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THE MUNG BEANS BILL, 2020

A Bill for

AN ACT of Parliament to provide for the development, regulation and promotion of the mung beans sector, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Mung Beans Act, 2020. Short title.
2. In this Act—
 - “Authority” means the Agriculture and Food Authority established under Section 3 of the Agriculture and Food Authority Act; Interpretation.
 - “buyer” means a legal person engaged in acquiring mung beans for re-sale in the local or export market; No. 13 of 2013.
 - “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;
 - “county executive committee member” means the county executive committee member responsible for matters relating to agriculture in a county where mung bean is grown;
 - “licence” means a licence granted under section 10;
 - “mung bean” means the plant or part of the plant of the species known botanically as *vigna radiata* or of any inter-specific hybrid involving this species or of any progeny of such hybrid;
 - “grower” means a person who grows or cultivates mung bean in Kenya, or a person who manages, controls or cultivates land in Kenya on which mung bean is grown; and
 - “mung bean product” means any product, extract or substance obtained or derived from mung bean by any treatment or process.
3. The object of this Act is to— Objects of the Act.
 - (a) provide a framework for the co-ordinated implementation of the national policies and

strategies on the development and regulation of the mung bean industry;

- (b) facilitate and develop a framework to regulate and promote the development of the mung bean industry in Kenya in order to make it competitive at the international level;
- (c) promote the productivity of the mung bean industry and generate higher income for growers;
- (d) to promote the use of mung beans by the national and county governments in the implementation of feeding programs;
- (e) facilitate the introduction of modern mung bean farming techniques and general modernization of the mung bean industry for cost control and productivity improvement; and
- (f) provide a framework for implementation of effective marketing strategies for mung bean in Kenya and at the international level.

PART II – RESPONSIBILITIES OF THE NATIONAL AND COUNTY GOVERNMENTS

4. For the realization of the objectives set out under section 3, the Authority shall—

- (a) put in place measures to improve the overall production of mung beans in the country;
- (b) establish, co-ordinate and monitor the implementation of national standards and policies relating to the mung bean industry;
- (c) provide technical assistance and capacity building to county governments on its own initiative or upon request by a county government;
- (d) develop, adapt and disseminate new technologies for enhancing efficiency and productivity in the mung bean industry;
- (e) establish linkages with international research agencies for the adoption of best mung bean farming and processing practices;
- (f) develop a framework to increase accessibility of affordable agricultural inputs by growers;

Duties of the
Agriculture and
Food Authority.

- (g) ensure allocation of adequate resources for the development of the mung bean industry;
- (h) collate, manage and disseminate information on the mung bean industry;
- (i) promote access to international mung bean markets and for this purpose, collaborate with the respective county executive committee members in determining appropriate areas for the establishment of local, regional and international markets;
- (j) implement strategies in order to safeguard the interests of the growers in the mung bean industry;
- (k) initiate financing schemes for growers to enable access to affordable funding for farmers; and
- (l) perform any other function necessary for the implementation of this Act.

5. For the realization of the objectives set out under section 3, a county executive committee member shall—

- (a) put in place measures to improve the quality and quantity of the production of mung beans within the county;
- (b) provide agricultural extension services to the growers in the respective county;
- (c) enforce regulations and standards on quality control of inputs and production of mung beans at the county level;
- (d) market mung beans produced in the respective county both locally and at the international level;
- (e) initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on mung bean production, processing and marketing in the county;
- (f) promote the circulation and access to timely market information by growers;
- (g) promote investment in the infrastructure necessary to facilitate access to markets and the transportation of mung beans and mung bean products within and outside the respective county;

Duties of county executive committee members.

- (h) identify challenges affecting the mung bean industry in the county and implement appropriate remedial measures;
- (i) avail farm inputs and implements including seeds, fertilizers and other planting materials in order to facilitate mung bean production;
- (j) develop programs to intervene on soil conservation and improvement;
- (k) provide assistance to growers on post-harvesting management of mung bean products;
- (l) promote the carrying out of mung bean trade through conducive taxation regimes;
- (m) establish inter-county frameworks, institutions and agencies that they may consider necessary for the promotion of the mung bean industry;
- (n) formulate and implement county specific policies on the development and regulation of the mung bean industry within the respective county;
- (o) develop and enact a county regulatory framework for the development, management and regulation of the mung bean industry;
- (p) put in place measures for the control of plant diseases or noxious weeds that affect mung bean production;
- (q) put in place strategies for access to affordable credit and insurance packages for growers;
- (r) investigate complaints relating to unfair trade practices within the county; and
- (s) perform any other function necessary for the implementation of this Act.

6. (1) The National and county governments shall, where they implement feeding programmes within schools or other institutions or areas falling within their respective mandate, implement a homegrown feeding programme aimed at—

- (a) maximizing the benefits for growers by linking schools and other relevant institutions to local production;

Prioritisation of mung bean products in government feeding programmes.

- (b) strengthening the capacities of growers and communities; and
- (c) promoting the efficient production of mung beans in each county in order to ensure adequate supply to the schools, relevant institutions and food insecure areas in the country.

(2) In implementing a feeding programme under subsection (1), the cabinet secretary or county executive committee member responsible for the feeding program shall—

- (a) ensure the minimum standards on production, quality and safety of mung beans by growers are maintained;
- (b) ensure minimum nutritional standards are maintained in the affected schools, institutions and areas;
- (c) ensure the price stability of mung bean products;
- (d) put in place mechanisms that ensure accessibility and ease of transport of mung beans to schools, relevant institutions and areas implementing the feeding programmes; and
- (e) put in place strategies that ensure that the growers' own food stock is protected.

7. (1) Within six months of the commencement of this Act, the Cabinet Secretary shall develop and adopt a comprehensive National Mung Bean Policy to promote growth and development of the mung bean industry in Kenya.

Mung bean policy.

(2) In developing the National Mung Bean Policy, the Cabinet Secretary shall have regard to—

- (a) the need for an effective management and implementation structure at the national and county levels of government in order to ensure the effective development of the mung bean industry;
- (b) adequate capacity development and support for growers and other stakeholders in the mung bean industry;
- (c) the participation of stakeholders and communities at the national and county levels of government;

- (d) the development of appropriate strategies and mechanisms at the national and county levels of government necessary to support the development of the mung bean industry;
 - (e) the need to have in place a framework to monitor and evaluate the implementation of the policy in the development and regulation of the mung bean sector;
 - (f) the resources required at the national and county levels of government for the effective implementation of the policy;
 - (g) mechanisms needed to be put in place for the reduction of the cost of procurement of mung bean products;
 - (h) the capacity building programmes and strategies needed to be carried out to ensure that growers are able to respond to the needs identified for the implementation of the policy; and
 - (i) the resources necessary for the implementation of the policy in each county.
- (3) County governments shall incorporate the Mung Bean Policy in the respective County Integrated Development Plan and agriculture industry policies.
- (4) The Cabinet Secretary shall—
- (a) publish National Mung Bean Policy in the *Gazette*;
 - (b) review the policy at least once every five years; and
 - (c) facilitate public participation and involvement in the development and review of the policy.

PART III – REGULATORY PROVISIONS

8. (1) Every grower shall register with the relevant county executive committee member.

Requirement for registration by growers.

(2) Each county executive committee member shall maintain a register of all mung bean growers registered in the respective county under subsection (1) specifying—

- (a) the name of the grower;
- (b) the location, size and parcel number of the land on which the mung bean is grown; and
- (c) the variety of mung bean grown.

(3) A county government may enact county legislation setting out—

- (a) the criteria for the registration of a grower within the respective county;
- (b) further information required to be submitted by an applicant for registration; and
- (c) such other matters as the county government may consider necessary for the registration of growers in the respective county.

9. (1) A person shall not market, process or carry out large scale trading of mung bean or mung bean products unless the person has obtained a licence from the relevant county executive committee member.

Requirement for licensing of marketers, processors and large scale traders.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

10. (1) A person who intends to market, process or carry out large scale trading of mung bean or mung bean products shall make an application for a licence to the county executive committee member in the form prescribed by the county executive committee member.

Application for a licence.

(2) A county executive committee member shall notify an applicant of the decision on an application for a licence within twenty one days.

(3) A county government may enact county legislation setting out—

- (a) the criteria for the issuance of a licence within the respective county;
- (b) information required to be submitted by an applicant for a licence under this Act;
- (c) the process of determination of an application for a licence under this Act;

- (d) the process of application for the renewal of licences under this Act; and
- (e) such other matters as the county government may consider necessary for licensing in the respective county.

11. A county executive committee member may refuse to issue a licence under this Act where—

Refusal to issue a licence.

- (a) the applicant has submitted false or misleading information in the application;
- (b) the application does not comply with the provisions of this Act; or
- (c) the application does not comply with the requirements of a relevant county legislation.

12. (1) A county executive committee member may cancel a licence issued under this Act where the holder of such a licence is in breach of the provisions of this Act or any other relevant national or county legislation.

Cancellation of a licence.

(2) A county executive committee member shall not cancel a licence issued under this Act unless the county executive committee member—

- (a) issues the holder of the licence a notice, of at least fourteen days, of the intention to cancel the licence; and
- (b) grants the holder of the licence an opportunity to be heard on the intended cancellation.

(3) The notice specified under subsection (2)(a) shall—

- (a) be in writing;
- (b) notify the holder of the licence of the breach and the steps required to be taken to ensure compliance with the relevant law and avoid cancellation;
- (c) inform the holder of the licence of the timelines within which compliance is required; and
- (d) contain such other information as the county executive committee member may prescribe.

(4) A county executive committee member may, upon request by a holder of a licence, extend the timeline for compliance under subsection (3)(c) for such period as the county executive committee member may consider necessary.

(5) A county government may enact county legislation, not inconsistent with this Act, prescribing further grounds for, and the process of, cancellation of a licence issued under this Act.

(6) A county executive committee member shall inform the holder of a licence issued under this Act of the cancellation of such a licence in writing.

13. (1) A person who is aggrieved by the decision of a county executive committee member under this Act may, within thirty days of being notified of the decision, apply to the Authority for a review of the decision.

Application for review.

(2) An application for review shall be in such form as the Cabinet Secretary may prescribe.

(3) The Authority shall determine an application under subsection (1) within sixty days of receipt of the application and may confirm, vary or reverse the decision under review.

14. A licence issued under this Act is renewable annually.

Licences to be renewed annually.

15. The Authority shall carry out market research and disseminate such information to growers and buyers.

Dissemination of market information.

16. (1) The Authority shall keep and maintain a register of all growers, buyers and other entities registered or licensed to undertake actions regulated by this Act.

Maintenance of registers.

(2) A county executive committee member shall keep and maintain a register of all licenses issued under this Act.

(3) A county executive committee member shall furnish the Authority with information on all growers registered and licences issued, cancelled or renewed by the county executive committee member on the fifth day of every month.

PART IV– MISCELLANEOUS PROVISIONS

17. (1) A person who commits an offence under this Act for which no penalty is provided is liable, on

Penalties.

conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) Where an offence under this Act is committed by a partnership, company, association or co-operative society, every person who at the time when the offence was committed—

- (a) was director, partner or officer;
- (b) had knowledge or should have had knowledge of the commission of the offence; and
- (c) did not exercise due diligence to ensure compliance with this Act,

commits an offence and is liable for the offence as if that person had themselves committed the offence, unless the person proves that the act or omission constituting the offence took place without their knowledge, consent or connivance and that they exercised diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions as director, partner or officer concerned as aforesaid and to all the circumstances.

18. (1) The Cabinet Secretary may, upon consultation with the Authority and county governments, make Regulations—

Regulations.

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make Regulations to provide for—

- (a) the regulation of the processing, importation and exportation of mung bean and mung bean products;
- (b) the forms to be used in the application for registration, licensing, contracts and related activities;
- (c) the process of application for registration, licensing and related activities; and

(d) any fee which may be charged for anything done under this Act.

19. A county government may enact legislation, not inconsistent with this Act, to make further provision for the performance of functions and exercise of powers of the county government under this Act.

County
legislation.

20. The Crops Act shall not apply to the production, development and regulation of mung beans.

Exclusion from
application of No.
16 of 2013.
No. 16 of 2013.
Previous
authorizations.

21. All directions, orders and authorizations given, or licenses or permits issued, or registrations made by the Authority in relation to mung bean, and subsisting or valid immediately before the commencement of this Act, shall be deemed to have been given, issued or made by the Authority as the case may be, under this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to provide for the development, regulation and promotion of the mung bean sector in Kenya. It provides for the support of farmers of mung beans in each county in the production and marketing of their produce.

The Bill also provides for the regulation of the production and sale of mung bean products by county governments and the Agriculture and Food Authority. It also encourages the use of mung beans as a food security item by the National and county governments in their various feeding policies and programs.

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

This Bill, once enacted, would confer on the Cabinet Secretary responsible for agriculture the power to make regulations for the purpose of bringing into effect the provisions contained in the Bill. It therefore delegates limited and conditional legislative powers.

The Bill does not limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in that it contains provisions relating to the development, regulation and promotion of the mung bean sector. Mung bean is an agricultural produce. Paragraph 1 of Part 2 of the Fourth Schedule to the Constitution designates agriculture as a function of county governments.

It therefore follows that the development, regulation and promotion of mung beans would affect counties in the performance of the agriculture function. The Bill therefore affects the functions and powers of county governments in terms of 110(1)(a) of the Constitution.

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

The Bill deals with matters other than those listed in the definition of a money Bill under Article 114 (3) of the Constitution and is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 22nd July, 2020.

ENOCH KIIO WAMBUA,
Senator.