PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION

THE JOINT DEPARTMENTAL COMMITTEES ON AGRICULTURE & LIVESTOCK AND TRADE, INDUSTRY & COOPERATIVES

REPORT OF
THE INQUIRY INTO ALLEGED IMPORTATION OF ILLEGAL AND CONTAMINATED SUGAR IN THE COUNTRY

DIRECTORATE OF COMMITTEE SERVICES
Clerk's Chambers,
Parliament Buildings,
NAIROBI

AUGUST, 2018

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ABBREVIATIONS

ACA	-	Anti – Counterfeit Agency
AFA	-	Agriculture Food Authority
CS	-	Cabinet Secretary
CoG	-	Council of Governors
CFS	-	Container Freight Services
COMESA	-	Common Market for Eastern & Southern Africa
CoC	-	Certificate of Conformity
DCI	-	Directorate of Criminal Investigation
EAC	-	East African Community
EGH	-	Elder of Golden Heart
KEBS	-	Kenya Bureau of Standards
KEPHIS	-	Kenya Plant health inspectorate Service
KISM	-	Kenya Import Standardization Mark
KSB	-	Kenya Sugar Board
KRA	-	Kenya Revenue Authority
KPA	-	Kenya Ports Authority
MICD	-	Multiple Inland Container Depot
MP	-	Member of Parliament
MT	-	Metric Tonnes
PVOC	-	Pre–export Verification of Conformity
PS	-	Principal Secretary
RRI	-	Rapid Results Initiative
SGS	-	Specialized Germany Services ‘
ToR	-	Terms of Reference
WCO	-	World Customs Organization

CHAIRPERSON'S FOREWORD

A Statement was sought by Hon. Naisula Lesuuda, MP Samburu West Constituency, pursuant to Standing Order No. 44 (2) regarding the contraband sugar recently seized in most parts of the Country. In addition, a Motion of adjournment was sought by the Hon. George Otsosi, MP on the safety of sugar.

In that regard, the Speaker of the National Assembly on 19th June 2018 directed that the Departmental Committee on Trade, Industry & Cooperatives and that on Agriculture & Livestock, jointly inquire into the matter and report to the House within ten days.

The Committee commenced its inquiry on 22nd June 2018 under specific terms of reference as contained herein the report. The Committee held a total of twenty-five (25) sittings and received oral and written submissions from Government Ministries, State Agencies and Government Departments and various Stakeholders in the sugar industry. In addition, the Committee undertook inspections and fact-finding visits to Nairobi, Mombasa, Nakuru, Kakamega and Bungoma Counties.

The Committee appreciates facilitation provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions during the inquiry and report writing exercises.

Finally, I also wish to thank Honourable Members of the Committees for participating in this inquiry with enthusiasm for a difficult subject and with a commitment to bipartisanship hence discharging their mandate.

EXECUTIVE SUMMARY

This report contains proceedings of the Joint Committees on Trade, Industry & Cooperatives and Agriculture & Livestock in the inquiry into alleged importation of sugar unfit for human consumption into the Country. Following the Statement requested by the Hon. Naisula Lesuuda, MP regarding whether sugar currently in the Country was fit for human consumption and subsequent debate by a number of Honourable Members on the same, The Speaker of the National Assembly in his ruling dated Wednesday, 20th June, 2018 directed the Departmental Committees on Agriculture & Livestock; and Trade, Industry & Cooperatives to jointly *'investigate, inquire into, and report within ten (10) days on the alleged importation of contraband sugar into the Country'.*

From the House proceedings debate, Honourable Members raised concerns of the imported sugar alleged to be unfit for human consumption as it contains substances believed to have adverse effects on human health. There were claims that Government Agencies including; KEBS, KRA, ACA, AFA, Ministry of Agriculture & Livestock, Ministry of Trade, Industry & Cooperatives and the National Treasury & Planning had failed to discharge their mandates leading to unregulated importation of contraband sugar by traders.

During the inquiry, the Committee met with several Stakeholders including Government Ministries represented by Hon. Mwangi Kiunjuri, EGH, MP, the Cabinet Secretary, Ministry of Agriculture & Livestock; Mr. Henry Rotich, EGH, the Cabinet Secretary, Ministry of National Treasury & Planning; Dr. Adan Abdulla Mohammed, EGH, the Cabinet Secretary, Ministry of Trade, Industry and Cooperatives; Dr. Fred Matiang'i, EGH, the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government; State Agencies and Departments and sugar industry stakeholders (Importers and Traders). Further, the Committee undertook field inspections and fact-finding visits to Nairobi, Mombasa, Nakuru, Bungoma and Kakamega Counties.

It was established that there was negligence by Government Agencies concerned with sugar importation to regulate and inspect imported sugar. It was apparent that there was unlimited importation of sugar following Gazette Notice No. 4536 dated 11th May, 2017 on importation of duty-free sugar.

Mandate of the Committees

The Departmental Committees on Agriculture & Livestock and Trade, Industry & Cooperatives of the National Assembly are established under Standing Order No. 216 and mandated to:-

a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;

b) study the programme and policy objectives of Ministries and Departments and the effectiveness of the implementation;

c) study and review all legislation referred to it;

d) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;

e) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House;

f) to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and

g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation..

Pursuant to the mentioned roles of the Committees, the Speaker of the National Assembly directed the Committees to investigate the matter under the following Terms of Reference as requested by the Hon. Naisula Lesuuda, MP, Samburu West Constituency: -

1) To establish whether the sugar imported during the 2017 duty-free window was fit for human consumption.

2) To establish measures in place to ensure that the sugar in the market is safe for human consumption.

3) To inquire whether there is contraband sugar in the market and measures taken regarding the same.

4) To establish if the required procedures were followed in the importation of sugar under the 2017 duty-free window.
5) The disposal mechanism for the unfit sugar and contraband goods

MEMBERSHIP OF THE JOINT COMMITTEE

The Joint Committee Membership is comprised of the following;

1. Hon. Kanini Kega, MP– **Chairperson**
2. Hon. Adan Haji Ali, MP – **Vice-Chairperson**
3. Hon. Emmanuel Wangwe, MP
4. Hon. Cornelly Serem, MP
5. Hon. Maison Leshoomo, MP
6. Hon. Francis Munyua Waititu, MP
7. Hon. Florence Mutua, MP
8. Hon. Ferdinand Wanyonyi, MP
9. Hon. Simba Paul Arati, MP
10. Hon. Kathuri Murungi MP
11. Hon. Alois Musa Lentoimaga, MP
12. Hon. Kipruto Moi, MP
13. Hon. Andrew Mwadime, MP
14. Hon. Jones Mlolwa, MP
15. Hon. James Mukwe, MP
16. Hon. Daniel Maanzo, MP
17. Hon. Bunyasi John Sakwa, MP
18. Hon. Silas Kipkoech Tiren, MP
19. Hon. Alexander Kimutai Kigen Kosgey, MP
20. Hon. Yegon Brighton Leonard, MP
21. Hon. Gabriel Kago Mukuha, MP
22. Hon. John Paul Mwirigi, MP
23. Hon. Dr. Wilberforce Oundo, PhD, MP
24. Hon. Dr. John Kanyuithia Mutunga, MP
25. Hon. Adan Haji Yussuf, MP

26. Hon. Janet Jepkemboi Sitienei, MP
27. Hon. Dr. Daniel Kamuren Tuitoek, MP
28. Hon. Fred Ouda, MP
29. Hon. Joyce Kamene, MP
30. Hon. Justus Makokha Murunga, MP
31. Hon. Rahab Mukami Wachira, MP
32. Hon. Anab Mohamed Gure, MP
33. Hon. Robert Gichimu, MP
34. Hon. Patrick Kimani Wainaina Jungle, MP
35. Hon. Generali Nixon Kiprotich Korir, MP
36. Hon. Joseph Nduati Ngugi, MP

COMMITTEE SECRETARIAT

1. Mr. Ahmad Kadhi	- First Clerk Assistant
2. Mr. Erick Nyambati	- Second Clerk Assistant
3. Mr. Nicodemus Maluki	- Third Clerk Assistant
4. Ms. Nuri Kitel Naatan	- Third Clerk Assistant
5. Mr. Peter Mwaura	- Legal Counsel I
6. Ms. Colletah Sigilai	- Legal Counsel II
7. Mr. Erick Kariuki	- Research Officer
8. Mr. Chelang'a Rotich Maiyo	- Research Officer
9. Ms. Deborah Mupusi	- Media Relations Officer
10. Mr. Yaqub Ahmed	- Media Relations Officer
11. Ms. Rose Omtere	- Audio Officer
12. Mr. Alex Mutuku	- Sergeant At -Arms
13. Ms. Faith Makena	- Sergeant At- Arms
14. Mr. Richard Sang	- Sergeant At- Arms

1.0 INTRODUCTION

Referral of the Inquiry and Terms of Reference

1.1 On 13th June, 2018 the Cabinet Secretary, Ministry of Interior and Coordination of National Government Dr. Fred Matiangi, made a public pronouncement while at the Directorate of Criminal Investigations alleging that sugar in the Country was laced with mercury which triggered a national debate leading to a public outcry.

As a result of the public pronouncement, the Hon. Naisula Lesuuda, MP, Samburu West Constituency, on Tuesday 19th June, 2018 requested for a Statement from the Chairperson Departmental Committee on Trade, Industry and Cooperatives regarding the contraband sugar seized in most parts of the country pursuant to Standing Order No. 44 (2) (c). The Speaker invited Members to comment on the issues raised in the Statement where the matter was deliberated. He subsequently directed that the matter be dealt with jointly by the Departmental Committees on Trade, Industry & Cooperatives and Agriculture & Livestock and report back to the House within a period of ten (10) days.

1.2 The Committee was guided by the following Terms of Reference in responding to issues raised in the Statement; To establish: -

i. measures in place to ensure that the sugar in the market was safe for human consumption.
ii. the source of the contraband sugar and the entities responsible for importation of the sugar.
iii. mechanisms for disposal of the contaminated sugar.
iv. measures in place to guarantees the safety and fitness of food items in the market.
v. the circumstances under which the contraband sugar acquired Kenya Bureau of Standards stickers.

1.3 The Committee began its investigations on 22nd June, 2018 by developing its operational guideline, timetable and schedule of activities. The Committee held a total of twenty-six (26) sittings during which it received information from the following institutions: -

i. The Ministry of Agriculture, Livestock, Fisheries and Irrigation;
ii. The Ministry of National Treasury and Planning;
iii. The Ministry of Trade, Industry and Co-operatives;
iv. The Ministry of Interior and Coordination of National Government;
v. The Ministry of Health;
vi. Diamond Wholesalers;
vii. SGS Kenya;
viii. Rai Group Representing West Kenya Sugar Company Limited Sukari Menegai Oil;
ix. Hydrey (P) Limited;
x. Kenya Revenue Authority;
xi. Kenya Bureau of Standards
xii. Council of Governors
xiii. Sony Sugar Company Limited

Written Submissions by Companies;

i. Sukari Investments
ii. YH Wholesalers
iii. Regional Bargains Limited
iv. Cosmocare Industries Limited
v. Anwar Oil Limited
vi. Inland Africa Limited
vii. Herob Enterprises; and
viii. Haleel Commodities

STATUS OF KENYA'S SUGAR INDUSTRY

1.4 Kenya's sugar production remained low in the year 2016/2017 due to severe drought experienced in Kenya in 2017 and continued poor performance of the state-owned sugar milling plants caused by depressed cane production by milling Companies to meet their production target. According to statistics by Ministry of Agriculture, Livestock and Fisheries, the monthly local sugar production was on a downward trend from 53,071MT in January to 10,871MT in August, 2017 against a monthly demand of 60,000MT. Resulting from this deficiency, the

Country has been importing sugar to bridge the shortfall based on the statistical analysis and advice by the Agriculture Food Authority.

1.5 The import safeguard that limits duty free sugar imports from the Common Market for Eastern and Southern Africa (COMESA) Countries remains in place. In furtherance to the regulations in the sugar industry Kenya remains steadfast in expanding its sugar production by putting safeguards to leverage its performance as well as sustaining local demand. In COMESA region there was a shortfall of 210,000MT.

1.6 The prolonged drought and famine experienced in 2016/18 in most parts of the Country culminated in severe shortage of vital foodstuff, mainly sugar. The scarcity of these key food items caused serious challenges as prices escalated beyond the reach of Kenyans.

1.7 To mitigate on the effects of drought and famine; His Excellency the President and the Commander in Chief of the Defence Forces declared drought and famine National Disaster through Executive Order No. 1 of 2017 on 10th February, 2017.

1.8 The Food Security Committee meeting held at Harambee House on 5th May, 2017 and 21st June, 2017 reviewed the prevailing maize shortage and high prices of sugar and milk in the market.

1.9 The Committee noted the escalation of prices and resolved to request the National Treasury to Gazette duty – free imports of sugar and milk for purposes of lowering their prices and make them affordable to the general public.

1.10 The Sugar industry in Kenya was currently faced with grave problems that include high costs of inputs and stiff competition from low cost manufacturers (KSB, 2017). The current state of sugar sector is primarily as a consequence of destructive political policies that have seen corruption, mismanagement and shortage of partisan goodwill ruins the sector (SCAM, 2002).

1.11 The resultant effect of these policies is a perennial increase in insufficiency levels amongst farmers and subsequent decline in a maintainable competitive gain and growth of the subsector (Barney, 2006). The condition has been worsened more by non-sequenced trade liberalization treaties.

1.12 This policy has contributed to uncontrolled influx of imported (often dumped) sugar into the national market. The sector is presently operating under COMESA safeguard measures which will terminate in February 2018. There is an urgent need for radical reforms and scanning of the turbulent competitive landscape for the industry all the stakeholders (Peteraf, 2003).

1.13 Kenya Sugar segment is destined to undertake key reforms in several aspects to build competitiveness and introduce effective governance in the commodity supply chain. Sugar from the international market and other low-cost manufacturers such as Malawi, Zambia and Swaziland who are members of COMESA and SADC trading blocks, pose a great threat to Kenya sugar segment survival attributable to zero tariff tax regimes operated by COMESA that allows free motion of sugar within member states.

1.14 Kenya is presently enjoying a temporary protection through a COMESA safeguard that was granted to allow Kenya build its economic advantage until 2018 when the safeguard measure will be lifted.

2.0 EVIDENCE AND SUBMISSIONS FROM GOVERNMENT MINISTRIES AND STAKEHOLDERS

The Ministry of Agriculture, Livestock, Fisheries and Irrigation

Hon. Mwangi Kiunjuri, EGH, MP, the Cabinet Secretary for the Ministry of Agriculture, Livestock, Fisheries and Irrigation appeared before the Committee on Monday 25th June, 2018 and submitted as follows;

2.1 Kenya and East Africa region experienced severe drought in late 2016 and 2017 which led to reduced production of essential food stuff like maize, sugar and milk.

2.2 To mitigate on the effects of the drought and famine the President through Executive Order No. 1 of 2017 declared drought a national disaster and directed the concerned ministries to take immediate action to ensure that there were enough supplies of the essential food commodities in the country. (Annex 4)

2.3 Sugar production trends was on the decline as a result of the drought and consequent low cane supply; that depressed monthly production of local sugar declined from 53,071 MT in January 2017 to 10,872 MT in August 2017 against a monthly demand of 60,000 MT.

2.4 Statistics indicate that on May 2017, the average sugar prices increased from Kshs. 130 per kilo in January to Kshs. 179 in cities and Ksh. 250 in rural areas; this sudden increase in sugar prices was occasioned by the decline in production against average demand.

2.5 Kenya produces on average 60% of her domestic sugar requirement, while the deficit is imported from COMESA and EAC countries. During this period the imports from COMESA and EAC were also on a downward trend from 25,113 MT in January 2017 to 15,740 MT in April 2017.

2.6 In view of the above trends, there was an urgent need for Government to take urgent measures to address the acute sugar shortage and stabilize retail prices that had skyrocketed, in a bid to cushion the public.

2.7 On 12th May 2017, the Cabinet Secretary National Treasury issued a Gazette Notice No. 4536 seeking for the importation of sugar and powdered milk duty free from the world markets to mitigate on the escalating prices of sugar and guarantee availability to the public. This gazette notice was to remain in force to 31st August, 2017. **(Annex 5)**

2.8 Further, the Cabinet Secretary noted that on 4th October 2017 the Cabinet Secretary National Treasury through Gazette Notice No. 9801 extended the duty-free importation of sugar consigned to local millers up to 31st December, 2017. **(Annex 6)**

2.9 Based on the available quantities and market assessment the Ministry of Agriculture advised the Cabinet Secretary, National Treasury to bring forward the duty-free importation since there was sufficient stock of sugar in the country; consequently the Cabinet Secretary National Treasury on 13th October, 2017 through Gazette Notice No. 10149(**Annex 8**) brought forward duty free importation of sugar under Gazette Notice No. 9801 from 31st December 2017 to 13th October 2017 as requested by the Cabinet Secretary Agriculture.

2.10 A total of 829,871 MT of brown sugar was imported in the year 2017.

2.11 The Cabinet Secretary tabled the list of companies that imported sugar during the duty-free period with the quantities associated to each company and also the sugar millers involved in the importation. (**Annex 9**)

2.12 The Ministry of Agriculture, Livestock, Fisheries and Irrigation does not have the mandate to impound contraband sugar or its products. However, the Ministry collaborates with relevant authorities under whose mandate this falls, by providing any information required if any.

2.13 Sugar importers took advantage of the duty-free period arising from the Gazette Notice No. 4536 which allowed everybody to import sugar in to the country without observing the requirements of regulatory agencies specifically the sugar directorate of AFA.

2.14 On quality of the imported sugar and other contraband sugar in the country; when issuing licenses, AFA specifies the type and quantity to be imported while the Kenya Bureau of Standards (KEBS) has the mandate, capacity and procedures to determine quality as per the applicable standards.

2.15 To eliminate the resurgence of contraband goods including sugar importation; the Kenya Bureau of Standards (KEBS) and the Anti-Counterfeit Agency (ACA) ought to undertake market surveillance and coordinate their activities to ensure that no counterfeit goods are brought into the country.

2.16 The role of the Ministry was to advise on sugar and other products to be imported whereas the application and enforcement of Standards is carried out by the Kenya Bureau of

Standards. Additionally, the Ministry collaborates with other Government agencies on matters of Food Safety.

2.17 Kenya is currently enjoying COMESA safeguards and one of the conditions of the safeguards is that Kenya has an obligation to import 210,000 MT from COMESA member states in 2018, this is based on the extension of the safeguard following the government's request to facilitate restructuring of the Sugar industry and enhance self-reliance in sugar production.

2.18 The sugar sector in Kenya is faced with myriad of challenges that require multifaceted approach to mitigate them and realize optimal production; these challenges are: -

i. Litigations on the proposed regulations
ii. Ageing equipment and obsolete technologies in public mills
iii. High debt burden
iv. Cane poaching
v. Non-payment to farmers
vi. Low uptake of high yielding varieties
vii. Low diversification initiatives within the value chain
viii. Over employment in public mills

2.19 The Ministry in consultation with the County Governments is currently working to expedite the gazettement of sugar regulations, which will streamline the operations of the sugar sector. There are also consultations regarding the future ownership and management of public mills with the aim of modernizing and improving efficiency.

The Minister submitted written evidence that;-

2.20 The Cabinet Secretary submitted written evidence that consultations on sugar importation were done during food security meetings held on Friday, 5th May 2017 and Wednesday 21st June 2017 at Harambee House to discuss the prevailing maize shortages and high prices of commodities. The meetings were chaired by the Head of Public Service. The excerpts from both meetings are as follows.

Excerpt: Minute No. 5 of 5th May 2017: Milk and Sugar Supply in the Country

"The meeting reviewed the supply of sugar and milk in the market and noted that their prices had escalated beyond reach of many Kenyans. To ensure steady supply of the products at affordable prices, the meeting requested the National Treasury to gazette duty free imports of sugar and milk for purposes of lowering their prices". Action: National Treasury

Excerpt: Minute No 3 of 21st June, 2017 Part 2 on Sugar

"The meeting noted that adequate sugar had been imported but traders were overcharging beyond the recommended price. It was thus agreed that the Ministry of Interior and Coordination of National Government and the Ministry of Trade should mobilize their officers to enforce the government price. It was also agreed to invite the Director General –National Intelligence Service and the Principal Secretary for Interior to attend the next meeting to discuss the modalities of monitoring and enforcing the price" Action: Interior, Trade, National Intelligence Service

The National Treasury and Planning

Mr. Henry Rotich, the Cabinet Secretary Treasury and National Planning appeared before the Committee on Monday 25th June, 2018, and informed the Committee that;

2.21 In 2016/17, the Country was hit by drought and famine that led to depressed yields and production on Agriculture and in effect caused the skyrocketing of food prices including sugar, milk and maize.

2.22 Due to the said drought, as one of the initiatives to mitigate this, on 10th February, 2017 the President through Executive Order number 1 of 2017(**Annex 4**) declared drought a national disaster and directed all relevant ministries to take immediate necessary action to ensure that there were enough supplies of essential food commodities in the country thus alleviate the effects of the drought.

2.23 Further the East Africa Community Customs Management Act, 2004 under section 114 (2) allows for the importation of goods duty free by a member state upon a phenomenon being declared national disaster. (**Annex 10**)

2.24 Subsequently, the Cabinet Secretary National Treasury and Planning issued Gazette Notice No. 4536, (**Annex 5**) of 11th May, 2017 on importation of sugar and powdered milk duty-free between 12th May, 2017 to 31st August, 2017;

The Gazette notice in part stated as follows;

a) Sugar imported by any person with effect from the date of the notice to the 31st August 2017..."

2.25 The Gazette Notice No. 4536 waived duty on sugar importation whereas other requirements were to be dully observed including health safety, quality specifications and standardization by Kenya Bureau of Standards in accordance with the standards Act, Cap. 496. Importation was time bound and not quantity

2.26 Since Gazette notice no. 4536 was open, it allowed any person to import sugar. Stakeholders reached out to CS for Agriculture and Livestock and the Sugar Directorate of AFA to discuss the need of reviewing the Gazette Notice No. 4536 issued by CS Treasury and National Planning to restrict importation of sugar by limiting the quantities and persons to import, such as millers, who had the capacity of ensuring quality sugar was sourced and imported.

2.27 By the expiry of the Gazette Notice the Ministry of Agriculture in their supply/demand analysis observed that; -

i. There was a 50% deficit on domestic production leading to an overall national deficit of about 50 %,

ii. Sugar millers were facing underutilization of the domestic factories due to shortage of cane: and

iii. High sugar prices persisted

2.28 The Ministry of Agriculture therefore recommended that sugar millers be granted permission to import sugar duty-free up to 31st December 2017.

2.29 The Cabinet Secretary Treasury and National Planning following the advice from CS Agriculture issued Gazette Notice No. 9801(**Annex 6**) which allowed local sugar millers to import sugar from 1st September, 2017 to 31st December, 2017.

The Gazette notice in part stated as follows;

"...Duty shall not be payable for sugar which will have been loaded into a vessel between 1st September 2017 and 31st December 2017 destined to a port in Kenya and consigned to a local sugar miller.

2.30 On 10th October 2017 following further analysis of the sugar situation in the Country, the Ministry of Agriculture advised that the sugar in the country was reasonably sufficient and that the was no need for more sugar importation hence the need to revoke Gazette Notice No. 9801 of 2017. Consequently, the CS Treasury through Gazette Notice No. 10149 of 13th October 2017 moved the deadline for duty-free importation from 31st December 2017 to 13th October 2017.

2.31 On the issue of clearance of goods at the port of Mombasa, the Kenya Revenue Authority uses automated scanners as well as pre-arrival declaration forms for bulk clearance hence reducing mis-declaration of imports.

2.32 To address the challenge of illicit trade on all commodities and support the Kenya Revenue Authority address revenue leakage through tax evasion the president has launched a multi-sectoral agency with clear terms of reference on eliminating counterfeits and contraband goods in the country.

The Kenya Revenue Authority (KRA)

2.34 The KRA Commissioner General Mr. John K. Njiraini appeared before the Joint Committee on 3rd July 2018 and informed the committee as follows;

Administration process during the Duty-Free Importation Window

2.35 Pursuant to the Declaration of the National Disaster by the Government of Kenya, the Cabinet Secretary, National Treasury, in accordance with the provisions of Section 114 (2) of the EAC Customs Management Act, 2004, approved the importation of sugar on duty free basis with effect from 12th May 2017 to 31st August 2017 vide the Kenya Gazette Notice No. 4536 dated 11th May 2017

2.36 Subsequently, Gazette Notice No. 9802 dated 29th September 2017 (**Annex 7**) amended Gazette Notice No. 4536 of 11th May 2017 by deleting the word "imported" and substituting therefore the words *"loaded into a vessel destined to a port in Kenya"*. The amendment meant that duty was not to be charged on sugar loaded into a vessel destined to a port in Kenya between 12th May 2017 and 31st August 2017.

Gazette Notices relating to Sugar Millers

2.37 Gazette Notice No. 9801 dated 29th September 2017 granted duty waiver on sugar loaded into a vessel destined to a port in Kenya between 1st September 2017 and 31st December 2017 and consigned to a local sugar miller.

2.38 Subsequently, Gazette Notice No. 10149 dated 13th October 2017 amended Gazette Notice No. 9801 of 29th September 2017 by deleting the expression "31st December 2017" and substituting therefore the expression "13th October 2017". This amendment means that duty shall not be charged on sugar loaded into a vessel destined to a port in Kenya between 1st September [illegible]

Internal Communication

2.39 The Kenya Revenue Authority, in consultation with the National Treasury developed administrative guidelines to facilitate the implementation of the aforementioned Gazette Notices on Duty-free sugar importation.

2.40 Due Diligence

Upon expiry of the initial exemption deadline of 31st August 2017, KRA received requests to facilitate duty free entry of sugar whose arrival was said to have been delayed by various logistical challenges. Upon processing the request, KRA advised the National Treasury of its inability to admit the sugar on duty free basis given the strict timelines stated in Gazette Notice No. 4536. **(Annex 13)**

2.41 Additionally, while conducting due diligence to ensure that only sugar that met the requirements specified in the Gazette Notices 4536 was allowed into the country on duty free basis, KRA intercepted an importation of 40,000 MT of brown sugar purported to have originated from Brazil and declared to have been loaded within the gazette period.

Upon verification of the import documents, several inconsistencies were detected in regard to certificate of origin; date and place of loading; place and date of the inspection and change of ownership; among others. Consequently, KRA declined to allow the importation on duty free basis and demanded Kshs 2.5 billion in taxes.

The importer objected to the demand and filed a case in Court. The matter is currently before the Supreme Court.

Raw versus Table Sugar

2.41 The report noted that;

(i) Raw sugar is obtained by processing sugar cane (or beet) juice into crystalline solid sugar. A number of processes are involved in production of raw sugar and includes processes such as milling the canes, crushing, juice clarification, evaporation, crystallisation and centrifugation

(ii) Raw sugar can then be categorised into various grades depending on the colour of the sugar in solution and sucrose content. Traditionally some of the grades of raw sugar generally encountered include brown sugar and mill white sugar classified on the basis of colour.

(iii) The colour of raw sugar in solution is a property that is greatly dependent on the efficiency of sugar production process and other factors such as the condition of the raw material, seasons of the harvest of cane and prevailing environmental conditions during processing.

(iv) Raw sugar (brown or mill white) having satisfied quality criteria set out for fitness for human consumption by a qualified body is often referred to as 'table sugar' or 'common table sugar'.

(v) On further processing or purification of raw sugar under specific conditions, industrial sugar is obtained. Industrial sugar has reduced colour and very high sucrose content.

(vi) The terms 'common table sugar', 'mill white sugar', 'brown sugar', 'white sugar' and so on refer to the various grades of raw sugar based on the quality parameters such as colour, sucrose content and fitness for consumption.

2.43 **Customs Classification of Raw Sugar**

(i) The classification of raw cane sugar for the purposes of international trade is guided by the World Customs Organisation (WCO) Harmonised Systems Convention of Commodity Coding (HS) of which Kenya is a Party.

(ii) Chapter 17 of the Harmonised System covers the classification of Sugar and Sugar Confectionary.

(iii) Raw cane sugar in solid form is classified under the tariff heading 17.01.

(iv) Under the tariff heading 17.01 "raw sugar" means sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5°.

(v) The sugar imported under the exemption regime falls under the tariff codes: -

a) 1701.13.90 ......raw cane sugar obtained without centrifugation and having sucrose content on dry basis corresponding to a polarimeter reading of 69° or more but less than 93°

b) 1701.14.90....... other raw cane sugar

(vi) The distinction between the two tariff codes is based on the sucrose content as given by the polarimeter readings and not based on suitability for consumption.

(vii) Polarimeter reading is an expression of sucrose content of sugar in solution. A polarimeter is a scientific instrument used to measure the angle of rotation caused by passing polarized light through an optically active substance.

(viii) Sugar contains optically active sucrose which rotates polarized light to an extent that is directly proportional to the quantities present in sugar sample.

(ix) In order to establish fitness for consumption, the raw cane sugar imported under the exemption regime were accompanied by Certificates of Conformity (CoC) from the Kenya Bureau of Standards.

2.44 Types of Packaging of Raw Cane Sugar Encountered During Importation

(i) The raw cane sugar imported under the exemption regime was presented to customs in 50 kilogram bags and in un-bagged bulk carriers.

(ii) Whether sugar is imported bagged or un-bagged, release by customs is conditional upon confirmation by relevant regulatory agencies of the fitness of the product for entry into the country. In all cases where un-bagged sugar was imported, all regulatory agencies including Kenya Bureau of Standards (KEBS), Port Health, and Radiation Board certified the consignments as fit for importation.

2.45 Customs and border control department's mandate is to ensure strict compliance by importers to the exemption provisions and other import requirement in collaboration with other government regulatory agencies in terms of customs documentation on importation.

2.46 The following are the pre-condition for sugar imports:

i. Import declaration form;

ii. Preparation of an import entry and payment of taxes due such as VAT/IDF/DUTY/RDL/MSS among others;

iii. COMESA rates approval by customs rules of origin office (if COMESA rates apply, import duty is waived 100% or as per agreement on the COMESA rates platform);

iv. Pre-export verification of conformity to standards (PVOC or local certificate of conformity). The inspection for quality standards is undertaken by KEBS locally or by their appointed agents (Intertek, SGS, CCIC and bureau Veritas) from countries of supply/origin;

v. Commercial invoice;

vi. Sugar permits issued by Agriculture Authority Sugar Directorate;

vii. Bill of lading/Air waybill/ road manifest;

viii. Internal exemption approval by customs exemptions office; and

ix. Any other relevant documents including Marine insurance cover note;

2.47 Joint verification is undertaken at entry point (port or border stations) to confirm that goods declaration tally with imported goods. Prior to the customs release, the following government agencies must be satisfied and grant approval; KEBS, Port Health, Radiation Board and Kenya Ports Authority.

2.48 Whether sugar is imported bagged or un-bagged, release by customs is conditional upon confirmation by relevant regulatory agencies of the fitness of the product for entry into the country. In all cases where un-bagged sugar was imported, all regulatory agencies including Kenya Bureau of Standards (KEBS), Port Health, and Radiation Board certified the consignments as fit for importation. The raw cane sugar imported under the exemption regime was presented to customs in 50-kilogram bags and in un-bagged bulk carriers
Alist of importers was provided **(Annex 17)**

2.49 **Mshale Commodities Limited**

There is evidence confirming existence of Mshale Commodities Uganda Limited and Mshale Commodities Limited Mombasa. Mshale Commodities Limited Mombasa is a registered entity in Kenya vides PIN P051216534Y.

In July 2016 one of the 4X20FT container number MEDU3333950 on manifest number 2016MSA130073, bill of lading number MSCUZS683812 on transit to Uganda imported by Mshale Commodities Uganda Limited. Verification was conducted by Government agencies led by Anti-Narcotics Police Unit and found with four unsealed polypropylene bags Concealed within the bags of sugar with a substance packaged in block shape suspected to be narcotic drugs. The four bags yielded 90 blocks of the item. Marks on the blocks of the substance read "Lacoste".

The 90 blocks suspected to be narcotics were marked as exhibits and packed in evidence bags and detained by the Anti-Narcotics Police Unit.

All four containers were secured under F89 number 203728 dated 29/07/2016 issued to OCS Port Police

Currently the matter is being handled by the relevant Government Agency (Anti-Narcotics Police Unit).

Record available show that Mshale Commodities Limited Mombasa imported 300MT Swaziland VHF brown sugar supplied by ED&F MAN SUGAR LIMITED after being granted authority by KEBS and ASD and Customs had no reasons to deny importation.

Takaba Investment Limited

2.57 Takaba Investments Limited has two directors namely; Hanan Adan Abdullahi of KRA Pin No A008110244X and Josephine Wanjiku Njoroge of KRA PiN No A008145285X. During the exemption period the company imported 780 MT of sugar.

ED & F MAN Sugar Limited

2.58 The available records indicate that the company supplied sugar to Mshale Commodities Limited Mombasa and Sukari Industries Limited after being granted authority by KEBS and Agricultural Authority Sugar Directorate. Details on the sources of sugar imported by Sukari Industries Limited and Mshale Commodities Limited Mombasa are provided in tables 11 and 12 below respectively.

The Ministry of Trade, Industry and Cooperatives

2.59 Mr. Adan Mohamed the Cabinet Secretary for the Ministry of Industry, Trade and Cooperatives, appeared before the Committee on Monday 25th June 2018, and informed the Committee that;

2.60 The responsibility of determining the sugar deficit, the quantities and the resultant gazettement of duty free importation window fall under the mandate of the relevant user Ministry.

2.61 The role of the Ministry through Kenya Bureau of Standards (KEBS) is to inspect and test imported sugar to ensure that each consignment meets the requirement of the Kenya sugar Standards.

2.62 As at 22nd June 2018 a total of 587,668 bags of sugar were impounded from 20 companies. Further, he noted that there are two key areas through which goods and particularly sugar can come into the Country that is the port of Mombasa and land borders.

2.63 95% of the sugar importation came through the port of Mombasa and had Certificate for Conformity (CoC) for each shipment of sugar, proving tests and conformity to Kenyan Standards.

2.64 In addition sugar importation is governed by East Africa Customs Management regulations as well as the COMESA quota levels assigned to each member country; Kenya was granted sugar importation safeguard extension by COMESA for a further period of two years from February 2018 on the understanding that Kenya will provide during the period an increase, based on the deficit, of quotas already set by the council.

2.65 The sugar seized from Diamond Wholesalers in Eastleigh and Paleah stores in Ruiru have undergone testing by the Kenya Bureau of Standards and the results tested positive for copper and lead. Further tests are being undertaken on the consignments seized by the multi-agency team in other parts of the Country to ascertain possibility of contamination with heavy metals and other impurities.

The Kenya Bureau of Standards (KEBS)

2.66 The Acting Managing Director, Mr. Moses Ikiara of KEBS appeared before the Committee on 17th July 2018 and submitted that;

The Mandate of Kenya Bureau of Standards

2.67 The Kenya Bureau of Standards (KEBS) is a statutory organization of the Government of Kenya established by the Standards Act, Cap 496, Laws of Kenya in July 1974.

The functions of KEBS as per the Standards Act Cap 496 Section 4 are as follows:

a) to promote standardization in industry and commerce;

b) to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards approved by the Minister on the recommendation of the Council, and for the issue of certificates in regard thereto;

c) to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated;

d) to control, in accordance with the provisions of this Act, the use of standardization marks and distinctive marks;

e) to prepare, frame, modify or amend specifications and codes of practice;

f) to encourage or undertake educational work in connexion with standardization;

g) to assist the Government or any local authority or other public body or any other person in the preparation and framing of any specifications or codes of practice;

h. to provide for co-operation with the Government or the representatives of any industry or with any local authority or other public body or any other person, with a view to securing the adoption and practical application of standards;

i) to provide the testing at the request of the Minister, and on behalf of the Government, of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of this Act or any other law dealing with standards of quality or description.

2.68 There was no prohibition for importation of brown sugar in bulk form, provided that the transportation complies with the *(CAC/RCP 47-2001 - Code of Hygienic Practice for The Transport of Food in Bulk and Semi-Packed Food.*

2.69 The key things that the standard requires to be confirmed are:

i. Previous commodities shipped in the vessel/container

ii. Risks for contamination of the commodities being shipped from the vessels' materials, paints etc.

iii. Presence of locks and seals for containers to prevent environmental contamination.

2.69 The following companies imported raw bulk sugar for processing;

West Kenya, Sukari Industries, Menengai oil and Amnav requested to be allowed to import sugar for processing at their factories into table sugar.

2.70 KEBS permitted the importation and gave the following conditions for its transportation to the factories:

1) The sugar be inspected at the country of origin.

2) The sugar be bagged in 50kg bags at the port.

3) The bags be labelled "NOT FOR SALE"

4) Sugar to be inspected, sampled and tested for compliance with KS EAS 749.

2.71The firms complied with the conditions given by KEBS with regards to transportation. Audit at the factories to confirm processing of the quantities imported was an ongoing process.

2.72 KEBS gave the following conditions for the bagging.

1) The sugar be inspected at the country of origin.
2) The sugar be bagged in 50kg bags at the port.
3) The bags be labelled in conformity with KS EAS 749:2010
4) Sugar be inspected, sampled and tested for compliance with KS EAS 749 and the firms complied with the conditions as given.

Copies of Certificate of Conformity

2.73 Copies of the Certificates of Conformity for the shipment of sugar imported between May 2017 and October 2017 were submitted to the Committee.

2.74 One of KEBS' mandate is to ensure that goods offered on sale in the local market outlets are compliant with the requirements of relevant Kenya Standards and/or approved specifications. This is done through controls and measures undertaken at the manufacturing level through product certification schemes and import inspection through Pre-export verification of conformity (PVOC) program and destination inspection. The two quality assurance activities are supported by market surveillance activities and testing infrastructure which is spread across the country. KEBS testing laboratories are accredited to ISO/IEC 17025:2005 - *General requirements for competence in Testing and calibration laboratories* by SANAS of South Africa.

The measures that KEBS has put in place to give assurance of the quality of the products being offered for sale in the market are;

Quality Inspection of Imports

2.75 Submitted that Quality of imported products is controlled through:

1. The Pre-Export Verification of Conformity to Standards (PVoC) programme.

2. Destination inspection at the ports of entry.

PVOC Programme

2.76 This is a programmer under which imported products are inspected at the countries of exportation and if complying with the relevant Kenya Standards or other approved specifications are issued with certificates of conformity (CoC).

2.77 Goods accompanied with CoCs are subjected to surveillance inspection and sampling at the port of entry on risk assessment basis.

2.78 The sugar imported is pre- inspected by KEBS appointed agents and issued with Certificates of Conformity (CoC) at the country of supply. A CoC is only issued for complying products which means the tested parameters are within limits allowed by the Kenya standards. The KEBS inspection agents are SGS and INTERTEK.
Some of these imports which come with a CoC are sampled and tested at the port of entry for surveillance purposes.

The certification of sugar is done against the following standards:

1) KS EAS 749: 2010 *Brown Sugar – Specification*
2) KS EAS 16:2010 *Plantation (Mill) white Sugar – Specification*
3) KS EAS 5:2009 Refined *white sugar — Specification*

For sugar to be cleared at the ports of entry, the following agencies must approve release based on their individual requirements:

1) Kenya Revenue Authority (Customs).
2) Kenya Bureau of Standards (Quality).
3) Port Health (Food safety).
4) Sugar Directorate (Licensing).
5) Radiation Protection Board (Safety)
6) Kenya Ports Authority (Logistics).

Destination Inspection

2.80 In the event some imports arrive at the entry points without CoC, the products are detained while samples are taken for testing for compliance with the relevant standards. Only compliant products are released while those that fail to meet the requirements are rejected. In order to enhance the fight against contraband products, KEBS is working with other Government agencies through a multi-agency framework at the entry points targeting the following consignments:

1) 100% inspection of consolidated cargo.
2) 100% inspection of products arriving without a COC.
3) 100% inspection of used clothes and shoes,
4) 100% inspection of imports through Eldoret Airport.

Certification of Imported products

2.81 All imported products are required to have Import Standardization Mark (ISM) before they are put on the shelf for sale. ISM is a secure mark with a track and trace solution which enables verification of authentic marks through special bar code readers and mobile application. This is to enable consumers as well as KEBS market surveillance to identify certified products in the market.

Some of the activities undertaken to mitigate substandard products include:

1) Conducting scheduled market surveillance to confirm the quality of locally manufactured and imported products to confirm presence and authenticity of KEBS marks.
2) Conducting targeted market surveillance based on receipt of complaints and intelligence information.
3) Confirming conditions of products including marking and labelling and taking appropriate action where products are found to be in poor state or marking and labelling is found wanting.
4) Confirming whether imported products have genuine Certificates of Conformity.
5) During surveillance activities our officers conduct awareness to businesses/stakeholders. This assists in promoting a quality culture in the general population.
6) We also organize awareness workshops on sectors noted to have perennial problems/complaints.

2.83 In 2017-2018, KEBS inspected and tested market samples totalling to 1396 from various sectors. This lead to 168 seizures most of which have been condemned and destroyed.

Results of Analysis for the various types of sugars

2.84 Kenya Bureau of Standards tested two categories of sugar samples as follows:

1. Samples of Sugar drawn from consignments seized by the Multi Agency RRI on fight against illicit trade.
2. Samples taken by KEBS Market Surveillance team from various outlets across the country.

2.85 The samples were tested against the following standards:

EAS 749: 2010 EAST AFRICAN STANDARD Brown sugars - Specification

This specifies for tests on polarization, colour, insoluble matter, lead, conductivity ash, moisture content, *E. coli, Salmonella,* Total viable count, yeast and moulds. On top of these parameters, mercury, arsenic, cadmium, and copper were also tested.

EAS 16: 2010 EAST AFRICAN STANDARD Plantation (mill) white sugar - specifications.

This specifies for tests on polarization, heavy metals such as arsenic, copper and lead, moisture content, sulphur dioxide, colour, conductivity ash, staphylococcus aureus, yeast and moulds. On top of these parameters, mercury, cadmium, manganese and nickel among others were also tested.

EAS 5: 2009 EAST AFRICAN STANDARD Refined white sugar - Specification.

Parameters tested in this case includes; invert sugar, polarization, arsenic, copper, lead, water insoluble matter, Coliforms, *Staphylococcus*, yeast and moulds, among others.

2.86 KEBS had tested two categories of sugar samples, the first category of sugar samples was drawn from consignments seized by Multi agency constituted to fight against illicit trade and the second category of sugar samples was taken by KEBS market surveillance team from various outlets across the Country.

Test result of sugar samples drawn from Seized sugar consignments;**(Annex 14)**

2.87 From a total of 1,319,668 50-kg bags seized in various locations across the country of the by the Multi Agency team, KEBS drew and tested 66 samples representing 1,266,351 50-kg bags which translated to 96% of the total. The results indicated that 157,392 bags complied with standards while 705,000 failed. The failed bags were from lots of sugar meant for reprocessing and failed to meet standard in respect of the following parameters: -

- Moisture content
- Yeast and moulds

- Colour
- Total viable count
- Polarisation

2.88 The samples were tested for the following heavy metals: Mercury, Arsenic, Lead and Copper. KEBS detected heavy presence of copper at 20.7 mg/kg against a maximum acceptable limit of 2 mg/kg and lead was at 0.35 mg/kg on sugar which had been seized in Eastleigh and Ruiru, the consignment had been detained at DCI headquarters. The committee was informed that the seized sugar from Eastleigh and Ruiru was not from known sources. There was no other sample tested by KEBS have shown presence of these heavy metals. KEBS confirmed that there was no Mercury was detected on all the samples tested.

Test result of sugar samples drawn in Market surveillance; **(Annex 15)**

2.89 KEBS drew a total of 219 samples from 45 counties through market surveillance to establish on quality of the sugar in the Market. KEBS has tested 72 samples representing 21 counties'.42 samples complied with the standards representing 58.33 percent of the samples tested

30 samples failed to meet standard representing 41.7 percent of the samples tested in respect of the following parameters:

- Moisture content
- Yeast and moulds
- Color
- Total viable count
- Polarization

2.90 The samples from market surveillance were tested for the following heavy metals: Mercury, Arsenic, Lead and copper and did not detect any of these heavy metals in any of the samples drawn.

The Ministry of Interior and Coordination of National Government

2.91 Dr. Fred Matiang'i, the Cabinet Secretary Ministry of Interior and Coordination of National Government appeared before the Committee on Thursday 28th June 2018 and informed the Committee that;

2.92 The intelligence reports from the Directorate of Criminal Investigation has sufficient evidence and reason to believe that there were contraband and contaminated sugar in circulation in the country;

2.93 It was on that intelligence that a Multi-Agency Team mounted an aggressive campaign to protect public interest by impounding ALL suspect goods from circulation. He submitted that their first priority in dealing with the vice was to clean up the ecosystem to remove contaminated sugar and other products, from circulation;

2.94 The exercise by the Multi-Agency Team was successful as more goods were seized from various locations around the country and that his public pronouncement on the contraband good and counterfeits was intended to act as a cautionary statement to the public.

2.95 He undertook to assure the country that adequate measures have been put in place to ensure that going forward; no more contraband and/or contaminated goods find their way into the Kenyan market.

2.96 Regarding the Gazette Notice No. 4536 of 11th May 2017; he accepted Cabinet collective responsibility in the issuance of the Notice pursuant to the Executive Order No. 1 of 2017 by the Head of State on the declaration of drought and famine as national disaster.

2.97 Illicit trade from the port of Kismayu in Somalia was a big threat with many other ramifications including terrorism and movement of small arms. He also noted that Kenya has approximately 700 km of porous borders and the government is investing heavily to secure it through heightened border control. He further informed the Committee that plans were underway to build infrastructure across the borders and move disciplined forces to secure the country and control illicit trade.

2.98 There was need to restructure the Kenya Revenue Authority (KRA) by separating the customs management and other revenue administration in an effort to stamp out illicit trade and contrabands in the local market through enhanced surveillance and customs management.

2.99 Excess sugar in the country was curtailing the growth of the local sugar industry by reducing the competitive advantage in production and thereby depressing revenue from sales.

2.100 The Ministry of Interior was undertaking investigations into the illicit trade, contrabands and counterfeits in the country with the assistance of international police (Interpol), it was meant to establish the origin and movement of these goods into the country hence develop mechanisms to eradicate the existence of such dealing.

SGS- Kenya Limited

2.101 Mr. Gringnard Stockell, the Director for SGS- Kenya appeared before the Committee and submitted that: -

2.102 The Kenya Bureau of Standards contracted SGS to carry out inspections. Kenya's PVoC ensures that goods meet mandatory safety, quality and security requirements, enables international trade, avoids delays in customs and reduces potential losses from the import of non-compliant products.

2.103 In 2017 there were four inspection companies approved by the Kenya Bureau of Standards (KEBS) including SGS-Kenya for the certification of sugar imports into the country. SGS – Kenya has a market share of 21% in certification of sugar imports measured by FOB value.

2.104 The SGS contract were entered and signed by the Kenya Bureau of Standards and the SGS-South Africa headquartered in Geneva, Switzerland, whereas SGS-Kenya Limited is hosting the Contract Management Office (CMO) representing the parent company in Kenya.

2.105 SGS-Kenya Limited was mandated to liaise with the Kenya Bureau of Standards on contractual agreements relating to the Pre-Verification of Export Certification (PVoC) on behalf of SGS- South Africa, as well as dissemination of KEBS regulations and standards.

2.106 The Certificates of Conformity (CoC) are issued by overseas affiliates domiciled in country of origin of the goods/exporters. That in the case of SGS-Kenya the certification process is undertaken by a technical centre referred to as the Certification Centre (CC) based in Manila, Philipines.

2.107 The certification process was conducted by the affiliates and the outcome delivered to the SGS certification centre for review of documents and certification decision is made by analysts hence the issuance of the Certificate of Conformity (CoC) for the cargo.

2.108 Certificate of conformity would be availed to the Kenya Bureau of Standards and Kenya Revenue Authority as well as the trading parties (importers and exporters) automatically. The progress relating to specific order can be tracked online in the SGS Certification system by the trader hence transparency in the certification of goods.

2.109 Metals such as Mercury, Cadmium, Arsenic and Lead enter the environment primarily as a consequence of industrial emissions or via the disposal of products containing these metals, including mercury-cadmium or cadmium –nickel batteries, lead-containing ceramics and glass, mercury thermometers.

2.110 Past uses, such as, the use of mercury as a seed dressing and as an antibacterial, the use of lead in water pipes and as an antiknock agent in petrol, and the use of arsenic as a rodenticide, have been largely phased out because of the toxicity and persistence of the metals.

2.111 Sugar cane grown on contaminated soils, such as oil landfills, might have increased amounts of heavy metals, which could be found in the brown and/or refined sugar, some fertilizers contain small amounts of heavy metals. Arsenic, cadmium and lead are found quite frequently, whereas mercury is only found in some specific cases.

2.112 The presence of lead and copper in sugar seems more possible, but in the Codex Alimentarius standards, no limits are set for lead and copper in sugar. In the Codex Alimentarius 193 (General Standard for contaminants and toxins in food and feed) sugar was not included.

2.113 Copper in general is not considered a heavy metal or a toxic element. Many food additives or food supplements contain copper in their formulae. World food programme (WFP) has set a maximum copper limit for white sugar at 1ppm and at 0.5ppm for lead.

2.114 SGS –Kenya is contractually obliged to use the Kenya Standards or East Africa Standards and for the case of brown sugar the applicable standard was the EAS 749:2010; However, in the process of certification Codex standard for sugar – CODEX STAN 212-1999 shall apply.

2.115 There were various types of sugar available in the world market, noting that sugar imported to Kenya is bagged at the manufacturers' premises and health certificate issued for such consignment. When refineries buy sugar for further processing, the consignment will be delivered in bulk.

Rai Group of Companies

2.116 Mr. Jaswant Rai and Mr. Tejveer Rai the Chairman and the Managing Director for Rai Group of Companies respectively appeared before the Committee and informed the Committee that;

2.117 The Rai group of companies has grown over the years to become a key player in the sugar industry by developing their facilities, processes and investing in their employees and communities as well as establishing and maintaining high standards of practice across the range of their operations.

2.118 In addition their efforts to produce products of the highest quality have been rewarded by the popularity of premium white sugar and golden-brown sugar that the West Kenya sugar company produces under the Kabras brand. The Rai Group of Companies had invested over 9

Billion in sugar related businesses over the last three years, paid 2.6 Billion in wages, contributed over 7.2 billion in taxes to the government and paid farmers over 14 Billion.

2.119 Further in the year 2015, the Rai Group of Companies crushed over 1,869,014 tonnes of cane producing 179,159 MT of sugar but in 2017 it reduced to 1,194,045 tonnes of cane crushed producing 100,607MT of sugar. The shortage of cane and resultant reduction in the quantity of sugar produced predictably gave rise to increase in prices.

2.120 The Kenyan Government responded in an effort to contain escalating prices through Gazzette Notice No 4536 published on 12th May 2017 by granting four-month duty exemption for the importation of sugar up to 31st August 2017.

2.121 Having been granted this lifeline by the Government the West Kenya Sugar Company limited along with other companies applied for and was granted a license to import bulk raw sugar by the Agriculture and Food Authority (AFA).

2.122 Millers under the umbrella Kenya Millers Association reached out to CS for Agriculture and Livestock and Sugar Directorate of AFA to discuss the need of restricting importation of sugar to only allow millers who had the capacity of ensuring quality sugar was sourced and imported. The response the millers got through their representative was that restricting permission to import sugar to millers would amount to discrimination against other traders.

2.123The Rai Group imported the following quantities of bulk raw sugar through the following listed companies; from Brazil 34,100 MT imported by West Kenya Sugar Company limited; 34,500 MT imported by Sukari Industries limited; and 40,000MT imported by Amnav Limited; from Thailand and COMESA region the following quantities: 21,000MT of bagged brown sugar imported by Menengai oil refineries limited all amounting to 129,600 MT of bulk raw brown sugar imported from Brazil and Thailand by Rai group of companies while the following quantities were imported from Swaziland; 34,800 MT by Amnav Limited and 25,200MT by Menengai Oil refineries Limited, altogether amounting to 60,000 MT.

2.123 The bulk raw brown sugar that was imported was stored in various warehouses in Mombasa, Nairobi, Nakuru, Webuye, Kakamega & Ndhiwa by making use of facilities owned by Rai Group of Companies to control costs and exercise control over the conditions of storage.

Some bags were stored in pan paper which is a recent acquisition of Rai Group of Companies with ample storage facilities which is ideal due to its proximity to processing plant in Kakamega.

2.124 The sugar stored at pan paper's premises was stored in a food safety godown normally utilized for the storage of paper that is used for packaging unga, wheat flour and other food products.

2.125 The sugar was bagged into 50 kilograms bags having been shipped in bulk. Bagging was done at qee side whereas some were bagged at the CFS with proper tagging 'NOT FOR SALE'. The sugar was stored at various locations such as JB Maina Warehouse, Multiple Internal Container Depot and Motrex Warehouse within the port. Due to the huge consignment imported by the Rai group of companies' raw bulk brown sugar that was imported was stored in various warehouses in Mombasa, Nairobi, Nakuru, Webuye, Kakamega & Ndhiwa.

2.126 The brown sugar found in Eastleigh, Nairobi labelled "NOT FIT FOR HUMAN CONSUMPTION" were not from his company as bagging and labeling of West Kenya Sugar Company were in white bags written "NOT FOR SALE".

2.127 All records, locations, documentation and can account for all the sugar imported by the company.

Diamond Wholesalers

2.128 Mr. Mohammed Sheikh Ahmed one of the Directors at Diamond Wholesalers with a shareholding of 4,000 shares out of a total of 15,000 shares appeared before the Committee on Thursday 28th June 2018. Diamond wholesalers had been adversely mentioned in regard to seized sugar consignment from their go downs in Eastleigh. He informed the Committee that:

2.129 The Company was registered in August 2004 to operate as a wholesale for various foodstuff within Nairobi.

The Company 1,600 bags of sugar were confiscated from their premises and that the matter was currently in court.

The company had purchased the commodity from West Kenya Kabras Sugar in packets of one kilogram each and in 50kgs bag from Landmark Freight Services that was sourced from Brazil.

Hydery (P) Limited

2.230 Mr. Naushad A. Merali the Director, Hydrey (P) Limited appeared before the Committee on Monday 2nd July 2018 and informed the Committee that; -

2.231 He joined the Hydery (P) Limited in 1980 and became the Managing Director in 1998. The Company exports Maize Bran, Wheat Bran, and Green Grams among many other goods to the regional markets and has been exporting sugar for the last 18 years. In the year 2017, the Company had planned to import sugar from COMESA ranging from 60,000 to 70,000 MT for the local market.

2.232 The Company imported 35,000 MT of Bulk Brown Sugar that was ready for consumption, having complied with the necessary conditions and tests. The sugar was imported from Brazil and Thailand which is outside COMESA region under close supervision and approval by KEBS.

2.233 The company sought the permission of KEBS to sell the product upon arrival at the Port of Mombasa since the sugar was a finished product ready for consumption requiring no further processing.

2.234 With regard to transportation and handling of the consignment, upon arrival at the port of Mombasa, the sugar was bagged into 50kgs bags and transported to designated warehouses.

2.235 The sugar sample was taken on 21st August 2017 and tested against the EAC 749 Standards and it complied.

2.236 The company is licensed to import sugar in the country and it operates under the Agricultural Food Authority (AFA) guidelines. The Company received all necessary and relevant certification from KEBs in every importation process.

2.237 He was not privy to the recommendation that Hydrey (P) had been black listed in the 11th Parliament report from importing sugar into the Country.

2.238 There was no relationship between the Hydery P Ltd and Holbud Limited as one is UK based Company and the other one is based in Mombasa. He confirmed that he has been regularly mistaken for Mr. Naushad Merali of Sameer Group of Companies

The Ministry of Health

2.239 Mr Peter K. Tum the Principal Secretary, Ministry of Health, appeared before the Committee on Tuesday, 3rd July, 2018 and informed the Committee as follows;

2.240 Part of the mandate for the Ministry of Health includes monitoring of Public Health hazards and inspection of storage facilities, amongst other functions in order to safeguard health and safety of citizens. In performing its functions, the Ministry is guided by legal instruments such as the Public Health Act Cap 242, Food, Drugs and Chemical Substances Act Cap 254. Further the Executive Order No. 1 of June, 2018 has placed the mandate of food safety under the Ministry of Health.

2.241 The Port Health officers conduct inspection of vessels, cargo as well as the crew before granting clearance for the same to dock. Sugar imports can either be in the form of a container or bulk cargo provided the standards specified are adhered to and a certificate of conformity was issued. In addition when sugar is imported in bulk form, it should be offloaded into bags and stored in a warehouse based on specific handling and storage procedures to avoid contamination.

2.242 Due to poor conditions of storage and handling, sugar may get contaminated after clearance to enter into the country. This is the major entry point to this country, upon inspection, raised safety issues on handling and storage of bulk sugar. He further informed the Committee that surveillance of foods placed in the market was further conducted by the county governments.

2.243 In Kenya there were three national standards for different types of sugar namely:

i. Brown sugar- specifications (KS EAS 749: 2010
ii. Refined White Sugar - Specifications (KS EAS 5: 2009)
iii. Plantation (mill) white sugar – specification (KS EAS 16: 2010)

2.244 In the three standards, the levels of arsenic, copper and lead are the same and are 1mg/kg, 2mg/kg and 0.5mg/kg respectively. However, the levels of moisture content are different, that is maximum of 0.2 % m/m and 0.15% m/m moisture content for brown sugar and light brown sugar respectively.

2.245 On the eradication of counter-feit and illicit trade, the Ministry of Health is participating in the ongoing Presidential Rapid Result Initiative (RRI) on eradication of counterfeits and illicit trade. The members include KRA, KEBS, Anti- counterfeit Agency, Ministry of Health, Police, Immigration, and Directorate of Criminal Investigation (DCI) amongst others. The RRI has resulted to seizure of various food commodities meant for human consumption.

2.246 In view of action taken by the Ministry of Health regarding health safety of goods, the Ministry issued two circulars to the county governments' officers, points of entry, the Kenya Association of Manufacturers and retailers giving guidance on surveillance and responsibility to safety of food stuffs such as sugar and cooking oils/ fats for the purpose of safe guarding the general public. The Ministry and the county governments conduct routine inspections and sampling of food articles at various parts of the country along the supply chain.

2.247 Following the circulars some consignments of sugar have been seized and sampled by the public health officers in some counties such as Nakuru, Kiambu and Nairobi amongst other counties and that the sampling exercise was still ongoing although some results were already out.

2.248 The laboratory analysis results as of 23rd June 2018 had found that copper, lead and arsenic contamination is within the standard specification. The analysis of mercury contamination was ongoing. **(Annex 16).**

2.249 Further the results have shown that 60% of the samples analyzed did not comply with the national standards making it unfit for human consumption. To this effect the respective counties have been advised to keep the contaminated lots under seizure pending destruction. **(Annex 16)**

2.250 In addition industrial sugar was also sampled and analyzed and the results of 29th June 2018 had found that sugar conforms to the standard specification and is fit for use in preparation of food meant for human consumption.

2.251 The results are based on each sample taken for analysis and including the safety conditions of the sampled lot. Additionally, analysis of these samples is ongoing at the government Chemist in Nairobi.

2.252 The broad objective of the Ministry of Health is to safeguard the public health of the consumers, population from consuming contaminated sugar. The ministry is aware that sugar is widely used in industrial and domestic hence it is of major public health interest. He promised to continue with enhanced surveillance to ensure that the risk is reduced.

The Council of Governors

2.253 H.E Hon. Okoth Obado the Governor for Migori County on behalf of the Council of Governors as the Chairperson for Agriculture Committee appeared before the Committee on Tuesday, 3rd July, 2018 and informed the Committee that;

2.254 Agriculture is a shared function between the National and the County government. County government is mandated with but not limited to Crop husbandry, trade development and regulation whereas the National Government has been assigned agriculture policy and international trade. The Kenya Gazette Supplement No. 116 of 9th August 2013; Legal Notice NO. 137 transferred enforcement of regulations and standards on quality control of inputs, produce and products from the National Government to county government.

2.255 It is therefore the duty of County Governments to ensure that all agricultural produce and products that are sold in our markets meet the national standards and thus fit for human consumption.

2.256 The County Governments have ensured that there is adequate human capacity, infrastructure and enough tools to undertake continuous testing and inspection of agricultural products. However, this process requires huge sum of financing.

2.257 Contraband and sugar unfit for human consumption has been lately flooding our markets which have largely been occasioned by weak regulatory institutions mandated to safeguard local farmers.

2.258 The National Governments should consult county governments in making international trade policy decision inclusive of Importation and Exportation of Sugar that meet the domestic and international requirements and ensure Kenyan consumers are protected.

2.259 Commodities that have been frequently dumped in the Country includes; sugar, fish and maize and it is unfortunate that even with the National Government`s initiative to promote manufacturing as a key pillar to industrialization, the country continues not only to have excess imports but also contaminated products.

2.260 Even with myriad of challenges, Kenya has a great potential and there is great political will to revitalize the sugar sector. The County Governments are key in seeing this sector grow to not only meet the country's sugar demand but also have surplus for exports.

2.261 He concluded by proposing that the Committee intervene in the following: -

i. Disbandment of AFA whose functions are a clear encroachment on County Governments;
ii. Fast- tracking of gazettement of the Sugar General Regulations.
iii. Inclusion of County Governments in matters of importation and exportation of sugar to ensure any import request is justified by prevailing deficits/surplus market conditions;
iv. Imposition of tougher penalty charges for those found culpable of Cane poaching and importation of contraband Sugar;
v. Write-off of all debts and claims owned by the Government to Public owned Sugar mills; and
vi. Injection of Capital to ailing factories to resuscitate their revival and that action be taken against individuals involved in illicit trade.

The South Nyanza Sugar Company Limited (SONY)

2.262 That Sony sugar company is a public owned state corporation with over 99% government of Kenya Ownership.

2.263 The decision to pursue importation of sugar during the duty waiver period was informed by the decline in cane production as well as to meet financial requirements for shareholders and farmers.

2.264 He informed the committee that Sony Sugar Company produces both brown and while granular (Plantation white) sugar for local consumption.

2.265 To shore up cash flows arising from continuous decline in local production and competition from duty free imports from NON-COMESA regions, collapse of market prices before and cane poaching by competitors the company undertook to take advantage of the scheduled government policy to waive duty on sugar importation during the period.

2.266 Sony Sugar Company Limited imported 50500 MT of bulk brown sugar in two consignments having followed the due process as per regulations representing about 5% of the total sugar imports for the year, 2017. The importation was effected through a buyback arrangement with MS. Holbud Limited, United Kingdom.

2.267 That Sony sugar in response to Gazette Notice. 9801 dated 29th September, 2017 decided via Board of Directors meeting of 12th October, 2017 to fast track a buy-back arrangement.

2.268 The company issued tender notice for expression of interest for partnership in the importation of sugar under a buyback arrangement. The buy- back process was formalized and an agreement entered with MS. Holbud, United Kingdom based on evaluation from three responsive bids.

2.269 That the sugar imported by Sony Sugar Company under went through due process in certification based on the KS-EAS 749:2010 and a pre-shipment permit and certificate of conformity issued by KEBS contracted agents. The Ag. Managing Director informed the Committee that sugar imported by Sony sugar was specified as Brown sugar for direct human consumption matching the specifications under East Africa Standards –EAS

749:2010 and inspection for product compliance certificates issued respectively by the regulatory agencies.

2.270 It is important to note that there was no further processing envisaged from the certification done by KEBS since EAS standards 749:2010 represent brown sugar for direct human consumption. Additionally, Sony Sugar Company Limited lacked in-house capability to re-process granulated sugar knowing that re-processing capability is inherent in a sugar refinery.

2.271 He further reported the committee that MS.Holbud being the primary contracted agent for Sony Sugar Company Limited retained the custody of the consignment upon clearance at the port. Storage arrangements, packaging and sale to the six buy-back local companies as per terms of the joint collateral management and buy-back agreement.

2.272 He submitted that the importation 50500 MT of sugar by Sony sugar company Limited was petitioned in the High Court by Mr.Okiya Omtatah on the basis of non-compliance to import duty clearance caused by the falsification of shipping documents to evade duty payment, safety measures of the consignment despite being offloaded to warehouses not under the custody of the company.

3.0 COMMITTEE FIELD INSPECTION VISITS

3.10 The Committee undertook inspection visits in **Nairobi, Mombasa, Nakuru and Kakamega/Webuye** to ascertain on the alleged/illegal and /or unfit sugar in the country with respect to public information, media reports and the seizure of sugar lots made by the multi-agency team in various parts of the country;

Below are the specific findings from the respective field visits: -

3.1 Mombasa

i. Port of Mombasa

3.11 The Sub - Committee while on inspection visit at the port of Mombasa was informed on various processes and aspects as follows: -

3.12 The Committee observed that for sugar to be cleared at the ports of entry, the following agencies must approve release based on their individual requirements:

1) Kenya Revenue Authority (Customs).
2) Kenya Bureau of Standards (Quality).
3) Port Health (Food safety).
4) Sugar Directorate (Licensing).
5) Radiation Protection Board (Safety)
6) Kenya Ports Authority (Logistics).

3.13 The Committee was provided with a summary report of sugar imported from May 2017 to date and copies of the Certificates of Conformity (CoC).

3.14 Members were further informed as follows;

- KEPHIS played no role in the importation of sugar as it did not fall within their mandate.
- The Anti Counterfeit Agency played no role in the importation of sugar.

3.15 Members noted that The Port Health Officer at Kilindini Sea Port had issued a notice to all sugar importers regarding the bagging of bulk sugar. In the letter dated 23rd October and delivered to the clearing agents, the document from the Ministry of Health notes that;

- Ideally sugar should be bagged at the country of origin
- Bulk consignments were imported without rebagging
- It was expected that bagging be done on arrival
- Consignments leaving the ports without bagging was against the Food Drugs and Chemical substance Act Cap 254 of the Laws of Kenya

1.16 The Officials from the Department of Criminal Investigations informed the Members that a total of eleven (11) godowns had been sealed for testing and verification. The facilities that had been sampled included following;

1. Freight Forwarders Limited
2. Ballore Logistics
3. Allied Wharfage
4. OCO Limited
5. Ligna Godow
6. Equity Logistics Ltd at NCPB Godown
7. Damaris Kandoli (Kinango)
8. Hyder (P) Limited at Bandari
9. Adil Wahab Adil at Mariakani
10. Cyber Commodities at Focus CFS
11. Kwale International Sugar Company

3.17 Members heard that the process was ongoing noting that facilities not yet sampled were those of, West Kenya Sugar Company (J.B. Maina Godown) at Kipevu, Ballore Logistics

ii. Quay Side, KPA Berth

3.18 During the tour of facilities members were shown how sugar was bagged quay side. The Committee was thereafter informed that the Kenya Ports Authority had the role of stevedoring which involved loading and offloading of cargo. Vessels expected at the port were declared a fortnight to the arrival with their Particulars listed e.g Name of the vessel, arrival date and length of the vessel. The Committee was informed that the role of the Immigration officers was to check the entry documents of the crew whereas the role of the Port Health Officer was to check the health status of the Officers and safety of the vessel before allowing anyone to board.

3.19 Members noted that before any cargo was offloaded clearance must have been given by the KRA, KEBS, Port Health, Anti – Counterfeit and KEPHIS hence KPA could not commence any cargo operations until a release order was issued by KRA. Therefore, KPA ideally was involved at the tail end of all other processes. Further, Members heard that it was the Importers' responsibility to make arrangement for storage facilities outside the port of Kilindini Port as it doesn't have any storage facilities for bulk or bagged cargo.

3.20 Members were informed of the Cargo offloading processes that were used to offload the sugar;

1. Bulk Handling – sugar was scooped using grabs then offloaded to the awaiting trucks (tippers) which parked under the hoppers.
2. Bulk bagging – the process involved bulk cargo offloaded to the bagging plant and then bagged cargo loaded onto trucks.
3. Bagged sugar – Process of offloading sugar using cargo slings onto the waiting trucks.

3.21 The same tippers are used for other purposes like carrying clinker, fertilizer, sand, they informed the Committee that the trucks are cleaned and a lining attached when carrying and other foodstuff items.

iii. Hydery (P) Warehouses

The Committee visited the warehouse and was informed that;

3.22 The Warehouse had been sealed by the Multi-Agency taskforce. Samples had been taken for testing and verification. The facility contained bagged sugar in 50 kilograms bags.

3.23 Thereafter, the Committee noted that bagging of sugar from the shipment was done at quay side and appeared better than transporting and storage in open sheds as it was exposed to various impurities.

iv. Multiple Inland Container Depot (MICD)

3.24 Members visited the bulk storage facility and were informed that the facility handled bulk cargo where the activities involved depositing and bagging of raw sugar belonging to West Kenya Sugar which was deposited in bulk, bagged on site, and thereafter transported to Warehouses for storage pending further processing, a process that took a period of about 30 days.

3.25 Members observed that the structure was large enough to enable Lorries and Tippers to move freely. It was noted with concern that; the facility was located next to the Kibarani Dumpsite, there was heavy dust, clinker, mud and sand and there were remnants/deposits of sugar stuck on walls and surfaces of the facility.

3.26 Members heard that the sugar was dumped on the ground and that tippers and open trucks were used to transport the sugar from the ship, further, the raw sugar was unfit for direct human consumption and was to be subject to further processing. Finally, it was noted that at the time of visit there was no sugar stored at the facility.

3.2 Nairobi

3.27 The Committee undertook inspection visit to seized warehouses in Industrial Area, Nairobi at the Menengai Oil Facility; The Members were informed that Sugar Samples were collected from the facility and submitted for testing and analysis on 19th June 2018 by the Multi-Agency taskforce on illicit trade. Menengai Oil Company was a distributor agency selling to different food items to retailers and wholesalers including Diamond wholesalers, The Company had not previously been in the sugar importing business as this was their first time to import sugar.

3.28 Members thereafter observed that;

a) The godown with sugar was locked securely using two seals that were serialised.
b) The packaging was in 1-kilogram bags labelled "Ndhiwa sugar" and 50 kg bag from Brazil and Thailand.
c) The facility was well secured.
d) There were 230,000 bags of 50 kg sugar.

3.3 Nakuru

3.29 The Committee visited five godowns while undertaking an inspection visit in Nakuru.Four of the five godowns belonged to Menengai Oil Refeneries and one for United Millers.During the inspection the members observed that: -

1) Nakuru Industries

3.30 Menengai Oil Refineries ltd has leased Nakuru industries/Nakuru Blankets Warehouse in which over one million bags of seized sugar was found in three godowns. The three godowns were each secured with 2 padlocks belonging to the Multi -Agency team and that of Menengai Oil Refineries and a seal of a bank security agent Vallon as agreed by the parties.

3.31 The sugar was imported as Brown sugar in Bulk from Brazil for further processing thus not ready for consumption and the bags were labelled to that effect .The Bulk Sugar was packed in bags of West Kenya Sugar in Mombasa on arrival. Menengai imported the brown sugar to be processed by Sukari Industries/Ndiwa Sugar co. and West Kenya Sugar Company. The sugar was imported in May, 2017 after the publication of the Kenya Gazette notice number 4536 on importation of Sugar and Milk duty free. The sugar in the ware House had been cleared by KEBS and KRA.

3.32 The Colour of the Bulk brown sugar was not any different from processed brown sugar that is sold for consumption thus the bulk brown sugar can easily get into the market.
The storage of the sugar was wanting as the bags were stacked on each other on the floor that was dirty and damp.
No documentation was provided in regard to the Bulk brown sugar imported from Brazil.Photos and Samples of the sugar was taken.

2) **Menengai Godown**

3.33 Journalists were barred from accompanying Members into Menengai Oil Refineries premises but through the intervention of Members, they were allowed in.
The seal of the main door to the warehouse with seized sugar was tampered with; the seal that was found was 0144413 against what was recorded as 0144412.There was only one Padlock that belonged to the Multi-Agency Team thus a padlock belonging to Menengai Oil Refineries was missing.
3.34 The sugar seized in the godowns within the premises of Menengai Oil Refineries was imported as sugar ready for consumption. The seized Sugar in the store was as follows;

a. 1000 Metric Tonnes(MT) from Zimbabwe
b. 12,750 MT from Thailand

c. 1000MT from Mozambique

3.35 The 14,750 MT of sugar were imported at a cost of USD 7,076,250 in May, 2017 after the Kenya gazette notice that opened a window for importing sugar duty free. The sugar had been cleared by KEBS and KRA

3.36 The storage of the Sugar was wanting. It was stored directly on dirty and dump floor thus vulnerable to contamination. Food hygiene licence had been issued despite the unhygienic condition/manner of sugar storage.

Samples and photos were taken.

3) **United Millers**

At United Millers godown, the delegation observed that:

3.36 The sugar was seized on 26th June, 2018 by the Multi Agency Team, it was the Thailand sugar is to expire on December 2018;The sugar was stacked on wooden beds/flats; The sugar had been cleared by KEBS and KRA; They had Thailand Sugar in small quantity and their main Godown is in Kisumu.

3.3. Kakamega and Webuye

3.37 The Sub-Committee undertook an inspection visit to Pan African Paper Mills and West Kenya Limited in Webuye and Kakamega respectively. The inspection visit targeted the warehouses where the seized sugar by the multi-agency team had been stored.

3.38 The Committee was informed that: -

3.39 West Kenya Sugar Company Limited was the leading sugar processing firm based in Kakamega County producing Kabras Premium White Sugar and Kabras Brown Sugar. The company has invested heavily in an ultra-modern sugar processing plant that has resulted to the growth of its market share by producing exceptional sugar. The factory had contracted over 60,000 small-scale sugar cane farmers to supply the factory with sugar cane.

3.40 The Committee heard that as result of the extended drought experienced in Kenya in 2016-2017 which was subsequently declared a national disaster through Gazette Notice No. 4536, the

Company requested and was granted authority by KEBS to import raw sugar in bulk from Brazil for processing and packaging in the factory.

3.41 The Committee was further informed that 59,000(50kgs) bags had been seized by the multi -agency team at their warehouse in Pan African Paper Mill in Webuye. The Committee also heard that six bags had been collected by KEBS for testing and analysis.

3.42 The West Kenya Sugar Company imported bulk brown sugar for further processing for the first time under the Rai Group and storage of the consignment provided by Menegai Oil Company and Pan African Paper Mills.

3.43 The Committee observed that: -

- The raw bulk brown sugar was packaged in 50kgs white bags marked "NOT FOR SALE".
- The warehouse where the impounded sugar was kept was under guard by the multi-agency security team.
- The storage facility was dusty, dumpy and lacked adequate ventilation.
- The Company only imported the raw brown sugar in bulk for further processing.

4.0 OBSERVATIONS

Having received oral and written evidence, the Joint Committee made the following observations:

Test Results of Sugar Samples by the Kenya Bureau of Standards

4.1 The Mandate of KEBS includes among others testing of locally manufactured and imported commodities with a view to determining whether such commodities comply with provisions of the Standards Act and any other relevant laws which provide for the Standards of Quality or description of commodities.

4.2 The certification of sugar is guided by the following standards: **(Annex 18)**

(a) KS EAS 749: 2010 *Brown Sugar – Specification*
(b) KS EAS 16:2010 *Plantation (Mill) white Sugar – Specification*
(c) KS EAS 5:2009 Refined *white sugar — Specification*

4.3 **No traces of Mercury were detected in the samples collected from seized sugar and from market surveillance by KEBS.** KEBS tested two categories of sugar samples; the first category of samples was drawn from consignments seized by the Multi-Agency Taskforce, **(Annex 14)** while the second category was collected by the KEBS market surveillance team from various outlets across the Country **(Annex 15)**. These market surveillance samples were collected from outlets most frequented by members of the public.

4.4 From a total of 1,319,668 50-kg bags seized in various locations across the country by the Multi -Agency team, KEBS drew and tested 66 samples representing 1,266,351 50-kg bags. This translated to 96% of 1,319,668 50kg bags.

4.5 Out of the sample of 1, 266, 351 50kg bags, 837, 244 50kg bags equivalent to 66% of the sample failed the KEBS test. Only 157,392 of the sampled 1, 266,351 bags equivalent to 34% of the sample passed the KEBS test. It was noted that 705, 125 bags amongst the ones that did not meet the standards were meant for further processing. **(Annex14)**

4.6 To date KEBS has drawn a total of 261 samples from fourty five (45) counties with the exception of Tana River and Mandera, through market surveillance routine checks to establish the quality of the sugar in the market. KEBS has tested 109 samples representing 42 Counties of which, 75 samples complied with the standard representing 68.81% of the total samples tested. Thirty four (34) samples failed to meet the set standards representing 32% of the samples tested for moisture content, yeast and moulds, colour, total viable count and polarisation. **(Annex 15).**

4.7 The samples collected by the KEBS **market surveillance** team were tested for the following heavy metals; Mercury, Arsenic, Lead and Copper. KEBS **did not detect any non-conformity** from the samples tested and analysed since Lead and Copper were within the recommended threshold.

4.8 The samples collected from sugar seized at Diamond Wholesalers godown in Eastleigh and Paleah Stores in Ruiru were tested for the following heavy metals: Mercury, Arsenic, Lead and Copper. KEBS detected heavy presence of copper at 20.7 ppm from samples of sugar seized at Diamond Wholesalers against a maximum acceptable limit of 2.0 ppm and the levels of Lead was at 0.35 ppm in samples collected from Paleah stores against the recommended limit of 0.05 ppm. **(Annex 14)**

Laboratory Sample Test Results from the Ministry of Health

4.9 The Mandate of the Ministry of Health includes amongst others, monitoring public health and safety and inspection of storage facilities. The Department of Public Health under the Ministry is singly responsible for the inspection and certification of storage facilities. Port health officers are required to conduct inspection of vessels, cargo as well as crew before a vessel is authorized to dock at the port.

4.10 The initial report from the Government Chemist as submitted to the Committee by the Ministry of Health on 23rd June, 2018 indicated that from 174 samples collected from 19 Counties, 60% of the samples tested and analysed for moisture content did not comply with KS:EAS 749:2010. The standard requirement is 0.2% m/m and 0.15% m/m maximum moisture content for brown sugar and light brown sugar respectively.

4.11 The sugar is therefore not fit for human consumption. In respect to heavy metals; laboratory analysis results **revealed that Copper, Lead and Arsenic contamination were within the standard specification for brown and light brown sugar.** Industrial sugar was also tested and analysed for conformity with the standard specifications. The tests showed that the **industrial sugar was fit for use in preparation of foods meant for human consumption.**

4.12 A subsequent report submitted by the Ministry of Health indicated that one (1) sample out of five (5) samples collected from **Moi Airbase Eastleigh, Nairobi County Ref. F/MISC/267/17-18** tested positive for Mercury at 0.1141 ppm. Out of five (5) samples collected from Bungoma County, it was reported that one (1) sample tested positive for Mercury at 0.5910 ppm hence not fit for human consumption. **(Annex16).** Correspondence through letter reference **Ref. F/MISC/270/17-18** between the Director of Public Health and the Public Health Officer, Bungoma County indicates that the sample was obtained from Webuye West. The Committee efforts to establish the ownership details of the consignment were unsuccessful. The contaminated sugar is under seizure by the Multi–Agency Taskforce (MAT) pending further action.

Cabinet Secretary for Interior and Coordination of National Government

4.13 The Cabinet Secretary for Interior and Coordination of National Government submitted that his allegation on presence of sugar contaminated with mercury in the country was cautionary and intended to call the attention of the general-public to the existence of contaminated products in the market.

4.14 The Government Chemist was moved from the Ministry of Health to the Ministry of Interior and Coordination of National Government through Executive Order No.1 of 2018 dated 5th June 2018. The CS did not corroborate his statement on presence of mercury in sugar despite the Government Chemist being housed in his docket by the time he appeared before the Committee.

Cabinet Secretary National Treasury

4.15 The Executive order No. 1 of 2017 dated 10th February, 2017 declaring drought and famine as a national disaster directed government Ministries, Agencies and Departments to institute measures aimed at alleviating the ramifications of the drought experienced in the country.

4.16 Inter-Ministerial meeting held at Harambee House on 5th May 2017 **(Annex 21)** resolved to import sugar duty free into the country. The meeting reviewed the supply of sugar and milk in the market and noted that the shortages had led to an escalation of prices of these products. The objective of the Inter-Ministerial consultations was to explore measures to mitigate the escalation of prices of sugar and milk.

4.17 The Gazette Notice No. 4536 **(Annex 5)** issued by the Cabinet Secretary National Treasury Mr. Henry Rotich published on 12th May 2017 allowed importation of;

(a) Sugar by any person, with effect from the date of the notice to 31st August 2017

(b) 9,000 metric tonnes of milk powder imported by milk processors, with the authority of the Kenya Dairy Board, with effect from the date of the notice to 31st July 2017.

4.18 The Gazette Notice No. 4536 waived duty on sugar importation whereas other requirements were to be observed as per the law including health and safety, quality specifications and standardization by the Kenya Bureau of Standards and other relevant agencies in accordance with the law. The importation of sugar was time bound and not quantity based.

4.19 During this period 829,871 MT of sugar were imported against a deficit of 343,889MT based on the local production of 376,111 MT hence resulting to over importation by 453,760 MT. A total of 194 Companies imported sugar during the duty-free window. **(Annex)**.

4.20 The Gazette Notice No. 4536 failed to give guidelines on quantity and type of sugar that was to be imported, whereas importation of milk powder was specified in paragraph (b) of the same Gazette Notice. The CS National Treasury opened up the otherwise well regulated sugar importation process to abuse by any person. This allowed for importation of 829, 871 MT of sugar when the deficit based on the local production was 343, 889 MT, hence an over importation by 453,760 MT.

The Role of CS Agriculture, Livestock, Fisheries & Irrigation

4.21 According to Executive Order No.1 of 2013, the then Ministry of Agriculture, Livestock and Fisheries was responsible for food safety, security and inspections. In this regard, the National Treasury published Gazette Notice No.4536 based on the Executive Order No. 1 of 2017 declaring drought and famine as a national disaster. A consultative inter-ministerial meeting chaired by Head of Public Service held on 5th May, 2017 **(Annex21)** at Harambee House directed the National Treasury to gazette the importation of sugar duty-free.

4.22 Registration of sugar importers is conducted pursuant to Legal Notice No. 114, Sugar Imports, Exports and By-Products (Amendment) Regulations, 2001 importers are required to file a pre shipment request with AFA by submitting documentary evidence of;

(a) Quantity and type of sugar to be imported;
(b) Country of origin;
(c) Pro-forma invoice showing all charges (FOB, Freight, Insurance Premium);
(d) Intended time of importation; and
(e) The supplier of the sugar.

4.23 After the expiry of Gazette Notice No. 4536 on 31st August 2017, the CS for National Treasury following the advice of the CS Agriculture, Livestock and Fisheries published a subsequent Gazette Notice No. 9801 on 4th October, 2017 **(Annex 5)** extending the duty free window for the importation of sugar. The Gazette Notice provided that duty would not be payable on sugar loaded into a vessel between 1st September, 2017 and 31st December, 2017 destined to a port in Kenya and consigned to a local sugar miller. Gazette Notice No. 9801 as amended by Gazette Notice No. 10149 published on 13thOctober, 2017 created an avenue for tax evasion by sugar millers who imported sugar between 1st September, 2017 and 3rd October, 2017.

4.24 Gazette Notice No. 9802 amended Gazette Notice No. 4536 to specify that only sugar loaded on a vessel between 12th May, 2017 and 31st August, 2017 would quality for importation on a duty free basis. The failure to specify whether the waiver of duty was applicable to "sugar loaded on a vessel within the duty free window" or "sugar imported within the duty free window" was abused by unscrupulous dealers. Gazette Notice No.9802 was specifically designed to benefit fourteen (14) companies **(Annex 9)**. There were no justifiable reasons why the fourteen companies were given preferential treatment during the clearance of imported sugar.

4.26 The Gazette Notice No. 9801 was published on 4th October 2017 **(Annex 6)**. Therefore, sugar imported between 1st September and 3rd October 2017 was not within the duty free window. As such, millers who imported sugar outside the duty free window are obligated to pay import duty. The Gazette Notice contravened the basic principle on retrospective application of the law.

4.27 The Parliamentary report on the investigation into *"The crisis facing the sugar industry in Kenya"* by the Departmental Committee on Agriculture, Livestock and Co-operatives in the 11th Parliament established that certain companies were involved in illegal importation and repackaging of contraband sugar. The Committee had recommended that their import licences be withdrawn. The licensing body AFA did not withdraw the licences. Therefore some of the companies participated in and benefited from the duty free importation of sugar in 2017. The companies were; Czarnikow E. A. Ltd, Kenafric Industries, Stuntwave Ltd, Mshale Commodities and Rising Star Commodities Ltd.

4.28 The South Nyanza Sugar Company applied for a licence to import 90,000 MT under Gazette Notice No. 9801. The Company was however allowed to import 50,500 MT on 19th October, 2017, six (6) days after the expiry of Gazette Notice No. 9801 on 13th October, 2017. In addition, the Company did not have the financial capacity to pay for the imports as it was technically insolvent. **(Annex 22)**

4.29 The Management of Sony Sugar Company informed the Committee that they were not involved in the handling of the imported sugar and could therefore not guarantee the quantity and quality of sugar imported. The licence issued to them was not transferable to a third party; they were paper consignees.

South Nyanza Sugar Company entered into a contractual agreement with Ms Holbud Ltd, an international supplier of commodities to secure the consignment. The Contract involved a *buy back* arrangement under which, Ms. Holbud would sell the imported sugar to Sony Sugar Company and the agents of Ms. Holbud would take responsibility for the importation, clearing and handling of the sugar. The six *buy back* companies along with Sony Sugar Company were required to meet all necessary legal and regulatory mechanisms as per the requirements of KS: EAS 749:2010. **(Annex 23)**

4.30 The Company made a commission of Kshs. 82 Million in a transaction worth approximately Kshs. 2.5 Billion. The contract lacked a clear formula for sharing the profit earned. If duty was paid on the imported sugar the country would have earned approximately Kshs. 2.5 Billion.

Handling, Storage and Disposal

4.31 The handling, offloading, bagging, storage and transportation of some of the sugar was done in contravention of the standards set out in KES:EAS 749:2010. From field visits conducted by the Committee in Mombasa (Multiple Inland Container Depots), it was evident that the sugar had been stored in unhygienic conditions contrary to Section 127 of the Public Health Act. Specific violations included transporting sugar in open tippers which were also used to ferry other non-food products such as fertilizer. The sugar was stored in open warehouses on dusty contaminated with foreign elements such as klinker and cement.

4.32 According to the Cabinet Secretary Interior and Co-ordination of National Government 95% of sugar imported into the country gained entry through the port of Mombasa whereas 5% contraband sugar found its way into the country through porous borders. The quality and safety conditions of the contraband sugar could not be ascertained.

4.33 It is not possible to differentiate raw sugar (for further processing) and brown sugar (for direct consumption) in absence of laboratory analysis.

4.34 Some supermarkets, wholesalers and retail outlets served as avenues in the distribution and sale of the sugar, by virtue of the fact that most supermarkets, wholesalers and retail outlets purchase unpackaged sugar from millers in 25 kg bags or 50kg bags and consequently package it into smaller quantities under uncontrolled conditions.

4.35 From the samples collected from forty five (45) Counties by KEBS and laboratory analysis by the Government Chemist, contamination of sugar was majorly in moisture, yeast, moulds, total viable count and polarisation. Sugar contaminated with Mercury was detected in two samples; from Moi Airbase in Eastleigh, Nairobi and Webuye West in Bungoma County. The consignments of contaminated sugar are under the custody of the Multi-Agency Team pending further action.

4.36 Efforts by the Joint Committee to validate the findings of the Government Chemist on the presence of Mercury in the seized consignment of sugar by independent agencies namely the University of Nairobi and the Kenya Plant and Health Inspectorate Service (KEPHIS) were unsuccessful after they were denied entry to the two sites by the Multi-Agency Team.

COMMITTEE RECOMMENDATIONS

From submissions received and observations made, the Joint Committee recommends that:-

5.1 All sugar that does not comply with the set standards and hence unfit for human consumption should be destroyed by the Multi-Agency Taskforce or any other appropriate government agencies within twenty one (21) days of adoption of the report of the Joint Committee Departmental Committee on Agriculture and Livestock and Trade, Industry and Co-operatives by the House.

5.2 The importers, wholesalers and millers dealing in contaminated sugar should be investigated by the relevant government agencies with a view to prosecution for violating the provisions of Section 3 of the Food, Drugs and Chemical Substances Act (Cap. 254), Section 131 of the Public Health Act (Cap. 242) and any other relevant law.

5.3 The Kenya Revenue Authority should recover duty payable on all sugar imported between 1st September and 3rd October, 2017. The importers benefited as a result of the retrospective application of the law vide Gazette Notice No. 9801.

5.4 The Directorate of Criminal Investigations and the Ethics and Anti-Corruption Commission should investigate the alleged irregular transaction between South Nyanza Sugar Company Ltd and all other companies for the alleged tax evasion of approximately Kshs. 2.5 Billion.

5.5 The relevant investigative agencies should investigate the Cabinet Secretary for National Treasury to ascertain the circumstances under which Gazette Notice No. 4536, Gazette Notice No. 9801, Gazette Notice No. 9802 and Gazette Notice No. 10149 were issued, leading to importation of excess sugar into the country and evasion of taxes.

5.6 The relevant investigative agencies should investigate the then Cabinet Secretary for Agriculture, Livestock and Fisheries to establish the circumstances under which the CS recommended waiver of duty for the fourteen (14) companies which imported sugar under Gazette Notice No.9802.

5.7 The Directorate of Criminal Investigations and the Ethics and Anti-Corruption Commission should conduct further in-depth investigations of all irregularities relating to the importation of sugar into the country.

5.8 The Government should ban importation of un-bagged/bulk sugar and institute measures to guarantee the safety of sugar and other food commodities imported into the country.

5.9 The Government should ban the importation of raw sugar meant for further processing as table sugar to avoid diversion of this sugar into the local market and safeguard the local sugar cane farmers.

5.10 KEBS should undertake a thorough review of its existing standards for sugar importation to provide that all sugar imported into the country is tested for presence of heavy metals prior to issuance of Pre-verification of Export Certificate and Certificates of Conformity from the country of origin.

5.11 The relevant investigative agencies should investigate the then Cabinet Secretary, Ministry of Trade, Industry and Co-operatives under whose docket KEBS falls to establish the circumstances under which KEBS failed to undertake adequate market surveillance to guarantee the safety and quality of sugar in the country.

5.12 The Government, through the Multi-Agency Team should speed up investigations into the unfit and contraband sugar and publish its findings within twenty one (21) days of adoption of the report of the Joint Committee Departmental Committee on Agriculture and Livestock and Trade, Industry and Co-operatives by the House.

5.13 The relevant agencies should ensure that all raw sugar imported into the country during the duty free window is reprocessed in compliance with the set KEBS standards.

5.14 The Multi-Agency Taskforce should ensure that seized Sugar which has complied with the relevant tests and the set standards is released back to the owners immediately. (Annex)

5.15 The samples collected from sugar seized at Diamond Wholesalers godown in Eastleigh and Paleah Stores in Ruiru were tested by KEBS for the following heavy metals: Mercury, Arsenic, Lead and Copper. KEBS detected heavy presence of copper at 20.7 ppm from samples of sugar seized at Diamond Wholesalers against a maximum acceptable limit of 2.0 ppm and the levels of Lead was at 0.35 ppm in samples collected from Paleah stores against the recommended limit of 0.05 ppm. **(Annex)**. The Relevant government agencies to investigate the circumstances leading to the contamination of sugar with Copper and Lead.

5.16 In view of the findings submitted by the Government Chemist that two samples tested positive for Mercury (Moi Air Base, Eastleigh **Ref. F/MISC/267/17-18** at 0.1141 ppm and Webuye West, Bungoma **Ref. F/MISC/270/17-18** at 0.5910 ppm) and the obstruction of the University of Nairobi (UoN) and Kenya Plant Health Inspectorate Service (KEPHIS) to validate the same finding through independent testing agencies, the relevant Government agencies should immediately conduct further investigations on:-

(a) Why the contracted institutions were denied access by the Multi-Agency Taskforce to the consignments or lots on two occasions; and,

(b) The circumstances leading to the contamination of sugar with Mercury.

Signature.................................... Date....1/8/2018..............

HON. KANINI KEGA
(CHAIRPERSON)
JOINT COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES AND AGRICULTURE & LIVESTOCK

Signature.................................... Date....01/08/2018......................

HON. ADAN HAJI ALI
(VICE CHAIRPERSON)
JOINT COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES AND AGRICULTURE & LIVESTOCK