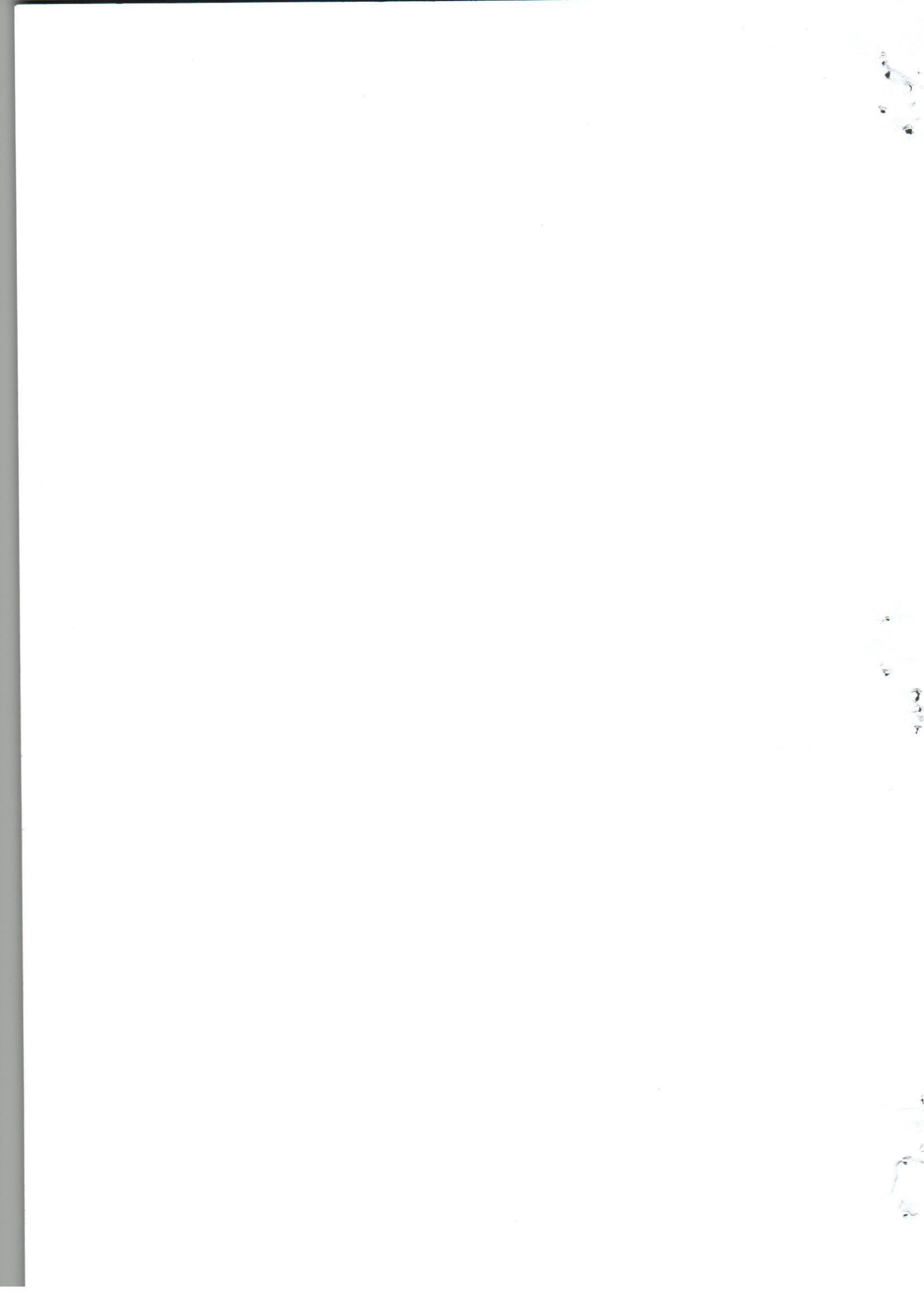
2. County Visits

The Committee resolved to undertake County Visits to Kilifi County to look into challenges facing cashew nut farming and fishing.

MIN. NO. 65/2019

DATE OF NEXT MEETING

The next meeting will be held on Tuesday, 26th March, 2019 at 11.00 a.m.



MIN. NO. 66/2019 **ADJOURNMENT**

There being no other business the Sitting was adjourned at 4.45 p.m.

SIGNED:.....

(CHAIRPERSON)

DATE:..... 20/3/19

