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SNA
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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

REPORT ON:

THE SUGAR BILL (*NATIONAL ASSEMBLY BILL NO. 34 OF 2022*)

 THE NATIONAL ASSEMBLY	
DATE: 06 JUL 2023	
DAY: Thursday	
TABLED BY:	Hon. Geoffrey Odanga, MP (Member, Agriculture & Livestock Committee)
CLERK-AT-THE-TABLE:	Joyce Lemelle

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JULY 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
NOPEU	-	National Ordinary People Empowerment Union
AFA	-	Agriculture and Food Authority
TCD	-	Tons of Cane per Day
MT	-	Metric Tonnes
KSh	-	Kenya Shillings
COMESA	-	Common Market for Eastern and Southern Africa
EAC	-	East African Community
KEBS	-	Kenya Bureau of Standards
LN	-	Legal Notice
No.	-	Number
ToRs	-	Terms of Reference
CET	-	Common External Tariffs
KAM	-	Kenya Association of Manufacturers
KESMA	-	Kenya Sugar Manufacturers Association
CoG	-	Council of Governors
KNSAFO	-	Kenya National Sugarcane Farmers Organisations
SUCAM	-	Sugar Campaign for Change
KALRO	-	Kenya Agricultural and Livestock Research Organisation
KNTC	-	Kenya National Trading Corporation
PS	-	Principal Secretary
CS	-	Cabinet Secretary
SDL	-	Sugar Development Levy
CF	-	Commodities Fund
KSB	-	Kenya Sugar Board
SONY	-	South Nyanza
KESMA	-	Kenya Sugar Manufacturers Association
KNFSF	-	Kenya National Federation of Sugarcane Farmers
CSR	-	Corporate Social Responsibility
MD	-	Managing Director
KM	-	Kilometre
KNTC	-	Kenya National Trading Corporation
KNASFO	-	Kenya National Association of Sugarcane Farmer Organisation
KISCOL	-	Kwale International Sugar Company Limited
CIF	-	Cost, Insurance and Freight
FRP	-	Fair and Remunerative Price
AFC	-	Agricultural Finance Corporation
SACCOs	-	Savings and Credit Cooperative Organisations
MW	-	Megawatts
Ha	-	Hectare

LIST OF ANNEXURES

1. Report adoption Schedule
2. Minutes
3. Copy of the newspaper advertisement on public participation
4. Letter inviting stakeholders for meetings with the Committee
5. Stakeholder submission

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Agriculture and Livestock on its consideration of the Sugar Bill (*National Assembly Bill No. 34 of 2022*) which was published on 6th October 2022. The Bill went through the First Reading on 9th November 2022 and was thereafter committed to the Departmental Committee on Agriculture and Livestock for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has sixty-two (62) clauses and seeks to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill is expected to restore the roles of the Kenya Sugar Board currently undertaken by the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Following placement of advertisements in the print media on Tuesday, 14th February 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from six (6) stakeholders.

The Committee also invited stakeholders vide letter REF: NA/DDC/A&L/2023/009 dated 9th March 2023 for a stakeholders' engagement retreat on the Bill which was held at Holiday Inn Hotel, Two Rivers Mall in Nairobi on Friday, 24th March 2023 with twelve (12) stakeholders making oral presentations before the Committee.

Majority of the stakeholders were in support of the Bill, noting that the sugar industry had nosedived since the disbandment of the Kenya Sugar Board. They observed that the Sugar Directorate in the Agriculture and Food Authority had not been felt by players in the sugar industry. Other stakeholders averred that AFA had not been able to effectively discharge its mandate because it had not had a Board of Management since its inception and should therefore be given time to do its role given that a Board had been put in place.

The stakeholders were in support of the re-introduction of the Sugar Development Levy. They observed that the levy would contribute to the improvement of the sugar sector if correctly used. They however differed on the allocation of the SDL. Some proposed that most of the monies collected in the levy should be used for sugar development while others observed that the public milling companies need to be supported through the Levy. Others noted that the Levy was previously misused by public sugar companies and that the companies should therefore not be beneficiaries.

Some stakeholders were in support of zoning of sugar companies while others opposed it. The proponents observed that zoning will protect them from poaching of sugarcane which has occasioned losses on their part given that they usually invest in their farmers through seed provision, ploughing, and fertilizer, among others. The opponents noted that zoning should be done away with because it encourages inefficiencies and subjects farmers to suffer when their cane is not harvested in time.

Some sugarcane farmers were in support of cane quality payment because it will ensure that only farmers that produce good quality sugarcane survive in the industry hence encourage farmers to improve the quality of sugarcane. Sugar manufacturers on their part were not in support of quality payment because agronomic practices by farmers do not allow them to produce sugarcane with high sucrose content and paying farmers on the sucrose content will be unfavourable to farmers.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Emmanuel Wangwe, MP who attended all the meetings that the Committee invited him during consideration of the Bill and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Sugar Bill (*National Assembly Bill No. 34 of 2022*).

It is my pleasure to report that the Committee has considered the Sugar Bill (*N.A. Bill No. 34 of 2022*) and has the honor to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee.**

Hon. (Dr.) John K. Mutunga, M.P.
Chairperson, Departmental Committee on Agriculture and Livestock

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. ***To study and review all the legislation referred to it;***
- v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider, agriculture, livestock, food production and marketing.
3. In executing its mandate, the Committee oversees the Ministry of Agriculture and Livestock Development.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Agriculture and Livestock was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. (Dr.) John Kanyuithia Mutunga, MP
Tigania West Constituency
UDA Party

Vice-Chairperson

Hon. Brighton Leonard Yegon, MP
Konoin Constituency
UDA Party

Hon. Sabina Wanjiru Chege, CBS, MP
Kitutu Chache North Constituency
Jubilee Party

Hon. Ferdinand Kevin Wanyonyi, MP
Kwanza Constituency
Ford Kenya Party

Hon. Geoffrey Makokha Odanga, MP
Matayos Constituency
ODM Party

Hon. Justice Kipsang Kemei, MP
Sigowet/Soin Constituency
UDA Party

Hon. Jared Okello Odoyo, MP
Nyando Constituency
ODM Party

Hon. Lawrence Mpuru Aburi, MP
Tigania East Constituency
NOPEU Party

Hon. David Kiplagat, MP
Soi Constituency
UDA Party

Hon. Gabriel Gathuka Kagombe, MP
Gatundu South Constituency
UDA Party

Hon. Monicah Muthoni Marubu, MP
Lamu County
Independent Member

Hon. Pamela Njoki Njeru, MP
Embu County
UDA Party

Hon. Patrick Kibagendi Osero, MP
Borabu Constituency
ODM Party

Hon. Peter Kalerwa Salasya, MP
Mumias East Constituency
ODM Party

Hon. Yussuf Mohamed Farah, MP
Wajir West Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Ms. Laureen Omtsa Wesonga
Clerk Assistant I/Head of Secretariat

Mr. Victor Kanda Kilimo
Clerk Assistant III

Ms. Brigitta Mati
Legal Counsel I

Mr. David Ng'eno
Research Officer II

Ms. Noelle Chelagat
Media Relations Officer II

Mr. Muhumed Shillow
Research Officer III

Mr. Kelvin Sekani
Audio Officer III

Mr. Ahmednoor Sheikh Hassan
Clerk Assistant III

CPA. Robert Ng'etich
Fiscal Analyst I

Ms. Sheila Chebotibin
Senior Serjeant-At-Arms

Mr. Gerald Kadede
Legal Counsel II

Mr. Richard Sang
Serjeant-At-Arms

PART TWO

2 BACKGROUND OF THE SUGAR INDUSTRY IN KENYA

2.1 INTRODUCTION

6. The development of the sugar industry in Kenya is linked to the history of Asian Agricultural Settlement in the country. The first sugar factory was established in 1922 in Miwani Kisumu District, followed by Ramisi in the Coastal Region in 1927. During post-independence, the Government established five additional factories in the 1960s and 1970s: Muhoroni (1966), Chemelil (1968), Mumias (1973), Nzoia (1978), and South Nyanza (1979).
7. The Kenya sugar sub-sector plays a vital role in the agricultural sector and the Kenyan economy. The industry contributes to food security, employment creation, regional development and improved livelihoods for more than 8 million Kenyans.
8. Sugarcane is grown in 14 counties spread across Western, Nyanza, Rift Valley and Coastal regions, mainly on small-scale farms. Kenya has the potential to produce enough sugar to satisfy her domestic demand and provide surplus for export. There are 14 sugar factories with a total installed milling capacity of 41,000 TCD.

2.2 SITUATIONAL ANALYSIS

9. According to the Sugar Taskforce Report of 2019, Kenya produced 48% of its domestic sugar requirement, making her a net importer of sugar. The total sugar requirement in the country then was estimated at 1,000,000 MT and made up of 850,000 Tonnes of table sugar and 150,000 Tonnes of industrial-use sugar.
10. The industry has the potential of producing over 1.09 million MT of sugar which would meet the domestic demand and provide a sustained surplus for export to the wider COMESA region which is generally a net importing region. Due to industry inefficiencies, this capacity is currently underutilized.
11. The sugar sub-sector has faced a myriad of challenges that have severely affected cane production. These include high cost of production; acute cane shortage; low productivity; inefficiencies across the value chain; weak regulatory framework; high indebtedness; weak extension support; low value addition initiatives; cyclic markets; uncontrolled and illegal sugar imports; poor governance; ageing equipment; obsolete technology; and delayed payment to cane farmers.
12. These challenges have largely contributed towards making Kenya a high-cost sugar producer and consequently a preferred destination for sugar imports, smuggling and dumping from low-cost producers.

2.3 RECOMMENDATIONS OF THE TASKFORCE OF THE SUGAR INDUSTRY

The former President, H.E. Uhuru Kenyatta, directed that a Taskforce comprising of stakeholders in the sugar industry be established. This was as a result of the challenges faced by the sugar industry in Kenya. The Taskforce was established under Gazette Notice No. 11711 of 9th November 2018. The Taskforce embarked on their mandate and made the following recommendations in line with their terms of reference:

13. **Increasing sugarcane production and productivity by:** Enhancing research into high yielding disease resistant and early maturing varieties; Providing financial and extension support to farmers to increase cane production and productivity; Reducing the cost of cane production by facilitating block farming to enable farmer's pool resources for bulk procurement of farm inputs, services and machinery; Enhancing harvesting and transportation efficiencies; Transparency at the weighbridge; Increasing farm level diversification initiatives; and Strengthening out-grower institutions.
14. **Enhancing milling efficiencies and competitiveness by:** Reducing the cost of production at the factory level; Synchronizing cane development to cane supply; investing in value addition; Adoption and development of the ICT Infrastructure across the value chain; Establishing governance structures to coordinate cane production, supply and processing; Developing infrastructure; and mitigating against cane fires.
15. **Pricing mechanism by:** Reviewing the cane payment formula; and ensuring prompt payments to farmers.
16. **Enhancing sugar marketing and trade by:** Increasing sugar production; Improving efficiency along the value chain to reduce cost of production and ensure competitiveness; Proper coordination of sugar importation; Mitigating against sugar smuggling and dumping; Packaging and traceability; Marketing of value-added products; Value addition on ethanol; Encouraging millers to take advantage of the existing opportunity and supportive framework for the production and use of co-generated electricity; Developing and implementing a Policy and strategy that will promote the production, distribution and use of briquettes; and Ensuring compliance with the existing standards on jaggery production.
17. **Compliance with the COMESA safeguard conditions by:** Commencing privatization process of public owned mills by June 2019; putting efforts in place to ensure that Kenya is self-sufficient in sugar production by 2021 on a cost-effective basis; and Commencing payment based on quality of sugarcane by 2021.
18. **Provision of a funding mechanism to support various components in the value chain by:** Reinstating the Sugar Development Levy; and Enhancing research funding.
19. **Revitalization of public owned mills by:** Ensuring adherence and enforcement of all laws and guidelines on good governance; Addressing the capital needs, technology adoption, modernization and indebtedness of public owned mills; Promoting a competitive environment in the sugar industry; Adhering to labour laws on staff benefits and compensations; and Addressing inadequate skilled personnel through capacity building and apprenticeship, appointment of boards of directors and management on specific skills set and competencies; and establishing a national sugar training institute for capacity building.
20. **Taxation structure by:** Classifying sugar as a food item; Reviewing the taxation regime to create a tax friendly investment environment including duty waivers on high end industry inputs such as fertilizer, diesel, farm implements, and plant and factory equipment; and the national and county governments should rationalize levies and taxes to improve farmer earnings and support investment in the sector.

21. **Policy, Legal, Regulatory and Institutional Framework through:** Finalization of policies, gazetting of sugar regulations and development of policy; Reviewing various legislations e.g. the Crops Act No.16 of 2013, the Agriculture and Food Authority Act No.13 of 2013, and the Kenya Agriculture and Livestock Research Act No. 17 of 2013; Consumer protection on sugar including imports through enforcement of necessary legislation by various institutions; Promoting good corporate governance in public owned mills; Improving the quality of products and by-products in the sugar industry; Improving basic conditions of employment for employees, trade unions and trade disputes, promote sound labour relations and expeditious dispute settlement, conducive to social justice and economic development; and Facilitating dispute resolution between Kenya, COMESA and EAC member states over sugar related trade issues.

2.4 ISSUES TO NOTE IN SAFEGUARDING THE SUGAR INDUSTRY IN KENYA

Sugar Branding

22. Super markets in Kenya have been found to rebrand sugar indicating no label of its origin. The Consumers Federation of Kenya had raised concern about rebranding because of the following reasons: It is inconsistent with the Consumer Protection Act, 2012; Such packaging hardly indicates the actual origin of the repackaged products; Expiry dates are either missing on the packaging and or are decided by the particular supermarket; It contravenes Article 46 of the Constitution, the Public Health Act and related statutes; and the KEBS mark of quality on the items would be for the supermarkets and not the manufacturers.
23. Rebranding of sugar is anchored in section 12 and 13 of the Sugar (Imports, Exports and By-products) Regulations of 2019. The Regulations require a relook to cure the aspects of smuggled sugar into the country.

Regulatory framework: The Sugar (Imports, Exports and By-products) Regulations, 2020 – L.N. No. 125

24. Regulation 8 mandates the Authority to determine the quantity of sugar that may be required from manufacturers for domestic consumption while accounting for any shortfall in the production of sugar in the country.
25. Regulation 9(2)(e) obligates the person who imports sugar to submit to the Authority the certificate of origin of the consignment.
26. Regulation 12 (1) provides that a person shall not pack sugar or a by-product of sugar into a package of different quantity, material or brand from the original packaging without the approval of the Authority and regulation 12(3) provides that a package of an imported consignment, whether repackaged or in its original packaging, shall carry, in bold print, the name and contact details of the manufacturer, country of origin, and the vendor and purchaser of the consignment.
27. Regulation 13 (1) provides that an approved importer of sugar or a by-product of sugar, who wishes to rebrand a consignment, shall apply for a permit from the Authority before rebranding the sugar. This may give room for smuggled sugar to gain entrance into the market.

Taxation on imported sugar to promote local sugar production

28. Kenya is a member of the EAC and COMESA and is bound by the treaties of these organizations in as far as sugar trade is concerned.

29. Kenya has been on COMESA sugar safeguards since 2002 to enable it take measures to improve competitiveness of its sugar industry. The latest two-year extension was scheduled to end in February 2023.
30. Article 57 of the COMESA Treaty states that no member state shall impose, directly or indirectly, on the products of other member states any internal taxation of any kind in excess of that imposed, directly or indirectly, on like products.
31. Kenya should strictly apply the maximum CET of 35% on sugar imports coming from outside the COMESA region.

2.5 WAY FORWARD

In order to safeguard the sugar industry, the following should be implemented:

32. There is need to amend the Sugar (Imports, Exports and By-Products) Regulations, 2019 by banning sugar rebranding through this Bill which will subsequently require the Ministry to delete clauses that allow importers to rebrand sugar and sugar products thereby losing the points of origin. This provision may enable unscrupulous traders to smuggle in products and rebrand them and this may contribute to the killing the local sugar industry.
33. Kenya is bound by the EAC and COMESA treaties on imposing higher taxes on sugar from the member states, the Government needs to impose CET maximum tariff on sugar imported from outside the COMESA region.
34. The Government should implement the recommendations of the Taskforce on Sugar 2019 as highlighted above.

PART THREE

3 OVERVIEW OF THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

3.1 INTRODUCTION

35. The Kenya Sugar Authority was established in 1973 under the Kenya Sugar Authority Order (Cap. 318) to promote and foster the effective and efficient development of sugar cane for the production of white sugar. The legislation aimed at strengthening the sugar sector.
36. The Sugar Act No.10 of 2001 came into force to provide for the development, regulation and promotion of the sugar industry and establishment the Kenya Sugar Board (KSB). Pursuant to section 33 of the Sugar Act, 2001, a set of regulations including those relating to Election of Board of Directors in 2002, imposition of the Levy Order in 2007, Imports, Exports and By-Products in 2008 and Arbitration Tribunal Rules in 2008 were gazetted. However, the most important General Regulations required to operationalize the Act, specifically relating to production, manufacturing and marketing were never gazetted leading to the dysfunctional environment in the sugar industry.
37. In 2013, the Crops Act No. 16 of 2013 came into force to provide for the growth and development of agricultural crops. Further, the Agriculture and Food Authority Act No. 13 of 2013 came into force to provide for the consolidation of the laws on the regulation and promotion of agriculture in the country. In effect, the Sugar Act of 2001 was repealed.
38. The sugar sub-sector has lacked regulations for the proper conduct of its business since 2001. The Crops Act No. 16 of 2013 gives provision for the development of crop regulations under Section 40. Efforts to develop the Draft Sugar (General) Regulations to operationalize the Act commenced in 2014 but the Regulations are yet to be gazetted to date.
39. Noting that the sugar sector is at an all-time low ensuing from the failure to have sector specific laws or regulations, an attempt was made in the 12th Parliament to enact the Sugar Bill, 2019 which unfortunately did not materialize before the end of term of the 12th Parliament.

3.2 REVIEW OF THE BILL

The Bill has sixty-two (62) clauses and has the following provisions:

40. The principal object of the Bill is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill shall restore the roles of the Kenya Sugar Board currently undertaken the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Part I: Preliminary

41. Clauses 1 and 2 of the Bill provide for preliminary provisions that is, the short title, interpretation of terms as used in the bill, objects of the Bill and the guiding principles to disaster risk management.
42. The object of the Bill is to provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes.

Part II: Establishment Powers and Functions of the Sugar Board

43. Clauses 3 to 6 of the Bill provide for the establishment of the Kenya Sugar Board as a corporate body with perpetual succession. The main functions of the Board are to, among others, regulate, develop and promote the sugar industry; co-ordinate the activities of individuals and organizations within the industry; and co-ordinate the activities of individuals and organizations within the industry.
44. The Board also takes part in policy formulation and implementation, research, export of local sugar, advisory to local sugar growers, pricing, licensing sugar mills, compliance with set standards, local and international market surveillance among others.
45. Clause 5 provides for the functions of county governments to offer cane nursery certificate, extension services, ensure and enforce compliance with regulations and establish road networks for sugar movements.
46. Clauses 6 to 17 provide for the composition of the Board, the terms of appointment of its members and vacation of office. The powers of the board in performing its functions and the conduct of its business. It Establishes committees of the board, the power of the board to delegate functions and remuneration of board members.
47. The clauses also establish the office of the Chief Executive Officer as an *ex-officio* member of the Board, appointment of staff of the Board and their protection from personal liability in the performance of their duties.

Part III: Licensing and Registration

48. Clauses 19 to 22 of the Bill require anybody who operates a sugar mill or jaggery to obtain a license from the Board. The circumstance under which the Board may decline to issue a license, the times for application or renewal of license, duration and expiry of the license as well as the specifics and purpose of a license.
49. Provides for conditions for importation of sugar, registration of millers and establish offences under the Bill.

Part IV: Establishment of the Kenya Sugar Research Institute

50. Clauses 23 to 28 contain provisions establishing the Kenya Sugar Research Institute as a body corporate with perpetual existence. The functions of the Institute, its management and the funds of the Institute.

Part V: Appointment of Crop Inspectors

51. Clauses 31 and 32 empower the Board to appoint and regulate qualified persons as crop inspectors, the functions and powers of the inspectors, and offences for obstructing the inspectors from performing their functions.

Part VI: Financial Provisions

52. Clauses 33 to 35 provide for funding of the Board outlining monies considered to comprise funds of the Board, the Sugar Development Levy as a fund gazetted by the Cabinet Secretary to be levied on domestic sugar and Sugar Development Fund administered by the Board.
53. Clauses 36 to 39 provide for the financial year, preparation of annual estimates before the commencement of a financial year, records and audit of accounts and preparation of annual report on operations of the Board. The report is submitted to the Cabinet Secretary for tabling before the National Assembly.

Part VII: Establishment of the Sugar Arbitration Tribunal

54. Clauses 40 to 43 establish the Sugar Arbitration Tribunal, its composition, qualification for membership, terms of service, tenure and jurisdiction.
55. Clauses 44 to 48 provide for the powers of the Tribunal in performing their functions, conditions for removal from office of a member of the Tribunal and filling of vacancies in the Tribunal. The Clauses also provide for the appointment of a Secretary to the Tribunal by the Chief Justice and remuneration of the Tribunal and its members of staff.

Part VIII: Miscellaneous Provisions

56. Clauses 48 to 56 provide for saving and transitional provisions.
57. Clause 48 provides for the Board to convene an annual general meeting or special meeting of representatives of millers and growers to consider the annual report and accounts of the Board.
58. Clause 49 provides that all sugar produced locally or imported into the country shall meet the set quality, health and safety control measures and sets penalty for contravention.
59. Clause 50 provides for physical inspection of premises by the Board to ensure quality and safety and provides for penalty for contravention.
60. Clause 51 provides for safeguard measures to protect the industry from unfair trade practices on regional agreements and importation of sugar.
61. Clause 52 provides for offences and penalties under the Bill.
62. Clause 53 provides for guidelines for sugar industry agreements negotiated between the millers and the growers.
63. Clauses 54 and 55 provide for the shareholding rights of the growers in private companies and representation in the Boards of Management.
64. Clause 56 provides for the powers of the cabinet secretary to amend the Third Schedule.

Part IX: Provisions on Delegated Powers

65. Clause 57 provides for the powers of the Cabinet Secretary to make regulations in consultation with the Board to give effect to provisions of the Bill.

Part X: Consequential Amendments

66. Clauses 58 and 59 provide for amendments to the First Schedule to the Agriculture and Food Authority Act, 2013 to restore the roles of the Kenya Sugar Board currently undertaken by the Sugar Directorate of the Agriculture and Food Authority as established by the Act.

Part XI: Savings and Transitional Provisions

67. Clauses 60 to 62 provide for the transfer of staff of the former Kenya Sugar Board before the commencement of the Agriculture and Food Authority Act, 2013 and current staff of the Sugar Directorate, assets and liabilities and all pending legal proceedings and claims to the Kenya Sugar Board upon commencement of the Act.

Schedules to the Bill

68. The First Schedule provides for the delineation of sugar catchment areas.
69. The Second Schedule provides for the conduct of business and affairs of the Board.
70. The Third Schedule provides guidelines for agreements between parties in the sugar industry.
71. The Fourth Schedule has provisions for the meetings and procedure of the tribunal.
72. The Bill delegates legislative powers to the Cabinet Secretary responsible for matters related to agriculture to make regulations for the better carrying into effect of its provisions. It does not limit fundamental rights and freedoms.
73. The Bill affects the functions of county governments as it deals with the functions of agriculture assigned to county governments under Paragraph 1 of Part 2 of the First Schedule to the Constitution.
74. Enactment of the Bill shall occasion additional expenditure of public funds.

PART FOUR

4 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

75. Following the call for memoranda from the public through the placement of adverts in the print media on 14th February 2023 and vide a letter REF: NA/DDC/A&L/2023/009 dated 9th March 2023 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

- i. Kwale International Sugar Company Limited
- ii. Kenya Association of Manufacturers
- iii. Commodities Fund
- iv. Kenya Sugar Manufacturers Association
- v. The Sugar Campaign for Change
- vi. The Council of Governors
- vii. Hon. Emmanuel Wangwe, MP
- viii. West Kenya Sugar Company Limited/Sukari Sugar Company
- ix. Kenya National Association of Sugarcane Farmers Organizations
- x. Kenya Agricultural and Livestock Research Organisation
- xi. Ministry of Agriculture and Livestock Development
- xii. Kisumu Sugarbelt Co-operative Union Limited
- xiii. Kenya National Federation of Sugarcane Farmers
- xiv. Out-growers Sukari Sugar Company Limited
- xv. South Nyanza Sugar Company Limited
- xvi. Kenya National Federation of Sugarcane Farmers, Sony Sugar Branch

76. The stakeholders submitted as follows:

4.1 KWALE INTERNATIONAL SUGAR COMPANY LIMITED

In a meeting with the Committee held on Friday, 24th March 2023, Kwale International Sugar Company proposed the following amendments to the Finance Bill 2022:

Clause 2

77. Amend the clause by redefining the word "*Jaggery Mill*" to mean "*rudimentary or bare minimum technology equipment used to crush sugarcane to produce sugarcane juice which is processed through boiling to produce jaggery*". Jaggery mill is insufficiently described in the Bill and the proposed amendment will provide a proper definition so that every stakeholder can fit into the industry.

Committee's Observation/Recommendation

The Committee observed that the term "*jaggery mill*" had not been defined in the Bill. Their proposal was therefore adopted by the Committee. The Committee further proposed to delete the word "*rudimentary*"

78. Amend definition of the term "*growers*" to "*a person who grows sugarcane or any crop in Kenya capable of producing for sale to a miller and is so registered by the board*". The purpose of the proposed amendment is to replace produce with grows.

Committee's Observation/Recommendation

The Committee observed that defining the word "*growers*" was not necessary. Their proposal was therefore not adopted by the Committee.

79. Include Kenya Sugar Manufacturers Association (KESMA) in the Bill, so that it is the recognized Association for lobbying for the interests of millers. This will give formal recognition and a regulatory framework to the millers on how they can engage or lobby on sugar industry matters.

Committee's Observation/Recommendation

The Committee observed that there is need to have an apex body for millers just as there is one for growers. Definition for "*sugar manufacturers apex body*" was introduced in the Bill.

80. Define '*sugar importer*' to mean "*a miller who has been licensed by the board to import sugar in to the country*". This is because sugar importation will be done through the sugar millers based on a quota system. The Bill is silent on who is a sugar importer yet, sugar importation meets almost 40-50% of the country's sugar demand making the sugar importer a critical player in the industry. If this is solely left to private dealers as is the case now, we will have people who are not interested in the sugar industry benefiting at the expense of more deserving stakeholders.

Committee's Observation/Recommendation

The Committee observed that it is the role of KSB to determine who imports sugar into the country. Their proposal was therefore not adopted by the Committee.

Clause 4

81. Amend clause 4 (2) (f) to read as follows "*to license import and export of sugar*" this will give powers to the Board to license sugar importers and exporters.

Committee's Observation/Recommendation

The Bill had only mandated the KSB to facilitate the export of sugar. Their proposal was adopted by the Committee as it will allow the Board to facilitate importation of sugar too.

82. Insert the following additional clause under Licensing of Inputs Distributor "*a seller or stockiest of agricultural inputs used in sugarcane cultivation*". This is to give the Board powers to control the quality of inputs availed in the market which has an impact on the quality of the sugarcane together with effective monitoring of input pricing to avoid high cost of inputs in the industry.

Committee's Observations/Recommendation

There are bodies charged with the responsibility of licensing such distributors such as AGMAC. The proposal was therefore not adopted by the Committee.

83. Give the Board powers to register growers by inserting the following sentence "*The Board shall have the power to register all sugarcane out-growers in the country*". This will enable the Board to have clear database of all growers in the country and act as a source of reference in determining full area under cane within different catchment areas and also resolving issues around cane poaching.

Committee's Observation/Recommendation

The Committee observed that this function can be done by the various farmer organisations. It was also noted that the Bill provides for a sugar growers apex body which *inter alia* registers farmers. Clause 4 (1) (b) tasks the Board with coordinating activities of the value chain actors.

84. Insert the following as an additional function to the Board *"to monitor the implementations of the provisions of the agreement governing sale of privatized sugar factories and submit report to the cabinet secretary"*. This is because the Board is the regulator of the industry and it should have mandate to give its views on the government's proposed privatization of public sugar mills.

Committee's Observation/Recommendation

The Board can still discharge this function under paragraph 4(2) (u) of the Bill. This proposal was therefore not adopted by the Committee.

Clause 6

85. Amend the composition of the Board as follows: *"(a) The Chairperson should be appointed by the President and shall be from the private sector having experience and knowledge of no less than 15 years in the industry; (b) Principal Secretary of the Ministry responsible for trade or his/her representative; (c) Three representatives of millers proposed by KESMA; (d) Principal Secretary responsible for agriculture or his/her representative; (e) Principal Secretary for National Treasury or his/her representative; (f) Chair of Council of Governors (COG) Committee on Agriculture; and (g) Chief Executive Officer of the Board as an Ex-officio member."*

The Chairperson should be appointed by the President so as to project the importance of the industry to the government's agenda on food security. The Trade Ministry will look into aspects of competition and markets that will make the industry competitive.

Committee's Observation/Recommendation

Their proposal was adopted with amendments.

86. Insert the following to cooperation with agencies: *"(a) The Board shall cooperate with other government ministries, departments and agencies in the implementation of this Act; and (b) For the purpose of part (a), ministries, departments and agencies of government shall accord to the Board such assistance as may be necessary to ensure proper discharge of the functions of the Board"*.

Committee's Observation/Recommendation

The Committee observed that their proposal is already catered for under paragraph 9(g) of the Bill and therefore no need to repeat it.

Clause 8

87. Amend clause 8 by inserting the following new paragraph, *"when their behaviour affects millers or out-growers and he/she ceases to belong to the category of persons he/she is representing in the Board"*. This is relevant when the proposing association withdraws membership or that person ceases to hold office under the terms prescribed within the body.

Committee's Observation/Recommendation

The Committee observed that the provisions in the Bill are standard considerations for vacation from office. Their proposal was therefore not adopted.

Clause 20

88. Amend sub-clause 20 (1) to read as follows: *"(a) The Board shall have the power to issue sugar input licenses and prescribe procedures and regulations for sugar imports; (b) The sugar import licenses issued by the Board shall be subjected to the payment of a fee and upon such terms and conditions as the Board may*

impose; and (c) Before issuing the relevant license under sub-section (1), the Board shall take into account the levels of sugar production and sugar import or export requirements at a particular time.

Committee's Observation/Recommendation

The Committee observed that their proposal had already been provided for in the Bill and was therefore not adopted.

89. Amend sub-clause 20 (2) to read as follows *"a sugar importer who imports sugar into Kenya shall prior to importation: (a) Provide evidence that the sugar that they intend to import is not available in the local market; (b) Provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and (c) Obtain pre-import approval from the Board"*.

Committee's Observation/Recommendation

The Committee observed that details on the importation of sugar will be provided in regulations. Their proposal was therefore not adopted.

Clause 25

90. Amend sub-clause 25 (b) to read as follows, *"three representatives elected by growers and two representatives by KESMA"*. The purpose is to have more representation in the management board of the research institute to ensure effective varied stakeholders' input and engagement.

Committee's Observation/Recommendation

Growers and representatives of the sugar manufacture's apex body are already part of the directors of the Board, as such, they will still oversight the running of the Institute through the Board. Their proposal was therefore not adopted.

4.2 KENYA ASSOCIATION OF MANUFACTURES

In a meeting with the Committee held on Friday, 24th March 2023, Kenya Association of Manufacturers proposed the following amendments to the Bill:

Clause 2

91. Amend the definition of *"farm gate"* to mean *"cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas"* this is important for the farmers since most are not close to the factories and as such, the distance can be a challenge and a burden in terms of costs of transportation. By reducing the costs of transportation it's a win for the farmer.

Committee's Observation/Recommendation

The Committee observed that there is no need to define the word *"farm gate"*. Definition of the word was therefore deleted.

92. Amend definition of the word *'mill gate'* to read as follows, *'a site where sugarcane is received at the respective factory weighbridge.'* This definition brings out the function of the mill gate that is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory of the receiving centers.

Committee's Observation/Recommendation

Their proposal was partly adopted by the Committee. The proposal was adopted with amendments.

93. Amend the definition of 'sugar catchment area' by deleting the words "*for purposes of election to the Board under the first schedule*" appearing immediately after the second "area". This is to focus on the substance of the sugar catchment area as a factor in clustering a region, that is, the soil conditions, weather and other factors including availability of at least two to three sugar mills that provide the farmer with alternatives on sugarcane market.

Committee's Observation/Recommendation

The Committee observed that the main purpose of having the catchment area was for election of representatives to the Board. As such, deleting the words "*for purposes of election to the Board under the First Schedule*" will negate the notion of having representatives of the Board.

94. Define of "industrial sugar" as follows, "*Industrial sugar*" means a white crystalline carbohydrate used as a sweetener and preservative sugar, which complies with the specifications set by the body for the time being responsible for setting standards". This is because industrial sugar is meant for use in the manufacturing processes and products only. It is not manufactured in Kenya and therefore, should be distinctive. The distinction between raw sugar and industrial sugar is based on the sucrose content as given by the polarimeter readings and not based on suitability for consumption.

Committee's Observation/Recommendation

"Industrial sugar" had not been defined in the Bill. Their proposal was adopted by the Committee.

Clause 6

95. Amend sub-clause 6 (1) (b) to read as follows, "*(b) the representative nominated by farmers' apex body from each sugar catchment area as per the first schedule*". This will allow for one representative from the Western Region, one from the Central Region and one from the Southern Region who are the major players in the sugar industry. It will also give the recognized farmers' apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board. The farmers will have a structured way to front their representative without undue influence. The farmers' apex body is mandated to advocate for the farmers' interests.

Committee's Observation/Recommendation

The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

96. Amend sub-clause 6 (1) (c) to read as follows, "*three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition*". It would be prudent to allow the millers' apex body to nominate at least three representatives as they are key stakeholders. This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry.

Committee's Observation/Recommendation

The Committee resolved to have two representatives from the sugar manufacturers' apex body, one from the public milling companies and one from the private milling companies and to achieve an odd number. Their proposal was therefore not adopted.

Clause 20

97. Amend sub-clause 20 (1) by deleting paragraph (a) in its entirety. This is because this function should not be left open to the sugar importers. It is the responsibility of the Board to determine the sugar deficit in the country at any one time. The onus should not be on the importer.

Committee's Observation/Recommendation

This is a way of exercising control on the importation of sugar. Their proposal was therefore not adopted by the Committee.

Clause 25

98. Amend sub-clause 25 (b) by deleting the words "*elected by the growers*" appearing immediately after the words "*persons*" and substituting therefore, with the words "*nominated by the farmers' apex body from the designated sugar catchment regions*". This amendment will ensure that the appointees are selected for the purpose of representing farmers for better uptake of new practices.

Committee's Observations/Recommendations

The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

99. Amend sub-clause 25 (e) by deleting the words "*Kenya Agriculture Livestock & Research Organization*" appearing immediately after the words "*of the*" and substituting the with the words "*Kenya Sugar Research Institute*". This proposal is guided by the notion that this is a new body being set up which is not under the ambit of KALRO.

Committee's Observation/Recommendation

KALRO is the body charged with agricultural research in the country. It is therefore important for them to be represented in the Institute's board of directors.

100. Amend clause 25 by deleting paragraph (f) in its entirety and replacing it with "*one person nominated by the apex body of the sugar millers*". The millers are not represented and they are a major stakeholder. Further, the Bill removes the sugar directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA on the Board.

Committee's Observation/Recommendation

The Committee observed that millers were not represented in the Institute's board of directors. Their proposal was therefore adopted by the Committee.

Clause 29

101. Amend clause 29 by deleting paragraph (1) in its entirety. This is because the work of inspectors is a replication of other agencies already set in place in the sugar industry, that's, KRA, KEBS, Sugar Directorate. In addition, the sugar industry is already overregulated with more than 40 licenses. The Sugar Board ensures that the millers/users comply with the licenses before releasing the annual licenses.

Committee's Observation/Recommendation

The Committee observed that crop inspectors have the specific purpose of ensuring that the agronomic requirements of sugar crops are met. This role cannot be performed by KRA or KEBS. Their proposal was therefore not adopted by the Committee.

Clause 34

102. Amend sub-clause 34 (1) to read as follows, "*the cabinet secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar excluding industrial sugar to be known as Sugar Development Levy*". This is because Kenya lacks capacity to produce industrial sugar which necessitates the need to import it from countries

outside the East Africa Community (EAC). The proposal to levy 10% Sugar Development Levy (SDL) will increase the cost of doing business for manufactures in Kenya.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

103. Amend sub-clause 34 (7) (a) to read as follows: *"Twenty per centum shall be applied by the Board for income or price stabilization and cane development for growers."* This will ensure that the funds are well provided for all programmes associated with cane development. This will increase sugarcane yields and will generate more income for farmers by applying the right inputs and correct agronomic practices.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

104. Amend sub-clause 34 (7) (c) by: (i) deleting the words *"Twenty per centum"* and substituting therefore the words *"Fifteen per centum"*; and (ii) by clarifying that the funds will be channelled to the Sugar Research Institute specifically. The amounts involved are huge and reallocating five per centum from this item to the development of the sugarcane growers will bring greater gains to the industry and will not adversely affect the Board. The proposal to channel the funds to the Sugar Research Institute will help underline that the funds are specific for sugar research.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 50

105. Delete the clause in its entirety because the Board should not be allocated this duty as the work will be a replication of other agencies. KEBS and NEMA already do most of the tasks contemplated in this clause. They should therefore remain the sole national agencies that carry out this task.

Committee's Observation/Recommendation

One of the functions of the Board is to enforce standards. This can only be done through physical inspection of the premises. Their proposal was therefore not adopted by the Committee.

Clause 51

106. Amend sub-clause 51(2) (b) to read as follows: *"importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licenses."* Requirement of reporting on a daily basis is impractical and would result into increased cost of doing business. An importer of sugar is required to get a pre-import approval it would therefore be reasonable to file returns per consignment for the quantity approved after the sugar has been utilized. Such returns should be in a prescribed form requiring information on the imports, sales and stock.

Committee's Observation/Recommendation

The Committee recommended that the importers will report as the Board will determine. Their proposal was therefore not adopted.

Clause 54

107. Delete the clause in its entirety. This should not be admissible in the privately-owned mills where the growers are not investment capital contributors. Further, this will discourage private investment in the sugar mills.

Committee's Observation/Recommendation

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Their proposal was therefore adopted by the Committee.

Clause 55

108. Delete the clause in its entirety. This clause will not be applicable and may lead to legal tussles once implemented. It will also discourage private investments.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. The Committee adopted KAM's proposal.

First Schedule

109. Amend by deleting the word "*counties*" and replacing with the word "*regions*" and delineate as follows: "*(i) Central Region - Kericho, Kisumu & Nandi; (ii) Upper Western Region - Bungoma, Kakamega, Trans-Nzoia and Uasin Gishu; (iii) Lower Western Region - Busia, Mumias & Siaya; (iv) Southern Region - Homabay, Kisii, Migori & Narok; and (v) Coastal Region - Kwale, Lamu & Tana River*". This proposal will leave the rift region orphaned with no operational sugar mill. This is tantamount to economic suicide and should not be allowed to be established in law.

Committee's Observation/Recommendation

The Committee observed that the First schedule has provided for election of representatives to the office of member to the Board. Further, the Committee observed that there is need to provide zoning of catchment areas in order to curb irregularities experienced in the catchment areas such as cane poaching, cane agreements not being adhered to. The Committee agreed with the proposal to zoning.

Third Schedule

110. Amend Paragraph (2) of the Third Schedule by deleting the words "*sugar lobby group*" and substituting therefore with the words "*Sugarcane Growers Apex Body*". This is because lobby groups do not have the objectivity to steer the sugarcane growers' issues in a joint and clear perspective as compared to an apex body.
111. Amend Paragraph (5) (a) by deleting the words "*harvest*" and "*transport*". The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. Entrenching this in the Act will result in an untenable situation on the ground.

112. Amend Paragraph (5) (g) by deleting word “mobile” appearing immediately after the word “that”. This is because weighbridges are not mobile.
113. Amend the Third Schedule by deleting paragraph (2) (d) in its entirety. The amendment will ensure that farmers have a structured way to front their representative without undue influence.
114. Amend sub-paragraph (7) (4) by inserting the following new paragraph (d) “the peculiarities of each region”. This proposal is premised on the fact that the central region has different soils and climate from all the other regions rendering its yield much lower than the rest.
115. Amend sub-paragraph 7 (6) by deleting the words “thirty-six months” appearing immediately after the word “every” and substituting therefore with the words “one-month”. The one month will provide a realistic and sufficient time for the Committee to regularly review the prices as per the market forces demand. This will in turn be a win-win situation for the farmers and the millers to benefit from the running price for the month.
116. Delete the entire Part 4 because there are no longer any out-grower institutions on the ground. The current regulations deal with relationships between the miller and the sugarcane grower directly. There is no longer any out-grower institution on the ground. The current regulation deal with relationships between the miller and the sugarcane growers directly. Furthermore, these are issues that can be handled under Sugar Regulations and not in the Act.

Committee’s Observation/Recommendation

The Third Schedule to the Bill was deleted in its entirety. The Committee observed that the provisions can be carried in regulations.

4.3 COMMODITIES FUND

In a meeting with the Committee held on Friday, 24th March 2023, Ms. Nancy Cheruiyot, Managing Trustee and Chief Executive Officer, Commodities Fund proposed the following amendments to the Bill:

Clause 34

117. Delete clause 34 in its entirety because the clause seeks to replicate the mandate of Commodities Fund. This will be detrimental to Commodities Fund and cause confusion in the industry. The purposed sugar Board should only concentrate on regulation of the sector and leave the matter of financing-to-financing institutions in place. The sugar development levy should be collected but administration of the lending part left to the Commodities Fund. The issue of infrastructure development should not be left to the Board as this will lead to conflict with the county governments and national government as well. It can also lead to abuse in allocation as the board does not have the capacity to assess the same. The apportionment of the levy should not be left to the board as well but instead the Cabinet Secretary should be the one to determine the apportionment based on the budgetary needs of the benefitting institutions.

Committee’s Observation/Recommendation

The Committee observed that the fund should be maintained by the Commodities Fund. Within the Commodities Fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was adopted

Clause 35

118. Delete clause 35 in its entirety because establishing a Sugar Development Fund is replication to what the Commodities Fund is doing. Within the Commodities Fund, is a Sugar Development Fund, which does exactly what this Fund is proposing to do. In the past, the defunct Kenya Sugar Board failed to manage the Sugar Development Fund effectively and efficiently and this led to the current bad loan book of over KSh. 20 billion.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the commodities fund. Within the Commodities fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was adopted.

4.4 KENYA SUGAR MANUFACTURERS ASSOCIATION

In a meeting with the Committee held on Friday, 24th March 2023, Ms. Joyce Opondo, Secretary, KESMA proposed the following amendments to the Sugar Bill, 2022 on behalf of the Association:

119. The Association proposed formation of the Kenya National Federation of Sugarcane Farmers as the apex body. This is because the body is recognized by the Kenya Sugar Board and encompasses all other sugar lobby groups. It also makes it easier for the Government to deal with one entity.

Committee's Observation/Recommendation

The Committee observed that the sugarcane growers' apex body was already defined in the Bill and their proposal will be a repetition. The Committee did not adopt their proposal.

Clause 6

120. Amend sub-clause 6(1) (a) to define "*chairperson*" as a person appointed by the President through a gazette notice. This is in accordance with the Mwongozo code.

Committee's Observation/Recommendation

The Committee observed that this was the standard practice and adopted their proposal.

121. Amend sub-clause 6 (1) (b) by including three (3) farmer representatives. This is to promote equity in the allocation of representation of each stakeholder.

Committee's Observation/Recommendation

The number of farmer representatives is as per the number of catchment areas. This is to ensure that each catchment area is represented in the Board. The Committee did not adopt their proposal.

122. Amend clause 6 (1) (c) by including three (3) sugar mill representatives namely: PS (Ministry of Agriculture), PS (Ministry of Trade and Industry) and County Government. This is to adhere to the Mwongozo Code and to provide equity in representation among the main players in the industry.

Committee's Observation/Recommendation

The Committee recommended that millers be represented by two persons, one from the public mills and the other from the private mills. Additionally, there is no need to have the PS Ministry of Trade and Industry in the Board. Their proposals were therefore not adopted by the Committee.

Clause 18

123. Amend sub-clause 18 (1) by giving the mandate of issuing licenses to county governments. This is because Sugar Catchment Regions have been adopted and therefore, regional counties will be jointly mandated to issue the licenses.

Committee's Observation/Recommendation

Licensing of the sugar and jaggery mills is a role of the national government and shall be exercised through the Board. County governments will issue trade licenses to the milling companies. Their proposal was therefore not adopted.

Clause 20

124. Amend the clause to include "*sugar and sugarcane imports*." The provision should also deal with sugarcane imports.

Committee's Observation/Recommendation

The Committee rejected the proposal.

Clause 25

125. Amend sub-clause (b) as follows: "*three farmers' representatives; one person nominated by the COG; and one person who has knowledge and experience in matters relating to sugar technology and value addition nominated by KESMA*." Further, the representatives mentioned above be appointed by the Cabinet Secretary by notice in the Gazette.

Committee's Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

126. Amend sub-clause 25 (e) by deleting the words "*Kenya Agricultural Livestock and Research Organization*" and replacing with the words "*Kenya Sugar Research Institute*." This is because the position should be left for the miller representative and representation of KALRO in the Sugar Research Board is unnecessary.

Committee's Observation/Recommendation

The Committee observed that KALRO is the body mandated to carry out agricultural research in the country and it is important for the Organisation to be represented in the Institute's Board of Directors.

The Committee recommended representation of the millers in the Institute's Board of Directors.

Clauses 29-32

127. The terms of reference of the crop inspectors should be corrected to reflect the industry as sugar production is both agricultural and industrial. Their TORs should be directed towards sugarcane production and not sugar milling.

Committee's Observation/Recommendation

The Board is mandated to enforce and monitor compliance with standards along the sugar value chains which include the milling companies. This can only be done through inspection of the premises. Their proposal was therefore not adopted by the Committee.

Clause 34

128. Amend sub-clause 34 (1) to read as follows, "*EAC-5%, COMESA- 15%, outside COMESA 25% and Locally produced max 2%*". This is because imports negatively impact the prices of domestically produced sugar therefore levying them more will encourage the growth of local sugarcane growers.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

Clause 54

129. Amend sub-clause 54 (1) (a) by inserting the words "*shares held by the government in*" immediately after the words "*shareholding of all*".
130. Amend sub-clause 54 (1) (b) by deleting the expression "*51%*" appearing at the beginning of the paragraph.

Committee's Observation/Recommendation

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Their proposals were therefore adopted by the Committee.

Clause 55

131. Delete clause 55 in its entirety because privately owned sugar mills should not be interfered with by the government and that the government cannot impose directors on them.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. The Committee adopted their proposal.

First Schedule

132. Amend the sugar catchment areas as follows: "*Central Region: Kericho, Nandi, Kisumu; Upper Western region: Bungoma, Kakamega, Trans Nzoia, Uasin Gishu; Lower Western Region: Busia, Mumias, Siaya; Southern Region: Homabay, Kisii, Migori and Narok; and Coastal Region: Kwale, Lamu, Tana River*". This was proposed by Sugar Stakeholders Task force and reflects the views of the public through public participation that was done by the task force.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Third Schedule

133. Amend Paragraph 2 by deleting the words "*Sugar Lobby Group*" and replacing it with "*Sugarcane Growers Apex Body*."
134. Delete the Third Schedule because the provisions in the Schedule should be left for the Sugar Regulations which will guide the Sugar Act once it is enacted.

Part 2

135. Amend Part 2 by deleting sub-paragraph 5(a), because the provision is irrelevant as farmers have the option of harvesting and transporting their own sugarcane to the sugar mill.
136. Amend Part 2 by deleting sub-paragraph 5 (g) because it provides for mobile weighbridges to be availed to the growers while there are no mobile weighbridges.

Part 3

137. Amend by deleting Clause 7 (2) (d) because there is no need for lobby groups as there is already representation from the key stakeholders in the sector.
138. Insert the following sub-paragraph immediately after sub-paragraph 4(c) "*(d) Climate, soil topology and other natural features of each region*". This because factories in the Central Region paying the same price as in other zone stand to make losses as the region suffers the disadvantages of a rendement of less than 9.
139. The duration for reviewing sugarcane prices by the sugarcane pricing Committee be amended to three months. This is because three months' period is reasonable for the determination of the prices by the committee.

Parts 4 & 5

140. Delete parts 4 and 5 in their entirety. These provisions should be contained in the Sugar Crop Regulations.

Part 6

141. Amend paragraph 13(1) by deleting the words "*Kenya Sugar Authority*" and substituting with the words "*Kenya Sugar Board*" because the Kenya Sugar Authority has no place in the new Sugar Bill, 2022.

Committee's Observation/Recommendation

The Third Schedule to the Bill was deleted in its entirety. The Committee observed that the provisions can be carried in regulations.

4.5 THE SUGAR CAMPAIGN FOR CHANGE

In a meeting with the Committee held on Friday, 24th March 2023, Mr. Michael Aruru, proposed the following amendments to the Bill on behalf of Sugar Campaign for Change:

142. Amend the definition of "*Sugar Catchment Area*" by deleting the word "*election*" and replacing it with the word "*nomination*."

Committee's Observation/Recommendation

The Committee observed that the sugar catchment area is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Clause 6

143. Amend the clause to include five representatives from each sugar catchment area. This because the election of the farmers' board of directors was compromised by political processes (politicians and community elites).

Committee's Observation/Recommendation

The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

Clause 9

144. Amend the clause by inserting a new paragraph which provides that the Board should impose a levy upon growers at the rate of ten shillings per ton of cane delivered. The funds collected will be used to support the farmers' apex body in undertaking the following roles: Represent growers in sugarcane pricing committee; Represent farmers at the weighbridges; Organize farmers into block farming system; Develop cane development plans in conjunction with the millers; Develop cane harvesting and transport plan in conjunction with the millers; Organize for bulk farm inputs and services; and Facilitate development and implementation of Sugar industry agreements between the growers and millers. The deduction should be made by the millers and collected by the Board on behalf of the growers' apex body.

Committee's Observation/Recommendation

The Committee observed that the sugarcane apex body should come up with ways of raising funds to cater for its expenses. Their proposal was therefore not adopted.

Clause 23

145. Insert a new paragraph that provides for freedom of farmers to register with other out-grower institutions to access economies of scale. The registration has several benefits such as: Providing a framework to the government for the identification of a qualified apex body to collaborate with; Creation of economies of scale leading to improved sustainability; Improving logistics such as harvesting and transport; Promotion of good cane husbandry, soil testing, applying recommendable inputs; Bulk buying hence lowering transaction costs; Providing access to best technology available in order to improve yield and quality; and Providing value adding and agro-processing facilities.

Committee's Observation/Recommendation

The Committee observed that this can be proposed to farmers through the apex body and therefore no need to include it in the Bill.

Clause 25

146. Insert a new paragraph that provides for the powers to appoint the growers under the First Schedule to the growers' apex body. This is because there is no register for farmers and lack of independent electoral body to carry out elections.

Committee's Observation/Recommendation

The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

Clause 34

147. Amend sub-clause 34 (7) as follows: "(a) *Forty eight percent to be applied by the board for income or price stabilization for sugar grower; (b) Twenty four percent be remitted directly to the institute; (c) One percent be set aside by the board for factory rehabilitation and maintenances; (d) Twenty four percent for the operations of the Board and Board of Trustees; and (e) Four percent be applied for infrastructure for the sugar subsector on a pro rata basis*". The apportionment above is informed by the Sugar Industry Stakeholders Taskforce Report of 2019.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 35

148. Insert new sub-clause 35 (3) to provide for the management of the Fund by a Board of Trustees consisting of: *"(a) PS, National Treasury or a representative nominated by him in writing; (b) PS responsible for the Ministry in charge of matters relating to sugar or his representative nominated by him in writing; (c) The Chief Executive Office of the Board; (d) 2 Members representing sugar cane growers' apex body; (e) 1 member representing millers' apex body; (f) 2 members appointed by the Minister on the basis of their professional and managerial capacity; and (g) The managing trustee as an ex officio member and secretary to the Board of trustees"*.
149. Insert the following new sub-clause 35 (5), *"The Board of Trustees Chairperson be elected by the members from amongst themselves"*.
150. Insert the following new sub-clause 35(6), *"Every appointment under paragraph (d) shall be for a term of three years renewable once and shall be by name and by notice in the Gazette"*.
151. Insert the following new sub-clause 35(7), *"A person nominated as a Managing Director shall be a holder of degree from a University recognized in Kenya and with at least Five (5) years' experience in Financial management"*.
152. Insert the following new sub-clause 35(8), *"The Managing Trustee shall be appointed by the Minister through a competitive process and shall hold office for a period of three years (renewable)"*.

The above amendments will ensure proper management of the funds of the Board by having qualified members in the Board of Trustees.

Committee's Observation/Recommendation

The Committee observed that putting in place a Board of Trustees to manage the SDL will come with additional costs yet there are institutions in place that can carry out the function. Their proposal was therefore not adopted by the Committee.

Clause 37

153. Amend the sub-clause 27 (1) by deleting the word *"Board"* and replacing it with the words *"Sugar import and export committee"*. The said committee shall have the following members: *"(a) Chairman of Kenya Sugar Board; (b) PS in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing; (c) The PS in the Ministry for Trade and Industry or his representative nominated by him in writing; (d) Two (2) representatives nominated by Sugarcane growers in writing; and (d) Representatives nominated by Millers' apex body in writing"*.

Committee's Observation/Recommendation

The Committee observed that this proposal is not necessary because the role can be executed by the Board.

Clause 54

154. Amend the clause by inserting paragraph (c) that read as follows: *"51% grower shares warehoused in an out-growers mutual fund."* This is because equity reserved for farmers will most likely be sold as soon as shares climb when trading opens after the Initial Public Offer (IPO).

Committee's Observation/Recommendation

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Clause 54 was therefore deleted.

Clause 55

155. Amend sub-clause 55 (2) by deleting the words *"the milling company shall consider in the first instance"* and replacing it with the following words *"the milling company shall write to the apex body for nomination of one of."* The amendment seeks to avoid the millers' appointment of their sympathizers.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. Clause 55 was therefore deleted.

Third Schedule

156. Amend Part 3 by deleting the words *"sugarcane fires"* to read as follows and substituting with the words *"cane pricing"*.
157. Amend Part 3 by deleting paragraph 6 because the millers may use the provision to frustrate and exploit the farmers through delayed payment in order to deter them from torching their cane to influence harvesting.
158. Amend Part 3 by deleting paragraph 7 (2) (d) and substituting it as follows: *"three persons nominated by the growers' apex body from sugarcane catchment region."* This is because growers' committee members should be nominated by the apex body in a bid to avoid millers providing unfair preferential treatment to their friends at the committee.
159. Amend Part 3 by inserting the following new paragraph 7 (4) (d): *"Fair and Remunerative Price (FRP) which is a floor price which the farmers would receive even when sugar prices fall to a level which leads to prices lower than FRP"*.
160. Amend Part 3 by inserting the following new paragraph 7 (4) (e): *"Fixed division of proceeds ratio 67% and 33% to millers"*. This is because price fluctuations have led to inadequate cane production leading to millers operating below capacity. Therefore, price stabilization will lead to increased production.
161. Amend Part 3 by deleting the words *"thirty-six months"* in paragraph 7 (6) and providing that cane prices set by the committee be reviewed regularly as directed by prevailing market price. This is because the provision is unfair to the farmers and it provides a justification to the millers to control the sugarcane prices contrary to free market economy.

Committee's Observation/Recommendation

The Third Schedule to the Bill was deleted in its entirety. The Committee observed that the provisions can be carried in regulations.

4.6 THE COUNCIL OF GOVERNORS

In a meeting with the Committee held on Friday, 24th March 2023, H.E. Governor Paul Otuoma proposed the following amendments to the Bill on behalf of CoG:

Clause 2

162. Amend by deleting definitions of the word "*license*" and replacing it with the definition of the word "*Regional Zones*." This is because agriculture and trade development is a devolved function under the Fourth Schedule to the Constitution.

Committee's Observation/Recommendation

Licensing of the milling companies is a function of the regulator i.e. the Board. County governments will issue business licenses to the milling companies.

Clause 4

163. Amend sub-clause 4(2) (c) to read as follows: "*Establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate the flow of research findings to the interested parties*".

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

164. Amend sub-clause 4(2) (i) to read as follows: "*In collaboration with the county governments, facilitate an equitable mechanism for the pricing of sugarcane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines*".

Committee's Observation/Recommendation

The Committee observed that it is important for county governments to be involved in sugarcane pricing and be involved in the disposal of by-products because it is a function of county governments. Their proposal was adopted by the Committee.

165. Amend sub-clause 4(2) (p) to read as follows: "*In consultation with the county governments, formulate a national strategic plan for the sugar subsector at least once every five years*".

Committee's Observation/Recommendation

It is important for county governments to be involved in the formulation of the strategic plan because they are key stakeholders. Their proposal was adopted by the Committee.

166. Amend sub-clause 4(2) (q) to read as follows: "*In consultation with the county governments, formulate guidelines on an efficient and economical transportation of sugar*".

Committee's Observation/Recommendation

County governments are key stakeholders in the formulation of the transportation guidelines. Their proposal was adopted by the Committee.

167. Amend sub-clause 4(2) by inserting the following new paragraph, *"Provide technical assistance and capacity building of the county governments in regulation of the sugar industry"*. The amendments proposed in the clause align it to Part 1, Sections 1, 9, 29 and 32 of the Fourth Schedule to the Constitution that outlines the mandate of the National Government as well as the county governments in the agriculture sector.

Committee's Observation/Recommendation

Regulation of the sugar industry is a function of KSB and therefore no need to train counties on regulation of the industry. Their proposal was not adopted by the Committee.

Clause 5

168. Delete the clause in its entirety and substitute it as follows: *"The County Governments through the County Executive Committee Member shall: (a) Issue sugarcane nursery certificates; (b) License sugar mills and warehouses in the country; (c) Formulate and implement the county sugar sub-sector strategic plan; (d) Offer and coordinate the provision of advisory and extension services to growers, out-grower institutions and millers in the country; (e) Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties; (f) Enforce county and national legislation on sugar industry code of practice and other industry standards; (g) In collaboration with the Board and law enforcement agencies, enforce of regulations within the county; (h) Enforce policies and guidelines on corporate governance in growers' institutions and millers; (i) Monitor and report incidences of pests and disease outbreaks and take appropriate action in collaboration with the Board and other relevant Government agencies; (j) Establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry; and (k) Develop and regulate sugarcane growers' institutions in accordance to this act and any other relevant laws"*. Sections 1 and 7, Part 2 of the Fourth Schedule to the Constitution provide that agriculture and trade development and regulation of agriculture and trade excluding international trade are functions fully devolved to County Governments. Therefore, Sugar mills licensing cannot be done by the Board as this is trade development and therefore falls under the mandate of county governments.

Committee's Observation/Recommendation

The Committee observed that most of the proposals by CoG on the clause are functions of KSB. Their proposals were therefore not adopted by the Committee.

Clause 18

169. Amend sub-clause 18 (1) to read as follows: *"A person shall not operate a sugar mill, a jaggery mill or a sugar warehouse unless he or she is a holder of a valid license issued by the relevant county government for that purpose"*. The function of licensing millers belongs to the County Government and it is their mandate to license the millers within their jurisdiction. The Board in this case is only mandated to issue export and import licenses which is under the purview of the National Government.

Committee's Observation/Recommendation

It is the responsibility of KSB to license sugar and jaggery mills and not county governments. Their proposal was therefore not adopted.

Clause 19

170. Amend Sub-clause 19 (1) to read as follows: *"A person shall apply to the County the County Executive Committee member for a license to operate a sugar mill, warehouse or a jaggery mill in the prescribed form and accompanied by the prescribed fee"*.

171. Amend sub-clause 19 (2) to read as follows: "*The County Executive Committee member shall not issue a license under this Act unless-*"

172. Amend sub-clause 19 (2) by inserting the following new paragraph (c) "*It is satisfied that the applicant has paid the prescribed fee and obtained a certificate of registration and compliance from the Board*".

Committee's Observation/Recommendation

It is the responsibility of KSB to license sugar and jaggery mills and not county governments. Their proposal was therefore not adopted.

Clause 25

173. Amend the clause by inserting the following new paragraph: "*One person with knowledge and experience in the agricultural sector nominated by the Council of County Governors appointed by the Cabinet Secretary*". This is because county governments are integral in the implementation of research proposals in the sector and therefore should have representation in the Board.

Committee's Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for Counties to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 29

174. Amend sub-clause 29(1) to read as follows: "*The Board and the County Executive Committee Member may appoint qualified persons to be crop inspectors for the purposes of this Act*". This is for effective implementation of the Act.

175. Amend sub-clause 29(2) to read as follows: "*For the purpose of sub-section (1), the Board may in consultation with the County Executive Committee Members, by regulations prescribe the qualifications for appointment as a crop inspector*". This is for effective implementation of the Act, it is necessary to provide appointment of crop inspectors at the county level.

Committee's Observation/Recommendation

County governments have a representative in KSB who will take care of their interests in the appointments.

Clause 34

176. Amend sub-clause 34 (7)(d) to read as follows: "*Forty-five per centum shall be remitted directly to the sugar growing counties on a pro rata basis to be applied for infrastructure development in the sugar sub-sector*". This is because the Fourth Schedule to the Constitution provides that infrastructure development is within the mandate of county governments and therefore the fund should be apportioned to them.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 57

177. Amend sub-clause 57 (1) to read as follows: *"The Cabinet Secretary, in consultation with the Board and county governments may make regulations generally for the better carrying into effect of the provisions of this Act".* The process of making Regulations should be made consultative hence the Board and the County Governments need to be involved.

Committee's Observation/Recommendation

Counties are key stakeholders in the sugar industry and should therefore be involved in the process of making regulations. Their proposal was adopted by the Committee.

4.7 HON. EMMANUEL WANGWE, MP/SPONSOR OF THE BILL

178. In a meeting with the Committee held on Friday, 24th March 2023, Hon. Wangwe informed the Committee that the Bill seeks to address the following challenges that sugarcane farmers face:
- i. Non-payment of farmers by public millers;
 - ii. Increased cost of sugar production as a result of obsolete technology;
 - iii. Declining acreage of land;
 - iv. Lack of markets for sugar;
 - v. Failure to control import and export of sugar and unfavourable market competition due to cheaper sugar imports;
 - vi. Poor management of sugar companies;
 - vii. Lack of research and cane development initiatives; and
 - viii. Poor maintenance of state-owned milling factories.

4.8 WEST KENYA SUGAR COMPANY LIMITED/SUKARI SUGAR COMPANY

In a meeting with the Committee held on Friday, 24th March 2023, Mr. Jaswant Singh, Chairperson, West Kenya and Sukari Sugar companies proposed the following amendments to the Bill:

Clause 3

179. Introduce a new clause 3 to provide for the Objectives of the Bill as follows: *"The objective of the act is to accelerate the growth and development of the sugar subsector, enhance productivity and incomes of farmers, improve investment climate and efficiency of sugar sub-sector through promotion of the production, processing, marketing and distribution of sugarcane in suitable areas of the country and in particular to –(a) Circumvent unnecessary regulatory bureaucracy in the sugar subsector; (b) Reduce unnecessary levies, taxes or other barriers to free movement of sugar products and provide for rationalized taxation system; (c) Reduce unnecessary regulation or over-regulation of the sugar-subsector; (d) Reduce duplication and overlap of functions among institutions involved in the regulation of sugar sub-sector; (e) Promote competitiveness in the sugar sub-sector; and (f) Attract and promote private investment in the sugar subsector".* This is to elaborate the object and terms of the Act and provide standards of operation for the sugar sub-sector.

Committee's Observation/Recommendation

The Committee observed that the explanation provided in the Long Title of the Bill is sufficient and therefore did not adopt their proposal.

Clause 4

180. Introduce a new clause 4 to provide for the roles of the National and county governments as follows: *"(1) Each County Government shall within its area of jurisdiction be responsible, for agricultural*

matters concerning sugarcane in accordance with Part 2 of the fourth Schedule of the Constitution; (2) The National government shall, for purposes of ensuring uniformity and national standards in the sugar sub-sector, through its legislation and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet secretary on the advice of the Board under this Act or any other written Law. (3) Any Action to be done by the government shall be deemed to have been done if done by an officer of the county government authorized by that Government in that behalf". This is to ensure devolution of Agriculture is recognized as per the Fourth Schedule to the Constitution.

Committee's Observation/Recommendation

This is already provided in the Constitution and other acts hence no need to restate it in the Bill. The proposal was therefore not adopted.

181. Amend sub-clause 4(1) to include the following: "(da) advise the national government and the county governments on agricultural levies for purposes of planning, enhancing harmony and equity in the sugar sub-sector; (db) carry out such other functions as may be assigned to it by this Act, the Crops Act, Agriculture and Food Authority Act and any written law while respecting the roles of the two levels of government; and (f) administer and manage the Sugar Industry Contributory Development Fund established under this Act". This is to provide details on the expanded mandate of the Board.

Committee's Observation/Recommendation

The proposal to insert the new paragraph (da) was adopted by the Committee while the one to insert paragraph (db) was rejected because it is provided for under paragraph 4(2) (u) of the Bill.

Clause 5

182. Amend sub-clause 5(1) by deleting paragraph (c) and substituting therefor with the following: "(c) Four Representatives of the millers elected by the millers and appointed by the Cabinet Secretary; Provided that any miller commanding at least 20 per cent of the domestic sugar production shall be represented on the Board as of right". The amendment is based on the proposal that the sugar millers' representation be increased based on the fact that they are the key players in the sub-sector and have invested a lot of money in their mills and operations.

Committee's Observations/Recommendation

The proposal is discriminatory to millers who do not command 20% of the domestic sugar production and was therefore not adopted by the Committee.

Clauses 19, 20, 21 and 22

183. Delete the clauses and replace with: "**19. Registration of Sugarcane dealers:** (1) every dealer in sugarcane shall register with the Board; (2) a person shall Not deal in sugarcane unless the person is registered in accordance with this Act. (3) The Cabinet Secretary shall, in consultation with the relevant County Executive committee member responsible for Agriculture, prescribe regulations providing for the procedure for legislation of sugar dealers and the regulations shall also set out the appeal process in case of refusal or denial of registration. (4) A person who contravenes subsection (2) commits an offence and on conviction be liable to imprisonment for a term not exceed three years or to a fine not exceeding Five minutes or to both". This is done in a bid to give the process constitutional underpinning by giving certain roles to the County Governments.

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

184. **“20. Taxation of sugarcane:** (1) *pursuant to Article 209 of the Constitution, only the National Government may impose, in relation to sugarcane – (a) income tax; (b) Value added Tax; (c) custom duties and other duties on import of agriculture and other aquatic products; and (d) excise duty; (2) County governments may, pursuant to the Fourth Schedule of the Constitution, impose fees for – (a) development of sugarcane within the county; (b) development and regulation of sugarcane markets within the County; (c) Issuance of Trade Licenses to any persons trading in sugar within the County; and (d) Issuance of Licenses for Cooperative Societies dealing with sugarcane within the County; (3) the fees imposed by a County Government under subsection (2) shall not in any way prejudice national economic policies, economic activities across the County boundaries or national mobility of goods, services, capital or labour; and (4) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, 2012 (No. 2 of 2012), put in place mechanisms to avoid double taxation of sugarcane and its products by the two levels of Governments”.*

Committee’s Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

185. **“21. Manufacturing Licence:** (1) *A person shall not manufacture or process sugarcane product for sale except under and in accordance with a license issued under this Act; (2) An application for a license under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee; (3) The Board may, after consultation with the County Executive – (a) Issue a manufacturing License, in accordance with this Act; (b) Refuse to issue the License on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof; and (c) cancel, vary or suspend any license if in the findings of the Board, the license is found to have contravened the regulations made under this Act for the operations of manufacturing or processing entities; and (4) A manufacturing license issued under this section shall, in addition to authorizing the holder to carry on the business set out in the Subsection (1), also authorize the holder to carry out the business of packing and blending sugarcane”.*

Committee’s Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

186. **“22. Illegal Manufacture, possession, etc:** (1) *A person who- (a) Manufactures sugarcane for sale in contravention of this Act; (b) Buys, sells, offers for sale, transports or has possession of sugarcane to which the person’s knowledge or belief – (i) has been grown, manufactured or processed otherwise than in accordance with this Act; (ii) is from a non-registered grower or dealer of sugarcane, commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment to a term not exceeding five years, or both; and (2) If a person is in possession or has control of sugarcane for which the person is unable to account to the satisfaction of a person authorized under this Act, such scheduled crop shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.*

Committee’s Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

187. **“23. Issue of Licenses:** (1) *The Board shall issue licenses to applicants subject to such lawful conditions as the authority may determine; (2) every license shall specify the premises upon which the business specified in the license may be carried on (3) Licences issued under this Act shall remain in force until the thirtieth of June next following the date of issue, unless earlier cancelled; (4) There shall be payable for the issue of licenses under this Act such fees as the licensing authority, after consultation with the Cabinet Secretary or County Executive as the case may be, prescribe; (5) The total fees charged under Subsection (4) shall depend*

on the turnover of the dealer and shall not overburden small scale dealers and the cumulative total of all levies and fees payable shall in any event not exceed ten per cent of the gate value of the agricultural or aquatic product; (6) The Licensing authority shall, at least thirty days before granting a license under this Act, give notice of the proposed grant in the gazette and in such other manner as the authority may determine; (7) The notice referred to in Subsection (6) shall – (a) Specify the name or other particulars of the person or class of persons to whom the license is to be granted; (b) State the purpose for the proposed licence and indicate the date such license is proposed to be issued to the successful applicant; and (c) Invite objections to the proposed grant of license and direct that such objections be lodged with the Authority within fourteen days next following the date of the notice; (8) The licensing Authority may after considering objections, if any, made under this section, grant the license applied for, subject to such terms and conditions as may be specified therein; (9) The issuance of a license to an applicant under this Act shall not be withheld without reasonable cause (10) A licence issued under this Act shall not be transferrable”.

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

188. **“24. Application for Renewal of a Licence:** *An application for the renewal of a licence under this Act shall be made to the Board not later than the First day of the month of June in which the current licence is due to expire but, notwithstanding the foregoing, a late application may be made upon the payment of a late application fee as may be prescribed by the Board”.*

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

189. **“25. Conditions of a Licence:** *(1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the license and to any conditions which may be prescribed; (2) The Board may require that any class of licenses issued to a dealer will be subject to the condition that the dealer engages in actual growing for any given crop; (3) The Board may at any time during the validity of a license – (a) Vary the conditions of the license; or (b) Impose conditions or further conditions on the license”.*

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

190. **“26. Revocation or Alteration of a license:** *The Board may revoke, alter or suspend a licence issued under this Act if in its opinion: (a) An offence under this Act, or in respect of the licensed activity under any other written law has been committed by the license holder or any employee of the license holder; or (b) A condition of the license has been contravened or not complied with”.*

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

191. **“27. Surrender of licence:** *(1) The holder of a license which is revoked shall immediately surrender it to the Board; (2) A license holder may at any time surrender the licence to the Board and the licence shall cease to have effect forthwith”.*

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

192. **“28. Appeals:** (1) *An applicant for or a holder of a license who is aggrieved by a decision of the licensing Authority on or in respect of - (a) the grant, refusal, renewal, variation or revocation; or (b) the conditions imposed on the grant, renewal or variation, of a licence, may appeal to the Cabinet Secretary; and (2) An appeal under this Section shall be lodged within thirty days from the date on which the appellant first received notice of the decision and determined within 60 days of lodging”.*

Committee’s Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

Clause 38

193. Amend by including the following new sub-clauses: *“(1) For the purpose of ensuring effective participation of farmers in the governance of the sugar sub-sector in Kenya, there shall be close consultations with all registered farmer organizations in the development of policies or regulations and before the making of any major decision that has effect on the sugar sub-sector; and (2) The Cabinet Secretary shall make rules – (a) To ensure that any agreements including any agreement with regards to contributions by farmers to their organizations, entered into between the farmers and the farmers’ organizations to which such farmers belong shall be respected by any third parties; and (b) To provide the procedures for internal democracy in the sugar farmers’ organization”.*

Committee’s Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

Clause 39

194. Amend by inserting the following paragraph *“Subject to regulations made under this Act in relation to registration of sugar growers, any farmer shall have the freedom to grow sugarcane on his or her land and to enter into contact with any sugar dealer or sugar miller for sale of his or her produce”.*

Committee’s Observation/Recommendation

The Committee observed that clause 39 is a standard provision for all state agencies to submit a report to the Cabinet secretary on the operations of the Board. The proposal was rejected.

Clause 40

195. Amend by inserting the following paragraph *“The National Government, the County Governments, the Board and any other person or authority are hereby prohibited from enacting, making, formulating or implementing any law, regulation, practice or policy to provide for, require or promote the establishment of Geographical Zones for development and procurement of sugarcane from farmers”.*

Committee’s Observation/Recommendation

Zoning will bring order in the sugar industry. It will eliminate cases of sugarcane poaching which have resulted in losses to the affected millers. This proposal was not adopted by the Committee.

Clause 41

196. Amend by inserting the following paragraph *“The grant of licence to a sugar miller confers upon it the right to access sugarcane from farmers across the country on the principle of freedom of contract in addition to the rights and privileges envisaged in Sections 18-25 of this Act or any other written law”.*

Committee's Observation/Recommendation

Zoning will bring order in the sugar industry. It will eliminate cases of sugarcane poaching which have resulted in losses to the affected millers. This proposal was not adopted by the Committee.

Clause 42

197. Amend by inserting the following new paragraph "*Subject to relevant regulations made by the Board, every contributing Sugar farmer, dealer and sugar miller have the right to benefit by application for funds in the Sugar Development contributory Fund for purposes of Cane development and investment in any activity in the value chain in the sugar industry*".

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7). Further the proposed amendment is misplaced. The proposal was rejected

Clause 43

198. Amend by inserting the following paragraph "*In the discharge of its functions under this Act or any other written Law, the Board shall ensure that there are no dominant undertakings in the sugar sub-sector as defined in section 23 of the Competition Act*".

Clause 34

199. Amend by deleting sub-clause 34(1) and replacing it with the following new clause: "*The Cabinet Secretary shall in consultation with the Board, by order in the Gazette, impose a levy on domestic Sugar not exceeding two per centum of the value and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy*".

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

200. Amend by deleting sub-clause 34(2) and replacing it with the following: "*The levy shall be charged at such rate as may be described in the order provided that it shall not exceed two per centum of the value of sugar*".

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

201. Amend by deleting sub-clause 34(6) and replacing it with the following: "*The sugar levy collected under subsection (2) shall be apportioned as follows: (a) Seventy-five per centum shall be applied by the Board towards cane development initiatives by cane growers and millers; (b) Ten per centum shall be applied by the Board for income or price stabilization for sugar growers; (c) Five per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board; and (d) Five per centum shall be remitted directly to the Sugar Research Foundation*".

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 35

202. Amend by deleting the words *"which shall be administered by the Board"* in sub-clause 35(1) and substituting therefor with clause 35 A to provide as follows: *"The fund shall be managed by a Board of Trustees to be appointed by the Cabinet Secretary on recommendation of the Board"*.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the Commodities Fund. Within the Commodities Fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

203. Introduce the following new clause 35 B: *"(1) Subject to clause 18(6) above, the Fund shall be used to provide sustainable affordable credit and advances to farmers for all or any of the following purposes – (a) Farm improvement; (b) Farm inputs; (c) Farming operation; (d) Price stabilization; and (e) Any other lawful purpose approved by the Cabinet Secretary; (2) The Cabinet Secretary shall in consultation with the Board shall, from time to time, make rules for the better management of the fund in the best interest of the farmers"*. The amendments are proposed to introduce an accountable for the usage of the funds through the establishment of a Board of Trustees to manage the funds.

Committee's Observation/Recommendation

The Committee observed that the proposal seeks to provide for what the sugar development levy is providing for. The Committee has made amendments to clause 34(7) the proposal was rejected.

Clause 54

204. Delete the clause in its entirety because transfer of shares to the cane growers is not reasonable simply because publicly owned sugar mills are owned by all citizens. Upon privatization, the shareholding and directorship of the sugar company should be in accordance with the ownership structure. The clause (Clause 54) purports to oust the Companies Act as the principal law in matters of shareholding and directorship of companies.

Committee's Observations/Recommendations

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Clause 54 was therefore deleted.

Clause 55

205. Delete the clause in its entirety because the proposal violates the principles of Good Corporate Governance as embodied in the Companies Act and that virtually all sugar milling companies are incorporated under the same. The clause also provides that a legislative order be given by the Parliament to owners of Sugar mill private companies to include a growers' representative in running its affairs. West Sugar Company terms the same as an infringement of privacy contrary to Articles 31 and 40 of the Constitution.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. Clause 55 was therefore deleted.

Clause 7 (Third Schedule)

206. Amend sub-clause 7 (2) by inserting the following new paragraphs: "(g) One representative of private sugar millers; (h) One representative of Public sugar Millers; and (i) One person appointed by the Cabinet Secretary who shall not have direct material interest in the sugar industry". This is to broaden membership of the Committee (Sugarcane Pricing Committee) and accommodate the stakeholders by having their representative.
207. Amend sub-clause 7 (6) by deleting the word 'Thirty-Six months' and replacing it with the words 'three months.' This is because the period (thirty-six months) for early review of the sugarcane pricing is untenable.

Committee Observation/Recommendation

The Committee proposed to delete the Third Schedule because it provides for guidelines to sugar industry agreements.

Clause 30

208. Delete the clause and substitute as follows: "An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to a cane grower so requesting: (a) enter any land including a nucleus farm, for purposes of inspecting the sugar crop; (b) may require any person found thereon to give such information as the person may require". This is because inspection of premises is a function of the Board according to sub-clause 50 (1) and that crop inspectors have no legal basis to inspect factories and other premises of the miller.

Committee's Observation/Recommendation

One of the functions of the Board is to enforce and monitor compliance with standards along the sugar value chains. Factories and other premises of millers are part of the sugar values. This proposal was therefore rejected by the Committee.

Clause 40

209. Amend the clause by deleting sub-clause 40 (3) and replacing it with: "The Chairperson and members of the Tribunal shall serve on a full-time basis." This is because the Tribunal is required to determine a dispute within three months from the date the dispute was lodged and it would be unreasonable for it to sit on a part-time basis.

Committee's Observation/Recommendation

Timelines within which disputes are supposed to be determined have been provided in the Bill. The Tribunal will adhere to the timelines regardless of their terms of service.

Clause 57

210. Amend paragraph 57 (2) (h) by deleting the word 'minimum' because there is no need for a minimum period as this will automatically bring about a maximum period. It should be set at seven to fourteen days.

Committee's Observation/Recommendation

It is important to provide for the minimum time within which farmers are paid. Their proposal was therefore rejected by the Committee.

211. Amend the clause by deleting paragraph 57 (2) (i) because cane harvesting and transportation cannot be regulated by the Board since the two are sole responsibilities of the growers

Committee's Observation/Recommendation

This are important aspects of the sugar industry and it is therefore important to provide regulations on them. Their proposal was not adopted by the Committee.

4.9 THE KENYA NATIONAL ASSOCIATION OF SUGARCANE FARMER ORGANISATION

In a meeting with the Committee held on Friday, 24th March 2023, Hon. Saulo Busolo proposed the following amendments to the Bill on behalf of the Association:

Clause 2

212. Amend by including definition of the word '*agreements*' to mean "*agreements specifying the standard provisions as arrived in specific stakeholder forum in a public participation governing the rights and obligations of growers, millers, out-grower institutions, importers, transporters, research scientists, workers, by-product dealers and traders*". These are stakeholders that must be included.

Committee's Observation/Recommendation

The Committee observed that it is important to recognise sugarcane stakeholders in the definition of the word "*agreements*". Their proposal was therefore adopted.

213. Amend definition of the word '*by-product*' to refer to specific product.

Committee's Observation/Recommendation

The definition provided in the Bill is sufficient. Some of the items mentioned are not by-products of sugarcane.

214. Amend definition of the word '*farm-gate*' by adding prices received by farmers at the mill-gate and weighbridge. There farmers who are close to the factory while others are far away.

Committee's Observation/Recommendation

The Committee observed that definition of "*farm-gate*" was not necessary and it was therefore deleted.

215. Amend definition of the word '*institute*' by adding training component to read as follows; '*Kenya Sugar Research and Training Institute*'. The research and training institute will be used by stakeholders in the sugar industry.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee because it is important to have a sugar industry training industry in the country.

216. Amend the definition of the word '*member*' to mean a member elected to the Board. This is to provide for the direct gazettment of an elected member.

Committee's Observation/Recommendation

Farmers should be given an opportunity to choose their representatives in the Board. This can best be done through elections.

217. Amend by deleting the definition of the word '*mill-gate*' because it is ambiguous.

Committee's Observation/Recommendation

The Committee amended the definition so that it can be relevant to the Bill.

218. Amend definition of the word '*out-grower*' to mean any person or institution that grows sugarcane or any other crop that produces sugar. This is to prevent tying farmers or introducing zoning in a free market.

Committee's Observation/Recommendation

There needs to be order in the sugar industry and this can be enforced through zoning.

219. Amend by deleting definition of the word '*sugar catchment area*' because it is zoning which is outdated.

Committee's Observation/Recommendation

There needs to be order in the sugar industry and this can be enforced through zoning.

220. Amend by deleting definition of '*Sugarcane growers' apex body*' and replacing with '*sugarcane farmers organizations*' because sugarcane farmers are organized around specific mill zones and have no apex body.

Committee's Observation/Recommendation

For better representation of growers, the apex body needs to be national. The regional bodies can be provided for in regulations.

221. Amend definition of the word '*stakeholder*' to include transporters, workers, cane cutters, molasses dealers, and traders in order to be inclusive.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

Clause 4

222. Amend paragraph 4 (1) (a) to read as follows: "*regulate the sugar industry*" this is because other key stakeholders are playing the role of promoting the industry.

Committee's Observation/Recommendation

The Board is in-charge of all matters pertaining to the sugar industry including developing and promotion of the industry.

223. Amend the clause by deleting paragraph 4 (1) (c) because it's a function of county governments.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee.

224. Amend paragraph 4 (2) (d) to read as follows: "*the Board shall Monitor and regulate the domestic market with a view to identifying and advising the government and interested parties on any distortions in the sugar market*". The Board should not only monitor but regulate as well.

Committee's Observation/Recommendation

The Committee adopted their proposal.

225. Amend the clause by deleting paragraph 4 (2) (e) because it is a function of the Sugar Arbitration Tribunal.

Committee's Observation/Recommendation

The Committee observed that the provision is a function of the Tribunal and deleted the paragraph as proposed by the Organisation.

226. Amend paragraph 4 (2) (f) to read as follows: "*facilitate import and export of the local sugar*". This will take care of the export as well.

Committee's Observation/Recommendation

The proposal was only catering for export and not import of sugar. The Committee adopted their proposal.

227. Amend the clause by deleting paragraph 4 (2) (f) because growers and millers have their own boards which can advise.

Committee's Observation/Recommendation

The committee rejected the proposal. The Board should facilitate the import and export of sugar.

228. Amend paragraph 4 (2) (i) to read as follows: "*Implement an equitable mechanism for the pricing of the sugarcane and appropriation of the proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines*". The Board is to implement not to facilitate because there is the pricing committee which will undertake the role.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

229. Amend paragraph 4 (2) (m) to read as follows: "*License sugar mills and other stakeholders*". This takes care of the other industry stakeholders.

Committee's Observation/Recommendation

It is not clear who the other stakeholders are. Their proposal was therefore rejected by the Committee.

230. Amend paragraph 4 (2) (p) to read as follows: "*Formulate and implement a strategic plan for the sugar sub-sector anchored on national vision*". To anchor the strategy to the national development agendas.

Committee's Observation/Recommendation

It is important to have timelines for the formulation and implementation of the strategic plan. All strategic plans are aligned to the national vision.

Clause 5

231. Amend the clause by deleting paragraph 5 (a) and transferring the function to Kenya Sugar Institute of Research and Training because it is a county function.

Committee's Observation/Recommendation

The Committee observed that this is a function of county governments and rejected their proposal.

232. Amend by deleting paragraph 5 (e) in its entirety because it is a KERA/KURA/KENHA affair.

Committee's Observation/Recommendation

Sugar growers pay cess to county governments and it is therefore their responsibility to maintain the roads. The Committee did not adopt the proposal.

Clause 6

233. Amend paragraph 6 (1) (a) by deleting the word appointment and replacing with the word gazetted. and adding, the CS shall gazette the chairperson. A non-executive chairperson elected by the Board from among the representatives of the growers on the Board shall be gazetted by the Cabinet Secretary. He is already appointed by farmers. All is remaining is gazettelement.

Committee Observation/Recommendation

The Committee rejected the proposal and observed that any amendment to this clause should be in line with Mwongozo Code.

234. Amend by deleting paragraph 6 (1) (b) and replacing it with five representatives nominated by registered farmer organizations. This is because catchment areas are deleted.

Committee's Observation/Recommendation

Catchment areas have not been deleted. Farmer representatives will be elected from each of the catchment areas.

235. Amend sub-clause 6 (2) to read as follows: "*Elected members under sub-section 1(b)(c) and (e) shall be gazetted directly*" because they have been nominated by the farmers.

Committee's Observation/Recommendation

The farmer representatives will be elected by farmers in each of the catchment areas to ensure fairness in the selection. Their proposal was therefore rejected.

236. Amend sub-clause 6 (3) by deleting the degree requirement because farming is not academic.

Committee's Observation/Recommendation

Running the Board is technical and requires qualified persons to properly execute the mandate. Their proposal was therefore rejected.

Clause 7

237. Amend sub-clause 7 (1) by deleting one further term and leaving it open. There are those who work for the interest of the organization.

Committee's Observation/Recommendation

There has to be limits on the number of terms that one serves in the Board. Their proposal was therefore not adopted by the Committee.

238. Amend sub-clause 7 (2) by providing that members will be elected and gazetted at the same time because they are nominated by the farmers.

Committee's Observation/Recommendation

The staggering will ensure that there is institutional memory in the Board. Their proposal was therefore rejected by the Committee.

Clause 14

239. Amend by deleting paragraphs 14 (2) (a), (b), (c) and (d) and replacing with, qualifications set by the Board at the time of appointment. You cannot have a one-set formula, the industry is technology bound and dynamic in nature, therefore skills change rapidly. These are not a matter of academic degrees.

Committee's Observation/Recommendation

Qualifications of the CEO should be provided in the Bill. Their proposal was not adopted by the Committee.

Clause 18

240. Amend sub-clause 18 (1) by deleting the recommendation by county governments and replacing as follows: "*A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current license issued by the Board upon payment of relevant county levies*". The trend is to simplify licensing according to the government agenda as well as best practice.

Committee's Observation/Recommendation

The license is issued by the Board and not county governments. The payment of levies to county governments does not apply.

Clause 19

241. Amend by deleting sub-clause 19 (1) because the prescribed form has not been subjected to public participation.

Committee's Observation/Recommendation

The Committee observed that in drafting regulations, public participation is a major step before the regulations are gazetted.

242. Amend by deleting paragraphs 19(2) (a) and (b) and replacing with: "*The Board shall not issue a license under this Act upon a criterion set from time to time*". This is a regulatory Board therefore will determine at the right time what is appropriate.

Committee's Observation/Recommendation

The Committee rejected the proposal. It observed that the proposed amendment would give rise to various ambiguities.

243. Amend by deleting sub-clause 19 (5) and replacing with: "*There shall be payable the issues of a license, such fees as the Board may determine from time to time*". The necessary regulatory mechanism at the moment will determine.

Committee's Observation/Recommendation

Proposal rejected. The committee observed that the Cabinet Secretary ought to prescribe and not left to the Board to determine

244. Amend sub-clause 19 (7) by deleting the words '*reasonable cause*' and amending to read as follows: "*the issuance of a license to an applicant under this section shall not be withheld without citation of relevant infringed law*". The word reasonable cause is subjective and has no basis in law.

Committee's Observation/Recommendation

The Committee rejected the proposal. The Committee proposed for regulations in order to provide for such causes.

Clause 21

245. Delete the clause in its entirety because it is detrimental to the diversification at the process level which is licensed.

Committee's Observation/Recommendation

The Committee rejected the proposal. The Committee observed that industrial sugar is imported sugar and there is need to license such business.

Clause 22

246. Delete the clause in its entirety because it is repetitive.

Committee's Observation/Recommendation

The Committee rejected the proposal. The Committee observed that it is important to provide for registration of millers.

Clause 23

247. Amend sub-clause 22 (1) to read as follows: "*There is hereby established a body to be known as the Kenya Sugar Research and Training Institute*". The industry has not had a training facility for the stakeholders.

Committee's Observation/Recommendation

The Committee observed that it is important to have a training institute for the sugar industry. Their proposal was therefore adopted by the Committee.

248. Amend by deleting sub-clause 23 (2) in its entirety because it is a department of the Kenya Sugar Board, it's not independent, and there is no need to duplicate.

Committee's Observation/Recommendation

The Committee rejected the proposal and found it fit to have an Institute independent from the Board that will conduct research on sugarcane.

Clause 24

249. Amend by combining paragraphs 24(2) (a) and (b) to read as follows: "*Formulate policy and make policy recommendations in respect of sugar research and development (R&D) to the Board in line with national policy on sugar*". Both sub-clauses are the same.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

250. Amend paragraph 24(2) (c) by deleting the word '*Government*' and replacing with the word '*Board*'. Reports to the Board.

Committee's Observation/Recommendation

Their proposal was adopted because the Board will oversight the Institute.

251. Amend paragraph 24(2) (g) by deleting the word 'agriculture' to read as follows: "*Support and promote training and capacity building in relation to sugar research*". Research is not limited to agriculture but to sugar.

Committee's Observation/Recommendation

The Institute has been put in place to specifically carry out research on the sugar industry. Their proposal was therefore adopted.

Clause 25

252. Delete entire clause. The Institute should be a department of the Board for better management of research in the sugar subsector.

Committee's Observation/Recommendation

The Committee rejected the proposal and found it fit to have an Institute independent from the Board that will conduct research on sugarcane.

Clause 26

253. Delete the entire clause because it is unnecessary.

Committee's Observation/Recommendation

The Committee observed that this Institute is a state corporation. There are standard provisions for all state corporations that enable smooth operations. The proposal was dropped.

Clause 27

254. Amend paragraph 27 (c) by replacing the word 'ministry' with the word 'Board'. Because it's a department of the Board.

Committee's Observation/Recommendation

This proposal was rejected by the Committee. The Committee observed that the Institute may receive other monies from the Ministry for purposes of research. The Ministry is distinct from the Board.

Clause 28

255. Amend sub-clause 28 (1) by deleting the words "*Director General*" and substituting with the words "*Director of Research*" because the Institute is a component of the Board thus the title is inappropriate and secondly, it the Board that shall appoint the Director of research.

Committee's Observation/Recommendation

The Committee rejected the proposal because the committee had proposed its own amendments.

256. Amend paragraphs 28 (2) (a) and (b) to read as follows: "(2) *A person shall be qualified for appointment under this section if the person: (a) Holds a degree in sugar technology from a university recognized in Kenya; and (b) Has some managerial experience*". An appropriate expert should manage the research institute.

Committee's Observation/Recommendation

The Committee observed that a person with qualifications in agricultural research, soil and seed research or soil science can effectively run the Institute. To be a Director General of the Institute, one needs to have at least five years' experience in a senior managerial position. Their proposals were therefore rejected by the Committee.

Clause 33

257. Amend the clause by inserting new paragraph (d) which reads "*Sugar development levy*".

Committee's Observation/Recommendation

The Sugar Development Levy will be one of the sources of income to the KSB. Their proposal was therefore adopted by the Committee.

258. Amend the clause by inserting the following new paragraph (e) "*Contributory miller farmer scheme*" because it is part of the funding source to promote saving culture and also have available fund for emergency.

Committee's Observation/Recommendation

The Committee observed that there is no such scheme known as *Contributory miller farmer scheme* and therefore cannot be implemented.

Clause 34

259. Amend the clause to read as follows: "*The Cabinet Secretary shall in consultation with the Board by order in the gazette impose a levy on domestic sugar of no more than five percent and twenty per centum of CIF value on imported sugar to be known as sugar development levy*". Kenya produces 1 tonne of sugar at \$800 against cheaper producers from within COMESA.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

260. Amend sub-clause 34 (7) to read as follows: "(7) *the sugar development levy collected under subsection (2) shall be apportioned as follows: (a) fifty percent shall be applied to cane development; (b) fourteen percent be applied by the Board for income or price stabilization for sugar growers; (c) ten percent shall be remitted directly to the Institute; (d) ten percent shall be applied by the Board in the factory rehabilitation and maintenances; (e) ten percent shall be applied by the Board in the furtherance or exercise of any function or powers of the Board; and (f) six percent to farmer organizations*". The aim is to strengthen the farmers who are the most vulnerable in the sub-sector.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 35

261. Amend sub-clause 35 (1) to read as follows: "*There is established a Fund to be known as Sugar Development Fund which shall be administered by an independent Board of Trustees comprising of industry stakeholders appointed by the Cabinet Secretary*". The Board of Trustees will be independent and experts in management of the Fund this will uphold good corporate governance.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the commodities fund. Within the Commodities fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

Clause 60

262. Amend sub-clause 60 (1) to read as follows: *"Upon the commencement of this Act, a person who was a former staff of Sugar Board of Kenya before the commencement of the Agriculture and Food Authority Act 2013 and current staff of the Sugar directorate not being under any notice of dismissal or resignation may upon commencement of this Act be seconded to the Board on performance contract basis".* This will give room for appraisal of the staff.

Committee's Observation/Recommendation

The Committee observed that the clause is a standard provision. Further the Board cannot vet legal proceedings and claims pending. The Board is presumed to take up such legal obligations.

Clause 61

263. Amend sub-clause 61 (2) to read as follows: *"The pension of the seconded staff under the provident fund of the Agriculture and Food Authority – Sugar Directorate may on the commencement of the Act vest on the Board".*

Committee's Observation/Recommendation

The Committee observed that the clause is a standard provision. Further the Board cannot vet legal proceedings and claims pending. The Board is presumed to take up such legal obligations.

Clause 62

264. Amend sub-clause 62 (2) to read as follows: *"All legal proceedings and claims pending in respect to actions and activities to which this Act apply shall be vetted by the Board".*

Committee's Observation/Recommendation

The Committee observed that the clause is a standard provision. Further the Board cannot vet legal proceedings and claims pending. The Board is presumed to take up such legal obligations.

First Schedule

265. Delete the entire schedule because the electoral areas will be determined by the Cabinet Secretary.

Committee's Observation/Recommendation

The Committee observed that the First Schedule is for purposes for election.

4.10 KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANISATION

In their memorandum, Ref: KALRO/LGL/GEN/01/06/VOL.XXV/(114) dated 23rd March 2023, KALRO proposed the following amendments to the Bill:

Clause 23

266. Amend sub-clause 23(1) to establish a body similar to the Kenya Sugar Research Foundation (KESREF). This is because other institutions are reverting to their former e.g. Tea Research Foundation and Kenya Sugar Board.

Committee's Observation/Recommendation

The sugar industry needs to have a standalone sugar research institute for effective research in the sector. Their proposal was therefore rejected by the Committee.

Clause 24

267. Amend sub-clause 24(1) (a) to read as follows: "*Promote, co-ordinate and regulate research in sugarcane, sugar and co-products*". The Foundation will have the mandate on sugarcane, sugar and co-products.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

Clause 25

268. Amend sub-clause 25 (b) to read as follows: "*Five persons with background in agricultural research (minimum of masters degree), elected by growers from each of the sugar catchment areas under the First Schedule*". Research is technical and requires a vibrant Board to interrogate policy matters of proposals made by research scientists.

Committee's Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 28

269. Amend sub-clause 28(1) to read as follows: "*There shall be a Director General (DG) and Deputy Director General (DDG) of the Institute*". Borrowing from KALRO, the DG is in charge of policy and fund mobilisation while the DDG is in charge of research.

Committee's Observation/Recommendation

It is not necessary to provide for the position of the deputy director general in the Act. This proposal was therefore rejected by the Committee.

270. Amend sub-clause 28 (2) (a) to read as follows: "*Holds a PhD from a university recognised in Kenya in agricultural research, soil science and seed research or related field*". Research is an apex in academia and should be led by a senior researcher at PhD level.

Committee's Observation/Recommendation

The Committee observed that the director general of the Institute should have the highest qualifications in their area of training. This proposal was adopted by the Committee.

4.11 MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

In a letter, Ref: MOA/OFTA/13/1/21 dated 24th March 2023, the Principal Secretary, State Department for Crop Development informed the Committee that the Ministry was in the process of strengthening AFA to better perform its mandate and proposed that the Bill should not be progressed with. In a memorandum submitted earlier to the Committee, the Ministry proposed the following amendments to the Bill:

Clause 2

271. Delete the definition of "*farm gate*" because it does not convey the correct industry meaning and it has only been used once in the Bill.

Committee's Observation/Recommendation

Definition of the word "*farm gate*" was deleted because it was not necessary.

272. Delete the definition of “*mill gate*” and replace with the following new definition, “*mill gate means a site designed as such by the Authority where sugarcane weighing and sugarcane testing facilities have been set up*”. This is because the definition provided in the Bill is for a sugarcane nursery and not a mill gate.

Committee’s Observation/Recommendation

This definition was adopted by the Committee.

273. Delete the definition of “*sugar*” and replace as follows, “*sugar means crystalline or liquid sucrose derived from sugarcane or sugar beet in any of its recognised commercial forms, intended for human consumption or other uses and includes jaggery, raw, brown, plantation (mill) white and industrial sugar*”. This is to include in the definition crops from which sugar may be derived and the types of sugar which may be produced.

Committee’s Observation/Recommendation

The definition of “*sugar*” provided by the Ministry was more comprehensive and therefore adopted by the Committee.

274. Define “*sugar beet*” as, “*sugar beet means any plant or part of a plant of the genus Beta or any of its hybrid*”. This is to expand the scope of sugar crops to include sugar-beet.

Committee’s Observation/Recommendation

Sugar beet is also a crop that is used in the production of sugar. The Committee observed that it was important for the definition to be provided in the Bill and therefore adopted their proposal.

275. Amend definition of the word “*license*” by deleting the words “*to a miller*”. This is because licenses are not only issued to millers but also to importers and exporters of sugar.

Committee’s Observation/Recommendation

The proposal was adopted.

Clause 4

276. Amend sub-clause 4(1) (b) by deleting the words “*individuals and organisations*” and substituting with the word “*actors*”. This is to clean the document to properly refer to players within the industry.

Committee’s Observation/Recommendation

The proposal was adopted as it caters for all the stakeholders in the sugar industry.

277. Amend the clause by deleting sub-clause 4(2)(e) and substituting it with the following paragraph, “*Establish mechanisms to facilitate expeditious dispute resolution*”. This is because arbitration is a formal process that takes a long period to conclude. The amendment will allow for flexibility and expediency in dispute resolution.

Committee’s Observation/Recommendation

The Committee observed that the Tribunal is a preserve of the Judiciary and as such there are rules for conduct. The proposal was rejected.

278. Amend the clause by deleting sub-clause 4(2)(f) and substituting it with the following paragraph, "*Facilitate the sale, import and export of sugar and sugar products*". This is to broaden the scope.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

279. Amend the clause by deleting paragraph 4 (2) (j) and replacing it with the following paragraph, "*Collaborate with national and international trade bodies on sugar related matters*" in order to broaden the scope.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

280. Amend by deleting paragraph 4 (2) (n) and substituting with the following paragraph, "*Register and license sugar mills, exporters, importers and dealers*". This is to broaden the scope.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

281. Amend paragraph 4 (2) (n) by inserting the word '*establish*' immediately before the word '*enforce*'. This is to cover key aspects of compliance.

Committee's Observation/Recommendation

The Kenya Bureau of Standards is mandated to establish standards and cannot therefore be a role of KSB. This proposal was rejected by the Committee.

282. Amend by deleting paragraph 4 (2) (o) and replacing with the following paragraph, "*Promote and advise on strategies for value addition and product diversification in the sugar industry*". To broaden the scope.

Committee's Observation/Recommendation

The proposal was adopted.

283. Amend the clause by deleting paragraph 4 (2) (p) because it is an administrative function.

Committee's Observation/Recommendation

It does not harm to have this in the Bill. This proposal was therefore rejected by the Committee.

284. Amend paragraph 4 (2) (q) by inserting the word "*sugarcane*" immediately before the word "*sugar*" and the words "*sugar co-products*" immediately after the word "*sugar*". To cover key aspects of transportation in the industry.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

285. Amend by deleting paragraph 4 (2) (r) and substituting with the following paragraph, "*Facilitate marketing and distribution of sugar and sugar co-products through gathering and dissemination of market information and monitoring of the local and global supply-demand situation*". To broaden the scope.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

286. Amend by deleting paragraph 2 (u) and substituting with the following paragraph, "*Perform such function as may be conferred on it by this Act or any other written law*". Assignment of the roles to the Board should be done within the provision of the law.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 5

287. Amend paragraph 5 (b) by deleting the words, "*and milling*" because milling is outside the purview of the county government.

Committee's Observation/Recommendation

The proposal was adopted.

Clause 6

288. Amend the clause by deleting paragraph 6 (1) (a) and substituting with the following paragraph, "*a non-executive chairperson appointed by the President by notice in the gazette*". Mwongozo Code on governance on state corporations provides that the President appoints the chairperson.

Committee's Observation/Recommendation

The proposal was adopted.

Clause 8

289. Amend the clause by deleting the word '*of*' appearing after the word '*Board*'. Correcting a grammatical error.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 9

290. Amend paragraph 9 (a) by inserting the words '*by notice in the Gazette*' before the word '*impose*' in order to clarify the instrument by which the levy will be imposed.

Committee's Observation/Recommendation

This proposal was rejected by the Committee.

291. Amend paragraph 9 (a) by deleting the words '*growers and millers*' and substituting with the words '*value chain players*' so as to widen the scope.

Committee's Observation/Recommendation

The Committee noted that the proposed amendment would widen the scope.

Clauses 18 to 22

292. Rearrange the sections for registration provisions to come before licensing. Registration provisions should precede because it is a prerequisite for licensing and it is used for data capture.

Committee's Observation/Recommendation

The Committee adopted this proposal.

Clause 19

293. Amend by deleting sub-clause 19 (2) because the provision is not necessary as the conditions for issuance of a license will be provided for in the regulations.

Committee's Observation/Recommendation

This proposal was rejected by the Committee.

294. Sub-clause 19 (4) should be made a stand-alone clause so that it covers all licenses issued under this Act. The sub-clause was only addressing milling license hence need to address all other licenses.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

295. Amend the clause by deleting sub-clause 19 (6) because application procedures are best provided for in regulations.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

296. Amend by deleting sub-clause 19 (8) because it is a misplaced provision. It should be moved to sub-clause 20 (1).

Committee's Observation/Recommendation

The proposal was adopted.

297. Introduce the following new paragraphs under sub-clause 19 (8): "*(a) A licensed miller shall not procure cane outside their delineated catchment area; and (b) Regulations for transfer of sugarcane within catchments and mills shall be developed under this Act*". This is to secure availability and sustainable supply of raw materials for processing by all millers.

Committee's Observation/Recommendation

The proposal was adopted with amendments.

Clause 20

298. Amend the clause by deleting sub-clause 20 (1) and substituting as follows: "*(1) A person shall not import or export sugarcane, sugar or sugar by-products without a valid license issued by the Board in accordance with regulations made under this Act; (2) A holder of a valid import or export license shall not import or export sugarcane, sugar or sugar by-products unless they have obtained a pre-import or pre-export approval from the Board in accordance with regulations made under this Act*". Application procedures and requirements are best provided in the regulations.

Committee's Observation/Recommendation

The proposal was adopted with amendments.

299. Amend the clause by deleting sub-clause 20 (3) because it is already covered in sub-clause 20 (1).

Committee's Observation/Recommendation

The Committee rejected the proposal because there are instances when the country imports sugarcane.

Clause 21

300. Amend the clause by deleting sub-clause 21 (1) (2) because it is covered under clauses 18 and 19.

Committee's Observation/Recommendation

Clauses 18 and 19 do not provide for industrial sugar. Their proposal was therefore rejected by the Committee.

Clause 22

301. Amend sub-clause 22 (1) by inserting the words "*in accordance with the regulations made under this Act*" immediately after the word "*Board*". Details and procedures for registration will be provided in regulations.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

302. Amend the clause by deleting sub-clause 22 (4) because details and procedures for registration will be provided in the regulations.

Committee's Observation/Recommendation

The Committee observed that regulations will provide for other details, therefore there is need to have the substantive provision in the Bill. The proposal was rejected.

Clauses 23 to 28

303. Amend by deleting the clauses because the Sugar Research Institute is one of the institutes under KALRO.

Committee's Observation/Recommendation

The Committee observed that it is important to have a standalone research institute to carry out research in the sugar industry. This proposal was rejected by the Committee.

Clause 29

304. Amend sub-clause 29 (1) (2) to provide for gazettement by the Board of both Board and county inspectors. The Board will prescribe the qualifications for inspectors in regulations. This is to recognise the shared regulatory roles by both the Board and county governments.

Committee's Observation/Recommendation

The Committee observed that clause 5 provides for the functions of county government. The Board is best fit to undertake crop inspection. The proposal was rejected.

Clause 41

305. Amend paragraph 41 (1) (b) by deleting sub-paragraph (iii) because it is covered under paragraph 41 (1) (a) because growers and farmers are the same.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 48

306.Delete clause 48 because conduct of the affairs of the Board are covered under the Second Schedule.

Committee's Observation/Recommendation

The Second Schedules provides for the conduct of meetings of the Board while clause 48 provides for the conduct of meetings of the Board with other stakeholders. Their proposal was rejected by the Committee.

Clause 49

307.Amend the clause by deleting sub-clause 49 (2) because the penalties have been provided for under the standards, public health and environment laws.

Committee's Observation/Recommendation

This proposal was carried by the Committee.

Clause 50

308.Delete clause 50 because it is a function of NEMA under EMCA.

Committee's Observation/Recommendation

One of the functions of the Board is to enforce standards. This proposal was rejected by the Committee.

Paragraph 51

309.Amend paragraph 51 (2) (a) by deleting the words "*quarterly basis*". Move the clause on safeguard measures to part III immediately under clause 20 on sugar imports. Importing sugar on a quarterly basis is difficult to implement. This is a substantive and import related issue and therefore should not be under miscellaneous issues.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

310.Delete paragraph 51 (2) (b) because daily reporting is not practical. However, filing of returns monthly should be considered.

Committee's Observation/Recommendation

This proposal was rejected by the Committee.

311.Amend the clause by deleting sub-clause 51 (4) because the actions proposed under sub-clause 51 (1), (2) and (3) do not give rise to any offense.

Committee's Observation/Recommendation

The provisions under sub-clauses (1), (2) and (3) are to be provided by the Board and therefore do not give rise to any offense. Their proposal was adopted by the Committee.

Clause 53

312.Delete the clause because the guidelines are already covered under paragraph 57 (g) to be prescribed in the regulations.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 55

313. Amend sub-clause 55 (3) by deleting the words "*two years*" and replacing thereof with the words "*three years renewable once*". Two-year period is a short time for one to set leadership and establish structures.

Committee's Observation/Recommendation

The Committee observed that having directorship in private companies is not tenable. The committee proposed the deletion of this clause. The proposal was dropped.

Clause 56

314. Amend the clause by deleting the word "*third*" and replacing with the word "*first*". The Third Schedule has been proposed for deletion.

Committee's Observation/Recommendation

The Committee recommended deletion of the Third Schedule to the Bill.

Clause 57

315. Amend sub-clause 57 (2) by inserting the following new paragraphs, "*(j) To provide for registration procedures for actors under the Act; and (k) To provide for procedures for issuance of pre-import and pre-export approvals*". To add to the list of regulations to be made by the Cabinet Secretary.

Committee's Observation/Recommendation

The proposal to insert paragraph (j) was adopted by the Committee while the one to insert paragraph (k) was rejected.

316. Amend sub-clause 57 (3) by deleting paragraphs (a) and (b) because they are explanatory statements.

Committee's Observation/Recommendation

The Committee observed that the provisions in paragraphs (a) and (b) are in the Constitution hence no need to restate them. Their proposal was adopted by the Committee.

Second Schedule

317. Amend the Schedule by deleting paragraph 1 because it is already covered in clause 8.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Third Schedule

318. Delete the Schedule because guidelines for agreements between parties in the sugar industry will be provided for in regulations as stipulated in paragraph 57 (g).

Committee's Observation/Recommendation

The provisions in the Third Schedule should be provided in the regulations. The Committee adopted their proposal to delete the Schedule.

Fourth Schedule

319. Amend the Schedule by deleting paragraph 2 (d) because it is already covered in paragraph 2 (2) (c).

Committee's Observation/Recommendation

Their proposal was rejected because paragraph (c) deals with offences involving fraud and dishonesty while paragraph (d) focuses on criminal offences with a sentencing of more than six months. Their proposal was therefore rejected by the Committee.

4.12 KISUMU SUGARBELT CO-OPERATIVE UNION LIMITED

During the field visits to Kibos Sugar and Allied Industries, Miwani Sugar Company, Muhoroni Sugar Company and Chemelil Sugar Company Limited on 15th April 2023, the Committee received the following submission from the Kisumu Sugarbelt Co-operative Union Limited. That:

Clause 2

320. Create a body named "*National Sugarcane Farmers Association*" as apex body for all sugarcane farmers. The creation will bring order in farmer representation instead of persistent wrangling in between several bodies with no clear fixed abodes masquerading as farmers' representatives while farmer interest suffer.

Committees' Observation/Recommendation

The Bill has provided definition for the word "*sugar apex body*" which is an umbrella body for sugarcane farmers.

321. Define the word "*rendement*" as "*the sugar produced expressed as a percentage by weight of the sugarcane crushed*". This will increase efficiency in sugar production and recoveries. Ratio of cane to sugar produced for a well-run industry should be 9:1 or lower. The ratio 9:1 for cane to sugar recovered implies rendement of 11.1.

Committees' Observation/Recommendation

Their proposal was rejected as it should be provided in regulations.

Clause 6

322. Amend sub-clause 6 (1) (a) to read as follows, "*A non-executive Chairperson elected by the Board from among the representatives of growers on the Board and gazetted by the President*". Role of the farmer is accorded paramount significance in the industry as only supplier of major raw material and appointed by the highest office in the country.

Committees' Observation/Recommendation

The proposal was adopted by the Committee.

323. Amend sub-clause 6 (1) (b) by giving the farmers' apex body an additional slot in the Board. Farmers and grower representatives should constitute the majority in the Board as the key stakeholders.

Committees' Observation/Recommendation

This proposal was rejected because it is against the *Mwongozo* Guidelines on good governance.

324. Amend sub-clause 6 (1) (c) by deleting the word "*one*" and substituting with the word "*two*".
~~Farmers and grower representatives should constitute the majority in the Board as the key stakeholders.~~

Committees' Observation/Recommendation

The Committee observed the need to include more millers. The proposal was adopted with amendments.

325. Amend Clause 6 (1) (h) by adding a representative of Kenya National Trading Corporation to be nominated in writing by the CS, Ministry of Trade and Industry; PS State Department for Crops Development; and representatives of county governments. KNTC will be in charge of importation of sugar in the country in-case of shortfall in production. KNTC as was practiced in the past should receive and distribute all sugar produced locally and do importation in cases of deficit in order to eliminate cartels who have been some of the major causes of failure in sugar industry.

Committees' Observation/Recommendation

The Government is represented in the Board by the PS National Treasury.

Clause 25

326. Amend sub-clause 25 (b) to retain representation of each catchment area (5 in total) and one person nominated by Council of Governors. Each catchment area should elect one representative of suitable and relevant knowledge with experience. The representative will have adequate information about what the institute can do for the area.

Committees' Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 25 (e)

327. Amend sub-clause 25 (e) by deleting the words, '*Kenya Agricultural Livestock and research Organization*' and replacing with the words, '*Kenya Sugar Research Institute (KESRI)*'. KALRO does not need to be represented in the sugar research board. This position should be left for the second miller representative.

Committees' Observation/Recommendation

KALRO is the institution charged with agricultural research in Kenya. It is therefore important that it is represented in the Institute's board of directors.

Sugar Development Levy

328. Amend it to read as follows: "*Imports from EAC- 5%. COMESA – 15% Outside COMESA- 30 % locally produced sugar – 5%. Application of the Fund shall include a reasonable per centum for running of the Official Sugar Apex Body. Sugar importation for local refining purposes to supply industrial need be levied at 2% and allowed only for factory with registered refinery plant*". Imported sugar frequently includes damped sugar in the world market which must not be allowed to disadvantage local farmers in cane pricing. Funding Farmers' Apex Body will eliminate influence of cartels on Farmers' Representatives so that they can concentrate on their official roles and deliver for the farmers.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. The proposal was adopted with amendments.

First Schedule

329. On the delineation of sugar catchment areas amend as follows: "*Regions: Central Region (Kericho, Nandi, Kisumu), Upper Western Region (Bungoma, Kakamega, Trans Nzoia, Uasin Gishu) Lower Western Region (Busia, Mumias, Siaya) Southern Region (Homa Bay, Kisii, Migori and Narok) Coastal Region (Kwale, Lamu, Tana River)*". The Act should reflect wishes of the stakeholders.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Third Schedule

330. Amend paragraph 2 by deleting definition of the word "*sugar lobby group*" and replacing with the definition of "*Sugarcane Growers Apex Body*". Existence of many lobby groups which have always been wrangling in courts brings a lot of confusion in the industry while the plight of farmers they masquerade as representing has gotten worse.

Part 2 (5) (a)

331. Maintain the same for a period to allow the growers develop their own transport units. This to be reviewed from time to time with a definite scheme for getting growers properly equipped or allowing cane transport organization to develop. This is because most growers are dilapidated and do not have transport equipment.

Part 2 (5) (d)

332. Pay sugarcane farmers within one week of cane delivery to the mill. It has been proven that well run mills are paying every week and there should be no reason for backtracking.

Part 3

333. Amend Paragraph 7(2) (d) by deleting the words '*lobby group*' and replacing with the words '*Growers' Apex Body*'. Lobby groups cause chaos in the industry and apex body can take good care of growers' interests.
334. Amend paragraph 7(6) by deleting the words '*thirty-six*' appearing immediately after the words '*review after every*' and substituting therefore the word '*three*'. Three months' period provides a practical duration for which the committee can determine market prices at every given point.
335. Amend Paragraph 13 (1) by deleting the words '*Kenya Sugar Authority*' appearing immediately after the words '*comprising of the*' in sub-paragraph (1) and substituting, therefore with the word '*Kenya Sugar Board*'. The Sugar Bill is restoring the Kenya Sugar Board. The Kenya Sugar Authority has no place in the new Sugar Bill 2022.
336. Sub-heading of the Sugar Bill should be deleted and replaced with '*Appointment of Sugar Crop and Sugar Milling Inspectors*'. The decline and failure of sugar industry, apart from other factors mentioned elsewhere, can also be greatly attributed to non-existence of authoritative inspection both in the crop and factory performance.

Committee's Observation/Recommendation

The Committee recommended deletion of the Third Schedule to the Bill.

4.13 KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

In their memorandum, the Kenya National Federation of Sugarcane Farmers proposed the following amendments to the Bill:

Clause 2

337. Amend definition of the word '*by-product*' to include molasses, ethanol, electricity and bagasse. To specify primary by product from which farmers should benefit.

Committee's Observation/Recommendation

The definition provided in the Bill is sufficient. Some of the items mentioned in the definition are not by-products of sugarcane. This proposal was therefore rejected.

338. Delete the word "*farm gate*" and replace it with the word "*farm gate price*" to mean prices received by farmers for their sugarcane from where cost of transport should be determined. Clarification because "*farm gate*" could mean many other things.

Committee's Observation/Recommendation

Definition of the word "*farm gate*" was deleted by the Committee.

339. Amend definition of "*grower*" by deleting the words "*or any other crop*". There is no other crop known in Kenya at this moment for the manufacture of sugar with the same name.

Committee's Observation/Recommendation

Sugar beet, a crop that is used for the manufacture of sugar is being introduced in Kenya. The definition in the Bill is therefore sufficient. Their proposal was rejected by the Committee.

340. Amend definition of "*sugar catchment area*" to read as follows: "*a large regional geographical area made up of a cluster of two or more sugar mills suitable for development, procurement, free marketing of sugarcane and forming the electorate for farmers' representation to the sugar Board*". Catchment area is primary for sugarcane development and procurement. As opposed to a zone of one sugar mill this set up gives more latitude for farmers to market their cane to mills of choice within reasonable transport distance. It frees farmers from enslavement to a mill that does not provide satisfactory services.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided only for election of representatives to the office of member to the Board. The proposal was rejected.

341. Delete definition of the word "*mill gate*" because the meaning in the Bill is not relevant. Sugarcane varieties are developed on plots at the Research Institute, not at the gate of the mill.

Committee's Observation/Recommendation

The Committee observed that the proposal in Bill ought to be amended in order to reflect what happens on the ground. The proposal was adopted with amendments.

342. Amend definition of the word "*out-grower*" by adding the word "*institution*" or "*corporate*" entity after the words "*means in person*". Institutions and corporate bodies are also legal persons.

Committee's Observation/Recommendation

The Committee observed that the definition of outgrower was sufficient as is in the Bill. The proposal was rejected.

343. Re-word definition of "Sugarcane growers' apex body" to "Kenya National Federation of Sugarcane Farmers registered under the societies Act for the purpose of national united advocacy of sugarcane farmers interests and gazetted by the Cabinet Secretary for the time being responsible for agriculture". Provision in the Bill is misleading. Kenya National Federation of Sugarcane Farmers was established through Government initiative and support. It has dominant representation in all sugarcane growing areas in Kenya. It is misleading to say that this apex body can have a cane supply contract.

Committee's Observation/Recommendation

The Bill has provided definition for the word "sugar apex body" which is an umbrella body for sugarcane farmers.

344. Amend definition of "sugar millers apex body" by introducing sugar millers' apex body bringing together Kenya Sugar Manufacturers Association registered under the Societies Act and gazetted as such by the Cabinet Secretary for the time being responsible for Agriculture.

Committee's Observation/Recommendation

Definition for millers' apex body was not provided in the Bill. The Committee adopted their proposal.

345. Amend definition of "out grower institution" to mean "an institution formed by growers under the Societies Act or any other relevant law for the purposes of national advocacy of their interests as an Apex Body" or "An institution formed by growers and registered under the companies Act the cooperative societies Act or any other relevant law for the purposes of providing services to the growers at mill level". Not provided for in the Bill.

Committee's Observation/Recommendation

The committee observed the need to amend clause to in order to provide for out grower institutions but also take into consideration other definitions such as growers and out growers. The proposal was adopted with amendments.

Clause 6

346. Amend paragraph 6 (b) to read as follows: "Eight Representatives elected by growers from the catchment area as follows one from Rift Region Two from upper western Region Two from lower western region Two from southern region One from coastal region". Consider the number of farmers within a particular region or catchment area Rift Region (Kericho, Nandi, Uasin Gishu) - 21,208 farmers Upper western (Bungoma, Trans Nzoia) 72,544 farmers Lower western (Busia, Kakamega, Siaya, Vihiga) 95,006 Southern region (Kisii, H/Bay, Kisumu, Migori, Narok) 76,363 Coastal Region (Kwale) 245.

Committee's Observation/Recommendation

The Committee observed that the proposal was not in line with the Mwongozo code. The proposed eight representatives will make the total number of board members to be thirteen. Mwongozo provides for at least seven to nine members.

347. Amend paragraph 6 (c) to read as follows: "Three representatives nominated by the sugar millers Apex Body, KESMA". Allow for representation based on one for Government owned sugar mills and two for private sugar millers.

Committee's Observation/Recommendation

The Committee amended the Bill to provide for two persons from the millers' apex body, one representing public milling companies and the other representing private milling companies.

Clause 9

348. Amend the clause by re-wording and re-numbering paragraph 9 (a) (i) to read as follows: *"Imposition of a levy or levies upon growers not exceeding two per centum of the price per ton of sugarcane for the purpose of enabling the sugarcane growers Apex Body and mill based out growers' institutions to effectively fulfil their obligation in accordance with their constitutions".* Out growers' institutions are weak and not effective because they do not have regular and reliable funding.

Committee's Observation/Recommendation

The Committee observed that clause 9 provides generally for the powers of the Board which is among others the imposition of levies. Clause 34 specifically provides for one such kind of levy that is the sugar development levy. The proposal was rejected.

349. Amend paragraph 9 (a) by introducing the Sugar Development Levy. Imposition of a levy on domestic sugar and on imported sugar payable by consumers. This power is not provided for in the sugar Bill. Propose that this important item be specifically provided for under this clause and clearly stated as who should pay the levy to remove the current position whereby the incidence of the tax burden is on the farmers.

Committee Observation/Recommendation

The Committee observed that clause 9 provides generally for the powers of the Board which is among others the imposition of levies. Clause 34 specifically provides for one such kind of levy that is the sugar development levy. The proposal was rejected.

Clause 34

350. Amend sub-clause 34 (1) to read as follows: *"The Cabinet Secretary shall in consultation with the Board by order in the Gazette, impose a levy on domestic sugar and at a per centum of CIF value on imported sugar compliant with regional and international trade agreement to which Kenya is a party in respect of prevailing import duties, taxes and other tariffs to be known as the Sugar Development Levy".* To remove the proposed ten per centum from this section and let the Cabinet Secretary decide the rate in the order to be sure that there is flexibility in case of changes in the protocols.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. The proposal was adopted with amendments.

351. Amend sub-clause 34 (2) to read as follows: *"The levy shall be payable by sugar consumers at such rate added to the price of domestic sugar production as may be specified in the order".* This levy is a consumption tax payable by consumers. The reason for this proposed change is to protect the farmers from misinterpretation of the order leading to exploitation and backward passing of the tax burden to the farmer.

Committee's Observation/Recommendation

The Committee observed that clause 34 (2) was sufficient and not ambiguous.

352. Amend paragraph 34 (7) (a) by increasing to forty per centum because sugarcane development is the back bone foundation of sugar business.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

353. Amend paragraph 34 (7) (d) by reducing to twenty per centum. Infrastructure has other contributions such as county cess, CDF county infrastructure programmes, fuel levy, e.t.c.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 48

354. Amend sub-clause 48 (1) by adding, Attendance Millers - 20 delegates Growers - 20 delegates Farmers Apex Body Out-growers' institutions - 20 delegates. This will be specific on the attendees. This activity did not take place throughout the life of the past Kenya Sugar Board and now it is corrected.

Committee's Observation/Recommendation

This proposal can be contained in regulations. It was therefore rejected by the Committee.

355. Amend sub-clause 48 (2) by adding that one of the meetings shall be consideration of Annual Estimates. To enable participation in equitable allocation of funds for functional of the Board throughout the sugar industry.

Committee's Observation/Recommendation

This proposal can be contained in regulations. It was therefore rejected by the Committee.

356. Amend paragraph 52 (2) (f) to read as follows: "*The enforcement of levies upon growers for the purpose of enabling the Sugarcane Growers' Apex Body and mill based out growers' institutions to effectively fulfil their obligations in accordance with their constitution as per clause 9(a)*". Sugarcane farmers' institutions must have funds to run their organizations. The constitutions of these organizations have provided for funding through such levies.

Committee's Observation/Recommendation

The Committee observed that sugarcane farmers apex bodies are a necessity in disseminating information especially if that information involves cane development. The apex body is best suited as a tool in mobilising farmers and also a channel for farmers to air their grievances. Further this is a proposal to amend clause 52 which provides for offences and therefore the proposed amendment is misplaced. The proposal was rejected.

Clause 57

357. Amend sub-clause 57 (4) by deleting the words "*twelve months*" and replace with the words "*two months*". It is now 31 years since the sugar industry was liberalized. Throughout this period sugarcane farmers have borne the brunt of economic injustice with nowhere to go for redress on account of absence of regulations.

Committee's Observation/Recommendation

Two months are not sufficient because of the procedure involved in the approval of regulations. The Committee amended it to six months after enactment of the Bill.

Third Schedule, Part II

358. Amend paragraph 4 to read as follows: "*Functions of sugarcane growers' Apex Body: (a) Promoting and representing the interests of growers; (b) Negotiating or arranging on behalf of such grower members the terms of production and supply of sugarcane to the factories; and (c) Negotiating cane prices with millers through sugarcane growers' Apex Body and Kenya National Federation of Sugarcane Farmers*". To separate activities of advocacy from service provision.
359. Amend paragraph 4 (d) to read as follows "*Effectively participating in lobbying for favorable government policies in the industry*".
360. Amend paragraph 4 (b) to read as follows: "*Functions of mill based out grower's institutions i.e. "provision of services"*".
361. Amend paragraph 4 (c) to read as follows: "*Providing financial credit or otherwise arranging finance for such grower members in connection with the production of their sugarcane, including land clearance and preparation, planting, cultivation and tending harvesting, transport and supply of goods and services relating there to*". To provide services that include business activities in support of sugarcane development and supply which cannot be mixed with advocacy at the same time.
362. Amend paragraph 4 (d) to read as follows: "*Providing or procuring services advice and assistance to such grower members as may be required to carry out or procure the carrying out of such operations for such members*".
363. Amend paragraph 4 (e) to read as follows: "*Providing or procuring accounting services and books of records for members in respect of their individual operations*".
364. Delete "sugar lobby group". Not necessary, it will cause confusion. Farmers, millers being the main players are well represented by their institutions. They can hire other experts and consultants as need be.

Third Schedule, Part 3

365. Amend by deleting paragraph 7 (2) (d) in its entirety because it is not necessary. Millers and Farmers are well represented under 7 (2) (b) and (7) (2) (c). Experts or consultants can be hired to advice as necessary.
366. Amend paragraph 7 (3) to read as follows: "*Review sugarcane prices based on (1) Reasonable costs of sugarcane production; (2) The cane price arrived at must cover the costs of its production; (3) Consumption taxes imposed on sugar shall be added to the costs of sugarcane production and sugar production for on onward transmission to the consumers; (4) The farmer/miller sharing ratio shall be 2/3 to the farmer, 1/3 to the miller; (5) Milling efficiency should be pegged at 82% nationally to protect farmers from inefficient mills (i.e. KR); (6) The sugarcane price in the formula shall be Ex-Factory price based on total costs of sugarcane and sugar production NOT Net ex-factory; and (7) Extraneous matter shall be limited to not more than 0.5% compelling delivery of clean cane to the mills*". This is practiced internationally.
367. Amend paragraph 7 (4) (a) to read as follows: "*pricing mechanisms for all related costs, charges paid, accrued and imputed incurred by the farmer including interest charges administration and inflation*". Not all costs are paid in cash. Some accrue and are paid later. Time and use of the farmers' vehicle and other equipment must be costed. Inflation is not paid in cash but it affects the value of the cash paid to the farmer.

368. Amend paragraph 7 (4) (b) to read as follows: "*an Index take into consideration delayed harvesting, delayed payments, and harvesting of immature cane*". These are necessary calculations to compensate the farmer e.g. if cane matures at 24 months but it is harvested at 36 months, the farmer will have lost 12 months of a ratoon crop. Assuming that he expects a yield of 75 tons in 24 months the tonnage growth is $75 \div 24 = 3.125$ tons per month. Hence at a price of KSh. 4,000 per ton the farmer will have lost 12 months $\times 3.125 \times 4,000 =$ KSh. 150,000. Similarly, a farm whose cane is harvested at 12 months instead of 24 months loses KSh. 150,000.

369. Amend paragraph 7 (6) to read as follows: "*The sugarcane pricing committee shall meet quarterly to review the operations under its mandate. Or as necessary in addition to quarterly meetings*". The total mandate of the sugarcane pricing committee is heavy. It cannot be left to be reviewed after 36 months.

Third schedule

370. Re-Arrange Part 6 to Read "*Relationship between the miller and the grower*". This important relationship has been omitted from the Bill. With the exception of some farmers in Muhoroni and Chemelil whose total sugarcane supplies through growers Institution for year 2021 amounted to 667155 tons equivalent to 8.72% of total national cane supplies of 7,647,224 tons from growers 91.27% the cane was supplied by growers who had direct relationship with millers in Kenya.

Committee's Observation/Recommendation

The Committee proposed deletion of the Third Schedule to the Bill.

4.14 OUT-GROWERS SUKARI SUGAR COMPANY LIMITED

In their memorandum, the out-growers proposed the following amendments to the Bill:

Clause 2

371. Amend definition of the word '*agreements*' to read as follows, "*agreements specifying the standard provisions negotiated by all parties governing the rights and obligations of growers, millers, out-grower institutions, transporters, and workers*". This is because the contract should be negotiated and developed by all parties.

Committee's Observation/Recommendation

The Committee observed that it would be prudent to add other industry players. The proposal was adopted with amendments.

372. Amend definition of '*out-grower*' to mean, "*any person or institution who grows sugarcane for the production of sugar and by-productions and who has in force of supply contracts in respect of sugarcane grown on such farm and registered by the Board*". The issue of the catchment area is confusing, it missed the out-grower institution.

Committee's Observation/Recommendation

The Committee observed that the definition provided in the Bill is sufficient and therefore rejected the proposal.

373. Delete definition for the word "*sugar catchment area*". The definition is not necessary as it zones farmers. The CS will gazette electoral areas as was done in the past.

Committee's Observation/Recommendation

Zoning cannot be wished away in the sugar industry because it will bring order in the sector. Their proposal was therefore rejected by the Committee.

374. Amend definition of the word "*stakeholder*" to include transporters, workers, cane cutters, loaders, molasses dealers and traders.

Committee's Observation/Recommendation

The Committee observed that the use of the word "includes" means that all persons who have an interest in the sugar industry are taken into account as stakeholders. The proposal was rejected.

Clause 5

375. Amend the clause by deleting sub-clauses (a), (b), (c) and (d) because county governments have no capacity to undertake these roles.

Committee's Observation/Recommendation

The Committee observed that Agriculture is a devolved function and counties have been facilitated to undertake these roles. The proposal was rejected.

376. Amend sub-clause 5(e) to read as follows, "*establish an efficient road network for the movement of sugarcane through the use of cess fund collected and retained by the miller; managed by a committee comprising five grower representatives and millers*". Cess should be managed by both miller and out-grower.

Committee's Observation/Recommendation

Collection of cess is a function of county governments. This proposal was rejected by the Committee.

Clause 6

377. Amend sub-clause 6(1) (b) to read as follows, "*five representatives nominated by growers' organisation from electoral areas gazetted by the Cabinet Secretary*". The last KSB election was characterised by violence, corruption, mismanagement, lack of transparency and rigging.

Committee's Observation/Recommendation

Election is the fairest way of selecting the representatives of farmers. This proposal was rejected by the Committee.

378. Amend sub-clause 6(2) (a) by deleting the word "*appointment*" and replacing with the word "*gazetted*" and add the words, "*the CS shall gazette the chairperson*". This is because he is already appointed by farmers and only awaiting gazettelement.

Committee's Observation/Recommendation

The Committee noted the Mwongozo code and agreed that the chairperson should be appointed by the President and gazetted as such.

379. Amend sub-clause 6(3) by deleting the degree requirement because farming is about practical skills and not degrees. It will deny members the opportunity.

Committee's Observation/Recommendation

The KSB is a professional body that requires a person with the relevant academic qualifications as the chairperson.

Clause 20

380. Amend by deleting sub-clause 20(1) because importers will take advantage.

Committee's Observation/Recommendation

This proposal was rejected by the Committee.

Part IV

381. Delete clause 29, 30, 31 and 32 because they are oppressive.

Committee's Observation/Recommendation

The Committee observed that the aspect of entry and inspection of land and buildings and also appointment of crop inspectors is vital to the development of sugar industry in Kenya. The proposal was dropped.

Clause 34

382. Amend sub-clause 34(2) to read as follows, "*the Cabinet Secretary shall in consultation with the Board by order in the gazette impose a levy on domestic sugar of no more than two percent and seventy per centum of CIF value on imported sugar to be known as the sugar development levy*". To discourage surplus sugar imports by cartels.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

383. Insert the following new paragraph under sub-clause 34(2), "*the levy imposed under sub-clause (2) shall be collected by millers and disbursed to the Commodities Fund with the Board undertaking the role of supervision*". For accountability of the money.

Committee's Observation/Recommendation

The Committee observed that there are proper channels of collecting the levy as is being done currently by the commodities fund. Further this is an administrative role which can be performed by the commodities fund in conjunction with the millers and other value chain actors in the sugar industry. The proposal was dropped.

Clause 35

384. Amend sub-clause 35(1) to read as follows, "*There is established a Fund to be known as Sugar Development Fund which shall be administered by an independent Board of Trustees comprising of one grower and two others with extensive knowledge in law, agriculture, banking or economics*". This is for good corporate governance and accountability of the Fund.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the Commodities Fund which currently maintains it. Within the Commodities fund, is a sugar development fund which does

exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

385. Amend paragraph 35(1) (b) to read as follows, "*the Trustees be appointed by the Cabinet Secretary for Agriculture for a term of 3 years renewable once*".

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the commodities fund. Within the Commodities fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

Clause 40

386. Amend sub-clause 40(4) to read as follows, "*The members of the Tribunal appointed under sub-section (2) shall hold office on appointment basis, and paid salaries and not allowances*". Working on a part-time basis will prolong the dispute resolution.

Committee's Observation/Recommendation

The Committee observed that it is a standard practice for all members serving in a tribunal to serve on a part time basis.

Clause 55

387. Amend sub-clause 55(3) to read, "*a person appointed as director under sub-section (1), shall serve for a term not less than three and a half years*". For institutional memory after election of KSB directors.

Committee's Observation/Recommendation

Clause 55 was deleted by the Committee.

First Schedule

388. Delete the entire Schedule because the electoral areas are to be determined by the Cabinet Secretary and the area under coverage is not realistic.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Third Schedule, Part 3

389. Amend paragraph 6(2) (a) to include that burnt sugarcane shall only be rejected when it is under 12 months and when it is stale because only underage cane cannot be milled.
390. Amend by deleting paragraph 6(2) (b) because it can be abused by millers who do not have the interest of farmers.
391. Amend paragraph 7(1) (c) to read as follows, "*three persons nominated by the sugarcane growers' organisations*". To provide for nomination by the organisation.
392. Amend by deleting paragraph 7(3) (d) because farmers are not educated on the cane-based payment system.

Committee's Observation/Recommendation

The Third Schedule to the Bill was deleted by the Committee.

4.15 SOUTH NYANZA SUGAR COMPANY LIMITED

In their memorandum, SONY Sugar proposed the following amendments to the Bill:

Clause 54

393. Amend the clause by harmonising it to the Privatisation Act in order to encourage investors to invest in the sugar companies.

Committee's Observation/Recommendation

The Committee deleted the clause 54.

First Schedule

394. Amend the Schedule by grouping Kisumu, Kericho, Nandi and Uasin Gishu under the Rift Region and Kisii and Nyamira added to the Southern Region.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. Further, The Committee observed that there is need to provide zoning of catchment areas in order to curb irregularities experienced in the catchment areas such as cane poaching, cane agreements not being adhered to. The Committee agreed with the proposal to zoning.

Third Schedule

395. Amend Part 1 (2) and Part 2 (4) by providing definition for out-grower institutions because the definition in the Bill does not provide the qualifications for an institution to be an out-grower institution.
396. Amend paragraph 5(a) to read as follows, "*weigh the harvested sugarcane on designated and registered weighbridges*". Millers are required to weigh the harvested sugarcane at the farmgate which is not practical.

Committee's Observation/Recommendation

The Third Schedule to the Bill was deleted by the Committee.

4.16 KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS – SONY SUGAR BRANCH

Clause 2

397. Amend definition of "*Sugarcane Growers Apex Body*" to read as follows, "*A national registered organisation whose membership shall be mill level registered farmers' institutions and groups championing the rights under a cane supply contract and in catchment areas under the First Schedule gazette as such by the Cabinet Secretary for the time being responsible for agriculture*".

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

398. Amend definition of “*Dispute Resolution Committee*” to read as follows, “*A committee established within each Sugar Mill level comprising of two representatives from the miller, 2 farmers’ representatives and 1 representative from the county government to resolve all minor disputes arising between the parties within such milling zones*”.

Committee’s Observation/Recommendation

The Tribunal established in the Bill will resolve all disputes in the sugar sector.

399. Amend definition of “*Agreements*” to read as follows, “*the agreements and/or tripartite cane contact agreement specifying the standard provisions governing the rights and obligations of growers, millers and out-grower institutions in the sugar industry*”.

Committee’s Observation/Recommendation

The Committee observed that the word tripartite is limiting and therefore rejected the proposal.

400. Amend definition of “*Cess Committee*” to read as follows, “*a committee established within sec.....with full representation of sugarcane farmers who are the main contributors for the monitoring of the utilisation of such funds*”.

Committee’s Observation/Recommendation

Cess is collected by county governments. The county governments will therefore form the cess committee if they establish that there is need for the committees.

Clause 6

401. Amend paragraph 6(1) (b) to read as follows, “*the five representatives elected by the registered growers’ institutions from each sugar catchment area as per the First Schedule*”.

Committee’s Observation/Recommendation

The Committee observed that there is no need to insert the word “registered” because the sugarcane farmers organisations will ultimately register the farmers. The proposed amendment is superfluous. The proposal was dropped.

Clause 25

402. Amend paragraph 25(b) to read as follows, “*five representatives elected by the registered growers’ institutions from each sugar catchment area as per the First Schedule*”.

Committee’s Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 34

403. Amend sub-clause 34(7) to include sugarcane farmers apex institutions because the apex body represents all sugarcane growers in the country.

Committee’s Observation/Recommendation

The Committee observed that sugarcane farmers apex bodies are a necessity in disseminating information especially if that information involves cane development. The apex body is best suited as a tool in mobilising farmers and also a channel for farmers to air their grievances. The proposal was adopted with amendments.

Clause 40

404. Amend the clause to provide a local dispute resolution mechanism to help deal with other minor matters that can be solved locally within mill level. The committee should comprise of 2 miller representatives, 2 growers' representatives and 1 county government representative who shall be the chairperson.

Committee's Observation/Recommendation

The Tribunal is established in the Bill to resolve all disputes in the sugar industry. The proposal to establish local dispute resolution committees was rejected by the Committee.

Clause 55

405. Amend sub-clause 55(1) to include state owned sugar companies. Growers' representatives should be given full responsibility to nominate growers' representatives to such boards.

Committee's Observation/Recommendation

The Committee proposed deletion of clause 55.

406. The cane pricing committee should be established with proper farmers' representation and in consideration of the five sugar catchment regions and nomination of the said farmers' representatives be done with respective growers' institutions registered with the regulator and with membership across the respective regions.

Committee's Observation/Recommendation

Cane pricing is a function of the Board and therefore no need to put in place a cane pricing Committee. Their proposal was rejected by the Committee.

First Schedule

407. Proposed that zoning be done according to regions as follows: Rift Region (Kericho, Nandi and Uasin Gishu); Coastal Region (Kwale, Lamu and Tana River); Southern Region (Homabay, Kisumu, Migori and Narok); Upper Western Region (Bungoma and Transzoia); and Lower Western Region (Busia, Kakamega, Siaya and Vihiga).

Committee's Observation/Recommendation

The Committee observed that there is need to provide zoning of catchment areas in order to curb irregularities experienced in the catchment areas such as cane poaching, cane agreements not being adhered to. The Committee agreed with the proposal but with amendments.

408. Include the Kenya National Federation of Sugarcane Farmers as the national sugarcane growers' apex body.

Committee's Observation/Recommendation

The sugarcane growers' apex body is already provided in the Bill.

PART FIVE

5 FIELD VISITS

409. During the stakeholder engagement retreat held on Friday, 24th March 2023 at Holiday Inn Hotel, Two Rivers Mall, the Committee resolved to conduct field visits to sugar companies in order to appreciate the conditions under which they operate, the challenges that they experience in their day-to-day operations, the status of the factories particularly the public mills and to interact with farmers who supply sugarcane to the factories. The Committee conducted field visits as follows:

5.1 WESTERN REGION AND KISUMU COUNTY

410. The Committee undertook field visits between Thursday, 13th and Saturday, 15th April 2023 to the following sugar companies:

- i. West Kenya Sugar Company;
- ii. Butali Sugar Mill;
- iii. Nzoia Sugar Company Limited;
- iv. Mumias Sugar Company Limited;
- v. Busia Sugar Industry Limited;
- vi. Kibos Sugar Company Limited;
- vii. Miwani Sugar Company Limited;
- viii. Chemelil Sugar Company Limited; and
- ix. Muhoroni Sugar Company Limited.

411. During the field visits, the Committee conducted a tour of the companies and established that the privately owned sugar mills were well maintained while the government owned sugar mills were run down and struggling financially.

412. The Committee received the following submissions from sugar company management and out-growers during the field visits:

5.1.1 WEST KENYA SUGAR COMPANY

413. The Company's management and farmers submitted that the SDL should be charged on all sugar imports and exports. These Levy should benefit the farmer through construction of feeder roads and support the community through CSR activities. Farmers recommended that 75% of the levy should be used for purposes of cane development. The Company's management submitted that the Levy should be distributed as follows: 15% price stability; 20% to the KSB; 20% to research; and 45% in infrastructure.

414. The farmers were opposed to zoning proposing that farmers and millers should be left free to develop their relationships and agreements irrespective of their location within the sugarcane catchment areas.

415. Both parties submitted that sugar packaging by supermarkets and sugar millers who rely solely on imports should be banned. Additionally, imports and exports should be regulated.

416. They supported the re-establishment of KSB to regulate operations and relationships of the sugar farmer, sugar miller and the consumer. The Board should have representatives from millers and out-growers. KSB will also address a myriad of challenges facing state owned factories e.g. poor

management, corruption, government interferences, disputes between factories and sugarcane farmers, inadequate funding for cane development etc.

5.1.2 BUTALI SUGAR MILL

417. The Butali sugar management requested the Committee to fast-track consideration of the Sugar Bill, 2022 so as to reinstate the Kenya Sugar Board. They supported the amendments proposed to the Bill by KESMA.

418. They requested the Committee to push the Ministry to develop crop (sugar) regulations to regulate all players in the industry.

419. The management was in support of the introduction of zoning on priority basis.

420. They stated that government owned factories should endeavour to pay farmers on time and embrace good governance

421. Sugar companies were jointly looking for ways to mitigate against harvesting of immature cane. Additionally, they proposed that the Sugar Pricing Committee needs to be reconstituted to address price fluctuations in the industry. Further, CF needs to be empowered to be able to collect the levies and approve funds requests by millers on time.

422. They proposed that VAT needs to be reduced from 16% to 8% in order to improve the business environment.

423. KESMA and KNFSF need to be legally recognised as apex bodies to reactivate out-growers' companies by each mill to represent their farmers. Further, the Sugar Taskforce Report of 2019 should be implemented and regional research centres created in each of the five sugar catchment regions.

5.1.3 NZOIA SUGAR COMPANY LIMITED

424. The famers proposed that the SDL should be imposed on all imports and exports at 5%, local millers at 3% and consumers at 2%. The levy should not be a perpetual fund but have a timeline to morph into a fully-fledged sugarcane farmers' bank. 75% of the levy should be used for purposes of Cane development.

425. The farmers proposed that county governments should work with millers and farmers in the planning and utilization of cess in improving infrastructure in the sugar catchment areas.

426. The farmers opposed zoning and encouraged the Committee to allow the use of farmer-miller agreements irrespective of their location within the sugarcane growing area. They observed that contractual farming is better suited in the current environment.

427. They proposed that a policy banning repackaging of sugar by supermarkets and sugar companies who rely solely on imported sugar mainly for repackaging and selling in their respective brand names be put in place.

428. They also proposed that institutions participating in CSR activities should be given tax rebates. They observed that the future of the sugar industry lies in the energy sector. There should be laws

that encourage power production to the national grid by implementing policies aimed at replacing the fossil fuel generators with environmentally friendly options from the sugar industry.

429. In conclusion, they submitted that farmers should be free to join an organization of their own choice.

5.1.4 MUMIAS SUGAR COMPANY LIMITED

430. The MD, Mumias Sugar Company informed the committee that the Company was under rehabilitation on resumption of operations after almost seven (7) years of closure. He stated that the company had managed to revive three weighbridges and replaced several fuel pumps that were defective.

431. The new management had managed to put almost 1,852 acres of land under cane cultivation. The Company had boosted cane supply by the enrolling 11,456 farmers into the Company's cane supply register.

432. The Company had employed a total of 900 persons on full time basis and 1000 on contractual terms.

433. In order to boost confidence of farmers in the Company, arrears owed to them arising from cane supplied from July 2022 to April 2023 amounting to KSh. 1.7 billion were settled. The price of sugarcane purchased from farmers had increased to KSh. 5,500 per ton.

434. The company had contributed to the revenue of the County Government of Kakamega by paying cess totalling to KSh. 8.2 million. The Company had spent over total KSh. 1.6 billion as capital injected in order to revive the factory.

435. The MD informed the Committee that the Company was faced with several challenges including:

- i. Multiple suits filed against the company. A total of 10 cases were filed allegedly by the Company's competitors and seven (7) were dismissed with the cost of suits awarded in two (2) of them.
- ii. Unfair competition where other sugar millers purportedly engaged in practices such as destruction of cane within the zone of Mumias Sugar Company and persuading farmers contracted by the Company to harvest immature cane and sell to them.
- iii. Terms of the lease agreement provided that the lessee conduct rehabilitation on the Company within 8 to 9 months after execution of the Agreement. This was a tall order because the Company required more time for full rehabilitation.
- iv. The Company had a production capacity of 8,500 tonnes per day. A capacity which the Company was unable to meet due to several reasons such as reduction in availability of cane caused by farmers abandoning sugarcane farming in the region.
- v. Negative media coverage that claimed that the company had imported sugar from Uganda.

436. Mumias Sugar Company supported zoning because other sugar companies had allegedly trespassed into its zone and operated there while it was non-operational due to insolvency for about seven years. Zoning will reduce instances of unfair competition or business practices and increase agricultural produce through calculated investments.

437. The MD informed the Committee that the industry required long-term policies to promote its growth and stability.

5.1.5 BUSIA SUGAR INDUSTRY LIMITED

438. The Company's management supported licensing as provided for in the Bill. They stated that it was important to regulate sugarcane millers through licensing and that the mandate was well domiciled within the proposed KSB.
439. The Company supported zoning with slight proposed amendments to have Mumias Sugar Company area to feature in Kakamega. The Company further stated that delineation will reduce cases of unfair business practices such as cane poaching by enforcing that no miller should establish a cane buying centre or a weighbridge outside the allocated catchment area. They also proposed that sugar mills be established not less than 40 Km radius from another in order to tackle the issue of poaching of young cane by rival millers.
440. The Company fully supported the reinstatement of the Sugar Board as provided in the Bill and claimed that AFA, Sugar Directorate reversed many gains made by the initial KSB.
441. They proposed that the prices of sugarcane should be determined by the market forces of demand and supply and not set by the sugarcane pricing committee.
442. The management proposed that the Government should give millers sugar importation quotas based on production capacity. They further proposed that the allocation be shared between the millers and the KNTC.
443. The management requested the Committee to assist private sugar companies in acquiring idle Government land for cane production in order to increase sugarcane production in the country. This will ensure that sugar production in the country satisfies demand hence therefore reducing the importation of cane or sugar into the country.
444. They also proposed a total ban on repackaging and rebranding of both locally manufactured and imported sugar because it denies millers the intellectual property ownership rights and also interferes with traceability in case of a faulty product.
445. They proposed that environmental protection should be enhanced by compelling sugar companies to exhaust *bagasse briquettes* for fuel as an alternative to firewood.

5.1.6 KIBOS SUGAR COMPANY LIMITED

446. The Company's management supported enactment of the Sugar Bill, 2022 into law with the justification that it will bring a lasting solution to the problems experienced in the sugar industry. Farmer associations also supported the Bill and lauded efforts of the sponsor of the Bill, Hon. Emmanuel Wangwe, MP. They However, brought to the attention of the Committee that enactment of the Bill should be followed up by formulation of regulations to operationalize the proposed Act. They pointed out that the Sugar Industry lacked Regulations for almost two decades therefore hindering interpretation and operation of previous the Act.
447. The management was of the view that the Government's position of restricting importation of sugar was detrimental to the sugar industry because locally produced sugar was not enough to meet the demand due to shortage of sugarcane. They further observed stakeholders in the sugar industry should be given permits to import sugar into the country and do reprocessing.

448. They noted that the cost of producing sugar was relatively high due to the high taxes imposed on every aspect of the industry namely, milling, cost of inputs and heavy taxation on the importation of raw materials. They implored the Committee to look into the issue and work on policies that will reduce taxation on the sugar industry.
449. The management and the farmers supported the establishment of the KSB as provided for in the Sugar Bill, 2022. Farmers expressed concerns regarding the Agriculture and Food Authority, Sugar Directorate, stating that it had proven to be ineffective in carrying out its mandate.
450. Both the management and farmers supported privatization of the government owned sugar mills. They however emphasized that privatization will be ineffective if importation of sugar is uncontrolled.
451. The farmers proposed that farmers board or an apex body should be established of the to deal with representation of farmers on all levels of decision-making including issues such as importation of sugarcane. They gave a framework for the establishment of the board through regulations and midwifed by the Ministry of Agriculture and Livestock Development.
452. The farmers were against the setting up of Cane Testing Units because the few that had been initiated were not functional and therefore served as avenues for embezzlement of funds.

5.1.7 MIWANI SUGAR COMPANY LIMITED

453. The out requested the Committee to help revive the sugar industry in the region. The farmers expressed difficulty in making profit from cane growing despite sugarcane farming being the major economic activity in the area.
454. Farmers advocated for the reestablishment of the Kenya Sugar Board because it would streamline the sugar sector for the benefit of the sugar farmers, millers and consumers. The Board should have representatives elected by grass-root groups.
455. The farmers called upon the Committee to help revive the sugar industry. They were in support of the privatisation of Miwani Sugar Company Limited but requested that public participation is carried out before the privatisation process kicks off.
456. Farmers averred that they should be involved in the management of the Board so as to agitate for their access to farm inputs like subsidized government fertilizers which is necessary for cane development.
457. The Ministry should communicate the intention to import sugar at least three months prior to through a gazette notice. Importation should be clearly communicated to the millers in terms of costs, quantities, and period expected to allow local millers to plan well and forecast.
458. The famers advocated for reintroduction of the SDL and strengthening of its administration to achieve the following: Provide an opportunity for sugar millers to access funding for annual maintenance of their factories and agricultural machinery; allow farmers and millers with nucleus farms to borrow money for cane development; and support construction and maintenance of feeder roads and bridges for easier supply of raw materials to the mills. They proposed that 75% of the levy should go towards sugarcane development.

5.1.8 CHEMELIL SUGAR COMPANY LIMITED

459. In a meeting with farmers at Chemelil Sugar Company, they proposed that grants for maintenance of feeder roads need to be provided and the cess paid to the County Governments of Nandi and Kisumu properly utilized. Further, recommendations made by the Sugar Taskforce should be enhances especially those on zoning.
460. They requested for facilitation and access to farm inputs like subsidised government fertilizer for cane development at the company nucleus estate.
461. The farmers were opposed to privatization of Chemelil Sugar Company citing Mumias Sugar Company as a failed project despite its privatisation.

5.1.9 MUHORONI SUGAR COMPANY LIMITED

462. The farmers and workers were in support of the establishment of KSB as an apex body in the industry. They also proposed that the cess committee should be formed to administer payment of cess to county governments and ensure that a percentage of the cess collected is used to promote and develop the Sugar Industry.
463. The farmers and the workers called for separation of the management of Muhoroni Sugar Company Limited from that of Miwani Sugar company Limited. They stated that both Companies had the same joint receiver managers and that it was necessary to have their own manager separate from that of Miwani Sugar Company because the Company required special attention and the challenges faced by the Company were different from those faced by Miwani Sugar Company.
464. The Company workers cited lack of payment of salaries for a period of up about 46 months. The Company had been the source of livelihood for many residents of the area before its collapse and therefore pointed out the importance of its revival. The workers, through their representatives, called for the privatization of the company in a bid to initiate its revival.

5.2 SOUTH NYANZA REGION AND NAROK COUNTY

465. The Committee undertook field visits between Monday, 8th and Wednesday, 10th May 2023 to the following sugar companies:
- i. Transmara Sugar Company Limited;
 - ii. Sukari Sugar Company Limited; and
 - iii. SONY Sugar Company Limited
466. The Committee held meetings with the management and sugarcane farmers in the above sugar companies and established that:

5.2.1 TRANSMARA SUGAR COMPANY LIMITED

467. The Sugar Company is located in Kilgoris Sub-County in Narok County. The Company is owned by *Sucriere Des Mascareines* Limited (SML), a Mauritian Company with a shareholding of 71% and local investors with a shareholding of 29%.
468. The Company had contracted 17,000 sugarcane farmers in Narok County and was spending KSh. 9 billion on input to farmers. The Company operates for 11 months in a year and is usually closed between April and May for maintenance.

469. The Company's management informed the Committee that some farmers bridge the contract with the Company so as to evade paying for the inputs. To deal with this, the management proposed that zoning and regulations protecting farmers and factories need to be introduced.
470. The management further observed that there is no mechanism by AFA to check on the growth of sugar companies. The Authority needs to be given more power to regulate the sugar industry.
471. On their part, farmers complained that despite having a 24-month contract with the Company, some sugarcane had stayed in the farms for 50 months mainly because sugarcane production was higher than the company's capacity. They stated that monopoly on their cane needs to be abolished and were therefore not in support of zoning. To address this, they averred that farmers should charge interest to the Company for sugarcane that stays in the farm beyond the contract time.
472. The farmers raised concern about the harsh penalties imposed on them if their sugarcane gets burnt i.e. the sugarcane is paid on sucrose content, the farmer is paid KSh. 400 per tonne, the farmer is paid after three to six months and farmer meets the cost of transporting the sugarcane from their farm to the Company.
473. Additionally, farmers complained of delayed payments, inaccessibility of the Company's management, delays in supply of cane seed, many hidden costs leading to reduced income to the farmers, lack of consultation when coming up with the contract, the CSR activities undertaken by the Company are not commensurate to the profits that they make and payment is only made for sugar and not other by-products like molasses.

5.2.2 SUKARI SUGAR COMPANY LIMITED

474. Sukari Sugar Company Limited is owned by the Rai Group and is located in Ndhiwa Subcounty, Homabay County.
475. In a meeting with the Committee, the management of Sukari submitted that they were in support of the reintroduction of the Kenya Sugar Board and the Sugar Development Levy. They observed that the Kenya Sugar Board should be a regulator and not manager of the SDL. The SDL can be collected by KRA because it has enforcement mechanism and managed by the Commodities Fund.
476. They proposed that the SDL should be distributed mainly to the farmers and millers instead of being used to cater for administrative expenses of KSB. The SDL should be used for construction of bridges, cane development, purchase of machinery for road development and repair of roads to ease accessibility to farms during cane harvesting.
477. The management also supported introduction of the Sugar Tribunal especially to resolve cases between millers and farmers. They observed that there were many cases in court and it takes long for them to be concluded in the court system.
478. Additionally, the management stated that county governments collect cess of 1% of farmers' earnings that is meant to be used for the repair of roads. Sugar companies remit the money to county governments but the roads are not repaired. They proposed that the Bill should prescribe the use of the money.

479. With regards to poaching, they stated that it should not be introduced in the Sugar Bill because it is discriminative and Kenya is a free market. To deal with it, they proposed that contract farming for farmers should be introduced and laws against cane poaching put in place.
480. In conclusion, the management informed the Committee that there was need to enhance research in the sugar sector in order to improve sugarcane varieties. Research will help develop high yielding sugarcane that matures in a short time.
481. On their part, farmers lauded Sukari Sugar Company for quick payment. They received their payment within four (4) to seven (7) days after supplying sugarcane to the Company. They also expressed their gratitude to the Company for their role in cane development, offering of scholarships and maintenance of roads.
482. They also supported the reintroduction of KSB because AFA had done nothing for the sugar sector since its inception. They also supported reintroduction of the SDL and the usage must be clearly stipulated in law in order to ensure accountability. The Levy should be managed by a trustee and not KSB.
483. They complained about bad roads that had made it difficult to transport sugarcane from their farms to the Company, lead to high cost of sugarcane transportation and cane spillage reducing the sugar tonnage.
484. The farmers also observed that extension services need to be reintroduced. They proposed that these services should be domiciled in the National Government because it appeared that county governments were not able to handle them.
485. Additionally, the farmers called for introduction of insurance against burning of sugarcane, crop development should be done by CF, free sugarcane market system (opposed zoning), devolving of the sugar tribunal to county level for accessibility by farmers, clear stipulation of penalties for sugarcane poaching in the contracts, putting in place of regulations on cane poaching and stopping of illegal sugar importation.

5.2.3 SOUTH NYANZA SUGAR COMPANY LIMITED

486. SONY Sugar Company Limited is a government owned sugar company in Uriri Sub-County, Migori County.
487. In a meeting with the Committee, the Company's management observed that there was need to protect public milling companies by writing off historical debts and bailing them out of their debts. In November 2021, the Company requested for KSh. 500 million from the Government and was given KSh. 317 million, KSh. 138 million was used for maintenance of the factory while KSh. 138 billion was used to pay farmers.
488. On how the Company accrued the historical pending bills, the management stated that the Company lost KSh. 4 billion of their investment to cane poaching by private sugar companies. The debts were accrued between 2017 and 2020.
489. The management noted that the sugar subsector needs to be mainstreamed. They were not keen on where the SDL is domiciled as long as there is a levy for the sugar industry.

490. On their part, the out-growers submitted that there should be one sugar industry agreement for all sugar companies prepared by all stakeholders so that interests of all stakeholders are taken care of.
491. They supported reintroduction of the KSB and zoning of sugar catchment areas for order in the industry. They expressed concern in the classification of sugar as a commodity instead of food which has resulted in high taxes.
492. The farmers were opposed to the privatisation of public sugar companies mainly because private sugar mills do not employ locals and if they do, the pay is low; private mills do not maintain roads; and private millers import sugar.
493. The farmers raised concern about obsolete machines in the Company which resulted in high cost of production. They observed that there was need to have a level playing ground for private and public sugar milling companies.
494. The workers' union informed the Committee that employees of the Company were not paid salaries in 2019 and 2020 though the Company was paying the salary arrears. They observed that only 700 workers in the Company were employed on permanent and pensionable terms. Over 900 workers had been working on contractual terms for the last 30 years. They noted that there was need to regulate board meetings because a lot of money was being used to pay board members instead of going into other important areas like paying salary arrears.

5.3 KWALE INTERNATIONAL SUGAR COMPANY LIMITED

495. The Committee undertook a field visit to Kwale International Sugar Company on Friday, 16th June 2023. The Company is located in Msambweni Sub-County, Kwale County. It is owned by Pabari Investments Limited, a Kenyan Company with a shareholding of 80% and Omnicane Limited, a Mauritian Company with a shareholding of 20%.
496. The management informed the Committee that KISCOL has the following components: A 3300 TCD factory; nucleus land; irrigation network comprising of dams, boreholes and bulk water supply system; 18 MW co-generation plant; and out-grower farms.
497. KISCOL is set up where Ramisi Sugar Factory was located. The Company was allocated 15,000 acres (6082 Ha) from the 42,000 acres (17,000 Ha) belonging to Ramisi Sugar Factory and 27,000 acres were set aside for relocation and settlement of squatters. The lease for the 15,000 acres was issued to KISCOL by the National Treasury on behalf of the Government in 2007.
498. The project was projected to attain full commercial operations in March 2015 but this is yet to happen due to the following: Occupation of part of the Company's land (almost 2500 Ha) by squatters which has resulted in court cases; excision of 1,000 Ha from the lease area to extend Base Titanium's Special Mining Lease; and political incitement by local leaders.
499. Sugarcane farmers informed the Committee that the prolonged drought in 2022 led to the drying of sugarcane, consequently, they were not able to service the loans that they had taken from AFC. Resultantly, AFC had auctioned some of their property to recover the loans. They raised concern about the huge sums of money required by AFC before loans are approved.

500. They observed that the cess collected from them by the County Government of Kwale was not used for the intended purpose of repairing roads, bridges and for extension services. They also observed that AFA had not been felt in Kwale County since its inception.
501. In order to improve the livelihood of sugarcane farmers, the farmers proposed that importation of sugar should be done by SACCOs so that farmers are able to sustain themselves during the dry season, an out-grower office should be set up to provide extension services, permits should be provided to KISCOL to plant the improved sugarcane varieties which will increase their yield, and seed cane should be provided to farmers.
502. The farmers supported reintroduction of KSB and requested for the provision of insurance for sugarcane to cover them when their sugarcane gets burnt or when production is affected by unfavourable climatic conditions.

PART SIX

6 COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee observed that enacting the Sugar Bill (*National Assembly Bill No. 34 of 2022*) into law will bring several potential benefits to the sugar industry, including:

6.1 OBSERVATIONS ON THE BILL

503.Regulating the sugar industry: The sugar law will help to regulate the sugar industry in Kenya as it will ensure that producers and manufacturers comply with established standards and guidelines. This will help in improving the quality of sugar products and ensure that consumers are protected from harmful or substandard products.

504.Encouraging investment: A clear legal framework for the sugar industry will make it easier for investors to understand the regulatory environment and make informed decisions about investing in the sector. This can lead to increased investment in sugar production and processing facilities, which will create jobs and drive economic growth.

505.Protecting domestic producers: The Sugar Bill, 2022 has provisions that protect domestic sugar producers from unfair competition from foreign imports. This will help to support local sugar production and ensure that Kenya's sugar industry remains viable and sustainable.

506.Promoting food security: The sugar industry is an important part of Kenya's agricultural sector, and promoting the growth and development of the industry can help to promote food security in the country. This is especially important given Kenya's dependence on imported sugar and other food products.

507.Generating revenue: A well-regulated sugar industry will generate significant revenue for the Kenyan government through taxes and other fees. This revenue will be used to support important social programs and infrastructure projects.

6.2 OBSERVATIONS FROM THE FIELD VISITS

508.Eleven (11) CTUs had been installed in both public and private sugar companies. All the CTUs were not operational despite the heavy investment used by AFA to put them in place. AFA had the responsibility of operating the CTUs in the pilot stage in both private and public mills.

509.The public sugar companies were run down. The technology used in most of them was outdated resulting in reduced efficiency and effectiveness and high maintenance costs. Additionally, the companies were heavily indebted especially to farmers who supplied cane to them and their employees.

510.The sugarcane varieties in all places visited by the Committee were low yielding. This was attributed to low funding on account of sugar research.


511.AFA's impact had not been felt by farmers and management of sugar companies visited by the Committee.

PART SEVEN

7 COMMITTEE RECOMMENDATION

The Committee having reviewed the Sugar Bill (*National Assembly Bill No. 34 of 2022*) recommends that the House approves the Bill with amendments.

SIGNED..........DATE..........
HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

 THE NATIONAL ASSEMBLY	
DATE: 06 JUL 2023	
DAY: Thursday	
TABLED BY:	Hon. Geoffrey Odanga (Member, Agriculture and Livestock Committee)
CLERK AT THE TABLE:	Kemelle Joyo

REFERENCES

1. Sugar Industry Stakeholders Taskforce Report, 2020, Government Printer, Nairobi
2. <https://www.cofek.africa/2015/02/why-cofek-wants-supermarkets-to-stop-re-branding-consumer-goods-and-kenya-bureau-of-standards-kebs-response/>
3. <https://www.comesa.int/sub-committee-on-kenya-sugar-safeguard-measures-reviews-progress/>

ANNEX ONE:
REPORT
ADOPTION
SCHEDULE





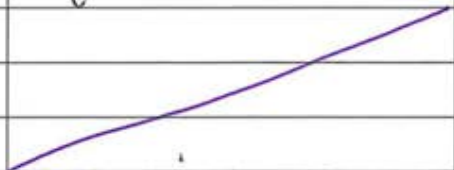



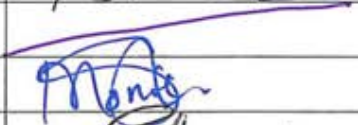

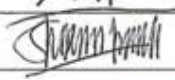

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF SUGAR BILL, 2022

DATE: 3RD JULY 2023

NO.	NAME	SIGNATURE
1.	HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP - CHAIRPERSON	
2.	HON. BRIGHTON LEONARD YEGON, MP - VICE- CHAIRPERSON	
3.	HON. SABINA WANJIRU CHEGE, CBS, MP	
4.	HON. FERDINAND KEVIN WANYONYI, MP	
5.	HON. GEOFFREY MAKOKHA ODANGA, MP	
6.	HON. JUSTICE KIPSANG KEMEI, MP	
7.	HON. JARED OKELLO ODOYO, MP	
8.	HON. LAWRENCE MPURU ABURI, MP	
9.	HON. DAVID KIPLAGAT, MP	
10.	HON. GABRIEL GATHUKA KAGOMBE, MP	
11.	HON. MONICAH MUTHONI MARUBU, MP	
12.	HON. PAMELA NJOKI, MP	
13.	HON. PATRICK KIBAGENDI OSERO, MP	
14.	HON. PETER KALERWA SALASYA, MP	
15.	HON. YUSSUF MOHAMED FARAH, MP	

ANNEX TWO: MINUTES



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023**

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON MONDAY, 3RD JULY 2023 IN THE COMMITTEE ROOM ON FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 P.M.

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 3. Hon. Sabina Wanjiru Chege, CBS, MP | | |
| 4. Hon. Justice Kipsang Kemei, MP | | |
| 5. Hon. David Kiplagat, MP | | |
| 6. Hon. Monicah Muthoni Marubu, MP | | |
| 7. Hon. Pamela Njoki Njeru, MP | | |
| 8. Hon. Patrick Kibagendi Osero, MP | | |
| 9. Hon. Peter Kalerwa Salasya, MP | | |

ABSENT WITH APOLOGY

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Geoffrey Makokha Odanga, MP
3. Hon. Jared Okello Odoyo, MP
4. Hon. Lawrence Mpuru Aburi, MP
5. Hon. Gabriel Gathuka Kagombe, MP
6. Hon. Yussuf Mohamed Farah, MP

SECRETARIAT

- | | | |
|----------------------------|---|----------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant I |
| 2. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 3. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel I |
| 5. Ms. Noelle Chelagat | - | Media Relations Officer II |
| 6. Mr. Gerald Kadede | - | Legal Counsel II |
| 7. Ms. Lilian Aluga | - | Public Relations Officer |
| 8. Mr. Muhumed Shillow | - | Research Officer III |
| 9. Mr. Richard Sang | - | Serjeant-at-Arms |
| 10. Mr. Kelvin Sakani | - | Audio Officer III |

STAKEHOLDERS

AGRICULTURE AND FOOD AUTHORITY (SUGAR DIRECTORATE)

1. Ms. Patricia Njeru - Director, Market Research & Product Development
2. Mr. Samuel Kemboi

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Meeting with the Agriculture and Food Authority (Sugar Directorate) to be briefed on the Sugar Development Levy, Sugar Development Fund and Catchment Areas**
5. **Clause by clause consideration of the Sugar Bill (N.A. Bill No. 34 of 2022)**
6. **Adoption of the Report on the Consideration of the Sugar Bill, 2022**
7. Adjournment/Date of the Next Sitting

MIN. NO. NA/A&L/2023/137: PRELIMINARIES

The meeting was called to order at two minutes to three o'clock with a word of prayer by the Chairperson. The Chairperson then invited the meeting to deliberate on the day's agenda.

MIN. NO. NA/A&L/2023/138: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the following sittings were confirmed as a true reflection of the proceedings:

1. 30th Sitting held on 6th June 2023 having been proposed by Hon. Pamela Njeru, MP and seconded by Hon. Brighton Yegon, MP;
2. 31st Sitting held on 21st June 2023 having been proposed by Hon. David Kiplagat, MP and seconded by Hon. Pamela Njeru, MP;
3. 32nd Sitting held on 23rd June 2023 having been proposed by Hon. Peter Salasya, MP and seconded by Hon. Pamela Njeru, MP;
4. 33rd Sitting held on 23rd June 2023 having been proposed by Hon. Pamela Njeru, MP and seconded by Hon. Peter Salasya, MP.
5. 34th Sitting held on 24th June 2023 having been proposed by Hon. Justice Kemei, MP and seconded by Hon. Peter Salasya MP.
6. 35th Sitting held on 24th June 2023 having been proposed by Hon. Pamela Njoki, MP and seconded by Hon. Justice Kemei, MP.

MIN. NO. NA/A&L/2023/139: MATTERS ARISING

No matters arose from the confirmed minutes.

Officers from the Agriculture and Food Authority (AFA) were ushered into the meeting. The Chairperson called for introduction of those present in the meeting before inviting Ms. Patricia Njeru to present AFA's submission. Ms. Njeru submitted that:

Sugar Development Levy (SDL)

1. The rate of SDL was revised from 40% to 7% and finally to 4% of the CIF for imported sugar and the ex-factory price for locally manufactured sugar.
2. In 2015, KSh. 1.86 billion was collected through the levy before revocation of the Sugar Act in 2016. The SDL was distributed as follows:
 - i. Factory Development/Rehabilitation – 17%
 - ii. Research and Development – 23.5%
 - iii. Cane Development and Maintenance – 16%
 - iv. Infrastructure Development and Management – 8.5%
 - v. Administration of the Board – 35%
3. The Levy should be distributed as follows in the Bill:
 - i. Cane Development and Maintenance – 30%
 - ii. Factory Development and Rehabilitation – 15%
 - iii. Research and Extension Services – 20%
 - iv. Infrastructure Development and Management – 15%
 - v. Administration of the Board – 20%

Sugar Development Fund

The Fund was previously managed by the Kenya Sugar Board. The Board however mismanaged the Fund.

Catchment Areas

1. Zoning should be introduced with provision that each area should have at least two milling companies. Zoning will encourage cane development by milling companies.
2. Penalties should be introduced to prevent exploitation of small millers by big millers and to millers who misinform the Government on the sugar that they manufacture each day. Millers who prevent inspectors from accessing their companies should also be penalized.
3. Cane growing contracts between millers and farmers should be strengthened on the part of the miller if they delay to harvest cane and on the part of the farmer if they sell the sugarcane to a different miller.
4. A miller's license should be renewed based on proof of availability of sugarcane.

DELIBERATIONS

1. The meeting was informed that AFA has not been able to roll out cane testing units because of the sugarcane varieties in the country. 95% of the sugarcane varieties in Kenya are low on sucrose but heavy in weight and therefore using CTUs to pay farmers will be disadvantageous to them.
2. On the number of requests to set up new milling companies submitted to AFA for consideration, Ms. Njeru stated that AFA had received 17 requests and will be conducting public participation on three milling companies who have met the requirements.
3. The local sugar consumption in Kenya (table sugar) is 900,000 MT per annum.
4. Regarding management of the Fund by the Commodities Fund, Ms. Njeru stated that CF was doing a good job managing the funds under their purview however, the terms and conditions for access to the loans are very tough on farmers hence very few are able to get the loans. She proposed that regulations on the Fund should be farmer friendly.

MIN. NO. NA/A&L/2023/141:

CLAUSE BY CLAUSE CONSIDERATION OF THE SUGAR BILL (N.A. BILL NO. 34 OF 2022)

The Committee resolved as follows on the clauses whose consideration was deferred:

Clause 34

1. Amend the clause by setting the Sugar Development Levy at 4% for both local and imported sugar.
2. Amend the clause to provide that the Levy shall be distributed as follows:
 - i. Factory Development/Rehabilitation -15%;
 - ii. Research and Training - 25%;
 - iii. Cane Development and maintenance - 15%;
 - iv. Infrastructure Development and Management - 25%;
 - v. Administration of the Board - 15%; and
 - vi. Out-grower Institutions - 5%

Clause 35

1. Amend to provide for the management of the Fund by the Commodities Fund and to ring fence the Fund to only cater for sugar related activities.
2. The Kenya Sugar Board should be involved in the management of the Fund.

First Schedule

Amend the Schedule to provide for zoning of the sugarcane growing areas into regions with two or three millers.

MIN. NO. NA/A&L/2023/142:

ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE SUGAR BILL (N.A. BILL NO. 34 OF 2022)

The report on the Consideration of the Sugar Bill (N.A. Bill No. 34 of 2022) was adopted having been proposed by Hon. Justice Kemei, MP and seconded by Hon. Brighton Yegon, MP.

MIN. NO. NA/A&L/2023/143:

ADJOURNMENT/DATE OF THE NEXT
MEETING

There being no other business, the meeting was adjourned at three minutes past five o'clock.
The next meeting will be held on notice.

SIGNED:



DATE:

5/7/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023**

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
AGRICULTURE & LIVESTOCK HELD ON SATURDAY, 24TH JUNE 2023 IN
PAVILLION CONFERENCE ROOM, HILTON GARDEN INN HOTEL AT 2.30 P.M.**

PRESENT

- | | | |
|---|---|-------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Ferdinand Kevin Wanyonyi, MP | | |
| 3. Hon. Justice Kipsang Kemei, MP | | |
| 4. Hon. Jared Okello Odoyo, MP | | |
| 5. Hon. Pamela Njoki Njeru, MP | | |
| 6. Hon. Peter Kalerwa Salasya, MP | | |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|------------------|
| 1. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 2. Hon. Sabina Wanjiru Chege, CBS, MP | | |
| 3. Hon. Geoffrey Makokha Odanga, MP | | |
| 4. Hon. Lawrence Mpuru Aburi, MP | | |
| 5. Hon. David Kiplagat, MP | | |
| 6. Hon. Gabriel Gathuka Kagombe, MP | | |
| 7. Hon. Monicah Muthoni Marubu, MP | | |
| 8. Hon. Patrick Kibagendi Osero, MP | | |
| 9. Hon. Yussuf Mohamed Farah, MP | | |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant I |
| 2. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 3. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel I |
| 5. Mr. Gerald Kadede | - | Legal Counsel II |
| 6. Ms. Sheila Chebotibin | - | Senior Serjeant-at-Arms |
| 7. Mr. Kelvin Sakani | - | Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson

3. Confirmation of Minutes/Matters Arising
4. Clause by clause consideration of the Sugar Bill (N.A. Bill No. 34 of 2022)
5. Adjournment/Date of the Next Sitting

MIN. NO. NA/A&L/2023/132: PRELIMINARIES

The meeting was called to order at fifteen minutes to three o'clock with a word of prayer by the Chairperson. The Chairperson then invited Ms. Brigitta Mati, Legal Counsel, to take the Committee through the Bill.

MIN. NO. NA/A&L/2023/133: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred

MIN. NO. NA/A&L/2023/134: CLAUSE BY CLAUSE CONSIDERATION OF THE SUGAR BILL (N.A. BILL NO. 34 OF 2022)

The Committee deliberated and resolved as follows on the Bill:

Clause 51

1. 51(1): Agreed to
2. 51(2) (a): Delete the words "*on a quarterly basis*".
3. 51(2) (b): Amend to read as follows "*importers report to the Board on their imports, sales and stock as may be determined by the Board*".
4. 51(3): Agreed to
5. 51(4): Delete

Clause 52: Amend the clause by deleting sub-clauses (4) and (5) and making them standalone clauses.

Clause 53: Delete

Clause 54: Delete

Clause 55: Delete

Clause 56: Delete

Clause 57

1. 57(1): Amend by inserting the words "*Council of Governors*" immediately before the word "*Board*".
2. 57(2): Agreed to
3. 57(3): Delete
4. 57(4) Amend by deleting the words "*within twelve months*" and substituting with the words "*six months*".

Clause 58: Agreed to

Clause 59: Agreed to

Clause 60: Agreed to

Clause 61: Agreed to

Clause 62: Agreed to

First Schedule: Consideration deferred
Second Schedule: Amend by deleting Paragraph 1
Third Schedule: Delete
Fourth Schedule: Agreed to

MIN. NO. NA/A&L/2023/135: **ADJOURNMENT/DATE OF THE NEXT MEETING**

The Committee resolved to hold a meeting with officers from the Ministry of Agriculture, Ministry of Trade and Industry, Agriculture and Food Authority and Sugar Research Institute to be apprised on the sugar catchment areas and the Sugar Development Levy so as to finalise on the clauses that had been pending.

The meeting will take place on Wednesday, 28th June 2023 at 10.00 a.m.

MIN. NO. NA/A&L/2023/136: **ADJOURNMENT/DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at twenty-eight minutes past five o'clock. The next meeting will be held on Wednesday, 28th June 2023.

SIGNED:  DATE: 3/7/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023**

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
AGRICULTURE & LIVESTOCK HELD ON SATURDAY, 24TH JUNE 2023 IN
PAVILLION CONFERENCE ROOM, HILTON GARDEN INN HOTEL AT 9.30 A.M.**

PRESENT

- | | | |
|---|---|-------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Ferdinand Kevin Wanyonyi, MP | | |
| 3. Hon. Justice Kipsang Kemei, MP | | |
| 4. Hon. Jared Okello Odoyo, MP | | |
| 5. Hon. Pamela Njoki Njeru, MP | | |
| 6. Hon. Peter Kalerwa Salasya, MP | | |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|------------------|
| 1. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 2. Hon. Sabina Wanjiru Chege, CBS, MP | | |
| 3. Hon. Geoffrey Makokha Odanga, MP | | |
| 4. Hon. Lawrence Mpuru Aburi, MP | | |
| 5. Hon. David Kiplagat, MP | | |
| 6. Hon. Gabriel Gathuka Kagombe, MP | | |
| 7. Hon. Monicah Muthoni Marubu, MP | | |
| 8. Hon. Patrick Kibagendi Osero, MP | | |
| 9. Hon. Yussuf Mohamed Farah, MP | | |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant I |
| 2. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 3. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel I |
| 5. Mr. Gerald Kadede | - | Legal Counsel II |
| 6. Ms. Sheila Chebotibin | - | Senior Serjeant-at-Arms |
| 7. Mr. Kelvin Sakani | - | Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson

3. Confirmation of Minutes/Matters Arising
4. Clause by clause consideration of the Sugar Bill (N.A. Bill No. 34 of 2022)
5. Adjournment/Date of the Next Sitting

MIN. NO. NA/A&L/2023/128: PRELIMINARIES

The meeting was called to order at twelve minutes to ten o'clock with a word of prayer by the Chairperson. The Chairperson then invited Ms. Brigitta Mati, Legal Counsel, to take the Committee through the Bill.

MIN. NO. NA/A&L/2023/129: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred

MIN. NO. NA/A&L/2023/130: CLAUSE BY CLAUSE CONSIDERATION OF THE SUGAR BILL (N.A. BILL NO. 34 OF 2022)

The Committee deliberated and resolved as follows on the Bill:

Clause 23

1. 23(1): Amend to read as follows; *"There is established a body to be known as the Kenya Sugar Training and Research Institute"*.
2. 23(2): Agreed to

Clause 24

1. 24(1) (a): Amend to read as follows; *"promote, co-ordinate and regulate research in sugar, sugar crops, sugar by-products, sugar technologies and management practices"*.
2. 24(1) (b): Amend to read as follows; *"expedite equitable access to research information resources, technologies and innovations and promote the application of research findings in the development of sugar industry"*.
3. 24(2) (a): Amend to read as follows; *"formulate policy and make policy recommendations in respect of sugar research, development and training to the Board in line with the national policy on sugar"*.
4. 24(2) (b): Delete
5. 24(2) (c): Amend by deleting the word *"government"* and substituting with the word *"Board"*
6. 24(2) (d) to (f): Agreed to
7. 24(2) (g): Amend by deleting the word *"agricultural"* and substituting with the words *"sugar and sugar crops"*.
8. 24(2) (h): Agreed to
9. 24(2) (i): Amend by inserting the word *"industry"* immediately after the word *"sugar"*
10. 24(2) (j): Agreed to
11. 24(2) (k): Amend by inserting the word *"industry"* immediately after the word *"sugar"*
12. 24(2) (l): Amend by inserting the words *"and promote"* immediately after the word *"breed"*.
13. 24(2) (m): Amend by deleting the word *"sugarcane"* and substituting with the word *"sugar crops"* and deleting the word *"fertilizers"* and substituting with the word *"inputs"*.
14. 24(2) (n): Amend by deleting the word *"sugarcane"* and substituting with the words *"sugar crops"*

15. 24(2) (o): Amend by deleting the word "*sugarcane*" and substituting with the words "*sugar crops*".
16. 24(2) (p): Amend by deleting the word "*sugarcane*" and substituting with the words "*sugar crops*".
17. 24(2) (q): Agreed to
18. 24(2) (r): Amend to read as follows; "*test, design and evaluate farm machinery, transport and factory equipment for efficient sugar production*".
19. 24(2) (s): Amend by inserting the word "*industry*" immediately after the word "*sugar*" and inserting the words "*training and*" immediately after the word "*relevant*".
20. 24(2) (t) and (u): Agreed to
21. 24(2) (v): Delete
22. 24(2) (w): Amend by deleting the word "*cane*" and substituting with the words "*sugar industry technologies, innovations,*".
23. 24(2) (x): Agreed to
24. 24(2) (y) Insert the following new paragraph "*charge levies and fees for rendered services and products*".

Clause 25

Amend as follows:

- (a) Agreed to
- (b) Four persons nominated from the following bodies; one miller, one farmer, one person from the university system and 1 person from the input supply system.
- (c) Agreed to
- (d) Agreed to
- (e) The Principal Secretary for the time being responsible for Agriculture or a representative appointed in writing.
- (f) The Director General of KALRO
- (g) Managing Director of the Institute who shall be an ex officio member

Clause 26: Agreed to

Clause 27

1. 27(a): Agreed to
2. 27(b): Amend to read as follows; "*such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this act*".
3. 27(c): Amend to read as follows; "*monies from any other source as approved by the Board of Directors and Ministry responsible*".
4. Insert new paragraph (d) to read as follows; "*levies and fees accrued from rendered services and products*".

Clause 28

1. 28(1) Amend by deleting the word "*Director General*" and substituting with the word "*Managing Director*".
2. 28(2) (a): Amend deleting the word "*degree*" and substituting with the word "*PhD*".
3. 28(2) (b): Amend to read as follows; "*has at least five years' experience in a senior managerial capacity*".
4. Amend by inserting the following new paragraph "*has at least ten years' experience from a relevant field*".

Clause 29: Agreed to
Clause 30: Agreed to
Clause 31: Agreed to
Clause 32: Agreed to

Clause 33

1. 33(a) to (c): Agreed to
2. Insert the following new paragraph (d) "*Sugar Development Levy*"

Clause 34: Consideration deferred

Clause 35: Consideration deferred

Clause 36: Agreed to

Clause 37: Agreed to

Clause 38: Agreed to

Clause 39: Agreed to

Clause 40: Agreed to

Clause 41

1. 41(1) (a): Amend by deleting the word "*sugarcane*" and substituting with the words "*sugar crops*".
2. 41(1) (b): Amend by deleting the word "*sugarcane*" and substituting with the words "*sugar crops*".
3. Amend 41(1) (b) by deleting sub-paragraph (iii).
4. Insert the following new paragraphs:
(e) "*disputes between millers*".
(f) "*disputes between any other interested parties*".

Clause 42

1. 42(1) Insert the word "*expeditiously*" immediately after the words "*Tribunal shall*" and deleting the word "*expeditiously*" appearing immediately after the words "*before it*".
2. 42(2) to (4): Agreed to

Clause 43: Agreed to

Clause 44: Agreed to

Clause 45: Agreed to

Clause 46: Agreed to

Clause 47: Agreed to

Clause 48: Agreed to

Clause 49

1. 49(1) (a) and (b): Agreed to
2. 49(1) (c): amend by inserting the words "*standards and*" after the word "*environmental*".
3. 49(2): Delete

Clause 50: Agreed to

MIN. NO. NA/A&L/2023/131:

ADJOURNMENT/DATE OF THE NEXT
MEETING

There being no other business, the meeting was adjourned at eighteen minutes to two o'clock.
The next meeting will be held at 2.30 p.m.

SIGNED:  DATE: 3/7/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 33RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
AGRICULTURE & LIVESTOCK HELD ON FRIDAY, 23RD JUNE 2023 IN PAVILLION
CONFERENCE ROOM, HILTON GARDEN INN HOTEL AT 3.00 P.M.

PRESENT

- | | | |
|---|---|-------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Ferdinand Kevin Wanyonyi, MP | | |
| 3. Hon. Justice Kipsang Kemei, MP | | |
| 4. Hon. Jared Okello Odoyo, MP | | |
| 5. Hon. Pamela Njoki Njeru, MP | | |
| 6. Hon. Peter Kalerwa Salasya, MP | | |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|------------------|
| 1. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 2. Hon. Sabina Wanjiru Chege, CBS, MP | | |
| 3. Hon. Geoffrey Makokha Odanga, MP | | |
| 4. Hon. Lawrence Mpuru Aburi, MP | | |
| 5. Hon. David Kiplagat, MP | | |
| 6. Hon. Gabriel Gathuka Kagombe, MP | | |
| 7. Hon. Monicah Muthoni Marubu, MP | | |
| 8. Hon. Patrick Kibagendi Osero, MP | | |
| 9. Hon. Yussuf Mohamed Farah, MP | | |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant I |
| 2. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 3. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel I |
| 5. Mr. Gerald Kadede | - | Legal Counsel II |
| 6. Ms. Sheila Chebotibin | - | Senior Serjeant-at-Arms |
| 7. Mr. Kelvin Sakani | - | Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson

3. Confirmation of Minutes/Matters Arising
4. **Clause by clause consideration of the Sugar Bill (N.A. Bill No. 34 of 2022)**
5. Adjournment/Date of the Next Sitting

MIN. NO. NA/A&L/2023/124: PRELIMINARIES

The meeting was called to order at ten minutes past three o'clock with a word of prayer by the Chairperson. The Chairperson then invited Ms. Brigitta Mati, Legal Counsel, to take the Committee through the Bill.

MIN. NO. NA/A&L/2023/125: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred

MIN. NO. NA/A&L/2023/126: CLAUSE BY CLAUSE CONSIDERATION OF THE SUGAR BILL (N.A. BILL NO. 34 OF 2022)

The Committee deliberated and resolved as follows on the Bill:

Clause 3: Agreed to

Clause 4

1. 4(1) (a): Agreed to
2. 4(1) (b): Amend by deleting words "*individuals and organizations*" and substituting with the word "*actors*".
3. 4(1) (c): Agreed to
4. 4(2) (a) and (b): Agreed to
5. 4(2) (c): Delete and substitute with the following paragraph; "*establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate flow of research findings to the interested parties*".
6. 4(2) (d): Amend to read as follows; "*monitor and regulate the domestic market with a view to identifying any distortions and advising the government and interested parties on any corrective actions*".
7. 4(2) (e): Delete
8. 4(2) (f): Amend to read as follows; "*facilitate the import and export of sugar*".
9. 4(2) (g) and (h): Agreed to
10. 4(2) (i): Amend to read as follows; "*in collaboration with county governments, facilitate an equitable mechanism for the pricing of sugarcane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines*".
11. 4(2) (j): Amend to read as follows; "*collaborate with national and international trade bodies on sugar related matters*".
12. 4(2) (k) and (l): Agreed to
13. 4(2) (m): Amend by inserting the words "*and jaggery*" immediately after the word "*sugar*".
14. 4(2) (n) and (o): Agreed to
15. 4(2) (p): Amend to read as follows; "*in consultation with county governments and other stakeholders, formulate a national strategic plan for the sugar sub-sector at least once every five years*".

16. 4(2) (q): Amend to read as follows; *"in consultation with the county governments, formulate guidelines on efficient, safe and economical transportation of sugar and disposal of unutilized by-products and wastes"*.
17. 4(2) (r): Amend by deleting the paragraph and substituting with the following paragraph; *"Gather and disseminate market information on regional and global supply chains dynamics for the benefit of stakeholders"*.
18. 4(2) (u): Amend to read as follows; *"perform such functions as may be conferred on it by this Act or any other written law"*.
19. Insert the following new paragraphs; *"(da) advice the national government and county governments on agricultural levies for purposes of planning, enhancing harmony and equity in the sugar sub-sector"*.

Clause 5

1. 5(a): Amend to read as follows; *"issue certificates and inspect sugar crop nurseries in collaboration with the Kenya Sugar Institute"*.
2. 5(b): Amend to read as follows; *"offer and coordinate extension services on sugar crops production in the respective county"*.
3. 5(e): Amend by deleting the word *"establish"* and substituting with the word *"maintain"*.

Clause 6

1. 6(1) (a): Amend to provide that the chairperson shall be appointed by the President
2. 6(1)(b): A decision on this paragraph will be made after coming up with the sugar catchment areas.
3. 6(1) (c): Amend by deleting the word *"one"* and substituting with the word *"two"*.
4. 6(1) (d), (e), (f) and (g): Agreed to

Clause 7: Agreed to

Clause 8

1. Amend by deleting the word *"of"* appearing after the word *"Board"*.
2. 8(a) to (g): Agreed to

Clause 9: Agreed to

Clause 10: Agreed to

Clause 11: Agreed to

Clause 12: Agreed to

Clause 13: Agreed to

Clause 14

1. 14(1): Amend to read as follows; *"There shall be a Chief Executive Officer of the Board who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in consultation with the Public Service Commission in the instrument of appointment or otherwise in writing from time to time"*.
2. 14(2): Agreed to
3. 14(3): Agreed to

Clause 15: Agreed to

Clause 16: Agreed to

Clause 17: Agreed to

Clause 18

1. 18(1): Correct the grammatical errors
2. 18(2): Agreed to

Clause 19

1. Amend by rearranging the paragraphs on registration to come before the provisions on licensing.
2. 19(1), (2) and (3): Agreed to
3. 19(4): Should be made a standalone clause so that it covers all licenses issued under this Act.
4. 19(5): Agreed to
5. 19(6): Delete
6. 19(7): Agreed to
7. 19(8): Delete

Clause 20

Amend by deleting and substituting with the following new paragraphs:

- (1) *"A person shall not import or export sugar crops, sugar or sugar by-products without a valid license issued by the Board in accordance with regulations made under this Act."*
- (2) *"A holder of a valid import or export license shall not import or export sugar crops, sugar or sugar by-products unless they have obtained a pre-import or pre-export approval from the Board in accordance with regulations made under this Act".*

Clause 21: Agreed to

Clause 22

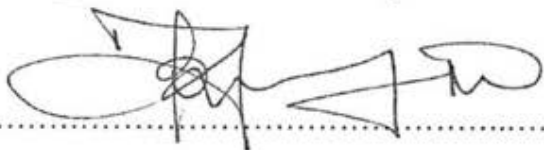
1. 22(1): Amend by inserting the words *"in accordance with the regulations made under this Act"* immediately after the word *"Board"*.
2. 22(2) to (7): Agreed to

MIN. NO. NA/A&L/2023/127:

ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at nineteen minutes to eight o'clock. The next meeting will be held on Saturday, 24th June 2023 at 9.30 a.m.

SIGNED:



DATE: 3/7/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
AGRICULTURE & LIVESTOCK HELD ON FRIDAY, 23RD JUNE 2023 IN PAVILLION
CONFERENCE ROOM, HILTON GARDEN INN HOTEL AT 10.00 A.M.

PRESENT

- | | | |
|---|---|-------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Ferdinand Kevin Wanyonyi, MP | | |
| 3. Hon. Justice Kipsang Kemei, MP | | |
| 4. Hon. Jared Okello Odoyo, MP | | |
| 5. Hon. Pamela Njoki Njeru, MP | | |
| 6. Hon. Peter Kalerwa Salasya, MP | | |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|------------------|
| 1. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 2. Hon. Sabina Wanjiru Chege, CBS, MP | | |
| 3. Hon. Geoffrey Makokha Odanga, MP | | |
| 4. Hon. Lawrence Mpuru Aburi, MP | | |
| 5. Hon. David Kiplagat, MP | | |
| 6. Hon. Gabriel Gathuka Kagombe, MP | | |
| 7. Hon. Monicah Muthoni Marubu, MP | | |
| 8. Hon. Patrick Kibagendi Osero, MP | | |
| 9. Hon. Yussuf Mohamed Farah, MP | | |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant I |
| 2. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 3. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel I |
| 5. Mr. Gerald Kadede | - | Legal Counsel II |
| 6. Ms. Sheila Chebotibin | - | Senior Serjeant-at-Arms |
| 7. Mr. Kelvin Sakani | - | Audio Officer III |

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson

3. Confirmation of Minutes/Matters Arising
4. Clause by clause consideration of the Sugar Bill (N.A. Bill No. 34 of 2022)
5. Adjournment/Date of the Next Sitting

MIN. NO. NA/A&L/2023/120: PRELIMINARIES

The meeting was called to order at twenty-three minutes past ten o'clock with a word of prayer by the Chairperson. The Chairperson then invited Ms. Brigitta Mati, Legal Counsel, to take the Committee through the Bill.

MIN. NO. NA/A&L/2023/121: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred

MIN. NO. NA/A&L/2023/122: CLAUSE BY CLAUSE CONSIDERATION OF THE SUGAR BILL (N.A. BILL NO. 34 OF 2022)

The Committee deliberated and resolved as follows on the Bill:

Clause 2

1. Amend definition of the word "agreements" to read as follows; *"agreements specifying the standard provisions governing the rights and obligations of growers, out-growers, millers, transporters and other sugar industry players"*.
2. Amend definition of the word "institute" to read *"the Kenya Sugar Research Institute established to support and promote the training and capacity building in relation to agricultural research"*.
3. Amend definition of the word; "mill gate" to read as follows; *"a site designed as such by the Board where sugar crops are received, weighed or tested at the mill or collection centre"*.
4. Amend definition of "sugar" to read as follows; *"crystalline or liquid sucrose derived from sugar crops in any of its recognized commercial forms, intended for human consumption or other uses and includes jaggery, raw, brown, plantation (mill) white and industrial sugar"*.
5. Amend definition of "sugarcane apex body" to read as follows; *"a national registered organization whose membership shall be mill level registered and contracted farmers' institutions and groups championing the rights under a cane supply contract and in catchment areas under the First Schedule gazetted as such by the Cabinet Secretary for the time being responsible for Agriculture"*.
6. Amend definition of "stakeholders" to read as follows; *"a person with significant interest in the sugar industry and includes growers, out-growers, millers, transporters and other sugar industry players"*.
7. Amend by including definition of the word "industrial sugar" to mean *"white crystalline carbohydrate used as sweetener and preservative sugar, which complies with the specifications set by the body for the time being responsible for setting standards"*.
8. Amend by including definition of the word "sugar manufacturers apex body" to mean *"a body composed of sugar and jaggery millers registered under the Societies Act to lobby for their interests"*.
9. Amend by including definition of the word "sugar beet" to mean *"any plant or part of a plant of the genus Beta or any of its hybrid"*.
10. Amend by providing definition for the word "sugar crops" to mean *"a crop grown for the purpose of sugar production including sugarcane and sugar beet"*.

11. Amend by including definition of the word "jaggery mill" to mean "*bare minimum technology equipment used to crush sugarcane to produce sugarcane juice which is processed through boiling to produce jaggery*".
12. Amend by deleting definition of the word "*farm gate*".
13. Amendment of definition of the word "*sugar catchment area*" was deferred because the Committee needed to seek for more information.

MIN. NO. NA/A&L/2023/123:

ADJOURNMENT/DATE OF THE NEXT
MEETING

There being no other business, the meeting was adjourned at three minutes past two o'clock. The next meeting will be held at three o'clock.

SIGNED:  DATE: 3/7/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK





THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
AGRICULTURE & LIVESTOCK HELD ON FRIDAY, 24TH MARCH 2023 AT HOLIDAY
INN HOTEL IN KIAMBU COUNTY AT 3.00 P.M.**

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 3. Hon. Geoffrey Makokha Odanga, MP | | |
| 4. Hon. Justice Kipsang Kemei, MP | | |
| 5. Hon. Jared Okello Odooyo, MP | | |
| 6. Hon. David Kiplagat, MP | | |
| 7. Hon. Pamela Njoki Njeru, MP | | |
| 8. Hon. Peter Kalerwa Salasya, MP | | |
| 9. Hon. Yussuf Mohamed Farah, MP | | |

ABSENT WITH APOLOGY

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Sabina Wanjiru Chege, CBS, MP
3. Hon. Lawrence Mpuru Aburi, MP
4. Hon. Patrick Kibagendi Osero, MP
5. Hon. Gabriel Gathuka Kagombe, MP
6. Hon. Monicah Muthoni Marubu, MP

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant II |
| 2. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 3. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel II |
| 5. Mr. Muhumed Shillow | - | Research Officer II |
| 6. Mr. Richard Sang | - | Serjeant-at-Arms |
| 7. Mr. Kelvin Sekani | - | Audio Recording Officer |

STAKEHOLDERS

NATIONAL ASSEMBLY

- | | | |
|----------------------------|---|---|
| 1. Hon. Emanuel Wangwe, MP | - | MP, Navakholo Constituency, Sponsor of the Bill |
| 2. Hon. John Waluke, MP | - | MP, Sirisia Constituency |

KENYA NATIONAL ASSOCIATION OF SUGARCANE FARMERS ORGANIZATIONS (KNASFO)

- | | | |
|-------------------------|---|---------------------------------|
| 1. Hon. Saulo W. Busolo | - | Chairman, KNASFO |
| 2. Mr. Richard Ogudo | - | Kenya Sugar Growers Association |

SUGAR CAMPAIGN FOR CHANGE (SUCAM)

Mr. Michael Aruru

COMMODITIES FUND

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Nancy Cheruiyot | - | Chief Executive Officer |
| 2. Ms. Roseline Wambura | | |
| 3. Ms. Jane Kimani | | |
| 4. Mr. Nesline Gechuki | | |
| 5. Ms. Vivian Wasike | | |

MINISTRY OF AGRICULTURE & LIVESTOCK DEVELOPMENT/AGRICULTURE AND FOOD AUTHORITY (AFA)

- | | | |
|-------------------------|---|---|
| 1. Mr. David Ombalo | - | MOALD |
| 2. Ms. Terry Gamagu | - | MOALD |
| 3. Mr. Richard Magero | - | AFA, Deputy Director, Sugar Directorate |
| 4. Mr. Andrew Osudo | - | AFA, Director Legal Services |
| 5. Mr. Vincent Chirchir | - | AFA, Sugar Directorate |
| 6. Ms. Patricia Ngeno | - | AFA, Sugar Directorate |

KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA)

- | | | |
|---------------------------|---|---|
| 1. Mr. Jayanti G. Patel | - | Chairman |
| 2. Ms. Joyce Oendo | - | Secretary |
| 3. Ms. Jacqueline Kotonya | - | Interim MD, Chemilil Sugar |
| 4. Mr. Sanjay Patel | - | MD, Butali Sugar Mills |
| 5. Mr. Stephen Ligane | - | SONY Sugar Company Limited |
| 6. Mr. Caleb Anyula | - | Busia Sugar Company Limited |
| 7. Mr. Alibhei Hassan | - | HMS Advocates LLP (Busia Sugar) |
| 8. Dr. Furchin Yusefu | - | Kwale International Sugar Company Limited |
| 9. Mr. Benson Musili | - | Kwale International Sugar Company Limited |
| 10. Dr. Chrispine Omondi | - | MD, Nzoia Sugar Company Limited |
| 8. Mr. Francis E. Ooko | - | Receiver Manager, Muhoroni/Miwani Sugar |
| 9. Mr. Fredrick Coombes | - | Transmara Sugar Company Limited |
| 10. Mr. Rajo Chatte | - | Kibos Sugar Company Limited |

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Stakeholder engagement on the Sugar Bill (National Assembly Bill No. 34 of 2022)**
5. Any other Business
6. Adjournment/Date of the Next Sitting

The meeting was called to order at thirteen minutes past three o'clock with a word of prayer by the Chairperson. The Chairperson then called for introduction of those present in the meeting before inviting stakeholders to make their submissions on the Sugar Bill, 2022.

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred

STAKEHOLDER ENGAGEMENT ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

Stakeholders submitted on the Bill as follows:

1. Kenya National Association of Sugarcane Farmers Organisations (KNASFO)

The Chairman of the Association, Hon. Saulo Busolo stated that catchment areas enslave farmers as they are tied to specific milling companies.

He called on the Committee to carry out an investigation on the funds that have been allocated to the Cane Testing Units because they are yet to be implemented and the money that was left in the Kenya Sugar Board account when it was disbanded.

Farmers support cane quality payment as it will ensure that only farmers that produce good quality sugarcane survive in the industry. It will encourage farmers to improve the quality of sugarcane.

Hon. Busolo requested the Committee to go through the following reports:

- i. SUCAM Report on the Sugar Sector
- ii. Sugar Task Force Report of 2001-2003
- iii. Report of the Independent Sugar Task Force

(Details of the proposed amendments are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

2. Sugar Campaign for Change (SUCAM)

Mr. Michael Aruru submitted that the representatives should be nominated and not elected because there is no legitimate farmer register that will guarantee credibility of the elections. He proposed that a farmer apex body needs to be formed at the grassroots, middle and national level.

He also proposed that sugarcane growers should contribute ten shillings per ton of the cane delivered to milling companies so that all stakeholders contribute to the kitty. The Sugar Development Levy should be managed by a board of trustees to prevent mismanagement.

(Details of the specific amendments to the Bill are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

3. **Hon. Emmanuel Wangwe, MP (Sponsor of the Bill)**

Hon. Wangwe informed the Committee that the Bill seeks to address the following challenges that sugarcane farmers face:

- i. Non-payment of farmers by public millers.
- ii. Increased cost of sugar production as a result of obsolete technology.
- iii. Declining acreage of land.
- iv. Lack of markets for sugar.
- v. Failure to control import and export of sugar and unfavourable market competition due to cheaper sugar imports.
- vi. Poor management of sugar companies.
- vii. Lack of research and cane development initiatives.
- viii. Poor maintenance of state-owned milling factories.

4. **Hon. John Waluke Koyi, MP (Chairperson of the Sugar Caucus)**

As the Chairperson of the Sugar Caucus in Parliament, Hon. Waluke undertook to mobilise MPs so that the Bill is passed.

5. **Commodities Fund**

The CEO, Ms. Nancy Cheruiyot informed the Committee that AFA had not been able to do its job because it did not have a Board since its inception and should therefore be given enough time to perform its mandate now that it has a board. Kenya Sugar Board should be a regulator.

When the Kenya Sugar Board was disbanded, there was KSh. 4.5 billion in its account. This money was however not handed over to the Commodities Fund. An investigation should be done to find out where the money went.

The Fund was in support of the reintroduction of the Sugar Development Levy for reinvestment and creation of enough financing for the sugar sector. 90% of the money should be allocated to sugar development while the balance should be used to support the Sugar Board/Sugar Directorate, sugar research and factories.

Zoning should be done away with because it's the farmers who suffer when sugarcane is not harvested in time. Zoning encourages inefficiencies.

(Details of the specific amendments to the Bill are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

6. **Ministry of Agriculture and Livestock Development/Agriculture Food Authority**

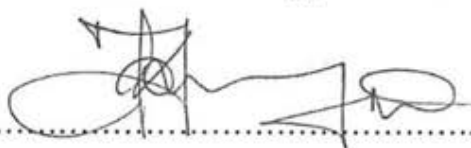
The Ministry informed the Committee that there have been efforts to strengthen the Agriculture Food Authority. The AFA Board had been gazetted and this will enable the institution to discharge its mandate better. The Ministry was therefore not in support of the Bill.

MIN. NO. NA/A&L/2023/84:

ADJOURNMENT/DATE OF THE NEXT
MEETING

There being no other business, the meeting was adjourned at eight minutes past six o'clock. The next meeting will be held on Saturday, 25th March 2023 at nine o'clock.

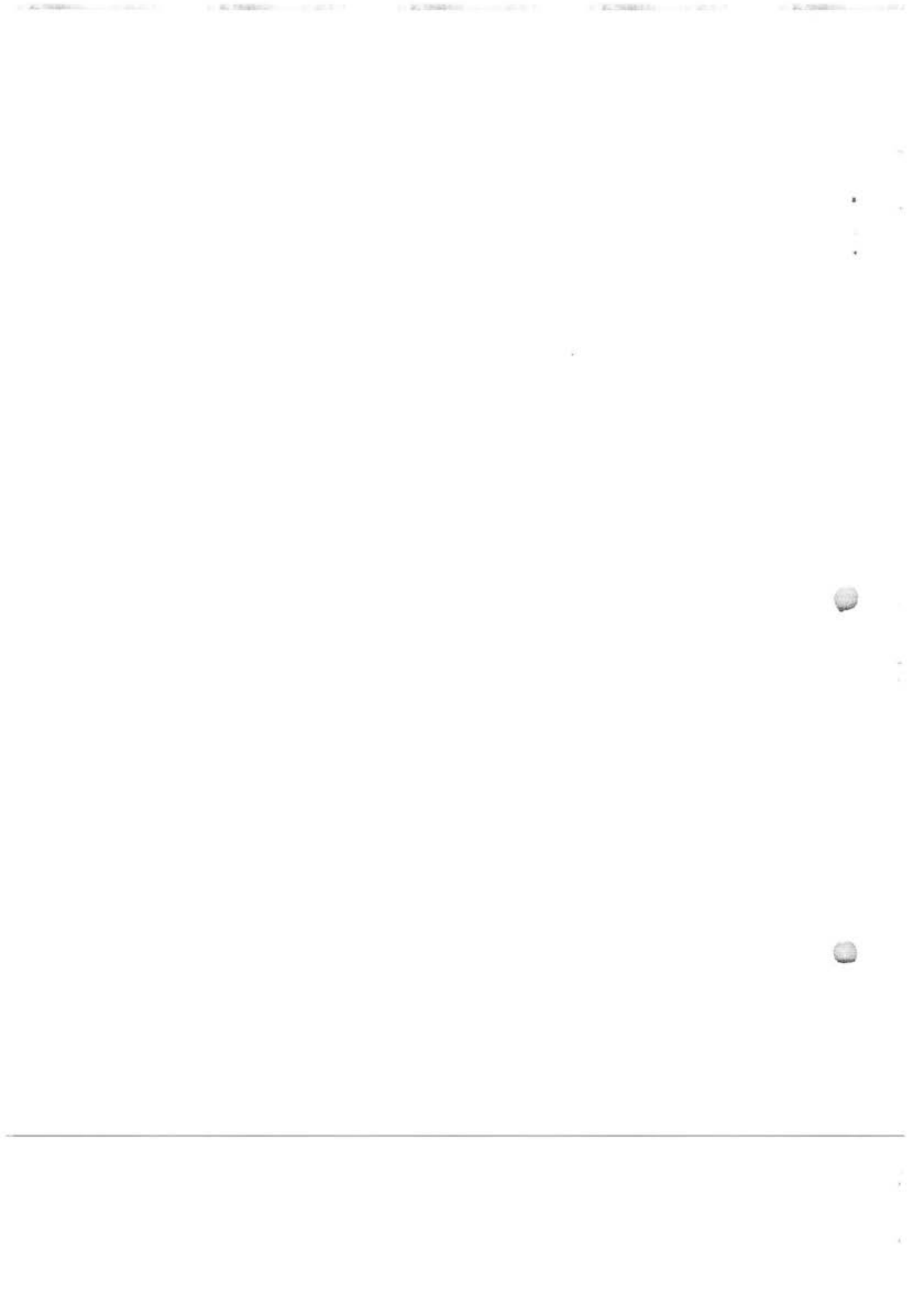
SIGNED:



DATE:

25/05/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK





THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
AGRICULTURE & LIVESTOCK HELD ON FRIDAY, 24TH MARCH 2023 AT HOLIDAY
INN HOTEL IN KIAMBU COUNTY AT 10.00 A.M.**

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. (Dr.) John Kanyuithia Mutunga, MP | - | Chairperson |
| 2. Hon. Brighton Leonard Yegon, MP | - | Vice-Chairperson |
| 3. Hon. Geoffrey Makokha Odanga, MP | | |
| 4. Hon. Justice Kipsang Kemei, MP | | |
| 5. Hon. Jared Okello Odoyo, MP | | |
| 6. Hon. David Kiplagat, MP | | |
| 7. Hon. Pamela Njoki Njeru, MP | | |
| 8. Hon. Peter Kalerwa Salasya, MP | | |
| 9. Hon. Yussuf Mohamed Farah, MP | | |

ABSENT WITH APOLOGY

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Sabina Wanjiru Chege, CBS, MP
3. Hon. Lawrence Mpuru Aburi, MP
4. Hon. Patrick Kibagendi Osero, MP
5. Hon. Gabriel Gathuka Kagombe, MP
6. Hon. Monicah Muthoni Marubu, MP

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Ms. Laureen O. Wesonga | - | Clerk Assistant II |
| 2. Mr. Victor Kanda Kilimo | - | Clerk Assistant III |
| 3. Mr. Ahmednoor Hassan | - | Clerk Assistant III |
| 4. Ms. Brigitta Mati | - | Legal Counsel II |
| 5. Mr. Muhumed Shillow | - | Research Officer II |
| 6. Mr. Richard Sang | - | Serjeant-at-Arms |
| 7. Mr. Kelvin Sekani | - | Audio Recording Officer |

STAKEHOLDERS

NATIONAL ASSEMBLY

- | | | |
|----------------------------|---|---|
| 1. Hon. Emanuel Wangwe, MP | - | MP, Navakholo Constituency, Sponsor of the Bill |
| 2. Hon. John Waluke, MP | - | MP, Sirisia Constituency |

KENYA ASSOCIATION OF MANUFACTURERS (KAM)

- | | | |
|---------------------------|---|-------------------------|
| 1. Mr. Bharat Shah | - | Chairperson |
| 2. Mr. Anthony Mwangi | - | Chief Executive Officer |
| 3. Ms. Ruth Lemlem | | |
| 4. Mr. Malcolm Mwangi | | |
| 5. Ms. Christine Adhiambo | | |
| 6. Mr. Erick Githua | | |
| 7. Ms. Fridah Mbugua | | |

COUNCIL OF GOVERNORS (CoG)

- | | | |
|---------------------------|---|-----------------------------------|
| 1. H.E. (Dr.) Paul Otwoma | - | Governor, Busia County |
| 2. Hon. Oyugi Magwanga | - | Deputy Governor, Homabay County |
| 3. Mr. George Mboya | - | Homabay County |
| 4. Mr. K'Okoth Sylvester | - | CECM Agriculture, Siaya County |
| 5. Ms. Monicah Fedha | - | CECM Agriculture, Bungoma County |
| 6. Mr. Benson Andama | - | CECM Agriculture, Kakamega County |
| 7. Ms. Margret Wanyama | - | Busia County |
| 8. Mr. Benson Loktari | - | Senior Legal Officer, CoG |

KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA)

- | | | |
|---------------------------|---|---|
| 1. Mr. Jayanti G. Patel | - | Chairman |
| 2. Ms. Joyce Ogendo | - | Secretary |
| 3. Ms. Jacqueline Kotonya | - | Interim MD, Chemilil Sugar |
| 4. Mr. Sanjay Patel | - | MD, Butali Sugar Mills |
| 5. Mr. Stephen Ligane | - | SONY Sugar Company Limited |
| 6. Mr. Caleb Anyula | - | Busia Sugar Company Limited |
| 7. Mr. Alibhei Hassan | - | HMS Advocates LLP (Busia Sugar) |
| 8. Dr. Furchin Yusefu | - | Kwale International Sugar Company Limited |
| 9. Mr. Benson Musili | - | Kwale International Sugar Company Limited |
| 10. Dr. Chrispine Omondi | - | MD, Nzoia Sugar Company Limited |
| 8. Mr. Francis E. Ooko | - | Receiver Manager, Muhoroni/Miwani Sugar |
| 9. Mr. Fredrick Coombes | - | Transmara Sugar Company Limited |
| 10. Mr. Rajo Chatte | - | Kibos Sugar Company Limited |

WEST KENYA SUGAR COMPANY LIMITED AND SUKARI SUGAR COMPANY

- | | | |
|-----------------------|---|----------|
| 1. Mr. Jaswant S. Rai | - | Chairman |
| 2. Mr. Kibe Mungai | | |

KENYA NATIONAL ASSOCIATION OF SUGARCANE FARMERS ORGANIZATIONS (KNASFO)

- | | | |
|-------------------------|---|---------------------------------|
| 1. Hon. Saulo W. Busolo | - | Chairman, KNASFO |
| 2. Mr. Richard Ogudo | - | Kenya Sugar Growers Association |

SUGAR CAMPAIGN FOR CHANGE (SUCAM)

Mr. Michael Aruru

COMMODITIES FUND

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Nancy Cheruiyot | - | Chief Executive Officer |
| 2. Ms. Roseline Wambura | | |

3. Ms. Jane Kimani
4. Mr. Nesline Gechuki
5. Ms. Vivian Wasike

AGENDA

1. Prayers
2. Preliminaries/Introductions
 - ii. Adoption of the Agenda
 - iii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Stakeholder engagement on the Sugar Bill (National Assembly Bill No. 34 of 2022)**
5. Any other Business
6. Adjournment/Date of the Next Sitting

MIN. NO. NA/A&L/2023/77:

PRELIMINARIES

The meeting was called to order at twenty-five minutes past ten o'clock with a word of prayer by the Chairperson. The Chairperson then called for introduction of those present in the meeting before inviting stakeholders to make their submissions on the Sugar Bill, 2022.

MIN. NO. NA/A&L/2023/78:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Agenda deferred

MIN. NO. NA/A&L/2023/79:

STAKEHOLDER ENGAGEMENT ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

Stakeholders submitted on the Bill as follows:

1. Kenya Association of Manufactures (KAM)

Mr. Anthony Mwangi, CEO, KAM informed the Committee that the Association was working together with the Government in order to increase manufacturing in the country. The agriculture sector is one of the sectors that will make this possible.

The Association proposed a number of amendments to the Sugar Bill, 2022 most of which aim at ensuring that the local sugar manufacturers are not disadvantaged through higher taxation in comparison to sugar importers.

(Details of the proposed amendments are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

Deliberations

i. Multiplicity of licenses

There is an overlap of regulation in the sugar sector. A lot of time is spent by manufacturers going to different agencies to present similar papers for different licenses.

ii. AFA or Sugar Board

They were not particular on whether to retain the status quo of put in place the Kenya Sugar Board. They however observed that if AFA becomes too big, it may not be able to aptly discharge its mandate.

iii. Levies on Industrial Sugar

Industrial sugar should not be levied because the sector needs to grow and also to encourage competitiveness of Kenya's industrial sugar both in the local and international market.

2. Council of Governors (COG)

The council of governors, through its representative, Governor Paul Otwoma proposed amendments to the Bill that seek to entrench county governments in the Bill so as to align it to the requirements of the Fourth Schedule to the Constitution.

(Details of the proposed amendments are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

Deliberations

i. AFA or Sugar Board

AFA is an omnibus of many sectors hence the proposal to have the Sugar Board which will solely concentrate on the sugar sector.

ii. Zoning

The issue of zoning is well captured in the Sugar Task Force Report.

- iii. To make sugarcane growing in the country profitable, both the national and county governments need to come up with policies to address the issues of land fragmentation, climate change and agronomic practices.

3. Kenya Sugar Manufacturers Association (KESMA)

The Secretary to the Association, Ms. Joyce Ogendo proposed a number of amendments to the Bill on behalf of the Association. The amendments aim at ensuring that sugar companies operate in a good business environment in order to ensure enough supply of sugar in the country at good prices.

(Details of the proposed amendments are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

4. West Kenya Sugar Company Limited/Sukari Sugar Company

Mr. Jaswant Rai, Chairman, West Kenya Sugar Company Limited proposed that the Bill be amended to provide that 75% of the sugar development levy be used to fund farmers through provision of seed cane, fertilizers and weeding advance.

He informed the Committee that it is important to look at the audited accounts of the defunct Kenya Sugar Board and the Sugar Research Institute before apportioning the Sugar Development Levy in order to prevent misuse of the Fund. He added that it is important to analyse the expenses that the Board will come with before putting it in place.

(Details of the proposed amendments are contained in Part Four of the Report on the Consideration of the Sugar Bill, 2022).

Deliberations

i. Sugar Pricing

Sugar prices depend on supply and demand. The Pricing Committee monitors sugar prices for a period of three months and gets the average price which it sets as the price of sugar.

ii. Time within which farmers should be paid after supplying sugarcane to milling companies

Most private sugar companies pay farmers within five days of supply of sugarcane. They therefore proposed that 15 days is the best time within which farmers should be paid.

iii. Cane Testing Units

Agronomic practices by farmers do not allow them to produce sugarcane with high sucrose content. Paying farmers on the sucrose content will therefore be unfavourable to farmers.

iv. Sugar Development Levy

If 75% of the levy is allocated to cane development, it will increase sugarcane farming in the country. It will also improve the quality of sugarcane produced by farmers.

5% of the levy needs to be allocated to the Sugar Research Institute in order to enable the Institute to optimally discharge its mandate.

A percentage of the levy should go towards infrastructure development because the cess charged on sugarcane by county governments is too low and in most cases, it isn't appropriated for the repair of roads.

v. Importation of sugar

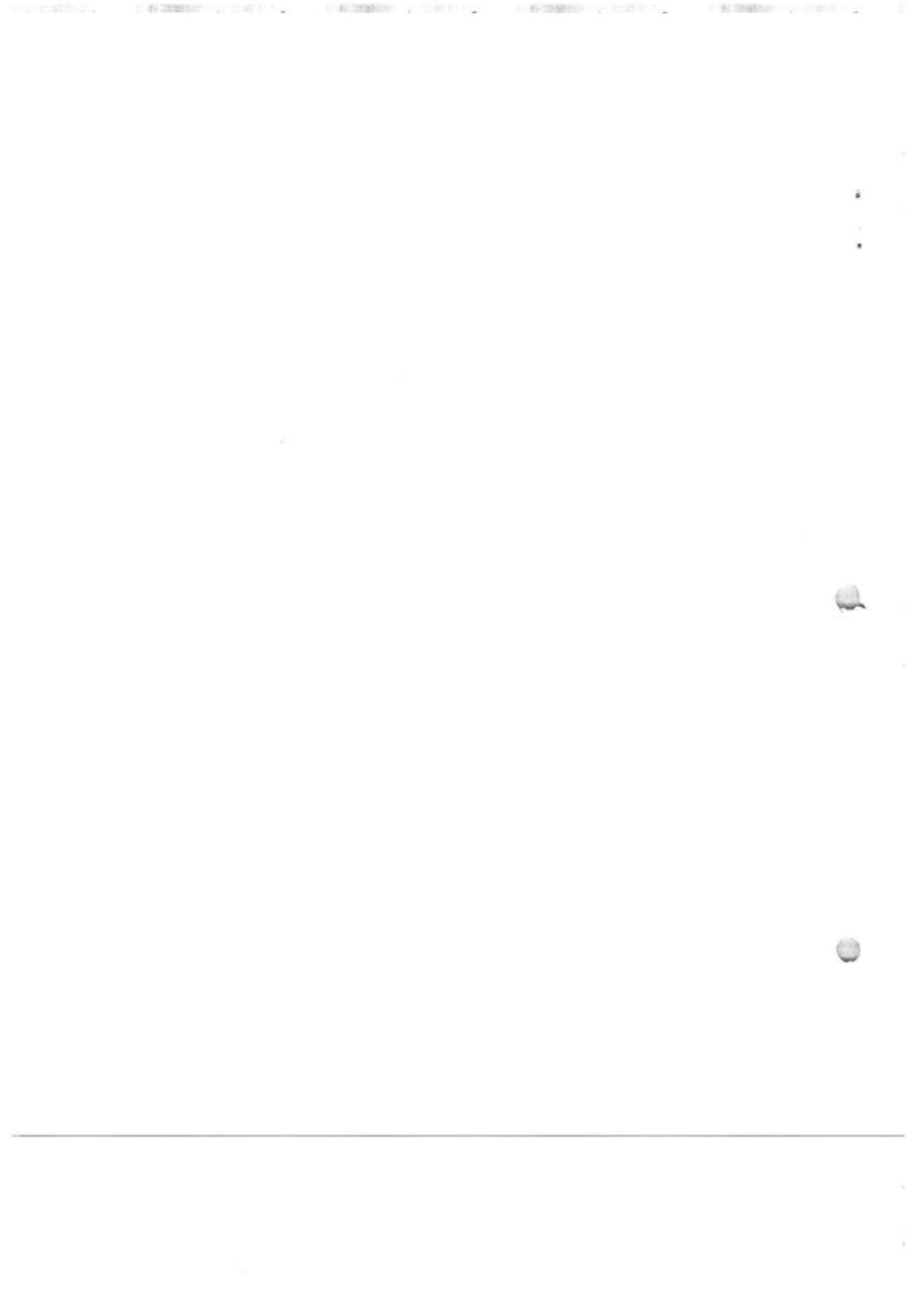
The Sugar Directorate collects data on how much sugar is in the country on a daily basis and this advises on whether to import or not.

MIN. NO. NA/A&L/2023/80:

ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at twenty-five minutes past two o'clock. The next meeting will be held at three o'clock.

SIGNED: DATE: 25/12/2023
HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE &
LIVESTOCK



ANNEX THREE:
NEWSPAPER
ADVERTISEMENT
ON PUBLIC
PARTICIPATION



We're an early intervention centre for children on the autism spectrum and other related disorders

Our main focus is on children between ages 2 and 10.

We boast of excellent services offered by qualified professionals in the different therapies:

- Occupational therapy
- Speech therapy
- ABA
- Play therapy
- Tomatis Music therapy
- Special Education

Our centre has the best, experienced and professional therapists in town!

Call/ Visit to find out more:

Q 259, Miotoni Rd- Karen, Nairobi

☎ 0793 582 540

✉ malitherapycentre@gmail.com

ENSED DIGITAL LENDERS KENYA

Many of Kenyan borrowers opt for digital lenders as their first choice. These lending institutions have been instrumental in bridging the financing credit services gap for businesses and individuals who could not get credit because of a poor credit score or history.

Concern that The Central Bank of Kenya was given the mandate to oversee and license digital lenders in order to protect the public from rogue operators. Digital lenders are now required to obtain a license to operate in Kenya, in line with the Protection of Personal Data Act of Kenya.

The Standard Newspaper and Standard Digital will publish an in-depth feature on 27th February 2023 to highlight the Licensed digital lenders in Kenya. It will also be a platform for digital lenders to highlight their services and products, supporting SME's development through digital Apps and Savings and credit products.

If you are an esteemed Digital lender to be part of this special feature, please call.

19827671 ☎ iduor@standardmedia.co.ke

17486639 ☎ ikokag@standardmedia.co.ke

34249338 ☎ Hmchari@Standardmedia.co.ke

The Standard

The Standard
ON



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT (SECOND SESSION - 2023)
DEPARTMENTAL COMMITTEE ON AGRICULTURE
AND LIVESTOCK

In the Matter of Article 118 (1) (b) of the Constitution
and

In the Matter of Consideration by the National Assembly of the
Sugar Bill

(National Assembly Bill No. 34 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other businesses of Parliament and its Committees.

The Sugar Bill (National Assembly Bill No. 34 of 2022) sponsored by the Hon Emmanuel Wangwe, M.P. was published on 6th October 2022, read a First Time on 9th November 2022 and committed to the Departmental Committee on Agriculture and Livestock for review and reporting to the House.

The principal object of the Bill is to re-instate the Sugar Act which was repealed through the enactment of the Crops Act, 2013 and restore the roles of Kenya Sugar Board currently undertaken by the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

IN COMPLIANCE with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committee on Agriculture and Livestock hereby invites stakeholders and the public to submit memoranda on the Bill. Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before Tuesday, 28th February 2023 at 5.00 p.m.

SAMUEL NJOROGE

CLERK OF THE NATIONAL ASSEMBLY

15th February 2023

"For the Welfare of Society and the Just Government of the People"

ANNEX FOUR:
LETTER INVITING
STAKEHOLDERS
FOR MEETINGS
WITH THE
COMMITTEE



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/A&L/2023/008

9th March 2023

Ms. Pamela Ogada
General Manager
Kwale International Sugar Company Limited
Unifresh Exotics Building
Baba Dogo Road
NAIROBI
info@kwalegroup.com

Kenya Sugar Research Foundation
P.O. Box 44-40100
KISUMU
kesref@kesref.org

Sugar Campaign for Change (SUCAM)
info@sucam.co.ke

Ms. Joyce Opondo
Secretary
Kenya Sugar Manufacturers Association
Reinsurance Plaza, Oginga Odinga Street
KISUMU
kesmakenya@gmail.com

Mr. Anthony Mwangi
Chief Executive Officer
Kenya Association of Manufacturers
15 Mwanzi Road, opposite Westgate Mall
Westlands
NAIROBI
info@kam.co.ke

Ms. Nancy C. Cheruiyot, FCCA
Managing Trustee/CEO
Commodities Fund
11th Floor, Utalii House
Utalii Street, off Uhuru Highway
NAIROBI
info@comfund.co.ke

Ms. Mary Mwititi
Chief Executive Officer
Council of Governors
2nd Floor, Delta House
Waiyaki Way, Westlands
NAIROBI

Dear

REF: STAKEHOLDER ENGAGEMENT ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022) BY THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

The Departmental Committee on Agriculture and Livestock is established pursuant to Standing Order 216 and is mandated *inter alia* 'to study and review all legislation referred to it'.

Pursuant to the cited mandate, the Committee is in the process of considering the Sugar Bill (National Assembly Bill No. 34 of 2022) (*copy forwarded herewith*). The Bill seeks to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The Bill seeks to restore the roles of Kenya Sugar Board currently undertaken by the Sugar Directorate of the Agriculture and Food Authority.

In compliance with the provisions of Article 118 (1) (b) of the Constitution, the Committee invites you for a meeting to discuss the said Bill. The meeting will be held on **Friday, 24th March 2023** at a venue in Nairobi and its environs. You are requested to attend the meeting with twenty (20) copies of your written submissions, the soft copy should be sent to the email addresses provided in the letter.

The liaison officers for this activity are Ms. Laureen Omusa Wesonga who may be contacted on Tel. No. 0710820442 or email: laureen.wesonga@parliament.go.ke, Mr. Ahmednoor Hassan, on Tel. No. 0748993663 or email: ahmednoor.hassan@parliament.go.ke or Mr. Victor Kilimo on Tel. No. 0724587091 or email: kilimo.simon@parliament.go.ke.

Yours

Sincerely,
Peter K. Chemweno

PETER K. CHEMWENO
FOR: CLERK OF THE NATIONAL ASSEMBLY

ANNEX FIVE: STAKEHOLDER SUBMISSIONS



① Lawrence Mwangi

7/5/23
2/3/23



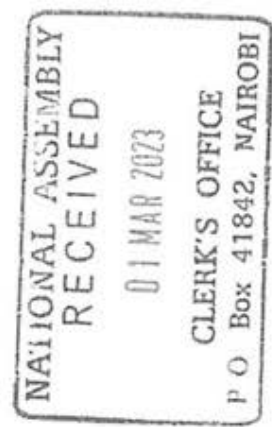
KWALE INTERNATIONAL SUGAR COMPANY LIMITED

DDC-1100
1/10

KISCOL'S MEMORANDUM ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

SUBMITTED TO

THE CLERK OF THE NATIONAL ASSEMBLY P.O. BOX 41842 -00100 NAIROBI



Introduction:

The sugar cane industry in Kenya has certainly gone through a number of phases of developments and challenges. Following the Sugar Industry stakeholders taskforce report the Government should have proceeded to come up with a National Sugar Policy principally focusing on the sustainable development of the sector to become competitive through harmonized coordination with key stakeholders and the Government. The following should be the key focus issues for the Government:

- Provide an enabling business environment and harmonized relationship between the millers, farmers and Government.
- Regulatory mechanism put in place to monitor activities and over all running of the sector.
- Facilitating smooth trade in relation to the existing marketing forces.
- Infrastructure investment in key potential rural cane growing areas.
- Research and Development to improve services to the sector.
- Enhance human resource development.
- Provide supportive schemes through which financial assistance can be accessed.
- Sustainable land management practices in order to protect the environment and take corrective actions to mitigate climate

Comments on the Bill

HEADING OF UNDER THE BILL	PROPOSED CHANGES	JUSTIFICATION FOR PROPOSED CHANGES
	PART 1- PRELIMINARY	
Section 2. Miller means a person licensed to operate a sugar mill or a jaggery mill in Kenya for the production of sugar including refined sugar and other by-products	We propose the inclusion of the definition of the word "Jaggery Mill" <i>"Jaggery mill" means rudimentary or bare minimum technology equipment used to crush sugarcane to produce sugarcane juice which is processed through boiling to produce jaggery</i>	Jaggery mill insufficiently described in the Bill, we therefore propose they are accorded proper definition for them to fit in the industry.
"Grower" means a person who produces sugarcane or any crop in Kenya for the manufacture of sugar	We propose the definition be amended to <i>Grower" means a person who grows sugarcane or any crop in Kenya capable of producing sugar for sale to a miller and is so registered by the Board</i>	Replace produce with grows. Add the component of registration by the Board
"KESMA" Kenya Sugar Manufacturer's Association	We propose inclusion of KESMA under the Bill to have it as the recognized association for lobbying interests of the millers	This will give formal recognition to a regulated framework on how millers can engage/ lobby on industry matters
Sugar Importer	We propose proper definition of who is a Sugar Importer. <i>Sugar Importer means</i>	As a Miller we propose that the Sugar Importation be done through the Sugar Millers

	<i>a miller who has been licensed by the Board to import sugar into the Country.</i>	based on a quota system. The Bill is silent on who is a Sugar Importer yet sugar importation meets almost 40- 50% of the country's sugar demand making a Sugar Importer a critical player in the industry. If this is solely left to private dealers as is the case now, we will have people who are not invested in the sugar eco-system benefiting at the expense of more deserving stakeholders.
	PART II ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD	
Section 4 (2) (f) - facilitate the export of local sugar	We propose the Clause to read – <i>To license import and export of sugar</i>	Section 20 of the Bill deals with the aspect of importation of Sugar without actually recognizing it as a function of the Board to license Sugar Importers in the first place. It only makes mention of a pre-import approval.
Licensing of Inputs Distributor	We propose that an additional clause be added for Licensing of Inputs distributor by the Board. <i>Inputs distributor means a seller or stockist of agricultural inputs used in sugarcane cultivation</i>	The essence of this is for the Board to be able to control the quality of inputs availed in the Market which has an impact on the quality of the sugar cane together with effective monitoring of input pricing to avoid high cost of inputs in the industry
Register of Growers	We propose that amongst the functions of the Board be to Maintain a Register of Growers. We propose wording as follows.	This proposal will enable the Board to have a clear database of all the Growers in the Country and act as a source of reference in determining

	<i>The Board shall have the power to register all sugarcane out growers in the country</i>	full area under cane under the different catchment areas and also brings clarity in resolving issues around cane poaching.
Privatization	We propose the following function be added: <i>to monitor the implementation of the provisions of the Agreement governing sale of privatized sugar factories and submit report to the Cabinet Secretary</i>	Board being the regulator of the industry it should have mandate to give its views on the Government's proposed privatization of public sugar mills
Section 6. Composition of the Board	<p>We propose review of the composition of the Board to be as follows:</p> <p><i>a) Chairperson should be appointed by the President and shall be from the private sector having experience and knowledge of no less than 15 years in the Industry</i></p> <p><i>b) Replace the one representative elected by the sugar millers with the Principal Secretary of the Ministry responsible for trade or his or her representative</i></p>	<p>The Reason we seek to change composition of the Board by having the Chairperson appointed by the President is to project the importance of the industry to the Government's Agenda on food security and also to add the component of the Trade Ministry in order to look into aspects of competition and markets which will be important in driving the industry's competitiveness. All members other than the Chairperson to be appointed by the Cabinet Secretary for matters related to Agriculture.</p>

	<p><i>c) Three representatives of millers proposed by KESMA</i></p> <p><i>d) PS Agriculture or representative</i></p> <p><i>e) PS National Treasury or Representative</i></p> <p><i>f) Representation by COG</i></p> <p><i>g) CEO of the Board as ex-officio member</i></p>		
Cooperation with other Agencies	<p>Insert the following under this Part:</p> <p>Co-operation with agencies:</p> <p><i>1) The Board shall cooperate with other government ministries, departments and agencies in the implementation of this Act</i></p> <p><i>2) For the purposes of subsection (1)), ministries, departments and agencies of government shall accord to the Board such assistance as may be necessary</i></p>	<p>This acknowledges that for successful implementation of its mandate the Board shall be obliged to liaise with other sectors of government to ensure proper implementation and execution of its mandate – Avoid a Silo set up.</p>	

	<i>to ensure proper discharge of the functions of the Board</i>	
Section 8. Vacation of Office	We propose a member of the board should vacate office where it affects millers or out growers and he/she seizes to belong to the category of persons he/she is representing in the board	This is particularly relevant when the proposing association withdraws membership or that person ceases to hold office under the terms prescribed within that body
	PART III – LICENSING AND REGULATION	
Section 20	<p>We clause to read as 20 (1):</p> <p>a) The Board shall have the power to issue sugar import licenses and prescribe procedures and regulations for sugar imports</p> <p>b) The sugar import licenses issued by the Board shall be subject to the payment of a fee and upon such terms and conditions as the Board may impose</p> <p>c) Before issuing the relevant licenses under sub-section (1) of this section, the Board shall</p>	This provision gives the Board a clear and defined mandate when it comes to Sugar importation as opposed to the existing section 20

	<p><i>take into account the levels of sugar production and sugar import or export requirements at the particular time</i></p> <p>20 (2): <i>A Sugar Importer who imports sugar into Kenya shall prior to importation:</i></p> <p><i>a) Provide evidence that the sugar that they intend to import is not available in the local market</i></p> <p><i>b) Provide a sample of the sugar to be imported and pre-import verification certificate from the country origin; and</i></p> <p><i>c) Obtain pre-import approval from the Board</i></p>		
Section 8. Vacation of Office	<p>We propose a member of the board should vacate office where it affects millers or out growers and he/she seizes to belong to the category of persons he/she is representing in the board</p>	<p>This is particularly relevant when the proposing association withdraws membership or that person ceases to hold office under the terms prescribed within that body</p>	
	<p>PART IV ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE</p>		

<p>Section 25 (b) . Management of the Kenya Sugar Institute; Composition of The Board</p>	<p>We propose review of the composition of the Management of the Institute to have three representative elected by growers and two representatives by KESMA</p>	<p>The purpose is to have more representation in the management board of the research institute to ensure effective varied stakeholders input and engagement</p>
---	---	--

KAM/10/14/mm/rl/mb/jw/AM/2023

27th February 2023

Mr. Samuel Njoroge
The Clerk, National Assembly
Parliament of Kenya, Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

Dear Sir,

RE: SUBMISSION OF KAM MEMORANDUM ON THE SUGAR BILL, 2022

The Kenya Association of Manufacturers (KAM) presents its compliments and appreciates the continued support.

Following the call for memoranda on the Sugar Bill 2022, we hereby wish to submit our Memorandum.

The purpose of this letter is to therefore submit the Kenya Association of Manufacturers' Memorandum on the Sugar Bill, 2022.

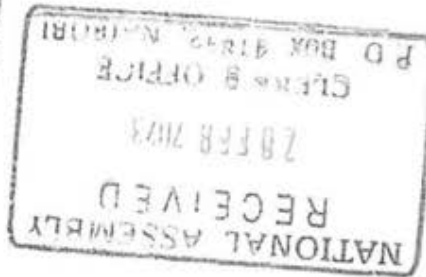
Feedback may be communicated to us via our physical address and advance feedback email to ceo@kam.co.ke on mobile +254 721 303335/+254 723 443363.

Your early feedback will be appreciated.

Yours sincerely,

[Signature]
Anthony Mwangi
CHIEF EXECUTIVE
Encl.

[Handwritten signature]
P/s TMA. 01/03/23







MEMORANDUM ON THE SUGAR BILL, 2022

Submitted to

**THE CLERK,
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS, NAIROBI.**

Presented By

**ANTHONY MWANGI, CHIEF EXECUTIVE,
KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

FEB 2023 – NAIROBI, KENYA

1.0 INTRODUCTION

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through her strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value add industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya playing a critical role. The EAC region integration is expected to spur the manufacturing sector enhancing intra-EAC trade in value added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Service ranging from **Food and Beverage; Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood and Furniture; Electric and Electronic; Building, Mining and Construction; Agro-Processing**

2.0 PROPOSED AMENDMENTS TO THE SUGAR BILL, 2022

In response to the call for public participation on the afore-referenced Bill, we propose the following amendments to be considered by the draft Bill is enacted:

CLAUSE	PROPOSAL	JUSTIFICATION
Clause 2 Interpretation	We propose to amend the definition of 'farm gate' to mean cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas.	<ul style="list-style-type: none"> This is important for the farmers since most are not close to the factories and as such, the distance can be a challenge in terms of costs of transportation. By reducing the costs of transportation it's a win for the farmer.
	We propose to amend the definition of 'mill gate' to mean a site where sugarcane is received at the respective factory weighbridge.	<ul style="list-style-type: none"> This definition brings out the function of the Mill Gate is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory or receiving centers.
	We propose to amend the definition of 'sugar catchment area' by deleting the phrase "for purposes of election to the Board under the First Schedule" appearing immediately after the second "area".	<ul style="list-style-type: none"> To focus on the substance of the sugar catchment area factor in clustering a region, that is, the soil conditions, weather and other factors including the availability of water to three sugar mills that provide the farmers with alternatives on sugarcane market.
	We propose to add the definition of Industrial sugar to read as follows: <i>"Industrial sugar" means a white crystalline carbohydrate used as a sweetener and preservative sugar, which complies with the specifications set by the body for the time being responsible for setting standards.</i>	<ul style="list-style-type: none"> Industrial Sugar is meant for use in the manufacturing of products only. It is not manufactured in Kenya and it should be distinctive. The distinction between raw sugar and Industrial Sugar is on the sucrose content as given by the polarimeter reading not based on suitability for consumption.
Clause 6 Composition of the Board	We propose subclause (1)(b) be amended to read: <i>(b) Three representatives nominated by the farmers' apex body from each sugar catchment area as per the first schedule"</i>	<ul style="list-style-type: none"> This will allow for one representative from the various regions, one from Central region and one from Southern region which are the major players in the sugar industry. It will also give the recognized farmers apex body National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board. The farmers will have a structured way to form a representative without undue influence.

		<ul style="list-style-type: none"> • The farmers' apex body was mandated to advocate farmers' interests. • It would be prudent for the Bill to allow the Millers apt to nominate at least three representatives as they are stakeholders. • This will also allow for two more representatives for sugar millers as they have a major role to play in the industry too.
	<p>We propose to amend subclause (1)(c) be amended to read:</p> <p><i>Three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition.</i></p>	
Clause 20 Sugar Import	We propose to amend this clause by deleting subclause (1)(a) in its entirety.	<ul style="list-style-type: none"> • We make this proposal because this function should be left open to the sugar importers. • This is the responsibility of the sugar board to determine sugar deficit in the country at any one time. • The onus should not be on the importer.
Clause 25 Management of the Kenya Sugar Research Institute	We propose to amend paragraph (b) of this clause by deleting the words "elected by the growers" appearing immediately after the word "persons" and substituting, therefore, with the words "nominated by the farmers"	<ul style="list-style-type: none"> • This amendment will ensure that the appointees are selected for the purpose of representing farmers for better up-to-date new practices.

	apex body from the designated sugar catchment regions".	<ul style="list-style-type: none"> This proposal is guided by the notion that this is a new being set up which is not under the ambit of KALRO.
	<p>We propose to amend paragraph (e) of this clause by deleting the words "Kenya Agricultural Livestock and Research Organization" appearing immediately after the words "of the" and substituting therefor the words "Kenya Sugar Research Institute".</p> <p>We propose to amend paragraph (f) of this clause by deleting it and replacing it with one person nominated by the apex body of the Sugar millers.</p>	<ul style="list-style-type: none"> The millers are not represented, and they are a major stakeholder. Further, the Bill removes the Sugar Directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA in the Board.
Clause 29 Appointment of Crop Inspectors	We propose to amend this clause by deleting it in its entirety.	<ul style="list-style-type: none"> We propose the deletion of this clause since the world inspectors is a replication of other agencies already in place in the sugar industry, that is, KRA, KEBS, Directorate, etc. In addition to this, the sugar industry is already overregulated with more than 40 licenses that already have the regulatory entities that deal with the same. The Sugar Board ensures that the millers/users comply with the licenses before releasing the annual licenses.
Clause 34 Sugar Development Levy	<p>We propose to amend subclause (1) to exclude industrial sugar used by Manufacturers from imposition of the sugar development levy to read as follows:</p> <p><i>"The Cabinet Secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported"</i></p>	<p>We propose to retain clause 34(1) on the Sugar Development Levy and only exclude industrial sugar based on the following reasons:</p> <ul style="list-style-type: none"> Kenya lacks the capacity to produce industrial sugar necessitates the need to import it from countries outside East African Community (EAC). The proposal to levy 10% Sugar Development Levy (SD) increase the cost of doing business for manufacturers.

	<p><i>sugar excluding industrial sugar to be known as Sugar Development Levy".</i></p>	<p>Kenya. For instance, major users like KBL and UL estimate that the cost of taxes and levies subject to importation will increase by 60-62%.</p> <ul style="list-style-type: none"> • Currently levies and taxes include imposed on sugar 10% import duty (imports from outside COMESA but EAC Quota), 16% VAT, IDF, RDL and Merchant Services fee. The levies described are exclusive of charge for registration to Sugar Directorate (Kshs 20 and the import permit (Kshs 100,000 annually). • Unintended consequences of the levy include increase in trade. In this case, products like alcohol, illicit trade currently estimated at 44% (490mn litres) of all the consumed in Kenya according to WHO 2018 report. The illicit is currently even higher due to increased pressure on consumer spending reeling from the negative impact of Covid-19. • The proposed levy will intensify declining consumer spending power due to increased direct cost of goods. • This will ensure that the funds are well provided for programmes associated with cane development. • This will also increase sugarcane yields and will generate more income for farmers by applying the right input and correct agronomic practices.
	<p>We propose to amend subclause (7)(a) by-</p> <p>a) deleting the words "Fifteen per centum" and substituting therefor the words "Twenty per centum" and</p> <p>b) adding the words "and cane development" immediately after the word "stabilization"</p> <p>The provision will read as follows: <i>"Twenty per centum shall be applied by the Board for income or price stabilization and cane development for sugar growers".</i></p>	

	<p>We propose to amend subclause (7)(c) of this clause by deleting the words "twenty per centum" and substituting therefor the words "fifteen per centum."</p> <p>We further propose to amend this subclause (7)(c) by clarifying that the funds will be channeled to the sugar research institute specifically.</p>	<ul style="list-style-type: none"> • The amounts involved are huge and reallocating F centum from this item to the development of the sug growers will bring greater gains to the industry and adversely affect the Board. • The proposal to channel the funds to the sugar institute will help underline that the funds are spe Sugar Research.
Clause 50 Inspection for quality and safety	<p>We propose to amend this clause by deleting it in its entirety.</p>	<ul style="list-style-type: none"> • The Board should not be allocated this duty as the wo be a replication of other agencies. • KEBS and NEMA already do most of the tasks contemp this clause. • They should therefore remain the sole national agenci carry out these tasks.
Clause 51 Safeguard Measures	<p>We propose to amend this clause to require the Board to ensure that importers report on their sugar transactions per consignment, and not daily.</p> <p>Amend Section 51(2) (b) to read:</p> <p><i>"Importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licences"</i></p>	<ul style="list-style-type: none"> • Requirement of reporting on a daily basis is impracti would result into increased cost of business. • Given that an importer of sugar is required to get a pre-approval, it would be reasonable to file retur consignment/for the quantity approved after the sug been utilized. • Such returns should be in a prescribed form re information on the imports, sales, and stock.
Clause 54 Rights of growers in a privatized company	<p>We propose to amend this clause by deleting it in its entirety.</p>	<ul style="list-style-type: none"> • The same should not be admissible in the privately mills where the growers are not investment contributors. • Further, this will discourage private investment in th mills.
Clause 55	<p>We propose to amend this clause by deleting it in its entirety.</p>	<ul style="list-style-type: none"> • This clause will not be applicable and may lead to legal once implemented.

Representative of a grower in a private milling company.		<ul style="list-style-type: none"> It will also discourage private investment.
First schedule		
Delineation of sugar catchment areas	<p>We propose to amend this clause to represent regions as opposed to counties by deleting "Counties" and replacing with "Regions" and delineate as follows.</p> <p>Central Region Kericho, Kisumu and Nandi.</p> <p>Upper Western Region Bungoma, Kakamega, Trans Nzoia and Uasin Gishu.</p> <p>Lower Western Region Busia, Mumias and Siaya.</p> <p>Southern Region Homabay, Kisii, Migori and Narok.</p> <p>Coastal Region Kwale, Lamu and Tana River</p>	<ul style="list-style-type: none"> This proposal will leave the Rift Region orphaned v operational sugar mill. This is tantamount to economic suicide and should allowed to be established in Law. At the same time, the Southern Region covering Hor Kisumu, Migori and Narok is provided with more factories, 7 of which are in operation. Our proposal is that Kericho and Nandi in the Rift which are currently being served by Sugar Facto Kisumu County be included in a Region to be kn Central Region comprising Kericho, Nandi, Kisumu an served by Muhoroni Sugar, Chemelil Sugar, Kibos Sug Soin Sugar. This would also fit in with the recommendations of the Task Force Report Page 62. This would ensure that all the sugarcane farne adequately taken care of, rather than the current pi that has discriminated against the sugarcane farmer: Rift Valley Region, leaving them without a sugar fac supply their sugarcane to.
Third Schedule		
Interpretation	We propose to amend paragraph (2) of the Third Schedule by deleting the words "sugar lobby group" and substituting therefor the words "Sugarcane Growers Apex Body".	<ul style="list-style-type: none"> This is because lobby groups do not have the object steer the sugarcane grower's issues in a joint and perspective as compared to an apex body.
Paragraph (2)		

<p>Paragraph (5) The role of the miller</p>	<p>We propose to amend paragraph 5(a) by deleting the words "harvest" and "transport".</p> <p>We propose to amend paragraph 5(g) by deleting the word "mobile" appearing immediately after the word "that".</p> <p>We propose to amend paragraph (2)(d) by deleting it in its entirety.</p>	<ul style="list-style-type: none"> • The two are the sole responsibility of the grower can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. • Entrenching this in the Act will result in a situation on the ground. • The justification is that weighbridges are not mobile.
<p>Paragraph (7) Sugarcane Pricing Committee</p>	<p>We propose to amend this paragraph by inserting a new subparagraph (4): (4) the peculiarities of each region.</p> <p>We propose to amend subparagraph (6) by deleting the words "thirty-six months" appearing immediately after the word "every" and substituting therefor with "one month".</p>	<ul style="list-style-type: none"> • The amendment will ensure that the farmers have a structured way to front their representative with influence. • This proposal is premised on the fact that the country has different soils and climate from all other regions rendering its yields much lower than the rest. • The one month will provide a realistic and sufficient time for the committee to regularly review the prices and market forces demand. • This will in turn will be a win-win situation for the millers to benefit from the running of the mill.
<p>Part 4- Relationship between the Outgrower institutions and the Miller</p>	<p>We propose for the deletion of this Part in its entirety.</p>	<ul style="list-style-type: none"> • There is no longer any outgrower institution on the island. • The current regulations deal with relationships between the miller and the sugarcane growers directly. • There is no longer any outgrower institution on the island. • The current regulations deal with relationships between the miller and the sugarcane growers directly.

<p>Part 5 - Relationship between the Outgrower Institution and the Grower.</p>	<p>We propose for the deletion of this Part in its entirety.</p>	<ul style="list-style-type: none"> • There is no longer any outgrower institution on • The current regulations deal with relationships miller and the sugarcane growers directly. • Furthermore, these are issues that can be handled Sugar Regulations and not in the Act.
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Commodities Fund



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Our Ref: ComFund/F.28/Parliament/Vol.1/01

Date: 28th February 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI

E-mail: cna@parliament.go.ke

Laureen Wabunga
pls facilitate
up w/ 6
2/3/23

Dear Sir,

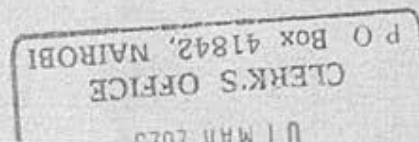
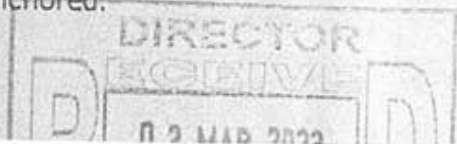
RE: PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

We refer to the subject matter and ministerial directive to develop the Commodities Fund's legislation.

Commodities Fund (ComFund) is a Government Agency established under Section 9(1) of the Crops Act No. 16 of 2013. It is the successor of the Coffee Development Fund and Sugar Development Fund which ceased operation following the enactment of the Crops Act 2013 and AFA Act respectively.

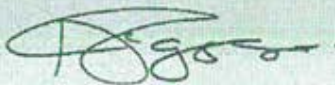
The Fund came into operation on 1st August 2014 with the aim of affording accessible and affordable financing to the scheduled crops mentioned under the 1st Schedule of the Crops Act 2013. The Fund beneficiaries include; individual coffee, sugarcane farmers and coconut, Farmers' co-operative societies, estate growers, entrepreneurs/ value addition players in coffee, sugarcane and coconut sectors and Saccos.

The Fund on advice from the Cabinet Secretary of the Ministry of Agriculture and Livestock Development set out to develop robust Commodities Fund legislation in order to realise prudent and meaningful legislative backing of its existence and operations in line with our mandate. This is aimed at solidifying the otherwise weak and porous legal platform upon which the Fund's mandate is anchored.



The purpose of this communication is to request consideration and support of the draft regulations and eventual forwarding to the National Treasury for scrutiny, deliberation and feedback. This shall be a precursor to stakeholder engagement and public participation.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'N. Cheruiyot', with a stylized flourish at the end.

**Nancy C. Cheruiyot, FCCA
Managing Trustee/CEO**

Encl.



Commodities Fund



COMMODITIES FUND REMARKS AND RECOMMENDATIONS ON THE PROPOSED SUGAR BILL CURRENTLY BEFORE THE PARRLIAMENT.

BACKGROUND OF THE COMMODITIES FUND

Commodities Fund (ComFund) is a Trust Fund established under the Crops Act No. 16 of 2013 (amended May 2016), Article 9 (1). The Fund was the successor of Coffee Development Fund and Sugar Development Fund (which was part of Kenya Sugar Board) that ceased to be following the enactment of Crops Act 2013 after the review and consolidation of over 130 laws (which existed in the agricultural sector in Kenya, including the Coffee Act, 2001 that had established Coffee Development Fund, and Sugar Act, 2001 that had established Kenya Sugar Board, which administered Sugar Development Fund) which culminated in the enactment of the Agriculture and Food Authority Act, 2013 (amended May 2016), the Crops Act 2013 (amended May, 2016), and the Kenya Agricultural and Livestock Research Act, 2013.

The Fund was operationalized on 1st August 2014. This implies that the Commodities Fund took over operations of the former Coffee and Sugar Development Funds as well as funding of the scheduled crops mentioned under the 1st Schedule of the Crops Act and price stabilization. The scheduled crops are categorized under:

- Coffee
- Tea
- Sugarcane
- Horticulture
- Food crops
- Nuts and oils
- Fibre (sisal and cotton)
- Pyrethrum and other industrial crops.

With the taking over the lending operations of the former Coffee and Sugar Development Funds, ComFund took over the historical outstanding debts as at 31st July 2014 of the institutions to the tune of Kshs. 787.9 million and Kshs. 14.9 billion for Coffee and Sugar respectively. These two crops were the only crops that had established funds in place prior to the merger.

1.1 MANDATE OF THE COMMODITIES FUND

The mandate of the Fund is to provide sustainable and affordable credit and advances to the agriculture sector for:

- Farm improvement;
- Farm inputs;
- Farming operations;
- Price stabilization and;
- Any other lawful purpose approved by the Agriculture and Food Authority.

The core functions of the fund include the following:

- i) Development of loan products for scheduled agricultural commodities as per Commodities Fund's credit policy, Crops Act No. 13 of 2013, AFFA Act No. 13 of 2013 and various crops regulations.
- ii) Collection of repayments arising from disbursed credit facilities.
- iii) Facilitation of capacity building related to agricultural credit facilities.
- iv) Financing agricultural sector infrastructure development.
- v) Establish and maintain a price stabilization system.
- vi) Financing value addition initiatives within the Agriculture sector.

Source of Funds of Commodities Fund

The source of funds as provided in the Crop Act (2013) to achieve its mandate are:

- Monies paid as license fees,
- Commission,
- Export or import agency fees that may accrue to or vest in the Agriculture and Food Authority,
- Funds appropriated by Parliament and funds from any other lawful source approved by the Trustees.

The Problems posed by Proposed Sugar Bill

Noting from above, the proposed bill seeks to take over not only the mandate of the Commodities Fund but also the source of financing. This should not be allowed because of the following reasons:

- i. This will replicate the functions of Commodities Fund causing confusion in the industry. This can lead to further over indebtedness in the sector as each of the two Funds compete for the same clients.
- ii. The Bill also replicates the source of their Finances exactly as that of Commodities Fund. This will create legal conflict between the two institutions
- iii. In the past, the defunct Kenya Sugar Board failed in its duties of administering the Sugar Development Fund. The over 20 billion bad loans in the sugar sector was administered by the defunct Kenya Sugar Board. The Fund administration should be left to the Commodities Fund which has all the necessary capacity to administer the Fund, while the Board should concentrate on regulation. Carrying out both mandates will lead to conflict of interest leading to biasness and undue influence in loan and grant Administration

- iv. The proposed bill intends to finance infrastructure. This will pose a problem with county governments who also have a budget for infrastructure of the same roads. This in addition can also lead to abuse of the Funds as all the three parties claim to have done the same road for example.

The two key clauses in the bill which should be expunged are shown in the table below;

Clause	Details	REMARKS
Sugar Development Levy.	<p>34. (1) The Cabinet Secretary shall, in consultation with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.</p> <p>(2) The levy shall be payable at such rate as may be specified in the order.</p> <p>(3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.</p> <p>(4) All moneys received in respect of the levy shall be paid to the Board and if not paid on or before the date prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.</p> <p>(5) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.</p> <p>(6) The Board shall apply the money received under this section for the furtherance of the objects of the Board.</p> <p>(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows-</p>	<p>I. This clause seeks to to replicate the Mandate of Commodities Fund. This will be detrimental to Commodities Fund and cause confusion in the industry.</p> <p>II. The proposed Sugar Board should only concentrate on regulations of the sector and leave the matter of financing to Financing institutions in place</p> <p>III. The sugar development Levy should be collected but administration of the lending part left to the commodities Fund</p> <p>IV. The issue of infrastructure development should not be left to the Board as this will lead to conflict with the county governments and national governments as well. It can also lead to abuse in allocation as the board do not have the capacity to assess the same.</p>

	<p>(a) fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;</p> <p>(b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;</p> <p>(c) twenty per centum shall be remitted directly to the Institute; and</p> <p>(d) forty five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.</p> <p>(8) The funds provided for under subsection (7)(a) shall be used to provide for sustainable, affordable credit and advances to farmers for all or any of the following purposes-</p> <p>(a) farm improvement;</p> <p>(b) farm inputs;</p> <p>(c) farming operations; and</p> <p>(d) price stabilization.</p>	<p>V. The apportionment of the levy should not be left to the board as well but instead the Cabinet Secretary should be the one to determine the apportionment based on the budgetary needs of the benefitting institutions.</p>
Sugar Development Fund.	<p>35. (1) There is established a Fund to be known as the Sugar Development Fund which shall be administered by the Board.</p> <p>(2) The Fund shall consist of-</p> <p>(a) the Sugar Development Levy;</p> <p>(b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;</p> <p>(c) any moneys provided by the National Assembly for the purposes of the Fund;</p> <p>(d) any moneys provided by a county assembly for the purposes of the Fund; and</p> <p>(e) moneys from any other source approved by the Board.</p>	<p>Establishing a Sugar Development Fund is replication to what the Commodities Fund is doing. Within the Commodities Fund, we have a Sugar Development Fund which does exactly what this Fund here proposes to do.</p> <p>In the past, the defunct Kenya Sugar Board failed to manage the Sugar Development Fund effectively and efficiently and this led to the current bad loan book of over 20bn Kenya shillings</p>

RECOMMENDATIONS ONE

1) SUGAR DEVELOPMENT LEVY

The Sugar Development Levy should be instead collected by the Commodities Fund who will then immediately apportion to various benefitting institutions according to a given rate determined by the Cabinet secretary. The benefitting institutions shall be

- The Sugar Board for its administration.
- The Sugar Research Institute
- The Commodities Fund; for lending and administering the Price Stabilization Fund of the Sugar Industry.

The commodities Fund shall account for the levies collected periodically to the parent ministry and the National Treasury.

The amount to be levied will be determined by the Cabinet Secretary from time to time and so is the rates of apportionment.

2) SUGAR DEVELOPMENT FUND

The board should not establish another Fund to carry out exactly similar roles as Commodities Fund. This will not only create confusion in the industry but will lead to over indebtedness as the two institutions compete for the same borrowers.

The Commodities Fund is better placed to carry out this mandate as this is its primary mandate and not a secondary as in the case of the proposed Sugar Bill. The Commodities Fund is managed by Board of Trustees and not a Board of Directors as is the case of the proposed Sugar Board. What this means is that, a board of trustee is responsible personally and severally for the decisions made by the Fund, whereas a board of directors is not. This was the case of the defunct Kenya Sugar Board which led to billions of shillings ending up as bad loans while not helping the sector.

In summary, the proposed Kenya Sugar Board should be a solely Sugar industry regulator. The bill clearly is in conflict with the Crops Act which created the Commodities Fund and should not be allowed to pass in its current form.

RECOMMENDATION TWO - ON THE COMMODITIES FUND DRAFT BILL, 2023

There are several Bills in parliament that if assented would form their Funds and render the Commodities Fund redundant due to duplicity in roles. Some of them include the Coffee Bill, Sugar Bill, Miraa Bill, Pyrethrum and other industrial crops Bill, Food crops and the recently assented Tea Act. The proposal is to have a sectorial engagement to come up with one policy that aids the establishment of one Fund (Commodities Fund) in the agricultural sector that deals with lending. This would mean:

1. Amending the draft Bills to ensure the Funds established therein are deleted
2. Repealing the sections in the Tea Act that establish a Fund.
3. Ensure all Bills and the Tea Act apportion a percentage of the levies collected under the instruments to the Commodities Fund for the sole purpose of lending in the various sectors.

4. Having a section in the Fund's Bill that gives the Cabinet Secretary the power to apportion a certain rate of levies from the scheduled crops to the Commodities Fund.

There was previously a suggestion that under section 24 of the PFM Act, the Commodities Fund should be under Treasury. This however should not be the case since the Fund is not an ordinary Fund but a Trust Fund and should rightfully be under the Ministry of Agriculture



KENYA SUGAR MANUFACTURERS ASSOCIATION

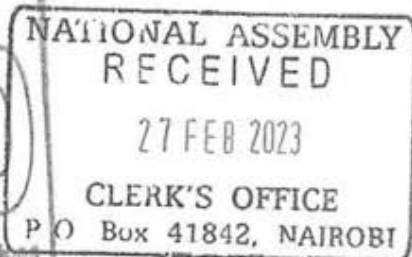
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24th February 2023

Re: KESMA/SEC/NA/SB/01/23

The Clerk of the National Assembly
Thirteenth Parliament/Second Session
Departmental Committee on Agriculture and Livestock
Republic of Kenya
P O Box 41842-00100
NAIROBI

Email – cna@parliament.go.ke



RE: THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022) – SUBMISSION OF MEMORANDA FROM THE KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA)

The Kenya Sugar Manufacturers' Association (KESMA) is a duly registered Association with the Registrar of Societies, bringing together Sugar Millers in Kenya. We have registered office bearers and a fully functioning office based at the 7th Floor of the Reinsurance Plaza, Oginga Odinga Street, in Kisumu City. We are recognized by the Sugar Directorate/AFA as the Apex Body for sugar manufacturers in Kenya.

Our main objective is to represent the interests of the sugar millers. The Association is registered with AFA and the Sugar Directorate as the Apex Association of Sugar Millers in Kenya. We enjoy a cordial and mutual relationship with the Sugar Directorate, that engenders the smooth operations of the sugar sub-sector in Kenya.

The industry contributes huge amounts of taxes to both the National Treasury and the County Treasuries and its success will be of great benefit to the country on all fronts. Bringing sanity to the sugar industry through the enactment of this Sugar Bill will attract both local direct investment and Foreign Direct Investment thereby boosting the manufacturing sector, enhancing agricultural growth; increasing tax revenue, food security and employment among other benefits.

The Sugar Industry Task Force established under gazette notice No 11711 of 9th November

for the development of the sub-sector in Kenya. Its mandate was intensively and extensively carried out, taking into consideration views of members of the public, experts, desktop studies of successful sugar industry models from various countries in COMESA and internationally; and ensuring well attended and documented public participation meetings in all sugar growing areas to collect public views.

The data and views collected, were collated, discussed; challenges pin-pointed and recommendations presented to the industry stakeholders for ratification. The final recommendations were presented to His Excellency, the President, in a Sugar Industry Stakeholders Taskforce Report in February 2020.

Many of the recommendations of the Sugar Task Force Report are incorporated in the current National Assembly Bill No. 34 of 2022. However, there are areas that our suggestions, informed by the recommendations of the Sugar Industry Taskforce Report, will enhance and enrich the document further. Our proposals, attached herewith, are presented to you in a clear manner with justifications for each proposal that will make it easy to understand their practicability on the ground.

We are convinced that this Bill, when passed into Law, will bring sanity, law and order to the sugar sub-sector in Kenya and will greatly improve on the industry which impacts on the socio-economic lives of approximately 8 million Kenyans in the Western part and the coastal regions of Kenya. The sub-sector's backward and forward linkages are felt across the length and breadth of the Nation of Kenya.

We are grateful to the sponsor of the Sugar Bill Hon Emmanuel Wangwe, MP, the National Assembly and the Ministry of Agriculture and Livestock for the interest shown to revive the sugar industry by pushing through the new Sugar Bill 2022. We hereby, request, humbly and respectfully that our proposals be considered and that we be given an opportunity, to appear before the Agriculture Committee to expound further on them.



Joyce A. Opondo (Ms)
HON. SECRETARY/KESMA

POSED AMENDMENTS TO SUGAR BILL 2022 – CURRENTLY IN PARLIAMENT

ION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR CHANGE, IF ANY
I – PRELIMINARY	Sugarcane growers apex body	“national sugarcane farmers and out grower organization under a cane supply contract and in catchment areas under the First Schedule gazetted as such by the Cabinet Secretary for the time bring responsible for agriculture;”	Kenya National Federation of Sugarcane Farmers	This is the body recognized by the Kenya Sugar Board and which brings all other sugar lobby groups within it. It makes it easier for the Government to deal with one entity that represents them all.
II –	6 (1) (a)	A non-executive Chairperson elected by the board from among the representatives of growers on the board and appointed by the cabinet secretary;	(a) a chairperson appointed by the President by notice in the Gazette.	This is according to the Mwongozo Code
BLISHMENT, RS AND TIONS OF THE A SUGAR BOARD	Composition of the Board		Mwongozo Code	
	6 (1) (b)	Five representatives elected by growers from each sugar catchment area as per the first schedule.	3 Farmer Representatives	There should be equity in allocation of representation of each stakeholder. Institutions such as apex body of farmers
	6 (1) (c)	One representative elected by sugar millers who is knowledgeable in sugar technology and value addition.	3 sugar mill representatives, Chairman, MOA PS, MOT&I PS, County Govt.	This proposal fits in with the Mwongozo code and provides equity in representation among the main players in the industry.
III – LICENSING & REGISTRATON	Requirement of a license to operate a mill (18)	18(1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence issued by the Board upon recommendation by the relevant County Government for that purpose.	The County Governments shall issue the licenses. The Sugar Board should only issue export/import licenses	Since the Sugar Catchment regions have been adopted, Regional counties will be jointly mandated to issue the licenses.
	Sugar import 20	Sugar Import	Sugar and sugarcane imports	This section should also deal not only with sugar imports but also sugarcane imports into the country
IV- BLISHMENT OF THE A SUGAR ARCH INSTITUTE	Board of the Institute 25 (b)	(b) Five persons elected by growers from each of the sugar catchment areas under the first schedule	(b) We propose 3 farmers’ representatives (ba) one person nominated by the CoG; and (bb) one person, who has knowledge and experience in matters relating to sugar technology	(c) 3 farmers to be elected by the Apex Body of sugarcane farmers. (ba) The CoG needs to nominate one person to the research institution as agriculture is devolved; (bb) Millers need to have one person to represent them on the board.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR CHANGE, IF ANY
			and value addition, nominated by KESMA; The Cabinet Secretary shall appoint the members under subsection (1)(b), (ba) and (bb) by notice in the Gazette.	
		(e) The Chief Executive Officer of the Kenya Agricultural Livestock and Research organization	(e) "Kenya Agricultural Livestock and Research Organization" and replace with "Kenya Sugar Research Institute."	(e) KALRHO does not need to be represented in the sugar research board. This position can be left for the miller representative.
V	Appointment of Crop Inspectors	Appointment of Crop Inspectors 29(1), (2) Entry and inspection (30) (a, b, c), Powers of Entry (31) (a, b, c, d, e, f, g) (2)(3) Obstruction of Inspectors (1)(2)	The terms of reference of the crop inspectors needs to be corrected to reflect the industry as sugar production is both agricultural and industrial. Their TOR should be directed towards sugarcane production & not sugar milling.	All supervisory/inspection roles of Government are already being undertaken by NEMA, Public Health, KEBS, Sugar Directorate, MOA, Ministry of Labour, County Occupational Health and Safety, Water Resources Authority, etc.
VI – FINANCIAL PROVISIONS	Sugar Development Levy 34 (1)	The CS shall in consultation with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten percentum of CIF value on imported sugar to be known as the sugar development levy	We propose the following: Sugar imported from the following should be levied as proposed: EAC – 5% COMESA – 15% Outside COMESA 25% Locally produced Max 2%	Sugarcane price is based on a formula where sugar price is key. To stabilize sugarcane price, it is imperative to levy imports differently depending on the origin of the imports. This is because importers negatively impact more on the sugar sub-sector. Levying them more will encourage the growth of the local sugarcane growers to increase production as the levies will go towards improving the lot of the farmers. This will also improve levy collection to make the industry self-sufficient; will improve infrastructure development, research, alleviate poverty and go towards development in the rural areas.
	Rights of growers in a privatized company	54 (1) (a) 51% shareholding of all privatized sugar factories; and	THAT clause 54 of the Bill be amended in— (1) paragraph	Shareholding on public mills that are privatized will be agreed upon based

TION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR CHANGE, IF ANY
			(a) by inserting the words "shares held by the government in" immediately after the words "shareholding of all"; (2) paragraph (b) by deleting the expression "51%" appearing at the beginning of the paragraph.	on peculiar circumstances of each mill. Some are under receivership, others are no longer operating while some are limping. Their privatization will therefore, not carry mandatory provisions. Agriculture has been devolved to the counties. Therefore, Counties in consultation with the Ministry of Agriculture, Treasury and the Privatization Commission should have a say in privatization of the sugar mills in their jurisdictions. The same should go for sugar mills that have already been privatized.
	Rights of growers in a privatized company 54 (1) (b)	51% representation on the Boards of Directors of a privatized company		Privately owned sugar mills should not be the subject of interference with regard to ownership. Like all other industries in the country, private sugar mills are fully privately owned and Directors cannot be imposed on them by Law or otherwise.
T SCHEDULE 6(1) (b) and 25 (b)	DELINEATION OF SUGAR CATCHMENT AREAS	<p>1) Notwithstanding the provisions of any other Act, each private sugar milling company shall have a representative of the growers in its board of directors.</p> <p>2) In appointing a director representing the growers under sub-section (1), the milling company shall consider in the first instance, the leaders of the out-grower institutions within the sugar-cane catchment area in which the sugar mill is located.</p> <p>3) A person appointed as a director under subsection (1) shall serve for a term not exceeding two years.</p> <p>Rift Region – Kericho, Nandi and Uasin Gishu</p> <p>Upper Western Bungoma and Trans Nzoia</p> <p>Lower Western Region Busia, Kakamega, Siaya and Vihiga</p> <p>Southern Region Homa Bay, Kisumu, Migori and Narok</p>	<p>The section should be deleted in its entirety</p> <p>Regions: Counties Central Region: Kericho, Nandi, Kisumu Upper Western Region: Bungoma, Kakamega, Trans Nzoia, Uasin Gishu Lower Western Region: Busia, Mumias, Siaya</p>	The issue of the sugar catchment areas was discussed at length under the Sugar Stakeholders Task Force that was set up by the Cabinet Secretary of the Ministry of Agriculture and the Report of the Committee clearly recommended the Regions after intensive and extensive

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR CHANGE, IF ANY
PART 1 SCHEDULE DEFINITIONS RELATIONS BETWEEN THE SUGAR INDUSTRY		Coastal Region Kwale, Lamu and Tana River	Southern Region: Homabay, Kisii, Migori and Narok Coastal Region: Kwale, Lamu, Tana River.	public participation. The Act should reflect the wishes of the stakeholders.
	2. Interpretation	"sugar lobby group" means a registered group of people comprising of farmers and growers from the sugar catchment areas championing the rights of sugar stakeholders.	THAT the third schedule of the Bill be amended — (a) in paragraph 2 by deleting the definition of the word "sugar lobby group" replace by the Sugarcane Growers Apex Body	The Third Schedule should be left for the Sugar Regulations which will be the guiding document for the operations of the Sugar Bill once it becomes an Act. Therefore, the whole of the Third Schedule should be expunged from the Bill.
PART 2 - ROLES OF INSTITUTIONS IN THE INDUSTRY	5.(a) (Role of Millers)	Harvest, weigh at the farm gate, transport and mill the sugar cane supplied from the growers' fields and the nucleus estates efficiently and make payments to the sugarcane growers as specified in the agreement.	The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. Entrenching this in the Act will result in an untenable situation on the ground.	In some cases, farmers have their own transport. Therefore, the farmer has the option to harvest and transport his own cane to the sugar mill. Part 2 should also be deleted and relegated to the Sugar Crop Regulations,
	5.(g) (Role of Millers)	Ensure that mobile weighbridges are closer to growers; and one representative from the sugar lobby groups;	Delete the provision	Weighbridges are not mobile.
PART 3 - SUGARCANE PRICING COMMITTEE	Sugarcane Pricing Committee 7 (2) (d)		Delete the provision	There is already representation from the key stakeholders in the sector. Lobby groups are a ground for chaos in the industry.
	Sugarcane Pricing Committee 7 (4) (d)		(d) inserting the following new subparagraph immediately after subparagraph (4)(c) climate, soil topology and other natural features of each region;	The Central Region suffers the disadvantage of a remuneration of less than 9. This means that factories in this zone paying the same price for sugarcane make high losses.
	Sugarcane Pricing Committee 7 (6)	The sugar-cane prices set by the committee under sub paragraph (4) shall be reviewed after every six months provided that the Committee may, with the prior approval of the	(iii) deleting the words "thirty-six" appearing immediately after the words "reviewed after every" in subparagraph (6) and substituting therefore the word "three".	Three months' period duration provides a practical period for which the committee can determine market prices at any given point.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR CHANGE, IF ANY
PART 4 – RELATIONSHIP BETWEEN THE OUTGROWER INSTITUTION & THE MILLER	Out-grower Institution and miller agreement	Board, undertake an early review of the sugar-cane pricing Whole PART 4		Part 4 and Part 5 should be removed and placed in the Sugar Crop Regulations.
PART 5 – RELATIONSHIP BETWEEN THE OUTGROWER INSTITUTION & THE GROWER	Out-grower Institution and grower agreement Clause 9	Whole PART 5		
PART 6 – SUGAR INDUSTRY CONTROL MEASURES	13(1) Industry control.	13(1) The sugar industry agreement shall recognize the measures already undertaken to deal with constraints to development which include the setting of a committee comprising of the Kenya Sugar Authority, Kenya Ports Authority and Kenya Bureau of Standards to coordinate the inspection and certification of imported sugar.	delete the words "Kenya Sugar Authority" appearing immediately after the words "comprising of the..." in subparagraph (1) and substituting therefore with the word "Kenya Sugar Board".	The Sugar Bill is restoring the Kenya Sugar Board. The Kenya Sugar Authority has no place in the new Sugar Bill 2022



SUCAM

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Proposals on the Sugar (Amendment) Bill, 2022

Contents:

The proposals are submitted in 3 Parts:

- Part 1:** Provides the introduction and core objectives behind the amendments
- Part 2:** Expected results by adopting the proposed amendments
- Part 3:** Critiques the current proposed amendments as per The Sugar Bill, 2022 and makes recommendations to that effect

Released March 21st 2022

**(Presented to Departmental Committee on Agriculture and Livestock on Friday
24, March 2022**

Holiday Inn Two Rivers Mall

INTRODUCTION AND EXPECTED RESULTS

Kenya attained self-sufficiency in 1980, 1981 and 1984, by producing 401,239 MT against a demand 299,514 MT in 1980, 368,970 MT against a demand of 324,054 MT in 1981, and 372,114 MT against a demand of 348,678 MT. During this period, Kenya export amounted to 68,054 in 1981¹. The policy objective on self-sufficiency with surplus for export was achieved. The reasons for the good performance include:

1. Contract farming system
2. Strong out-grower institutions working with an apex body
3. Availability of extension services
4. Efficient marketing system through Kenya National Trading Corporation (KNTC)
5. Efficient farm and factory operations

SUGAR BILL 2022

Sugar Bill 2022 was drafted to address public policy issues bedeviling the sugar industry for the achievement of the industry policy objectives. The main public policy issues in sugar industry are competitiveness, productivity, production, efficiency and competition. To great extent, the bill has addressed these issues with but has gaps that the proposed amendments attempt to address.

These gaps include

1. Glossing over farmers' representation,
2. Lack of growers registration,
3. Inadequate sugar development levy allocation to cane development,
4. Lack of framework for effective controlling sugar imports and promoting exports,
5. Incomplete cane pricing system.

EXPECTED RESULTS:

1. Improved efficiency through planned cane development, harvesting and transporting coordinated by Apex Body
2. Improved net income to the sugarcane farmer as a result of reduced cost of farm input and services and remunerative cane price
3. Adequate cane production synchronized with milling capacity and improved productivity due availability of affordable, adequate and accessible funds for cane development.

FARMERS PARTICIPATION:

Sugar Campaign for Change (SUCAM) responded to the after undertaking four (4) consultative meetings with farmers on 14/2/2023 at Bukembe Market Centre (75 farmers), 16/2/2023 at Namable (121 farmers), 18/2/2023 at Miwani (105 farmers), and 20/2/2023 at Awendo sugar-belt cooperative hall - SONY (98 farmers).

¹ Statistics from the then Kenya Sugar Authority 2000

COMMENTS ON THE CURRENT PROPOSALS

PART I: PRELIMINARY

Page 1082 SUB-SECTION 2: Interpretation - 'cane catchment areas'

Amend to read as follows:

"sugar catchment area" means a specific geographical area as shall be determined by the Cabinet Secretary from time to time for purposes of nomination to the Board

JUSTIFICATION#1: the complexity of the industry

The electoral areas were being gazetted by the Minister for Agriculture. This tradition is appropriate compared to fixing boundaries in a sub-sector that is expanding.

PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF KENYA SUGAR BOARD

Page 1086 SUB-HEADING OF THE SUGAR BILL Sec6(1)(b) Composition of the Board,

Amend to read as follows:

Sec6(1)(b) five representatives from each electoral area as determined by the Cabinet Secretary nominated by growers apex body

JUSTIFICATION#1 provided in other laws:

Agriculture and Food Authority (AFA) Board members are nominated. The Sugar (Amendment) Bill 2005 proposed appointment to the Kenya Sugar Board by grower Association.

JUSTIFICATION#2 failure of past Kenya Sugar Board elections:

Lack of farmer register and independent electoral body to conduct fair election of the past Kenya Sugar Board directors; due to lack of accountability framework as directors were not answerable to farmers and did not care about their interests because they did not vote them.

JUSTIFICATION#2 geographical coverage of electoral areas;

With reduced number of directors, it is impractical for an aspirant campaign in the areas

PART III—LICENSING AND REGISTRATION

Page 1092: SUB-HEADING OF THE SUGAR BILL: Section 22: Registration of millers

Add additional sub-heading for registration of cane farmers after clause 22 to read as follows;

SUB-HEADING:- Registration of farmers,

Sec 22(1): Every sugarcane grower, for purposes of accessing economies of scale, shall have the freedom to —

- (a) register with an out-grower institution and any other organization representing the interests of sugar farmers;**
- (b) all out-grower institutions and any other organization representing the interests of sugar farmers shall register with sugarcane growers apex body of their choice that has capacity of representing their interests;**
- (c) all the grower apex body organizations will be registered by the Board using the guidelines duly designed by the Board for the purpose of identifying qualified body to participate in the nomination of its members to the sugar industry organs;**
- (d) the farmer register will be available at the out-grower institution, apex body Board offices.**

JUSTIFICATION#1 it is provided in other laws:

Registration of farmers is provided in the Crops Act 2013.

JUSTIFICATION#2 basis of identifying cane grower apex body:

This will provide a framework upon which the government would identify suitable and qualified apex body to work and collaborate with on a time to time basis.

JUSTIFICATION#3 improvement of efficiencies at the farm

It will ensure improved sustainability through creation of economies of scale. Improved logistics in terms of harvesting and transportation facilities. Assist in ensuring undertaking good cane husbandry—soil testing, applying recommendable input. Lowering of transaction costs as a result of bulk buying. Improved access to best available technology to improve production efficiencies and quality of products. Ensure that there are value adding and agro-processing facilities.

PART IV—ESTABLISHMENT OF KENYA RESEARCH INSTITUTE

Page 1095 SUB-HEADING OF THE SUGAR BILL Sec25 Management of the Institute

Amend to read;

Sec25(b) five representatives from each electoral area as determined by the Cabinet Secretary
nominated by growers apex body

See justification on the composition of the Kenya Sugar Board that replaces direct election with
nomination by the farmer apex body

PART V—APPOINTMENT OF CROP INSPECTORS

Page 1096: Delete the entire Part V of the Sugar Bill

JUSTIFICATION:

This is an outdated procedure and it can also be abused for rent-seeking

PART VI—FINANCIAL PROVISIONS

Page 1097: SUB-HEADING OF THE SUGAR BILL: Section 34 (1) Sugar Development Levy

To include levying of growers, amend to read as follows;

The Cabinet Secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar, a ten percent of CIF value on imported sugar, **cane delivered by growers of no less than shillings ten per ton**, to be known as Sugar Development Levy

JUSTIFICATION#1 **contribution by all stakeholders:**

All industry stakeholders should contribute to the funding kitty of the industry for sustainability as the best practice

JUSTIFICATION#2 **unsustainability of a consumer levy**

Depending on consumer levy as the only funding source for a sub-sector supporting livelihoods like sugar value chain is not sustainable

Page 1098: SUB-HEADING OF THE SUGAR BILL: Section 34 (7) Sugar Development Levy

To redistribute the funds Amend to read as follows;

Sec34. (7) The sugar development levy collected under subsection (2) on both domestic and imported sugar shall be apportioned as follows:—

- a) forty eight percent shall be applied by the Board of Trustees for cane development, value addition and price stabilization for sugar growers;
- b) nine percent shall be applied by the Board of Trustees in the furtherance or exercise of any function or powers of the Board and board of Trustees;
- c) twenty four percent shall be remitted directly to the Institute;
- d) fourteen percent shall be applied by the Board in the factory rehabilitation and maintenances;

JUSTIFICATION

The distribution is based on the Sugar Industry Stakeholders Taskforce Report 2019, Budgeted Implementation Matrix:

- Cane production, farm diversification initiatives and Pricing mechanism: 8,992B (48%)
- Research and Development 3,685B (20%)
- Price stabilization 3,250B (17%)
- Administration, compliance and regulations: 1,672B (9%)
- Sugar processing, rehabilitation, ICT Infrastructure, CTU: 1,007B (5%)

Add sub-section 34(9) to read as follows:

The sugar development levy collected under subsection (2) on cane delivered by cane growers shall be allocated and disbursed to the gazetted cane grower apex body for the furtherance of its objectives

JUSTIFICATION #1 Cost Reduction strategy:

Besides being a traditional membership support or best practice world over, it will result into cost reduction during farm operations. For example, it takes a farmer to spend a minimum of Kshs3,000 to deliver to the factory a tractor of 4-7 tons. This is illegal levy to get permit, extra payment to cane cutters, loaders and tractor driver. *Giving Ksh70.00 (Ksh10 X 7tons) to apex body instead of Kshs3,000 is a good business deal to growers.*

JUSTIFICATION #2 for efficient production of cane:

The resources will enable apex body to undertake the following roles for the benefit of growers;

- (a) Represent growers in sugarcane pricing committee

- (b) Represent farmers at the weighbridge
- (c) Organize farmers into block farming system,
- (d) develop cane development plan in conjunction with the millers,
- (e) develop cane harvesting and transport plan in conjunction with the millers,
- (f) organize for bulk procurement of farm inputs and services
- (g) Facilitate development and implementation of Sugar Industry Agreements between the growers and millers;
- (h) For research, advocacy, negotiation and farmers education

Page 1099: SUB-HEADING OF THE SUGAR BILL Sec35 Sugar Development Fund.

For prudent management of the fund, add additional clause 35(3)(4)(5)(6)(7) to read as follows;

35(3) The Fund established in sub-section(1) shall be managed by a Board of Trustees which shall consist of—

- (a) the Permanent secretary to the Treasury or a representative nominated by him in writing;
- (b) the Principal Secretary in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing;
- (c) the Chief Executive Officer of the Board;
- (d) 2 members representing sugarcane growers apex body
- (e) 1 member representing millers apex body
- (f) 2 members appointed by the Minister on the basis of their professional and managerial capacity;
- (g) the managing trustee, who shall be an ex officio member and the Secretary to the Board of trustees.

(4) The members of the Board of Trustees shall elect a chairman from amongst themselves.

(5) Every appointment under paragraph (3) shall be by name and by notice in the Gazette and shall be for a term of three years which shall be renewable once.

(6) No person shall be appointed as a Managing Trustee unless such a person holds a degree from a university recognized in Kenya and has at least five years' experience in financial management.

(7) The Managing Trustee shall be appointed by the Board through a competitive process and shall hold office for a period of three years which shall be renewable

JUSTIFICATION #1 Cost Reduction strategy:

By placing the administration of the Sugar Development Fund in the hands of a Board of Trustees with a specified mandate and fiduciary responsibilities, the purposes for which the Sugar Development Fund may be applied and promote good corporate governance.

JUSTIFICATION #2 the craped Sugar Development Fund for poorly managed:

Analysis of performance of the scraped Fund paints bad picture;

1. The Fund was mismanaged and the industry has nothing to show. The state of government mills is worse than before the establishment of the funds. Disbursement of trillions of shillings for factory rehabilitation and maintenance cannot be accounted for
2. Loans given without guarantee and due supervision to government mills were not refunded resulting into huge debts compounding into trillion of Kenyan shillings
3. Loan given to these mills were diverted to salary and paying other suppliers,
4. Reports on Out-grower companies; MOCO, BOCO, NOCO, MUSOCO, SOC, COC and WECO implicate former directors of KSB in mismanagement of loans advanced to these firms has not been acted upon;
5. SDF loans given to cane growers by AFC were recovered, whether the cane was harvested or not
6. All SDF loans given on credit to cane farmers were recovered but not submitted by millers or out-grower companies to the Board.

PART V—MISCELLANEOUS PROVISIONS

Page 1106: SUB-HEADING OF THE SUGAR BILL Sec 51 Safeguard measures

To introduce a committee for sugar import and export, amend add sec51(1) to read as follows;

27. (1) Subject to such regional and international trade agreements to which Kenya is a party, all sugar imports into the country shall be subject to the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Sugar Import and Export Committee comprising of;

- (a) chairman of Kenya Sugar Board;
- (b) the Secretary in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing;
- (c) the Principal Secretary in the Ministry for trade and industry or his representative nominated by him in writing;
- (d) two representatives nominated by Sugarcane Growers Apex Body in writing;
- (e) one representative nominated by Millers Apex Body in writing

JUSTIFICATION#1: involvement of stakeholders

The issue of uncoordinated sugar imports impacts negatively on key industry stakeholders, with growers and millers of sugar bearing the brunt. This makes their involvement in the management of sugar imports and export very critical.

JUSTIFICATION#2: conflict of interest

In good governance practice, the Board cannot be in charge of issuing the import license, supervising import, and reporting to itself.

Page 1108: SUB-HEADING OF THE SUGAR BILLB Sec 53(d) the sugar industry agreements

Amend by including the role of the sugarcane growers apex body to read;

Sec 53 (d): the functions to be executed by the Board and the sugarcane growers apex body in the execution of the agreement;

JUSTIFICATION: guaranteeing and witnessing of the agreement

Farmers are vulnerable and need the support of the apex body during implementation of the contract

Page 1108: SUB-HEADING OF THE SUGAR BILL Sec 54 Right of growers in a privatized company

To safeguard the shares of the farmers in a privatized sugar company, add additional sub-section to read as follows;

Sec 54(c) 51% grower shares shall be warehoused in an Out-growers Mutual Fund

JUSTIFICATION

Equity reserved for farmers will most likely be sold as soon as shares climb when trading opens after the Initial Public Offering, IPO

PART VI—PROVISIONS ON DELEGATED POWERS

Page 1109: SUB-HEADING OF THE SUGAR BILL Sec 57(2)(d) Regulations

Amend to read as follows:

Sec57(2)(d): the **management** of weighbridges

JUSTIFICATION:

We as farmers welcome the establishment of more weighbridges to promote weighing at the farm gate. But their management should include the participation of farmer representative

THIRD SCHEDULE

GUIDELINES FOR AGREEMENTS BETWEEN PARTIES IN THE SUGAR INDUSTRY

PART 2—ROLES OF INSTITUTIONS IN THE SUGAR INDUSTRY

Page 1115: SUB-HEADING OF THE SUGAR BILL Sec 4(d) The role of out-grower institutions

Emendment#1: replace the sub-heading of the Sugar Bill:

Amend by replacing to read;

The role of sugarcane growers apex body

This is a paradigm shift – the provision for ideal farmer organization

Page 1115: SUB-HEADING OF THE SUGAR BILL Sec 4 The role of out-grower institutions

~~Amend 4 and add other functions to read as follows~~

The functions and role of out-grower institutions include—

(h) effectively participating in lobbying for favorable Government policies in the industry;

(i) to jointly with millers, transport, and harvesting contractors to develop a cane establishment, transport and harvesting program;

(j) represent farmers at the weighbridge;

(k) represent the farmers at the industry organs and committees

JUSTIFICATION:

ensuring that farmer representation at the weighbridge, during planning and in industry organs

Page 1116: SUB-HEADING OF THE SUGAR BILL Sec 5(b) the role of the miller

Amend to read;

5(b) maintain and develop adequate milling capacity for sugar-cane planted on the basis of agreed planting plans with the sugarcane growers apex body;

Page 1116: SUB-HEADING OF THE SUGAR BILL Sec 5 the role of the miller

Add additional sub-heading after (5)(h) to read;

5(i) develop jointly with sugarcane growers apex body, cane establishment, harvesting, and transport program

JUSTIFICATION

To promote timely planting, eliminate delayed harvesting, and efficient transport system

Page 1117 PART3: SUGARCANE FIRES AND PRICING

Amendment #1: Amend to include insurance in the heading to read as follows;

PART3: INSURANCE, SUGARCANE FIRES AND PRICING

Delete entire sub-section (6):- Cane fires and replace with the following;

Sub-section 6: Sugarcane insurance and fires

Sec(6)(1) The Cabinet Secretary shall, in consultation with the Board, the county governments and sugarcane grower apex body make regulations on cane insurance and cane fires to cover, protect and compensate farmers from losses from negative effects of climate change and marketing;

JUSTIFICATION#1: opportunity for exploitation of farmers

Millers will use provision to frustrate and exploit us (farmers) despite the fact that best cane is burnt cane if it is harvested and milled in 2 days after harvesting as trash level lowest and can cutters work is eased at the field.

JUSTIFICATION#2: provision of insurance services

Insurance to cane farmers for cover and compensation losses due negative effects of climate change is missing in the industry

Page 1117: SUB-HEADING OF THE SUGAR BILL Sec7 Sugar Cane Pricing Committee.

Amend by adding (7)(4)(d)(e)

(d) Fair and Remunerative Price (FRP) which is a floor price which the farmers would receive even when sugar prices fall to a level which leads to prices lower than FRP;

(e) Fixed Division of Proceeds ratio 67% to growers and 33% to millers

JUSTIFICATION#1: Best practice in regards to Fair and Remunerative Price;

It is practiced in sugar regimes in cushioning farmers - in South Africa who have set a recoverable value RV and India where they set a floor price which the farmer would receive even when sugar prices fall very low

JUSTIFICATION#2: Best practice in regards to Fixed Division of Proceeds;

In South Africa, the fixed division proceeds if rated at ratio 64% to growers and 36% to millers, in India, it is 75% to growers and 25% to millers

JUSTIFICATION#3: Review of Sharing Ration 67% to growers and 33% to millers;

Sugar Stakeholders Taskforce Report, the cost of cane comprises 67% of the overall cost of production.

JUSTIFICATION#4: The history of cane payment;

In the period of 1981-1990 - greater emphasis was given to cane growers as they received 55% of the sugar revenue and the miller got 45%. In 1991 -200, the government policy shifted emphasis from grower to miller on average the growers received 48% of the sugar revenue and the miller 52%. From 2001 to date, the growers and miller have had equal share of the revenue at 50%. Price fluctuations has resulted in inadequate cane production forcing millers to operate below capacity.

Page 1118: SUB-HEADING OF THE SUGAR BILL Sec7(6) cane price review cycle.

Delete the entire sub-clause

JUSTIFICATION:

This is a malicious insert aimed at controlling the sugarcane prices contrary to free market economy.



COUNCIL OF GOVERNORS

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Our Ref: COG/6/48 Vol. 54

27th February, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear Mr. Njoroge

LETTER FORWARDING LEGISLATIVE MEMORANDUM ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

Reference is made to your request in the local dailies calling for submission of memoranda on the referenced Bill on or before 28th February, 2023.

The Council of Governors takes note of the importance of having a legal framework for the revitalization of the ailing sugar industry and welcomes the enactment of the sugar Bill into law.

In view of the above, we wish to forward for your consideration the legislative memoranda attached herewith on the **Sugar Bill (National Assembly Bill No. 34 of 2022)** for better implementation by the County Governments. Further, we request for a session with the Departmental Committee on Agriculture and Livestock to deliberate and agree on some of the critical provisions of the Bill.

Thank you for the continued support.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

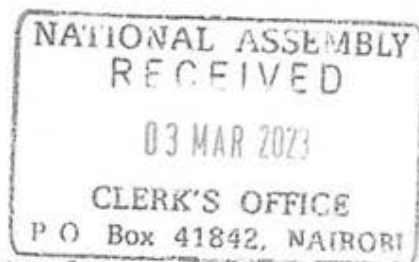
Copy: All Excellency Governors

NATIONAL ASSEMBLY
RECEIVED

All CECMs responsible for Agriculture

06 MAR 2023 All County Attorneys

Ms. Laureen Wasonga





COUNCIL OF GOVERNORS

1. The Council of Governors is the highest authority in the country.
2. It is composed of the Governors of the States and the Federal Capital Territory.
3. It has the power to make laws for the country.

1999



**LEGISLATIVE MEMORANDUM ON THE SUGAR BILL, 2019 (NATIONAL
ASSEMBLY BILLS NO. 34 OF 2022)**

TO

**THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON
AGRICULTURE**

FROM

**THE COUNCIL OF GOVERNORS
AGRICULTURE, LIVESTOCK AND COOPERATIVES COMMITTEE**

Introduction

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation are cognizant of the fact that agriculture is a fully devolved function under the Part 2 of the Fourth Schedule to the Constitution;

Aware of the need for coordinated action and approach in the revitalization of the ailing Sugar industry between the National, County Governments and other stakeholders for the benefit of the sugar cane farmers; and

Also aware that a Taskforce was established under the Gazette Notice No. 11711 of 9th November 2018 to examine the challenges ailing the industry and make appropriate recommendations for the development of the sub-sector presented its report to His Excellency the President of the Republic of Kenya for implementation and thus should guide the proposed legal framework.

Having reviewed the **Sugar Bill, 2022 (National Assembly Bill No. 34 of 2022)** in its entirety, the Council of Governors opines that the Bill as it is does not respect the Fourth Schedule of the Constitution in terms of the devolved nature of agriculture and thus recommends the following amendments for better implementation of the proposed Act by the County Governments in the revitalization of the ailing sugar sub-sector:

CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Clause 2. Interpretation	"licence" means a licence issued by the Board to a miller;	Amend by deleting definitions of the words "license" and replace with the following new definition and introduce definition of word "Regional Zones": "licence" means a licence issued by a County Government to a miller;	Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction.

<p>Clause 4: Functions of the Board</p>	<p>4. (2) Without prejudice to the generality of subsection (1), the Board shall —</p> <p>(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;</p> <p>(b) act as an intermediary between the industry and the Government;</p> <p>c) facilitate the flow of research findings to interested parties through the provision of effective extension services;</p> <p>(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;</p> <p>(e) facilitate the arbitration of disputes among interested parties;</p> <p>(f) facilitate the export of local sugar;</p> <p>(g) promote and encourage the use of environmentally friendly technologies in the industry;</p> <p>(h) provide advisory services to growers,</p>	<p>Amend amending clause 4(2) to read as follows:</p> <p><u>Functions of the Board</u></p> <p>4. (2) Without prejudice to the generality of subsection (1), the Board shall —</p> <p>(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;</p> <p>(b) act as an intermediary between the industry and the Government;</p> <p><u>c) establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate the flow of research findings to interested parties;</u></p> <p>(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;</p> <p>(e) facilitate the arbitration of disputes among interested parties;</p> <p>(f) facilitate the export of local sugar;</p> <p>(g) promote and encourage the use of environmentally</p>	<p>To align to the provisions of the Part 1 sections 1, 9, 29 and 32 of the Fourth Schedule to the Constitution, which stipulates the mandate of the national government as inter alia, setting and enforcement of standards, international trade and capacity building and technical assistance to counties. Development and regulation of the sugar sub-sector is a function fully devolved to County Governments.</p> <p>We further opine that the Bill as it is, does not respect the functional and institutional integrity of the county governments and as such should be amended accordingly.</p>
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	<p>out-grower institutions and millers;</p> <p>(i) facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines</p> <p>(j) represent the industry in such organizations as are relevant for the promotion of the industry;</p> <p>(k) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;</p> <p>(l) collect, collate and analyze industry statistics and maintain a data base for the industry;</p> <p>(m) licence sugar mills;</p> <p>(n) enforce and monitor compliance with standards along the value chain;</p> <p>(o) facilitate value addition and product diversification in the sugar sub-sector;</p> <p>(p) formulate and implement a strategic plan for the sugar sub-</p>	<p>friendly technologies in the industry;</p> <p>(h) <u>in collaboration with county governments</u>, facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.</p> <p>(i) represent the industry in such organizations as are relevant for the promotion of the industry;</p> <p>(j) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;</p> <p>(k) collect, collate and analyze industry statistics and maintain a data base for the industry;</p> <p>(l) enforce and monitor compliance with standards along the value chain;</p> <p>(m) facilitate value addition and product diversification in the sugar sub-sector;</p> <p>(n) <u>in consultation with county governments, formulate a national strategic plan for the sugar sub-sector at least every once every five years;</u></p> <p>(o) <u>in consultation with county governments, _____ formulate guidelines on an efficient and</u></p>	

	<p>sector at least every once every five years;</p> <p>(q) formulate guidelines on an efficient and economical transportation of sugar;</p> <p>(r) conduct local and international sugar market intelligence and advise stakeholders accordingly;</p> <p>(s) establish linkages with other government agencies and research institutions to enhance quality assurance and research;</p> <p>(t) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and</p> <p>(u) perform such other functions as may, from time to time, be assigned by the interested parties.</p>	<p><u>economical transportation of sugar;</u></p> <p>(p) conduct local and international sugar market intelligence and advise stakeholders accordingly;</p> <p>(q) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages;</p> <p>(r) <u>provide technical assistance and capacity building of the county governments in regulation of the sugar industry; and</u></p> <p>(s) perform such other functions as may, from time to time, be assigned by the interested parties.</p>	
5. functions of county governments	<p>5. the County Government shall—</p> <p>(a) issue sugar cane nursery certificates;</p> <p>(b) offer and coordinate extension services on sugar production and milling in the respective county;</p> <p>(c) in collaboration with the Board and law enforcement agencies,</p>	<p>Amend by deleting clause 5 and replace with the following new Clause 5:</p> <p><u>Functions of the County Government</u></p> <p>4(1). The County Governments through the <u>County Executive Committee Member</u> shall:</p>	<p>To align to the provisions of Part 2 sections 1 and 7 of the Fourth Schedule to the Constitution which stipulates that the agriculture and trade development and regulation of agriculture and trade excluding</p>

	<p>enforce regulations within the county;</p> <p>(d) monitor and report incidences of pests and disease outbreaks and take appropriate action in collaboration with the Board and other relevant government agencies; and</p> <p>(e) Establish an efficient road network for movement of sugarcane, delivery of other services and general development of the sugar industry.</p>	<p>(a) issue sugar cane nursery certificates;</p> <p>(b) <u>licence sugar mills and warehouses in the county;</u></p> <p>(c) <u>formulate and implement the county sugar sub-sector strategic plan;</u></p> <p>(d) <u>offer and coordinate the provision of advisory and extension services to growers, out-grower institutions and millers in the county;</u></p> <p>(e) Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties;</p> <p>(f) enforce county and national legislation on sugar industry code of practice and other industry standards;</p> <p>(g) in collaboration with the Board and law enforcement agencies, enforce of regulations within the county;</p> <p>(h) enforce policies and guidelines on corporate governance in growers' institutions and millers;</p>	<p>international trade are functions fully devolved to County Governments.</p> <p>Therefore, it is our considered opinion that in accordance the aforementioned provisions of the Constitution, the Board cannot licence sugar mills as this is trade development in the county but can only regulate imports and exports.</p>
		<p>(i) monitor and report of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies; and</p>	

		<p>(j) establish an efficient road network for the movement of sugar cane, delivery of other services and general development of the sugar industry.</p> <p>(k) <u>develop and regulate sugarcane growers institutions in accordance to this Act and any other relevant law.</u></p>	
<p>PART III LICENSING AND REGISTRATION</p> <p>18. Requirement of a license to operate a mill</p>	<p>18 (1) A person shall not operate a sugar mill or a 7iggery mill unless he or she is a holder of a current licence issued by the Board upon recommendation by the relevant County Government for that purpose</p>	<p>Amend clause 18 to read as follows:</p> <p><u>18 (1) A person shall not operate a sugar mill, a 7iggery mill or warehouse sugar unless he or she is a holder of a valid licence issued by the relevant County Government for that purpose.</u></p>	<p>As explained elsewhere in this document, under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses.</p>
<p>19: Issue of licence and licence fees</p>	<p>19. (1) A person shall apply to the Board for a licence to operate a sugar mill or a 7iggery mill in the prescribed form.</p> <p>(2) The Board shall not issue a licence under this Act unless —</p> <p>(a) ...</p>	<p>Amend by deleting the clause 19(1) (2) and (5) and replace with the following new Clause 19(1) and (2):</p> <p><u>19. (1) A person shall apply to the County Executive Committee Member for a licence to operate a sugar mill, warehouse or a 7iggery mill in the prescribed form and</u></p>	<p>Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County</p>

	<p>(5) There shall be payable for issue of a license, such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.</p>	<p>accompanied by the prescribed fee.</p> <p>(2) <u>The County Executive Committee Member shall not issue a licence under this Act unless —</u></p> <p>(a)...</p> <p>© <u>it is satisfied that the applicant has paid the prescribed fee and obtained a certificate of registration and compliance from the Board.</u></p>	<p>Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses which is under the purview of the National Government under the Fourth Schedule.</p> <p>We further recommend that the Board issues <u>certificate of compliance</u> to all the sugar mills, jiggery or warehouses before they are license by the County Governments.</p>
25. Management of the Institute	<p>25. The Management of the Institute shall vest in a Board which shall consist of</p> <p>(a) A chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;</p> <p>(b) five persons elected by growers from each of the</p>	<p>Amend to include a representative of the County Governments as follows:</p> <p>(c) <u>One person with knowledge and experience in the agricultural sector nominated by the Council of County Governors appointed by the Cabinet Secretary;</u></p>	<p>The County governments are integral in the implementations of the research proposals in the sector, it is therefore imperative they are represented in the Board.</p>

	sugar catchment areas under the First Schedule;		
29. Appointment of crop inspectors	<p>29(1) The Board may appoint qualified persons to be crop inspectors for purposes of this Act.</p> <p>(2) For purposes of subsection (1), the Board may, by regulations prescribe the qualifications for appointment as a crop inspector.</p>	<p>Amend to read as follows:</p> <p>29(1) <u>The Board and County Executive Committee Member</u> may appoint qualified persons to be crop inspectors for purposes of this Act.</p> <p>(2) <u>For purposes of subsection (1), the Board may in consultation with County Executive Committee Members,</u> by regulations prescribe the qualifications for appointment as a crop inspector.</p>	<p>To provide for appointment of crop inspectors by the County Governments for purposes of effective implementation of the Act.</p>
34. Sugar Development Levy	<p>34(7) the Sugar Development Levy collected under subsection (2) shall be apportioned as follows:</p> <p>(a) Fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;</p> <p>(b) Twenty per centum shall be applied by Board in the furtherance or exercise of any function or power of the Board;</p> <p>(c) Twenty per centum shall be directly remitted to the institute; and</p> <p>(d) Forty five per centum shall be</p>	<p>Amend clause 34(7)(d) to read as follows:</p> <p>34(7) the Sugar Development Levy collected under subsection (2) shall be apportioned as follows:</p> <p>(a)...</p> <p>(d) <u>Forty five per centum shall be remitted directly to the sugar growing counties on a pro rata basis to be applied for infrastructure development in the sugar subsector.</u></p>	<p>To align to the provision of the Fourth Schedule to the Constitution which bestows upon the County Governments with the responsibility of regulation and development of Agriculture, trade, county transport among others. Infrastructure development in the sugar subsector is therefore the responsibility of the respective County Governments hence the Fund should be appropriated to them.</p>

	infrastructure development in the sugar subsector on a pro rata basis.		
57: Regulations	57. (1) The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act.	Amend to read as follows: 57. (1) <u>The Cabinet Secretary, in consultation with the Board and County Governments</u> may make regulations generally for the better carrying into effect of the provisions of this Act.	The process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.

Conclusion

The centrality of devolution in the agriculture sector is something that cannot be wished away in the revitalization of the sugar industry and as such it should be emphasized in the Sugar Bill, 2019. Regulation and development of agriculture and trade under the Fourth schedule to the Constitution means that the licensing of sugar millers and warehouses except those dealing with imports and exports should be done at the County level by the respective County Government and the information shared with the Board for purposes of National statistics.

We therefore urge the National Assembly to be guided by the Constitution and the Sugar Task Force Report, 2019 in this important process of development of the sugar legislation that will support the National Government, County Governments and all the stakeholders in the sugar industry in this noble process of revitalization.

Hon. Wadhwa

The Sugar Bill, 2022

1. The Sugar Bill 2022 seeks to reinstate the Sugar Act which was repealed through the enactment of the Crops Act 2013.
2. The Sugar Bill 2022, seeks to restore the role of the Kenya Sugar Board (KSB) in regulating, developing, and promoting the sugar industry as well as facilitating equitable access to the benefits derived from the industry.
3. The Bill also proposed the setting up of the Kenya Sugar Research Institute and the Sugar Arbitration Tribunal.
4. Upon enactment, Sugar Bill 2022 will restore the KSB's mandate that was a decade ago merged with other regulators overseeing different crops including the coffee and tea boards, to form the Agriculture and Food Authority (AFA).
5. Since 2013, ineffective stewardship of the sugar industry by the Agriculture and Food Authority (AFA) has contributed to the following challenges bedeviling the sugar industry;
 - a) Non-payment of farmers by public sugar companies due to huge debt portfolio
 - b) Increased cost of sugar production (obsolete technology)
 - c) Declining land acreage under ^{cane}sugar and small-scale farming that hampers the farmers from enjoying economies of scale.
 - d) Lack of markets for sugar
 - e) Failure to control imports and exports of sugar and unfavorable market competition for cheaper sugar produced within COMESA countries and imports from other nations have led to higher inefficiencies that undermined the viability of the sector.
 - f) Poor management of sugar companies
 - g) Lack of research and cane development initiatives
 - h) Poor maintenance of state-owned milling factories, which still run on ageing machines
6. The Bill proposes the following composition of the KSB:
 - a) Five representatives elected by growers
 - b) One representative elected by millers,
 - c) The Principal Secretary (PS) for the Ministry of Agriculture
 - d) The Treasury PS.
 - e) One person nominated by the Council of Governors
 - * f) Non-executive chairperson coming from among the representative of growers on the board. ?



KINOTI & KIBE

Co. Advocates

COMMISSIONERS FOR OATHS & NOTARIES PUBLIC

Our Ref: KK/SB/WKSCL/23

21st March, 2023

Your Ref: NA/DDC/A&L/2023/008

The Clerk to the National Assembly,
Office of the Clerk,
Parliament Building,
P.O Box 41842-00100,
Nairobi.

"Advance Copy by Email"

Dear Sir,

RE: STAKEHOLDER ENGAGEMENT ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022) BY THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

Refer to the above matter and particularly your letter dated 9th March, 2023 addressed to select stakeholders, a copy of which is enclosed herewith for your ease of reference.

We write this letter on behalf of our client, West Kenyan Sugar Company Ltd and Sukari Sugar Company Ltd who have instructed us to address you as follows.

Our clients are major stakeholders in Kenya's Sugar Industry with a direct stake on the Sugar Bill, 2022 which is currently the subject matter of the Departmental Committee on Agriculture and Livestock. Our clients are aware that this Bill is the successor of the Sugar Bill, 2019 which was passed by the National Assembly on 11th November, 2021 and thereafter presented to the Senate in accordance with Standing Order 142 of the National Assembly Standing Orders. Before the relevant committees of both Houses, our clients presented their views but in the end the Sugar Bill, 2019 was not enacted reportedly due to lapse of parliamentary term.

In your letter dated 9th March, 2023 our clients have observed that various stakeholders have been invited for engagement with the esteemed departmental committee. Our clients have instructed us to notify you, as we hereby do, that they wish to be invited and to participate in the said stakeholders engagement scheduled for Friday, 24th March, 2023. In order to do so, our clients will comply with the directions contained in your letter dated 9th March, 2023 as they await your formal invitation and allocation of time slot to make their presentation.

In view of the above, our clients would be pleased to be given an opportunity to make their presentation before the Committee. We thank you in advance.

Yours faithfully,
KINOTI & KIBE CO.
ADVOCATES



KIBE MUNGAI

Cc: *The Director*
Sukari Sugar Company Ltd
Ndhiwa

Cc: *The Managing Director*
West Kenya Sugar Co. Ltd
Kakamega

SUBMISSIONS BY WEST KENYA SUGAR COMPANY LIMITED AND SUKARI SUGAR COMPANY ON THE
SUGAR BILL, 2022

I. INTRODUCTION

1. In his Memorandum of objects and Reasons for the Sugar Bill, 2022 Hon. Emmanuel Wangwe (MP) states, inter-alia, as follows:-

The principal object of the Bill is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill shall restore the roles of the Kenya Sugar Board currently undertaken the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Since 2013, ineffective stewardship of the sugar industry by the Agriculture and Food Authority has contributed to—

- (a) non-payment of farmers by public sugar companies;*
- (b) increased costs of sugar production;*
- (c) declining land acreage under sugar;*
- (d) lack of markets for sugar;*
- (e) failure to control imports and exports of sugar;*
- (f) poor management of sugar companies; and*
- (g) lack of research and cane development initiatives.*

The reestablishment of the Kenya Sugar Board, the Sugar Development Levy and the Sugar Development Fund and the establishment of the Kenya Sugar Research Institute shall address these challenges.

2. Admittedly, Kenya's Sugar Industry has been facing many challenges poor performance and failures but it is simplistic either to blame the Agriculture and Food Authority (AFA) for ineffective leadership for them or to purport that the re-establishment of the Kenya Sugar Board, the Sugar Development Levy and the Sugar Development Fund as the panacea or automatic solution to these

challenges. There are three broad reasons why the reason given for re-enactment of the Sugar Act, 2001 will not be the answer to the myriad challenges facing Kenya's sugar industry.

3. First, under the Crops Act, 2013 under which AfA was established as the regulator in the agriculture and food sectors, and the Sugar Directorate established to help AfA in regulating the sub-sector, no stretch of the imagination can justify the blame (above) attributed to AfA's "ineffective leadership" for the challenges facing the sugar industry. In fact under the Crops Act, AfA is not directly or indirectly responsible for or involved in the seven challenges/problems facing the sugar industry enumerated in the Memorandum of the Sugar Bill, 2022.

4. Secondly, the clamour for re-introduction of the Sugar Act, 2001 and its attendant governance institutions ignores the constitutional necessity that informed its repeal. For avoidance of doubt, the Crops Act, 2013 and the Agriculture and Food Authority Act, 2013 were enacted as a result of the promulgation of the Constitution of Kenya on 27th August, 2010. Pursuant to Article 186(1) and the Fourth Schedule, the National Government is allocated the function of Agricultural Policy whilst County Governments have been allocated the functions and powers in respect of agriculture, including:-

- (a) crop and animal husbandry;*
- (b) livestock sale yards;*
- (c) county abattoirs;*
- (d) plant and animal disease control; and*
- (e) fisheries.*

Before the promulgation of the current Constitution in 2010 various organs and bodies within the agriculture sector used to act independently but there was need to harmonize the operations of these organs and remove the bureaucracy. Article 186(1) and the Fourth Schedule of the Constitution, 2010 separated functions to be performed by the National Government and what was to be

performed by the County Governments. According to the Fourth Schedule of the Constitution, the National Government is mandated to develop a national agriculture and veterinary policy, national standards and norms, regulations for international trade as well as capacity building for County Governments. Every other function in the sector was to be transferred to the County Government. The above mentioned formed the basis for formulation and enactment of the Agricultural and Food Authority Act and the Crops Act 2013. Therefore one of the key reasons for repealing the Sugar Act 2001 was to ensure the regulation of the sugar sub-sector was aligned with the constitutional provisions of having key aspects of the Agriculture sector devolved. Therefore re-enactment of the Sugar Act 2001 contravenes Article 186(1) and Schedule 4 of the Constitution as it does not adequately recognize the proper role to be played by the County Governments and it vests majority of powers and roles in the sugar sector to the National Government yet Schedule 4 is very express in its provision.

5. Thirdly, in paragraph 69 of the Report titled *The Crisis Facing the Sugar Industry in Kenya* dated March, 2015 the Agriculture Committee of the National Assembly lists the following as the Challenges facing the Sugar Industry in Kenya:-

- (a) Poaching of sugarcane among sugar millers;
- (b) High cost of production;
- (c) Field and factory inefficiencies;
- (d) Corruption and impunity;
- (e) Lack of capital to modernize and automate the mills;
- (f) Fast decreasing land sizes and loss of soil fertilities; and
- (g) Failure by the regulator to properly manage and regulate the sector

6. In our considered view, the fundamental problem facing Kenya's sugar industry revolve around perennial shortage of sugar cane which manifests itself through high cost of production, field and factory inefficiencies and frequent bankruptcy of state-owned

sugar mills. Accordingly by addressing the issue of cane development, majority of these other secondary problems would be easily addressed.

7. Section 18 of the Sugar Act, 2001 empowered the Minister in consultation with the Board, by order in the Gazette, to impose the Sugar Development Levy (SDL) on domestic and imported sugar. However, under Section 18(6) the Board had a broad discretion to “apply the money received under this section for the furtherance of the objects of the Board”. Available records show that the bulk of the money collected as SDL was not used for purposes of cane development resulting into stagnation of growth in this subsector.

8. Against this backdrop Clause 34(7) of the Sugar Bill, 2022 has apportioned the Sugar Levy as follows:-

(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—

- (a) fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;*
- (b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;*
- (c) twenty per centum shall be remitted directly to the Institute; and*
- (d) forty five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.*

7. The proposed apportionment of the levy under Clause 34(6) is problematic and unlawful in four major respects:-

- a) It does not make any apportionment to cane development which is the main justification for this levy. At least 75 per cent of the SDL should be apportioned for cane development in our considered view.
- b) The apportionment for income or price stabilization for sugar growers is too large. Further, if farmers are adequately supported to grow enough cane there will be no need for income or price stabilization for sugar growers.

- c) The apportionment to the Board and the Sugar Research Foundation is unreasonably high given the potential amount to be collected under this levy.
- d) The apportionment for infrastructure development in the sugar growing areas is not justified given that the Kenya Roads Act and the Fourth Schedule of the Constitution have already provided for elaborate legal and financial framework for roads development under all classes.
9. Bearing the above in mind, our clients have proposed an alternative apportionment in order that this important fund can meet its purpose.
10. The cumulative effect of the foregoing is that the Sugar Bill, 2022 is not only founded on a simplistic diagnosis of the serious problems facing the sugar sub-sector but, more importantly, the answers and prescriptions it gives for them are woefully inadequate and potentially puts the sector into a path laden with legal landmines. Notwithstanding the above concerns we nevertheless wish to try and propose amendments to the Sugar Bill, 2022 to make it conform with the current constitutional dispensation and to make it more effective in dealing with the serious challenges facing the sugar subsector.

II. PROPOSED AMENDMENTS TO SUGAR BILL, 2022

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PART 1	PRELIMINARY	N/A	<p>1. Introduce Clause 3 to provide as follows on the proposal objective of the Bill.</p> <p>3. Objects and purposes of the Act</p> <p>The objective of this Act is to accelerate the growth and development of the sugar sub-sector, enhance productivity and incomes of</p>	<p>1) To elaborate in clear terms the objects and purposes of the Act.</p> <p>2) To make it clear the standards and ideals to which the sugar sub-sector is expected to uphold and realize.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
			<p>farmers, improve investment climate and efficiency of sugar sub-sector through promotion of the production, processing, marketing, and distribution of sugarcane in suitable areas of the country and in particular to—</p> <p>(a) circumvent unnecessary regulatory bureaucracy in the sugar subsector;</p> <p>(b) reduce unnecessary levies, taxes or other barriers to free movement of sugar products and provide for a rationalized taxation system;</p> <p>(c) reduce unnecessary regulation or over-regulation of the sugar sub-sector;</p> <p>(d) reduce duplication and overlap of functions among institutions involved in the regulation of sugar sub-sector;</p> <p>(e) promote competitiveness in the sugar subsector; and</p> <p>(f) attract and promote private investment in sugar sub-sector.</p> <p>2. Introduce Clause 4 to provide as follows</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
			<p>on the role of County Governments.</p> <p>4. Role of national and county governments in development of sugarcane</p> <p>(1) Each county government shall within its area of jurisdiction be responsible, for agricultural matters concerning sugarcane in accordance with Part 2 of Fourth Schedule to the Constitution.</p> <p>(2) The national government shall, in accordance with Part 1 of section 29 of the Fourth Schedule to the Constitution, be responsible for agricultural policy and for assisting the county governments on agricultural matters concerning sugarcane.</p> <p>(3) Each county government shall, for purposes of ensuring uniformity and national standards in the sugar sub-sector, through its legislation and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary on the advice of the Board under this Act or any other written law.</p> <p>Any action required under this Act to be</p>	<p>a) To ensure that the devolved system of government and attendant devolution of agriculture is recognized.</p> <p>b) To ensure the smooth regulation of the sugar sub-sector taking to account the Fourth Schedule of the Constitution.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
			done by the county government shall be deemed to have been done if done by an officer of the county government authorised by that government in that behalf.	
Clause 3	Functions of the Board	4. (1) The Board shall— (a) regulate, develop and promote the sugar industry; (b) co-ordinate the activities of individuals and organizations within the industry; and (c) facilitate equitable access to the benefits and resources of the industry by all interested parties.	Amend Clause 4(1) to introduce paragraphs (d) and (e) to provide as follows:- (d) advise the national government and the county governments on agricultural levies for purposes of planning, enhancing harmony and equity in the sugar sub-sector. (e) carry out such other functions as may be assigned to it by this Act, the Crops Act, the Agriculture and Food Authority Act and any written law while respecting the roles of the two levels of governments. (f) Administer and manage the Sugar Industry Contributory Development Fund Established under this Act.	To capture more concisely the expanded mandate of the Board.
Clause 6	Composition of	6. (1) The Board shall comprise— (a) a non-executive	Amend Clause 5(1) by deleting Clause 5(1) paragraph (c) and substituting therefor the following paragraph:-	1) The proposed composition of the Board is not only skewed-up but also retrogressive. Basically the board will have ten (10) members out of

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
	the Board	<p>Chairperson elected by the Board from among the representatives of growers on the Board and appointed by the Cabinet Secretary;</p> <p>(b) five representatives elected by growers from each sugar catchment area as per the First Schedule;</p> <p>(c) one representative elected by sugar millers who is knowledgeable in sugar technology and value addition;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for matters relating agriculture or a representative nominated by the Principal Secretary in writing;</p> <p>(e) one person nominated by the Council of County Governors who is</p>	<p>(c) Four representatives of millers elected by millers and appointed by the Cabinet Secretary;</p> <p>Provided that any miller commanding at least 20 per cent of the domestic sugar production shall be represented on the Board as of right.</p>	<p>which five will represent growers whilst two(2) will represent the National Government. The millers will be represented by one representative the same as the Council of County Governors whilst the Chief Executive of the Board shall be appointed by the Board although there is no express requirement of competitive recruitment as required by the Constitution.</p> <p>2) From the standpoint of devolution, it is clear that relevant County Governments will have no significant role or impact in the sugar sector in the event of the Sugar Bill being enacted. Similarly from the standpoint of sugar millers that have invested billions in the industry representation by one person is certainly inadequate and there is no clear logic for the Board being growers-led given their transient and disorganized stake in the sugar</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>knowledgeable in extension services and management of farmer institutions;</p> <p>(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;</p> <p>(g) the Chief Executive of the Board appointed under section 14 who shall be an ex-officio member and the secretary to the Board.</p>		<p>Sector. Moreover, given that the majority of sugar millers are privately owned it is disingenuous to provide for a legal framework that does not take this reality into account.</p> <p>3) Furthermore, good corporate principles and practise require that representation of sugar millers on the Board or any Committee must be based on their respective size or levels of production otherwise the value of such representation will be negated. To be sure this is the principle that underpins representation in a board of directors under the Companies Act and it would help to acknowledge the same. For starters it should be noted that even under the repealed Sugar Act, 2001 the millers had three representatives. This number should be increased rather than reduced</p>
PART III	LICENSING AND	Clauses 18, 19, 20, 21 and	Amend Part III (Clauses 19, 20, 21 and 22) by deleting it and replacing it with the following	1) The Crops Act come into force to harmonize the licensing and

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
	REGISTRATION	<p>22 that provide as follows:</p> <p>18 licence to operate.</p> <p>(1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence issued by the Board upon recommendation by the relevant County Government for that purpose.</p> <p>(2) A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or to a fine not</p>	<p>PART III on taxation, registration licensing:-</p> <p>16. Registration of sugarcane dealers</p> <p>(1) Every dealer in sugarcane shall register with the Board.</p> <p>(2) A person shall not deal in sugarcane unless the person is registered in accordance with this Act.</p> <p>(3) The Cabinet Secretary shall, in consultation with the relevant county executive committee member responsible for agriculture, prescribe regulations providing for the procedure for registration of sugar dealers and the regulations shall also set out the appeal process in case of refusal or denial of registration.</p> <p>(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p>17. Taxation of Sugarcane</p>	<p>registration process across the agricultural sector and remove the unnecessary bureaucracy.</p> <p>2) The Sugar Bill proposes a process that is different from the already established process in the Crops Act, a process that has Constitutional underpinning as it gives certain roles to the County Government.</p> <p>3) The licensing process in the Bill has not provided for public participation whereas the Crops Act had provided for the same by virtue of publishing the application in a gazette and inviting objection to the grant of the license.</p> <p>4) Further the process proposed in the bill does not provide for an appeal process which amounts to contravention of Article 47 and 165 of the Constitution.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>exceeding ten million shillings, whichever is the higher, or to imprisonment for a term not exceeding five years, or to both. Issue of licence 19 and licence fees . .</p> <p>(1) A person shall apply to the Board for a licence to operate a sugar mill or a jaggery mill in the prescribed form.</p> <p>(2) The Board shall not issue a licence under this Act unless</p> <p>(a) it is of the opinion that the applicant is a fit and proper person to hold such a licence; and</p> <p>(b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him conduct business or that he</p>	<p>(1) Pursuant to Article 209 of the Constitution, only the national government may impose, in relation to sugarcane—</p> <p>(a) income tax;</p> <p>(b) value-added tax;</p> <p>(c) customs duties and other duties on import of agricultural and aquatic products; and</p> <p>(d) excise duty.</p> <p>(2) A county government may, pursuant to the Fourth Schedule of the Constitution, impose fees for—</p> <p>(a) development of sugarcane within the county;</p> <p>(b) development and regulation of sugarcane markets within the county;</p> <p>(c) issuance of trade licences to any person trading in sugarcane within the county; and</p> <p>(d) issuance of licenses for cooperative societies dealing with sugarcane within the county.</p> <p>(3) The fees imposed by a county</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>has, amongst his staff. The person with such knowledge and experience.</p> <p>(3) Every licence shall specify the premises upon which the milling of sugar may be carried on.</p> <p>(4) Every licence shall, unless earlier revoked, expire on the 30th June next following the date of issue.</p> <p>(5) There shall be payable for the issue of a licence, such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.</p> <p>(6) An application for the renewal of a licence shall be made to the Board not later than the 1st June in the year in which the current</p>	<p>government under subsection (2) shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.</p> <p>(4) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, 2012 (No. 2 of 2012), put in place mechanism to avoid double taxation of sugarcane and its products by the two levels of governments.</p> <p>18. Manufacturing licence</p> <p>(1) A person shall not manufacture or process sugarcane product for sale except under and in accordance with a licence issued under this Act.</p> <p>(2) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee.</p> <p>(3) The Board may, after consultation</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>licence is due to expire.</p> <p>(7) The issuance of a licence to an applicant under this section shall not be withheld without reasonable cause.</p> <p>(8) A person shall not import or export sugar without a valid licence issued by the Board.</p> <p>20. (1) A person who imports sugar into Kenya shall, sugar import, prior to importation—</p> <p>(a) provide evidence that the sugar they intend to import is not available in the local market;</p> <p>(b) provide a sample of the sugar to be imported and pre-import verification certificate from the country</p>	<p>with the county executive—</p> <p>(a) issue a manufacturing licence, in accordance with this Act;</p> <p>(b) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;</p> <p>(c) cancel, vary or suspend any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing or processing entities.</p> <p>(4) A manufacturing licence issued under this section shall, in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending sugarcane.</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>of origin; and</p> <p>(c) obtain pre-import approval from the Board.</p> <p>(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both. (3) This section shall apply to importation of sugar cane.</p> <p>21. (1) A licenced sugar miller shall be licenced by the sugar Board to carry out the business of processing industrial sugar.</p> <p>(2) The Board shall regulate the processing of industrial sugar.</p> <p>22. (1) A person shall not</p>	<p>19. Illegal manufacture, possession, etc.</p> <p>(1) A person who—</p> <p>(a) manufactures sugarcane for sale in contravention of this Act;</p> <p>(b) buys, sells, offers for sale, transports or has possession of sugarcane which to the person's knowledge or belief—</p> <p>(i) has been grown, manufactured or processed otherwise than in accordance with this Act;</p> <p>(ii) is from a non-registered grower or dealer of sugarcane, commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.</p> <p>(2) If a person is in possession or has control of sugar cane for which the person is unable to account to the</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>conduct the business of a Registration of miller unless he or she is registered by the Board and the premises in which the business is conducted is specified in the register.</p> <p>(2) The Board shall issue to every miller registered under this section, a certificate of registration specifying the premises at which milling may be carried on by the miller.</p> <p>(3) No fee shall be charged in respect of any registration or certification of registration made or issued under this section.</p> <p>(4) In issuing certificates of registration under subsection (3), the Board shall satisfy itself that the premises upon which</p>	<p>satisfaction of a person authorized under this Act, such scheduled crop shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.</p> <p>20. Issue of licences</p> <p>(1) The Board shall issue licenses to applicants subject to such lawful conditions as the authority may determine.</p> <p>(2) Every licence shall specify the premises upon which the business specified in the licence may be carried on.</p> <p>(3) Licenses issued under this Act shall remain in force until the thirtieth of June next following the date of issue, unless earlier cancelled.</p> <p>(4) There shall be payable for the issue of licenses under this Act such fees as the licensing authority, after consultation with the Cabinet Secretary or county executive as the case may be, prescribe.</p>	

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		<p>milling may be carried out meets the environmental standards set by the National Environmental Management Authority and the miller has been issued with a certificate of safety by the relevant county government.</p> <p>(5) A miller may offer extension or other services to growers.</p> <p>(6) Every miller registered under this section shall conduct business in accordance with this Act and any regulations made thereunder.</p> <p>(7) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to imprisonment for a term</p>	<p>(5) The total fees charged under subsection (4) shall depend on the turnover of the dealer and shall not overburden small scale dealers and the cumulative total of all levies and fees payable shall in any event not exceed ten per cent of the gate value of the agricultural or aquatic product.</p> <p>(6) The licensing authority shall, at least thirty days before granting a licence under this Act, give notice of the proposed grant in the Gazette and in such other manner as the authority may determine.</p> <p>(7) The notice referred to in subsection (6) shall—</p> <p>(a) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;</p> <p>(b) state the purpose for the proposed licence and indicate the date such licence is proposed to be issued to the successful applicant; and</p>	

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		not exceeding five years or to a fine not exceeding ten million shillings or to both.	(c) invite objections to the proposed grant of licence and direct that such objections be lodged with the Authority within fourteen days next following the date of the notice.	
			(8) The licensing authority may after considering the objections, if any, made under this section, grant the licence applied for, subject to such terms and conditions as may be specified therein.	
			(9) The issuance of a licence to an applicant under this Act shall not be withheld without reasonable cause.	
			(10) A licence issued under this Act shall not be transferable.	
			21. Application for renewal of a licence	
			An application for the renewal of a licence under this Act shall be made to the Board not later than the first day of the month of June in which the current licence is due to expire but, notwithstanding the foregoing, a late application may be made upon payment of a	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
			<p>late application fee as may be prescribed by the Board.</p> <p>22. Conditions of a licence</p> <p>(1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.</p> <p>(2) The Board may require that any class of licenses issued to a dealer will be subject to the condition that the dealer engages in actual growing of any given crop.</p> <p>(3) The Board may at any time during the validity of a licence—</p> <p>(a) vary the conditions of the licence; or</p> <p>(b) impose conditions or further conditions on the licence.</p> <p>23. Revocation or alteration of a licence</p> <p>The Board may revoke, alter or suspend a licence issued under this Act if in its opinion—</p>	

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			<p>(a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder; or</p> <p>(b) a condition of the licence has been contravened or not complied with.</p> <p>24. Surrender of licence</p> <p>(1) The holder of a licence which is revoked shall immediately surrender it to the Board.</p> <p>(2) A licence holder may at any time surrender the licence to the Board and the licence shall cease to have effect forthwith.</p> <p>25. Appeals</p> <p>(1) An applicant for or holder of a licence who is aggrieved by a decision of the licensing authority on or in respect of—</p> <p>(a) the grant, refusal, renewal, variation or revocation; or</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PROPOSED PART VII	Rights and Obligations of Farmers and Sugar Millers	After Part V of the Bill	<p>(b) the conditions imposed on the grant, renewal or variation, of a licence, may appeal to the Cabinet Secretary.</p> <p>(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision and determined within 60 days of lodging.</p> <p>Introduce a new Part V on the Rights and Obligations of Farmers and Sugar Millers to provide as follows:-</p> <p>38. (1) For purposes of ensuring effective participation of farmers in the governance of the sugar sub-sector in Kenya, there shall be close consultation with all registered farmers' organisations in the development of policies or regulations and before the making of any major decision that has effect on the sugar sub-sector.</p> <p>(2) The Cabinet Secretary shall make</p>	<p>1) To ensure better protection of the interests and rights of the main stakeholders.</p> <p>2) To ensure that freedom to contract is protected and internal democracy promoted.</p> <p>3) To eliminate or reduce incidences of arbitrary regulation and abuse of discretion by relevant law enforcers.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
			<p>rules-</p> <p>(a) to ensure that any agreements, including any agreement with regard to contributions by farmers to their organizations, entered into between the farmers and the farmers' organizations to which such farmers belong shall be respected by any third parties; and</p> <p>(b) to provide the procedures for internal democracy in the sugar farmers' organizations</p> <p>39. Subject to Regulations made under this Act in relation to registration of Sugar growers, any farmer shall have the freedom to grow sugarcane on his or her land and to enter into contract with any sugar dealer or sugar miller for sale of his or her produce.</p> <p>40. The National Government, the County Governments, the Board and any other person or authority are hereby prohibited from enacting, making, formulating or implementing any law,</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
			<p>regulation, practise or policy to provide for, require or promote the establishment of geographical zones for development and procurement of sugarcane from farmers.</p> <p>41. The grant of a licence to a sugar miller confers upon it the right to access sugarcane from farmers across the country on the principle of freedom of contract in addition to the rights and privileges envisaged in Sections 18 – 25 of this Act or any other written law.</p> <p>42. Subject to relevant Regulations made by the Board, every contributing sugar farmer, dealer and sugar miller have the right to benefit by application for funds in the Sugar Development Contributory Fund for purposes of cane development and investment in any activity in the value-chain in the sugar industry.</p> <p>43. In the discharge of its functions under this Act or any other written law, the Board shall ensure that there are no dominant undertakings in the sugar sub-sector as defined in section 23 of the Competition Act.</p>	

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Clause 34(1)	Sugar Development Levy	34. (1) The Cabinet Secretary shall, in consultation Sugar with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.	Amend Clause 34(1) on Sugar Development Levy by deleting it and replacing it with the following new clause:- 34. (1) The Cabinet Secretary shall, in consultation Sugar with the Board, by order in the Gazette, impose a levy on domestic sugar not exceeding two per centum of the value and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.	1) To limit the maximum levy that may be imposed to two per centum in order to prevent imposition of exorbitant or arbitrary amount of levy. 2) To ensure that the levy is used for the main reason of its imposition namely cane development which is the fundamental factor that will turn around the fortunes of Kenya's sugar industry.
		(2) The levy shall be payable at such rate as may be specified in the order. (3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.	Clause 34 should be further amended as follows:- a) To delete sub-Clause 2 and replace it with the following new clause: 2) The levy shall be charged at such rate as may be described in the order provided that it shall not exceed two per centum of the value of sugar. b) To delete sub-Clause 6 and replace it with the following new clause:- (6) The sugar levy collected under subsection (2) shall be apportioned as follows —	4) Similar to the Sugar Act, 2001, it is critical to note that the Sugar Bill, 2022 does not specify the purpose and activities for using the monies of the Fund which means that the money can be used for anything that the Board pleases. 5) Before the SDL was abolished following the repeal of the Sugar Act, 2001 it was common knowledge that all too often funds of SDL were used to pay the debts of government owned mills, finance repairs of

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.</p> <p>(5) If a person fails to pay any amount payable by him her by way of the levy on or before the date prescribed by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.</p> <p>(6) The Board shall apply the money received under this section for the furtherance of the objects of the Board; Or</p> <p>(7) The Sugar Development Levy collected under</p>	<p>(a) Seventy Five per centum shall be applied by the Board towards cane development initiatives by cane growers and millers.</p> <p>(b) Ten per centum shall be applied by the Board for income or price stabilization for sugar growers;</p> <p>(c) five per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;</p> <p>(d) five per centum shall be remitted directly to the Sugar Research Foundation;</p>	<p>broken government mills and to pay salary arrears of their workers following mismanagement and embezzlement of those mills. No doubt only a small percentage of the SDL was used to develop the industry, improve productivity of sugarcane and enhance cane production. Thus the welfare and interests of sugar farmers and private millers were not served by the SDL and quite often worsened on account of skewed allocation of resources.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>subsection (2) shall be apportioned as follows—</p> <p>(a) fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;</p> <p>(b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;</p> <p>(c) twenty per centum shall be remitted directly to the Institute; and</p> <p>(d) forty five per centum shall be applied for infrastructure development in the sugar subsector on a prorata basis.</p> <p>(8) The funds provided for under subsection (7)(a) shall be used to provide for sustainable, affordable</p>		

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		credit and advances to farmers for all or any of the following purposes— (a) farm improvement; (b) farm inputs; (c) farming operations; and (d) price stabilization.		
CLAUSE 35	Sugar Development Fund	35. (1) There is established a Fund to be known as the Sugar Development Fund which shall be administered by the Board. (2) The Fund shall consist of— (a) the Sugar Development levy; (b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;	Clause 35 should be amended as follows:- a) Deleting the words "which shall be administered by the Board" in Clause 1. b) By introducing a new sub-Clause 35A to provide as follows: The Fund shall be managed by a Board of Trustees to be appointed by the Cabinet Secretary on recommendation of the Board. Clause 35 of the further Bill is amended by introducing a new Clause 35B to provide as follows:-	It is necessary for the Bill to be amended as set out here in order to introduce an accountable framework on usage of these funds and to establish a Board of Trustees to manage the Fund.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>(c) any moneys provided by the National Assembly for the purposes of the Fund;</p> <p>(d) any moneys provided by a county assembly for the purposes of the Fund; and</p> <p>(e) moneys from any other source approved by the Board.</p>	<p>35B. Application of the Fund</p> <p>(1) Subject to Clause 18(6) above, the Fund shall be used to provide sustainable affordable credit and advances to farmers for all or any of the following purposes—</p> <p>(a) farm improvement;</p> <p>(b) farm inputs;</p> <p>(c) farming operations;</p> <p>(d) price stabilization; and</p> <p>(e) any other lawful purpose approved by the Cabinet Secretary.</p> <p>(2) The Cabinet Secretary in consultation with the Board shall, from time to time, make rules for the better management of the Fund in the best interest of farmers.</p>	
CLAUSE 54	Rights of Growers in a Privatized Company	<p>54. Notwithstanding any other provision in this Act or any other written law to the contrary, growers shall be entitled to at least—</p> <p>(a) 51% shareholding of all privatized sugar factories;</p>	Amend Clause 54 by deleting it entirely	<p>Clause 54 should be deleted for three major reasons:-</p> <p>a) Publicly owned sugar mills are owned by all citizens and so shares cannot be transferred to a section of the people merely because they are cane growers.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		Rights of growers in a privatized company, and (b) 51% representation on the Boards of Directors of a privatized company.		<p>b) The shareholding and directorship of the privatized sugar factory should be in accordance with the ownership structure after the privatization process.</p> <p>c) The Companies Act cannot be lawfully ousted by Clause 54 as the principal law in matters of shareholding and directorship of companies.</p>
Clause 55	Representative of a grower in a private milling company	<p>55. (1) Notwithstanding the provisions of any other Act, each private sugar milling company shall have a representative of the growers in its board of directors.</p> <p>(2) In appointing a director representing the growers under subsection (1), the milling company shall consider in the first instance, the leaders of the out-grower institutions within the sugar-cane catchment area in which the sugar mill is located.</p>	Delete Clause 55 in entirety	<p>This Clause should be deleted for three major reasons:-</p> <p>a) Private milling factories are companies governed by their Articles and Memorandum of Associations that provide for appointment and removal of directors.</p> <p>b) This Clause violates the good corporate governance principles embodied in the Companies Act under which virtually all sugar milling companies are incorporated.</p> <p>c) The Clause violates Articles 31 (Privacy) and Article 40 (Protection</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		(3) A person appointed as a director under subsection (1), shall serve for a term not exceeding two years.		of right to property) of the Constitution since it amounts to a legislative order by Parliament to owners of sugar milling private companies to include a growers' representative in running its affairs and without the express consent of the shareholder

**ADDITIONAL PROPOSED AMENDMENTS TO SUGAR BILL, 2022 BY WEST KENYA SUGAR COMPANY
LIMITED AND SUKARI SUGAR COMPANY**

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Clause 30	Entry and Inspection	30. An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting— (a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act; (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the	Delete Clause 30 and replace with the following new Clause:- 30) An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to a cane grower so requesting— a) enter any land, including a nucleus farm, for purposes of inspecting the sugar crop. b) may require any person found thereon to give such information as the person may require.	1) Under Clause 50 (1) inspection of the premises is a function of the Board. 2) Crop inspectors have no legal or material basis to inspect factories and other premises of the miller.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		terms and conditions of the respective licence are being complied with; and (c) may require any person found thereon to give such information as the person may require.		
Clause 40(3)	Establishment of the Sugar Arbitration Tribunal	40(3) The Chairperson and members of the Tribunal shall serve on a part-time basis.	Delete Clause 40(3) and replace it with the following new Clause:- (1) The Chairperson and members of the Tribunal shall serve on a full-time basis.	1) There are very many cases pending in various courts concerning disputes that fall under the jurisdiction of this Tribunal. 2) Given that Clause 44(1) requires the Tribunal to determine any dispute within a period of three months from the date the dispute was lodged, it will not be practical to expect a tribunal of part-time members to comply with this requirement of expeditious determination of disputes.
Clause 57(1) and	Regulations	57.(1) The Cabinet Secretary shall in consultation with the Board make regulations generally	a) Delete Clause 2(d). a) Delete the word minimum in Clause 2(h).	1) The establishment should be on the basis of their provision of services close to their contracted farmers or growers.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
(2)		<p>for the better carrying into effect of the provisions of this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), may make regulations prescribing—</p> <p>(a) the regulation and control of the production, manufacturing, marketing, importation or exportation of sugar and its by-products;</p> <p>(b) the forms of licences to be issued under this Act, and the form and manner of application for the licences; and</p> <p>(c) the fees which may be charged for any activity relating and incidental to the development, products, marketing and distribution of sugar and its by-products,</p>	b) Delete Clause 2(i).	<p>2) Minimum period within which farmers should be paid. No need for Minimum period. It should be seven or fourteen days. Giving minimum days will demand to give maximum days also.</p> <p>3) Cane harvesting and transportation. This cannot be regulated by the Board. The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. However, the miller may offer to harvest and transport such cane form their contracted sugarcane contracted farms and no other for use either as seed cane or mill sugarcane. This is an arrangement between the miller and the grower which the Board has no control over. Entrenching this in the Act will result in an untenable situation on the ground.</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>(d) the establishment of weigh bridges;</p> <p>(e) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;</p> <p>(f) production and import of sugar to ensure adequate sugar availability in the country;</p> <p>(g) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;</p> <p>(h) minimum period within which farmers are to be paid for sugar crop delivered and penalties for</p>		

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		delayed payments; and (i) cane harvesting and transportation		
Third Schedule PART 3 Clause 7(2) and 7(6)	Sugarcane Pricing Committee	7(2) The Committee shall comprise of — (a) the Chief Executive Officer of the Board; (b) two persons nominated by the Kenya Sugar Manufacturers Association; (c) three persons nominated by the sugar cane growers from the sugar catchment region; (d) one representative from the sugar lobby groups; (e) the Principal Secretary responsible for matters related to agriculture or a representative appointed in writing; and	1) Amend Clause 7(2) by adding two new paragraphs to provide as follows:- g) One representative of private sugar millers. h) One representative of public sugar millers. i) One person appointed by the Cabinet Secretary who shall not have direct material interest in the sugar industry. 2) Amend Clause 7(6) by deleting the words "thirty six months" and replacing it with the words "three months".	a) There is need to broaden the membership of this committee to make it more representative of stakeholders and enhance its objectivity. b) thirty six months for early review of the sugarcane pricing is untenable.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		<p>(f) one representative from county government nominated by the Council of Governors.</p> <p>(6) The sugar-cane prices set by the committee under sub paragraph (3) shall be reviewed after every thirty six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane pricing.</p>		



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PROPOSED AMENDMENTS TO SUGAR BILL 2022

Presented to Committee on Agriculture and Livestock on March 24, 2022
By Kenya National Alliance of Sugarcane Farmers Organizations (KNASFO)

KNASFO is comprising of Central Sugarcane Growers and Stakeholders Association (CSGASA), Kenya Sugarcane Growers association (KESGA), Kenya Association of Sugar and Allied Products (KASAP), Smallholders Sugarcane Farmers Association of Kenya (SHSAFAK))
Contact : Hon Saulo W. Busolo, Chairman - 0719895881

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PART I; PRELIMINARY		
Sec 2 'agreements'	Amend to include 'agreements' means agreements specifying the standard provisions as arrived in specific stakeholder forum in a public participation governing the rights and obligations of growers, millers, out-grower institutions, importers, transporters, research scientists, workers, by-product dealers and traders	These are stakeholders that must included
'by-products'	Amend 'interpretation of 'by-product' to refer to specific product	We want to be specific
'farm-gate'	Amend by adding Prices received by farmers at the mill-gate and weighbridge	There farmers who are close to the factory while others located at a far distant
'institute'	Amend by adding training component to read as follows; 'Kenya Sugar Research and Training Institute'	We aspire a research and training institute for our stakeholders
'license'	Amend to read 'license' means a license issued to the miler and other stakeholders	This is to ensure inclusivity

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
'member'	Provide for direct gazettment of elected member by amending to read as follows; 'member' means a member elected to the Board	This gives opportunity for direct gazettment after election to the Board
'mil-gate'	'mil-gate' Delete	It is ambiguous
'out-grower'	Amend to read; 'out-grower' means any person or institution who grows sugarcane or any other crop that produces sugar	This is tying farmers or introducing zoning in a free market
'sugar catchment area'	'sugar catchment area' delete	This is zoning which is outdated
'sugarcane growers apex body'	'sugarcane growers apex body' delete and replace with 'sugarcane farmers organizations'	We are organized around specific mill zones and have no apex body
'stakeholder'	'stakeholder' broaden to include transporters, workers, cane cutters, molasses dealers, traders.	
PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF KENYA SUGAR BOARD		
Page 1084 Sec4: Functions of the Board		
Sec 4(1)(a)	We delete develop and promotion to read as follows; 4(1)(a) regulate the sugar industry	The other key stakeholders are playing the role of promoting the industry
Sec 4(1)(c)	Delete and transfer to the county	County affair

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Sec 4(2)(d)	The Board shall Monitor and regulate the domestic market with a view to identifying and advising the government and interested parties on ant distortions in the sugar market	The Board should not only monitor but regulate as well
Sec 4(2)(e)	Transfer to Sugar Arbitration tribunal	This is a function of the SAT
Sec 4(2)(f)	Amend to include import to read as follows; Facilitate import and export of the local sugar	This will take care of the export as well
Sec 4(2)(f)	Delete the entire clause	Growers and millers have their own boards which can advise
Sec 4(2)(i)	Amend to read as follows; Implement an equitable mechanism for the pricing of the sugarcane and appropriation of the proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines	The Board is to implement not to facilitate because there is the pricing committee which undertake the that role
Sec 4(2)(n)	Amend to read, License sugar mills and other stakeholders	This takes care of the other industry stakeholders
Sec 4(2)(p)	Amend to read; Formulate and implement a strategic plan for the sugar sub-sector anchored on national vision	To anchor the strategy to the national development agendas
Page 1085 Sec 5: Functions of County Governments		

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Sec 5 (a): Functions of County Governments	Delete and transfer to Kenya Sugar Institute of Research and Training	Not a county function
Sec 5 (e):	Delete	KERA/KURA/KENHA affair
Page 1086 Sec 6: Composition of the Board		
Sec 6 (1)(a):	Delete appointment and replace with gazetted. and add, the CS shall gazette the chair person A non-executive Chairperson elected by the Board from among the representatives of the growers on the Board shall be gazetted by the Cabinet Secretary	He is already appointed by farmers. all is remaining is gazettement
Sec 6 (1)(b):	Delete and replace five representatives nominated by registered farmer organizations	The catchment areas is deleted
Sec 6(2)	Amend to read Elected members under sub-section 1(b)(c) and (c) shall be gazetted directly	Because they have been nominated by the farmers
Sec 6(3)	Delete degree requirement	Farming is not academic
Page 1087 Sec7: Term of Appointment		
Sec 7(1)	Delete one further term and leave it open	There are those who work for the interest for the organization
Sec 7(2)	Members to be elected and gazetted at the same time	They are nominated by the farmers

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Page 1089 Sec 14: Chief Executive Officer		
14(2) Chief Executive officer	Delete Sec 14 (2) (a), (b), (c) and (d) and replace with, qualifications set by the Board at the time of appointment	You cannot have a one-set formula, the industry is technology bound and dynamic in nature, therefore the skill change rapidly. These are not a matter of academic degrees.
PART III: LICENSING AND REGISTRATION		
Page 1090 Sec 18: Requirement of License to operate a mill		
18 (1) Requirement of License to operate a mill	18(1) Delete recommendation by County government and replace with ' A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current license issued by the Board upon payment of relevant county levies	The trend is to simplify licensing according to the government agenda as well as best practice
18 (1) Requirement of License to operate a mill	Delete the entire clause	This clause kills the value addition and innovation initiatives by the local farmers who cannot afford big industries
Page 1090 Sec 19 Issue of license and license fee		
Sec 19(1) Issue of license and license fee	Delete the clause	Prescribed form has not been subjected to public participation

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Sec 19(2)	Delete Sec 19(2) (a) and (b) and replace with The Board shall not issue a license under this Act upon a criterion set from time to time	This is a regulatory Board therefore will determine at the right time what is appropriate
Sec 19(5)	Delete and replace with: There shall be payable the issues of a license, such fees as the Board may determine from time to time	The necessary regulatory mechanism at the moment will determine
Sec 19(7)	Delete 'reasonable cause' and replace with The issuance of a license to an applicant under this section shall not be withheld without citation of relevant infringed law	The word " reasonable cause" is subjective, it has no basis in law
Page 1091 Sec 20: Sugar import		
Sec 20 Sugar import	Delete entire section: 20(1)(a)(b)(c), (2) and (3)	The provision is punitive, discriminative, and encourages smuggling hence distorting the internal sugar market
Page 1091 Sec 20: Industrial Sugar		
Sec 21 Industrial Sugar	Delete entire clause	This detrimental to diversification at the process level which is licensed. How do you again deal with industrial sugar separately?, this is also the role of the Kenya Bureau of Standards
Sec 22 Registration of millers	Delete the entire	This repetitive

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PART IV ESTABLISHMENT OF KENYA SUGAR RESEARCH INSTITUTE		
Page 1092 Page 1091 Sec 23: Establishment Of Kenya Sugar Research Institute		
Sec 23 Kenya Sugar Institute	Amend to read: There is hereby established a body to be known as the Kenya Sugar Research and Training Institute	The industry has not had its training facility for the stakeholders
Sec 23(2)	Delete entire clause	It is a department of the Kenya Sugar Board, it's not independent, there is no need to duplicate
Page 1093 Sec 24 Functions of the Institute		
Sec 24(2)(a)(b) the Institute	Combine 24(2)(a)(b) to read; Formulate policy and make policy recommendations in respect of sugar research and development (R&D) to the Board in line with national policy on sugar	Both sub-sections(a)(b) are one and the same
Sec 24(2)(c)	Replace 'Government with the Board'	Reports to the Board (Board's department)
Sec 24(2)(g)	Delete the word 'agriculture' and replace with; Support and promote training and capacity building in relation to sugar research	Research is not limited to agriculture but to sugar
Page 1095 Sec 25 Management of the Board		

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Sec 25 Management of the Board	Delete entire clause	We suggested that the Institute is a department of the Board for better management of research in the sugar sub-sector
Sec 26 Application	Delete the entire clause	It's unnecessary
Sec 27 (c) Funds of the Institute	Replace 'ministry' with 'Board'	Because it's a department of the Board
Sec 28(1) Director General of the Institute	Replace Director General with Director of Research There shall be a Director of the Research who shall be appointed by the Board whose terms and conditions of service shall be determined by the Board in the instruments of appointment or otherwise in writing from time to time	The Institute is a component of the Board thus the title is inappropriate and secondly, it the Board that shall appoint the Director of research
Sec 28(2)(a)(b) Director General of the Institute	Amend to read: A person shall be qualified for appointment under this section if the person (a) Holds a degree in sugar technology from a university recognized in Kenya (b) Has some managerial experience	We want an appropriate expert the in management of the industry research institute
PART VI—FINANCIAL PROVISIONS		

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Sec33 Funds of the Board.	Add 33(d) Sugar development levy Add 33(e) Contributory miller farmer scheme	It is part of the funding source To promote saving culture and also have available fund for emergency
Sec34 Sugar Development Levy	Amend to read The Cabinet Secretary shall in consultation with Board by order in the gazette impose a levy on domestic sugar of no more than five percent and twenty per centum of CIF value on imported sugar to be known as sugar development levy	We produce 1 ton of sugar at \$800 against cheaper producers from within COMESA
Sec34. (7) The sugar development levy collected under subsection(2) shall be apportioned as follows –	Amend to read; Sec34. (7) The sugar development levy collected under subsection(2) shall be apportioned as follows (a) fifty percent shall be applied to cane development (b) fourteen percent be applied by the Board for income or price stabilization for sugar growers; (b) ten four percent shall be remitted directly to the Institute; (c) ten percent shall be applied by the Board in the factory rehabilitation and maintenances; (d) ten percent shall be applied by the Board in the furtherance or exercise of any function or powers of the Board; (e) six percent to farmer organizations	The aim is strengthen the farmers who are the most vulnerable in the sub-sector

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Sec 35 Sugar Development Fund	Amend to read: 35 (1) There is established a Fund to be known as Sugar Development Fund which shall be administered by an independent Board of Trustees comprising of industry stakeholders appointed by the Cabinet Secretary	The Board of Trustees will be independent and experts in management of the Fund This will uphold good corporate governance
Sec 60(1) Transfer of staff	Amend to read as follows: Upon the commencement of this Act, a person who was a former staff of Sugar Board of Kenya before the commencement of the Agriculture and Food Authority Act 2013 and current staff of the Sugar directorate not being under any notice of dismissal or resignation may upon commencement of this Act be seconded to the Board on performance contract basis	This will give room for appraisal of the staff
Sec 61(2) Transfer of staff	Amend to read: The pension of the seconded staff under the provident fund of the Agriculture and Food Authority – Sugar Directorate may on the commencement of the Act vest on the Board	
Sec 62(2) pending proceedings and claims	Amend to read All legal proceedings and claims pending in respect to actions and activities to this which this Act apply shall be vetted by the Board	
THE FIRST SCHEDULE DELINEATION OF SUGAR CATCHMENT AREAS		

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SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
The First Schedule Delineation of Sugar Catchment Areas	Delete the entire schedule	The electoral areas to be determined by the Cabinet Secretary

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KENYA AGRICULTURAL & LIVESTOCK RESEARCH ORGANIZATION

② D/Apt' Comm

② Lauren Hwang

Deal

24/03

When replying please quote:

Our Ref: KALRO/LGL/GEN/01/06/VOL.XXV/(114)

Date: 23rd March, 2023

The National Assembly,
Office of the Clerk,
Main Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.



(Attn: Peter K. Chemweno)

RE: STAKEHOLDER ENGAGEMENT ON THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022) BY THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

We refer to the above subject matter and to your letter dated 9th March 2023 which was unfortunately delivered to us on the 23rd of March 2023.

The Kenya Agricultural and Livestock Research (KALR) Act, No.17 of 2013 established the Kenya Agricultural and Livestock Research Organization (KALRO) as a consequence, Kenya Agricultural Research Institute (KARI), Kenya Sugar Research Foundation (KESREF), Tea Research Foundation of Kenya (TRFK) and the Coffee Research Foundation (CRF) were merged.

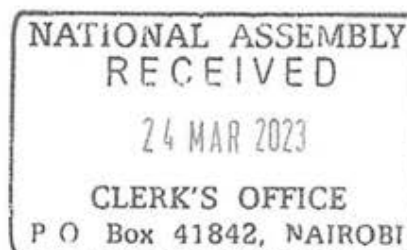
Owing to the short notice of this communication and the unfortunate event of the Director General, KALRO being currently indisposed, we regret to inform you that he shall not be able to appear before the Committee in person but have hereby forwarded our proposal for amendment of the Sugar Bill (National Assembly Bill no 24 of 2022) for your consideration.

We request for the Committee's indulgence on this issue and remain ready and willing to address or clarify any concerns from our proposal.

Patricia Ngutu

For: DIRECTOR GENERAL

Encl.



KALRO HEADQUARTERS

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SUBMISSIONS ON THE PART OF THE SUGAR RESEARCH INSTITUTE TO THE SUGAR BILL FRIDAY 24th MARCH 2023

CLAUSE	PROVISION	PROPOSED AMENDMENTS	JUSTIFICATION
Clause 23. (1) Establishment	established a body to be known as the Kenya Sugar Research Institute	Amend to establish a body to Kenya Sugar Research Foundation (KESREF)	Just like the other institutions are reverting to their former such as Tea Research Foundation and Kenya sugar Board
Clause 24. (1)	promote, co-ordinate and regulate research in sugar and sugar diseases;	promote, co-ordinate and regulate research in sugarcane, sugar and co-products;	The Foundation will have the mandate on sugarcane, sugar and co-products
Clause 24. (b)	five persons elected by growers from each of the sugar catchment areas under the First Schedule;	five persons with background in agricultural research (Minimum of Masters degree), elected by growers from each of the sugar catchment areas under the First Schedule;	Research is technical and requires a vibrant Board to interrogate policy matters of proposals made by Research Scientists.
Clause 28. (1)	There shall be a Director General of the Institute	There shall be a Director General(DG) and Deputy Director General(DDG) of the Institute	Borrowing from KALRO, the DG is in charge of policy and fund mobilization while the DDG is in charge of research
Clause 28. (1), 2 (a)	holds a degree from a university recognized in Kenya in Agricultural research, soil and seed research, soil science or related field;	holds a PhD degree from a university recognized in Kenya in agricultural research, soil science and seed research, or related field;	Research is an apex in academia and should be led by a senior researcher at PhD level.



Ministry of Agriculture & Livestock Development

Memorandum by the Ministry of Agriculture and Livestock Development During the National Assembly's Departmental Committee on Agriculture and Livestock Stakeholder Engagement on the Sugar Bill (National Assembly Bill, No. 34 of 2022)

1. Overview of The Sugar Industry

1.1 Importance of the Sector to the National economy

The Sugar industry is an important contributor to the agricultural and national GDP and supports the livelihoods of more than 8 million Kenyans. It is a dominant employer and source of livelihoods for households in 15 counties in Kenya traversing Nyanza, Rift Valley, Western, and the Coast regions. The KNBS Economic Survey, 2022 indicates that, of the KSh 465.7 billion realized in value of marketed agricultural production, the crops sub-sector contributed 70% of which 4.5% was from sugarcane.

1.2 Current Status

- 1) Over 300,000 farmers supply sugarcane to the millers; 94% of the cane supply is by out-growers and 6 % is from Nucleus Estates owned by the various milling companies.
- 2) The area under cane is 237,000 hectares with a yield of 70.27 tonnes per hectare.
- 3) There are 16 registered sugar companies, 14 of which are in operation, with a total production of 796,000 MT in 2022. The projected production for 2023 is 980,000 MT. Of the 16 sugar mills, 5 are state-owned.

- 4) Kenya remains a net sugar importer despite having the potential to produce and meet her domestic consumption and surplus for export. Total sugar imports in 2022 were 321,000 MT, valued at Ksh 24 Billion.

1.3 Challenges in the Sugar Industry

The sugar industry is faced with a myriad of challenges that include:

- 1) Low sugarcane productivity and quality
- 2) Inefficiency in processing of sugar and co-products
- 3) Inadequate generation, dissemination and adoption of technologies
- 4) High level of indebtedness especially among public owned-mills
- 5) Inadequate and poorly maintained infrastructure and support services
- 6) Weak marketing structures for sugar and co-products
- 7) Inadequate financing
- 8) Weak institutional, legal and regulatory framework

2.0 Policy and Legal Reforms

2.1 Legal Reforms in Crop Development, Promotion, Regulation and Research

The Ministry for Agriculture initiated structural reforms in 2010 which sought to reduce multiplicity of regulatory and research functions; maximize benefits of economies of scale by merging parastatals with similar or related functions; and strengthen the capacity of parastatals responsible regulation and research to effectively undertake their core mandates. These reforms culminated in the enactment of the Agriculture and Food Authority Act, No. 13 of 2013; The Crops Act, No. 16 of 2013 and the Kenya Agriculture and Livestock Research Act, 2013 (KALR Act, No. 17 of 2013).

After the merger of former Boards responsible for Sugar, Tea, Coffee, Pyrethrum, Horticultural crops, and Nuts and Oil Crops, to form the Agriculture and Food Authority (AFA), the envisaged efficiency gains were not realized due to challenges that included, lack of a Board of Directors,

inefficiencies in operations, financing challenges following the revocation of crop levies in 2016. These reforms did not achieve the intended objectives leading to the general decline in the performance of all the major crop sub-sectors and raising concern among stakeholders many of whom have continued to agitate for the Ministry reintroduction of the former regulatory boards.

In an attempt to address these challenges, the Ministry for Agriculture initiated further reforms which led to the enactment of the Tea Act in 2022. Other major crop sub-sectors, sugar included, are at different levels of pushing their respective Bills towards enactment and eventual separation from AFA.

2.2 Government Policy Direction

There have been various initiatives to institute reforms in the crops sub-sector with a view to having a number of crop value chains managed under their independent institutional frameworks. However, the Ministry is in the process of strengthening AFA to better regulate, promote and develop crop value chains.

3.0 Summary of Proposals on the Sugar Bill (National Assembly Bill, No. 34 of 2022)

3.1 Key provisions on the Sugar Bill (National Assembly Bill, No. 34 of 2022)

We note that the Private Member's Bill seeks to address the following salient issues:

1. Creation of a Kenya Sugar Board as a separate entity from AFA for the purpose of regulating, developing, and promoting the sugar industry
2. Establishment of the Kenya Sugar Research Institute
3. Introduction of the Sugar Development Fund to finance the activities of the sugar industry – price stabilization; infrastructure development; sugar research
4. Establishment of the Sugar Arbitration Tribunal
5. Sugar industry safeguard measures (management of sugar imports)
6. Appointment of Crop Inspectors
7. Rights of growers in a privatized company
8. Ownership and representation of growers in private milling companies

9. Guidelines on agreements between parties in the sugar industry
10. Registration and licensing of players
11. Development of Regulations

3.2 Key Changes Proposed by MoALD for Inclusion in the Sugar Bill

(National Assembly Bill, No. 34 of 2022)

1. For purposes of creating order and promoting investment in the sugar industry, both in sugarcane and processing, we propose the delineation of sugarcane catchment areas, into regions composed of sugarcane growing counties. This will secure the availability and sustainable supply of raw materials for processing by all millers.
2. For purposes of ensuring that sugar research is adequately funded we note and agree with the proposal in the Bill to reintroduce the Sugar Development Fund. However, we propose that sugar research be retained under the Sugar Research Institute, which is one of the institutes under KALRO, established under the KALR Act No.17 of 2013.
3. In order to broaden the scope of crops from which sugar can be manufactured, we propose the introduction of sugar beet as one of the sugar crops to be regulated by the Board;
4. In line with the provisions of the 4th Schedule of the Constitution of Kenya 2010, and in recognition that regulation is a shared role between National and County Governments, we have proposed the broadening of the appointment and gazettelement of inspectors to include those from the Board and the county governments.

In addition to these key proposals, we have detailed in the attached matrix, the amendments that we propose for consideration to ensure the effective implementation of the Bill once it is enacted.



Ministry of Agriculture & Livestock Development

Memorandum Matrix by the Ministry of Agriculture and Livestock Development During the National Assembly's Departmental Committee on Agriculture and Livestock Stakeholder Engagement on the Sugar Bill (National Assembly Bill, No. 34 of 2022)

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
2 - Interpretation.	"Farm gate" means prices received by farmers for their sugarcane at the location of farm;	Delete	(a) It does not convey the correct industry meaning (b) It has only been used once
	"mill gate" means a site where sugarcane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop;	Delete and substitute therefor the following "mill gate" means a site designated as such by the Authority where sugarcane weighing and sugarcane testing facilities have been set up;	The definition provided is for a sugar cane nursery and not for a mill gate
	"sugar" means crystalline or liquid sucrose in any of its recognized commercial forms, intended for human consumption or other uses and includes raw sugar and industrial sugar	Delete and substitute therefor with the following "sugar" means crystalline or liquid sucrose derived from sugarcane or sugar beet in any of its recognized	To make the definition inclusive of crops from which sugar may be derived and the types of sugar which may be produced

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
		commercial forms, intended for human consumption or other uses and includes jaggery, raw, brown, plantation (mill) white and industrial sugar.	
	Proposed definition “Sugar beet”	Introduce a new definition as follows: “sugar beet” means any plant or part of a plant of the genus Beta or any of its hybrid	To expand the scope of sugar crops to include sugar-beet
	“license” means a license issued by the Board to a miller;	Delete the words ‘to a miller’	License is not only issued to the millers but also to importers and exporters of sugar
4 - Functions of the Board. (1) b	‘coordinate the activities of individuals and organizations within the industry; and	Delete the words “individuals and organizations ” and substitute with the word “actors”	Cleaning the document to properly refer to players within the industry
4 - Functions of the Board. (2) e	‘facilitate the arbitration of disputes among interested parties’	Delete and substitute therefor the following ‘Establish mechanisms to facilitate expeditious dispute resolution’	Arbitration is a formal process that takes a long period to conclude. To allow for flexibility and expediency in dispute resolution
4 - Functions of the Board.	‘facilitate the export of local sugar’	Delete and substitute therefor the following	To broaden the scope

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
(2) f		'facilitate the sale, import and export of sugar and sugar products'	
4 - Functions of the Board. (2) j	'represent the industry in such organizations as are relevant for the promotion of the industry'	Delete and substitute therefor the following 'collaborate with national and international trade bodies on sugar related matters'	To incorporate both national and international collaborative sugar industry activities
4 - Functions of the Board. (2) m	'license sugar mills'	Delete and substitute therefor the following 'Register and license sugar mills, exporters, importers and dealers'	To broaden the scope
4 - Functions of the Board. (2) n	'enforce and monitor compliance with standards along the sugar value chain'	Insert the word 'establish,' before the word 'enforce'	To cover key aspects of compliance
4 - Functions of the Board. (2) o	'facilitate value addition and product diversification in the sugar sub-sector.'	Delete and substitute therefor the following: 'promote and advise on strategies for value addition and product diversification in the sugar industry'	To broaden the scope
4 - Functions of the Board. (2) p	'formulate and implement a strategic plan for the sugar sub-sector at least once every five years'	Delete	This is an administrative function

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
4 - Functions of the Board. (2) q	'formulate guidelines on an efficient and economical transportation of sugar,'	Insert the words 'sugar cane and sugar co-products' before and after the word sugar respectively	To cover key aspects of transportation in the industry
4 - Functions of the Board. (2) r	'conduct local and international sugar market intelligence and advise stakeholders accordingly'	Delete and substitute therefor the following 'facilitate marketing and distribution of sugar and sugar co-products through gathering and dissemination of market information and monitoring of the local and global supply-demand situation'	To broaden the scope
4 - Functions of the Board (2) u	'perform such other functions as may, from time to time, be assigned by the interested parties.'	Delete and substitute therefor the following 'perform such other function as may be conferred on it by this Act or any other written law'	Assignments of the roles to the Board should be done within the provision of the written law
5- Functions of the County Governments (b)	'offer and coordinate extension services on sugar production and milling in the respective county'	Delete the words 'and milling'	Milling is outside the purview of the County Government
6. Composition of the Board 1 (a)	'a non-executive Chairperson elected by the Board from among the representatives of growers on the Board and appointed by the Cabinet Secretary'	Delete and substitute therefor the following 'a non-executive chairperson appointed by the President by notice in the gazette'	Mwongozo code on governance on State Corporation provides that the President appoints the chairperson

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
8 - Vacation of office.	'A person shall cease to be a member of the Board of if the person'	Delete the word 'of' appearing after the word 'Board'	Grammar correction
9 - Powers of the Board (a)	(a) 'impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act;'	Insert the words "by notice in the Gazette" before the word 'impose'	To clarify the instrument by which the levy will be imposed
		Delete the words "growers and millers" and substitute with the words "value chain players"	To widen the scope

PART III- LICENSING AND REGISTRATION

18-22	Registration and licensing provisions	Propose rearrangement of sections for registrations provisions to come before licensing	Registration provisions should precede because it is a prerequisite for licensing and it is used for data capture
19 (2)	The Board shall not issue a license under this Act unless (a) it is of the opinion that the applicant is a fit and proper person to hold such a license; and (b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him conduct business or that he has, amongst his staff.	Delete	The provision is not necessary because the conditions for issuance of license will be provided for in the regulations
19 (4)	Every license shall, unless earlier revoked, expire on the 30th June next following the date of issue.	This should be made a stand alone clause so that it covers all licenses issued under this Act	The provision 19 (4) was only addressing milling license hence need to address all other licenses
19 (6)	An application for the renewal of a license shall be made to the Board not later than the 1st June in the year in	Delete	Application procedures are best provided for in the regulations

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
	which the current license is due to expire		
19 (8)	A person shall not import or export sugar without a valid license issued by the Board.	Delete	Misplaced provision to be moved to clause 20 (1)
	Proposed clause	<p>Introduce new clauses to read as follows:</p> <p>19 (8) a A licensed miller shall not procure cane outside their delineated catchment area</p> <p>19 (8) b Regulations for transfer of sugarcane within catchments and mills shall be developed under this Act</p>	<p>For purposes of creating order and promoting investment in the sugar industry, both in sugarcane and processing, we propose the delineation of sugarcane catchment areas, into regions composed of sugarcane growing counties. This will secure the availability and sustainable supply of raw materials for processing by all millers.</p>
20 (1)- Sugar Import	<p>A person who imports sugar into Kenya shall, prior to importation —</p> <p>(a) provide evidence that the sugar they intend to import is not available in the local market;</p> <p>(b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and</p>	<p>Delete Sub Clause 20 (1) and insert the following</p> <p>(1) A person shall not import or export sugarcane, sugar or sugar by-products without a valid license issued by the Board in accordance with regulations made under this Act</p> <p>(2) A holder of a valid import or export license shall not import or</p>	<p>Application procedures and requirements are best provided in the regulations</p> <p>The determination of quantities of sugar available in the country is the responsibility of the Board hence it should be given the</p>

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
	(c) obtain pre-import approval from the Board.	export sugarcane, sugar or sugar by-products unless they have obtained a pre-import or pre-export approval from the Board in accordance with regulations made under this Act	mandate to approve imports or exports
20 (3)	This section shall apply to importation of sugarcane	Delete	Already covered in the proposed clause 20 (1)
21 (1) (2) Industrial Sugar	A licenced sugar miller shall be licenced by the Board to carry out the business of processing industrial sugar The Board shall regulate the processing of industrial sugar	Delete	Already covered under clauses 18 and 19
22 (1)	'A person shall not conduct the business of a miller unless he or she is registered by the Board and the premises in which the business is conducted is specified in the register'	Insert the words ' in accordance with the regulations made under this Act' immediately after the word 'Board'	Details and procedures for registration will be provided in the regulations
22 (4)	In issuing certificates of registration under subsection (3), the Board shall satisfy itself that the premises upon which milling may be carried out meets the environmental standards set by the National Environmental Management Authority and the miller has been issued with	Delete	Details and procedures for registration will be provided in the regulations

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
	a certificate of safety by the relevant county government.		
PART IV - ESTABLISHMENT THE KENYA SUGAR RESEARCH INSTITUTE			
Part IV- Establishment of the Kenya Sugar Research Institute 23-28	Establishment of the Kenya Sugar Research Institute	Delete	<p>The institutional framework for undertaking agricultural research in the country is well established under the Kenya Agricultural and Livestock Research Act No.17 of 2013 that created KALRO.</p> <p>The Sugar Research Institute is one of the institutes under KALRO.</p> <p>It is proposed that Sugar research will still be funded by Sugar Development Fund (SDF) proposed in the Clause 34 of the Bill</p>
PART V - APPOINTMENT CROP INSPECTORS			
29 - Appointment of crop inspectors 29 (1) (2)	Appointment of crop inspectors	<p>Amend Clause 29 to provide for gazettelement by the Board of both Board and County inspectors</p> <p>The Board will prescribe the qualifications for inspectors in regulations.</p>	This is in recognition of the shared regulatory roles by both the Board and the County Government

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
		Counties will nominate inspectors for gazettement by the Board based on the prescribed qualifications.	
PART VII - ESTABLISHMENT THE SUGAR ARBITRATION TRIBUNAL			
41 - (1) Jurisdiction of the Tribunal	(b) disputes between sugarcane farmers and the following- i. out grower institutions ii. millers iii. growers ; or iv. other interested party	Delete (iii) growers	It is covered under 41 (1) (a) because growers and farmers are one and the same
PART VIII - MISCELLANEOUS PROVISIONS			
48 - Annual general meeting 48 (1) (2) (3)	Annual general meeting	Delete clause 48	Any meeting between the Board and stakeholders can be arranged administratively without being anchored under the law Conduct of the affairs of the Board are covered under the second schedule
49 Quality, safety and health control measures 49 (2)	(2)A person who contravenes the provisions of subsection (1) commits an offense and shall be liable, upon conviction— (a) to a fine not exceeding ten million shillings, or to imprisonment for a term	Delete clause 49 (2)	The penalties have been provided for under the standards, public health and environment laws

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
	not exceeding seven years, or to both; and (b) the court may where a person is convicted for an offense make a further order that the person's license be withdrawn		
50 - Inspection for quality and safety. 50 (1) (2) (3)	Inspection for quality and safety	Delete the clause	This is a function of NEMA under EMCA
51 - Safeguard measures (2) (a)	'sugar shall be imported in the country only when there is sugar deficit on a quarterly basis and for a specific tonnage; and'	Delete the words 'quarterly basis' Move the clause on safeguard measures to part III immediately under clause 20 on sugar imports Delete the clause	Importing sugar on a quarterly basis is difficult to implement This is a substantive and import related issue and therefore should not be under miscellaneous issues
51 (2) (b)	importers report to the Board on their imports, sales and stock on daily basis	Delete the clause	Daily reporting is not practical. However, filing of returns monthly should be considered.
51 (4)	A person who contravenes the provision of this section commits an offense and shall be liable, on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offense is committed, or two million shillings, whichever is the higher, or to	Delete the clause	The actions proposed under clause 51 (1), (2) and (3) do not give rise to any offense

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
	imprisonment for a term not exceeding ten years, or to both.		
53 - Sugar Industry agreements	Sugar Industry agreements	Delete the clause	The guidelines are already covered under clause 57 (g) to be prescribed in the regulations
53 (1) (2) (3)			
55 (3) Representatives of a grower in a private milling company	A person appointed as a director under subsection (1), shall serve for a term not exceeding two years.	Delete the words 'two years' and replace thereof with the words 'three years renewable once'	Two year period is a short time for one to set leadership and establish structures.
56 - Amendment of Third Schedule.	The Cabinet Secretary may, on the recommendation of the Board, by order in the <i>Gazette</i> , amend the Third Schedule.	Delete the words 'Third' and replace thereof with the words 'First' in both the margin notes and the clause	The third schedule has been proposed for deletion and the schedule which the Cabinet Secretary should be allowed to amend is the first schedule on delineation of catchment areas to allow flexibility so that the catchment areas can be reorganized as necessary
PART IX - PROVISIONS ON DELEGATED ON POWERS			
57 (2) - 1 Regulations	Without prejudice to the generality of subsection (1), may make regulations prescribing—	Introduce: 57(2) (j) 'To provide for registration procedures for actors under the Act' 57(2) (k) 'To provide for procedures for issuance of pre import and pre export approvals'	To add to the list of regulations to be made by the Cabinet Secretary

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
57 (3)	57 (3) (a), (b)	Delete the clauses	These are explanatory statements
First Schedule Delineation of sugar catchment areas	Southern Region: Homa Bay, Kisumu, Migori and Narok	Insert the words "Kisii, Nyamira" immediately after Migori and before the word "and"	These are currently sugarcane growing areas
Second Schedule -Vacation of office.	1. A member of the Board, other than the Chairperson or an ex-officio member, may— (a) at any time resign from office by notice in writing to the Cabinet Secretary; (b) be removed from office by the Cabinet Secretary if the member— (i) has been absent from three consecutive meetings of the Board without the permission of the Board; (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; (iii) is incapacitated by prolonged physical or mental illness; (iv) is adjudged bankrupt; or (v) is otherwise unable or unfit to discharge his functions.	Delete paragraph 1	Already covered in Clause 8 - Vacation of office.
Third Schedule	Third Schedule: Guidelines for agreements between parties in the sugar industry	Delete the entire Third Schedule	Guidelines for agreements between parties in the sugar industry will be

CLAUSE NO.	PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
Fourth schedule 2 - Vacation of office 2(d)	convicted of a criminal offense and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.	Delete the sub paragraph	provided for in regulations as stipulated in clause 57 (g) Already covered in Para 2 (2) C

SIGNED:

23rd MARCH 2023

Principal Secretary - MoALD

KISUMU SUGARBELT CO-OPERATIVE UNION LTD

P. O. BOX 39 – 40116

CHEMELIL

PROPOSED AMMENDMENTS TO THE SUGAR BILL 2022 – CURRENTLY IN PARLIAMENT

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMMENDMENTS	JUSTIFICATION FOR THE CHANGE
1	PART I PRELIMINARY	Interpretation	Sugarcane growers' apex body means a national sugarcane farmers and out-growers organization under a cane supply contract and in catchment area under the First Schedule gazette as such by the Cabinet Secretary for the time being responsible for agriculture.	Create a body named "National Sugarcane Farmers Association" as apex body for all sugarcane farmers.	A new clean body engineered and created with initial assistance by the parent ministry in charge of agriculture to be formed. This should be in similar way the old KESGA (Kenya Sugarcane Growers Association) was started, nursed and developed with the support of the old Kenya Sugar Authority. It worked very well before it was killed by non-patriotic officials supported by cartels. The creation should bring order in farmer representation instead of persistent wrangling in between several bodies with no clear fixed abodes masquerading as farmers' representatives while farmer interest suffer.

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMMENDMENTS	JUSTIFICATION FOR THE CHANGE
2	PART I PRELIMINARY	Interpretation		<p>Include definition of the important term rendement. Rendement is the sugar produced expressed as a percentage by weight of the sugarcane crushed.</p>	<p>This is a very important parameter which indicates efficiency in sugar production and recoveries. Ratio of cane to sugar produced for a well-run industry should be 9:1 or lower. The ratio 9:1 for cane to sugar recovered implies rendement of 11.1. Some countries such Colombia have reported values as low as 8:1 implies rendement of 12.5 which is very good.</p> <p>The Kenya sugar industry must be regulated to achieve high rendement for its survival and sustainability.</p> <p>A minimum standard level needs to be set for all factories as it is a controllable entity that can be achieved. It depends only on choice of sugarcane variety for high sucrose content, control of staleness of cane after harvesting, efficiency at mill extraction and efficiency of boiling house recovery all of which are controllable.</p> <p>In Kenyan situation the time lapse between cutting of cane and actual milling together with low mill extraction efficiency and low boiling house recovery are major contributing factors to low rendement.</p> <p>It is common knowledge that different factories operating the same region and with same cane variety will produce different rendements depending on their efficiencies of operation.</p>

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
3	PART II ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD	6 (1) (a) Composition of the Board	A non-executive Chairperson elected by the Board from among the representatives of growers on the Board and appointed by the Cabinet Secretary.	A non-executive Chairperson elected by the Board from among the representatives of growers on the Board and gazetted by the President.	Role of the Farmer is accorded paramount significance in the industry as only supplier of major raw material and appointed by the highest office in the country.
	ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD	6 (1) (b) Composition of the Board	Five representatives elected by growers from each sugar catchment area as per the first schedule.	To be retained as it is proposed. The Farmers apex body to be give one place in addition.	Whereas the number of all sugarcane farmers is about over 250,000 in the country (statistics quoted in 2019) the number of sugar factories in operation currently are only 12. Due to the intensive capital requirement to establish and run the factories, the number of their representatives needs to be raised to 2. Together with grower representatives they should constitute the majority in the Board as the key stakeholders.

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
4	ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD	6 (1) (c) Composition of the Board	One representative elected by sugar millers who is knowledgeable in sugar technology and value addition	Two representatives elected by sugar millers who is knowledgeable in sugar technology and value addition	Whereas the number of all sugarcane is about over 250,000 in the country (statistics quoted in 2019) the number of sugar factories in operation currently are 12. Due to the intensive capital requirement to establishment and run the factories, the number of their representatives needs to be raised to 2. Together with grower representatives they should constitute the majority in the Board as the key stakeholders.
5	ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD	Create new heading Composition of the Board 6 (1) (h)	Addition	Create provision for Kenya National Trading Corporation (KNTC) Representative to be nominated in writing by Ministry of Trade and Industry. KNTC to be in charge of all importation of sugar in case of shortfall in production. The composition should also include MOA PS, County Govt.	Kenya National Trading Corporation as was practiced in the past should receive and distribute all sugar produced locally and do importation in cases of deficit. This will eliminate cartels who have been some of the major causes of failure in sugar industry.

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
6	ESTABLISHMENT OF KENYA SUGAR RESEARCH INSTITUTE	Board of the institute 25 (b)	Five persons elected by growers from each of the sugar catchment areas under the first schedule.	Retain representation of each catchment area (5 in total) and one person nominated by Council of Governors.	Each catchment area to elect one representative of suitable and relevant knowledge with experience. The representative will have adequate information about what the institute can do for the area.
7	ESTABLISHMENT OF KENYA SUGAR RESEARCH INSTITUTE		e) The Chief Executive Officer of the Kenya Agricultural Livestock and research Organization	e) Delete 'Kenya Agricultural Livestock and research Organization' and replace with 'Kenya Sugar Research Institute (KESRI)'.	KALRHO does not need to be represented in the sugar research board. This position should be left for the second Miller representative. It must be accepted that the KALRHO experiment failed and disastrously miserably for sugar industry and must not be put any near to the KESRI.

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMMENDMENTS	JUSTIFICATION FOR THE CHANGE
8	PART VI FINANCIAL PROVISIONS	Sugar development Levy	The CS shall, in consultation with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.	Amend to read: Levy on sugar as follows: Imports from EAC- 5%. COMESA – 15% Outside COMESA- 30 % Locally produced sugar – 5%. Application of the FUND shall include a reasonable per centum for running of the Official Sugar Apex Body. Sugar importation for local refining purposes to supply industrial need be levied at 2% and allowed only for factory with registered refinery plant.	Imported sugar frequently includes damped sugar in the world market which must not be allowed to disadvantage local farmers in cane pricing. Funding Farmers' Apex Body will eliminate influence of cartels on Farmers' Representatives so that they can concentrate on their official roles and deliver for the farmers. It is not acceptable that net importing countries such as Egypt are allowed to export sugar to Kenya. There is no guarantee that such countries are not importing sugar from damping market for their domestic use while off-loading their expensive local product to Kenya. That way they protect their domestic consumers and local farmers at the expense of Kenyan citizens. This has been allowed for decades to ruin local industry and needs to be stopped.

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
9		Rights of growers in a privatized company	54 (1) (a) 51% shareholding of all privatized sugar factories; and	Remain the same	Because of the ancestral land ownership issue where land was set aside in the first place to establish the entities purely for development of the indigenous communities, the communities must, at least, have an upper hand in ownership.
10		Rights of growers in a privatized company 54 (1) (b)	51% representation on the Boards of Directors of a privatized company	Be retained as originally proposed	Because of the ancestral land ownership issue where land was set aside in the first place to establish the entities purely for development of the indigenous communities, the communities must, at least, have an upper hand in ownership.
11	FIRST SCHEDULE (5.2, 6(1) and 25 (b)	DELIMITATION OF 54 (1) (b) SUGAR CATCHMENT AREAS	Rift Region – Kericho, Nandi and Uasin Gishu. Upper Western Region Bungoma and Trans Nzoia Lower Western Region Busia, Kakamega, Siaya and Vihiga Southern Region Homa Bay, Kisumu, Migori and Narok Coastal Region Kwale, Lamu and Tana River	Regions: Counties Central Region: Kericho, Nandi, Kisumu Upper Western Region Bungoma, Kakamega, Transoia, Uasin Gishu Lower Western Region: Busia, Mumias, Siaya Southern Region: Homa Bay, Kisii, Migori and Narok Coastal Region Kwale, Lamu, Tana River.	The issue catchment brought a lot of heated discussion during the time of Sugar Task Force public participation and it was well handled by the Task Force. The final recommendation in the report was the best. The Act should reflect wishes of the Stakeholders. Cartels who do not have genuine interest to improve the lot of farmers put a spirited effort remove all controls for their own benefits.

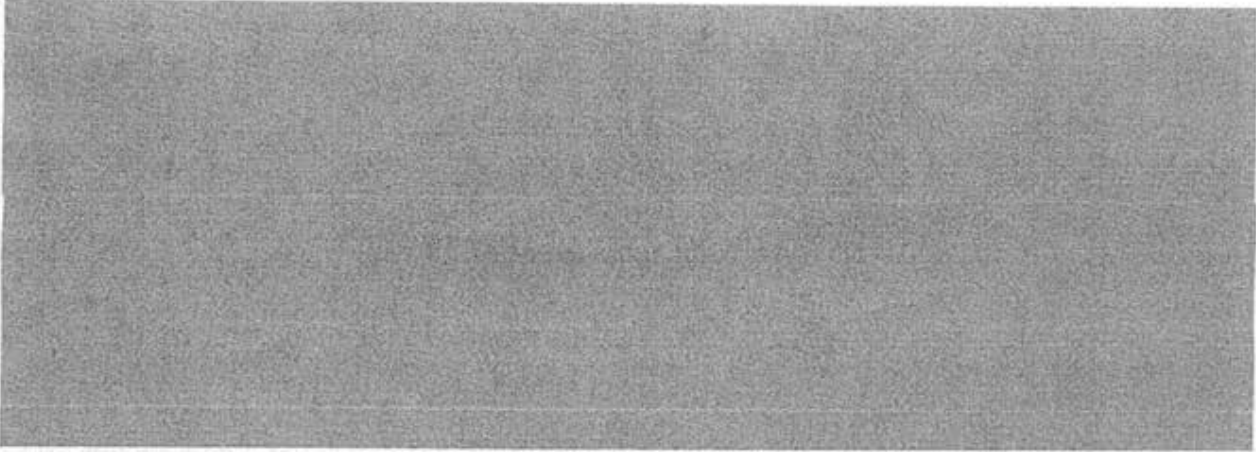
SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
12	THIRD SCHEDULE GUIDELINES FOR AGREEMENTS BETWEEN PARTIES IN THE SUGAR INDUSTRY	2. Interpretation	"Sugar lobby group" means a registered group of people comprising of farmers and growers from the sugar catchment areas championing the rights of sugar stake holders.	THAT the third schedule of the Bill be amended – (a) in paragraph 2 by deleting the definition of the word "sugar lobby group" replace by Sugarcane Growers Apex Body.	Existence of many lobby groups which have always been wrangling in courts brings a lot of confusion in the industry while the plight of farmers they masquerade as representing has gotten worse and worse. Their elections have not met criteria for genuine representation of real farmers in the fields.
11	PART 2- ROLE OF INSTITUTIONS IN THE INDUSTRY	5 (a) (Role of Millers)	Harvest, weigh at the farm gate, transport and mill the sugarcane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugarcane growers as specified in the agreement.	Maintain the same for a period to allow the growers develop their own transport units. This to be reviewed from time to time with a definite scheme for getting growers properly equipped or allowing cane transport organization to develop.	Reason for retaining the same is the fact that as things do stand now the majority of growers are dilapidated and do not have transport equipment. The situation was different in the eighties and nineties when many farmers had their own tractors and trailers. This was wiped out by selfish practice whereby some millers gave preferential off-loading of delivered cane – a millers unit would do two to four rounds while farmers unite would que for one to two days to offload. Transport costs currently charged ate exorbitant with 300% markup.

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
12		5 (d) (Role of Millers)	Pay the sugarcane farmer within 15 days of accepting delivery or otherwise, pay interest on the sum due at market rates, plus a penalty of 3% per month on late payment	Pay sugarcane farmer within one week of cane delivery to the mill.	For nearly four decades Kenya has been made a net importer of sugar for domestic consumption. What is produced goes into the market immediately except of occasions cartels have been allowed to over-import sugar which distorts the market. Already it has been proven that well run mills are paying every week and there should be no reason for backtracking.
13	PART 4- RELATIONSHIP BETWEEN THE OUT-GROWER INSTITUTION & THE MILLER	Out-grower institution and miller			
14	PART 4- RELATIONSHIP BETWEEN THE OUT-GROWER INSTITUTION & THE MILLER	Out-grower institution and grower agreement			

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMENDMENTS	JUSTIFICATION FOR THE CHANGE
15	PART 3 SUGARCANE PRICING COMMITTEE	Sugarcane Pricing Committee 7(2) (d)	One representative from sugar lobby group	Delete word 'lobby group' and replace with 'Growers apex body' One representative from growers apex body who has knowledge and experience relating to sugar technology and value addition	Lobby groups cause chaos in industry and apex body can take good care of growers' interests.
16	PART 3 SUGARCANE PRICING COMMITTEE	Sugarcane Pricing Committee 7(6)	The sugarcane prices set by the committee under sub paragraph (4) shall be reviewed every six months pro, with the prior approval of the Board, undertake an early review of the sugarcane pricing.	(ii) Deleting the words 'thirty six' appearing immediately after the words 'review after every' in subparagraph (6) and substituting therefore the word 'three'.	Three months' period provides a practical duration for which the committee can determine market prices at every given point.
17	PART 6- SUGAR INDUSTRY CONTROL MEASURES	13(1) Industry control	13 (1) The sugar industry agreement shall recognize the measures already undertaken to deal with constraints to development which include the setting of a committee comprising of the Kenya Sugar Authority, Kenya Ports Authority and Kenya Bureau of Standards to coordinate the inspection and certification of imported sugar.	Delete the words 'Kenya Sugar Authority' appearing immediately after the words 'comprising of the' in subparagraph (1) and substituting, therefore with the word 'Kenya Sugar Board'	The Sugar Bill is restoring the Kenya Sugar Board. The Kenya Sugar Authority has no place in the new Sugar Bill 2022.

PAGE 11 OF 11

SN	SECTION OF THE BILL	SUB-HEADING OF THE SUGAR BILL	PROVISIONS IN THE BILL	PROPOSED AMMENDMENTS	JUSTIFICATION FOR THE CHANGE
18	PART V	Appointment of Crop inspectors	Appointment of Crop Inspectors 29 (1), (2) Entry and inspection (30) (a, b, c), Powers of Entry (31) (a, b, c, d, e, f, g, h) (2) (3) Obstruction of inspectors	Sub-heading of the Sugar Bill should be deleted and replaced with 'Appointment of Sugar Crop and Sugar Milling Inspectors" Provision of bill retained.	The decline and failure of sugar industry, apart from other factors mentioned elsewhere, can also be greatly attributed to non-existence of authoritative inspection both in the crop and factory performance. There is urgent need to change this for the sugar industry. Cane yields and rendement both of which can be greatly improved have gone tremendously low compared to earlier days of Kenya Sugar Authority. The inspectors shall be able to demand, for example, explanations if low rendement and recoveries are reported and insist on improvement.



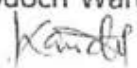
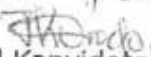

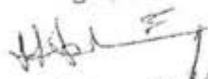



Proposed Amendments to Sugar Bill 2022

Sugar cane growers views and Recommendations

The proposal is summarized as follows: 1. Support for the establishment of Kenya Sugar Board, 2. Providing accountability structure for Sugar Development Fund to ensure sustainable industry financing, 3. A free sugarcane marketing system supported by Contract farming and not zoning

INTRODUCTION:

This memorandum is developed by the sugarcane farmer groups supplying cane to the SUKARI sugar factory. The groups nominated the following representatives to collate and sign the memorandum:

1. Grace Adhiambo Oguda - Pala / South Kabuoch Ward 
2. Lamek Oduor Maende – Kanykela Ward 
3. Kehpers Rodo of farmer – Uriri area 
4. Charles Owuor Aroko - Kanydoto and Kanyidoto 
5. Domnic Apiyo –Kamenya 
6. Vitalis Opiyo Okinda –Kobitat Sugarcane farmers group. 
7. Raphael Owino Otiri - Ndhiwa zone 
8. Jckton Omondi Adiang –Kologi Ward and Kosewe 
9. Peter Onyango Ogalo – Kobodo sugarcane growers association 
10. Ruth Sophie Okongo – Pala/ south Kabuoch Ward 
11. Major Zadock Owuor – Oyani Maasai 

9/05/2023

Challenges we are facing as Ndhiwa sugarcane farmers:

1. Dilapidated state of access roads to enable transportation of cane from our farms;
2. High cost of farm inputs in terms of land preparation, seed cane, and fertilizer price;
3. Lack of affordable and readily accessible funding especially after the removal of the Sugar Development Levy in 2016;
4. Diminishing yields due to lack of extension services;
5. Poor sugarcane variety seed cane. Seed-cane available and accessible that are of late-maturing, not draught resistant, prone to diseases;
6. High cost of sugarcane transportation due to poor road infrastructure;
7. Increased cane spillage between the farm and weighbridge due to poor road infrastructure.

Our experience and relationship with the millers:

We started cane farming by delivering to SONY factory and some to jaggery producers. During that time, we had the following problems:

1. Delayed payment
2. Lack of payment
3. Poor cane price

Today, with Sukari Industries Ltd, we have the following to say:

1. Prompt payment, in 4 – 7 days' time
2. Good relationship with the miller
3. When the prices of cane are revised the miller responds by paying farmers
4. They have supported cane development

WHY WE LIKE THE SUGAR BILL 2022:

Reason#1: Reintroduction of Kenya Sugar Board (KSB)

We support the reintroduction of the Kenya Sugar Board due to the following reasons:

1. 10 years down the line, AFA has not been visible;
2. AFA has not been conducting farmer meetings as a way of sensitization;
3. We don't know the AFA director(s) representing the sugar value chain;
4. During KSB, we were able to get credit facilities, particularly for cane development;
5. During KSB, grants for road infrastructure were given and we could see access bridges constructed. This is not happening with AFA. The roads are not passable and the farmers are suffering

Reason#2: reintroduction of sugar development levy

With the reintroduction of the sugar development levy, we expect the followings:

1. Affordable, accessible, and timely financing for cane development to undertake appropriate cane farming practices;
2. Get advance for fees and medical services
3. Funding for access roads

Reason#3: industry-specific research institute

The research will ensure the following:

1. Production of recommended seed-cane varieties
2. Planting of early maturing and disease-resistant varieties

Reason#4: Sugar Arbitration Tribunal

We have cases of various natures involving us with other stakeholders. Regular courts are expensive, and complex, and take a long time for the case to be determined.

WHAT WE DON'T KNOW HOW TO ADDRESS:

1. Extension services:

Who is supposed to offer extension services to ensure the improvement of the yield? The industry has a history of this challenge.

2. Insurance services

We are victims of losses caused by drought and diseases. There is no avenue of addressing this.

AREAS OF OUR FOCUS IN THE BILL:

Focus Area #1: Free sugarcane market system:

In the body of the bill, we are able to identify references to the zoning of the farmers by using the word 'sugar catchment areas'. We are not comfortable with this. This is because:

1. Reverse the benefits to cane farmers: multiple weighbridges established by mills all over have reduced the cost of transport to farmers. Implementing zoning will result in the demolition of the weighbridges and return expensive transport rates.
2. Not compliant with the free market system and it is irrelevant to a paradigm shift from a controlled to a free market. Farmers currently deliver cane to the mills of their choice
3. Contradict other Principal laws: It is a breach of Competition Act No. 12 of 2010 whose object is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya
4. Rejected by the Ministry of Agriculture: zoning was introduced by Repealed Sugar Act 2001 in relation to the establishment of mills. However, the Kenya Sugar Board which was implementing the Act realized its derogatory nature, bypassed it and licensed Butali factory which is less than 20KM away from West Kenya. Secondly, they licensed SUKARI Industry which is situated about 35KM away from SONY

Focus Area #2: Management of Sugar Development Fund:

In recognition of the dire need for dependable and sustainable funding base for the sugar industry, the Government established the Sugar Development Fund in 1992. Utilization targeted specifically sugarcane development (21.3%), factory rehabilitation (24.3%), improvement of roads infrastructure (9.1%), research (12.1%), KSB administration (15%) and reserve deposit 18.2%). The Sugar Development Levy (SDL) de-gazettement in 2016 and the Fund transferred to the Commodities Fund

However, as farmers, we propose the management Sugar Development Fund by Trust Fund with technical administration capacity while KSB remains the supervisor. The Fund Trustees to include the farmers, millers, KSB, and experts

SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
INTERPRETATION	Amend to include 'agreements' means agreements specifying the standard provisions negotiated by all parties governing the rights and obligations of growers, millers, out-grower institutions, transporters, and workers	The contract should be negotiated and developed by all parties not one. It should also add transporters and workers
	Amend to read; 'out-grower' means any person or institution who grows sugarcane for the production of sugar and by-products and who has in force of supply contracts in respect of sugarcane grown on such farm and registered by the Board	The issue of the catchment area is confusing, it missed the out-grower institution
	'sugar catchment area' delete	It is not necessary as it is tending to zone farmers; The Cabinet Secretary will gazette electoral areas as is was done in the past
	'stakeholder' Add transporters, workers, cane cutters, loaders, molasses dealers, traders.	Additional stakeholders
Sect 5: Functions of the County governments	Delete sub-section (a,b,c and d)	The county governments have no capacity to undertake these roles
	Amend sub-sect (e) to read establish an efficient road network for the movement of sugarcane through the use of cess fund collected and retained by the miller; managed by a committee comprising five grower representatives and miller	Cess should be managed by both grower and miller
Sec6.(1) Composition of the Board, Page 1086	Sec6(1)(b)“(c) five representatives nominated by growers organization from electoral areas gazetted by the Cabinet Secretary	The past KSB election was characterized by violence, corruption, mismanagement, lack of transparency, and rigging. It is not realistic to have a director campaign in such a wide area.

SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
	Sec 6 (2)(a): Delete appointment and replace with gazetted. and add, the CS shall gazette the chairperson	He is already appointed by farmers. All is remaining is gazettelement.
	Sec 6 (3) Delete degree requirement	Farming is about practical skills and not degrees, this is denying the members opportunity
	Sec 7 (3) Delete	It is discriminative
Sec 20 Sugar import	Delete entire section: 20(1)	Importers will take advantage
Part IV Appointment of Crop Inspectors	Delete the entire Part IV Sec (29,30,31 & 32)	This is a colonial system of watchmen's role of oppression
Sec34 Sugar Development Levy	Sec34 (2) Amend to read The Cabinet Secretary shall in consultation with Board by order in the gazette impose a levy on domestic sugar of no more than two percent and seventy per centum of CIF value on imported sugar to be known as the sugar development levy	To discourage surplus sugar import by cartels To increase contribution to the Fund
	Add a new Sec 34(2) the levy imposed in clause (2) shall be collected by millers and disbursed to the Commodities Fund with the Board undertaking the role of supervision	To ensure disbursement and
Sec 35 Sugar Development Fund	Amend to read; Amend to read; 35 (1) There is established a Fund to be known as Sugar Development Fund which shall be administered by an independent Board of Trustees comprising of One grower and two others with extensive knowledge on law, agriculture, banking or economics	The purpose for which the Sugar Development Fund may be applied, promote good corporate governance and accountability levels by placing the administration of the Sugar Development Fund in the hands of a Board of Trustees with a specified mandate and fiduciary responsibilities

SUB-HEADING OF SUGAR BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
	35(1)(b) The Trustees be appointed by the Cabinet Secretary for Agriculture for a term of 3 years renewable once	
40(1) Establishment Of Sugar Arbitration Tribunal	40(4) amend to read: The members of the Tribunal appointed under sub-section (2) shall hold office on a permanent basis, and paid salaries and not allowances	Members are to work on a permanent basis and not a part-time basis as proposed in the bill. Working on a part-time basis will prolong the dispute resolution
Sec55 Representative of a grower in a private milling company Page 1108	55(3) a person appointed as director under sub-section (1), shall serve for a term not less than three and half years	For institutional memory after the election of KSB directors
The First Schedule Delineation of Sugar Catchment Areas - Page 1111	Delete the entire schedule	The electoral areas to be determined by the Cabinet Secretary The area under coverage is not realistic The schedule is tending toward zoning the industry into catchment areas.
R 6 Sugarcane fires	Sec 6 (2) (a) Amend to include that rejected only when the cane is under 12 months and when it is stale	Only underage cane cannot be milled thus should not be recommended for harvesting
	Sec 6 (2) (b) delete	Can be abused by some millers who not have interest of farmers' welfare
Sec7 Sugar Cane Pricing Committee. Page 1117	Sec7 (1)The Committee shall comprise of:- (c)three persons nominated by the sugar cane growers' organizations	Nomination by the organization
	Sec 7(3)(d) : Delete	We are not educated about the cane-based payment system





SONYSUGAR
Simply The Sweetest

SOUTH NYANZA SUGAR COMPANY LIMITED

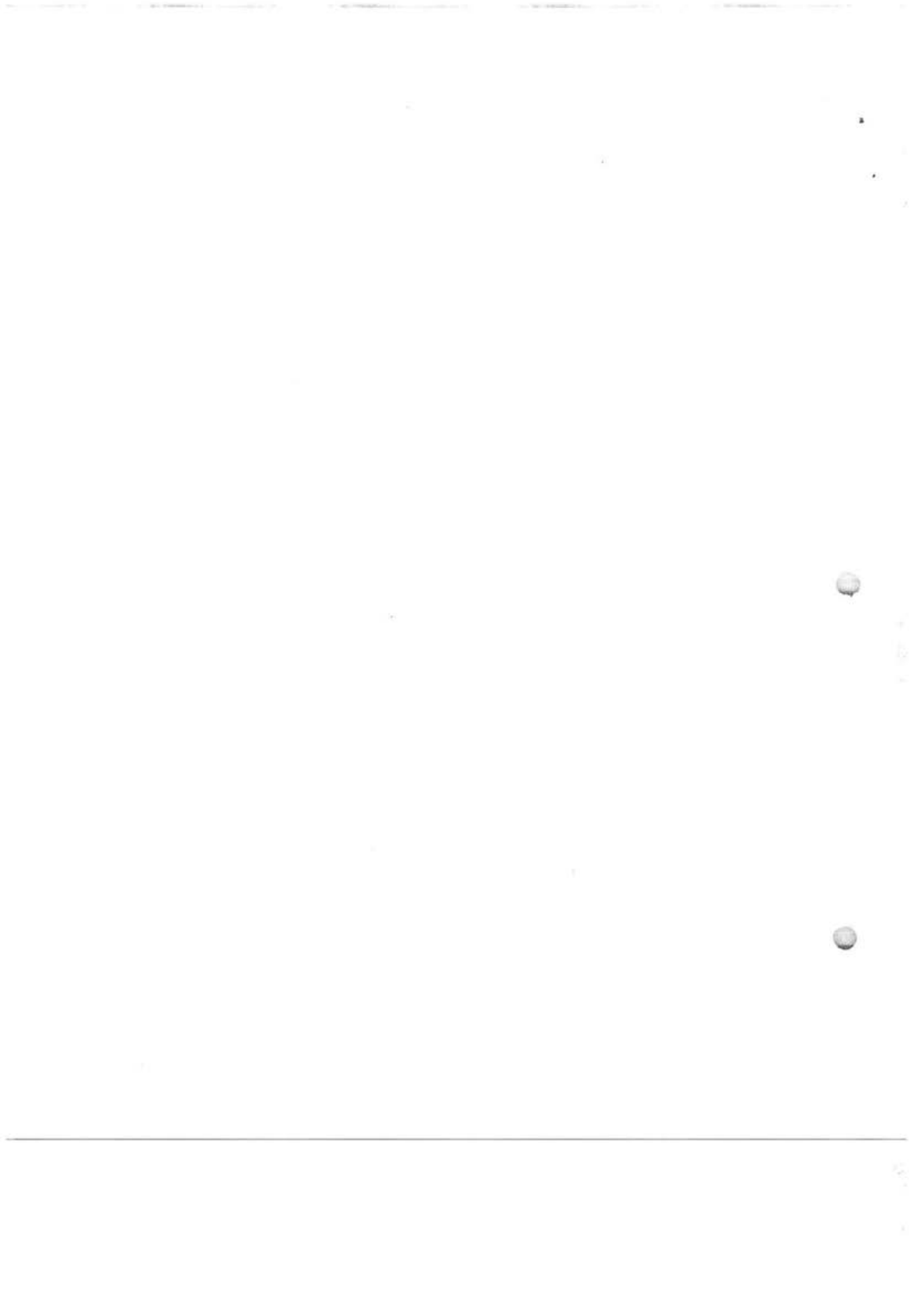
**SONYSUGAR FEEDBACK TO THE PARLIAMENT DEPARTMENT
COMMITTEE ON AGRICULTURE AND LIVESTOCK ON 9/05/2023 AS
PART OF THE TO THE STAKEHLDER PARTICIPATION**

Reference	Issue	Observation	Recommendation	
Clause 34, 35	Sugar Development Levy	Sugar Development Levy is to be reinstated and administered by kenya Sugar Board. This levy is key in financing Cane Development, Infrastructure and Factory Rehabilitation and Sugar Research through the Sugar Development Fund	Levies collected under this Section to be Administered for Sugar related issues and not combined with levies from other crops under a different entity. To be retained	
Clause 20	Import Regulations	The unregulated Importation of sugar undercuts the local mills since they are forced to sell their sugar below the their production costs. It also stalls the generation of income for the local mills thus making it impossible to meet their financial obligation.	This to be retained and enforced	

Clause 54	Restructuring of the Public sugar mills	There is need to harmonize this with the Privatization Act	The provisions are not in harmony and may not encourage investors	
First Schedule	Delineation of Sugar Catchment Areas	Kisumu county is grouped with Homa Bay, Migori and Narok. This delineation of catchment areas shall ensures cane development by the millers in their respective zone thus avoiding the poaching of cane across counties which is disrupting the milling programs of other millers and causing unnecessary competition for raw material instead of market space for finished products	Kisumu borders Kericho, Nandi and Uasin Gishu Counties and should be grouped with them under the Rift Region. Under Southern region add Kisii and Nyamira counties	
Part VII	Establishment of the Sugar Arbitration Tribunal	This should be done immediately to address the disputes between millers and growers, Growers and outgrower institutions and miller to miller disputes expeditiously	This to be retained and acted upon speedily to help decongest the thousands of pending cases.	
Third Schedule (Part 1)(2) Third Schedule (Part 2)(4)	Outgrower Institutions formation and registration	This expressly not defined expressly in the bill in terms of what qualifies an entity to be an outgrowers/growers	There is need to define what an outgrowers institution is as an entity (what qualifies), under	

		<p>institution, under what act it is registered and with what objectives.</p> <p>Under the third schedule (2) there is only mention of a "sugar lobby group"</p> <p>Under Under the third schedule (Part2) (4) only the roles of Outgrower institutions is enumerated.</p> <p>It is not clear which Outgrower Institution is being referred to as an apex body for all farmers.</p>	<p>what act (societies, union, NGO) and what type of governance structure should it have; is it to be registered with the kenya sugar Board, etc. This is to prevent masqueraders from defrauding farmers as has happened in the past.</p> <p>Need to clearly define the structure and composition of the farmers Apex body (if there is going to be one) with Accounting and audited reports filed yearly</p>	
<p>Third Schedule (Part 2) (5)(a)</p>	<p>The role of the Miller</p>	<p>Miller is required to weigh the harvested sugarcane at the farm gate which is not practical.</p>	<p>Need to amend this to;</p> <p>"Weigh the harvested sugarcane on designated and registered weighbridges" as required in 5(f). Expunge 5(g)</p>	


 Stephen Ligawa
 Managing Director (Ag)



THE KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS (KNFSE) SONY BRANCH MEMORANDUM TO THE PARLIAMENTARY COMMITTEE ON AGRICULTURE DATED 9TH DAY OF MAY, 2023 AT SONY SUGAR COMPANY GROUND.
BACKGROUND

HON. CHAIRMAN SIR; KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS (KNFSF) is an umbrella Apex Body registered under Society Act cap 108 Laws of Kenya, with branches within all sugarcane milling zones. The same was done in line with AFFA ACT, 2013 and CROPS ACT, 2013 respectively. Federation is a non-political organization and has clear objectives, goals and/or mission. The head office of the Federation is in Kakamega town within Kakamega County. The main objectives of the Federation is to unite all sugarcane farmers in Kenya, Advocate for favorable policies and laws, represent all sugarcane farmers in matters of Sugarcane pricing, transportation costs, negotiate on their behalves, educate and train them to understand the policies and relevant laws on matters of sugarcane farming as a business.

HON. CHAIRMAN: The following are some of the areas with regards to the SUGAR BILL 2022:-

1. INTERPRETATION:

- a) "Sugarcane Growers Apex Body" shall mean a National Registered Organization whose membership shall be mill level registered farmers' institutions and groups championing the rights under a cane supply contract and in catchment areas under the First schedule gazette as such by the cabinet secretary for the time being responsible for agriculture.
- b) "Disputes Resolution Committee" means a committee established within each Sugar Mill level comprising of Two Representatives from the miller, 2 farmers' representatives and 1 representative from the county Government to resolve all minor disputes arising between the parties within such milling zones.
- c) "Agreements" means the agreements and/or tripartite cane contract agreement specifying the standard provisions governing the rights and obligations of growers, millers and Out-grower institutions in the Sugar Industry.

- d) "Cess Committee" means a committee established within sec.....with full representation of sugarcane farmers who are the main contributors for the monitoring of the utilization of such funds.

2. **COMPOSITION OF THE SUGAR BOARD**

Under clause 6 (1) (b), the five representatives elected by the registered growers institutions' from each sugar catchment area as per the First Schedule.

3. **SUGAR RESEARCH INSTITUTE MANAGEMENT BOARD**

Under Section 25 (b) the five representatives elected by the registered growers institutions' from each sugar catchment area as per the First Schedule.

NOTE: Hon. Chairman, for the farmers' registered institutions to be empowered and/or strengthened; it should be their responsibility to nominate all farmers' representatives to any board dealing in sugar matter

4. **PART VI-FINANCIAL PROVISIONS**

HON. CHAIRMAN; *Section 34(7) left out sugarcane farmers apex institution, and we do hereby propose that the apportionments of such funds should include farmers apex body for its management and/or operation. This is because the apex body represents all sugarcane growers in the Country pertaining to sugar industry matters at National level.*

5. **ESTABLISHMENT OF LOCAL DISPUTES RESOLUTIONS COMMITTEE.**

With respect to **Part VII of the Bill, Section 40** The bill should provide a local disputes resolution mechanism to help deal with other minor matter that can be solved locally within mill level. We propose that the said committee should comprise of the following:-

- a. 2 miller representatives
- b. 2 growers' representatives
- c. 1 county government representative who shall be the chairperson thereof.

6. **APPOINTMENT OF BOARD OF DIRECTORS**

Section 55 (1) should include the state owned sugar companies; let growers' representatives be given full responsibility to nominate growers representatives to such boards. With this, millers will not just appoint their friends to represent growers to such boards. The person appointed should be answerable to the growers through their registered institutions.

7. **DELAYED PAYMENT:**

HON. CHAIRMAN SIR; delayed payment has caused much decline in terms of Ratoon Crop's maintenance and the same has seriously affected sustainability of the factories due to lack of raw material.

We therefore propose a very tough penalty to any party delaying such payment to the growers, and this will probably encourage millers to pay farmers as stipulated in the agreements

8. **CANE PRICE**

Hon. Chairman; many people think that the private millers are paying farmers promptly and fast and that they are doing much better than state owned companies, but this is not true at all. To confirm this, may I bring to your attention that what is being deducted from such farmers including unsupplied inputs and services leaves farmers with only *kshs. 2, 600/=* as net income per ton of cane.

9. **CANE PRICING COMMITTEE:**

The cane pricing committee to be established with proper farmers' representation and inconsideration of the five Sugar Catchment Regions and nomination of the said farmers' representatives be done with respective growers' institutions registered with the Regulator and with membership across the respective regions.

10. **SUGAR INDUSTRY REGULATOR**

Due to the complexity of the Sugar Industry and the many challenges affecting our industry in terms of high cost of productions, importation of Sugar, Cane Poaching and sugar research amongst others, we propose that the bill provide for the **INDEPENDENT SUGAR INDUSTRY REGULATORY BODY** to effectively deal with the aforementioned matters herein, and whereas we propose that ***KENYA SUGAR BOARD*** be re-instated to that effects.

11. **ZONING OF THE INDUSTRY.**

HON. CHAIRMAN; the industry needs to have some orders which is currently missing completely. Zoning of the industry will automatically create some orders in the industry, and Zoning of sugarcane growing zones is seriously needed. This will discourage cane poaching and further encourage millers to contract growers and support them in the development of raw material for the sustainability of the industry.

We do hereby propose that zoning be done according to regions i.e.

1. **Rift Region:** Kericho, Nandi and Uasin Gishu.
2. **Coastal Region:** Kwale, Lamu and Tana River
3. **Southern Region:** Homa-Bay, Kisumu, Migori and Narok
4. **Upper Western Region** Bungoma, and Trans Nzoia
5. **Lower Western Region:** Busia, Kakamega, Siaya and Vihiga

12. **GROWERS NATIONAL UMBRELLAH APEX BODY**

The only growers' national umbrella apex body recognized with the growers in Sony Sugar Zone is **KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS** and this institution should be included in the Act as the National Growers Apex Body thereof. This will automatically eliminate National Briefcase Farmers Apex Bodies not known to the growers and are only confusing the entire sugar industry for their own selfish gain.

13. **CLASIFICATION OF CROPS**

HON. CHAIRMAN; as sugarcane farmers, we feel that there's serious unfairness in the classification of crops. We are wondering how tea and coffee can be classified as food and yet sugar is classified as a comodity. With this sugar attract a lot of taxes than the crops that are classified as food. Let Sugar be classified as food just like Coffee and tea amongst others.

14. **SUGAR CO-PRODUCTS**

HON. CHAIRMAN SIR; Sugar industry by-products, Wastes and residues in the form of trash, chemicals and effluent generated during production process are as herein forth:-

- a) *Bagasse 30% (fiber-cellulose) is a fibrous organic material left after extraction of juice;*
- b) *Molasses 4% -from cane juice crystallization and centrifugation;*
- c) *Press mud 3.5 % -a mud mixture from sugarcane juice filtration;*

- d) *Boiler ash 0.4% -from burning bagasse for steam and electric power generation;*
- e) *Green tops and leaves 20% -directly from farms (which are usually burnt in the farms).*

The bill should include the establishment of benefits of the complex amongst many others as follows:-

1. Creation of employment opportunities in the country particularly for women and youths.
2. Press mud fertilizer plant provides farm nutrients and solution to soil acidity and salinity.
3. Production of co-friendly and biodegradable products and composites using bagasse fibers, and wastes generated.
4. Provide extra income to family units in the small holder farms.

Note: attached herewith is a list of final end products:-

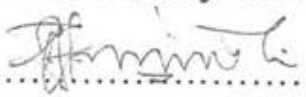
CONCLUSION

The sugar industry in Kenya needs to work on the closing of its material cycle loop to reach sustainability. The by-products, wastes and residues generated from the mills and harvesting process are not efficiently utilized but rather burnt or disposed. Re-using the agricultural residues to produce useful products will achieve sustainability in sugar production. The godown/warehouse will be the site for other operations of the complex and industrial clusters.

Hon. Chairman Sir; Sugar Industry has been lacking political goodwill for a long time and this has seriously affected the sugar industry in terms of development. With your good leadership, we are optimistic that you're going to make sugar industry a wonderful and prosperous industry in Africa.

May our good lord grant you with excellent knowledge to come up with a sugar bill that will give life to the sugar industry by creating proper orders in the industry.

Thanks and may God bless you all.


.....
John Odondi Omolo
Branch Chairman


.....
Argwengs Otieno Adongo
Branch Secretary

