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REGULATORY IMPACT ASSESSMENT (RIA) REPORT

THE SUGAR DEVELOPMENT LEVY ORDER, 2025

FOR

KENYA SUGAR BOARD

APRIL 2025

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EXECUTIVE SUMMARY

This Regulatory Impact Assessment (RIA) is a policy tool whose purpose is to examine and measure the likely benefits, costs and effects of the proposed Sugar Development Levy Order, 2025 pursuant to Sections 6 & 7 of the Statutory Instruments Act, CAP 2A. It examines the impact on the establishment of a Levy Order whose main objective is to impose a levy on domestic sugar and imported sugar in Kenya. The Order is aimed at streamlining collection of levy imposed on domestic sugar and imported sugar in Kenya.

This RIA is divided into 11 parts as follow;-

Part 1 is the Introduction which outlines the Regulatory Making Authority and its legal mandate. Additionally, it delineates the requirements of the Statutory Instruments Act in drawing a Regulatory Impact Assessment.

Part 2 of the RIA captures a statement of the purpose and objects of the proposed Sugar Development Levy Order, 2025.

Part 3 of the RIA outlines the salient features of the Sugar Development Levy Order. It gives a general summary of the provisions of the Order.

Part 4 provides a historical background on the imposition of a levy on domestic sugar and imported sugar in Kenya.

Part 5 of the RIA dives into background and context of imposition of Sugar Development Levy

Part 6 speaks to the policy and legal framework for the proposed Sugar Development Levy Order, 2025

Regulatory Impact Assessment on the Sugar Development Levy Order, 2025

Part 7 is on the consultative process adopted to develop the RIA. It states the initial consultative process and other engagements with experts, agencies and general public.

Part 8 of the RIA is a cost benefit analysis that weighs the costs of implementing the proposed Order against the benefits of what the proposed Order are anticipated to bring. It also justifies why the regulatory option is appropriate.

Part 9 is the conclusion.

Part 10 is the recommendations on the option to adopt.

Part 11 is the annexures.

1. INTRODUCTION

Regulatory-Making Authority and the Legal Mandate

Kenya Sugar Board (KSB) is a body corporate with perpetual succession and a common seal established under Section 3 of the Sugar Act, No. 11 of 2024. KSB plays an integral role in regulation, development and promotion of the sugar industry. Additionally, it coordinates the activities of value chain actors within the industry and facilitates equitable access to the benefits and resources of the industry by all interested parties.

KSB plays a critical role in consumer protection by monitoring and regulating the domestic market with a view to identifying any distortion in the sugar market and advising the Government and interested parties on any corrective measures to be taken. KSB facilitates Agriculture by establishing linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate flow of research findings to the interested parties as well as providing advisory services to growers, out-grower institutions and millers. KSB participates in the formulation and implementation of overall policies, plans and programs of work for the development of the industry. It promotes and encourages the use of environmentally friendly technologies in the sugar industry.

KSB in collaboration with the county governments, implements an equitable mechanism for the pricing of sugar crop and appropriation of proceeds from the disposal of the byproducts of sugar production between millers and growers as stipulated in the guidelines. Further, in consultation with the county governments, it formulates guidelines on an efficient, safe and economical transportation of sugar, sugar crop and disposal of unutilized by-products.

KSB provides an important platform for dissemination of market information to growers and millers in that it gathers and disseminates market information on regional and global supply chain dynamics for the benefit of stakeholders.

KSB also plays an important role in trade where it registers and licenses sugar and jaggery mills, exporters, importers and dealers as well as enforces and monitors compliance with standards along the sugar value chain. In doing this, it contributes to the Kenyan Economy every year more than twenty (20) billion shillings in revenue. The passage of the Sugar Act, No. 11 of 2024, introducing the Sugar Development Levy, aims to alleviate the financial strain on the sugar sector by providing dedicated funding, which was previously drawn from the industry's own earnings.

Section 40 (1) of the Sugar Act provides that the Cabinet Secretary shall in consultation with the Board, by order in the *gazette*, impose a levy on domestic sugar not exceeding four *per centum* of the value and a four *per centum* of CIF value on imported sugar to be known as the Sugar Development Levy. Further, the Order shall provide the time at which any amount payable by way of the levy shall become due. In consideration of the above, the Cabinet Secretary in consultation with KSB has prepared the draft **Sugar Development Levy Order, 2025** (proposed Order). This is a statutory instrument which seeks to boost and streamline the collection of levy on domestic sugar and imported sugar.

Requirements of the Statutory Instruments Act

The Statutory Instruments Act, CAP 2A is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require the regulation-making authority to prepare a RIA about an instrument if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, prior to making the statutory

instrument. The Act further sets out certain key elements that must be contained in the RIA *inter alia*—

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Section 5 of the Act requires a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content. The Cabinet Secretary, Ministry of Agriculture and Livestock Development undertakes public consultations and prepares this Regulatory Impact Assessment (RIA) in partial fulfilment of the requirements of the Statutory Instruments Act.

Regulatory Impact Assessment

RIA is a systematic policy tool used to examine and measure the likely benefits, costs and effects of new or existing regulation. It is an analytical report purposed to assist decision makers. As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit. Typically, the structure of a RIA should contain the following elements: title of the proposal, the

objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

RIA is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. RIA promotes evidence-based policy making as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, RIA should confirm whether or not a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIA therefore has objectives of improving understanding of the real- world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

2. PURPOSE AND OBJECTS OF PROPOSED SUGAR DEVELOPMENT LEVY ORDER, 2025

Scope

The scope of the proposed Order is as follows—

- a) Prescribe levy payable on domestic sugar and imported sugar;
- b) Collection of Development Levy; and
- c) Remission of the Development Levy.

Objective

The Proposed Order aims to enumerate provisions to give effect to Section 40(1) of the Sugar Act.

Specific objectives

Specifically, the implementation of the Sugar Development Levy Order is intended to—

- a) Specify the amount of levy imposed on domestic sugar and imported sugar
- b) Identify who collects the levy imposed on domestic sugar and imported sugar
- c) Stipulate the time when levy imposed on domestic sugar and imported sugar will be due.

3. AN OVERVIEW OF THE PROPOSED ORDER: SALIENT FEATURES OF THE SUGAR DEVELOPMENT LEVY ORDER

This overview is intended to assess whether the proposed Order is clear, consistent, comprehensible, and comprehensive enough to address the identified problem. The rules should be understood by persons likely to be affected by the proposed order, and to that end KSB has taken steps to ensure that the text and structure of the proposed order are as clear as possible.

The structure of the proposed Sugar Development Levy Order is as follows:

- 1- Citation
- 2- Imposition of development levy
- 3- Collection of levy
- 4- Payment of levy

4. HISTORICAL BACKGROUND ON THE IMPOSITION OF A LEVY ON DOMESTIC SUGAR AND IMPORTED SUGAR IN KENYA.

The history of Sugar Development Levy can be traced through various legislative and administrative interventions over the years. Some of these interventions have resulted to inefficiencies in the administration of this levy.

The Kenya Sugar Authority Order, 1973 (Cap. 318) established the Kenya Sugar Authority to promote and foster the effective and efficient development of sugarcane for the

production of white sugar in Kenya; and advise on the rules and regulations necessary to enable the effective and efficient functioning and development of the sugar industry. In the year 2001, the Parliament enacted the Sugar Act which established the Kenya Sugar Board, a successor to the Kenya Sugar Authority which was responsible for regulating the sugar industry.

The objects of the Act were to promote the sugar industry, coordinate industry activities, and ensure equitable access to industry resources. It provided for the development of the sugar industry, including the regulation of sugarcane cultivation.

However, the Sugar Act was repealed by the Crops Act, 2013. The Crops Act sought to streamline agricultural regulations by integrating the oversight of various crops, including sugarcane, under a single legislative framework. Consequently, this led to shift from a dedicated sugar board to the Agriculture and Food Authority (AFA), which was given broader responsibilities for regulating the agricultural sector.

Although, the Act intended to increase efficiency in gains in management of the sugar sector, the same were not realized due to issues which included a lack of a Board of Directors, operational inefficiencies, and financing challenges compounded by the revocation of crop levies in 2016.

The Sugar Directorate under the AFA faced many challenges that led to it becoming ineffective and inefficient. As a result, public sugar companies were unable to pay farmers, there was increased production costs, decline in land under sugar cultivation, decline in research and trainings, decline in cane development and productivity enhancement and decline in factory development and rehabilitation.

As a result of these inefficiencies, Parliament enacted the Sugar Act, No. 11 of 2024 which re-established the Kenya Sugar Board and conferred it with the mandate among others of collection of the sugar development levy. The levy is to be imposed on the domestic sugar and imported sugar. It allows a levy of up to four per centum on domestically produced and imported sugar which is to be primarily used to support the development of the Kenyan sugar industry.

Further, the Act provides that the levy collected by the KSB is allocated to various areas such as factory development, cane development, research, and industry infrastructure. The funds are to be distributed as follows: 15% towards factory development and rehabilitation, 15% allocated to sugarcane-producing regions on a pro-rata basis based on production capacity for infrastructural development and maintenance; 10% for the administration of the Board; and 5% to the functions of sugarcane farmers' organizations.

Cane farmers will benefit from 40% to cane development and 15% to factory rehabilitation, to boost productivity, develop infrastructure and directly support cane farmers across sugar-producing regions.

The Kenya Sugar Research and Training Institute will benefit from 15% of the development levy, empowering the institute to advance research and improve training standards. This investment in knowledge and skills aims to strengthen Kenya's Competitiveness in both local and global sugar markets.

5. BACKGROUND AND CONTEXT OF IMPOSITION OF SUGAR DEVELOPMENT LEVY

Policy Background

United Nations Sustainable Development Goals (SDGs)

Goal 1 addresses the eradication of hunger. One of the purposes of the Sugar Development Levy is the stabilization of the sugar industry which the resultant effect of, is increase of incomes for smallholder farmers involved in sugarcane farming hence, the reduction of poverty in rural areas in the sugar catchment areas.

Goal 2 aims at ending hunger, achieving food security and improved nutrition and promoting sustainable agriculture. Fifteen (15) per centum of the development levy has been designated for advancement of research and improved training of the stakeholders in the sugar sub-sector. Sustainable agriculture will be realized through the development of drought-resistant sugarcane varieties and the adoption of climate smart farming practices.

Goal 3 addresses decent work and economic growth. It entails achieving higher levels of economic productivity through diversification, technological upgrading and innovation. This levy is intended to support the growth of the sugar industry which will lead to job creation, improved wages, and overall better working conditions for those employed in the sugar sub-sector. Additionally, the funds from the levy will be used in the factory development such as modernization of sugar mills, and improved processing technology, which will result in the sector's increased contribution to national GDP.

Goal 4 deals with building resilient infrastructure, promotion of inclusive and sustainable industrialization and fostering of innovation. The Levy will be used to finance upgrades or establishment of infrastructure like better roads in the sugarcane catchment areas, irrigation systems, or processing facilities that will not just benefit the cane farmers but also the broader agricultural sector.

Goal 5 addresses issues of climate change and its impact. Part of the funds from the levy will be used in research on better agricultural practices that reduce the carbon footprint of sugar production, like bioenergy from sugarcane by-products (bagasse). In doing so, the levy will be supporting climate action.

These ideals are achievable with enhanced production where development levy plays a critical role in supporting the sugar industry. The Proposed Order is intended to support the sugar industry which will in effect power the manufacturing sector hence increase contribution to the national GDP.

Africa Agenda 2063

One of the key aspirations of Africa Agenda 2063 is *“A Prosperous Africa, based on Inclusive Growth and Sustainable Development”*. One of the goals under this aspiration is Transformed Economies whose priority areas are:

- Sustainable and inclusive economic growth
- Science Technology and Innovation (STI) driven Manufacturing / Industrialization and Value Addition
- Economic diversification and resilience

Technology and innovation is considered a key driver of the manufacturing sector. KSB and Kenya Sugar Research and Training Institute will need to continuously develop

standards in line with developing technologies. This exercise comes with a cost implication which the Proposed Order seeks to address.

Kenya's Vision 2030

The Vision identifies manufacturing as a key enabler for driving the country to a globally competitive and prosperous country with a high quality of life by the year 2030. The goal is to generate an additional KES. 30 billion to GDP by producing consumer goods that compete with imports. This is achievable through research which part of the development levy is intended for.

The Kenya National Trade Policy, 2016

The Policy outlines its mission as to facilitate Kenya's transformation into a competitive export led economy, enhance regional integration and widen participation in both domestic and international trade. It enumerates one of its objectives as creation of an enabling environment for trade and investment to thrive. KSB will play a critical role by enhancing the production of sugar upon utilization of the development levy.

Domestic Context

KSB plays a central role in consumer protection and trade facilitation. Sugar Development Levy Order is a key component in financing KSB activities.-. It sets out the provisions that specify the amounts of levies payable to KSB or its agents for domestically produced and imported sugar. For an effective model, the Sugar Development Levy Order should have legal status and should be capable of enforcement so that all millers and persons involved in the sugar industry can fully comply with it.

Sugar Development Levy Order provides levies payable for domestic sugar and imported sugar which should be remitted to KSB at prescribed timelines. This levy supports KSB activities, hence, facilitation of trade and protection of health and safety of consumers and stakeholders. Further, the Sugar Development Levy Order as read together with Section 40 of the Sugar Act, 2024 provides general information as well as specific information such as the purpose of the development levy and penalties imposed for failure to pay levies among others.

6. LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED SUGAR

DEVELOPMENT LEVY ORDER, 2025

An evaluation of the legal and policy framework related to Sugar Development Levy Order is intended to answer the question whether there is a legal basis for developing the proposed Order. It is also intended to bring out the context and legal environment within which the proposed Order is being developed.

Statutory instrument proposals should be structured so that all regulatory decisions rigorously respect the principles of the rule of law, that is, there must be explicit responsibility demonstrating that a proposed Statutory Instrument is authorized by the respective Act of Parliament and is consistent with the Constitution as well as any treaty or international convention obligations that Kenya has acceded to.

In addition, a proposed Statutory Instrument must complement other legal requirements and be in statutory harmony with the entire statute book.

Constitutional basis

Article 42 of the Constitution of Kenya confers every person with the Right to a clean and healthy environment. This protects them from activities and practices that are harmful such as emissions of sugarcane waste in rivers or emissions of carbon in the air. The development levy will help in factory development that will see to this right being guaranteed to all persons.

Article 46 of the Constitution of Kenya, 2010 has robust provisions on consumer protection. All consumers have a right to quality goods and services, access to all information necessary to derive full benefit of the goods and services; and protection of their health, safety as well as that of the environment.

Article 201 of the Constitution has robust provisions on the principles of public finance which are enumerated as follows:

- a. there shall be openness and accountability, including public participation in financial matters;
- b. the public finance system shall promote an equitable society, and in particular—
 - i. the burden of taxation shall be shared fairly;
 - ii. revenue raised nationally shall be shared equitably among national and county governments; and
 - iii. expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas
 - iv. expenditure shall promote;
- c. the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations; and
- d. Public money shall be used in a prudent and responsible way.

Article 209 of the Constitution empowers the national government to impose any tax or duty while **Article 210** requires that any tax or licensing fee imposed, waived, or varied is provided for in a Legislation.

Sugar Act, No. 11 of 2024

Section 4 of the Sugar Act provides the mandate of the KSB including regulation, development and promotion of the sugar industry.

Section 40(1) of the Sugar Act empowers the Cabinet Secretary in consultation with KSB to publish an Order known as Sugar Development Levy in the Gazette on the imposition of a levy on domestic sugar not exceeding four *per centum* of the value and a four *per centum* of CIF value on imported sugar. The Order is to prescribe the collection and payment of levy. It ought to prescribe the date the levy will be due.

Public Finance Management Act, CAP 412A

The Act defines “national government revenue” to mean all taxes imposed by the national government under Articles 206(1)(a) and (b) and 209 of the Constitution, excluding county government revenue.

Sugar Development levy is therefore considered a national government revenue in the context of the Act. The Act further requires that public finances are managed according to the principles laid down in the Constitution.

Statutory Instruments Act, CAP 2A

The Act defines a statutory instrument to mean any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued. The

Sugar Development Levy Order is therefore a statutory instrument under the Sugar Act, No. 11 of 2024.

Where the proposed statutory instrument is likely to impose significant costs on the community or a part of the community, Section 6 of the Act requires the regulation making authority to prepare a regulatory impact statement about the instrument prior to the enactment of the instrument.

7. PUBLIC PARTICIPATION

Legal requirements relating to public participation and consultation

Article 10 of the Constitution of Kenya enumerates the National values and principles of governance that informs public service including the law-making processes. It mandates any public institution making any law to undertake public participation before enacting and implementing any public policy decision or law.

Article 232 of the Constitution of Kenya provides the values and principles of public service. It requires the involvement of the people in the process of policymaking and participation, transparency and provision to the public of timely and accurate information.

With regard to the subsidiary legislation making process, the Statutory Instruments Act, CAP 2A requires that the regulation-making authority to make consultations before making the statutory instrument in question and in particular where the proposed Order is likely to have a direct, or a substantial indirect effect on business or restrict competition.

The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation-making authority shall have regard to all relevant matters,

including the extent to which the consultation:

- a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be less than 14 days or be invited to participate in public hearings concerning the proposed instrument.

The Process of public consultation

The Cabinet Secretary in consultation with KSB prepared a draft Order in December 2024 which was subsequently publicized on the KSB website on 8th January 2025. Further, the CEO published a notice in the newspapers inviting the public to submit comments on the proposed Sugar Development Levy Order, 2025, as outlined in the draft gazette notice within 14 days. The comments and written memoranda were to be submitted via email to info@ksb.go.ke.

On 6th January 2025, the CEO sent out letters to all Sugarcane Farmers Organizations communicating itinerary for the public participation on the proposed Order. On 9th January 2025, the CEO sent updated letters communicating the itinerary for the public participation on the proposed Order.

The said correspondences from the CEO contained the following—

- i. a statement summarizing the Levy Order;

- ii. ways in which the documents relating to the Levy Order shall be accessed;
- iii. invitation for the public to submit written comments or representations;
- iv. mode of conducting public participation;
- v. venue, date, and time; and
- vi. Contacts of KSB.

KSB in collaboration with the Ministry of Agriculture and Livestock Development undertook the process of public participation from 13th January to 18th January 2025 in 16 regions across the country aimed to engage diverse stakeholders, including farmers, millers, importers, traders, researchers, and members of the public.

The forums were open to all members of the public who desired to participate and were allowed to contribute personally or through representatives.

In conducting the public participation, KSB ensured that:

- a. All participants, including their representatives and all respondents, were courteous, respectful, and civil during public participation processes.
- b. Freedom of expression was limited to the subject matter.
- c. All reasonable measures were taken to facilitate the participation of persons with disabilities in the forums.
- d. The languages used were widely understood by the persons present at the forums

3.	Confirm whether the Levy will affect VAT calculations for sugar imports	Responded	VAT is levied on the composite CIF value plus all applicable levies including SDL
4.	Exempt manufacturers	Responded	SDL is a consumer levy and not directly imposed on manufacturers but on domestic sugar and imported sugar as specified in the Act.
5.	Levy should not be collected by KRA	Not adopted	The Board will collect the levy directly or through an appointed agent, as outlined in the Act.
6.	Levy imposed on imports should be increased to 15%	Not adopted	The percentage is fixed at a maximum of 4% as provided by the Act.
8	Payment directly to Kenya Sugar Board (KSB) instead of customs entry	Not adopted	The Board will collect the levy directly or through an appointed agent, as outlined in the Act.
	Levy to start at 2% instead of 4%	Not adopted	Stakeholder input acknowledged however, the levy to retained at 4% at this initial stage with room for adjustment in future as the industry stabilizes.
10	Imported sugar levy higher than locally produced sugar levy	Not adopted	The stakeholder proposal is against the National Treatment Principle for international trade.
11	Remove the term "agent" in levy remittance provisions	Not adopted	The term "agent" is provided for in the Act.

in turn inform the decision makers since the cost of government action should be justified by its benefits before action is taken.

However, given the nature of this development levy and the available information, the costing will be qualitative. The task of comparing the benefits and costs associated with the proposed Levy Order and determining whether, and to what extent, there would be a net benefit associated with its adoption is an onerous one

Table1: Benefits and Costs arising from the new features of the Sugar Development Levy Order, 2025

S.No	Category	Benefits	Cost
1.	Support of cane farmers	Enactment of the Sugar Development Levy will lead to stabilization of the farmer's incomes through better yields and possibly a higher cane prices	Adjustments in farming practices to align with any new industry standards proposed by KSB and Kenya Sugar Research and Training Institute might require initial investment
2.	Sugar industry development	The Sugar Development Levy will provide funding for research and innovation in sugarcane cultivation and processing. Further, it will help in Infrastructure improvements and developments in sugar-producing areas	KSB will incur an administrative costs for collection and management of the levy.

Regulatory Impact Assessment on the Sugar Development Levy Order, 2025

3.	Decent work & Economic Growth	<p>The funds appropriated from this fund to the sugar industry has a potential for job creation in farming and processing. It also has a potential for increased value addition for local and export markets.</p> <p>The realization of the benefits from the increased efficiencies and yields resulting from utilization of the levy will lead to a reduction in the cost of production and hence lower consumer prices</p>	<p>At the beginning the implementation of the levy will likely lead to increased consumer prices for sugar thus affecting purchasing power.</p>
4.	Efficiency and Potential	<p>The Sugar industry has a potential to become self-sufficient and competitive.</p>	<p>If the funds collected are not used effectively as stipulated in the law, then it will be inefficient as money may be appropriated to less productive entities and activities.</p>

5.	Environment and Health	It will encourage sustainable farming practices hence reducing negative environmental impacts. Imposition of the levy has a potential for health benefits through better sugar quality control.	There are costs associated with implementing and monitoring sustainable production practices.
6.	Risks and Challenges	Increased transparency in the use of funds could lead to a greater public trust and support for the sugar industry.	There will be costs associated with setting up and implementing structures to ensure transparency and Accountability in levy collection and management.

Consideration of Alternatives to the Sugar Development Levy Order

This section considers whether the proposed Order is the best form of government action. The Statutory Instruments Act, CAP 2A requires a regulator to carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

The options considered under this section are the following:

Option one: Maintenance of the Status Quo

Maintaining the status quo means failing to operationalize the provisions of Section 40(1) of the Sugar Act, No. 11 of 2024. This would amount to an affront to the gains made by the enactment of the Principal Act into law.

Option two: Administrative measures

Use of administrative measures to implement Section 40(1) of the Sugar Act, No. 11 of 2024 would be against the letter and spirit of Article 201 and 209 of the Constitution of Kenya. Notably, Section 40 (1) requires that the Cabinet Secretary makes a Sugar Development Levy Order being the instrument to enable collection of levies.

Option three: Enacting the Sugar Development Levy Order, 2025

The enactment of the Sugar Development Levy Order provides benefits to the sugar industry, farmers, and the broader economy as enunciated under Section 40 of the Sugar Act, No. 11 of 2024.

Impact analysis of the Options

Table 2: Regulatory and non-regulatory options

S.No	Impact on Sectors	Option 1: Maintenance of the Status Quo	Option Two: Administrative Measures	Option Three: Enacting the Sugar Development Levy Order, 2025
1.	Cane farmers	Cane farmers continue to face challenges without additional support or development initiatives from the state.	The cane farmers might not receive clear or equitable benefits from administrative actions.	The cane farmer receives direct benefits through cane development funds, Potentially increasing productivity and income.

2.	Sugar industry	<p>This would lead to continued inefficiencies and lack of industry development.</p> <p>There would be no new funding for factory, research, or cane development.</p>	<p>This might lead to an adhoc or inconsistent implementation, potentially worsening the issues the sugar industry is already grappling with.</p>	<p>It provides a well-structured funding for industry development, research, and infrastructure.</p>
3.	Economy	<p>There are no immediate economic benefits from sugar sector revitalization.</p> <p>This would result potentially into missed opportunities for</p>	<p>The Economic gains and benefits are uncertain due to the lack of structured funding.</p> <p>This would create uncertainty and disorder that lead to confusion or</p>	<p>It stimulates economic activities through job creation, infrastructure development, and industry growth.</p> <p>It supports broader economic goals like poverty reduction and sustainable agricultural practices and methods.</p>

		job creation and economic growth.	legal challenges affecting economic stability.	
4.	Consumers	Sugar prices would remain the same, however, high prices might persist due to inefficiencies.	There is a potential for uneven or unexpected price changes if the levy is applied inconsistently.	It is likely to lead to an increase in sugar prices, but with potential long term benefits in quality and sustainability of sugar production. The realization of the benefits from the increased efficiencies and yields resulting from utilization of the levy will lead to a reduction in the cost of production and hence lower consumer prices

5.	Legal framework	<p>It violates the legal provisions under the Sugar Act, No. 11 of 2024</p> <p>It undermines the legislative progresses.</p>	<p>It contravenes constitutional principles on taxation and public finance management.</p> <p>There is a risk of potential legal disputes over the legality of levy collection.</p>	<p>This is compliance with legal frameworks, ensuring transparency and accountability in levy collection and disbursement.</p> <p>It aligns with the spirit of the Sugar Act and constitutional requirements</p>
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Preferred Option

Based on the above analysis, it is clear the third option (enacting the new Sugar Development Levy Order, 2025) is the preferred option. The benefits and impact of enacting a new Sugar Development Levy Order by far outweigh any estimated cost of its implementation. The other two options have diminished or no impact in addressing the problems outlined above.

9. CONCLUSION

Based on the above analysis, the following matters are apparent:

- a) **Regulatory-Making Authority and the legal mandate:** Section 40(1) of the Sugar Act, No. 11 of 2024, empowers the Cabinet Secretary in Consultation with the Kenya Sugar Board(KSB) by order in the *gazette*, to impose a levy on domestic sugar not exceeding four per centum of the value and a four per centum of CIF value on imported sugar to be known as the Sugar Development Levy. The Cabinet Secretary and KSB therefore have the required legislative powers to propose the Sugar Development Levy Order, 2025.
- b) **Requirements of the Statutory Instruments Act:** Section 5 requires a regulation making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument have an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA should be prepared where a statutory instrument is likely to impose significant costs on the community. The RIA must contain certain key elements namely:
 - a) a statement of the objectives of the proposed legislation and the reasons,
 - b) a statement explaining the effect of the proposed legislation,
 - c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
 - d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
 - e) the reasons why the other means are not appropriate.

The RIA structure requirements have been fully met. Public consultation requirements have been fully adhered to.

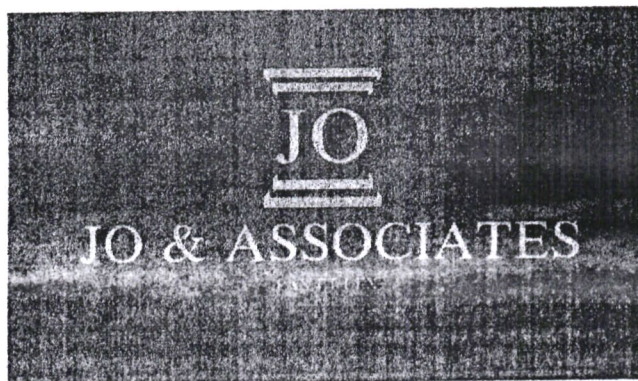
- c) **Other existing legal frameworks:** The draft Sugar Development Levy Order, 2025 proposes to promulgate a new legislation. It is in harmony with other laws making its implementation more effective.
- d) **The draft:** The draft Sugar Development Levy Order, 2025 as drafted is clear, consistent and comprehensive enough to cover all matters.

10. RECOMMENDATION

In view of the above conclusions, it is recommended that the Sugar Development Levy Order, 2025 be approved and adopted.

11. ANNEXURES

1. The draft Sugar Development Order, 2025
2. The Sugar Act No.11 of 2024



IN THE MATTER OF PUBLIC PARTICIPATION ON THE
REGULATORY IMPACT ASSESSMENT (RIA)
ON
THE SUGAR DEVELOPMENT LEVY ORDER, 2025
JANUARY 2025

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EXECUTIVE SUMMARY

This Regulatory Impact Assessment (RIA) is a policy tool whose purpose is to examine and measure the likely benefits, costs and effects of the proposed Sugar Development Levy Order, 2025 pursuant to Sections 6 & 7 of the Statutory Instruments Act, CAP 2A. It examines the impact on the establishment of a Levy Order whose main objective is to impose a levy on domestic sugar and imported sugar in Kenya. The Order is aimed at streamlining collection of levy imposed on domestic sugar and imported sugar in Kenya.

This RIA is divided into 11 parts as follow;-

Part 1 is the Introduction which outlines the Regulatory Making Authority and its legal mandate. Additionally, it delineates the requirements of the Statutory Instruments Act in drawing a Regulatory Impact Assessment.

Part 2 of the RIA captures a statement of the purpose and objects of the proposed Sugar Development Levy Order, 2025.

Part 3 of the RIA outlines the salient features of the Sugar Development Levy Order. It gives a general summary of the provisions of the Order.

Part 4 provides a historical background on the imposition of a levy on domestic sugar and imported sugar in Kenya.

Part 5 of the RIA dives into background and context of imposition of Sugar Development Levy

Part 6 speaks to the policy and legal framework for the proposed Sugar Development Levy Order, 2025 .

Part 7 is on the consultative process adopted to develop the RIA. It states the initial consultative process and other engagements with experts, agencies and general public.

Part 8 of the RIA is a cost benefit analysis that weighs the costs of implementing the proposed Order against the benefits of what the proposed Order are anticipated to bring. It also justifies why the regulatory option is appropriate.

Part 9 is the conclusion.

Part 10 is the recommendations on the option to adopt.

Part 11 is the annexures.

1. INTRODUCTION

Regulatory-Making Authority and the Legal Mandate

Kenya Sugar Board (KSB) is a body corporate with perpetual succession and a common seal established under Section 3 of the Sugar Act, No. 11 of 2024. KSB plays an integral role in regulation, development and promotion of the sugar industry. Additionally, it coordinates the activities of value chain actors within the industry and facilitates equitable access to the benefits and resources of the industry by all interested parties.

KSB plays a critical role in consumer protection by monitoring and regulating the domestic market with a view to identifying any distortion in the sugar market and advising the Government and interested parties on any corrective measures to be taken. KSB facilitates Agriculture by establishing linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate flow of research findings to the interested parties as well as providing advisory services to growers, out-grower institutions and millers. KSB participates in the formulation and implementation of overall policies, plans and programs of work for the development of the industry. It promotes and encourages the use of environmentally friendly technologies in the sugar industry.

KSB in collaboration with the county governments, implements an equitable mechanism for the pricing of sugar crop and appropriation of proceeds from the disposal of the byproducts of sugar production between millers and growers as stipulated in the guidelines. Further, in consultation with the county governments, it formulates guidelines on an efficient, safe and economical transportation of sugar, sugar crop and disposal of unutilized by-products.

KSB provides an important platform for dissemination of market information to growers and millers in that it gathers and disseminates market information on regional and global supply chain dynamics for the benefit of stakeholders.

KSB also plays an important role in trade where it registers and licenses sugar and jaggery mills, exporters, importers and dealers as well as enforces and monitors compliance with standards along the sugar value chain. In doing this, it contributes to the Kenyan Economy every year more than twenty (20) billion shillings in revenue. The passage of the Sugar Act, No. 11 of 2024, introducing the Sugar Development Levy, aims to alleviate the financial strain on the sugar sector by providing dedicated funding, which was previously drawn from the industry's own earnings.

Section 40 (1) of the Sugar Act provides that the Cabinet Secretary shall in consultation with the Board, by order in the *gazette*, impose a levy on domestic sugar not exceeding four *per centum* of the value and a four *per centum* of CIF value on imported sugar to be known as the Sugar Development Levy. Further, the Order shall provide the time at which any amount payable by way of the levy shall become due. In consideration of the above, the Cabinet Secretary in consultation with KSB has prepared the draft **Sugar Development Levy Order, 2025** (proposed Order). This is a statutory instrument which seeks to boost and streamline the collection of levy on domestic sugar and imported sugar.

Requirements of the Statutory Instruments Act

The Statutory Instruments Act, CAP 2A is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require the regulation-making authority to prepare a RIA about an instrument if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, prior to making the statutory

instrument. The Act further sets out certain key elements that must be contained in the RIA *inter alia*—

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Section 5 of the Act requires a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content. The Cabinet Secretary, Ministry of Agriculture and Livestock Development undertakes public consultations and prepares this Regulatory Impact Assessment (RIA) in partial fulfilment of the requirements of the Statutory Instruments Act.

Regulatory Impact Assessment

RIA is a systematic policy tool used to examine and measure the likely benefits, costs and effects of new or existing regulation. It is an analytical report purposed to assist decision makers. As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit. Typically, the structure of a RIA should contain the following elements: title of the proposal, the

objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

RIA is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. RIA promotes evidence-based policy making as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, RIA should confirm whether or not a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIA therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

2. PURPOSE AND OBJECTS OF PROPOSED SUGAR DEVELOPMENT LEVY

ORDER, 2025

Scope

The scope of the proposed Order is as follows—

- a) Prescribe levy payable on domestic sugar and imported sugar;
- b) Collection of Development Levy; and
- c) Remission of the Development Levy.

Objective

The Proposed Order aims to enumerate provisions to give effect to Section 40(1) of the Sugar Act.

Specific objectives

Specifically, the implementation of the Sugar Development Levy Order is intended to—

- a) Specify the amount of levy imposed on domestic sugar and imported sugar
- b) Identify who collects the levy imposed on domestic sugar and imported
- c) Stipulate the time when levy imposed on domestic sugar and imported sugar will be due.

3. AN OVERVIEW OF THE PROPOSED ORDER: SALIENT FEATURES OF THE SUGAR DEVELOPMENT LEVY ORDER

This overview is intended to assess whether the proposed Order is clear, consistent, comprehensible, and comprehensive enough to address the identified problem. The rules should be understood by persons likely to be affected by the proposed order, and to that end KSB has taken steps to ensure that the text and structure of the proposed order are as clear as possible.

The structure of the proposed Sugar Development Levy Order is as follows:

- 1- Citation
- 2- Imposition of development levy
- 3- Collection of levy
- 4- Payment of levy

4. HISTORICAL BACKGROUND ON THE IMPOSITION OF A LEVY ON DOMESTIC SUGAR AND IMPORTED SUGAR IN KENYA.

The history of Sugar Development Levy can be traced through various legislative and administrative interventions over the years. Some of these interventions have resulted to inefficiencies in the administration of this levy.

The Kenya Sugar Authority Order, 1973 (Cap. 318) established the Kenya Sugar Authority to promote and foster the effective and efficient development of sugarcane for the

production of white sugar in Kenya; and advise on the rules and regulations necessary to enable the effective and efficient functioning and development of the sugar industry. In the year 2001, the Parliament enacted the Sugar Act which established the Kenya Sugar Board, a successor to the Kenya Sugar Authority which was responsible for regulating the sugar industry.

The objects of the Act were to promote the sugar industry, coordinate industry activities, and ensure equitable access to industry resources. It provided for the development of the sugar industry, including the regulation of sugarcane cultivation.

However, the Sugar Act was repealed by the Crops Act, 2013. The Crops Act sought to streamline agricultural regulations by integrating the oversight of various crops, including sugarcane, under a single legislative framework. Consequently, this led to shift from a dedicated sugar board to the Agriculture and Food Authority (AFA), which was given broader responsibilities for regulating the agricultural sector.

Although, the Act intended to increase efficiency in gains in management of the sugar sector, the same were not realized due to issues which included a lack of a Board of Directors, operational inefficiencies, and financing challenges compounded by the revocation of crop levies in 2016.

The Sugar Directorate under the AFA faced many challenges that led to it becoming **ineffective and inefficient**. As a result, public sugar companies were unable to pay farmers, there was increased production costs, decline in land under sugar cultivation, decline in research and trainings, decline in cane development and productivity enhancement and decline in factory development and rehabilitation.

As a result of these inefficiencies, Parliament enacted the Sugar Act, No. 11 of 2024 which re-established the Kenya Sugar Board and conferred it with the mandate among others of collection of the sugar development levy. The levy is to be imposed on the domestic sugar and imported sugar. It allows a levy of up to four per centum on domestically produced and imported sugar which is to be primarily used to support the development of the Kenyan sugar industry.

Further, the Act provides that the levy collected by the KSB is allocated to various areas such as factory development, cane development, research, and industry infrastructure. The funds are to be distributed as follows: 15% towards factory development and rehabilitation, 15% allocated to sugarcane-producing regions on a pro-rata basis based on production capacity for infrastructural development and maintenance; 10% for the administration of the Board; and 5% to the functions of sugarcane farmers' organizations.

Cane farmers will benefit from 40% to cane development and 15% to factory rehabilitation, to boost productivity, develop infrastructure and directly support cane farmers across sugar-producing regions.

The Kenya Sugar Research and Training Institute will benefit from 15% of the development levy, empowering the institute to advance research and improve training standards. This investment in knowledge and skills aims to strengthen Kenya's Competitiveness in both local and global sugar markets.

5. BACKGROUND AND CONTEXT OF IMPOSITION OF SUGAR DEVELOPMENT LEVY

Policy Background

United Nations Sustainable Development Goals (SDGs)

Goal 1 addresses the eradication of hunger. One of the purposes of the Sugar Development Levy is the stabilization of the sugar industry which the resultant effect of, is increase of incomes for smallholder farmers involved in sugarcane farming hence the reduction of poverty in rural areas in the sugar catchment areas.

Goal 2 aims at ending hunger, achieving food security and improved nutrition and promoting sustainable agriculture. Fifteen (15) per centum of the development levy has been designated for advancement of research and improved training of the stakeholders in the sugar sub-sector. Sustainable agriculture will be realized through the development of drought-resistant sugarcane varieties and the adoption of climate smart farming practices.

Goal 3 addresses decent work and economic growth. It entails achieving higher levels of economic productivity through diversification, technological upgrading and innovation. This levy is intended to support the growth of the sugar industry which will lead to job creation, improved wages, and overall better working conditions for those employed in the sugar sub-sector. Additionally, the funds from the levy will be used in the factory development such as modernization of sugar mills, and improved processing technology, which will result in the sector's increased contribution to national GDP.

Goal 4 deals with building resilient infrastructure, promotion of inclusive and sustainable industrialization and fostering of innovation. The Levy will be used to finance upgrades or establishment of infrastructure like better roads in the sugarcane catchment areas, irrigation systems, or processing facilities that will not just benefit the cane farmers but also the broader agricultural sector.

Goal 5 addresses issues of climate change and its impact. Part of the funds from the levy will be used in research on better agricultural practices that reduce the carbon footprint of sugar production, like bioenergy from sugarcane by-products (bagasse). In doing so, the levy will be supporting climate action.

These ideals are achievable with enhanced production where development levy plays a critical role in supporting the sugar industry. The Proposed Order is intended to support the sugar industry which will in effect power the manufacturing sector hence increase contribution to the national GDP.

Africa Agenda 2063

One of the key aspirations of Africa Agenda 2063 is "*A Prosperous Africa, based on Inclusive Growth and Sustainable Development*". One of the goals under this aspiration is Transformed Economies whose priority areas are:

- Sustainable and inclusive economic growth
- Science Technology and Innovation (STI) driven Manufacturing / Industrialization and Value Addition
- Economic diversification and resilience

Technology and innovation is considered a key driver of the manufacturing sector. KSB and Kenya Sugar Research and Training Institute will need to continuously develop

standards in line with developing technologies. This exercise comes with a cost implication which the Proposed Order seeks to address.

Kenya's Vision 2030

The Vision identifies manufacturing as a key enabler for driving the country to a globally competitive and prosperous country with a high quality of life by the year 2030. The goal is to generate an additional KES. 30 billion to GDP by producing consumer goods that compete with imports. This is achievable through research which part of the development levy is intended for.

The Kenya National Trade Policy, 2016

The Policy outlines its mission as to facilitate Kenya's transformation into a competitive export led economy, enhance regional integration and widen participation in both domestic and international trade. It enumerates one of its objectives as creation of an enabling environment for trade and investment to thrive. KSB will play a critical role by enhancing the production of sugar upon utilization of the development levy.

Domestic Context

KSB plays a central role in consumer protection and trade facilitation. Sugar Development Levy Order is a key component in financing KSB activities.-. It sets out the provisions that specify the amounts of levies payable to KSB or its agents for domestically produced and imported sugar. For an effective model, the Sugar Development Levy Order should have legal status and should be capable of enforcement so that all millers and persons involved in the sugar industry can fully comply with it.

~~Sugar Development Levy Order provides income benefits for domestic sugar and imported~~ sugar which should be remitted to KSB at prescribed timelines. This levy supports KSB activities, hence, facilitation of trade and protection of health and safety of consumers and stakeholders. Further, the Sugar Development Levy Order as read together with Section 40 of the Sugar Act, 2024 provides general information as well as specific information such as the purpose of the development levy and penalties imposed for failure to pay levies among others.

6. LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED SUGAR

DEVELOPMENT LEVY ORDER, 2025

An evaluation of the legal and policy framework related to Sugar Development Levy Order is intended to answer the question whether there is a legal basis for developing the proposed Order. It is also intended to bring out the context and legal environment within which the proposed Order is being developed.

Statutory instrument proposals should be structured so that all regulatory decisions rigorously respect the principles of the rule of law, that is, there must be explicit responsibility demonstrating that a proposed Statutory Instrument is authorized by the respective Act of Parliament and is consistent with the Constitution as well as any treaty or international convention obligations that Kenya has acceded to.

In addition, a proposed Statutory Instrument must complement other legal requirements and be in statutory harmony with the entire statute book.

Constitutional basis

Article 42 of the Constitution of Kenya confers every person with the Right to a clean and healthy environment. This protects them from activities and practices that are harmful such as emissions of sugarcane waste in rivers or emissions of carbon in the air. The development levy will help in factory development that will see to this right being guaranteed to all persons.

Article 46 of the Constitution of Kenya, 2010 has robust provisions on consumer protection. All consumers have a right to quality goods and services, access to all information necessary to derive full benefit of the goods and services; and protection of their health, safety as well as that of the environment.

Article 201 of the Constitution has robust provisions on the principles of public finance which are enumerated as follows:

- a. there shall be openness and accountability, including public participation in financial matters;
- b. the public finance system shall promote an equitable society, and in particular—
 - i. the burden of taxation shall be shared fairly;
 - ii. revenue raised nationally shall be shared equitably among national and county governments; and
 - iii. expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas
 - iv. expenditure shall promote;
- c. the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations; and
- d. Public money shall be used in a prudent and responsible way.

~~Article 209 of the Constitution empowers the national government to impose any tax or duty~~ while Article 210 requires that any tax or licensing fee imposed, waived, or varied is provided for in a Legislation.

Sugar Act, No. 11 of 2024

Section 4 of the Sugar Act provides the mandate of the KSB including regulation, development and promotion of the sugar industry.

Section 40(1) of the Sugar Act empowers the Cabinet Secretary in consultation with KSB to publish an Order known as Sugar Development Levy in the Gazette on the imposition of a levy on domestic sugar not exceeding four *per centum* of the value and a four *per centum* of CIF value on imported sugar. The Order is to prescribe the collection and payment of levy. It ought to prescribe the date the levy will be due.

Public Finance Management Act, CAP 412A

The Act defines "national government revenue" to mean all taxes imposed by the national government under Articles 206(1)(a) and (b) and 209 of the Constitution, excluding county government revenue.

Sugar Development levy is therefore considered a national government revenue in the context of the Act. The Act further requires that public finances are managed according to the principles laid down in the Constitution.

Statutory Instruments Act, CAP 2A

The Act defines a statutory instrument to mean any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued. The

Sugar Development Levy Order is therefore a statutory instrument under the Sugar Act, No. 11 of 2024.

Where the proposed statutory instrument is likely to impose significant costs on the community or a part of the community, Section 6 of the Act requires the regulation making authority to prepare a regulatory impact statement about the instrument prior to the enactment of the instrument.

7. PUBLIC PARTICIPATION

Legal requirements relating to public participation and consultation

Article 10 of the Constitution of Kenya enumerates the National values and principles of governance that informs public service including the law-making processes. It mandates any public institution making any law to undertake public participation before enacting and implementing any public policy decision or law.

Article 232 of the Constitution of Kenya provides the values and principles of public service. It requires the involvement of the people in the process of policymaking and participation, transparency and provision to the public of timely and accurate information.

With regard to the subsidiary legislation making process, the Statutory Instruments Act, CAP 2A requires that the regulation-making authority to make consultations before making the statutory instrument in question and in particular where the proposed Order is likely to have a direct, or a substantial indirect effect on business or restrict competition.

The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation-making authority shall have regard to all relevant matters,

including the extent to which the consultation:

- a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be less than 14 days or be invited to participate in public hearings concerning the proposed instrument.

The Process of public consultation

The Cabinet Secretary in consultation with KSB prepared a draft Order in December 2024 which was subsequently publicized on the KSB website on 8th January 2025. Further, the CEO published a notice in the newspapers inviting the public to submit comments on the proposed Sugar Development Levy Order, 2025, as outlined in the draft gazette notice within 14 days. The comments and written memoranda were to be submitted via email to info@ksb.go.ke.

On 6th January 2025, the CEO sent out letters to all Sugarcane Farmers Organizations communicating itinerary for the public participation on the proposed Order. On 9th January 2025, the CEO sent updated letters communicating the itinerary for the public participation on the proposed Order.

The said correspondences from the CEO contained the following—

- i. a statement summarizing the Levy Order;

- ii. ways in which the documents relating to the Levy Order shall be accessed;
- iii. invitation for the public to submit written comments or representations;
- iv. mode of conducting public participation;
- v. venue, date, and time; and
- vi. Contacts of KSB.

KSB in collaboration with the Ministry of Agriculture and Livestock Development undertook the process of public participation from 13th January to 18th January 2025 in 16 regions across the country aimed to engage diverse stakeholders, including farmers, millers, importers, traders, researchers, and members of the public.

The forums were open to all members of the public who desired to participate and were allowed to contribute personally or through representatives.

In conducting the public participation, KSB ensured that:

- a. All participants, including their representatives and all respondents, were courteous, respectful, and civil during public participation processes.
- b. Freedom of expression was limited to the subject matter.
- c. All reasonable measures were taken to facilitate the participation of persons with disabilities in the forums.
- d. The languages used were widely understood by the persons present at the forums

Approach and methodologies

The following approaches and methodologies were applied during the stakeholder consultation process:

- Physical meetings
- Letters
- Emails
- Kenya Sugar Board website
- Publishing in local dailies

Analysis and feedback

The forums provided an opportunity to gather insights, address concerns, and build consensus around the implementation of the levy. The matrix below captures stakeholder feedback gathered during the public participation forums conducted. It presents the key issues raised, the recommendations adopted and the responses provided by the Board.

	Stakeholder Comment	Action Taken	Justification
1.	A fixed rate of 400 USD instead of a 4% Levy	Not adopted	The rate is stipulated in the Sugar Act No. 11 of 2024, which prescribes a percentage-based levy.
2.	Levy to be reduced to 1%	Not adopted	Stakeholder input acknowledged however, the levy to retained at 4% at this initial stage with room for adjustment in future as the industry stabilizes.

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3.	Confirm whether the Levy will affect VAT calculations for sugar imports	Responded	VAT is levied on the composite CIF value plus all applicable levies including SDL
4.	Exempt manufacturers	Responded	SDL is a consumer levy and not directly imposed on manufacturers but on domestic sugar and imported sugar as specified in the Act.
5.	Levy should not be collected by KRA	Not adopted	The Board will collect the levy directly or through an appointed agent, as outlined in the Act.
6.	Levy imposed on imports should be increased to 15%	Not adopted	The percentage is fixed at a maximum of 4% as provided by the Act.
8	Payment directly to Kenya Sugar Board (KSB) instead of customs entry	Not adopted	The Board will collect the levy directly or through an appointed agent, as outlined in the Act.
9	Levy to start at 2% instead of 4%	Not adopted	Stakeholder input acknowledged however, the levy to retained at 4% at this initial stage with room for adjustment in future as the industry stabilizes.
10	Imported sugar levy higher than locally produced sugar levy	Not adopted	The stakeholder proposal is against the National Treatment Principle for international trade.
11	Remove the term "agent" in levy remittance provisions	Not adopted	The term "agent" is provided for in the Act.

12	Reduce levy to 3%	Not adopted	Stakeholder input acknowledged however, the levy to retained at 4% at this initial stage with room for adjustment in future as the industry stabilizes.
13	Increase levy above 4% to benefit farmers	Not adopted	The percentage is fixed at a maximum of 4% as provided by the Act.
14	Increase allocation percentage for factory rehabilitation	Not adopted	The Act has appropriated the levy.
15	Imports to attract 10% levy	Not adopted	The percentage is fixed at a maximum of 4% as provided by the Act.
16	SDL should be increased to 7%	Not adopted	The percentage is fixed at a maximum of 4% as provided by the Act.
17	SDL should even be higher at 6%	Not adopted	The percentage is fixed at a maximum of 4% as provided by the Act.
18	Proposed 2% which revenue is approximated at Kshs. 2,240,000,000 which is basically enough revenue to run operations by the Kenya Sugar Board (KSB)	Not adopted	Stakeholder input acknowledged however, the levy to retained at 4% at this initial stage with room for adjustment in future as the industry stabilizes.
19	Apportionment should be issued on a pro-rata basis.	Not adopted	This is a consumer levy and the fund is a pool for the sugar industry. Pro-rata allocation applies to infrastructure under Section 40(6)(d)
20	How will the fund take care of defaulters mostly the state-owned sugar mills?	Responded	The Act under section 40 (5) provides for action to be taken on defaulters.

21	The SDL manual should include issues to do with disbursement, penalty and apportionment	Noted	The SDL manual will provide accordingly
22	There were concerns by private millers that the money may be used to bail out the state-owned sugar mills and the millers needed assurance.	Noted	The SDL manual will provide guidelines for disbursement of the funds in accordance with the law

The feedback from these forums demonstrated an overwhelming endorsement of the proposed development levy, with stakeholders emphasizing its potential to advance the growth and sustainability of the sugar industry. It is worth noting that some stakeholders, particularly importers who represent a minority within the sugar value chain, expressed a preference for the levy to be implemented in a graduated manner or replaced with flat-rate fees. Their feedback was carefully noted and acknowledged, underscoring the Board's commitment to inclusivity and open dialogue.

8. COST- BENEFIT ANALYSIS

The analysis of the expected costs and benefits of the proposed Order in this part seeks to answer the question whether the benefits justify the projected costs. This would enable KSB to estimate the total expected cost and benefit of every aspect of the Order. This will

~~in such instances the benefits of the proposed action should be justified~~
by its benefits before action is taken.

However, given the nature of this development levy and the available information, the costing will be qualitative. The task of comparing the benefits and costs associated with the proposed Levy Order and determining whether, and to what extent, there would be a net benefit associated with its adoption is an onerous one

Table1: Benefits and Costs arising from the new features of the Sugar Development Levy Order, 2025

S.No	Category	Benefits	Cost
1.	Support of cane farmers	Enactment of the Sugar Development Levy will lead to stabilization of the farmer's incomes through better yields and possibly a higher cane prices	Adjustments in farming practices to align with any new industry standards proposed by KSB and Kenya Sugar Research and Training Institute might require initial investment
2.	Sugar industry development	The Sugar Development Levy will provide funding for research and innovation in sugarcane cultivation and processing. Further, it will help in Infrastructure improvements and developments in sugar-producing areas	KSB will incur an administrative costs for collection and management of the levy.

	Economic Growth	The funds appropriated from this fund to the sugar industry has a potential for job creation in farming and processing. It also has a potential for increased value addition for local and export markets. The realization of the benefits from the increased efficiencies and yields resulting from utilization of the levy will lead to a reduction in the cost of production and hence lower consumer prices	At the beginning the implementation of the levy will likely lead to increased consumer prices for sugar thus affecting purchasing power.
4.	Efficiency and Potential	The Sugar industry has a potential to become self-sufficient and competitive.	If the funds collected are not used effectively as stipulated in the law, then it will be inefficient as money may be appropriated to less productive entities and activities.

5.	Environment and Health	It will encourage sustainable farming practices hence reducing negative environmental impacts. Imposition of the levy has a potential for health benefits through better sugar quality control.	There are costs associated with implementing and monitoring sustainable production practices.
6.	Risks and Challenges	Increased transparency in the use of funds could lead to a greater public trust and support for the sugar industry.	There will be costs associated with setting up and implementing structures to ensure transparency and Accountability in levy collection and management.

Consideration of Alternatives to the Sugar Development Levy Order

This section considers whether the proposed Order is the best form of government action. The Statutory Instruments Act, CAP 2A requires a regulator to carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

The options considered under this section are the following:

Option one: Maintenance of the Status Quo

Maintaining the status quo means failing to operationalize the provisions of Section 40(1) of the Sugar Act, No. 11 of 2024. This would amount to an affront to the gains made by the enactment of the Principal Act into law.

Option two: Administrative measures

Use of administrative measures to implement Section 40(1) of the Sugar Act, No. 11 of 2024 would be against the letter and spirit of Article 201 and 209 of the Constitution of Kenya. Notably, Section 40 (1) requires that the Cabinet Secretary makes a Sugar Development Levy Order being the instrument to enable collection of levies.

Option three: Enacting the Sugar Development Levy Order, 2025

The enactment of the Sugar Development Levy Order provides benefits to the sugar industry, farmers, and the broader economy as enunciated under Section 40 of the Sugar Act, No. 11 of 2024.

Impact analysis of the Options

Table 2: Regulatory and non-regulatory options

S.No	Impact on Sectors	Option 1: Maintenance of the Status Quo	Option Two: Administrative Measures	Option Three: Enacting the Sugar Development Levy Order, 2025
1.	Cane farmers	Cane farmers continue to face challenges without additional support or development initiatives from the state.	The cane farmers might not receive clear or equitable benefits from administrative actions.	The cane farmer receives direct benefits through cane development funds, Potentially increasing productivity and income.

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2.	Sugar industry	<p>This would lead to continued inefficiencies and lack of industry development.</p> <p>There would be no new funding for factory, research, or cane development.</p>	<p>This might lead to an adhoc or inconsistent implementation, potentially worsening the issues the sugar industry is already grappling with.</p>	<p>It provides a well-structured funding for industry development, research, and infrastructure.</p>
3.	Economy	<p>There are no immediate economic benefits from sugar sector revitalization.</p> <p>This would result potentially into missed opportunities for</p>	<p>The Economic gains and benefits are uncertain due to the lack of structured funding.</p> <p>This would create uncertainty and disorder that lead to confusion or</p>	<p>It stimulates economic activities through job creation, infrastructure development, and industry growth.</p> <p>It supports broader economic goals like poverty reduction and sustainable agricultural practices and methods.</p>

		job creation and economic growth.	legal challenges affecting economic stability.	
4.	Consumers	Sugar prices would remain the same, however, high prices might persist due to inefficiencies.	There is a potential for uneven or unexpected price changes if the levy is applied inconsistently.	It is likely to lead to an increase in sugar prices, but with potential long term benefits in quality and sustainability of sugar production. The realization of the benefits from the increased efficiencies and yields resulting from utilization of the levy will lead to a reduction in the cost of production and hence lower consumer prices

5.	Legal framework	<p>It violates the legal provisions under the Sugar Act, No. 11 of 2024</p> <p>It undermines the legislative progresses.</p>	<p>It contravenes constitutional principles on taxation and public finance management.</p> <p>There is a risk of potential legal disputes over the legality of levy collection.</p>	<p>This is compliance with legal frameworks, ensuring transparency and accountability in levy collection and disbursement.</p> <p>It aligns with the spirit of the Sugar Act and constitutional requirements</p>
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Preferred Option

Based on the above analysis, it is clear the third option (enacting the new Sugar Development Levy Order, 2025) is the preferred option. The benefits and impact of enacting a new Sugar Development Levy Order by far outweigh any estimated cost of its implementation. The other two options have diminished or no impact in addressing the problems outlined above.

9. CONCLUSION

Based on the above analysis, the following matters are apparent:

- a) **Regulatory-Making Authority and the legal mandate:** Section 40(1) of the Sugar Act, No. 11 of 2024, empowers the Cabinet Secretary in Consultation with the Kenya Sugar Board(KSB) by order in the *gazette*, to impose a levy on domestic sugar not exceeding four per centum of the value and a four per centum of CIF value on imported sugar to be known as the Sugar Development Levy. The Cabinet Secretary and KSB therefore have the required legislative powers to propose the Sugar Development Levy Order, 2025.
- b) **Requirements of the Statutory Instruments Act:** Section 5 requires a regulation making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument have an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA should be prepared where a statutory instrument is likely to impose significant costs on the community. The RIA must contain certain key elements namely:
 - a) a statement of the objectives of the proposed legislation and the reasons,
 - b) a statement explaining the effect of the proposed legislation,
 - c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
 - d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
 - e) the reasons why the other means are not appropriate.

The RIA structure requirements have been fully met. Public consultation requirements have been fully adhered to.

- c) **Other existing legal frameworks:** The draft Sugar Development Levy Order, 2025 proposes to promulgate a new legislation. It is in harmony with other laws making its implementation more effective.
- d) **The draft:** The draft Sugar Development Levy Order, 2025 as drafted is clear, consistent and comprehensive enough to cover all matters.

10. RECOMMENDATION

In view of the above conclusions, it is recommended that the Sugar Development Levy Order, 2025 be approved and adopted.

11. ANNEXURES

1. The draft Sugar Development Order, 2025
2. The Sugar Act No.11 of 2024