



AGRICULTURE AND FOOD

MATRIX ON PUBLIC COMMENTS ON THE MIRAA PYRETHRUM AND OTHER INDUSTRIAL CROPS BILL

N O	SECTION	ISSUE/COMMENT RAISED	PROPOSED RECOMMENDATIONS	Action taken
1.	5 (1) f	Farmers' Representation/Associations	<ul style="list-style-type: none"> • Increase no. from 3 – 6 & consider diversity i.e. gender, regions & capacity required, (coz of the 3 crops) • Clarify on Associations – duly registered prior to the birth and passing of bill. • Remove gender needs in Miraa, considering cultural aspects. This can be put in balance by the other representatives in e, g, b, & c • Remove “Either Gender” under f & g. 	<ul style="list-style-type: none"> • With the maximum number of board members being 7-9, it is impractical to add more farmers to the board. • Associations registering farmers ought to be registered by the Authority under the bill. • Cultural orientation of certain communities cannot be considered since the crop in question is not a national crop. • Either gender maintained to avoid over representation on one gender.

2.	5 (3) (c)	Academic Requirements of at least a Degree and 10 years' experience	<ul style="list-style-type: none"> • A degree from a recognized institution with at least 3 years or Diploma with 5/6 years' experiences • Remove degree as mandatory 	<ul style="list-style-type: none"> • The comment noted but the degree maintained.
	5 (s)	Term of Office for Farmers' Representatives	<ul style="list-style-type: none"> • Increase the term from 3 to 5 years. • Remove the capping of terms to two and specify the renewal to be based on elections/resolution by the member farmers' associations. Allow the farmers' associations to independently determine the terms and limits. "Renewable once" • To read "The Chairperson and other nominated members of the board shall hold office for a term of 5 years and are eligible for re-appointment upon election/nomination by their Farmers' /Associations" 	<ul style="list-style-type: none"> • This doesn't apply as suggested. Chairperson is appointed while farmer representative term tends to create an Atwoli situation
3	SECTION 6	The Authority has proposed to be granted with powers to facilitate equitable resources, facilities to the industrial crop subsector. The Clause could breed round for possible duplicity in the lending roles where the Commodities Fund undertakes thus -	<ul style="list-style-type: none"> • This should be improved to recognize the Commodities Fund as a lender and by allowing the Fund undertake its mandate of lending to the scheduled Crop sub sector. • Further the Bill should include an explicit percentage from the levy and funds collected towards the lending aspect to the sector under the Commodities Fund. • The above percentage could be a per centum specifically 30% of the overall levy and fees collected in the sector towards lending and crop development. 	<ul style="list-style-type: none"> • This provision caters for all and thus shall not be changed
4	Citation	This Act may be cited as the Miraa, Pyrethrum and <u><i>Other Industrial Crops</i></u> Act, 2020.	Change the citation to: The Pharmaceuticals (traditional) and	Industrial crops are defined in the part I (interpretation)

		<p>Issue:</p> <p>a) It is not clear what ‘other industrial crops’ refers too. This is too broad. Which other industrial crops?</p> <p>b) There should be a clear indication of what other industrial crops are covered? Define industrial crop.</p> <p>c) -Why should miraa, pyrethrum and bixa get special attention to an extent of having an authority?</p> <p>d) -The wording of the bill should be well thought out, maybe it should be pharmaceutical crops bill?</p>	Therapeutic (novel) Crops Bill of 2020	Pharmaceutical and therapeutic features of the crops is just one of their broad usage
5,	Interpretation	<p>“scheduled crop” means any of the crops listed under the Second Schedule and includes such other crops as the Cabinet Secretary, on the advice of the Authority, may declare to be a scheduled crop under section 22</p>	<p>“scheduled crop” means any of the crops listed under the Second Schedule and includes such other crops as the Cabinet Secretary, on the advice of the Council of governors and the Authority, may declare to be a scheduled crop under section 22 and subject to Article 11 of the CoK 2010.</p>	

		<p>Issue</p> <p>a) This Bill has the potential to indiscriminately encompass Kenya's vast Genetic resources which are a heritage to our communities. Our Genetic resources are constitutionally (1) protected as inheritance to support their livelihoods and for benefit sharing (2,3) with the world while avoiding bio piracy from commercial interests.</p> <p>b) The indiscriminate scheduling of crops into compulsory breeding and certification schemes by the CS, invites commercial persons to remove these crops from the sphere of innovative farmers who are always</p>		
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¹ COK 2010 Article 11 3b

² International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) - Kenya is a signatory.

³ Nagoya Protocol on Access and Benefit Sharing

		<p>experimenting and raising new cultivars ably suited for changing climate change in their own niches.</p> <p>The Cabinet secretary and the Authority therefore must be guided by Council of Governors and stakeholder consent from where these crop resources are being developed for exploitation.</p>		
6	Interpretation	<p>“Other industrial crops” Issue</p> <p>a) An open-ended invitation to the CS and a controversial new authority to pile new crops onto this ambiguous list.</p> <p>b) What may be intended is defined by the term “Pharmaceuticals and Therapeutic industrial Crops” and may include Borage, Cannabis sativa, Echinacea, Artemisia, Tobacco, Khat (Miraa) Bixa and Pyrethrum among many more.</p>	Delete	

7	Interpretation Missing	Broker- A person who buys and sells commodities for the pure reason of profits. The word includes dealers, traders and merchants.	Add term: and replace where buyers and sellers of commodity merchants are mentioned in this act.	The persons in the value chain i.e. dealers, exporters, importers, etc. have certain roles and responsibilities besides profits as compared to brokers.
8	Interpretation Missing	Pharmaceutical and Therapeutic Crops are those cultivated species that are used for medicinal or therapeutic purpose. They may be used for extraction of therapeutic substances and includes crops that may be used as beauty products and as drugs, pesticide, antipyretic, aphrodisiac, antidiarrheal, antidiabetic, and insect repellents.	Add term: and use term to give meaning to where Miraa (Khat) Pyrethrum and other Industrial crops (MPOIC) are used.	
9	4 (1) Headquarters	The headquarters of the Authority <u><i>shall</i></u> be <u><i>in Nairobi City County.</i></u> Issue: Why headquartered at Nairobi and the board given powers to decide whether to devolve or not. The board should be obliged to devolve	Replace the word <i>shall</i> with may .	Nairobi is the central point for all the crops under the bill, therefore, “shall” ensures conformity while “May” is discretionary. Provision for branches has

		branches through the word may with shall.		been captured in the bill.
10	13 (4) Chief Executive Officer	A Chief Executive Officer shall serve for a term of <i>three years</i> and is eligible for renewal for one term. Issue: Why the term limit? The CEO serves with the oversight of the board who are free to hire and fire to improve the performance of the entity.	Delete	Mwongozo code provides for the terms of the members of the board of state corporations.
PART IV- REGULATORY PROVISIONS				
11	24 (1) Role of the national and county governments	Each County Government shall implement the National Government policies to the extent that the policies relate to the County and in particular shall be responsible for - Issue: a) The role of the Authority and County Government are overlapping b) It's hard to see how budgets would be shared.	Clearly define the roles of the authority and the county government.	The separation of roles and functions shall be clearly addressed in the regulations to be developed under the bill. There is no envisaged sharing or budgets between the two levels of government.
12	25 (1) Registration	Every Miraa grower shall be registered with a registered association.	Replace shall with may	The bill contends that registration of miraa growers

		<p>Issue: Why mandatory and paid for registration? The registration should be voluntary and free. Therefore, should provide for the term may instead of shall. Therefore, there should be no fine for failure to register.</p>		<p>shall be mandatory.</p> <p>As this is a legal document, any discretionary provisions are discouraged. For that reason, “shall” shall be used.</p> <p>Registration fee for associations was erroneously included in the bill. It shall be free</p>
13	26 (1) Registratio n of growers association s	<p>The Authority shall maintain a register of all association registering growers, in such form as it may determine, and shall enter in the register—</p> <p>Issues (a) County government function Great potential to abuse privacy laws</p>	<p>Change: With the help of the Authority, the County government shall maintain a register of all association registering growers, subject to the Constitutional privacy protections in Article 31(COK 2010) and the Data protection act no. 24 of 2019</p>	
14	26 (3) Registratio n of growers’ association s	<p>Any person who contravenes the provisions under this section commits an offense.</p> <p>Issue: Why mandatory registration? - Registration should be voluntary.</p>	Delete 26 (3)	Addressed above

15	27 Licensing	<p>(1) All persons dealing in the MPOIC sector shall not, without a valid license from the Authority, operate as;</p> <p>(a) a commercial nursery operator;</p> <p>(b) an aggregator;</p> <p>(c) a commercial transporter for miraa;</p> <p>(d) a dealer</p> <p>(e) a processor; and</p> <p>(f) an importer or exporter</p> <p>Issue: Why force nursery operators, aggregators, transporters and dealers to have a license. Only processors, importers and exporters should be licensed.</p>	Delete	The industries have been struggling. Licensing of all value chain players is an intervention aimed at revitalizing them.
16	27 (2) Licensing	A person who contravenes provisions of sub section (1) commits an offence and is liable, on conviction to a fine not exceeding one million shillings or twice the value of MPOIC or its products whichever	Delete	The fine is deterrent and this is another initiative to revitalize the industries.

		<p>is greater or to imprisonment for a term not exceeding two years or both.</p> <p>Issue:</p> <p>The fine is punitive</p> <p>Reduce the fine payable for breach because it will deter people from doing business on the crops.</p>		
17	30	<p>Prohibition of export of raw pyrethrum and bixa seeds</p> <p>Why call it seed yet not certified, they are mere grains/harvest?</p> <p>Why the prohibition? Why give the cabinet secretary the powers to authorize or disapprove export?</p> <p>-The fine is punitive</p>	<p>-There is the principal of free market trade, farmers should be given freedom to decide the form in which they want to market their produce in a free market economy.</p> <p>-One person should not be conferred with powers to regulate market; the board should have such powers.</p> <p>-do away with the fine; no one should be punished for producing and trading.</p>	<p>Bixa produce is 'seed' and does not refer the same as "certified seed"</p> <p>To allow for export of the same in case of over production.</p>
18	31 (1)	<p>Crop inspectors</p> <p>(1) The Authority may appoint qualified persons, to be inspectors for the scheduled crops in MPOIC sector for the purposes of this Act.</p> <p>Issues</p> <p>a) Duplication and encroaching on the functions of KEPHIS</p> <p>b) Implications on exchequer and additional tax burden on Kenyans</p>	<p>Delete: replace with- The Authority shall use licensed and qualified crop inspectors from KEPHIS according to the Kenya Plant Health Inspectorate Service Act of 2012</p>	<p>KEPHIS inspectors' role is on issue plant health and sanitary and phyto-sanitary requirements whereas the inspector herein is on licensing and compliance to general industry requirements.</p>

		Too many inspectors for many crops, makes farmers weary.		
19	31 (2) Crop inspectors	For purposes of subsection (1), the Authority may, by regulations, prescribe the qualifications for different categories of inspectors. Issues a) As above in 31 (1)	Delete: and refer to KEPHIS Act 2012	Dealt with as above
20	31 (4) Crop inspectors	The Authority in consultation with the County Governments, shall separately or jointly conduct inspection of farms, nurseries, collection centres, processing plants, warehouses and pack houses, transportation vessels to ascertain compliance with the requirements of the Act. Issues As above in 31 (1)	Delete: Delete: and refer to KEPHIS Act 2012	Dealt with as above
	31 (6) Crop inspectors	A grower, a transporter, a processor, a warehouse operator or a <u>buyer, dealer</u> , aggregator and a trader shall accord an inspector full and free access and all necessary assistance	Add: Subject to Constitutional privacy protections in Article 31(COK 2010) and the Data protection act no. 24 of 2019 Replace: buyer, dealer with Broker	Dealt with as above

		during the inspection, Issues b) Buyer and dealer mean the same and should be replaced with Brokers		
21	31 (7)	A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.	Add: Subject to Constitutional privacy protections in Article 31(COK 2010) and the Data protection act no. 24 of 2019	Repetition
22	31 (8) Crop inspectors	The Authority and County Governments shall jointly or separately conduct periodic surveillance among growers, processing plants, warehousing facilities, transporters, retail outlets and border points to assess the degree of compliance with the policy, standards, codes of practice, laws and the general well-being of the MPOIC industry. (2) Surveillance reports will be shared with County Governments for purposes of standards and	Add: Subject to Constitutional privacy protections in Article 31 (COK 2010) and the Data Protection Act No.24 of 2019	Not applicable. The information and data collected in not private in nature

		<p>the regulatory framework enforcement,</p> <p>(3) A grower, a transporter, a processor, a warehouse operator or a buyer, dealer, aggregator and a trader shall accord an inspector full and free access and all necessary assistance during the inspection,</p> <p>(4) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.</p> <p>A person who hinders or obstructs any person duly exercising or attempting to exercise any of the powers conferred by sub-section (1), or who fails to give any information reasonably required commits an offence</p>		
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		<p>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>Issue: Quality assurance should be done at the aggregation centres. Inspection at the farm level should be done with the permission of the producers or upon request.</p> <p>-The fine should be reduced.</p> <p>According the inspectors full and free access for inspection Unlimited access to private premises is unconstitutional (COK 2010 article 31-Privacy). -the fine proposed under number 8 is punitive and unreasonable</p>		
23	33 Part V: Financial provisions	<p>What are the producer counties going to get in terms of revenue? 33(2) there so many levies</p> <p>Issue:</p>		<p>All funds shall be administered by the board of the authority, therefore no need of establishing another entity</p>

		<p>-There should be a crop development fund.</p> <p>-Reduce the levies</p> <p>-There should be a tribunal on handling levy claims</p> <p>-There should be a provision on how counties will earn revenue from these crops for example in form of a crop development fund as a kitty.</p>		<p>within the Authority.</p> <p>Establishment of tribunals is not within the Authority's mandate in this bill.</p> <p>The monies to be charged by the counties is as outlined in article 209 of the COK</p>
24	Appeals	<p>A person aggrieved by the decision of the Authority under this Act may appeal to the court established under article 162(2) of the constitution.</p> <p>Issue: Why rush to court? There should be an ADR mechanism to.</p> <p>-Set up a tribunal for dispute resolution.</p>		Addressed above
25	43 Consequential amendments to no 16 of 2013	<p>The Crops Act is amended by deleting-</p> <p>a) paragraph (d) of section 14(1); and the term pyrethrum" appearing in part 1 and "Miraa" and Bixa appearing in part 3 of the First Schedule.</p>	-Crop act section 14 (1) should be upheld and should not be amended.	The crops Act will be repealed with the enactment of this act.

		Why delete the section 14(1) a and d that gives farmers freedom to register		
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Note: Below are general concerns

Key Observations:

1. This is a very shallow bill, not well thought through. – **not specific on exactly what the proposer wants addressed.**
2. There is no justification for lumping together miraa, pyrethrum and bixa due to the different geographical areas the crops are grown. ***Lumping up alleged is not based on geographical location of the crops***
3. What is the role of the council of elders and Miraa growers' Association? **They are an important as any other stakeholder and their inputs well recognized.**
4. Like all the other bills, this proposed Act assumes the newly created body will be completely self-sufficient, working in silo, without the need for collaboration working with the same farmers. It creates crop Inspectors –without mention of KEPHIS who not only have years and years of investments in phyto-sanitary affairs, but do gulp-in a considerable sum of taxpayers' resources in laboratories, qualified and licensed staff, vehicles and presence in all agricultural counties in Kenya.
The issues cited have been adequately handled in the specific queries.
5. A regulatory Impact Statements for Khat and Bixa are missing and it would be hard to second guess the ramification of a legislative framework on the social, economic

and political future of these crops. **Bixa and Miraa regulation have not been developed. What is on the website is for the previous regulations.**

6. It is surprising that this proposed bill seeks to regulate Khat growing and marketing without an acknowledgment of the lack of an assured market anywhere in the world. The Commodity has been banned in Britain and the EU since 2014, and Somalian authorities currently have imposed an import ban. Is it possible that this bill would develop a crop that has a market only in Kenya, hence making endemic the same problems that more developed economies have sought to avoid? **The bill in not retrospective, it focuses in the future. The bill is an initiative to capture markets for the crop.**