Approved for tabling. SNA 20/6/19

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 20 JUN 2019
DAY. Thursday
TABLED BY: Chairperson, Committee on implementation
CLERK-AT THE-TABLE: [illegible]

TWELFTH PARLIAMENT-THIRD SESSION

COMMITTEE ON IMPLEMENTATION

REPORT ON IMPLEMENTATION STATUS OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES' REPORT ON THE PETITION ON AND INQUIRY INTO THE CRISIS FACING THE SUGAR INDUSTRY IN KENYA

Clerk's Chambers
Directorate of Committee Services
National Assembly
Parliament Buildings
NAIROBI

JUNE, 2019

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ABBREVIATION AND ACRONYMS

ACA	Anti- Counterfeit Agency
AFA	Agriculture Food Authority
CEO	Chief Executive Officer
COC	Certificate of Conformity
CS	Cabinet Secretary
DCI	Directorate of Criminal Investigations
EA	East Africa
EACC	Ethics and Anti-Corruption Commission
EACCMA	East Africa Community Customs Management Act
EACCET	East Africa Community Common External Tariff
EU	European Union
ISM	Import Standardization Mark
KALRO	Kenya Agricultural and Livestock Research Organization
KEBS	Kenya Bureau of Standards
KESGA	Kenya Sugar Growers Association
KNTC	Kenya National Trading Corporation
KPA	Kenya Ports Authority
KPLC	Kenya Power & Lighting Company
KRA	Kenya Revenue Authority
KSB	formerly Kenya Sugar Board now Sugar Directorate
Kshs.	Kenya Shillings
Ltd	Limited
MD	Managing Director
MP	Member of Parliament
MSC	Mumias Sugar Company
MT	Metric Tonnes
NEMA	National Environment Management Authority
NIS	National Intelligence Service
PS	Principal Secretary
PVoC	Pre-export Verification of Conformity
SD	Sugar Directorate
SDL	Sugar Development Levy
SEZA	Special Economic Zones Act
S.O	Standing Orders
TCD	Tons Cane per Day
VAT	Value Added Tax

CHAIRPERSON'S FOREWORD

The Committee on Implementation is mandated to scrutinize resolutions of the House (including adopted Committee reports), petitions and the undertakings given by the National Executive and examine whether such decisions and undertakings have been implemented within the sixty (60) days as provided for in the Standing Orders and whether such implementation has taken place within the minimum time necessary. The Committee on Implementation was seized of the "*Report by the Departmental Committee on Agriculture, Livestock and Cooperatives on the crisis facing the sugar industry in Kenya* " after it had been adopted by the House on 24th February 2016 and resolved to appraise itself on the implementation status of the recommendations contained in the Report.

The Committee resolved to invite the Sugar Directorate, the Ministry of Agriculture & Irrigation, the Ministry of Lands and Physical Planning, Kenya Bureau of Standards, Kenya Revenue Authority, Mumias Sugar Company, Dantes Peak Limited, Sony Sugar Company, Chemilil Sugar Company, Kwale International Sugar Company Limited, Kibos Sugar and Allied Industries Limited, West Kenya Sugar Company, Sukari Industries Limited, Butali Sugar Mills Limited, who appeared on various dates before the Committee to give written and oral submissions on the implementation status of the recommendations under their purview.

Even as the Committee undertook the exercise, the Country underwent a crisis in the sugar industry. Further, during its scrutiny, Kenafric Industries Limited, a company adversely mentioned in the Report by the Departmental Committee on Agriculture, Livestock & Cooperatives appealed that it had not been accorded an opportunity to be heard and the Speaker directed this Committee to act as an appellate forum. The Committee after consideration of the matter tabled a report recommending the House to review its earlier decision and expunge the name of Kenafric Industries Limited from its records. A task force has been constituted under the Ministry of Agriculture and Irrigations to receive stakeholder's views and provide a way forward in the sugar industry.

It is hoped that this status report will provide the House with an overview of what the implementing agencies have done so far. Further, the scrutiny of the report by the Committee will also allow further conversations to be had so as to provide recommendations to assist the industry.

The Committee registers its appreciation to the Office of the Speaker and the Clerk of the National Assembly for necessary facilitation and support in the production of this report.

Pursuant to Standing Order 199(6), it is, therefore, my pleasant duty and privilege, on behalf of the Committee on Implementation, to lay this report on the Table of the House.

Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

The Committee on Implementation is a select Committee of the House established pursuant to Standing Order 209 of the National Assembly Standing Orders. It is mandated to scrutinize resolutions of the House (including adopted committee reports), petitions, legislation and the undertakings given by the National Executive and examine whether such decisions and undertakings have been implemented within the sixty (60) days provided for in the Standing Orders and whether such implementation has taken place within the minimum time necessary and satisfactory explanation for the delay in full implementation.

The Committee commenced to appraise itself on the implementation status of the "Report by the *Departmental Committee on Agriculture, Livestock and Cooperatives' on the crisis facing the sugar industry in Kenya"* as the adopted by the House on 24th February 2016 pursuant to Standing Order 209.

The Committee held a total of thirty-five (35) sittings, in which it received oral and written submissions and examined evidence from witnesses as indicated in Section 2.0 of this Report. The records of evidence adduced, documents and notes received by the Committee, form the basis of the Committee's observations/findings and recommendations as outlined in the Report. Listed below are some of the observations and recommendations from the Committee.
The Committee observed THAT:-

The Inter-Agency is yet to become operational although a request for its gazettement has been put in by the CS, Agriculture & Irrigation. Further, the multi-Agency headed by the Deputy Head of the Public Service is tasked with a wider mandate of imported goods beside sugar and does not include AFA and consequently Sugar Directorate.

Despite the recommendation to cancel the sugar import licence of Kenafric Industries Ltd, Czarnikow E. A. Ltd, Stuntwave Ltd, Mshale Commodities and Rising Star Commodities Ltd in 2016, the Sugar Directorate did not and did issue sugar import licence for some of the companies for 2016 and 2017. AFA still issued sugar licenses for Hydrey' P' Ltd, Krish Commodities, Reeswood Enterprises and Shree Sai Industries Ltd to import sugar after 2016.

The gazettement of sugar regulations will go a long way in streamlining and strengthening the sugar industry.

The removal of the Sugar Development Levy has adversely affected the Sugar Research Institute especially on research beneficial to the sugar industry as well as reduced monies which used to be used to maintain road infrastructure.

The Ministry of Lands & Physical Planning were yet to provide submissions of the National Land Policy to mitigate against and improve productivity to the Committee at the time of compiling the Report.

The fertilizer subsidy program needs to be revamped to address the current situation of fake fertilizer finding its way into the market.

The Committee Recommends THAT:-

There is a need for the Inter-Agency taskforce to promptly invite the Sugar Directorate and the Agricultural Food Authority to be members of the inter-agency unit because their critical role in the agricultural and sugar industry cannot be gainsaid. Further, the legal status of the Inter-Agency taskforce should be cleared by expeditiously publishing it in the Kenya Gazette.

Public millers are encouraged to form associations and information sharing platforms to curb the issue of farmers holding more than one contract with millers.

Land belonging to any public miller and where the cane is grown should revert to communities in the event of privatization of millers.

The Sugar Development Levy directed to sugar cane development, factory maintenance, research & extension services and road infrastructure is reinstated with clear management structure and review of its functions.

Importation of sugar into the Country should strictly adhere to the sugar deficit as advised by the Ministry of Agriculture and Irrigation. Any Gazette notices issued to permit the importation of sugar must not be ambiguous and further, the Ministry should consider restricting the importation of sugar to Kenya National Trading Corporation and sugar millers on pro-rata basis, depending on the sugar deficiency in the country and the capacity of millers to address gaps.

The National Government strengthens the fertilizer subsidy program and gazettes regulations on the importation, quality, quantity and repackaging of fertilizer.

The Cabinet Secretary for Lands and physical planning should provide information on the implementation status of the recommendation under paragraph 111, failures to which appropriate action, including censure, should be taken by the House.

1.0 PREFACE

1.1 Mandate of the Committee

The Committee on Implementation is a Select Committee of the House established pursuant to the provisions of Standing Order 209 of the National Assembly Standing Orders, with the following terms of reference: -

1. The Committee shall scrutinize the resolutions of the House (including adopted Committee reports), petitions and the undertakings given by the National Executive and examine-
   a) Whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and
   b) Whether or not legislation passed by the House has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary.
2. Standing Order 201 further provides that within sixty days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the relevant committee of the House in accordance with Article 153(4) (b) of the Constitution.
3. The Committee may, therefore, propose to the House, sanctions against any Cabinet Secretary who fails to report to the relevant select Committee on implementation status without justifiable reasons.

1.2 Committee Membership

Chairperson

Hon. Moitalel Ole Kenta, MP

Narok North Constituency

Orange Democratic Party

Vice Chairperson

Hon. Godfrey Osotsi, MP

Nominated

Amani National Congress

Members

Hon. Maj. (Rtd) John Waluke Koyi, MP
Sirisia Constituency
Jubilee Party

Hon. Alois Lentoimaga, MP
Samburu North Constituency
Jubilee Party

Hon. (Dr.) James Murgor, MP
Keiyo North Constituency
Jubilee Party

Hon. Onesmas Kimani Ngunjiri, MP
Bahati Constituency
Jubilee Party

Hon. Francis Munyua Waititu, MP
Juja Constituency
Jubilee Party

Hon. Paul Odalo Abuor, MP
Rongo Constituency
Orange Democratic Party

Hon. Hassan Oda Hulufo, MP
Isiolo North Constituency
Kenya Patriots Party

Hon. Paul Simba Arati, MP
Dagoretti North Constituency
Orange Democratic Party

Hon. Joseph Wathigo Manje, MP
Kajiado North Constituency
Jubilee Party

Hon. Johnson Manya Naicca, MP
Mumias West Constituency
Orange Democratic Party

Hon. George Theuri, MP
Embakasi West
Jubilee Party

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency
Ford Kenya

Hon. Owen Yaa Baya, MP
Kilifi North Constituency
Orange Democratic Party

Hon. Michael Thoya Kingi, MP
Magarini Constituency
Orange Democratic Party

Hon. Nelson Koech, MP
Belgut Constituency
Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency
Wiper Democratic Movement-Kenya

Hon. (Dr.) Daniel Kamuren Tuitoek, MP
Mogotio Constituency
Jubilee Party

Hon. Silvanus Osoro, MP
South Mugirago Constituency
Kenya National Congress

Hon. Generali Nixon Kiprotich Korir, MP
Langata Constituency
Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency
Wiper Democratic Movement-Kenya

Hon. Jared Okello, MP
Nyando Constituency
Orange Democratic Party

1.3 Committee Secretariat

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Clerk Assistant I /Team Leader

Mr. Abdirahman Hassan
Clerk Assistant III

Mr. Denis Abisai
Principal Legal Counsel 1

Mr. Joseph Okong'o
Senior Media Relations Officer

Ms. Doreen Karani
Legal Counsel I

Mr. Eugene Apaa
Research Officer III

Mr. James Muguna
Research Officer III

Ms. Jane Serem
Audio Officer I

Mr. Moses Kariuki
Sergeant-at-Arms

2.0 INTRODUCTION

The Departmental Committee on Agriculture, Livestock and Co-operatives' Report on the Petition by Western Development Initiative Association and the inquiry into the crisis facing the sugar industry in Kenya was adopted by the National Assembly on 24th February 2016. **(Attached as Appendix 1)**

The matter arose from a petition by Western Development Initiative Association on the imminent collapse of the sugar industry in Western Kenya of which the Committee also undertook to inquire into the issues raised in the petition on the status of the sugar industry in Kenya with a view to finding a lasting solution and making recommendations to salvage the industry and save the loss to be incurred by over six million sugarcane farmers across the country if the industry were to collapse.

OBSERVATIONS OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES

The Committee's observations are as follows;

1. **Repackaging of contraband sugar**

That, substantial amounts of illegal sugar imports are repackaged into locally branded bags to conceal identity and evade the surveillance network. Industrial sugars have been found repackaged and end up on the market to compete with table sugar that has been subjected to full duty hence evading taxation.

It was established that Ms Rising Star Commodities repackages imported sugar into bags with Mumias brand details. The company denied officers from the then Kenya Sugar Board from entry into its warehouse for verification.

2. **Flouting sugar Import license conditions**

Rising Star Commodities Ltd, a licensed sugar importer, brought in sugar beyond licensed quantities and needs to be further investigated too over claims that it denied Kenya Sugar Board entry into its go-downs for verification. The Committee also observed that in 2013/2014, KRA allowed into the country 15,140.40MT without permits from KSB. The companies involved are;

a) Hydrey (P) (3000MT)
b) Krish Commodities Ltd (1,140.40MT)
c) Reeswood Enterprises Ltd (4,000MT)
d) Shake Distributors Ltd (6,000MT) and

e) Shree Sai Industries Ltd (1000MT).

3. **Compromised consumer safety**

Sugar auctioned by Kenya Revenue Authority is allowed back into the local market without Kenya Bureau of Standards verifying if it is suitable for direct consumption or manufacturing. This also contravenes the Kenya Bureau of Standards regulations.

4. **False declaration**

In view of the fact that MSC made exports to the regional markets through various companies mentioned above, there are glaring disparities between records from MSC and the respective exporting companies.

Although the KRA submitted that it did not have sufficient capacity and equipment to verify all incoming cargo, the Committee after its visit observed that there was lack of proper coordination between KSB, KRA, KEBS and KPA in handling and verifying imports creating loopholes for sugar being imported as other commodities such as rice and fertilizer.

That, a total summary of all exports by MSC for the period 2006 to 2012 are given as 52,284MT while the detailed itemised list to individual companies totals to 30,204.37 MT. However figures from KRA indicated that MSC had export entries amounting 70,610.76MT Further, KRA confirmed that only 8,133 MT were exported as per entries in Simba System and therefore there is no evidence of exports of the reminder sugar volumes estimated at 62,477.76 MT Split them into two Mumias figures and KRA figures.

That, imported low-grade sugar was being repackaged into superior quality bags by M/s Rising Star Commodities Ltd which led to the Government losing revenue in terms of duty.

5. **Illegal points of entry**

The Committee's investigations also found out that there is an illegal point of entry in the Shimoni area, which is being used to facilitate the illegal entry of sugar with the knowledge of Customs officers and police. The then KSB had issued MSC license to import sugar even at a time when there was a lot of un-harvested sugar cane in the local farms and plenty of sugar stocks in the local market. The then KSB had been disbursing Sugar Development Levy Funds for cane development to Millers with no cane development schemes. At the time of compiling the report, NIS had not provided any documents and/or reports despite several requests by the Committee in relation to all exports and imports of sugar between 2006 and 2012. The Committee also observed that MSC exports and business dealings with the following companies were controversial:-

a) Czarnikow Sugar EA Limited,
b) E D & F Man Sugar Ltd,
c) Rising Star Commodities Ltd,
d) Kambale Nzagale of (DRC),
e) Osman Adan and Nesredin Mohamed of (Ethiopia),
f) S&G General Suppliers,
g) Star General Suppliers and Mugabe Thomas of Rwanda,
h) Mega Laser International,
i) Manyuon Samuel Deng,
j) Mid Africa,
k) Southern Sudan Mudland Co. Ltd,
l) Kapoeta Trading Co. Ltd,
m) International Relief Services of Southern Sudan,
n) Arua Mercantile Co. Ltd,
o) Quick Sellers Uganda,
p) Muru Enterprises,
q) Kasave Trading Co. Ltd,
r) Trident Investment Ltd,
s) Uchumi Commodities (Uganda) Ltd of Uganda.

In view of the fact that MSC made exports to the regional markets to the companies mentioned above, there are glaring disparities between records from MSC and the respective importing companies. The Committee observed that despite there being questionable dealings of MSC from 2006 to 2012, the then MSC Auditors Ms Delloite and Touché gave MSC a clean bill of health. The Committee observed that, with regard to the importation of 10000MT of sugar from Sudan by MSC, the Import Permit from KSB issued to MSC was un-procedurally transferred to a third party (Dantes Peak Ltd). Further, KRA admitted having noted the anomaly but still went ahead to release the consignment.

KPMG has provided a disclaimer to its "Draft Factual Finding Report" as to the accuracy and completeness of the report, noting that any subsequent information may require the findings to be adjusted and qualified accordingly. However, the Committee took cognizance of the report.

RECOMMENDATIONS OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK & CO-OPERATIVES

The Departmental Committee on Agriculture, Livestock & Cooperatives after its deliberations recommended

105. **THAT**, the government establishes a permanent inter-agency enforcement unit on sugar trade which should enhance capacity to verify, scrutinize and monitor cross-

border trade and step up border patrols to eradicate sugar smuggling. The unit should draw membership from KPA, Public Health, AFA, KEBS, the Kenya Police, KRA and any other relevant government agencies.

106.THAT, KRA officer(s) should be investigated and appropriate action taken for clearing sugar without a permit from the sugar regulator. Equally any company that imported sugar without a permit from the regulator should be banned from import and export business.

107.THAT, the reinforcement of re-packaging regulations to ensure consumer safety and that KEBS be held responsible for failure to prevent abuse of its seal which is supposed to be a standard measure for the safety of goods in the country but has consistently been abused.

108.THAT, relevant laws and regulations governing sugar imports and exports should be amended to provide for higher accountability and public health standards for re-packaged sugar and for stiffer penalties for offenders. The Government should cancel import licenses for the following companies: - Kenafric Industries, Czarnikow E. A. Ltd, Stuntwave Ltd, Mshale Commodities and Rising Star Commodities Ltd.

109.THAT, the government implements the sugar industry strategic agenda for increased competitiveness and reduction in consumer prices. There is a need to lower production cost, improve extension services among others to reduce and eventually eliminate the incentive to smuggle sugar into the country.

110.THAT, the National Government in collaboration with county government should provide a mechanism for coordinated infrastructure development to avoid duplication of responsibilities by different bodies mandated to maintain roads.

111.THAT, the National Government should implement the National Land Policy to mitigate further land sub-division for improved productivity.

112.THAT, the fertilizer subsidy should be complemented by bulk procurement of other farm inputs and capacity utilization, which should be done by the Sugar Directorate.

113.THAT investigation should be carried out on MSC and/or its agents, KRA and all importers and/or their agents who imported sugar from MSC in the period between 2006 and 2012 and appropriate action is taken.

114.THAT, the KRA should be held responsible for the loss of VAT taxes amounting to Kshs 577 million for fictitious exports of sugar by MSC.

115. **THAT,** any officer from the Board and Management of MSC and KRA responsible for the fictitious exports of sugar between 2006 and 2012 be held responsible for the abuse of procedures and abuse of office.

116. **THAT,** the National Government introduces landing certificates for all transit sugar as a confirmation of physical exit to stop any dumping into the local market.

117. **THAT,** the Government should consider offering tax breaks to encourage new investors into the sugar industry. Additionally, the duty waiver for sugar industry farm inputs and farm machinery will go a long way towards reducing the high cost of sugar production.

118. **THAT,** KPMG having provided a disclaimer as to the accuracy of the Draft Factual Finding Report, Mumias Sugar Company avails with immediate effect the final KPMG report to the National Assembly.

119. **THAT,** officers from MSC/KRA who abused import procedures with regard to Import Permit requirements in the importation of 10,000MT of sugar in 2012 from Sudan be held to account for their misdeeds.

120. **THAT,** Deloitte and Touché be held responsible for misleading the government, other shareholders and the public on the state of affairs in MSC during the period of their engagement as auditors.

The Committee on Implementation in its 13th Sitting pursuant to Standing Order 201, resolved to consider the implementation status of the recommendations contained in the aforesaid Report. During its scrutiny of the adopted Report, the Committee not only invited relevant stakeholders to make its submissions both oral and written but conducted site visits to ascertain the implementation status.

The Committee invited the Cabinet Secretary, Agriculture and Irrigation; Cabinet Secretary, National Treasury and Planning; the Commissioner General, Kenya Revenue Authority; the Acting Managing Director (MD), Kenya Bureau of Standards; the Interim Head, Sugar Directorate; and the Acting Chief Executive Officer (CEO), Mumias Sugar Company on various dates to apprise it on the implementation of the recommendations which fall under their purview.

The Committee also met with the Acting Managing Director (MD), SONY Sugar Company, the Chairperson, KIBOS Sugar and Allied Industries, the Director, Kwale International Sugar Company, the MD, West Kenya Sugar Company/Sukari Industries Limited, the MD, Butali Sugar Mills Limited and the MD, Dantes Peak Limited. The Committee also met with the

Acting MD, Chemilil Sugar Company Limited, the Receiver Managers of Muhoroni & Miwani Sugar Companies and farmers' representatives at Mumias, Chemilil, Miwani and Muhoroni sugar factories. The Committee also received written submissions from Ethics Anti-Corruption Commission and the Directorate of Criminal Investigations.

2.1 STATUS OF RECOMMENDATIONS OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES REPORT FROM MINISTRIES, DEPARTMENTS AND AGENCIES

2.1.1 Recommendation 105

THAT, the government establishes a permanent inter-agency enforcement unit on sugar trade which should enhance capacity to verify, scrutinize and monitor cross-border trade and step up border patrols to eradicate sugar smuggling. The unit should draw membership from KPA, Public Health, AFA, KEBS, the Kenya Police, KRA and any other relevant government agencies.

1. The Ministry of Agriculture and Irrigation, the National Treasury & Planning, the Kenya Bureau of Standards, the Kenya Revenue Authority and the Sugar Directorate reported that an Inter-Agency enforcement unit had been put in place. The inter-agency is a meeting of Principal Secretaries and Chief Executive Officers of various Ministries and Agencies who would deal with the various products imported into or produced in the Country.
2. The Office of the President through the Office of the Deputy Head of Public Service coordinates the work of the Task Force, whose membership comprises of KRA, KEBS, Anti-Counterfeit Agency, National Police, National Intelligence Service and Ministry of Health. The Agriculture and Food Authority (AFA) and consequently the Sugar Directorate are not members of the unit although AFA has in the past collaborated with other agencies like National Police, KRA and KEBS on market surveillance operations. The Commissioner in-charge of Intelligence at Kenya Revenue Authority has delegated powers of enforcement in the inter-Agency.
3. The Committee observed that the omission of the AFA as a member of the Inter-Agency Enforcement unit went against the recommendation of their inclusion, which the Departmental Committee on Agriculture, Livestock and Cooperatives' Report had recommended in concurrence with the recommendation from the Ministry of Agriculture and Irrigation. Further, as a licensing and regulating body, the Sugar Directorate's role is critical to the activities concerning sugar and would have impacted the unit positively in achieving its mandate to which the Committee concurs.

4. The Committee was provided with documents showing that the Sugar Directorate had reached out to KRA & KEBS on the matter of omission from the inter-agency unit, which included minutes of the meeting held with KRA & KEBS on the same.
5. The Committee was informed that the inter-agency was yet to be gazetted, however, the Ministry of Agriculture and Irrigation had requested for its gazettement vide a letter **Ref. No. MOALF/SDA/ADM/31A** dated **30th July 2018**. **(Attached as Appendix 2)**
6. This raises the question of the legal status of the inter-agency unit since it exists due to a presidential directive.

2.1.2 Recommendation 106

THAT, KRA officer(s) should be investigated and appropriate action taken for clearing sugar without a permit from the sugar regulator. Equally any company that imported sugar without a permit from the regulator should be banned from import and export business.

7. The Sugar Directorate reported that AFA has taken the following actions on the companies that imported sugar without permits.

No.	Company	Remarks
1.	Hydery "P" Ltd	AFA has not renewed its 2017/18 import license
2.	Krish Commodities Ltd	AFA has not renewed its import license since 2017
3.	Reeswood Enterprises	AFA has not renewed its 2017/18 import license
4.	Shake Distributors Ltd	AFA has not renewed its import license since 2015
5.	Shree Sai Industries Ltd	AFA has not renewed its 2017/18 import license

8. The recommendation had called for the cancellation of these sugar licenses in 2016, however, it appears that AFA still issued sugar licenses for Hydrey' P' Ltd, Krish Commodities, Reeswood Enterprises and Shree Sai Industries Ltd to import sugar after 2016.
9. **Ethics and Anti-Corruption Report:** The Commission reported that investigations had been finalized on the irregular issuance of sugar import permits. The inquiry file was forwarded to the Director of Public Prosecution whom upon review in July 2017 directed the matter be closed for lack of evidence to sustain a prosecution.

2.1.3 Recommendation 107:

THAT, the reinforcement of re-packaging regulations to ensure consumer safety and that KEBS be held responsible for failure to prevent abuse of its seal which is supposed to be a standard measure for the safety of goods in the country but has consistently been abused.

10. The Ministry of Agriculture and Irrigation and the Sugar Directorate undertake joint regular market surveillance with KEBS to enforce repackaging regulations and customer safety. The market surveillance is conducted in supermarkets and other retail outlets throughout the Country in which samples are taken and tasted. During the market surveillance exercise, seizures and destruction of goods have been done where it was established there was non-compliance.
11. Kenya Bureau of Standards reported that to achieve the recommendation they enforce two standardization marks schemes, a Standardization mark (SM) for locally manufactured products and the Diamond Mark (DM) for imported products.
12. KEBS requires that all sugar being imported into the country undergoes inspection under the Pre-export Verification of Conformity program (PVoC). The only sugar that meets the requirements of the relevant standard is issued with a Certificate of Conformity either from KEBS inspectors or its contracted agents. This will go a long way in eliminating illicit trade that manifests itself in four major and interrelated ways, smuggling, counterfeiting, piracy and substandard goods, transit fraud/dumping and trade in prohibited goods or products.
13. KEBS reported that it does not have enough manpower to have a presence on all legal entry points into the Country. Samples taken at the entry points which are not manned must be taken to the testing centres, a time-consuming exercise for analysis. There are plans to open more testing centres.
14. The Ministry of Agriculture and Irrigation has developed and is awaiting gazettement of the Crops Act (Sugar) (Imports, Exports and By-Products), 2018 Regulations. The Ministry requested and was granted leave until August 2019 for consideration of the Regulations by the Committee on Delegated Legislation to allow for more consultation. These Regulations will further reinforce repackaging conditions.
15. From the submissions presented by KEBS, the Committee observed that KEBS was negligent in its duties and it had led to the current sugar crisis facing the Country with the flooding of contraband sugar and contaminated sugar. The Committee observed that the

quality of goods in the Country should conform to KEBS standards regardless of whether they are imported or locally manufactured.

16. The Committee queried the clarity of regulations used to allow for bulk importation of sugar products as was witnessed recently during the duty-free import window in October 2018 which may have led to the current high levels of contaminated sugar in the Country.

2.1.4 Recommendation 108:

THAT, relevant laws and regulations governing sugar imports and exports should be amended to provide for higher accountability and public health standards for re-packaged sugar and for stiffer penalties for offenders. The Government should cancel import licenses for the following companies: - Kenafric Industries Ltd, Czarnikow E. A. Ltd, Stuntwave Ltd, Mshale Commodities and Rising Star Commodities Ltd.

17. The Ministry of Agriculture and Irrigation as well as the Sugar Directorate under AFA reported that implementation of the recommendation awaits the acceding of the two regulations under the Crops Act 2013, the crops (sugar) general regulations, 2018 and the crops (sugar)(Imports, Exports and By-Products), 2018 regulations which are awaiting gazettement. The draft Regulations were initiated in 2015 but have taken long to actualize due to the need for public participation (Article 118 of the Constitution) and slow consensus among stakeholders. The Cabinet Secretaries of Agriculture & Irrigation and Industry, Trade & Cooperatives had convened a consultative meeting with the relevant stakeholders and it is anticipated that it would open the way for gazettement of the draft regulations.
18. The Ministry of Agriculture and Irrigation sought and received approval for an extension for consideration of the crops (sugar) (imports, exports and by-products) regulations up to August 2019 by the Committee on Delegated Legislation.
19. The National Treasury and Planning reiterated the need to incorporate the multi-agency team in the proposed regulations on sugar.
20. The Departmental Committee on Agriculture, Livestock and Cooperatives' had recommended cancellation of the sugar import licenses of the companies listed below.

No.	Company	Remarks
1.	Kenafric Industries Ltd	AFA has not renewed its 2017/18 import license
2.	Czarnikow EA Ltd	AFA has not renewed its import license since 2015
3.	Stuntwave Ltd	AFA has not renewed its 2017/18 import license

4.	Mshale Commodities Ltd	AFA has not renewed its 2017/18 import license
5.	Rising Star Commodities	AFA has not renewed its import license since 2015

However, it appears that the licenses were in fact not cancelled, but AFA allowed some to expire, while others were actually renewed in 2017.

21. Kenya Revenue Authority reported that the regulation of sugar imports and issuance of licenses is within the mandate of AFA. KRA collaborates with AFA in the enforcement of import permit requirements prior to Customs clearance. Import permits are usually uploaded in the Single Window System by the Sugar Directorate to facilitate clearance in the Simba System.
22. On the recent sugar importation of 2017 and 2018, Kenafric Industries Ltd, Stuntwave Ltd and Mshale Commodities among others were granted clearance by KRA since they had valid sugar import permits issued by AFA. There is no information on contravention of the Customs laws by the companies to warrant their suspension by the Commissioner of Customs.
23. Kenafric Industries Limited on 22nd August 2018 petitioned Parliament on the grounds that it had been denied the right to be heard by the Departmental Committee on Agriculture, Livestock and Cooperatives' which subsequently made an adverse recommendation for cancellation of their sugar import license. The Speaker subsequently referred the matter to the Committee on Implementation as an appellate forum. Kenafric Industries Limited was successful in its appeal to have its name expunged from the records of Parliament. The Sugar Directorate was unable to provide documentary evidence of their allegations and it did issue Kenafric Industries Limited with sugar import licenses for 2016, 2017 and 2018, even after the recommendation to have its sugar import license cancelled had been adopted by the House.
24. On the allegations that Mshale Commodities Ltd Kenya and Mshale Commodities Ltd Uganda were one and the same and were involved in criminal activities, Mshale Commodities Ltd had obtained court orders stopping the Sugar Directorate from banning the company from importing sugar. A copy of the full judgment by Justice Odunga was presented to the Committee regarding the court order. The Committee had not been presented with any evidence of an appeal against that decision.

25. KRA further clarified that Czarnikow E.A Ltd is not an importer but a supplier of sugar. It supplied sugar to various companies in 2017 including Kenafric Industries Ltd. KRA records further indicate that Rising Star Commodities Ltd had not imported sugar from 2015 to 2018.
26. The Committee noted that there appeared a lapse in communication between the agencies.

2.1.5 Recommendation 109:

THAT the Government implements the sugar industry's strategic agenda for increased competitiveness and reduction in consumer prices. There is a need to lower production costs, improve extension services among others to reduce and eventually eliminate the incentive to smuggle sugar into the country.

27. The Ministry of Agriculture and Irrigation and the Sugar Directorate reported that AFA has developed both the Crops (Sugar) General Regulations, 2018 and the crops (sugar)(Imports, Exports, and By-Products), 2018 Regulations, both awaiting gazettement; has undertaken improvement of roads and related infrastructure in the sugar belt through the EU Sugar Reforms Support Project to reduce transport costs; through KALRO – Sugar Research Institute (SRI), is undertaking the on-going development and release of new cane varieties (early maturing and high yielding) of which 21 varieties have already been released; is proceeding with the installation of Cane Testing Units and operationalization of quality cane payment system which has commenced.
28. However, following the removal of Sugar Development Levy (SDL), operations of KALRO-Sugar Research Institute (SRI) have been adversely affected thus impacting negatively on research in the sugar industry.
29. The fertilizer subsidy program is ongoing through the Ministry of Agriculture and Irrigation.
30. The Committee observed that this implementation status from the Ministry of Agriculture and Irrigation is insufficient since it does not outline any substantive strategic agenda or action taken to reduce the cost of production, improve extension services among others and to reduce and eventually eliminate the incentive to smuggle sugar into the Country.
31. The National Treasury and Planning reported that the sugar companies' privatization stalled in April 2016 following the filing of a court case by various County Governments and the Council of Governors in April and May 2016 seeking to stop privatization on account of devolution issues regarding the ownership of the assets. In November 2017, the High court delivered its judgment which allowed for more consultations.

32. Following discussions at the Intergovernmental Budget and Economic Council (IBEC) level and follow-up consultations at factory level which were not fruitful, the Cabinet Secretary, Ministry of Agriculture and Irrigation convened a meeting which was held on 28th and 29th June, 2018 to address the challenges affecting the sugar industry and to come up with sustainable solutions. Participants in the meeting included Governors, Members of Parliament and other leaders from the sugar-growing region, the National Treasury and Planning and the Privatization Commission.

33. To address the challenges, in the meeting the following was agreed on: -

i. The Ministry of Agriculture and Irrigation to provide leadership in bringing together the relevant Government Departments and Agencies to address the financial requirements of the Public Sugar Companies;
ii. The Public Sugar Companies to seek strategic partners for capital injection;
iii. A multi-sectoral team to be appointed to review the legal and regulatory framework paying particular attention to the issues of cane poaching and the need for zoning;
iv. The Sugar Development Levy to be re-introduced to facilitate cane research, cane development and infrastructure development;
v. Licensing to be undertaken through the consultation and concurrence of both levels of Government;
vi. The National and County Governments to intervene in the revival of Mumias Sugar Company;
vii. Sugar importation to be restricted to the provisions of the COMESA Free Trade Agreement;
viii. The Arbitration Tribunal to be re-established; and
ix. The Ministry of Agriculture and Irrigation, Council of Governors (Agriculture Committee), Parliament representatives from the sugar-growing region, the National Treasury, Privatization Commission, Intergovernmental Relations Technical Committee (IGRTC), Lake Region Economic Bloc, Intergovernmental Budget and Economic Council (IBEC), Attorney General's Office and Millers to steer implementation of the resolutions.

34. Following these discussions and agreements between the National and County Governments, what is being awaited is a consensus that would provide solutions to the crisis facing the sugar industry.

2.1.6 Recommendation 110:

THAT the National Government, in collaboration with the County Governments should provide a mechanism for coordinated infrastructure development to avoid duplication of responsibilities by different bodies mandated to maintain roads.

35. Both the Ministry of Agriculture and Irrigation and the Sugar Directorate reported that the roads and related infrastructure function have been clearly defined at both levels of government and where applicable with roads specifically assigned to either National or County Governments.
36. Sugar Directorate no longer funds infrastructure development following the removal of the Sugar Development Levy. The Interim Head reported that the withdrawal of sugar development levy has a direct impact on farmers and has affected the sugar industry. However, there has been considerable development of infrastructure in the sugar growing areas through the EU Sugar Reforms Support Project.

2.1.7 Recommendation 111

THAT, the National Government should implement the National Land Policy to mitigate further land sub-division for improved productivity.

37. The Committee wrote to the Ministry of Lands and Physical Planning to confirm the status of the recommendation but was yet to receive an update at the time of compiling the report.

2.1.8 Recommendation 112:

THAT the fertilizer subsidy should be complemented by bulk procurement of other farm inputs and capacity utilization, which should be done by the Sugar Directorate.

38. The Ministry of Agriculture and Irrigation reported that it has been doing bulk procurement of subsidized fertilizer for the benefit of the farmers since FY 2008/2009. This, however, has been abused and some of the subsidized fertilizer has been alleged to be of substandard quality.
39. The Committee raised concerns that the importation of bulk fertilizer, which is then repackaged, has led to the repackaging of substandard or fake fertilizer.
40. The Committee proposes the introduction of higher tariffs for the importation of sugar to levels like those imposed in Sudan, South Africa and other Countries.

2.1.9 Recommendation 113:

THAT investigation should be carried out on MSC and/or its agents, KRA and all importers and/or their agents who imported sugar from MSC in the period between 2006 and 2012 and appropriate action is taken.

41. The Directorate of Criminal Investigations in their letter **Ref. No. CID/SEC/OPS/2/6/13/8/196** dated **28th November 2018 (attached as Appendix 3)** reported that substantial ground had been covered in terms of trailing of cash in different banks accounts within and outside the Country. During their investigations, it came to light that some substantial amount of money was transferred to foreign accounts that are not in their jurisdiction and they, therefore, require Interpol's assistance to acquire information. This is because the origin of the sugar was from outside Kenya, which requires Interpol Protocol to accomplish the investigations. This has occasioned the delay in completing their investigations. The DCI, in their letter, requested for one month to complete the investigations and forward a report to the Committee. However, at the time of compiling the report, the status of the matter had not been communicated.
42. **EACC Report status:** EACC in a letter **Ref. No. EACC.6/4/1 Vol. IV (21)** dated **29th November 2018(attached as Appendix 4)**, reported that investigations commenced, documents were collected, analyzed and statements recorded. However, the matter stalled based on the query whether Mumias Sugar Company was a private or public entity. With the clarity of the same, investigations had resumed and are reported to be at an advanced stage. Adequate information on the investigations had not been received by the time of compiling the report.

2.1.10 Recommendation 114:

THAT KRA should be held responsible for the loss of VAT taxes amounting to Kshs 577 million for fictitious exports of sugar by MSC.

43. KRA raised the VAT and SDL assessments and demanded the resultant tax from Mumias Sugar Company. As they are unable to trace the original demand notices, KRA reissued the demand together with copies of the assessments and the workings in a letter dated **10th July 2018(attached as Appendix 5)** and received at MSC on **12th July 2018 (attached as Appendix 6)**. Section 32 of the Tax Procedures Act, 2015 provides that if the demand notice is not honoured within 30 days, appropriate recovery measures ensue immediately.

44. MSC avoided paying VAT by claiming it had exported sugar. It should be noted that KRA reissued demand notices of VAT to the MSC after the Committee invited KRA for meeting on the implementation status. Further, the Committee noted that the thirty days' notice issued by KRA had lapsed yet no money had been recovered.
45. There are no taxes paid on exportation, but the company can claim VAT refunds for which KRA demands proof of before making payments. KRA reported that it is aware of schemes to claim exportation of goods which are then rerouted and sold in the country as imports to avoid paying VAT. The onus of proof of exportation lies with the claimant of the VAT refund and if KRA is not satisfied it will send a demand notice for the VAT tax. Confirmation of export is verified online although, before 2007, it was written on the reverse of the export documentation at the border points.
46. Kenya Revenue Authority did report that there were no VAT refunds claimed and/or paid to the Mumias Sugar Company for the period 2006 to 2012. There was no month in the period 2006 to 2012 in which the company reported excess input tax over output VAT to warrant a claim of refunds.
47. The responsibility of inputs online and the accuracy of the inputs lies with the customs officers at the border points and by extension, the KRA. Before containers of goods exit or enter the Country, their seals are expected to confirm they have not been tampered with and that the accompanying documents are in order.
48. The Committee observed that the action by KRA to raise the VAT bill a day before the meeting with the Committee was questionable.
49. The Committee recommends that the DCI should investigate if there indeed was any collusion between KRA and MSC officials. Thereafter, appropriate action should be taken against those found culpable. The proceedings should be undertaken with a view to recovering lost public funds.
50. The National Treasury and Planning reiterated that the report does not directly link any specific KRA officer to any crime but made assurances to take up the matter and engage KRA Board and that necessary action will be taken against anyone found culpable.

2.1.11 Recommendation 115:

THAT, any officer from the Board and Management of MSC and KRA responsible for the fictitious exports of Sugar from 2006 to 2012 be held responsible for the abuse of procedures and abuse of office.

51. The Sugar Directorate reported that it was yet to receive an up to date status from Mumias Sugar Company on the same.

52. The National Treasury and Planning reported that Mumias Sugar Company is a listed company and with the Government shares of 20% of total shares, which in turn allows the Ministry of Agriculture and Irrigation and the National Treasury and Planning to have representatives in the Company. The Ministry had effected changes in the management and the Board of Mumias Sugar Company and improvements in the company since 2015.

53. The Committee observed that the recommendation is vague in that no investigating agency was assigned a task.

54. The Committee recommends that the Ethics and Anti-Corruption Commission takes up investigations on the matter.

2.1.11 Recommendation 116:

THAT the National Government introduces landing certificates for all transit sugar as a confirmation of physical exit to stop any dumping into the local market.

55. The Ministry of Agriculture and Irrigation and the Sugar Directorate reported that consultation with KRA is ongoing on the implementation and impact of the Single Customs Territory (SCT). The Sugar Directorate conducts background checks before registering a company by obtaining personal details of directors and the company clearance certificates from Kenya Revenue Authority (KRA), the Police, and Credit Review Bureau (CRB). It also supports and safeguards the local industry against the importation of sugar by establishing how much sugar the Country requires over time and what deficit exists if any. From the known deficits, the Sugar Directorate recommends for the importation of sugar from the East Africa Community (EAC) and COMESA.

56. The Ministry of Agriculture and Irrigation has no access to the KRA *Simba* system to verify the efficiency of the landing certificate and they instead use *Kentrade* system. During the duty-free window, KRA had configured their system and the Ministry of Agriculture and Irrigation could not use their system.

57. KRA reported that the implementation of landing certificate is in place because duties are paid in advance of the goods landing in the Country. Under the East African Community Customs Management Act, a landing certificate is a mandatory requirement for bond cancellation purposes. This is strictly enforced by KRA prior to bond cancellation or refund processing for goods exported or transferred to the region.

58. In regard to goods in transit to the Partner States of Uganda, Tanzania, Rwanda and Burundi or transferred/exported to the Partner States they are cleared under the Single Customs Territory (SCT) Regime. The SCT clearance model was introduced and implemented in 2013. The SCT process is complemented by close monitoring of the cargo by Transit Monitoring Unit and the use of Electronic Cargo Tracking System (ECTS)/Regional Electronic Cargo Tracking System (RECTS) and the Rapid Response Units to ensure safe conveyance and exit of cargo to destination Countries. The RECTS is a web-based integrated system deployed along the Northern Corridor to monitor and track goods under Customs control from the point of loading to final destination within Kenya and to the destination Country (Rwanda or Uganda).

59. The system achieves two broad objectives. It provides real-time detection of transit violations and also provides coordinated responses to alert Rapid Response Units.

60. The Committee questioned the effectiveness of the landing certificates because contraband sugar was still finding its way into the Country by unscrupulous companies circumventing the law and import in excess of the deficit. There is a need to restrict importation to the defined deficit.

61. The Committee recommends that

i. The relevant agencies which include the Sugar Directorate and Ministry of Agriculture & Irrigation who advise on the sugar deficit and the National Treasury & Planning who issue the gazette notice for duty-free import are impressed upon to avoid laxity and maintain strict adherence to the deficit announced.

ii. The Departmental Committee on Agriculture & Livestock conducts an inquiry on the effectiveness of the landing certificates especially in the importation of agricultural products like sugar.

iii. An audit of available sugar in the Country is undertaken and the need for a policy change from Government in the importation of sugar developed.

62. **EACC Report status**: EACC reported that investigations commenced, documents were collected, analyzed and statements recorded. However, the matter stalled based on the query whether Mumias Sugar Company was a private or public entity.

2.1.12 Recommendation 117:

THAT the Government should consider offering tax breaks to encourage new investors into the sugar industry. Additionally, the duty waiver for sugar industry farm inputs and farm machinery will go a long way towards reducing the high cost of sugar production.

63. The National Treasury and Planning and KRA reported that the Income Tax Act, CAP 470, provides a range of tax incentives in form of capital allowances on Plant, Equipment and Machinery under special conditions prescribed in law. These incentives include Investment Deductions (Allowances) of up to 150% on the cost of investment if located outside the three municipalities; Nairobi, Mombasa and Kisumu. The value of the investment ought to be Kshs 200M and above to benefit from the incentives. This facility is available to sugar millers by virtue of capital investment outlay. The VAT Act, 2013, First Schedule, Part 1, item 27 exempts Plant and Machinery from VAT. In the construction of a sugar factory, plant and machinery form a major part of the construction cost. The removal of VAT from plant and machinery is, therefore, a major boost for an investor in a sugar factory. Plant and machinery do not attract customs duty since the tariff duty under which they fall does not attract import duty.
64. Under the VAT Act, 2013 incentives are available in the form of remission of the VAT. Agricultural machinery and farm inputs (including fertilizer) are exempted from VAT. This is specific to the investor and is granted by the Cabinet Secretary, National Treasury and Planning on a project by project basis. It covers the supply of goods and services made to investments/projects, mainly new ones, on a VAT exempt basis. Agricultural farm inputs can also be supplied to the targeted sectors or investors or projects on a Vat exempt basis under this Remission program. This has the effect of lowering the cost of investments and spurring the economic growth of the sector. The Tax Laws (amendments) act as incentives to the sugar sector and encourage investors into the industry.
65. Investors in the sugar sector can also explore the incentive programs under the Special Economic Zones Act (SEZA), 2015. These incentives include exemptions from VAT, Withholding Taxes, Excise Duties and Tax Breaks or Holidays. Investors require to be licensed under SEZA as operators to enjoy these incentives. Licensed Operators under the SEZA program are eligible for any other tax incentives currently provided under the Income Tax Act, Cap 470. This is the latest model of incentive schemes intended to spur economic growth under Vision 2030 Development Plan.

66. In regard to import duty and taxes on agricultural machinery and farm inputs (including fertilizer), these are already generally duty-free in the East African Community Common External Tariff (EAC CET) or they are exempted under the Fifth Schedule to the East African Community Customs Management Act (EACCMA).

2.1.13 Recommendation 118:

THAT KPMG having provided a disclaimer as to the accuracy of the Draft Factual Finding Report, Mumias Sugar Company avails with immediate effect the final KPMG report to the National Assembly.

67. The National Treasury and Planning reported that the KPMG Report was an internal document and Mumias Sugar Company (MSC) could advise on submission of the Report to the Committee. The Ministry will work on an overhaul of MSC and address liabilities under a well-structured consolidated plan in order to provide a sustainable solution.
68. The Capital Markets Authority (CMA) reported that in 2014/15 Mumias Sugar Company procured Messrs. KPMG to carry out a comprehensive forensic audit with a wide scope covering the overall operations of the organization. The Report prepared by Messrs. KPMG covered a broad spectrum of the organizational issues facing the Company.
69. The KPMG final factual finding Report was not adopted by Mumias Sugar Company as the managers and individuals cited in the Report took the Company to court stopping the adoption and implementation of the report. This has made the matter*sub-judice* and the Report could not be discussed nor adopted at the Board level.
70. The Committee wrote to KPMG requesting a copy of the final Factual Finding Report to which it did not receive the copy as at the time of compiling the report.
71. The Committee,however, noted that KPMG is a private company whose dealings with its clients is protected by company - client privileges. Further, the recommendation had directed Mumias Sugar Company to provide the final KPMG Report,not the audit firm itself.
72. The Capital Market Authority in the exercise of its regulatory oversight role over listed companies commissioned an independent forensic investigation through an independent consultant J Miles & Co. in May 2017. The key areas identified that are sufficiently substantiated to commence administrative and criminal proceedings were: embezzlement of funds and cash misappropriation through under billing (discount and credit notes) scheme to siphon funds out of Mumias Sugar Company to members of Management and the Board; conflicts of interest by Management in some of the Mumias Projects;

ineffective Board oversight and lack of Board Risk Management Framework on the general operations of Mumias; and misrepresentation of Financial Statements with respect to certain aspects of the financials with a view to assessing whether the company's operations were in compliance with the Capital Markets Legal and Regulatory framework.

73. The Audit Report was reviewed by CMA and found to highlight potential contraventions by the Company and/or its officers under the capital markets legal and regulatory framework, particularly on corporate governance and financial reporting; In order to inform the appropriateness and scope of potential regulatory action, the Authority undertook further investigations which informed the focus and nature of enforcement actions to be taken by the Authority.
74. The Authority through this process re-validated some of the key findings set out in the forensic investigation's report through these further investigations. In line with the provisions of the Constitution, the Fair Administrative Actions Act and the Capital Markets Act, the persons who were adversely mentioned in the forensic investigation report were issued with Notices to Show Cause setting out the Authority's investigatory findings and specific legal provisions which they were alleged to have contravened.
75. The CMA did issue letters to Mr. Peter Hongo; to Dr. Kimutai Murgor, PhD and to Dr Evans Kidero (**attached as Appendix** 7) giving them notices of show cause. In response to the Notices to Show Cause, the persons of interest commenced court proceedings against the Authority's investigations and regulatory actions and interlocutory conservatory orders were subsequently issued staying the investigations and enforcement/administrative actions of the Authority.
76. CMAreports that the court cases and the bank's unreasonable delays and/or refusal to comply with their requests are hampering investigations. The report prepared by CMA has not been availed to the Company, as they had not paid CMA its dues amounting to Kshs. 5 million.
77. On the alleged non-existent imports by Dantes Peak Limited, Officers from the Directorate of Criminal Investigation had visited Mumias Sugar Company premises investigating the alleged fraudulent import of sugar. Other arms of Government also conductedinvestigations on the matter.
78. The Sugar Directorate reported that it was yet to receive an update on the status from Mumias Sugar Company.

2.1.14 Recommendation 119:

THAT officers from MSC/KRA who abused import procedures with regard to Import Permit requirements in the importation of 10,000MT of sugar in 2012 from Sudan be held to account for their misdeeds.

Status

79. KRA reported that under customs law, the "Owner" in respect of imported goods is defined to include any person holding himself or herself out to be the owner, importer, exporter, consignee, agent or the person in possession of or beneficially interested in, or having control of, or power of disposition over the goods. It, therefore, does not implicitly define who an importer is.
80. At the time of importation, the case was investigated and the consignment was released after offences that had been committed by the company were addressed. Following the investigation, no KRA officer was found to have abused import procedures in regard to the importation of the sugar. In relation to the importation of sugar by Mumias Sugar Company (MSC) in 2013, at the time of importation a customs import entry was registered under the name MSC. All supporting import documents including the Bill of Landing were in the name of MSC.
81. Due to the prevailing cane sugar situation in 2012-2013, the management of Mumias Sugar Company Limited reported that production had been greatly affected leading to a significant deficit in production and revenue projections. As a way of bridging the deficit, the management came up with a proposal to import about 30,000 tons of sugar in the month of May 2013. The management had identified Dantes Peak Ltd and the proposal was tabled before the MSC Board on 4th February 2013. The MSC Board mandated the management to import 30,000 tons of sugar from the COMESA market through Dantes Peak Limited as the importer.
82. The initial agreement was between Kenana Sugar Company Ltd and Dantes Peak Ltd dated 11th December 2012 for the supply of 30,000 tons of sugar. Dantes Peak Limited then entered into a supply agreement with Mumias Sugar Company Ltd dated 1st February 2013. The condition by Mumias Sugar Company Limited was for sugar to be of COMESA origin **(attached as Appendix 8).**
83. During clearance, issues arose in regard to the origin and ownership that necessitated the issuance of a Customs Deposit Notice (F89).

84. Through a letter dated 1st October 2013, Kenana Sugar Company Limited wrote to the KRA confirming that the sugar was of COMESA origin and that the company was the bonafide owner of the stock of sugar that was seized by KRA and that the sugar was exported for Mumias Sugar Company Limited **(attached as Appendix 9).** Further, the Embassy of Sudan through their letter dated 3rd October 2013 confirmed that the consignment imported by Mumias Sugar Company Ltd was manufactured and packed in Sudan at Kenana Sugar Company Ltd. The Embassy confirmed that Sudan is a member of COMESA **(attached as Appendix 10).**

85. KRA with no recourse had its officers escort the sugar to Mumias Sugar Company. The importation was confirmed as having been of Mumias Sugar Company and was duly authorized by the then Kenya Sugar Board now Sugar Directorate through the issuance of an Import Permit to the company.

86. KRA is limited as per the law and its mandate as to what extent it can instruct or impede an independent institution to carry out their job.

87. KRA did note that the sugar brought in by Dantes Peak Limited had been under-valued for which a demand notice was issued and paid by Dantes Peak Limited. As a result of the offences of undervaluation and misrepresentation, Mumias Sugar Company Ltd was fined and paid USD 10,000 or Kshs. 1 Million the highest possible in law, because among others the PIN used in the import documents was different from Mumias Sugar Company **(attached as Appendix 11).**

2.1.15 Recommendation 120:

THAT Deloitte and Touché be held responsible for misleading the government, other shareholders and the public on the state of affairs in MSC during the period of their engagement as auditors.

88. The Committee noted that Deloitte & Touché is a private company whose dealings with its clients are protected by company client privileges. Further, the Office of the Auditor General is charged with auditing public investments or appointment of private auditors to do so on its behalf.

As the Committee proceeded with its scrutiny on the implementation status of the Report on the crisis facing the sugar industry in Kenya, it received additional submissions both oral and written from the following stakeholders.

2.2 EVIDENCE FROM DANTES PEAK LIMITED

While appearing before the Committee on 9th October 2018, the Executive Chairman, Dantes Peak Limited Mr. Benson Sande Ndeta in response to the observations contained in the Departmental Committee on Agriculture, Livestock and Cooperatives' Report on the crisis facing the sugar industry in Kenya, submitted that:-

89. Dantes Peak Limited is a family owned business that operates in diverse sectors that include manufacturing of cement, concrete and paper bags; transport; logistics as well as power production.
90. In December 2012, Mumias Sugar Company (MSC) wrote to Dantes Peak Limited among four other companies and requested for a quotation to supply 100,000 metric tonnes of sugar in Mombasa, from a COMESA country. This was to ensure that the sugar did not attract customs duties and would be competitive for resale in the local market. Dantes Peak Limited used its global contacts to source and secure an allocation from Kenana Sugar Company and submitted their quotation to Mumias Sugar Company.
91. On 22nd December 2012, Dantes Peak Limited received a communication from MSC informing it that its bid was the most competitive at a price of USD 815 per metric tonne in Mombasa.
92. MSC then requested Dantes Peak Limited to consider financing the consignment under Collateral Management Agreement, i.e. allowing them to sell the sugar, receive payments from its customers and then pay Dantes Peak Limited what was owed. This was subject to entering into a contract which was prepared by February 2013 and executed on 12th March 2013 after the Boards of the two companies approved the same.
93. During the negotiation process, the quantity of sugar to be supplied was revised downwards to 30,000 metric tonnes to be delivered in lots of 10,000 tonnes per month, subject to market dynamics.
94. Dantes Peak Limited then entered into a separate agreement with their supplier, Kenana Sugar Company, for the supply of 30,000 metric tonnes and purchased the first lot of 10,000 metric tonnes which was delivered at the Port of Mombasa on the 26th of April 2013 as per the terms of the Master Contract Agreement entered into with Mumias Sugar Company (**attached as Appendix 12**). Their obligations having been fully met as per the contract, the cargo was handed over to Mumias Sugar Company who cleared it and sold the same to its customers.

95. Concerning *the Departmental Committee on Agriculture, Livestock & Cooperatives' findings and Kenya Revenue Authority assertion that on Mumias Sugar Company import declaration document for the importation of 10,000 metric tonnes of sugar, Dantes peak Limited acted as an agent and imported the sugar on behalf of MSC, which is un-procedural as an import permit is not transferrable to a third party"*, although Dantes Peak Limited completely agreed with the Kenya Revenue Authority that it acted as an agent, it disagreed with the conclusion that the import permit was transferred to Dantes Peak Limited. Dantes Peak Limited indicated that they were never the importer of the sugar.

96. On the Departmental Committee findings that *''further, on the aforementioned import declaration document, the PIN No. listed was for Dantes Peak Limited instead of Mumias Sugar Company as the importer''*, Dantes Peak Limited responded that the transaction continues to be misrepresented or misunderstood to an erroneous conclusion that then implies a misdeed by Mumias Sugar Company, Kenya Revenue Authority or Dantes Peak Limited. At the time of this sugar import, Mumias Sugar Company had a sugar import license but lacked the financial capacity to buy the sugar in the international market. It thus entered into a contract with Dantes Peak Limited to source for, buy the sugar and deliver the same ex-port to Mombasa where Mumias Sugar Company would clear it and sell it as a profit to its customers. Dantes Peak Limited and Mumias Sugar Company entered into a contractual arrangement and opened an escrow account for holding funds until the amount was fully settled. MSC would not use the money for other purposes but instead, bank it into the account until they had paid Dantes Peak Limited their debt within thirty days from the date of lending as per the agreement. Mumias Sugar Company alleged that 23,500 bags went missing from the consignment and terminated its contract with Dantes Peak Limited in 2015.

97. Dantes Peak Limited on its part entered into a contract with Kenana Sugar Company to supply it with the same consignment for delivery to Mumias Sugar Company. Dantes Peak Limited reported that they were required to pay 4,980,000 Euros which was the amount claimed by Kenana Sugar Company. However, they only managed to pay 500,000 Euros forcing Mumias Sugar Company to settle the rest.

98. The PIN being referred was used by Dantes Peak Limited to process the Pre-export Verification of Conformity (PVOC) leading to the issuance of the Certificate of Conformity that is necessary before the goods can be loaded on the ship in Sudan to sail to Mombasa. The obligations to get the consignment inspected and verified and obtaining

the Certificates of Conformity was a responsibility of Dantes Peak Limited. This is in conformity with the terms of the Master Agreement executed with Mumias Sugar Company.

99. On the issue that *"Kenya Revenue Authority also reported that there were mis-declaration and undervaluation of the consignment that Dantes Peak Limited imported and for which Mumias was fined USD 10,000"*, Dantes Peak Limited informed the Committee that the value of the sugar that was used by Mumias Sugar Company to declare to the customs for purposes of VAT was as per the invoice issued to Dantes Peak Limited by Kenana Sugar Company and which is corroborated by the remittance payment to Kenana Sugar Company. Declaring a higher value would, in any case, have been interpreted as an attempt to profit off Mumias Sugar Company. This notwithstanding, Kenya Revenue Authority has discretionary power to uplift the value of any imported item by benchmarking with the international market which they utilized and for which the importer, Mumias Sugar Company acceded to.

100. Dantes Peak Limited was never an importer of sugar but there was a master agreement executed between Mumias Sugar Company and Dantes Peak Limited for the importation of sugar.

101. The goods once brought in at Kilindini port in Mombasa together with necessary documents became properties of MSC who in turn was required to clear and bring in the consignment into the Country after satisfying all the requirements of KRA and sell the same to its customers.

102. Dantes Peak Limited never applied for an import permit nor received a sugar license from the Sugar Directorate to import sugar but deals with commodities.

103. Dantes Peak Limited alleged that Kenya Revenue Authority and Kenya Bureau of Standards held the consignment for more than two (2) months at the port of Mombasa on the suspicion that the sugar was not from Sudan yet it had produced all necessary documents e.g. a COMESA Certificate. KRA impounded the sugar, investigated and concluded the matter and released the goods on 26th April 2013, six weeks after signing of the contract and when the prices of sugar had dropped.

104. When the Directors of Dantes Peak Limited appeared before the Committee, they tabled various documents as proof that the company's relationship with Mumias Sugar Company was purely commercial.

105. Among the said documents tabled by the Directors of the Company are pleadings in civil suit No. 38 of 2015, Mumias Sugar Company Limited versus Dantes Peak Limited and

five (5) others, thereby confirming that the matter is still active at the commercial court division, Milimani law courts and therefore sub judice.

2.4 FIELD VISIT TO WESTERN KENYA

During the Committee retreat held in Naivasha from 6th to 9th September 2018, the Committee resolved to visit various sugar factories in Western Kenya to establish the implementation status of the recommendations contained in the Report on the crisis facing the sugar industry in Kenya by the Departmental Committee on Agriculture, Livestock and Cooperatives. During the site visits to various factories in the sugarcane growing areas held from 26th to 29th September 2018, the Committee held meetings with various stakeholders from the region.

2.4.1 EVIDENCE FROM THE BOARD AND THE MANAGEMENT OF MUMIAS SUGAR COMPANY

Ms Naomi Cidi, a Board Member, Mr. Patrick Chebosi, Acting CEO and other Board Members and Managers of Mumias Sugar Company informed the Committee that:-

106. Mumias Sugar Company (MSC) was the 5th sugar factory to begin cane milling in 1973 and the Government owns 26% of the company shares. By the late 1970s, it was the largest sugar producing factory and accounted for 60% of all sugar produced in the country. It has the largest nucleus among sugar millers.

107. The Acting CEO noted that MSC is the economic mainstream of the region and its inactivity has been felt in the sugar-growing region. The cash flow in MSC is currently very poor and it's attributed to lack of cane availability. Other revenue streams like water bottling and co-generation were closed. The Acting CEO also informed the Committee that the company had entered into an agreement with KPLC to be providing power to the National Grid, however, they failed to meet the agreement condition that had led to heavy penalties amounting to Kshs. 1.2 billion and as a result, electricity supply was disconnected. The Company was relying on 100% on ethanol production that uses generators. It was alleged that there were people who were behind the electricity disconnection for personal interest. The Committee was requested to intervene and have the electricity re-connected. The Ethanol production was ongoing but the prices of molasses and diesel used in generators had risen reducing the profit margins.

108. The Acting CEO further informed the Committee that the Company had made a request for a Government bailout of Kshs. 3.8 billion to the National Treasury and Planning, which was yet to be actualized.

109. On the issue of production, the Acting CEO noted that the capacity of sugar production for MSC is 8,000 tonnes, with a deficit of 3,000 tonnes per year. The variety being planted takes around 18-24 months to mature compared to shorter maturing cane varieties in other Countries. The management further noted that they were working with farmers to supply seed that take a lesser period to mature and have high sucrose content. They also emphasized on the need for better management of raw materials and elimination of cane poaching.

110. On the issue of Zoning, the management of Mumias Sugar Company noted that they were in support, noting that 96% of the local community including transporters, farmers and workers supported zoning. It was observed that cane poaching was connected to zoning.

111. On the issue of farm input, the management noted that the prices of fertilizers were very expensive compared to other countries like Uganda, which make the cost of production high for farmers.

112. After the meeting, the Committee was taken around the factory where it was noted that the machines were in a dilapidated state and needed urgent attention.

2.4.2 EVIDENCE FROM MSC SECRETARY-GENERAL, FARMERS' UNION
Mr. J. Mulomi, the Secretary-General, Farmers' Union reported that:-

113. The key issues that were ailing the factory were mainly on governance, mismanagement and mal-practices. The Board of Mumias Sugar Company was interfering with the day-to-day operations of the Company. It was alleged that some Board members occasioned a change of signatories of the operational account of the company without a Board resolution. He alleged that the Board, with the intention of controlling Kshs 4.2 Billion bailouts from the government, fired the finance manager.

114. He noted that there was a need for effective and prudent management of the massive investment and urged the Government to intervene in the management of the available resources.

115. There was an urgent need to unlock the stalemate between the Board and the Management of MSC and that each level should concentrate on its mandate.

116. He further noted the urgent need for bailout funds from the Government to revive Mumias Sugar Company. There are inordinate delays in the payment of employees' salaries. For instance, the employees have not received their wages for the past seventeen (17) months but were still willing to continue working.

2.4.3 EVIDENCE FROM CHEMILIL SUGAR COMPANY LIMITED

Mr. Gabriel Nyangwesa, the Acting Managing Director, Chemilil Sugar Company Limited informed the Committee that:-

117. Chemilil Sugar Company Limited (Chemilil) is a state corporation initially established and incorporated as a private limited Company in 1965. Currently, the company shareholders are, the GoK (through ADC) 96.22%, Development Bank of Kenya 1.42%, Shell Company (Vivo Energy) 0.94% and Minerva holdings that own 1.42%. The Company is mandated to manufacture sugar and co-products from sugarcane and to assist in and manage sugar plantations. Chemilil serves farmers from Nandi and Kisumu Counties.

118. The available area for sugarcane growing is 2,273 hectares and 23,617 hectares in the nucleus and out-growers respectively. Only 1,532 hectares of the nucleus farm and 15,363 hectares of the out growers farms are currently under sugarcane growing.

119. The initial installed factory milling capacity was 85 tons per day (TCD), but currently, the Company is operating at a capacity of 1,500 TCD with an optimal capacity of 3,000 TCD. The total number of sugarcane farmers is eleven thousand two hundred (11,200).

120. Chemilil Sugar Company is facing challenges which include aged factory infrastructure and equipment; insufficient generation of revenue from Company operations; delayed farmers payments-the factory owes farmers arrears of Kshs. 212 million; poor and dilapidated sugar feeder roads infrastructure; cane poaching i.e. transfer of canes to other zones; low cane yields due to the acidity of soil and lack of fertilizers; fluctuation in sugar prices due to excess and illegal imports; highly indebted (Kshs. 7.2 billion) as at June, 2018, meaning the company is insolvent as the liabilities are more than the assets.

121. The Company did cease operations in 2007 and has since incurred losses approximated at Kshs 700 million for the last ten years. The Company resumed operations on 6th August 2018 and has been paying employees since it resumed operations; however, it is yet to pay the initial arrears.

122. The Company owes KRA tax totalling to Kshs. 90 million of which they are required to pay Kshs. 40 million per month in order to clear its debts and remain current in remittances.

123. The management indicated that they had requested for debts write-off from KRA but have not received a favourable response.

124. Land issues should be resolved first while privatization is left to the factories in consultation with other stakeholders. It is alleged that some dubious businessmen want to use privatization to acquire the large parcels of Chemilil land.

125. On zoning, the cane area is enough for the three (3) factories in the area. A stakeholder consultative forum was held where all factories agreed to zone except Kibos Sugar and Allied Companies, a private factory that has not developed any cane and uses roads without incurring any cost.

126. Uncontrolled cane movement is a major problem that affects the factories which can be curbed by limiting the movement of cane within the County.

127. State-owned mills are old while private mills have been recently set up and use modern technology, making it difficult for public mills to be competitive and pay farmers promptly.

128. Public millers are also challenged in terms of bureaucratic procurement processes and cannot take advantage of favourable market situations promptly like private mills.

2.4.4 EVIDENCE FROM CHEMILIL SUGAR CANE FARMERS FROM NANDI AND KISUMU COUNTIES

129. Chemilil Sugar factory performance has deteriorated due to lack of consistent annual maintenance, resulting in losses arising from diminishing profits, compounded by lack of payments to farmers, transporters and company employees.

130. The sugarcane farmers held a meeting with the management of Chemilil Sugar Cane Company Ltd, sub-county administrators and other relevant stakeholders on 27th April 2018, with the aim of exploring ways to salvage Chemilil Sugar Company from imminent collapse.

131. From the meeting, it emerged that the challenges facing the factory include; low sugarcane production; demoralized management and employees affecting their productivity; distortion of the price of sugar in the market; lack of cane development; factory maintenance funding and dilapidated factory infrastructure.

132. The meeting proposed a Government bailout to pay sugarcane farmers' arrears totalling Kshs. 200 million owed by Chemilil Sugar Company to boost farmers' morale. Further, the Government is to inject Kshs. 1.2 Billion into the Company to help it reach its optimal production levels.

133. The Sugar Development Fund (SDF) should be reintroduced and the department it falls under strengthened & managed effectively.

134. Local sugarcane farmers' representatives are incorporated in the Company Board of Directors' to articulate farmers issues at the Board level, which will, in turn, build farmers confidence.

2.4.5 EVIDENCE FROM THE JOINT RECEIVERSHIP MANAGERS OF MUHORONI AND MIWANI SUGAR COMPANIES LIMITED

Mr. Francis E. Ooko, one of the joint Receiver Managers of Muhoroni and Miwani Sugar Companies informed the Committee that:-

135. Muhoroni Sugar Company Limited (MUSCO) was incorporated in 1964 under an Act of Parliament, Cap 441 and started operations in 1966, with an initial factory capacity of 800 Tons Cane per Day (TCD). The Company is owned by the Government of Kenya (82.78%), UKETA Ltd. (16.86%) and (0.36%) private shareholders.
136. Miwani and Muhoroni Sugar Companies were placed under joint receivership by the Kenya Sugar Board (now Agriculture and Food Authority, Sugar Directorate) and National Bank of Kenya (NBK) in March 2001 with the main objective of preserving the assets while restructuring the balance sheet with the intention of the Government divesting (privatization) to allow for private investment in its modernization. NBK has since been paid off; hence the sole debenture holder is the Sugar Directorate and Agriculture and Food Authority.
137. Muhoroni and Miwani Sugar Companies Ltd (in receivership) are two distinct companies. They are however managed under One Joint Receivership which makes the two companies' synergy its operations. Currently, Miwani Sugar (1989) Ltd has a valid farming contract with Muhoroni in its vast nucleus estate, which is 3,200 hectares of land for cane growing. Muhoroni has a working sugar plant and therefore is able to mill the cane from Miwani Sugar Company Ltd (in receivership).
138. Currently, MUSCO mainly processes brown sugar from sugar cane grown on its nucleus estate and in the out-grower zone. The total area under cane is 14,638 hectares (ha) of which 1,866 ha lies in the nucleus estate. During the period of 2017/2018, the Company experienced a drastic drop in milling due to the biting shortage of cane in the entire western region resulting in reduced milling capacity by 60% from a high of 9,000 tonnes to 3,600 tonnes between the months of April to mid-September 2017 after which the supply of cane improved.
139. Cane poaching by the private milling companies has also escalated the cane shortage in the region. The shortage has resulted in low cash flows, milling of young immature cane to keep the factory running and reduced crushing days to an average of three days.

140. Importation of cheap sugar also continues to contribute to the reduced cash flows. Sugar production in the country dropped by 41% during the same period as factories grappled with a shortage of raw material. The sugar deficit is ideally covered by stringently controlled imports from the COMESA trade bloc, with the Country having a quota of 300,000 tonnes annually, however, most recently, this quota was tripled.

141. The flooding of cheap sugar has led to a drastic drop in local prices from Kshs. 7,000 per bag to Kshs. 3,700. The Company has continued to buy sugarcane at a high price of Kshs. 4,052 per tonne despite the low price of sugar of Kshs. 3,700 per bag in the local market.

142. The Company faces cane poaching allegedly from neighbouring mills like Kibos Sugar & Allied Companies and West Kenya Sugar Company; both having set up weighbridges in MUSCO zone, contrary to best practice and in the absence of industry standards.

143. As a way forward, the Management of MUSCO proposed a strategic plan to acquire Kshs. 1.2 billion for cane development in the next five years.

144. Miwani Sugar was placed under receivership when its sugar mills, refinery and distillery had ceased operations and has yet to resume.

145. About 2,014 hectares contains cane at various development stages that are developed and maintained under a farming contract, which facilitated the provision of inputs. The need to accelerate cane development in the nucleus estate is informed by the need to improve the financial resources of the Company and to deter the urge by encroachers and squatters to occupy the land illegally.

146. In August 2011, Miwani Sugar applied for a refinancing loan from the then Kenya Sugar Board(now Sugar Directorate) amounting to Kshs. 172 million for cane development in the nucleus estate but has yet to receive a response. The current Joint Receivers & Managers have ploughed back the little financial resources from the nucleus estate to increase the hectarage under cane.

147. Miwani Sugar Company land covers 4,046.95 hectares, out of which the Company designates 3,000 hectares for cane farming. The land was valued at Kshs. 696,600,000 in 2007. Ownership of the land was reverted to the Miwani Sugar Company in 2010 following favourable rulings at the High Court of Kenya and the Court of Appeal.

148. The Committee thereafter made a tour of Miwani Sugar Company where it observed that the plant remains in a state of disuse, with the plant and machinery showing signs of deterioration. Miwani Sugar Company was in a dilapidated state and requires urgent capital injection.

149. The Committee recommends re-introducing the Sugar Development Levy and the Cess Levy and providing tax breaks to facilitate investments and aid in factory rehabilitation, research and farmers' training. The Government should bail out Miwani Sugar Company, as the government largely owns the company.

2.4.6 EVIDENCE FROM KENYA SUGARCANE GROWERS ASSOCIATION

In a meeting of the Committee held on 27th September 2018, the Kenya Sugarcane Growers Association submitted that: -

150. In terms of policy and legislative framework, the sector was until 2013 in the hands of the then Kenya Sugar Board which made the largest regulatory decisions about the industry. This led to the establishment of the Kenya Sugar Growers Association (KESGA) and the direct election of farmers' representatives in the defunct Kenya Sugar Board.

151. The Agriculture, Fisheries and Food Authority (AFA) Act repealed the Sugar Act, amongst other agricultural statutes and established the Sugar Directorate in the place of the Kenya Sugar Board. The Act was the product of the reforms around the Economic Recovery Strategy for Wealth and Employment creation and strategy for revitalization of agriculture.

152. However, the Act has not addressed the following: -

   i. Cane zoning for the sugar millers which the delay in gazettement and operationalization of Sugar Regulations has opened the door to chaos and confusion in the sector from 2013 to 2018.
   ii. The issue of farmers representation on sugar issues became even more obfuscated;
   iii. Sector policy issues becoming further removed from stakeholders, and issues such as fast cane maturing sugarcane (and research on sugar), cane pricing, fertilizer etc. remaining under the purview of sugar directorate alone.

153. Several challenges have emerged over time which includes:-

   i. Low productivity at the farm level and costly inputs. It is estimated that the production price per tonne of sugar in Kenya ranges about $500 per tonne being higher than most sugar producing Countries. Lack of modern technology; low levels of mechanization and dilapidated and poor physical infrastructure in the sugarcane growing areas further raise the cost of production.

ii. Mismanagement in the factories at all levels of production and poor decision making which has contributed to inefficiencies. Lack of funds and poor use of funds for factory rehabilitation has also led to low productivity levels at the factory.

iii. International Trade Regimes of Sugar: Kenya is a member of the COMESA Free Trade Area (COMESA-FTA). Kenya's sugar industry is at the moment not competitive hence cheaper imports could probably inflict irreparable damage to it.

154. The farmers' representatives propose several solutions which include: -

i. The Government streamlining management of the public sugar factories and infusing corporate governance values in the running of the companies.

ii. Finalizing and gazetting draft sugar regulations after public participation of stakeholders especially farmers to provide mechanisms for relating in the sector and integrate concerns in running the sector.

iii. A proposal to incorporate County Governments in the management of the sugar industry to enhance the supervisory function of the management of the Boards, network with local stakeholders, provide for stakeholders concerns in the sugar factories and improve accountability.

iv. Increase the efficiency of the factories through modernized infrastructure and systems. Factory machinery should be overhauled for greater efficiency and outputs, which in turn, will improve the production.

v. Strengthen research and extension services in the sector including research of cane varieties and other factors affecting the sugar industry in the Country. The research services should be undertaken in collaboration with the sugar companies and other research institutions and universities.

vi. There is a need for rational resourcing of the factories and revamping the public sugar factories to curb the requests for bailouts from the National Treasury.

2.4.7 EVIDENCE FROM THE KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

In their meeting with the Committee held on 27th September 2018, the Kenya National Federation of Sugarcane Farmers submitted that: -

155. Muhoroni Sugar Company (in receivership) closed without the involvement of the various stakeholders on 27th May 2018 and was recently re-opened after concerted efforts by the Receiver managers of the Company, the local leaders, staff and other stakeholders.

156. Most farmers have not been paid for sugarcane deliveries since April 2017 despite sugar having been produced and there being no stocks in the warehouses.

157.The Receiver managers have applied for a bailout from the Government of Kshs. 600 million that would enable the management to pay arrears to farmers, employees, transporters and other debts. The company risks closure again if these payments of arrears are not done soon.

158.The Representatives proposed that debts owed by Muhoroni Sugar Company are written off for the factory to have a fresh start with a revamped Board of Directors in an effort to bring to an end its receivership status.

159.The money that is deducted from farmers must be properly accounted for as most of the access roads in the area are in a state of disrepair due to poor or no maintenance done.

160.The Sugar Development Levy should be re-introduced to help farmers produce better yields since part of it used to be ploughed into research. New sugarcane varieties with shorter maturity periods should be introduced and lower costs of production attained. This is achievable through farmers' sensitization.

161.Pricing should be done correctly and follow supply and demand dynamics.

162.Miwani region is the most potential cane growing catchment area with the minimal cost of production. Miwani Nuclear Estate has naturally fertile soil covering an area of 10,000 acres, which can sustain a Mill capacity of 2,000 tons per day without supplementary supply from out growers. Although it's currently underdeveloped, it is the main cane supply to Muhoroni Sugar Company.

163.The cane development catchment area covering both Kisumu and Nandi counties covers over 100,000 acres by extension to Ahero region. Currently, over 50,000 acres is under cane without any support from any quarter.

2.4.8 EVIDENCE FROM SOUTH NYANZA SUGAR COMPANY (SONY SUGAR)

In their meeting with the Committee held on 18th October 2018, the Chairman, South Nyanza Sugar Company Hon. Charles Owino Likowa, accompanied by the Acting Managing Director, Mr. Bernard Otieno appeared before the Committee and submitted that: -

164. SONY SUGAR is a largely state-owned public agency with a 98% Government of Kenya shareholding of the total company shares and serves four (4) Counties with varied agro-variation, soil and even weather. The area of land that is under cane production (nucleus) is 24,000 ha.

165.Because of lack of proper internal control mechanisms, the Government brought in a private company META that managed SONY SUGAR for the first five (5) years. It was during that period that the company began nucleus farms and decided on the type of cane varieties to grow.

166. It took the company four (4) years to avail enough cane to set up a milling plant since the mill was operating under different management. The milling capacity is tied to cane production and the installed capacity of the mill is 75,000 metric tonnes.

167. The Country consumes approximately 650,000 metric tonnes of sugar per month.

168. SONY Sugar Company uses a contracting model because most of its farmers are small-scale holders who own as small as a quarter of an acre piece of land. The company makes an advance payment to farmers and provides cane material and fertilizers.

169. SONY Sugar Company operates for ten and a half months annually and its current low operation capacity has been occasioned by lack of sugar cane hence the need for the consistent development of cane.

170. Seed cane production including variety trials and production run on the infrastructure of millers.

171. SONY Sugar Company suffered from diminishing cane area due to lack of investment in cane of which the cost of the cane is a significant factor, ultimately affecting prices of sugar. There is a hidden cost in terms of cane development e.g. sunken costs in the form of extension support which cost SONY Kshs. 1 billion yearly on average. Therefore, there is a need to indemnify millers from sunken costs and other related costs.

172. The sugar factories in the Country including private millers suffer from an acute shortage of cane and were largely affected by cane poaching.

173. Sugar varies largely because of agronomics and harvesting practices. For instance, the agro-climatic conditions are ideal in Colombia hence highest in terms of efficiency and sugar content but small in scale. India also runs on small-holder production model yet it's one of the largest producers of sugar.

174. The abolished Sugar Development Levy assisted in mitigating the cost of inputs like fertilizers, procuring technical personnel, building capacity to sustain raw materials and providing updates on new varieties.

175. The SDL funded the Sugar Development and Research Institute that provides research services but it's currently dormant and is alleged to not being able to pay its employees. The current regulations only provide for licensing of new mills and importation of sugar and there are gaps in terms of effectiveness and delivery hence the need to create a policy defining regulations.

176.SONY Sugar Company pays cess to the County Government but they do not have the legal means to access the cess Fund. Initially, before County Governments were created, Local Authorities assisted in administrative services and retained a portion of the cess Fund and 80% of it was tied to the building of roads, gravels and drainages.

177.Kenya and other markets were relying on the European Union (EU), which provided grants and had access to the European market with preferential prices. However, the sugar regime changed and the EU market was de-regulated therefore former ACP countries including Kenya that were enjoying preferential treatment can no longer receive EU grants which are no longer available.

178.The industry is no longer import driven and there is no growth of a complementary industry to support the sugar sector. There are hardly incentives in the sector and SONY Sugar Company is not benefitting from tax incentives except on agricultural products that are zero-rated. However, the industry depends on machinery, spare parts and consumables that are not zero-rated.

179.There is a provision in the licensing requirement that millers must demonstrate that they have cane. Nucleus farms offer the Millers the raw materials required at a cost and appear unique in irrigated areas and in the East Africa region. For example, India does not have nucleus farms and this does not appear to affect their production capacity.

180.Some millers are taking advantage of farmers' vulnerability many of whom are small-scale farm holders who don't understand the consequences and implications of breaching a contract. There is a need to educate and dissuade contracted farmers who collude with private companies despite entering into an agreement with public millers. Enforcement of the contracts is a challenge because suing for breach of contract is a civil matter hence police involvement is minimal as it is not a criminal matter.

181.However, SONY Sugar has been working with Administration Police on enforcement of contracts and to address cane poaching which was partly theft and partly collusion with farmers. The Company provided evidence of details of contracted farmers and complaints forwarded to the Sugar Industry Regulator.

182.SONY Sugar Company has lost a huge investment including cane worth Kshs. 2.3 billion to Mara Sugar, Sukari Industries, Jaggers and other private companies. SONY deliberated on a Memorandum of Understanding with Mara Sugar and Sukari Industries and formed an alliance with Mara Sugar to establish actual plot owners and farmers who hold duplicate contracts.

183. Zones, which are command areas, are an established practice even in globally competitive market areas. However, zoning should not be used as a blanket application but should apply to paid contracted farmers.

184. The concern raised on zoning is whether it amounts to stifling farmers in terms of choice. Independent farmers have a choice but contracted farmers do not. The Government should provide a policy and enforcement framework for companies who have contracted farmers to recoup their investment back.

185. For importation of sugar, there appear to be no set standards for raw sugar and Kenya Revenue Authority doesn't possess a tariff for raw sugar.

186. There is only one refinery in Kenya, KIBOS Sugar and Allied Companies Limited, which has a fully furnished refined sugar factory and the technical ability to reprocess raw sugar in the Country. However, the factory has yet to be operationalized.

187. Any miller that wishes to import raw sugar must acquire two (2) import licenses, authorizations from Kenya Bureau of Standards (KEBS) and Agriculture and Food Agriculture (AFA) (like SONY) that allowed them to import sugar.

188. The objective of the subsidy program was to avail farmers with fertilizers but it failed ostensibly. SONY received communication from the Ministry of Agriculture and Irrigation that barred them from buying fertilizers from the market.

189. SONY SUGAR was under-capitalized from inception but the Government doesn't owe any money to the Company. Delays in payments to farmers have sometimes escalated to the next month.

190. In 2017, SONY requested for some capital injection to help alleviate farmers' distress because of non-payment for their delivered cane as well as to pump money into the factory for maintenance, but they are yet to receive assistance.

191. There is no framework for public millers to register companies outside the Country.

192. The sugar sector is highly unregulated but discussions are ongoing between the National and County Governments and other stakeholders with a view to providing a lasting solution to the industry. There was also a proposed forum to engage stakeholders in order to settle accounts on ageing phases in the mills and advance payments to farmers and thereafter submit a report to the Ministry of Agriculture & Irrigation.

2.4.9 EVIDENCE FROM WEST KENYA SUGAR COMPANY

In their meetings with the Committee held on 23rd October 2018 and 15th November 2018, the Chairman of West Kenya Sugar Company, Mr. Jaswant S. Rai, accompanied by Mr. Kibe Mungai, West Kenya Legal Representative appeared before the Committee and submitted that: -

193. West Kenya Sugar Company started operations in 1981 during which time it was a requirement that each mill should have a nucleus area which the Company does. In reference to the sugar industry, the basic meaning of property is three-fold. First, the sugar cane which is owned by the cane farmer or the sugar miller with a nucleus estate. Secondly, the sugar mills and jaggeries own the sugar mills and other plants for processing sugar cane. Thirdly, the Kenyan people through their National Government own shares in publicly owned sugar mills.
194. Initially, millers developed zones which were demarcated by the then Kenya Sugar Board. The zones back then provided comfort to both the miller and the farmer. The millers would invest in farmers' fields and be assured that at maturity they would harvest the sugar cane and transport it to their factory. The miller would recover the cost of investment whereas the farmer would remain with the difference which was a substantial percentage as the yields were good due to proper cultivation of the crop.
195. Each factory managed its zone and there were no conflicts until 2005 when an application was made by other sugar companies including Butali Sugar Mill who then proceeded to build a sugar factory about 20 kilometres from West Kenya Sugar Company. The rationale for the said distance between sugar factories was to ensure that each factory would have an exclusive area to source sugar cane and invest in the development of cane.
196. West Kenya Sugar's protest to the then Kenya Sugar Board, was rejected, and on the 5th time, the license for Butali was approved. West Kenya Sugar moved to court protesting over the licensing of Butali Sugar Mill. There was an out of court settlement between West Kenya Sugar and the then Kenya Sugar Board and it was agreed that the then Kenya Sugar Board would not license any other sugar mill within a 24-kilometre radius of West Kenya Sugar Company. It was also agreed that the license of Butali Sugar Mill be revoked and instead the Company was issued a license to construct a sugar mill away from existing sugar mills.
197. However, in 2009, a sugar mill registration was issued to Butali Sugar Mills who proceeded to build a factory. West Kenya Sugar went to court and sued in Nairobi High

Court Civil Case No. 206 of 2016 on the grounds that granting a license to Butali Sugar would deprive West Kenya Sugar of raw materials and therefore jeopardize its investment. However, the High Court through Hon. Lady Justice Martha Koome ruled that since Kenya is a free capitalist state in which citizens enjoy the freedom to contract, sugar cane farmers had the prerogative to sell their produce to whichever miller offered the best price. The court also directed that there should be no monopoly or restriction to farmers.

198. The effects of the ruling has exerted pressure to meet cane demand for milling. Cane poaching is a manifestation of the profound reality of cane shortage in that at any time, there is less cane than the installed milling capacity of sugar factories. Both the millers and the farmers attribute the genesis of cane poaching to weak regulations regarding licensing of new factories and failure to honour contractual agreements.

199. Millers shied away and or stopped investing in cane development, as they were not certain if they would harvest the farmer's cane after putting in their investment. This, in turn, affected the area under cane and cane yields have dropped to more than half due to inability to properly care for the crop, as farmers are unable to buy fertilizers, herbicides and even raise money for weeding.

200. It was alleged that Butali Sugar Mill didn't plant cane and didn't invest in farmers. West Kenya Sugar developed the area, formed partnerships with farmers and currently has over one hundred (100) contracted farmers.

201. A subsequent attempt by Butali Sugar Mills Limited to obtain renewal of a sugar milling license was declared unlawful because it had no original license on the basis of which such renewal could be granted. To date, Butali Sugar Mills is yet to be issued with a sugar milling license in accordance with Section 20 of the Crops Act, 2013 yet it continues to operate.

202. West Kenya Sugar Company adopted a business strategy to purchase cane in nearby sugar growing areas. The Company set up sugarcane buying centres and weighbridges to serve farmers by saving them from high transport costs from their farms to the West Kenya Sugar factory.

203. West Kenya Sugar Company has been paying farmers every Friday of the week, within Seven (7) days of delivery of the cane harvest since 1981 and this has strengthened their relationship with farmers.

204. On 7th November 2018, the Cabinet Secretary (CS), Agriculture and Irrigation launched the Sugar Industry Taskforce whose terms of reference was to review the policy, legal,

regulatory and institutional framework of the sugar industry; review past, present and emerging challenges facing the sugar industry; review the sugar industry value chain including research and review importation and taxation structures in the sugar sector among others and make appropriate recommendations.

205.The Sugar Industry Taskforce, formed under the Ministry of Agriculture & Irrigation, lists low cane supply, cane poaching, aging equipment and/or obsolete technology, high debt portfolio particularly in public owned sugar factories, farmers and staff salary arrears and lack of regulations as some of the challenges being faced by players in the Industry.

206. In the public owned sugar factories, farmers rank the lowest in the list of creditors so that although they deliver cane which is milled and sold, they are not a priority when it comes to paying creditors. Farmers are the cornerstones of agriculture but their interests appear not to be taken into consideration during the formulation of policies and legislation.

207.Section 40 of the AFA Act underscores the need to ensure effective participation and involvement of farmers in the governance of the agriculture sector in Kenya by ensuring their involvement in the development of policies and regulations.

208.The conditions of nucleus farms of some companies were generally poor and produced little.

209.The Sugar Development Levy was abused to fund some mills instead of being managed as a revolving Fund like the National Social Security Fund (NSSF) thus missing the purpose of its creation which was to aid the development of sugarcane and the sugar industry.

210.The farm inputs are zero-rated and there is no Value Added Tax on farm machinery.

211.There should be an immediate and permanent freeze of licensing of other millers in western Kenya to allow existing factories to grow their capacity and reduce their operating costs.

212.On zoning, West Kenya Sugar Company noted that there was no mill that had enough cane of its own hence the need to give enough area to each mill. The Government should also consider the available cane area before licensing any new mill, as this would put pressure on land, making it difficult for existing mills to operate optimally.

213.It's should not be a requirement for mills to have nucleus farms before licensing but they should have enough cane to satisfy their requirement. Some of the public mills have nucleus farms but which are in a poor state. West Kenya Sugar has invested in farmers by providing seed cane, fertilizers and entered into contracts with farmers. Farmers should have a choice of selling their cane to any company but the millers should pay farmers on time.

214.On importation of sugar, it's important to note the disparity in the cost of production in Kenya. Countries that export sugar are large-scale producers and use irrigation method, therefore, doubling yields in terms of output.

215.Egypt and Madagascar are sugar deficit Countries and net importers from Brazil and other Countries yet they import sugar to Kenya. He proposed that the two Countries should not be allowed to import sugar into the country.

216.Cane availability in 2017 was below 50% because of the severe drought in the Country. West Kenya Sugar Company imported sugar during the 2017 duty-free importation window just like other mills to supplement the shortage in the country. The Gazette notice should have limited quantity to be imported into the Country based on the shortfall. He urged the Committee to ensure that in future, 50 % of the sugar shortage be imported by the Kenya National Trading Corporation (KNTC) and the other 50% imported by millers based on their capacity of production.

217.The Committee observed that the sugar regulations are vital for the sector hence the need to ensure consultative public participation to exhaustively address issues ailing the sector.

2.4.10 EVIDENCE FROM BUTALI SUGAR MILL LIMITED

In the meeting with the Committee held on 23rd October 2018, the Managing Director, Butali Sugar Mills Limited Mr. Jownyiwol Patel, accompanied by Mr. Daniel Kiyondi Nyarunda, Finance Manager and Mr. Miller Bwire, Legal Counsel, KEMSA appeared before the Committee and submitted that: -

218.Butali Sugar Mills (hereinafter referred to as "Butali Sugar") was licensed in 2005 based on the potential of the western region at the time. As regards its ownership history, the shareholders of Butali Sugar were the founders of West Kenya Sugar Company before its sale in 2007 to the current owners. The company operations began in 2011.

219.Butali Sugar has no nucleus estate as it is a small grower based factory but has been developing cane from 2007 to date and invested about Kshs 1 billion in cane development. Butali Sugar has 90% of its contracted farmers in Lugari, Uasin Gishu and Nandi while the farmers in Kakamega are independent. The Company started cane growing in Kibigori area and set up five jaggery factories in Kakamega. Initially, Butali Sugar produced 50 tonnes of sugarcane per acre but this has over time reduced to 25 to 30 tonnes per acre as crop levels dropped.

220.Butali Sugar pays contracted farmers on a weekly basis. To this end, the Company pays Kshs. 4,300 for a 50kg bag of sugar, which is notably, the highest price in the region. Butali Sugar also provides a transport subsidy as well as Kshs. 450 per tonne in transportation costs. This is a great boost to farmers to continue planting cane.

221.The production capacity of Butali Sugar averages 2,500 tonnes per day but it currently ranges from 1,900 to 2,200 tonnes per day owing to the rainy season and the crop cycle that takes about 18 months to reach maturity.

222.The company's market is mainly the Western and Nairobi region.

223.On the issue of cane poaching, the vice became rampant beginning from 2002. However, Butali Sugar is not involved in cane poaching and there are no court cases involving Butali Sugar regarding cane poaching. It considers itself as having a good business relationship with both Mumias Sugar Company (MSC) and Nzoia Sugar Company. In that regard, Butali Sugar has been supplying Bolasie to MSC for its ethanol plant for several years while receiving extra cane from Nzoia Sugar Company.

224.It was reported that some millers had set up weighbridges at the zones of other millers which encouraged cane poaching. For example, Kibos Sugar and Allied Industries Limited and West Kenya Sugar Company has built weighbridges at Chemilil and Mumias Sugar Companies' zones respectively. The company proposed regional zones where millers in certain regions compete amongst themselves giving farmers a choice of say three millers he/she can sell his crops to.

225.The sugar consumption in the country is approximately 810,000 tonnes of sugar per year. The consumption per family is on average 18 kgs of sugar per month with Nairobi County the highest consumer of sugar. The amount of sugar required for confectioneries like chocolate and coca cola is approximately 200,000 tonnes of sugar per year. For instance, in 2015/2016, all millers performed well, MSC produced 630,000 tonnes of sugar and imported 93,000 tonnes of sugar and the price of a 50 kg bag of sugar was Kshs. 5,000. But in 2017, there was not enough cane in the country.

226.On the issue of sugar importation, the company stated that during the duty-free importation period in 2017, it never imported sugar. In its opinion, the amount of sugar imported during that time was enough to bridge the Country's deficit for 2 years. It was alleged that some companies were still importing sugar into the Country and the company lamented that over-importation could pose a challenge of surplus in the market as farmers were on the other hand still being encouraged to grow cane.

227.The company emphasized the need to regulate and control the importation and proposed that future importation be done on pro-rata basis depending on the sugar deficiency in the Country and the capacity of millers to address gaps. In its view, the sugar millers and the Kenya National Trading Corporation should be the only permitted sugar importers for planning purposes and in order to avoid unscrupulous traders. This is because traders don't pay any income/company tax and don't contribute to the growth of the industry. Butali Sugar Mills claimed that it paid around Kshs 900 million on corporation tax and Kshs 1.4 billion on Value Added Tax.

228.The Sugar Development Levy (SDL) financed millers for cane development, helped government millers with the infrastructure maintenance and development to improve cane yields and also helped farmers and millers survive during hard times. SDL also offered money for sugarcane research on cane varieties, provided infrastructure grants, advanced money to farmers and establishment of new research centres. In the company's view, abolishing of the Sugar Development Levy was misguided, therefore they support its reintroduction with proper management.

229.In Kenya, growing of sugar cane is rain-fed hence farmers don't plant early maturing or irrigate sugarcane like other Countries. Cane matures between 12 to 13 months on average in some Countries, while in Kenya, its maturity is at 20 months producing 150 kg from the same input.

230.Butali Sugar noted the need to stop cane poaching and enforce harvesting of cane at the appropriate time after maturity and paying farmers their dues on time. The company advised that cane harvested from 18 to 20 months has a higher height and more tonnage. Currently, millers pay farmers based on the weight of cane and not on sucrose content. However, there are machines that were brought by some millers in order to pay farmers based on sucrose content levels but are yet to be operationalized.

231.On the issue of the sugar Regulations, the Committee was informed that in 2015, the draft sugar Regulations were presented to farmers, millers and other stakeholders for their input, however, court cases have delayed the gazettement of the regulations. The Ministry of Agriculture and Irrigation is still receiving and collating submissions from various stakeholders.

232.Enactment of the regulations will address numerous challenges, for instance, some sugar companies have not paid farmers' since 2014 hence the need for the regulations to provide for enforcement mechanisms compelling millers to pay farmers on time to avoid the uprooting of the cane. The Regulations should additionally provide for annual licensing of millers, demonstration of cane capacity by millers, specify the distance between factories, enforce zoning and criminalize cane poaching. The Regulations should also set minimum prices for cane and ensure uniform payments to cane farmers.

233.As regards privatization, the Company submitted that this would force the millers to be competitive and consequently viable adding that farmers will plant cane once they are paid on time.

234.On research, there exists a privately owned research Centre in Kibos but it's not large enough to provide the necessary research. There was a proposal to start new research centres in every region.

235.It appears that the government mills were created to enhance employment and not for making a profit like private mills.

2.1.11 EVIDENCE FROM KWALE INTERNATIONAL SUGAR COMPANY LIMITED

In their meetings with the Committee on 25th October 2018 and 15th November 2018, the Director, Kwale International Sugar Company Limited, Mr. Kaushik Pabari, accompanied by Mr. Harshil Kotech, Director, Projects, Ms. Pamela Ogada, General Manager and two others appeared before the Committee and submitted that-

236. Kwale International Sugar Company Limited (KISCOL) shareholding structure comprises 80% shares owned by Pabari Group and 20% shares owned by Omnicane Limited. Pabari Group has invested through Topnotch Investments Holdings Ltd and Omnicane Limited through Omnicane Africa Investment Limited. Omnicane Limited is the biggest sugar factory in Mauritius and is listed on Mauritius Stock Exchange with interests in sugar production, ethanol, electricity production and food crops. Omnicane Limited provides technical support and transfer for best practices to the sector. The Company started operations three (3) years ago and markets its products mainly in Mombasa and Nairobi Counties. The Company doesn't export sugar.

237.The Company occupies 10,000 acres of land of which 5,000 acres are leased from the Government. Half of the land is under irrigation while 5,000 acres are from out growers. The Company lamented that squatters have occupied half of the land leased from the Government. The matter has been before the courts for the last eight (8) years awaiting final judgment in February 2019. The County Government of Kwale had also put up structures like markets and playing fields on the land leased from the government.

238.KISCOL uses irrigation, technical production method and mechanization in their agricultural production system, which reduces the cost of production by fifty per cent while other millers in the western part of the Country rely 100 per cent on rainfall. 70% of KISCOL cane supply is from its nucleus farms and 30% from out-growers. In comparison, factories in Western Kenya receive 75% of their cane supply from out-growers and only 25% come from the nucleus farms.

239. The Company also harvests cane five times for a period of 5 years because of the favourable climatic condition while other companies harvest 3 times. Their cane maturity cycle takes twelve months while other companies take 18 to 24 months. On average, the sugar yield for KISCOL is 1 hectare per month while that of the factories in western Kenya is quarter hectare per month. In terms of sugar production, KISCOL yields 12 tonnes per hectare while other factories produce about 4 tonnes per hectare. The cost of production of sugar is therefore apparently cheaper in the Coastal region due to favourable climatic conditions compared to other parts of the country adding that the location of other factories in Kenya is not suitable for sugar growing.

240. The Company alleged that other sugar factories were not functioning at optimal levels due to cane poaching and mismanagement. KISCOL indicated that public mills have invested in farmers' nucleus farms but other companies that have ready capital poach their cane. KISCOL itself enjoys a monopoly of sorts at the coast region because it is currently the only sugar miller in the area. As a result, it is yet to grapple with the issue of cane poaching.

241. The Company currently supplies bulk sugar to Kwale County but it is still not able to meet demand. However, the Company recently purchased packaging machinery, which it will use to repackage, with its label, retail size sugar packages perhaps beginning December 2018.

2.4.12 EVIDENCE FROM KIBOS SUGAR AND ALLIED INDUSTRIES LIMITED

In the meeting with the Committee held on 6th November 2018, the Managing Director, Kibos Sugar & Allied Industries Limited, Mr. Raghbir Singh Chacchee accompanied by Mr. Miller Bwire, Legal Consultant, KESMA submitted that-

242. KIBOS Sugar and Allied Industries Limited (KSAIL) is a privately owned miller that was commissioned in December 2007 with a capacity to mill 900,000 tons of sugar cane per year produced by both large and small-scale farmers in the Counties of Kisumu, Nandi, Kericho and Siaya. The factory produces both white and brown sugar packaged and sold as "star sugar simply sweet".

243. KSAIL has constructed weighbridges for farmers for whom their transport terminates to those weighbridges, to supply the factory with the cane. The weighbridges are located at

Awasi, Chemase, Mberere, Shikunga, Nambale and Koru. The Company has strategically invested in cane development and in weighbridges to source cane from free farmers on a willing buyer, willing seller basis which has ensured an adequate supply of sugar cane to the factory.

244.KSAIL is the only factory with an ISO 17025:2005 certified laboratory in the sugar industry, this being a requirement that all sugar factories should have such a lab for purposes of purchasing sugarcane based on sucrose content.

245.In order to take advantage of diversification, the factories which fall under the Kibos Sugar and Allied Industries though separate, their premises are situated next to each other much like Mumias Sugar Company has various plants set up next to each other for value addition creation. Kibos Sugar and Allied Industries Limited has diversified to -

- Kibos Sugar Refinery Limited- which has a capacity to process 500 tons per day of specialized sugar for food, beverages and pharmaceutical industry with a turnover of approximately Kshs. 11.4 million annually. The factory has been commissioned awaiting the importation of raw sugar which has been delayed due to non-gazettement of duty remission.
- Kibos Distillers Limited- which produces 40,000 litres of ethanol per day (LPD) from molasses. The company sources molasses, power and steam from KSAIL making it a low cost and competitive producer. It faces challenges due to high taxation in Kenya that is not in parity with the East African Community, which makes Kenya attractive for tax evasion.
- Kibos Paper and Packaging Limited- it is a 100 tons per day pulp and mill at the premises adjacent to the sugar factory using excess bagasse, power and steam from the sugar mill. The company's main activity will be the production of pulp and paper as a by-product of the papermaking process and it will also manufacture cartons/boxes. At full capacity, it expects to produce 100TPD of pulp, 120TPD of Kraft paper, 50TPD of white paper, 45TPD of tissue paper and 50TPD duplex paper. Full production will be achieved by the year 2020. The project, a first of its kind in East Africa, is expected to revolutionize the papermaking process to a more ecologically friendly manner using biomass from sugarcane.
- Kibos Fertilizers Limited is a factory being set up whose raw materials will be from the waste produced by Kibos Sugar and distillery plants by way of bio-composting and drying. The factory at full capacity will be expected to produce 120TPD

Organic of Compost translating to organic fertilizer and can also blend the same with other chemicals to produce DAP, NPK, CAN and Urea; which result in producing a competitively priced fertilizer and boost the food production.

246. KSAIL has been granted a license to process raw sugar while Kibos Sugar Refinery limited (which is yet to operationalize) and a license to process industrially refined sugar. In the EAC market, all manufacturers of sugar are granted a 90% duty remission while importers do not receive any since sugar is classified as a sensitive product.

247. KSAIL had requested for an extension for a waiver of duty on raw sugar for refining into sugar for industrial use through a letter dated **1st February 2019 and 14th August 2018 (attached as Appendix 13)** to the Ministry of Industry, Trade and Cooperatives' after enjoying a previously granted waiver for two years. The company has yet to receive a response on the same.

248. However, because of the delay in granting of the waiver in FY 2018/2019, in addition to not able to secure funding, land title documents issues and not being able to import the raw sugar required, the company has been unable to operationalize Kibos Sugar Refinery to manufacture industrially refined sugar. The company attributed the delay to the National Treasury and Planning and the Ministry of Industry, Trade and Cooperatives. The Company insisted that without the duty waiver, it was unable to import the raw sugar for reprocessing to industrially refined sugar, causing a billion shillings investment to continue lying idle. Once KSAIL is able to refine and supply industrially refined sugar, it will go a long way in reducing or even stopping the importation of illicit sugar.

249. Cane poaching occurs mainly during the period of excess sugar cane production because of non-payment of farmers. The menace is not restricted to public millers but also among private millers. Cane poaching prompts the miller to avoid investing in cane improvement since the cane may be poached. As a mitigation measure, Kibos sugar meets farmers' transportation cost to its mill. This has brought about the building of the weighbridges to collect the sugar cane even in far-flung areas outside what would be considered their zone. The weighbridges are used for both private sugar farmers and farmers contracted by KSAIL.

250. Whenever KSAIL has been informed by another miller that the sugar cane it purchased from a farmer is contracted to the miller, the company has always paid the miller instead of the farmer for the sugar cane and informed the farmer on the same. This issue presents itself when a farmer takes on several contracts with different millers. As a solution, the

millers have now formed an association to share information to curb the issue of farmers holding more than one contract.

251.KSAIL claimed to be saving the farmers who have been burdened by debts owed to the public sugar millers as well as non-payments for the sugar cane supplied on credit. The company was opened due to the availability of excess sugar and the delays or non-payments to farmers who view it as an alternative. The Company has not had any legal proceedings instituted against it because it has paid off any miller who has proven a claim that the sugar cane that Kibos had processed was theirs.

252. As a member of KESMA, KSAIL fully supports KEMSA's resolutions that-

- On zoning, cane poaching and administration of sector-
    a) in addition to the existing regulatory authority, there should be a creation of an Executive Board with a sector participatory philosophy which includes inclusivity in trying to tackle the issues facing the sugar industry by bringing together various stakeholders including County Governments, the National Government, farmers and millers;
    b) Creation of regions with several millers and restraining millers from sourcing cane outside the regions. Regional zoning to be implemented as proposed by the creation of five regions with the provision that should farmers feel unfairly treated or exploited in any region, they have regional committees/Executive Board to submit grievances or seek authorization to allow them to take their sugarcane to other regions. This will encourage millers to engage in aggressive cane development programmes to sustain their mills;
    c) sugar research facilities should be strengthened;
    d) availability of adequate seed cane;
    e) harvesting of immature sugar cane should be prohibited;
    f) contractual model on sugar cane farming to be formalized by the Executive Board and managed by regional committees;
    g) farmers should be paid without delays and based on all sugar by-products;
    h) County Governments should be encouraged to support the sugar industry.
    i) The Sugar Development Levy should be re-introduced and administered by the Executive Board;
- On sugar importation-

a) it should be limited to Kenya National Trading Corporation (KNTC) and sugar millers on a 50:50 basis reviewed every three years;

b) importation to be governed by the Executive Board;

c) Importation to be undertaken to strictly cover deficit to avoid a glut.

253. If the said proposals are adopted and given the force of law through the regulations, it will -

a) ensure law and order in the sugar sector and thus attract investments;

b) create jobs and expand business opportunities;

c) shift the sugar sector from an importer Country to an exporter;

d) contain rural-urban migration;

e) contribute to the achievement of vision 2030, which includes industrialization and self-reliance;

f) save Kenya from import substitution;

g) Contribute to the achievement of the Big 4 Agenda by engendering food security and industrialization.

254. KSAIL contends that the draft regulations that were gazetted for public participation were inconsistent with the proposals that were agreed on at the stakeholders' meeting held at Windsor Golf Hotel & Country Club.

255. One of the reasons why there was an influx of contaminated sugar was because Kenya does not have a storage facility at its port to handle imported bulk sugar, which resulted in contamination during storage. It is doubtful that a single person can possess 200 tonnes of sugar for reprocessing because the amount is enormous.

256. The SDL that stood at Kshs. 2.5 Billion was unevenly distributed with the public millers benefiting. The company supports the reinstatement of the levy but not in the previous format. Instead, it can be used, among other things, to support the development of seed cane. It should not be used to pay farmers or repair machinery. Additionally, it should be taxed differently so that factories pay less than importers. However, before re-introduction of the levy, stakeholders including private sugar millers should be consulted.

3.0 COMMITTEE OBSERVATIONS ON THE IMPLEMENTATION STATUS OF THE RECOMMENDATIONS

1. **On the recommendation in paragraph 105 that the government establishes a permanent interagency enforcement unit on sugar trade which should enhance capacity to verify, scrutinize and monitor cross-border trade and step up border patrols to eradicate sugar smuggling. The unit should draw membership from KPA, Public Health, AFA, KEBS, the Kenya Police, KRA and any other relevant government agencies-**
    a) An Inter-Agency enforcement unit, being a meeting of Principal Secretaries and Chief Executive Officers of various Ministries and Agencies had been put in place;
    b) The Office of the President through the Office of the Deputy Head of Public Service coordinates the work of the Taskforce, whose membership comprises of KRA, KEBS, Anti-Counterfeit Agency, National Police, National Intelligence Service and Ministry of Health;
    c) Agriculture and Food Authority (AFA) and consequently the Sugar Directorate are not members of the unit but had written to KEBS and KRA seeking inclusion;
    d) The omission of the AFA as a member of the Inter-Agency Enforcement unit goes against this recommendation since as a licensing and regulating body, the Sugar Directorate's role is critical to the activities concerning sugar and would have impacted the unit positively in achieving its mandate;
    e) The Head of the Public Service, Dr. Joseph Kinyua, EGH vides a letter dated **20th February 2019 (attached as Appendix 14)** reported that the interagency unit chaired by Mr. Wanyama Musiambo, the Deputy Head of Public Service is not the permanent inter-agency that is envisioned and recommended for establishment by the Departmental Committee on Agriculture, Livestock and Cooperatives.
    f) The legal status of the inter-agency is questionable since it was pending gazettement;
2. **On the recommendation in paragraph 106 that KRA officer(s) should be investigated and appropriate action taken for clearing sugar without a permit from the sugar regulator. Equally any company that imported sugar without a permit from the regulator should be banned from import and export business-**
    a) It was apparent that AFA still issued sugar licenses for Hydrey 'P' Ltd, Krish Commodities, Reeswood Enterprises and Shree Sai Industries Ltd to import sugar after 2016 despite the resolution that AFA bans any company that had imported sugar without requisite permits.

b) EACC had carried out investigations on the irregular issuance of sugar import permits and submitted the inquiry file to the Director of Public Prosecution who upon review in July 2017, directed the matter be closed for lack of evidence to sustain a prosecution.

c) The KRA Commissioner-General while appearing before the Committee insisted that internal investigations were carried out and no officer of the Authority was found culpable.

3. **On the recommendation in paragraph 107 that the reinforcement of re-packaging regulations to ensure consumer safety and that KEBS be held responsible for failure to prevent abuse of its seal which is supposed to be a standard measure for the safety of goods in the country but has consistently been abused-**

a) The Kenya Bureau of Standards requires that all sugar being imported into the country undergoes inspection under the Pre-export Verification of Conformity program (PVoC). The only sugar that meets the requirements of the relevant standard is issued with a Certificate of Conformity either from KEBS inspectors or its contracted agents;

b) KEBS reported that it does not have enough manpower to have a presence on all legal entry points into the Country.

c) The Ministry of Agriculture and Irrigation has developed and is awaiting gazettement of the Crops Act (Sugar) (Imports, Exports and By-Products), 2018 Regulations that will reinforce repackaging conditions. The Ministry requested and was granted leave to undertake consultations until August 2019 by the Committee on Delegated Legislation.

d) KEBS was negligent in undertaking its duties and this had led to a sugar crisis in 2018 with the flooding of the Country with contraband and contaminated sugar.

e) KEBS senior managers are facing criminal cases in court due to (d) above.

4. **On the recommendation in paragraph 108 that relevant laws and regulations governing sugar imports and exports should be amended to provide for higher accountability and public health standards for re-packaged sugar and for stiffer penalties for offenders. The Government should cancel import licenses for the following companies: - Kenafric Industries, Czarnikow E. A. Ltd, Stuntwave Ltd, Mshale Commodities and Rising Star Commodities Ltd-**

a) The Ministry of Agriculture and Irrigation had developed the Crops (Sugar) General regulations, 2018 and the Crops (Sugar) (Imports, Exports and By-Products), 2018 regulations which are awaiting gazettement. The regulations are undergoing public participation.

b) AFA had not cancelled the import licenses of the companies but had allowed some to expire, contrary to the recommendation. Kenafric Industries Limited, Stuntwave Limited and Mshale Commodities licenses were actually renewed in 2017/18.

c) The House resolved to expunge the name of Kenafric Industries Limited from this paragraph for the reason that the company had been condemned unheard.

d) Mshale Commodities Ltd had obtained court orders stopping the Sugar Directorate from banning the company from importing sugar and there was no evidence of an appeal against that decision.

e) KRA clarified that Czarnikow E.A Ltd is not an importer but a supplier of sugar. It supplied sugar to various companies in 2017 including Kenafric Industries Ltd.

f) From KRA records, Rising Star Commodities Ltd had not imported sugar from 2015 to 2018.

g) Shree Sai Industries Limited wrote to the Committee appealing the decision of Parliament to ban it from the sugar importation business (**attached as Appendix 15**). It was observed that such an appeal should be submitted to the House by way of a Petition, clearly outlining the grounds relied upon.

h) It was apparent that importation during the duty-free window period in 2017 was not restricted to registered companies and as a result, there had been allegations of unregistered persons importing sugar during that window. The Agriculture and Food Authority (AFA) did not avail the list of the directors of the companies that imported sugar at the time of compiling the Report despite a request from the Committee.

i) The regulations used to allow for bulk importation of sugar products were ambiguous as was witnessed recently during the duty-free import window in October 2018 which in turn may have contributed to the current high levels of contaminated sugar in the Country.

j) The quality of sugar in the Country should conform to KEBS standards regardless of whether they are imported or locally manufactured.

k) Some companies had proposed that importation of sugar be restricted to sugar millers and the Kenya National Trading Corporation.

l) It was alleged that traders who import sugar into the country do not pay corporation taxes, unlike millers.

5. **On the recommendation in paragraph 109 that, the government implements the sugar industry strategic agenda for increased competitiveness and reduction in consumer prices. There is a need to lower production cost, improve extension services among others to reduce and eventually eliminate the incentive to smuggle sugar into the country-**

   a) The Ministry of Agriculture and Irrigation reported that the Crops (Sugar) General Regulations, 2018 and the Crops (Sugar)(Imports, Exports, and By-Products), 2018 Regulations were developed but both await gazettement; has undertaken improvement of roads and related infrastructure in the sugar belt through the EU Sugar Reforms Support Project to reduce transport costs; through KALRO – Sugar Research Institute (SRI) is undertaking the on-going development and release of new cane varieties (early maturing and high yielding) of which 21 varieties have already been released; and is proceeding with the installation of Cane Testing Units and operationalization of quality cane payment system.
   b) Following the removal of Sugar Development Levy (SDL), operations of KALRO-Sugar Research Institute (SRI) had been adversely affected hence negatively impacting research in the industry.
   c) Removal of the Sugar Development levy reduced monies that were used to maintain road infrastructure in sugar growing areas and contributed to the deterioration of the roads in those areas.
   d) A number of sugar processing companies supported the reintroduction of the levy but propose that the management and functions of the fund be properly re-examined prior to reintroduction. Additionally, it should be taxed differently so that factories pay less than importers. However, before re-introduction of the levy, stakeholders including private sugar millers should be consulted.
   e) The steps outlined by the Ministry of Agriculture and Irrigation were insufficient since they do not outline any substantive strategic agenda or action taken to reduce the cost of production, improve extension services among others and to reduce and eventually eliminate the incentive to smuggle sugar into the Country.
   f) There is a need for companies and farmers to look into and receive support on ways of adopting irrigation based farming of sugar cane among other cost-cutting measures such as technical production methods and mechanization of agricultural production systems, which may reduce costs by up to fifty per cent.

g) The taxation policy and licensing procedures need to be reviewed and other ways explored by the Government to reduce licensing timelines and prevent delays in order to prevent the flight of investors.

h) There is a need to encourage green economy production methods which promote the utilization of sugarcane products and its by-products e.g. by-products can be used to process fertilizers.

i) Sugarcane growing and sugar production could be diversified to other potentially high yielding areas such as the coastal region.

j) The Ministry of Agriculture and Irrigation had convened discussions to deliberate on issues facing the sugar industry and consultations had with leaders from the sugar-growing region. The meeting agreed on ways to address the challenges and the Ministry of Agriculture and Irrigation, Council of Governors (Agriculture Committee), Parliament representatives from the sugar-growing region, the National Treasury and Planning, Privatization Commission, Intergovernmental Relations Technical Committee (IGRTC), Lake Region Economic Bloc, Intergovernmental Budget and Economic Council (IBEC), Attorney General's Office and millers were to steer implementation of the resolutions.

k) There had been no consensus and the President had appointed a new task force to deal with the matter which had created confusion and duplication of duties.

6. **On the recommendation in paragraph 110 that the National Government in collaboration with County Government should provide a mechanism for coordinated infrastructure development to avoid duplication of responsibilities by different bodies mandated to maintain roads-**

   a) The roads and related infrastructure function have been clearly defined at both levels of government and where applicable with roads specifically assigned to either National or County Governments.

   b) Sugar Directorate no longer funds infrastructure development following the removal of the Sugar Development Levy.

   c) The County Government receives cess which is redirected to other functions instead of infrastructure development.

7. **On the recommendation in paragraph 111 that the National Government should implement the National Land Policy to mitigate further land sub-division for improved productivity-**

a) The resolution had not been implemented as the Committee had not received any communication on the issue, despite writing to the Ministry of Lands and Physical Planning to confirm the status of the recommendation at the time of writing the report.
b) There is a need for the relevant Departmental Committee of Parliament to pursue this issue.

8. **On the recommendation in paragraph 112 that, the fertilizer subsidy should be complemented by bulk procurement of other farm inputs and capacity utilization which should be done by the Sugar Directorate-**

a) Despite reports from the Ministry of Agriculture and Irrigation that it has been doing bulk procurement of subsidized fertilizer for the benefit of the farmers since 2008/2009 FY, this has been abused and some fertilizer is alleged to be of substandard quality.
b) The importation of bulk fertilizer for repackaging had led to the repackaging of substandard or fake fertilizer.
c) The fertilizer subsidy program appeared to have collapsed and further, no testing of the imported and repackaged bulk fertilizer had been done in the current financial year.
d) Certain cartels had been apparently formed to fleece farmers.

9. **On the recommendation in paragraph 113 that investigation should be carried out on MSC and/or its agents, KRA and all importers and/or their agents who imported sugar from MSC in the period between 2006 and 2012 and appropriate action is taken-**

a) EACC had commenced investigations, collected and analyzed documents and statements recorded. However, the matter stalled based on the query whether Mumias Sugar Company was a private or public entity. With the clarity of the same, investigations resumed and were reported to be at an advanced stage. Adequate information on the investigations had not been received by the time of compiling the report.
b) The Directorate of Criminal Investigations had gained substantial ground in terms of trailing of cash to different bank accounts within and outside the Country. During their investigations, it came to light that some substantial amount of money was transferred to foreign accounts which are not in their jurisdiction and they require Interpol's assistance to acquire information and accomplish the investigations. This has occasioned the delay in completing their investigations. At the time of compiling the report, the status of the matter had not been communicated.

10. **On the recommendation in paragraph 114 that, the KRA should be held responsible for the loss of VAT taxes amounting to Kshs 577 million for fictitious exports of sugar by MSC-**

a) KRA never received any VAT refund claims from MSC for the period 2006-2012.

b) KRA raised the VAT and SDL assessments and demanded the resultant tax against Mumias Sugar Company and reissued the demand together with copies of the assessments and the workings in a letter dated 11th July 2018.

c) The demand notices were reissued by KRA one day before its meeting with the Committee on the matter, an action the Committee considers suspect.

d) If the demand notice was not honoured within 30 days, appropriate recovery measures should have ensued immediately as provided for in section 32 of the Tax Procedures Act, 2015. However, the thirty days' notice issued by KRA had long lapsed yet no money had been recovered.

e) It was apparent that the investigative agencies had not been keen on following up the matter.

11. **On the recommendation in paragraph 115 that any officer from the Board and Management of MSC and KRA responsible for the fictitious exports of sugar between 2006 and 2012 be held responsible for the abuse of procedures and abuse of office-**

a) The Ministry of Agriculture and Irrigation and the National Treasury and Planning had effected changes in the management and the Board of MSC and improvements made in the company since 2015.

a) The recommendation is vague in that no investigating agency was assigned that responsibility.

b) The Committee recommends that the Ethics and Anti-Corruption Commission takes up investigations on the matter.

12. **On the recommendation in paragraph 116 that the National Government introduces landing certificates for all transit sugar as a confirmation of physical exit to stop any dumping into the local market-**

a) The implementation of a landing certificate is in place. Under the East African Community Customs Management Act, a landing certificate is a mandatory requirement for bond cancellation purposes. This is strictly enforced by KRA prior to bond cancellation or refund processing for goods exported or transferred to the region.

b) In regard to goods in transit to the Partner States of Uganda, Tanzania, Rwanda and Burundi or transferred/exported to the Partner States, they are cleared under the Single Customs Territory (SCT) Regime.

c) The SCT process is complemented by close monitoring of the cargo by Transit Monitoring Unit and the use of Electronic Cargo Tracking System (ECTS)/Regional Electronic Cargo Tracking System (RECTS) and the Rapid Response Units to ensure safe conveyance and exit of cargo to destination countries.

d) The effectiveness of the landing certificates is questionable because contraband sugar was still finding its way into the Country.

13. **On the recommendation in paragraph 117 that the Government should consider offering tax breaks to encourage new investors into the sugar industry. Additionally, the duty waiver for sugar industry farm inputs and farm machinery will go a long way towards reducing the high cost of sugar production-**

a) The Income Tax Act, CAP 470, provides a range of tax incentives in the form of capital allowances on Plant, Equipment and Machinery under special conditions prescribed in law. These incentives include Investment Deductions (Allowances) of up to 150% on the cost of investment if located outside the three municipalities of Nairobi, Mombasa and Kisumu. The value of the investment ought to be Kshs. 200M and above to benefit from the incentives

b) The VAT Act, 2013, First Schedule, Part 1, item 27 exempts Plant and Machinery from VAT, which is a major construction cost of a sugar factory.

c) Under the VAT Act, 2013 incentives are available in the form of remission of the VAT and agricultural machinery and farm inputs (including fertilizer) are exempted from VAT. Agricultural farm inputs can also be supplied to the targeted sectors or investors or projects on a VAT exempt basis under the Remission program, which has the effect of lowering the cost of investments. Further, import duty and taxes on agricultural machinery and farm inputs (including fertilizer), are already generally duty-free in the East African Community Common External Tariff (EAC CET) or they are exempted under the Fifth Schedule to the East African Community Customs Management Act (EACCMA).

d) Investors in the sugar sector can also explore the incentive programs under the Special Economic Zone Act 2015 which include exemptions from VAT, Withholding Taxes, Excise Duties and Tax Breaks or Holidays.

14. **On the recommendation in paragraph 118 that KPMG having provided a disclaimer as to the accuracy of the Draft Factual Finding Report, Mumias Sugar Company avails with immediate effect the final KPMG report to the National Assembly-**

a) Mumias Sugar Company provided copies of the Conservatory Orders on the final factual finding Report by KPMG and the Report by CMA on the audit of MSC;

b) The Chairperson and Board members of MSC did not honour the two invitations by the Committee sent on 31st July and 24th September 2018. The Committee, however, did meet some Members of the Board during the site visit to Mumias Sugar Company premises on Wednesday 26th September 2018, who confirmed that the MSC Board has never adopted the draft KPMG report.

c) CMA in the exercise of its regulatory oversight role over listed companies commissioned an independent forensic investigation in 2017 that highlighted potential contraventions by the Company and/or its officers under the capital markets legal and regulatory framework. The report prepared by CMA has not been availed to the Company, as they had not paid CMA its dues amounting to Kshs. 5 million.

d) The court cases and the bank's unreasonable delays and/or refusal to comply with their requests are hampering investigations.

15. **On the recommendation in paragraph 119 that officers from MSC/KRA who abused import procedures with regard to Import Permit requirements in the importation of 10,000MT of sugar in 2012 from Sudan be held to account for their misdeeds.**

a) Following investigations, no KRA officer was found to have abused import procedures in regard to the importation of the sugar.

b) In relation to the importation of sugar by Mumias Sugar Company (MSC) in 2013, at the time of importation, a customs import entry was registered under the name MSC. All supporting import documents including the Bill of Landing were in the name of MSC.

c) The sugar brought in by Dantes Peak Limited had been under-valued and KRA issued demand notice.

d) As a result of the offences of undervaluation and misrepresentation, MSC was fined and paid USD 10,000 or Kshs. 1Million, the highest possible in law.

e) During its meeting with the Committee, Dantes Peak Limited tabled various documents before the Committee as proof that the company's relationship with MSC was purely commercial. MSC did not provide rebuttal evidence disapproving this during it's various submissions to the Committee.

f) Among the tabled submissions by Dantes Peak Limited, are pleadings in civil suit No. 38

of 2015, Mumias Sugar Company Limited versus Dantes Peak Limited and five (5) others, thereby confirming that the matter is still active at the commercial court division, Milimani law courts and therefore sub judice.

16. **On the recommendation in paragraph 120 that Deloitte and Touché be held responsible for misleading the government, other shareholders and the public on the state of affairs in MSC during the period of their engagement as auditors.**

The Committee noted that Deloitte & Touché is a private company whose dealings with its clients are protected by company-client privileges. Further, the Office of the Auditor General is charged with auditing public investments or appointment of private auditors to do so on its behalf.

17. **On the lacking of comprehensive Sugar Regulations-**

a) The sugar sector is highly unregulated.

b) There is need for expedient publication of the same taking into consideration views from stakeholders in order to resolve issues plaguing the sugar sector including zoning and cane poaching.

c) Adequate research into zoning is required as it was apparent that in some regions like Mumias, zoning is supported but in others, it is not. Most sugar processing companies supported the aspect of zoning.

18. **On public millers generally-**

a) During the site visits, it was evident that some public millers like Muhoroni and Miwani sugar companies were in a dilapidated state and in need of maintenance and urgent overhaul.

a) The public mills owe KRA, farmers and other creditors' colossal amount of monies and there is need to look into strategic ways of reviving or financing those companies e.g. creating a public-private partnership. However, the management of Mumias Sugar Company was reluctant to bring in a private investor, as this might not be in the best interest of the local community.

b) There is a need to provide policies, invest in cane production and protect the interests of Mumias Sugar Company and other public millers.

c) There is a likelihood of loss of public and community land to private individuals, should some public millers be wound up.

f) From the visit to the MSC factory, it was obvious that the factory machines were in a dilapidated state and required an urgent overhaul. However, the ethanol plant was indeed operational. A tour of the nuclear estate showed that the cane status was adequate.

g) Other factories like Miwani and Muhoroni Sugar Companies were in a dilapidated state and required urgent overhaul as well.

h) Most public millers had not met the goal for their establishment to create employment as most of the workers in those companies were not hired on a merit basis.

19. Some implementing agencies informed the Committee of their inability or delay in implementation of the recommendations contained in the Report for the reason that their offices had not received the Report. However, adopted House resolutions are ordinarily communicated in writing to the relevant Ministries, Departments and Agencies (MDAs).

4.0 COMMITTEE RECOMMENDATIONS

The Committee recommends **THAT** –

1. There is a need for the Inter-Agency taskforce to promptly invite the Sugar Directorate and the Agricultural Food Authority to be members of the inter-agency unit because their critical role in the agricultural and sugar industry cannot be gainsaid. Further, the legal status of the Inter-Agency taskforce should be cleared by expeditiously publishing it in the Kenya Gazette.
2. Public millers are encouraged to form associations and information sharing platforms to curb the issue of farmers holding more than one contract with millers.
3. Land belonging to any public miller and where the cane is grown should revert to communities in the event of privatization of millers.
4. The Sugar Development Levy directed to sugar cane development, factory maintenance, research & extension services and road infrastructure is reinstated with clear management structure and review of its functions.
5. The Cabinet Secretary, for the Ministry of Agriculture and Irrigation, having been granted until August 2019 to make regulations under the Crops Act expedites actions necessary to enable the publication of the Crops (Sugar) (General) regulations and the Crops (Sugar)(Imports, Exports and By-Products), regulations. The regulations must address all issues raised by stakeholders including zoning (where millers in certain regions compete amongst themselves giving farmers a choice of millers he/she can sell his crops to), cane poaching, contracting of out growers, minimum and uniform prices for cane based on weight or sucrose content and all sugarcane by-products.
6. The KALRO – Sugar Research Institute (SRI) be adequately funded to promote research and development of cane varieties especially specific to sugar growing regions.
7. Importation of sugar into the Country should strictly adhere to the sugar deficit as advised by the Ministry of Agriculture and Irrigation. Any Gazette notices issued to permit the importation of sugar must not be ambiguous and further, the Ministry should consider restricting the importation of sugar to Kenya National Trading Corporation and sugar millers on pro-rata basis, depending on the sugar deficiency in the country and the capacity of millers to address gaps.
8. The National Government strengthens the fertilizer subsidy program and gazettes regulations on the importation, quality, quantity and repackaging of fertilizer.

9. The Cabinet Secretary for Lands and physical planning should provide information on the implementation status of the recommendation under paragraph 111, failures to which appropriate action, including censure, should be taken by the House.
10. The Departmental Committee on Agriculture and Livestock should look into the plight of frustrated investors and manufacturers in the sugar industry to avert the likelihood of investment losses.
11. Any private audit firms established in the country should conduct their affairs in a professional manner without the intention to mislead shareholders and stakeholders as to the financial status of companies and in future, any such private company which is proved to aid in such unprofessional acts should be barred from operating in the country.

Signed______________ Date 18/06/2019.

Hon. Moitalel Ole Kenta, MP

Chairperson, Committee on Implementation

ADOPTION LIST