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[Section 8]	DEPUTY MAJORITY WHIP
EXPLANATORY MEMORANDUM	HON. NAOMI NLAZO
TO	J. Lemerle
THE CROPS (BIXA) REGULATIONS, 2023	

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PART I

Name of the Statutory Instrument: The Crops (Bixa) Regulations, 2023
Name of the Parent Act: The Crops Act No. 16 of 2013
Enacted Pursuant to: Section 40 of the Crops Act No. 16 of 2013
Name of the Ministry/Department: Ministry of Agriculture and Livestock Development
Gazetted on:
Tabled on:

PART II

1.0 Purpose of the Statutory Instrument

The purpose of these Regulations is to guide the promotion, development and regulation of bixa and bixa products for the benefit of the Bixa growers and other stakeholders in the Bixa sub-sector. The objectives of these regulations are to—

1. set procedures and conditions for registration, licensing and issuance of permits;
2. enhance growth and development of the sub-sector;
3. ensure quality and safety of bixa and bixa products; and
4. promote good agricultural practices.

2.0 Legislative Context

Bixa was classified as a scheduled crop under section 7 (2) of the Crops Act, 2013 Part 3 of the First Schedule vide Gazette Notice No. 2164 of 13th March 2020 and being a relatively new crop introduced into the country after 1970, there are no specific policies, regulations or strategies developed specifically for the Bixa sub-sector. This sector has however operated under the different general Kenyan agricultural sector policies, regulations or strategies developed over time to guide the development of general agriculture in Kenya. The current and past agricultural sector policies, regulations and strategies have however impacted and continue to impact the developments and performance of the Bixa sub-sector. The development of African agriculture in Kenya from the pre-independence period (1902-1960) was mainly influenced by the colonial administration policies and advocacy by the European farmers and promoted a land tenure policy that primarily reallocated sole land rights to settlers which left most arable land even in the coastal counties producing Bixa in the hands of settlers. The Swynnerton Plan of 1954 advocated for the reversal of this policy but the vision to revert the land to the local communities was not fully actualized as a significant part of the land reverted to other Kenyans from other parts of the country. The land problem in this region persists today as many families in this region are still squatters and thus find it hard to invest in Bixa plantations which is a perennial shrub in the land they don't legally own.

After independence in 1963, Kenya developed several post-independence policies and strategies that shaped the transformation of the agricultural sector in the new nation and whose impact has continued to be felt in the agriculture sector to date. Key among them is the Sessional Paper No. 10 of 1965 on African Socialism which envisaged concentration of agricultural investment in high rainfall areas, encouragement of both smallholder and large-scale farming and the pursuit of accelerated growth of private sector investment. This policy, therefore, focused on key commodities in the high-potential areas of the country and thus set the foundation of neglecting other parts of the country with low potential including the coastal Bixa growing counties where to date agricultural development has lagged behind compared to the region classified as high potential. This is a result of low investment, low technology development and dissemination, low farmers capacity building, limited research and development for crops grown in these regions, limited accelerated land consolidation and tiling, and minimum irrigation development in these regions etc.

District Focus for Rural Development (DFRD) was introduced in 1983 and by then Bixa had been introduced into the country and was being grown in the then-coastal Districts. The DFRD made the districts centers of planning, implementation and management of rural development and enhanced participation in decision making and improved identification of local priorities. This allowed individual Districts to prioritize enterprises that benefited their region most and Bixa then featured as one of the priority crops in Kwale, Kilifi and Lamu Districts and these counties today remain the main Bixa-producing counties in the country.

Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth acted as the blueprint for the implementation of the Structural Adjustment Programmes (SAPs) through the 1990s. The reforms instituted by the SAPs led to significant changes in agriculture including restructuring of agricultural institutions, liberalization of product prices, and privatization of services in the Sector. This removed Government control in all agricultural sub-sectors leading to the privatization of government-owned institutions including the Kenya Bixa Company and left the industry to operate on free market principles which saw the emergence of middlemen and brokers in Bixa seed marketing and later smuggling of the produce across the national boundaries. All this created major distortions in the local Bixa market in supply and prices and to date continues to heavily affect returns for farmers in the sector and Bixa processing in Kenya.

Other Government policies in the sector at the turn of the century included the Economic Recovery Strategy for Wealth and Employment Creation (ERS) of 2003, the Strategy for Revitalizing Agriculture (SRA) 2004 - 2014, the Agricultural Sector Development Strategy (ASDS 2010 – 2020), the Big 4 Agenda 2017– 2022; the Agricultural Sector Transformation and Growth Strategy (ASTGS) 2019-2029 which is anchored on CAADP and the Sustainable Development Goals (SDGs), the National Agriculture Investment Plan (2019–2024), National Agriculture Policy (2021), the Kenya Agricultural Sector Extension Policy (2022), National Agriculture Research System Policy (2021) and Kenya Vision 2030 and its 5-year Medium Term Plans identify, recognize and prioritize Bixa as a key enterprise for the transformative development of agriculture in the three main Bixa producing counties and as an alternative enterprise in other potential regions in the country. The current Government's Bottom-up Economy Transformation Approach also

recognizes agriculture as one of its key pillars and emphasizes agriculture as a national transformation priority.

In addition to these policies, the Bixa sub-sector and the agricultural sector in Kenya have been guided by several specific laws in the agricultural sector. Key among them are: the Agriculture, and Food Authority (AFA) Act, 2013; Crops Act, 2013, Kenya Agriculture and Livestock Research Organization Act, 2013 (KALRO Act, 2013), and Warehouse Receipt System Act, 2019. Other key legislations to the sub-sector include the Food, Drug and Chemical Substance Act (Cap. 254) and Biosafety Act (2009). The AFA Act and Crops Act repealed the following Agricultural Sector Acts whose provisions were relevant to the sub-sector and that are still relevant and need to be accommodated in newer laws including the Agriculture Act, Cap. 318; Agricultural Produce (Export) Act, (Cap. 319); Agricultural Produce Marketing Act, (Cap. 320); Crop Production and Livestock Act, (Cap. 321) and the Irrigation Act, (Cap. 347). Relevant sections of these repealed laws need to be accommodated in new and reviewed laws. There, however, is a need for continuous review of the agriculture sector laws and full operationalization of some of this legislation to support the transformation of the sector in general and to the Bixa sub-sector specifically. (MoALFC, 2021)

The different Bixa-producing counties through their 5-year County Integrated Development Plans (CIDPs) and/or through country-specific legislation, policies and strategies have also developed different pieces of county-specific legislation, policies and strategies for the development of agricultural production and marketing in the individual counties which include and directly affect the Bixa sub-sector in each county.

Bixa was classified as a scheduled crop under section 7 (2) of the Crops Act, 2013 Part 3 of the First Schedule by the Cabinet Secretary for Agriculture and Livestock Development vide Gazette Notice No. 2164 of 13th March 2020. The scheduling of the crop was a move towards initiating renewed growth in the sub-sector by the government benefiting the coastal farming community. This notice mandated the Agriculture and Food Authority to in addition take the following specific developments and regulations measures which have necessitated regulation of the crop.

- i. Develop Bixa through capacity building of the industry players on the best agronomic practices;
- ii. Registration of the Bixa by Registering and licensing the industry players and ensuring compliance to set the standards and;
- iii. Creating market linkage in both local and international markets (AFA, 2019)

The sub-sector, however, still needs a strengthened enabling policy framework that will support the rapid transformation of the Bixa industry into an important industry for all the industry actors and the national economy.

3.0 Legal and Policy Background.

The production, processing, and marketing of Bixa and Bixa products in Kenya have continued since the introduction of the crop in 1970 and its commercialization in 1975. There are numerous

legislations in the agricultural sector and in other related sector that directly or indirectly affect the production, processing, and marketing of Bixa and Bixa products in the country. These include:

The Kenya Constitution 2010: Following the promulgation of the new constitution 2010 the Fourth Schedule of the Constitution provides for devolution of specific functions in agriculture to the County Governments. The National government retains the executive function of policy decision-making under Part 1 Section 29 of the Fourth Schedule, while the counties take up the implementation task of the policies generated by the National Government and stipulate that the two levels of government shall conduct their mutual relations based on consultation and cooperation (Article 6 and Article 189 (1) (b) (c)). Due to the importance of agriculture to economic development and the realization of the Constitutional requirements, it is necessary to have an Agricultural Policy that guides the development of the entire Agricultural Sector and unbundles National and County Government functions. The roles of County Governments include agriculture (crop husbandry); implementation of programmes in the agricultural sector to address food security in the county; development of programmes to intervene in soil and water management and conservation of the natural resource base for agriculture; land development services for horticultural production for food security and others.

The Crops Act No. 16 of 2013 remains the principal legislation in the agricultural sector and was enacted to accelerate the growth and development of agriculture in general, enhance the productivity and incomes of farmers and the rural population, improve the investment climate and efficiency of agribusiness and develop crops as export crops that will augment the foreign exchange earnings of the country, through the promotion of the production, processing, marketing, and distribution of crops in suitable areas of the country.

Other relevant legislations to the production, processing, and marketing of Bixa and Bixa products include:

Agriculture and Food Authority Act No. 13 of 2013 is an Act of Parliament to provide for the consolidation of the laws on the regulation and promotion of agriculture generally, to provide for the establishment of the Agriculture and Food Authority, administration of matters of agriculture and the preservation, utilization and development of agricultural land and related matters to make provision for the respective roles of the National and County Governments in agriculture excluding livestock and related matters in furtherance of the relevant provisions of the Fourth Schedule to the Constitution and connected purposes

Food, Drugs and Chemical Substance Act (Cap 254) Laws of Kenya is an Act of Parliament to make provision for the prevention of adulteration of food, drugs and chemical substances. This Act provides rules for the placing on the market of food, drugs for man and animal and chemical substances, establishes the Public Health (Standards) Board and makes otherwise provisions for

the control of the quality and safety of food, drugs and chemical substances to be placed on the market of Kenya.

Public Health Act (Cap 242) Laws of Kenya is concerned with the protection of public health in Kenya and lays down rules relative to, among other things, food hygiene and protection of foodstuffs, the keeping of animals, protection of public water supplies, the prevention and destruction of mosquitos and the abatement of nuisances including nuisances arising from sewerage. The Act establishes the Central Board of Health and County health management boards. It also establishes and defines the functions of health authorities.

Trade Description Act (Cap 505) Laws of Kenya is an Act of Parliament to prohibit misdescriptions of goods, services, accommodation, and facilities provided in the course of trade, prohibit false or misleading indications as to the price of goods and confer powers to require information or instructions relating to goods to be marked on or to accompany the goods or to be included in advertisements.

Weights and Measures Act (Cap 513) Laws of Kenya is an Act of Parliament to amend and consolidate the law relating to the use, manufacture and sale of weights and measures and to provide for the introduction of the International System of Units (ISU). This Act would apply to agriculture produce trading in regard to their correct weights and labeling for efficient marketing.

Standards Act (Cap 496) Laws of Kenya – An Act of Parliament to promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice; to establish a Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with, the foregoing. Whereas there are no standards developed yet for the Bixa industry, there are however some general standards developed for agricultural produce and products which define specifications on quality and standards for agricultural produce.

The Kenya Agricultural and Livestock Research Act No. 17 of 2013 is an Act of Parliament to provide for the establishment and functions of the Kenya Agricultural and Livestock Research Organization; to provide for organs of the Organization; to provide for the coordination of agricultural research activities in Kenya, and for connected purposes.

Pest Control Products Act (Cap 346) Laws of Kenya is an Act of Parliament to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and the organic function of plants and animals and for connected purposes.

County Governments Act No. 17 of 2012: The various County Integrated Development Plans (CIDPs) and country-specific legislation, policies and strategies: Individual County governments

have developed different pieces of country-specific legislation, policies and strategies for the development of agricultural production and marketing in the individual counties. These instruments will affect the Bixa industry in individual counties.

Kenya Vision 2030 through its 5-year Medium Term Plans is a nationwide multi-sectorial national strategy that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement during the period 2008-2030 which aims to transform Kenya into a newly industrializing, middle-income country providing a high-quality life to all its citizens through three pillars: economic, social and political.

Agriculture Sector Transformation and Growth Strategy (ASTGS), 2019-2029 is a ten-year nationwide sectorial document aiming at developing and transforming the agricultural sector to achieve what is established by Article 43 of the Constitution of Kenya 2010 which states that Every person has the right to be free from hunger, and to have adequate food of acceptable quality". To reach the overall goal it establishes 3 anchors for the first 5 years as follows (i) increase small-scale farmer, pastoralist and fisher-folk incomes; (ii) increase agricultural output and value add; and (iii) increase household food resilience.

International and regional conventions and agreements: Kenya is also a signatory of various international policies that are employed by the international community to regulate trading or to reduce the volatility of different product markets. These include trade agreements, international arrangements or controls or limitations on activities on commodities markets, and regional and bilateral policies that are employed by governments to regulate trade. These policies, among other things, may include export bans, variable export taxes or import tariffs. These regional and global policies, protocols and treaties including the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), African Union (AU), United Nations (UN) and the WTO Agreement affect the performance of agriculture in the country through specific international requirements for trade, market access, sanitary and phytosanitary standards among others.

4.0 Challenges being addressed.

The development of the Bixa sub-sector industry in Kenya has been constrained by many factors, principal among them being the absence of an effective legal framework declining production and produce quality, low adoption of recommended agronomic technologies, limited access and availability of quality planting materials, fragmented production and marketing and market related issues. Some of the market-related issues include over-reliance on the same and now shrinking traditional markets, unstructured and unregulated markets dominated by cartels and middlemen, wide produce price fluctuations, low market stability, limited adoption compliance of food safety and quality standards, high post-harvest losses, frequent disasters, low-value addition capacity, climatic change impacts, lack of or weak growers organizations, and emerging pests and diseases, lack of adequate reliable data on the sub-sector to inform planning and increasing competition from imported cheap substituting synthetic products among others.

These forces have impacted significantly on the development of the Bixa sub-sector since its introduction in the country in 1970 and as a result, in recent years, the sub-sector has been on a decline despite its huge potential and the fast-increasing opportunities in the global market driven by the fast-increasing demand for Bixa products. This has in turn affected the operation and livelihood of Bixa farmers in terms of planning for production and access to markets resulting in farmers' and other Bixa sub-sector actors' incomes remaining stagnant or even declining over time.

Further to these challenges, due to the unstructured and not well-regulated Bixa industry in the country, the Kenyan Bixa product market has begun facing low market uptake by the traditional markets due to deteriorating quality. Smugglers of Bixa seed buy immature seed whose quality of 'bixin' (colour) is low and use different tactics to conceal the export consignments by misrepresenting the names of the cargo e.g. by using synonyms of Bixa, grinding the seed or use of undesignated routes of exit to ship the consignments. These actions negatively impact the Kenyan Bixa industry, and the ripple effects of the smuggling are being felt by all players in the value chain with growers being subjected to large and unpredictable produce fluctuations when the smugglers exit the market. Further, processors and other buyers focus on volumes to satisfy their own demand at the expense of quality and end up with large volumes of immature seeds that lack colour and un-exploitable seeds. In the global market, the immature seed is rejected or fetches poor prices tainting the otherwise highly regarded Kenyan Bixa market and resulting in the loss of the Kenya market share to competitors. (AFA, 2019).

As shown in Table 1 below, Bixa production has been on a decline in recent years after an improvement in production of 1,890 2019 Tons up from 1,712 Tons in 2018 and a low of 1019 Tons in 2017. Similarly, as shown in the table export value of Bixa products has declined from a peak of Kshs 223,768,000 in 2019 to Kshs. 214, 787,000 in 2021. This data clearly demonstrates a lack of growth in the sub-sector and depicts a decline in the performance of the Bixa industry in Kenya in recent years.

Table 1: Bixa Seed Production and export value for the period 2017- 2021

Year	Total Production (Tons)	Export value (Kshs)
2017	1,019	98,602,000
2018	1,712	220,071,000
2019	1,890	223,768,000
2020	2,200	186,425,000
2021	1,884	214,787,000

Source: AFA – Miraa, Pyrethrum and Other Industrial Crops Directorate

Other key challenges of the industry include inadequate industry institutional and administrative structures, the existence of cartels perpetuating unfair trade practices including smuggling of produce across international boundaries, lack of designated markets, informal trade practices, lack of quality and standard grading systems, lack of traceability along the value chain to support structured market development initiatives, limited value addition with only one main processor in the country, emerging socio-economic concerns due to declining incomes among farmers' communities, thus threatening families' food security.

Therefore, there is a need for deliberate interventions to revitalize and prop growth of the Kenya Bixa sub-sector for sustainable development into the future. To realize this dream, the sector needs efficient production systems for optimal outputs from the farms both in quantity and quality driven by better availability and access to quality planting materials, adoption of good agronomic practices, reduced post-harvest losses and suitable marketing systems, and a policy and regulatory framework environment that guarantees optimal and sustainable returns to all actors in the value chain for the sustainable development of the industry in Kenya and to enhance the competitiveness of Kenyan Bixa products in the global market.

In a Bixa value chain baseline survey conducted by AFA in 2019, farmers identified the major challenges that they face in Bixa farming in order of priority as follows:

- High cost of labour
- Inadequate training on best agronomic practices for Bixa
- Inadequate knowledge of post-harvest handling technologies
- Pests and diseases
- Lack of quality planting materials
- Lack of improved varieties
- High labour requirements (harvesting & threshing)
- Declining soil fertility
- Un-organized marketing infrastructure
- Unpredictable weather (climate change)
- Poor road infrastructure

(Source AFA, 2019)

The challenges listed by the farmers in the survey clearly confirm that smallholder Bixa farmers have limited access to appropriate technologies for Bixa production and agricultural advisory services on the crop. This is mainly because the crop is still not considered a major crop in Kenya despite its potential and thus limited technical information and support is available to the farmers which has resulted in the production practices applied to remain largely traditional. There is, therefore, a need for increased research investment on Bixa agronomy, variety improvement, product development and value addition, capacity development of farmers on husbandry practices, post-harvest handling, marketing, food safety and quality standards and to support the production of adequate clean and quality planting materials that will be affordable and easily accessible by most farmers in all growing zones and to promote the production of Bixa in other potential suitable growing regions of the country.

Due to the unstructured nature of the Bixa market in Kenya, Bixa farmers heavily rely on local Bixa traders and agents to access the market. This means that most smallholder producers are typically isolated from markets due to distances to markets, limited market information, fragmented production which produces low volumes to warrant investing in marketing by individual growers and other artificial market barriers leaving them with limited selling alternatives, lack of linkages with downstream buyers, inability to enter into contractual relationships, and also are usually obliged to accept the buyer's assessment of volume, quality and prices. These marketing challenges have encouraged the evolution of middlemen that dominate Bixa marketing, leaving farmers as price takers.

In the same survey, these traders listed the following as the major challenges that they face in Bixa trading:

- Competition among brokers and other traders who buy and smuggle raw Bixa.
- Poor post-harvest practices (low-quality produce) from the farmers.
- Lack of proper storage facility.
- Poor road infrastructure.
- Dilapidated and mismanaged collection centers.

These traders however occupy the driver's seat in Bixa marketing and exploit market dynamics to their favour and any additional costs or losses incurred resulting from these challenges are quickly transferred to the farmers, further eroding the farmers' returns. This situation urgently necessitates a farmer-centered solution to protect the farmer from such unpredictable developments.

By consolidating their produce within grower's associations, smallholders could benefit from reduced market transaction costs and the use of food safety and quality standards and self-regulatory mechanisms within the groups/associations to ensure quality and thus attract better prices while also according to farmers in such organized groups the advantage of economies of scale in trade volumes and thus enhance their negotiations power in the market.

The Baseline survey by AFA also engaged the only processors in the industry who identified the main challenges faced in the industry including:

- The emergence of competition for synthetic products and food colours which are cheaper than organic products.
- International market price fluctuations.
- Illegal export of raw Bixa from the country by unscrupulous traders.
- Generally low Bixin content of the delivered produce with low extraction recoveries.

The challenges cited by the processors call for strengthened industry institutional and administrative structures in the sector that will promote appropriate policy measures that will promote the production, processing, and value addition of the use of locally produced Bixa products and discourage imports of synthetic substitutes. Additionally, the structures are to ensure that the Bixa value chain is efficient and devoid of unfair trade practices to make Bixa products from Kenya competitive in the international markets, control illegal export of Bixa seed to ensure adequate supply of raw Bix for local processing and investment in research for the development of better Bixa varieties to be availed to the farmers to replace the current old and degenerating varieties.

A study on “The Mediating Influence of Bixa Value Chain Government Policy on the Relationship between Product Strategy and sales performance” by Cheruiyot, Mwaura and Tanui published in the International Journal of Business & Management, ISSN 2321–8916 in 2019 points that the Government did not have an effective policy that supports Bixa production and marketing. This, according to the study, was evident with the lack of an effective policy on regulation of the Bixa industry and the lack of market information to farmers. It includes information on prices, provision of subsidies like fertilizer and land preparation for Bixa farming, extension services provision of technical training on Bixa farming, a policy that addresses roads network in Bixa growing areas, policy on sufficient information and training on the marketing of Bixa crop from Government officials, policy on agency charged with the promotion, production and marketing of Bixa crop, development and information on new varieties of Bixa crop to be planted and policy on Bixa value chain effectiveness. (Cheruiyot, Mwaura and Tanui, 2019).

In the current situation, these challenges compounded with the effects of climate change, reducing farmland sizes, the fast transformation of the land use system in the Bixa growing regions, the existing farming systems and emerging socio-economic factors including the aging farmer population, continue to erode the Bixa production, farms’ productivity and returns to farmers, traders and processors while denying the local Bixa industry raw materials to exploit the fast expanding Bixa products global markets demand. It is therefore imperative for the country to identify interventions that can be applied to stem this trend and exploit the increasing potential of this sub-sector for the benefit of all the value chain actors and the national good.

5.0 Consultation Outcomes

Section 5 of the Statutory Instruments Act, 2013 requires a regulation-making Authority to, before issuing a statutory instrument, make appropriate consultations with persons who are likely to be affected by the proposed instrument. Specifically, section 5(3) (a) of the Act requires a regulation-making authority (Ministry of Agriculture and Livestock Development, AFA and county governments) to notify, either directly or by advertisement, bodies or organizations and representatives of persons who are likely to be affected by the proposed instrument.

5.1 Stakeholders Mapping and Engagements

The Ministry organized stakeholders' engagement and public participation workshops to provide an opportunity for the public to participate in the regulation-making process. The Authority held specific engagement workshops with key stakeholders including national government ministries, government agencies and private players in the sector. The public workshops were distributed in different counties where Bixa is grown.

The Ministry held a three-day workshop at Naivasha between 27th May 2022 and 29th May 2022 that was coordinated by the Policy Legislations Standards and Sector working group. The meeting was attended by representatives from the National Government, County Governments and private sector players.

The public participation workshops took place at the following locations: Lamu, Kwale, Kitui and Mombasa counties. In addition, there was a public participation forum held at the Kenya School of Government in Mombasa. The workshops attracted stakeholders from National and County Governments, the private sector, Bixa farmers, research, and academia.

The Ministry issued a public notice inviting stakeholders in the sector to give their views. There was a public notice vide the My Gov. Weekly Review Issue No. 12/2023-2024 newspaper of 19th September 2023 on page 2 requiring submission of stakeholder views on the draft Crops (Bixa) Regulations (2023). The submissions of the views by the stakeholders were required to be received by 3rd October 2023 through the email and address provided there. The comments were received from Kenya Bixa Limited, the Secretary Nakuru County Public Opinion Consultative Initiative and Botanical Extract EPZ.

The records from the public forums show extensive deliberations on the myriad of issues that arose from the proposed Regulations. The stakeholders were allowed to read and analyze the draft Regulations and share their written views with the Authority. There was evidence to show that the Authority collated, reviewed and incorporated into the proposed Regulations the issues raised and comments received from the workshops.

5.2 National Level Consultations (Government)

Consultations were made with representatives of various national government agencies including various departments of the Ministry of Agriculture, Livestock, Fisheries and Cooperatives (MoALFC), Agriculture and Food Authority (AFA), Kenya Forestry Research Institute (KEFRI), Kenya Agricultural and Livestock Research Organization (KALRO), Kenya Bureau of Standards (KEBS), Kenya Plant Health Inspectorate Service (KEPHIS) and Kenya Ports Authority (KPA).

5.3 County Government Level Consultations

The Ministry conducted several public participation workshops in different counties, especially where Bixa is grown including Mombasa, Taita Taveta, Makueni, Malindi, Kilifi, Kwale and Lamu counties.

On 27th May 2022, the Authority held a meeting in Naivasha. The purpose of the meeting was to present the draft regulation to the Policy, Legislations and Standards Sector Working Group, MOALF, Garissa County, Transzoia County and Nakuru County.

The Ministry held a consultative meeting with the Joint County Agriculture Sector Steering Committee (JASSCOM) in Naivasha between 27th September 2022 and 29th September 2022. The meeting was geared toward the review of the draft regulations. The meeting was attended by representatives from JASSCOM, AFA, Kwale, Lamu and Kilifi Counties.

The Ministry held a consultative meeting in Machakos on 9th November 2022 and 10th November 2022. The agenda of the meeting was to incorporate the comments that had been aired during the meeting with JASSCOM. The meeting was attended by representatives from AFA and MoALFC.

On 9th and 10th November 2022, the Authority held a consultative workshop for the draft Bixa regulations in Machakos County. The meeting was attended by representatives from the AFA and MoALFC.

On 17th November 2022, the Authority held a consultative workshop for the draft Bixa regulations in Kwale County. This meeting was attended by representatives of Dzombo Farmers' Co-operative, MoALFC, CGK-Longalona, CGK- Agriculture, AFA-MPICD, KEPHIS, WAO-Mkongani, WAO- Longalona, Kenya Bixa Limited and farmers.

On 6th December 2022, the Authority held a consultative meeting in Mombasa which was attended by participants from Mombasa, Kilifi and Taita Taveta Counties. The meeting was attended by representatives from Kenya Bureau of Standards (KEBS), KALRO, MoALFC, Ministry of Agriculture, Media – People Daily, Msanangu FM and Pwani Classic, AFA and farmers.

The Ministry held a consultative workshop in Lamu on 8th December 2022. The meeting was attended by representatives from AFA, Department of Agriculture – Kilifi and Lamu counties,

Media- Kenya Broadcasting Cooperation (KBC), Sifa FM and Radio Lamu, Kenya Bixa Limited, County Inspector, businesspersons and farmers.

On 6th April 2023, the Authority held a consultative workshop for the draft Bixa regulations in Kitui County which included participants from Kitui and Makueni counties. This meeting was attended by the representatives from MoA&LD, AFA – MPICD, KALRO, KEFRI, Botanical Extracts Ltd, and farmers.

5.4 Research and Academia

The Ministry involved various stakeholders from research institutions such as the Kenya Agricultural and Livestock Organisation (KALRO) and Kenya Forestry Research Institute (KEFRI) who gave insightful comments on the improvement of the draft regulations.

5.5 Private Sector

The Ministry had various fora with farmers from Kwale, Lamu, Mombasa, Kitui, Taita Taveta, Makueni and Kilifi counties who gave considerable comments on the improvement of the draft regulations.

The consultations held in Kwale were attended by a representative of Dzombo farmers' cooperative society. Similarly, several businesspersons attended the consultations held in Lamu County.

5.6 Stakeholder Reviews

The stakeholders raised the following issues: reduction of the export levy to 0.025% from the proposed 0.1%; and setting a standard levy of Kshs. 6, 000/- per consignment; increase growers' associations by allowing them to register with the county and be recorded by the Authority; a processor should be licensed and mandated to pay the levy; nursery operators should register with the county and pay registration fees; Authority to help in getting a market for Bixa products through trade affairs; provide a distinction between individual and group dealership licenses; review fees for each license; create a clear distinction between agent, trader, and processor; distinguish between a commercial processor and a cottage-based processor; capacity building of the players in Bixa sub-sector; identification of best varieties of Bixa for planting for better yield; pricing formula committee should have a representative from processors; and there should be a contract between the farmers and stakeholders who wish to buy Bixa produce.

The stakeholders' feedback from the Public Notice dated 19th September 2023 raised the following issues: proposed export levy of 0.1% on export value being high and punitive for the processors, fastracking of registration process, the penalties to be increased, restriction of inspection hours, replacement of the Council of Governors representatives with two representatives appointed directly by caucus of County Ministers for Agriculture, Livestock and Fisheries, too many licenses

for applicants since processors are exporters and importers, validity being annual from date of issue and reduction of license fees.

5.7 Assessment of Adequacy of Public Participation Process

The Ministry conducted various stakeholder consultation meetings and stakeholder public participation forums that allowed it to receive various comments, especially from farmers that would help in the development and improvement of the draft regulations.

The consultant reviewed stakeholder engagement and public consultative records from the Authority. The records revealed that the Authority mapped out and sent an invitation to various stakeholders who are majorly based in the coastal region of the country where Bixa grows.

From the records, the Consultant established that attendees of the public participation workshops raised their issues and gave their comments, and the Authority was able to respond to the issues raised. Additionally, the attendance lists revealed that the attendance was a good representative of the stakeholders who are likely or will be affected by the proposed regulations in accordance with the law.

Having reviewed the records from the public participation forums organized by the Authority, it was the opinion of the Consultant that key stakeholders in the agricultural sector and Bixa sub-sector in Kenya especially those who are likely to be impacted by the proposed Regulations such as farmers, AFA, County Governments, agricultural experts, and related sector Ministries have been adequately consulted in the formulation of the draft Regulations. The Consultant also noted that the Authority engaged research institutions and members from academic institutions such as Kenya Agricultural and Livestock Research Organization (KALRO), and Kenya Forest Research Institute (KEFRI). In addition, the Consultant noted that the Ministry invited different stakeholders to revert with comments, through a public notice, in September 2023 to close any gaps in the stakeholder engagement process. The Kenya Bixa Limited, the Secretary for Nakuru County Public Opinion Consultative Initiative and Botanical Extract EPZ in turn responded to the public invitation.

The Consultant believes that the Ministry and AFA conducted meaningful public participation as evidenced by the public participation records. Overall, the formulation of the draft Regulations was compliant with the law relating to public participation and stakeholder engagement in Kenya.

The public consultation outcomes were as follows:

	Key Areas of the Regulations	Proposed Changes by the Stakeholders	Responses from Ministry/AFA	Justification of the responses from Ministry/AFA
1	Registration of farmers	Farmers should be registered by the Authority.	No amendments effected.	Section 15 of the Crops Act mandates the Authority to register the Grower's Association and not the individual farmers.
2	Registration of dealers	Dealers should be registered by the counties.	Dealers are registered by the Authority	Section 16 of the Crops Act mandates the Authority to register all dealers.
3	Registration and licensing	The licensing fees should vary as follows. <ul style="list-style-type: none"> a) Commercial Nursery operators Kshs. 1,000/- for new licenses and Kshs. 500/- for renewals. b) Bixa agents Kshs. 5,000/- for both new and renewals c) Processors Kshs. 100,000/- for new and renewals 	The comments shall be considered	No changes effected because the proposed fees were considered reasonable in the sector.
4	Licensing	Dealer License	There should be a distinction between an individual and a group dealership license.	No changes effected. The term individual covers natural and unnatural persons.
5	Licensing	The distinction between agent, trader and processor	Action taken as proposed	Changes effected in the Draft Regulations.

6	Licensing	<p>The distinction between a commercial processor and a cottage-based processor.</p> <p>The proposed fee for the registration of a commercial processor should be Kshs. 100,000/- and for the cottage based be Kshs. 5,000/-</p>	<p>Changes effected as proposed.</p> <p>No action taken</p>	The fees shall be based on the turnover of the facility.
7.	Licensing	Change the processor licensing process to have a letter of no objection/letter of comfort before licensing.	Change effected as proposed to include the letter of no objection/ letter of comfort	This was borrowed from the Pyrethrum Regulations
8	Pricing formula committee	There should be added two members to represent each processor	No action taken	Membership to represent categories of value chain players and not individual processors.
9	Capacity building	<p>More training in Bixa agronomic practices.</p> <p>Enhancing effectiveness on development of cooperatives.</p>	<p>Action was taken as proposed.</p> <p>Capacity building role included in Part III</p>	The changes were effected in the draft Regulations.
10	Contracts	Have contracts between growers and agents and stipulate minimum requirements that the contract must process.	Amended as proposed	<p>This was borrowed from the Sugar regulations.</p> <p>Regulation 18(3) provide for contracts and a template to guide the minimum requirements.</p>

11	Immature Bixa	Describe immature Bixa	Define a way of curbing immature seeds from being sold	A schedule was introduced to prescribe mature Bixa for clarity.
12	Quality Assessment	There should be provision for quality planting materials	Planting materials should be collected from licensed commercial nursery operators	The licensed nurseries will be inspected by the Authority, periodically.
13	Pricing Bixa	The pricing committee should come up with the lowest price for Bixa to inform the farmers of the total amount of money they will be paid after the delivery of Bixa.	No changes effected	The pricing committee is an advisory body that does not give a specific price. The committee only advise and establishes a formula for produce and product prices
14	Timelines for payment of produce/deliveries	Maximum 15 days after collection of produce. Prescribe penalty for late payment for deliveries	Added at regulation 24. No action taken	Penalty for late payment should be addressed in individual contracts between players.
15	Modification of forms	Should be in consultation with the County	Authority and the County Government shall modify their respective forms.	The forms specify the role of the County or Authority.
16	Contracting and loaning with Cooperatives	Loaning agreements and payment dates to be defined between the value chain	No action taken	It is not a regulatory issue. Cooperatives have their by laws that guide the conduct.

The public was further consulted vide the public notice of 19th September 2023 which elicited the following feedback:

	Key Areas of the Regulations	Proposed Changes by the Stakeholders	Responses from Ministry/AFA	Justification of the Responses from the Ministry/AFA
1	Registration of farmers	Registration be fast-tracked as to take place within seven (7) days	No amendments effected.	14 days is the maximum time allowed. Further, there is a committee that meets to deliberate and validate the applications every fortnight.
2.	Registration of processors	In many cases, processors are exporters and importers. It does not make sense for processors to apply for three licenses. Processors should apply for one license and the Authority issues an export/import permit.	No amendments effected	It is important to regulate each category of player through the various licenses. Further, not all processors are exporters or importers.
3	Registration of a dealer, jail sentence	Jail sentence and fine be capped at one (1) year and one million (Ksh. 1,000,000). Our take is that this will adequately serve as a reasonable and justifiable deterrent.	No amendments effected	The penalty is derived from section 16(4) of the Crop Act (2013) and this is the maximum sentence and fine.
4	Validity of a license	Validity should be annual from the date of issue.	No amendments effected	Validity of licenses is provided for under the section 20(3) of the Crop Act (2013)
5	Issuing Manufacturing license	Recommend that all construction works	No amendments effected	This is adequately addressed in the relevant legislation e.g. NEMA and NCA.

		conform with building regulations in Kenya.		
6	Pricing Formula Committee and Payment for Deliveries	Price should be controlled by the direct involved with Bixa i.e. processors, farmers. If at all there will be a pricing formula, processors need to be part of the committee.	No amendments effected	Regulations 24(2) (e) and (f) of the Bixa Regulations 2023 value chain players are well represented in the Pricing Formula committee
7	Pricing Formula Committee and Payment for Deliveries	Proposed to have the Council of Governors representatives replaced with two representatives appointed directly by a caucus of County Ministers for Agriculture, Livestock and Fisheries.	No amendments effected	The Council of Governors is the registered entity that represents all the CECMs. If we add two representatives from COG, will make the committee heavy on the government side against the farmer representatives.
8	Inspection	Inspections are regulated as to take place only on official working days Monday to Friday, from 9:00 am to 3:00 pm.	No amendments effected	Restricting inspection between 9:00 am-3:00 pm is likely to be abused. As it is the regulation is adequate.
9	Fees and levies	The proposed Export levy of 0.1% on export value is not agreeable as it is too high and punitive for the processors since the cost of production is very high.	No amendments effected	The Bixa levy is within the law as provided under section 32 of the Crops Act (2013).
10	Levies	The interest be capped at 2%	No amendments effected	5% is adequate to serve as deterrent.
11	Fees and levies	Reduce the license fees. Eliminate all levies – no levies for import of raw	No amendments effected	The fees provided are reasonable. The levy is intended to address the gaps in the sector

		material and exports of Processed bixa.		that include crop development, research and marketing.
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From the table above, it is clear that the Ministry and AFA addressed the views and responses of stakeholders adequately. This included justifying the non-adoption of some views from the stakeholders.

6.0 Impacts

The following are the impacts of the proposed Crops (Bixa) Regulations, 2023:

6.1 Impacts on Fundamental Rights and Freedoms

The proposed Regulations shall have a positive impact on fundamental rights and freedoms in the following ways: -

i. Consumer Protection

Article 46 of the Constitution provides for consumer rights and in particular, that consumers have the right to goods and services of reasonable quality, information necessary for them to gain full benefit from goods and services for the protection of their health, safety and economic interests and to compensation for loss or injury arising from defects in goods or services. The draft regulations promote this right in several ways. Regulation 19(3) of the draft regulations states that the Bixa should be packaged, stored and transported in such a way that it is not contaminated. Regulation 20 of the draft regulations further provide for a traceability system where dealers are required to declare to the Authority the source and to whom it is sold, be responsible for the quality and safety of Bixa, and put in place a system that ensures that Bixa and Bixa products failing to meet food and safety standards can be identified, removed and withdrawn from the supply chain. Additionally, Regulation 22 authorizes inspectors to audit food safety management systems implemented by agents and processors. Regulation 23 further provides for the protection of consumers' economic interests by establishing a Bixa pricing committee that considers supply and demand forces, costs of production and any other prevailing factors to determine the Bixa pricing formula, therefore protecting both consumers' and growers' interests.

ii. Fair Administrative Action

Article 47 of the Constitution guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. The Regulations enhance this right by, for instance, providing timelines during which applications for registration, certificates, licences and permits must be considered and responded to as per Regulations 4, 5, 7, 8, 10, 11, 12, 14 15, and 16. Regulations 5, 6, 7, 8, 11 and 12 further stipulate that the Authority or the County Government must give written reasons for declining an application for a certificate or licence.

However, no dispute resolution mechanism has been provided for in the regulations. There is also no process described for the revocation of a licence, which is contrary to fair administrative action because there should be a set procedure and an opportunity to be heard before such a decision is made.

iii. Right to privacy

Article 31 of the Constitution provides for the right to privacy. This can possibly be affected by the draft regulations. Regulation 4 provides that members of a growers' association should submit their particulars and update them every financial year. These particulars are collected through Form Bx1, which lists some personal data fields such as name, ID number, telephone number, age,

gender, title number, and geo-location. Thus, without a strong data protection framework, this data may be leaked, and the privacy rights of the data subjects infringed. The regulations need to provide that all the data shall be collected and stored in line with the provisions of the Data Protection Act, 2019 to mitigate this impact. The Authority should also ensure that there are strong mechanisms within its systems to enforce this.

iv. Freedom of association

Article 36 of the Constitution provides for the freedom of association. Regulation 4 of the draft regulations protects this right by providing for the registration of growers' associations, whose purpose is to enhance economies of scale for small-scale growers.

v. Access to Information

Article 35 of the Constitution provides for access to information. The draft regulations enhance this by requiring the Authority to publish information in the Gazette regarding the intended grant of a licence for establishing a processing factory and appointment of inspectors in Regulations 8, and 22 respectively. In Regulation 10, the information from the gazette gives the public an opportunity for consultation and objection while in Regulation 22, the public is given a notification of the appointment to enable them to know who the official inspectors are.

vi. A clean and healthy environment

Article 42 of the Constitution provides for the right to a clean and healthy environment. Regulation 19 of the draft regulations protects this right by providing that all produce handling facilities such as warehouses, stores, and collection centres, as well as working areas and designated points are to be kept free of waste materials.

6.2 Impacts on the Public Sector

The proposed Regulations will have both direct (immediate) and indirect (incidental) impacts on the public sector in the following ways:

a). Direct (Immediate) Impacts

1. The Bixa sub-sector will now be formally organized with an enabling regulatory framework, industry structures that will include growers' associations, dispute resolution mechanisms, compliance and enforcement structures, a pricing formula committee, and the necessary supportive controls to support the promotion and development of the industry for the benefit of all Bixa sub-sector stakeholders and the country.
2. Bixa marketing which has remained mainly informal, unstructured, poorly organized, and ridden by unfair trade practices including having no quality and operations standards and being dominated by organized middlemen trading mainly in immature produce will be better organized and structured and have harmonized trade and operations standards. As a result, this will guarantee compliance with acceptable international Bixa standards to ensure Kenyan Bixa maintains and grows its market share globally.

3. All sub-sector actors will be registered and/or licensed. Bixa planting materials, production, aggregation, trading, processing and value addition, imports and exports will be documented. It will therefore allow for easy monitoring of sector performance and to allow for corrective interventions, improved sector regulation and effective compliance monitoring and enforcement across the entire sub-sector.
4. The improved documentation of development in the sub-sector including actual crop acreage, trading data, registration and licensing of all active sub-sector actors will provide reliable real-time data and other important details on production and price trends, market performance, trade volumes - both local and exports allowing for better planning, informed decision making and proactive interventions in the industry.
5. Promotion of the adoption of food safety, an effective traceability mechanism, and produce quality standards across the Bixa industry operations which will ensure the production of quality and healthy Bixa and Bixa products for the local and export markets and reduce health challenges resulting from the consumption of poor quality, contaminated and unhealthy Bixa, contributing to reduced local public health provision costs.

b). Indirect (Incidental) Impacts

1. The regulations will encourage and promote the introduction of other value-adding processes in the sub-sector such as produce sorting and grading, codes of practice, self-regulation within the growers' associations, contract Bixa farming and collective marketing by growers, and hence further market development in this value chain and improved earnings and contribution to the economy from the sub-sector.
2. The increased use of high-quality planting materials and the increased support from national research institutions and effective agricultural advisory services to Bixa growers will increase production, reduce field and post-harvest losses, improve produce quality and thereby increase produce volume and quality available for export. This will increase foreign exchange earnings.
3. The regulations will enable individual Bixa producing County Governments to develop and effectively implement county-specific Bixa value chain development strategies based on their identified priorities and points of intervention to meet their development objectives and the needs of their local communities in these value chains as per their CIDPs.
4. Implementation of the regulations will create employment opportunities to support the increased Bixa production, processing and value addition, trading and marketing and resultant auxiliary services, contributing to the Government agenda on employment creation, value addition in agriculture and industrialization.

5. The broader agricultural sector and national economy will benefit from the increased volumes of production, regional and export trade from the industry, reduced imports of food colour substitutes and thus increased foreign exchange earnings and savings for the country.

6.3 Impacts on the Private Sector.

The proposed Regulations will have both direct (immediate) and indirect (incidental) impacts on the private sector in the following ways:

a). Direct (Immediate) Impacts

1. The private sector actors in the industry will stand to benefit from the introduction of a well-structured, organized and regulated Bixa sub-sector 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 such as periodic trading bans and safeguard the industry from control and domination by cartels, brokers and middlemen.
2. The reduced control of Bixa trading and marketing by industry cartels, brokers and middlemen will increase margins and reduce price volatility, thus stabilizing markets and incomes for the different actors especially the farmers and processors who are victims of middlemen exploitation particularly during peak harvesting seasons or shortages.
3. Adoption and compliance with food safety and produce quality standards and establishing an effective traceability mechanism across the Bixa sub-sector will enable farmers, processors and industry entrepreneurs to better access alternative standards-sensitive niche markets locally, regionally and internationally.
4. Accurate and real-time data on industry actors, crop acreage, planting materials production, availability and distribution, Bixa production, produce trade volumes and prices, produce sources, and existing and potential markets will readily be available to the industry players for better business planning and operations.
5. The Bixa industry will be well streamlined and operate on common processes, procedures and standards thereby promoting fair trade practices and eliminating or reducing unscrupulous players in the industry especially the over-exploitative middlemen and monopolistic cartels.
6. The Bixa pricing formula committee comprising representatives from the different segments of the Bixa sub-sector stakeholder will determine the formula of Bixa pricing

and thus ensure fair Bixa and Bixa products pricing in the industry for the benefit of all actors and particularly the smallholder Bixa growers.

7. All Bixa growers and all 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 shall be applied for sustenance, development, provision and the benefit of the Bixa industry subsector.

b). Indirect (Incidental) Impacts

1. Collective marketing through registered growers' associations and dealing with licensed dealers and agents will enhance smallholders' Bixa farmers' market access and provide effective negotiating platforms that will enable them to secure the best possible deals benefiting from the improved negotiation position, economies of scale and direct linkages with downstream buyers and financiers, and allow growers to overcome asymmetric power relationships within the market chain.
2. 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 post-harvest losses, and improve the quality of produce thereby increasing incomes for farmers and traders from the increased volumes and quality of produce.
3. Increased production, local processing and value addition, reduced post-harvest losses, reduced price volatility and effectively regulated operations in the industry will increase the incomes of businesses in the Bixa industry. This will make them viable and sustainable enterprises as well as improve the livelihoods of the investors, employees and the local communities.
4. 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 in the society.
5. A well-regulated Bixa subsector 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 a lack of industry information, creating monopolies and industry domination or illicit transactions.
6. The general local Bixa consumers will be assured of quality natural products hence reducing consumption of imported synthetic substitutes, reducing health problems associated with ingesting unhygienic and synthetic materials and thus reducing medical expenses for households.

7. Bixa growers' associations and other Bixa industry actors will get recognition upon registration and licensing of their now informal businesses, thus allowing them more access to development and support services and opportunities available to MSMEs in other industries.

7.0 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 the 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. A 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 Bixa products, 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, and development of the Bixa industry and products that will increase Bixa production, storage and transportation and enhance the national, regional, and international market for Bixa and Bixa products.

Regulation 20 requires a dealer to declare to the Authority the source and customer of Bixa and Bixa products as part of the traceability system. This shall enable the Authority to monitor the transactions occurring in the Bixa subsector.

Regulation 22 provides for the nomination of inspectors by the County Government and their appointment by the Authority and further provides for their training. Regulation 23 further expounds on the duties and responsibilities of inspectors in conjunction with the Authority as carrying out inspections and compliance audits; monitoring of activities associated with Bixa production, dealing, handling and processing; and surveillance of growers, agents, processors, exporters and importers of Bixa and Bixa products. Further, it grants the inspectors the power to enter and search land, premises or vessels used for holding and transporting Bixa and Bixa products. The inspectors, therefore, play a monitoring and oversight role.

Regulation 24 provides for a Bixa pricing committee which is supposed to regularly monitor supply and demand forces, cost of production and other factors going into establishing the price of Bixa and Bixa products. The committee can also co-opt experts to provide technical advice which is important for the review and evaluation of the regulations.

Regulation 25 requires a commercial nursery operator to submit annual returns to the County Government no later than the tenth day of the first month after the end of the financial year. Bixa agents are also obliged to submit bi-annual returns to the Authority no later than the tenth day of January and July. Bixa processors, exporters and importers are to submit quarterly returns to the Authority. This information may inform the review of the regulations in the future.

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

8.0 Contact

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