



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
IRRIGATION**

**REGULATORY IMPACT STATEMENT (RIS)
THE CROPS (FIBRE CROPS) REGULATIONS 2019**

FEBRUARY, 2019

Introduction

The Regulatory Impact Statement for the proposed Crops (Fibre Crops) Regulations was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instrument Act, 2013. Section 6 of the Act requires a regulation making authority to prepare a regulatory impact statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Section 7(1) and (2) of the Act set out the contents of a regulatory impact statement for the proposed Regulations as follows:

1.0 A Statement of the Objectives and Reasons for the Proposed Regulations

The regulatory objectives and justifications for the Regulations are to:

- a. Consolidate the Regulations that relate to fibre crops. Currently, the two main fibre crops, being sisal and cotton, are regulated separately by Sisal Industry Rules and Cotton (General) Regulations, 2007 respectively made under the repealed Agriculture Act Cap. 318 Laws of Kenya. The proposed Regulations seek to bring the two crops under the same regulatory framework.
- b. Ensure a level-headed competition for various players in the fibre crops industry. The Regulations seek to provide for standardized sample boxes, fibre quality assessment for trading purposes, use of kilogram units, and baling in standard sizes and weights in fibre crop sale, frameworks for establishing standards of fibre crops nurseries and packaging of cotton and sisal.
- c. Provide for a regulatory framework for registration and licensing of dealers in the fibre crops industry. The Regulations provides for the registration of the growers and makes further provisions for the licensing of fibre crops ginning, milling and factory businesses, buyers, fibre crops buying stores and marketing agents. The Regulations also provides for the framework of issuance of permits to exporters and importers of fibre crops.
- d. Encourage collaboration between the county governments and the national government in the regulation of fibre crops industry. The Regulations posits that the relationship between the two levels of government shall be consultative and complementary in nature. The

Regulations recognizes the two levels of governance and provides for functions carried out at each level or in consultation with the county government.

- e. Protect the consumers in the fibre crops industry through setting the standards of fair trading and marketing in fibre crops and fibre crops products in Kenya. This is to be achieved through setting out of a revisable pricing formula, improving efficiency in grading and placement of restriction in the mixing of cotton grades.
- f. Establish the framework of inter-agency cooperation to streamline operations in the fibre crops industry. The Regulations provide for the relationship between the Kenya Plant Health Inspectorate Services (KEPHIS) and Kenya Agricultural Research and Livestock Organization in regulation of seed merchanting and cotton seed planting respectively.
- g. Provide the fundamentals of management of contracts with stakeholders in the fibre crops industry. The Regulations establish a framework for the verification and registration of the contracts with the AFA as a requirement for enforceability of contracts.
- h. Full implementation of the Regulations will aid to advance the manufacturing pillar of the National Government's Big Four Agenda through increased productivity in the fibre crops industry. The Regulations will result in increased farm incomes, increased export revenues and foreign exchange earnings.
- i. Other objectives of the Regulations which are proposed to be implemented through the Fibre Crops Directorate include: facilitate formulation of general and specific policies for the development of the fibre crops sub-sector; provide guidelines and standards for the establishment of collection centers in viable areas; facilitate marketing and distribution of fibre and fibre products; develop, standardize and disseminate training materials on fibre crops; recommend general industry agreement between farmers and processors of fibre crops and any other players; set standards for acquisition of high quality planting materials; establish and maintain an up-to-date database and

disseminate information on fibre crops for planning purposes; and provide pricing guidelines for fibre with regard to quality and international market scenario etc.

- j. Overall, the Regulations seeks to create an administrative environment for smooth running of affairs in the fibre crops industry through imposition of licensing conditions and other obligations on the fibre crops dealers and enhancement of accountability through the set framework for making returns.

2.0 Statement on the Effect of the Proposed Regulations

2.1 Effects on the Public Sector

- a. A well organized and coordinated fibre sector is expected to attract more investors into the industry.
- b. Both National and County Governments are expected to benefit from service charges and fees paid for acquiring licenses.
- c. Increase in government revenues is expected to spur economic growth
- d. Establishment of cotton and sisal factories is expected to create employment for Kenyan citizens especially in rural areas.
- e. Production and processing of sisal and cotton is expected to act as a sustainable alternative to plastic bags which were banned recently.
- f. Full implementation of these Regulations will advance the manufacturing pillar of the National Government's Big Four Agenda through provision of raw materials which will result in increased productivity in the fibre crops industry. The Regulations will facilitate increased farm incomes, increased export revenues and foreign exchange earnings.

2.2 Effects on the Private Sector

- a. Small-scale farmers are expected to benefit from increased yields which are expected to translate into increased incomes.
- b. The establishment of cotton/sisal pricing committee for release of indicative prices is expected to minimize the exploitation of growers.
- c. The Regulations are expected to bring about operational efficiency in the industry and thus the ease of doing business.
- d. The Regulations also provide that the Fibre Crops Directorate in conjunction with county governments will facilitate formulation of other specific policies and guidelines for the development of fibre crops.
- e. The adherence to fibre crops standards set out in the Regulations is expected to increase demand and create new markets especially at the international level where consumers demand good environmental

conditions and efficient regulatory framework in the production and processing processes of the products they buy.

2.3 Effects on Fundamental Rights and Freedoms

- a. There are no foreseen negative impacts on fundamental rights and freedoms in relation to the proposed Regulations
- b. The proposed Regulations shall have a positive impact. They will provide better returns on their produce and investment to existing and new farmers. The Regulations will also create wealth and employment for more Kenyans in the rural areas. This will contribute to improved household incomes and enhance capacities to afford an adequate standard of living envisaged in article 43 of the Constitution.
- c. The proposed Regulations seek to advance the Government's policy of implementing reforms in the fibre sub-sector aimed at achieving the national goals set out in the Kenya Vision 2030 whereby the agricultural sector shall be a key driver of economic growth and value addition. The Regulations will not only enhance public participation of the players in the sub-sector but also ensure consumers of fibre crops and their products have quality and are safe as required in article 46 of the Constitution.

3.0 Statement on Regulatory & Non-Regulatory Options

3.1 Option 1: Maintaining the Status Quo

The option of not promulgating or adopting the Regulations will mean that the Regulations made under the repealed statutes will continue to apply. This will mean that there will be gaps in the regulatory framework considering that there is urgent need to implement and enforce the provisions of the Crops Act which has consolidated laws relating to the agricultural sector and repealed various statutes that applied to this sector. The proposed Regulations are targeted to the specific categories of crops and have consolidated and improved existing regulatory framework.

The Cotton (General) Regulations, 2007 and the Sisal Industry Rules have proven to be unable to adequately address the challenges facing cotton and sisal production and marketing in the country. As such the status-quo will only sustain the challenges facing the fibre sub-sector and will prolong the quest for solutions and revival of the high valued cotton and sisal crops. The option of maintaining

the status quo is not sustainable and the RIA recommends that the Fibre Crops Regulations, 2019 be put in place to improve on fibre crops sub-sector's performance and ensure achievement of Vision 2030 becomes a reality.

The prevailing circumstances in the fibre crops sector present a situation in which the urgency to act immediately is imperative; not acting immediately will mean the fibre sector will continue facing mentioned challenges. Therefore, the option of doing nothing is very costly in the troubled fibre sub-sector. For example, most of the ginneries in Kenya have closed due to lack of sufficient cotton to sustain their operation. Doing nothing will therefore allow the trend to continue and it is possible to reach a point whereby we will no longer be producing cotton or sisal. The option may also have negative consequences on the achievement of Kenya's Vision 2030 which under Second Medium Term Plan (2013 – 2017), implementation of the Consolidated Agricultural Reform Legislations include preparation of necessary Regulations to actualize implementation of the Acts for this case The Agriculture and Food Authority Act, 2013 (AFA) and the Crops Act, 2013. In light of the issues raised above, the RIA implores the adoption of the Regulations and averts the challenges currently being faced by the fibre crops sub-sector.

If the status quo is maintained county governments will not play any role in the regulation of the sub-sector thus contravening the Fourth Schedule of the Constitution, section 6 of the Crops Act, section 29 of the AFA Act and relevant provisions of the County Governments Act.

3.2 Option 2: Passing the Regulations

The passing thus the implementation of the proposed Fibre Crops Regulations will be critical in reviving the fibre crops sub-sector. The Regulations are expected to bring together all the fragmented cotton and sisal Regulations which is key in reducing the inefficiencies and ineffectiveness that have hindered the growth of the sub-sector. The current Regulations (for example (Cotton Regulations, 2007) have been found to be general. The proposed Regulations propose to address the problem by providing clear guidelines for the regulation, promotion and development of the fibre crops. For example, the Regulations have provided a clear framework of roles of different stakeholders in the sub-sector which is lacking in the existing Regulations.

For Kenya to meet its Vision 2030 of becoming an industrialized nation, the implementation of the proposed Regulations is key. The proposed Regulations are also important for other Regulations, policies and statutes in providing the much needed complementarity and holistic growth. They include the Agriculture and

Food Authority Act, 2013 (AFA), the Crops Act, 2013, Kenya Youth Agribusiness Strategy 2017-2021 and the Kenya Agricultural & Livestock Research Organization (KALRO) Act, 2013.

3.3 Option 3: Other Practical Options

Other practical options of achieving the objectives of the proposed Regulations could include dissemination of information and education, market-based structures, self-regulation and co-regulation. The RIA did not however, note these as feasible options of achieving the objectives of the proposed Regulations.

4.0 Costs-Benefit Analysis (CBA)

4.1 Economic, Environmental and Social Impact

The economic impact of the regulations will include:

- a. There will be an increase in both productivity and production of cotton and sisal as cash crops for both local and export markets.
- b. Regulations will ensure that an organized cotton and sisal industry benefits from increased exports of finished fabrics and products to international destinations.
- c. The proposed Regulations will lead to increased value addition and product diversification resulting from improved economic incentive of enhanced export markets. The ginneries that have been dormant for decades are likely to spur back to life.
- d. Regulations will increase earnings from cotton and sisal products exports and this will ensure steady flow of foreign exchange for the exchequer and key stakeholders.
- e. Smallholder households, producer organizations and cooperative societies will benefit from a more organized fibre crops sector thus enhancing incomes received for producers, processors, transporters and other value chain actors in the sector.
- f. There will be steady flow of direct foreign investment through new investments in production, value addition and marketing of Kenyan cotton and sisal crop products.

The social impact of the Regulations will include:

- a. Cotton growers are grappling with high cost of chemicals, pests, lack of improved seeds, low finances, scarce water for irrigation and thus not able to expand cotton farming.
- b. The Government will ensure high production has been achieved. It plans to strengthen farmer organizations and cluster them into seven clusters -Upper Eastern, Lower Eastern, Bura Hola, Coast (Lamu, Kilifi and Kwale), Taita Taveta, Rift Valley and Lake Region (Western and Nyanza).
- c. The clusters which will be formed by strong county co-operatives will be the points of input acquisition, marketing and value addition and thus help in taming cost of production.
- d. Farmers in each cluster will be able to enjoy benefits of economies of scale, increased use of recommended inputs and ease of application of a targeted support programme including best agronomic practices. For farmers to achieve high production to meet the local demand, the national Government and county Governments will commercialize high-yielding cotton varieties and establish a certified seed system.
- e. Employment is targeted in the sector because of the anticipated revitalization of cotton growing, cotton ginneries, commercialization of genetically modified cotton and the revival of the sisal industry including value addition.

The environmental impact of the Regulations will include:

- a. The Fibre Crops Regulations will lead to environmental sustainability. The Regulations have proposed a raft of measures that ensures that there is no adverse effects to the environment as a result of introduction of new (Bt) cotton varieties that are genetically modified to increase yields. Similarly, an increase in use of natural fibres like cotton and sisal will reduce use of artificial fibres that pollute the environment.
- b. Improved land conservation, utilization and management.
- c. Reduced soil degradation due to improved plant cover and reduced soil operations.

4.2 Administration and Compliance Costs

The Regulations will result into increased cost towards revitalization of the cotton industry. The Government is now fast-tracking far-reaching measures to revive cotton crop in 22 Counties where these crops are grown. Under a comprehensive plan, the Government aims to increase current production and quality, improve processing efficiency and promote marketing and expansion of trade. This calls for initial budget allocation that will implement all these measures for the good of the sector.

Additional resources would be required for operationalization of the Regulations which will include human resource and operation costs for enforcement as well as for awareness creation of the Regulations to the different stakeholders in the cotton and sisal sub sectors. More resources will go to the implementation of the wider National Agriculture Policy which supports extension services for strengthening knowledge transfer and technology distribution among the farmers, whose implementation will augment the achieving of the objectives of the Regulations.

The Regulations also support the strengthening of sustainable research and development of new cotton varieties, promoting strong partnerships with institutions and developing and enforcing a regulatory framework including quality standards are other strategies to be pursued. This implies that there will be increased resource allocation to strengthen activities under research.

The Regulations and strategies to revitalize the cotton industry are contained in a Cotton Comprehensive Plan the Government has developed to resuscitate the sub-sector in the next four years. The Government's plan is to mobilize all the sub-sector stakeholders with a view to achieving an integrated value chain.

4.3 Assessment of Return on Investment (Benefit)

The regulatory impact assessment notes that passing and operationalization the Fibre Crops Regulations will be beneficial in facilitating development of the cotton and sisal sub sectors through liberalization of the sub sector to allow vibrant participation of the private sector, improved level of productivity, increased value addition, efficiency in cotton and sisal production, manufacturing and marketing to guarantee improved incomes for the farmer and thus improved livelihoods and social welfare for communities, while also guaranteeing other businesses within the value chains good returns and higher export earnings for the country.

Other benefits are as follows:

- a) Improved and more efficient agricultural advisory services will support the farmers to improve the productivity of cotton/sisal and also improve on quality.
- b) Increased access to quality planting materials for cotton and sisal by smallholders will result to increased cotton and sisal acreage, increased yields and improved quality.
- c) New manufacturers, processors, dealers and other value chain actors will be attracted to invest in the more efficient cotton sub sector providing farmers with alternative market options for their produce.
- d) Processors, dealers, and other value chain actors will be assured of sufficient quantities of produce/products of acceptable quality for sustained operations of their businesses.
- e) A comprehensive sector database including for cotton and sisal growers, nursery operators, processors and dealers, sector data, research information and data, seed and seedlings production and distribution, exports and market demand etc. will be developed and maintained to inform sector planning and future investments.
- f) More efficient cotton and sisal marketing structure will eliminate brokers and excessive exploitation of growers.
- g) Increased national production and value addition will translate to increased exports of the cotton and sisal products.
- h) Increased production will translate to increased job creation through farm labour, cotton and sisal processing and products manufacturing, value addition, marketing and auxiliary services.
- i) Increased production of cotton and sisal will also translate to increased exports and thus increased foreign exchange earnings.

4.4 Quantification of the Benefits

The Fibre Crops Regulations have come in the wake of Government and stakeholders efforts to revitalize the sector that was once vibrant. The new Regulations support stakeholders moves to revamp the sector and already, inherent economic benefits have been foreseen. According to the Agriculture and Food Authority, cotton growing in Kenya can support up to 200,000 farmers. However, just 30,000 are growing cotton. Only 21,000 hectares are under cotton production (572 kilograms per hectare) while the country has a production potential of 400,000 hectares; feed The Future (2018): Policy Brief Enhancing Investment Attractiveness in Kenya's Cotton Sector, (FtF, 2018).

Currently, only 21,000 bales of lint are produced annually against a demand of 140,000. The Regulations will result into an improved business environment that will spur farmers to increase production (FtF, 2018).

As the country gears up for the adoption of superior cotton varieties including genetically modified (Bt) cotton, there is a potential production of 420,000 bales or more. The proposed Regulations are in line with the biosafety Regulations that seek to commercialize genetically modified cotton. Already, the Horticulture Research Institute has started national performance trials of Bt cotton in Kisumu after the National Environmental Management Authority gave the green light. Through production using superior varieties including Bt, Kenya can increase income in the textile industry from Sh3.5 billion to Sh2 trillion by 2022 (KALRO, 2018).

Currently, twenty one Counties produce cotton. They include Kitui, Machakos, Makueni, Isiolo, Embu Tana River, Taita-Taveta, Kwale, Kilifi and Lamu. With the new Regulations, these Counties will be encouraged to increase their production. The total installed annual ginning capacity of ginneries is 140,000 bales. Currently, the combined available operating ginning capacity is 70,000 bales at full capacity for six months (FtF, 2018).

The Regulations are likely to lead to creation of 500,000 cotton jobs and 100,000 new jobs in cloth making industry.

4.5 Distribution of Impact

The operationalization of the Fibre Crops Regulations, 2019 is poised to generate more positive than negative impacts/risks if they are implemented with sufficient financial, logistical, technical and human resources. These impacts are projected to spread in various ways. Proper coordination and regulation is expected to be an incentive for farmers and other stakeholders to invest in the sector. It is therefore expected that production of fibre crops will increase hence more income at the household level which will allow for hiring of human labour. Cotton and sisal products are expected to be used as alternatives to plastic bags which acted as a threat to the environment in form of pollution. The products are preferred to plastic because they are sustainable because of their biodegradability nature.

The production of cotton and sisal is expected to increase as more farmers are incentivized to revert to cotton and sisal production or increase crop acreage by a more efficient production system that provide the much needed support. The Regulations obligates prompt payment to growers by processors for their deliveries. Improved access to quality planting materials and research findings supported by better agricultural advisory services will further contribute to increased production.

Because of increased cotton and sisal production, increased farm incomes will allow farmers hire extra labour to work on their farms to support the increased farm production as well as contribute to new capital formation. Other processes within the value chain will also create employment opportunities including processing through ginneries, textiles and cloth manufacturing companies.

As more cotton and sisal is produced in the country, more farmers will focus on maximization of yield rather than the sprawl of agriculture due to the population pressure on resources, including wetlands, forests, etc. The more that farmers realize increased returns from their land, the better it will be for the environment as the crop yields on the same operated arable land will increase and be sustained rather than creating a sprawl into new land openings, while the land will be maintained under a good crop cover. Socially the farm families' livelihoods will be enhanced and sustained, allowing for better health care, education and wealth creation among the families.

The impact on public sector as a result of the Regulations will also be felt through coordination of a streamlined cotton and sisal sub sector which will then be significantly improved, with the Government and its agencies' role being strictly that of regulation and leaving sector business to the private sector. The improved production and value addition for cotton and sisal crops will contribute to increased exports and earning in foreign exchange for the country. Counties where these crops will be cultivated will register increased incomes for households and revenue collection leading to improved welfare amongst the population.

5.0 Reasons why other Regulatory Options are not Appropriate

The other regulatory options were considered and it was found necessary that the fibre crops industry needed Regulations in order to improve performance and benefit flows in the sector which is a key enabler in the manufacturing sector as a source of raw materials and foreign exchange earner among the smallholder farmers who depend on it for their livelihoods. The organizations at the moment will very unlikely cooperate to formulate and implement a co-regulation in the industry, and thus co-regulation may not be practically possible currently in the Kenyan fibre sector.

6.0 Conclusion

The draft Fibre Crops Regulations provide for proper regulation, promotion, development and oversight of the fibre crops industry in Kenya. The

operationalization of the Fibre Crops Regulations, 2019 is poised to generate more positive than negative impacts/risks.

7.0 Recommendations

The RIA recommends the passing and operationalization of the proposed Crops (Fibre Crops) Regulations, 2019.