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REPUBLIC OF KENYA

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 02/11/23

EP

02/11/2023

THIRTEENTH PARLIAMENT - SECOND SESSION

THE SENATE

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND
FISHERIES

REPORT ON THE AGRICULTURE AND FOOD AUTHORITY
AMENDMENT BILL, 2023 (SENATE BILLS NO. 13 OF 2023)

Approved.

02.11.2023

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PAPERS LAID	
DATE	21/11/2023
TABLED BY	Chair, Agriculture
COMMITTEE	Agriculture
CLERK AT THE TABLE	Cherop

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

NOVEMBER, 2023

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LIST OF ABBREVIATIONS/ACRONYMS

AFA	-	Agriculture and Food Authority.
NUTPAK	-	Nut Processors Association of Kenya.
COG	-	Council County of Governors.

PRELIMINARIES

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Standing Committee on Agriculture, Livestock and Fisheries is established under standing order 228(3) of the Senate Standing Orders and is mandated to consider all matters relating to agriculture, irrigation, livestock, fisheries development and veterinary services.

In undertaking its mandate, the Committee oversees the following State Departments:

1. Ministry of Agriculture and Livestock Development;
 - i. The State Department for Crops Development and;
 - ii. The State Department for Livestock Development
2. Ministry of Sanitation, Water and Irrigation;
 - i. State Department for Irrigation
3. Ministry of Mining and Blue Economy and Fisheries;
 - i. State Department for Blue Economy and Fisheries

The Committee also oversees the following State Agencies among others-

- a. Agriculture and Food Authority (AFA);
- b. Agricultural Finance Corporation (AFC);
- c. Agricultural Development Corporation (ADC);
- d. Kenya Seed Company (KSC);
- e. Kenya Plant Health Inspectorate Services (KEPHIS);
- f. Kenya Agricultural and Livestock Research Organization (KALRO);
- g. Kenya Veterinary Vaccine Production Board (KVVPB);
- h. Kenya Veterinary Board (KVB);
- i. Kenya Meat Commission (KMC);
- j. Kenya Dairy Board (KDB);
- k. Kenya Leather Development Council (KLDC);
- l. Kenya Fisheries Service (KFS);
- m. Kenya Fish Marketing Authority (KFMA);
- n. Kenya Marine and Fisheries Research Institute (KEMFRI);
- o. National Irrigation Authority (NIA);
- p. Kenya Fishing Industries Corporation; and

q. National Irrigation Board (NIB).

The Committee also works closely with the Council of Governors (CoG), and the County Assemblies Forum (CAF) and non-state actors including among others-

- a. Kenya Private Sector Alliance (KEPSA);
- b. Agricultural Council of Kenya (AgCK)
- c. Food and Agriculture Organization (FAO);
- d. Kenya National Farmers' Federation (KENAFF);
- e. Centre for Agriculture and Bioscience International (CABI); and
- f. Agricultural Industry Forum (AIF).

MEMBERSHIP OF THE COMMITTEE

The Committee is comprised of –

- | | | |
|-------------------------------------|---|-------------------------|
| 1. Sen. James Kamau Murango, MP | - | Chairperson |
| 2. Sen. Alexander Munyi Mundigi, MP | - | Vice-Chairperson |
| 3. Sen. Moses Otieno Kajwang', MP | | |
| 4. Sen. Enoch Kiio Wambua, CBS, MP | | |
| 5. Sen. Daniel Kitonga Maanzo, MP | | |
| 6. Sen. Beth Kalunda Syengo, MP | | |
| 7. Sen. Wahome Wamatinga, MP | | |
| 8. Sen. Allan Kiprotich Chesang, MP | | |
| 9. Sen. David Wafula Wakoli, MP | | |

CHAIRPERSONS FOREWORD

Mr. Speaker Sir,

The Agriculture and Food Authority (Amendment) Bill, 2023 (Senate Bills No. 13 of 2023) is a Bill for an Act of Parliament to provide for the amendment of the Agriculture and Food Authority Act and for connected purposes.

The principal object of the Bill is to amend Section 43 of the Agriculture and Food Authority Act, 2013, by deleting Section 43 to allow the importation of raw cashew nuts, macadamia nuts and bixa. Currently, the ban on exportation of raw nuts is unfavorable to the further development on the nuts industry because farmers are unable to obtain competitive prices from the local processors of nuts who have been regulating prices downwards to the detriment of the farmer. The amendment is necessary because it will enable nut farmers to benefit from better prices from export sales.

Additionally, the amendment will deter the smuggling of macadamia nuts to neighboring countries which has been denying Kenya foreign exchange earnings.

Mr. Speaker Sir,

The Agriculture and Food Authority (Amendment) Bill, 2023 (Senate Bills No. 13 of 2023) was published on 11th March 2023 and was introduced in the Senate by way of First Reading on Thursday, 4th May, 2023, and thereafter the Bill stood committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries for consideration.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Tuesday, 9th May, 2023 inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

In total, the Committee received written submissions from four (4) stakeholders namely The Nut Processors Association of Kenya, the Council of Governors, the Agriculture and Food Authority and the Ministry of Agriculture, Livestock and Fisheries.

Summary of Observations by the Committee

From the submissions received, the Committee made the following Observations:

1. Ninety nine percent (99%) of Macadamia nuts in Kenya are produced for export and therefore the amendments on the Bill should factor in this aspect.
2. Although there has been a tremendous growth of the macadamia processing factories over the last decade, from 5 processors in 2009 to current over 30 macadamia processors today, this growth has not translated to better prices for the farmers and therefore there is a need to protect the farmers to ensure that they are not being exploited by the processors.
3. The current glut in the Kenyan market has been occasioned by a high production capacity by the farmers and a low intake by producers which can only be remedied by creating alternative avenues like allowing the sale of raw nuts to the export market.
4. Despite the submissions of some of the stakeholder disagreeing with the proposed amendments, it is important to appreciate and consider what is the best interest of the farmer. In light of this, the Committee strongly believes that the amendment will create a larger market which will translate to better earnings to the farmers.

Summary of Recommendations by the Committee

The Committee recommends that the House approves the Bill together with the proposed amendments in order to allow farmers to have an alternative avenue to sell their products.

Mr. Speaker Sir,

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Agriculture and Food Authority (Amendment) Bill, 2023 (Senate Bills No. 13 of 2023), successful.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment. Lastly, I wish to acknowledge the time and considerable effort made by the Ministry of Agriculture and Livestock, Development, the Agriculture and Food Authority, the Council of Governors and the Nut Processors Association of Kenya who gave their submissions to the Committee.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to standing order 148 (1), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on The Agriculture and Food Authority Development Amendment Bill, 2023

Signed.....

Date.....

SEN. JAMES KAMAU MURANGO, MP,

CHAIRPERSON,

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON THE AGRICULTURE AND FOOD AUTHORITY (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 13 OF 2023)

We, the undersigned Members of the Senate Standing Committee on Agriculture, Livestock, and Fisheries, do hereby append our signatures to adopt this Report –

	Name	Designation	Signature
1.	Sen. James Kamau Murango, MP	Chairperson	
2.	Sen. Alexander Munyi Mundigi, MP	Vice-Chairperson	
3.	Sen. Moses Otieno Kajwang', MP	Member	
4.	Sen. Enoch Kiio Wambua, CBS, MP	Member	
5.	Sen. Daniel Kitonga Maanzo, MP	Member	
6.	Sen. Beth Kalunda Syengo, MP	Member	
7.	Sen. Wahome Wamatinga, MP	Member	
8.	Sen. Allan Kiprotich Chesang', MP	Member	
9.	Sen. David Wafula Wakoli, MP	Member	

CHAPTER ONE

1.1. Background

The Agriculture and Food Authority (Amendment) Bill, 2023 (Senate Bills No. 13 of 2023) was published on 11th March 2023 and was introduced in the Senate by way of First Reading on Thursday, 4th May, 2023, and thereafter the Bill stood committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries for consideration. The Bill published is attached to this Report as *Appendix 2*.

The amendment is also aimed at enabling farmers to directly source for markets and export their raw macadamia. Currently, farmers can only sell their produce to the processors who have been offering very low prices due to the monopoly that they enjoy. Additionally, the amendment will stop smuggling of macadamia nuts to neighboring countries which has been denying Kenya foreign exchange earnings.

1.2. Comparative Analysis

The South African nut industry is among the leading producers and exporter of nuts, the main one being macadamia nuts. It also produces pecans, walnuts, almonds, cashews, hazelnuts, pistachios and peanuts. South Africa nuts are widely exported with half of them being exported in shell, with most going to China and other parts of Asia, the remaining half is exported as kernels to the United States, Canada, Europe, Japan, South East Asia and the Middle East. The South African nut industry export is relatedly competitive at the global stage and has the highest return value.

Brazil is a minor producer of the macadamia nuts representing 3% of the global production. Despite this, the Country is one of the highest consumers of the macadamia nuts. Brazil's export has been increasing with the main markets for Brazilian macadamia nuts being Hong Kong, China, Europe and the United States. Macadamia is the Country's main product as it offers higher margins for farmers and exporters compared to other nut varieties such as cashew and pecan nuts. The Brazilian Government supports the macadamia export industry by exempting the nut from export taxes, which makes the nut more profitable to export. The Government also invests in research on improving the quality of Brazilian nuts and on the value addition of nuts. Brazilian macadamias are competitively priced, this makes them cheaper than Australian nuts and on par with African nuts.

In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Tuesday, 9th May, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

1.3. Object of the Bill

The object of the Bill is to amendment of Section 43 of the Agriculture and Food Authority Act, 2013 to allow exportation of macadamia, bixa and cashew nuts in their raw form. Currently, the Act prohibits raw export of these nuts except with the authority of the Cabinet Secretary for Agriculture. Due to this restriction imposed by the provision of section 43, farmers can only sell their produce to the processors who at times have a low intake than the market supply therefore occasioning farmers numerous losses, as is the case currently. With the Ban on exportation, farmers are left stuck with their produce due to lack of alternative markets.

1.4. Overview of the Bill

The Bill seeks to amend Section 43 of the Agriculture and Food Authority Act, 2013, by deleting Section 43 which prohibits exportation of raw cashew nuts, pyrethrum, bixa, macadamia and any other agricultural products as may be prescribed by the Cabinet Secretary for Agriculture. The Act also gives the Cabinet Secretary the powers to give authority for exportation of these nuts in their raw form.

The purpose of the amendment is therefore to remove the restrictions on the export of raw macadamia, bixa and cashew nuts in order to allow farmers to sell their produce in any form, both locally and internationally,

CHAPTER TWO

2.1. OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.1.1. Introduction

The Committee pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Tuesday, 9th May, 2023 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Appendix 3*.

Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

In response to the advertisement and invitations, the Committee received written submissions from four (4) stakeholders namely the Nut Processors Association of Kenya (NUTPAK), the Council of Governors, the Agriculture and Food Authority (AFA) and the Ministry of Agriculture, Livestock and Fisheries, while the detailed submissions by the stakeholder, organized clause-by-clause, is set out in a matrix attached as *Appendix 4*.

2.1.2. Submissions from The Nut Processors Association of Kenya

In their submission, the Association explained that in support for the local industrialization and value addition, the Government of Kenya has for the past decade promoted the establishment of processing factories from 5 processors in 2009 to current over 30 macadamia processors today. Today the installed processing capacity stands at 10,000 metric tonnes while productions is almost 50,000 metric tonnes. Within the last decade, production has gradually increased and is expected to continue in the coming years. The global nut in shell volume is expected to reach 290,00 metric tonnes in 2023.

On Justification for not amending Section 43 of No. 13 of 2013, the Association noted that it is worth noting that the tremendous growth was occasioned by the ban that availed raw materials that spurred local investments in the cracking facilities. Today the installed

processing capacity stands at 100,000 metric tons while production is nearing 50,000 metric tons. In context therefore, the instated processing capacity is double the production.

On the Change in traditional markets, the Association explained that China's demand for macadamia in shell as the case had been previously has drastically declined. China's domestic production has significantly offset demand for macadamia in shell from overseas. South Africa and Australia who have traditionally supplied macadamia in shell have shifted to kernel processing owing to shifting demand for macadamia in shell in china thus occasioning over supply of macadamia kernel in the global market. China demand for macadamia in shell can only take 15% of Kenyan crop owing to quality parameters of macadamia in shell of 22mm and above.

The Association noted that exports for macadamia in shell from Kenya should be facilitated through express authority to facilitate processing companies to export macadamia in shell on consignment and on a case-by-case basis without changing the law. The current situation is temporary and a cyclic commodity downswing which has been witnessed before in 2006/7 after which there was a market correction that led to an unprecedented market peak.

They therefore opined that the justification on the ban for the exportation of in – shell macadamia nuts is still valid and justifiable. The submission is attached to the report as *Appendix 5*.

2.1.3. Submissions from The Council of Governors

Having reviewed the Agriculture and Food Authority (Amendment) Bill, 2023 in its entirety, the Council of Governors supports the Bill to amend Section 43 of the Agriculture and Food Authority Act, 2013.

The Council of Governors also proposes further amendments touching on several sections of the AFA Act i.e., Section 4(1) (a), (b), (c) and (d), Section 5 (a), (b), and (c), Section 21(1), Section 41(1) and (2), Section 42 (a) and (b), Section 44 and Section 49. They may propose drafting of a new Bill to provide for the provisions that are captured in the Memoranda.

However, this being an amendment Bill the scope of the amendments is limited to only section 43 that is being amended by the Bill. The submission is attached to the report as *Appendix 6*.

2.1.4. Agriculture and Food Authority (AFA) and Ministry of Agriculture and Livestock Development (MOALD)

The Ministry of Agriculture and Livestock Development and the Agriculture and Food Authority appeared before the Committee and presented their memoranda which stated that amending section 43 of the AFA Act has the potential to negate the gains which have been attained since the ban on exports of raw produce was enacted and operationalized. The manufacturing plants may lack materials for processing or may choose to export raw produce if they make enough profits.

Domestic processing of the nuts has greatly improved since the ban on exports of raw nuts that was imposed in the year 2009 under the Kenya gazette notice of 2nd June 2009. Some of the milestones of the ban include.

The country has availed raw materials for local processing of macadamia and cashew resulting in the increase of processing factories. (from 5 in 2008 to 38 in 2022 for macadamia and 1 in 2008 to 7 in 2022 for cashew). The Cashew value chain is undergoing revitalization to increase availability of raw materials. The insufficient supply of raw materials led to the closure of two processing companies during the 2021/2022 season. Allowing export of raw nuts will continue to negate the efforts made in value addition and agro processing.

In-country processing also supports marketing agents who sign contracts to buy the produce from farmers and supply the processing companies. More than 100 marketing agents are currently in operation.

In-country processing of macadamia and cashew has created over 20,000 direct jobs and several others in connected industries such as nursery development, logistics, transport and packaging.

The combined established factories have invested an estimated Kshs. 12-Billion in construction of processing facilities and machinery between 2008 and 2023 due to the confidence they have in the ban. Should section 43 be amended there will be mushrooming of exporters unwilling to invest in orchard development in addition to reduced domestic processing which will result in lost investments and increased theft from farms to supply to the exporters of raw produce.

Amendment of section 43 will also result in Kenya losing the international market share it currently enjoys. Currently, Kenya already has excess processing capacity which is currently 118 Metric tonnes of Nuts in shell (NIS) against the country production of 42,000

Metric tonnes. The idle capacity is negatively impacting on the investments so far made. The policy change must be cognizant that macadamia and cashew processing is an expensive investment and a long-term commitment, taking many years to produce profits.

Local processing of macadamia and cashew has encouraged transfer and investment in modern technology in the country, the amendment proposed will negatively affect the milestones so far realized as a result of this technological advancements in manufacturing both at cottage and large scale.

The Kenyan macadamia and cashew industries has contributed significantly to the country's employment both in the formal and informal industry. More jobs are realized during peak season deployed to aggregate, sort and package the nuts in factories.

Retaining section 43 of the AFA Act as it is presently will provide certainty and an enabling environment for new factories come up to process the nuts, with more employment opportunities being created.

Kenya earns an estimated Ksh 10 billion in 2022, from the export of processed macadamia and cashew kernels mainly exported to the U.S.A and European countries where they are predominantly used in the confectionery and snack food industries, and therefore the amendments proposed will result in loss of this Forex earning which directly has an implication on the farmer earnings at farm gate.

The domestic retail industry such as kiosks, shops and supermarkets are directly supported by the existing processing factories. Amending section 43 will negatively impact these business as it will comprise their supplies.

Currently the Authority has programmes to increase macadamia and cashew production and productivity. This is being done through sensitization of farmers on good agricultural practices in addition to distribution of planting materials to farmers in non-traditional areas. Increased production will assure the processors of a steady supply of raw materials to support their investments so far. The proposed amendments will negatively impact the industry, exports of raw produce which will fetch lower returns.

Pyrethrum: The Authority proposes that the provision on prohibition of export of unprocessed pyrethrum be retained since the production of pyrethrum flower as of last financial year 2022/23 was 950MT. The country's installed processing capacity by the current processors is over 10,000MT. This demonstrates that the country has a net deficit of over 9,000MT installed capacity currently that is underutilized. Besides this, the industry

is experiencing increase in investors installing pyrethrum processing factories in Kenya. Pyrethrum remains a premium product in the international market and the country has focused its efforts towards recapturing its global position as a leader in production and supply of pyrethrum. Efforts towards improving production and quality planting materials are underway through adoption of techniques such as tissue culture.

It is against this background that the Authority supports the prohibition of export of unprocessed pyrethrum flowers to allow for value addition through processing which in turn creates job opportunities and increases earnings, Further, Kenya processed.

Pyrethrum extract is highly competitive in the international markets hence earn foreign exchange for the Country. Additionally, registration of Kenya's pyrethrum molecule's position may be lost if export unprocessed pyrethrum is allowed by other entities other than Kenya, since the molecule is geographically registered.

Consideration for Bixa: The prohibition on export of raw bixa in Kenya is a ban on the export of unprocessed annatto seeds, also known as bixa. The ban was implemented by the Kenyan government in order to encourage local value addition and processing of the crop, which is prima grown in the country's coastal region

However, Bixa farming has continued to decline since the 1970's. Most farmers have at down their trees while others have left them in the bushes unattended as a result of the lower prices offered for the commodity which is attributed to competition with cheap synthetic materials that were introduced in the market and presence of one processor. The quality of the bixa produced has also gone down as the level of bixin (the most essential product) has greatly reduced.

The limited use of synthetic food colors has however triggered a high demand for bixa in the world market. The prices for bixa at the farm gate keep on increasing on annual basis as a result of the increased demand for natural food colours in the world markets. Allowing export of raw Bixa will encourage competition and increase farmer's bargaining power. This will also lead to increase in production since the market demand will be high.

Recommendation:

The Authority recommends that Section 43 of the AFA Act, 2013 which imposes a prohibition of export of some new produce be retained. The Section does not impose a total ban on exportation of the listed crops it grants the Cabinet Secretary the power to lift the prohibition from time to time as need arises and upon application. This will protect the

existing investments in production and agro processing, while simultaneously addressing emerging challenges

CHAPTER THREE

3.1. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1.1. COMMITTEE OBSERVATIONS

The committee observed that:

5. Ninety nine percent (99%) of Macadamia nuts in Kenya are produced for export and therefore the amendments on the Bill should factor in this aspect.
6. Although there has been a tremendous growth of the macadamia processing factories over the last decade, from 5 processors in 2009 to current over 30 macadamia processors today, this growth has not translated to better prices for the farmers and therefore there is a need to protect the farmers to ensure that they are not being exploited by the processors.
7. The current glut in the Kenyan market has been occasioned by a high production capacity by the farmers and a low intake by producers which can only be remedied by creating alternative avenues like allowing the sale of raw nuts to the export market.
8. Despite the submissions of some of the stakeholder disagreeing with the proposed amendments, its is important to appreciate and consider what is the best interest of the farmer. In light of this, the Committee strongly believes that the amendment will create a larger market which will translate to better earnings to the farmers.

3.1.2. COMMITTEE RECOMMENDATIONS

The Committee recommends that: -

That the House approves the Bill together with the proposed amendments in order to allow farmers to have an alternative avenue to sell their products.

LIST OF APPENDICES

Appendix 1	Minutes of the Standing Committee on Agriculture, Livestock and Fisheries
Appendix 2	The Agriculture and Food Authority (Amendment) Bill, 2023 (Senate Bills No. 13 of 2023)
Appendix 3	Advertisement published in the <i>Daily Nation</i> and <i>Standard</i> newspapers on Tuesday, 21 st February, 2023
Appendix 4	Matrix of the submissions received by the Committee on each clause of the Bill and on general matters relating to the Bill
Appendix 5	Copies of stakeholder submissions on the Bill
Appendix 6	Copy of Amendments