

Rt. Hon. Speaker

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20/11/23



THE SENATE

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND
FISHERIES

REPORT ON THE FOOD AND FEED SAFETY CONTROL COORDINATION
BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 21 OF 2023)

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

PAPERS LAID	
DATE	28/11/2023
TABLED BY	Sen. Lelegwe
COMMITTEE	Agriculture
CLERK AT THE TABLE	Kawira M.

NOVEMBER, 2023

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LIST OF ABBREVIATIONS/ACRONYMS

AFA	-	Agriculture and Food Authority
FAO	-	Food and Agriculture Organization
KEBS	-	Kenya Bureau of Standards
SPS	-	Sanitary and Phytosanitary protocol
CoG	-	Council of Governors
KEBS	-	Kenya Bureau of Standards
PCPB	-	Pest Control Products Board
NBA	-	National Biosafety Authority
NEMA	-	National Environment Management Authority
KEPHIS	-	Kenya Plant Health Inspectorate Service
KAM	-	Kenya Association of Manufacturers
NEMA	-	National Environment Management Authority
MOALD	-	Ministry of Agriculture and Livestock Development
KVB	-	Kenya Veterinary Board

PRELIMINARIES

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

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

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

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

The Committee also oversees the following State Agencies among others-

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

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

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

MEMBERSHIP OF THE COMMITTEE

The Committee is comprised of –

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

CHAIRPERSONS FOREWORD

Mr. Speaker Sir,

The Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No. 21 of 2023) seeks to provide for the safeguarding of livestock from adverse conditions including drought, provide for sustainable practices to alleviate the effects of drought on livestock farmers and for connected purposes. The Bill provides for the sustainable development of the livestock sector, shielding the livelihoods of its stakeholders, and fostering resilience among rural communities against drought and its repercussions.

Mr. Speaker Sir,

The Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No. 21 of 2023) was read for the first time in the Senate on Tuesday, 19th September 2023 and thereafter the Bill stood committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Friday, 22nd September 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

In total, the Committee received written submissions from five (5) stakeholders namely: The Council County of Governors (COG), Ministry of Agriculture and Livestock Development. (MOALD), Kenya Plant and Health Inspectorate Service (KEPHIS), Kenya Veterinary Board. (KVB) and the Kenya Association of Manufacturers (KAM).

Mr. Speaker Sir,

The Committee thereafter proceeded to consider extensively the provisions of the Bill and the submissions received thereon. Based on its deliberations, the Committee has made various observations as summarised below:

Summary of Committee Observations

1. The role of the Food and Feed Safety Controller will work efficiently if it is independent offering a guiding role in the performance of official controls by competent authorities. It is therefore, important that the office is domiciled above ministries so that the role is not left to one ministry;
2. Food safety cuts across the County Governments and the competent authorities. Consequently, the Bill should factor in the role of the county governments in food and feed safety. The Committee noted that there is gap in clause 4 of the Bill which provides that the Act will apply to competent authorities as listed under the first schedule, the schedule however does not include the county governments. Noting that County health services are devolved, the implementation of this Act should therefore be undertaken by both levels of government;
3. The submission of the annual reports is important both at the National and at the County level. The annual report should therefore be submitted by the Governor to both the County assembly and to the Cabinet Secretary so as to provide clarity in the handling of the state of food and feed safety at both levels of government; and
4. That a mechanism should be put in place to facilitate consultations between the Controller and a competent authority or a county government in instances where an overlap occurs.

Summary of Committee Recommendations

The Committee recommends that the House approves the report together with the following amendments: -

1. That, clause 4 of the bill be amended to provide for the application of the Bill to both the competent authorities and the county governments;
2. That, Clause 19 be amended to provide for consultation in cases where an overlap occurs between the Controller and competent authorities or the county governments;
3. That, Clause 22 be amended to provide that where a risk is identified, the controller shall advise the relevant authority on steps to be undertaken to manage the risk; and
4. That, Clause 33 on regulations be amended to provide for Consultation with the Council of County Governors when developing regulations.

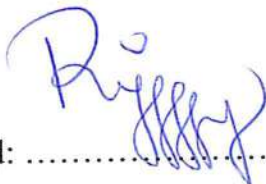
Mr. Speaker Sir,

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

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

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to standing order 148 (1), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No. 21 of 2023).

Signed:


Date:
23/11/2023

SEN. JAMES KAMAU MURANGO, MP,

CHAIRPERSON,

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK, FISHERIES

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK, FISHERIES ON THE FOOD AND FEED SAFETY CONTROL COORDINATION BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 21 OF 2023)

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

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

CHAPTER ONE

1.1. Background

The Food and Feed Safety Control Coordination Bill 2023, (National Assembly No. 21 of 2023) was published on Thursday, 21st September 2023 and read a-First Time in the Senate on Tuesday, 19th September 2023 and thereafter the Bill stood committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration. The Bill published is attached to this Report as *Appendix 2*.

The Bill is an Act of Parliament that seeks to provide for the coordination of the public institutions in the control of food and feed safety; to establish the Office of the Food Safety Controller; to provide for the role of County Governments in food and feed safety; and for connected purposes.

The Bill seeks to ensure that there is supply of safe food and feed to consumers. It provides that food safety is a critical function of both the national and county governments in fulfilment of consumer protection as provided in the Constitution. It seeks to ensure that food is safely produced, distributed, processed, marketed and prepared for human and animal consumption. Food safety is a critical function of the national and county government in fulfilment of the consumer protection as provided in the Constitution. The Bill will ensure that food is safely produced, distributed, processed, marketed and prepared for human consumption from the farm to fork.

The Bill further provides for the coordination of Competent Authorities and provides for the multi-annual control plan, the verification of mechanisms utilized by Competent Authorities to enforce food and feed safety requirements and for audits of food safety or feed safety mechanisms. It further provides for the conduct of verification audits and risk analyses by the Controller.

Most importantly, the Bill provides for traceability requirements and for reference laboratories for purposes of official control. It requires the submission of reports on food safety and feed safety to the Controller and for the appointment of compliance officers and the powers of compliance officers. It accordingly provides for consequential amendments to the Public Health Act, Food, Drugs and Chemical Substances Act, Dairy Industry Act, *Report on the Food and Feed Safety Control Coordination Bill, 2023*

Fertilizers and Animal Foodstuffs Act, Pest Control Products Act, Meat Control Act, Standards Act, Biosafety Act, 2009, Kenya Plant Health Inspectorate Service Act, 2012, Agriculture and Food Authority Act, 2013, Fisheries Management and Development Act, 2016, Water Act, 2016 and Health Act, 2017, to provide for the role of the Controller and for the multi-annual control plan.

In Kenya, foods for export or for the formal market are the only ones subjected to inspections and testing, yet more than 80% of food is traded in the informal markets. It is for this reason that the CAADP review report by the African Union ranked the country poorly on the indicators that measure the impact of food safety on public health and trade.

Kenya misses a huge market of meat and meat products in the European market because it does not have a competent authority that is responsible throughout the food chain to implement effective inspection and guarantee credible public health and animal health attestations in the health certificate to accompany meat and meat products that are destined for the European Union.

Kenya has a history of epidemic outbreaks such as Rift Valley Fever, cholera and aflatoxin that led to loss of lives and economic downturn that was majorly attributed to inadequate measures to enhance food safety. Furthermore, we do not have a functional food safety surveillance system, with only a handful of food safety professionals and accredited laboratories. The multi-agency approach in food safety has become a hindrance in managing issues owing to some overlapping mandates, lack of coordination and under resourcing. This has led to agencies that don't implement their mandates, leaving food safety issues unaddressed.

Aflatoxin, high levels has been linked to bad agricultural practices, lack of sensitization and inadequate detection and surveillance. Farmers neither have the knowledge of the dangers of aflatoxin nor the techniques to prevent its growth. Water pollutants such as heavy metals, industrial effluent, agricultural inputs and raw sewage discharge in water bodies is a concern. Farm produce in Kenyan markets has been found to have high pesticide residues.

Furthermore, unscrupulous practices by traders of perishable foods have been reported in the country with chemicals used to preserve agricultural produce. Despite the Food Safety Policy (2013) aiming for the creation of an integrated food control system, a National Food

Safety Authority and the harmonization of agency mandates; no progress has been made on these policy objectives.

1.1. Object of the Bill

The principle object of the Bill is to provide for the coordination of the public institutions in the control of food and feed safety. It establishes the Office of the Food Safety Controller and provides for the role of County Governments in food and feed safety in order to ensure the supply of safe food.

1.2. Overview of the Bill

The proposal contains 34 clauses and has the following provisions:

Part I: Preliminary Provisions

Clauses 1 to 5 of the Bill provide for preliminary provisions, that is the short title, interpretation of the terms as used in the Bill, objects, application of the Bill and the guiding principles.

The application clause provides that the Bill shall apply to every competent authority.

Part II: Office of the Food and Feed Safety Controller

Clauses 6 to 9 of the Bill provide for establishment of the Office of the Food and Feed Safety Controller as a body corporate with perpetual succession, common seal and capable of suing and being sued, acquiring and disposing property and perform such acts as may be performed by body corporates. It provides that the Office of the Controller shall be designated as a State Office. It also provides for the appointment of Controller by the President with the approval of National Assembly and the qualifications and functions of the Controller.

Clauses 10 to 15 of the Bill further provide for vacancy in the office of the Controller, removal from office, staff of the Office of the Controller, remuneration of the Controller, delegation by the Controller and protection from personal liability.

Part III: Food Safety and Feed Safety by County Governments

Clause 16 of the Bill provides functions of county government in relation to food and feed safety. It also provides that each county government should prepare an annual food and feed safety report at least 30 days before the end of a financial year and submit the report to the Controller.

Part IV: Food Safety and Feed Safety Control and Coordination

Clause 17 mandates the development and periodic review of a multiannual control plan. This collaborative effort involves the Controller's office, competent authorities, and county governments, providing a structured basis for ensuring the safety of food and feed products within the country.

Clauses 18 to 27 delve into various aspects of this coordination framework. Clauses 18 and 19 emphasize the need for competent authorities to enforce international food safety standards and address any overlaps in their functions. Clauses 20 and 21 outline a rigorous audit and verification process, allowing the Controller to assess the compliance and effectiveness of competent authorities' food safety mechanisms, including recommendations for corrective actions.

Clauses 22 and 23 focus on risk assessment and traceability enforcement, while Clause 24 designates a reference laboratory for confirmatory testing. Clause 25 mandates regular reporting by competent authorities and the preparation of a national food safety report. **Clause 26 and 27** mandates the Controller to appoint compliance officers from the office's technical staff, granting them the authority to assess and inspect various premises, vehicles, and documents related to food safety and take samples for analysis. They must identify themselves when exercising these powers.

Part V: Financial Provisions

Clauses 28 of the Bill provides for funds of the office of the Controller which consist of monies appropriated by Parliament, any grants, gifts, donations or other endowments and such other funds as may accrue to the Office in the performance of its actions.

Clause 29 outlines the Controller's authority to invest funds or deposit surplus money with the approval of the national treasury. Clause 30 focuses on financial planning, requiring the Controller to prepare annual estimates for revenue and expenditure, including provisions for salaries, allowances, property maintenance, and creating funds for future

liabilities. These estimates are submitted to the cabinet secretary for parliamentary approval. Clause 31 stipulates that the annual accounts of the Controller's office should be prepared, audited, and reported in compliance with constitutional and legal provisions, ensuring transparency and accountability in financial matters within the organization.

Part VI: Miscellaneous Provisions

Clause 32 of the Bill provides that the Act supersedes other Acts such that where there is a conflict between the provisions of this act and any other written law with regards to the powers and functions of the Controller then the Act prevails.

Clause 33 of the Bill provides for powers of the Cabinet Secretary in consultation with the Controller to make regulations to give effect to the Act.

Clause 34 provides for consequential amendments are specified in the Second Schedule.

Consequences of the Bill

The Food and Feed Safety Control Coordination Bill, 2023, aims to strengthen food and feed safety control in Kenya by improving coordination, oversight, and financial management in food and feed safety control, ultimately benefiting the health and well-being of consumers. It will further ensure safe production, distribution, processing, marketing, and preparation of food and feed for both people and animals.

CHAPTER TWO

2.1. OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.1.1. Introduction

The Committee pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Friday, 22nd September 2023 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Appendix 3*.

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

In response to the advertisement and invitations, the Committee received written submissions from five (5) stakeholders namely: The Council County of Governors (COG), Ministry of Agriculture and Livestock Development (MOALD), Kenya Plant and Health Inspectorate Service (KEPHIS), Kenya Veterinary Board (KVB) and the Kenya Association of Manufacturers (KAM), while the detailed submissions by the stakeholder, organized clause-by-clause, is set out in a matrix attached as *Appendix 4*.

2.1.2. Submissions from the Council County of Governors (COG)

The Council of Governors proposed the following:

That, **Clause 16** on the submission of the report should be amended to put additional requirement for the report to be submitted to the Governor and the County assembly. This is to provide clarity in the handling of the state of food and feed safety report at the County level.

The Committee partially accepted this proposal on reports to be submitted to the County Assembly. They further observed that the office of Governor is obligated to prepare the report and therefore it's not logical to resubmit the report to itself.

That, **Clause 20** on the audit of food and feed safety mechanism be amended to obligate the Controller to present the report to the responsible Cabinet Secretary and Governors. This is to provide for the sharing of the audit report to the respective County Governors for effective implementation at the county level.

The Committee noted that the proposal was already covered in the Bill.

That, **Clause 33** on regulations be amended to provide for Consultation with COG when developing regulations. To provide for an intergovernmental consultation.

The Committee accepted the proposal to provide for consultation with the Council of Governors when developing regulations, health is a shared function and therefore the regulation will provide for matters that cut across both levels of the government.

That, the First Schedule be amended to include respective departments of the County Governments as one of the competent authorities. This is to provide for inclusion of the County Governments as Competent Authorities on matters of feed and food safety within their jurisdiction.

The Committee rejected this proposal but instead proposed to amend Clause 4 on the application of the act to include the County Governments.

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

The Service proposed the following:

That, Clause 4 on application of the Act be amended to include the County Governments on the scope of application of the Act. This is because Food safety cuts across the county governments and the competent authorities who are both responsible for the implementation of this Act.

The Committee accepted this proposal.

That, Clause 16 on the food and feed safety by County Governments be amended to provide for the role of competent authorities in relation to international trade which cuts across all counties. This is because international trade cuts across all counties.

The Committee rejected this proposal because the role of competent authorities is set out in different legislations that establish the authorities. The role of the Controller is to ensure that competent authorities adhere to the international standards.

That, Clause 19 on the overlap of functions of a competent authority be amended to obligate the Controller to consult with the competent authorities and county government in instances where an overlap occurs in performance of their functions under their respective legislations. This is because food safety may cut across the county governments and the competent authorities. Therefore, there could be conflict between the county governments and the Competent Authorities which is not covered by the Bill.

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

That, Clause 22 on the risk analysis contravenes Clause 9 of this Bill and creates overlaps with competent authorities. Propose for the entire Clause 22 to be deleted. This is because risk assessment is a technical function domiciled in different legislation of competent authorities carrying out food and feed safety official controls. Also, it is not a function of Food Controller as spelled out in article 9 of this bill.

The Committee accepted this proposal to reword the clause so that the function of the controller will be to review the food assessment measures that are undertaken by competent authorities.

That, Schedule 2 on the Consequential amendments on KEPHIS ACT NO 54/12. Be amended to insert (mb) immediately after paragraph (c) of KEPHIS Act, which is on support administration and enforcement of food safety measures. This is to because the amendment proposed at M of KEPHIS ACT to insert (mb) is not in line with KEPHIS functions (m) which is on registration and licensing of seed merchants, growers and any other person who requires registration.

The Committee rejected this proposal because the subclauses are properly inserted in the Act.

2.1.4. Submissions from the Kenya Association of Manufactures (KAM)

That, Clause 2 (i) on the Interpretation of the word Controller be amended to replace the definition of Controller to mean an entity or to clearly define who the controller is, and under which ministry domiciled. This is to clarify whether the office of the controller will report directly to the President as the appointing authority or to the Cabinet Secretary responsible for food safety as the individual responsible for overseeing and enforcing the provisions of this Act'

The Committee rejected this proposal since the word is well defined in the Bill to mean the person appointed under clause 7. The purpose of the Bill is to form a body which will be tasked with coordinating competent authorities.

That, ii) the Interpretation of the term Cabinet Secretary be deleted. This is because the role of the Food and Feed Safety Controller will work efficiently if it is independent offering a guiding role in the performance of official controls by competent authorities. It is therefore important that the office is domiciled above ministries so that the role is not left to one ministry. The objectives in this proposed Bill depict that the functions of the controller will cut across various ministries namely, Agriculture, Trade and Industrialization, Health, and water. Food safety is an essential part of food security. This implies that health, food safety, and food security are relevant to a wide range of SDGs whose monitoring and implementation is domiciled within the Office of the President. Similarly, we deem it fit that the office of the Controller should be domiciled under the office of the President to enable it to execute its mandate effectively.

The Committee rejected this proposal because the responsibility of the Cabinet Secretary is making regulations and other related responsibilities but not to supervise the controller

That, Clause 9 on the functions of the food and feed safety controller be amended by adding a function on review of mandates of competent regulatory authorities to harmonize functions and to provide a report to the Cabinet Secretary. This is because one of the key issues from the private sector that informed the development of the Bill was to harmonize functions on food safety in the country. For instance, the competent authorities listed under the first schedule still have overlapping mandates and we propose that the controller's

function be to conduct regular reviews of the same. This will support the improvement of the business regulatory environment in the country.

The Committee rejected the proposal because the Bill under Clause 9 provides that the controller shall coordinate competent authorities through implementation of multi control plan. Under clause 19 the controller will give advice where an overlap occurs.

That, Clause 16 on the food and feed safety by County Governments which provides for Clause 16 1 (b) for License and excise official control of persons who conduct this role and the licence and excise official control be deleted. This is because it will create another layer of licensing which would be duplication and an added burden on the cost of doing business. A single entity is better placed to issue licences.

The Committee rejected this proposal as the role is currently being undertaken by the County Governments.

That, Clause 19 on the overlap of functions of a competent authority be amended to provide more clarity on the extent of the duplication and process to resolve the same. This is because the competent authorities are already set independent bodies. The procedure or guidelines on resolving overlaps or conflicts in the mandate to be anchored in the law to support implementation.

The Committee rejected this proposal they observed that the same be left to regulations.

That, Clause 21 on the Verification audit be amended by introducing a new paragraph 21 (2) to provide for regulations to provide clarification on the compensation mechanism. This is because the provision of Clause 21 (1) does not provide clarity on the extent of the compensation mechanism and there is a need for more clarification on the type and amount of compensation, the payer, and the recipient of the compensation.

The Committee rejected this proposal since the purpose of the clause is to conduct audit on competent authorities to ascertain their efficiency and effectiveness.

That, Clause 23 on the traceability be amended to introduce a new sub-clause to provide for the specific traceability requirements that food and feed business operators will need to adhere to. Food and Feed business operators will be in a better position to comply with the traceability requirements if they are aware of them beforehand. To anchor them in the law and protect food and feed business operators from requirements that may be imposed upon them without their input.

The Committee rejected the proposal since the intention of the Bill is to ensure compliance by competent authorities with the requirements set by the enabling legislations and not to set new requirements. These requirements already exist in different Acts and Regulations.

That, Clause 24 on the reference to a laboratory be amended to introduce a new sub-clause to include a mechanism to monitor necessary public structures testing to facilitate businesses. The Controller in consultation with the relevant stakeholders requires reports from competent authorities on the progress of setting up public infrastructure to support accredited testing to facilitate the ease of doing business. Businesses continued to be impacted by the absence of adequate testing facilities in the country to facilitate their production processes. This has led to delays and affected the ease of doing business. To offer information on the criteria for designating official testing laboratories is in line with the accredited testing requirement by relevant authorities.

The Committee rejected the proposal because it provides on designating of independent laboratories to conduct test in case of an adverse audit report.

That, Clause 27 on the powers of the compliance officer be amended by deleting it. The role of the Office of the Controller is overarching. It provides for the effective coordination of competent authorities in the control of food and feed safety and therefore should not be exciting operational roles such as inspection, and enforcement.

The Committee rejected this proposal, it observed that, the office of the controller is required to perform inspection on competent authority to ensure compliance.

That, Clause 33 on regulations be amended to replace the word 'regulations' with 'guidelines' to avoid duplication of development of regulations by relevant authorities. This is because all the competent authorities regulating food safety have their own regulations and requiring additional regulations will increase the regulatory burden for businesses in the country.

The committee rejected this proposal.

That, Clause 33 on regulations be amended to delete Clause 33 to avoid duplication of already existing national regulations on the conduct of risk analysis, traceability, and designation of laboratories. All the competent authorities regulating food safety have their own regulations, some of which touch on the proposed areas under clause 33.

The Committee rejected this proposal since the regulations are only to the extent of the provision of this Act.

2.1.5. General Comments

2.1.5.1. Ministry of Agriculture and Livestock Development

As captured in the present Bill, regulation of Food safety should always be done separately from regulation of medicines as guided by the SPS Agreement of WTO and other international standard setting bodies.

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

While the choice of which ministry takes the lead in food control and food safety is determined by local politics, the FAO has put a strong case for the ministry responsible for agriculture as it is able to address food safety issues along the entire food production chain from farm to fork. Many hazards enter the food chain during the production process, which should be controlled through the application of good agricultural practices, good manufacturing practices and good hygiene practices. Generally, the ministry responsible for agriculture has the necessary skills and knowledge to build the required safety and quality into the food product right from its primary production. And because agricultural exports are often a critical part of many countries' (especially developing countries') foreign exchange earnings, there are strong justifications for the agricultural sector making significant investments to ensure that food products meet established standards. Involvement of the ministry responsible for agriculture is also a better way to secure farmers' capital investments, in that preventive measures are applied, and unsafe products can be removed earlier along the food chain.

The Committee agreed with the views of the Ministry and noted that the Bill as drafted defines a Cabinet Secretary as the cabinet Secretary in charge of Food Safety which is a department in the Ministry of Agriculture.

2.1.5.2. The Kenya Veterinary Board (KVB)

As captured in the present Bill, regulation of Food safety should always be done separately from regulation of medicines as guided by the SPS Agreement of WTO and other

international standard setting bodies. The Bill is properly drafted to address the current challenges in food safety regulation devoid of any business interests and is backed by a sound Food Safety Policy.

CHAPTER THREE

3.1. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1.1. COMMITTEE OBSERVATIONS

The Committee observed that:

1. The role of the Food and Feed Safety Controller will work efficiently if it is independent offering a guiding role in the performance of official controls by competent authorities. It is therefore, important that the office is domiciled above ministries so that the role is not left to one ministry;
2. Food safety cuts across the County Governments and the competent authorities. Consequently, the Bill should factor in the role of the county governments in food and feed safety. The Committee noted that there is gap in clause 4 of the Bill which provides that the Act will apply to competent authorities as listed under the first schedule, the schedule however does not include the county governments. Noting that County health services are devolved, the implementation of this Act should therefore be undertaken by both levels of government;
3. The submission of the annual reports is important both at the National and at the County level. The annual report should therefore be submitted by the Governor to both the County assembly and to the Cabinet Secretary so as to provide clarity in the handling of the state of food and feed safety at both levels of government; and
4. That a mechanism should be put in place to facilitate consultations between the Controller and a competent authority or a county government in instances where an overlap occurs.

3.1.2. COMMITTEE RECOMMENDATIONS

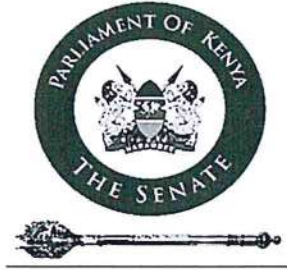
The Committee recommends that the House approves the report together with the following amendments: -

1. That, clause 4 of the Bill be amended to provide for the application of the Bill to both the competent authorities and the county governments;
2. That, clause 19 of the Bill be amended to provide for consultation in cases where an overlap occurs between the Controller and competent authorities or the county governments;
3. That, clause 22 of the Bill be amended to provide that where a risk is identified, the controller shall advise the relevant authority on steps to be undertaken to manage the risk; and
4. That, clause 33 of the Bill on regulations be amended to provide for Consultation with the Council of County Governors when developing regulations.

LIST OF APPENDICES

Appendix 1	Minutes of the Standing Committee on Agriculture, Livestock and Fisheries
Appendix 2	Committee Stage Amendments
Appendix 3	The Food and Feed Safety Control and Coordination Bill, 2023
Appendix 4	Daily Nation Advertisement Friday, 22 nd September 2023
Appendix 5	Matrix of the submissions received by the Committee on each clause of the Bill and on general matters relating to the Bill
Appendix 6	Copies of stakeholder submissions on the Bill

APPENDIX 1



**MINUTES OF THE SEVENTY-SEVENTH SITTING OF THE SENATE
STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND
FISHERIES, HELD ON THURSDAY, 23RD NOVEMBER, 2023 AT
COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 10.00 AM**

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. James Kamau Murango, MP | - | Chairperson |
| 2. Sen. Alexander Munyi Mundigi, MP | - | Vice-Chairperson |
| 3. Sen. Wahome Wamatinga, MP | - | Member |
| 4. Sen. Allan Kiprotich Chesang, MP | - | Member |
| 5. Sen. Beth Kalunda Syengo, MP | - | Member |
| 6. Sen. David Wafula Wakoli, MP | - | Member |

ABSENT WITH APOLOGIES

- | | | |
|-----------------------------------|---|--------|
| 1. Sen. Enoch Kii Wambua, CBS, MP | - | Member |
| 2. Sen. Moses Kajwang, MP | - | Member |
| 3. Sen. Daniel Kitonga Maanzo | - | Member |

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Caroline Njue | - | Clerk Assistant |
| 2. Mr. Reinhardt Choge | - | Clerk Assistant |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Belinda Ogolla | - | Research Officer |
| 5. Mr. Hillary Cheruiyot | - | Research Officer |
| 6. Ms. Happy Furaha | - | Fiscal Analyst |
| 7. Ms. Violet Nalianya | - | Media Relations Officer |
| 8. Ms. Rose Ometere | - | Audio Officer |
| 9. Mr. Ian Mugo | - | SAA |

MIN/SEN/SCA/525/2023-

PRAYER

The Chairperson called the meeting to order at 10.10 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/526/2023-

ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Beth Syengo, MP and seconded by Sen. David Wakoli, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. **Consideration of:**
 - i. **Minutes of the Seventieth sitting held on Thursday, 16th November, 2023 at 10.0 a.m.;**
 - ii. **Minutes of the Seventy-First sitting held on Friday, 17th November, 2023 at 10.00 a.m.;**
 - iii. **Minutes of the Seventy-Second sitting held on Friday, 17th November, 2023 at 2.00 p.m.;**
 - iv. **Minutes of the Seventy- Third sitting held on Saturday, 18th November, 2023 at 10.00 a.m.;**
 - v. **Minutes of the Seventy-Fourth sitting held on Saturday, 18th November, 2023 at 2.00 p.m.;**
 - vi. **Minutes of the Seventy-Fifth sitting held on Sunday, 19th November, 2023 at 10.00 a.m.; and**
 - vii. **Minutes of the Seventy-Sixth sitting held on Tuesday, 21st November, 2023 at 10.00 a.m.**
4. **Consideration of -**
 - i. **Committee paper No. 63 on the meeting with the Governor Vihiga County to deliberate on the statement on the National Agricultural Rural Inclusive Growth Program (NARIGP) requested by the Sen. Godfrey Osotsi, MP;**
 - ii. **Committee paper No. 58 on the pre-publication scrutiny of the legislative proposal on the Narcotics Drugs and Psychotropic (Control) (Amendment) Bill, 2023 (National Assembly Bills No. 22 of 2023); and**
 - iii. **Committee paper No. 64 on the consideration and adoption of the report on the Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No. 21 of 2023).**
5. Any Other Business; and
6. Date of the Next Meeting and Adjournment.

Minutes of the Seventieth sitting held on Thursday, 16th November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Wahome Wamatinga, MP.

Minutes of the Seventy-First sitting held on Friday, 17th November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Wahome Wamatinga, MP.

Minutes of the Seventy-Second sitting held on Friday, 17th November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. Wahome Wamatinga, MP and seconded by Sen. David Wafula Wakoli, MP.

Minutes of the Seventy- Third sitting held on Saturday, 18th November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Wahome Wamatinga, MP.

Minutes of the Seventy-Fourth sitting held on Saturday, 18th November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Wahome Wamatinga, MP.

Minutes of the Seventy-Fifth sitting held on Sunday, 19th November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Wahome Wamatinga, MP.

Minutes of the Seventy-Sixth sitting held on Tuesday, 21st November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. Beth Syengo, MP and seconded by Sen. David Wafula Wakoli, MP.

COMMITTEE PAPER NO. 63 ON THE
MEETING WITH THE GOVERNOR
VIHIGA COUNTY TO DELIBERATE
ON THE STATEMENT ON THE
NATIONAL AGRICULTURAL RURAL
INCLUSIVE GROWTH PROGRAM
(NARIGP) REQUESTED BY THE SEN.
GODFREY OSOTSI, MP

The Committee was informed of a letter received from the Governor requesting rescheduling of the meeting with the Committee to a date after 19th December, 2023. This is due to the State of the County address which he was attending today and the Cop28 which he will be attending later in the month.

The Senator, Vihiga County requested the Committee to consider turning the Statement into an inquiry noting the grievous matters surrounding the National Agricultural and Rural Inclusive Growth Project.

It was noted that the projects rarely follow the public procurements and disposals Act, and in order to ensure that the Governors respond then a veto of the funds allocated to them in regard to the project will force them to account for the previous allocation.

The Committee resolved to ask for physical project locations from the Governors to determine whether there was value for money for the projects and whether they exist.

Committee Resolutions

1. The Committee resolved to wait for the submissions from the Controller of Budget and the National treasury which will be considered after being analysed by the Budget Officer;
2. The Committee resolved to invite the Ministry of Agriculture and Livestock Development and the National Agricultural Rural Inclusive Program (NARIGP) for a meeting, then thereafter invite the Governors.

MIN/SEN/SCA/529/2023-

CONSIDERATION OF LEGISLATIVE PROPOSAL NARCOTICS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL, 2023 (COMMITTEE PAPER NO. 58)

The Committee deferred the consideration of the legislative proposal since the Sponsor was unavailable.

MIN/SEN/SCA/530/2023-

ADOPTION OF THE REPORT ON THE FOOD AND FEED SAFETY CONTROL COORDINATION BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 21 OF 2023)

The report on the Food and Feed Safety Control Coordination Bill (National Assembly Bills No. 21 of 2023) was adopted having been proposed by Sen. Wahome Wamatinga, MP and seconded by Sen. Allan Chesang, MP.

The Amendments on the Food and Feed Safety Control Coordination Bill (National Assembly Bills No. 21 of 2023) was adopted having been proposed by Sen. Wahome Wamatinga, MP and seconded by Sen. Allan Chesang, MP.

MIN/SEN/SCA/531/2023-

ANY OTHER BUSINESS

There was no other business.

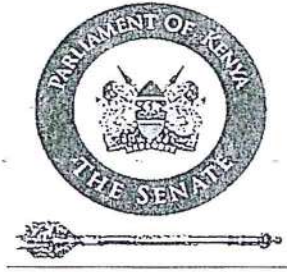
MIN/SEN/SCA/532/2023-

DATE OF NEXT MEETING AND
ADJOURNMENT

The meeting adjourned at 10.48 a.m. and the next meeting will be by notice.

SIGNED:DATE:

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)



MINUTES OF THE SIXTY-EIGHTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON TUESDAY, 14TH NOVEMBER, 2023 AT FIRST FLOOR BOARDROOM, RED CROSS BUILDING AT 10.00 AM

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. James Kamau Murango, MP | - | Chairperson |
| 2. Sen. Alexander Munyi Mundigi, MP | - | Vice-Chairperson |
| 3. Sen. Wahome Wamatinga, MP | - | Member |
| 4. Sen. Enoch Kii Wambua, CBS, MP, | - | Member |
| 5. Sen. Daniel Kitonga Maanzo, MP | - | Member |
| 6. Sen. Allan Kiprotich Chesang, MP | - | Member |
| 7. Sen. David Wafula Wakoli, MP | - | Member |

ABSENT WITH APOLOGIES

- | | | |
|-----------------------------------|---|--------|
| 1. Sen. Moses Otieno Kajwang', MP | - | Member |
| 2. Sen. Beth Kalunda Syengo, MP | - | Member |

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Caroline Njue | - | Clerk Assistant |
| 2. Mr. Reinhardt Choge | - | Clerk Assistant |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Belinda Ogolla | - | Research Officer |
| 5. Mr. Hillary Cheruiyot | - | Research Officer |
| 6. Ms. Violet Nalianya | - | Media Relations Officer |
| 7. Ms. Rose Ometere | - | Audio Officer |

MIN/SEN/SCA/471/2023-

PRAYER

The Chairperson called the meeting to order at 10.18 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/472/2023-

ADOPTION OF THE AGENDA

The meeting agenda was adopted after being proposed by Sen. Daniel Kitonga Maanzo, MP and seconded by Sen. David Wafula Wakoli, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes of previous meetings;
4. Matters Arising;
5. *Consideration of-*
 - a) *A legislative proposal on the Livestock Protection and Sustainability Bill, 2023 (Committee Paper No. 57); and*
 - b) *A legislative proposal on the Narcotic and Psychotropic Substances (Control) (Amendment) Bill, 2023 (Committee Paper No. 58);*
6. *Consideration of the matrix on the Food and Feed Safety Coordination Bill, 2023 (National Assembly Bills No. 21 of 2023);*
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/473/2023-

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The minutes of the Forty-Ninth meetings were deferred to the next meeting.

Confirmation of the minutes of the Sixty-Sixth sitting held on Thursday, 2nd November, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. Daniel Maanzo, MP and seconded by Sen. David Wafula Wakoli, MP.

The Minutes of the Sixty-Seventh sitting confirmation was deferred to the next meeting.

MIN/SEN/SCA/474/2023-

MATTERS ARISING

This was deferred to the next meeting.

MIN/SEN/SCA/475/2023-

CONSIDERATION OF THE LEGISLATIVE PROPOSALS

- a) Legislative proposal on the Livestock Protection and Sustainability Bill, 2023 (Committee Paper No. 57)

The Committee was informed of the request by Sen. (Dr.) Lelegwe Ltumbesi to reschedule the Proposal to a day he is available so he could inform the Committee on the rationale of the Bill.

b) Legislative proposal on the Narcotic and Psychotropic Substances (Control) (Amendment) Bill, 2023 (Committee Paper No. 58)

The Committee was taken through the Bill Analysis and Bill Digest by the Committee Secretariat.

The essence of the Bill was to amend the Narcotics Drugs and Psychotropic (Control) Act to exempt *cathine* and *cathinone* substances which are naturally found in Miraa Crop from being classified as a psychotropic substance.

This would remove the bottlenecks around the marketing of value-added products such as Miraa Juice and Wine apart from the crop itself.

The Committee was informed that there would be need for international lobbying should the law pass to allow the export and marketing of Miraa and its products.

The Committee resolved to invite the Sponsor of the Bill to inform the Committee whether there had been communication/liaison with the National Campaign Against Drug Abuse (NACADA) towards the declassification of Miraa Crop.

MIN/SEN/SCA/476/2023-

CONSIDERATION OF THE MATRIX
ON THE FOOD AND FEED SAFETY
COORDINATION BILL, 2023
(NATIONAL ASSEMBLY BILLS NO. 21
OF 2023

The committee was taken through the matrix on the Food and Feed Safety Coordination Bill, 2023. The Committee noted the proposals by the Stakeholders and resolved to accept only the one's supporting devolution as envisaged by the Constitution.

The Committee further resolved to ensure that the Cabinet Secretary specified should be the Cabinet Secretary for matters Agriculture.

MIN/SEN/SCA/477/2023-

ANY OTHER BUSINESS

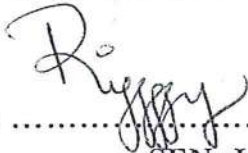
1. The Secretariat to write an invitation to the Governor, Vihiga County to come and respond to matters raised by Sen. Godfrey Osotsi in regards to the NARIGP programme in Vihiga County and to write to the Controller of Budget and National Treasury to furnish the Committee with reports on the disbursements and usage of NARIGP funds in the forty-seven counties from 2017 to date.
2. Sen. Wakoli informed the Committee on his statement that was upcoming this week on the program on enumeration on livestock and poultry which is seeking to find out whether the exercise was budgeted for and whether it had been carried out in all other counties apart from Bungoma County where the Enumerators had not been paid. He advised that the responses should be sought from the National Government and County Government of Bungoma.

MIN/SEN/SCA/478/2023-

DATE OF NEXT MEETING AND
ADJOURNMENT

The meeting adjourned at 12.10 am and the next meeting will be by notice.

SIGNED:

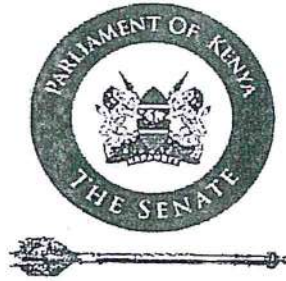


DATE:

21st Nov 2023

SEN. JAMES KAMAU MURANGO, MP

(CHAIRPERSON)



**MINUTES OF THE SIXTY-FOURTH SITTING OF THE SENATE
STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND
FISHERIES, HELD ON THURSDAY, 19TH OCTOBER, 2023 AT COMMITTEE
ROOM 5, PARLIAMENT BUILDINGS AT 10.00 AM**

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. Alexander Munyi Mundigi, MP | - | Vice-Chairperson |
| 2. Sen. Daniel Kitonga Maanzo, MP | - | Member |
| 3. Sen. Wahome Wamatinga, MP | - | Member |
| 4. Sen. David Wafula Wakoli, MP | - | Member |
| 5. Sen. Beth Kalunda Syengo, MP | - | Member |

ABSENT WITH APOLOGIES

- | | | |
|--------------------------------------|---|-------------|
| 1. Sen. James Kamau Murango, MP | - | Chairperson |
| 2. Sen. Enoch Kiiio Wambua, CBS, MP, | - | Member |
| 3. Sen. Moses Otieno Kajwang', MP | - | Member |
| 4. Sen. Allan Kiprotich Chesang, MP | - | Member |

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Caroline Njue | - | Clerk Assistant |
| 2. Mr. Reinhardt Choge | - | Clerk Assistant |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Belinda Ogolla | - | Research Officer |
| 5. Mr. Hillary Cheruiyot | - | Research Officer |
| 6. Ms. Violet Nalianya | - | Media Relations Officer |
| 7. Ms. Rose Ometere | - | Audio Officer |

IN-ATTENDANCE

- | | | |
|---------------------------|---|---|
| 1. Dr. Agutu Mary Theresa | - | Ag. Chief Executive Officer
Kenya Veterinary Board |
| 2. Mr. Simon G. Wainaina | - | Kenya Veterinary Board |
| 3. Ms. Miriam Bomett | - | Kenya Association of
Manufacturers |
| 4. Ms. Jane Ndungo | - | Kenya Association of |

- | | | |
|-----------------------|---|---|
| 5. Ms. Ruth Lemlem | - | Manufacturers
Legal Counsel, Kenya
Association of Manufacturers |
| 6. Mr. Malcolm Mwangi | - | Kenya Association of
Manufacturers |

MIN/SEN/SCA/441/2023- PRAYER

The Chairperson called the meeting to order at 10.21 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/442/2023- ADOPTION OF THE AGENDA

The meeting agenda was adopted after being proposed by Sen. Beth Kalunda Syengo, MP and seconded by Sen. David Wafula Wakoli, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of:
 - a) *Minutes of the Forty-Ninth sitting held on Tuesday, 8th August, 2023;*
 - b) *Minutes of the Fifty-Third sitting held on Monday, 25th September, 2023;*
 - c) *Minutes of the Fifty-Fourth sitting held on Tuesday, 26th September, 2023;*
 - e) *Minutes of the Fifty-Sixth sitting held on Tuesday, 3rd October, 2023;*
 - f) *Minutes of the Fifty-Seventh sitting held on Thursday, 12th October, 2023;*
 - g) *Minutes of the Fifty-Eighth sitting held on Friday, 13th October, 2023;*
 - h) *Minutes of the Fifty-Ninth sitting held on Friday, 13th October, 2023;*
 - i) *Minutes of the Sixtieth sitting held on Saturday, 14th October, 2023;*
 - j) *Minutes of the Sixty-First sitting held on Saturday, 14th October, 2023;*
 - k) *Minutes of the Sixty-Second sitting held on Monday, 16th October, 2023; and*
 - l) *Minutes of the Sixty-Third sitting held on Tuesday, 17th October, 2023;*
4. Matters Arising from the Minutes of the Previous Meetings;
5. *Committee Paper No.52 on the Stakeholder engagement on the Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No.21 of 2023);*
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/443/2023- CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The confirmation of minutes of the Forty-Ninth, Fifty-Third, Fifty-Fourth, Fifty-Sixth, Fifty-Seventh, Fifty-Eighth, Fifty-Ninth, Sixtieth, Sixty-First, Sixty-Second and Sixty-Third meetings were deferred to a later date.

MIN/SEN/SCA/444/2023- MATTERS ARISING

There were no matters arising.

The stakeholders presented to the committee as follows-

1. **The Kenya Veterinary Board:** The acting Chief Executive Officer stated that they supported the Bill and hence had no amendments.

The senators asked the acting Chief Executive Officer some questions regarding the security of the population when it comes to contaminated meat and milk especially through vaccinations and how GMOs can be factored into the Bill.

The acting Chief Executive Officer informed the Committee that the Board usually regulates the persons dealing with animals and that they have educated the public that all meat should be slaughtered in the slaughter house. She also added that there are existing laws whereby all meat slaughtered and inspected is required to have the roller stamp from the Veterinary Officer stationed at the slaughterhouse. Once the meat is inspected and sold, a permit is issued.

She also informed the Committee that when it comes to milk, an animal that has been vaccinated goes through a period of withdrawal of at least thirty (30) days before milking it.

On GMOs, she informed the Committee that it's a requirement for any GMO product to have a label that says the product is GMO. This is done to give the consumers a choice of either buying the product or not. KEBS have a responsibility of indicating GMO food/products for the public to decide whether to consume or not.

2. **The Kenya Association of Manufacturers** presented the following amendments:

Clause 2 - Change the interpretation of the 'Controller' and 'Cabinet Secretary';

Clause 9 - Introduce new provisions under functions of the controller after Clause 9 (h);

Clause 16 - Delete the entire Clause;

Clause 19 - Amend it to provide more clarity on the extent of duplication and processes to resolve the same;

Clause 21 - Introduce new paragraph (2) to provide clarification on compensation mechanisms;

Clause 23 - Introduce new sub-clause 23(2) to include specific traceability requirements for food and feed business operators need to adhere to; and

Clause 24 - Introduce new sub-clause (2) to include mechanisms to monitor public structures testing.

The Kenya Association of Manufacturers further spoke of the disconnect between regulators and farmers/ business community should be bridged by an advisory role to assist in improving the business environment. The cost of compliance should be reduced.

Members requested the Kenya Association of Manufacturers to share a report affecting their members and business people in general dealing with the Agricultural sector.

MIN/SEN/SCA/446/2023-

ANY OTHER BUSINESS

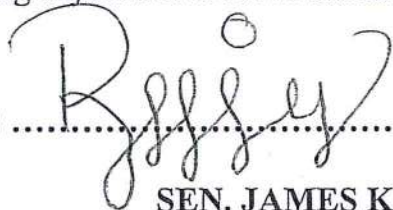
There was no other business.

MIN/SEN/SCA/447/2023-

DATE OF NEXT MEETING AND
ADJOURNMENT

The meeting adjourned at 11.45 am and the next meeting will be by notice.

SIGNED:



DATE:

31/10/2023

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)



MINUTES OF THE SIXTY-THIRD SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON TUESDAY, 17TH OCTOBER, 2023 AT COMMITTEE ROOM 5, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. James Kamau Murango, MP | - | Chairperson |
| 2. Sen. Alexander Munyi Mundigi, MP | - | Vice-Chairperson |
| 3. Sen. Daniel Kitonga Maanzo, MP | - | Member |
| 4. Sen. Wahome Wamatinga, MP | - | Member |
| 5. Sen. Allan Kiprotich Chesang, MP | - | Member |
| 6. Sen. David Wafula Wakoli, MP | - | Member |
| 7. Sen. Beth Kalunda Syengo, MP | - | Member |

ABSENT WITH APOLOGIES

- | | | |
|--------------------------------------|---|--------|
| 1. Sen. Enoch Kiiro Wambua, CBS, MP, | - | Member |
| 2. Sen. Moses Otieno Kajwang', MP | - | Member |

IN-ATTENDANCE

- | | | |
|------------------------------|---|--|
| 1. Hon. Benjamin Cheboi | - | Governor, Baringo (Council of Governors) |
| 2. Prof. Theophilus M. Mutui | - | Managing Director, Kenya Plant Health Inspectorate Services |
| 3. Dr. Akwimbi A. William | - | State Department for Livestock Development |
| 4. Mr. Peter K. Mbugua | - | State Department for Livestock Development |
| 5. Mr. Peter O. Owoko | - | State Department for Crop Development |
| 6. Mr. Peter Kamuti | - | Deputy Director, Legal, Kenya Plant Health Inspectorate Services |

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Caroline Njue | - | Clerk Assistant |
| 2. Mr. Reinhardt Choge | - | Clerk Assistant |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Belinda Ogolla | - | Research Officer |
| 5. Mr. Hillary Cheruiyot | - | Research Officer |
| 6. Ms. Violet Nalianya | - | Media Relations Officer |
| 7. Ms. Rose Ometere | - | Audio Officer |

MIN/SEN/SCA/434/2023-

PRAYER

The Chairperson called the meeting to order at 10.23 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/435/2023-

ADOPTION OF THE AGENDA

The meeting agenda was adopted after being proposed by Sen. Wahome Wamatinga, MP and seconded by Sen. Alexander Mundigi, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of:
 - a) Minutes of the Forty-Ninth sitting held on Tuesday, 8th August, 2023;
 - b) Minutes of the Fifty-Third sitting held on Monday, 25th September, 2023;
 - c) Minutes of the Fifty-Fourth sitting held on Tuesday, 26th September, 2023;
 - e) Minutes of the Fifty-Sixth sitting held on Tuesday, 3rd October, 2023;
 - f) Minutes of the Fifty-Seventh sitting held on Thursday, 12th October, 2023;
 - g) Minutes of the Fifty-Eighth sitting held on Friday, 13th October, 2023;
 - h) Minutes of the Fifty-Ninth sitting held on Friday, 13th October, 2023;
 - i) Minutes of the Sixtieth sitting held on Saturday, 14th October, 2023; and
 - j) Minutes of the Sixty-First sitting held on Saturday, 14th October, 2023;
4. Matters Arising from the Minutes of the Previous Meetings;
5. *Committee Paper No.51 on the Stakeholder engagement on the Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No.21 of 2023);*
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/436/2023-

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The confirmation of minutes of the Forty-Ninth, Fifty-Third, Fifty-Fourth, Fifty-Sixth, Fifty-Seventh, Fifty-Eighth, Fifty-Ninth, Sixtieth and Sixty-First sittings were deferred to a later date.

There were no matters arising.

Members introduced themselves and asked the Stakeholders to introduce themselves for the record.

1. The Council of Governors

Hon. Benjamin Cheboi, Governor for Baringo County the Committee through their written memorandum and proposed the following amendments:

Clause 16

(2) - **Amend it to read as follows:** "Each County Government shall at least thirty days before the end of the financial year, prepare an annual report on the state of food safety and feed safety in the respective county and submit the report to the respective County Governor and a copy to the controller".

(3) - **Add a new Clause to read as follows:** "The respective County Governor shall submit the report to the County Assembly".

Clause 20 (3) - **Amend to read as follows:** "Upon conducting an audit under sub-section (1), the Controller shall prepare an audit report and submit the audit report to the Cabinet Secretary responsible for the competent authority and all other County Governors".

Clause 33 (1) - **Amend to read as follows:** "The Cabinet Secretary in consultation with the Controller and County Governments, may make regulations for better carrying into effect this Act".

First Schedule - **Amend** to include County Governments as one of the competent authorities.

2. The State Departments for Crop Development and Livestock Development supported the Bill and had no further amendments as the Bill originated from them.

3. Kenya Plant Health Inspectorate Services

The Managing Director took the Committee through his memorandum and proposed following Amendments:

Clause 4 - **Amend it to read as follows:** "This Act shall apply to every competent authority, County Governments and every person conducting food business or feed business".

Clause 16 - **Improve Part III** to cover competent authorities and County Governments. **Clause 16(1)** to cover competent authorities and add new **Clause 17 (1)(2)** to cover County Governments.

Clause 19 - **Amend the clause to read as follows:** "The Controller in consultation with the competent authorities and county governments shall advise where an overlap occurs in performance of their functions under their respective legislations".

Clause 22 - they propose deleting the clause in its entirety as risk assessment is a scientific based process and creates an overlap with the competent authorities.

Second Schedule, On the consequential amendments to the Kenya Plant Health Inspectorate Services Act, 2012 (No. 54 of 2012), they propose that (mb) be inserted immediately after paragraph (c) of KEPHIS Act, which is on support, administration and enforcement of food safety measures.

The Committee noted that the submission from KEPHIS was geared towards enabling the devolution agenda.

MIN/SEN/SCA/439/2023-

ANY OTHER BUSINESS

There was no other business.

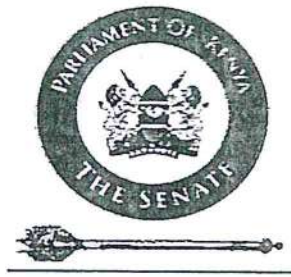
MIN/SEN/SCA/440/2023-

DATE OF NEXT MEETING AND
ADJOURNMENT

The meeting adjourned at 11.57 am and the next meeting will be by notice.

SIGNED: DATE: 31/10/2023


SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)



MINUTES OF THE SIXTY-SECOND SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON MONDAY, 16TH OCTOBER, 2023 AT GROUND FLOOR BOARDROOM, COUNTY HALL AT 10.00 AM

PRESENT

- | | | |
|-----------------------------------|---|-----------------------|
| 1. Sen. James Kamau Murango, MP | - | Chairperson (Virtual) |
| 2. Sen. Daniel Kitonga Maanzo, MP | - | Member |
| 3. Sen. Wahome Wamatinga, MP | - | Member |
| 4. Sen. Beth Kalunda Syengo, MP | - | Member (Virtual) |

ABSENT WITH APOLOGIES

- | | | |
|-------------------------------------|---|------------------|
| 1. Sen. Alexander Munyi Mundigi, MP | - | Vice-Chairperson |
| 2. Sen. Enoch Kiio Wambua, CBS, MP, | - | Member |
| 3. Sen. Allan Kiprotich Chesang, MP | - | Member |
| 4. Sen. David Wafula Wakoli, MP | - | Member |
| 5. Sen. Moses Otieno Kajwang', MP | - | Member |

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Caroline Njue | - | Clerk Assistant |
| 2. Mr. Reinhardt Choge | - | Clerk Assistant |
| 3. Ms. Regina Munyao | - | Legal Counsel |
| 4. Ms. Belinda Ogolla | - | Research Officer |
| 5. Mr. Hillary Cheruiyot | - | Research Officer |
| 6. Ms. Violet Nalianya | - | Media Relations Officer |
| 7. Ms. Rose Ometere | - | Audio Officer |

MIN/SEN/SCA/426/2023-

PRAYER

The Chairperson called the meeting to order at 10.23 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/427/2023-

ADOPTION OF THE AGENDA

The meeting agenda was adopted after being proposed by Sen. Wahome Wamatinga, MP and seconded by Sen. Beth Kalunda Syengo, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of:
 - a) Minutes of the Forty-Ninth sitting held on Tuesday, 8th August, 2023;
 - b) Minutes of the Fifty-Third sitting held on Monday, 25th September, 2023;
 - c) Minutes of the Fifty-Fourth sitting held on Tuesday, 26th September, 2023;
 - d) Minutes of the Fifty-Fifth sitting held on Thursday, 28th September, 2023; and
 - e) Minutes of the Fifty-Sixth sitting held on Tuesday, 3rd October, 2023.
4. Matters Arising from the Minutes of the Previous Meetings;
5. *Consideration of Committee Paper No .49 on the Matrix on the Agriculture and Food Authority Bill, 2023 (Senate Bills No. 13 of 2023);*
6. *Consideration of Committee Paper No.50 on the Bill digest and Bill analysis on the Food and Feed Safety Control Coordination Bill, 2023 (National Assembly Bills No.21 of 2023);*
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/428/2023-

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The minutes of the Forty-Ninth, Fifty-Third, Fifty-Fourth and Fifty-Sixth meetings were deferred to a later date.

Confirmation of the minutes of the Fifty-Fifth sitting held on 28th August, 2023 were confirmed as a true reflection of the proceedings having been proposed by Sen. Wamatinga Wahome, MP and seconded by Sen. Beth Kalunda Syengo, MP.

MIN/SEN/SCA/429/2023-

MATTERS ARISING

Under MIN/SEN/SCA/389/2023 - MEETING WITH TURKANA COOPERATIVE FISHERMEN SOCIETY AND THE FISHERMEN AT KALOKOL

Members resolved to liaise with the National and County governments to see whether a steering committee can be formed to enable the growth of the Blue Economy in Turkana County.

MIN/SEN/SCA/430/2023-

CONSIDERATION OF COMMITTEE
PAPER NO .49 ON THE MATRIX ON
THE AGRICULTURE AND FOOD
AUTHORITY BILL, 2023 (SENATE
BILLS NO. 13 OF 2023):

Members were taken through the matrix by the Legal counsel. The submissions received from the Nut processors Association, Agriculture and Food Authority and the Ministry of Agriculture and Livestock Development were all against the amendment sighting that it will interfere with the gains that have been made so far in the industry.

It was noted that the submission from the Co0uncil of Governors was in support of the amendment however, they proposed further amendments on other Sections of the Act. The Committee was advised that the Sections that they proposed amendments on were not accepted as the Committee was limited to the single Amendment to Section 43 as initially published.

MIN/SEN/SCA/431/2023-

CONSIDERATION OF COMMITTEE
PAPER NO.50 ON THE BILL DIGEST
AND BILL ANALYSIS ON THE
FOOD AND FEED SAFETY CONTROL
COORDINATION BILL, 2023
(NATIONAL ASSEMBLY BILLS NO.21
OF 2023)

Members were taken through the Bill analysis by the research officer and through the Bill digest by the legal counsel.

The Committee noted the importance of the bill and stated that indeed coordination was needed between the County and National governments to ensure that food and safety is well adhered to along the whole value chain from production to consumption.

MIN/SEN/SCA/432/2023-

ANY OTHER BUSINESS

1. Members were informed that the Amendments on the Coffee Bill, 2023 (Senate Bills No. 10 Of 2023) were done and awaiting approvals before presentation to the Committee.
2. Members were informed of the stakeholder meetings scheduled for the 17th and 19th of October, 2023 on the Food and Feed Safety Control Coordination Bill (National Assembly Bills No. 21 of 2023).

The meeting adjourned at 11.07 am and the next meeting will be by notice.

SIGNED:DATE: 31/10/2023

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

APPENDIX 2

23rd November, 2023

The Clerk of the Senate,
Parliament Buildings,

NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE FOOD AND FEED SAFETY CONTROL CORDINATION BILL, (NATIONAL ASSEMBLY BILLS NO. 21 OF 2023)

NOTICE is given that Sen. James Kamau Murango, Chairperson, Committee on Agriculture, Livestock and Fisheries intends to move the following amendments to the Food and Feed Safety Control Cordination Bill, (National Assembly Bills No. 21 of 2023), at the Committee Stage—

CLAUSE 22

THAT clause 22 of the Bill be amended in sub-clause (2) by deleteting the words “conduct risk management” appearing immediately after the words “ the Controller may” and substituting therefor the words “advise on the appropriate risk management measures ”.

CLAUSE 25

THAT clause 25 of the Bill be amended in sub-clause (3) by inserting the following new sub- clause—

3A. On receipt of the report under subsection (3)(b), the governor shall submit the report to the respective County Assembly.

FIRST SCHEDULE

THAT the First Schedule be amended by inserting the following new items immediately after item no 3 —

3A. Each county government department dealing with matters relating to agriculture;

3B. Each county government department dealing with matters relating to health;

Dated.....23/11/.....2023.



Sen. James Kamau Murango,
Chairperson, Committee on Agriculture, Livestock and Fisheries.

APPENDIX 3



REPUBLIC OF KENYA

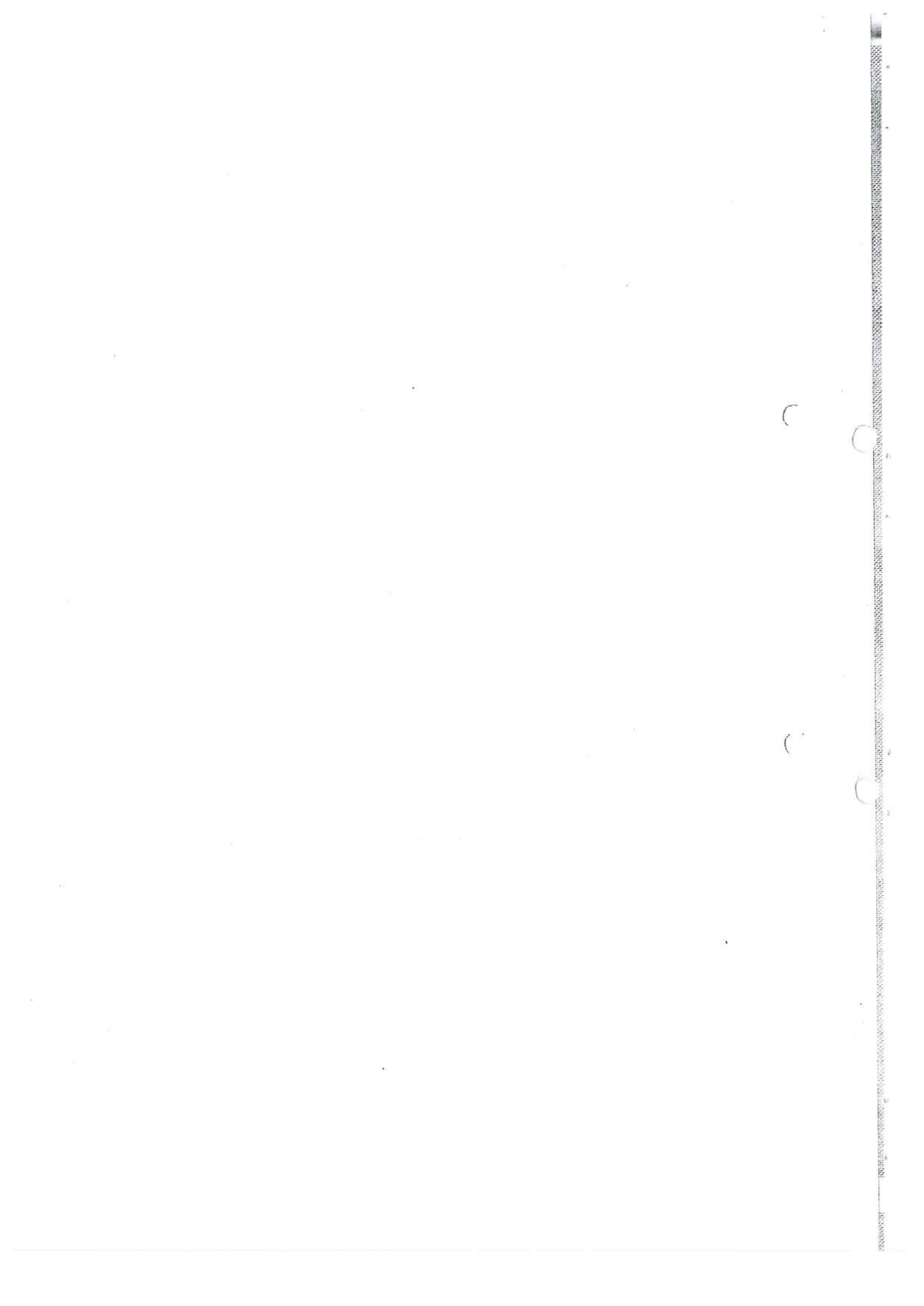
PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 21 of 2023)

**THE FOOD AND FEED SAFETY CONTROL CO-
ORDINATION BILL, 2023**

(A Bill published in the Kenya Gazette Supplement No. 75 of 24th May, 2023 and passed by the National Assembly, with amendments, on 23rd August, 2023)

N.A. /B/No. 21/2023



**THE FOOD AND FEED SAFETY CONTROL
CO-ORDINATION BILL, 2023
ARRANGEMENT OF CLAUSES**

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object of this Act.
- 4—Application of this Act.
- 5—Guiding principles.

**PART II— OFFICE OF THE FOOD AND FEED
SAFETY CONTROLLER**

- 6—Establishment of the Office of the Food and Feed Safety Controller.
- 7—Appointment of the Controller.
- 8—Qualifications of the Controller.
- 9—Functions of the Controller.
- 10—Vacancy in the Office of the Controller.
- 11—Removal from Office.
- 12—Staff of the Office of the Controller.
- 13—Remuneration of the Controller.
- 14—Delegation by the Controller.
- 15—Protection from personal liability.

**PART III— FOOD SAFETY AND FEED SAFETY BY
COUNTY GOVERNMENTS**

- 16—Functions of a county government.

**PART IV— FOOD SAFETY AND FEED SAFETY
CONTROL AND COORDINATION**

- 17—Multi-annual control plan.
- 18—Verification of mechanisms to enforce food and feed safety requirements.

- 19—Overlaps in functions of competent authorities.
- 20—Audit of food safety or feed safety mechanisms.
- 21—Verification audit.
- 22—Risk analysis.
- 23—Traceability.
- 24—Reference laboratory.
- 25—Report on food safety and feed safety.
- 26—Appointment of compliance officers.
- 27—Powers of compliance officer.

PART V —FINANCIAL PROVISIONS

- 28—Funds of the Office of the Controller.
- 29—Investment of funds.
- 30—Annual estimates.
- 31—Accounts and audit.

PART VI —MISCELLANEOUS PROVISIONS

- 32—Act to supersede other Acts.
- 33—Regulations.
- 34—Consequential amendments.

**FIRST SCHEDULE—COMPETENT
AUTHORITIES**

**SECOND SCHEDULE—CONSEQUENTIAL
AMENDMENTS**

**THE FOOD AND FEED SAFETY CONTROL
CO-ORDINATION BILL, 2023**

A Bill for

AN ACT of Parliament to provide for the coordination of the public institutions in the control of food and feed safety; to establish the Office of the Food and Feed Safety Controller; to provide for the role of County Governments in food and feed safety; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Food and Feed Safety Control Co-ordination Act, 2023. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for food safety;

“competent authority” means the public institutions responsible for official control set out in the First Schedule, or such other public entity as the Cabinet Secretary may, by Order in the *Gazette*, determine;

“compliance officer” means a person appointed as such under section 26;

“consumer” means —

- (a) a person to whom particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of this Act;
- (c) a user of a particular good or a recipient or beneficiary of particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods and services; and

(d) a franchise in terms of a franchise agreement, to the extent applicable in terms of this Act.

“Controller” means a Food and Feed Safety Controller appointed under section 7;

“feed” means processed, semi-processed or raw material which is to be consumed directly by an animal which is consumed as food or an animal whose produce is capable of being consumed as food;

“feed business” means the production, manufacture, storage or distribution of feed, feed ingredient, feed additive or feed supplement;

“feed ingredient” means a component or any combination of components used in the production of feed and includes a feed additive;

“feed safety” means all measures that ensure that feed will not cause harm to an animal which is consumed as food or to an animal whose produce is capable of being consumed as food, when the feed is consumed in accordance to the recommended use of the manufacturer of the feed;

“food” means a processed, semi-processed or raw substance which is consumed by a human being and includes drinking water and a substance which has been used in the production, manufacture, preparation or treatment of food but does not include a cosmetic, tobacco or a substance used as drugs;

“food business” means the production, processing, storage or distribution of food for commercial purposes but does not include the domestic preparation, handling or storage of food for consumption within a residence;

“food safety” means measures taken to ensure that food shall not cause harm to a consumer when consumed according to its intended use;

“hazard” means any biological, chemical or physical agent or condition of food or feed which is capable of causing an adverse health effect;

“multi-annual control plan” means a plan which—

(a) specifies information on the structure, roles and

responsibilities of the Competent Authorities; and

- (b) provides an overview of how the competent authorities safeguard the health of the members of the public, animal and plant health and protects consumers;

“official control” means a regulatory activity by a Competent Authority that—

- (a) provides protection to a consumer during the production, handling, storage, processing and distribution of food or feed; and
- (b) ensures food or feed is safe, wholesome and fit for human consumption, and conforms to the quality and safety requirements for the conduct of food business or feed business;

“Office of the Controller” means the Office of the Food and Feed Safety Controller established under section 6;

“risk analysis” means a process which consists of risk assessment, risk management and risk communication;

“risk assessment” means a scientifically based process which consists of the—

- (a) identification of a hazard;
- (b) characterisation of a hazard;
- (c) assessment of the exposure to the hazard; and
- (d) characterisation of the risk;

“risk communication” means the interactive exchange of information and opinions throughout a risk analysis on the risk-related factors, risk perceptions of risk assessors, risk managers, consumers, industry, the academic community and other interested parties, and the explanation of risk assessment findings as the basis of risk management; and

“risk management” means the process of evaluating policy alternatives, in consultation with interested parties considering risk assessment and other factors relevant for the protection of health of consumers and for the promotion of fair-trade practices, and, if needed, selecting appropriate

prevention and control options.

3. The object of this Act is to —

Object of this Act.

- (a) effectively coordinate the performance of the functions of competent authorities; and
- (b) enhance accountability in the implementation of official control.

4. This Act shall apply to every competent authority.

Application of this Act.
Guiding principles.

5. The guiding principles for the implementation of this Act shall be—

- (a) the protection of human health;
- (b) the protection of consumer interests in the conduct of food business and feed business;
- (c) the promotion of the use of scientific based risk analysis;
- (d) the promotion of food safety and feed safety;
- (e) the promotion of fair-trade practices in the conduct of food business and feed business;
- (f) efficiency in the performance of official control;
- (g) the promotion of sustainable production, processing and handling of food and feed; and
- (h) the protection of animal health.

PART II—OFFICE OF THE FOOD AND FEED SAFETY CONTROLLER

6. (1) There is established the office of the Food and Feed Safety Controller which shall be a body corporate with perpetual succession and a common seal, and in its corporate name shall be capable of—

Establishment of the Office of the Food and Feed Safety Controller.

- (a) suing and being sued;
- (b) acquiring or disposing of movable and immovable property; and
- (c) performing such acts as may be performed by a body corporate.

(2) The Office of the Controller shall be designated as a State Office in accordance with paragraph (q) in the definition of State Office under Article 260 of the

Constitution.

7. (1) There shall be a Food and Feed Safety Controller who shall be appointed by the President, with the approval of Parliament.

Appointment of
the Controller.

(2) Whenever a vacancy arises in the office of the Controller, the Public Service Commission shall initiate the recruitment process.

(3) Within seven days of the vacancy referred to in sub section (2) occurring, the Public Service Commission shall invite applications from persons who qualify for nomination and appointment for the position of the Controller.

(4) The Public Service Commission shall within twenty-one days of receipt of applications under subsection (3)—

- (a) consider the applications received to determine their compliance with this Act;
- (b) shortlist qualified applicants;
- (c) publish and publicise the names of the applicants and the shortlisted applicants;
- (d) conduct interviews of the shortlisted persons through an open and transparent process;
- (e) nominate three qualified applicants in the order of merit for the position of Controller; and
- (f) submit the names of the persons nominated under paragraph (e) to the President.

8. (1) A person shall qualify to be appointed as the Controller if that person—

Qualifications of
the Controller.

- (a) holds a Masters degree in a discipline related to food safety or feed safety;
 - (b) has at least fifteen years' experience working in a field related to food safety or feed safety;
 - (c) has at least five years' experience working in a senior management position; and
 - (d) meets the requirements of Chapter Six of the Constitution.
- (2) The Controller may be appointed for a term of

three years and shall be eligible for reappointment for a final term of three years.

9. The functions of the Controller shall be to—

Functions of the Controller.

- (a) coordinate the competent authorities through the implementation of the multi-annual control plan;
- (b) coordinate the development and review of a multi-annual national control plan;
- (c) monitor and evaluate the implementation of a multi-annual control plan at the national level;
- (d) liaise with competent authorities to identify and advise on policy gaps and inadequate regulation on food safety and feed safety official control;
- (e) assess the adequacy of food safety and feed safety preparedness and make recommendations to the relevant competent authority;
- (f) establish an information management system for food safety and feed safety in the country;
- (g) verify that competent authorities have put in place systems for effective official control;
- (h) prepare an annual report on the state of food and feed safety in Kenya; and
- (i) perform such other duties as may be necessary to ensure coordination of official control of food safety and feed safety.

10. The Office of the Controller shall become vacant, if the Controller—

Vacancy in the Office of the Controller.

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President; or
- (c) is removed from office in accordance with section 11.

11. (1) The Controller may be removed from office on the following grounds—

Removal from Office.

- (a) violation of Chapter Six of the Constitution;
- (b) gross misconduct in the performance of the functions of the Controller;
- (c) incapacity to perform the functions of the

Controller due to physical or mental illness;

- (d) being adjudged bankrupt; or
- (e) being convicted of an offence and sentenced to a term of imprisonment exceeding six months.

(2) A person who desires the removal of the Controller on any ground specified under subsection (1) shall present a complaint to the Public Service Commission setting out the alleged facts constituting that ground.

(3) Subject to Article 47 of the Constitution, the Public Service Commission shall consider the complaint and, if satisfied that the complaint discloses a ground under subsection (1), the Public Service Commission shall—

- (a) investigate the matter expeditiously;
- (b) report on the facts; and
- (c) make a recommendation to the President.

(4) Prior to any action under sub-section (3), the Public Service Commission shall—

- (a) inform the Controller, in writing, of the reasons for the intended removal; and
- (b) offer the Controller an opportunity to put in a defence against the alleged grounds.

12. The Controller, in consultation with the Public Service Commission, shall employ such members of staff as are necessary for the discharge of the functions of the Controller on such terms of service as the Controller in consultation with the Salaries and Remuneration Commission may determine.

Staff of the Office of the Controller.

13. The Controller shall be paid such remuneration or allowances as the Salaries and Remuneration Commission may determine.

Remuneration of the Controller.

14. The Controller may delegate the performance of any of the functions of the Controller to any member of staff of the Office of the Controller as the Controller deems necessary.

Delegation by the Controller.

15. (1) The Controller or a member of staff of the Office of the Controller, or a person acting on the directions of the Controller, shall not be personally liable for any action, claim or demand whatsoever or any matter

Protection from personal liability.

or thing done in the performance of the functions of the Office of the Controller in good faith.

(2) Subsection (1) shall not relieve the Office of the Controller of the liability to pay compensation or damages, for loss or injury to a person or property, in the performance of the functions on the Office of the Controller.

PART III—FOOD SAFETY AND FEED SAFETY BY COUNTY GOVERNMENTS

16. (1) The functions of a county government in relation to food safety and feed safety in the respective County shall be to—

Functions of a county government.

- (a) implement and enforce food safety and feed safety measures;
- (b) license and exercise official control of persons who conduct food business and feed business;
- (c) conduct capacity building on food safety and feed safety;
- (d) conduct public awareness on matters food safety and feed safety;
- (e) prepare county food safety and feed safety reports.
- (f) provide a platform for the consultation and cooperation of the County Governments and stakeholders in the implementation of a multi-annual control plan;
- (g) conduct audits to ascertain compliance and enforcement of food safety and feed safety measures;
- (h) coordinate food safety and feed safety activities;
- (i) regulate and enforce official control; and
- (j) monitor and evaluate implementation of the multi-annual control plan.

(2) Each County Government shall at least thirty days before the end of a financial year, prepare an annual report on the state of food safety and feed safety in the respective County and submit the report to the Controller.

PART IV—FOOD SAFETY AND FEED SAFETY CONTROL AND COORDINATION

17. The Office of the Controller, in consultation with

Multi-annual

the competent authorities and county governments shall develop and review a multi-annual control plan as a basis and mechanism for official control.

control plan.

18. (1) The Controller shall verify that a competent authority has mechanisms to enforce the requirements of food safety or feed safety in accordance with international standards of food and feed safety.

Verification of mechanisms to enforce food and feed safety requirements.

(2) The scope of verification conducted by the Controller shall include—

- (a) conduct of inspections;
- (b) taking of samples and conducting analyses;
- (c) staff health and hygiene;
- (d) examination of the records; and
- (e) issuance of certificates, permits and licenses.

(3) Upon conducting a verification under sub-section (1), the Controller shall prepare a report and submit the report to the Cabinet Secretary responsible for the competent authority.

19. The Controller in consultation with the competent authorities shall advise where an overlap occurs in the performance of their functions under their respective legislation.

Overlap in functions of competent authorities.

20. (1) The Controller shall conduct an audit of the food safety or feed safety mechanisms of a competent authority to ascertain compliance and enforcement.

Audit of food safety or feed safety mechanisms.

(2) The Controller in liaison with the competent authorities, shall develop the criteria for conducting the audit under subsection (1).

(3) Upon conducting an audit under subsection (1), the Controller shall prepare an audit report and submit the report to the Cabinet Secretary responsible for the competent authority and each County Government.

21. (1) The Controller shall conduct a verification audit to ascertain whether the systems established by a competent authority provide accurate certification, inspection and validation of—

Verification audit.

- (a) the effective monitoring of compliance with set standards;
- (b) the implementation of corrective measures

including penalties, suspension and withdrawal of licenses;

- (c) the sustainability of the system;
- (d) the investigative powers of the competent authority;
- (e) the registration conducted by the competent authority, where applicable;
- (f) the confidentiality of the information held by the competent authority;
- (g) the self-assessment persons conducting food business, where applicable;
- (h) the self-assessment persons conducting feed business, where applicable;
- (i) the effectiveness of the early warning system for food safety risks, where applicable;
- (j) the effectiveness of the early warning system for feed safety risks;
- (k) the effectiveness of the handling and resolution of complaints;
- (l) the compensation mechanism; and
- (m) such other matter as the Controller considers necessary.

(2) On conducting a verification audit, if it is determined that the competent authority is in contravention of subsection (1), the Controller shall recommend corrective measures which are to be undertaken within the specified timelines.

(3) Where a competent authority does not implement the corrective measures recommended under subsection (2), the Controller shall notify the Cabinet Secretary responsible for the competent authority of the contravention.

22. (1) The Controller shall conduct risk assessment in relation to food hazards and feed hazards.

Risk analysis.

(2) Where an overlap of functions is discovered upon conducting a risk assessment under subsection (1), the Controller may conduct risk management on an identified hazard.

(3) Upon conducting risk management under subsection (2), the Controller, shall communicate the risk of the hazard to the relevant competent authority.

(4) The Controller, in consultation with competent authorities shall develop and maintain food safety and feed safety risk profiles for every region of the country.

23. The Controller shall verify that a competent authority has an effective mechanism to enforce traceability requirements by persons conducting food business or feed business.

Traceability.

24. (1) The Controller in consultation with the relevant competent authorities shall designate a laboratory as a reference laboratory for confirmatory testing.

Reference laboratory.

(2) Upon receipt of an adverse report, the results of an audit conducted under this Act or a complaint by a consumer, the Controller shall conduct confirmatory testing at a designated laboratory for food and feed safety control.

25. (1) Every Competent Authority shall, at least thirty days before the end of a financial year, prepare and submit a report on the measures taken to ensure food safety or feed safety to—

Report on food safety and feed safety.

- (a) the relevant competent authorities; and
- (b) the Office of the Controller.

(2) On receipt of the reports under subsection (1), the Controller shall—

- (a) analyse the reports and provide feedback to the competent authorities; and
- (b) within three months after the end of a financial year, prepare an annual report on the state of food safety and feed safety in the Country.

(3) The Controller shall submit the report prepared under subsection (2)(b) to—

- (a) the Cabinet Secretary;
- (b) all the County Governors; and
- (c) the competent authorities.

(4) On receipt of the reports under subsection (3) (a), the Cabinet Secretary shall submit the reports to Parliament.

26. The Controller shall appoint such compliance officers as are necessary for the proper discharge of the

Appointment of compliance officers.

functions of the Controller from amongst the technical members of staff of the Office of the Controller.

27. (1) A compliance officer may at all reasonable times—

Powers of compliance officer.

- (a) access and inspect land, premises, vessels or vehicles and make such enquiries as are necessary;
- (b) inspect, examine and make copies of licences, registers, records and other documents relating to food and feed safety; and
- (c) take samples for analysis.

(2) A compliance officer shall identify himself or herself when exercising the powers under subsection (1).

PART V—FINANCIAL PROVISIONS

28. The funds of the Office of the Controller shall consist of—

Funds of the Office of the Controller.

- (a) moneys appropriated by Parliament;
- (b) any grants, gifts, donations or other endowments given to the Office of the Controller; and
- (c) such funds as may vest in or accrue to the Office of the Controller in the performance of its functions under this Act or any other written law.

29. The Controller may invest the funds of the Office of the Controller—

Investment of funds.

- (a) in trust funds or in any other securities; or
- (b) by depositing moneys not immediately required for the performance of the functions of the Controller,

with the approval of the National Treasury.

30. (1) At least three months before the commencement of each financial year, the Controller shall prepare the estimates of the revenue and expenditure of the Office of the Controller for that financial year.

Annual estimates.

(2) The annual estimates shall provide for all estimated expenditure of the Office of the Controller for the financial year concerned, and in particular shall provide for—

- (a) the payment of the salaries, allowances, pensions, gratuities, retirement benefits and other expenses

of the members of staff or agents of the Office of the Controller;

- (b) the payment of allowances and other expenses to the members of the staff of the Office of the Controller;
- (c) the acquisition, maintenance and repair of the property of the Office of the Controller; and
- (d) the creation of reserve funds for future or contingent liabilities for retirement benefits, insurance, maintenance or replacement of property, or such other matters as the Controller deems necessary.

(3) The annual estimates shall be submitted to the Cabinet Secretary for tabling in Parliament for approval.

31. The annual accounts of the Office of the Controller shall be prepared, audited and reported in accordance with the provisions of Article 226 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015.

Accounts and
audit.
No. 18 of 2012.
No. 34 of 2015.

PART VI—MISCELLANEOUS PROVISIONS

32. Where there is conflict between the provisions of this Act and the provisions of any written law with regard to the powers or functions of the Controller under this Act, the provisions of this Act shall prevail.

Act to supersede
other Acts.

33. (1) The Cabinet Secretary in consultation with the Controller, may make regulations for the better carrying into effect of this Act.

Regulations.

(2) Without prejudice to subsection (1), the regulations made under this section may provide for—

- (a) the conduct of risk analysis;
- (b) the traceability of food and feed;
- (c) third party authorization;
- (d) the designation of laboratories for official control; and
- (e) any other matter necessary for better realisation of the object of this Act.

34. The written law specified in the Second Schedule

Consequential
amendments.

are amended in the manner specified in the Schedule.

FIRST SCHEDULE

(s. 2)

COMPETENT AUTHORITIES

1. The Ministry responsible for matters relating to public health and medical services.
2. The Ministry responsible for matters relating to veterinary services, crop development and livestock development.
3. The Ministry responsible for matters relating to fisheries.
4. The Agriculture and Food Authority.
5. The Kenya Dairy Board.
6. The Kenya Plant Health Inspectorate Service.
7. The Pest Control Products Board.
8. The Fertilizer and Animal Foodstuff Board.
9. The National Biosafety Authority.
10. The Kenya Bureau of Standards.
11. The Veterinary Medicines Directorate.

SECOND SCHEDULE

(s. 34)

CONSEQUENTIAL AMENDMENTS

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
Public Health Act (Cap. 242)	s. 2	Delete the definition of the term "food".
	s. 2	inserting the following new definitions in proper alphabetical sequence— "Controller" means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; "food" means a processed, semi-processed or raw substance which is consumed by a human being and includes drinking water and a substance which has been used in the production, manufacture, preparation or treatment of food but does not include a cosmetic, tobacco or a substance used as drugs; and "multi-annual control plan" has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.
	s. 10	Insert the following new subsection immediately after subsection (2)— (2A) The function of the Medical Department shall include the— (a) conduct of audits on the traceability mechanisms established by persons who sell food or expose food for sale; and (b) implementation of the multi-annual control plan in the performance of its functions.
	New.	Insert the following new section

immediately after section 10—

Role of the
Controller.

10A. (1) Where the Director-General for Health determines that there is an overlap between his or her functions and the function of any other public institution in relation to food safety, the Director-General for Health may request the Controller to advise.

(2) Where a conflict arises between the Director-General for Health and any other public institution in the execution of his or her functions in relation to food safety, the Director-General for Health may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Director-General for Health to verify that the Director-General for Health has established a system for the effective official control for food safety.

The Food,
Drugs and
Chemical
Substances
Act
(Cap. 254)

s. 2

Delete the definition of the term “food”.

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act;

“food” means a processed, semi-processed

or raw substance which is consumed by a human being and includes drinking water and a substance which has been used in the production, manufacture, preparation or treatment of food but does not include a cosmetic, tobacco or a substance used as drugs; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

New. Insert the following new sections immediately after section 27—

Functions of
the Board.

27A. The functions of the Board shall be to—

- (a) conduct audits of the traceability mechanisms established by a person who labels, packages, sells or advertises any food; and
- (b) implement the multi-annual control plan in the performance of its functions.

Role of the
Controller.

27B. (1) Where the Board determines that there is an overlap in its functions and the function of any other public institution in relation to food safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety, the Board may request the Controller to advise.

(3) The Controller shall

conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety.

The Dairy s. 3
Industry Act
(Cap. 336)

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 17

Insert the following new paragraphs immediately after paragraph (e)—

(ea) to conduct audits of the traceability mechanisms established by a person who engages in the production, marketing, distribution and supply of dairy produce;

(eb) to implement the multi-annual control plan in the performance of its functions.

New.

Insert the following new section immediately after section 17—

Role of the Controller.

17A. (1) Where the Board determines that there is an overlap in its functions and the functions of any other public institution in relation to food safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other

public institution in the execution of its functions in relation to food safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety.

The
Fertilizers
and Animal
Foodstuffs
Act
(Cap. 345)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 2B Insert the following new paragraphs immediately after paragraph (f)—

(fa) conduct audits of the traceability mechanisms established by a person who engages in the production, manufacture, packaging, importation and marketing of animal foodstuffs;

(fb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 2B—

Role of the
Controller.

2BA. (1) Where the Board determines that there is an overlap in its functions and the functions of any other public institution in relation to food safety or feed safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety or feed safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety or feed safety.

The Pest Control
Products Act
(Cap. 346)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 6 Insert the following new paragraphs immediately after paragraph (b)—

(ba) to conduct audits of the traceability mechanisms established by a person

who deals in pest control products;

(bb) to implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 6—

Role of the Controller.

6A. (1) Where the Board determines that there is an overlap in its functions and the functions of any public institution in relation to food safety or feed safety, the Board may request the Controller to advise.

(2) Where a conflict arises between the Board and any other public institution in the execution of its functions in relation to food safety or feed safety, the Board may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Board to verify that the Board has established a system for the effective official control for food safety or feed safety.

The Meat Control Act
(Cap. 356) s. 2

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act;

“multi-annual control plan” has the meaning assigned to it in section 2 of the Food and Feed Safety Control Coordination

Act.

s. 3 (1) Insert the following new paragraphs immediately after paragraph (h)—

(ha) conduct of audits of the traceability mechanisms established by a person who operates a slaughterhouses or who engages in the production, manufacture, packaging, importation, exportation or marketing of meat products; and

(hb) implementation of the multi-annual control plan in the performance of its functions.

The
Standards
Act
(Cap. 496)

s. 2 Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 4 (1) Insert the following new paragraphs immediately after paragraph (d)—

(da) conduct audits of the traceability mechanisms established by persons who use of standardization marks and distinctive marks for foods or feeds; and

(db) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 4—

Role of the
Controller.

4A. (1) Where the Bureau determines that there is an overlap in its functions and the functions of any other public institution in relation to food safety or feed safety, the Bureau may request the Controller to advise.

(2) Where a conflict arises between the Bureau and any public institution in the execution of its functions in relation to food safety or feed safety, the Bureau may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Bureau to verify that the Bureau has established a system for the effective official control for food safety or feed safety.

The
Biosafety
Act, 2009
(No. 2 of
2009)

s. 2

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 7 (2)

Insert the following new paragraphs immediately after paragraph (b)—

(ba) conduct audits of the traceability

mechanisms established by a person who engages in the transfer, handling and use of genetically modified organisms;

(bb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 7—

Role of the Controller.

7A. (1) Where the Authority determines that there is an overlap in its functions and the function of any other institution in relation food safety or feed safety, the Authority may request the Controller to advise.

(2) Where a conflict arises between the Authority and any other public institution in the execution of its functions in relation to food safety or feed safety, the Authority may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Authority to verify that the Authority has established a system for the effective official control for food safety or feed safety.

The Kenya s. 2
Plant Health
Inspectorate
Service Act,
2012
(No. 54 of
2012.)

Inserting the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food

and Feed Safety Control Coordination Act;
and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 5 Insert the following new paragraphs immediately after paragraph (m)—

(ma) conduct audits of the traceability mechanisms established by seed merchants, seed growers, agents and any other person who may be required to be registered under the provisions of this Act or any of the laws specified in the First Schedule;

(mb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 5—

*Role of the
Controller.*

5A. (1) Where the Service determines that there is an overlap in its functions and the function of any other public institution in relation to food safety, the Service may request the Controller to advise.

(2) Where a conflict arises between the Service and any other public institution in the execution of its functions in relation to food safety or feed safety, the Service may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Service to verify that the Service has

established a system for the effective official control for food safety or feed safety.

The
Agriculture
and Food
Authority
Act, 2013
(No. 13 of
2013)

s. 2

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 4

Insert the following new paragraphs immediately after paragraph (e)—

(ea) conduct audits of the traceability mechanisms established by persons who engage in the production, processing, marketing, grading, storage, collection, transportation or warehousing of agricultural products excluding livestock products as may be provided for under the Crops Act; and

(eb) implement the multi-annual control plan in the performance of its functions.

New.

Insert the following new section immediately after section 4—

Role of the
Controller.

4A. (1) Where the Authority determines that there is an overlap in its functions and the function of any other institution in relation food safety, the

Authority may request the Controller to advise.

(2) Where a conflict arises between the Authority and any other institution in the execution of its functions in relation to food safety, the Authority may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Authority to verify that the Authority has established a system for the effective official control for food safety.

The Fisheries s. 2
Management
and
Development
Act, 2016
(No. 35 of
2016)

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 58

Insert the following new paragraphs immediately after paragraph (h)—

(ha) conduct audits of the traceability mechanisms established by a person who engages in the handling, landing, transportation, processing or marketing of fish or

fish products;

(hb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 58—

Role of the Controller.

58A. (1) Where the Committee established under section 58 determines that there is an overlap in its functions and the function of any other public institution in relation food safety, the Committee may request the Controller to advise.

(2) Where a conflict arises between the Committee established under section 58 and any other public institution in the execution of functions of the Committee in relation to food safety, it may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Committee established under section 58 to verify that the Committee has established a system for the effective official control for food safety.

The Water Act, 2016
(No. 43 of 2016)

s. 2

Insert the following new definitions in proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 12 Insert the following new paragraphs immediately after paragraph (f)—

(fa) conduct audits of the traceability mechanisms established by water services providers;

(fb) implement the multi-annual control plan in the performance of its functions.

New. Insert the following new section immediately after section 72—

Role of the
Controller.

72A. (1) Where the Regulatory Board determines that there is an overlap in its functions and the function of any other public institution in relation to food safety, the Regulatory Board may request the Controller to advise.

(2) Where a conflict arises between the Regulatory Board and any other public institution in the execution of the functions of the Regulatory Board in relation to food safety, it may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Regulatory Board to verify that the Regulatory Board has established a system for the effective official control for food safety.

The Health s. 2 Insert the following new definitions in

Act, 2017
(No. 21 of
2017)

proper alphabetical sequence—

“Controller” means the Food and Feed Safety Controller appointed under the Food and Feed Safety Control Coordination Act; and

“multi-annual control plan” has the meaning assigned to it under section 2 of the Food and Feed Safety Control Coordination Act.

s. 17 Insert the following new paragraphs immediately after paragraph (k)—

(ka) conduct audits of the traceability mechanisms established in exercising stewardship in setting policy guidelines and standards for human food consumption, dietetic services and healthy lifestyle;

(kb) implement the multi-annual control plan in the performance of his or her functions.

New. Insert the following new section immediately after section 17—

Role of the
Controller.

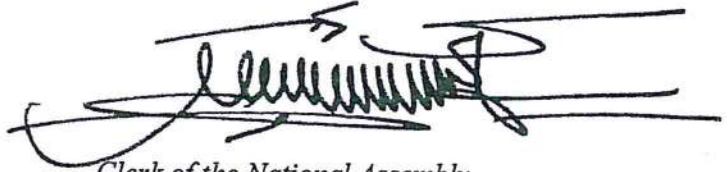
17A. (1) Where the Director-General determines that there is an overlap in his or her functions and the function of any other public institution in relation to food safety, the Director-General may request the Controller to advise.

(2) Where a conflict arises between the Director-General and any other public institution in the execution of his or her functions in relation to food safety, he or she may request the Controller to advise.

(3) The Controller shall conduct an audit on the mechanisms for food safety established by the Director-General to verify that the Director-General has established a system for the effective official control for food safety.

The Food and Feed Safety Control Co-ordination Bill, 2023

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 23rd August, 2023.

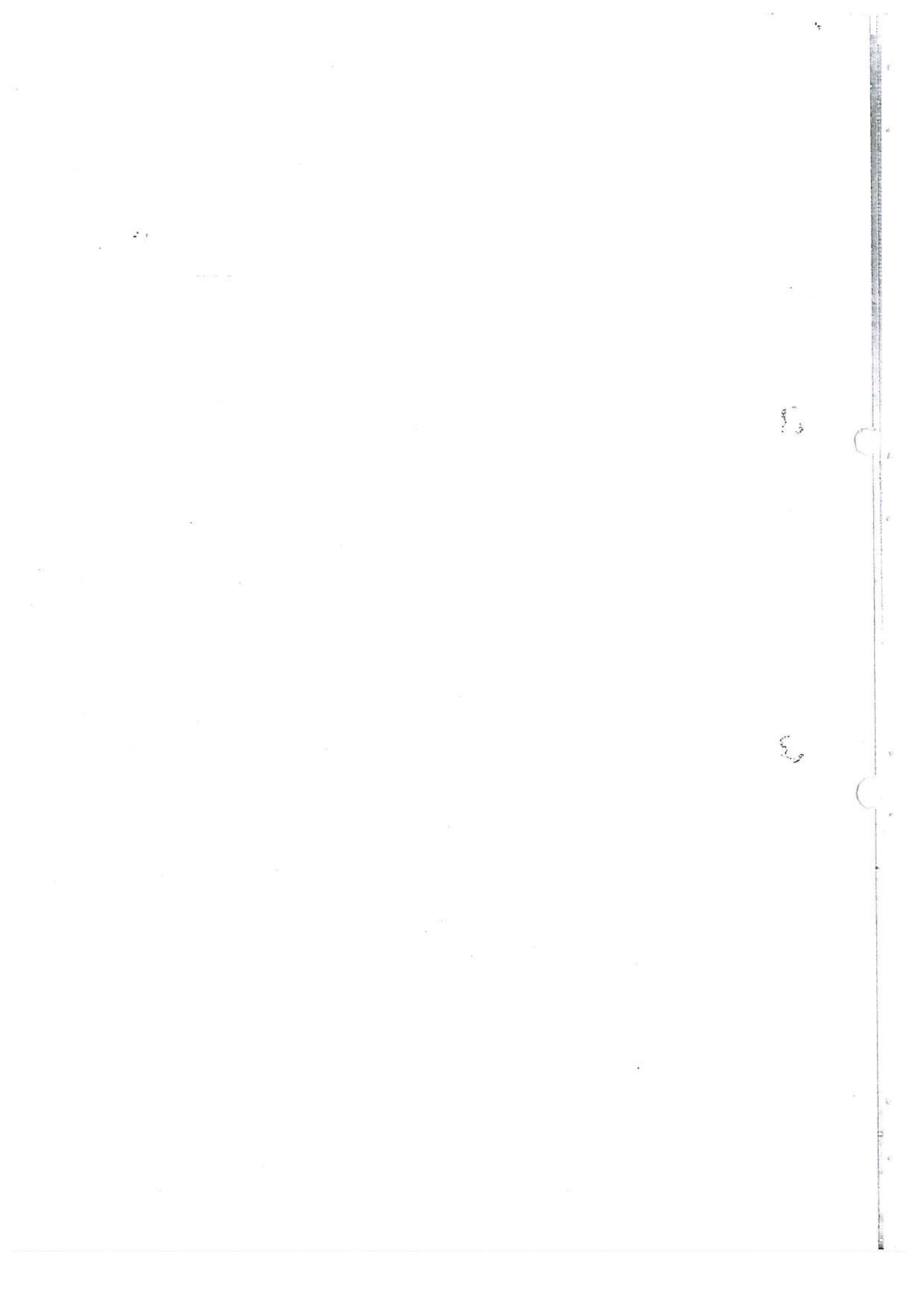


Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



Speaker of the National Assembly



APPENDIX 4

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At sittings of the Senate held on Tuesday, 19th September, 2023 the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Senate Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of written memoranda on email to the Clerk of the Senate on the address clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Tuesday, 3rd October, 2023 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Equalization Fund Appropriation Bill (Senate Bills No. 30 of 2023)	Standing Committee on Finance and Budget.	Financebudgetcomm.senate@parliament.go.ke
b)	The Food and Feed Safety Control Coordination Bill (National Assembly Bills No. 21 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries.	agriculturelfcommittee.senate@parliament.go.ke
c)	The Water (Amendment) Bill (National Assembly Bills No. 33 of 2023)	Standing Committee on Land, Environment and Natural Resources.	Landenvironcommittee.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.

APPENDIX 5

STAKE HOLDERS VIEWS ON THE FOOD AND
FEED SAFETY CORDINATION BILL, 2023.

NATIONAL ASSEMBLY BILLS NO. 21 OF 2023.

NOVEMBER 1, 2023
COMMITTEE ON AGRICULTURE LIVESTOCK AND FISHERIES
DIRECTORATE OF LEGAL SERVICES- SENATE.

NO CLAUSE STAKEHOLDER PROPOSAL RATIONALE OBSERVATION

NO.	CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE OBSERVATION AND DETERMINATION
1.	2 Interpretation	KAM	Replace the definition of Controller to mean an entity or individual responsible for overseeing and enforcing the provisions of this Act.	<ul style="list-style-type: none"> • to clearly define who the controller is, and under which ministry domiciled. • to clarify whether the office of the controller will report directly to the President as the appointing authority or to the Cabinet Secretary responsible for food safety. 	The word is well defined to mean the person appointed under clause 7. The purpose of the Bill is to form a body which will be tasked with coordinating agencies various authorities and agencies that are involved in the food and feed regulations.
2.	Clause 2 Interpretation "Cabinet Secretary"	KAM	Delete the clause.	<p>This proposal is based on the following justifications:</p> <ul style="list-style-type: none"> • The role of the Food and Feed Safety Controller will work efficiently if it is independent offering a guiding role in the performance of official controls by competent authorities. It is, therefore, important that the office is domiciled above ministries so that the role is not left to one ministry. • The objectives in this proposed Bill depict that the functions of the controller will cut across various ministries namely, Agriculture, Trade and 	The Committee may consider this proposal.

NO CLAUSE STAKEHOLDER PROPOSAL RATIONALE OBSERVATION

			Industrialization, Health, and water. <ul style="list-style-type: none"> Food safety is an essential part of food security. This implies that health, food safety, and food security are relevant to a wide range of SDGs whose monitoring and implementation is domiciled within the Office of the President. Similarly, we deem it fit that the office of the Controller should be domiciled under the office of the President to enable it to execute its mandate effectively. 	
3.	CLAUSE 4- Application of the Act.	KEPHIS	Amend clause 4 to include the County Governments on the scope of application of the Act.	The Committee may consider this proposal. The act has several provisions in regards to the functions of the county governments.
4.	Clause 9 Functions of the food and feed safety controller	KAM	Clause 9 (i) To add a function on review of mandates of competent regulatory authorities to harmonize functions and to provide a report to the Cabinet Secretary.	The Bill provides under clause (9) that the controller shall coordinate competent authorities through implementation of multi control plan. Under clause 19 the Controller will give advice where an overlap occur.

NO CLAUSE

STAKEHOLDER

PROPOSAL

RATIONALE

OBSERVATION

				function be to conduct regular reviews of the same. This will support the improvement of the business regulatory environment in the country.	
5.	Clause 16 Food and feed safety by County Governments	KEPHIS	Amend to provide for the role of competent authorities in relation to International trade which cuts across all countries.	International trade cuts across all countries.	The role of competent authorities is set out in different legislations that establish the authorities. The role of the Controller is to verify whether competent authorities meet international standards.
Clause 16 Food and feed safety by County Governments	KAM	Delete of Clause 16. Which provides for- Clause 16 1 (b) License and excise official control of persons who conduct Food and feed safety by County Governments Clause 16 1 (b) License and excise official control	<ul style="list-style-type: none"> • It will create another layer of licensing which would be duplication and an added burden on the cost of doing business. • A single entity is better placed to issue licences. • Counties currently lack the capacity to inspect and undertake testing of food and feedstuff and to write reports This capacity needs to be built first.	<ul style="list-style-type: none"> • To provide the clarity in the handling of the state of food and feed safety report at the County level. 	This role is currently being undertaken by the County Governments. The Bill is just setting out the functions for purposes of clarity.
Clause 16	COG	On submission of report Amend to put additional requirement for the report to be submitted to the Governor and the County assembly.			The report will be prepared by the Governor who is the accounting officer to

NO CLAUSE STAKEHOLDER PROPOSAL RATIONALE OBSERVATION

6.	Clause 19- Overlap of functions of a competent authority.	KEPHIS	'Amend to obligate the Controller to consult with the competent authorities and county government in instances where an overlap occurs in performance of their functions under their respective legislations''	Food safety may cut across the county governments and the competent authorities. Therefore, there could be conflict between the county governments and the Competent Authorities which is not covered by the Bill.	the County Government. However, the Committee may consider the proposal to submit reports to the County assembly. The committee may consider this proposal to provide for consultation with with County governments.
"		KAM	Amend Clause 19 to provide more clarity on the extent of the duplication and process to resolve the same.	•The competent authorities are already set independent bodies • We, therefore, propose for the procedure or guidelines on resolving overlaps or conflicts in the mandate to be anchored in the law to support implementation.	This can be left to regulation.
7.	Clause 20 – Audit of food and feed safety mechanism	COG	Amend to obligate the Controller to present the report to the responsible Cabinet Secretary and Governors.	To provide for the sharing of the audit report to the respective County Governors for effective implementation at the county level.	This proposal is already covered in the Bill under clause 20(3)
8.	Clause 21- Verification audit.	KAM	Introduce a new paragraph 21 (2) to provide for regulations to provide clarification on the compensation mechanism.	• The provision of Clause 21 (1) does not provide clarity on the extent of the compensation mechanism and there is a need for more clarification on the type	The purpose of the clause is conduct audit on competent authorities to ascertain

NO CLAUSE STAKEHOLDER PROPOSAL RATIONALE OBSERVATION

NO	CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	OBSERVATION
9.	Clause 22- Risk Analysis	KEPHIS	Clause 22 contravenes Clause 9 of this Bill and creates overlaps with competent authorities. We therefore propose the entire article 22 to be deleted.	and amount of compensation, the payer, and the recipient of the compensation. Risk assessment is a technical function domiciled in different legislation of competent authorities carrying out food and feed safety official controls. Also, it is not a function of Food Controller as spelled out in article 9 of this bill.	their efficiency and effectiveness. The committee may consider re-wording of the clause so that the function of the controller will be to review the food assessment measures that are undertaken by competent authorities.
10.	Clause 23 - Traceability	KAM	Introduce a new sub-clause to provide for the specific traceability requirements that food and feed business operators will need to adhere to .	<ul style="list-style-type: none"> Food and Feed business operators will be in a better position to comply with the traceability requirements if they are aware of them beforehand. To anchor them in the law and protect food and feed business operators from requirements that may be imposed upon them without their input. 	The intention of the Bill is to ensure compliance by competent authorities with the requirements set by the enabling legislations and not to set new requirements. These requirements already exist in different acts and regulations.
11.	Clause 24- Reference to a laboratory.	KAM	<ul style="list-style-type: none"> Introduce a new sub-clause to include a mechanism to monitor necessary public structures testing to facilitate businesses. The Controller in consultation with the relevant 	<ul style="list-style-type: none"> businesses continued to be impacted by the absence of adequate testing facilities in the country to facilitate their production processes. This has 	The clause provides for designating independent laboratories to conduct test incase of an adverse audit report.

OBSERVATION

RATIONALE

PROPOSAL

STAKEHOLDER

NO

NO	CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	OBSERVATION
12.	Clause 27 Powers of the compliance officer		Delete Clause 27.	<p>led to delays and affected the ease of doing business.</p> <ul style="list-style-type: none"> To offer information on the criteria for designating official testing laboratories is in line with the accredited testing requirement by relevant authorities. The role of the Office of the Controller is overarching. It provides for the effective coordination of competent authorities in the control of food and feed safety and therefore should not be exciting operational roles such as inspection, and enforcement. 	Therefore the purposes of designating the laboratories is to establish an avenue for review.
13.	Clause 33- Regulations	COG	Amend to provide for Consultation with COG when developing regulations. Replace the word 'regulations' with 'guidelines' to avoid duplication of development of regulations by relevant authorities.	<p>To provide for an intergovernmental consultation</p> <ul style="list-style-type: none"> All the competent authorities regulating food safety have their own regulations and requiring additional regulations will increase the regulatory burden for businesses in the country. All the competent authorities regulating food safety have their own regulations, some of which touch on the proposed areas under clause 33. 	The regulations will have different enabling laws and therefore the issue of confusion does not arise.
		KAM	Delete Clause 33 to avoid duplication of already existing national regulations on the conduct of risk analysis, traceability, and designation of laboratories.		The regulations are only to the extent of the provision of this act in terms.

NO CLAUSE STAKEHOLDER PROPOSAL RATIONALE OBSERVATION

14.	First Schedule	COG	Ament to include Respective Departments of the County Governments as one of the competent authorities.	To provide for inclusion of the County Governments as Competent Authorities on matters of feed and food safety within their jurisdiction.	This may cause some conflict with the functions and independence of the County Governments.
15.	Schedule 2- Consequential amendments on KEPHIS ACT NO 54/12.	KEPHIS	we propose (mb) to be inserted immediately after paragraph (c) of KEPHIS Act, which is on support administration and enforcement of food safety measures to read as: <ul style="list-style-type: none"> • As captured in the present Bill, regulation of Food safety should always be done separately from regulation of medicines as guided by the SPS Agreement of WTO and other international standard setting bodies. • The Bill is properly drafted to address the current challenges in food safety regulation devoid of any business interests and is backed by a sound Food Safety Policy. • The 	The amendment proposed at M of KEPHIS ACT to insert (mb) is not in line with KEPHIS functions (m) which is on registration and licensing of seed merchants, growers and any other person who requires registration.	
16.	General Comments	MOALD and KVBS	<ul style="list-style-type: none"> • The Bill is properly drafted to address the current challenges in food safety regulation devoid of any business interests and is backed by a sound Food Safety Policy. • The 		
	General Comment.	MOALD		While the choice of which ministry takes the lead in food control and food safety is determined by local politics, the FAO has put a strong case for the ministry responsible for agriculture as it is able to address food safety issues along the entire food production chain from farm to fork. Many hazards enter the food chain during the production process, which should be controlled through the application of good agricultural	

OBSERVATION

RATIONALE

PROPOSAL

NO CLAUSE STAKEHOLDER

NO CLAUSE	STAKEHOLDER	PROPOSAL	OBSERVATION
			<p>practices, good manufacturing practices and good hygiene practices. Generally, the ministry responsible for agriculture has the necessary skills and knowledge to build the required safety and quality into the food product right from its primary production. And because agricultural exports are often a critical part of many countries' (especially developing countries') foreign exchange earnings, there are strong justifications for the agricultural sector making significant investments to ensure that food products meet established standards. Involvement of the ministry responsible for agriculture is also a better way to secure farmers' capital investments, in that preventive measures are applied, and unsafe products can be removed earlier along the food chain.</p>

LIST OF STAKEHOLDERS.

1. Council County of Governors (COG).
2. Ministry of Agriculture and Livestock Development. (MOALD).
3. Kenya Plant and Health Inspectorate Service (KEPHIS).
4. Kenya Veterinary Board. (KVB).
5. Kenya Association of Manufacturers (KAM).

APPENDIX 6



COUNCIL OF GOVERNORS

**LEGISLATIVE MEMORANDUM ON THE FOOD AND FEED SAFETY CONTROL
CO-ORDINATION BILL, 2023**

TO

THE SENATE

FROM

**THE COUNCIL OF GOVERNORS'
AGRICULTURE, LIVESTOCK AND COOPERATIVES COMMITTEE**

And

THE COUNCIL OF GOVERNORS' HEALTH COMMITTEE

Introduction

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that the legislation is cognizant of the fact that agriculture is a fully devolved function under the Part 2 of the Fourth Schedule to the Constitution; and

Aware of the need for coordinated action and approach between the two levels of government in food and feed safety control for the benefit of all Kenyans.

Having reviewed the **Food and Feed Safety Control Co-ordination Bill, 2023**, in its entirety, the Council of Governors recommends the following amendments for better implementation of the proposed Act by the County Governments.

REGULATION	PROVISION OF THE REGULATION	PROPOSED AMENDMENT	JUSTIFICATION
16. Functions of the county government ✱	16(2) Each County Government shall at least thirty days before the end of a financial year, prepare an annual report on the state of-food safety and feed safety in the respective County and submit the report to the Controller.	Amend to read as follows: 16(2) Each County Government shall at least thirty days before the end of a financial year, prepare an annual report on the state of-food safety and feed safety in the respective County and submit the report to the <u>respective County Governor</u> and a copy to the Controller. (3). <u>The respective County Governor shall submit the report to the County Assembly.</u>	To provide the clarity in the handling of the state of food and feed safety report at the County level.
20. Audit of food safety or feed safety mechanisms	20(3) Upon conducting an audit under sub-section (1), the Controller shall prepare an audit report and submit the audit report to the Cabinet Secretary responsible for the competent authority.	Amend to read as follows: 20(3) Upon conducting an audit under sub-section (1), the Controller shall prepare an audit report and submit the audit report to the Cabinet Secretary responsible for the competent authority and <u>all the County Governors.</u>	To provide for the sharing of the audit report to the respective County Governors for effective implementation at the county level.

33. Regulations	33(1). The Cabinet Secretary In consultation with the controller, may make regulations for better carrying into effect this Act.	Amend to read as follows: 33(1). The Cabinet Secretary In consultation with the controller and County Governments, may make regulations for better carrying into effect this Act.	To provide for an intergovernmental consultation with the County Governments in the making of the regulations
FIRST SCHEDULE Competent Authorities		Amend to include the word " <u>11. Respective Departments of the County Governments</u> " immediately after the words " <u>10. The Kenya National Bureau of Standards</u> "	To provide for inclusion of the County Governments as Competent Authorities on matters of feed and food safety within their jurisdiction.

CONCLUSION

Agriculture, including— crop and animal husbandry as well as County health services, including, in particular, promotion of primary health care; licensing and control of undertakings that sell food to the public; veterinary services (excluding regulation of the profession); among others are functions of the County Government under the Fourth Schedule to the Constitution. It is therefore imperative that the proposed legislation recognizes the County Governments as competent authorities for purposes of coordination of efforts between the National and County Governments in the promotion, control and regulation of food and feed safety in the country.

REPUBLIC OF KENYA



**MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT
STATE DEPARTMENT FOR LIVESTOCK DEVELOPMENT**

**MEMORANDUM ON THE FOOD AND FEED SAFETY CONTROL
COORDINATION BILL, 2023 (NATIONAL ASSEMBLY BILL NO.21 OF
2023) PRESENTED TO THE STANDING COMMITTEE ON
AGRICULTURE LIVESTOCK AND FISHERIES OF THE SENATE**

OCTOBER 2023

1.0 ISSUE

The Executive forwarded the Food and Feed Safety Control Coordination Bill to Parliament to process after going through extensive stakeholder engagement locally and internationally. The Bill seeks to provide for the coordination of the public institutions in the control of food and feed safety from farm to fork; to establish the office of the Food Safety Controller; to provide for the role of the County Governments in food and feed safety and for connected purposes.

2.0 BACKGROUND

2.1 Food safety means all measures put in place to ensure that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use. It is central to consumer safety, public health, food security and key to facilitation of local and international trade. Access to safe food is a fundamental right as prescribed in Article 43 as read with Article 46 of the Constitution of Kenya. Food safety needs to be assured by protecting the food supply from all types of hazards that may occur during all stages of food production, including growing, harvesting, processing, transporting, retailing, distributing, preparing, storing and consumption.

2.2 Kenya is a signatory member to the World Trade Organization (WTO). Kenya especially the Agreement on Application of Sanitary and Phytosanitary Measures (SPS Agreement) on which basis we set our own food safety policies, laws and regulations, provided they are not in conflict with the provisions of the SPS Agreement.

2.3 Ensuring that Food is safe is a collective responsibility and in Kenya the Food Safety control is managed using several laws implemented by three key Ministries: Ministry of Agriculture, Livestock, Fisheries and Corporate, Ministry of Health and the Ministry of Trade and Industrialization. The existing food safety policy and laws have failed to harmonize operations of the different actors and agencies. This has hampered effective coordination of food safety in the country leading to persistent lapses in food control.

2.4 Food Safety regulation runs along the farm to fork continuum where various competencies are necessary to play their role in assuring food safety through all stages of production up to sale.

2.5 International good practice does not mix food safety regulation with medicines regulation. Human medicines are not part of food safety. Veterinary medicines are only part of food safety as far as those used on food animals since they can be consumed in milk and meat if appropriate withdrawal periods are not observed. Global food safety standards are based on the Codex Alimentarius Commission (CAC) which is a joint initiative between the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). The International Standards supporting the implementation of the food safety measures are based on the World Health Organization (WHO), World Organization for Animal Health (WOAH) and the International Plant Protection Convention (IPPC) for humans, animals, and plants respectively. The Secretariat for CAC is hosted by FAO.

3.0 ROLE OF VARIOUS MINISTRIES IN FOOD SAFETY

While the choice of which ministry takes the lead in food control and food safety is determined by local politics, the FAO has put a strong case for the ministry responsible for agriculture as it is able to address food safety issues along the entire food production chain from farm to fork. Many hazards enter the food chain during the production process, which should be controlled through the application of good agricultural practices, good manufacturing practices and good hygiene practices. Generally, the ministry responsible for agriculture has the necessary skills and knowledge to build the required safety and quality into the food product right from its primary production. And because agricultural exports are often a critical part of many countries' (especially developing countries') foreign exchange earnings, there are strong justifications for the agricultural sector making significant investments to ensure that food products meet established standards. Involvement of the ministry responsible for agriculture is also a better way to secure farmers' capital investments, in that preventive measures are applied, and unsafe products can be removed earlier along the food chain.

4.0 DEVELOPMENT OF THE FOOD SAFETY POLICY AND FOOD & FEED SAFETY CONTROL COORDINATION BILL

4.1 The two Ministries of Health, Agriculture and Livestock Development developed a road map upon which to deliver a more comprehensive Food Safety Policy and Bill. This was to be followed by a series of stakeholder engagements, call for public comments through newspapers and a benchmarking trip to the United States of America (USA) and Denmark. The USA and Danish visits were designed to specifically understand their system for food regulation.

4.2 The process of developing the policy and bill was however suffered a setback in March 2020 following the COVID 19 pandemic. However, from early 2021 to 2022, the multistakeholder technical team developed the Draft Policy and Bill which was taken through stakeholder engagement including presentation to the Departmental Committees on Agriculture and Livestock of both levels of Parliament before subsequent validation.

5.0 RECOMMENDATION

- As captured in the present Bill, regulation of Food safety should always be done separately from regulation of medicines as guided by the SPS Agreement of WTO and other international standard setting bodies.
- The revised Food Safety Policy and Food & Feed Safety Control Coordination Bill published by Parliament should be fast tracked to bequeath Kenya a modern food safety law and policy that guarantees consumer safety and facilitates trade.
- The current Food and Feed Safety Control and Coordination Bill is properly drafted to address the current challenges in food safety regulation devoid of any business interests and is backed by a sound Food Safety Policy.



Dr. Joshua Chepchieng' PhD, MBS
For: PRINCIPAL SECRETARY

STATE DEPARTMENT OF CROP DEVELOPMENT SUBMISSION ON THE FOOD & FEED SAFETY CONTROL COORDINATION BILL (NATIONAL ASSEMBLY BILLS NO. 33 OF 2023) DURING STAKEHOLDER CONSULTATIONS BY THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES – THE SENATE

Introduction

Food safety is central to public health, poverty reduction and sustainable development. Access to safe food is a fundamental right as prescribed in Article 43 as read with Article 46 of the Constitution of Kenya. Over the years concerted efforts and initiatives have been directed at addressing improvement of food safety.

Protecting consumers from contaminated or unsafe foods and feeds cost a significant amount of expenditure in any food and feed industry business. These preventative measures are both time and resource-intensive, but constitute an essential part of doing business in the food and feed industry.

Cognizant that food is as safe as its produced, we appreciate that contamination may occur at any point along the food value chain. Ensuring that Food is safe is a collective responsibility and various agencies under different ministries and using different laws manage the Food Safety System in Kenya. However, the key Ministries are Ministry of Agriculture and Livestock Development, Ministry of Health, Ministry of Blue Economy and Mining (Fisheries) and the Ministry of Investment and Industrialization.

Rationale of the Food and Feed Safety Bill

Ensuring food and feed safety and product quality is a demanding, ongoing undertaking that affects every level of the food and feed supply chain. In order to prevent recalls and improve productivity, food and feed processors and manufacturers need an effective food and feed safety management system.

The EU Legislation 178, which strengthened food safety requirements, necessitated Kenya having a coordination mechanism for food safety system. As early as 2013 the need to review existing food safety legislative framework and creation of a body to direct and coordinate all

Government activities in the field of food safety in close collaboration with all relevant governmental and non-governmental sectors had been provided for in the Food Safety Policy of 2013.

Currently, the coordination on food and feed safety is by a joint committee of the Ministry of Health and Ministry of Agriculture known as **National Food Safety Coordinating Committee**. This committee lacks the legal mandate to handle food safety matters and is therefore very ineffective.

The Food Safety Policy 2013 has since been reviewed to establish and maintain a rational, integrated farm-to-fork food safety system that harmonizes inter-agency efforts, minimizes inter-agency conflict and overlap, establish a coordination mechanism. This will ensure the protection of public safety and food trade consistent with World Trade Organization (WTO) agreement on the Sanitary and Phytosanitary (SPS) Protocol measures and other international requirements.

This Bill comprehensively address food safety challenges based on policy with a targeted scope and provisions with a focus on effective implementation based on the following considerations:

- a) Food is safe when produced and handled using appropriate measures; any risks to food safety are identified continuously and addressed expeditiously along the value chain from farm to fork;
- b) Need for other foods and nonfood products relevant to food safety being produced and used in adherence to safety standards;
- c) Need to utilize the respective competencies required for food safety regulation along the value chain.
- d) Need to comply with International Standards based on the FAO/WHO-Codex Alimentarius Commission (CAC) for food safety, the World Health Organization (WHO) for human health, the International Plant Protection Convention (IPPC) for plant health and the World Animal Health Organization (OIE) for animal health and welfare. This is enforceable globally through the Sanitary and Phytosanitary (SPS) Protocol of the World Trade Organization (WTO) agreement to which Kenya is signatory.

The coordination and oversight mechanism among the institutions that deal with food safety control is currently inadequate. This has created

lapses and overlaps of mandates with ensuing inefficiencies in food safety system.

The review of existing statutes will establish a coordination requirement with the regulatory agencies. It will also require review of existing statutes to align with the requirements that food business operators take responsibility of the safety of the food they handle, existence of gaps and devolved system of government. Regulatory agencies should take a risk-based approach to the regulation of food within their mandate.

Recommendation

Food safety needs to be organized in a more coordinated and integrated way to deliver a high level of public health and consumer protection in accordance with both local and international requirements. Food systems should ensure that food and feed is produced and distributed through a safe process that results in wholesome products fit for human consumption.

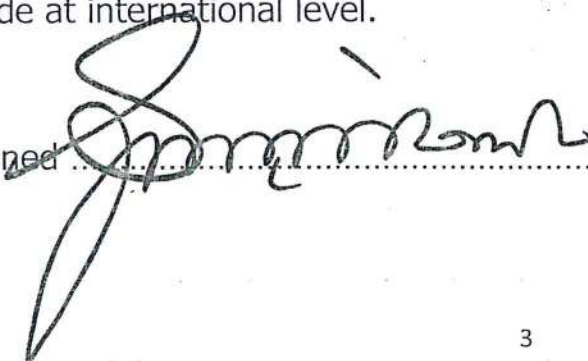
Increased demand for food coupled with reduction of arable land and water has led to adoption of technologies of agricultural production and enhanced trade, which requires adequate monitoring of biological, chemical, and physical food hazards.

Coordination of regulatory agencies, enforcement of existing legislation and accountability, which the Bill seeks to provide, by all along the food value chain will enhance Kenya food safety.

Conclusion

We support the Bill and request the Senate to approve it for the betterment of management of food in the Country and to enhance food trade at international level.

Signed



Date

16/10/2023



**KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)
HEADQUARTERS - Oloolua Ridge, Karen**

P. O. Box 49592 00100 GPO Nairobi, Kenya, Tel: 0206618000 / 0709891000 E-mails:director@kephis.org
Website: www.kephis.org

**KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)
SUBMISSION ON THE FOOD AND FEED SAFETY CONTROL
CO-ORDINATION BILL, 2023 BEFORE THE SENATE THE
STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND
FISHERIES ON 17TH OCTOBER, 2023**

A Bill for

AN ACT of Parliament to provide for the coordination of the public institutions in the control of food and feed safety; to establish the Office of the Food Safety Controller; to provide for the role of County Governments in food and feed safety; and for connected purposes

Introduction

KEPHIS supports enactment of this bill to an Act of Parliament of Kenya. The Act will address several gaps within the Kenyan Food Control System key among them being the coordination of several competency authorities who have a role in food and feed safety.

KEPHIS hereby presents submissions that will enhance operationalization of the Act as follows:

Section
1. Article 4:

Food safety cut across the county governments and the competent authorities. The Competent Authorities and the County Governments are responsible for the implementation of this Act.

Therefore, we propose amendment of article 4 which reads "This act shall apply to every competent authority and every person conducting food business or feed business" to read;

"This act shall apply to every competent authority, County Governments and every person conducting food business or feed business"

2. **Section 16** on Food Safety and Feed Safety by County Governments talks about the function of county governments with respect to food safety and feed safety in respective counties shall be as give in 16 1 a-J.

However, the role of competent authorities in relation to International trade which cuts across all counties has not been defined.

Therefore, we propose to improve Part III to cover competent authorities and County Governments. Article 16 (1) to cover Competent Authorities and 17 (1) to cover the County Governments where the current 16 (1 and 2) will be renumbered as 17 (1 and 2) to read as follows:-

PART III: FOOD SAFETY AND FEED SAFETY BY COMPETENT AUTHORITIES AND COUNTY GOVERNMENTS

16 (1) The functions of competent authorities in relation to food safety and feed safety in respect to internal trade shall be to—

- (a) implement and enforce food safety and feed safety measures for import and export;
- (b) license and exercise official control of persons who conduct international food business and feed business;
- (c) conduct capacity building on food safety and feed safety;
- (d) conduct public awareness on matters food safety and feed safety;
- (e) prepare National food safety and feed safety reports.
- (g) conduct audits to ascertain compliance and enforcement of food safety and feed safety measures;
- (h) coordinate food safety and feed safety activities;
- (i) regulate and enforce official control; und
- (J) monitor und evaluate implementation of the multi annual control plum

3. Article 19:

Food safety may cut across the county governments and the competent authorities. For example, production for export commodities happens in the counties while their export is regulated by national competent authorities; Similarly, consumption of imported foods happens at the counties while regulations happen at National and counties.

Therefore, there could be conflicts between the county governments and the Competent Authorities that is not covered by the bill.

We therefore propose to review article 19 which reads "The Controller in consultation with the competent authorities shall advise where an overlap occurs in performance of their functions under their respective legislations" to read ;

"The Controller in consultation with the competent authorities and county government shall advise where an overlap occurs in performance of their functions under their respective legislations"

4. Article 22:

Risk assessment is a scientific based process which consist of identification, characterization and assessment of exposure to and hazard and characterization of the risk.

Risk assessment is a technical function domiciled in different legislation of competent authorities carrying out food and feed safety official controls. Also it is not a function of Food Controller as spelled out in article 9 of this bill.

Therefore, the entire article 22 contravenes Article 9 of this bill and creates overlaps with competent authorities.

We therefore propose the entire article 22 to be deleted

5. MISCELLANEOUS PROVISIONS/ Second schedule- Consequential Amendments. KENYA PLANT HEALTH INSPECTORATE SERVICES Act, 2012(No, 54 of 2012)

s.2 insert the following new paragraph immediately after paragraph (m)-

The amendment proposed at M of KEPHIS ACT to insert (mb) is not in line with KEPHIS functions (m) which is on registration and licensing of seed merchants, growers and any other person who requires registration.

Therefore, we propose (mb) to be inserted immediately after paragraph (c) of KEPHIS Act, which is on support administration and enforcement of food safety measures to read as:

(ca) implement the multi annual control plan in the performance of its functions



MEMORANDUM ON THE FOOD AND FEED SAFETY CONTROL CO-ORDINATION BILL, 2023

Submitted to

**THE CLERK
SENATE**

PARLIAMENT BUILDINGS P O BOX 41842-00100, NAIROBI

Presented By

**ANTHONY MWANGI
CHIEF EXECUTIVE**

THE KENYA ASSOCIATION OF MANUFACTURERS

OCTOBER 2023 – NAIROBI, KENYA

1.0 INTRODUCTION

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through its strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value-added industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification, and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya playing a critical role. The EAC region integration is expected to spur the manufacturing sector to enhance intra-EAC trade in value-added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Services ranging from Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood, and Furniture; Electric and Electronic; Building, Mining and Construction; Agro- Processing.

2.0 SUMMARY OF THE PROPOSALS ON THE BILL

Below is a summary of the issues proposed in the Bill:

1. **Food and Feed Safety Controller:** Providing clarity on the food and feed safety controller's structure of reporting including integration within the existing food and feed safety regulatory environment. At the national and county level. We propose to have an independent structure outside the Ministries or reporting at an intergovernmental level. The County Government has a critical role in food and feed safety, and this needs to be considered.
2. **Ease and cost of doing business and continuous review of the regulatory environment:** The Bill needs to underpin the need to enhance the ease of doing business in the food and feed safety environment and the need to regularly undertake a review of mandates of competent regulatory authorities. This will ensure that the framework facilitates businesses in the country and supports making Kenya an attractive destination for investment. The need to streamline the duplication of mandates and continuous review of the environment is required. It will also ensure the cost of doing business is monitored.

3.0 PROPOSED AMENDMENTS TO THE FOOD AND FEED SAFETY CONTROL COORDINATION BILL, 2023

In response to the call for public participation in the afore-referenced Bill, we propose the following amendments to be considered before the Bill is enacted.

KAM MEMORANDUM ON THE FOOD AND FEED SAFETY CONTROL COORDINATION BILL, 2023		
CLAUSE	PROPOSAL	JUSTIFICATION
1. Clause 2 Interpretation “Controller” means a Food Safety Controller appointed under section 7.	We propose to replace the definition of the word controller under Clause 2 as follows: To read as follows: “Controller” refers to the entity or individual responsible for overseeing and enforcing the provisions of this Act. Delete Clause 2	This proposal is based on the following justifications: <ul style="list-style-type: none"> • There is a need to clearly define who the controller is, and under which ministry or agency of the Government they are domiciled. • The Bill needs to clarify whether the office of the controller will report directly to the President as the appointing authority or to the Cabinet Secretary responsible for food safety.
2. Clause 2 Interpretation “Cabinet Secretary” means the cabinet secretary responsible for food safety		This proposal is based on the following justifications: <ul style="list-style-type: none"> • The role of the Food and Feed Safety Controller will work efficiently if it is independent, overarching in the country offering a guiding role in the performance of official controls by competent authorities. It is, therefore, important that the office is domiciled above ministries so that the role is not left to one ministry. • The objectives in this proposed Bill depict that the functions of the controller will cut across various ministries namely, Agriculture, Trade and Industrialization, Health, and water. • Food safety is an essential part of food security.

	<p>this section may provide for --</p> <p>a) The conduct of Risk Analysis.</p> <p>The traceability of food.</p> <p>The designation of laboratories for official control (d)...</p>	<p>authorities such as Hazard Analysis Critical Control Point (HACCP) and food traceability.</p> <ul style="list-style-type: none"> • Inclusion of provisions requiring similar regulations will lead to duplication of regulations and affect the regulatory environment. • We therefore propose harmonization of the proposed regulations to avoid duplication of roles and ambiguity in the implementation of the Act.
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Ref: KVB/GEN/Vol.IX/67

Date: 17th October, 2023

The Clerk of the Senate
The Senate
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI

RE: MEMORANDUM ON THE FOOD AND FEED SAFETY CONTROL COORDINATION BILL, 2023 (NATIONAL ASSEMBLY BILL NO.21 OF 2023) PRESENTED TO THE STANDING COMMITTEE ON AGRICULTURE LIVESTOCK AND FISHERIES OF THE SENATE

Kenya Veterinary Board (KVB) wishes to provide feedback on the proposed Food and Feed Safety Control Co-ordination Bill, 2023.

KVB is a regulatory Agency mandated to ascertain provision of quality veterinary services through "exercising general supervision and control over the training, business, practice and employment of Veterinary Surgeons and Veterinary Paraprofessionals in Kenya and advice the government in relation to all aspects thereof". KVB established by the Veterinary Surgeons and Veterinary Paraprofessionals (VSVP) Act of 2011 is central in regulating the delivery of veterinary services countrywide. The scope of regulation of veterinary practice includes veterinary clinical & surgical practice, veterinary medicines regulation, animal health related training, certification of foods of animal origin and the rest of the veterinary domain. We have reviewed the proposed Bill and are in full support as the Bill seeks to provide for the coordination of the public institutions in control of food and feed safety from farm to fork; to establish the office of the Food Safety Controller; to provide for the role of the County Governments in food and feed safety and for connected purposes.

Considering that;

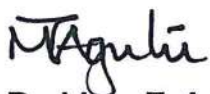
1. Kenya as a signatory to the World Trade Organization (WTO) must abide by the rules-based trade under the World Trade Organization (WTO) being a signatory to all treaties and agreements of the WTO, including the Agreement on (Application of Sanitary and Phytosanitary Measures (SPS Agreement)). Under the SPS Agreement, Kenya has the right to set own laws and regulations, provided they are not in conflict with the provisions of the SPS Agreement. *Supersedes to the constitution*
2. Food safety means all measures put in place to ensure that food will not cause harm to the consumer when it is prepared and/or eaten according to its

intended use. It is central to consumer safety, public health, food security and key to facilitation of local and international trade. Access to safe food is a fundamental right as prescribed in Article 43 as read with Article 46 of the Constitution of Kenya. Food safety needs to be assured by protecting the food supply from all types of contamination and hazards that may occur during all stages of food production, including growing, harvesting, processing, transporting, retailing, distributing, preparing, storing and consumption.

3. International good practice does not mix food safety regulation with medicines regulation. In food safety, the SPS Agreement encourages WTO members to base their national measures on the international standards, guidelines and recommendations adopted by the Codex Alimentarius Commission (CAC) whose secretariat is hosted by Food and Agriculture Organization. For animal and plant life and health, measures are to be based on those standards adopted by Food and Agriculture Organization (FAO) from the World Organization for Animal Health (WOAH) and the International Plant Protection Convention (IPPC), respectively. The Regulations of medicines is not under the SPS agreement under which Food safety guidelines and regulations are set by the WTO. Veterinary medicines are only part of food safety as far as those used on food animals since they can be consumed in milk and meat if appropriate withdrawal periods are not observed.

In this regard, Kenya Veterinary Board appreciates the role of County Governments in food and feed safety and recommends as follows:

1. The regulation of Food safety should be done separately from regulation of medicines as guided by the SPS Agreement of WTO and other international standard setting bodies as captured in the present Bill.
2. The revised Food Safety Policy and Food & Feed Safety Control Coordination Bill published by Parliament should be fast tracked to guarantee consumer safety and facilitate trade.
3. The Bill addresses the current challenges in food safety regulation devoid of any business interests and is backed by a sound Food Safety Policy.



Dr. Mary T. Agutu

Ag. Chief Executive Officer

