

## **COMMENTS ON HORTICULTURAL CROPS AUTHORITY DRAFT BILL 2020**

### **STAKEHOLDERS COMMENTS ARE FROM:**

1. Tatu Emmaculate  
Consultant Food Security, Sustainable Agriculture, Food Waste, Food Safety, Circular Economy
2. Nature Kenya the East African Natural History Society
3. Commodity Fund
4. Participatory Ecological Land Use Management (PELUM) Association
5. Kenya Flower Council (KFC), Fresh Produce Exporters Association of Kenya (FPEAK) and Fresh Produce Consortium of Kenya

<b>SECTION</b>	<b>ISSUE/COMMENT RAISED</b>	<b>PROPOSED RECOMMENDATION</b>	<b>ACTION TAKEN ON DRAFT</b>	<b>INSTITUTION/PERSON</b>
<b>Sec 40 (1a and b) Food safety control</b>	1a) What would happen to a dealer that contravenes this provision?  b) Would it be better to maintain the use of 'food safety standards' in section a as it is used in section b and c?	a) I believe they should be a liability to operations just as we have on people handling the produce and environment producing it.  Consistency to avoid any grey areas.	Adopted	Tatu Emmaculate,  Consultant, Food Security, Sustainable Agriculture, Food Waste, Food Safety, Circular Economy
<b>Sec 41(1 &amp;2): Enforcement of</b>	Does that mean that the County	a) Kindly just clarify because the	a. and b. Adopted	

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<b>safety and quality standards</b>	Government officers cannot therefore Inspect, survey and sample local products? They have to await the authority?	<p>theme before this section has clearly separated the mandates between the County and the Authority</p> <p>b) Kindly correct the writing on 'quality food safety and standard' to 'food safety and quality standards'. Consistency is key.</p>		
<b>Sec 41(2): Enforcement of quality and standards</b>	How will they be destroyed?	Perhaps a pointer to directive already available? i.e. 'shall be seized and destroyed according to.....'	Adopted.	
<b>Sec 41(3): Enforcement of safety and quality standards</b>	a) At what point will the import inspection happen?	I find this clause very generalized. It would help to streamline it and make it clear beyond a shadow of doubt of the	Not Adopted. The inspections for export on phytosanitary are done by KEPHIS	

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	b) How about the export inspection?	role and know-hows of enforcement body		
<b>Sec 41(4) Enforcement of quality and standards</b>	So far, this is the first time in the document that specific produce is being mentioned and they are just 2 of them i.e. the immature mangoes and avocados. Is this contextual?	Clarification	This is addressing the challenge of harvesting and selling immature mangoes and Avocadoes.	Tatu Emmaculate
<b>Sec 43(1&amp;2): Safe use of Pesticides and fertilizer</b>	a) Based on experience in the Kenyan context, the use of the word 'trained personnel' is ambiguous. Does it mean they will need to show a certificate? From which schools? To which level? What is the qualification? Who will be the trainer? etc.	a) Either the word is replaced by another such as experienced or more explanation is given or the intricacies are addressed in a different directive. b) Consider including a clause on that	Adopted. Trained Replaced by Experienced	

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	b) There is no mention of fertilizer application now that pest control was mentioned here. I believe the hazards that maybe presented by organic and inorganic fertilizers warrant a mention			
<b>Sec 46: Appointment of Horticultural Inspectors</b>	Yes, if they are going to be appointed, their roles need to be defined in 43 above	Clarification	Adopted.	Tatu Emmaculate
<b>Sec 48: Power of entry and inspection</b>	Realign this section and 43	clarification	Adopted. The role has been outlined under power of entry	
<b>Sec 32: Production of Flowers</b>	Amend Section 34 (a) all growers of flowers shall adhere to sustainable environmental conservation practices to ensure that section	by inserting "value chain actors" to read as "all growers of flowers and value chain actors shall adhere to sustainable environmental conservation practices	Dealers added in the section to address the issue of value chain actors	Nature Kenya the East African Natural History Society

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	34 (a) of ensuring adherence to sustainable environmental conservation practices there is need for continuous monitoring and capacity building of the stakeholders.			
<b>Sec 5: Appointment and Composition of the Board</b>		Amend Section 8(1) on the composition of the Board to include Principal Secretary responsible for the time being for environment.	Not adopted. The limit of Director is covered by Muongozo code. There is close cooperation between the different Ministries. Under sec 13(powers of the board) the board may co-opt persons whose knowledge may be required.	
<b>Sec 51: Horticultural Research and Development Fund</b>	Amend Horticultural Research and Development Fund purpose.	Include building capacity of growers and value chain actors on sustainable environmental conservation practices	Not adopted. According to schedule 4 of the constitution, extension is a function of the County government.	
<b>Sec 51: Horticultural Research and</b>	The bill provisions for a formation of the	<ul style="list-style-type: none"> <li>The Bill should be amended to recognize the</li> </ul>	Not adopted as the fund is specific to emerging issues in the Horticulture sector	Commodity Fund

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<b>Development Fund All of it</b>	<p>Horticultural Research and development Fund with a unique but brilliant mandate and roles. While this is a good idea, the regulator status, the research aspect and the Funding aspects should be stand alone to allow for efficiency in service. Besides the research and developmental aspect (lending and funding) have been independently handled through independent channels.</p>	<p>presence of the commodities Fund and further explore mechanisms of having an independent but effective research body that specifically deals with the technicalities therein.</p> <ul style="list-style-type: none"> <li>• The Roles, Mandate proposed for the Horticultural Research and development Fund should be partially adopted under the Commodities Fund for purposes of funding the farmers and value addition players for effectiveness and prudent financial management under the Trustee Model.</li> </ul>	<p>which are not provide for in the commodities fund. Some of the emerging issues are not institution research based</p> <p>Research towards the sector has suffered ever since the HRF was discontinued.</p>	

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<b>Sec 51: Horticulture Research Fund Development</b>	The sub section addresses the percentage of the levy that is to be apportioned to the Authority. The bill however fails to explicitly indicate how the same levy will be shared for development of the subsector specifically lending to the farmers, value chain players and even exporters for purposes of development of the sector through affordable and accessible structures.	<ul style="list-style-type: none"> <li>The Bill should be amended to address the specific per centum granted to the lending and developmental aspect in order to ensure intentional efforts towards nurturing the primary players (farmers, local value additional players and exporters. This would spur growth and inclusivity in development of the sector.</li> </ul>	Not adopted due to the lack of experience by the Authority to administer such a facility.	Commodity Fund
<b>Interpretation</b>	<b>"dealing in horticultural crops"</b> means growing, aggregation, transporting, packing, storage, selling, processing, exporting and importing	Remove "GROWING" from definition of "dealing in horticultural crops"	Adopted	Participatory Ecological Land Use Management (PELUM) Association  PELUM KENYA

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	<p>horticultural produce and products for purposes of trade but does not include dealing for household consumption.</p> <p><b>Issue</b> Too broad a catch all definition which does not match with economic or marketing term. The definition includes growing, which means all farmers.</p>			
<b>Interpretation</b>	<p>"inspector" means an officer of the Authority or County government appointed in writing by the Authority or the County Government, to be an inspector, for purposes of this Act and gazetted by the Cabinet Secretary;</p> <p><b>Issue</b></p>	<p><b>Add the word:</b> KEPHIS to "Inspectors" and clearly Identifiable before ..officer</p>	<p>Not adopted. KEPHIS appoints inspectors under their Act</p> <p>Issue of badges can be incorporated in the regulations</p>	<p>PELUM KENYA</p>



SECTION	ISSUE/COMMENT RAISED	PROPOSED RECOMMENDATION	ACTION TAKEN ON DRAFT	INSTITUTION/PERSON
	a) Should he have a identification badge? Uniform and an SMS confirmation trigger system to avoid con men and other ill motivated persons?			
<b>Interpretation</b>	<p><b>"dealer"</b> means a natural person, a company or a firm engaged in <i>propagation of</i> planting materials, collecting, transporting, storing, buying or selling horticultural produce and includes a ship Chandler, an exporter, an importer, processor or a marketing agent;</p> <p><b>Issue</b> Too broad a catch all definition which does not match with</p>	<p><i>Delete natural person engaged in propagation of propagation material to retain firms and companies of planting materials, collecting, transporting, storing, buying or selling horticultural produce and includes a ship Chandler, an exporter, an importer, processor or a marketing agent. Delete word dealer and consistently use "Marketing agent" instead</i></p>	<p>Adopted (1) Retained person and deleted natural, company or firm has been Person is defined (1) Adopted inclusion of commercial activity (2) Not adopted: Marketing agent has been defined for clarity because they are part of dealers Farmers are excluded in the group of dealers</p>	PELUM KENYA

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	<p>economic or marketing term.</p> <p>Dealer should be left as an economic term as native meaning – a commercial entity engaged in “buying and selling” – of which farming activities have nothing to do with.</p> <p>This makes all farmers, dealers who are unjustly subjected to unfair penalties, fees and fines in the laws that follow</p>	Exclude registered farmers groups who handle less than KES 40,000 monthly or KES 240,000 in a crop cycle season		PELUM KENYA
<b>Interpretation</b>	<p>“levy” means a payment imposed on horticultural produce based on a criterion determined and published in the gazette by the cabinet secretary;</p> <p><b>Issue</b></p>		Export and import levy is a function of National government	

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	Check if national or county government function			PELUM KENYA
<b>Interpretation</b>	<p><b>"marketing agent"</b> means a natural person, company or firm engaged in buying horticultural produce for sale in the domestic market or export market;</p> <p><b>Issue</b> This is the acceptable definition of a dealer and does not include unfairly, poor farmers who can routine farm activities of planting, harvesting and preparing for storage or sale their hard earned produce.</p>	Replace dealer with marketing agent or marketing agencies	Has been clarified. Definition has excluded growers and non-commercial activities	
<b>Interpretation</b>	<b>"Person"</b> includes an individual, firm, a company an association or cooperation which has	Just specify –legal person or natural person	Not adopted as it one or the other. Semantics	

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	legal rights and obligations			
<b>Interpretation</b>	<p><b>"horticultural crop"</b> means a crop listed under the First Schedule;</p> <p><b>Issue</b> The first schedule commodities all the food crops in Kenya, this takes away the right to stewardship of traditional food varieties away from farmers and makes it mandatory for them to purchase from approved breeders, the farmers are denied the opportunity to develop their varieties and safeguard heirloom varieties, since they cannot commercially trade in whatever varieties they have which are</p>	<p>Traditional food crops should be exempted from the First Schedule.</p> <p>All the broad statements I.e. <i>Any other fruit of economic value</i> <i>All other medicinal and aromatic plants of commercial value</i> <i>Any other vegetables of economic value</i> <i>Any other herbs and spices of economic value</i> <i>And any other flower and ornamental plants of economic value</i> Should be deleted.</p>	<p>Not adopted</p> <p>1. There are traditional vegetables that need to be regulated because of food safety.</p> <p>2. When others of economic value are included. Refers to produce that is emerging and has not been included in the list and need to be regulated.</p>	PELUM KENYA

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	not registered by KEPHIS.			
<b>Missing Interpretation</b>	Value Chains <b>ISSUE</b> Objects and Purpose of this bill and other places. It is a significant phrase and must be in the terms on interpretation	Needs defining - A value chain is a set of linked activities that add worth to a commodity (raw product) and links producers to processors and markets.	Adopted with refinement	PELUM KENYA
<b>Missing Interpretation</b>	Contract farmers, farming used 11 times in this bill alone and is a significant hidden agenda.	Needs defining	Adopted. Contract farming defined	
<b>Missing Interpretation</b>	Warehouse receipt system concepts dominate here and need to be included out rightly	Add definition	Not adopted. The warehouse receipt system works well for grains that can be stored for a long time	
<b>Missing Interpretation</b>	Organic -produce, market already a significant sector and must not be ignored	Add definition	Adopted in the main text.	

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<b>Missing Interpretation</b>	Agro-ecology	Add definition	Not adopted	PELUM KENYA
<b>Sec 4(j): Functions of the Authority</b>	The objective of this Act is to accelerate the growth and development of horticulture industry, to enhance productivity and incomes of farmers and other value chain actors and in particular; - <b>Issue:</b> <b>What is the room for organic market</b>	-	Adopted. Organic production has been included in the bill	
<b>Part 2: Application</b>	This Act shall apply to all scheduled crops specified in the First Schedule and to all farms <u>whether privately or communally held as well as to growers, grower organizations, cooperatives and community associations dealing</u>	-	Noted. The application is just a scope that outlines the length and breadth what the bill covers	

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	<p><u>with horticultural crops.</u></p> <p><b>Issue: Very Broad</b></p> <p>This Act shall also apply to all horticultural produce and products –</p> <p>a) grown, processed or marketed in Kenya;</p> <p>and</p> <p>b) imported to or exported from Kenya.</p>			
<b>Sec 4 (d, h, j): Functions of the Authority</b>	<p>b) register dealers of horticulture produce</p> <p>c) License exporters, importers and processors of horticultural produce and products;</p> <p>d) Determine research and technology priorities from the industry through collaboration with private sector, public and private research institutions;</p>	<ul style="list-style-type: none"> <li>• Spell out members in the value chain –</li> <li>• d) Determine research and technology priorities for the industry through, and consultations with stakeholders in the private sector, public and private research institutions including Agro ecology and Organic market stakeholders.</li> <li>• Delete h)</li> </ul>	<p>(d) Adopted</p> <p>(h) Not adopted as KEPHIS is the competent Authority in Phytosanitary matters. The mandate of sanitary matters cuts across different institutions depending on the mandates. National horticulture standard is a sanitary standard enforced by the Authority</p> <p>(J) Not adopted as curriculum development is</p>	PELUM KENYA

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	<p>f) represent the country in national, regional</p> <p>h) regulate horticulture crops quality and sanitary standards</p> <p><b>Issues</b></p> <ul style="list-style-type: none"> <li>• Devolved function dictate that Authority should assist the County develop and maintain a register of growers, dealers and exporters</li> <li>• How do you make Agro-ecological research not to be buried and dictated by the Authority?</li> <li>• There are no reasons why a county Hort. Dept. cannot represent itself in for a. Geographical indications like Khat, coffee make it important that County stakeholders</li> </ul>	<p>J) replace may with shall and add after "relevant training institutions...including organic farming institutes...</p>	<p>not a mandate of the Authority.</p> <p>J Adopted "including organic production"</p> <p>There are Authorities for Khat and Coffee. The scope of the bill is the scheduled horticulture products.</p> <p><b>In Section 39 Geographical Indications included</b></p>	<p>PELUM KENYA</p>



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	also play a role in this promotion. KEPHIS –role is undermined –quality and sanitary standards including enforcement are already funded and <b>effectively managed by KEPHIS</b>			PELUM KENYA
<b>Sec 5 (1g) Appointment and composition of the Board</b>	g) Four members appointed by the Cabinet Secretary for the time being responsible for Crop development; one member representing; — i. Registered flowers, fruit and vegetables growers association under this Act; ii. Registered nursery operators’ association under this Act;	Include General Farmer Network Representative Consumer Network representative  Change Four to Five and also add v. a member of CSOs working in the Organic sector belonging to a registered organization	Not adopted. The limit of Director is covered by Muongozo code. There is close cooperation between the different Ministries.  Under sec 13(powers of the board) the board may co-opt persons whose knowledge may be required.	PELUM KENYA

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	<p>iii. Registered exporters' association under this Act; and</p> <p>iv. Registered association of horticulture marketing agents under this Act.</p> <p><b>Issue:</b> <b>Organic sector not represented</b></p>			
<b>Sec 5 (2g): Appointment and composition of the Board</b>	<p>(iii) Holds a Degree from a University recognized in Kenya; and</p> <p><b>Issue</b> Too limiting as nursery transporters and farmers may not have been privileged to study up to university level</p>	delete	Not adopted. Policy and strategic matters require capacity	PELUM KENYA
<b>Sec 19: Role of county governments</b>	(2) In execution of the roles provided for in sub-section (1), the county governments	Replace the word may with shall	Not adopted This is an administrative position	

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	<p>may establish a Horticulture Technical Working Group to provide for technical guidance in Horticulture matters in the county.</p> <p><b>Issue</b> A county government may take long or completely disregard the need for the technical committee – or not prioritize</p>			
<b>Sec 26(2): Registration of dealers by the Authority and County government</b>	<p>(2) The Authority shall register the following; <b>Issue</b> Every grower shall be registered by the respective county government where their farm is located for purposes of</p>	The Authority shall facilitate county governments to register the following;	Not adopted provision has been provided for the County Government on who they can register	PELUM KENYA
<b>Sec 27: Registration of growers</b>	<p><b>Issue:</b> What will be the cost implication for smallholder farmers?</p>	Exclude small holder farmers from paying fees.	No fee is being charged for registration	

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<b>Sec 30(6): Registration of dealers by the Authority and County government</b>	(2) The Cabinet Secretary may, in consultation with the Authority and County government, prescribe regulations for registration of growers	<b>Change by adding :</b> regulations for registration of Commercial growers	Adopted. Commercial grower added	
<b>Sec 26: Application for renewal of registration certificate</b>	An application for the renewal of a registration certificate shall be made to the Authority or respective county government not later than the first day of the month of March in which the current license is due to expire. (2) A late application may be made provided that a late application fee of ten per cent (10%) of the prescribed fee is paid to the Authority or County government as the case may be.	All applicable fees and payments should be explicitly listed.	Not adopted. Fees and payment listed under the regulation	PELUM KENYA

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	<b>Issue:</b> This implies a registration fee, which has not been expressly stated in the document			
<b>Sec 31: Certification of National Horticulture standard</b>	The Authority shall register and monitor the certification scheme of the National Horticulture standard for compliance of produce and products with the regional and international market requirements. <b>Issue:</b> KEPHIS conflict of functions. KEPHIS is already excelling in this area. Therefore, avoid duplication of need for resources including highly trained human resources.	Delete	Not adopted  KEPHIS mandate is on phytosanitary aspects. The mandate of Authority under this bill is to enforce the National Horticulture Standard	PELUM KENYA
<b>Sec 34: Produce packing,</b>	A person who contravenes the provision of this	A fine of 500,000 or 18 months	Not adopted. It is a deterrence and affects food	PELUM KENYA

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<b>processing and storage facilities</b>	<p>Section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding one million shillings or to both</p> <p><b>Fee is too high</b></p>		safety. The fee says not exceeding	
<b>Sec: 35 Branding and geographical indications</b>	<p>The Authority shall promote and register all horticultural produce and products produced in accordance with certification marks including geographical indications or regions as a Certification Mark of origin.</p> <p><b>Issue</b> County governments have the largest stake and interest in promoting their products</p>	<p>The Authority in collaboration with County government shall promote and register all horticultural produce and products produced in accordance with certification marks including geographical indications or regions as a Certification Mark of origin.</p>	Adopted	PELUM KENYA

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<b>Sec 48: Power of Entry and Inspection</b>	<p>The Authority in consultation with the county governments, shall separately or jointly conduct inspection and surveillance of horticultural farms, nurseries, aggregation centers, stores, pack houses, transport vehicles, markets, and warehouses to ascertain compliance with the requirements of this Act.</p> <p>(2) A person duly authorized in writing by the Authority may, at all reasonable times and upon production of such authority to any person so requesting—</p> <p>(a) enter any farm or buildings occupied by the holder of a license</p>	<p>Powers of Entry Inspection should be based on reasonable cause and voluntary for farmers</p> <p>The Fines should be scraped</p> <p><b>Delete</b></p>	<p>Not adopted.</p> <p>Power of entry has been confined to the provisions of the proposed Act but has been reworked to show the roles without infringing on individual rights</p>	PELUM KENYA

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	<p>issued under this Act, or a person registered under this Act; (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; (c) the owner or occupier of a farm or premises or a vehicle which is inspected under subsection (2a) shall render such reasonable assistance as may be required by the inspector and; (d) may seize and remove any article or thing in respect of which the inspector</p>			



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	<p>has reasonable grounds for believing that an offence under this Act is being or has been committed.</p> <p>(2) A person who hinders or obstructs any person duly exercising or attempting to exercise any of the powers conferred by subsection (2), or who fails to give any information reasonably required commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.</p> <p><b>Issue</b></p> <p>(1) This section arbitrarily gives inspectors the right to</p>			

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	<p>enter properties without reasonable cause, or reasonable cause does not have to be justified. This contravenes Article 31 on the Constitution on the Right to Privacy. With the fact that most rural household also practice agriculture, thus are farmers, and Farmers under this bill are required to be certified and registered, this clause give inspectors undue power to invade the privacy all</p> <p><i>31. Every person has the right to privacy, which includes the right not to have—</i></p> <p><i>(a) their person, home or property searched;</i></p> <p><i>(b) their possessions seized;</i></p>			

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	<p><i>(c) information relating to their family or private affairs unnecessarily required or revealed; or</i></p> <p><i>(d) the privacy of their communications infringed.</i></p> <p>(2)The fines and penalties are too punitive and harsh</p>			
<b>Sec:51 Horticultural Research and Development Fund</b>	<p>51. (1) There is established a fund to be known as the Horticultural Research and development Fund, which shall be administered by the Authority.</p> <p><b>Issue</b> KALRO Act conflict? Maintenance of pest free areas and management of emerging pests; <b>Issue</b></p>		<p>Not adopted. The bill proposes to support institutions with research and phytosanitary mandates to intervene in matters that affect horticulture by funding the intervention.</p> <p>The Authority is not proposing to take up these mandates as indicated in its functions in Section 7</p>	PELUM KENYA

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	Conflict with KEPHIS act and functions (e) Support conservation and protection of indigenous horticulture technologies and genetic resources; <b>Issue</b> Conflict with Seed and Plant varieties Amend (2016) section 27 a. This is a function of GERRI			
<b>Sec 51: Horticultural research and development Fund</b>	There is established a fund to be known as the Horticultural Research and development Fund <b>Issue:</b> research already handled by KALRO and needs funding	<b>Delete:</b>	Not adopted as earlier clarified	PELUM KENYA
<b>Sec 51: Horticultural research and development Fund</b>	(3) The Fund shall be used for the purpose of:	<b>Delete:</b>	Not adopted as earlier clarified	

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	(a) support research and technology for horticulture Industry; <b>Issue:</b> research already handled by KALRO			
<b>Sec 51: Horticultural research and development Fund</b>	Maintenance of pest free areas and management of emerging pests; <b>Issue:</b> a) Already being handled ably by KEPHIS complete with staff and labs b) No need to duplicate and has financial and HR burden on the exchequer (e) Support conservation and protection of indigenous horticulture technologies and genetic resources; <b>Issue:</b>	<b>Delete:</b>	Not adopted as earlier clarified. Purpose of the fund is facilitatory in nature.	
		<b>Delete:</b>	Not adopted as earlier clarified. Purpose of the fund is facilitatory in nature.	PELUM KENYA

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	<p>a) Already being handled ably by GERRI complete with staff and functional gene Bank</p> <p>b) No need to duplicate and has financial and HR burden on the exchequer</p>			
<b>Sec 60: General penalty</b>	<p>Any person who is guilty of an offence under this Act for which no penalty has been provided shall be liable to a fine not exceeding Two hundred thousand shillings or to imprisonment for a term not exceeding six months, or both.</p> <p><b>Issue</b></p> <p>a) Abuse of legislative and regulation privilege which does</p>	<b>Delete</b>	Not adopted. Clause provides for penalties in sections where penalties have not been provided for.	

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	not exist in natural justice b) Against the CoK 2010			
<b>Sec 61: Regulations</b>	<p>The Cabinet Secretary may, in consultation with the Authority make regulations for the better carrying into effect the provisions of this Act or for prescribing anything which is to be prescribed under this Act.</p> <p><b>Issue</b></p> <p>a) Public participation ignored including input from the county governments</p> <p>b) Farming happens at the Counties and the governors are responsible</p>	The Cabinet Secretary may, in consultation with the Authority and the Council of governors make regulations	Not adopted. Policy formulation lies with national government with requirement to consult stakeholders COG included.	PELUM KENYA

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<b>FIRST SCHEDULE: List of Scheduled Horticultural Crops</b>	<ul style="list-style-type: none"> <li>Any other fruit of economic value</li> <li>All other medicinal and aromatic plants of commercial value</li> </ul> <p><b>Issue</b> Carte Blanche catch all – infringes on Article 11 (3) of the COK 2010. All genetic resources in Kenya are a heritage of the communities and must be protected for their benefit. Conflict with conservation ideals and makes implementing the Cartagena protocol on benefit sharing a problem</p>	delete	Not adopted. This law promotes their conservation and protection	PELUM KENYA
<b>Sec 13: Qualifications of the Chief Executive Officer</b>	15. A person shall qualify to be appointed	Amend to: "has at least 5 years' experience in management; and meets the requirements of	Not adopted. This is a leadership position that requires senior managerial skills and experiences	Kenya Flower Council (KFC), Fresh Produce Exporters Association of Kenya (FPEAK) and Fresh Produce Consortium of Kenya



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	to the position of a Chief Executive Officer if such person;-  (d). has at least 5 years' experience in a position of senior management; and meets the requirements of Chapter Six of the Constitution.	Chapter Six of the Constitution."		KFC,FPC,FPEAK
<b>Sec 20: Licenses issued by the Authority and county government</b>	(3) The following license shall be issued by the County government;  A person who contravenes any provision of this Section commits an offence and shall upon conviction be	Kshs. 2 million is punitive.	Not adopted. This compromises on international trade, traceability and accountability of products	KFC, FPC, FPEAK

SECTION	ISSUE/COMMENT RAISED	PROPOSED RECOMMENDATION	ACTION TAKEN ON DRAFT	INSTITUTION/PERSON
	liable to imprisonment for term not exceeding three years or to a fine not exceeding two million shillings or to both.			
<b>Sec 26: Registration of dealers by the Authority and County governments</b>	(1) A dealer shall not conduct any horticulture business unless that person is registered by the Authority or County Governments in accordance with this ACT	Companies are registered by the Registrar of Companies.  <b>Amended</b> to: .....the Authority or County government shall keep a list of dealers	Not adopted as the registration unlike that done by registrar requires compliance to set requirements and quality standards	KFC,FPC,FPEAK
<b>Sec 26: Registration of dealers by the Authority and County governments</b>	28. (1) A dealer shall not conduct any horticulture business unless that person is registered by the Authority or County government in accordance with this Act.	The Authority cannot register associations  <b>Amend to:</b> The Authority shall maintain a list of horticultural associations	Not adopted.  The registration unlike that done by registrar requires meeting criteria that demonstrates relevance to the sector  The authority shall maintain a list of the dealers	

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	The Authority shall register the following (f) horticulture associations.			
<b>Sec 28: Application for renewal of registration certificate</b>	30(2) A late application may be made provided that a late application fee of ten per cent (10%) of the prescribed fee is paid to the Authority or County government as the case may be.	Exporters should be allowed to register and renew registration as and when they are ready	Not adopted.  Late renewal is an administrative burden that requires to be funded through a penalty.	
<b>Sec 48: Power of Entry and Inspection</b>	48. (2) A person who hinders or obstructs any person duly exercising or attempting to exercise any of the powers conferred by subsection (2), or who fails to give any information reasonably required commits an offence and shall be liable, on conviction, to	This is punitive. Delete the clause.	Reviewed fine to One million and term not exceeding 1 year.  The compliance is easy but the cost of compliance is high to enhance cooperation with inspectors.	

SECTION	ISSUE/COMMENT RAISED	PROPOSED RECOMMENDATION	ACTION TAKEN ON DRAFT	INSTITUTION/PERSON
	a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.			
<b>Sec 49: Funds of the Authority</b>	<p>49.</p> <p>(2). The Cabinet Secretary may, in consultation with the Authority, by order in the Gazette, impose the following levies;</p> <p>(a) 1% export levy based on the customs value, imposed on all horticultural produce and products other than those canned, bottled, preserved, dehydrated or delivered to operators for canning and processing factories;</p>	<p>1% levy is equivalent to Kshs. 1.5Billion annually charged on exporters.</p> <p>Amendment: Maintain the current 30 cents per kilo exported.</p> <p>Part of these funds should support horticulture associations</p>	<p>Amended to 0.5%. Current 30 cents is not tenable as it is based on orders of 1996.</p> <p>The funds will support priority issues from the associations as indicated in 54 (3)</p>	KFC,FPC,FPEAK