



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES & COOPERATIVES**

**AGRICULTURE AND FOOD AUTHORITY**

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**REVISED REGULATORY IMPACT STATEMENT (RIS)**

**CROPS (MIRAA) REGULATIONS, 2021**

**AUGUST, 2021**

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## **Introduction**

The Regulatory Impact Statement for the proposed Crops (Miraa) Regulations, 2021 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instruments Act, 2013. Section 6 of the Statutory Instruments Act, 2013 requires the Regulation Making Authority to prepare a Regulatory Impact Statement (RIS) 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 purpose of these Regulations is to guide the development, promotion, and regulation of miraa for the benefit of the miraa growers and other stakeholders in the miraa industry. The Regulations provide for-

- i. Procedures and conditions for registration of dealers;
- ii. Procedures, terms and conditions for the issuance of licenses and permits under these Regulations;
- iii. Issuance of export and import permits;
- iv. Collection and maintenance of data related to miraa;
- v. Compliance and enforcement of miraa standards to ensure quality assurance and safety;
- vi. Promotion of best practices in production, grading, transportation sorting, packaging and packing of miraa.
- vii. Guidance on contracts between buyers and growers of Miraa
- viii. Assurance of safety and quality of produce and products
- ix. Marketing of Miraa produce and products

### **2.0 Statement on the Effect of the Proposed Regulations**

#### **2.1 Effects on the Public Sector**

The proposed Regulations will affect the public sector in the following ways:

- i. The Government will introduce formal controls and regulations in the Miraa industry and establish the necessary structures and environment including dispute Resolution mechanisms and compliance enforcement structures and a miraa pricing formula committee to support the promotion and development of the industry for the benefits of the miraa growers and other stakeholders.
- ii. Miraa markets which are currently mainly informal, unstructured, and poorly organized and have no quality and operations standards and are dominated by organized cartels will

- be designated, better organized and structured and have harmonized trade and operations standards.
- iii. The Miraa value chain in the country has remained informal having virtually no regulation, these regulations will provide a good framework for the regulation of the value chain, with all actors registered and/or licensed; standards defined and developed, miraa imports and exports licensed, miraa markets designated and regulated and improved data documentation among others, allowing for improved regulation, compliance monitoring and effective enforcement within these markets.
  - iv. The regulations will provide an effective avenue for the introduction of other institutional innovations such as grading, codes of practice, contracting and collective marketing, and hence further market development in this value chain. It is normally difficult to introduce grading and standards systems into markets where most trading happens informally.
  - v. The improved documentation of transactions including crop acreage, trade data, registration and licensing of the different Miraa actors will provide reliable real-time data and other important details on the actual produce, markets, prices, trade volumes both local and exports allowing for better planning, informed decision making and proactive interventions in the industry
  - vi. The increased use of high-quality planting materials and the increased support from national research institutions and the introduction of effective Agricultural Advisory services in Miraa will increase production, and reduce field and post-harvest losses there increase produce available for export and thus increased foreign exchange earnings
  - vii. The introduction of different levies and fees will increase revenue collection for the national and county governments.
  - viii. Enhanced waste management systems will promote public and environmental health;
  - ix. The regulations will provide individual County Governments with a well-organized Miraa marketing policy and strategies implementation structure at the local level, especially with the registration and licensing of all Miraa actors, improved data and information documentation, effective regulation and better coordination of the industry in the county thus promoting the Miraa value chain and trading development in the counties.
  - x. Promote adoption of food safety, an effective traceability mechanism hygiene and produce quality standards across the Miraa industry operations will ensure access to quality and healthy Miraa in the country and for export markets increasing acceptability of Kenya's Miraa especially in foreign markets and reducing health challenges resulting from consumption of poor quality, contaminated and unhealthy Miraa, contributing to reduce public health provision costs.
  - xi. Implementation of the regulations will create employment opportunities to support the increasing Miraa production and trading, formalized Miraa industry operations and resultant auxiliary services, contributing to the Government agenda of employment creation.
  - xii. The broader agricultural sector and national economy will benefit from the increased volumes of production and regional and export trade from the industry and thus increased foreign exchange earnings

- xiii. A well-regulated miraa industry will provide a focus for the development of the entire Miraa value chain, providing incentives for a range of different parties, including farmers, financiers, traders, processors, exporters, and investors in the industry, contributing to the overall development of the Agricultural sector in the country.

## **2.2 Effects on the Private Sector**

The proposed Regulations will potentially affect the private sector in the following ways:

- i. The private sector actors in the industry will stand to benefit from the introduction of a well-structured, organized and regulated Miraa which will provide a conducive operating environment for their different businesses, promote fair trade and shield them from the frequent negative effects of Government pronouncements and actions on the industry and the control of operations cartels, and contribute to improving the public perception of the industry.
- ii. The reduced control of Miraa trading by industry cartels and marketing contracting will increase margins and reduce price volatility, thus stabilize the incomes for the different actors especially the farmers who are victims of middlemen exploitation particularly during peak harvesting seasons.
- iii. Collective marketing through growers' associations, marketing contracting and the establishment of designated Miraa markets will avail smallholders, farmers, a market window that can help them secure the best possible deal by providing them with better positions for negotiation and economies of scale while also allowing them to deal directly with downstream buyers and financiers, and overcome asymmetric power relationships within the market chain.
- iv. The increased use of quality and clean planting materials, increased industry support from national research institutions and enhanced provision of agricultural advisory services will increase production, reduce the post-harvest losses, and improve quality of produce thereby increasing incomes for farmers and traders from marketing increased volumes and quality of produce.
- v. Increased production, promotion of value addition, reduced post-harvest losses, reduced produce price volatility and effectively regulated operations in the industry will increase incomes of businesses in the industry making them viable and sustainable enterprises as well as improving the livelihoods of the investors and employees.
- vi. Adoption of food safety, hygiene and produce quality standards and a traceability mechanism across the Miraa industry will enable farmers and traders better access standards' sensitive markets locally, regionally and internationally.
- vii. Implementation of the regulations will create stable employment opportunities in the increased agricultural production, the formalized industry operations and resultant auxiliary services, thus improving the livelihoods of many families across this system.

- viii. A well-regulated Miraa industry will enhance transparency in all the transactions across the operations and protect farmers, traders, and financial institutions and other actors from business risks associated with lack of information or fraudulent transactions.
- ix. Accurate and real-time data on industry actors, crop acreage, nurseries' seedlings production and distribution, trade volumes and prices, produce sources, and existing and potential markets will be readily available to the industry players for better business planning and operations.
- x. The industry will be well streamlined and operate on common standards thereby promoting fair trade practices and eliminating or reducing unscrupulous players in the industry especially the over-exploitative middlemen and cartels.
- xi. The general Miraa population consumers will be assured of quality health products, reducing health problems associated with ingesting contaminated feeds and thus reducing medical expenses for households.
- xii. Miraa farmers and other Miraa industry actors will get recognition upon registration and licensing of their informal businesses, thus allowing them more access to development and support services and opportunities available to MSMEs in other industries.
- xiii. The miraa pricing formula committee comprising representatives from the different segments of the miraa sub-sector stakeholder will determine the formula of miraa pricing and thus ensure fair Miraa pricing in the industry for the benefit of all actors and especially the smallholder farmer.
- xiv. Miraa farmers and other industry actors will be required to pay various requisite fees and levies and re-align their operations to the provisions of these regulations which will increase their costs of doing business and may result in loss of some businesses that will not meet the specific requirements of these regulations resulting to the loss of livelihoods for some families.

### **2.3 Effects on Fundamental Rights and Freedoms**

It shall provide a better return to agricultural produce and investment to the farmers and commercial Miraa transporters. This will greatly contribute to improved household incomes and an enhanced capacity to afford adequate standards of living as envisaged under article 43 of the Constitution. Article 43 of the Constitution provides for economic and social rights. It affirms the rights of individuals and communities to an adequate standard of life including the right to the highest attainable standard of health. The State should allocate and provide resources for the progressive realization of these rights.

Article 36 of the Constitution provides for freedom of association which includes the right to form, join and participate in the activities of an association of any kind. Regulation 5 promotes and protects this right by providing for the registration of the smallholder growers associations by the Authority to access economies of scale.

Article 47 of the Constitution obligates the administrative authority to ensure expeditious, efficient, lawful, reasonable and procedurally fair administration action/decision. Regulation 16(5) promotes the realization of this right because it requires the Authority to within two days after receiving an application for an import permit for consignment of Miraa products in the

prescribed form to issue the import permit to the Applicant upon satisfying itself that the requisite conditions have been met. This is an expeditious and reasonably fair process.

However, the Regulations do not expressly provide for giving of reasons by the enforcement authorities for their decisions made in respect to the activities by the dealers. For instance, Regulation 16(7) does not direct the Authority to give reasons to a Miraa and Miraa products exporter for its decision to deny the dealer Miraa an importation permit. This contravenes Article 47 of the Constitution which mandates any administrative body to give reasons for taking a particular administrative decision. In addition, the Regulations do not have provisions on how unsuccessful applicants/Miraa dealers would be informed about the status of their applications. The Regulations do not also provide for timelines within which such communication can be made. It is advisable to include a clause that requires reasons to be provided for a decline or rejection of applications. Failure to adhere to this infringes on the constitutional right to fair administrative action under Article 47(2) of the Constitution which requires that written reasons be given for every administrative action/decision taken.

Article 48 of the Constitution provides for a right to access to justice and an assurance that the state should ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice. However, the Regulations do not align themselves to the set provisions of the Constitution on access to justice. This is because the Regulations do not provide for any avenue for internal dispute resolution among the players in the Miraa industry.

Article 31 of the Constitution provides for the right to privacy which includes the right not to have one person, home or property searched, possessions arbitrarily seized, information relating to family or private affairs unnecessarily revealed or privacy of communications exposed. Regulation 27(3) gives an inspector unlimited access to premises and vessels transporting or storing Miraa and Miraa products without distinguishing records that are required to be kept under the Act or regulations as in Regulation 27(3). The powers granted to inspectors by the regulations once set out in general terms violate the right to privacy under article 31 of the Constitution. In any case, the right to privacy is not absolute; however, the limitation must be reasonable and justifiable in an open and democratic society. The Consultant recommends the introduction of a provision that requires the inspectors to issue notice to the Miraa dealers before entry and access to their premises or vessels. This will be justified as a reasonable limitation of the right to privacy.

The Regulations also seek to promote the right to access to information under article 35 of the Constitution. Article 35(1) guarantees every citizen the right of access to information held by State or by persons' other person and required for the exercise or protection of any right. This provision is promoted under Regulations 26(5) where the Authority is mandated to publish in the Gazette a list of all appointed inspectors within 30 days upon completion of their training. The publication of the information is to avail it to the public and ensure that every person can access it.

Regulation 28 provides for compliance standards where the Authority is required from time to time to be inspecting sites and produce to ensure conformity to food safety and quality standards as prescribed in Miraa (Khat) Industry – Code of Practice. This ensures conformity and compliance with Article 46 of the Constitution which guarantees every consumer the right to goods and services of reasonable quality and protection of their health, safety and economic interests.

### **3.0 Statement on Regulatory & Non-Regulatory Options**

#### **3.1 Option 1: Maintaining the Status Quo**

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing regulatory framework, thus maintaining the status quo. Examples of this are:

- i. making use of existing laws, regulations and/or guidelines
- ii. simplifying or clarifying existing regulation;
- iii. improving enforcement of existing regulation; or
- iv. Making legal remedies more accessible or cheaper.

It is however to be noted that Miraa was not legally recognized as a crop before 2016, and thus no existing regulations applied to the Miraa industry before 2016. The industry has operated unhindered but unregulated in the country for many decades now.

#### **3.2 Option 2: Passing the Regulations**

Government can achieve its policy objectives by using taxpayer's money or through a range of non-spending interventions, including regulation. The purpose of these Regulations is to guide the development, promotion, and regulation of miraa for the benefit of the miraa growers and other stakeholders in the miraa industry. These Regulations aim to set rules to protect and benefit people, businesses and the environment, stabilizing markets and addressing production and market failures to support the development of the industry. Regulations could also create costs for businesses and the public sectors. It could if overused, poorly designed or implemented, stifle competitiveness and growth.

Adoption and operationalization of the proposed Regulations will:

- i. Facilitate the development of the Miraa industry in Kenya and the necessary support structures and environment
- ii. Provide standards and guidelines for Miraa industry operations; produce traceability and produce quality, thus improving safety, hygiene and produce quality standards while reducing price volatility.
- iii. Promote the development of organized and better-structured Miraa markets with harmonized produce/products quality, operations standards and an effective traceability mechanism.

- iv. Develop and maintain a realistic database on the Miraa industry including registers of the different industry actors, nurseries' seedlings production and distribution, crop acreage, volumes traded, sources and prices, markets, among others for better coordination, control and planning in the industry.
- v. Streamline and coordinate Miraa marketing for a coherent, coordinated and regulated market environment, for oversight and improved management and to remove marketing hurdles that have negatively impacted this industry
- vi. Enhance quality and safety of produce from the farms, during transportation and trading; and produce waste management to better promote human and environmental health
- vii. Create new business opportunities in the Miraa industry, from the farms, other industry operations, agro-processing, financial and insurance services for innovative private sector investors.
- viii. Increase participation of the private sector to support the country's agricultural development agenda as envisaged in the Vision 2030, the Big 4 agenda, the national agriculture policies including the Agriculture Sector Transformation and Growth Strategy (ASTGS) and individual Counties Integrated Development Plans (CIDPs), policies and other strategies to make the agricultural sector a key driver of economic growth and value addition.
- ix. Create employment opportunities in the increased Miraa production, Miraa industry operations and resultant auxiliary services, thus improving the livelihoods of many families across this system.
- x. Reduce the post-harvest losses of Miraa, thereby increasing incomes and thus livelihoods for farmers, traders and vendors from the sale of increased volumes of produce.
- xi. Provide smallholder Miraa farmers with a market window that can help them secure the best possible trade deals especially during peak Miraa harvesting seasons.
- xii. Increase Miraa industry information access to all interested parties, especially smallholder farmers, traders, financial institutions and prospective investors for informed on-farm and investment decisions.
- xiii. Promote fair trade practices and eliminate unscrupulous players in the Miraa industry marketing, and especially the over-exploitive middlemen.
- xiv. Establish a miraa pricing formula committee to determine the formula of miraa comprising representatives from different segments of the miraa sub-sector stakeholders to ensure fair Miraa pricing in the industry for the benefit of all actors and especially the smallholder farmer.

The Regulations are thus important for the development of the Miraa industry for the benefit of all industry stakeholders specifically miraa farmers and for further development of the agricultural sector in the country in general.

### **3.3 Option 3: Other Practical Options**

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, existing policies can be improved, without further regulation, using techniques such as behavioral insight or changing enforcement practices to



improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure.

1. **Alternatives to regulation include:**

- i. **No new intervention/do nothing:** This may include making use of existing laws (or none) and regulations; simplifying or clarifying existing laws and regulations; improving enforcement of existing laws and regulations, or making legal remedies more accessible or cheaper and as discussed in the section above status quo in the sector is likely to remain since the country did not recognize Miraa legally as a crop until 2016 and thus there were no laws or regulations that applied to the Miraa crop till then and the industry has had no form regulation at all.
- ii. **Information and education:** Information and education can be used to empower Miraa industry actors including farmers and other industry actors and stakeholders to make their own decisions, improving choice for the mutual benefit of all. For instance, there are potential risks associated with this, information and education can take time to make an impact. Access to information on the Miraa industry is a big challenge as documentation in the industry has remained very limited to be useful and still even the ability to use the little available information can vary within a community and so may not reach all equally. It may also not be straightforward to assess how people will react or change their behavior in response to the information provided. It will also increase costs for the government and businesses that will be providing the information and education required.
- iii. **Incentive/market-based structures:** The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers etc. as initiatives to realize the desired objectives. These initiatives, however, are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures unlike in the Miraa industry which is yet to be properly established in the country. Further, often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the miraa industry.

2. **Alternatives models of regulation:**

i. **Self-regulation;**

Self-regulation entails industry players developing a framework to self-regulate a sector. This could be done through the use of codes of conduct or practice, customer charters, standards or accreditation. In many cases, rules and codes of conduct or practice will be formulated by the industry representatives or organizations under their own initiative. In absence of well-developed

and all-inclusive industry organizations as in the Miraa industry, self-regulation currently cannot be effectively possible. The Miraa industry code of practice envisaged in the regulations is yet to be developed and implemented.

ii. **Co-regulation.**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice whose enforcement would be by the industry or a professional organization and accredited by the government. In absence of well-developed and all-inclusive industry organizations as in the Miraa industry, effective co-regulation is not possible currently in the country. The Miraa industry code of practice envisaged in the regulations is yet to be developed and implemented.

**4.0 Costs-Benefit Analysis (CBA)**

**4.1 Economic, Environmental and Social Impact**

**4.1.1 The Economic Impact of the Regulations**

**Economic benefits of proposed Regulations are: -**

- i. **Increased Miraa production:** The increased access to quality seedlings for farmers, industry support from research institutions and improved agricultural advisory services will see increased investment in the production and quality of Miraa which will contribute to an increase in agriculture and national GDPs.
- ii. **Employment creation:** The well-developed and regulated Miraa industry in the country will create new employment opportunities both on-farm and off-farm. On-farm employment opportunities will be created by a need for increased labour for the increasing Miraa production as a result of producers' enhanced access to support services and an enabling environment, (re-)investment in Miraa farms and engaging the rural population in production including crop establishment and management, harvesting, grading, packaging and marketing. Off-farm employment opportunities will arise from produce aggregation, agro-processing transportation and marketing. The industry auxiliary services including financial and insurance services will also create more employment opportunities in these fields.
- iii. **Increased farm incomes:** A streamlined marketing structure with no exploitation of farmers by cartels, increased production and supply of Miraa produce to the market and reduced price volatility through the interventions of the pricing committee will increase incomes for farm families engaged in Miraa production.
- iv. **Increased trading and value addition for Miraa,** further contributing to increased agriculture and national GDPs
- v. **Reduced health costs:** The general improved health of the Miraa consumers as a result of improved access to quality produce that meet food safety and quality standards, reducing health expenses for individual household as well as for the public health services.

- vi. Increased foreign exchange earnings from increased regional and international trading and export of Miraa
- vii. Increased savings and investment by the different actors within the Miraa industry by farm families; warehouse operators, traders, agro-processors etc.

**Economic costs of the proposed regulation are:**

- i. Effective implementation of the Regulations will require increased investment in production, grading, packaging, transportation, marketing, registrations, certification and licenses which will increase the cost of doing business. This cost is likely to be transferred to the consumer thus increasing the Miraa prices.
- ii. Implementation of these regulations will require concerted efforts and investments to support a rigorous and effective regulatory system from the Authority, county governments and other complimenting agencies
- iii. The National and County Governments have to invest in Miraa industry stakeholders' education to introduce the regulations to them for their total buy-in before the full and effective implementation.
- iv. Given a large number of actors in the Miraa industry and their spread across the country, the investment to monitor for compliance has to be significant to realize and sustain the benefits of the regulations.
- v. The Regulations will also introduce additional transactional costs and bureaucracy due to the many processes envisaged in the Regulations resulting in increased cost of doing business and time delays for businesses.

**4.1.2 The Social Impact of the Regulations**

Miraa is a social habitual commodity. There are still huge gaps to fill in the information on some of the perceived benefits or social costs.

**The social benefits of the proposed Regulations include:**

- i. Improved Miraa consumer's health - High quality, healthy and hygienic food available for consumers due to the widespread adoption of food safety and quality standards. In addition, research by Kenya Medical Research Institute (KEMRI) show Miraa has some health benefits in weight management, reproductive health and reduces heart diseases
- ii. Source of livelihoods: Miraa is of extreme importance to poor rural households because it is drought tolerant and has low production costs, thus a valuable source of livelihood in dry areas.
- iii. Income diversification for families – Alternative source of income for smallholder farm families from Miraa production and trading

- iv. Improved income distribution among the farm families and the communities in general and thus reduced inequalities due to production and increased participation in produce marketing in the industry by smallholder farmers, traders and vendors.
- v. Improved education levels and reduced illiteracy in the societies due to improved incomes and thus improved social wellbeing of the rural communities.
- vi. The reduced tide of rural-urban migration in search of employment opportunities;
- vii. Reduced food aid dependency in the Miraa producing counties and the country in general due to increased families' incomes.

**The social costs of the Proposed Regulations include:**

- i. Miraa chewing generally promotes idleness, implying a loss of time that would otherwise have been used for productive work, reducing productivity in the local economies.
- ii. Increase in child labour engagement in the financially attractive industry
- iii. Addiction to chewing miraa drives most consumers to use huge domestic budgets on Miraa thus creating a strain on family relationships
- iv. Heavy Miraa consumption commonly results in anti-social behavior and health effects such as insomnia among consumers.
- v. High doses and chronic use of miraa can cause adverse neurological, psychiatric, cardiovascular, dental, gastrointestinal and genitourinary health problems.
- vi. Miraa production and consumption are often associated with criminal activities, thus increased production and consumption may increase insecurity.

**4.1.3 The Environmental Impacts of the Regulations**

**The environmental benefits of the proposed Regulations are:**

- i. Reduced soil degradation due to improved plant cover from increased investment in Miraa production
- ii. Improved land utilization and management especially in low potential areas
- iii. Improved environmental health from enhanced Miraa produce waste management

**The possible negative impact of the Regulations may include:**

- i. Increased soil degradation due to increased soil operations and increased use of agrochemicals to support increased agriculture produce production
- ii. Poor disposal of increased Miraa waste

However, with proper and effective implementation of these regulations, these negative environmental impacts can be significantly mitigated and impacts reduced.

## **4.2 Administration and Compliance Cost**

The RIA notes that resources would be required for operationalization of the Regulations which will include human resource and operation costs for monitoring compliance and enforcement as well as for awareness creation of the Regulations to the different stakeholders in the Miraa industry and particularly the large population of smallholder Miraa farmers, traders and vendors in the country and for promoting and supporting the development of the Miraa industry structures across the country. It is assumed that additional resources will go to the implementation of the wider national agriculture policies which support, crop research and development in Miraa, agricultural advisory services and which is now a devolved function for strengthening knowledge transfer and technology distribution among the farmers, capacity building of industry actors, and in the implementation of the regulations, agriculture sector transformation and growth strategy, the Government's Big 4 agenda, County CIDPs and agriculture and trade sectors specific policies and strategies and other relevant sector national policies and strategies.

## **4.3 Assessment of Return on Investment (Benefit)**

Passing and operationalization of the proposed Regulations will be critical in facilitating the development, promotion, and regulation of miraa for the benefit of the miraa growers and other stakeholders in the miraa industry in the country. This will significantly transform the marketing of Miraa which is currently, inefficient, poorly structured, dominated by unfair trade practices and with shrinking export markets. The regulations also seek to promote crop research and crop development through the use of high-quality Miraa varieties and improving farmers' access to quality planning materials. This coupled with enhanced capacity building of farmers on good agricultural practices (GAPs) and other key technical areas in Miraa production including crop harvesting and post-harvest management of the produce through the provision of industry targeted agricultural advisory is expected to increase Miraa production and the productivity of farmers' Miraa fields while reducing the current high post-harvest losses. This will result in increased volumes of quality Miraa produce available for the market meaning increased earnings for the farmers, traders and vendors, and also increased foreign exchange earnings for the country. The promotion of collective action among the farmers through the formation of growers' associations, produce aggregation at the associations levels and marketing contracting will give the farmers better negotiating positions enabling bargaining for better prices and other terms of trade and thus allowing them to benefit from the economies of scale in the marketing their produce collectively.

The regulations will also create a level playing field for all industry players and promote transparent and fair trade practices in the industry to support Kenya's agricultural development and manufacturing pillars as envisioned in the Vision 2030, the Big 4 agenda, ASTGS and

individual counties' CIDPs and the various county policy instruments to harness the potential of the industry to spur economic development in the Miraa producing areas and contribute to the nation's development.

The regulations will introduce applicable food safety and quality standards in the Miraa industry and envisages the development of specific Miraa standards. The will ensure that the quality of Miraa produced in Kenya meets the set quality and hygiene standards and thus assuring the consumers of food safety of the produce which is consumed in its fresh form. Compliance with these standards and the establishment of an effective traceability mechanism also envisaged in the regulations will make Kenya's Miraa more competitive in the global market and thus support efforts to recover key lost foreign markets and to develop and enter new markets across the world. The regulations will also regulate Miraa imports and exports thus control illegal trade actions that can negatively impact the Local Miraa and export markets by distorting demand and prices.

Implementation of the regulations will also create numerous employment opportunities both on-farm to increase production and off-farm in the industry and the provision of auxiliary services in the industry.

In broad terms, the RIA notes that the following broad benefits and returns on investment will be achieved:

- i. The Regulations will support the establishment of a well-structured, streamlined, and regulated Miraa industry in the country that will transform and improve Miraa production and marketing for the benefit of all Miraa stakeholders and the country.
- ii. Support organization of Miraa farmers into growers' associations to enable farmers to collectively market their Miraa and/or contract marketing and to optimize economies of scale for farmers
- iii. Introduction of food safety and quality standards and an effective traceability mechanism will improve the competitiveness of Kenya's Miraa in the world market, supporting efforts to reclaim lost export markets and development of alternative export markets and as well as assure consumers of healthy produce
- iv. Support the development of agro-enterprises especially by smallholder farmers and traders, most of whom have faced challenges to establish themselves in the cartel-dominated industry to increase or intensify production and trade.
- v. Improve production and productivity of Miraa with improved farmers' access to effective agricultural advisory services, increased crop research and improved access to quality planting materials
- vi. Improved access to comprehensive reliable data and information continuously maintained by the different actors in the industry and by other service providers will provide a planning and decision-making basis both for the Government and private sector businesses in the Miraa industry

- vii. Promote the production and consumption of standardized high quality and hygienic Miraa produce while creating a level playing field for all industry actors and promote fair trade in Miraa and the country.
- viii. Reduce Miraa prices volatility through the interventions of the Miraa pricing formula committee
- ix. Improve health status of the Miraa consumer population with reduced incidences of consumption of unhygienic Miraa produce
- x. Reduce post-harvest food losses through the development, promotion, adoption and use of appropriate Miraa preservation technologies and value addition of Miraa
- xi. Create numerous employment opportunities both on-farm and off-farm across Miraa industry and supportive industry auxiliary services, trading and marketing, processes within the industry
- xii. Increase incomes for farm families resulting from the increase in Miraa production and good and stable prices, and thus improved livelihoods and social well-being of the rural communities.
- xiii. Increased national Miraa production and trading will translate into increased agricultural and national GDP; and increased foreign exchange earnings
- xiv. Regulating Miraa imports and exports will control illegal trade actions that can negatively impact the local Miraa and export markets thus distorting demand and prices.

#### **4.4 Quantification of the Benefit**

Due to the lack of legal recognition of Miraa as a crop until as recently as 2016, there have been very limited studies or documentation of the household and national economic benefits and costs of the Miraa industry or its contribution to the Country's economy. It is however not in doubt that Miraa's contribution has a very significant impact on the households' livelihood in the Miraa producing regions in the Country.

Different sources give different data on the economic benefits and costs of Miraa but none of these can reliably be considered as substantive and no authoritative data by a recognized national agency is available to enable a compressive cost-benefit analysis of the Miraa industry now as it is and to project the quantified benefits of a transformed Miraa industry with the implementation of these regulations. However, a mainstreamed sector under the regulations will give an avenue for consolidating all research efforts and develop common interventions.

Examples of some data on economic benefits of the industry quoted include:

- i. Miraa exports earned Kenya Sh16.5 billion in the five years to 2011, making it the top export fresh product destined for Africa, a USAid survey shows. The survey says the value of miraa (khat) exports has been growing at an average of 9.7 percent annually and accounted for 54.2 percent of the fresh produce export from Kenya to its peers in Africa.

“Miraa exports ranked fourth in terms of the total cumulative volume of exports and ranked highest in terms of total cumulative value having attained close to Sh16.5 billion (\$231.7 million,” said the survey that looks at intra-Africa horticulture trade. Exports of processed vegetables stood at Sh4.7 billion or 15.5 percent of the total in the five years, processed fruit (Sh3.7 billion or 12.4 percent), flowers (Sh2.5 billion or 8.3 percent) and fresh fruit at Sh376 million or 1.2 percent. (Business Daily)

- ii. The value of exports, largely miraa (khat), contracted Sh3.24 billion, or 21.51 percent, to Sh11.83 billion in the 12 months ended December 2019, compared with a year ago, data collated by the Central Bank of Kenya (CBK) indicate (Business Daily)
- iii. According to FarmBiz Africa, Before the first case of Coronavirus was reported in the country on 13th March 2020, 50 tons of khat worth Sh16 million was shipped daily to Somalia from Igembe’s three main miraa growing regions; Meru North, South and Central. (FarmBiz Africa, 2020)
- iv. Kenya is the world’s number two miraa producer totaling \$200 to \$250 million. Of this 75% is exported to Somalia by plane with secondary exports to Europe; 25% is consumed locally and the trade is largely controlled by the Somali merchants (Taylor & Francis 2005).

## **5.0 Reasons why other Regulatory Options are not Appropriate**

### **5.1 Option 1: Maintaining the Status Quo**

Maintaining the status-quo will mean the country does not establish a legal and regulatory framework to guide the development, promotion, and regulation of the Miraa industry for the benefit of growers and other stakeholders in the industry which will deny farmers, traders, vendors and other interested parties the prospects to benefit from the many opportunities in the Miraa industry while also curtailing realization of the country’s development objectives, including the following:

- i. The development, promotion and regulation of the Miraa industry will not be realized in the country which will leave the Miraa industry unorganized, unstructured and not effectively regulated allowing a continued decline in production, shrinking of markets, continued operation of unscrupulous, quick-for-profit players and cartels who do not necessarily comply with set food safety and quality standards resulting to the production of unhygienic, contaminated and poor quality Miraa which is harmful to lives and health of consumers and cannot compete in the primary Miraa world markets
- ii. Miraa farmers, in general, will lose the opportunity to increase their income and thus improve their livelihoods through increased production from their farms and better produce prices



- iii. Post-harvest losses will remain high, increasing losses for farmers and traders, resulting in declining returns and thus livelihoods for farmers and traders who rely on Miraa for income
- iv. Declining incomes will further reduce capital access for smallholder farmers and small traders will continue to be limited, denying them the much-needed capital to re-invest in their businesses to increase production and trade.
- v. The health status of Miraa consumers will remain poor due to consumption of poor quality and unhygienic Miraa availed to the market.
- vi. Public and household health costs will continue to increase with increasing incidences of miraa related health problems
- vii. In absence of accurate reliable real-time data and information of the Miraa industry, planning for the industry will continue to depend on unverifiable and unreliable data and information
- viii. In absence of crop research, quality planting materials and agricultural advisory services Miraa production and productivity, value addition and quality in Kenya will remain low leaving the Miraa industry in the country stagnant or even in a decline
- ix. The Non-formation of effective growers' associations will leave individuals still with limited access to markets, poor negotiations positions and at the mercy of cartels in the industry
- x. In absence of the Miraa pricing committee, Miraa prices volatility will continue and Miraa farmers will remain price takers controlled by industry cartels and their incomes remain fluid
- xi. Illegal trade actions through uncontrolled Miraa imports and exports can still be used by unscrupulous traders to negatively impact the Kenyan local Miraa and main export markets by distorting demand and prices that can even lead to total loss of such markets
- xii. The anticipated employment opportunities to be created by the increased Miraa production, trading and other complimenting services will not be created

The situation is undesirable, and the RIA recommends that the proposed Regulations be implemented to realize the optimal development, promotion, and regulation of the Miraa industry for the benefit of growers and other stakeholders in the industry in the country for this industry to effectively contribute to the realization of the objectives of the Vision 2030, the Agricultural Sector Transformation and Growth Strategy, the National Agriculture Sector Development Strategy, the Government's Big 4 Agenda and the respective Counties' CIDPs, policies and strategies on agricultural transformation.

## **5.2. Option 2: Other Practical Options**

Alternatives to regulation include:

- i. **No new intervention/do nothing**

This may include making use of existing regulation; simplifying or clarifying existing regulation; improving enforcement of existing regulation, or making legal remedies more accessible or cheaper. However, with this approach, the status quo is likely to remain as the Miraa industry in the country has had no form of regulation in the past as Miraa had no legal recognition as a crop until as recently as 2016. In absence of any new intervention, the industry would therefore be as it currently is and this will be to the detriment of all the sector stakeholders and the country in general.

**ii. Information and education**

Information and education can be used to empower stakeholders to make their own decisions, improving choices for the mutual benefit of all. However, information and education can take time to make an impact and still may not be acceptable. This approach may increase costs for the government and businesses that will be providing the information and education required. The desired objectives are unlikely to be realized within a reasonable time for the common good of all.

**iii. Incentive/market-based structures.**

The government can use economic instruments, such as taxes, subsidies, initiatives to realize the desired objectives. These initiatives however are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures and often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the miraa industry in Kenya as it is yet to be established.

**5.3. Alternatives models of regulation include:**

The alternative modes of regulating the Mirra industry include the following:

**i. Self-regulation**

The Miraa industry in the country does not have an all-inclusive industry representative(s) that could formulate and implement codes of conduct or practice, customer charters, standards or accreditation system acceptable to all sector actors for self-regulation and the necessary mechanisms to monitor the effective implementation of such self-regulation. This makes effective self-regulation in the Miraa industry currently not possible.

**ii Co-regulation.**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice whose enforcement would be by the industry or a professional organization accredited by the government. In the Miraa industry in Kenya

currently, there is no universally accepted and all-inclusive industry representative organization(s) that can mobilize and organize the actors towards this and thus co-regulation is practically not possible currently.

## **6.0 Conclusion**

The proposed Regulations if approved and effectively implemented will introduce formal controls and regulations in the Miraa industry and establish the necessary structures and environment including compliance enforcement structures and a miraa pricing formula committee to support the promotion and development of the industry for the benefits of the miraa growers and other stakeholders.

## **7.0 Recommendation**

The Regulatory Impact Assessment recommends the passing and operationalization of the proposed Regulations.

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**SCHEDULE**  
**[Section 8]**  
**EXPLANATORY MEMORANDUM**  
**TO**  
**THE CROPS (MIRAA) REGULATIONS, 2021**

**PART I**

<b>Name of the Statutory Instrument:</b>	Crops (Miraa) Regulations, 2021
<b>Name of the Parent Act:</b>	Crops Act No. 16 of 2013
<b>Enacted Pursuant to:</b>	Section 40 of the Crops Act No. 16 of 2013
<b>Name of the Ministry:</b>	Ministry of Agriculture, Livestock, Fisheries & Cooperatives

**Gazetted on:**

**Tabled on:**

**PART II**

**1.0 Purpose of the Statutory Instrument**

The primary objective of the Regulations is to guide the development, promotion, and regulation of miraa for the benefit of the miraa growers and other stakeholders in the miraa industry. The Regulations provide for-

- i. Procedures and conditions for registration of dealers;
- ii. Procedures, terms and conditions for the issuance of licenses and permits under these Regulations;
- iii. Issuance of export and import permits;
- iv. Collection and maintenance of data related to miraa;
- v. Compliance and enforcement of miraa standards to ensure quality assurance and safety;
- vi. Promotion of best practices in production, grading, transportation sorting, packaging and packing of miraa.
- vii. Guidance on contracts between buyers and growers of Miraa
- viii. Assurance of safety and quality of produce and products
- ix. Marketing of Miraa produce and products

## 2.0 Legislative Context

The Miraa industry has faced many challenges that date back to pre-independent Kenya. In 1934, the Meru Local Native Council (LNC) passed a resolution restricting Miraa consumption to elders and from 1938 there was increased agitation for increased control of Miraa consumption on the premise that its consumption threatened the wellbeing of communities and especially pastoralists in Northern Kenya. By 1940 the Meru LNC was persuaded to ban exports to Isiolo until the end of the 2<sup>nd</sup> world war to stop African soldiers from its consumption. In 1945 a bill to control the sale, cultivation and consumption of Miraa was drafted and which prohibited Miraa sales, cultivation and consumption in all parts of Kenya except in Meru, where ceremonial use was allowed through permits issued by elders. This bill which finally becomes effective in 1947 prohibited Miraa cultivation except under written permits given by the native authorities of Meru and Embu within their home districts and persons recognized as addicts were issued with permits from the local district office to allow Miraa consumption. After agitation of the Meru elders, this law was amended through the Miraa Prohibitive Ordinance Cap 339 of 1951 which however prohibited Miraa in the Northern Province while removing controls elsewhere. The Elders were left to control the youth within Meru customs. The Meru council of Elders petitioned the colonial government to lift the ban through the legislative council and though the ban was lifted administratively, the statute remained.

The Miraa Prohibitive Ordinance Cap 339 was finally repealed in 1977 but there was no corresponding statute to replace the ordinance to give Miraa a legal status. This created ambiguity since Miraa was thus still not recognized as a crop. Cultivation, trade and consumption of Miraa have continued unhindered since then despite increasing campaigns to control and regulate the commodity in the society by various actors including the National Authority for the Campaign Against Alcohol and Drugs Abuse (NACADA) which has created a negative perception of the commodity. A parliamentary committee set to look into the matters relating to Miraa in 2013 recommended among other things the amendment of the Crops Act 2013 to include Miraa as one of the scheduled crops and this was achieved through Statute Law (Miscellaneous Amendment) Act No. 7 of 2016. This amendment required the Government to take responsibility for the development, promotion and marketing of Miraa subsequently and The Government established the Taskforce on the development of the Miraa industry to address the challenges in the industry.

Although cultivation, trade and consumption of Miraa have continued unhindered in Kenya for decades, Miraa has not had legal status as a crop and was thus not recognized as a crop until 2016. The amendment of the Crops Act 2013 through Statute Law (Miscellaneous Amendment) Act No. 7 of 2016 included Miraa as one of the scheduled crops in Kenya and thus granted the crop legal status in Kenya for the first time. Following this, there are numerous other legislations in addition to the Crops Act 2013 that now directly or indirectly affect the cultivation, trade and consumption of Miraa.

The fourth schedule of the Constitution of Kenya 2010 has assigned specified functions on agriculture to the national government and the county governments and it stipulates that the two levels of government shall conduct their mutual relations based on consultation and cooperation

and Miraa products without distinguishing records that are required to be kept under the Act or regulations as in Regulation 27(3). The powers granted to inspectors by the regulations once set out in general terms violate the right to privacy under article 31 of the Constitution. In any case, the right to privacy is not absolute; however, the limitation must be reasonable and justifiable in an open and democratic society. The Consultant recommends the introduction of a provision that requires the inspectors to issue notice to the Miraa dealers before entry and access to their premises or vessels. This will be justified as a reasonable limitation of the right to privacy.

The Regulations also seek to promote the right to access to information under article 35 of the Constitution. Article 35(1) guarantees every citizen the right of access to information held by State or by persons' other person and required for the exercise or protection of any right. This provision is promoted under Regulations 26(5) where the Authority is mandated to publish in the Gazette a list of all appointed inspectors within 30 days upon completion of their training. The publication of the information is to avail it to the public and ensure that every person can access it.

Regulation 28 provides for compliance standards where the Authority is required from time to time to be inspecting sites and produce to ensure conformity to food safety and quality standards as prescribed in Miraa (Khat) Industry – Code of Practice. This ensures conformity and compliance with Article 46 of the Constitution which guarantees every consumer the right to goods and services of reasonable quality and protection of their health, safety and economic interests.

## **7.2 Impact on the Public Sector**

The proposed Regulations will affect the public sector in the following ways:

- i. The Government will introduce formal controls and regulations in the Miraa industry and establish the necessary structures and environment including dispute Resolution mechanisms and compliance enforcement structures and a miraa pricing formula committee to support the promotion and development of the industry for the benefits of the miraa growers and other stakeholders.
- ii. Miraa markets which are currently mainly informal, unstructured, and poorly organized and have no quality and operations standards and are dominated by organized cartels will be designated, better organized and structured and have harmonized trade and operations standards.
- iii. The Miraa value chain in the country has remained informal having virtually regulation, these regulations will provide a good framework for the regulation of the value chain, with all actors registered and/or licensed; standards defined and developed, miraa imports and exports licensed, miraa markets designated and regulated and improved data documentation among others, allowing for improved regulation, compliance monitoring and effective enforcement within these markets.
- iv. The regulations will provide an effective avenue for the introduction of other institutional innovations such as grading, codes of practice, contracting and collective marketing, and

hence further market development in this value chain. It is normally difficult to introduce grading and standards systems into markets where most trading happens informally.

- v. The improved documentation of transactions including crop acreage, trade data, registration and licensing of the different Miraa actors will provide reliable real-time data and other important details on the actual produce, markets, prices, trade volumes both local and exports allowing for better planning, informed decision making and proactive interventions in the industry
- vi. The increased use of high-quality planting materials and the increased support from national research institutions and the introduction of effective Agricultural Advisory services in Miraa will increase production, and reduce field and post-harvest losses there increase produce available for export and thus increased foreign exchange earnings
- vii. The introduction of different levies and fees will increase revenue collection for the national and county governments.
- viii. Enhanced waste management systems will promote public and environmental health;
- ix. The regulations will provide individual County Governments with a well-organized Miraa marketing policy and strategies implementation structure at the local level, especially with the registration and licensing of all Miraa actors, improved data and information documentation, effective regulation and better coordination of the industry in the county thus promoting the Miraa value chain and trading development in the counties.
- x. Promote adoption of food safety, an effective traceability mechanism hygiene and produce quality standards across the Miraa industry operations will ensure access to quality and healthy Miraa in the country and for export markets increasing acceptability of Kenya's Miraa especially in foreign markets and reducing health challenges resulting from consumption of poor quality, contaminated and unhealthy Miraa, contributing to reduce public health provision costs.
- xi. Implementation of the regulations will create employment opportunities to support the increasing Miraa production and trading, formalized Miraa industry operations and resultant auxiliary services, contributing to the Government agenda of employment creation.
- xii. The broader agricultural sector and national economy will benefit from the increased volumes of production and regional and export trade from the industry and thus increased foreign exchange earnings
- xiii. A well-regulated miraa industry will provide a focus for the development of the entire Miraa value chain, providing incentives for a range of different parties, including farmers, financiers, traders, processors, exporters, and investors in the industry, contributing to the overall development of the Agricultural sector in the country.

### **7.3 Impact on the Private Sector**

The proposed Regulations will potentially affect the private sector in the following ways:



12	Socio-economic impacts of the sub-sector	Formation of Miraa SACCOs to handle income from Miraa to improve living standards	Establishment of association, Saccos and groups to benefit from the economies of scales, bargaining power and therefore higher returns – easy to invest and get financial literacy training	Miraa farmers are to be registered through the association crops act 2013
13	Classification of substances with cathine and cathinone as controlled narcotics	Declassification of these substances as controlled narcotics	Discussions on this issue are active	Pending because the discussion on the issue is still ongoing
14	Amendment to the regulations	How regulations' amendments shall be done, in case of need	Through a proposal to the Cabinet Secretary upon the stakeholders giving in their concerns and/or amendments	Provided for by the Crops Act 2013
15	Standardizing/Grading	Miraa should be graded	Standardized market-driven grades	Grading will be dependent on customers specifications
16	Registration of farmers	How to deal with the issue of re-registration	Farmers are encouraged to join associations of their choice and register the associations with the County	Crops Act 2013

## 6.0 Guidance

There is a need to conduct post-publication stakeholder sensitization for the various players in the sector. This should be done both at the National and County Government levels. Further sensitization will also be held at the County level to provide insights on the implementation of the Regulations.

Stakeholder engagement and public participation were adequately done by the Authority. All stakeholders both at the National and County governments as well as private sector players and farmers were involved and consulted.

## 7.0 Impact

## **7.1 Impact on Fundamental Rights and Freedoms**

The proposed regulations shall have a positive impact on the rights and freedoms of individuals.

It shall provide a better return to agricultural produce and investment to the farmers and commercial Miraa transporters. This will greatly contribute to improved household incomes and an enhanced capacity to afford adequate standards of living as envisaged under article 43 of the Constitution. Article 43 of the Constitution provides for economic and social rights. It affirms the rights of individuals and communities to an adequate standard of life including the right to the highest attainable standard of health. The State should allocate and provide resources for the progressive realization of these rights.

Article 36 of the Constitution provides for freedom of association which includes the right to form, join and participate in the activities of an association of any kind. Regulation 5 promotes and protects this right by providing for the registration of the smallholder growers associations by the Authority to access economies of scale.

Article 47 of the Constitution obligates the administrative authority to ensure expeditious, efficient, lawful, reasonable and procedurally fair administration action/decision. Regulation 16(5) promotes the realization of this right because it requires the Authority to within two days after receiving an application for an import permit for consignment of Miraa products in the prescribed form to issue the import permit to the Applicant upon satisfying itself that the requisite conditions have been met. This is an expeditious and reasonably fair process.

However, the Regulations do not expressly provide for giving of reasons by the enforcement authorities for their decisions made in respect to the activities by the dealers. For instance, Regulation 16(7) does not direct the Authority to give reasons to a Miraa and Miraa products exporter for its decision to deny the dealer Miraa an importation permit. This contravenes Article 47 of the Constitution which mandates any administrative body to give reasons for taking a particular administrative decision. In addition, the Regulations do not have provisions on how unsuccessful applicants/Miraa dealers would be informed about the status of their applications. The Regulations do not also provide for timelines within which such communication can be made. It is advisable to include a clause that requires reasons to be provided for a decline or rejection of applications. Failure to adhere to this infringes on the constitutional right to fair administrative action under Article 47(2) of the Constitution which requires that written reasons be given for every administrative action/decision taken.

Article 48 of the Constitution provides for a right to access to justice and an assurance that the state should ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice. However, the Regulations do not align themselves to the set provisions of the Constitution on access to justice. This is because the Regulations do not provide for any avenue for internal dispute resolution among the players in the Miraa industry.

Article 31 of the Constitution provides for the right to privacy which includes the right not to have one person, home or property searched, possessions arbitrarily seized, information relating to family or private affairs unnecessarily revealed or privacy of communications exposed. Regulation 27(3) gives an inspector unlimited access to premises and vessels transporting or storing Miraa

- i. The private sector actors in the industry will stand to benefit from the introduction of a well-structured, organized and regulated Miraa which will provide a conducive operating environment for their different businesses, promote fair trade and shield them from the frequent negative effects of Government pronouncements and actions on the industry and the control of operations cartels, and contribute to improving the public perception of the industry.
- ii. The reduced control of Miraa trading by industry cartels and marketing contracting will increase margins and reduce price volatility, thus stabilize the incomes for the different actors especially the farmers who are victims of middlemen exploitation particularly during peak harvesting seasons.
- iii. Collective marketing through growers' associations, marketing contracting and the establishment of designated Miraa markets will avail smallholders, farmers, a market window that can help them secure the best possible deal by providing them with better positions for negotiation and economies of scale while also allowing them to deal directly with downstream buyers and financiers, and overcome asymmetric power relationships within the market chain.
- iv. The increased use of quality and clean planting materials, increased industry support from national research institutions and enhanced provision of agricultural advisory services will increase production, reduce the post-harvest losses, and improve quality of produce thereby increasing incomes for farmers and traders from marketing increased volumes and quality of produce.
- v. Increased production, promotion of value addition, reduced post-harvest losses, reduced produce price volatility and effectively regulated operations in the industry will increase incomes of businesses in the industry making them viable and sustainable enterprises as well as improving the livelihoods of the investors and employees.
- vi. Adoption of food safety, hygiene and produce quality standards and a traceability mechanism across the Miraa industry will enable farmers and traders better access standards' sensitive markets locally, regionally and internationally.
- vii. Implementation of the regulations will create stable employment opportunities in the increased agricultural production, the formalized industry operations and resultant auxiliary services, thus improving the livelihoods of many families across this system.
- viii. A well-regulated Miraa industry will enhance transparency in all the transactions across the operations and protect farmers, traders, and financial institutions and other actors from business risks associated with lack of information or fraudulent transactions.
- ix. Accurate and real-time data on industry actors, crop acreage, nurseries' seedlings production and distribution, trade volumes and prices, produce sources, and existing and potential markets will be readily available to the industry players for better business planning and operations.
- x. The industry will be well streamlined and operate on common standards thereby promoting fair trade practices and eliminating or reducing unscrupulous players in the industry especially the over-exploitative middlemen and cartels.

- xi. The general Miraa population consumers will be assured of quality health products, reducing health problems associated with ingesting contaminated feeds and thus reducing medical expenses for households.
- xii. Miraa farmers and other Miraa industry actors will get recognition upon registration and licensing of their informal businesses, thus allowing them more access to development and support services and opportunities available to MSMEs in other industries.
- xiii. The miraa pricing formula committee comprising representatives from the different segments of the miraa sub-sector stakeholder will determine the formula of miraa pricing and thus ensure fair Miraa pricing in the industry for the benefit of all actors and especially the smallholder farmer.
- xiv. Miraa farmers and other industry actors will be required to pay various requisite fees and levies and re-align their operations to the provisions of these regulations which will increase their costs of doing business and may result in loss of some businesses that will not meet the specific requirements of these regulations resulting to the loss of livelihoods for some families.

## **8.0 Monitoring and Review**

Monitoring and evaluation (M&E) of the regulations is important in determining its effectiveness, efficiency and adequacy in achieving its intended objectives and purpose. It informs the government and players in the sector whether the regulations are working. Proper use of M&E mechanisms constitutes a major change in operational style and working culture of regulatory authorities that enables them to set up a process of continuous learning through experience and evidence. A well-functioning system of M&E would directly influence the ability of regulations to foster competitiveness and economic growth in the sub-sector. Review of regulations will ensure it is consistent and effective in regulating the activities in the sub-sector.

It is expected that the Regulations shall be a subject of great interest to all stakeholders particularly because of its potential to offer improvement in incomes, improved quantity and quality of agricultural produce, create employment, reduce poverty and enhance the living standards of Kenyans. The Authority working together with the respective County Governments will thus work hand in hand to promote research to review the adequacy and effectiveness of the regulations towards promoting the growth, development of the Miraa industry and products that will increase healthy Miraa production, storage and transportation and enhance the national, regional and international market for Miraa and Miraa products.

Regulation 6(7) requires the county government to submit to the Authority a list of licensed Miraa aggregators annually. Miraa aggregators are also obligated under Regulation 6(8) to submit (in the prescribed form) annual returns to the respective county government not later than the tenth day of the first month after the end of the financial year. Further, Regulation 8(5) requires the county government to submit to the Authority a list of licensed Miraa vendors annually.

Regulation 18 requires Miraa exporters to submit quarterly returns to the Authority in the prescribed form.

Regulation 23 requires the Authority, in consultation with the County Executive Committee member to initiate and coordinate training programs for service providers, growers and dealers for effective implementation of the Regulations. The Authority is also mandated, in consultation with the respective County Executive Committee member to develop Codes of Practice to facilitate safe production and handling of produce as per the regional and international standards.

Further, Regulation 25 provides for traceability which obligates the Authority in consultation with the relevant stakeholders are required to develop and build capacity for the implementation of a traceability system for both export and locally consumed Miraa produce. Dealers are also required to establish and maintain traceability code for every source of their produce and products.

The information and details shared by the various stakeholders and the Authority could be used to enhance prudent planning and decision making process and also enable the Authority and the respective County Government to conduct a survey of the Miraa sector, its production, storage and transportation to find out whether the objectives of the regulations have been met and identify areas for improvement.

## **9.0 Contact**

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