REPUBLIC OF KENYA

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THE SENATE

THIRTEENTH PARLIAMENT | THIRD SESSION

....

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE SUGAR BILL 2022, (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

PAPERS LAID	
DATE	26/03/2024
TABLED BY	Chairperson
COMMITTEE	Agriculture
CLERK AT THE TABLE	

Clerk's Chambers,
The Senate,
First Floor, Parliament Buildings,
NAIROBI.

MARCH, 2024

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LIST OF ABBREVIATIONS/ACRONYMS

AFA	-	Agriculture and Food Authority
AFA –SD	-	Agriculture and Food Authority – Sugar Directorate
AFC	-	Agricultural Finance Corporation
CAK	-	Competition Authority of Kenya
CIDP	-	County Integrated Development Plan
GDP	-	Gross Domestic Product
COG	-	Council of Governors
COMESA	-	Common Markets for Eastern and Southern Africa
CTU	-	Cane Testing Unit
EASST	-	East African Societies of Sugarcane Technologists
ICT	-	Information Communication Technology
ILO	-	International Labour Organisation
KALRO	-	Kenya Agriculture Livestock Research Organization
KARI	-	Kenya Agricultural Research Institute
KEBS	-	Kenya Bureau of Standards
KEPHIS	-	Kenya Plant Health Inspectorate Services
KESMA	-	Kenya Sugar Cane Manufacturers Association
KESREF	-	Kenya Sugar Research Foundation
KETRACO	-	Kenya Electricity Transmission Company
KISCOL	-	Kwale International Sugar Company Limited
KNTC	-	Kenya National Trading Corporation
KPLC	-	Kenya Power & Lighting Company
KRA	-	Kenya Revenue Authority
KSSCT	-	Kenya Society of Sugar Cane Technologists
MOALF&I	-	Ministry of Agriculture Livestock Fisheries & Irrigation
MT	-	Metric Tons
PCPB	-	Pest Control Products Board
SAP	-	Structural Adjustment Programme
SDF	-	Sugar Development Fund
SDL	-	Sugar Development Levy
SRI	-	Sugar Research Institution
TCD	-	Tons Cane Per Day
TCH	-	Tons Cane per Hectare
TOR	-	Terms of Reference
VAT	-	Value Added Tax

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Standing Committee on Agriculture, Livestock and Fisheries is established under standing order 228(3) of the Senate Standing Orders and is mandated to consider all matters relating to agriculture, irrigation, livestock, fisheries development and veterinary services.

In undertaking its mandate, the Committee oversees the following State Departments-

1. Ministry of Agriculture and Livestock Development;
   (i) The State Department for Crops Development and;
   (ii) The State Department for Livestock Development
2. Ministry of Sanitation, Water and Irrigation.
   (i) State Department for Irrigation.
3. Ministry of Mining, Blue Economy and Fisheries.
   (i) State Department for Blue Economy and Fisheries.

The Committee also oversees the following State Agencies among others-

1. Agriculture and Food Authority (AFA);
2. Agricultural Finance Corporation (AFC);
3. Agricultural Development Corporation (ADC);
4. Kenya Seed Company (KSC);
5. Kenya Plant Health Inspectorate Services (KEPHIS);
6. Kenya Agricultural and Livestock Research Organization (KALRO);
7. Kenya Veterinary Vaccine Production Board (KVVPB);
8. Kenya Veterinary Board (KVB);
9. Kenya Meat Commission (KMC);
10. Kenya Dairy Board (KDB);
11. Kenya Leather Development Council (KLDC);
12. Kenya Fisheries Service (KFS);
13. Kenya Fish Marketing Authority (KFMA);
14. Kenya Marine and Fisheries Research Institute (KEMFRI);
15. Kenya Fishing Industries Corporation; and
16. National Irrigation Board (NIB).

The Committee also works closely with the Council of Governors (CoG), and the County Assemblies Forum (CAF) and non-state actors including among others-

1. Kenya Private Sector Alliance (KEPSA);
2. Agricultural Council of Kenya (AgCK)
3. Food and Agriculture Organization (FAO);
4. Kenya National Farmers' Federation (KENAFF);
5. Centre for Agriculture and Bioscience International (CABI); and
6. Agricultural Industry Forum (AIF).

MEMBERSHIP OF THE COMMITTEE

The Committee is comprised of the following Members-

1. Sen. James Kamau Murango, MP	-	**Chairperson**
2. Sen. Alexander Munyi Mundigi, MP	-	**Vice-Chairperson**
3. Sen. Moses Otieno Kajwang', MP	-	Member
4. Sen. Enoch Kiio Wambua, CBS, MP	-	Member
5. Sen. Daniel Kitonga Maanzo, MP	-	Member
6. Sen. Beth Kalunda Syengo, MP	-	Member
7. Sen. Wahome Wamatinga, MP	-	Member
8. Sen. Allan Kiprotich Chesang, MP	-	Member
9. Sen. David Wafula Wakoli, MP	-	Member

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) is an Act of Parliament 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.

Mr. Speaker Sir,

The main objective of the Bill is to establish the Kenya Sugar Board. This board will regulate, promote, and develop the sugar industry, oversee value chain activities, and ensure fair access to industry benefits for all stakeholders. Currently, these responsibilities fall under the Sugar Directorate of the Agriculture and Food Authority (AFA), as per the Agriculture and Food Authority Act, 2013.

The sugar sub-sector in Kenya is vital to the economy for food security and job creation, with over 400,000 small-scale farmers as its backbone. However, challenges like high production costs and inefficiencies hinder competitiveness, leading to imports that depress prices and strain local mills financially. Factors like cane shortages, low productivity, and regulatory issues further compound these challenges, causing a decline in cane cultivation since 2015.

The Sugar Bill aims to address these issues by boosting productivity, streamlining processing, enhancing value addition, and creating a favourable regulatory framework. This legislation is expected to revive the sugar industry to meet domestic needs, and generate surplus for export, benefiting millions of Kenyans and improving livelihoods.

Mr. Speaker Sir,

The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) was read a first time in the Senate on Tuesday, 31st October, 2023 and thereafter committed to the Standing Committee on Agriculture, Livestock and Fisheries.

Pursuant to the provisions of Article 118 and standing order 145(5) of the Senate Standing Orders, the Standing Committee on Agriculture, Livestock and Fisheries invited interested members of the public to submit their representations on the Bill. The Committee sent invitations and met with the following stakeholders – Ministry of Agriculture and Livestock Development, Kenya Sugar Manufacturers Association, the Council of Governors, the Kenya Agricultural and Livestock Research Organization, the Commodities Fund and the Kenya National Federation of Sugarcane Farmers. The Committee conducted public participation on the Bill in the following four (4) sugar belt counties Kisumu, Kakamega, Bungoma and Busia. In total, the Committee received oral and written submissions from forty-five (45) stakeholders.

The Committee thereafter proceeded to consider extensively the provisions of the Bill and the submissions received. Based on its deliberations, the Committee has made various observations and recommendations.

Summary of Committee Observations

1) **Challenges in Sugar Production:** Sugar producers faced a number of challenges including inadequate infrastructure, high production costs, and limited access to modern technology;
2) **Market Dynamics:** The Committee noted the complex market dynamics affecting the sugar industry, such as competition from imported sugar, price fluctuations, and demand-supply imbalances;
3) **Impact on Farmers:** The Committee observed the impact of these challenges on sugarcane farmers, including low incomes, indebtedness, and lack of access to credit and inputs;
4) **Policy and Regulatory Issues:** The Committee identified gaps in existing policies and regulations governing the sugar sector, including issues related to licensing, taxation, and trade agreements;
5) **Need for Investment:** The Committee stresses the importance of increased investment in the sugar industry to improve productivity, modernize infrastructure, and enhance competitiveness. This will have a good impact on the economy and livelihoods of farmers;
6) **Role of Government:** The Committee appreciated the role of government agencies in supporting the sugar industry through policy interventions, research and development, and extension services;
7) **Stakeholder Collaboration:** The Committee emphasizes the need for collaboration among stakeholders, including National and County governments, private sector, civil society, and farmers' organizations, to address the challenges facing the sugar industry comprehensively;
8) **Market Diversification:** The Committee saw the need for diversifying markets and products within the sugar sector, such as promoting value-added products like ethanol, biofuels, and confectionery items. This can be achieved through policies and strategic plans;
9) **Sustainability and Resilience:** The Committee observed the importance of ensuring the long-term sustainability and resilience of the sugar industry, taking into account economic, social, and environmental factors; and

   Zoning: The Committee noted that stakeholders were divided on the issues of zoning in regards on how to demarcate the catchment areas. However, the issue of restricting the delivery of cane to a specified catchment received substantial positive support from the stakeholders. The justification for zoning was to protect millers to curb loss of cane which they have invested in development.

Summary of Committee Recommendation

1. That, clause 2 of the Bill be amended to modify the definition of a catchment area to mean a geographical area where growers and millers are restricted in the delivery and receipt of cane respectively;
2. That, clause 6 of the Bill be amended to provide that for appointment of a person to represent the gender least representant on the board and a youth or a person living with disabilities;
3. That, clause 19 be amended to provide for inter-miller agreements in cases where a mill is temporarily broken down or of oversupply of cane;
4. That, clause 29 be amended to provide for nomination of a representative of the Council of Governors to the membership of the Board of Directors of the Kenya Sugar Research Institute;
5. Further, clause 29 be amended to clarify that the representative of Universities to the Board of Directors of the Kenya Sugar Research and Training Institute be appointed by the Commission on University Education;
6. That, clause 38 be amended in paragraph (c)to provide that funds allocated for research be remitted to the Kenya Sugar Research and Training Institute;
7. Further, clause 38 (d) which provides for the apportionment of levies for infrastructure development be amended by deleting the word Kenya Rural Roads Authority and replace with the county governments;
8. That, clause 43 which provides for tabling of annual reports be amended to require the Cabinet Secretary to table the report in both the National Assembly and the Senate;
9. That, the Bill be amended by deleting clause 59 which obligates private millers to appoint a grower's representative to sit on the Board of Directors
10. That, the Bill be amended by inserting a new clause 19A to empower the Board to exempt a commercial grower from the restrictions of supply of cane within a defined catchment area.

Mr. Speaker Sir,

May I take this opportunity to acknowledge the time and considerable effort made by the institutions, organizations and individuals that prepared and submitted their memoranda to the Committee. I also wish to express my gratitude to my colleagues, Members of the Committee for their thoughtful insights and contributions towards the Sugar Bill. The Committee acknowledges and appreciates the sponsor of the Bill, who is also a member to the Committee Sen. David Wafula Wakoli, MP. for the great commitment and determination on co-sponsoring the Bill.

Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for support extended to the Committee in facilitating all the actions and interactions that led to the production of this report.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the Sugar Bill (National Assembly Bills No. 34 of 2022).

Signed..   Date...26/3/2024...........................

CHAIRPERSON: SEN. JAMES KAMAU MURANGO, MP,

<u>STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES</u>

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

We, the undersigned Members of the Senate Standing Committee on Agriculture, Livestock, and Fisheries, do hereby append our signatures to adopt this Report –

	Name	Designation	Signature
1.	Sen. James Kamau Murango, MP	**Chairperson**	
2.	Sen. Alexander Munyi Mundigi, MP	**Vice-Chairperson**	
3.	Sen. Moses Otieno Kajwang', MP	Member	
4.	Sen. Enoch Kiio Wambua, CBS, MP	Member	
5.	Sen. Daniel Kitonga Maanzo, MP	Member	
6.	Sen. Beth Kalunda Syengo, MP	Member	
7.	Sen. Wahome Wamatinga, MP	Member	
8.	Sen. Allan Kiprotich Chesang', MP	Member	
9.	Sen. David Wafula Wakoli, MP	Member	

CHAPTER ONE

1.1. BACKGROUND

1. The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) is an Act of Parliament 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.

2. The Bill seeks to provide for the development, regulation and promotion of the sugar industry; for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes. The 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 by the Sugar Directorate of Agriculture and Food Authority established under the AFA Act, 2013. A copy of the Bill is attached to this Report as (*Appendix 2*).

3. The Sugar Bill, co-sponsored by Sen. David Wakoli Wafula, MP, is a National Assembly Bill No. 34, Gazette Notice No. 150, which was considered, passed by the National Assembly, and forwarded to the Senate for concurrence on 16th October 2023. The proposed Bill was first read A First Time in the Senate on 31st October 2023 and thereafter referred to the Senate Standing Committee on Agriculture, Livestock, and Fisheries.

4. Pursuant to the provisions of Article 118 and Standing Order 145(5) of the Senate Standing Orders, the Standing Committee on Agriculture, Livestock and Fisheries invited interested members of the public to submit their representations on the Bill. The Committee sent invitations and met with the following stakeholders – Ministry of Agriculture and Livestock Development, Kenya Sugar Manufacturers Association, the Council of Governors, the Kenya Agricultural Research Organization, the Commodities Fund, Kenya National Federation of Sugarcane Farmers. The Committee conducted public participation on the Bill in four (4) sugar belt counties; Kisumu, Kakamega, Bungoma and Busia. In total, the Committee received oral and written submission from forty-five (45) stakeholders.

5. The Committee thereafter proceeded to consider extensively the provisions of the Bill and the submissions received thereon. Based on its deliberations, the Committee has made various observations and recommendations which are set out at Chapter Three of this Report.

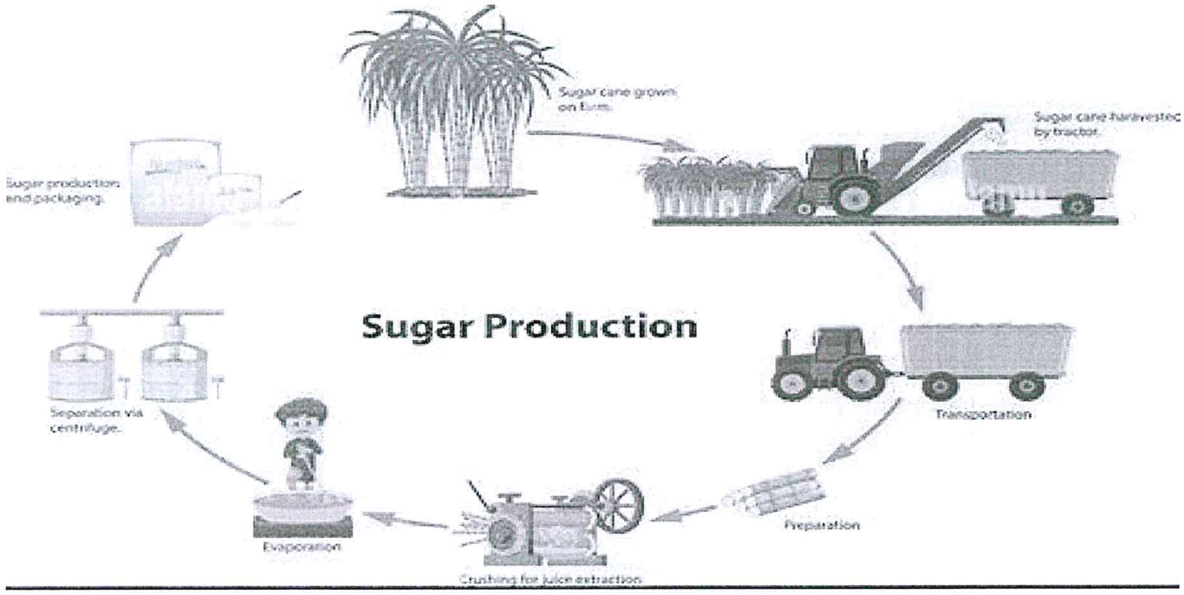
1.2. SITUATIONAL ANALYSIS ON THE SUGAR SECTOR IN KENYA

6. The history of sugar cane in Kenya traces back to 1902, when it was introduced and initially processed by jaggeries. The first sugar factory emerged in Miwani, Kisumu District in 1922 and followed by Ramisi in 1927. Post-independence, the government acknowledged the significant role of the sugar industry, as outlined in Sessional Paper No. 10 of 1965. The objective for the sugar sector was to hasten socio-economic progress, tackle regional economic disparities, foster local entrepreneurship, and attract foreign investment, culminating in Kenya achieving sugar self-sufficiency in 1980 and 1981.

7. By 2020, Kenya boasted 14 sugar factories with a collective capacity to process 41,000 Tons of Cane per Day (TCD), according to AFA-SD. However, despite considerable investments, the nation continues to be a net sugar importer due to consumption exceeding production levels. For instance, in 2018, Kenya produced 490,704 MT of sugar against a consumption of 1,012,399 MT, resulting in a shortfall of 521,695 MT that was imported from regional and global markets.

8. Kenya's annual refined sugar demand surpasses its current domestic production capacity, which stands at 160,000 metric tons. As a result, the country bridges this gap by importing both table sugar and refined sugar from the COMESA region and international markets.

9. Sugar is mostly derived from sugarcane plants cultivated on farms. Once the cane is harvested, it is transported to a mill where it undergoes receiving, weighing, and shredding processes. The juice contained within the cane is then extracted. This juice contains impurities, which are eliminated through a clarification process involving phosphate, lime, and heat treatment. The resulting clarified juice is concentrated by evaporating water, forming syrup. This syrup is then processed into massecuite, which is further processed using centrifugation to separate sugar crystals from the liquid (molasses). The separated sugar crystals are subsequently dried, packaged, and brought to market. The primary byproducts of this process include bagasse, filter mud, and molasses. Bagasse is utilized in a cogeneration plant to generate steam and electricity, while filter mud can be repurposed as farm manure.



10. Despite its significance, the sugar industry encounters various challenges, such as high production costs, substantial debt burdens, cane shortages, diminishing yields, limited value addition, operational inefficiencies, insufficient research and extension services, outdated equipment and technology, mismanagement of state-owned mills, reduced farmer incomes, and a fragile regulatory framework.

1.2.1. Challenges facing Sugar Sector in Kenya

11. The challenges facing the sugar industry in Kenya are numerous and deeply entrenched, posing significant obstacles to its long-term sustainability. One of the primary issues is the high cost of production, which is driven by various factors such as expensive inputs, inefficient production processes, and outdated technology. This leads to elevated prices for locally produced sugar, making it less competitive compared to imports from lower-cost producers.

12. Additionally, inadequate cane supply further exacerbates the industry's woes. This shortage of raw material not only affects the overall productivity of sugar mills but also leads to fierce competition for the limited cane available, driving up prices and reducing profitability. Furthermore, low productivity across the entire value chain, from farming to processing, contributes to inefficiencies and reduces the sector's overall competitiveness.

13. The regulatory framework governing the sugar industry also presents challenges, with inadequate regulations leading to market distortions, unfair trade practices, and a lack of accountability. Poor governance within sugar companies and regulatory bodies further hampers effective management and decision-making, hindering efforts to address key issues facing the industry.

14. Another significant challenge is the industry's indebtedness, which limits investment in modernizing infrastructure, adopting new technologies, and improving overall efficiency. This debt burden, coupled with limited research and development initiatives, stifles innovation and hinders the industry's ability to adapt to changing market dynamics and consumer preferences.

15. Moreover, the lack of significant value-addition initiatives means that Kenya primarily exports raw sugar, missing out on higher-value products and potential revenue streams. This narrow focus on commodity sugar production leaves the industry vulnerable to cyclic market fluctuations, further compounded by uncontrolled and illegal sugar imports, smuggling, and dumping from low-cost producers.

16. The consequences of these challenges are profound, as Kenya's reputation as a high-cost sugar producer makes it a preferred destination for cheaper imports, exacerbating the competition faced by local producers. This influx of imported sugar not only undermines domestic production but also threatens the livelihoods of cane farmers, employees, and suppliers who depend on a thriving sugar industry for their income.

1.2.2. Sugar Industry Funding

17. Cane farming and processing are indeed capital-intensive sectors that require substantial investment in infrastructure, technology, and research. Before the establishment of the Sugar Development Fund (SDF), funding in the industry primarily relied on equity and limited government support for public-owned mills. This meant that millers and individual farmers bore the financial burden of cane production.

18. However, the landscape changed significantly with the introduction of the Sugar Development Levy (SDL) in 1992. The SDL quickly became the primary source of funding for crucial areas such as research, cane development, factory rehabilitation, and infrastructure development within the sugar industry. This influx of funding played a crucial role in driving growth, innovation, and sustainability across the sector.

19. Unfortunately, the situation took a downturn with the de-gazettement of the SDL in 2016. This decision had far-reaching consequences, leading to inadequate funding for critical aspects like research, cane development, and factory rehabilitation. As a result, the industry faced several challenges, including:

    (i) Low Research Initiatives: The lack of funding hampered research initiatives aimed at improving cane varieties, enhancing processing techniques, and developing sustainable practices. This setback stifled innovation and hindered the industry's ability to stay competitive on a global scale.

(ii) Acute Cane Shortage: Without sufficient investment in cane development, there was a decline in cane productivity and quality. This shortage not only impacted the supply chain but also affected the livelihoods of farmers and the overall economic stability of sugar-producing regions.

(iii) Low Factory Efficiencies: The absence of funding for factory rehabilitation meant that many facilities were unable to modernize or upgrade their equipment and processes. This led to lower efficiencies, increased operational costs, and reduced competitiveness in the market.

20. This Bill reintroduces the levy to rejuvenate the sugar industry through research, infrastructure development, cane development, factory rehabilitation and administration of different stakeholder units of the sector.

1.3. LEGAL FRAMEWORK ON THE SUGAR SECTOR

21. **The Constitution of Kenya, 2010** provides fundamental principles and rights that impact the agriculture sector significantly. Some of the issues include-

(i) **National Values and Principles of Governance (Article 10):** The Constitution promotes sustainable development, participation, equality, transparency, accountability, integrity, and good governance. However, challenges such as governance issues and sustainability threaten the sugar cane farming community.

(ii) **Economic and Social Rights (Article 43):** Individuals are entitled to freedom from hunger, adequate food, health, housing, water, sanitation, social security, and education. Despite its economic potential, sugar cane farming faces hurdles like food insecurity and low incomes.

(iii) **Consumer Rights (Article 46):** Consumers have rights to quality products, necessary information, health and safety, fair pricing, and compensation for defects. The high production costs in the sugar industry led to expensive sugar for consumers, with concerns about packaging standards affecting product quality.

(iv) **Distribution of Functions and Powers (Article 186 and Fourth Schedule):** Responsibilities in agriculture are split between the National and County Governments, but there's confusion in execution, hampering effective implementation.

(v) **Regulation of Land Use and Property (Article 66(1)):** The State must regulate land use for planning and ensure local communities benefit from investments. However, issues arise regarding land ownership or leasing, emphasizing the need for clear land use conditions.

22. **The Crops Act of 2013:** Section 40 of the Crops Act, 2013 mandates the development of comprehensive regulations to effectively operationalize the various provisions outlined within the Act. These regulations play a crucial role in facilitating the implementation and enforcement of the Act's mandates, particularly in areas where detailed guidelines and procedures are necessary for effective governance.

23. **The Agriculture and Food Authority Act No.13 of 2013** outlines the functions of the Authority, highlighting a potential conflict between the County Government and the National Government. This conflict arises from Section 4 (b) of the Act, which aligns with the Fourth Schedule of the Constitution. Specifically, the Constitution assigns responsibilities related to crop production, marketing, grading, storage, collection, transportation, and warehousing to the County Government.

24. **The Kenya Agriculture and Livestock Research Act No. 17 of 2013** outlines the creation of KALRO (Kenya Agricultural and Livestock Research Organization) and the coordination of agricultural research endeavors within the country. Specifically, regarding the sugar sub-sector, the Sugar Research Institute (SRI) under KALRO is currently tasked with conducting research activities.

25. **Draft Sugar Regulations:** The sugar sub-sector has been operating without proper regulations since 2001, leading to a need for comprehensive guidelines. The Crops Act No. 16 of 2013 provides a framework for creating crop regulations, including those for the sugar industry under Section 40. In 2014, initiatives began to develop the Draft Sugar (General) Regulations, aiming to implement the provisions of the Act through extensive consultations with stakeholders.

26. **The Consumer Protection Act No. 46 of 2012** is a comprehensive legal framework designed to safeguard consumer rights, address unfair practices, and establish procedures for consumer remedies. It encompasses various provisions aimed at ensuring fairness, transparency, and accountability in the marketplace. The Act serves as a shield for consumers against deceptive practices, substandard products, and unfair treatment by businesses.

27. **The Standards Act CAP 496** focuses on standardizing commodity specifications and creating the Kenya Bureau of Standards (KEBS). For the sugar industry, KEBS' main functions are promoting standards, testing compliance, controlling standardization marks, and conducting educational activities.

28. **The Public Finance Management Act (PFMA) of 2012** aims to ensure the efficient management of public finances in line with constitutional principles. It outlines oversight and accountability measures, including the National Treasury's monitoring of public enterprises' finances, risk management strategies, governance structures, and state corporations' financial performance. The PFMA also addresses protocols for handling serious financial challenges encountered by these entities.

29. **The Competition Act No.12 of 2010 as amended,** focuses on fostering competition in the national economy, ensuring consumer protection against unfair practices, and establishing bodies like the Competition Authority and Tribunal. Regarding the sugar industry, the Act empowers the Competition Authority to safeguard competition and consumer welfare, investigate barriers to competition such as market entry and exit, and make the findings of such investigations public.

30. **The Environmental Management and Coordination Act No. 8 of 1999, as amended,** establishes a legal and institutional framework for environmental management. It is particularly relevant to the sugar sub-sector due to its provisions for environmental impact assessments (EIAs). Under the Act, sugar mills are classified as high-risk projects, necessitating the submission of an EIA study report. This report must outline measures for pollution control, including noise and effluent management, as well as soil management strategies.

31. **Fertilizers and Animal Foodstuffs Act (CAP 345):** Regulates the importation, manufacture, and sale of agricultural fertilizers and animal foodstuffs. The high cost of production in the industry is partly due to expensive farm inputs like fertilizer. There's an opportunity to manufacture fertilizer locally to reduce costs.

32. **Pest Control Products Act (CAP 346):** Regulates products used for pest control and plant/animal health. Despite existing regulations, sugar yields have decreased due to inadequate pest and disease control skills. Collaboration is recommended between various bodies for better pest control and sugar cane management.

33. **Plant Protection Act (CAP 324):** Focuses on preventing and controlling pests or diseases in plants.

34. **Public Health Act (CAP 242) and Food, Drugs, and Chemical Substances Act (CAP 254):** These acts prevent adulteration of food, drugs, and chemicals, ensuring public health. Adulteration issues in sugar products need addressing through collaboration and proper implementation of regulations.

35. **Pharmacy and Poisons Boards Act (CAP 244):** Controls the trade in drugs and poisons, relevant for agricultural poisons like pesticides. Low awareness in the sugar farming community necessitates collaboration for enforcing poison standards and sensitizing farmers.

36. **Employment Laws (Employment Act of 2007, Labour Relations Act No. 14 of 2007, Work Injury Benefits Act 2007, Occupational Health and Safety Act 2007, Labour Institutions Act 2007):** Defines employee rights, conditions of employment, and safety regulations. Adherence to these laws is essential in the sugar industry.

37. **County Governments Act (No. 17 of 2012) and Intergovernmental Relations Act (No. 2 of 2012):** The County Governments Act outlines the powers and

responsibilities of county governments, emphasizing their role in implementing agriculture policies and services. Challenges persist in coordinating functions between national and county levels, as well as fully implementing constitutional mandates. The Intergovernmental Relations Act aims to foster cooperation and resolve disputes between national and county governments.

38. **National Land Commission Act (No. 5 of 2012):** This act defines the National Land Commission's role in managing public land, investigating land injustices, and overseeing land use planning. Concerns exist regarding the categorization and use of nucleus land in the sugar industry, prompting recommendations to maintain land use for cane growing and specify land use purposes in legal documents.

39. **Climate Change Act (No. 11 of 2016):** The act aims to integrate climate change responses into development planning and enhance resilience to climate impacts. Stakeholders propose climate adaptation measures such as dam construction, water harvesting for irrigation, afforestation, and exploring carbon credit trading from sugar cane plantations.

40. **Energy Act (No. 1 of 2019):** This act consolidates energy-related laws, promotes renewable energy, and ensures affordable energy services. Bagasse, a by-product of sugar, qualifies as a renewable energy source.

1.4. INSTITUTIONAL FRAMEWORK

1.4.1. The Agriculture and Food Authority-Sugar Directorate (AFA-SD)

41. The Sugar Directorate of the Agriculture and Food Authority (AFA-SD) was created in accordance with the Agriculture and Food Authority Act of 2013 as part of the various Directorates within AFA. Both the AFA Act of 2013 and the Crops Act of 2013 aim to simplify the agricultural sector and implement fresh oversight mechanisms to enhance coordination of agriculture in a decentralized setup. This involves merging laws that oversee the advancement, management, and advocacy of agriculture.

(i) The Sugar Research Institute (SRI)

42. The Sugar Research Institute (SRI) functions as the research division of the industry, established in accordance with the Kenya Agriculture Livestock Research Organization (KALRO) Act of 2013. SRI is tasked with conducting research and creating suitable technologies, products, and services for sugar cane and related crops' production, milling, utilization, and marketing of sugar and its by-products. Additionally, the Institute is responsible for testing and sharing enhanced production technologies with users in collaboration with stakeholders.

(ii) Farmers' Institutions

43. Farmer institutions encompass Out-grower Companies, Societies, Community-based organizations, Unions, and Savings and Credit Co-operative Societies. These organizations recruit membership from sugarcane farmers who cultivate and provide cane to factories. Most of these farmer institutions were established as means to organize farmers and facilitate credit provision, among other purposes.

(iii) Millers

44. Millers are authorized to run either a sugar or jaggery mill for manufacturing sugar and related items. They are represented by the Kenya Sugar Manufacturers Association (KESMA), which advocates for their interests. Millers play a crucial role in the sugarcane industry due to their involvement in processing and adding value. The industry's profitability and resilience hinge on their operational efficiency.

45. Jaggeries, smaller-scale mills that produce jaggery exclusively, utilize about 10% of the available cane, providing an alternative market for farmers. However, most jaggeries operate informally, creating challenges in coordination and cane supply.

(iv) Kenya Society of Sugarcane Technologists (KSSCT)

46. The Kenya Society of Sugarcane Technologists (KSSCT) is connected to both the International Society of Sugarcane Technologists (ISST) and the East African Society of Sugarcane Technologists (EASST) as an affiliated organization.
47. It comprises technical experts involved in various aspects of the sugar production process and includes members from both individuals and corporations invested in the sugar industry.

a) OVERVIEW OF THE BILL

48. The Bill proposes the following-

1) PART I – PRELIMINARY

a) Contains preliminary provisions and sets out various definitions of terms used in the Bill.

2) PART II- ESTABLISHMENT, POWERS AND FUNCTIONS OF KENYA SUGAR BOARD

a) Clause 3- 4 provides for the establishment of the Kenya Sugar Board whose mandate shall be, to regulate, promote and develop the sugar industry, coordinate activities of value chain actors, and to promote equitable access to benefits and resources of the industry by all interested parties.

b) Further, the Board shall perform the following specific functions-

   i. formulate and implement policies plans and programs;
   ii. be an intermediary between the industry and the government;
   iii. establish linkages with other government agencies and research institutions;
   iv. monitor and regulate domestic market with a view to identify and advise the government on any distortion and possible corrective measures.
   v. advise the national and county government on agricultural levies;
   vi. facilitate sale, import and export of sugar and sugar products;
   vii. provide advisory services to growers, out-growers institutions and millers;
   viii. in collaboration with county governments, implement a mechanism for pricing sugar and apportioning of proceeds of sale of by-products between growers and millers;
   ix. oversee formulation of provisions mutual rights and obligations of growers, millers and other interested parties;
   x. register and license sugar and jaggery mills, exporters, importers, and dealers;
   xi. promote and advise on strategies for value addition and product diversification; and
   xii. in consultation with county governments, formulate guidelines on transportation of sugar, sugar crops and their by-products;

c) Clause 5 sets out the functions of county government in relation to the sugar industry as –

   i. issuance of certificates and inspecting of sugar crop nurseries in collaboration with the research institute.
   ii. providing extension services on sugar production;
   iii. in collaboration with the Board and law enforcement agencies, to enforce regulations within the counties;
   iv. to monitor, report and take appropriate action on pest and disease outbreaks; and

v. to establish an efficient road network for sugar production within the respective counties.

d) Clause 6 Provides for the composition of the Board which shall consist of 11 members, namely-

i. a non-executive chairperson appointed by the president;
ii. five representatives of growers from each sugar catchment area;
iii. two persons representing the private and public millers;
iv. principal secretaries of National Treasury and Agriculture;
v. one nominee of council of governors with knowledge of extension services and management of farmer institutions;
vi. and the Chief Executive Officer.

e) The Board members shall possess a degree in any field and shall serve for a term of three years renewable once.
f) Clause 9 provides for the powers of the Board which include; the power to impose levy upon growers and millers.
g) Clause 14 provides for the office of the chief executive officer of the Board and sets out the qualification as; a relevant degree, ten years' experience in a relevant field and five years' experience in senior management.
h) Clause 18 makes it a prerequisite for a person intending to operate a sugar mill to be registered and issued with a certificate by the Board. In issuing the certificate, the Board shall ensure that the premises where milling is carried out meets the environmental and safety standards. Further, contravention of the provision is an offense punishable by a fine of not more than ten million- or five-years imprisonment.
i) Clause 19 obligates growers to be registered by a miller who receives their cane. In this regard a miller shall not offer milling services to unregistered growers. Contravention of the section is an offense which is punishable by a fine of not less than one million shillings or a fine of not less than one year.

3) PART III – LICENCING AND REGISTRATION

j) Clause 20 sets a requirement for any person operating a sugar mill or a jaggery mill to be a holder of a current license issued by the Board upon recommendation by the relevant county government. Further, contravention of this provision is an offense punishable by a fine of not more than ten million- or 5-years imprisonment.
k) Clause 21 sets the conditions for issuance of a license as; being fit to hold a license and having sufficient knowledge, experience and capacity to conduct the milling business.
l) Clause 23 prohibits importation of sugar or its by-products without a valid license issued by the Board. The clause further sets the following additional requirements -
   i. evidence of non-availability of the sugar in the market;

ii. Provision of a sample of the sugar and pre-import verification certificate;
iii. A pre-import approval from the Board.

m) Clause 24 outlines sugar imports safeguard measures and in this regard provides that sugar shall be imported in the country only where there is a shortage.
n) Under clause 24 the Board shall license and regulate processing of industrial sugar.
o) Clause 26 obligates millers and retailers to ensure that sugar is packaged in a package that satisfies the trade principle of traceability.

4) PART IV - PROVIDES FOR THE ESTABLISHMENT OF THE KENYA SUGAR RESEARCH AND TRAINING INSTITUTE

a) Clause 27 establishes the Sugar Research and Training Institutes (STRI)managed by a Board of directors consisting of –
   i. a chairperson appointed by the CS through a competitive process;
   ii. one person nominated by sugarcane apex growers' body;
   iii. one person nominated by sugarcane manufactures apex body;
   iv. one person nominated by the inputs supply chain;
   v. one person nominated by universities;
   vi. principal secretaries for treasury and agriculture;
   vii. Director General of KALRO; and
   viii. a managing director who shall be *ex- official.*
b) Clause 28 provides that the overarching function of the institute shall be to coordinate, regulate and conduct research in the sugar industry.
c) Under Clause 27, the funds of the Institute shall include monies remitted by the Board from the sugar development levy, among others.
b. Clause 32 provides for the position of a Managing Director who shall be appointed by the Board of the Institute and shall have a doctorate degree, ten years' experience from a relevant field, and at least 5 years' experience in a senior management position.

5) PART V - APPOINTMENT OF SUGAR INSPECTORS

a) Under clause 33(2) the Sugar inspectors shall comprise crop, factory, warehouse and transport inspectors. In the performance of their duties, the inspectors shall have powers to enter a building, inspect and require information as necessary.

6) PART VI - FINANCIAL PROVISIONS

a) Clause 33 sets out the funds of the Board which shall comprise of among others monies appropriated by the National Assembly and the sugar development levy.

b) Under clause 38, the Cabinet Secretary shall impose a sugar development levy on domestic sugar not exceeding 4% of the Value and 4% of CIF value on imported sugar which shall be payable to the Board.
c) The Sugar Development Levy shall be apportioned, 15% of the levy shall be applied for factory development and rehabilitation,15% on research and training, 40% on cane development and productivity enhancement, 15% in infrastructural development managed by KRRA,10% for administration of the Board, and 5% for to sugarcane farmers organizations.
d) Clause 39 establishes the Sugar Development Fund which shall be administered by the Board.

7) **PART VII- THE SUGAR ARBITRATION TRIBUNAL**

a) Clause 44 establishes a Sugar Tribunal which shall consist of a chairperson and four other members appointed by the Chief Justice, the jurisdiction of the tribunal shall be to determine disputes between stakeholders in the sugar industry.

8) **PART - MISCELLANEOUS PROVISIONS**

a) Clause 52 provides that the Board shall convene annual general meeting and special meetings of growers and millers for purposes of considering annual report and any other matter.
b) Clause 53 obligates millers and importers to meet the safety, health and quality standards on locally produced or imported sugar as set out by the body responsible for setting standards.
c) Clause 54 provides that the Board shall conduct quarterly inspections on premises to ensure safety and health standards are followed.
d) Clause 56 of the Bill provides for sugar industry agreements which shall be negotiated between the industry players. The agreements shall provide for, among others, designation of an agricultural crop for production of sugar, right of growers, contracts, formula for determining price, functions of the board in execution of the agreement, powers of the Board to enforce penalties upon breach of a contract, and enforcement of levies.
e) Clause 58 sets up a Sugarcane Pricing Committee composed of a nominee of the Board, a representative of sugar manufactures and two representatives of sugar growers, the PS for finance and agriculture, two representatives of COG, and a nominee of the SRTI.
f) The objective of the Committee shall be to review sugarcane prices, provide a mechanism of paying farmers for products delivered, ensure adherence of cane processing formula, peg prices on quality, and enforce contracts. The prices set shall be reviewed every 3 months.
g) Clause 59 sets a requirement on the boards of private milling companies to have a representative of the growers in the board of directors.

9) **PART IX** contains provisions on delegated powers. Clause 57 empowers the Cabinet Secretary to make regulations for better carrying into effect the provision of this Act.
10) **PART X** contains consequential amendments to the Agriculture and Food Authority Act, 2013 and the Crops Act, 2013 to remove sugar from the purview of these Acts.
11) **PART XI** contains savings and transitional provisions.
12) The **First Schedule** of the Bill delineates various sugar catchment regions.
13) The **Second Schedule** of the Bill provides for the conduct and affairs of the Sugar Board.
14) The **Third Schedule** of the Bill contains provisions on the procedure and meetings of the sugar arbitration tribunal.

CHAPTER TWO

2.1. OVERVIEW OF THE PUBLIC PARTICIPATION ON THE BILL

2.1.1. INTRODUCTION

49. The Committee pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 20th October 2023 inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as ***(Appendix 4).***

50. Additionally, the Committee sent invitations to the Ministry of Agriculture and Livestock Development, Kenya Sugar Manufacturers Association, the Council of Governors, the Kenya Agricultural Research Organization, the Commodities Fund, and the Kenya National Federation of Sugarcane Farmers. The Committee conducted public participation on the Bill in four (4) sugar belt counties of-Kisumu, Kakamega, Bungoma and Busia. In total, the Committee received oral and written submission from forty-five (45) stakeholders.

51. In response to the advertisement and invitations, the Committee received submissions from a total of eighteen (18) stakeholders. The detailed submissions by stakeholders, organized clause-by-clause, are set out in a matrix attached as ***(Appendix 5)***.

52. Additionally, copies of the stakeholder submissions on the Bill are attached collectively as ***(Appendix 6).***

2.2. SUBMISSIONS FROM STAKEHOLDERS AND COMMITTEE RESOLUTION

2.2.1. Submissions on Part I- Interpretation

53. The Commodities Fund proposed the removal of the word "Funds" from the definitions. They suggested consolidating management under the already established entity, The Commodities Fund.

    The Committee disagreed with this proposal since the definition is necessary for the establishment of the Sugar Development Fund which is sector-specific to the sugar industry.

54. The Council of Governors proposed an amendment to the definition of "*license*" from *"issued by Board to a miller"* to *"issued by respective County Governments or Board as the case may be"* This proposed change aims to align with the provisions outlined in the Bill. Specifically, County Governments would be responsible for licensing millers, whereas the Board would handle the licensing of importers and exporters.

    The Committee disagreed with this proposal. This is because Agriculture is a concurrent function, with the national government being responsible for policy, regulation, standards and the County Government dealing with implementation of the policies.

55. Mumias Sugar Company is proposing a change to the *"Sugar Catchment area"* definition, to "*to establish a designated zone where millers can only purchase cane and growers can solely deliver cane"*. This aims to regulate markets, ensuring a more predictable sugarcane supply. Additionally, it facilitates the application of incentives for sugarcane growers.

    The Committee resolved that the Sugar Catchment Areas remain as they are delineated in the Bill and that the zones be used for both elections and supply of sugarcane by the farmers to the millers.

56. Olepito Sugar Farmers suggest creating cooperative societies as the sugarcane growers' apex body for sugarcane growers instead of out grower societies. This shift is proposed due to past experiences where out grower facilities exploited farmers.

    The Committee disagreed with this proposal. Clause 2 defines out-grower apex body to mean an organization registered under the societies Act for the purpose of championing for the rights of growers. Cooperative Societies are registered under the Cooperative Societies Act, Cap 490 of the Laws of Kenya. The

purpose of the Sugar Act is not to establish farmers' organizations but rather to recognise their existence and set out their role in the sugar industry.

57. The Sugar Traders Association of Kenya suggests amending the definition of "*industry*" to incorporate traders. Currently, the Bill defines industry as the entire sugar sector in Kenya, encompassing sugarcane cultivation, production, refining, storage, marketing, transport, and waste management. However, omitting sugar traders from this definition excludes them from being recognized as stakeholders in the industry, despite their substantial involvement and interest. This exclusion is seen as discriminatory by the association.

    The Committee disagreed with this proposal. The sugar traders do not substantially contribute to the production, regulation and promotion of the sugar industry which is the main purpose of the legislation.

2.2.2. Part II – Establishment, Powers and Functions of the Kenya Sugar Board.

58. The Council of Governors (COG) proposed an amendment to Clause 4(2)(m) regarding the functions of the Board, specifically to include registering and licensing exporters and importers. This amendment aims to align with constitutional provisions outlined in Part 1 Sections 1, 9, 29, and 32 of the Fourth Schedule. COG believes that the current Bill does not adequately respect the functional and institutional integrity of County Governments.

    The Committee disagreed with this proposal. There is a need to have a centralized system to license all value chain actors. The County Government will have representation in the Board. The Board will issue licenses.

59. The Council of Governors proposes expanding the functions of County Governments in the Bill. These are; issuing sugarcane nursery certificates, registering and licensing sugar and jaggery mills, warehouses, and other dealers within the county (excluding importers and exporters), formulating and implementing strategic plans for the county's sugar sub-sector, providing advisory and extension services to growers, out-grower institutions, and millers, inspecting sugar-related facilities within the county, enforcing industry standards and legislation, overseeing corporate governance in relevant institutions, establishing road networks instead of merely maintaining them, and developing and regulating sugarcane growers' institutions in line with relevant laws. These proposed functions aim to align with the Constitution's Fourth Schedule, which grants County Governments full authority over agriculture and trade development and regulation within their jurisdictions, excluding international trade.

The Committee disagreed with this proposal.

60. KASAP, SUCAM, KESGA, CSGASA, and SHSFAK, have proposed removing a section concerning County Governments' roles in sugar crop nurseries. Their rationale includes concerns that licensing could lead to harassment of farmers involved in seed multiplication, increased production costs, and the absence of a functioning seed system.

The Committee disagreed with this proposal. Agriculture is a devolved function and therefore the role is properly placed under the County Government. The counties will work in collaboration with the Sugar Research Institute in propagating quality seedling.

61. Clause "5(e) *Maintain efficient road network*" KASAP, SUCAM, KESGA, CSGASA, and SHSFAK proposed an amendment to establish a cess Committee at each milling zone. This Committee would include growers, millers, the Kenya Rural Access Authority and the relevant County Government. The justification for this amendment is that roads in the sugar belt region are in poor condition. Despite the fact that growers are charged 1% levy on the total tonnes delivered, with the levy being submitted to counties without a framework for rehabilitating county roads. Currently, the collection of this cess is done illegally without a legal framework in place.

The Committee disagreed with this proposal because it may create unnecessary bureaucracy and conflict which will delay implementation. Further, collection and utilization of Cess is governed by county laws.

62. David G Okello, a farmer from Muhoroni, proposes allocating fifteen percent of funds of the SDL for infrastructural development and maintenance, managed by the Kenya Rural Roads Authority (KERRRA) in the catchment area. He argues that counties struggle with financial challenges and might be misappropriated. Additionally, he proposes a new clause for joint assessment by the Kenya Sugar Board, County Government, and KERRRA annually to allocate funds for repairing roads in the sugar belt, regardless of ownership. Okello emphasizes the importance of harmonious infrastructure management between stakeholders.

The* Committee *disagreed with this proposal to avoid adding to the bureaucracy

63. Clause 6 concerning the Establishment, Powers, and Functions of the Board: Kenya Sugarcane Growers Association (KESGA), Kenya Sugarcane Farmers Association, Musa Ekaye and Anthlus Muge both farmers, proposes that the

chairperson of the Board should be elected from among the elected farmers' representatives rather than being appointed by the President.

The Committee disagreed with this proposal as it is against the Mwongozo guidelines which recommends that Chairpersons to a Board be appointed by the President.

64. Metrine, a Member of the County Assembly of Bungoma County, along with sugarcane farmers from Nandi, are proposing an amendment to the Bill to ensure that appointments made to the Board reflect gender balance, thereby aligning with the constitutional principle of the third gender rule.

The Committee accepted the proposal and resolved that a provision requiring for compliance with a third gender principle as provided for in the Constitution be included in the Bill.

65. The Sugar Traders Association of Kenya advocated for the inclusion of a representative from their body on the Board. They argue that Sugar Traders should have representation on the Sugar Board due to their substantial stake in the sugar industry. Given that the Sugar Board will be responsible for licensing and regulating sugar traders as part of its broad mandate, including a representative from the Sugar Traders Association ensures that policies and administrative decisions affecting sugar traders are made with their input and expertise.

The Committee disagreed with the proposal. The stakeholder does not substantially contribute to the production, regulation and promotion of the sugar industry which is the main purpose of the legislation. Further, licensing of sugar traders is a function of the county government and not the board.

66. Nandi Sugarcane Farmers are requesting that measures be implemented to ensure that new millers are licensed, as the current provision only caters to existing millers.

The Committee disagreed with this proposal. The clause specifically allows for registration, not licensing. Clause 4 outlines the functions of the Board, which will encompass licensing millers as per section 4(2)(m).

67. Deputy Governor, Busia County, Hon. Author Odera proposes amending "may" to "shall," compelling millers to provide extension services, thus ensuring efficiency.

The Committee disagreed with this proposal. Extension services are a function of county governments. The millers may however voluntarily provide these services to the farmer.

68. Clause 19 on the registration process for growers to a factory, KASAP, SUCAM, KESGA, CSGASA, and SHSFAK is seeking an amendment to include out-grower institutions. This amendment aims to support the development of out-grower institutions and cooperatives that offer services to growers. The rationale behind this is to prevent millers from imposing excessively high prices on services and inputs for farmers in the absence of such institutions.

    Additionally, they propose amendments so that growers should register with out-grower institutions and establish agreements with them. The reasoning for this amendment is to establish a structured framework for the government to identify a suitable and qualified apex body to collaborate with. This collaboration is intended to ensure sustainability through economies of scale, provide services like harvesting and transportation, offer extension services, reduce transaction costs through bulk purchases, provide agro-processing facilities, and engage in value addition initiatives.

    The Committee disagreed with this proposal. Clause 2 of the Bill defines an out-grower to mean a person who has a sugarcane farm and has a supply contract in force. The definition therefore includes an out-grower company engaged in cane growing. The Committee resolved that the definition be amended to read 'grower' which is the word that is used in the Bill.

69. The Deputy Governor of Busia County suggests including a provision on the agreement between millers to address situations where a miller faces an oversupply of cane or is unable to process the cane efficiently.

    The Committee agreed with the proposal and provided for condition for miller to enter into agreements

70. Various stakeholders including the Kenya National Federation of Sugarcane Farmers (Busia Branch), represented by Mr. Muge, a Busia Boda Boda rider, Asul Anyango, Anthlus Mugo, and the Central region-KNFSF are advocating for the inclusion of a new clause in the Bill regarding the headquarters of the Kenya Sugar Board. The proposed clause suggests establishing the Kenya Sugar Board within the sugar belt, specifically in Kisumu or Kakamega.

The Committee disagreed with the proposal citing the need for the devolution of services to counties. The Committee however took notice of the fact that there is already an existing infrastructure in Nairobi. The Committee recommended that the headquarters be retained in Nairobi but be devolved gradually to areas such as sugar catchement areas.

2.2.3. Part III-Licensing and Registration

71. KASAP, SUCAM, KESGA, CSGASA, and SHSFAK are proposing an amendment to "Registration of Dealers" with the rationale that the current provision lacks provisions for farmer registration.

    The Committee accepted the proposal. The clause only provides for licensing.

72. The Council of Governors is proposing an amendment to Clause 20, which concerns the requirement of a license to operate a mill. The proposed change suggests that licenses for operating a sugar mill or producing jaggery should be issued by the respective County Governments. This proposal is based on the Fourth Schedule of the Constitution, which devolves agriculture, trade development, and regulation to County Governments. Therefore, the rationale is that County Governments should be responsible for licensing millers within their jurisdiction, while the Board would handle export or import licenses only. Additionally, Deputy Governor Hon. Arthur Odero emphasized that the Board's issuance of licenses should not merely rely on county governments' recommendations; instead, county governments should play a more active role beyond recommendation.

    The Committee disagreed with this proposal. The Committee resolved that there is a need to have a centralized system to license all value chain actors. The county government will have representation in the board.

73. The Council of Governors proposes an amendment to Clause 21, specifically sections 21(1), 21(2), and 21(4), in order to synchronize them with Clause 20 regarding the licensing authority. The rationale behind this amendment is rooted in the devolution of agriculture, trade development, and regulation to County Governments as outlined in the Fourth Schedule of the Constitution. Consequently, County Governments are responsible for licensing millers within their jurisdiction, while the Board's role is limited to issuing export or import licenses.

The Committee disagreed with this proposal. The Committee resolved that there is a need to have a centralized system to license all value chain actors. The county government will have representation in the Board.

74. KESMA proposed the introduction of a new clause 21 (6) in order to apply the Competition Act to the Sugar industry. This proposed clause aims to limit any single miller from controlling more than 30% of the market share. KESMA argues that this aligns with section 23 of the Competition Act, which forbids actins constituting buyer power abuse in Kenya's markets. They contend that sugar poaching constitutes an abuse of dominant position and should be banned. The main goal of this proposal is to safeguard small millers and prevent one sugar company from dominating and exploiting the sugar industry.

    The Committee disagreed with this proposal to allow for healthy competition within the industry. The provisions of Clause 19 which sets a requirement of registration of growers for purposes of delivery of cane will curb poaching.

75. The Council of Governors is proposing an amendment to Clause 22(1) on Conditions of a license. The proposed change suggests replacing "the Board" with "the respective County Government." This amendment is justified by the Fourth Schedule to the Constitution, which devolves agriculture, trade development, and regulation to County Governments. Consequently, County Governments should be responsible for licensing millers within their jurisdiction, while the Board should focus on issuing export or import licenses.

    The Committee disagreed with this proposal. There is a need to have a centralized system to license all value chain actors. The county Government will have representation in the Board.

76. Clause 23 regarding Sugar imports: The Kenya Sugarcane Growers Association (KESGA) proposes that imported sugar should undergo sample testing. This requirement should not solely rely on allowing a miller to import only the shortfall. Given that the miller is already operating in the sugarcane industry, this measure will effectively block the entry of substandard sugar into the country.

    The Committee disagreed with this proposal. Clause 23 (3) (b) provides for provision of a sample of the sugar to be imported. Further, clause 24(3) provides that the Government shall introduce other safeguard measures to protect the industry from unfair trade practices.

77. In Clause 23 (3) (b), Nzoia Sugar Company is proposing an amendment to include a provision for samples that adhere to the Kenyan sugar standard and

require a pre-import verification certificate from the country of origin. This amendment aims to enhance quality control measures.

The Committee disagreed with this proposal. Clause 23 (3) (b) provides for provision of a sample of the sugar to be imported. Further, clause 24(3) provides that the Government shall introduce other safeguard measures to protect the industry from unfair trade practices.

78. The Kenya Sugarcane Farmers Association is advocating for an amendment that would allow sugar millers, rather than non-sugar manufacturers, to import sugar in case of a shortfall. The rationale behind this proposal is that sugar millers possess specialized knowledge about sugar and are therefore better equipped to handle its importation.

The Committee disagreed with this proposal. Clause 23 (3) (b) provides for provision of a sample of the sugar to be imported. Further, Clause 24(3) provides that the Government shall introduce other safeguard measures to protect the industry from unfair trade practices.

79. Clause 23, on "Sugar imports," KESMA is proposing amending the clause to require that 50% of Kenya's sugar deficit be imported by local millers in proportion to their actual share of local sugar production. These millers would be responsible for ensuring that imported sugar meets Kenyan standards. Presently, individuals lacking expertise in the sugar industry handle sugar imports, resulting in the importation of substandard sugar unfit for human consumption.

The Committee disagreed with this proposal. Clause 23 (3) (b) provides for provision of a sample of the sugar to be imported. Further, Clause 24(3) provides that the Government shall introduce other safeguard measures to protect the industry from unfair trade practices.

80. Senator Boni Khalwale is proposing that during periods of sugar supply deficits in Kenya, 50% of sugar imports should be directed to out-grower societies.

The Committee disagreed with this proposal to allow for a healthy competition in the industry.

81. Governor Ken Lusaka suggests licensing sugar millers for sugar importation. His rationale is that the current importers lack expertise in the sugar industry, resulting in the importation of substandard sugar unfit for human consumption.

The Committee disagreed with this proposal to allow for a healthy competition in the industry.

82. Mumias Sugar Company Ltd proposes implementing stringent measures to regulate sugar importation in Kenya. These measures would include imposing tariffs and quotas on imported sugar to safeguard local millers.

The Committee disagreed with this proposal. Clause 23 and 24 sets out safeguard measures on importation of sugar. The Bill further provides in 60(2) (f) for the Cabinet Secretary in consultation with the county government and the Board to come up with regulations.

83. The Kenya National Federation of Sugarcane Farmers (Busia Branch) suggests amending the Bill to include the formation of a sugar importation Committee. This Committee would consist of representatives from farmers, millers, and the government. Its purpose would be to oversee and regulate sugar importation activities nationwide.

The Committee disagreed with this proposal. Clause 11 of the Bill empowers the Board to establish its Committees where suitable. Further, it gives the Board powers to co-opt such other persons to sit in the Committee. Setting up a Committee to deal only with sugar imports will occasion unnecessary expenditure on public resources.

84. Mumias Sugar Company proposes an amendment to clause 24 to introduce strict regulations such as tariffs and quotas on imported sugar. This is to protect millers from unfair competition and maintain a level playing field.

The Committee disagreed with this proposal. Clause 24 provides that sugar shall be imported only when there is a deficit.

85. Similarly, Butali Sugar Mills Limited proposes the regulation of sugar imports due to market instability affecting cash flow, leading to challenges in paying farmers and causing stagnation in the local economy.

The Committee disagreed with this proposal. Clause 24 provides that sugar shall be imported only when there is a deficit.

86. George Kasawa, a farmer from Nzoia Sugar, proposed an amendment to clause 24, suggesting the prohibition of non-COMESA sugar imports into Kenya. This

proposal stems from concerns about the extensive importation of substandard sugar that is unsuitable for human consumption.

The Committee disagreed with this proposal. Clause 23 and 24 of the Bill outline safeguard measures for sugar importation, specifying that sugar shall only be imported in cases of deficit. Additionally, Clause 60(2)(f) empowers the Cabinet Secretary, in collaboration with county governments and the Board, to develop regulations on this matter.

87. Clause 26, Duties of Millers and retailers: West Sugar Company Limited proposes banning the repackaging of sugar by companies and supermarkets. This could be due to concerns about quality control, tampering, or misrepresentation.

The Committee disagreed with the proposal. It observed that Clause 26 provides that a retailer shall sell sugar products in a package that satisfies the trade principle of traceability.

88. Governor Ken Lusaka suggests that repackaged sugar should include information about its origin. This is likely aimed at transparency and ensuring consumers know where the sugar comes from.

The Committee disagreed with the proposal. It observed that Clause 26 provides that a retailer shall sell sugar products in a package that satisfies the trade principle of traceability.

89. Nzoia Sugar Company proposes replacing the "farm gate" weighing with weighing at the factory or collection centers. This change is based on past challenges in implementing farm gate weighing due to logistical issues with mobile weighbridges.

The Committee observed that the provision is not in the Bill. However, the Bill gives powers to the Cabinet Secretary under clause 60(2) to make regulations prescribing the establishment of weigh bridges and collection centers.

90. Matayos sugarcane farmers and John Orenge propose establishing weigh bridges at the farm gate, with millers bearing the cost. This is to enhance accountability in the weighing process and ensure fair treatment for farmers.

The Committee observed that the provision is not in the Bill. However, the Bill gives powers to the Cabinet Secretary under clause 60(2) to make regulations prescribing the establishment of weigh bridges and collection centers.

David G. Okello Mkulima-Muhoroni suggests establishing well-calibrated cane testing units to price sugar based on sucrose levels rather than just weight. This approach could lead to more accurate pricing reflecting the quality of the sugar.

The Bill under clause 58(3) (b) gives powers to the pricing Committee to transition payment based on quality as opposed to quantity. Further clause 60(2) gives powers to the Cabinet Secretary to make regulation on the conditions with respect to the delivery, measurement, examination and testing of sugar crop.

2.2.4. Part IV- Establishment of the Kenya Sugar Research and Training Institute

91. Clause 27 & 28, Sugar Research Institute: Mumias Sugar Company is suggesting a new provision in support of research investment aimed at driving innovation and boosting productivity. They propose prioritizing sugarcane research to introduce faster-maturing breeds and promote efficient cultivation practices, ultimately enhancing productivity.

    The Bill under clause 38(6) (f) allocates 15% to the Sugar Research Institute to be applied for research and training. Part iv provides for establishment of the Sugar Research Institute whose function is in 28(2) include training in industry best practices and to breed varieties suited for various ecological areas.

92. Clause 29- Management of the Institute: The Council of Governors is suggesting an amendment to clause 29(1) to include a representative from County Governments in the agricultural sector. This representative would be nominated by the Council of County Governors and appointed by the Cabinet Secretary. The rationale behind this proposal is that County Governments play a crucial role in implementing research proposals in the agricultural sector, hence their representation on the Board is essential.

    The Committee agreed to this proposal and resolved to replace the nominee of input supply with a nominee of the county governments.

93. The Sugar Traders Association of Kenya proposes for the inclusion of sugar traders within the Sugar Research and Training Institute. They argue that given the objectives outlined by this statutory body, which significantly impact the sugar sector, it is imperative for sugar traders, who are major stakeholders, to have representation.

The Committee disagreed with this proposal. The stakeholder does not substantially contribute to the production, regulation and promotion of the sugar industry. Which is the main purpose of the legislation

They further propose that the President appoints the chairperson of the board, citing the authority granted by the State Corporation Act No. 11 of 1986, Subsection (1). This move is in line with the requirements outlined in the Mwongozo guidelines.

The Committee observed that a board is not a state corporation and therefore not subject to the State corporation Act.

Additionally, they propose the removal of Clause 29(h) of the Institute, which mandates the Director-General of KALRO to sit on the board, as they believe it does not contribute any significant value to the institute's objectives.

The Committee accepted this proposal by observing that having two Directors sitting in one board may cause conflicts.

2.2.5. Part V- Appointment of Sugar Industry Inspectors

94. Clause 33, Appointment of Crop Inspectors: The Council of Governors has proposed an amendment to Clause 33(1) by adding a new sub-clause (1a) immediately after sub-clause (1). This new sub-clause would allow the respective County Executive Committee Member to appoint qualified persons as sugar industry inspectors for the purpose of carrying out functions under the Act or any other written law. The rationale behind this proposal is to facilitate the appointment of county sugar industry inspectors, which would contribute to the effective implementation of the Act by the County Governments.

The Committee disagreed with this proposal. There is a need to have a centralized system to inspect all value chain actors. The county Government will have representation in the Board.

The Bungoma Cane Farmers Association is calling for checks on the powers of inspectors to eradicate instances of corruption within their ranks.

The Committee disagreed with this proposal and resolved to leave it as is in the Bill.

Nzoia Sugar Company proposes the addition of the term "factory inspectors" to the heading for enhanced clarity. This modification is rationalized by the fact that inspections encompass not only crops and land but also premises within the scope of examination.

The part referred to by the stakeholder was amended. It read "appointment of sugar industry inspectors" and therefore the proposal is overtaken by events.

George Kasawa, a farmer affiliated with Nzoia Sugar, is proposing an amendment to clause 35(1)(f) regarding the seizure of items when there is reasonable suspicion of an offense under the Act. His reasoning is rooted in concerns about the extensive powers held by inspectors, which could potentially be exploited and abused.

The Committee disagreed with this proposal. The powers are necessary to ensure compliance by stakeholders.

Mr. James Etabale, the Chairperson of the Agriculture Committee of the Kakamega County Assembly, has proposed an amendment to the Bill aimed at regulating the authority of crop inspectors. The objective is to reduce instances of corruption and undue oppression attributed to their extensive powers, which Mr. Etabale argues could be misused.

The Committee disagreed with this proposal. The powers are necessary to ensure compliance by stakeholders.

2.2.6. Part IV- Financial Provisions

95. Clause 38- Sugar Development Levy: The Commodities Fund proposed an amendment to grant the Cabinet Secretary discretion in determining the percentage allocation of the fund based on prevailing circumstances. Additionally, there was a proposal to allocate fifty-five per cent of the fund towards lending for factory and cane development. The rationale behind these proposals is that the Commodities Fund already possesses established policies for lending and repayment, making it feasible to allocate a significant portion towards specific developmental purposes.

The Council of Governors proposed an amendment to clause 38(6) regarding the allocation of funds in the sugar industry. The proposed amendment suggests the following distribution of funds:

i. 20% directly to sugar-growing counties for factory development and rehabilitation.
ii. 15% for research and training.
iii. 40% directly to sugar-growing counties for cane development and productivity enhancement.

iv. 15% directly to sugar-growing counties for infrastructural development and maintenance.
v. 5% for the administration of the Board.
vi. 5% for the functions of sugarcane farmers' organizations.

The rationale behind this proposal is to align with the Fourth Schedule of the Constitution, which entrusts County Governments with the responsibility of regulating and developing agriculture, trade, county transport, and other related areas. Infrastructure development within the sugar subsector is considered the responsibility of County Governments, hence the proposed fund allocation directly to them.

Nitiri Farmers, along with David Opala, Rasto Ojago, and Jeremiah Sunguti, are against allocating 5% of the sugar levy to farmers' organizations. They argue that these organizations do not effectively support farmers, there are numerous organizations already, some of which are influenced by millers, and there is a lack of accountability mechanisms for managing funds. Instead, they suggest that the 5% should be given to millers to provide subsidized fertilizer directly to farmers.

Nzoia Out-growers Company Ltd is proposing an amendment to introduce a 1% levy on the gross cane proceeds from growers delivering cane to factories for out-grower institutions.

Butali Sugar Mills Limited emphasizes the importance of government support for farmers. They argue that the government should provide assistance to farmers in cane development by offering financing options, reducing taxation, and providing subsidized farm inputs.

Clause 38(6) provides for a Sugarcane fund. 40% of the fund shall be allocated to cane development.

West Sugar Company Limited suggests a levy of 5% on exports, 3% on millers, and 2% on consumers.

Olepito Sugar Farmers propose a 5% levy on imports and exports, 3% on local millers, and 2% on consumers. Olepito Sugar Farmers argue for spreading the levy from millers to consumers to reduce the burden on millers.

Nzoia Outgrowers Co. Ltd is advocating for a modification to clause 38 (6) (a), suggesting the following adjustments: 10% of the funds will be allocated by the board to stabilize income or prices for sugar growers, while 5% will be directed towards supporting out-grower institutions in fulfilling their responsibilities.

96. Clause 39- Sugar Development Fund: The Commodities Fund suggests deletion of the clause due to the presence of the Sugar Development Fund, which fulfills the same purpose as the clause.

Deputy Governor Busia, Athur Odera, argues that the levy does not cater to counties, emphasizing that Agriculture is a devolved function.

The Kenya Union of Plantation and Allied Workers (Chemilil Branch) proposes that 70% of the Levy should be directed towards sugarcane development to guarantee a steady supply of raw materials for sustaining the sector.

On the issues of the allocation of levies, the Committee considered the submissions received and resolved as follows-

i. **that the 15% of funds allocated for research in Clause 38 (c) be remitted to the Kenya Sugar Research and Training Institute; and**
ii. **the 15% funds allocated for infrastructure development and maintenance be managed by county governments as a conditional grant to develop county roads.**

2.2.7. Part VIII- Miscellaneous Provisions

97. Clause 53, Quality, Safety and Health Control Measures: The Nzoia Sugar Company suggests amending the policy to encompass instances of unfair trade practices, such as the re-packaging of locally produced or imported sugar without the manufacturer's consent. The rationale behind this proposal is to empower the government to introduce additional safeguard measures as needed, ensuring the protection of the industry against such unfair practices.

Clause 53 provides that the importer shall ensure that all sugar imported in the country meets the safety standards. The clause does not expressly provide for importation of raw sugar. Further, clause 60 gives the Cabinet Secretary delegated powers to regulate importation of sugar and its by-products.

David G. Okello, a farmer from Muhoroni, suggests adding a clause to regulate the importation of raw sugar. He highlights that raw sugar imports have previously been justified for further processing but often end up in the local market in an unrefined and unhealthy state. This is due to the absence of local mills equipped for the necessary processing.

Clause 53 provides that the importer shall ensure that all sugar imported in the Country meets the safety standards. The clause does not expressly provide for importation of raw sugar. Further, clause 60 gives the Cabinet Secretary delegated powers to regulate importation of sugar and its by-products.

98. Clause 55, Election of Directors: Nandi sugarcane farmers propose that the Bill should include provisions for direct elections to select farmers' representatives, along with the establishment of designated voting stations through area mapping.

Clause 55 does not provide for the election of directors. However, the Companies Act, 2015 is the primary law governing all private companies in Kenya. Under this law, A private company is governed by its constitutive documents; the Articles and memorandum of Association which bind its shareholders. The decision to appoint members of the Board is therefore vested in the owners of the company for the benefit of the company. As such it may not be legally tenable to have farmers on the Board.

99. Clause 58, Sugarcane Pricing Committee: KESGA and the Kenya Sugarcane Farmers Association propose an amendment to clause 58 (2) (c) as follows: "Two individuals nominated by the apex bodies representing sugar growers."

The provision already exists in the Bill.

100. The Sugar Traders Association of Kenya is advocating for the inclusion of sugar traders in the Sugar Pricing Committee due to the Committee's responsibility for formulating pricing formulas, which directly impact traders. They argue that excluding traders from this process is unfair given the relevance of sugar pricing to their business.

The Committee disagreed with this proposal. The pricing formulae is in regards to cane and not refined sugar, which the traders sell. As such their inclusion in the sugar pricing Committee is unnecessary.

Kenya National Federation of Sugarcane Farmers (Busia Branch) suggests amending the Bill to include representatives from farmers, millers, county officials, and national government officials in the Sugarcane Pricing Committee. This broader representation aims to ensure a more comprehensive and balanced decision-making process.

The proposal is already covered under Clause 58.

John Orenge proposes that cane pricing should align with current market prices, emphasizing the importance of market dynamics in determining fair prices.

Clause 58 (4) & (6) sets out the factors that the Committee shall take into consideration in determining the prices of sugar. Further, sugar prices will be reviewed after every 3 months which will allow the Committee to factor in the market changes.

David G. Okello, a farmer from Muhoroni, recommends that one of the farmers and county government representatives in the Committee should be an accountant, suggesting a need for financial expertise in pricing considerations.

The Committee disagreed with this proposal. The pricing formulae is based on a scientific criterion which will factor in different aspects of the sugar industry which are not limited to accounting. The principal secretary for finance is also a member of the Committee.

Nzoia Sugar Company is proposing a new clause to include the installation and upkeep of suitable systems and technologies for sampling sucrose content in delivered sugarcane. This operationalization of cane testing units for sucrose measurement necessitates their installation at both the factory and cane collection centers.

The Bill does not provide for setting up of sucrose testing units. However, the Bill under clause 58(3) (b) gives powers to the pricing Committee to transition payment to be based on quality as opposed to quantity. Further clause 60(2) gives powers to the Cabinet Secretary to make regulation on the conditions with respect to the delivery, measurement, examination and testing of sugar crops.

The clause provides that the pricing Committee shall provide a mechanism that remunerates farmers for other by-products derived from processing of cane.

Anthlus Mugo and the Central region of the Kenya National Federation of Sugarcane Farmers (KNFSF) are proposing innovative strategies to harness the potential of sugar by-products, thereby creating tangible benefits for farmers.

The clause provides that the pricing Committee shall provide a mechanism that remunerates farmers for other by-products derived from processing of cane.

101. Clause 59- Representative of a grower in the private Company: The Kenya Sugar Manufacturers Association recommends removing an entire clause due to legal issues and potential operational absurdities. They argue that the provision, which pertains to directorship in private mills, conflicts with the Companies Act and could lead to discriminatory practices in the composition of boards in private sugar mills.

The Committee accepted the proposal to delete the clause. The Companies Act, 2015 is the primary law governing all private companies in Kenya. Under this law, a private company is governed by its constitutive documents; the Articles and memorandum of Association which bind its shareholders. The decision to

appoint members of the Board is therefore vested in the owners of the company for the benefit of the company. As such it may not be legally tenable to have farmers on the Board.

David G. Okello, a farmer from Muhoroni, suggests that out-grower organizations convene dedicated meetings to select representatives rather than allowing millers to unilaterally choose whom to engage with.

The Committee agreed to the proposal and recommends that the process of election be provided for in the regulation.

2.2.8. Part IX- Provision on Delegated Powers

102. Clause 60, Regulations: The Council of Governors has proposed an amendment stating that the Cabinet Secretary, in consultation with the Board and County Governments, may create regulations to effectively implement the provisions of the Act. The rationale behind this proposal is to ensure a consultative process in the formulation of regulations, thus necessitating the involvement of the Board and County Governments.

This provision is already covered under clause 60 (1) of the Bill.

KESGA recommends that weighbridges and collection centres should be established directly on farms, with the transportation costs to be covered by the miller. This setup ensures that farmers can personally verify the tonnage of their produce, enhancing transparency and accountability in the process.

Clause 60 (2) (d) provides that the Cabinet Secretary will make regulations on weighbridges. The details will be contained in the regulations.

Nzoia Out-growers Company Ltd. is requesting an amendment to specify that early-maturing cane must be harvested within 12 months, late-maturing cane within 20 months, and ratoon crops within 16 months. This adjustment is necessary as the current harvesting time frame is deemed excessively lengthy.

The Bill does not set the maturity period for cane; however, Clause 60(2) (i) gives the Cabinet secretary powers to make regulations on cane harvesting.

2.2.8.1. First Schedule

103. Delineation of Sugarcane Catchment areas: The Kenya National Federation of Sugarcane Farmers has proposed delineating sugar catchment areas as per the recommendations of the task force report. These areas include

the Central Region (comprising Kisumu, Southern Nandi, and Kericho), Upper Western Region (encompassing Bungoma, Kakamega excluding Mumias, Trans-Nzoia, Uasin Gishu, and Northern Nandi), Lower Western Region (covering Mumias, Busia, and Siaya), Southern Region (encompassing Migori, Homa Bay, Kisii, and Narok), and the Coastal region (including Kwale, Tana River, and Lamu). This clustering is justified by economic considerations and aims to reduce transportation costs for farmers.

However, various stakeholders have differing opinions on the delineation of these catchment areas. The Butali Farmers Association, for instance, proposes similar regions but with a focus on compelling millers to prioritize cane development within their respective regions. On the other hand, West Kenya Sugar Company Limited opposes this clustering, citing constitutional rights and potential disadvantages to certain millers.

Other groups like Nitiri Farmers, Busia Sugar Farmers, and Olepito Sugarcane Farmers advocate for more localized representation per county or per mill, highlighting concerns about effective representation and unclear purposes for establishing catchment areas. Mumias Sugar Company Ltd and several other organizations align with the original task force report's recommendations for clustering, emphasizing benefits such as reduced cane poaching and a conducive environment for inter-mill cane transfer.

Proposals for amendments include allocating multiple directors to larger regions, allowing private farmers to supply cane to any factory, ensuring farmers' freedom to choose millers, and reviewing zoning down to micro-administrative areas within regional zones. Concerns about the size and manageability of certain regions, like the proposed Southern region, are also raised, suggesting the need for further refinement in the delineation process.

The Committee resolved that the catchment areas be retained as they appear in the first schedule of the Bill. Clause 2 defines catchment area to mean a specified area for the purposes of election to the Board. The Committee however, proposes an amendment to provide that the catchment areas shall also be used for the purpose of cane delivery to sugar millers. For purposes of elections however, it will not be practical to have all Counties represented in the Board since the board will be too large. In addition, Mwomgozo recommends a maximum number of 9 members in. Board.

104. Zoning: Mumias Sugar Company advocates for the introduction of zoning to optimize sugarcane production and ensure the long-term sustainability of the

local sugar industry. This includes implementing supportive measures such as secure outgrower schemes and stringent control measures. Sen. Boni Khalwale further emphasizes the importance of assigning specific operational areas to each miller to streamline production processes.

Butali Sugar Mills Limited proposes the clustering of factories in regional catchment areas as a means to enhance efficiency and competitiveness. This approach aims to mitigate issues such as cane poaching, which has adversely impacted some millers and led to the collapse of public mills unable to compete fairly due to resource constraints. By focusing on regional development programs, millers can ensure a steady supply of cane, leading to increased production and income for all stakeholders while reducing disputes.

The Kenya National Federation of Sugarcane Farmers advocates for allowing independent farmers to supply cane to a pool of millers within their respective regions. This regional clustering, based on the Sugar Industry Taskforce Report, is viewed as a successful strategy that ensures proper representation at the national level while empowering farmers with the freedom to choose where to supply their cane. It also facilitates the provision of viable extension services and affordable transport, factors critical to the sector's success.

Muhoroni Sugar Company Ltd. supports zoning to address challenges such as Insufficient cane supply, funding uncertainties, harvesting of immature cane, low technology uptake, and inadequate infrastructure development. Central region sugarcane farmers also endorse zoning with a free market within the zones, emphasizing its potential to optimize competition and support farmer representation.

On the contrary, West Sugar Company advocates for a free market approach, arguing that zoning could limit farmers' freedom of choice and hinder competition, ultimately negatively impacting the sector. However, stakeholders like KASAP, SUCAM, KESGA, CSGASA, and SHSFAK support a free market, citing reduced transport costs and improved efficiency through multiple weighbridges near farms.

In addressing these diverse perspectives, it's crucial to strike a balance between zoning and a free market to ensure sustainable growth in the sugar industry. This includes providing farmers with flexibility in choosing millers while encouraging investments in cane development, infrastructure, and technological advancements. Collaboration between stakeholders, informed by the unique challenges and opportunities in each region, will be key to achieving long-term success and resilience in Kenya's sugar sector.

The Committee resolved to allow zoning for the purpose of cane delivery, milling of cane and election of representatives. Zoning shall be based on the catchment areas provided for in the first schedule to the Bill. The Committee further resolved that a grower should be free to deliver cane to a miller within a catchment area so long as they have entered into a cane supply agreement with a miller. Also, a commercial grower desirous of supplying cane to a miller outside a catchment area may make an application to the Board for an exemption. The Committee also resolved to amend the Bill to provide for agreements between millers to facilitate delivery of cane in case of a mill breaking down or oversupply of cane.

2.3. General Comments

105. During the Courtesy Call to the County Commissioner's Office in Busia County, discussions were held with sugarcane millers and various stakeholders. The meeting led to the adoption of several resolutions aimed at enhancing the sugarcane industry's efficiency and regulation.

106. Among the resolutions were decisions to impose and enforce a ban on night transportation and harvesting of cane, develop a standard cane supply contract supervised by AFA, confine Sugar Mills to operate within their respective regions, establish agreements on cane transfer modalities across regions, ensure adherence to signed MOUs shared with Regional and County Security teams, maintain digital registers of contracted farmers updated monthly, strictly prohibit cane poaching, enforce standard harvesting permits by AFA Sugar Directorate, ban harvesting of immature cane, close sugar weighing and buying centers located outside a miller's catchment center, and regulate the opening of new weighbridges within regions. These resolutions were made to streamline operations and address various concerns within the sugarcane sector.

107. Stakeholders such as the West Sugar Company Limited expressed support for creating cooperative societies instead of out-grower societies as proposed in the Bill. They emphasized the need for cooperatives to assist farmers through loans and advances.

108. Nzoia Out-growers Company Ltd advocated for establishing an Apex body to represent all out-grower institutions in Kenya during negotiations with millers or their association, fostering mutual interests among member associations.

The legal framework for registering societies is provided for under the Societies Act. The initiative to register an umbrella body should emanate from the farmers.

109. Bramwell Misiko, a farmer from Nzoia Sugar Company, called for amending the Bill to streamline outgrower institutions, reducing the burden on farmers caused by multiple entities making deductions.

110. Regarding financial matters, West Sugar Company Limited supported the sugar development levy to ease the burden of cane development currently borne by millers. They also proposed a mechanism to ensure collaboration between county governments, millers, and farmers in planning and utilizing cess for infrastructure improvement in sugarcane catchment areas.

111. Bernard Wanyonyi, an employee of Nzoia Sugar Company and National Chairperson of the Kenya Union of Sugar Plantation and Allied Workers, urged for amendments to protect the interests of employees, highlighting gaps in the current Bill's provisions.

Matters of employer – employee relationships are governed by the Employment Act, 2007.

112. Sen. Boni Khalwale, Ibrahim Juma, Cyrus O., Matayos Sugarcane farmers, and Anthlus Mugo provided input on various aspects, advocating for organized outgrower societies, subsidies, engagement of outgrowers in cane development, revival of outgrower institutions, government support in lowering production costs, and ensuring farmers benefit from sugarcane byproducts. These diverse perspectives reflect the complex challenges and opportunities within the sugarcane industry that stakeholders are actively addressing.

2.4. Specific prayers to the Committee from different Stakeholders.

113. Mumias Out-growers Company Limited (MOCO) is urgently seeking the listing and settlement of an outstanding debt totaling Kshs. 3.7 Billion, owed to hard working farmers, as a crucial step in their financial recovery. In addition, they are appealing to the Government for leniency in waiving MOCO's substantial loans amounting to Kshs. 278 million, previously guaranteed by Mumias Sugar Company Limited through the Kenya Sugar Board.

114. The New Muhoroni Sugarcane Outgrowers Company Limited (MUSOCO) is asking for the complete write-off of their substantial commodity fund loan, totaling Kshs. 391,930,771.20. This move is seen as pivotal in revitalizing the institution and empowering sugar farmers to achieve greater productivity and sustainable growth.

115. Busia Out-growers Company Limited (BOCO) is urging for the waiver of their significant loan standing at Kshs. 110,811,858.91, owed to the Kenya Sugar Board. This action is deemed necessary to enhance the company's capacity to effectively serve its farmers.

116. The Muhoroni Multipurpose Cooperative Union is advocating for the write-off of their loan amounting to Kshs. 89,079,333.83, which is owed to the Commodities Fund. This measure aims to alleviate the financial burden on farmers, allowing them to focus on robust cane farming practices.

117. West Kenya Out-growers Company is seeking relief through the writing off of their debt totaling Kshs. 97,359,279.16, owed to the Commodities Fund, as part of their strategy to stabilize and strengthen their operations.

118. Nzoia Out-growers Company Limited is calling for the write-off of their substantial debt amounting to Kshs. 407,525,205.40 owed to the Commodities Fund. This plea reflects the challenging economic climate facing the sugar industry in Kenya, necessitating urgent intervention.

119. Kisumu Sugar belt Co-operative Union Limited is seeking a waiver for their outstanding loan of Kshs. 134,285,741.59 owed to the Kenya Sugar Board, to alleviate financial pressures and support their ongoing efforts in the sugar sector.

120. Chemelil Out-growers Company Limited (COC) is making a similar appeal for a waiver of their loan, totaling Kshs. 271,200,798.56, owed to the Kenya Sugar Board, to foster financial stability and sustainability within the industry.

121. Kenya Sugarcane Growers Association (KESGA) is urging for the write-off of debts owed by the institution, although the specific loan amount has not been disclosed. This request underlines the critical need for comprehensive debt relief measures to bolster the resilience of the sugar sector and support the livelihoods of countless farmers across Kenya.

CHAPTER THREE

3.1. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1.2. COMMITTEE OBSERVATIONS

122. During a stakeholder engagement on the Sugar Bill 2022, the Committee made the following observations based on discussions, data, and testimonies presented by various stakeholders:

1. **Challenges in Sugar Production:** Sugar producers faced a number of challenges including inadequate infrastructure, high production costs, and limited access to modern technology;

2. **Market Dynamics:** The Committee noted the complex market dynamics affecting the sugar industry, such as competition from imported sugar, price fluctuations, and demand-supply imbalances;

3. **Impact on Farmers:** The Committee observed the impact of these challenges on sugarcane farmers, including low incomes, indebtedness, and lack of access to credit and inputs;

4. **Policy and Regulatory Issues:** The Committee identified gaps in existing policies and regulations governing the sugar sector, including issues related to licensing, taxation, and trade agreements;

5. **Need for Investment:** The Committee stresses the importance of increased investment in the sugar industry to improve productivity, modernize infrastructure, and enhance competitiveness. This will have a good impact on the economy and livelihoods of farmers;

6. **Role of Government:** The Committee appreciated the role of government agencies in supporting the sugar industry through policy interventions, research and development, and extension services;

7. **Stakeholder Collaboration:** The Committee emphasizes the need for collaboration among stakeholders, including National and County governments, private sector, civil society, and farmers' organizations, to address the challenges facing the sugar industry comprehensively;

8. **Market Diversification:** The Committee saw the need for diversifying markets and products within the sugar sector, such as promoting value-added products

like ethanol, biofuels, and confectionery items. This can be achieved through policies and strategic plans; and

9. **Sustainability and Resilience:** The Committee observed the importance of ensuring the long-term sustainability and resilience of the sugar industry, taking into account economic, social, and environmental factors.

10. **Zoning:** The Committee noted that stakeholders were divided on the issues of zoning in regards on how to demarcate the catchment areas. However, the issue of restricting delivery of cane to a specified catchment received substantial positive support from the stakeholders. The justification for zoning was to protect millers to curb loss of cane, which they have invested in development, and to ensure farmers benefit from the support of millers through cane development among others.

11. **Inter- Miller agreement**-The Committee noted the concern of growers that restricting them to a single miller may be detrimental in cases where there is a breakdown of a milling service. it was therefore observed that there was a need to provide for inter- millers agreements.

3.2. COMMITTEE RECOMMENDATIONS

The Committee having reviewed the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) makes the following recommendations-

1. That, clause 2 of the Bill be amended to modify the definition of a catchment area to mean a geographical area where growers and millers are restricted in the delivery and receipt of cane respectively;
2. That, clause 6 of the Bill be amended to provide that for appointment of a person to represent the gender least representant on the board and a youth or a person living with disabilities;
3. That, clause 19 be amended to provide for inter-miller agreements in cases where a mill is temporarily broken down or of oversupply of cane;
4. That, clause 29 be amended to provide for nomination of a representative of the Council of Governors to the membership of the Board of Directors of the Kenya Sugar Research Institute;
5. Further, clause 29 be amended to clarify that the representative of Universities to the Board of Directors of the Kenya Sugar Research and Training Institute be appointed by the Commission on University Education;
6. That, clause 38 be amended in paragraph (c)to provide that funds allocated for research be remitted to the Kenya Sugar Research and Training Institute;

7. Further, clause 38 (d) which provides for the apportionment of levies for infrastructure development be amended by deleting the word Kenya Rural Roads Authority and replace with the county governments;
8. That, clause 43 which provides for tabling of annual reports be amended to require the Cabinet Secretary to table the report in both the National Assembly and the Senate;
9. That, the Bill be amended by deleting clause 59 which obligates private millers to appoint a grower's representative to sit on the Board of Directors
10. That, the Bill be amended by inserting a new clause 19A to empower the Board to exempt a commercial grower from the restrictions of supply of cane within a defined catchment area.

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