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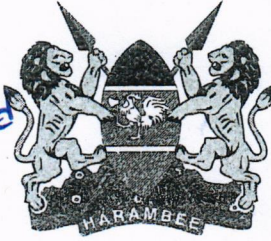
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20/3/2018

THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE CONSIDERATION OF THE WAREHOUSE RECEIPT SYSTEM  
BILL, (SENATE BILLS No. 10 of 2017)

Clerk's Chambers  
Parliament Buildings,  
NAIROBI

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COMMITTEE	CHAIRPERSON
CLERK AT THE TABLE	Amos Kiangwe

MARCH, 2018





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## **ABBREVIATIONS**

CoG	-	Council of Governors
COMEX	-	Commodity Exchange
SDCD	-	State Department of Crop Development
SDT	-	State Department of Trade
WRS	-	Warehouse Receipt System

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## **PREFACE**

**Mr. Speaker Sir,**

### **Establishment of the Committee**

The Senate Standing Committee on Agriculture, Livestock and Fisheries was constituted on Thursday, 14<sup>th</sup> December, 2017 during the First Session of the Twelfth (12<sup>th</sup>) Parliament pursuant to the provisions of standing order 212 (1) of the Senate Standing Orders which states:

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

### **Mandate of the Committee**

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

The Committee is established under standing order 212(3) of the Senate Standing Orders and is mandated to-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments in respect to devolved functions and county governments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation of devolution;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives on devolved policies and functions;*



- e) *investigate and inquire into all matters relating to the assigned departments as they may deem necessary, in relation to counties and as may be referred to them by the Senate;*
- f) *to consider petitions, reports and appeals by county assemblies/executives-including impeachments; and*
- g) *make reports and recommendations to the Senate as often as possible, including recommendation of proposed legislation to provide policy and legal guidelines and standards applicable across the 47 counties.*

### **Oversight**

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

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

### **Membership of the Committee**

The Committee is comprised of the following members-

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



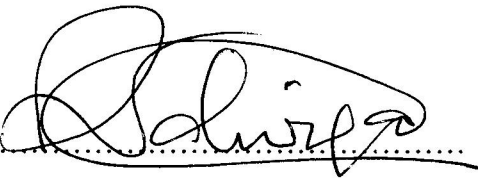


**Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of its meetings and the public hearing. The Committee also thanks members of the public who made submissions, both orally and in writing.

**Mr. Speaker Sir,**

It is my pleasant duty, pursuant to Standing Order 137 (1), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the Warehouse Receipt System Bill, 2017 for consideration by the House.

Signed.  Date.....

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

**CHAIRPERSON**



## **EXECUTIVE SUMMARY**

The Warehouse Receipt System Bill, (Senate Bills No. 10 of 2017) sponsored by Sen. Kipchumba Murkomen, EGH, M.P., Leader of Majority was read a First Time in the Senate on Thursday, 30<sup>th</sup> November, 2017. Following the First Reading, the Bill, stood committed to the Standing Committee on Agriculture, Livestock and Fisheries pursuant to standing order No. 134 (5) of the Senate Standing Orders.

Subsequently, the Committee subjected the Bill to public hearings pursuant to Article 118 (1) (b) of the Constitution and standing order 134 (5). The Committee invited submissions from members of the public on the Bill via advertisements on the Daily Nation and the Standard on 2<sup>nd</sup> and 3<sup>rd</sup> March, 2018 respectively.

The Committee received written submissions on the Bill and held a public hearing on 7<sup>th</sup> March, 2018 in the Mini Chamber, 1<sup>st</sup> Floor, County Hall, Parliament Buildings where oral submissions were received.

The Committee thereafter, considered all the proposed amendments and came up with its recommendations for amendments to the Bill as documented in this Report.





# **1 INTRODUCTION**

## **1.1 Background on the Warehouse Receipt System Bill, (Senate Bills No. 10 of 2017)**

The object and reasons of this Bill is to provide for a legal framework for regulation and development of the Warehouse Receipt System to cure the challenge of marketing cereal product in the country.

Warehouse Receipt System (WRS) is a process of depositing commodities in a licensed warehouse, the issuance of a warehouse receipt reflecting the quantity and quality of the deposited commodity. The management of the transfer of receipts as a document of title but it is not limited to the regulation and actors in the associated processes.

The Bill seeks to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities and for this purpose, to provide for the establishment of a Warehouse Receipt System Council to oversee and regulate the implementation of the warehouse receipt system.

The Bill elaborates the establishment of the Warehouse Receipt System Council as body corporate, its objects and function, membership, powers and funds. It provides for the licensing and inspection of the warehouse, the application of the warehouse and its operations within, it also emphasizes on the revocation and suspension of the license.

The Bill provides for the general inspection by the authorized officers from the Council, the publication of the general inspection and examination of books and records of the licensed warehouse. It also seeks to create a platform for establishment of a commodity exchange and widening marketing options for farmers to handle post-harvest of agricultural products.

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

The Warehouse Receipt System Bill, (Senate Bill No. 10 of 2017) was published on 10<sup>th</sup> November, 2017 and read a First Time as on 30<sup>th</sup> November 2017. The Bill was thereafter committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 134(5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard newspapers on 2<sup>nd</sup> and 3<sup>rd</sup> March, 2018 respectively.

The Committee received oral submissions at the Public Hearings held on 7<sup>th</sup> March, 2018 in the Mini Chamber, 1<sup>st</sup> Floor, County Hall, Parliament Buildings. The Committee also received a number of written submissions delivered through the Office of the Clerk of the Senate.

The Committee received submissions from the following:

1. State Department of Trade;
2. The Council of Governors;
3. Cereal Growers Association;
4. Food Trade East and Southern Africa; and
5. State Department of Crop Development;

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## **2 SUBMISSIONS**

### **2.1.1 Submissions from the State Department of Trade (SDT)**

In a memorandum submitted to the Committee, the Principal Secretary, State Department of Trade, noted that the State Department for Trade (SDT) is spearheading the development of a National Commodities Exchange that will facilitate structured commodity trading and will also provide a link for certified warehouse receipts to be traded on the exchange. Further, to avoid duplication of efforts of coming up with various legal frameworks, SDT proposed that the WRS Bill, 2017 should address all tradable commodities taking cognizance of the following:

#### **1. Global Warehouse Receipting System (WRS) Best Practice**

The State Department of Trade supports the global best practise on WRS which cuts across all classes of commodities. The WRS Act should be generic in nature, making it applicable to all tangible products. This can be done by defining commodities in the correct sense and ensuring applicability to all commodities. It was noted that:

- (i) The current Draft WRS Bill mentions Grains and Pulses as its scope, hence its applicability is limited;
- (ii) The WRS system will have separate set of regulations for storage and handling for each commodity, hence the scope to develop the regulations commodity specific is important in the Act;
- (iii) Once the scope of regulations is given, the same act will apply to many commodities; agricultural and non-agricultural (metals, minerals, energy, etc.).

#### **2. SDT Role of Coordination and Heading National Trade Strategy**

The Principal Secretary in charge of Trade was responsible for coordination and promotion of trade in various sectors such as Agriculture, Petroleum, Mining and Energy. Although the Ministry of Agriculture sponsored the original Bill, the State Department for Trade should be given the opportunity to take the lead in its coordination, given that

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WRS will now cover all tradable commodities. In addition, as per the best global practise the regulation of WRS and COMEX are housed under the Ministry responsible for Trade.

Consequently, the PS Trade should be incorporated into the Board and take lead in coordination and ensuring participation in WRS by all sectors. In addition, the Principal Secretary's responsible for Mining, Petroleum and Energy should also be incorporated as members of the board.

The Principal Secretary for Trade should take lead in making of appointments to the Board. In addition, the institution to implement the WRS should be an **Authority** rather than a **Council**.

### **3. Warehouse Receipts Trading on the Commodity Exchange**

In order to harmonise the laws and avoid duplication, the WRS Act should apply to all tradable commodities to avoid each commodity sector developing its own. The sectors will thereafter appoint specific committees and develop regulations.

The Kenya National Commodity Exchange will trade both Agricultural and Non-Agricultural Commodities including but not limited to Sugar, Rice, tea, coffee, cereals, maize, pulses, fertilizer, mineral, metals and energy related products.

### **4. Warehouse Receipts System Bill**

The Bill envisions the creation of a WRS Council to regulate only grains and pulses. The draft Bill should broaden the scope to include all commodities and not just grains and pulses as proposed in the WRS Bill 2017 due to the linkages between WRS and Commodities Exchange. SDT wishes to propose that the Bill includes all commodities; agricultural, metals, minerals, petroleum, energy and other no-agricultural commodities. We therefore wish to propose that SDT which is responsible for coordination of all Trade matters houses the WRS Council.

### **5. Seamless Connectivity and Automation**

The Ministry responsible for Trade should be engaged to ensure seamless connectivity between WRS and COMEX trading, standards, personnel skills and operational guidelines. Seamless automation between the WRS and the COMEX will create greater

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transparency and accountability, in particular with linking WRS to COMEX necessary to facilitate commodities and derivatives trading.

## 6. Electronic Warehouse Receipts

There is need to ensure that the Bill recognizes electronic warehouse receipts to be used on the COMEX platform.

### 2.1.1.1 Proposed amendments by SDT

**Table 1:** Contains the proposed amendments taking into account the issues raised in paragraphs 1 to 6 above.

<ul style="list-style-type: none"> <li>• <b>Appointments to the Board to be made in consultation with the Cabinet Secretary responsible for Trade.</b></li> </ul>	<p><i>Cite:</i></p> <p><i>Page 272 PART 1 – PRELIMINARY</i>  <i>2: In this Act, unless the context otherwise requires- “Cabinet Secretary “means the Cabinet Secretary for the time being responsible for matters relating to agriculture in consultation with the Cabinet Secretary for the time being responsible for Trade.</i></p>
<ul style="list-style-type: none"> <li>• <b>Include PS Trade on the Board of WRS Council Authority</b></li> </ul>	<p><i>Cite:</i></p> <p>Page 274 PART II  Section 3  Add (d) to read...  The Principal Secretary for the time being responsible for matters relating to Trade.</p>
<ul style="list-style-type: none"> <li>• Section (e) will change to (f) and read</li> </ul>	<p>Four and not five other persons, who in the opinion of the Cabinet Secretary, possess the skills and experience that will benefit the work of the Council Authority appointed by the Cabinet Secretaries of Trade and Agriculture in consultation.</p>
<p>Establishment of a Regulatory Authority and not a Council: In view of the fact that the WRS Bill establishes a regulatory body, the name WRS Council should be changed to WRS Authority. This is consistent with the</p>	<p><i>Cite:</i></p> <p><i>Page 272 The Warehouse Receipts System Bill, 2017</i>  <i>AN ACT of Parliament to provide a legal</i></p>



<p>global practice and also in line with other authorities established in Kenya.</p>	<p><i>framework for the development and regulation of a warehouse receipt system for agricultural and Non-Agricultural commodities, the establishment of the Warehouse Receipts System Council Authority and for connected purposes</i></p>
<p>Agricultural and Non-Agricultural Commodities: Enable Warehouse Receipts System to facilitate both agricultural and non-agricultural commodities certification.</p>	<p>Cite:  Page 272 <i>The Warehouse Receipts System Bill, 2017</i>  <i>AN ACT of Parliament to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural and Non-Agricultural commodities, the establishment of the Warehouse Receipts System Council Authority and for connected purposes</i></p>
<p>The Kenya National Commodity Exchange will trade both Agricultural and Non-Agricultural Commodities including but not limited to tea, coffee, cereals, pulses, fertilizer, mineral, metals and energy related products. Due to the link between WRS and the Commodities Exchange</p>	<p>Cite:  Page 291  MEMORANDUM OF OBJECTS AND REASONS  The objective of this Bill is to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities to address marketing challenges associated with Agricultural and Non-Agricultural commodities including but not limited to cereals and grain subsectors Sugar, rice, tea, coffee, <b>cereals</b>, pulses, fertilizer, mineral, metals and energy related products.</p>

No.	Section of the Bill (Act) where regulations are required/proposed	Focus/purpose of the regulations	Itemized regulatory provisions
<b>PART I - PRELIMINARY</b>			
	Section 2, page 272	Definition of Commodities	Replace the definition of Agricultural commodities by the definition of Commodities - Commodities means all products, storage of which is determined by regulations to be subject to this act and includes goods that are packed, processed or otherwise





			transformed and stored in a warehouse
	Section 2, page 272	Definition of Cabinet Secretary	Definition of Cabinet Secretary- From 'Agriculture' to 'Trade'
	Section 2, page 272	Definition of Collateral Manager	Definition of Collateral Manager- drop the word 'agricultural' in both references
<b>PART II- ESTABLISHMENT OF WAREHOUSE RECEIPT SYSTEM COUNCIL</b>			
	Section 4(1)(a), page 275	Functions of WRS Council	Drop the word 'agricultural'
	Section 4(1)(c), page 276	Functions of WRS Council	Drop the word 'agricultural'
	Section 4(1)(l), page 276	Functions of WRS Council	Drop the word 'agricultural'
	Section 4(1)(c), page 275	Functions of WRS Council	Defining the role of the WRS Council. It defines, one of the roles, as to "establish and maintain framework for structured trading." This has a wide spread meaning. Commodities Exchange is a structured trading mechanism and this clause will put the regulation of the exchange under the Warehouse Receipt Council.
<b>PART III – LICENSING AND INSPECTION OF WAREHOUSES</b>			
	Section 20(1), page 282	The stored commodities to meet the required standards	Drop the word 'agricultural'
	Section 20(2), page 282	The stored commodities to meet the required standards	Grading of the commodities shall be undertaken by the commodity graders approved by competent authority
	Section 21, page 282	Inspection of the commodities	Drop the word 'agricultural'
<b>PART IV – WAREHOUSE RECEIPTS</b>			
	Section 25(1)(3)(h), page 283	Issue of a warehouse receipt	Drop the word 'agricultural'
	Section 25(1)(3)(j), page 283	Issue of a warehouse receipt	Drop the word 'agricultural'
<b>PART V – OBLIGATIONS AND RIGHTS OF WAREHOUSE OPERATOR UPON THEIR RECEIPTS</b>			
	Section 30, page 285	Liability of loss	Drop the word 'agricultural'
	Section 31(1), page 285	Commingling of the commodities	Drop the word 'agricultural'
	Section 31(2), page 285	Liability of the warehouse operator	Drop the word 'agricultural'
<b>PART – MEMORANDUM OF OBJECTS AND REASONS</b>			
	Memorandum, page 291	Objectives of WRS Bill	The objective is modified as –



			“The objective of the Bill is to provide a legal framework for the development and regulation of a warehouse receipt system for commodities to address the trade related challenges of domestic markets and export markets of Kenya.
	Clause 21, page 291	Objectives of WRS Bill	“Provides for the grading of commodities to be done by the professional certified graders and weighing of the products using equipment calibrated in according to the weights and measures act.”

### 2.1.2 Submissions from the Council of Governors (CoG)

The Council of Governors noted in their memorandum submitted to the Committee that the sovereign power of the state is exercised at two levels of government and whose distinctness is recognized by Article 6 (2) of the Constitution of Kenya 2010. It further averred that all legislations must take cognizance of devolved governments and respond to the key issues that reflect the spirit and purpose of the devolution.

#### 2.1.2.1 Proposed amendments by CoG

CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
<b>Interpretation</b>	“ <b>Council</b> ” means the Warehouse Receipts System Council established under section 3.	Amend by deleting definition of Council and replace with: “ <b>National Council</b> ” Means the National Warehouse Receipts Council established under section 3.	<b>The Council of Governors opines that the Council established should be a national council coordinating the 47 County Governments.</b>
<b>Clause 3(1) Establishment of the Warehouse Receipt Systems Council</b>	<b>3(1) there is established a Council to be known as the Warehouse Receipt System Council.</b>	Amend by introducing the word “ <b>National</b> ” immediately after the word “ <b>to be known as the</b> ” so as to read:  <i>3(1) There is established a Council to be known as the National Warehouse Receipts System Council.</i>	<b>To align it with the proposed amendment by the Council of Governors</b>



<p><b>Clause 3 (3) (c)</b></p>	<p>3. The Council shall- a)... b)... c) one person nominated by the Council of Governors</p>	<p>Delete clause 3(3)(c) and replace with the following:  <i><b>“two people nominated by the Council of County Governors;</b></i></p>	<p>There are 47 Counties in the County and given also that agriculture is a devolved function one person will not be able to sufficiently and efficiently represented interests of Counties.</p>
<p><b>Clause 4: Functions of the Council.</b></p>	<p>4. The Council shall- a)... b)...  h) may issue, suspend or revoke registration or licenses issued under the Act.</p>	<p>Amend clause 4 to read as follows: <b>4. The National Council shall in consultation with the County Governments-</b> a)... b)...  h) may issue, suspend or revoke registration of warehouses under this Act.</p>	<p>Agriculture is a devolved function hence consultation as envisioned in Article 6 of the Constitution.  Licensing of warehouse is a county functions per the Fourth schedule part paragraph 7 and hence s</p>
<p><b>Clause 4</b></p>	<p>Functions of the Council</p>	<p>Amend by inserting a new <b>clause 4A immediately after clause 4</b> to provide for the functions of the County Government Department for Agriculture which includes:- (i) Issue, suspend or revoke licenses issued under the Act (ii) Enforce standard as prescribed by the National Council (iii) Inspection of warehouses (iv) Mobilisation of farmers to engender confidence and participation in the system (v) Data collection to assist in the inspection of warehouses (vi) Creating support mechanism for farmers to access the system. This includes subsidised transportation and pre-warehouse storage, financial support of pilot programmes, compensation to farmers for lost grain, (vii) Establishment of public warehouses (viii) Provide extension to farmers to comply with commodity standards,</p>	<p>This is to align the Bill to the functions of the County Governments as provided for under the fourth schedule of the Constitution.</p>

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		<p>which will also curtail cheating on weights and quality.</p> <p>(ix) Encourage the use of warehouses as delivery locations to allow for transparent trade in agricultural commodities between producers and large traders or processors thereby reducing the length of the marketing chain and narrowing distribution margins.</p> <p>(x) Develop and implement strategies to enable smallholder farmers use the system.</p>	
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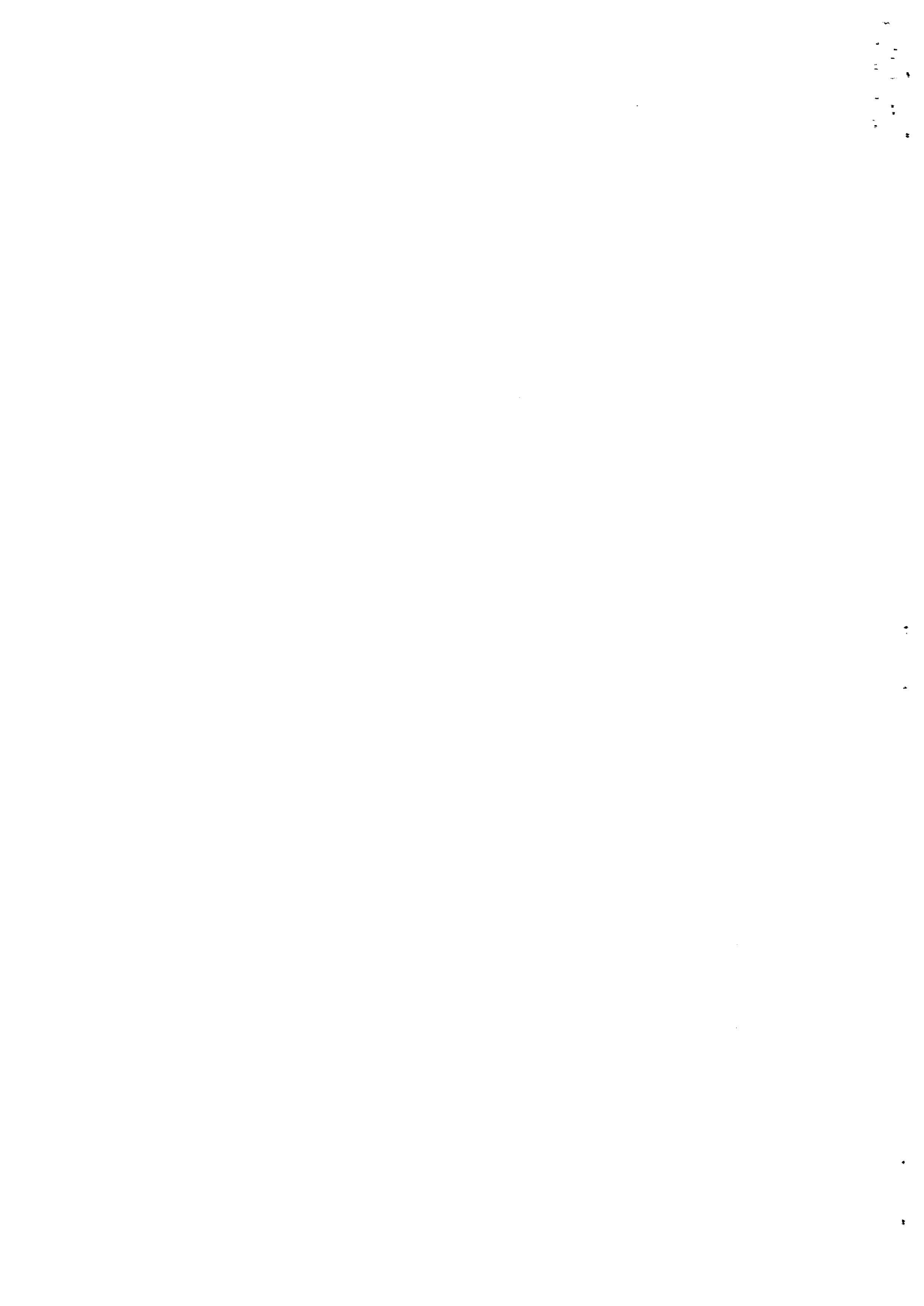
### **2.1.3 Submissions from Food Trade East and Southern Africa, and Cereal Growers Association**

Before presenting their memoranda to the committee, the stakeholders explained their roles as;

- a) Food Trade East and Southern Africa operates in nine countries: Kenya, Rwanda, Tanzania, Uganda, Burundi, Malawi, Mozambique, Zambia and Zimbabwe and recognizes the transformative potential of agriculture and trade as the way to improve the lives and incomes of thousands of small scale farmers, as well as strengthen food security in the region. It tries to bridge the gaps that exist in the trade of staple foods in East and Southern Africa by investing in innovative systems to allow small-scale farmers to improve their inputs and gain access regional markets.
- b) Cereal Growers Association (CGA) is a member based farmer organization that works with cereal farmers in Kenya on policy advocacy, adoption of improved production technologies and market information systems amongst other services. The association links farmers, both small and large scale, to their suppliers and service providers and also dialogues with policy makers on relevant agricultural policies

#### **2.1.3.1 Proposed amendments by Food Trade East and Southern Africa, and Cereal Growers Association**

Food Trade East and Southern Africa, and Cereal Growers Association proposed a number of amendments in the Bill as captured in the table below





S/No	Section	Provision of the Bill	Rationale	Proposed Amendment
1	Definition Section – Section 2	Insertion of new definition	To include the definition of the term “commingle” that is mentioned in Clause 31 (1) of the Bill.	commingle" means the binning and storage of commodities by class, under circumstances other than identity preserved;
2	Definition Section – Clause 2	holder” means the payee or endorsee of a warehouse receipt who is in possession of the receipt	To further elaborate this provision to include non-negotiable warehouse receipts	"holder" means a person who is in possession of a warehouse receipt, whether negotiable or non-negotiable, and who has proprietary right therein
3	Clause 9	The Board shall employ such other staff of the Council as the Board may consider necessary for the proper and efficient discharge of the functions of the Council under the Act, on such terms and conditions of service as the Council may	Remove the mention of the term “Board” since the Clause refers to the Council	Staff of the Council 9. The Council may employ such number of employees and such other officers as it may determine to be necessary for the efficient staff performance of the functions and the exercise of the powers of the Council.

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		determine.		
4	Insertion of new sub Clause 12 (1)	Insertion of new sub Clause.	To further clarify the start of the financial year of the Council.	Inserting new sub-Clause (1) as follows:- Without prejudice to subsection (1) the first financial year of the Council may be a shorter period commencing on the date on which the Council is established and ending with the next following 30th day of June.
5	Insertion of new Clause 17	Insertion of new Clause.	Provide further details on the conditions for operating a warehouse under the warehouse receipt system in Kenya.	<b>Conditions for operating a warehouse 17.</b> -(1) The Council may, upon application, issue a warehouse license for the conduct of warehouse business. (2) Two or more warehouses which constitute a station may be licensed under a single license. (3) All warehouses licensed under a single license shall be treated as a single warehouse for all the purposes of this Act, including issuance of receipts, and delivery of commodities.
6	Insertion of new Clause 18	Insertion of new Clause	Provide further details on the licensing procedure to conduct warehouse operations.	<b>Licensing procedure 18.</b> -(1) Any person who requires a license to conduct warehousing operations or business shall apply to the Council in the manner prescribed by the Regulations. (2) The Council shall, before granting a warehouse license, either by itself or any other authorized person, inspect any warehouse in respect of which a license is applied, to determine whether the warehouse is suitable for the storage of the particular goods for which the license is applied. (3) The Council shall, upon being satisfied that a warehouse is suitable for the

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				storage of the goods in question, grant a warehouse license to the applicant. (4) The applicant shall, upon being granted a license pay a fee prescribed by the Council.
7	Insertion of new Clause 19	Insertion of new Clause.	Provide a Clause to protect against nonperformance by warehouse operators. This new Clause shall require warehouse operators to have performance bonds to create more faith in the system.	<b>Performance Bonds 19.</b> -(1) Each warehouse operator applying for a license under this Act shall, execute and file with the Council a bond sufficient to secure the faithful performance by him of the obligations as a warehouse operator under this Act and Regulations and other statutory instruments made under this Act. (2) Where the Council determines that a previously approved bond is, or for any cause has become insufficient, it may require an additional bond or bonds to be given by the warehouse operator concerned, conforming with the requirements of this section, and, unless the additional bond is given within the time fixed by a written demand made by the Council, the license of the warehouse operator may be suspended or revoked by the Council.
8	Insertion of new Clause 20	Insertion of new Clause.	Provide a Clause to protect against nonperformance by warehouse operators. This new Clause shall require warehouse operators to have performance bonds to create more faith in the system	<b>Liability under Performance Bonds</b> 20. Any person injured by reason of the breach of any obligation for which a performance bond is given, shall be entitled to sue on the bond in his or her own name in any court, not lower than the Court of a Resident Magistrate to recover the damages for injury sustained because of the breach.

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9	Insertion of new Clause 21	Insertion of new Clause.	Provide a Clause for warehouse operators to ensure that their premises are insured. This protects the players (especially depositors) in the warehouse receipts system.	<p><b>Insurance of Warehouse Operators 21.</b>-(1) Each applicant for a license to operate a warehouse in accordance with this Act shall, as a condition to the granting, file or cause to be filed with the Council a certificate of insurance evidencing effective policy of insurance issued by an insurance company authorized to do business in Kenya in the name of the applicant insuring all commodities which are or may be in such warehouse for their full market value for loss by fire, theft, burglary, arson or any other risk which the Council may direct to be included under this category. (2) In the case of outbreak of fire, burglary, arson or any other risk categorized under sub-section (1) destroys or damages any commodities in any licensed warehouse, the warehouse operator shall, upon demand by the depositor, and upon being presented with the receipt or other evidence of ownership and after deducting the warehouse operators charges and advances at the market value of the commodity, make the settlement. (3) The warehouse operator shall make complete settlement to all depositors having commodities stored in any warehouse, damaged or destroyed, within ten (10) days' after settlement with the insurance company. (4) Failure by the warehouse operator to make settlement shall be the</p>
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				grounds for suspension or revocation of the warehouse operator's license.
10	10. Insertion of new Clause 22.	Insertion of new Clause.	Provide a Clause for warehouse operators to ensure that their premises are insured. This protects the players (especially depositors) in the warehouse receipts system	<b>Additional Insurance</b> (1) Where the Council shall determine that a previously approved insurance is insufficient, it shall require additional insurance to be given by the warehouse operator, conforming to the requirements of this Act. (2) Without prejudice to subsection (1), the warehouse operator shall be required to upgrade the insurance policy with a view to maintain sufficient policy all the time arising from settlement of loss through insurance, the warehouse operator shall meet the amount that falls short of the value of the loss unable to be settled through insurance.
11	Insertion of new Clause 23	Insertion of new Clause.	Provide a Clause for warehouse operators to ensure that their premises are insured. This protects the players (especially depositors) in the warehouse receipts system.	<b>Cancellation of insurance 23.</b> (1) A licensed warehouse operator shall not cancel or suspend an approved insurance policy or arrange for substitution of insurance policy without prior written approval of the Council. (2) The insurance company may cancel insurance required by this Act only after the expiration of thirty (30) days period from the date of mailing, by registered or certified mail, of the notice to the Council of the intention to cancel or suspend the insurance policy. (3) The insurance company shall, at the time of giving notice to the Council send a copy of the notice to the warehouse operator.

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12	Insertion of new Clause 25	Insertion of new Clause.	Provide more detail as to what happens to commodities by depositors after a license to a warehouse operator is expired, revoked or suspended	<b>Operation after revocation, suspension, or expiration of licenses 25.</b> (1) Where a license is revoked, suspended or has expired, the warehouse operator shall terminate, in the manner prescribed by the Council, all arrangements covering the receiving, storing, shipping, conditioning, or handling of commodities in the warehouse stations covered by such license, but shall be permitted, under direction or supervision of the Council to deliver commodities previously received. (2) During any suspension of a license, the warehouse operator may, under direction or supervision of the Council, operate the warehouse, station, but shall not receive any commodities for storage, conditioning, shipping, or handling during the term of such suspension.
13	Insertion of new sub Clause 29 (2) (currently being Clause 21)	Insertion of new sub Clause 29 (2)	To further clarify and give more detail on the hiring of inspection officers. Provide for further clarification of this issue in the Regulations.	Inserting new sub-Clause (2) as follows: <b>Inspection of stored products (2)</b> The Minister shall prescribe in the Regulations qualifications of a person to be appointed as an inspector.
14	Insertion of new sub Clause 33 (4) (5) and (6) (currently being Clause 25)	Insertion of new sub Clause 33 (4), (5) and (6)	To further clarify the content of warehouse receipts and issues of liability on the lack of content on the receipts.	inserting new sub-Clause (4) (5) and (6) as follows:- <b>Warehouse receipts (4)</b> A warehouse operator shall be liable to the person injured thereby, for damages caused by the omission of any such term required to be included in the warehouse receipt under this Act. (5) A warehouse operator may insert in a receipt any other terms and conditions which are not contrary to the

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				provisions of this Act and which do not impair obligations of delivery or duty of care. (6) Any provision appearing in a warehouse receipt, purporting to contain any condition which is contrary to this Act shall not be capable of enforcement by the court.
15	Insertion of new Clause 34	Insertion of new Clause	To define negotiable warehouse receipt	<b>Negotiable warehouse receipts 34.</b> (1) A warehouse receipt in which it is stated that the goods received will be delivered to the person named in the receipt or his order shall be known as a negotiable warehouse receipt. (2) No words shall be inserted in a negotiable receipt with the effect of rendering that receipt non-negotiable. (3) The Minister may prescribe in the Regulations the procedure and limits of negotiation of negotiable warehouse receipts.
16	Insertion of new Clause 35	Insertion of new Clause	To define nonnegotiable warehouse receipts	<b>Non-negotiable warehouse receipts 35.</b> A warehouse receipt on which it is stated that the goods received will be delivered to the bearer shall be treated as a non-negotiable receipt.
17	Insertion of new Clause 36	Insertion of new Clause	To provide to what happens when either a negotiable or non-negotiable warehouse receipt is altered	<b>Altered warehouse receipts 36.</b> An alteration to a warehouse receipt shall be regarded as (a) immaterial if the alteration does not affect ex-ante proprietary rights of the holder; (b) authorized when made with an implied or direct permission or connivance of the warehouse operator and which render a warehouse operator and the perpetrator liable under the provisions of this Act; or (c) unauthorized

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				but made without fraudulent intent, when made without an implied or direct permission or connivance of the warehouse operator and which render the warehouse operator liable according to the terms of the receipt, as they were before alteration.
18	Insertion of new Clause 37	Insertion of new Clause	To define the rights of the holders of an altered negotiable or non-negotiable warehouse receipt.	<b>Rights under an altered warehouse receipt 37.</b> -(1) A purchaser of a warehouse receipt for value without notice of alteration shall acquire the same proprietary rights against the warehouse operator which the purchaser would have acquired if the receipt had not been altered at the time of purchase. (2) A purchaser of a warehouse receipt shall be regarded to have had notice of alteration, if before the purchase of the warehouse receipt, he or his agent took part in or influenced the alteration of the said warehouse receipt. (3) A purchaser of an altered warehouse receipt who has been found or who could be reasonably imputed with possession of notice of alteration commits an offence and shall be proceeded against under this Act in the same footing with the operator
19	Insertion of new sub Clause 41 (3) (currently being Clause 29)	Insertion of new sub Clause 41 (3).	To define the obligation of the warehouse operator to deliver when it comes to an altered warehouse receipt.	Inserting new sub-Clause (3) as follows:- <b>Obligation of warehouse operator to deliver</b> (3) Where the warehouse operator refuses to deliver the goods as demanded by the depositor or holder of warehouse receipt because of the reason that the warehouse

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				receipt was altered, the holder or depositor who had notice of alteration shall be estopped from demanding more or less proprietary rights in the warehouse receipt than those provided on the altered warehouse receipt.
20	Insertion of new Clause 43.	Insertion of new Clause.	To define the duty of care of a warehouse operator when it comes to depositors of goods under his custody.	Warehouse operator duty of care 43.-(1) A warehouse operator shall exercise such care in regard to the goods kept by him as reasonably and as carefully as a reasonable and careful owner of similar goods would exercise. (2) In addition to other conditions that may be imposed to the warehouse operator's license, the warehouse operator shall be liable for breach of duty of care if he acts contrary to subsection (1) of this section in keeping safe custody of the goods.
21	Insertion of new Clause 44.	Insertion of new Clause.	To define the duty of care of the warehouse operator, specifically the duty to keep the goods separately.	<b>Duty to keep the goods separately 44.</b> Except as provided in this Act a warehouse operator shall keep goods of each depositor separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit the identification and re-delivery of the goods deposited.
22	Insertion of new Clause 48.	Insertion of new Clause.	To further define the rights and obligations under a warehouse operator's lien.	Statement of charges under lien 48. Where a negotiable receipt is issued for goods, the warehouse operator shall have no lien thereon, except for charges of storage of those goods, subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien

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				is claimed in which case there shall be a lien for the charges enumerated so far as they are within the terms of section 47, although the amount of the charges so enumerated is not stated in the receipt.
23	Insertion of new Clause 49	Insertion of new Clause.	To further define the rights and obligations under a warehouse operator's lien.	<b>Refusal to deliver goods until lien is satisfied 49.</b> A warehouse operator having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.
24	Insertion of new Clause 50	Insertion of a new Clause.	To further define the rights and obligations under a warehouse operator's lien.	<b>Warehouse operator's lien does not preclude other remedies 50.</b> The fact that a warehouse operator has or has not a lien upon the goods, shall not affect entitlement to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouse operator.
25	Insertion of new Clause 51.	Insertion of a new Clause.	To further define the rights and obligations under a warehouse operator's lien.	<b>Methods of enforcing the lien 51.</b> -(1) A warehouse operator's lien may be satisfied by (a) sale of goods; (b) other remedies allowed by the law for the enforcement of a lien against personal property; or (c) Any other action for recovery of the warehouse operator's claim.
26	Insertion of new Clause 52.	Insertion of a new Clause.	To further define the rights and obligations under a warehouse operator's lien.	<b>Perishable and hazardous goods 52.</b> -(1) Where the goods are of a perishable nature and likely to deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, are likely to injure other property or endanger the life of persons

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				<p>legally likely to come into contact with the goods, the warehouse operator may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of failure of such person to satisfy the lien and to remove such goods within the time so specified, the warehouse operator may sell the goods at public or private sale with or without advertising</p> <p>(2) If after reasonable efforts have been made the warehouse operator is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. (3) The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under this Act</p>
27	Insertion of new sub Clause 60 (2) (currently being Clause 41)	Insertion of new sub Clause 60 (2).	To further buttress section on unlawful issue of duplicate receipt <i>vis</i> the replacement of lost receipts	Inserting new sub-Clause (2) as follows:- <b>Unlawful issuing of duplicate Receipts</b> (2) The provision of this section shall not apply where a duplicate of a warehouse receipt is issued in accordance with the provisions of Clause 39 on replacement of receipts.
28	Insertion of new Clause 61.	Insertion of new Clause.	To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation the warehouse receipt system.	<b>Issue for warehouse operator's goods of receipts, which do not state that fact</b> 61. Where there are deposited with or held by a warehouse operator goods of which he is owner, either solely or jointly

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				or in common with others, then such warehouse operator or his agents or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods and omits to state any fact with respect to ownership, commits an offence shall be liable for imprisonment for a term not exceeding one year or to a fine not exceeding one million shillings or both.
29	Insertion of new Clause 62.	Insertion of new Clause.	To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation the warehouse receipt system.	<b>Delivery of goods without obtaining negotiable receipt 62.</b> A warehouse operator, or any officer, agent, or servant of a warehouse operator who delivers goods out of the possession of such warehouse operator, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such receipt is outstanding and not cancelled, without obtaining possession of that warehouse receipt, at or before the time of such delivery, shall be liable for imprisonment for a term not exceeding one year, or by a fine not exceeding one million shillings or to both.
30	Insertion of new Clause 63.	Insertion of new Clause.	To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation of warehouse receipt system	<b>Negotiation of receipt for mortgaged goods 63.</b> Any person who (a) deposits goods to which he has no title, or upon which there is a lien or mortgage; (b) takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of lien or mortgage, commits an

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				offence and shall on conviction be liable to imprisonment for a term not exceeding seven year or to a fine not exceeding ten million shillings.
31	Insertion of new Clause 64	Insertion of new Clause	To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation the warehouse receipt system.	<b>Obstructing a warehouse inspector</b> 64. Any person who obstructs the warehouse inspector or any other authorized person in the exercise of the power conferred upon him by this Act or who neglects or refuses to produce to the warehouse inspector or any authorized person any books, records, information or anything which the inspector or any other authorized person may request to be produced for inspection, commits an offence and shall be liable on conviction to imprisonment for three months or to a fine not exceeding one million shillings or to both.

#### 2.1.4 Submissions from the State Department of Crop Development

The State Department of Crop Development (SDCD) in their memorandum submitted that the contents of their amendments in the WRS Bill No. 10 of 2017 were similar to the submissions presented to the 11<sup>th</sup> Parliament Standing Committee on Agriculture and Livestock. Further, SDCD asserted that the memorandum reflected the agreed upon position on various recommended changes to the Bill as adopted by various stakeholders that included State Department of Agriculture , State Department of Trade and Private Sector Alliance ( through East Africa Grain Council) among others.

##### 2.1.4.1 Proposed amendments by SDCD

The table below shows the proposed amendments to WRS Bill 2017 by SDCD:



**Matrix I: Memorandum on Proposed Changes to the Warehouse Receipt Systems Bill, 2018**

Clause and Provision	Proposed Change	Reason
Between Cl. 3 (c) and (d)	Cl. 3 (d) The Principal Secretary for the time being responsible for matters relating to trade or his representative;	Due to the link between WRS and the Commodities Exchange, which is under establishment by the State Department of Trade, It is important that the PS Trade is a member of the WRS Board.
Cl. 3(3)(g); one person nominated by the Kenya Farmers Association;	Cl. 3(3)(g); one person nominated by the Kenya National Farmers Federation;	KENAFF is the current umbrella apex farmers' organization
Cl. 4(1)(i) - (i) may suspend operations of warehouse operators, inspectors, weighters or graders operating under the Act."	Cl. 4(1)(i) <ul style="list-style-type: none"> <li>• Change "weighters" to "weighers"</li> <li>• Reframe clause to read "may suspend operations of warehouse operators, inspectors, weighers, graders or <b>other service providers</b> operating under the Act</li> </ul>	Correction of spelling  Inclusion of " <b>other service providers</b> " anticipates the future participation of other value chain actors not specifically provided for under the act
Cl. 8(4); The chief executive officer shall serve for a term of three years and shall, subject to satisfactory performance, be eligible for re-appointment for a further term of <b>five</b> years.	Cl. 8(4); The chief executive officer shall serve for a term of three years and shall, subject to satisfactory performance, be eligible for re-appointment for a further term of <b>three</b> years.	Align initial and additional tenure of office with common practice
20. (2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a recognized competent Authority.	Cl. 20 (2) - Replace "recognised competent" with "mandated"	Refers to institutions mandated under Kenyan laws and not just competent

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### **3 COMMITTEE OBSERVATIONS**

The committee observed the following from the submissions;

- a) Warehouse Receipt System Bill, (Senate Bills No.10 of 2017) covers all agricultural produce;
- b) Warehouse Receipt System Bill, (Senate Bills No.10 of 2017) has the potential to reduce challenges faced in storage of farm produce in Kenya e.g. storage losses;
- c) Warehouse Receipt System can broaden the growth of marketing of the agricultural commodities in Kenya
- d) Warehouse Receipt System when fully developed can be a source of security document to access loan facilities by the farmers;
- e) The involvement of the two levels of government in the setting up of the governance structures and implementation of the warehouse receipt system is crucial;
- f) County governments should play a major role in implementation of this Bill;
- g) The private sector must be encouraged and supported through necessary subsidiary legislation to ensure their full participation in this new trading system; and
- h) The Bill should made provision for insurance in order to safeguard all actors.



#### **4 COMMITTEE RECOMMENDATIONS**

The Committee recommends the following amendments:

##### **CLAUSE 3**

**THAT** clause 3 of the Bill be amended in sub-clause (3) —

- (a) by inserting the following new paragraph immediately after paragraph (b) —
  - (bb) the Principal Secretary for the time being responsible for matters related to trade or a representative;
- (b) in paragraph (c) by deleting the word “one person” appearing at the beginning of the paragraph and substituting therefor the word “two persons”;
- (c) in paragraph (g) by deleting the words “the Kenya Farmers Association” appearing immediately after the words “one person nominated by” and substituting therefor the words “an umbrella body representing farmers in Kenya”; and
- (d) in paragraph (h) by deleting the words “East African Grain Council” appearing immediately after the words “Kenyan members of the” and substituting therefor the words “Eastern Africa Grain Council”.

##### **CLAUSE 4**

**THAT** clause 4 of the Bill be amended by —

- (a) deleting paragraph (h) and substituting therefor the following new paragraph —
  - (h) monitor and have oversight responsibilities over the issuance, suspension or revocation of registration or licences issued under this Act;
- (b) deleting paragraph (i);

##### **CLAUSE 10**

**THAT** clause 10 of the Bill be amended by deleting the word “assists” appearing immediately after the words “it considers appropriate to” and substituting therefor the word “assist”.

##### **CLAUSE 16**

**THAT** clause 16 of the Bill be amended ---

- (a) in sub-clause (1) by deleting the word “Council” appearing immediately after the words “shall apply to the” and substituting therefor the words “respective county executive committee member”;
- (b) in sub-clause (3) by deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member”; and
- (c) by inserting the following new sub-clause immediately after the sub-clause (4) —
  - (4A) Each county executive committee member shall furnish the Council with details of a licence issued under subsection (1) within seven days of issuance of the respective licence.

**CLAUSE 17**

**THAT** clause 17 of the Bill be amended —

- (a) in sub-clause (1) by deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member;
- (b) in sub-clause (2) by —
  - (i) deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member”;
  - (ii) deleting the word “and” appearing immediately after the words “and give the licensee” and substituting therefor the word “an”; and
  - (iii) deleting the word “it” appearing immediately after the words “make representations before” and substituting therefor the words “making a determination”;
- (c) in sub-clause (3) by —
  - (i) deleting the words “Council” appearing immediately after the words “of a licence, the” and substituting therefor the words “county executive committee member”; and
  - (ii) deleting the words “Council” appearing immediately after the words “the licence to the” and substituting therefor the words “county executive committee member”; and
- (d) at sub-clause (6) by deleting the word “Council” appearing immediately after the word “or revoked, the” and substituting therefor the words “respective county executive committee member”.



## **CLAUSE 18**

**THAT** clause 18 of the Bill be amended by ---

- (a) deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member; and
- (b) inserting the words “as prescribed by the Council” immediately after the words “of warehouse operator’s licence”.

## **CLAUSE 20**

**THAT** clause 20 of the Bill be amended in sub-clause (2) by deleting the words “a recognized competent Authority” appearing immediately after the words “commodity graders certified by” and substituting therefor the words “the Agriculture and Food Authority”.

## **CLAUSE 43**

**THAT** clause 43 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) —

(1A) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Cabinet Secretary shall make Regulations---

- (a) on the provision of performance bonds required under his Act;
- (b) on insurance policy required under this Act;
- (c) on the procedure for appealing to the Council or the Appeal Committee;
- (d) on the qualifications and appointment of officers undertaking inspection of warehouses registered or licensed under this Act;
- (e) on the form of warehouse receipts, whether negotiable or non-negotiable; and
- (f) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

## **NEW CLAUSES**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 4 —

Functions of  
the County  
Executive  
Committee  
member.

**4A.** The county executive committee member —

- (a) shall establish and maintain a county registry for the management of warehouse receipt transactions under this Act;
- (b) shall promote the development of a county network of privately or publicly managed warehouses that have the capacity to issue warehouse receipts;
- (c) may issue, suspend or revoke registration or licenses issued under this Act;
- (d) shall enforce the standards prescribed by the Council under this Act;
- (e) shall ensure the inspection of warehouses in the county;
- (f) shall promote confidence and participation in the warehouse receipt system;
- (g) shall develop and implement strategies to facilitate the utilisation of the warehouse system by smallholder farmers;
- (h) shall create support mechanisms to facilitate access to warehouses by all farmers in the respective county; and
- (i) may carry out any other function necessary or incidental to the implementation of this Act.

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 16

Performance  
bond.

**16A.** (1) A person applying for a license under this Act shall, further to other requirements prescribed by the Council or imposed under this Act, provide a performance bond in such form as may be prescribed by the Cabinet Secretary.

(2) A Performance bond shall serve as a financial assurance for the fulfilment of all obligations arising out of the licence under this Act, including potential

costs relating to rescue, recovery of other costs and fines, penalties or compensation for violations against this Act, and shall be drawn upon in such manner as may be prescribed.

(3) The form of financial assurance acceptable under this section shall include ---

- (a) surety bond;
- (b) trust fund with pay-in period;
- (c) insurance policy;
- (d) cash deposit; or
- (e) annuities.

Insurance.

**16B.** A person shall not qualify for the grant of a licence under this Act unless that person provides an insurance policy securing the respective warehouse and goods it contains against fire, flood, theft, burglary, earthquake, explosion and any other risk as may be prescribed by the Cabinet Secretary.

Appeal to the Council.

**16C.** A person who is aggrieved by a decision of the county executive committee member may, within thirty days of being notified of the decision, appeal to the Council in the prescribed manner.

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 41

Depositing goods without proper title.

**41A.** A person who deposits goods whose title belongs to another party in a warehouse registered or licensed under this Act without the approval of the owner commits an offence and is liable, on conviction, to a term of imprisonment not exceeding fourteen years.

**41B.** A person who obstructs the inspection of a registered or licensed warehouse in contravention of this Act or any other law commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or to both.

Obstruction.

**THAT** the Bill be amended by inserting the following new clause immediately after clause 43

---

Consultation. **44.** The Cabinet Secretary shall, in carrying out the functions under this Act, consult the Cabinet Secretary responsible for matters related to trade.

## ***CLAUSE 2***

**THAT** clause 2 of the Bill be amended by --

- (a) deleting the definition of the term 'holder' and substituting therefor the following new definition
- 

"holder" means the payee or endorsee of negotiable or non-negotiable warehouse receipt who is in possession of the receipt;

- (b) inserting the following new definitions in the proper alphabetical sequence --

"Agriculture and Food Authority" means the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013;

No. 13 of  
2013.

"county executive committee member" means the county executive committee member responsible for matters relating to agriculture in the respective county;

# ANNEXTURES

**THE WAREHOUSE RECEIPT SYSTEM BILL, 2017**  
**ARRANGEMENT OF CLAUSES**

*Clauses*

**PART I—PRELIMINARY**

1—Short title.

2—Interpretation.

**PART II—ESTABLISHMENT OF THE WAREHOUSE  
RECEIPT SYSTEM COUNCIL**

3—Establishment of the Warehouse Receipt System  
Council.

4—Functions of the Council.

5—Powers of the Council.

6—Conduct of the affairs of the Council.

7—Remuneration of members of the Council.

8—Chief Executive Officer.

9—Staff of the Council.

10—Consultants and experts.

11—Funds of the Council.

12—Financial year.

13—Annual estimates.

14—Accounts and audit.

15—Reports.

**PART III—LICENSING AND INSPECTION OF  
WAREHOUSES**

16—Licensing of warehouse operators.

17—Revocation of licence and suspension of licence or  
operations.

18—Fees.

19—Warehouse Receipts Appeals Committee.

- 20—Grading and weighing of agricultural products.
- 21—Inspection of stored products.
- 22—Publication of general inspections.
- 23—Examination of books and records of licensed warehouses and warehouse operators.
- 24—Regulations.

#### **PART IV— WAREHOUSE RECEIPTS**

- 25—Warehouse receipts.
- 26—Establishment of central registry.
- 27—Replacement of receipts.
- 28—Warranty and standing of duplicate receipts.

#### **PART V—OBLIGATIONS AND RIGHTS OF WAREHOUSE OPERATOR UPON THEIR RECEIPTS**

- 29—Obligation of warehouse operator to deliver.
- 30—Wrongful release of goods.
- 31—Separation of goods and fungible goods.
- 32—Attachment or levy upon goods for which negotiable receipt has been issued.
- 33—Warehouse operator's lien.

#### **PART VI—NEGOTIATION AND TRANSFER OF RECEIPTS**

- 34—Negotiation by endorsement.
- 35—Persons capable of negotiating a Warehouse Receipt.
- 36—Rights acquired after negotiation of warehouse receipts.
- 37—Rights and obligations of transferors and transferees of negotiable warehouse receipts.
- 38—Warranties on negotiation of the warehouse receipt.

#### **PART VII— PENAL PROVISIONS**

- 39—Issuing of fraudulent warehouse receipts.
- 40—Issuing of receipts with false information.

41—Unlawful issuing of duplicate Receipts.

42—General penalty.

**PART VII— MISCELLANEOUS PROVISION**

43—Regulations.

**SCHEDULE—PROVISIONS FOR THE  
MEETINGS AND PROCEDURE OF  
THE COUNCIL**



**THE WAREHOUSE RECEIPT SYSTEM BILL, 2017****A Bill for**

**AN ACT of Parliament to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities, the establishment of the Warehouse Receipt System Council and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Warehouse Receipt System Act, 2017.

Short title and commencement.

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

Interpretation.

“agricultural commodity” means all agricultural produce, the storage of which is determined by regulations to be subject to this Act and includes goods that are packed, processed or otherwise transformed and stored in a warehouse;

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

“central registry” means the central registry established under section 26;

“collateral manager” means a person appointed by the owner or any other person who has an interest in agricultural commodities stored in a warehouse with the intention of monitoring or taking custody of the agricultural commodities;

“Council” means the Warehouse Receipts System Council established by section 3;

“electronic warehouse receipt” means a warehouse receipt that has been generated, sent, received or stored by electronic, optical or similar means;

“holder” means the payee or endorsee of a warehouse receipt who is in possession of the receipt;

“negotiable receipt” means a receipt in which it is stated that the goods received will be delivered to the bearer or on the order of any person named in the receipt;

“owner” does not include a mortgagee or pledgee;

“person” includes a corporation, partnership or any other form of business entity or two or more persons having a joint or common interest;

“purchaser” includes mortgagee or pledgee;

“warehouse operator” means a person engaging in the business of storing goods for hire and the issuance of warehouse receipts regardless of whether such goods undergo packaging, processing, substitution or other transformation while in the warehouse;

“warehouse operator’s lien” means the right of a warehouse operator to recover, against the goods covered by a warehouse receipt or on the proceeds thereof, charges payable by the depositor for or in connection with the storage and handling of the goods in the possession of the warehouse operator;

“warehouse” means a licensed building or other protected enclosure in which goods are stored for the purpose of safekeeping, issuance of warehouse receipts or license and includes field warehouses and a plant or other facility where the goods are packed, processed or otherwise transformed;

“warehouse receipt” means a receipt issued by licensed warehouse operator as evidence that specified commodities of stated quantity and quality, have been deposited at particular locations by named depositors;

“warehouse receipt system” means part or the whole of the process of depositing commodities in a licensed warehouse, the issuance of a warehouse receipt reflecting the quantity and quality of the deposited commodity, the management of the transfer of the receipts as a document of title and includes but not limited to, the regulation of warehouses and actors associated in the processes.

## **PART II—ESTABLISHMENT OF THE WAREHOUSE RECEIPT SYSTEM COUNCIL**

3. (1) There is established a Council to be known as the Warehouse Receipt System Council.

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

Establishment of  
the Warehouse  
Receipt Systems  
Council.

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing such other things or acts necessary for the proper performance of the functions of the Council and which may lawfully be done or performed by a body corporate.

(3) The Council shall consist of—

- (a) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
- (b) the Principal Secretary for the time being responsible for matters related to finance or a representative;
- (c) one person nominated by the Council of Governors;
- (d) the Director-General of Agriculture, Food and Fisheries Authority or a representative;
- (e) the chief executive officer of the Council;
- (f) one person nominated by Financial Sectors Regulators Forum;
- (g) one person nominated by the Kenya Farmers Association;
- (h) one person nominated by Kenyan members of the East African Grain Council; and
- (i) one person nominated by Consumer Federation of Kenya.

(4) A person appointed as a member of the Council by the Cabinet Secretary under subsection (a) to (i) shall be—

- (a) persons who have the relevant expertise qualification and experience in the agricultural sector and any other relevant sector; and
- (b) appointed through a competitive and transparent process.

(5) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.

(6) The Chairperson and Vice-Chairperson shall be of the opposite gender.

(7) A decision of the Council shall not be invalid by reason of a vacancy in the Council.

(8) The chairperson and members of the Council appointed under subsection (3) (e) to (i) shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years.

(9) A member of the Council other than the chief executive officer may vacate office—

- (a) by resignation by letter addressed to the Cabinet Secretary;
- (b) on the written recommendation of the body which he represents revoking the nomination of the member;
- (c) for gross misconduct or abuse of office;
- (d) if he is absent, without permission of the chairperson of the Council, from three successive meetings of the Council of which he has received notice;
- (e) if in the opinion of the Council, he becomes by reason of mental or physical infirmity incapable of performing his duties as a member of the Council;
- (f) adjudication or admission of bankruptcy; or
- (g) conviction for an offence involving moral turpitude or corruption.

4. The Council shall—

- (a) facilitate the establishment, maintenance and development of the Warehouse Receipt System for agricultural commodities in Kenya;
- (b) oversee the functioning of the Warehouse Receipt System to ensure the efficiency, effectiveness and integrity of the system;

Functions of the Council.

- (c) establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities;
- (d) establish and maintain a central registry for the management of warehouse receipt transactions under the Act;
- (e) promote the development of a national network of privately or publicly managed warehouses that have the capacity to issue warehouse receipts;
- (f) prescribe the duties of warehouse operators, inspectors, graders and weighers, and collateral managers, operating under this Act in relation to the care of and responsibility for the stored agricultural commodities and related duties;
- (g) develop and implement, in conjunction with relevant Government agencies, an efficient commodity grading and weighing system that ensures quantity and quality assurance and facilitate the enforcement of commodity standards necessary for the warehouse receipting system;
- (h) may issue, suspend or revoke registration or licenses issued under the Act;
- (i) may suspend operations of warehouse operators, inspectors, weighters or graders operating under the Act, for failure to comply with any provision of this Act;
- (j) prescribe fees and other charges, payable for the examination, inspection, issuance and renewal of registrations and licenses under the Act;
- (k) establish mechanisms, including advising on the nature and form of regulations necessary for resolution of disputes between parties under the Act;
- (l) advise the Cabinet Secretary on matters relating to agricultural commodity trade and warehousing; and
- (m) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or Regulations made under the Act.

5. The Council shall have all the powers necessary for the proper performance of the functions of the Council under this Act and, in particular but without prejudice to the generality of the foregoing, the Council shall have power to—

Powers of the Council.

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Council in such manner and for such purposes as best promote the purpose for which the Council is established;
- (c) receive any gifts, grants, donations or endowments made to the Council or any other moneys in respect of the Council and make disbursements therefrom in accordance with the provisions of this Act;
- (d) enter into association with such other bodies or organizations within or outside Kenya as it may consider appropriate and in furtherance of the purposes for which the Council is established;
- (e) open a banking account or banking accounts;
- (f) offer services to any person upon such terms as the Council may from time to time determine; and
- (g) may at any time, with or without application, carry out inspections or cause to be inspected and examined all warehouses and warehouse operators and collateral management companies operating under the Act.

6. (1) The business and affairs of the Council shall be as provided in the Schedule.

Conduct of the affairs of the Council.

(2) Except as provided for in the Schedule, the Council may regulate its own procedure.

7. The members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration of members of the Council.

8. (1) There shall be a chief executive officer of the Council who shall be appointed by the Council through a competitive recruitment process, on such terms and conditions of service as the Cabinet Secretary may approve.

Chief Executive Officer.

(2) The chief executive officer shall, subject to the direction of the Council, be responsible for the day to day management of the activities of the Council.

(3) A person is qualified for appointment as the chief executive officer of the Council, if such person—

- (a) holds a university degree from a recognized university in Kenya;
- (b) has relevant experience in management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(4) The chief executive officer shall serve for a term of three years and shall, subject to satisfactory performance, be eligible for re-appointment for a further term of three years.

(5) The chief executive officer may—

- (a) at any time resign from office by a notice in writing addressed to the Chairperson of the Council;
- (b) be removed from office by the Council if the chief executive officer—
  - (i) breaches the terms of and condition of employment contract;
  - (ii) is unable to perform the functions of the office by reason of a mental or physical infirmity;
  - (iii) is convicted of an offence and sentenced to imprisonment for a term exceeding six months; or
  - (iv) adjudged or admits in writing to being bankrupt; or
  - (v) conducts himself in a manner deemed to be inconsistent with this Act.

9. The Council shall employ such other staff as it may consider necessary for the proper and efficient discharge of the functions of the Council under the Act, on such terms and conditions of service as it may, determine.

Staff of the  
Council.

10. The Council may engage the services of consultants or experts as it considers appropriate to assist in the discharge of its functions under his Act.

Consultants and  
experts.

11. The funds of the Council shall consist of— Funds of the Council.
- (a) such moneys as may from time to time be provided by Parliament for the purposes of the Council;
  - (b) moneys borrowed by the Council with the approval of the Cabinet Secretary and subject to such limitations and conditions as may be imposed by the National Treasury; and
  - (c) revenue or fees collected for services rendered by the Council.
12. The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year. Financial year.
13. The annual estimates of the Council shall be prepared in accordance with the Public Finance Management Act, 2012. Annual estimates. No. 18 of 2012
14. (1) The Council shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets and liabilities of the Council. Accounts and audit.
- (2) The books of accounts of the Council shall be audited in accordance with the Public Audit Act, 2015 and the Public Finance Management Act, 2012. No. 12 of 2015. No. 18 of 2012.
15. (1) The chief executive officer shall, cause to be prepared a report of the operations of the Council for every quarter and an annual report for every year. Reports.
- (2) The chief executive officer shall submit the reports prepared under subsection (1) to the Council and to the Cabinet Secretary—
- (a) in the case of a quarterly report, within one month after the end of the quarter to which the report relates; or
  - (b) in the case of an annual report, within four months of the end of the year to which the report relates.
- (3) Each report shall contain, in respect of the period to which it relates a description of the activities of the Council.
- (4) In addition to what is required under subsection (3), each annual report shall include the financial



statements of the Council for the year to which the report relates.

(5) The Cabinet Secretary shall, within thirty days after receiving a report, transmit it to the National Assembly.

### **PART III—REGISTRATION, LICENSING AND INSPECTION OF WAREHOUSES**

16. (1) A warehouse operator shall apply to the Council for a licence to operate within the Warehouse Receipt System.

Licensing of warehouse operators.

(2) An application under subsection (1) shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Council may grant or refuse to grant a licence to an applicant and may issue a licence subject to such conditions, as it may consider necessary.

(4) A license issued under this Part shall be valid for a period of twelve months from the date of issue and may be renewed subject to compliance of any set conditions.

(5) The Council shall annually publish the names of licensed warehouses in the Gazette and in at least one daily newspaper of nationwide circulation.

17. (1) The Council may suspend or revoke a licence—

Revocation of licence and suspension of licence or operations.

(a) if a warehouse operator transfers all or part of his or her control over the licence;

(b) immediately a licensed warehouse commences the process of dissolution or is dissolved; or

(c) if the warehouse operator violates or fails to comply with this Act.

(2) The Council shall before revoking or suspending a licence, inform the licensee of the intended revocation or suspension, in writing, and give the licensee and opportunity to make representations before it.

(3) Upon the revocation of a licence, the Council shall, within fourteen days of the revocation, notify the licensee of the revocation and require the licensee to, within fourteen days of receipt of the notification, surrender the licence to the Council.

(4) A licensee who, without reasonable cause, fails to surrender a licence within the period specified in paragraph (3) commits an offence.

(5) The Council may suspend the operations of warehouse operators, inspectors, weighers or graders operating under the Act, for failure to comply with any provision of this Act.

(6) Where a license has been suspended or revoked, the Council shall appoint an independent warehouse manager to operate the warehouse in the interim until the matter is resolved.

(7) The Council shall publish the names of a warehouse whose licence has been revoked in the Gazette and in at least one daily newspaper of nationwide circulation.

(8) The Cabinet Secretary shall in consultation with the Council make regulations to provide for management of a warehouse whose license has been suspended or revoked and commodities stored therein.

18. The Council may charge fees for initial warehouse inspection and issue of warehouse operator's licence.

Fees.

19. (1) There is established a Warehouse Receipts Appeals Committee which shall hear and determine appeals relating to—

Warehouse  
Receipts  
Appeals  
Committee.

- (a) the refusal to grant a licence;
- (b) the imposition of any conditions on a licence;
- (c) the revocation, suspension or variation of a licence;
- (d) a decision of a warehouse inspector;
- (e) any other decision of the Council under this Act.

(2) The Warehouse Receipts Appeals Committee shall consist of—

- (a) the Chairperson of the Council; and
- (b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication.

(3) The term of office of the Warehouse Receipts Appeals Committee shall be for a period of three years.

(4) A person who has been aggrieved by any decision of the Council relating to the matters set out in subsection (1) may, within thirty days of being notified of the decision, appeal to the Appeals Committee in the prescribed manner.

(5) The appellant shall state grounds of the appeal which may include, among others, the following grounds—

- (a) the decision is either unlawful under the laws of Kenya;
- (b) the decision exceeds the authority of the Council under the Act;
- (c) the decision is contrary to the express policies of the Council as set forth in the Act; or
- (d) the decision was based on fraud or influenced by corrupt practices.

(6) The Cabinet Secretary in consultation with the Council and relevant stakeholders shall make regulations on the operation and structure of the Warehouse Receipts Appeals Committee.

**20.** (1) A licensed warehouse operator shall ensure that the agricultural commodities stored in a licensed warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with the Weights and Measures Act.

Grading and weighing of agricultural products.

Cap. 513

(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a recognized competent Authority.

**21.** The chief executive officer or authorized officers of the Council may inspect any agricultural commodities stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary.

Inspection of stored products.

**22.** The chief executive officer may, from time to time publish the results of any inspection made under the Act, including the names and locations of the licensed warehouses inspected and the names of the operators licensed under this Act.

Publication of general inspections.

**23.** The chief executive officer may, through authorized officers, employees or agents examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehouse operators working in such warehouses.

Examination of books and records of licensed warehouses and warehouse operators.

24. The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying into effect of the provisions of this Part.

Regulations.

**PART IV—WAREHOUSE RECEIPTS**

25. (1) A warehouse operator shall issue a warehouse receipt for any agricultural commodity deposited in his or her warehouse.

Warehouse receipts.

(2) A warehouse receipt may be in hard or electronic form.

(3) A warehouse receipt shall be a document of title to goods and need not be in any particular form, but must contain the following information—

- (a) the name and physical address of the warehouse operator;
- (b) the name and physical address of the warehouse where the goods are stored;
- (c) the license number of the warehouse operator
- (d) the date of issue of the receipt;
- (e) the serial number of the receipt;
- (f) the particulars of the depositor;
- (g) a statement whether the goods will be delivered to the bearer, to a specified person or his order for negotiable receipt;
- (h) the description of the agricultural commodity including the type, grade, crop year and season and weight;
- (i) the signature of the warehouse operator, which may be made by his authorized agent;
- (j) a statement that the agricultural commodity covered by the warehouse receipt is insured by the warehouse operator for the full value thereof; and
- (k) security features to be determined by the Council.

(4) The details in a warehouse receipt shall not be altered for any reason.

26. (1) There is established a Central Registry which shall be operated by the Council.

Establishment of central registry.

(2) The chief executive officer shall be the Registrar for the purpose of registering any transaction relating to a warehouse receipt issued under the Act.

(3) A warehouse receipt issued in accordance with this Act, including any negotiation in respect of it shall be delivered up to the Registrar for registration within fourteen days of any such issue or negotiation.

(4) A certificate of registration signed by the Registrar shall be conclusive evidence of the issue or negotiation of a warehouse receipt.

(5) The Cabinet Secretary in consultation with the Council may make regulations to govern the day to day operations of the Central registry.

27. (1) Any loss, theft or destruction of the warehouse receipt shall be reported to the warehouse operator who shall notify the central registry.

Replacement of receipts.

(2) A warehouse operator may, on the request of the holder of a warehouse receipt, issue a warehouse receipt for a lost, stolen or destroyed, where the request is accompanied by a police report of the loss, theft, or destruction of the receipt.

(3) A warehouse operator shall notify the central registry of the issuance of a duplicate for a warehouse receipt that is lost, stolen or destroyed.

(4) Any person deals presents or deals with the original receipt after a replacement receipt has been issued commits an offence.

28. A duplicate receipt issued under section 27 shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.

Warranty and standing of duplicate receipts.

#### **PART V—OBLIGATIONS AND RIGHTS OF WAREHOUSE OPERATOR UPON THEIR RECEIPTS**

29. (1) A Warehouse operator shall deliver the goods referred to in a warehouse receipt to the holder of the receipt or depositor upon the presentation of the receipt.

Obligation of warehouse operator to deliver.

(2) Where the warehouse operator refuses or fails to deliver the goods in compliance with the provisions of this section, the warehouse operator shall be required to prove the existence of any lawful act for the refusal or failure.

30. Where a warehouse operator delivers agricultural commodities in a warehouse to a person who is not lawfully entitled to the possession, the warehouse operator shall be liable for loss.

Wrongful release of goods.

31. (1) A warehouse operator may commingle agricultural commodities of the same type and grade.

Separation of goods and fungible goods.

(2) A warehouse operator shall be liable, to each depositor or holder, for the care and redelivery of a depositor or holder of the commingled agricultural commodity to the same extent and under the same circumstances as if the agricultural commodity had been stored separately.

32. (1) If goods are delivered to the warehouse operator by the owner or by a person whose act in conveying title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in possession of the warehouse operator, be attached by garnishment or otherwise, or be levied on under an execution, unless the receipt be first surrendered to the warehouse operator, or its negotiation enjoined.

Attachment or levy upon goods for which negotiable receipt has been issued.

(2) The warehouse operator shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to the operator or impounded by the court.

33. (1) A warehouse operator has a lien on the goods covered by a warehouse receipt or on the proceeds of those goods in his or her possession for all lawful charges in the storage contract.

Warehouse operator's lien.

(2) A warehouse operator is entitled to all remedies allowed by law to a creditor against a debtor, for the collection from the depositor of all charges and advances which the depositor has expressly contracted with the warehouse operator to pay.

(3) A warehouse operator's lien for a claim which has become due may be satisfied by the warehouse operator giving a written notice to the person on whose account the goods are held, and to any other person known by the warehouse operator to claim an interest in the goods:

Provided that:

- (a) such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified;
- (b) if the warehouse receipt has been registered in the Central Registry, the warehouse operator shall also give written notice to the chief executive officer.

#### **PART VI—NEGOTIATION AND TRANSFER OF RECEIPTS**

34. A warehouse receipt issued to a person may be negotiated by endorsement and delivery to another specified person.

Negotiation by endorsement.

35. A warehouse receipt shall be regarded as duly negotiated in the manner stated under section 35 to a person who purchases it in good faith, for value without notice of any defect or claim to it by any other person.

Persons capable of negotiating a Warehouse Receipt.

36. Subject to the provisions of this section, a person to whom a receipt has been duly negotiated shall acquire—

Rights acquired after negotiation of warehouse receipts.

- (a) such title to goods as the person who negotiated the receipt to him had ability to convey to a purchaser in good faith for value and also such title to the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchase in good faith and for value;
- (b) the direct obligation of the warehouse operator to hold possession of the goods for him or her according to the terms of the receipt as fully as if the warehouse operator had contracted direct with him; and
- (c) all rights accruing under the law of agency, estoppel, including right to good delivery to the warehouse operator after the warehouse receipt was delivered.

37. (1) The transferee of a negotiable warehouse receipt for value and in good faith shall have the right to compel the transferor of such receipt to endorse the receipt in a case where endorsement is essential for negotiation.

Rights and obligations of transferors and transferees of negotiable warehouse receipts.

(2) In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that

warehouse receipt shall not be regarded as negotiated until the transferor endorses it.

(3) The endorsement of a warehouse receipt in good faith shall not make the transferee liable for any default or fraudulent acts on the receipt occasioned by the warehouse operator or previous endorsers.

**38.** (1) The negotiation or transfer by endorsement or delivery, or assignment of a warehouse receipt for value shall be an adequate proof or warranty that the person who negotiates, transfers or assigns that warehouse receipt, does so because—

Warranties on negotiation of the warehouse receipt.

- (a) the receipt is genuine;
- (b) has legal right to negotiate, transfer or assign it;
- (c) knows no fact which would impair the validity or worth of the receipt; and
- (d) has the right to transfer the title to the goods.

(2) If the contract of the parties is in respect of the transfer of goods to which such warehouse receipt is involved, the fact that the goods are merchantable or fit for that particular purpose, would have been implied.

(3) Warranty shall not be implied in cases where a creditor of the transferor demands in good faith or receives payment of the debt for which such receipt is security.

#### **PART VII— PENAL PROVISIONS**

**39.** A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or a fine not exceeding one million shillings, or to both.

Issuing of fraudulent warehouse receipts.

**40.** A warehouse operator, or any officer, agent, or employee of a warehouse operator, who fraudulently issues or knowingly facilitates the fraudulent issuing of a receipt for goods based on a false statement or a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on

Issuing of receipts with false information.



conviction a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or both.

41. A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word "Duplicate", commits an offence and is liable on conviction to a fine not exceeding one million shillings or a term of imprisonment not exceeding five years, or both.

Unlawful issuing  
of duplicate  
Receipts.

42. A person convicted of an offence under this Act for which no other penalty is specified shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

General penalty.

#### **PART VIII—MISCELLANEOUS PROVISION**

43. (1) The Cabinet Secretary, in consultation with the Council, may make Regulations for the carrying into effect the intent and purposes of this Act.

Regulations.

(2) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

#### **SCHEDULE (s. 6)**

##### **PROVISIONS FOR THE MEETINGS AND PROCEDURE OF THE COUNCIL**

1. (1) The Council shall meet at the Council's registered offices or any other designated venue and the meetings shall be convened by the chairperson.

Meetings.

(2) The Council shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(3) Unless two thirds of the members otherwise agree, at least fourteen days' notice in writing of a meeting shall be given to every member.

(4) A meeting shall be presided over by the chairperson or in the absence of the chairperson, by the vice-chairperson of the Council or in the absence of both the chairperson and the vice chairperson the members present shall appoint one of their number to preside at the meeting.

(5) The chairperson shall, on the written application of two-thirds of members, convene a special meeting of the Council.

(6) The Council may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Council.

2. (1) Subject to subparagraph (2), the quorum of the meeting shall be two thirds of the members. Quorum.

(2) Where there is a vacancy in the Council, the quorum of the meeting shall not be less than three members.

(3) A decision of the Council shall not be invalid by reason only of a vacancy among the members thereof.

3. (1) If a person has a personal or fiduciary interest in any matter before the Council, and is present at a meeting of the Council or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter. Conflict of interest.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) No member or staff of the Council shall transact any business or trade with the Council

4. A question before the Council shall be decided by a majority of the members and the Chairperson shall have a casting vote. Voting.

**5. The Council shall—**

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

Rules of  
procedure and  
minutes.

### **STATEMENT OF OBJECTS AND REASONS**

The objective of this Bill is to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities to address marketing challenges associated with cereals and grain subsectors in Kenya.

**Part I (Clauses 1-2)** contains preliminary provisions.

**Part II (Clauses 3-16)** provides for the establishment of the Warehouse Receipt System Council as a body corporate, the membership, the objects and functions of the Council, the powers of the Council, the Chief Executive Officer, Corporation Secretary and Staff of the Council, the funds of the Council and the manner of reporting on the operations of the Council.

**Part III (Clauses 17-25)** provides for the licensing and inspection of warehouses, for the application for a licence to operate within the Warehouse Receipts System, the revocation and suspension of the licence.

Clause 20 provides for the establishment of a Warehouse Receipts Appeals Committee and matters that the Committee may determine and confers powers on the Cabinet Secretary to make regulations on the structure and operation of the Committee.

Clause 21 provides for the grading of agricultural commodities by certified agricultural commodities graders and weighing of agricultural products using equipment calibrated in accordance with the Weights and Measures Act.

Clause 22-24 provides for the inspection of stored products by authorized officers of the Council, the publication of inspection results and the examination of books and records of licensed warehouses and the warehouse operators working the warehouses.

**Part IV (Clauses 26-29)** provides for the issuance of a warehouse receipt for agricultural produce deposited in a warehouse, the establishment of a Central Registry operated by the Council for the purpose of registering transactions relating to a warehouse receipt issued, the replacement of lost, stolen or destroyed receipts and the status of the duplicate receipts issued.

**Part V (Clauses 30-35)** provides for the rights and obligations of the warehouse operator on their rights including the liability for loss of goods to persons not lawfully entitled to the goods and the operator's lien over goods covered by a warehouse receipt or proceeds of the goods for lawful charges in the storage contract.

**Part VI (Clauses 36-40)** provides for the negotiation and transfer of receipts, negotiation by endorsement and delivery, the rights acquired by negotiation of warehouse receipts, rights and obligations of transferors and transferees of negotiable warehouse receipts and warranties on negotiations of the warehouse receipts.

**Part VII (Clauses 41-44)** contains miscellaneous provisions.

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

The Bill does not limit fundamental rights and freedoms.

**Statement of how the Bill concerns county governments**

The Bill concerns County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in Paragraph 1 of the Fourth Schedule on Agriculture . It also contains provisions related to trade regulation and licencing as set out in Paragraph 7 of the Fourth Schedule.

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

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through the annual estimates.

Date the 2nd November, 2017.

KIPCHUMBA MURKOMEN,  
*Leader of Majority.*

## FOOD SECURITY

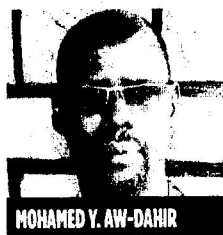
## Ending hunger in Africa doable task

A high-level event held on January 27 on the sidelines of the 30th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU) in Addis Ababa discussed progress in eradicating hunger in Africa.

Organised by the Food and Agriculture Organisation of the United Nations (FAO), in partnership with the African Union Commission (AUC), the Ethiopian Government and the United Nations Economic Commission for Africa (ECA), it focused on three key thematic areas: Policy, experience sharing and multi-stakeholder dialogue.

Participants at the meeting, called to review the continental target of ending hunger in Africa by 2025, noted that despite progress having been made, the task was a complex issue that calls for the concerted efforts of all the stakeholders.

The forum noted that several African countries had made remarkable progress to align their development policies, programmes and national visions to the 2014 Malabo Declaration on Accelerated Agricultural Growth and Transformation



MOHAMED Y. AW-DAHIR

Conflicts, civil insecurity and extreme weather patterns are the main drivers of hunger, food insecurity and malnutrition."

for Shared Prosperity and Improved Livelihoods.

Emphasis had been put on the third pillar of the Comprehensive Africa Agriculture Development Programme (CAADP), which aims at increasing food supply and reducing hunger by raising smallholder productivity and improving responses to food emergencies. The efforts are also aligned with Sustainable Development Goal 2, which seeks zero hunger by 2030.

An FAO report, *Regional Overview of Food Security and Nutrition in Africa 2017*, however, shows that the food security and nutrition situation was worsening in absolute terms. Undernourishment in sub-Saharan Africa rose from 20.8 per cent in 2015 to 22.7 per cent in 2016 — from 200 million to 224 million cases.

Conflicts, civil insecurity and extreme weather patterns are the main drivers of hunger, food insecurity and malnutrition. In eastern Africa, Somalia and South Sudan are among the four countries where pre-famine conditions were declared by the international community last year to have the highest number of undernourished people in Africa. Marginalised groups and rural communities are the most affected.

Most of Africa's poor and hungry populations live in the rural areas and depend on agriculture and related activities for their daily income and livelihoods.

However, despite the numerous challenges, African farmers, especially the small-scale ones, are at the frontline in the fight against hunger. Agricultural and rural transformation are

critical to not only achieving food security and nutrition, but also addressing many other challenges, including building resilience.

Governments and policy makers have a major role in ending hunger. Evidence-based policies, strategies and programmes that support and promote sustainable agriculture, food security and rural development will guarantee farmers quality and affordable inputs and markets.

## Holistic measures

Governments need to strengthen institutions meant to ensure food security within their borders and adopt other holistic measures. They must also ensure that safety nets and other social protection are put up to cushion communities from extreme hunger.

Vulnerable communities need to be empowered with the appropriate social interventions that catalyse production and productivity by linking food consumption with production — for example, through homegrown school feeding programmes. Forging partnerships and stakeholder engagement

across sectors is crucial to achieving nutritional outcomes through the promotion of sustainable agriculture, health and education. Creating youth employment in agriculture and agribusiness will eradicate economic strain, crime and discourage migration within and out of the continent.

Despite shrinking jobs in agriculture and agribusiness due to urbanisation and automation, productivity in farming can be increased through innovation. The success will depend on transparency and commitment to public service with zero tolerance to corruption. Good governance, political stability, peace and security are paramount in eradicating hunger. An unstable or insecure population cannot grow their own food or contribute to economic development.

To win this war, Africa should silence all other guns and focus on the fight against hunger.

Mr Aw-Dahir is senior officer (Program and Partnership) at FAO Sub-Regional Office for Eastern Africa, Addis Ababa. Mohamed.Awdahir@fao.org

## DROUGHT

## Act now to reverse water depletion trend

Growing up in the 1970s on the eastern slopes of Mt Kenya, our parents could not allow us to fetch water from River Mariara unaccompanied because of the risk of drowning or being devoured by crocodiles.

Sadly, the raging Mariara, whose volume was very high throughout the year, is now a mere trickle along a dry riverbed.

This is true of other nearby rivers such as Kathita, Thingithu and Mutonga and others countrywide. It is only through broad-based strategies that we can alleviate the water depletion trend. All the water users from the upstream up to the downstream should be sensitised and trained on the conservation of the water catchment areas, including riparian reserve restoration by planting appropriate vegetation.

There is an urgent need to invest in water preservation measures, including dams and reservoirs to tap the run-off water for agricultural and domestic use. The Kenya Forest Service (KFS) ought to up its game in forest restoration. Re-afforestation, afforestation and agro-forestation, just like the best farming practices, need to be revitalised and embraced urgently.

PROTASIO MUTUMA MBUI, Nairobi

## REPUBLIC OF KENYA

TWELFTH PARLIAMENT  
THE SENATE

## PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

1. The Warehouse Receipts System Bill, (Senate Bills No. 10 of 2017); and
2. The Food Security Bill, 2017 (Senate Bills No. 12 of 2017).

The Warehouse Receipts System Bill (Senate Bills No. 10 of 2017) and The Food Security Bill (Senate Bills No. 12 of 2017) were read a First Time in the Senate on 30<sup>th</sup> November, 2017 and 15<sup>th</sup> February, 2018, respectively and were thereafter committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 130(4) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries now invites interested members of the public to submit their views on the Bills. The views may be submitted in the following manner-

1. Public Hearings shall be held on **Wednesday, 7<sup>th</sup> March, 2018 from 10:00 a.m. to 12:00 p.m. at the Mini Chamber, First Floor, County Hall, Parliament Buildings, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi,** hand-delivered to the **Office of the Clerk/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **csenate@parliament.go.ke**, to be received on or before **Wednesday, 7<sup>th</sup> March, 2018 at 5:00 p.m.**

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

CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.

## IDB Capital Limited

"At the centre of your progress"



## CALL FOR APPLICATIONS

## LINE OF CREDIT FOR INDUSTRIAL FINANCING

IDB Capital Limited is a Development Finance Institution established in 1973 to stimulate Kenya's economic development by providing financial solutions to the needs of established and emerging industrial enterprises. IDB offers competitive and affordable finance to support the promotion, expansion and modernization of small, medium and large enterprises.

As part of its mandate, IDB was designated the implementing agency for rolling out a Line of Credit of KShs. 1.5 billion, secured by the Government of Kenya from the Government of India, to stimulate Kenya's industrial development. The facility, which is provided under a trade partnership agreement between the two countries, will enable small and medium industrial enterprises to access credit at competitive terms to purchase plant, machinery and equipment from India.

Stimulating the growth and expansion of the industrial sector will enhance the growth and contribution of the manufacturing sector to Kenya's national output in line with the Government's "Big 4" plans for transforming Kenya into a middle income industrial country.

## Benefits and Features

- Minimum loan amount of KShs. 5 Million
- Medium to long-term loan repayment period
- Grace period of up to 2 years
- Competitive interest rates
- 75% of loan amount must be for financing imports from India.

## Requirements

- A duly completed application form
- Feasibility study/Business plan
- 6 months original bank statements
- Latest management accounts
- Audited accounts for the last 3 years
- Memorandum and Articles of Association
- Copies of invoices for assets to be purchased

Detailed application guidelines are available on our website [www.idbkenya.com](http://www.idbkenya.com)

\*Other terms and conditions apply\*

For further information please contact:

The Managing Director  
IDB Capital Limited  
P.O. Box 44036-00100  
NAIROBI  
Tel: (020) 2248600; 2247142  
Mobile: +254 728970750; +254 73322111  
Email: [bizcare@idbkenya.com](mailto:bizcare@idbkenya.com)



**MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON WEDNESDAY, 7<sup>TH</sup> MARCH, 2018 IN THE MINI CHAMBER, 1<sup>ST</sup> FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 A.M.**

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**PRESENT**

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Steve Ltumbesi Lelegwe, MP - Vice Chairperson (**Chairing**)
3. Sen. Moses Kajwang', MP
4. Sen. Naomi Jillo Waqo, MP
5. Sen. Naomi Shiyonga, MP

**ABSENT WITH APOLOGY**

1. Sen. (Dr.) Michael Malinga Mbito, MP
2. Sen. Golicha Juma Walio, MP
3. Sen. Stewart Madzayo, MP
4. Sen. Ben Oluoch Okello, MP

**IN ATTENDANCE**

1. Mr. David Ng'eno - Research Officer
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Carol Kirorei - Clerk Assistant

**SENATE**

**IN ATTENDANCE**

1. Ms. Gladys Mugambi - Ministry of Health
2. Ms. Grace Gichohi - Ministry of Health
3. Ms. Victoria Mwenda - UNICEF
4. Mr. Saiyana Lembara - National Drought Management Authority
5. Mr. Abiya Ochola - National Drought Management Authority
6. Ms. Gladys Mbai - Africa Practice
7. Mr. Francis Osiemo - Food Trade



**MIN. NO. 11/2018**      **PRAYER**

The Sitting commenced at 10.30 a.m. with a word of prayer followed by a self-introductory session of Members present.

**MIN. NO. 12/2018**      **ADOPTION OF THE AGENDA**

Members adopted the agenda of the meeting after being proposed by Sen. Steve Lelegwe and seconded by Sen. Naomi Jillo.

**MIN.NO. 13/2018**      **PUBLIC HEARINGS ON THE WAREHOUSE  
RECEIPTS SYSTEM BILL, 2017 AND THE FOOD  
SECURITY BILL, 2017**

The Chairperson informed the meeting that pursuant to the provisions of Article 118(1)(b) of the Constitution and standing order 134(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries had scheduled Public Hearings in order to obtain views on The Warehouse Receipts Bill, (Senate Bills No. 10 of 2017) - read a First Time in the Senate on 30<sup>th</sup> November, 2017 and the Food Security Bill, (Senate Bills No. 12 of 2017) which was read a First Time on 15<sup>th</sup> February, 2018.

He added that after obtaining the views, the Committee will prepare its report and may, where appropriate and if necessary, propose amendments to the Senate during the Committee of the Whole House. He then welcomed the public to submit their views.

## **A. Submissions on the Warehouse Receipts System Bill, 2017**

### **i) Submissions from Food Trade**

Mr. Francis Osiemo, Trade Policy Officer at the Food Trade informed the meeting Food Trade is a DFID funded project, with a presence in 9 countries. Food Trade East and Southern Africa recognizes the transformative potential of agriculture and trade to improve the lives and incomes of small scale farmers and strengthen food security in the region.

He briefed the meeting as follows with regards to the Warehouse Receipts System Bill, 2017;

1. That the Bill lacks protection for depositors;
2. That there is need to protect non-performance by warehouse operators by way of performance bonds to create more faith in the system;
3. That there is need to provide for insurance for warehouse operators premises within the Bill, in order to protect players especially depositors; and
4. That a comprehensive memorandum from the Food Trade in conjunction with the Cereal Growers Association shall be sent to the Office of the Clerk of the Senate by 5 p.m.;

## **B. Submissions on the Food Security Bill, 2017**

### **i) Submissions from the Ministry of Agriculture and Irrigation**

Ms. Gladys Mugambi from the Ministry of Health gave submissions on behalf of the Ministry of Agriculture and Irrigation as summarized below:

1. That the Bill is biased towards food security and is limited on nutrition security. Proposal was made that the word “nutrition” be added to the title of the Bill so as to read “The Food and Nutrition Security Bill, 2017”;
2. That the structures proposed in the Bill e.g. proposal to establish an Authority with a Board of Directors and CEO differs from structures

defined in the Food and Nutrition Security Policy and Implementation Framework (FNSP-IF)(2017-2022), namely the Food and Nutrition Security Council and the Food and Nutrition Security Secretariat.

Food Security falls under the mandate of the Ministry of Agriculture and Irrigation, but some roles such as nutrition management are spread across ministries e.g. Health, Devolution and Trade & Industry. The Bill seeks to consolidate some functions under the proposed Authority without adequately taking into consideration the foreseen overlaps and conflicts during implementation.

3. That the County Food Security Committees are similar to the Stakeholder Technical Committees stated in the National Food and Nutrition Policy and Implementation Framework (2017-2022);
4. That establishment of the Council to be chaired by the Presidency would foster accountability at all levels save resources and would preserve the mandates and functions of various institutions, avoiding duplication of mandates and functions;
5. That the corresponding responsibilities for the Council and the Secretariat need to be included in the Bill, thereby greatly changing Part II and IV of the Bill;
6. That the corresponding mandates of the Council and Secretariat can be managed without imposing a new financial burden on the Exchequer; and
7. That in light of the above reasons, the Bill be aligned to the National Food and Nutrition Policy and Implementation Framework (2017-2022);

#### **ii) Submissions from the Ministry of Health**

Ms. Grace Gichohi gave submissions on behalf of the Ministry of Health as summarized below:

1. That the scope of the Bill should be expanded to reflect the spirit of the Food and nutrition security Policy, including changing the title to read “The Food and Nutrition Bill, 2017”;
2. That there is major duplication in the roles prescribed for the Authority with existing authorities and other government entities. There are Roles of AFA, NDMA, Special programmes, Social Protection, Kenya Bureau of Statistics – which oversees national Kenya Integrated Budgetary Household Survey;
3. That there is need for a separate Fund on food security issues; and
4. That a comprehensive memorandum would be sent to the Office of the Clerk of the Senate by 5 p.m.;

### **iii) Submissions from the National Drought Management Authority**

Mr. Saiyana Lembara and Mr. Abiya Ocholla submitted the views of the National Drought Management Authority (NDMA) as follows:

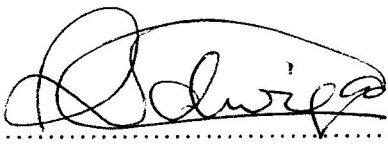
1. That the Bill proposes coordination structures that provide and overlap with structures provided under the National Drought Management Act, 2016;
2. That the National Drought Management Authority has in place County Steering Groups running in 23 Counties, and the Food Security Bill creates an overlap of duties, proposal was made that the existing structures under the National Drought Management Act, 2016 remain;
3. That section 12 (2)(e) which provides the function of the Authority as to *“monitor the issuance and administration of the food eligibility card to eligible Kenyans by the county food security committees to ensure that food poor persons access food with ease and in a timely manner”* creates an overlap with the functions of the NDMA;
4. That section 14(1)(g) which provides for the Membership of the Board of the Authority as follows *“one person nominated by the National Drought*

Management Authority established under paragraph 3 of the National Drought Management Authority Order, 2011” refers to an Order that was repealed by the National Drought Management Act, 2016; and

5. That a comprehensive memorandum would be submitted by close of business.

**MIN. NO. 14/2018      ADJOURNMENT**

There being no other business the Sitting was adjourned at 11.15 a.m.

**SIGNED:**.....  


**(CHAIRPERSON)**

**DATE:**..... 13/03/2018 .....

**MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON TUESDAY, 13<sup>TH</sup> MARCH, 2018 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 A.M.**

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**PRESENT**

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Ltumbesi Lelegwe, MP - Vice Chairperson
3. Sen. Naomi Jillo Waqo, MP
4. Sen. Naomi Shiyonga, MP
5. Sen. (Dr.) Michael Malinga Mbiti, MP
6. Sen. Golicha Juma Wario, MP
7. Sen. Stewart Madzayo, MP

**ABSENT WITH APOLOGY**

1. Sen. Moses Kajwang', MP
2. Sen. Ben Oluoch Okello, MP

**IN ATTENDANCE**

1. Mr. David Ng'eno - Research Officer
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Carol Kirorei - Clerk Assistant

**SENATE**

**MIN. NO. 15/2018      PRAYER**

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

**MIN. NO. 16/2018      ADOPTION OF THE AGENDA**

Members adopted the agenda of the meeting as presented after being proposed by Sen. Steve Lelegwe and seconded by Sen. Naomi Jillo.

**MIN.NO. 17/2018      CONFIRMATION OF PREVIOUS MINUTES**

1. The Minutes of the 1<sup>st</sup> sitting held on Tuesday, 9<sup>th</sup> January, 2018 were confirmed as a true record of the deliberations by the members present

and signed by the Chairperson having been proposed by Sen. Naomi Waqo and seconded Sen. Naomi Shiyonga.

2. The Minutes of the 2<sup>nd</sup> sitting held on Monday, 19<sup>th</sup> February, 2018 were confirmed as a true record of the deliberations by the members present and signed by the Chairperson having been proposed by Sen. Naomi Waqo and seconded Sen. Steve Lelegwe.
3. The Minutes of the 3<sup>rd</sup> sitting held on Wednesday, 7<sup>th</sup> March, 2018 were confirmed as a true record of the deliberations by the members present and signed by the Chairperson having been proposed by Sen. Steve Lelegwe and seconded Sen. Naomi Shiyonga.

**MIN.NO. 18/2018**

**CONSIDERATION OF PROPOSED AMENDMENTS TO  
THE WAREHOUSE RECEIPTS SYSTEM BILL, 2017**

Members considered the proposed amendments to the Warehouse Receipts System Bill, 2017 received during oral submissions at the Public Hearing held on 7<sup>th</sup> March 2018 and written memoranda submitted to the Committee through the Office of the Clerk of the Senate as follows:

**1. Long title and entirety of the Bill**

Proposal was made to delete the long title of the Bill and substitute the same with the following:

*“An Act of Parliament to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural and non-agricultural commodities, the establishment of the Warehouse Receipts System Authority and for connected purposes”*

To amend the body of the Act to provide for—

- (a) the warehousing of non-agricultural commodities; and
- (b) the establishment of a Warehouse Receipt System Authority to replace the Warehouse Receipt System Council.

**Rationale:** To provide for both agricultural and non-agricultural commodities to enable the warehouse receipts system facilitate both agricultural and non-agricultural commodities warehousing and certification and also to establishment a regulatory authority and not a council in view of the fact that the Bill establishes a regulatory body. This would be consistent with the global practice and also in line with other authorities established in Kenya.

**Resolution:** Not agreed to.

## 2. Clause 2

Proposal was made to insert a new definition as follows:

*"commingle" means the binning and storage of commodities by class, under circumstances other than identity.*

**Rationale:** To include the definition of the term "comingle" that is mentioned in Clause 31 (1) of the Bill.

**Resolution:** Not agreed to.

Proposal was made to amend the definition of 'holder' to state as follows:

*"holder" means a person who is in possession of a warehouse receipt, whether negotiable or non-negotiable, and who has proprietary right*

**Rationale:** To further elaborate this provision to include non-negotiable warehouse receipts.

**Resolution:** Agreed to.

Proposal was made to amend the definition of 'Cabinet Secretary' to state as follows:

*"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to agriculture in consultation with*



*the Cabinet Secretary for the time being responsible for matters relating to Trade;*

Proposal was also made to amend the definition of 'Cabinet Secretary' to state as follows:

*"Cabinet Secretary "means the Cabinet Secretary for the time being responsible for matters relating to Trade;*

**Rationale:** To provide for appointments to the Board to be made in consultation with the Cabinet Secretary responsible for Trade and to provide for the Cabinet Secretary responsible for Trade to oversee the implementation of the Bill.

**Resolution:** Agreed to with amendments that the Cabinet Secretary responsible for Trade should not be included in the definition but a clause be inserted that the Cabinet Secretary for Agriculture shall make decisions in consultations with the Cabinet Secretary responsible for Trade.

Proposal was also made to insert a new definition as follows:

*"Commodities" mean all products, storage of which is determined by regulations to be subject to this act and includes goods that are packed, processed or otherwise transformed and stored in a warehouse;*

Further proposal was made to delete reference to agriculture in the definition of "collateral manager"

**Rationale:** To make provisions for non-agricultural and other commodities.

**Resolution:** Not agreed to.

Proposal was made to amend the Clause by deleting the definition of 'Council' and replace with the following:

*“National Council” Means the National Warehouse Receipts System Council established under section 3;*

**Rationale:** To provide a national council to coordinate the 47 County Governments.

**Resolution:** Agreed to with amendments. The Committee resolved to retain the Council for standardization of fees across the counties, however, licensing being a devolved function would be under the County Executive Committee (CEC) Member responsible for agriculture.

3. **Clause 3**

Proposal was made to insert a new paragraph to state as follows immediately after clause 3(3)(b) and renumber appropriately:

*the Principal Secretary for the time being responsible for matters related to Trade;*

**Rationale:** To include the Permanent Secretary responsible for Trade on the Warehouse Receipts System Council.

**Resolution:** Agreed to.

Proposal was made to delete paragraphs 3(3)(e), (f), (g), (h) and (i) and replace them with a provision that providing for four other persons, who in the opinion of the Cabinet Secretary, possess the skills and experience that will benefit the work of the Council appointed consultatively by the Cabinet Secretaries responsible for Trade and Agriculture.

**Rationale:** To include the Permanent Secretary responsible for Trade in the appointment of members to the Council.

**Resolution:** Not agreed to.

Proposal was made to delete clause 3(3)(c) and replace with the following:

*“two people nominated by the Council of County Governors;”*

**Rationale:** To sufficiently represent the County Governments.

**Resolution:** Agreed to.

Proposal was made to Amend clause 3(3)(g) to state as follows:

*“one person nominated by the Kenya National Farmers Association;*

**Rationale:** The Kenya National Farmers Association is the current umbrella apex farmers’ organization.

**Resolution:** Agreed to with amendments to read a representative from an umbrella body representing farmers.

Proposal was made to Amend clause 3(3)(h) to state as follows:

*“one person nominated by Kenyan members of the Eastern Africa Grain Council;”*

**Rationale:** To make proper reference to the Eastern Africa Grain Council

**Resolution:** Agreed to.

Proposal was made to Amend clause 3(9)(c) to state as follows:

*“for gross misconduct and abuse of office in contravention of the Public Officer Ethics Act and any other relevant law.*

**Rationale:** No justification provided.

**Resolution:** Agreed to with amendment that the clause reads *“for gross misconduct and abuse of office in contravention to the law”*.

Proposal was made to Amend clause 3(9)(e) to state as follows:

*“if the member becomes, by reason of unsound or physical infirmity, incapable of performing his duties as a member of the Council;”*

**Rationale:** To remove the opinion of the Council as a consideration.

**Resolution:** Agreed to.

4. **Clause 4**

Proposal was made to amend clause 4(h) to read as follows:

*4. The National Council shall in consultation with the County Governments—*

*h) issue, suspend or revoke registration of warehouses to the warehouse receipt system under this Act.;*

**Rationale:** To provide for consultation with county governments. Agriculture is a devolved function hence consultation as envisioned in Article 6(2) of the Constitution.

**Resolution:** Agreed to with amendments by retaining the Council and removing reference to National Council.

Proposal was made to amend clause 4(i) as follows:

*(a) deleting the word 'weighters' and substitute therefor with the word 'weighers'; and*

*(b) amend the clause to read as follows:  
may suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act.*

**Rationale:** To provide the correct spelling; and to provide for other unspecified service providers in anticipation of other value chain actors that may need to be

**Resolution:** Agreed to.

Proposal was made to insert a new sub-clause 4(n) to state as follows:

*"may register or deregister warehouse entities under this Act;"*

**Rationale:** No justification.

**Resolution:** Not agreed to.

Proposal was made to amend the clause by inserting a new clause 4A immediately after clause 4 to provide for the following functions of the County Government Department for Agriculture—

- a) issue, suspend or revoke licenses issued under the Act;
- b) enforce standard as prescribed by the National Council;
- c) inspection of warehouses;
- d) mobilisation of farmers to engender confidence and participation in the system;
- e) data collection to assist in the inspection of warehouses;
- f) creating support mechanism for farmers to access the system. This includes subsidised transportation and pre-warehouse storage, financial support of pilot programmes, compensation to farmers for lost grain;
- g) establishment of public warehouses;
- h) provide extension to farmers to comply with commodity standards, which will also curtail cheating on weights and quality;
- i) encourage the use of warehouses as delivery locations to allow for transparent trade in agricultural commodities between producers and large traders or processors thereby reducing the length of the marketing chain and narrowing distribution margins; and
- j) develop and implement strategies to enable smallholder farmers use the system.

**Rationale:** To align the Bill to the functions of the County Governments as provided for under the fourth schedule of the Constitution and in particular paragraph 7 which provides that licensing of warehouse is a county function and hence should be left to the County Department in charge of Agriculture and not the National Council.

**Resolution:** Agreed to.

5. **Clause 9**

Proposal was made to amend the clause to state as follows:

*Staff of the Council*

*The Council may employ such number of employees and such other officers as it may determine to be necessary for the efficient staff performance of the functions and the exercise of the powers of the Council.*

**Rationale:** Remove the mention of the term “Board” since the Clause refers to the Council.

**Resolution:** Not agreed to.

6. **Clause 12**

Proposal was made to insert a new clause 12(l) as follows:

*“Without prejudice to subsection (1) the first financial year of the Council may be a shorter period commencing on the date on which the Council is established and ending with the next following 30th day of June.”*

**Rationale:** To further clarify the start of the financial year of the Council.

**Resolution:** Not agreed to.

7. **Clause 16**

Proposal was made to insert a new clause 17 to state as follows:

***Conditions for operating a warehouse***

*17. (1) The Council may, upon application, issue a warehouse license for the conduct of warehouse business.*

*(2) Two or more warehouses which constitute a station may be licensed under a single license.*

*(3) All warehouses licensed under a single license shall be treated as a single warehouse for all the purposes of this Act, including issuance of receipts, and delivery of commodities.*

Proposal was made to insert a new clause 18 thereafter to state as follows:

***Licensing procedure***

*18. (1) Any person who requires a license to conduct warehousing operations or business shall apply to the Council in the manner prescribed by the Regulations.*

*(2) The Council shall, before granting a warehouse license, either by itself or any other authorized person, inspect any warehouse in respect of which a license is applied, to determine whether the warehouse is suitable for the storage of the particular goods for which the license is applied.*

*(3) The Council shall, upon being satisfied that a warehouse is suitable for the storage of the goods in question, grant a warehouse license to the applicant.*

*(4) The applicant shall, upon being granted a license pay a fee prescribed by the Council.*

**Rationale:** Provide further details on the conditions for operating a warehouse under the warehouse receipt system in Kenya and provide

further details on the licensing procedure to conduct warehouse operations.

**Resolution:** Not agreed to. These provisions may be introduced through Regulations.

Proposal was made to insert a new clause 19 thereafter to state as follows:

*Performance Bonds*

19. (1) *Each warehouse operator applying for a license under this Act shall, execute and file with the Council a bond sufficient to secure the faithful performance by him of the obligations as a warehouse operator under this Act and Regulations and other statutory instruments made under this Act.*

(2) *Where the Council determines that a previously approved bond is, or for any cause has become insufficient, it may require an additional bond or bonds to be given by the warehouse operator concerned, conforming with the requirements of this section, and, unless the additional bond is given within the time fixed by a written demand made by the Council, the license of the warehouse operator may be suspended or revoked by the Council.*

**Rationale:** Provide a Clause to protect against non-performance by warehouse operators. This new Clause shall require warehouse operators to have performance bonds to create more faith in the system.

**Resolution:** Agreed to.

Proposal was made to insert a new clause 20 thereafter to state as follows:

***Liability under Performance Bonds***

20. *Any person injured by reason of the breach of any obligation for which a performance bond is given, shall be entitled to sue on*



*the bond in his or her own name in any court, not lower than the Court of a Resident Magistrate to recover the damages for injury sustained because of the breach.*

**Rationale:** To provide a Clause to protect against non-performance by warehouse operators. This new Clause shall require warehouse operators to have performance bonds to create more faith in the system/

**Resolution:** Agreed to.

Proposal was made to Insert a new clause 21 thereafter to state as follows:

***Insurance of Warehouse Operators***

21. (1) *Each applicant for a license to operate a warehouse in accordance with this Act shall, as a condition to the granting, file or cause to be filed with the Council a certificate of insurance evidencing effective policy of insurance issued by an insurance company authorized to do business in Kenya in the name of the applicant insuring all commodities which are or may be in such warehouse for their full market value for loss by fire, theft, burglary, arson or any other risk which the Council may direct to be included under this category.*
- (2) *In the case of outbreak of fire, burglary, arson or any other risk categorized under sub-section (1) destroys or damages any commodities in any licensed warehouse, the warehouse operator shall, upon demand by the depositor, and upon being presented with the receipt or other evidence of ownership and after deducting the warehouse operators charges and advances at the market value of the commodity, make the settlement.*

(3) *The warehouse operator shall make complete settlement to all depositors having commodities stored in any warehouse, damaged or destroyed, within ten (10) days' after settlement with the insurance company.*

(4) *Failure by the warehouse operator to make settlement shall be the grounds for suspension or revocation of the warehouse operator's license.*

**Rationale:** Provide a Clause for warehouse operators to ensure that their premises are insured. This protects the players (especially depositors) in the warehouse receipts system.

**Resolution:** Agreed to.

Proposal was made to insert a new clause 22 thereafter to state as follows:

*Additional Insurance*

22. (1) *Where the Council shall determine that a previously approved insurance is insufficient, it shall require additional insurance to be given by the warehouse operator, conforming to the requirements of this Act.*

(2) *Without prejudice to subsection (1), the warehouse operator shall be required to upgrade the insurance policy with a view to maintain sufficient policy all the time arising from settlement of loss through insurance, the warehouse operator shall meet the amount that falls short of the value of the loss unable to be settled through insurance.*

**Rationale:** Provide a clause for warehouse operators to ensure that their premises are insured. This protects the players (especially depositors) in the warehouse receipts systems.

**Resolution:** Agreed to.

Proposal was made to insert a new clause 23 thereafter to state as follows:

*Cancellation of insurance*

23. (1) *A licensed warehouse operator shall not cancel or suspend an approved insurance policy or arrange for substitution of insurance policy without prior written approval of the Council.*

(2) *The insurance company may cancel insurance required by this Act only after the expiration of thirty (30) days period from the date of mailing, by registered or certified mail, of the notice to the Council of the intention to cancel or suspend the insurance policy.*

(3) *The insurance company shall, at the time of giving notice to the Council send a copy of the notice to the warehouse operator.*

**Rationale:** Provide a Clause for warehouse operators to ensure that their premises are insured. This protects the players (especially depositors) in the warehouse receipts

**Resolution:** Agreed to. It was agreed that all the proposals on insurance be redrafted into one Clause.

Proposal was made to insert a new clause 25 thereafter as follows:

*Operation after revocation, suspension, or expiration of licenses*

25. (1) *Where a license is revoked, suspended or has expired, the warehouse operator shall terminate, in the manner prescribed by the Council, all arrangements covering the receiving, storing, shipping, conditioning, or handling of commodities in the warehouse stations covered by such license, but shall be permitted, under direction or supervision of the Council to deliver commodities previously received.*

*(2) During any suspension of a license, the warehouse operator may, under direction or supervision of the Council, operate the warehouse, station, but shall not receive any commodities for storage, conditioning, shipping, or handling during the term of such suspension.*

**Rationale:** Provides more detail as to what happens to commodities by depositors after a license to a warehouse operator is expired, revoked or suspended.

**Resolution:** Not agreed to.

8. **Clause 20**

Proposal was made to amend clause 20(2) by deleting the words “recognised competent” and replacing therefor with the word ‘mandated’.

**Rationale:** To make proper reference to institutions mandated by law.

**Resolution:** Agreed to.

9. **Clause 21**

Proposal was made to insert a new sub-clause 21(2) as follows:

*Inspection of stored products*

*(2) The Minister shall prescribe in the Regulations qualifications of a person to be appointed as an inspector.*

**Rationale:** To further clarify and give more detail on the hiring of inspection officers. Provide for further clarification of this issue in the Regulations.

**Resolution:** Agreed to, and that inspection be done by the Council for checks and balances.

10. **Clause 25**

Proposal was made to insert new sub-clauses 4, 5, 6 as follows:

*Warehouse receipts*

(4) *A warehouse operator shall be liable to the person injured thereby, for damages caused by the omission of any such term required to be included in the warehouse receipt under this Act.*

(5) *A warehouse operator may insert in a receipt any other terms and conditions which are not contrary to the provisions of this Act and which do not impair obligations of delivery or duty of care.*

(6) *Any provision appearing in a warehouse receipt, purporting to contain any condition which is contrary to this Act, shall not be capable of enforcement by the court.*

**Rationale:** To further clarify the content of warehouse receipts and issues of liability on the lack of content on the receipts.

**Resolution:** Not agreed to.

11. **Clause 34**

Proposal was made to insert a new clause 34 to state as follows:

*Negotiable warehouse receipts*

34. (1) *A warehouse receipt in which it is stated that the goods received will be delivered to the person named in the receipt or his order shall be known as a negotiable warehouse receipt.*

(2) *No words shall be inserted in a negotiable receipt with the effect of rendering that receipt non-negotiable.*

(3) *The Minister may prescribe in the Regulations the procedure and limits of negotiation of negotiable warehouse receipts.*

**Rationale:** To define negotiable warehouse receipts.

**Resolution:** Not agreed to as this may be provided for in Regulations.

12. **Clause 35**

Proposal was made to insert a new clause 35 thereafter to state as follows:

*Non-negotiable warehouse receipts*

35. *A warehouse receipt on which it is stated that the goods received will be delivered to the bearer shall be treated as a non-negotiable receipt*

**Rationale:** To define non-negotiable warehouse receipts.

**Resolution:** Not agreed to.

13. **Clause 36**

Proposal was made to insert a new clause 36 thereafter to state as follows:

***Altered warehouse receipts***

36. *An alteration to a warehouse receipt shall be regarded as-*

*(a) immaterial if the alteration does not affect ex-ante proprietary rights of the holder;*

*(b) authorized when made with an implied or direct permission or connivance of the warehouse operator and which render a warehouse operator and the perpetrator liable under the provisions of this Act; or*

*(c) unauthorized but made without fraudulent intent, when made without an implied or direct permission or connivance of the warehouse operator and which render the warehouse operator liable according to the terms of the receipt, as they were before alteration.*

**Rationale:** To provide to what happens when either a negotiable or non-negotiable warehouse receipt is altered

**Resolution:** Not agreed to.

14. **Clause 37**

Proposal was made to insert a new clause 37 thereafter to state as follows:

*Rights under an altered warehouse receipt*

37. (1) *A purchaser of a warehouse receipt for value without notice of alteration shall acquire the same proprietary rights against the warehouse operator which the purchaser would have acquired if the receipt had not been altered at the time of purchase.*

(2) *A purchaser of a warehouse receipt shall be regarded to have had notice of alteration, if before the purchase of the warehouse receipt, he or his agent took part in or influenced the alteration of the said warehouse receipt.*

(3) *A purchaser of an altered warehouse receipt who has been found or who could be reasonably imputed with possession of notice of alteration commits an offence and shall be proceeded against under this Act in the same footing with the operator.*

**Rationale:** To define the rights of the holders of an altered negotiable or non-negotiable warehouse receipt.

**Resolution:** Not agreed to.

15. **Clause 29**

Proposal was made to insert a new sub clause 29(3) to state as follows:

*Obligation of warehouse operator to deliver*

(3) *Where the warehouse operator refuses to deliver the goods as demanded by the depositor or holder of warehouse receipt because of the reason that the warehouse receipt was altered, the holder or depositor who had notice of alteration shall be estopped from demanding more or less proprietary rights in the*

*warehouse receipt than those provided on the altered warehouse receipt.*

**Rationale:** To define the obligation of the warehouse operator to deliver when it comes to an altered warehouse receipt.

**Resolution:** Not agreed to.

**16. Clause 43**

Proposal was made to insert a new clause 43 after Clause 29 to state as follows:

*Warehouse operator duty of care*

43. (1) *A warehouse operator shall exercise such care in regard to the goods kept by him as reasonably and as carefully as a reasonable and careful owner of similar goods would exercise.*

(2) *In addition to other conditions that may be imposed to the warehouse operator's license, the warehouse operator shall be liable for breach of duty of care if he acts contrary to subsection (1) of this section in keeping safe custody of the goods.*

**Rationale:** To define the duty of care of a warehouse operator when it comes to depositors of goods under his custody.

**Resolution:** Not agreed to.

**17. Clause 44**

Proposal was made to insert a new clause 44 thereafter to state as follows:

*Duty to keep the goods separately*



44. *Except as provided in this Act a warehouse operator shall keep goods of each depositor separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit the identification and re-delivery of the goods deposited.*

**Rationale:** To define the duty of care of the warehouse operator, specifically the duty to keep the goods separately.

**Resolution:** Not agreed to.

18. **Clause 48**

Proposal was made to insert a new clause 48 after clause 33 to state as follows:

*Statement of charges under lien*

48. *Where a negotiable receipt is issued for goods, the warehouse operator shall have no lien thereon, except for charges of storage of those goods, subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed in which case there shall be a lien for the charges enumerated so far as they are within the terms of section 33, although the amount of the charges so enumerated is not stated in the receipt.*

**Rationale:** To further define the rights and obligations under a warehouse operator's lien.

**Resolution:** Not agreed to.

19. **Clause 49**

Proposal was made to insert a new clause 49 as follows:

*Refusal to deliver goods until lien is satisfied*

49. *A warehouse operator having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.*

**Rationale:** To further define the rights and obligations under a warehouse operator's lien.

**Resolution:** Not agreed to.

20. **Clause 50**

Proposal was made to insert a new clause 50 as follows:

*Warehouse operator's lien does not preclude other remedies*

50. *The fact that a warehouse operator has or has not a lien upon the goods, shall not affect entitlement to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouse operator.*

**Rationale:** To further define the rights and obligations under a warehouse operator's lien.

**Resolution:** Not agreed to.

21. **Clause 51**

Proposal was made to insert a new clause 51 as follows:

*Methods of enforcing the lien*

51. (1) *A warehouse operator's lien may be satisfied by-*

*(a) sale of goods;*

*(b) other remedies allowed by the law for the enforcement of a lien against personal property; or*

*(c) Any other action for recovery of the warehouse operator's claim.*

**Rationale:** To further define the rights and obligations under a warehouse operator's lien.

**Resolution:** Not agreed to.

22. **Clause 52**

Proposal was made to insert a new clause 52 as follows:

***Perishable and hazardous goods***

52. (1) *Where the goods are of a perishable nature and likely to deteriorate greatly in value, or by their odour, leakage, inflammability, or explosive nature, are likely to injure other property or endanger the life of persons legally likely to come into contact with the goods, the warehouse operator may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of failure of such person to satisfy the lien and to remove such goods within the time so specified, the warehouse operator may sell the goods at public or private sale with or without advertising.*

(2) *If after reasonable efforts have been made the warehouse operator is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.*

(3) *The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under this Act.*

**Rationale:** To further define the rights and obligations under a warehouse operator's lien.

**Resolution:** Not agreed to.

### 23. **Clause 41**

Proposal was made to renumber the existing provision to sub-clause (1) and insert a new sub-clause (2) as follows:

*Unlawful issuing of duplicate Receipts*

(2) *The provision of this section shall not apply where a duplicate of a warehouse receipt is issued in accordance with the provisions of Clause 39 on replacement of receipts.*

**Rationale:** To further buttress the provision on unlawful issue of duplicate receipt *vis a vis* the replacement of lost receipts.

**Resolution:** Not agreed to.

24. **Clause 61**

Proposal was made to insert a new clause 61 after clause 41 as follows:

*Issue for warehouse operator's goods of receipts, which do not state that fact*

61. *Where there are deposited with or held by a warehouse operator goods of which he is owner, either solely or jointly or in common with others, then such warehouse operator or his agents or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods and omits to state any fact with respect to ownership, commits an offence shall be liable for imprisonment for a term not exceeding one year or to a fine not exceeding one million shillings or both.*

**Rationale:** To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation the warehouse receipt system.

**Resolution:** Not agreed to.

25. Clause 62

26. Proposal was made to insert a new clause 62 thereafter to state as follows:

***Delivery of goods without obtaining negotiable receipt***

62. *A warehouse operator, or any officer, agent, or servant of a warehouse operator who delivers goods out of the possession of such warehouse operator, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of*

*such receipt is outstanding and not cancelled, without obtaining possession of that warehouse receipt, at or before the time of such delivery, shall be liable for imprisonment for a term not exceeding one year, or by a fine not exceeding one million shillings or to both.*

**Rationale:** To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation the warehouse receipt system.

**Resolution:** Not agreed to.

Proposal was made to insert a new clause 63 thereafter to state as follows:

***Negotiation of receipt for mortgaged goods***

*63. Any person who-*

*(a) deposits goods to which he has no title, or upon which there is a lien or mortgage;*

*(b) takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of lien or mortgage, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding ten million shillings.*

**Rationale:** To further provide for further penal provisions. This is to buttress the integrity of the system and streamline the operation the warehouse receipt system.

**Resolution:** Agreed to. There is need to align the clause with the provisions of the Penal Code.

**27. Clause 64**

Proposal was made to insert a new clause 64 thereafter to state as follows:

***Obstructing a warehouse inspector***

*64. Any person who obstructs the warehouse inspector or any other authorized person in the exercise of the power conferred upon him by this Act or who neglects or refuses to produce to the warehouse inspector or any authorized person any books, records, information or anything which the inspector or any other authorized person may request to be produced for inspection, commits an offence and shall be liable on conviction to imprisonment for three months or to a fine not exceeding one million shillings or to both.*

**Rationale:** To further provide for further penal provisions.

**Resolution:** Agreed to.

**28. Clause 43**

Proposal was made to provide for the Cabinet Secretary responsible for matters relating to trade to make regulations on the following—

- (a) oversight of the Warehouse Receipt System by the council under clause 4(b); and
- (b) grading of commodities by agricultural commodity graders under clause 20.

**Rationale:** To provide for the better operationalization of the provisions.

**Resolution:** Not agreed to.

**MIN. NO. 19/2018      ANY OTHER BUSINESS**

1. Members were informed that the Committee was in receipt of two responses to statements which were on the day's Order Paper as follows:
  - i) Statement on the implementation status of the Fisheries Management Act, 2016 requested by Sen. Moses Kajwang’;
  - ii) Statement on climate change and the effect on pastoralists and their livestock requested by Sen. Mary Seneta.

The Chairperson informed the meeting that the responses would be given in the House in the afternoon.

2. Members raised concern on a Motion appearing on the Order Paper, for the establishment of an “*Ad hoc Committee to investigate the challenges in the tea sector*” and propose solutions; noting that tea fell under the mandate of the Standing Committee on Agriculture, Livestock and Fisheries and as such is capable of carrying out the necessary investigations.

***Members agreed to oppose the Motion in the House.***

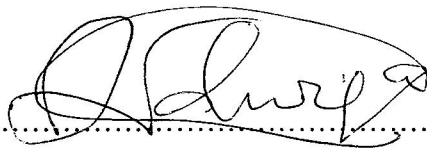
**MIN. NO. 20/2018      DATE OF NEXT MEETING**

The next meeting shall be held on 14<sup>th</sup> March, 2018 at 10.00 a.m.

**MIN. NO. 21/2018      ADJOURNMENT**

The Sitting was adjourned at 11.50 a.m.

SIGNED: .....



(CHAIRPERSON)

DATE: .....

15<sup>th</sup> March 2018

**MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON THURSDAY, 15<sup>TH</sup> MARCH, 2018 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL AT 11.00 A.M.**

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**PRESENT**

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Ltumbesi Lelegwe, MP - Vice Chairperson
3. Sen. Naomi Jillo Waqo, MP
4. Sen. (Dr.) Michael Malinga Mbito, MP
5. Sen. Moses Kajwang', MP
6. Sen. Stewart Madzayo, MP

**ABSENT WITH APOLOGY**

1. Sen. Ben Oluoch Okello, MP
2. Sen. Naomi Shiyonga, MP
3. Sen. Golicha Juma Wario, MP

**IN ATTENDANCE**

- |                       |   |                  |
|-----------------------|---|------------------|
| 1. Ms. Carol Kirorei  | - | Clerk Assistant  |
| 2. Mr. David Ng'eno   | - | Research Officer |
| 3. Mr. Leonard Kibet  | - | Legal Counsel    |
| 4. Mr. Mitchell Otoro | - | Legal Counsel    |

**SENATE**

**MIN. NO. 27/2018      PRAYER**

The Chairperson called the meeting to order at 11.05 a.m. followed by a word of prayer.

**MIN. NO. 28/2018      ADOPTION OF THE AGENDA**

Members adopted the agenda of the meeting as presented after being proposed by Sen. Ltumbesi Lelegwe and seconded by Sen. Naomi Jillo.



**MIN.NO. 29/2018**

**CONFIRMATION OF PREVIOUS MINUTES**

1. The Minutes of the 4<sup>th</sup> sitting held on Tuesday, 13<sup>th</sup> March, 2018 were confirmed as a true record of the deliberations by the members present and signed by the Chairperson having been proposed by Sen. Naomi Waqo and seconded Sen. Ltumbesi Lelegwe.
2. The Minutes of the 5<sup>th</sup> sitting held on Monday, 14<sup>th</sup> March, 2018 were confirmed as a true record of the deliberations by the members present and signed by the Chairperson having been proposed by Sen. Ltumbesi Lelegwe and seconded Sen. Naomi Waqo.

**MIN. NO. 30/2018**

**CONSIDERATION OF AMENDMENTS TO THE  
WAREHOUSE RECEIPT SYSTEM BILL, 2017**

Members were taken through the amendments to the Warehouse Receipt System Bill, Senate Bills No. 10 of 2017 as per the attached paper. The Committee adopted the amendments as presented after being proposed by Sen. Naomi Waqo and seconded by Sen. Stewart Madzayo.

**MIN. NO. 31/2018**

**CONSIDERATION AND ADOPTION OF THE REPORT  
ON THE WAREHOUSE RECEIPT SYSTEM BILL,  
2017**

Members were taken through the Report on the Warehouse Receipt System Bill. The Committee adopted the Report after being proposed by Sen. Moses Kajwang' and seconded by Sen. Ltumbesi Lelegwe.

**MIN. NO. 32/2018**

**DATE OF NEXT MEETING**

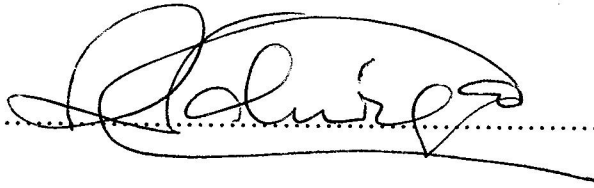
The next meeting will be held on 20<sup>th</sup> March, 2018 at 9.00 a.m.



**MIN. NO. 33/2018      ADJOURNMENT**

There being no other business the Sitting was adjourned at 12.00 noon

**SIGNED:**.....



**(CHAIRPERSON)**

**DATE:**.....



**15<sup>th</sup> March, 2018**

The Clerk of the Senate

Parliament Buildings

**NAIROBI**

**RE: COMMITTEE STAGE AMENDMENTS TO THE WAREHOUSE RECEIPT SYSTEM BILL, 2017**

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**NOTICE** is given that Sen. Ndwiga Peter Njeru, the Chairperson to the Standing Committee on Agriculture, Livestock and Fisheries, intends to move the following amendments to the Warehouse Receipt System Bill, 2017, at the Committee Stage—

**CLAUSE 3**

**THAT** clause 3 of the Bill be amended in sub-clause (3) —

(a) by inserting the following new paragraph immediately after paragraph (b) —

(bb) the Principal Secretary for the time being responsible for matters related to trade or a representative;

(b) in paragraph (c) by deleting the word “one person” appearing at the beginning of the paragraph and substituting therefor the word “two persons”;

(c) in paragraph (g) by deleting the words “the Kenya Farmers Association” appearing immediately after the words “one person nominated by” and substituting therefor the words “an umbrella body representing farmers in Kenya”; and

(d) in paragraph (h) by deleting the words “East African Grain Council” appearing immediately after the words “Kenyan members of the” and substituting therefor the words “Eastern Africa Grain Council”.

**CLAUSE 4**

**THAT** clause 4 of the Bill be amended by —

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

(h) monitor and have oversight responsibilities over the issuance, suspension or revocation of registration or licences issued under this Act;

(b) deleting paragraph (i);

## NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 4 —

Functions of the  
County Executive  
Committee  
member.

**4A.** The County Executive Committee member —

- (a) shall establish and maintain a county registry for the management of warehouse receipt transactions under this Act;
- (b) shall promote the development of a county network of privately or publicly managed warehouses that have the capacity to issue warehouse receipts;
- (c) may issue, suspend or revoke registration or licenses issued under this Act;
- (d) shall enforce the standards prescribed by the Council under this Act;
- (e) shall ensure the inspection of warehouses in the county;
- (f) shall promote confidence and participation in the warehouse receipt system;
- (g) shall develop and implement strategies to facilitate the utilisation of the warehouse system by smallholder farmers;
- (h) shall create support mechanisms to facilitate access to warehouses by all farmers in the respective county; and
- (i) may carry out any other function necessary or incidental to the implementation of this Act.

## CLAUSE 10

THAT clause 10 of the Bill be amended by deleting the word “assists” appearing immediately after the words “it considers appropriate to” and substituting therefor the word “assist”.

## CLAUSE 16

THAT clause 16 of the Bill be amended —

- (a) in sub-clause (1) by deleting the word “Council” appearing immediately after the words “shall apply to the” and substituting therefor the words “respective county executive committee member”;
- (b) in sub-clause (3) by deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member”; and
- (c) by inserting the following new sub-clause immediately after the sub-clause (4) —

(4A) Each County Executive Committee member shall furnish the Council with details of a licence issued under subsection (1) within seven days of issuance of the respective licence.

## CLAUSE 17

THAT clause 17 of the Bill be amended —

- (a) in sub-clause (1) by deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member;
- (b) in sub-clause (2) by —
  - (i) deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member”;
  - (ii) deleting the word “and” appearing immediately after the words “and give the licensee” and substituting therefor the word “an”; and
  - (iii) deleting the word “it” appearing immediately after the words “make representations before” and substituting therefor the words “making a

determination”;

(c) in sub-clause (3) by —

- (i) deleting the words “Council” appearing immediately after the words “of a licence, the” and substituting therefor the words “county executive committee member”; and
- (ii) deleting the words “Council” appearing immediately after the words “the licence to the” and substituting therefor the words “county executive committee member”; and

(d) at sub-clause (6) by deleting the word “Council” appearing immediately after the word “or revoked, the” and substituting therefor the words “respective County Executive Committee member”.

#### **CLAUSE 18**

**THAT** clause 18 of the Bill be amended by —

- (a) deleting the words “The Council” appearing at the beginning of the paragraph and substituting therefor the words “The county executive committee member; and
- (b) inserting the words “as prescribed by the Council” immediately after the words “of warehouse operator’s licence”.

#### **CLAUSE 20**

**THAT** clause 20 of the Bill be amended in sub-clause (2) by deleting the words “a recognized competent Authority” appearing immediately after the words “commodity graders certified by” and substituting therefor the words “the Agriculture and Food Authority”.

#### **CLAUSE 43**

**THAT** clause 43 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) —

(1A) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Cabinet Secretary shall make Regulations—



- (a) on the provision of performance bonds required under his Act;
- (b) on insurance policy required under this Act;
- (c) on the procedure for appealing to the Council or the Appeal Committee;
- (d) on the qualifications and appointment of officers undertaking inspection of warehouses registered or licensed under this Act;
- (e) on the form of warehouse receipts, whether negotiable or non-negotiable; and
- (f) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

### NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 16 —

- Performance bond. **16A.** (1) A person applying for a license under this Act shall, further to other requirements prescribed by the Council or imposed under this Act, provide a performance bond in such form as may be prescribed by the Cabinet Secretary.
- (2) A <sup>f</sup>Performance bond shall serve as a financial assurance for the fulfilment of all obligations arising out of the licence <sup>under</sup> and this Act, including potential costs relating to rescue, recovery of other costs and fines, penalties or compensation for violations against this Act, and shall be drawn upon in such manner as may be prescribed.
- (3) The form of financial assurance acceptable under this section shall include —
- (a) surety bond;
  - (b) trust fund with pay-in period;
  - (c) insurance policy;
  - (d) cash deposit; or
  - (e) annuities.

Insurance.

**16B.** A person shall not qualify for the grant of a licence under this Act unless that person provides an insurance policy securing the respective warehouse and goods it contains against fire, flood, theft, burglary, earthquake, explosion and any other risk as may be prescribed by the Cabinet Secretary.

Appeal to the Council.

**16C.** A person who is aggrieved by a decision of the county executive committee member may, within thirty days of being notified of the decision, appeal to the Council in the prescribed manner.

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 41 —

Depositing goods without proper title.

**41A.** A person who deposits goods whose title belongs to another party in a warehouse registered or licensed under this Act without the approval of the owner commits an offence and is liable, on conviction, to a term of imprisonment not exceeding fourteen years.

Obstruction.

**41B.** A person who obstructs the inspection of a registered or licensed warehouse in contravention of this Act or any other law commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or to both.

**THAT** the Bill be amended by inserting the following new clause immediately after clause 43 —

Consultation.

**44.** The Cabinet Secretary shall, in carrying out the functions under this Act, consult the Cabinet Secretary responsible for matters related to trade.

**CLAUSE 2**

**THAT** clause 2 of the Bill be amended by —

(a) deleting the definition of the term ‘holder’ and substituting therefor the following new definition —

"holder" means the payee or endorsee of negotiable or non-negotiable warehouse receipt who is in possession of the receipt;

(b) inserting the following new definitions in the proper alphabetical sequence —

"Agriculture and Food Authority" means the Agriculture and Food Authority established under the Agriculture and Food Authority Act;

"county executive committee member" means the county executive committee member responsible for matters relating to agriculture in the respective county;

.....  
**SEN. NDWIGA PETER NJERU**  
**CHAIRPERSON**  
**COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES**