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By the Chair
Departmental
Committee on
Agriculture, Livestock
and Cooperatives
Hon. Alan
Njoroge
on behalf
2/8/2016
[Signature]



REPUBLIC OF KENYA



ELEVENTH PARLIAMENT - FOURTH SESSION - 2016

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE OF AGRICULTURE LIVESTOCK AND
COOPERATIVES

REPORT ON THE CONSIDERATION OF THE POTATO PRODUCE AND
MARKETING BILL, 2015

Directorate of Committee Services,
Clerk's Chambers
Parliament Buildings,
NAIROBI

August, 2016

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ABBREVIATIONS

AFFA - Agriculture Fisheries and Food Authority

AFFA Act - Agriculture Fisheries and Food Authority Act

1.0 CHAIR'S FOREWORD

The Potato Production and Marketing Bill ,2014 Senate Bill No. 22 of 2014 was introduced to the National Assembly and thereafter committed to the Departmental Committee on Agriculture, Livestock and Cooperatives on Wednesday 2nd March, 2016 for deliberation pursuant to the Standing Order.

The Committee invited and held meetings with the State Department of Agriculture-MoALF and Agriculture Fisheries and Food Authority whose views are captured and contained in the body of this Report.

The Committee appreciate to the Office of the Speaker and the Clerk of the National Assembly for the support accorded to it to complete this report.

On behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives, it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Potato Production and Marketing Bill, 2014 Senate Bill No. 22 of 2014.

The Hon. Adan.M. Nooru, MBS, CBS, M.P

2.0 EXECUTIVE SUMMARY

In 2013 the National Assembly enacted the Crops Act ,2013 is an Act of Parliament that consolidated and repeal various statues relating to crops , to provide for growth and development of agricultural crops.

The objective of the Crops Act, 2013 was to accelerate the growth and development of agriculture, enhance productivity and incomes to farmers and rural population, improve efficiency of agribusiness and develop agricultural crops as exports crops through **promotion of production ,processing ,marketing and distribution of crops in suitable areas** of the country and in particular, circumvent unnecessary regulatory bureaucracy in crops subsector, reduce unnecessary levies ,taxes and other barriers to free movement of crops products and provide for rationalized taxation system ,reduce unnecessary regulation and overregulation of crops subsector and reduce duplication and overlap of functions among institution involved in the regulation of crop agriculture

During the same period enactment of the Agriculture ,Fisheries and Food Authority Act ,2013 was undertaken . This Act of Parliament was to provide for the consolidation of the laws on regulation and promotion of agriculture generally ,to provide for establishment of the Agriculture ,Fisheries and Food Authority ,to make provision for respective roles of the national and county governments in agriculture excluding livestock and related matters in furtherance of relevant provision of the Fourth Schedule to Constitution and for connected purposes

The main objective of the AFFA Act , 2013 was to create an Authority (AFFA) to, in consultation with county government ; administer the Crops Act , 2013 and Fisheries Act in accordance with the provisions of this Acts, promote best practice in , and regulate , the production , processing ,marketing ,grading ,storage , collection ,transportation and warehousing of agricultural and aquatic products excluding livestock and livestock products , as may be provided for under the Crops Act and Fisheries Act, collect and collate data ,maintain a data base on agricultural and aquatic products excluding livestock products , documents and monitor agriculture through registration of players as provided for in the Crops Act and Fisheries Act and advise the national government and the county government on agricultural and aquatic levies for purpose f planning ,enhancing harmony and equity in the sector.

The Potato Production and Marketing Bill ,2014 Senate Bill No. 22 of 2014 was introduced to the National Assembly and thereafter committed to the Departmental Committee on Agriculture,

Livestock and Cooperatives on Wednesday 2nd March, 2016 for deliberation pursuant to the Standing Order.

The object and the reasons of this bill is to provide for a legal framework for establishment of the National Potato Council, to promote the quality and quantity of potato production and to set standards to regulate the industry.

However, the Crops Act ,2013 in its First Schedule in Part 1 provides Irish Potatoes as a schedule crop under the Crops Act.

This bill as interpreted in Part II enumerates the mandate and function of the Potato Council with among other roles to regulate the Potato Industry including packaging and marketing of potatoes in the country and provides a framework how the licensing, registration of the potato seed merchants shall be handled.

This report analyses the objects and reasons of the bill in relations to other existing legislation by providing the comparative analysis between the AFFA Act , 2013, Crops Act ,2013 and the Potato Produce and Marketing Bill, 2014 with a view of advising the House accordingly.

The Committee in his consideration found many duplicities and inconsistencies between the Crops Act ,2013, AFFA Act , 2013 and bill (Potato Produce and Marketing Bill,2014) as stated in the report.

3.0 MANDATE OF THE COMMITTEE

The Committee on Agriculture, Livestock and Cooperatives is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ii. To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- iii. To study and review all legislation referred to it;
- iv. To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- vii. Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee is mandated to consider the following subjects:-

- i. Agricultural services
- ii. Livestock services
- iii. Fisheries
- iv. Irrigation Services
- v. Cooperatives

4.0 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
- iv. The State Department of Cooperatives
- v. The State Department of Irrigation

5.0 MEMBERS OF THE COMMITTEE

Chairperson

The Hon. Adan M. Nooru, MBS, CBS, MP

Vice Chairperson

The Hon. Kareke Mbiuki, M.P

Members

The Hon. John B. Serut, M.P

The Hon. Benjamin Washiali, M.P

The Hon. Raphael Letimalo, M.P

The Hon. Millie Odhiambo - Mabona, M.P

The Hon. Fredrick Outa, M.P

The Hon. Kabando Wa Kabando, M.P

The Hon. (Dr.) Victor Munyaka, M.P

The Hon. Daniel Maanzo, MBS,

The Hon. Silas Tiren, M.P

The Hon. Maison Leshoomo, M.P

The Hon. Mary Wambui, M.P

The Hon. Korei Ole Lemein, M.P

The Hon. Peter N. Gitau, M.P

The Hon. Florence Mutua, M.P

The Hon. John Kobado, M.P

The Hon. Patrick Wangamati, M.P

The Hon. Awiti Bollo , M.P

The Hon. Ayub Savula Angatia, M.P.

The Hon. Waititu Munyua, M.P

The Hon. Kimani Ichung'wah, M.P

The Hon. Ferdinand Wanyonyi, M.P

The Hon. Justice Kemei, M.P

The Hon. Benjamin Andayi, M.P

The Hon. Jude Njomo, M.P

The Hon. Aisha Jumwa, M.P

The Hon. Alfred Kiptoo Keter, M.P

The Hon. Paul Simba Arati, M.

6.0 COMMITTEE SECRETARIAT

First Clerk Assistant	-	Mr. Benjamin Magut
Clerk Assistant III	-	Ms. Naserian Lotuai
Clerk Assistant III	-	Mr. Ahmad Guliye
Legal Counsel	-	Ms. Brigita Mati
Research & Policy Analyst	-	Mr. David Ngeno
Fiscal Analyst	-	Ms. Lucy Makara

7.0 LIST OF RECOMMENDATION

The Committee after considering and deliberating on the Potato Produce and Marketing Bill, 2014 a Senate Bill No 22 of 2014 recommends that:

- (1) Various clauses of the Potato Produce and Marketing Bill, 2014 are inconsistent with the current legislation that governs the agricultural industry and therefore should be reconsidered by the mover of the Bill.
- (2) The Bill creates duplicity of roles as it attempts to re-create the functions of an existing Authority (AFFA) established under the AFFA Act and the Crops Act to the proposed new National Potato Council hence should not be approved.
- (3) Parliament should ensure that the existing structures established under the AFFA Act and the Crops Act are adequately funded to ensure that they discharge their various mandates under the various legislations dealing with agriculture in order to avoid inefficiency in the implementation.

8.0 INTRODUCTION

The Potato Production and Marketing Bill ,2014 Senate Bill No. 22 of 2014 was introduced to the National Assembly and thereafter committed to the Departmental Committee on Agriculture, Livestock and Cooperatives on Wednesday 2nd March, 2016 for deliberation pursuant to the Standing Order.

The object and the reasons of this bill is to provide for a legal framework for establishment of the National Potato Council, to promote the quality and quantity of potato production and to set standards to regulate the industry.

This Bill as interpreted in Part II enumerates the mandate and function of the Potato Council with among other roles to regulate the Potato Industry including packaging and marketing of potatoes in the country

The bill provides a framework how the licensing, registration of the potato seed merchants shall be handled.

The bill provides for how the Ware potatoes shall be handled as well establishes County Potato Committees to disseminate information and guidelines issued by the Council for use by the Potato fraternity in the country among other functions. This Committee at the County shall facilitate the registration of Potato farmers and traders in the county.

Part V of the bill provides for the Standardization of the package of Ware Potatoes, The bill empowers the Cabinet Secretary of Agriculture, Livestock and Fisheries to issues regulations that shall provide for standard package for chips, crisp and other Potato product.

Part VI of the this bill addresses the issues related to certification and verification of the Ware Potato and Potato Seed imported and exported in the country.

Part VII establishes Potato Development Fund which shall be administered by the Council to fund the general administration expenses of the council and assistance to the county potato committees to discharge their mandate.

Part IX of the bill grants the Cabinet Secretary in consultation with the Board to make regulations generally for the better carrying out of the purposes and provisions of this Act. It further prescribes the mechanism for conflict resolutions and penalties in case of persons convicted as per the Act.

The report concludes by enumerating the duplicity and inconsistent provisions between the roles of Agriculture Food and Fisheries Act ,2013 , Crops Act ,2013 and the bill.

9.0 ANALYSIS OF THE POTATO PRODUCE AND MARKETING BILL, 2014 AND CROPS ACT, 2013

9.1 Crops Act ,2013

The Crops Act ,2013 is an Act of Parliament that consolidated and repeal 1 various statues relating to crops , to provide for growth and development of agricultural crops and connected purpose.

The Objective of the Act is to accelerate the growth and development of agriculture, enhance productivity and incomes to farmers and rural population, improve efficiency of agribusiness and develop agricultural crops as exports crops through **promotion of production ,processing ,marketing and distribution of crops in suitable areas** of the country and in particular:-

- a) Circumvent unnecessary regulatory bureaucracy in crops subsector
- b) Reduce unnecessary levies ,taxes and other barriers to free movement of crops products and provide for rationalized taxation system
- c) Reduce unnecessary regulation and overregulation of crops subsector
- d) Reduce duplication and overlap of functions among institution involved in the regulation of crop agriculture

First Schedule of the Crops Act ,2013 Part 1 provides Irish Potatoes as a schedule crop that the Crops Act.

9.2 The Agriculture ,Fisheries and Food Authority Act ,2013

The Agriculture ,Fisheries and Food Authority Act ,2013 is an Act of Parliament to provide for consolidation of the laws on regulation and promotion of agriculture generally ,to provide for establishment of the Agriculture ,Fisheries and Food Authority ,to make provision for respective roles of the national and county governments in agriculture excluding livestock and related

matters in furtherance of relevant provision of the Fourth Schedule to Constitution and for connected purposes

The main objective of the AFFA Act , 2013 was to create an Authority (AFFA) to in consultation with county government :

- a) administer the Crops Act , 2013 and Fisheries Act in accordance with the provisions of this Acts
- b) Promote best practice in , and regulate , the production , processing ,marketing ,grading ,storage , collection ,transportation and warehousing of agricultural and aquatic products excluding livestock and livestock products , as may be provided for under the Crops Act and Fisheries Act
- c) collect and collate data ,maintain a data base on agricultural and aquatic products excluding livestock products , documents and monitor agriculture through registration of players as provided for in the Crops Act and Fisheries Act;
- d) advise the national government and the county government on agricultural and aquatic levies for purpose f planning ,enhancing harmony and equity in the sector

No	Potato Produce and Marketing Bill, 2014	Crops Act , 2013	Agriculture Fisheries and Food Authority Act , 2013	Committee Views
1	<p>Section 3 (a) , identify the objective of the bill as to</p> <p><i>"Regulate production ,packaging ,processing and marketing of potatoes and regulate the industry "</i></p>	<p>Section 8 (a) and 8 (b) of Crops Act provides that the authority (AFFA) shall:</p> <p><i>"(a)formulate general and specific policies for development of schedule crops specified in First Schedule of the Crops Act</i></p> <p><i>(b) facilitate marketing and distribution of schedule crops through monitoring and dissemination of marketing information including identification of the supply-demand situation ,domestic marketing matching and overseas marketing intelligence and promotion activities on schedule crops"</i></p>	<p>Section 4 (b) of AFFA Act,2013 mandates the Authority to :</p> <p><i>"Promote best practice in , and regulate , the production , processing ,marketing ,grading ,storage , collection ,transportation and warehousing of agricultural and aquatic products excluding livestock and livestock products , as may be provided for under the Crops Act and Fisheries Act".</i></p>	<p>The key objects of the Potato Produce and Marketing Bill, 2014 are well covered in the Crops Act ,2013 and therefore it will result to duplicity.</p>
2	<p>Section 4 of the bill establishes The Potato Board of Kenya whose mandate as provided in Section 6 (1) is</p> <p><i>"(a) regulate the Potato industry including the production ,packaging and marketing of potatoes in the country.</i></p> <p><i>(c) put measures in place to improves the overall production</i></p>	<p>Section 8 (f) of the Crops, Act provides for promotion of schedule crop by</p> <p><i>"establish experimental stations and seed farms for development of varieties suitable to the agro-climatically conditions of the areas and markets that will provide greatest value added to schedule crops"</i></p>	<p>Section 3 of the AFFA Act establishes an Authority whose mandates is to</p> <p><i>"Promote best practice in and regulate , the production , processing ,marketing ,grading ,storage , collection ,transportation and warehousing of agricultural and aquatic products excluding livestock and livestock products , as may be provided for under the Crops Act "</i></p>	<p>There exist AFFA Authority that is mandated to administer the Crops Act ,2013 and therefore establishing another institution such Potato Council shall not only result in duplicity but strain to the tax payer owing to the fact that the government has scrapped the levies that the Act had proposed to impose to the farmers to run</p>

	<p><i>of potatoes in the country as part of national food security</i></p> <p><i>(d) promote the production and availability of high quality and affordable certified potato seeds for varieties widely acceptable consumers"</i></p>			<p>the affairs of the Council</p>
3	<p>Section 10(1) of the bill provides that</p> <p><i>(1) "The Board shall gather and document information useful for furtherance of the objectives of this Act and generally maintain be the custodian of data of the Potato industry"</i></p>		<p>Section 4 (c) of the AFFA Act, 2013 provides that the authority shall:</p> <p><i>"collect and collate data ,maintain a data base on agricultural and aquatic products excluding livestock products , documents and monitor agriculture through registration of players as provided for in the Crops Act and Fisheries Act;"</i></p>	<p>The existing Agriculture Food and Fisheries Authority has constituted is mandated to undertake the function expected to performed by proposed Potato Council Board.</p>

4	<p>Section 11 (1) of the bill provides that</p> <p><i>" The Board may , with the approval of the Cabinet Secretary ,impose such levies as it considers necessary in order to raise funds necessary for the performance of its function"</i></p>	<p>Section 32 (1) provides that</p> <p><i>" The Cabinet Secretary, may with approval of Parliament , by notice in the Gazette impose a levy be levied on levied on a scheduled crop or crop product"</i></p>	<p>The function of imposing levies on the scheduled crops included the Potato is vested in the Cabinet Secretary and therefore this provision of the bill is inconsistent with the Crops Act, 2013</p>
5	<p>Section 13 of the bill, provides for gazettelement of regulations to guide agronomic practices , seed potato characteristics and on farm practices for seed potato production</p>	<p>Section 40 (1) of the Crops Act provides that the Cabinet Secretary in consultation with county governments make regulations for the better carrying into effect of the provision of this Act. Regulations under this section may provide for</p> <ul style="list-style-type: none"> a) Regulations on appropriate seeds and planting materials for export and import b) Administration of plant breeder's rights in line with the existing international conventions to which Kenya is a signatory c) standards testing and certification of seeds and planting materials 	<p>The Crops Act 2013 has conclusively addressed the development and the making of regulations for all scheduled crops including the Potato</p>

6	Section 14 ,15 and 16 of the bill, provides for registration of potato seeds producers and seeds merchants			This function is vested to the Kenya Plant Health Inspectorate Services as prescribed by Seeds and Plant Varieties Act Cap 326
7	Section 17 of the bill , provides for the promotion of use of certified seeds by farmers.		Section 4 (b) of AFFA Act,2013 mandates the Authority to : <i>"Promote best practice in , and regulate , the production , processing ,marketing ,grading ,storage , collection ,transportation and warehousing of agricultural and aquatic products excluding livestock and livestock products , as may be provided for under the Crops Act and Fisheries Act".</i>	The AFFA Act has mandate the Authority to promote best practices in production of agricultural
	Establishes	Section 26 (1) " The Authority shall in respect of each county appoint an officer to be stationed in the county for purpose of this " 2) " The Authority shall delegate of its powers and such functions to the officer (1) as shall be mandate in		Section 26 of the Crops Act mandates the existing Authority (AFFA) to appoint County Officers and Crops Inspectors who shall work closely with the County Executive Committees for the purpose of this Act hence what the bill is proposing shall be a duplication of roles.

	<p>packaging standards as set out in Act is adhered to</p> <p>c) Promote the principle of self regulations among the players in the country</p> <p>d) Represent the interest of the potato industry fraternity in the affairs of the county</p>	<p><i>that county"</i></p> <p><i>Section 26 (4) "A county officer appointed under subsection (1) shall liaise with the county executive committee in the discharge of its function"</i></p>		<p>The County Executive Committee members can administratively establish this Potato County Committee for the purpose of advising the CEC on matters Potatoes</p>
9	<p>Section 20 of the bill provides for the registration of potato farmers and traders by the County Potato Committee</p>	<p>Section 14 (1) of the Crops Act provides that</p> <p><i>" Every small holder grower , for purposes of accessing economies of scale ,shall have freedom</i></p> <p><i>(e) in case of any other grower ,register with such association as the Authority may from time to time determine "</i></p> <p><i>Section 16 (1) states that " Every dealer in a scheduled crop shall be registered with the Authority"</i></p> <p><i>Further Section 16 (3) " Cabinet Secretary shall , in consultation with the relevant county executive committee member responsible for agriculture ,prescribe</i></p>		<p>The bill provisions of registration of the farmers and traders in Potato crop is inconsistent with Section 14 (1) and Section 16 (1) and Section 16(3) which mandates the Authority(AFFA) and CEC Member to register farmers and dealers.</p>

		<i>regulation providing for the procedure for registration of dealers and the regulation shall also set out the appeal process in case of refusal or denial of registration"</i>		
11	<p>Section 22 of the bill, provides that the Board shall</p> <p><i>"(a) issue guidelines on appropriate methods of on-farm potato storage</i></p> <p><i>(b) provide or assist in the provision , maintenance and control of bulk storage and handling facilities for potato produce as the Board may at any time deem appropriate</i></p> <p><i>value addition in</i></p>	<p>Section 8 (n) of the Crops Act gives the Authority (AFFA) the role to advise on strategies of ensure value addition to the schedule crops.</p>	<p>Section 4 (b) of AFFA Act,2013 mandates the Authority to :</p> <p><i>"Promote best practice in , and regulate , the production , processing ,marketing ,grading ,storage , collection ,transportation and warehousing of agricultural and aquatic products excluding livestock and livestock products , as may be provided for under the Crops Act and Fisheries Act".</i></p>	<p>The AFFA Act 2013 and Crops Act 2013 mandates the Authority (AFFA) to issue best practice and guidelines on warehousing of agriculture products and strategies to ensure value addition on scheduled crops respectively therefore the bill is inconsistent with both the AFFA Act ,2013 and Crops Act 2013</p>
	des		<p>Section 42 of the AFFA Act 2013 state that <i>" The unit of measurement of weight of all produce subject to regulations by the Authority shall be the kiliogramme and each single package shall not exceed a weight of fifty kilogrammes"</i></p>	<p>The bill therefore contradicts the AFFA Act ,2013 Section 42</p>

13	<p>Section 24 (1) of the bill provides for the Exportation of potatoes that</p> <p><i>" The Board shall take steps to encourage the export of potatoes and potato product "</i></p>	<p>Section 8 (n) of the Crops Act ,2013 provides that the Authority (AFFA)</p> <p><i>"promote and advise on strategies for value addition prior to the export of crops from Kenya"</i></p>		<p>The bill is inconsistent with the Crops Act ,2013 Section 8 (n)</p>
14	<p>Section 26 (2) of the bill establishes the Potato Development Fund to consist of</p> <p><i>"(a) Gifts ,grants and donations</i></p> <p><i>(b) such funds as may be provided by bilateral or multilateral donors or development partners</i></p> <p><i>(c) such monies as may accrue to the Board pursuant to section 29(b) and (c)</i></p> <p><i>(d) such monies as the Cabinet Secretary may grant to the Board, out of monies that may be provided by the Government otherwise "</i></p>	<p>Section 9 of the Crops Act ,2013 provides for the establishment Commodities Fund which shall consist of</p> <p><i>"(a) monies paid as license fees ,commission export or import agency fees and fees that may accrue to or vest in the Authority in the course of exercise of its functions under the Act.</i></p> <p><i>(b) Funds from any other lawful source approved by the Trustees and</i></p> <p><i>(c) Fund appropriated by Parliament for this purpose"</i></p>		<p>The objectives of the Potato Development Fund is similar with the objectives of the existing Commodities Fund as provided by Crops Act ,2013 hence it will duplication.</p> <p>Section 26 (2) (d) of the bill renders the bill a Money bill as per the meaning of Article 114 (3)</p>

15	<p>Section 28 (1) of the bill states that</p> <p>" For avoidance of doubt , nothing in this Act may be construed as providing for or dealing with</p> <p>a) taxes</p> <p>b) The imposition of charges on a public fund or the variation or repeal of any of those charges</p> <p>c) The appropriation , receipt , custody , investment or issue of public money.</p> <p>ing or guaranteeing in or its repayment</p>		<p>Section 26 (2) (d) of the bill contradicts Section 28 (1) of the bill on the Non-money Bill status</p>
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10.0 COMMITTEE FINDINGS AND OBSERVATIONS

The Committee while considering the Bill observed the following:-

- (1) The proposed Bill is a money Bill as envisaged under Article 114(3) which contains provisions dealing with the imposition of charges on a public fund or the variation or repeal of any of those charges. The Bill proposes to include money that may be used for implementing the Act, if enacted, through an appropriation from the National Assembly (clause 28 (3) (b)). Article 109 (5) provides that *a Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114*. Therefore the Bill as it is can only originate in the National Assembly.
- (2) The Bill seeks to establish a National Potato Council to implement the Act once enacted. The functions of the Council as set out under clause 6 of the Bill which includes regulation of the potato industry, improving of production, safeguarding interests of stakeholders and management of a Potato Fund are functions falling within the mandate of the Food Crops Directorates in the Agriculture and Food Authority. Further, the main objects and functions of the Bill under this clause which include regulation of production, packaging, processing and marketing of potatoes are similar to the objects and functions under section 4 of the Agriculture Fisheries and Food Authority Act 2013 and section 4 of the Crops Act, 2013. Hence there is legislation already that covers the stated objects of the Bill and the enactment of the Bill will create duplicity of roles.
- (3) The Crops Act under section 6 provides for the role of national Government and county government pursuant to the Fourth Schedule of the Constitution hence the establishment of the County Committee under clause 19 of the Bill.

- (4) The Bill seeks to regulate exports of potatoes under clauses 24 and 25 which is part of the mandate of the Agriculture and Food Authority Directorates under section 8(n) of the Crops Act. It also seeks to regulate export and import of seeds which is under the purview of the Seeds and Plant Varieties Act cap 326 which is administered by Kenya Plant Health Inspectorate Service hence no need for a new legislation.
- (5) The Bill seeks to grant powers to the Cabinet Secretary to impose levies to raise funds for the Potato Board of Kenya under clause 11. Section 32 of the Crops Act, the Cabinet Secretary may with the approval of Parliament impose levies on scheduled Crops. Section 33 of the Crops Act also provides for the usage of the levies as part of the general funds to be used by the Authority in discharge of its functions.
- (6) The Crops Act under section 9 establishes a Commodities Fund which consists of monies paid as license fees, commissions and import agency fees; funds from other lawful sources and funds appropriated by Parliament. The Usage of these funds is provided for in section 10 of the Crops Act as advances to farmers for farm improvement, farm inputs, farming operations and price stabilization and other lawful source. There is thus no need for creation of a new fund as proposed under clause 26 of the Bill. Parliament should ensure that adequate funds are appropriated towards the Commodities Fund under the Crops Act .The Ministry of Agriculture should also hasten the regulations towards advancement of the money under the Commodities Fund.
- (7) The Bill at clause 23 (1) and 23 (2) sets the standard weight for a bag or package of ware potatoes to be fifty Kilograms with a tolerance of plus or minus five kilograms; this contradicts section 42 of the Agriculture and Food Authority Act that sets the maximum weight at 50 Kilograms for all scheduled crops. If there is need for an amendment on the maximum weights, it would be prudent to make an amendment to an already existing legislation.

(8) In view of the above, it is evident that the objects and function for which the Bill has been formulated are objects and functions that are already being undertaken by the Agriculture Fisheries and Food Authority under the AFFA Act and the Crops Act. The establishment of the National Potato Council would establish a parallel entity carrying out the same functions of the Authority with respect to all agricultural crops including potatoes.

11. RECOMMENDATIONS

The Committee after considering and deliberating on the Potato Produce and Marketing Bill, 2014 a Senate Bill No 22 of 2014 recommends that:

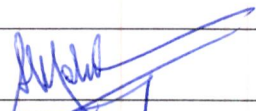

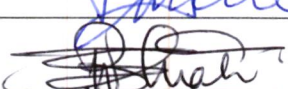
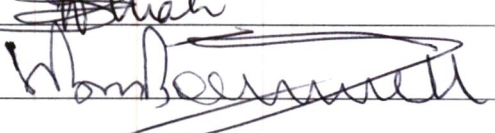
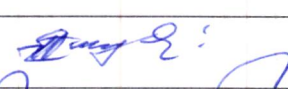
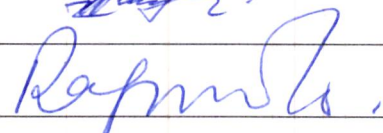
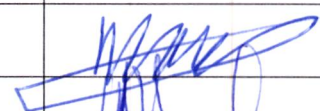
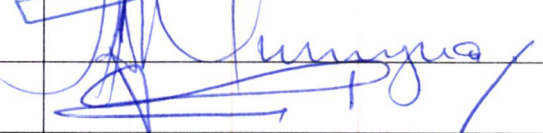
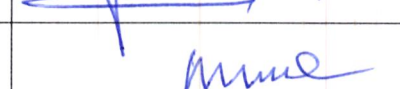


- (4) Various clauses of the Potato Produce and Marketing Bill, 2014 are inconsistent with the current legislation that governs the agricultural industry and hence should be reconsidered by the mover of the Bill.
- (5) The Bill creates duplicity of roles as it attempts to re-create the functions of an existing Authority (AFFA) established under the AFFA Act and the Crops Act to the proposed new National Potato Council hence should not be approved.
- (6) Parliament should ensure that the existing structures established under the AFFA Act and the Crops Act are adequately funded to ensure that they discharge their various mandates under the various legislations dealing with agriculture in order to avoid inefficiency in the implementation.

Signed..........Date.....2/8/2016.....

The Hon. Adan M. Nooru, MBS, CBS, M.P

**CHAIRPERSON DEPARTMENTAL COMMITTEE ON AGRICULTURE,
LIVESTOCK AND COOPERATIVES**

ADOPTION LIST FOR THE REPORT OF THE COMMITTEE ON CONSIDERATION OF THE POTATO PRODUCE AND MARKETING BILL ,2014 ON THURSDAY 28TH JULY, 2016

NO	NAME	SIGNATURE
1	The Hon. Adan Mohamed Nooru, CBS, MB,MP	
2	The Hon. Japhet M. Kareke Mbiuki, M.P.	
3	The Hon. Benjamin Jomo Washiali, M.P	
4	The Hon. John Bomett Serut, M.P.	
5	The Hon. KabandoWa Kabando, M.P.	
6	The Hon. (Dr.) Victor K Munyaka, M.P.	
7	The Hon. Raphael Letimalo, M.P.	
8	The Hon. Millie Odhiambo, M.P.	
9	The Hon. Fredrick Outa, M.P.	
10	The Hon. Benjamin Andayi, M.P.	
11	The Hon. Mary Wambui Munene, M.P.	
12	The Hon. Francis Munyua Waititu, M.P.	
13	The Hon. Peter Njuguna Gitau, M.P.	
14	The Hon. Maison Leshoomo, M.P.	
15	The Hon. Anthony K. Ichung'wah, M.P.	
16	The Hon. Aisha Jumwa, M.P.	
17	The Hon. Patrick Wangamati, M.P.	
18	The Hon. Maanzo, Daniel Kitonga, M.P.	
19	The Hon. Justice Kemei, M.P.	

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVE (Meeting with AFFA on The Statue Law Miscellaneous Amendment Bill, 2015 and Potato Produce and Marketing Bill Senate Bill No. 22 of 2014) HELD ON TUESDAY 19TH JULY 2016, IN 9TH FLOOR HARAMBEE PLAZA AT 10:30 A.M.

Present

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|-------------------------------------|--------------------|
| 1. Hon. Adan M. Nooru, MBS, M.P | Chairperson |
| 2. Hon. (Dr.) Victor Munyaka, M.P | |
| 3. Hon. Francis Waititu Munyua, M.P | |
| 4. Hon. Ferdinand Wanyonyi, M.P | |
| 5. Hon. Raphael Letimalo, M.P | |
| 6. Hon. Korei Ole Lemein, M.P | |
| 7. Hon. Patrick Wangamati, M.P | |
| 8. Hon. Florence Mutua, M.P | |
| 9. Hon. Silas Tiren, M.P | |
| 10. Hon. Justice Kemei, M.P | |

Apologies

- | | |
|--|-------------------------|
| 1. Hon. Kareke Mbiuki, M.P | Vice Chairperson |
| 2. Hon. Benjamin Washiali, M.P | |
| 3. Hon. Kimani Ichung'wah, M.P | |
| 4. Hon. Awiti Bolo, M.P | |
| 5. Hon. Aisha Jumwa, M.P | |
| 6. Hon. Kabando Wa Kabando, M.P | |
| 7. Hon. Jude Njomo, M.P | |
| 8. Hon. John Kobado, M.P | |
| 9. Hon. Daniel Maanzo, MBS, M.P | |
| 10. Hon. Mary Wambui, M.P | |
| 11. Hon. Fredrick Outa, M.P | |
| 12. Hon. Millie Odhiambo - Mabona, M.P | |
| 13. Hon. AyubSavulaAngatia, M.P | |
| 14. Hon. Paul Simba Arati, M.P | |
| 15. Hon. Peter N. Gitau, M.P | |
| 16. Hon. Alfred K. Keter, M.P | |
| 17. Hon. Maison Leshoomo, M.P | |
| 18. Hon. John B. Serut, M.P | |
| 19. Hon. Benjamin Andayi, M.P | |

the Cabinet Secretary may with the approval of Parliament impose levies on scheduled Crops. Section 33 of the Crops Act also provides for the usage of the levies as part of the general funds to be used by the Authority in discharge of its functions.

He observed that the Crops Act under section 9 establishes a Commodity Fund which consists of monies paid as license fees, commissions and import agency fees; funds from other lawful sources and funds appropriated by Parliament. The Usage of these funds is provided for in section 10 of the Crops Act as advances to farmers for farm improvement, farm inputs, farming operations and price stabilization and other lawful source. There is thus no need for creation of a new fund. Parliament should ensure that adequate funds are appropriated towards the Commodities Fund under the Crops Act the Ministry of Agriculture should also hasten the regulations towards advancement of the money under the Commodities Fund.

He added that the crops Act under section 6 provides for the role of National Government and the County Government pursuant to the Fourth Schedule of the Constitution hence no need for establishment of the County Committee under clause 19 of the Bill.

He informed the committee that the bill at clause 23 (1) and 23 (2) sets the standard weight for a bag or package of ware potatoes to be fifty Kilograms with a tolerance of plus or minus five kilograms, this contradicts section 42 of the Agriculture, Fisheries and Food Authority Act as amended that provides that the unit of measurement of all crop produce or products subject to regulations made under this Act by the Authority shall be as prescribed for each crop produce or product by the Cabinet Secretary by notice in the Gazette subject to any other law or regulations made under this Act and taking into account international standards. If there is need for an amendment on the maximum weights, it would be prudent to make an amendment to an already existing legislation.

He added by stating that Crops Act under section 6 provides for the role of national Government and the county government pursuant to the Fourth Schedule of the Constitution hence no need for establishment of the County Committee under clause 19 of the Bill.

The Bill at clause 23 (1) and 23 (2) sets the standard weight for a bag or package of ware potatoes to be fifty Kilograms with a tolerance of plus or minus five kilograms, this contradicts section 42 of the Agriculture, Fisheries and Food Authority Act as amended that provides that the unit of measurement of all crop produce or products subject to regulations made under this Act by the Authority shall be as prescribed for each crop produce or product by the Cabinet Secretary by notice in the Gazette subject to any other law or regulations made under this Act and taking into account international

various means including registration and licensing of processors among other functions.

3. Upon the commencement of the Crops Act, 2013, on 1st August 2014 via Gazette Notice Number 110, the following Acts were repealed; Agricultural Produce (Export) Act, Agricultural Produce Marketing Act, Crop Production and Livestock Act, Canning Crops Act, Cereals and Sugar Finance Corporation, Coconut Industry Act, Coconut Preservation Act, Cotton Act, Pyrethrum Act (CAP 340), Sisal Industry Act, Tea Act, Coffee Act and the Sugar Act. The purpose of the Crops Act was to consolidate and repeal various statutes relating to crops; to provide for the growth and development of agricultural crops and for connected purposes.
4. The Crops Act 2013 provides for regulation of all Scheduled Crops and Pyrethrum is among the Scheduled Crops regulated by AFA under the First Schedule.
5. The Agriculture and Food Authority is mandated to administer the Crops Act which covers the regulations of scheduled crops.
6. In view of the forgoing it is evident that the objects and function for which the Pyrethrum Act No. 22 of 2013 has been formulated are objects and functions that are already being undertaken by the Agriculture and Food Authority under the AFA Act and the Crops Act. The establishment of the Board of Management for the Pyrethrum Regulatory Authority would establish a parallel entity carrying out the same functions of the Authority.
7. Further, though the Pyrethrum and Other Industrial Crops Directorate established under the Authority presently carries out regulation of the Pyrethrum sub-sector, the **Pyrethrum Regulatory Act, No 22 of 2013** which was enacted the same day as AFA and Crops Act is still in place. This is creating legal challenges in the regulation of the Pyrethrum Sub-Sector.

Recommendations

1. The Pyrethrum and Other Industrial Crops Directorate under AFFA to continue handling the regulation of the Pyrethrum sub-sector
2. The Pyrethrum Regulatory Act No 22 of 2013 be repealed to remove the current conflict where there are two Acts regulating the Pyrethrum Sub-sector.
3. It is further proposed that, paragraph 3 (1) of the AFA Act under the Transitional provisions in the First Schedule be amended to increase the period when the institutions carrying out commercial activities are expected to transform into a Company to at least 6 years. This is due to the fact that the period of 12 months currently provided for has already elapsed and it is also over 3 years since the commencement of the AFA Act. The separation of the regulatory functions of the

MINUTES OF THE 41st SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Adoption of the Committee Reports on Potato Produce and Marketing Bill , 2014 and the Public Petition on the Lifting of the Ban and Sale of Raw Macadamia Nuts) HELD ON THURSDAY 28TH JULY 2016, AT NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Adan Mohamed Nooru, MBS, CBS, M.P - **Chairperson**
2. Hon. Kareke Mbiuki, M.P - **Vice Chair**
3. Hon. Ferdinand Wanyonyi, M.P - **Session Chair**
4. Hon. John B. Serut, M.P
5. Hon. Fredrick Outa, M.P
6. Hon. (Dr.) Victor Munyaka, M.P
7. Hon. Raphael Letimalo, M.P
8. Hon. Peter N. Gitau, M.P
9. Hon. Maison Leshoomo, M.P
10. Hon. Patrick Wangamati, M.P
11. Hon. Daniel Maanzo, M.P
12. Hon. Paul SimbaArati, M.P
13. Hon. Justice Kemei, M.P
14. Hon. Korei Lemein, M.P
15. Hon. Silas Tiren, M.P
16. Hon. Waititu Munyua, M.P
17. Hon. Florence Mutua, M.P

Apologies

1. Hon. Benjamin Washiali, M.P
2. Hon. Kabando Wa Kabando, M.P
3. Hon. Millie Odhiambo - Mabona, M.
4. Hon. John Kobado, M.P
5. Hon. Alfred K. Keter, M.P
6. Hon. Kimani Ichung'wah, M.P
7. Hon. Ayub Savula Angatia, M.P.
8. Hon. Benjamin Andayi, M.P
9. Hon. Hezron Awiti Bollo, M.P
10. Hon. Aisha Jumwa, M.P
11. Hon. Mary Wambui, M.P
12. Hon. Jude Njomo, M.P

Kenya National Assembly Secretariat

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|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Ms. Angeline Naserian | - Third Clerk Assistant |
| 4. Mr. David Ngeno | - Research Officer |
| 5. Mr. Stephen Nyakuti | - Audio Officer |
| 6. Ms. Zainabu Wario | - Serjeant Officer |

Min. 171/2016: Preliminaries

- I. The meeting was called to order at 10.46 a.m. and prayers were said by Hon. Ferdinand Wanyonyi, M.P
- II. Due to late arrival of the Chairperson and the Vice Chairperson due unavoidable circumstances, Members nominated Hon. Ferdinand Wanyonyi, M.P to chair the Sitting having being proposed and seconded by Hon. Florence Mutua, M.P and Hon. John Bommet Serut, M.P respectively.

Min. 172/2016: Adoption of the Agenda

The day's agenda was adopted as stipulated in the notice of meeting after it was proposed and seconded by Hon. Patrick Wangamati, M.P and Hon. John Serut, M.P respectively.

Min. 173/2016: Confirmation of Minutes

- I. The minutes of 26th sitting were confirmed as true record of the Committee's deliberation after they were proposed and seconded by Hon. Raphael Letimalo, M.P and Hon. John Serut, M.P respectively.
- II. The minutes of the 27th sitting were confirmed as true record of the committee's deliberations after they were proposed and seconded by Hon. John Serut, M.P and Hon. Victor Munyaka, M.P respectively.
- III. The minutes of the 28th sitting were confirmed as true record of the Committee's deliberations after they were proposed and seconded by Hon. John Serut, M.P and Hon. Victor Munyaka, M.P respectively.
- IV. The minutes of the 29th sitting were confirmed as true record of the Committee's deliberations after they were proposed and seconded by Hon. Korei Lemein, M.P and Hon. Justice Kemei, M.P respectively.
- V. The minutes of the 30th sitting were confirmed as true record of the Committee's deliberations after they were proposed and seconded by Hon. Justice Kemei, M.P and Hon. Korei Lemein, M.P respectively.

Min. 174/2016: Matters Arising

- I. Members reiterated their concerns that minutes of a Committee sitting should be confirmed in the subsequent sitting for ensure effective confirmation of minutes by Members. This will help in the appropriate consideration of matters arising from the previous meeting.
- II. Under minute 119/2016:
 - a) The Committee noted that, it is directive to the Ministry to furnish the Committee with documentations by on various response specifically response to Hon Njoroge Barua ,MP on his question dealt during the sitting has not been adhered to, to-date.
 - b) The Secretariat was asked to remind the Ministry to avail the requested documents in the meeting scheduled for the following week.
- III. The Committee was informed that the State Department of Irrigation still remains under the purview of the Departmental Committee on Agriculture, Livestock and Cooperatives as per the Standing Orders irrespective of the Ministry that it domiciled under.
- IV. The Committee deliberated on whether the vote of KES 4.8 billion has been transferred to the State Department of Irrigation from the State Department of Agriculture following the Second Supplementary estimates.
- V. The Committee resolved to invite the Cabinet Secretary for Water and Irrigation and Cabinet Secretary the National Treasury to shed light on the matter.
- VI. The Committee was informed that the Cabinet Secretary of Agriculture, Livestock and Fisheries is scheduled to appear before the Committee in August ,2016 to appraise the Members on the Programs and Projects that will be undertaken by the Ministry in the Financial Year 2016/2017.

Min.175/2016: Adoption of the Report of the Potato Produce and Marketing Bill, 2014

The Committee after considering and deliberating on the Potato Produce and Marketing Bill, 2014 a Senate Bill No 22 of 2014 recommends that:

- I. Various clauses of the Potato Produce and Marketing Bill, 2014 are inconsistent with the current legislation that governs the agricultural industry and therefore should be reconsidered by the mover of the Bill.
- II. The Bill creates duplicity of roles as it attempts to re-create the functions of an existing Authority (AFFA) established under the AFFA Act and the Crops Act to the proposed new National Potato Council hence should not be approved.
- III. Parliament should ensure that the existing structures established under the AFFA Act and the Crops Act are adequately funded to ensure that they discharge their various mandates under the various legislations dealing with agriculture in order to avoid inefficiency in the implementation.

Min. 176/2016: Adoption of the Report on the Petition by the Macadamia Farmers from Maragwa on lifting the Ban on Sale and Export of Raw Macadamia

The Committee adopted the report on the Petition by the Macadamia Farmers from Maragwa on lifting the Ban on Sale and Export of Raw Macadamia with the following recommendations;

- I. The ban on the sale and export of raw macadamia nuts be maintained as provided in Section 43 of the AFFA Act,2013 as it is in the best interest of the nut industry in the country as result of value addition.
- II. The Ministry of Agriculture, Livestock and Fisheries through Agriculture Food and Fisheries Authority should encourage licensing of more processors in the market to promote competition.
- III. The Ministry of Agriculture, Livestock and Fisheries through Agriculture, Fisheries and Food Authority in conjunction with Nut Processors Associations to intensify sensitization of nut farmers through training about the various technologies and skills in Macadamia nuts production and assist farmers to form groups to better their bargaining power.
- IV. The Ministry of Agriculture, Livestock and Fisheries through Agriculture, Fisheries and Food Authority to spearhead the introduction macadamia farming in new areas that have shown some potential for growing the crop.
- V. The Ministry of Agriculture, Livestock and Fisheries through Agriculture, Fisheries and Food Authority to support the Macadamia Nut farmers through the existing Commodities Fund as provided in Crops Act ,2013.
- VI. The Ministry of Agriculture, Livestock and Fisheries should intensify research activities in the macadamia nuts among other nuts in the country in order to improve the crop and ensure it meets the international standards.

Min. 177/2016: Any Other Business (A.O.B)

The Committee resolved to invite the Principal Secretary, State Department of Fisheries to appear before the Committee on Tuesday, 2nd August 2016 to deliberate Senate Amendments on the Fisheries Management and Development Bill, 2015.

Min. 178/2016: Adjournment

There being no other business to discuss, the meeting was adjourned at 12.27 p.m.

Signature



HON. ADAN MOHAMED NOORU, MBS, CBS, M.P.

(Chairperson)

Date.....

2 / 8 / 2016