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THIRTEENTH PARLIAMENT – THIRD SESSION - 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

REPORT ON:

THE COTTON INDUSTRY DEVELOPMENT BILL (*SENATE BILL NO. 5 OF 2023*)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2024	DAY: Thursday
TABLED BY:	Hon. John Mutunga (Chairperson, Agriculture & Livestock Committee)
CLERK-AT THE TABLE:	Shibuko

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI



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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Agriculture and Livestock on its consideration of the Cotton Industry Development Bill (*Senate Bill No. 5 of 2023*) which was published in the Kenya Gazette Supplement No. 9 of 6th February 2023. The Bill went through the First Reading on 16th August 2023 and was thereafter committed to the Departmental Committee on Agriculture and Livestock for consideration and reporting to the House pursuant to Standing Order 127.

The Bill has fifty-six (56) clauses and one Schedule and seeks to provide for the production, processing, marketing and distribution of cotton and its products in Kenya; establish the Cotton Industry Development Board; provide a framework for cotton farming; and ensure value addition to cotton and its related products.

Following placement of advertisements in the print media on Friday, 25th August 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from the State Department for Industry and the Agriculture and Food Authority.

The Committee also invited stakeholders vide letter REF: NA/DDC/A&L/2023/058 dated 26th September 2023 (*annex 3*) for a stakeholders' engagement meeting on the Bill which was held in the Committee Room on Fifth Floor, Continental House, Parliament Buildings on Thursday, 12th October 2023 with four (4) stakeholders making oral presentations before the Committee.

Majority of the stakeholders were in support of the Bill, noting that enactment of the Bill will play a key role in reviving the cotton industry in the country. The observed that disbandment of the Cotton Marketing Board had resulted in underperformance of the cotton industry. Most ginneries had been closed and the few that were still in business had difficulties in getting cotton for processing.

AFA, which was opposed to the establishment of the Cotton Industry Development Board, observed that the Board would negate the policy direction of the Government that informed the merger of various agriculture sector boards into AFA. Additionally, AFA averred that the Crops Act, 2013 and the Agriculture and Food Authority Act, 2013 provide a framework for regulation, development and promotion of the cotton crop and other fibre crops.

The Committee on its part observed that the cotton industry in the country needs to be revived at all costs and that the Cotton Industry Development Bill, 2023 will play a key role in ensuring that there is enough cotton in the country for local use and for export. The Cotton Industry Development Board that will be established through this Bill will play a key role in the marketing, production of good quality and adequate seeds, and regulation of the industry among others.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee also thanks the Agriculture and Food Authority, State Department for Industry, the Council of Governors and the Cotton Ginners Association for submitting their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Cotton Industry Development Bill (*Senate Bill No. 5 of 2023*).

It is my pleasure to report that the Committee has considered the Cotton Industry Development Bill (*Senate Bill No. 5 of 2023*) and has the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

Hon. (Dr.) John Kanyuithia Mutunga, MP
Chairperson, Departmental Committee on Agriculture and Livestock

CHAPTER ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:

- 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 their implementation;*
- iii. ***To study and review all the legislation referred to it;***
- iv. *To study, access and analyze 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 No. 204 (Committee on appointments);*
- vii. *To examine treaties, agreements and conventions;*
- viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider agriculture, livestock, food production and marketing.
3. In executing its mandate, the Committee oversights the Ministry of Agriculture and Livestock Development.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Agriculture and Livestock was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. (Dr.) John Kanyuithia Mutunga, PhD, MP
Tigania West Constituency

UDA Party

Vice-Chairperson

Hon. Brighton Leonard Yegon, MP
Konoin Constituency

UDA Party

Hon. Sabina Wanjiru Chege, CBS, MP
Nominated Member

Jubilee Party

Hon. Ferdinand Kevin Wanyonyi, MP
Kwanza Constituency

Ford Kenya Party

Hon. Geoffrey Makokha Odanga, MP
Matayos Constituency

ODM Party

Hon. Justice Kipsang Kemei, MP
Sigowet/Soin Constituency

UDA Party

Hon. Jared Okello Odoyo, MP
Nyando Constituency

ODM Party

Hon. Lawrence Mpuru Aburi, MP
Tigania East Constituency

NOPEU Party

Hon. David Kiplagat, MP
Soi Constituency

UDA Party

Hon. Gabriel Gathuka Kagombe, MP
Gatundu South Constituency

UDA Party

Hon. Monicah Muthoni Marubu, MP
Lamu County

Independent Member

Hon. Pamela Njoki Njeru, MP
Embu County

UDA Party

Hon. Patrick Kibagendi Osero, MP
Borabu Constituency

ODM Party

Hon. Peter Kalerwa Salasya, MP
Mumias East Constituency

DAP-K Party

Hon. Yussuf Mohamed Farah, MP
Wajir West Constituency

ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Ms. Laureen Omusa Wesonga
Clerk Assistant I/Head of Secretariat

Mr. Victor Kanda Kilimo
Clerk Assistant III

CPA. Robert Ng'etich
Fiscal Analyst II

Mr. Gerald Kadede
Legal Counsel II

Ms. Zainabu Sora
Serjeant-at-Arms I

Ms. Edith Chepngeno
Media Relations Officer III

Ms. Brigitta Mati
Legal Counsel I

Mr. David Ng'eno
Research Officer II

Mr. Muhumed Shillow
Research Officer III

Mr. Erastus Lotuk
Public Relations Officer III

Mr. Kelvin Sakani
Audio Recording Officer III

CHAPTER TWO

2 BACKGROUND OF THE COTTON INDUSTRY IN KENYA

2.1 INTRODUCTION

6. Cotton is one of the most important raw materials of the textiles and apparel sectors. The cotton-textile and apparel industry have the potential to absorb skilled, semi-skilled, and non-skilled workers within its chain of production. The cotton sub-sector in Kenya, however, recorded its peak performance in 1984 when cotton production was over 70,000 bales supplying the domestic textile industry, which comprised of 52 textile mills. The textile and clothing industry was at that time the second largest employer after the civil service.
7. Since then, however, domestic spinning and weaving capacities have drastically reduced from approximately 52 textile mills to only 15 main textile mills that are at less than 45 percent of their total capacity.
8. The key reason attributed to the collapse of the industry was the Global Economic Reforms under the Structural Adjustment Programme's (SAP) and Trade Liberalization of the 1980s/90s. Corruption and mismanagement at the defunct Cotton Board of Kenya also contributed to the collapse of the industry.
9. The current production of cotton lint in Kenya is approximately 7,000 tons versus a potential production of 200,000 tons. The production has been volatile for the last few years and has not been sufficient to meet the domestic mill requirement. As a result, Kenyan firms import cotton from neighbouring cotton-producing countries such as Uganda and Tanzania.
10. The existing mills operate using outdated technology and suffer from low levels of skilled labour and low productivity. The cost of electricity is a major cost driver for textile mills, as are the high maintenance and overhead costs due to old equipment. A further cost driver is the need to either use high-cost imported material or low-quality local fiber which requires additional processing.
11. Economic history shows that the clothing and textile industry in Kenya played an important role in the industrialization of today's developed countries. This is because of the industry's unique characteristics of being labour intensive and its links with other sectors of the economy such as agriculture.
12. The cotton, textiles, and apparel (CTA) industry is Kenya's second-largest manufacturing industry after food processing and has been classified as a core industry. Kenya's CTA manufacturing value chain comprises researchers, ginners, farmers, spinners, input suppliers, textile manufacturers, and extension service providers.
13. Under the Government's policy of addressing poverty 'Kenya Vision 2030', cotton has been identified as a key sub-sector with the potential to benefit eight (8) million people in the drier areas of the country.
14. The textiles and apparels sector has the ability to create a large number of employment opportunities within a short duration of time. A fully developed value chain has the capacity to employ about 10% of the country's population. The value chain is also an important driver of inclusivity as it employs women in excess of 60%.

2.2 POLICY AND LEGAL FRAMEWORK IN THE COTTON SUB-SECTOR

15. The AFA, Fibre Crops Directorate is the regulator, developer and promoter of the cotton industry in Kenya. With the enactment of this Bill, the cotton industry shall be under the Cotton Industry Development Board.
16. African Growth and Opportunity Act (AGOA): Since AGOA took effect in 2000, a significant growth in foreign investment and exports were realized.

2.3 COMPARATIVE ANALYSIS

India

17. The Indian textile industry is extremely varied, with the hand-spun and hand-woven sector at one end of the spectrum, and the capital intensive, sophisticated mill sector at the other. The decentralized power looms/hosiery and knitting sectors form the largest sections of the textile sector.
18. **Technology Up-gradation Fund Scheme:** This was launched in 1999 to provide firms access to low interest loans for technology up-gradation and setting up new units with state-of-art technology.
19. **Foreign Trade Policy:** Up to 100% foreign direct investment is allowed in textile and apparel manufacturing industry. There is therefore no requirement of any pre-approval by the investor. Companies are free to set up fully-owned sourcing (liaison) offices, as well as marketing operations.
20. **Cluster Approach:** This approach targets the development of 100 additional clusters in textiles Technology Mission on Cotton (TMC), focusing on dissemination of technology to farmers, improvement of market infrastructure and modernisation of ginning and pressing sector.
21. **Technology Mission on Technical Textiles (TMTT):** TMTT aims at establishing new Centres of Excellence (COEs) in the field of technical textiles and providing support for the development of the domestic and export market for technical textiles.

China

22. China has the largest textile and garment industry in the world. The industry has over 55,000 enterprises employing over 11 million workers across the country. Its economy is gearing up to change its growth model from an export driven economy to the one driven by domestic demand by boosting consumption at home.
23. There are hundreds of major textile and apparel clusters and each cluster/region specialises in producing one or more products. Through optimal allocation of resources, industry clusters have achieved a cost-saving and regional-scale effect.
24. The strong competitive advantage comes from the support of an integrated industry chain. The upstream firms offer sufficient production capacity of cotton, hemp, wool, silk and other fabrics, while the downstream companies provide adequate financial and logistics services and information

technology. It remains the largest exporter of cotton products to markets including USA, Japan, Hong Kong.

Turkey

25. Turkey is one of the few countries in the world that can carry out all production stages of textile and apparel sectors from cotton production to apparel production. Clothing and textiles are among the largest and best performing sectors of the Turkish economy.

Tanzania

26. Nearly 500,000 Tanzanian smallholder farmers are involved in the production of cotton, and it is estimated that the crop contributes to the livelihoods of up to 40% of the population, or 16 million people.
27. There is enormous potential to grow the textile and garment industry in Tanzania given the massive quantities of cotton lint produced locally, the ready availability of cheap labour throughout the country, and the current trade preferences.
28. Tanzania currently produces 700,000 bales of cotton annually while the proportion of lint used by domestic textile industries is 30%. As with most countries in Africa, the bulk of Tanzania's cotton production (in excess of 70%) is exported as lint.
29. Investors in EPZ areas have exemption from customs duty, Value Added Tax and other taxes charged on raw materials and goods of a capital nature. Investors are also exempt from the payment of Corporate Tax for an initial period of ten (10) years.

2.4 POLICY IMPLICATIONS

30. **Illicit imports/negative impact of second-hand clothing:** The growing trend of imported second-hand clothing has created a dilemma for the Kenyan economy. The Bill needs to factor in mechanisms to regulate the second-hand clothing sector and prioritize locally manufactured clothing which will automatically spur cotton growth.
31. **Lack of policy coherence and institutional alignment:** The cotton sub-sector under the auspices of the Ministry of Agriculture and Livestock Development, is supported by broad private sector associations and training institutes. No single association exists to represent the apparel and textile sector which is the main product of the cotton sub-sector.
32. **Manufacturing limitations:** The current cotton mills are particularly challenged at this point in time. The defunct Kenya Trade Millers Organization (KTMO) is moribund and needs to be reactivated and strengthened to embrace the Medium and Small-scale Industries (MSEs) in the sector.
33. **Marketing:** The country embraced liberalization policy in the 1990's which led to the withdrawal of the government from performing marketing functions. The private sector was not adequately prepared to perform this task. This created an inefficient marketing chain leading to low producer prices and high production costs.

34. **Low level of value addition:** The textile industry faces an inadequate supply of locally produced cotton, and that which is available is of poor quality. Textile firms must choose between the high-cost of imported material and the low-quality of local fibre which requires additional processing. As a result, the majority of export-quality fabric manufactured in Kenya is made from imported fibres.

2.5 SALIENT ISSUES TO INTERROGATE IN THE BILL

35. **Technological Support:** Equipment and technology are an integral part of the productivity of the cotton sector. Yet, outdated equipment are pervasive across the sector and firms face major difficulties in carrying out the needed upgrades. The Bill needs to highlight the support and proposed intervention areas for outdated processing ginneries and other value chain processes in the apparel sector.
36. **GMO/BT Cotton:** In 2019, the Government allowed the cultivation of *Bacillus Thuringiensis* (*Bt*) Cotton Hybrids in Kenya; which is a genetically enhanced variety of cotton that is resistant against African Bollworm. There needs to be a public debate before *Bt* cotton can be commercially released. There are important technical steps to be taken, including the development of bio safety assessment procedures and the equipping of laboratories, plus breeding work to incorporate the *Bt* gene into locally adapted cotton varieties.
37. **Stakeholder Organizations:** In order to revitalize the cotton/textile industry, there is need for various stakeholders to form their respective organizations for lobbying purposes, realizing economies of scale and harnessing the synergies within the stakeholders. The stakeholders' organizations will be for farmers, ginners, textile manufacturers, other stakeholders and an apex body for all the organizations.

2.6 CONCLUSION

38. The cotton sub-sector, which was once among the most vibrant in the country, is now a shell of its former self and any newly introduced legislation must consider the history, former key players in the sector and the historical mistakes that were made that led to the collapse of this industry.
39. For the cotton industry to be revamped, the business environment needs a thorough review. Kenya's business environment currently presents a number of operational challenges and is characterized by high electricity prices, old technology, limited access to finance, poor roads, challenging logistics, and for non-EPZ companies, complex regulations.
40. Enactment of this Bill will promote the cotton industry in Kenya locally and internationally and contribute to social and economic development.

CHAPTER THREE

3 OVERVIEW OF THE COTTON INDUSTRY DEVELOPMENT BILL (*SENATE BILL NO. 5 OF 2023*)

3.1 INTRODUCTION

41. The Cotton Industry Development Bill, 2023 seeks to make provision for the production, processing, marketing and distribution of cotton and its products in Kenya.
42. The Bill seeks to establish the Cotton Industry Development Board, provide a framework for cotton farming and ensure value addition to cotton and its related products and for connected purposes.
43. The Bill further seeks to promote a globally competitive cotton industry, while facilitating the production, value addition and processing of safe and healthy cotton and its products.

3.2 CONTENT OF THE BILL

Objectives of the Bill

44. The objectives of the Bill are to:
 - a) promote a globally competitive cotton industry;
 - b) facilitate the production, value addition and processing of safe and healthy cotton and its products;
 - c) promote the generation of high income for cotton farmers and traders;
 - d) sustain research and extension services for the development of the cotton industry;
 - e) facilitate the introduction of modern cotton farming techniques and general modernization of the cotton industry; and
 - f) provide financial support to the various players in the cotton industry.

Institutional Framework Proposed in the Bill

45. The Bill proposes to establish the Cotton Industry Development Board whose functions are to:
 - a) regulate and promote development of cotton growing and cotton ginning;
 - b) advise the Cabinet Secretary which counties qualify as cotton producing;
 - c) make recommendations to the Cabinet Secretary on the implementation of strategies, plans and policies relating to the cotton sector;
 - d) promote the diversification of cotton products;
 - e) regulate the import and export of cotton lint and cotton seed;
 - f) promote marketing of cotton products and by-products in both local and foreign markets;
 - g) formulate national standards acceptable in the international markets to ensure that the competitiveness and reliability of the country as a producer and suppliers of cotton products is preserved;
 - h) carry out surveillance and inspections to ensure compliance with the standards and legislation on the cotton sector;
 - i) establish linkages with local and international training and research institutions to conduct scientific research and investigations in all areas pertaining to the development of the cotton industry;

- j) undertake technology transfer and provide technical assistance to county governments on matters relating to cotton;
- k) collect, collate and disseminate information on the cotton industry including the appropriate technology and practices to ensure maximisation of yields by cotton farmers;
- l) regulate the marketing and the exportation of cotton products and by-products to conform to the quality or standards recognized in the international market;
- m) capacity-building and training of various players in the sector;
- n) develop and enforce the cotton industry standards and industry code of practice in collaboration with the KEBS; and
- o) carry out such other functions as may be assigned by the Cabinet Secretary or conferred under another law

3.3 CLAUSE BY CLAUSE PROVISIONS OF THE BILL

Part I: Preliminary

46. **Clauses 1 to 3** of the Bill provide for preliminary provisions i.e. the short title, interpretation of terms used in the Bill and objects of the Bill.

PART II: The Cotton Industry Development Board

47. **Clauses 4 to 22** of the Bill establish the Cotton Industry Development Board, headquarters of the Board, powers of the Board, composition of the Board, qualification for appointment as a member, tenure of appointment, functions of the Board, committees of the Board, delegation by the Board, remuneration of members of the Board, qualification for appointment as the CEO, functions of the CEO, removal of the CEO, staff of the Board, protection from personal liability, common seal of the Board, signing authority and meetings of the Board.

Part III: Role of County Governments

48. **Clause 23 and 24** of the Bill outline the role of county governments and establishment of county Cotton Development Committee.

Part IV: Regulatory Provisions

49. **Clauses 25 to 37** provide for registration, licensing of manufacturers or processors, refusal to grant license, revocation of a license, compliance notice, effects of revocation of a license, appeals, designation of collection centres, licensing of importers and exporters and renewal of a license.

Part V: Financial Provisions

50. **Clauses 38 to 43** of the Bill provide for funds of the Board, imposition of levies, annual estimates, accounts and audit, annual report and publication and financial year of the Board.

Part VI: Miscellaneous Provisions

51. **Clauses 44 to 49** provide for incentives, enactment of county specific legislation, penalties, regulations, publication of cotton growing counties and consequential amendment.

Part VII: Transitional Provisions

52. **Clauses 50 to 56** provide for rights and obligations, assets, legal proceedings, reference to written laws, previous authorisation and fate of members of staff of the Agriculture and Food Authority dealing with the cotton sector.

First Schedule

53. Provides for meetings of the Board, quorum, voting, minutes and disclosure of interest.
54. The Bill delegates legislative powers to the Cabinet Secretary responsible for matters relating to Agriculture to make regulations for the purposes of its implementation. The Bill does not limit any fundamental rights or freedoms.
55. The Bill concerns county governments in terms of Article 110(1) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

CHAPTER FOUR

4 STAKEHOLDERS VIEWS/COMMENTS ON THE COTTON INDUSTRY DEVELOPMENT BILL (*SENATE BILL NO. 5 OF 2023*)

56. Following the call for memoranda from the public through placement of adverts in the print media on 25th August 2023 and vide a letter REF: NA/DDC/A&L/2023/058 dated 26th September 2023 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- a) State Department for Agriculture/the Agriculture and Food Authority;
- b) State Department for Industry;
- c) The Council of Governors; and
- d) The Kenya Cotton Ginners Association.

The stakeholders submitted as follows:

4.1 STATE DEPARTMENT FOR AGRICULTURE/THE AGRICULTURE AND FOOD AUTHORITY

57. In a meeting with the Committee held on Wednesday, 1st November 2023, Ms. Grace Kyallo, Ag. Director, Fibre Crops Directorate, AFA informed the Committee that the State Department was not in support of the Bill because establishment of the Cotton Industry Development Board to regulate the cotton industry will negate the policy direction of the Government which informed merger of various agriculture sector boards into AFA; the law already provides a framework for regulation, development and promotion of the cotton crop and other fibre crops; and the traditional approach of handling cotton in the country has always grouped it with other fibre crops due to the similarities in the required regulatory provisions. Ms. Kyallo proposed the following amendments to the Bill:

Purpose

58. Amend the purpose of the Bill to read as follows, "*An Act of Parliament to provide for the regulation, production, value addition, marketing and distribution of cotton in Kenya and its products; establish the Cotton Industry Development Board, provide a framework for cotton farming; ensure value addition to cotton and its related products; and for connected purposes*". This is because the regulatory function of the Bill is missing and also to provide clarity by widening the scope of processing.

Committee's Observation/Recommendation

Members observed that one of the main functions of the Cotton Industry Board will be to regulate the cotton industry and it was important for the long title to reflect that. In addition, the value addition will cover a wider scope. Their proposal was therefore adopted by the Committee.

Clause 2

59. Amend definition of the word '*cotton industry*' to include '*marketing*' because there is need to regulate the marketing of cotton and its products.

Committee's Observation/Recommendation

Members observed that marketing is an important role that will be played by the Board and should therefore be captured in the definition of the word '*cotton industry*'. Their proposal was adopted by the Committee.

60. Provide definition for the word '*cotton plant*' as '*Gossypium spp and its varieties*' to provide clarity on cotton species and its varieties.

Committee's Observation/Recommendation

The Committee observed that this proposal will add value to the Bill and therefore adopted it.

61. Provide definition for the term '*collection centre*' because the word has been used in the Bill and there is need for clarity.

Committee's Observation/Recommendation

The Committee observed that it is important to define the word '*collection centre*' because it has been used in the Bill. Their proposal was adopted by the Committee.

62. Amend definition of the word '*cotton seed*' as follows, '*cotton seed means cotton seed produced from raw cotton*'. This is to capture all cotton seed to include seed for planting and milling.

Committee's Observation/Recommendation

Members observed that the definition provided in the Bill was more comprehensive. Their proposal was therefore not adopted.

Clause 3

63. Amend sub-clause 3 (a) to read, "*to promote a globally competitive cotton industry through regulation in collaboration with the county governments*". This is to include the regulatory function in collaboration with the county governments.

Committee's Observation/Recommendation

Members observed that their proposal will add value to the Bill and therefore adopted it.

Clause 7

64. Amend sub-clause 7 (1) by including the representation of the Principal Secretary responsible for matters relating to industrialization and the Principal Secretary responsible for the National Treasury because the cotton sub-sector revolves around SMEs at ginning, spinning and weaving levels and the State Corporations Act provides for inclusion of the Principal Secretary responsible for National Treasury.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

65. Amend paragraph 7 (1) (f) to include representation of the spinners. This is because spinners play a critical role as off takers of cotton lint.

Committee's Observation/Recommendation

This proposal was rejected because it will be difficult to select spinners that will be members of the Board as a criterion for selection is not provided.

Clause 11

66. Amend paragraph 11 (1) (a) to read, "*regulate and promote the development of the cotton industry*". To ensure all the industry players are regulated.

Committee's Observation/Recommendation

Their proposal will ensure that all players in the cotton sub-sector are regulated and it was therefore adopted by the Committee.

67. Amend paragraph 11 (1) (e) to read, "*regulate and promote import and export of cotton products and by-products*". This is to cater for the regulation and promotion of cotton products and by-products.

Committee's Observation/Recommendation

Members observed that the proposal adds value to the Bill and therefore adopted it.

68. Delete paragraph 11 (1) (p) because the responsibility of the Board is to determine research priorities which is covered under paragraph 11 (1) (i).

Committee's Observation/Recommendation

Members observed that paragraph 11 (1) (p) was not adding any value to the Bill and therefore adopted AFA's proposal to delete it.

Clause 14

69. Amend the clause by deleting the words "*fees*" and "*allowances*" since members of the Board are remunerated as determined by the Salaries and Remuneration Commission.

Committee's Observation/Recommendation

Clause 15

70. Amend paragraph 15 (2) (b) by providing that the chief executive officer should have a master's degree to align with the current trends.

Committee's Observation/Recommendation

Their proposal adds clarity to the Bill and was therefore adopted by the Committee.

Clause 25

71. Amend the clause by listing the minimum requirements e.g. catchment in relation to raw materials source, feasibility study etc. This is because these are heavy investments where there is need for investor comfort and producer offtake guarantee

Committee's Observation/Recommendation

The minimum requirements can be provided in regulations. Their proposal was therefore not adopted by the Committee.

72. Amend sub-clause 25 (1) to include registration of spinners and other cotton value addition Industries to ensure all industry players are registered by the respective County Governments.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 26

73. Amend the entire clause to reflect the role of licensing as a function of the Board. Amend the clause by listing the minimum requirements e.g. catchment in relation to raw materials source, feasibility study e.t.c. Since this are heavy investments where there is need for investor comfort and producer off taker guarantee.

Committee's Observation/Recommendation

This proposal was not adopted because the Bill is not dealing with the licensing of manufacturers and processors of cotton because it is under the Ministry of Trade and Industry.

74. Amend sub-clause 26 (2) to read as follows, "*a person who intends to engage in the business of cotton ginning, spinning or value addition and has been registered by the respective county government for that purpose shall submit an application in the prescribed form to the Board*". Manufacturing and processing impact on standards, quality and international trade hence a function of the National Government in accordance with the Constitution.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 27

75. Amend sub-clause 27 (1) by deleting the words '*the County Executive Committee Member*' and replacing with the word '*Board*' and deleting the words '*or prescribed under the specific county legislation*' this because licensing of manufacturer and processor is a national Government function.
- Committee's Observation/Recommendation**

This proposal was adopted by the Committee.

76. Amend sub-clause 27 (2) by deleting the words '*the County Executive Committee Member*' and replacing with the word '*Board*' and deleting the words '*in accordance with section 25 (3) and (4)*' this because licensing of manufacturer and processor is a national Government function

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 28

77. Amend by deleting the words '*the County Executive Committee Member*' and replacing with the word '*Board*'. Licensing of manufacturer and Processor is a County Government function.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 29

78. There is inconsistency between clauses 27 and 29. Amend the side note by replacing the word '*compliance*' with the word '*refusal*'. The matter referred in clause 27 is refusal to grant a license.

Committee's Observation/Recommendation

The proposal was rejected by the committee because the compliance clause refers to compliance notice under clause 28(2)(b).

79. Amend sub-clause 29 (1) by deleting the word '*compliance*' and replacing with the word '*refusal*' because the matter referred in the sub-clause is refusal to grant a license.

Committee's Observation/Recommendation

The proposal was rejected by the committee because the compliance clause refers to compliance notice under clause 28(2)(b).

80. Amend sub-clause 29 (2) by deleting the words '*the County Executive Committee Member*' and replacing with the word '*Board*' because licensing of manufacturer and processor is a county government function.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 30

81. Review the clause to provide clarity since, there is need to provide clarity and harmonize the side notes and the text.

Committee's Observation/Recommendation

Their proposal was rejected by the Committee because the text in the Bill is clear.

Clause 31

82. Amend by deleting the words '*the County Committee Member Executive*' and replacing with the word '*Board*' and deleting the words '*County Executive Committee*' and replace with the words '*Cabinet Secretary responsible for Agriculture*'. Issuance of manufacturer and processor licenses should be a function of the Board.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 32

83. County Executive Committee Member should designate ginneries, cooperative society stores as collection centres in addition to any other such centres after consultation with growers in the County. Ginneries and cooperative societies are by practice collection centres and should therefore be automatically considered.

Committee's Observation/Recommendation

The proposal was rejected by the committee because ginneries and cooperative societies are by practice collection centres among other designated collection centres. The process of designation of collection centres is a function of the county and should therefore be left to the counties to designate.

84. Amend paragraph 32 (2) (a) by replacing the words '*Cabinet Secretary*' with the word '*Board*' since development of collection stores standards is a function of the Board.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 33

85. Amend by removing the gazettelement requirement and providing general condition of import/export license to facilitate ease of doing business.

Committee's Observation/Recommendation

The proposal to remove the requirement for gazettelement was adopted by the Committee.

86. Amend sub-clause 33 (9) by deleting the words '*the County Executive Committee Member*' and replacing with the words '*the Board*' since issuance of import/export license is a function of the Board.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

87. Insert a new sub-clause prescribing an offence and applicable penalty, this is to enhance compliance to the provisions of the Act.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 34

88. Amend sub-clause 34 (1) by deleting the words '*section 32*' and replacing with the words '*this Act*'. This is to align the referencing accordingly.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

89. Amend sub-clause 34 (2) to read '*person who intends to renew a license under sub-section (1) shall submit an application to the Board in the prescribed form at least thirty days before the date of expiry of the current license*', so as to specify to whom the application is made.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

90. Amend sub-clause 34 (3) by deleting the words '*section 32*' and replacing with the words '*this Act*', this is to align the referencing accordingly.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 35

91. Amend sub-clause 35 (1) by deleting the words '*section 32*' and replacing with the words '*section 34*'. This is to align the referencing accordingly.

Committee's Observation/Recommendation

The Committee amended the clause by deleting the words '*section 32*' and substituting with the words '*this Act*'.

92. Amend sub-clause 35 (2) by deleting the words '*County Executive Member*' and replacing with the words '*Board*'. This is because licensing is a function of the Board.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

93. Amend paragraph 35 (2) (b) by replacing the word '*compliance*' with the word '*refusal*'. To provide for alignment.

Committee's Observation/Recommendation

The proposal was rejected by the committee because the compliance notice is issued before the revocation of a licence. The marginal note is in accordance with the revocation provisions of clause 35

Clause 36

94. Amend sub-clause 36 (1) to provide clarity and proper sequencing for clarity.

Committee's Observation/Recommendation

This proposal was rejected by the Committee because the wording in the Bill is clear.

Clause 37

95. Amend the side note to be in tandem with the text or consider collapsing the clause to be a sub-clause of clause 35 on revocation of a license in order to provide clarity.

Committee's Observation/Recommendation

The proposal was rejected by the committee. The committee amended clause 37(2) to read revoke instead of cancel to align with the marginal note.

96. Amend by creating substantive clauses in this part prescribing regulatory provisions for the following: production, harvesting, grading, processing, warehousing, packaging and trading; mechanisms for price stabilization; and agreements entered by growers and other value chain players. This is to provide clarity.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee because most of the listed items are provided under clause 47 for provision in regulations.

Clause 38

97. Introduce the following new sub-clause 38 (2) *'the Board shall apply the money received under this section for the furtherance of the objects and performance of the functions of the Board'*. To address the existing gap and clarify how the funds of the Board will be utilized.

Committee's Observation/Recommendation

The committee introduced a new sub-clause to provide for utilization of the funds collected by the Board for accountability.

Clause 39

98. Amend the clause by deleting the words *'the County Governments'*. The levies should be imposed on imports and exports which is a function of the National Government.

Committee's Observation/Recommendation

Import and export taxes are a function of the National Government and not counties.

99. Introduce a sub-clause under clause 39 prescribing the source(s) of levies which should include among others: imported new and used textiles and apparels; and imported cotton products and by-products.

Committee's Observation/Recommendation

This will be provided in regulations.

100. Introduce a sub-clause capping the rate of the levy in order not to burden the industry actors. This provides clarity on the areas where the levies can be imposed to support the development of the industry.

Committee's Observation/Recommendation

This will be provided in regulations. The proposal was therefore not adopted by the Committee.

101. Insert a new clause immediately after clause 39 to provide for: establishment of a Cotton Industry Development Fund; sources of the Fund which should include the levy; application of the Fund which may include credit for cotton production, processing, infrastructure and marketing, price stabilization, cotton research and Board operations; and administration of the fund.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 44

102. Amend to allow the Cabinet Secretary responsible for Agriculture to initiate processes or to consult with the Cabinet Secretary responsible for National Treasury in the creation of incentives for the industry. The Cabinet Secretary responsible for matters relating to Agriculture be part of initiation and implementation of incentives for the cotton industry.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 45

103. Amend to include '*cotton ginner, cotton cooperative society or cotton association, spinners and other cotton value addition industries*' after the word '*cotton grower*' To align provisions under this clause with the suggested amendments to clause 25 on registration.

Committee's Observation/Recommendation

The committee recommended that clause 45 of the Bill be deleted because enactment of county legislation is an existing function of the county government under the Constitution and therefore amounts to over legislation in the Bill. The Bill should not limit the counties on what to legislate on.

104. Amend paragraphs 45 (c) and (d) by deleting the words '*or issuance of a license*'.

Committee's Observation/Recommendation

The Committee recommended deletion of clause 45 of the Bill.

105. Amend the clause by deleting paragraphs 45 (e), (f) and (g).

Committee's Observation/Recommendation

The Committee recommended deletion of clause 45 of the Bill.

106. Introduce the following new sub-clause 45 (2) '*each county specific legislation enacted pursuant to this section shall not contradict provisions of this Act*' since county legislation on the cotton Industry need to be aligned to National legislation to avoid conflict in regulation of the cotton Industry.

Committee's Observation/Recommendation

The Committee recommended deletion of clause 45 of the Bill.

Clause 46

107. Amend sub-clause 46 (1) to include textiles and apparels to align it with provisions of the Act.

Committee's Observation/Recommendation

The Bill does not deal with textile and apparel. The proposal was therefore not adopted by the Committee.

Clause 47

108. Amend paragraph 47 (2) (a) by deleting the words under section 7 (1) (c). To provide clarity.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 48

109. Amend the Bill by deleting the clause to encourage development of cotton across all suitable agro-ecological areas.

Committee's Observation/Recommendation

The Committee observed that even though there are major cotton growing regions, cotton is grown in several other parts of the country and giving the Cabinet Secretary powers to determine which areas cotton is to be grown may limit or leave out other areas that grow cotton.

Clause 49

110. Amend the typographical error to read '*Gossypium spp*'

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 55

111. Amend the clause by deleting the word '*Authority*' and substituting with the word '*Board*'.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 56

112. Amend the clause to read as follows, '*Upon the commencement of this Act a person who was member of staff of the former Cotton Development Authority before the commencement of the Agriculture and Food Authority Act, 2013 and current staff of the Fibre Crops Directorate not being under any notice of dismissal or resignation shall upon commencement of this Act become staff of the Board on their current or improved terms and conditions of service.*'

113. *Staff member who does not intend to be a member of staff of the Board shall within a period of twenty-one days from the appointed day give notice in writing to the Board.*
114. *The pensions of staff of the Agriculture and Food Authority, Fibre Crops Directorate shall on the commencement of the Act vest in the Board.* To provide for flexibility to staff during the transition.

Committee's Observation/Recommendation

Their proposal was not adopted by the Committee because it gives recognition to staff of the Cotton Development Authority which was revoked after enactment of the Agriculture and Food Authority Act, 2013. This introduces mischief in the Bill.

4.2 THE STATE DEPARTMENT FOR INDUSTRY

In a meeting with the Committee held on Wednesday, 1st November 2023, Mr. Nicholas Gakiha, Ag. Director for Industry proposed the following amendments to the Bill:

Clause 2

115. Amend definition of the word '*cotton sector*' to capture value addition.

Committee's Observation/Recommendation

Their proposal was rejected because definition of '*cotton industry*' captures value addition.

Clause 3

116. Amend paragraph 3 (b) to facilitate the production, ginning and processing of safe and healthy cotton and its products.

Committee's Observation/Recommendation

Their proposal was rejected because the word value addition encompasses ginning.

Clause 7

117. Amend paragraph 7 (b) by including the Principal Secretary in charge of the State Department for Industry.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee because most of the cotton sub-sector is under the State Department for Industry.

118. Amend paragraph 7 (c) by reducing the number of farmer representatives and including a representative of textile millers.

Committee's Observation/Recommendation

This proposal was rejected because there is no criterion for selecting miller representatives to the Board.

Clause 23

119. Amend paragraph 23 (2) (i) to read as follows, *'inspect cotton farms, ginneries and by-products value addition industries located within their respective counties'*.

Committee's Observation/Recommendation

The Committee recommended deletion of paragraph 23(2)(i) because it's a regulatory function which is a function of the Board.

120. Insert the following new paragraph 23 (2) (r), *'work with relevant Ministries, Departments and Agencies for local seed multiplication'*.

Committee's Observation/Recommendation

This proposal was rejected because it is a function of the Board.

Clause 26

121. Amend sub-clause 26 (1) to provide clarity because the intention of the Bill is on cotton growing, ginning and value addition of cotton by-products not on textiles and apparels.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 32

122. Amend the clause to provide clarity on the cotton products that are being referred to.

Committee's Observation/Recommendation

The committee observed that the cotton products are cotton, cotton seed or cotton by-products which have all been mentioned.

4.3 THE COUNCIL OF GOVERNORS

123. In a meeting with the Committee held on Wednesday, 1st November 2023, Mr. Kizito Wangalwa, a Director in CoG informed the Committee that the Council was in support of the Bill. He proposed the following amendments to the Bill:

Clause 7

124. Amend the clause by introducing the following new sub-clause before sub-clause 7 (2), "*the Cabinet Secretary in consultation with the Council of Governors, shall receive the nominated farmers under sub-section 1 (d) and determine which county to be represented in the Board in each region on a rotational basis to ensure equitable representation*". This is to provide for a consultative process in the determination of the representation of farmers.

Committee's Observation/Recommendation

Their proposal was rejected because cotton farmer associations have their own mechanisms of electing their representatives. This proposal will amount to micromanaging the farmers.

Clause 39

125. Insert the following new sub-clause 39 (2), "*The levy collected under sub-clause (1) shall be apportioned as follows: (a) Fifteen per centum shall be applied by the Board for furtherance or exercise of any function or power of the Board under this Act; and (b) Eighty-five per centum shall be remitted directly to the cotton growing counties on a pro-rata basis to be applied for development of the cotton industry*".

Committee's Observation/Recommendation

The apportionment of the Levy shall be provided in regulations. This proposal was therefore not adopted by the Committee.

4.4 THE KENYA COTTON GINNERS ASSOCIATION

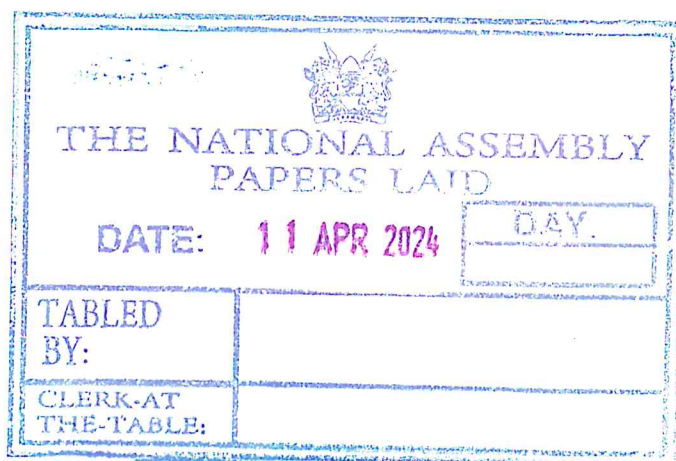
126. The Chairman of the Kenya Cotton Ginners Association, Mr. David Masika appeared before the Committee on Wednesday, 1st November 2023 and informed the Committee that the Association supported the Bill because it will play a role in reviving the cotton industry in Kenya. He further stated that the disbandment of the Cotton Marketing Board had resulted in underperformance of the cotton industry. Most ginners had closed shop and the few that were still in business had difficulties getting cotton.

CHAPTER FIVE

5 COMMITTEE OBSERVATIONS

The Committee observed as follows on the Bill:

1. The Bill will promote generation of high income for cotton farmers and traders and encourage the continuous and sustained research and extension services for development of the cotton industry.
2. The Bill will facilitate the introduction of modern cotton farming techniques and general modernisation of the cotton industry and provide financial support to the various players in the cotton industry.
3. There will be more cotton seeds for production of animal feeds (cotton seedcakes) hence high productivity in the livestock sector and consequently creation of a large number of employment opportunities within a short duration of time along the value chain.
4. Textile industry will be boosted and Kenyans will start wearing new clothing as opposed to second hand garments.



CHAPTER SIX

6 COMMITTEE RECOMMENDATION

5. The Committee having considered the Cotton Industry Development Bill (*Senate Bill No. 5 of 2023*) recommends that the House approves the Bill with amendments as proposed in the Schedule in Chapter Seven of this Report.

CHAPTER SEVEN

7 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House during the Committee Stage:

LONG TITLE

THAT the long title of the Bill be amended by deleting and substituting therefor the following new long title—

“AN ACT of Parliament to provide for the regulation, production, value addition, marketing and distribution of cotton and its products in Kenya; establish the Cotton Industry Development Board; provide a framework for cotton farming; ensure value addition to cotton and its related products; and for connected purposes”.

Justification

The regulatory function of the Bill is missing. The amendment also provides clarity by widening the scope of processing.

CLAUSE 2

THAT Clause 2 of the Bill be amended—

- (a) by inserting the following definitions in their proper alphabetical sequence—
 - (i) “Collection centre” means “centres designated by county governments to serve as buying stations for cotton”
 - (ii) “Cotton plant” means *Gossypium spp* and its varieties;

- (iii) “*Ginning*” means the process of removing cotton seed from the cotton balls;
- (iv) “*Processing*” means the process of value addition to cotton, cotton seed or cotton by-products and include cleaning, grading, spinning, weaving or knitting; and
- (v) “*spinning*” means the process of producing yarns from extracted cotton fibre;

Justification

The words have been used in the Bill but they haven’t been defined.

- (b) by deleting the definition of “*cotton industry*” and substituting therefor the following new definition—

“*Cotton industry*” includes growers, ginner, spinners, cotton value addition industries and marketers;

Justification

Marketers play a pivotal role in the cotton industry. It is therefore important to include them in the definition.

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph;

“(a) *to promote a globally competitive cotton industry through regulation in collaboration with the County Governments;*”.

Justification

To include the regulatory function in collaboration with county governments.

CLAUSE 7

THAT clause 7 of the Bill be amended—

- (a) in sub-clause (1)—

- (i) in paragraph (c) by deleting the word “*trade*” appearing immediately after the word “*to*” and substituting therefor the word “*industrialization*”; and
- (ii) by inserting a new paragraph (ca) immediately after paragraph (c) to read as follows—
“(ca) *The Principal Secretary responsible for National Treasury*”

Justifications

The cotton industry is under the State Department for Industrialisation. It is therefore important that the PS Industrialisation is a member of the Board.

The State Corporations Act provides for inclusion of the Principal Secretary for National Treasury in all board.

(b) by inserting a new sub-clause (4) immediately after sub-clause (3) to read as follows—

“(4) The composition of the Board shall as practically possible ensure gender balance.”

Justification

To comply with the requirements of the Constitution with regards to gender, the two thirds gender rule.

CLAUSE 11

THAT clause 11 of the Bill be amended in sub-clause (1)—

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

“(a) regulate and promote the development of the cotton industry;”

Justification

To ensure that all industry players are regulated.

(b) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) regulate and promote import and export of cotton products and by-products;”

Justification

To cater for regulation and promotion of cotton products and by-products.

(c) by deleting paragraph (g) and substituting therefor the following new paragraph—

“in consultation with the Kenya Bureau of Standards and other relevant institutions, formulate standards and code of practice acceptable in international markets to ensure the competitiveness and reliability of the country as a producer and cotton products.”

Justification

The paragraph as written in the Bill does not seem to make sense hence the amendment.

(d) by deleting paragraph (n)

Justification

It has been merged with paragraph (g).

(e) by deleting paragraph (o) and substituting therefor the following new paragraph—

“establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate flow of research findings to the interested parties;”

Justification

To enrich the paragraph.

(f) by deleting paragraph (p) and substituting therefor the following new paragraph—

“liaise with the national agricultural research system to develop suitable and affordable cotton seeds;”

Justification

There are institutions mandated with carrying out agricultural research. This function can therefore not be given to the Board.

CLAUSE 14

THAT clause 14 of the Bill be amended by deleting the words *“fees or allowance”* appearing immediately after the word *“remuneration”*.

Justification

The word remuneration includes fees and allowances.

CLAUSE 15

THAT clause 15 of the Bill be amended in paragraph 2 (b) by deleting the word *“degree”* and substituting therefor the words *“master’s degree”*.

Justification

The Chief Executive Officer of the Board is a senior person and the academic qualifications should therefore speak to this.

CLAUSE 17

THAT clause 17 of the Bill be amended in paragraph (c) by deleting the inserting the word *“of”* immediately after the word *“contravention”*.

Justification

To correct a grammatical error.

CLAUSE 23

THAT clause 23 of the Bill be amended—

- (a) in sub-clause (1)—
 - (i) by deleting paragraph (b)

Justification

This is a function of the Board.

- (ii) by deleting paragraph (c)

Justification

This is a function of the Board.

- (iii) by deleting paragraph (d)

Justification

The paragraph has been merged with paragraph (e).

- (iv) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) promote the organisation of cotton farmers cooperatives, associations and link them with credit and financing support;”

Justification

The role of county governments is to link farmers with financiers.

- (b) in sub-clause (2)—

- (i) by deleting paragraph (b).

Justification

The paragraph adds no value to the Bill.

- (ii) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) Promote production and productivity of cotton in the respective county;”

Justification

To make the sentence clear.

- (iii) by deleting paragraph (d) and substituting therefore the following new paragraph—

“(d) offer extension services on cotton production and processing;”

Justification

For clarity.

(iv) by deleting paragraph (e).

Justification

Already covered under paragraph (1) (e).

(v) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) provide training and dissemination of information to cotton farmers and processors on technologies, innovations and management practices”.

Justification

To make the sentence clear.

(vi) by deleting paragraph (g).

Justification

Already covered under paragraph (1) (e).

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

“(h) promote farm productivity through suitable seed varieties and integrated cotton farming systems;”

Justification

To make the sentence clear.

(viii) by deleting paragraph (i)

Justification

It is a function of the Board.

(ix) by deleting paragraph (j).

Justification

This paragraph does not add any value to the Bill.

(x) by deleting paragraph (m) and substituting therefor the following new paragraph—

“(m) establish cotton collection and aggregation centres in collaboration with the national government;”

Justification

Provide for the cotton collection centres.

(xi) By deleting paragraph (n).

Justification

Catered for under paragraph (n).

(xii) By deleting paragraph (o) and substituting therefor the following new paragraph—

“(o) Link cotton farmers with agricultural mechanisation centres for affordable machinery;”

Justification

County governments can only link farmers to the agricultural mechanisation centres.

(xiii) by deleting paragraph (p) and substituting therefor the following new paragraph—

“(p) link farmers with affordable farm inputs;”

Justification

County governments can only link farmers to farm inputs.

(xiv) by deleting paragraph (q) and substituting therefor the following new paragraph—

“(q) carry out other functions as may be conferred upon by this law or any other written law.”

Justification

For clarity.

(c) By deleting sub-clause (3).

Justification

This can be provided in the county legislation.

CLAUSE 24

THAT clause 24 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “*for the better carrying out of the functions under this Act,*” appearing immediately before the word “*committee*”;

Justification

The words do not add any value to the Bill.

- (b) in sub-clause (2) by deleting the words “*that the county executive committee member shall deem fit*” appearing immediately after the word “*county*”;

Justification

The words do not add any value to the Bill.

- (c) in sub-clause (3) by deleting the words “*executive committee member*” appearing immediately after the word “*county*”;

Justification

The words do not add any value to the Bill.

- (d) by deleting subclause (4);
- (e) by deleting subclause (5);
- (f) by deleting subclause (6); and
- (g) by deleting subclause (7)

Justification

The above provisions should be provided in the county legislation.

CLAUSE 25

THAT clause 25 of the Bill be amended—

- (a) by deleting subclause (3);

Justification

It is already covered under sub-clause (1).

- (b) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) A registered cooperative society or cotton association shall submit a register of its members to the respective county government and shall furnish the county government with information on any changes of its membership within 30 days of a change in membership”;

Justification

For clarity.

- (c) in sub-clause (5) by deleting the words "*under subsection (1)*" appearing immediately after the word "*applicant*" and substituting therefor the words "*in this section*";
- (d) in sub-clause (6) by deleting the words "*subsection (1)*" appearing immediately after the word "*under*" and substituting therefor the words "*this section*";
- (e) In sub-clause (7) by deleting the words "*subsection (6)*" appearing immediately after the word "*under*" and substituting therefore the words "*this section*".

Justification

To correct the cross referencing.

- (f) in sub-clause (7) paragraph (b) by deleting the words "*or that*" appearing immediately after the word "*business*";

Justification

To correct a grammatical error.

- (g) in sub-clause (8) by deleting the words "*under subsection (6)*" appearing immediately after the word "*register*";

Justification

The words add no value to the Bill.

- (h) in sub-clause (10) by deleting the words "*subsection (1)*" appearing immediately after the word "*under*" and substituting therefor the words "*this section*";

Justification

To correct the cross referencing.

CLAUSE 26

THAT clause 26 of the Bill be amended—

- (a) by deleting the marginal notes and substituting the following new words—
"*Licensing of ginnors, spinners and processors.*"

Justification

To increase the scope and remove manufacturers because the Bill does not regulate manufacturers.

- (b) in sub-clause (1) by adding the following new word "*processing*" immediately after the word "*spinning*" and inserting the word "*a*" immediately after the word "*such*";

Justification

To include processing in the list and to correct a typographical error.

- (c) by deleting sub-clause (2) and substituting the following new sub-clause—

"(2) A person who intends to engage in the business of cotton ginning, spinning, processing or value addition and has been registered by the respective County Government for the purpose shall submit an application in the prescribed form to the Board together with—

- (a) such documents and information as the Board may prescribe; and*
(b) the prescribed fees;"

- (d) in sub-clause (3) by deleting the words "*a county executive committee member*" and substituting therefore the word "*The Board*";

- (e) in sub-clause (5) —

- (i) by deleting the words "*county executive committee member*" appearing immediately before the word "*refuses*" and substituting therefor the word "*Board*";

- (ii) by deleting the words "*county executive committee member*" appearing immediately before the word "*shall*" and substituting therefor the word "*Board*"; and

- (iii) by deleting the words "*in its notification under subsection (3)*" appearing immediately before the word "*specify*";

Justification

Licensing is a function of the Board and not the county executive committee member.

- (f) in sub-clause (6) —

- (i) by deleting the words "*A county executive committee member*" appearing immediately before the word "*shall*" and substituting therefore the words "*The Board*"; and

- (ii) by deleting the words "*county executive committee member*" appearing immediately before the word "*may*" and substituting therefor the word "*Board*"

Justification

Licensing is a function of the Board and not the county executive committee member.

- (g) in subclause (7) by deleting the words "*county executive committee member*" and substituting therefor the word "*Board*";

- (h) in sub-clause (8)—

- (i) by deleting the words "*county executive committee member*" appearing immediately before the word "*shall*" and replacing therefor the word "*Board*"; and

Justification

Licensing is a function of the Board and not the county executive committee member.

- (ii) by deleting the words "*under sub-section (6)*" appearing immediately after the word "*objection*"; and
- (i) in sub-clause (10) by deleting the words "*of sub-section (1)*" appearing immediately before the word "*commits*" and replacing therefor the word "*under this section*".

Justification

Correct the cross referencing.

CLAUSE 27

THAT clause 27 of the Bill be amended—

- (a) in sub-clause (1)—
 - (i) by deleting the words "*county executive committee member*" appearing immediately before the word "*may*" and substituting therefor the word "*Board*"; and
 - (ii) by deleting the words "*or prescribed under the specific county legislation*" appearing immediately after the word "*Act*".

Justification

Licensing is a function of the Board. There is no need to refer to county legislation.

- (b) In sub-clause (2)—
 - (i) by deleting the words "*county executive committee member*" appearing immediately before the word "*shall*" and substituting therefor the word "*Board*"; and
 - (ii) by deleting the words "*in accordance with section 25(3) and (4)*" appearing immediately after the word "*refusal*".

Justification

Licensing is a function of the Board. It is not necessary to refer to section 25(3) and (4).

CLAUSE 28

THAT clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words "*county executive committee member*" appearing immediately before the word "*may*" and substituting therefor the word "*Board*";
- (b) in sub-clause (2)—
 - (i) by deleting the words "*county executive committee member*" appearing immediately after the word "*the*" and substituting therefor the word "*Board*";
 - (ii) by deleting the words "*under subsection (1) unless*" appearing immediately after the word "*licence*";
 - (iii) by deleting the word "*the*" appearing immediately after the word "*revoke*" and substituting therefor the word "*a*"; and

Justification

Licensing is a function of the Board, correct the cross referencing and to correct a grammatical error.

CLAUSE 29

THAT clause 29 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words "*section 27(2)*" appearing immediately before the word *shall* and replacing therefor the words "*section 28(2)(b)*" and
- (b) in sub-clause (2) by deleting the words "*county executive committee member*" and substituting therefor the word "*Board*".

Justification

For proper cross referencing and the Board is responsible for licensing.

CLAUSE 30

THAT clause 30 of the Bill be amended—

- (a) in sub-clause (1)—
 - (i) by deleting the words "*section 28*" appearing immediately before the word "*fails*" and substitute therefor the words "*section 29*";
 - (ii) by deleting the words "*county executive committee member*" appearing immediately after the word "*the*" and substituting therefor the word "*Board*" and
 - (iii) By deleting the word "*shall*" appearing immediately after the word "*member*" and substituting therefor the word "*may*".

Justification

For proper cross referencing and the Board is responsible for licensing and revocation of such licenses.

(b) in sub-clause (2)—

- (i) by deleting the word "*cancellation*" appearing immediately before the word "*of*" and substituting therefor the word "*revocation*";
- (ii) by deleting the word "*cancel*" appearing immediately after the word "*is*" and substituting therefor the word "*revoked*"; and
- (iii) by deleting the words "*county executive committee member*" appearing immediately after the word "*the*" and substituting therefor the word "*Board*".

Justification

To be consistent with the Marginal Note and it is the Board's responsibility to revoke a license and not the county executive committee member.

CLAUSE 31

THAT clause 31 of the Bill be deleted and substituted therefor with the following new clause—

- "31 (1) *There is hereby established a Tribunal to be known as the Cotton Industry Arbitration Tribunal.*
- (2) *The Tribunal shall consist of—*
- (a) *a chairperson appointed by the Chief Justice who shall be a person qualified to be appointed as a judge of the High Court; and*
 - (b) *four other members, being persons with expert knowledge in economics, trade, law, agriculture, research and engineering with at least five years' experience in arbitration, all of who shall be appointed by the Chief Justice through a competitive recruitment process.*
- (3) *The Chairperson and members of the Tribunal shall serve on a part-time basis.*
- (4) *The members of the Tribunal appointed under sub-section (2) shall hold office for such period, not exceeding three years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re- appointment for one further term of a period not exceeding three years.*
- (5) *A person shall not be qualified to be appointed as a member of the Tribunal if that person is a public servant or takes an active part in the activities of a political party.*
- (6) *A person shall not qualify for appointment under this section unless the person has met the requirement of Chapter Six of the Constitution.*

(7) *The Tribunal shall regulate its own procedure as to the conduct of meetings.*

(8) (1) *The Tribunal shall determine—*

- (a) *disputes between cotton crop farmers;*
- (b) *disputes between cotton farmers and the following—*
 - (i) *cooperative societies;*
 - (ii) *cotton associations;*
 - (iii) *other interested parties;*
- (c) *disputes relating to cotton pricing;*
- (d) *disputes relating to contract farming;*
- (e) *disputes between ginners and processors; and*
- (f) *disputes between any other interested parties.*

10.(1) *The Tribunal shall expeditiously determine any dispute before, but in any case, shall determine a dispute within a period of three months from the date the dispute is lodged.*

(2) *An Appeal shall lie from the decision of the Tribunal to the High Court within thirty days on points of law and facts and on points of law to the Court of Appeal.*

(3) *A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrates Court.*

(4) *The Tribunal shall apply the rules of evidence and procedure under the Evidence Act (Cap. 80) and the Civil Procedure Act (Cap. 21), with the necessary modifications, while ensuring that its proceedings do not give undue regard to procedural technicalities.*

11. *The Tribunal shall have the powers of the High Court—*

- (a) *to administer oaths to the parties and witnesses to the proceedings;*
- (b) *to summon witnesses and to require the production of documents;*
- (c) *to order the payment of costs; and*
- (d) *to order that the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—*
 - (i) *the protection of the members of the Tribunal from suit;*
 - (ii) *the form of summonses to witnesses;*
 - (iii) *to giving or fabricating of false evidence;*
 - (iv) *the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and*
 - (v) *the appearance of advocates;*

shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

12. *A member of the Tribunal may be removed if the member—*

- (a) *becomes an undischarged bankrupt;*
- (b) *is convicted of a criminal offence and sentenced to imprisonment for a period exceeding six months without the option of a fine;*

- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or
- (e) is otherwise unable or unfit to discharge the functions of the office.

13. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal and such member shall serve for his or her full term.

14. The Chief Justice shall appoint a Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

15. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

(2) The Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Judicial Service Commission on the recommendation of the Salaries and Remuneration Commission".

Justification

Clause 31 is putting in place a Tribunal.

CLAUSE 32

THAT clause 32 of the Bill be amended—

(a) By deleting sub-clause (1) and substituting therefor the following new sub-clause;

"(1) The county government shall designate collection centres in consultation with cotton growers and other stakeholders."

(b) in sub-clause (2) by deleting the words "county executive committee member" appearing immediately after the word "the" and substituting therefor the words "county government".

(c) in sub-clause (2) paragraph (a) by deleting the words "Cabinet Secretary" appearing immediately after the word "the" and substituting therefor the word "Board".

Justifications

It is the responsibility of county governments to designate the collection centres. The county government can assign the county executive committee member to do the designation.

The Board is responsible for ensuring that a collection centre meets the required standards and not the Cabinet Secretary.

CLAUSE 33

THAT clause 33 of the Bill be amended—

- (a) in sub-clause (2) by deleting the word “from” appearing immediately after the word “prescribed” and substituting therefore the word “form”.

Justification

Correct a typographical error.

- (b) by deleting sub-clause (3);
(c) by deleting sub-clause (4);
(d) by deleting sub-clause (5);

Justification

Should be provided in regulations.

- (e) in sub-clause (7) by deleting the word “subsection (2)” appearing immediately after the word “under” and substituting therefor the words “subsection (6)”;

Justification

For proper cross-referencing.

- (f) by deleting subclause (8);

Justification

The provision is not necessary.

- (g) in clause (10) by deleting the words “subsection (4)” appearing immediately after the word “under” and substituting therefore the words “subsection (6)”;

Justification

The penalty is too high in comparison with the offense hence the amendment.

- (h) by deleting subclause (11) and substituting therefore the following new subclause—

“(11) A person who is not satisfied with the decision of the Board may appeal to the Cabinet Secretary; and where such a person is not satisfied with the decision of the Cabinet Secretary, shall appeal to the High Court.”

Justification

To give applicants room to appeal if they are not satisfied with the Board’s decision to not give them a license.

- (i) by renumbering subclauses (6)(7)(8)(9) and (10) to subclauses (7),(8),(9)(10) and (11)

Justification

To correct a typographical error.

CLAUSE 34

THAT clause 34 of the Bill be amended—

- (a) By deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) A license issued under this Act shall be valid for a period of one year from the date it was issued.”;

- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) A person who intends to renew a license under sub-section (1) shall submit an application to the Board in the prescribed form at least thirty days before the date of expiry of the current license”.

- (c) in sub-clause (3) by deleting the words “section 32” appearing immediately after the word “under” and substituting therefor the words “section 33”.

Justification

Clean-up of the Bill.

CLAUSE 35

THAT clause 35 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following new sub-clause—

“(1) The Board may revoke a licence issued or renewed under this Act if the licensee—”

- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) The Board may revoke a licence issued under subsection (1) unless the Board—”.

Justifications

Provisions for the issuance and renewal of a license are provided in the Act and not just under section 32.

Licensing is a responsibility of the Board and not the county executive committee member.

CLAUSE 36

THAT clause 36 of the Bill be amended in subclause (1) by deleting the words "*section 34(2)*" appearing immediately after the word "under" and substituting therefor the words "*section 35(2)(b)*".

Justification

For correct cross-referencing.

CLAUSE 37

THAT clause 37 of the Bill be amended—

- (a) in subclause (1) by deleting the words "*section 34*" appearing immediately after the word "*under*" and substituting therefor the words "*section 36*";

Justification

To refer to the correct section.

- (b) in sub-clause (2)—
 - (i) by deleting the word "*cancellation*" appearing immediately after the letter "*a*" and substituting therefor the word "*revocation*"; and
 - (ii) by deleting the word "*cancelled*" appearing immediately after the word "*is*" and substituting therefor the word "*revoked*".

Justification

For consistency with the word used in the marginal note.

CLAUSE 38

THAT clause 38 of the Bill be amended by introducing a new sub-clause (2) to read as follows—

"(2) The Board shall apply the money received under this section for the furtherance of the objects and performance of the functions of the Board."

Justification

To provide clarity on how the money of the Board shall be utilised.

CLAUSE 39

THAT clause 39 of the Bill be amended by deleting the words "*the county government*" appearing immediately after the word "*Board*".

Justification

Imposition of the Levy is a function of the National Government.

CLAUSE 42

THAT clause 42 of the Bill be amended in subclause (3) by deleting the words "*the National Assembly and the Senate*" appearing before the word "to" and substituting therefor the word "*Parliament*".

Justification

Parliament comprises of both the National Assembly and the Senate.

CLAUSE 44

THAT clause 44 of the Bill be amended by deleting the clause and substituting therefor the following new clause—

"44. The Cabinet Secretary responsible for Agriculture may in consultation with the Cabinet Secretary for Treasury initiate implementation of such measures, including tax incentives in order to promote the development of the cotton industry.

Justification

It is important for the CS responsible for matters relating to agriculture to be part of the initiation and implementation of incentives for the cotton industry.

CLAUSE 45

THAT clause 45 of the Bill be deleted.

Justification

The clause is not necessary

CLAUSE 46

THAT clause 46 of the Bill be amended in sub-clause (1) by deleting the words "*twenty thousand*" appearing immediately after the word "than" and substituting therefor the words "*one hundred thousand*".

Justification

To match the penalty to the offence.

CLAUSE 47

THAT clause 47 of the Bill be amended in clause (2) paragraph (a) by deleting the words "*under section 7(1)(c)*" appearing immediately after the word "*farmer*".

Justification

Reference to section 7 (1) (c) is not necessary.

CLAUSE 49

THAT clause 49 of the Bill shall be amended by deleting the word "*aap*" appearing immediately after the word "*Gossypium*" and substituting therefor the word "*ssp*".

Justification

Correct a typographic error

CLAUSE 55

THAT clause 55 of the Bill shall be amended by deleting the word Authority appearing immediately after the word "the" and substituting therefor the word "Board".

Justification

Wrongful reference to the Authority instead of the Board.

FIRST SCHEDULE

That the First Schedule of the Bill be amended—

(a) in paragraph 1 of paragraph (1)—

(i) by deleting the word "*ten*" appearing immediately after the word "*least*" and substituting therefor the word "*four*";

Justification

Ten meetings in a financial year are too many hence the amendment to four meetings.

(ii) by deleting the word "*two*" appearing immediately after the word "*than*" and substituting therefor the word "*four*".

Justification

To provide that four months shall not lapse before a meeting of the Board is held as opposed to the provision in the Bill of two months.

(b) in sub-paragraph (i) by deleting the words "*and such places*" appearing immediately before the word "*as*" and substituting therefor the words "*at the Board headquarters or other places in Kenya*".

Justification

To ensure that Board meetings are held within the country.

(c) in paragraph (5)—

- (i) sub-paragraph (2) by deleting the words “*subsection*” appearing immediately after the word “*under*” and substituting therefor the word “*sub-paragraph*”;
- (ii) sub-paragraph (3) by deleting the word “*subsection*” appearing immediately after the word “*under*” and substituting therefor the word “*sub-paragraph*”;
- (iii) in sub-paragraph (4) by deleting the word “*subsection*” appearing immediately after the word “*contravenes*” and substituting therefor the word “*sub-paragraph*”;

Justification

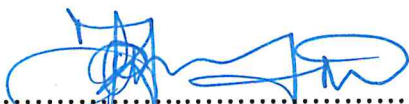
The above amendments are clean-ups of the Bill.

- (iv) in sub-paragraph (4) by deleting the words “*five hundred thousand*” appearing immediately after the word “*exceeding*” and substituting therefor the words “*fifty thousand*”; and
- (v) in sub-paragraph (4) by deleting the words “*seven years*” appearing immediately before the word “*or*” and substituting therefor the words “*six months*”.

Justification

The penalty is too high in comparison with the offense hence the amendment.

SIGNED.....



DATE.....

11 - 04 - 2024

HON. (DR.) JOHN KANYUTHIA MUTUNGA, PhD, MP
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

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