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EG 18/05/22

TWELFTH PARLIAMENT

SIXTH SESSION

THE SENATE

RT Hon Speaker  
You may approve for  
tabling.

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18/05/22

Approved  
19/5/2022

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE CONSIDERATION OF THE SUGAR BILL,

(NATIONAL ASSEMBLY BILL No. 68 of 2019)

Clerk's Chambers  
Parliament Buildings,  
NAIROBI

MAY, 2022

DC-EG  
Recommended & Forwarded for Approval  
18/05/22

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<b>Annex 5:</b> Matrix on consideration of public submissions on the Bill.	
<b>Annex 6:</b> Committee Stage amendments to the Sugar Bill (National Assembly Bills No. 68 of 2019)	

## ABBREVIATIONS

AFA	-	Agriculture and Food Authority
CIF	-	Cost, Insurance and Freight
COG	-	Council of Governors
CoK	-	Constitution of Kenya, 2010
KAM	-	Kenya Association of Manufacturers
KBL	-	Kenya Breweries Limited
KESGA	-	Kenya Sugar Growers Association
KESMA	-	Kenya Sugar Manufacturers Association
KNFSF	-	Kenya National Federation of Sugar Cane Farmers
SUCAM	-	Sugar Campaign for Change

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## **Membership of the Committee**

The Committee is comprised of the following Members-

1. Sen. Peter Njeru Ndwiga, EGH, MP - **Chairperson**
2. Sen. Enoch Wambua, MP - **Vice-Chairperson**
3. Sen. Kipchumba Murkomen, EGH, MP
4. Sen. (Canon) Naomi Jillo Waqo, MP
5. Sen. (Dr.) Michael Malinga Mbiti, MP
6. Sen. (Eng.) Ephraim Maina, EBS, MP
7. Sen. Justice (Rtd.) Madzayo Stewart Mwachiru, MP
8. Sen. Issa Juma Boy, MP

## **Secretariat of the Committee**

The Committee secretariat is comprised of –


1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. David Angwenyi - Clerk Assistant
3. Ms. Regina Munyao - Legal Counsel
4. Mr. Tiyan Joseph - Research Officer
5. Ms. Njeri Manga - Media Relations Officer
6. Ms. Mary Nyawira - Audio Officer
7. Mr. Alex Mutuku - Serjeant-At-Arms
8. Mr. Godana Mamo - Serjeant-At-Arms

## **Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the consideration of the Sugar Bill, (National Assembly Bills No. 68 of 2019).

**Mr. Speaker Sir,**

It is my pleasant duty, pursuant to Standing Order 213 (6), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019) for consideration by the House.




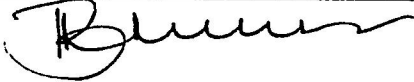

Signed.....  ..... Date.....18/05/2022.....

**SEN. PETER NJERU NDWIGA, EGH, M.P.**

**CHAIRPERSON**

## MEMBERS' ADOPTION LIST

### REPORT ON THE CONSIDERATION OF THE SUGAR BILL, (NATIONAL BILLS NO. 68 OF 2019)

NO	NAME	SIGNATURE
1.	Sen. Njeru Ndwiga, EGH, MP <b>Chairperson</b>	
2.	Sen. Enoch Wambua, MP <b>Vice-Chairperson</b>	
3.	Sen. (Canon) Naomi Waqo, MP	
4.	Sen. Kipchumba Murkomen, EGH, MP	
5.	Sen. (Dr.) Michael Mbiti, MP	
6.	Sen. Issa Juma Boy, MP	
7.	Sen. Justice (Rtd.) Stewart Madzayo, MP	
8.	Sen. (Eng.) Ephraim Maina, EBS, MP	

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## **EXECUTIVE SUMMARY**

The Sugar Bill, (National Assembly Bill No. 68 of 2019) was read a First Time in the Senate on Thursday, 24<sup>th</sup> February, 2022 and thereafter stood committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries invited interested members of the public to submit their views on the Bill through advertisements in The Standard and The Daily Nation newspapers on 1<sup>st</sup> March, 2022. The Committee received written submissions and also held meetings with from various stakeholders to consider the provisions of the Bill. Owing to immense public interest in the Bill, the Committee extended the period of receipt of submissions to 5<sup>th</sup> April, 2022.

At its 166<sup>th</sup> Sitting held on 12<sup>th</sup> March, 2022 and its 169<sup>th</sup> Sitting held on 21<sup>st</sup> April, 2022, the Committee considered the submissions on the Bill. The Committee thereafter, considered the proposed amendments and came up with its recommendations for amendment to the Bill.

Chapter One of this report contains an overview of the Bill setting out the salient provisions contained in it. Chapter Two of the report documents all the submissions received from the various stakeholders. Chapter Three contains the Committee observations and finally, Chapter Four contains the Committee recommendations.

## **1.0 INTRODUCTION**

### **1.1 Background**

The Sugar Bill, (National Assembly Bill No. 68 of 2019) was published in the Kenya Gazette Supplement No. 166 of 2<sup>nd</sup> October, 2019 and was passed by the National Assembly, with amendments, on 11<sup>th</sup> November, 2021. The Bill was read a First Time in the Senate on Thursday, 24<sup>th</sup> February, 2022 and thereafter stood committed to the Senate Standing Committee on Agriculture, Livestock and Fisheries. A copy of the Bill is annexed to the Report as **Annex 2**.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries invited interested members of the public to submit their views on the Bill through advertisements in The Standard and The Daily Nation newspapers on 1<sup>st</sup> March, 2022 (**Annex 3**). The Committee received written submissions and also held meetings with from various stakeholders to consider the provisions of the Bill. Owing to immense public interest in the Bill, the Committee extended the period of receipt of submissions to 5<sup>th</sup> April, 2022.

### **1.2 Object of the Bill**

The object of the Sugar Bill, (National Assembly Bill No. 68 of 2022) is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The Bill seeks to restore the roles of the Kenya Sugar Board currently granted to the Sugar Directorate of the Agriculture and Food Authority (AFA) established under the Agriculture and Food Authority Act, 2013.

### **1.3 Overview of the Bill**

The Bill proposes the following-

**Clause 3** of the Bill establishes the **Kenya Sugar Board**.

**Clause 4** of the Bill provides for the functions of the Board broadly to regulate, develop and promote the sugar industry; co-ordinate the activities of individuals and organizations within the industry and facilitate equitable access to the benefits and resources of the industry by all interested parties.

**Clause 5** provides for the functions of the county governments including issuance of sugarcane nursery certificates, coordination of extension services on sugar production and milling, enforcement of regulations, pest and disease monitoring and reporting and establishment of an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

**Clause 6** provides that the Board shall comprise of a non-executive Chairperson elected by the Board from among the representatives of growers representatives on the Board and appointed by the Cabinet Secretary; five representatives elected by growers and appointed by the Cabinet Secretary; one representative elected by millers and appointed by the Cabinet Secretary; the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture; one person nominated by the Council of County Governors; the Principal Secretary to the Treasury; and the Chief Executive of the Board appointed under section 10 who shall be an *ex-officio* member and the secretary to the Board.

**Clause 18** provides that a person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence issued by the Board for that purpose. The penalty for breach of this provision is a fine of not less than fifty thousand shillings and not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

**Clause 19** provides that a person shall apply to the Board for a licence to operate a sugar mill or a jaggery mill in the prescribed form as well as procedures for the renewal of a licence.

**Clause 20** provides that a person who intends to import sugar into Kenya shall provide evidence that the sugar they intend to import is not available in the local market, provide samples of the sugar to be imported and pre-import verification certificate from the country of origin and obtain a pre-import approval from the Board. Contravention of this provision is an offence punishable by imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or both.

**Clause 22** provides that a person is prohibited from conducting the business of a miller unless he or she is registered by the Board and no such business shall be conducted at any premises other than the premises specified in the register. This clause further provides that a person who contravenes this provision commits an offence, the penalty of which is a fine not exceeding ten million shillings, or imprisonment for a term not exceeding five years, or to both.

**Clause 23** establishes the **Kenya Sugar Research Institute** whose functions will be to promote and co-ordinate and regulate research in sugar and sugar diseases and expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of sugar.

**Part V** provides for the appointment of Crop Inspectors.

**Clause 34** provides for the imposition by the Cabinet Secretary in consultation with the Board of the **Sugar Development Levy** on domestic sugar and a ten per centum of CIF value on imported sugar. The Levy is to be apportioned as follows-

- a) fifteen per centum for income or price stabilization for sugar growers;
- b) twenty per centum in furtherance or exercise of functions or powers of the Board;
- c) twenty per centum to the Institute; and
- d) forty-five per centum for infrastructure development in the sugar subsector on a pro rata basis.

**Clause 35** establishes the Sugar Development Fund to be administered by the Board which shall consist of the Sugar Development Levy, any funds provided by donors, monies provided by the National Assembly, monies provided by a county assembly and any other monies from any other source approved by the Board.

**Clause 40** establishes the **Sugar Arbitration Tribunal** consisting of a Chairperson who shall be a person qualified for appointment as a judge of the High Court of Kenya; and four other members with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of whom shall be appointed by the Chief Justice in consultation with the Attorney-General and the Council of County Governors. The members of the Tribunal shall serve on a part-time basis and shall hold office for a period not exceeding three years and shall be eligible for re-appointment for one further term of a period not exceeding three years.

**Clause 49** provides that all sugar millers and importers shall ensure that all sugar produced locally or imported meets safety and quality standards, safety and health standards and environmental issues set by responsible bodies. Contravention of this section is an offence punishable by a fine not exceeding ten million or imprisonment for a term not exceeding seven years or both.

The **First Schedule** makes provision for sugar catchment counties grouped into five regions i.e. Rift region, Upper Western, Lower Western, Southern Region and Coastal Region.

The **Second Schedule** makes provision for the conduct of business and affairs of the Board.

The **Third Schedule** contains guidelines for agreements between parties in the sugar industry.

The **Fourth Schedule** contains provisions as to the meetings and procedure of the Tribunal.

#### **1.4 Consequences of the Bill**

The Bill will address the decline of the sugar industry in the country and ultimately lead to the revival of the sugar sector. The Bill will unbundle the regulation and management of sugar that falls within the ambit of the Agriculture and Food Authority (AFA) through the Crops Act, 2013 and establish the Kenya Sugar Board for the more efficient regulation of the sugar sub-sector.

## **2.0 PUBLIC PARTICIPATION**

### **2.1 Invitation and consideration of stakeholder submissions on the Bill**

The Standing Committee on Agriculture, Livestock & Fisheries, pursuant to Article 118 of the Constitution and standing order 140, invited submissions from members of the public on the Bill via an advertisement placed in the Daily Nation and the Standard newspapers on 1<sup>st</sup> March, 2022 (*Annex 3*).

In response to the advertisement, the Committee received eleven written submissions from stakeholders, three of whom appeared before the Committee (*Annex 4*). The Committee proceeded to consider the Bill and the submissions received thereon as set out in the matrix attached to this Report as *Annex 5*.

The Committee received submissions from the following-

1. The Ministry of Agriculture, Livestock, Fisheries and Cooperatives;
2. The Council of Governors (COG);
3. Kenya Breweries Limited (KBL);
4. Kenya Sugar Manufacturers Association (KESMA);
5. Kenya Association of Manufacturers (KAM);
6. Sugar Traders Association of Kenya;
7. Kenya National Federation of Sugar Cane Farmers (KNFSCF);
8. Kenya Sugar Growers Association (KESGA);
9. Small Holders Sugarcane Farmers Association;
10. Sugar Campaign for Change (SUCAM);
11. Kongeren Multipurpose Cooperative Society; and
12. Mr. Amish Gupta.

### 3.0 COMMITTEE OBSERVATIONS

The Committee in considering the Bill observed that-

1. The Bill provides for the election the Chairperson of the Kenya Sugar Board from among growers' representatives appointed by the Cabinet Secretary, and further provides that the Chairperson of the Kenya Sugar Research Institute shall be appointed by the Cabinet Secretary. The Committee notes that the *Mwongozo* Code stipulates that "*The Chairpersons of all State Corporations shall be appointed by the President...*" There is therefore need to align the provisions of the Bill relating to appointment of the Chairperson of the Kenya Sugar Board and the Chairperson of the Kenya Sugar Research Institute with the *Mwongozo* Code.
2. Part 2 of the Fourth Schedule of the Constitution of Kenya, 2010 provides for agriculture as a function of the county governments. Further, Article 6(2) of the Constitution provides that the governments at the national and county levels are distinct and inter-dependents and shall conduct their mutual relations on the basis of *consultation* and *cooperation*. It is therefore imperative that the Bill takes cognizance of these provisions in the composition and in the carrying out of functions of the Board and Institute, as well as in the making of Regulations by the Cabinet Secretary;
3. Part V of the Bill makes provision for the appointment of Crop Inspectors. The crop inspectors have powers to enter any land, premises or vehicle to inspect so as to ascertain compliance with the terms and conditions of licences issued by the Board. It is the opinion of the Committee that the inspectors' duties go beyond crop inspection and therefore the word "crop" should be deleted;
4. The terms "sugar lobby group" and "sugar growers' apex body" created controversy among various stakeholders in the sugar industry during the Committee's consideration of the Bill. The Committee received a number of submissions from various sugar growers' associations, each claiming to be the sugar growers' apex body. It is important to note that despite being defined under

clause 2, the interpretation clause, the phrase “sugar growers’ apex body” is not referred to in the text of the Bill. The Committee therefore opines that the two terms should be completely deleted from the Bill.

5. With regard to apportionment of the Sugar Development Levy towards price stabilization, the Board, the Institute, the Board and infrastructure development, the Committee contends that more importance should be placed on price stabilization so as to cushion the sugarcane farmers. Further, the Committee notes that there is need for the establishment of a Board of Trustees to administer the Sugar Development Levy Fund. This will ensure the monies are administered by an independent body detached from the Board thus promoting transparency;
6. Clause 9 of the Bill gives powers to the Board to impose levies on “growers and millers”. The Committee notes that there is need to widen the scope of the powers of the Board to impose levies on other relevant stakeholders;
7. The First Schedule of the Bill providing for sugar catchment counties requires review to regions to ensure that within each region a sugar factory is available and to also group sugarcane growers more efficiently for purposes of voting;
8. Paragraph 7 of the Third Schedule establishes the Sugar Cane Pricing Committee whose functions include review of sugar pricing and coming up with a sugar pricing formula. The composition of the Committee includes representation from sugar manufacturers, growers, national and county governments. The Committee observes that there is need to include representation from sugar traders who also play an important role in the sugar sub-sector;
9. There is need for review of the definitions of “farm gate” and “mill gate” as provided for under clause 2 of the Bill. The Bill defines a “farm gate” to mean *“prices received by farmers for their sugarcane at the location of farm;”* whereas paragraph 2(5)(a) of the Second Schedule of the Bill sets out one of the role of the millers as -

*(a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;*

A discrepancy in the definition of the term therefore exists and therefore there is need to amend the definition to capture the meaning of a farm gate.

Further, the Bill defines "mill gate" as "*a site where sugarcane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop*" The Committee observes that the definition of a mill gate should be deleted as it has not been used in the text of the Bill.

#### 4.0 COMMITTEE RECOMMENDATIONS

Arising from the observations made, the Committee recommends the following-

1. That clause 6 (a) be amended to have the Chairperson of the Kenya Sugar Board appointed by the President as opposed to election by the Board from among representatives of growers;
2. That clause 9 be amended to replace the words “growers and millers” with “value chain players”;
3. That clause 25 be amended to have the Chairperson of the Kenya Sugar Research Institute appointed by the President as opposed to the Cabinet Secretary; to include representation from the COG and sugar millers; to make provision that the Cabinet Secretary shall appoint members through notice in the Gazette and to clarify that the Director General shall be an ex-officio member and secretary to the Board of the Institute;
4. That Part V on appointment of crop inspectors be amended to delete the word “crop”;
5. That clause 29 be amended to require consultation between the Board and COG in appointment of qualified persons to be inspectors;
6. That clause 34 be amended to provide for a Board of Trustees to administer the Sugar Development Levy, and also to amend the apportioning of the levy to 45% for price stabilization for sugar growers, 10% for functions of the Board, 20 % for the Institute, 20% for infrastructure development in the sugar subsector and 5 % to the Board of trustees to cater for administrative costs
7. That clause 35 be amended to refer to the Fund as the “Sugar Development Trust Fund” to be administered by a Board of Trustees and that establishment, functions, powers, tenure and staff of the Board of Trustees be included in the Bill;

8. That clause 51 on safeguard measures for importers of sugar be amended to require importers to report to the Board “per consignment” instead of “on a daily basis”
9. That clause 57 on powers of the Cabinet Secretary to make regulations should be made not only in consultation with the Board but also with the Council of County Governors; and also make provision on how the levy will be apportioned to the counties and the procedure for election of farmers’ representatives;
10. That a new clause be inserted to provide for registration of growers by the county governments;
11. That the First Schedule be amended to regroup the sugar catchment areas;
12. That the Third Schedule be amended by deleting the words “sugar lobby group” and including sugar traders in the composition of the Sugar Cane Pricing Committee
13. That clause 2 be amended by inserting the definition of “value chain players”; by amending the definition of “farm gate” and by deleting the words “sugarcane growers’ apex body” and “mill gate”.
14. That typographical errors appearing within the Bill be corrected;

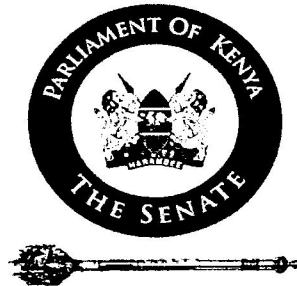
The text of the proposed amendments is set out in **Annex 6** of this Report.

## ANNEXES

- Annex 1:** Minutes of the Committee Deliberations on the Bill.
- Annex 2:** The Sugar Bill (National Assembly Bills No. 68 of 2019) as passed by the National Assembly, with amendments, on 11<sup>th</sup> November, 2022
- Annex 3:** Advertisement for submission of memoranda placed in the *Nation* and *Standard* newspapers on 1<sup>st</sup> March, 2022.
- Annex 4:** Copy of the submissions received from stakeholders.
- Annex 5:** Matrix on consideration of public submissions on the Bill.
- Annex 6:** Committee Stage amendments to the Sugar Bill (National Assembly Bills No. 68 of 2019)

# ANNEX 1

Committee Minutes



**MINUTES OF THE 166<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON SATURDAY, 12<sup>TH</sup> MARCH, 2022, AT 2.00 P.M. ON THE ZOOM ONLINE MEETING PLATFORM.**

**PRESENT**

1. Sen. Peter Njeru Ndwiga, EGH, MP - Chairperson
2. Sen. (Dr.) Michael Mbito, MP
3. Sen. Issa Juma Boy, MP

**ABSENT WITH APOLOGY**

1. Sen. Enoch Wambua, MP - Vice-Chairperson
2. Sen. (Canon) Naomi Jillo Waqo, MP
3. Sen. Justice (Rtd.) Stewart Madzayo, MP
4. Sen. (Eng.) Ephraim Maina, MP
5. Sen. Kipchumba Murkomen, EGH, MP

**SECRETARIAT**

1. Ms. Carol Kirorei - Clerk Assistant
2. Mr. David Angwenyi - Clerk Assistant (*Taking Minutes*)
3. Mr. Alex Mutuku - Serjeant-At-Arms
4. Ms. Regina Munyao - Legal Counsel
5. Mr. Mitchell Otoro - Legal Counsel
6. Mr. Tiyan Joseph - Research Officer
7. Ms. Mary Nyawira - Audio Officer
8. Mr. Titus Michubu - Pupil

**MIN. NO. 46/2022**

**PRELIMINARIES**

The Chairperson called the meeting to order at 2.05 p.m. followed by a word of prayer.

**MIN. NO. 47/2022**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. (Dr.) Michael Mbito, MP and seconded by Sen. Issa Juma Boy, MP-

1. Preliminaries
  - a) *Prayer*
  - b) *Adoption of the Agenda*
2. Consideration of submissions received on the Sugar Bill (National Assembly Bills No. 68 of 2019)
3. Any other business.
4. Date of Next Meeting
5. Adjournment.

**MIN. NO. 48/2022**

**CONSIDERATION OF SUBMISSIONS RECEIVED ON THE SUGAR BILL, (NATIONAL ASSEMBLY BILLS NO. 68 OF 2019)**

The Legal Counsel presented the Matrix of submissions received from the public on the Sugar Bill, (National Assembly Bills No. 68 of 2019). The Committee considered the proposals and made resolutions as follows-

1. **Clause 2**

**Proposal:** Replace the definition of the word “Farm Gate” with “Cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas.”

**Rationale:** This is important for the farmers since most are not close to the factories and as such the distance can be a challenge and a burden in terms of costs of transportation. By reducing the costs of transportation it’s a win for the farmer.

**Resolution:** Agreed to.

2. **Proposal:** Replace the definition of the word Mill Gate with “A site where sugarcane is received at the respective factory weighbridge.”

**Rationale:** This definition brings out the function of the Mill Gate which is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory or the receiving centers.

**Resolution:** Agreed to.

3. **Proposal:** Amend by deleting the words “purposes of election to the Board under the first schedule” from the definition of the word “Sugar Catchment Area”

**Rationale:** The above definition is important as it shall focus on the substance of the sugar catchment area as a factor in clustering a region i.e. the soil conditions, weather and other factors.

**Resolution:** Further consultations be made before the Committee makes a decision.

4. **Proposal:** Add the definition of the word “interested party”

**Rationale:** The previous draft Sugar Bills under Section 2 consistently defined the term "*interested Party*" to mean the government, millers, growers and out-growers. The Sugar Bill before the Senate has not adopted a definition of an "interested Party."

**Resolution:** Agreed to.

5. **Proposal:** Amend the definition of license to read as follows:

A license issued by a county government to millers

**Rationale:** Under the fourth schedule to the Constitution, agriculture and trade development regulation has been devolved to county governments. It therefore follows that county governments license the millers operating in their respective jurisdiction.

**Resolution:** Not agreed to.

6. **Proposal:** Amend the word "zone" to read "regional zones" and then amend the definition to read as follows:

Regional catchment areas whereby two or more mills are clustered within a defined region as provided for under the second schedule.

**Justification:** Other countries with vibrant sugar economies like Mauritius, South Africa and India have successfully implemented regional/geographical zones in which their sugar mills operates.

**Resolution:** There was need for further consultations on this matter.

7. **Clause 4**

**Proposal:** Amend by deleting clause 4 and replacing with following new clause:

*Functions of the Board*

*4(1) The functions of the board shall—*

*a) Capacity build and provide technical assistance to the county governments to regulate, develop and promote the sugar industry;*

*b) Coordinate the activities of individual and organizations within the industry; and*

*c) Facilitate equitable access to the benefits and resources of the industry by all interested parties.*

.....

*(2) Without prejudice to the generality of subsection (1), the Board shall —*

*(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;*

*(b) act as an intermediary between the industry and the Government;*

*c) establish linkages with other government agencies and research institutions to enhance*

*quality assurance and research and facilitate the flow of research findings to interested parties*

*(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;*

*(e) facilitate the arbitration of disputes among interested parties;*

*(f) facilitate the export of local sugar;*

*(g) promote and encourage the use of environmentally friendly technologies in the industry;*

*(h) in collaboration with county governments, facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.*

*(i) represent the industry in such organizations as are relevant for the promotion of the industry;*

*(j) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties; collect, collate and analyze industry statistics and maintain a data base for the industry; enforce and monitor compliance with standards along the value chain;*

*(m) facilitate value addition and product diversification in the sugar sub-sector;*

*(n) in consultation with county governments, formulate a national—strategic—plan for the sugar sub-sector at least every once every five years;*

*(o) in consultation with county governments, formulate guidelines on an efficient and economical transportation of sugar;*

*(p) conduct local and international sugar market intelligence and advise stakeholders accordingly;*

*(q) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and perform such other functions as may, from time to time, be assigned by the interested parties.*

**Rationale:** To align to the provisions of part 1, sections 1, 9, 29 and 32 of the fourth schedule to the Constitution.

**Resolution:** Agreed to.

**8. Clause 5**

**Proposal:** Amend by deleting clause 5 and replacing thereof new clause 5 to read as follows:

*Functions of County Governments*

*4(1). Each County Executive Committee Member shall:*

- (a) issue sugar cane nursery certificates;*
  - (b) licence sugar mills and warehouses in the county;*
  - (c) formulate and implement the county sugar sub-sector strategic plan;*
  - (d) offer and coordinate the provision of advisory and extension services to growers out-grower institutions and millers in the county;*
- Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties;*
- Enforce county and national legislation on sugar industry code of practice and other industry standards;*
- in collaboration with the Board and law enforcement agencies, enforce of regulations within the county;*
- (h) enforce policies and guidelines on corporate governance in growers' institutions and millers;*
- monitor and report of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies; and*
- establish an efficient road network for the movement of sugar cane, delivery of other services and general development of the sugar industry.*

**Resolution:** Agreed to.

**9. Clause 6**

**Proposal:** Amend to include a representative of the Kenya Sugar Traders Association in the composition of the Kenya Sugar Board.

**Rationale:** The Kenya Sugar Board and the Sugar Traders Association of Kenya share similar objectives as demonstrated in this submissions and the Sugar industry would be better served with the input of the sugar traders at the Board level.

**Resolution:** The Committee would revisit the Board's composition.

**10. Clause 6 (1) (a)**

**Proposal:** Amend by adding "among the representatives of the growers and the millers on the Board and appointed by the cabinet secretary."

to paragraph (a) of section 6(1).

**Rationale:** Both growers and millers are major stakeholders so the millers should also have a chance to chair the Board.

**Resolution:** Not agreed to.

**11. Clause 6 (1) (b)**

**Proposal:** Amend by replacing with “Three representatives nominated by the farmers’ apex body from each sugar catchment area as per the first schedule”

**Rationale:** This will allow for one representative from the western region, one from Central region and one from Southern region which are the major players in the sugar industry. It will also give the recognized farmers apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board. The farmers have a structured way to front their representative without undue influence. The farmers’ apex body was mandated to advocate for the farmers’ interests.

**Resolution:** The Committee shall revisit the Board’s composition.

**12. Clause 6 (1) (c)**

**Proposal:** Amend to read as follows: “three representatives nominated by the millers’ apex body who are knowledgeable in sugar technology and value addition;”

**Rationale:** The Bill has already recognized Kenya Sugar Manufacturers Association as the Millers’ apex body. It would be prudent for the bill to allow the apex body to nominate at least representatives as they are key stakeholders. This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry too.

**Resolution:** The Committee would revisit this matter.

**13. Clause 18**

**Proposal:** Amend clause 18 to read as follows:

18(1) A person shall not operate a sugar mill, jiggery mill, or warehouse sugar unless he or she is a holder of a valid licence issued by the relevant county government for that purpose.

**Rationale:** Under the fourth schedule to the Constitution agriculture and trade development and regulation has been devolved to county governments. It therefore follows that county governments license the millers operating in their respective jurisdictions. The board should only issue export/import licenses.

**Resolution:** Agreed to.

**14. Clause 19**

**Proposal:** Amend to add subsection 9 “New licenses shall be issued whereby distance from existing mills are a minimum of 40km radius apart.”

**Justification:** To protect the investments of already existing mills and to welcome investors.

**Resolution:** It was agreed that the county shall issue the licences.

**15. Proposal:** Amend by deleting clause 19(1) and (2) and replacing thereof with the following clauses:

(1) A person shall apply to the county executive committee member for a license to operate a sugar mill, warehouse or jaggery mill in the prescribed form and accompanied by the prescribed fees.

(2) The county executive committee member shall not issue a license under this Act unless—

(a).....

(c) it is satisfied that the applicant has paid the prescribed fee.

**Rationale:** Under the fourth schedule to the Constitution, agriculture and trade development and regulation has been devolved to county governments. It therefore follows that county governments should license the millers operating in their respective jurisdictions. The board should only issue export/import licenses which is under the purview of the national government.

**Resolution:** It was agreed that the county shall issue the licences.

16. **Clause 20 (1) (a)**

**Proposal:** Amend to Provide evidence that the sugar they intend to import is not available in the local market.

**Rationale:** This function should not be left open to the sugar importers. This is the responsibility of the sugar board to determine the sugar deficit in the country at any one time. The onus is not on the importer.

**Resolution:** Not agreed to.

17. **Clause 20 (1)**

**Proposal:** Insert new clause 20(1) d to read as follows:

“imports of gap sugar should be the sole responsibility of sugar millers based on their market share.”

**Rationale:** This is because there is lack of designated people to carry out imports. Importation of sugar to fill the deficit in the market affects the millers and sugarcane growers directly due to the negative impact of large quantities of cheap duty-free imported sugar.

**Resolution:** Not agreed to.

18. **Clause 22**

**Proposal:** Amend clause 22 to read as follows:

(1) *A person shall not conduct the business of a miller unless he or she is registered by the board and the regional zone in which the miller shall be conducting business specified in the register, and*

(2) *The board shall issue to every miller registered under this section, a certificate of registration specifying the regional zone and premises at which milling may be carried on by the miller.*

**Rationale:** This is to align to the proposed requirement of zoning sugar production according to the regions across the country.

**Resolution:** The Committee would revisit the matter.

19. **Clause 25 (b)**

**Proposal:** Amend by deleting the words “.... Elected by the growers ...” And replacing therefor the words “... nominated by the farmers’ apex body from the designated sugar catchment regions....”

**Rationale:** The amendment will ensure that the farmers have a structured way to front their representative without undue influence AND the millers have a representative in this very important institution as key stakeholders.

**Resolution:** The Committee would revisit the matter.

20. **Clause 25 (e)**

**Proposal:** Amend by deleting the words “Kenya Agricultural Livestock and Research Organization” and replacing with “Kenya Sugar Research Institute.”

**Rationale:** This is a new body being set up which is not Under the ambit of KALRO.

**Resolution:** Agreed to.

21. **Clause 25 (f)**

**Proposal:** Delete and replace with One person nominated by the apex body of the Sugar millers as the millers are not represented and they are a major stakeholder.

**Rationale:** The Act removes the Sugar Directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA in the Board. To be replaced by one sugar miller representative.

**Resolution:** The Committee agreed that there was need for other stakeholders in the Board.

22. **Clause 25**

**Proposal:** Amend clause 25 by *adding a new subclause* immediately after subclause (e) to read as follows:

*(eA) One person nominated by the Council of Governors.*

**Rationale:**

To provide for representation of the county governments in the board of the institute. Research has a significant impact on the functions of the county governments. It is therefore imperative that the counties are represented in the institute.

**Resolution:** Agreed to.

23. **Clause 30**

**Proposal:** Amend clause 30 to read as follows:

*(a) an appropriate percentage be reserved for growers in the privatized sugar factories;*

*(b) growers be represented on the Board of Directors of privatized milling companies in line with their shareholding.*

**Rationale:** It is impossible to allocate shares of 51% to growers as there is very complex equity valuation processes that require to be conducted as a mathematical fundamental basis; growers may not have the finance to acquire the 51% shareholding; ownership and control need to be separated; it may lead to poor interest from bidders for the rest of the shareholding; it may prevent the privatization from progressing to the detriment of the growers themselves and privatization is determined by the Privatization Act.

**Resolution:** The Committee resolved that the clause be amended to provide that where the government sells its shares, 49 percent should go to the farmers.

24. **Clause 29**

**Proposal:** Amend clause 29 to read as follows:

29

*(1) The board and county executive committee member may appoint qualified persons to be crop inspectors for purposes of this Act.*

*(2) For purposes of subsection (1), the Board may in consultation with County Executive Committee members, by regulations prescribe the qualifications for appointment as a crop inspector.*

**Rationale:** To provide for appointment of crop inspectors by county governments for effective implementation of this Act.

**Resolution:** It was resolved that the clause be amended to provide that the CECM shall facilitate extension services to the farmers.

25. **Part IV (29-32)**

**Proposal:** That the entire part be deleted.

**Rationale:** The sugar industry is already over regulated with more than 40 licenses that already have the regulatory entities that deal with the same. The Sugar Board ensures the millers comply with the licenses before releasing the annual milling license.

**Resolution:** Not agreed to.

26. **Clause 34**

**Proposal:** Amend clause 34(7) as follows:

*a) 35% shall be used by the Board for, top up of price stabilization by treasury. The Treasury should be the main source of funds for the stabilization and not farmers stabilizing their own prices.*

*b) 10% for use by the Board (Administrative expenses should not take a big percentage)*

*c) 15% for research.*

*d) 35% for infrastructure development.*

*And inserting a new subsection:*

*(a) 5% to fund activities of the Apex bodies for, effective lobby and representation of farmers.*

**Proposal:** Amend 34(7)(a) to read as follows:

“Twenty per centum shall be applied by the Board for income or price stabilization and cane development for sugar growers”.

**Proposal:** Amend 34(7)(b) by deleting twenty per centum and replacing with fifteen per centum

**Proposal:** Amend 34(7)(c) providing for the percentage of the Sugar Development Levy to be channeled to Sugar Research by deleting ....” Institute....” and replace with “.....Sugar Research Institutions....”

**Proposal:** Amend clause 34(7) d to read as follows:

34(7) *The sugar Development Levy collected under subsection shall be apportioned as follows:*

(a) ....

(d) *Forty-five per centum shall be remitted directly to the sugar growing counties on a pro rata basis to be applied for infrastructure development in the sugar subsector.*

**Resolution:** The Committee resolved that a) be amended to 45%, b) be amended to 10%, c) be amended to 20% and d) be amended to 25%.

27. **Clause 50(2)**

**Proposal:** Amend by deleting 50(2) a, b and c.

**Rationale:** It's the role of NEMA a body that has been mandated with the duty and which adequately carries it out.

**Resolution:** Not agreed to.

28. **Clause 50 (2) (d) and (e)**

**Proposal:** Amend by deleting 50(2) d & e.

**Rationale:** It's the role of KEBS a body that has been mandated with the duty.

**Resolution:** Not agreed to.

29. **Clause 54(1) (a)**

**Proposal:** delete in its entirety.

**Rationale:** This is not admissible in the privately owned mills where the growers do not need any representation in the management as they are not investment capital contributors. It is not practicable in law and will discourage private investment.

**Resolution:** Not agreed to.

30. **Clause 54(1)(b)**

**Proposal:** This clause be deleted.

**Rationale:** Directorship should be allocated based on their investment. It is not practicable in law and will discourage private investment.

**Resolution:** Not agreed to.

31. **Clause 55 (1,2 and 3)**

**Proposal:** Delete in its entirety.

**Rationale:** It is not practicable in law and negates the Constitution of Kenya 2010.

**Resolution:** Not agreed to.

32. **Clause 57**

**Proposal:** Amend to read as follows:

*57(1)*

*The Cabinet Secretary, in consultation with the Board and County Governments may make regulations generally for the better carrying into effect the provisions of this Act.*

**Rationale:** The process of making of the regulations should be consultative hence the Cabinet Secretary needs to consult with the County Governments and the Board.

**Resolution:** Agreed to.

**33. First Schedule**

**Proposal:** Amend by deleting the word ‘counties’ and replacing with ‘regions’ and delineate as follows:

**Central Region** Kericho, Kisumu and Nandi.

**Upper Western Region** – Bungoma, Kakamega, Trans Nzoia and Uasin Gishu.

**Lower Western Region** – Busia, Mumias and Siaya.

**Southern Region** – Homabay, Kisii, Migori and Narok.

**Coastal Region** – Kwale, Lamu and Tana River.

**Rationale:** This would ensure that all the sugarcane farmers are adequately taken care of, rather than the current proposal that has discriminated against the sugarcane farmers in the Rift Valley Region, leaving them without a sugar factory to supply their sugarcane to.

Additionally, this will be to follow presidential taskforce recommendations.

**Resolution:** Agreed to.

**34. Third Schedule, Part I Paragraph 2**

**Proposal:** Amend by deleting “Sugar lobby groups” and to be replaced by “Sugarcane Growers Apex Body”.

**Rationale:** This is because lobby groups do not have the objectivity to steer the sugarcane grower’s issues in a joint and clear perspective as compared to an apex body.

**Resolution:** That sugar lobby groups be deleted from the entire Bill.

**35. Third Schedule 5(a)**

**Proposal:** Amend clause 5(a) by deleting “..harvest...”and “ transport...”

**Rationale:** The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. Entrenching this in the Act will result in an untenable situation on the ground.

**Resolution:** Not agreed to.

**36. Third Schedule 5 (d)**

**Proposal:** Amend clause 5(d) by deleting “..within 15 days...”and replace with “...within a maximum of 30 days...”

**Rationale:**30 days is practical as not other crops are paid within 15 days.

**Resolution:** Not agreed to.

**37. Third Schedule 5 (g)**

**Proposal:** Amend clause 5(g) by deleting “..mobile...”

**Rationale:** Weighbridges are not mobile

- Resolution:** Not agreed to.
38. **Third Schedule 7(2) (d)**  
**Proposal:** Delete in its entirety.  
**Rationale:** To ensure that the farmers have a structured way to front their representative without undue influence.  
**Resolution:** Agreed to.
39. **Third Schedule 7(4)(d)**  
**Proposal:** Insert new subclause 7(4) d to read as follows:  
*(d) The formula shall take into consideration the peculiarities of each region.*  
**Rationale:** The central region has different soils and climate from all other regions rendering its renderment much lower than the rest.  
**Resolution:** Agreed to.
40. **Third Schedule 7 (6)**  
**Proposal:** Amend by providing for review of sugar cane prices by deleting "... thirty-six months..." and replacing with "... one month..."  
**Rationale:** The one month will provide a realistic and sufficient time for the committee to regularly review the prices as per the market forces demand. Which in turn will be a win-win situation for the farmers and the millers to benefit from the running price for the month.  
**Resolution:** Agreed to with further amendment to three months.
41. **Third Schedule Part 4**  
**Proposal:** Delete in entirety.  
**Rationale:** There is no longer any out-grower institution on the ground the current regulations deal with relationships between the miller and the sugarcane growers directly.  
**Resolution:** Not agreed to.
42. **Third Schedule Part 5**  
**Proposal:** Delete entirely.  
**Rationale:** There is no longer any out-grower institution on the ground the current regulations deal with relationships between the miller and the sugarcane growers directly.  
**Resolution:** Not agreed to.
43. **New Clause**  
**Proposal:** to establish Sugar Growers Apex body/lobby.  
**Rationale:** For effective representation, farmers need a strong voice. Some current National bodies have been held hostage by sectarian interests and become moribund; unable to effectively represent farmers.  
**Resolution:** Not agreed to.

MIN. NO. 49/2022


DATE OF NEXT MEETING

The next meeting would be held on notice.

**MIN. NO. 50/2022**

**ADJOURNMENT**

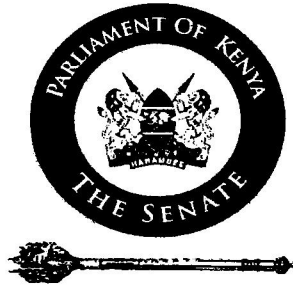
There being no other business, the meeting was adjourned at 3.50 p.m.



**SIGNED:**.....

**(CHAIRPERSON)**

**DATE:**.....17/5/2022.....



**MINUTES OF THE 169<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON THURSDAY, 21<sup>ST</sup> APRIL, 2022, AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.**

**PRESENT**

- |                                      |   |                  |
|--------------------------------------|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP  | - | Chairperson      |
| 2. Sen. Enoch Wambua, MP             | - | Vice-Chairperson |
| 3. Sen. (Canon) Naomi Jillo Waqo, MP |   |                  |

**ABSENT WITH APOLOGY**

1. Sen. Kipchumba Murkomen, EGH, MP
2. Sen. (Eng.) Ephraim Maina, EBS, MP
3. Sen. (Dr.) Michael Mbiti, MP
4. Sen. Justice (Rtd.) Stewart Madzayo, MP
5. Sen. Issa Juma Boy, MP

**SECRETARIAT**

- |                       |   |   |
|-----------------------|---|---|
| 1. Ms. Carol Kirorei  | - | Clerk Assistant                           |
| 2. Mr. David Agwenyi  | - | Clerk Assistant ( <i>Taking Minutes</i> ) |
| 3. Mr. Mitchell Otoro | - | Legal Counsel                             |
| 4. Mr. Alex Mutuku    | - | Serjeant-At-Arms                          |
| 5. Ms. Njeri Manga    | - | Media Relations Officer                   |
| 6. Ms. Happy Julius   | - | Fiscal Analyst                            |
| 7. Ms. Mary Nyawira   | - | Audio Officer                             |

**MIN. NO. 57/2022**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.17 a.m. followed by a word of prayer.

**MIN. NO. 58/2022**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. (Canon) Naomi Waqo, MP and seconded by Sen. Enoch Wambua, MP-

1. Preliminaries
  - a) *Prayer*
  - b) *Adoption of the Agenda*
2. Confirmation of previous Minutes
3. Matters arising from previous Minutes
4. Consideration of the Petition regarding prolonged and inordinate delay in implementation of the Lower Kuja Irrigation Development Project and continued delay in land compensation
5. Any other business
6. Date of Next Meeting
7. Adjournment.

**MIN. NO. 59/2022**

**CONFIRMATION OF PREVIOUS MINUTES**

- 1) The Minutes of the 158<sup>th</sup> Sitting held on Wednesday, 2<sup>nd</sup> February, 2022 were confirmed as a true record of the proceedings and signed by the Vice-Chairperson after being proposed by Sen. Njeru Ndwiga, EGH, MP and seconded by Sen. Issa (Canon) Naomi Waqo, MP;
- 2) The Minutes of the 159<sup>th</sup> Sitting held on Monday, 14<sup>th</sup> February, 2022 were confirmed as a true record of the proceedings and signed by the Acting Chairperson after being proposed by Sen. Enoch Wambua, MP and seconded by Sen. Njeru Ndwiga, EGH, MP;
- 3) The Minutes of the 160<sup>th</sup> Sitting held on Monday, 7<sup>th</sup> March, 2022 were confirmed as a true record of the proceedings and signed by the Acting Chairperson after being proposed by Sen. Enoch Wambua, MP and seconded by Sen. Njeru Ndwiga, EGH, MP; and
- 4) The Minutes of the 161<sup>st</sup> Sitting held on Tuesday, 8<sup>th</sup> March, 2022 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. Enoch Wambua, MP and seconded by Sen. (Canon) Naomi Waqo, MP.

**MIN. NO. 60/2022**

**CONSIDERATION OF THE PETITION REGARDING  
PROLONGED AND INORDINATE DELAY IN  
IMPLEMENTATION OF THE LOWER KUJA  
IRRIGATION DEVELOPMENT PROJECT AND  
CONTINUED DELAY IN LAND COMPENSATION**

The Legal Counsel briefed the meeting that on the Petition as follows-

1. Communication had been received from the Ministry of Water, Sanitation and Irrigation and the National Irrigation Authority (NIA) indicating that matters raised in the Petition were currently the subject of ongoing court proceedings and therefore *sub judice*;
2. The response from the Ministry and the NIA provided evidence on various issues raised in the Petition including public participation, the process and investigation of issues raised in the Petition;
3. The Ministry asserted that flooding, a matter raised in the Petition, was caused by rising levels of the Lake Victoria and farmers digging their own trenches to access water not the Project;
4. The subject matter of the court cases is Sagama A and not Sagama B which is raised in the Petition;
5. The court has determined that some environmental issues should be referred back to the Environmental Tribunal;
6. Compensation, the main issue in the Petition, has not been well handled in NIA's response as they have mentioned that they are still carrying out evaluation on persons eligible for compensation.

Following deliberations, the Committee resolved to invite the Ministry of Water, Sanitation and Irrigation and the National Irrigation Authority to a meeting to provide further clarification on the compensation process and its status and other gaps in their response that were not *sub judice*.

**MIN. NO. 61/2022**

**DATE OF NEXT MEETING**

The next meeting would be held on Thursday, 21<sup>st</sup> April, 2022.

**MIN. NO. 62/2022**

**ADJOURNMENT**

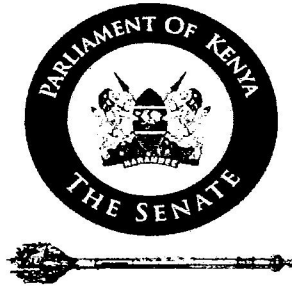
There being no other business, the meeting was adjourned at 11.32 a.m.

**SIGNED:**.....



**(CHAIRPERSON)**

**DATE:**.....17/5/2022.....



**MINUTES OF THE 173<sup>RD</sup> SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES HELD ON TUESDAY, 17<sup>TH</sup> MAY, 2022, AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM.**

**PRESENT**

- |  |   |                  |
|--|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, EGH, MP        | - | Chairperson      |
| 2. Sen. Enoch Wambua, MP                   | - | Vice-Chairperson |
| 3. Sen. Issa Juma Boy, MP                  |   |                  |
| 4. Sen. (Dr.) Michael Mbito, MP            |   |                  |
| 5. Sen. Justice (Rtd.) Stewart Madzayo, MP |   |                  |

**ABSENT WITH APOLOGY**

1. Sen. Kipchumba Murkomen, EGH, MP
2. Sen. (Eng.) Ephraim Maina, EBS, MP
3. Sen. (Canon) Naomi Jillo Waqo, MP

**SECRETARIAT**

- |                       |   |   |
|-----------------------|---|---|
| 1. Ms. Carol Kirorei  | - | Clerk Assistant                           |
| 2. Mr. David Angwenyi | - | Clerk Assistant ( <i>Taking Minutes</i> ) |
| 3. Mr. Tiyan Joseph   | - | Serjeant-At-Arms                          |
| 4. Ms. Njeri Manga    | - | Media Relations Officer                   |

**MIN. NO. 84/2022**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.06 a.m. followed by a word of prayer.

**MIN. NO. 85/2022**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Issa Boy Juma, MP and seconded by Sen. Enoch Wambua, MP-

1. Preliminaries
  - a) *Prayer*
  - b) *Adoption of the Agenda*

2. Consideration and adoption of Reports-
  - a) Report on consideration of the Sugar Bill, (National Assembly Bills No. 68 of 2019); and
  - b) Report on the National Assembly amendments to the Coffee Bill (Senate Bills No. 22 of 2020)
3. Any other business
4. Date of Next Meeting
5. Adjournment.

**MIN. NO. 85/2022**

**CONSIDERATION AND ADOPTION OF REPORTS**

1. The Committee considered the Report on the consideration of the Sugar Bill (National Assembly Bills No. 68 of 2019). The Report was adopted as presented after being proposed by Sen. Michael Mbito, MP and seconded by Sen. (Dr.) Issa Boy Juma, MP.
2. The Committee considered the Report on the consideration of the National Assembly amendments to the Coffee Bill (Senate Bills No. 22 of 2020). The Report was adopted as presented after being proposed by Sen. Issa Boy Juma, MP and seconded by Sen. (Dr.) Michael Mbito, MP.

**MIN. NO. 86/2022**

**DATE OF NEXT MEETING**

The next meeting would be held on Thursday, 19<sup>th</sup> May, 2022 at 11.00 a.m.

**MIN. NO. 87/2022**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.28 a.m.

SIGNED:.....  .....

(CHAIRPERSON)

DATE:.....17/5/2022.....

# ANNEX 2

The Sugar Bill (National Assembly Bills No. 68 of 2019) as passed by the National Assembly, with amendments, on 11<sup>th</sup> November, 2021



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REPUBLIC OF KENYA

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PARLIAMENT

NATIONAL ASSEMBLY BILLS

*(NO. 68 OF 2019)*

THE SUGAR BILL, 2019

(A Bill published in the Kenya Gazette Supplement No. 166 of 2<sup>nd</sup> October, 2019 and passed by the National Assembly, with amendments, on 11<sup>th</sup> November, 2021)

N.A. /B/No. 68/2019

**THE SUGAR BILL, 2019**  
**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I—PRELIMINARY**

- 1—Short title.
- 2—Interpretation.

**PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF  
THE KENYA SUGAR BOARD**

- 3—Establishment and incorporation of the Board.
- 4—Functions of the Board.
- 5—Functions of county governments.
- 6—Composition of the Board.
- 7—Term of appointment.
- 8—Vacation of office.
- 9—Powers of the Board.
- 10—Conduct of business and affairs of the Board.
- 11—Committees of the Board.
- 12—Delegation of powers of the Board.
- 13—Remuneration of Board members.
- 14—Chief Executive Officer.
- 15—Staff of the Board.
- 16—Protection from personal liability.
- 17—Liability of the Board for damages.

**PART III—LICENSING AND REGISTRATION**

- 18—Requirement of licence to operate mill.
- 19—Issue of licence and licence fees.
- 20—Sugar Import.
- 21—Industrial sugar.
- 22—Registration of millers.

**PART IV—ESTABLISHMENT OF THE SUGAR RESEARCH  
INSTITUTE**

- 23—Establishment of the Kenya Sugar Research Institute.
- 24—Functions of the Institute.
- 25—Management of the Institute.
- 26—Application.
- 27—Funds of the Institute.
- 28—Director General of the Institute.

**PART V— APPOINTMENT OF CROP INSPECTORS**

- 29—Appointment of crop inspectors.
- 30—Entry and inspection.
- 31—Powers of entry.
- 32—Obstruction of inspectors.

**PART VI—FINANCIAL PROVISIONS**

- 33—Funds of the Board.
- 34—Sugar Development Levy.
- 35—Sugar Development Fund.
- 36—Financial year.
- 37—Annual estimates.
- 38—Accounts and audit.
- 39—Annual report.

**PART VII— ESTABLISHMENT OF THE SUGAR  
ARBITRATION TRIBUNAL**

- 40—Establishment of the Sugar Arbitration Tribunal.
- 41—Jurisdiction of the Tribunal.
- 42—Determination of disputes.
- 43—Powers of the Tribunal.
- 44—Removal of members of the Tribunal.
- 45—Vacancy

46—Secretary of the Tribunal.

47—Remuneration of members and staff of the Tribunal.

**PART VIII—MISCELLANEOUS PROVISIONS**

48—Annual general meeting.

49—Quality, safety and health control measures.

50—Inspection for quality and safety.

51—Safeguard measures.

52—Offences and penalties.

53—Sugar industry agreements.

54—Rights of growers in a privatized company.

55—Representative of a grower in a private milling company.

56—Amendment of Third Schedule.

**PART IX—PROVISIONS ON DELEGATED POWERS**

57—Regulations.

**PART X—CONSEQUENTIAL AMENDMENTS**

58—Amendment of the First Schedule to No. 13 of 2013.

59—Amendment of the First Schedule to No. 16 of 2013.

**PART XI—SAVINGS AND TRANSITIONAL PROVISIONS**

60—Transfer of Staff.

61—Transfer of assets and liabilities.

62—Pending proceedings and claims.

**FIRST SCHEDULE—DELINEATION OF SUGAR  
CATCHMENT AREAS**

**SECOND SCHEDULE—PROVISIONS AS TO THE CONDUCT  
OF BUSINESS AND AFFAIRS OF THE BOARD**

**THIRD SCHEDULE—GUIDELINES FOR AGREEMENTS  
BETWEEN PARTIES IN THE SUGAR INDUSTRY**

**FOURTH SCHEDULE—PROVISIONS AS TO THE MEETINGS  
AND PROCEDURE OF THE TRIBUNAL**

**THE SUGAR BILL, 2019**

**A Bill for**

**AN ACT of Parliament to provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes**

**ENACTED** by Parliament of the Republic of Kenya as follows—

**PART I—PRELIMINARY**

Short title.

1. This Act may be cited as the Sugar Act, 2021.

Interpretation.

2. In this Act, unless the context otherwise requires—

“agreements” means the agreements specifying the standard provisions governing the rights and obligations of growers, millers and out-grower institutions in the sugar industry;

“Board” means the Kenya Sugar Board established under section 3;

“by-product” means any substance, other than sugar, produced incidentally during the process of manufacturing sugar;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective County;

“farm gate” means prices received by farmers for their sugarcane at the location of farm;

“Fund” means the Sugar Development Fund established under section 35;

“grower” means a person who produces sugarcane or any crop in Kenya for the manufacture of sugar;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Third

Schedule;

“industry” means the sugar industry in Kenya and includes the growing of sugar-cane and any other sugar producing crop, the manufacturing, refining, warehousing, marketing, transportation of sugar and disposal of sugar and its by-products;

“Institute” means the Kenya Sugar Research Institute established under section 23;

“licence” means a licence issued by the Board to a miller;

“member” means a member of the Board appointed under section 6;

“mill gate” means a site where sugarcane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop;

“miller” means a person licensed to operate a sugar mill or a jaggery mill in Kenya for the production of sugar including refined sugar and other by-products;

“outgrower” means a person who has a sugarcane farm in a catchment area and who has in force a cane supply contract in respect of the sugar-cane grown on such farm and registered by the Board;

“refined sugar” means sugar, which complies with the specifications set by the body for the time responsible for setting standards;

“stakeholder” means a person with significant interest in the sugar industry and includes government, millers, growers and out-grower institutions;

“sugar” means crystalline or liquid sucrose in any of its recognized commercial forms, intended for human consumption or other uses and includes raw sugar and industrial sugar;

“sugar-cane” means any plant or part of a plant of the genus *saccharum* or any of its hybrid;

“sugar catchment area” means a specific geographical area where farmers are clustered within a

suitable sugar catchment area for purposes of election to the Board under the First Schedule;

“sugarcane growers apex body” means a national sugarcane farmers and out grower organisation under a cane supply contract and in catchment areas under the First Schedule gazetted as such by the Cabinet Secretary for the time being responsible for agriculture;

“Tribunal” means the Sugar Arbitration Tribunal established under section 40.

**PART II—ESTABLISHMENT, POWERS  
AND FUNCTIONS OF THE KENYA SUGAR  
BOARD**

Establishment  
and  
incorporation of  
the Board.

3. (1) There is established a board to be known as the Kenya Sugar Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the  
Board.

4. (1) The Board shall—

- (a) regulate, develop and promote the sugar industry;
- (b) co-ordinate the activities of individuals and organizations within the industry; and
- (c) facilitate equitable access to the benefits and resources of the industry by all

interested parties.

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;
- (b) act as an intermediary between the industry and the Government;
- (c) facilitate the flow of research findings to interested parties through the provision of effective extension services;
- (d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;
- (e) facilitate the arbitration of disputes among interested parties;
- (f) facilitate the export of local sugar;
- (g) promote and encourage the use of environmentally friendly technologies in the industry;
- (h) provide advisory services to growers, out-grower institutions and millers;
- (i) facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines;
- (j) represent the industry in such organizations as are relevant for the promotion of the industry;
- (k) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and

other interested parties;

- (l) collect, collate and analyze industry statistics and maintain a data base for the industry;
- (m) licence sugar mills;
- (n) enforce and monitor compliance with standards along the sugar value chain;
- (o) facilitate value addition and product diversification in the sugar sub-sector;
- (p) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (q) formulate guidelines on an efficient and economical transportation of sugar;
- (r) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (s) establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- (t) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and
- (u) perform such other functions as may, from time to time, be assigned by the interested parties.

Functions of  
county  
governments.

5. The County Government shall—

- (a) issue sugar cane nursery certificates;
- (b) offer and coordinate extension services on sugar production and milling in the respective county;
- (c) in collaboration with the Board and law enforcement agencies, enforce regulations

within the county;

- (d) monitor and report incidences of pests and disease outbreaks and take appropriate action in collaboration with the Board and other relevant government agencies; and
- (e) establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

Composition of  
the Board.

6. (1) The Board shall comprise—
- (a) a non-executive Chairperson elected by the Board from among the representatives of growers on the Board and appointed by the Cabinet Secretary;
  - (b) five representatives elected by growers from each sugar catchment area as per the First Schedule;
  - (c) one representative elected by sugar millers who is knowledgeable in sugar technology and value addition;
  - (d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;
  - (e) one person nominated by the Council of County Governors who is knowledgeable in extension services and management of farmer institutions;
  - (f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;
  - (g) the Chief Executive of the Board appointed under section 14 who shall be an *ex-officio* member and the secretary to the Board.

(2) The members under subsection (1) (b), (c) and (e) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(3) A person shall not be appointed as a chairperson of the Board of Directors unless the person holds at least a degree or its equivalent in any discipline from an institution recognized in Kenya and has relevant experience in the sugar sector.

Term of appointment.

7. (1) A person appointed as chairperson or a member of the Board under section 6(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) Members of the Board under section 6(1)(b), (c) and (e) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times.

Vacation of office.

8. A person shall cease to be a member of the Board of if the person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months without the option of a fine;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

Powers of the Board.

9. The Board shall have all the powers necessary for the proper performance of its functions under this Act, including the power to—

- (a) impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act;
- (b) control, supervise and administer the assets of the Board in such manner and for such purpose as best promotes the purpose for which the Board was established;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (e) lay down policy guidelines for the operations and management of all the funds collected by the Board;
- (f) access all such relevant information as may be necessary for the efficient administration of the industry;
- (g) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Board is established; and
- (h) open a banking account or banking accounts for the funds of the Board.

Conduct of  
business and  
affairs of the  
Board.

**10.** (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Board shall regulate its own procedure and the procedure of any of its committees.

Committees of  
the Board.

**11.** (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt to sit in the committees established under subsection (1), such other persons whose knowledge and skills are necessary for the performance of the functions of the Board.

Delegation of powers of the Board.

12. The Board may, either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

Remuneration of Board members.

13. The Board shall pay to its members, such remuneration, fees or allowances for expenses as determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

Chief Executive Officer.

14. (1) There shall be a Chief Executive Officer of the Board who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under this section if the person—

- (a) holds a relevant degree from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience from a relevant field;
- (c) has at least five years' experience in a position of senior management; and
- (d) meets the provision of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs of the Board.

Staff of the Board.

15. The Board may appoint such officers and other staff as are necessary for the proper discharge of

its functions under this Act, upon such terms and conditions of service as the Board may determine.

Protection from personal liability.

16. A member, officer, employee or agent of the Board shall not be held personally liable to any action, claim or demand for a matter or thing done *bona fide* for the purpose of executing the functions, powers or duties of the Board.

Liability of the Board for damages.

17. Section 16 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

### PART III—LICENSING AND REGISTRATION

Requirement of a licence to operate mill.

18. (1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence issued by the Board, upon recommendation by the relevant County Government for that purpose.

(2) A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or to a fine not exceeding ten million shillings, whichever is the higher, or to imprisonment for a term not exceeding five years, or to both.

Issue of licence and licence fees.

19. (1) A person shall apply to the Board for a licence to operate a sugar mill or a jaggery mill in the prescribed form.

(2) The Board shall not issue a licence under this Act unless—

- (a) it is of the opinion that the applicant is a fit and proper person to hold such a licence; and
- (b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him conduct business or that he has,

amongst his staff, a person with such knowledge and experience.

(3) Every licence shall specify the premises upon which the milling of sugar may be carried on.

(4) Every licence shall, unless earlier revoked, expire on the 30th June next following the date of issue.

(5) There shall be payable for the issue of a licence, such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.

(6) An application for the renewal of a licence shall be made to the Board not later than the 1st June in the year in which the current licence is due to expire.

(7) The issuance of a licence to an applicant under this section shall not be withheld without reasonable cause.

(8) A person shall not import or export sugar without a valid licence issued by the Board.

Sugar Import.

20. (1) A person who imports sugar into Kenya shall, prior to importation —

- (a) provide evidence that the sugar they intend to import is not available in the local market;
- (b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and
- (c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

(3) This section shall apply to importation of sugar-cane.

Industrial sugar.

21. (1) A licenced sugar miller shall be licenced by the Board to carry out the business of processing industrial sugar.

Registration of millers.

(2) The Board shall regulate the processing of industrial sugar.

22. (1) A person shall not conduct the business of a miller unless he or she is registered by the Board and the premises in which the business is conducted is specified in the register.

(2) The Board shall issue to every miller registered under this section, a certificate of registration specifying the premises at which milling may be carried on by the miller.

(3) No fee shall be charged in respect of any registration or certification of registration made or issued under this section.

(4) In issuing certificates of registration under subsection (2), the Board shall satisfy itself that the premises upon which milling may be carried out meets the environmental standards set by the National Environmental Management Authority and the miller has been issued with a certificate of safety by the relevant county government.

(5) A miller may offer extension or other services to growers.

(6) Every miller registered under this section shall conduct business in accordance with this Act and any regulations made thereunder.

(7) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

#### **PART IV- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE**

Establishment of the Kenya Sugar Research Institute.

23. (1) There is hereby established a body to be known as the Kenya Sugar Research Institute.

(2) The Institute is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

Functions of the Institute.

24. (1) The Institute shall—

- (a) promote, co-ordinate and regulate research in sugar and sugar diseases; and
- (b) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of sugar.

(2) For the purpose of carrying out its functions, the Institute shall—

- (a) formulate policy and make policy recommendations to the Cabinet Secretary on sugar research;
- (b) prioritise areas for, and co-ordinate, sugar research in Kenya in line with the national policy on sugar;
- (c) determine and advise the Government on the resource requirements for sugar research in Kenya both at the national and county level;
- (d) regulate, monitor and ensure that all sugar research undertaken by other institutions or persons undertaking sugar research is consistent with the national priorities specified in the relevant policy documents;
- (e) formulate or approve medium and long term research plans, strategies and budgets of the

Institute;

- (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;
- (i) establish platforms for the purposes of sharing research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) breed sugarcane varieties suited for various agro-ecological areas of Kenya;
- (m) conduct research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- (n) appraise technologies on land preparation, drainage and water management for economical cane production;
- (o) study and monitor pests and diseases that affect sugarcane and recommend appropriate control strategies;
- (p) develop agronomic packages for sugarcane maintenance and management;
- (q) institute socio-economic investigations to improve human resource management and

enhance development of the sugar industry as an agribusiness;

- (r) test, design and evaluate farm machinery and factory equipment for efficient sugar production;
- (s) promote the transfer of sugar technology based on applied research through relevant extension mechanisms;
- (t) foster research on sustainable productivity, environmental issues, human safety at field and factory levels;
- (u) collaborate with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Institute's mission;
- (v) analyse soil and plant samples for advisory purposes;
- (w) offer modular courses on various aspects of cane management and practices; and
- (x) perform such other function as may be conferred on it by this Act or any other written law.

Management of  
the Institute.

**25.** The Management of the Institute shall vest in a Board which shall consist of--

- (a) a chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;
- (b) five persons elected by growers from each of the sugar catchment areas under the First Schedule;
- (c) the chief executive officer of the Board;
- (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
- (e) the chief executive officer of the Kenya Agricultural Livestock and Research Organization; and

Application. (f) the Director General who shall be an ex officio member.

26. The provisions of sections 8, 9, 10, 11 and 12 shall apply to the Board of the Institute with necessary modification.

Funds of the Institute. 27. The funds of the Institute shall consist of—

(a) monies remitted by the Board from the sugar development levy;

(b) any monies received by the Institute from grants and donations; and

(c) monies from any other source as approved by the responsible Ministry.

Director General of the Institute. 28. (1) There shall be a Director General of the Institute who shall be appointed by the Board of the Institute whose terms and conditions of service shall be determined by the Board of the Institute in the instruments of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under this section if the person—

(a) holds a degree from a university recognized in Kenya in agricultural research, soil and seed research, soil science or related field;

(b) has at least five years' experience in managerial capacity; and

(c) meets the provisions of Chapter six of the Constitution.

#### **PART V— APPOINTMENT OF CROP INSPECTORS**

Appointment of crop inspectors. 29. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for appointment as a crop inspector.

Entry and inspection. 30. An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

(a) enter any land or buildings occupied by the

holder of a licence issued under this Act, or a person registered under this Act;

- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

Powers of entry.

31. (1) For the purposes of this Act, an inspector who has reasonable grounds may—

- (a) at any reasonable time, enter upon any land, premises or vehicle;
- (b) take such persons and things as the inspector considers necessary;
- (c) perform the functions or exercise the powers conferred by this Act or any other written law;
- (d) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (e) demand the production by a licence holder of the licence for examination;
- (i) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (g) do any other thing authorized under this Act.

(2) The owner or occupier of any land or a person in control of any premise or a vehicle which an inspector has entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.

Obstruction of inspectors.

32. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions,

and duties or exercise of powers conferred by this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.

#### **PART VI—FINANCIAL PROVISIONS**

Funds of the Board.

**33.** The funds of the Board shall comprise—

- (a) such monies as may be appropriated by the National Assembly for the purposes of the Board;
- (b) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided for or donated or lent to the Board.

Sugar Development Levy.

**34.** (1) The Cabinet Secretary shall, in consultation with the Board, by order in the Gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.

(2) The levy shall be payable at such rate as may be specified in the order.

(3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.

(4) All moneys received in respect of the levy shall be paid to the Board and if not paid on or before the date prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.

(5) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed

by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.

(6) The Board shall apply the money received under this section for the furtherance of the objects of the Board.

(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—

- (a) fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;
- (b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
- (c) twenty per centum shall be remitted directly to the Institute; and
- (d) forty five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.

(8) The funds provided for under subsection (7)(a) shall be used to provide for sustainable, affordable credit and advances to farmers for all or any of the following purposes—

- (a) farm improvement;
- (b) farm inputs;
- (c) farming operations; and
- (d) price stabilization.

Sugar  
Development  
Fund.

35. (1) There is established a Fund to be known as the Sugar Development Fund which shall be administered by the Board.

(2) The Fund shall consist of—

- (a) the Sugar Development levy;
- (b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;

- (c) any moneys provided by the National Assembly for the purposes of the Fund;
- (d) any moneys provided by a county assembly for the purposes of the Fund; and
- (e) moneys from any other source approved by the Board.

Financial year.

36. The financial year of the Board shall be the period of twelve months ending on the 30<sup>th</sup> June in every year.

Annual estimates.

37. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Board for that financial year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Board for the financial year concerned and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Board;
- (c) the proper maintenance of the buildings and grounds of the Board;
- (d) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate.

(3) The annual estimates shall be approved by the

Board before the commencement of the financial year to which they relate and once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

Accounts and  
audit.

38. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Board.

(2) Within a period of three months from the end of the financial year, the Board shall submit to the Auditor General or to an auditor appointed under subsection (3), the accounts of the Board together with—

(a) a statement of the income and expenditure of the Board during that year; and

(b) a statement of the assets and liabilities of the Board on the last day of that year.

(3) The accounts of the Board shall be audited by the Auditor General or by an auditor appointed by the Board with the written approval of the Auditor General.

(4) The appointment of an auditor under subsection (3) shall not be terminated by the Board without the prior written consent of the Auditor General.

(5) The Auditor General may give general or specific directions to an auditor appointed under subsection (3) and the auditor shall comply with such directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor General on any matter relating to the directions given under subsection (5).

(7) Within a period of six months after the end of each financial year, the Auditor General shall report on the examination and audit of the accounts of the Board to the Cabinet Secretary and where an auditor has been appointed under subsection (3), such auditor shall transmit a copy of the report to the Auditor General.

(8) The fee payable to an auditor, appointed under subsection (3) shall be determined and paid by the Board.

(9) Nothing in this Act shall be construed to

prohibit the Auditor General from carrying out an inspection of the records and accounts of the Board whenever it appears to him desirable.

(10) Notwithstanding anything in this Act, the Auditor General may transmit to the Cabinet Secretary a special report on any matters incidental to his power under this Act and section 19(3) and (4) of the Exchequer and Audit Act (Cap. 412) shall, with necessary modifications, apply to any report made under this section.

Annual report.

39. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediate preceding year.

(2) The Cabinet Secretary shall lay the report submitted to him under subsection (1) before the National Assembly within three months of the day the Assembly next sits after the receipt of the report.

#### **PART VII- ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL**

Establishment of  
the Sugar  
Arbitration  
Tribunal.

40. (1) There is hereby established a Tribunal to be known as the Sugar Arbitration Tribunal.

(2) The Tribunal shall consist of—

(a) a chairperson appointed by the Chief Justice who shall be a person qualified to be appointed as a judge of the High Court; and

(b) four other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of who shall be appointed by the Chief Justice in consultation with the Attorney-General and the Council of County Governors.

(3) The Chairperson and members of the Tribunal shall serve on a part-time basis.

(4) The members of the Tribunal appointed under

subsection (2) shall hold office for such period, not exceeding three years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re- appointment for one further term of a period not exceeding three years.

(5) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a public servant or takes an active part in the activities of a political party.

(6) A person shall not qualify for appointment under this section unless the person has met the requirement of Chapter Six of the Constitution.

(7) The provisions set out in the Fourth Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

(8) Except as provided in the Fourth Schedule, the Tribunal shall regulate its own procedure as to the conduct of meetings.

Jurisdiction of the Tribunal.

41. (1) The Tribunal shall determine—

- (a) disputes between sugarcane farmers;
- (b) disputes between sugarcane farmers and the following-
  - (i) out grower institutions;
  - (ii) millers;
  - (iii) growers; or
  - (iv) other interested party;
- (c) disputes relating to cane pricing; and
- (d) disputes relating to contract farming.

Determination of disputes.

42. (1) The Tribunal shall determine any dispute before it expeditiously, but in any case, shall determine a dispute within a period of three months from the date the dispute is lodged.

(2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and

on points of law to the Court of Appeal.

(3) A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrates Court.

(4) The Tribunal shall apply the rules of evidence and procedure under the Evidence Act (Cap. 80) and the Civil Procedure Act (Cap. 21), with the necessary modifications, while ensuring that its proceedings do not give undue regard to procedural technicalities.

Powers of the Tribunal.

**43.** (1) The Tribunal shall have the powers of the High Court—

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents; and
- (c) to order the payment of costs.

(2) The provisions of the law relating to Commissions of Inquiry in Kenya with respect to—

- (i) the protection of the members of the Tribunal from suit;
- (ii) the form of summonses to witnesses;
- (iii) to giving or fabricating of false evidence;
- (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
- (v) the appearance of advocates;

shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

Removal of members of the Tribunal.

**44.** A member of the Tribunal may be removed if the member—

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence and sentenced to imprisonment for a period

exceeding six months without the option of a fine;

- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or
- (e) is otherwise unable or unfit to discharge the functions of the office.

Vacancy.

45. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal and such member shall serve for his or her full term.

Secretary of the Tribunal.

46. The Chief Justice shall appoint a Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Remuneration of members and staff of the Tribunal.

47. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

(2) The Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Judicial Service Commission on the recommendation of the Salaries and Remuneration Commission.

#### PART VIII—MISCELLANEOUS PROVISIONS

Annual general meeting.

48. (1) The Board shall, at least once in every year, convene an annual general meeting of representatives of millers and growers for the purposes of considering the annual report and accounts of the Board and for the purposes of transacting such other business of which notice shall be given.

(2) The Board may convene special meetings in addition to the meetings mentioned in subsection (1) for such purposes and at such times as it may deem fit.

(3) Subject to this Act and any regulations made

thereunder, the Board may make rules for the regulation of the conduct of business and procedure at the general meetings convened pursuant to this section.

Quality, safety  
and health  
control  
measures.

49. (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country meets—

- (a) safety and quality standards as set by the body for the time being responsible for setting standards;
- (b) safety and health standards for food handlers as set by the body for the time being responsible for public health; and
- (c) environmental issues as set by the body for the time being responsible for environment.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction—

- (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and
- (b) the court may where a person is convicted for an offence make a further order that the person's licence be withdrawn.

Inspection for  
quality and  
safety.

50. (1) The Board shall carry out physical inspection of premises licenced under section 19 quarterly to ensure that safety and health standards are followed.

- (2) Every person licenced under this Act shall—
  - (a) not discharge any affluent, dangerous materials, substances, oil or oil mixtures into land, water, air, or aquatic environment;
  - (b) not release smoke or any air pollutant to the air that pollutes the environment;
  - (c) manage any hazardous waste and materials;
  - (d) not import any hazardous waste;

- (e) not mislabel any sugar or jaggery; and
- (f) not aid or abet illegal trafficking of sugar or related substances.

(2) When an offence under this section, is committed by a body corporate, the body corporate and every director or officer of the body corporate who ought to have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to an imprisonment for a term not exceeding five years.

(3) In addition to the sentence under subsection (2), the Court may order for the revocation of a licence.

Safeguard  
measures.

51. (1) The Board shall ensure, subject to such regional and international trade agreements to which Kenya is a party, that all sugar imports into the country are subject to all the prevailing import duties, taxes and other tariffs.

(2) Despite subsection (1), the Board shall ensure that—

- (a) sugar shall be imported in the country only when there is sugar deficit on a quarterly basis and for a specific tonnage; and
- (b) importers report to the Board on their imports, sales and stock on daily basis.

(3) The Government shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices.

(4) A person who contravenes the provision of this section commits an offence and shall be liable, on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both.

Offences and penalties.

52. (1) The Board may direct any organization or person in the industry to produce any document or information, or submit any returns which it reasonably considers necessary for the proper performance of its functions under this Act.

(2) Any person who—

- (a) fails to comply with any direction given by the Board under this Act; or
- (b) furnishes to the Board any information or produces any document which is false or misleading in any material particular; or
- (c) obstructs an officer of the Board in the performance of his functions under this Act; or
- (d) diverts or abets the diversion of transit sugar into the domestic market,

commits an offence.

(3) A person convicted of an offence under paragraph (d) of subsection (2) shall be liable to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both.

(4) A person who contravenes any of the provisions of this Act commits an offence.

(5) A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Sugar industry agreements.

53. (1) There shall be, for the purposes of this Act, agreements to be known as the sugar industry agreements negotiated between growers and millers, growers and out-grower institutions, and millers and out-grower institutions.

(2) The agreements referred to in subsection (1)

shall conform to the guidelines set out in the Third Schedule.

(3) Without prejudice to the generality of subsection (2), the matters to be provided for in the agreements shall include—

- (a) the designation of any agricultural crop from which it is possible to manufacture sugar which is subject to the agreement;
- (b) a sugar-cane farming contract providing for the terms and conditions of the production of sugarcane and sugar and prescribing the rights and obligations of growers and millers;
- (c) a formula for determining the price to be paid by millers to growers for sugarcane or any other designated agricultural produce in consultation with stakeholders, which may include any factor related to the sale or other disposal of sugar industry products;
- (d) the functions to be executed by the Board in the execution of the agreement;
- (e) the granting of powers to the Board to enforce penalties prescribed in the agreement for the contravention of, or failure to comply with any term of the agreement; and
- (f) the enforcement of levies upon growers and millers for the purpose of enabling the Board to fulfill any obligation incurred by it in accordance with its constitution.

Rights of growers in a privatized company.

54. Notwithstanding any other provision in this Act or any other written law to the contrary, growers shall be entitled to at least—

- (a) 51% shareholding of all privatized sugar factories; and
- (b) 51% representation on the Boards of Directors of a privatized company.

Representative of a grower in a private milling

55. (1) Notwithstanding the provisions of any other Act, each private sugar milling company shall have

company. a representative of the growers in its board of directors.

(2) In appointing a director representing the growers under subsection (1), the milling company shall consider in the first instance, the leaders of the out-grower institutions within the sugar-cane catchment area in which the sugar mill is located.

(3) A person appointed as a director under subsection (1), shall serve for a term not exceeding two years.

Amendment of  
Third Schedule.

56. The Cabinet Secretary may, on the recommendation of the Board, by order in the *Gazette*, amend the Third Schedule.

#### **PART IX – PROVISIONS ON DELEGATED POWERS**

Regulations.

57. (1) The Cabinet Secretary shall in consultation with the Board make regulations generally for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), may make regulations prescribing—

- (a) the regulation and control of the production, manufacturing, marketing, importation or exportation of sugar and its by-products;
- (b) the forms of licences to be issued under this Act, and the form and manner of application for the licences;
- (c) the fees which may be charged for any activity relating and incidental to the development, products, marketing and distribution of sugar and its by-products;
- (d) the establishment of weigh bridges;
- (e) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;

- (f) production and import of sugar to ensure adequate sugar availability in the country;
- (g) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;
- (h) minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments; and
- (i) cane harvesting and transportation.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Board to discharge its functions more effectively;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section; and
- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap 2.  
No. 23 of 2013.

(4) Without prejudice to the generality of this section, the Cabinet Secretary shall make the regulations necessary to operationalize this Act within twelve months from the date of commencement of this Act.

#### **PART X—CONSEQUENTIAL AMENDMENTS**

Amendment of  
the First  
Schedule to No.  
13 of 2013.

**58.** The Agriculture and Food Authority Act, 2013 is amended in the First Schedule by deleting paragraph 1(ii).

Amendment of  
the First  
Schedule to No.  
16 of 2013.

59. The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the words “Sugar.....Saccharum spp”.

**PART XI —SAVINGS AND  
TRANSITIONAL PROVISIONS**

Transfer of  
Staff.

No. 13 of 2013.

60. (1) Upon the commencement of this Act, a person who was a member of the staff of the former Sugar Board of Kenya before the commencement of the Agriculture and Food Authority Act, 2013 and the current staff of the Sugar Directorate not being under any notice of dismissal or resignation shall upon commencement of this Act and subject to subsection (2) become a staff of the Board on their current improved terms and conditions of service.

(2) The pensions of staff under the provident fund of Agriculture and Food Authority-Sugar Directorate shall on the commencement of the Act vest in the Board.

Transfer of  
assets and  
liabilities.

61. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Sugar Directorate of the Agriculture and Food Authority, shall, on the date of commencement of this Act, vest in the Board subject to all interests, liabilities, charges, obligations and trusts affecting that property.

Pending  
proceedings and  
claims.

62. All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority had this Act not been enacted.

**FIRST SCHEDULE**  
[S. 2, 6(1)(b) and 25(b)]

**DELINEATION OF SUGAR CATCHMENT  
AREAS**  
**SUGAR CATCHMENT COUNTIES**

AREA	
Rift Region	Kericho, Nandi and Uasin Gishu
Upper Western	Bungoma, and Trans Nzoia
Lower Western Region	Busia, Kakamega, Siaya and Vihiga
Southern Region	Homa Bay, Kisumu, Migori and Narok
Coastal Region	Kwale, Lamu, and Tana River

SECOND SCHEDULE [Section 10]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Vacation of office.

1. A member of the Board, other than the Chairperson or an *ex-officio* member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
  - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
  - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
  - (iii) is incapacitated by prolonged physical or mental illness;
  - (iv) is adjudged bankrupt; or
  - (v) is otherwise unable or unfit to

discharge his functions.

Meetings.

2. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon request in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.

(5) The chairperson shall preside at every meeting at which he or she is present but, in his or her absence, the members shall elect one of their members to preside who shall with respect to that meeting and the business transacted thereat have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to paragraph (4), no proceeding of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Disclosure of interest.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other

matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

The common seal.

4. The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer:

Provided that the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the Chairperson or the Chief Executive Officer.

Contracts and instruments.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board for that purpose.

### THIRD SCHEDULE [Section 53.]

#### GUIDELINES FOR AGREEMENTS BETWEEN PARTIES IN THE SUGAR INDUSTRY PART I—INTRODUCTION AND SCOPE OF AGREEMENTS

Scope of Agreement.

1. The guidelines define the linkages among the different institutions in the industry and govern the operations of interested parties in the industry and any disputes arising in relation thereto shall be referred to the Tribunal.

Interpretation.

2. In these guidelines, unless the context otherwise requires—

“cane farming contract” means a contract between a grower and an out-grower institution or miller;

“cane supply contract” means a contract for the supply of sugar-cane to a miller;

“*force majeure*” means events that cannot be reasonably anticipated or controlled and includes acts of war or enemies, riots, strikes, embargoes, acts of God, acts of the Government or of any authority or agency thereof;

“grower member” means a member of an out-grower institution;

“Kenya Sugar Manufacturers Association” means the Kenya Sugar Manufacturers Association registered under the Societies Act;

“Kenya Sugar Research Institute” means the Kenya Sugar Research Institute established under Part IV of this Act; and

“sugar lobby group” means a registered group of people comprising of farmers and growers from the sugar catchment areas championing the rights of sugar stakeholders.

## **PART 2—ROLES OF INSTITUTIONS IN THE INDUSTRY**

The role of the Kenya Sugar Board.

3. The role of the Kenya Sugar Board is to—

- (a) co-ordinate the activities of the various organizations concerned with the industry, both in the private and the public sector;
- (b) support the general development of out-

- grower institutions and enable them become effective intermediaries for providing financial assistance and extension services to growers;
- (c) review, on a regular basis, the economic and financial performance as well as the problems and prospects of the industry;
  - (d) promote a more extensive use of sugar and its by-products;
  - (e) promote the manpower development of farmers and employees in the industry through establishment and co-ordination of a central training institute;
  - (f) facilitate negotiations on cane pricing between growers, out-grower institutions and millers;
  - (g) facilitate studies and investigations in respect of any specific or general issue affecting the industry;
  - (h) facilitate long-term master plans for the rehabilitation, rationalization of factories and marketing of sugar, with due regard to the interest of all parties concerned;
  - (i) collect information and evaluate any fixed investment to be made in the sugar sector by any individual;
  - (j) examine and advise on the operating costs of any organization concerned with the industry;
  - (k) monitor the production, importation and consumption of sugar and its by-products with a view to ensuring a viable industry; and
  - (l) ensure that millers and out grower institutions look into the welfare of its members and infrastructural development of the regions where they are situated.

The role of out grower institutions.

4. The functions and role of out-grower institutions include—

- (a) promoting and representing the interests of growers;
- (b) negotiating or arranging, on behalf of such grower members, the terms of supply of sugar-cane to the factory and the co-ordination of the production, harvesting and transport thereof;
- (c) providing financial credit or otherwise arranging finance for such grower members in connection with the production of their sugar- cane, including land clearance and preparation, planting, cultivation and tending, harvesting, transport and the supply of goods and services relating thereto;
- (d) providing or procuring services, advice and assistance for such grower members as may be required, to carry out or procure the carrying out of such operations for such members;
- (e) providing or procuring accounting services and books or records for members in respect of their individual operations;
- (f) purchasing, selling or otherwise dealing in, securing or providing such goods, materials, supplies and services as may be required by members;
- (g) make representations to the Sugar Cane Pricing Committee; and
- (h) effectively participating in lobbying for favourable Government policies in the industry through the registered sugar lobby groups.

The role of the miller.

5. The role of the miller is to—

- (a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;
- (b) maintain and develop adequate milling capacity for sugar-cane planted on the basis of agreed planting plans with the growers and the out-grower institution;
- (c) mill the sugar-cane efficiently so as to realize maximum returns for the millers and the growers;
- (d) pay the sugar-cane farmer within 15 days of accepting delivery or otherwise pay interest on the sum due at market rates, plus a penalty of 3 per cent per month on late payment;
- (e) participate in lobbying for favorable Government policies in the industry through the Kenya Sugar Manufacturers Association;
- (f) maintain accurate weighbridges to ensure correct weight of sugar- cane;
- (g) ensure that mobile weighbridges are closer to growers; and
- (h) install and maintain appropriate systems and technologies for sampling sucrose content in sugar-cane delivered.

#### **PART 3—SUGARCANE FIRES AND CANE PRICING**

Sugarcane fires.

6. (1) The out-grower institutions shall follow the harvesting programs strictly and be subject only to factory capacity.

(2) A miller may decline to accept burnt sugar-cane but where such sugar-cane is accepted, the following guidelines shall be adhered to—

- (a) the grower shall sign an authority to harvest his burnt sugar-cane prior to commencement of cutting which authority shall be different from any sugar-cane farming contract and shall set out conditions under which the miller may accept the burnt sugar-cane;
- (b) sugar-cane shall be delivered to the mill weighbridge within a period of up to seven days, inclusive of the day of burning, according to specific factory zones;
- (c) only sugar-cane of an acceptable quality shall be harvested; and
- (d) a payment for burnt sugar-cane shall be made one month from the date of the scheduled harvest of the sugar-cane.

Sugar Cane  
Pricing  
Committee.

7. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as "the Committee").

- (2) The Committee shall comprise of—
  - (a) the Chief Executive Officer of the Board;
  - (b) two persons nominated by the Kenya Sugar Manufacturers Association;
  - (c) three persons nominated by the sugar cane growers from the sugar catchment region;
  - (d) one representative from the sugar lobby groups;
  - (e) the Principal Secretary responsible for matters related to agriculture or a representative appointed in writing; and
  - (f) one representative from county government nominated by the Council of Governors.

(3) The main objectives of the Committee shall be to—

- (a) review sugar cane prices;
- (b) provide a mechanism that remunerates farmers for other products delivered from the

- processing of cane;
  - (c) ensure adherence to negotiated cane pricing formula;
  - (d) transition to payment based on quality; and
  - (e) enforcement of contracts between farmers and millers.
- (4) The Committee shall come up with the pricing formula and in doing so shall take into account the—
- (a) pricing mechanisms for all other cane related charges paid by the farmer;
  - (b) an index that takes into consideration delayed harvesting; and
  - (c) transportation cost per tonne per kilometre of sugarcane.
- (5) The Board shall offer Secretariat services to the Committee.
- (6) The sugar-cane prices set by the committee under sub paragraph (4) shall be reviewed after every thirty six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane pricing.

**PART 4—RELATIONSHIP BETWEEN THE  
OUT GROWER INSTITUTION AND THE MILLER**

Out-grower and  
miller  
Agreement.

8. (1) Except as otherwise agreed, a miller shall—
- (a) subject to the provisions of a supply contract, buy all sugar-cane of requisite quality harvested from the area specified in the supply contract in accordance with the program provided for herein;
  - (b) notify the out-grower institution in advance of any planned closure of the mill for any reason;

- (c) advise the grower of any change in planned activities as soon as the need for such change becomes apparent;
- (d) reject any sugar-cane found not to be of the requisite quality based on parameters established by the Kenya Sugar Board; and
- (e) pay the out-grower institution within thirty days of sugar-cane delivery: Provided that the sugar-cane will be harvested not later than twenty- four months for plant crops and not later than twenty-two months for subsequent ratoons.

(2) If a miller fails to pay the out-grower institution as specified, the miller shall be liable to pay interest charges on the outstanding grower loan accounts of the affected growers up to the time it completes payment so as to safeguard the grower's ability to repay the funds borrowed to finance cane production.

(3) The out-grower institution shall—

- (a) before the start of each financial year prepare a cultivation and planting program covering all growers and showing acreage, approximate timings and production quantities anticipated for each grower;
- (b) at the appropriate time, prepare a harvesting program showing the approximate expected time of harvesting the crop of each grower;
- (c) furnish the miller with copies of such programs as soon as they are completed, and consult with the growers regarding any significant changes therein that the miller may subsequently consider necessary to make; and
- (d) furnish the miller with a list of all growers showing the acreage of each grower's sugar-cane area as specified in his sugar-cane supply contract:

Provided that the programs referred to in

subparagraph (a), (b) and (c) shall be tentative and their implementation shall be to the exigencies of subsequent operations and circumstances.

(4) Neither the out-grower institution nor the miller shall be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of force majeure.

(5) Any event of force majeure shall be reported by the affected party to the other party within seven days from the date of its occurrence and the said event shall be certified by the competent authorities of both parties.

(6) The obligations of the parties under the specified agreement shall remain suspended for the period during which the said event of force majeure persists.

(7) The provisions of this Part shall apply mutatis mutandis to the relationship between the grower and the miller.

#### **PART 5—RELATIONSHIP BETWEEN THE OUT-GROWER INSTITUTION AND THE GROWER**

Out-grower  
institution and  
grower  
agreement.

9. (1) A grower may appoint an out-grower institution as his representative in all matters of sugar-cane development and the financing of sugar-cane supply, including negotiations for the price of sugarcane, costs of farm inputs and related services.

(2) The out-grower institution and the grower may agree on a specific period of maturity for purposes of harvesting, delivery and payment which shall be eighteen to twenty months for plant crop, and sixteen to twenty-two months for first and second ratoon crops:

Provided that by mutual consent the said term may be extended to include the harvesting of one or more ratoon crops or by such period as may be agreed upon, with or without modifications of the terms and conditions herein contained, by a memorandum of extension

endorsed hereon not less than three months before the date of the anticipated commencement of harvesting of what would otherwise have been the last ratoon crop under the contract or six years which ever shall be the earlier.

(3) Where a grower decides to discontinue the production of sugar-cane or terminate the relationship with an out-grower institution he shall give a three months' notice of his intention to do so and shall pay all his dues before the expected time of harvest and the out-grower institution will then harvest cane in the normal harvesting manner:

Provided that such notice shall only be effective if the grower shall, within the period of notice, repay in full all loans received by him from the out-grower institution.

(4) Any such termination of the contract shall be without prejudice to all rights accrued and obligations incurred to or by either party prior to the date of termination and shall not prejudice any claim for damages for such breach of contract.

(5) Any question or dispute as to the responsibility to fulfill the terms of the specified agreement due to the reasons stated above shall be referred to the Sugar Arbitration Tribunal.

Obligations of  
the grower.

10. The grower shall—

- (a) plant or cultivate the most suitable variety of cane recommended by the Kenya Sugar Institute;
- (b) allow the cultivation of seed cane nurseries, if the out-grower institution desires, for the multiplication of seed sugar-cane material to be supplied to other growers:

Provided that such sugar-cane may be used for milling when it is no longer required for seed cane.

- (c) allow the cutting of commercial sugar-cane of both plant and first ratoon only to supply seed to other growers in the absence of suitable

nurseries:

Provided that the age of the seed cane shall be not less than ten but not more than fourteen months;

- (d) at all times allow the out-grower institution to enter upon his land together with any vehicles, machinery or livestock which the out-grower institution may require to—
- (i) inspect the land and the cane growing thereon;
  - (ii) sample the sugar-cane;
  - (iii) gain access to other grower's land, including such construction of access tracks as may be required for the transport of sugar-cane produced by the grower or other growers; and
  - (iv) do anything required to be done by either party in terms hereof:

Provided that, if the grower fails to facilitate the harvesting of his sugar-cane at the appointed time, the out-grower institution shall refer the matter to the Sugar Arbitration Tribunal;

- (e) maintain his sugar-cane cultivation in a manner which will enhance a satisfactory yield by—
- (i) maintaining the sugar-cane crop weed-free;
  - (ii) applying at the recommended time and in the recommended amounts all fertilizers and other material recommended by the out-grower institution and the Kenya Sugar Research Institute;
  - (iii) undertaking the planting and gapping of sugar-cane area at the times recommended by the out-grower institution in order to ensure a high plant population; and

- (iv) applying all services and goods, which he may have obtained from the out-grower institution for the benefit for the sugarcane crop solely for that purpose;
- (v) undertaking stubble shaving, inter-row cultivation and trashlining within one month after harvesting;
- (vi) inspecting sugar-cane crops for pests and diseases periodically and removing diseased or infested sugar-cane and disposing them off in a manner prescribed by extension agents;
- (vii) planting the sugar-cane inter-row, one row only of common beans, soyabeans, potatoes, tomatoes, onions, cabbages or carrots;

Provided that—

if the out-grower institution so requires, in the case of a default, the grower shall allow all or any such work to be carried out at his cost by the out-grower institution and its agents or employees working in conjunction with the grower;

within seven days of receipt of a written notification from the out-grower institution that such operations are necessary to achieve a satisfactory yield of sugar-cane, allow unimpeded access to the out-grower institution and his equipment for the purpose of carrying out any or all operations which the grower has failed to carry out and that notification shall have either been served to the grower or his representative and acknowledged, or shall have been posted to the grower by registered mail;

- (f) offer for harvest and transport by the out-grower institution all such cane as is derived from his contracted sugar-cane plot and no other for use either as seed cane or mill sugar-cane;
- (g) not sell his sugar-cane through a middleman

nor dispose of it or any interest therein to any other parties without the written permission of the out-grower institution specifying the tonnage of sugar-cane which may be sold, the date on which the sale may take place and destination of the sugar-cane;

- (h) either attend himself or send an authorized representative to the buying point to witness the condition of the sugar-cane at the time of delivery and to obtain a ticket showing the value of sugar-cane delivered in the absence of an official representative appointed for the purpose;
- (i) bear all direct and indirect costs of the works, goods and services supplied by the out-grower institution as specified in the agreement and unless the same are paid earlier allow such costs to be deducted from payment for sugar-cane supplied by the grower;
- (j) be responsible for maintaining suitable permanent boundary marks and cleared firebreaks for his sugarcane crop;
- (k) be liable to pay the cost of any damage suffered by other growers as a result of failure to comply with the terms hereof;
- (l) take precautions against fire according to the advice of the out-grower institution;
- (m) not assign his land or any interest therein or any of his rights or obligations under the agreement without the written consent of the out-grower institutions; and
- (n) attend meetings and field days convened by the out-grower institution for the purpose of learning the proper sugar-cane husbandry, operation and application of goods and services obtained from the out-grower institution for the satisfactory yield of sugar-

Obligation of  
out-grower  
Institutions.

cane.

11. The out-grower institution shall—

- (a) during each harvest period, deliver to the miller from the grower, sugarcane in the quantities and on the dates agreed upon between the miller and the out-grower institution;
- (b) within the limits imposed by the condition of the roads, provide and operate an efficient system of transport from the field to the mill;
- (c) cause the grower's sugar-cane to be weighed and tested on arrival at the buying point, allow the grower or his representative access to the weighbridge to check the weight, maintain in duplicate a written or printed record of the value of each load of sugar-cane delivered and give to the grower or his representative on the day of delivery one copy of such record;
- (d) establish seed cane 'B' Nurseries on growers plots for bulking of seed cane to be supplied to other farmers, and for this purpose to purchase, harvest and transport such seed cane after certification by the out-grower institution's agronomist as to its suitability for planting; seed cane which fails to be used for seed will be used for milling:—

Provided that the grower whose sugar-cane is cut for seed will be paid at the price not less than that of mill cane and will not be charged the cost of transport;

- (e) have absolute charge and control of all equipment, machinery, staff and labour concerned with operations on the growers land:

Provided that the out-grower institution shall exercise due care to ensure that the operational costs to be charged to the grower shall be kept at a reasonable

level;

- (f) be entitled, in the event that the grower does not prepare, plant and maintain his land and sugar-cane in accordance with the agreement, to carry out all and any such operations on the grower's land which the out-grower institution shall consider necessary to ensure that the grower's quota of sugar-cane of satisfactory quality will be delivered on the due date, in which case the out-grower institution shall be further entitled to deduct the cost, including a penalty for these operations, from the payment to be made for the grower's sugar-cane;
- (g) charge interest on any credit that may be granted by the out-grower institution to the grower, such credit being only granted in exceptional circumstances at such rate as may, from time to time, be notified by the out-grower institution and be entitled to deduct such interest from the payment due to the grower in respect of the first cane harvest from the grower's land subsequent to the grant of the credit; and
- (h) be entitled to charge the grower for all works, goods and services supplied to the grower by the out-grower institution in accordance with the out-grower institution's schedule of charges from time to time in force at the date the agreement signed:

Provided that:

- (i) the said charges shall at all times be as agreed with the grower;
- (ii) the out-grower institution shall consult with the grower regarding any proposed changes in the said charges before such changes are proposed to take effect and shall maintain such records as are necessary to show the growers that the

charges from time to time are as agreed in (i) above;

- (iii) the out-grower institution shall notify all changes to the grower at least thirty days before the charges are due to take effect; and
- (iv) where a grower ends up with a debit balance, the out-grower institution shall immediately write to the grower for arrangements of recovery of the said debt.

*Force majeure.*

12. (1) Neither the out-grower institution nor the miller shall be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of *force majeure*.

(2) Any event of *force majeure* must be reported by the affected party to the other party within seven days from the date of its occurrence and the said event be certified by the competent authorities of both parties.

(3) The obligations of the parties under an agreement shall remain suspended for the period during which the said event of *force majeure* persists.

#### **PART 6—SUGAR INDUSTRY CONTROL MEASURES**

*Industry control.*

13. (1) The sugar industry agreement shall recognize the measures already undertaken to deal with constraints to development which include the setting of a committee comprising the Kenya Sugar Authority, Kenya Ports Authority and the Kenya Bureau of Standards to co-ordinate the inspection and certification of imported sugar.

(2) In dealing with the illegal diversion of unaccustomed transit sugar, there will be control measures put in place from time to time.

(3) In addition to existing taxes on imported sugar the antidumping duty and countervailing duty have been

imposed.

(4) The Cabinet Secretary for finance shall, by notice in the Gazette, establish a five person advisory committee to investigate cases of dumping or subsidization of goods exported to Kenya and to report its findings to the Cabinet Secretary.

Sugar  
specification.

14. The following are the specifications for mill white and refined sugar as per the Kenya Bureau of Standards specifications (KS:05-38):

#### **FOURTH SCHEDULE [Section 40.]**

##### **PROVISIONS AS TO THE MEETINGS AND PROCEDURE OF THE TRIBUNAL**

Resignation.

1. Any member of the Tribunal may, at any time, by notice in writing to the Chief Justice, resign his office.

Vacation of  
office.

2. (1) If a member of the Tribunal becomes a member of the Board or, in any case where a member other than the Chairperson is appointed to the service of the Government his or her office shall become vacant.

(2) The Chairperson or a member of the Tribunal may be removed from office by the Chief Justice if the member is—

- (a) unable to discharge the functions of his office by reason of mental or physical infirmity; or
- (b) an undischarged bankrupt; or
- (c) convicted of an offence involving fraud or dishonesty; or
- (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.

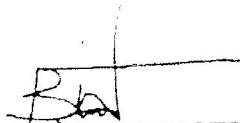
(3) In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the

- appointment.
- Disclosure of interests. 3. If any member of the Tribunal has any interest in any particular proceedings before the Tribunal he shall so inform the Chief Justice and the Chief Justice may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings.
- Majority decisions. 4. The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.
- Quorum. 5. The quorum of the Tribunal shall be three members.
- Proceedings to be valid. 6. No proceedings of the Tribunal shall be invalid by reason only of a vacancy among the members thereof.
- Venue. 7. The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.
- Rules. 8. Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.
- Proof of document. 9. A document purporting to be a copy of any order of the Tribunal, and certified by the Chairperson to be a true copy thereof, shall in any legal proceedings be *prima facie* evidence of the order.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 11<sup>th</sup> November, 2021

  
*Clerk of the National Assembly*

Endorsed for presentation to the Senate in accordance with the provisions  
of Standing Order 142 of the National Assembly Standing Orders

  
*Speaker of the National Assembly*

# ANNEX 3

Advertisement for submission of memoranda placed in the *Nation* and *Standard* newspapers on 1<sup>st</sup> March, 2022

## REPUBLIC OF KENYA



### TWELFTH PARLIAMENT | SIXTH SESSION THE SENATE

The Sugar Bill (National Assembly Bill No. 68 of 2019)

#### **INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA**

The Sugar Bill (National Assembly Bill No. 68 of 2019) was read a First Time in the Senate on 24<sup>th</sup> February, 2022 and thereafter stood committed to the Standing Committee on Agriculture, Livestock and Fisheries.

Pursuant to the provisions of Article 118 and standing order 140 (5) of the Senate Standing Orders, the Standing Committee on Agriculture, Livestock and Fisheries now invites interested members of the public to submit any representations that they may have on the Bill, by way of written memoranda.

The written memoranda may be emailed to the Office of the Clerk of the Senate on the address - [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke) and copied to [senatescalf@parliament.go.ke](mailto:senatescalf@parliament.go.ke) to be received on or before **Thursday, 10<sup>th</sup> March, 2022 at 5.00 p.m.**

The Bill may be accessed on the Parliament website at <http://www.parliament.go.ke/senate/bills>.

**J.M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**

# ANNEX 4

Copies of the submissions received from stakeholders



**AGRICULTURE AND FOOD AUTHORITY – SUGAR DIRECTORATE**

**MEMORANDUM ON SUGAR BILL, No. 68 OF 2019**

**MARCH, 2022**

**1. INTRODUCTION**

The Clerk of the Senate on 1<sup>st</sup> March 2022, invited interested members of the public to submit written memoranda on Sugar Bill No 68 of 2019.

Agriculture and Food Authority - Sugar Directorate, being a regulator in the industry, hereby submits a written memorandum as follows:

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
2 - Interpretation.	<p>“Farm gate” means prices received by farmers for their sugarcane at the location of farm;</p> <p>“mill gate” means a site where sugarcane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop;</p>	<p>Delete</p> <p>Delete and substitute therefor the following</p> <p>"a site designated as such by the Authority where sugarcane weighing and sugarcane testing facilities have been set up;."</p>	<p>(a) It does not convey the correct industry meaning</p> <p>(b) It has only been used once</p> <p>The definition provided is for a sugar cane nursery and not for a mill gate</p>
	<p>“licence” means a licence issued by the Board to a miller;</p>	<p>Delete the words ‘to a miller’</p>	<p>Licence is not only issued to the millers but also to importers and exporters of sugar</p>
4 - Functions of the Board.	<p>(2)</p> <p>(q) ‘formulate guidelines on an efficient and economical transportation of sugar;’</p> <p>(u) ‘perform such other functions as may, from time to time, be assigned by the interested parties.’</p>	<p>Insert the words ‘sugar cane and sugar co-products’ before and after the word sugar respectively</p> <p>Delete and substitute therefor the following ‘perform such other function as may be conferred on it by this Act or any other written law’</p>	<p>To cover key aspects of transportation in the industry</p> <p>Assignments of the roles to the Board should be done within the provision of the written law</p>
6 - Composition of the Board.	<p>‘Composition of the Board.’</p>	<p>Insert the word ‘of Directors’ after the word ‘Board’ on the marginal notes</p> <p>Delete the word ‘of’ appearing after the word ‘Board’</p>	<p>To clarify the Board referred to is the ‘Board of Directors’ and not “Kenya Sugar Board”</p> <p>Grammar correction</p>
8 - Vacation of office.	<p>‘A person shall cease to be a member of the Board of if the person’</p>	<p>Delete the word ‘by notice in the Gazette’ before the word ‘impose’</p>	<p>Grammar correction</p> <p>To clarify by the instrument by which the levy will be imposed</p>
9 - Powers of the Board.	<p>The Board shall have all the powers necessary for the proper performance of its functions under this Act, including the power to—</p> <p>(a) ‘impose a levy or levies upon growers and millers for the purposes of giving</p>	<p>Delete the words “growers and millers” and substitute with the</p>	<p>To widen the scope of the powers of the Board</p>

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
20 - Sugar Import	<p>effect to the provisions of this Act;’</p> <p>(1) A person who imports sugar into Kenya shall, prior to importation —</p> <p>(a) provide evidence that the sugar they intend to import is not available in the local market;</p> <p>(b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and</p> <p>(c) obtain pre-import approval from the Board.</p>	<p>words “value chain players’</p> <p>Delete Sub Clause (1) and insert the following</p> <p>‘(1) A person who imports sugarcane or sugar into Kenya shall, prior to importation obtain pre-import approval from the Board’</p>	<p>(a) It’s the mandate of the Board to provide evidence of the sugar deficit in the local market</p> <p>(b) It is impractical for an importer to provide a sample before getting a pre-approval from the Board</p> <p>(c) Pre-import verification certificate from the country of origin is one of the conditions for Pre-import approvals</p>
24 - Functions of the Institute.	<p>(3) This section shall apply to importation of sugar-cane.</p> <p>(2) For the purpose of carrying out its functions, the Institute shall—</p>	<p>Delete Sub Clause (3)</p> <p>Insert the following new additional function after Sub Clause (2)(x)</p> <p>‘(y) to conduct research in sugarcane processing’</p>	<p>It has been included in amended Clause 20 (1)</p> <p>To widen the scope of research to include sugar processing</p>
25 - Management of the Institute.	<p>The Management of the Institute shall vest in a Board which shall consist of—</p> <p>(a) a chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;</p> <p>(b) five persons elected by growers from each of the sugar catchment areas under the First Schedule;</p> <p>(c) the chief executive officer of the Board</p>	<p>Insert the following after (f)</p> <p>(g) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in</p>	<p>(a) Inclusion of a line ministry representative is a requirement under State Corporation Act</p> <p>(b) Millers are major consumers of research findings</p> <p>(c) COG representative is very necessary as agriculture</p>

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
	<p>(d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;</p> <p>(e) the chief executive officer of the Kenya Agricultural Livestock and Research Organization; and</p> <p>(f) the Director General who shall be an ex officio member.</p>	<p>(h) one representative elected by sugar millers who is knowledgeable in sugar technology and value addition;</p> <p>(i) one person nominated by the Council of County Governors who is knowledgeable in extension services and management of farmer institutions;</p>	<p>including extension is a devolved function</p>
34 - Sugar Development Levy.	<p>(7)</p> <p>(a) fifteen per centum shall be applied by the Board for income or price stabilization for <b>sugar</b> growers;</p>	<p>Delete the word "sugar" and substitute with the words "sugar cane"</p>	<p>Growers grow sugar cane and not sugar</p>
41 - Jurisdiction of the Tribunal	<p>The Tribunal shall determine—</p> <p>(b) disputes between sugarcane farmers and the following-</p> <ul style="list-style-type: none"> <li>i. out grower institutions</li> <li>ii. millers</li> <li>iii. <b>growers</b>; or</li> <li>iv. other interested party</li> </ul>	<p>Delete (iii) growers</p>	<p>Growers is a repetition of 41 (1) (a)</p>
	<p>41 (1) The Tribunal shall determine—</p>	<p>Correct the numbering</p> <p>41. The Tribunal shall determine—</p>	<p>The clause only has one sub-clause</p>
44 - Removal of members of the	<p>(b) is convicted of a criminal offence and sentenced to imprisonment for a period</p>	<p>Delete clause 44 (b)</p>	<p>It is only applicable to Boards which meet at least on a</p>

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
Tribunal.	exceeding six months without the option of a fine;		quarterly basis
48 - Annual general meeting.	<p>(1) The Board shall, at least once in every year, convene an annual general meeting of representatives of millers and growers for the purposes of considering the annual report and accounts of the Board and for the purposes of transacting such other business of which notice shall be given.</p> <p>(2) The Board may convene special meetings in addition to the meetings mentioned in subsection (1) for such purposes and at such times as it may deem fit.</p> <p>(3) Subject to this Act and any regulations made thereunder, the Board may make rules for the regulation of the conduct of business and procedure at the general meetings convened pursuant to this section.</p>	Delete clause 48	<p>(a) Issues to do with accountability, auditing and reporting have been covered in clause 38 and 39</p> <p>(b) Millers and growers are represented in the Board of Directors</p> <p>(c) It is not practical to hold an annual general meeting</p>
50 - Inspection for quality and safety.	<p>(2) (a) not discharge any <b>affluent</b>, dangerous materials, substances, oil or oil mixtures into land, water, air, or aquatic environment;</p> <p>(2) Every person licensed under this Act shall—</p> <p>(2) When an offence under this section, is committed by a body corporate, the body corporate and every director or</p>	<p>Delete the word “affluent” and substitute with the word “effluent”</p> <p>Correct numbering</p>	<p>Grammar correction</p> <p>Sub clause (2) is repeated</p>

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
	<p>officer of the body corporate who ought to have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to an imprisonment for a term not exceeding five years.</p>		
51 - Safeguard measures	<p>(3) The <b>Government shall introduce</b> other safeguard measures as may be necessary to protect the industry from unfair trade practices.</p>	<p>Delete the words 'Government shall introduce' and substitute therefor the words "the Cabinet Secretary shall make regulations prescribing'</p>	<p>The Cabinet Secretary is tasked with the obligation of prescribing safeguard measures through regulations</p>
56 - Amendment of Third Schedule.	<p>The Cabinet Secretary may, on the recommendation of the Board, by order in the <i>Gazette</i>, amend the Third Schedule.</p>	<p>Insert the words "First or" after the word "of" on the marginal notes  Insert the words "First or" before the word "Third" on the text</p>	<p>To accommodate emerging cane growing areas</p>
Second Schedule 1-Vacation of office.	<p>A member of the Board, other than the Chairperson or an ex-officio member, may— (a) at any time resign from office by notice in writing to the Cabinet Secretary; (b) be removed from office by the Cabinet Secretary if the member— (i) has been absent from three consecutive meetings of the Board without the permission</p>	<p>Delete paragraph 1</p>	<p>Already covered in Clause 8 - Vacation of office.</p>

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
	<p>of the Board;</p> <p>(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;</p> <p>(iii) is incapacitated by prolonged physical or mental illness;</p> <p>(iv) is adjudged bankrupt; or</p> <p>(v) is otherwise unable or unfit to discharge his functions.</p>		
<p>Third Schedule 5 -The role of the miller.</p>	<p>The role of the miller is to—</p> <p>(a) harvest, weigh at the <b>farm gate</b>, transport and mill the sugar-cane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;</p> <p>(g) ensure that <b>mobile weighbridges</b> are closer to growers; and</p>	<p>Delete the word 'farm gate' appearing immediately before the word 'transport' and substitute therefor the words 'mill gate'</p>	<p>The weighing and quality testing is done at the mill gate and not at the farm gate</p>
<p>Third Schedule 7 - Sugar Cane Pricing Committee</p>	<p>6) The sugar-cane prices set by the committee under sub paragraph (3) shall be reviewed after every thirty-six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane pricing.</p> <p>1) Except as otherwise agreed, a miller</p> <p>(e) pay the out-grower institution within thirty days of sugar-cane delivery: Provided that the sugar-cane will be</p>	<p>Delete the word 'mobile'</p> <p>Delete the word 'prices' appearing immediately before the word 'set' and substitute therefor the words 'pricing formula'</p>	<p>It is impractical to have mobile weighbridges</p> <p>The committee is responsible for setting the pricing formula and not the prices</p>
<p>Third Schedule 8 - Out-grower and miller Agreement.</p>	<p>1) Except as otherwise agreed, a miller</p> <p>(e) pay the out-grower institution within thirty days of sugar-cane delivery: Provided that the sugar-cane will be</p>	<p>Delete the word 'thirty' appearing immediately after the word 'within' and substitute therefor the word 'seven'</p>	<p>To allow the outgrower institution pay the farmer within 15 days as stipulated in Paragraph 5 (d)</p>

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
	harvested not later than twenty- four months for plant crops and not later than twenty-two months for subsequent ratoons.		
	5) Any event of <i>force majeure</i> shall be reported by the affected party to the other party within <b>seven days</b> from the date of its occurrence and the said event shall be certified by the competent authorities of both parties.	Delete the words ‘seven days’ appearing immediately after the word ‘within’ and replace therefor words ‘reasonable time’	Issues of <i>force majeure</i> are unpredictable to provide for a strict timeline
Third Schedule  9 - Out-grower institution and grower agreement.	2) The out-grower institution and the grower may agree on a specific period of maturity for purposes of harvesting, delivery and payment <b>which shall be eighteen to twenty months for plant crop, and sixteen to twenty-two months for first and second ratoon crops:</b>	Delete the words “which shall be eighteen to twenty months for plant crop, and sixteen to twenty-two months for first and second ratoon crops:” appearing immediately after the word ‘payment’ and substitute therefor the words ‘depending on variety’	Specific maturity period is variety and location dependent
Third Schedule  10 - Obligations of the grower.	The grower shall— (a) plant or cultivate the most suitable variety of cane recommended by the Kenya Sugar Institute;	Insert the word ‘Research’ immediately after the word ‘Sugar’	To correct the name of the institution
Third Schedule  12 - Force majeure	2) Any event of force majeure must be reported by the affected party to the other party within <b>seven days</b> from the date of its occurrence and the said event be certified by the competent authorities of both parties.	Delete the words ‘seven days’ appearing immediately after the word ‘within’ and replace therefor words ‘reasonable time’	Issues of <i>force majeure</i> are unpredictable to provide for a strict timeline
Third Schedule  13 - Industry	1) The sugar industry agreement shall recognize the measures already undertaken to deal with constraints to	Delete the word ‘Authority’ appearing immediately after the word ‘Sugar’ the and substitute	The correct name of the institution

CLAUSE	CURRENT STATUS	PROPOSED RECOMMENDATION	CONSIDERATION/ JUSTIFICATION
control.	development which include the setting of a committee comprising the Kenya Sugar Authority, Kenya Ports Authority and the Kenya Bureau of Standards to co-ordinate the inspection and certification of imported sugar.	therefor word "Board"	
4)	The Cabinet Secretary for finance shall, by notice in the Gazette, establish a five person advisory committee to investigate cases of dumping or subsidization of goods exported to Kenya and to report its findings to the Cabinet Secretary.	Delete the word 'finance' and substitute therefor word "National Treasury"	The correct name of the ministry as per The Constitution
Third Schedule 14- Sugar specification.	The following are the specifications for mill white and refined sugar as per the Kenya Bureau of Standards specifications (KS:05-38):	Delete the paragraph and substitute therefor words 'The specifications for brown, mill white, and white refined sugar shall be as per the relevant product specifications as prescribed by Kenya Bureau of Standards'	To take care of product standards specifications which can change from time to time
Fourth schedule 2 - Vacation of office.	convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.	Delete the sub paragraph	Already covered in Para 2 (2) C

SIGNED: ..... 10<sup>TH</sup> MARCH 2022

DIRECTOR





## COUNCIL OF GOVERNORS

Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
P.O. BOX 40401-00100,  
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Our Ref: COG/6/48Vol. 49 (58)

10<sup>th</sup> March 2022

Jeremiah Nyegenye, CBS  
The Clerk of the Senate  
Parliament Buildings  
**NAIROBI**

Dear Clerk,

**LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE SUGAR BILL  
(NATIONAL ASSEMBLY BILLS NO. 68 OF 2019)**

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The above matter refers.

The Council of Governors appreciates that in the process of revitalizing the sugar sector, there need for the proposed sugar subsector legal framework to ensure that County Governments play a central role in the development and regulation of the subsector.

In view of the above, the Council of Governors has reviewed the Sugar Bill, 2019 (National Assembly Bill No. 68 of 2019) and would like to forward for your consideration the following legislative memoranda attached herewith.

Yours sincerely,

Mary Mwiti  
**Chief Executive Officer**

Copy: All Excellency Governors

All CECMs in charge of Agriculture

All County Attorneys



**COUNCIL OF GOVERNORS**  
**LEGISLATIVE MEMORANDUM ON THE SUGAR BILL, 2019 (NATIONAL**  
**ASSEMBLY BILLS NO. 68 OF 2019)**

**TO**

**THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND**  
**FISHERIES**

**FROM**

**THE COUNCIL OF GOVERNORS**  
**AGRICULTURE, LIVESTOCK AND COOPERATIVES COMMITTEE**

## Introduction

### THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation are cognizant of the fact that agriculture is a fully devolved function under the Part 2 of the Fourth Schedule to the Constitution;

Aware of the need for coordinated action and approach in the revitalization of the ailing Sugar industry between the National, County Governments and other stakeholders for the benefit of the sugar cane farmers; and

Also aware that a Taskforce was established under the Gazette Notice No. 11711 of 9<sup>th</sup> November 2018 to examine the challenges ailing the industry and make appropriate recommendations for the development of the sub-sector and has since presented its report to His Excellency the President of the Republic of Kenya.

Having reviewed the Sugar Bill, 2019 (National Assembly Bill No. 68 of 2019) in its entirety, the Council of Governors opines that the Bill as it is does not respect the Fourth Schedule of the Constitution in terms of the devolved nature of agriculture and thus recommends the following amendments for better implementation of the proposed Act with a view of revitalization of the ailing sugar sub-sector:

CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Clause 2. Interpretation	"licence" means a licence issued by the Board to a miller; "zone" means the area within a radius of up to a maximum of forty kilometres of a sugar mill.	Amend by deleting definitions of the words "license" and "zones" and replace with the following:  "licence" means a licence issued by a County Government to a miller;  "Regional zones" means regional cane catchment areas whereby two or more mills are clustered within a defined region as provided for under the Second Schedule.	Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction.  Other countries with vibrant sugar sectors like Mauritius, South Africa and Northern India have successfully implemented regional/geographical zones

			in which their sugar mills operates we therefore recommend that Kenya adopts this model.
Clause 4: Functions of the Board	<p>4. (1) The Board shall—</p> <p>(a) regulate, develop and promote the sugar industry;</p> <p>(b) co-ordinate the activities of individuals and organizations within the industry; and</p> <p>(c) facilitate equitable access to the benefits and resources of the industry by all interested parties.</p> <p>(2) Without prejudice to the generality of subsection (1), the Board shall —</p> <p>(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;</p> <p>(b) act as an intermediary between the industry and the Government;</p> <p>c) facilitate the flow of research findings to interested parties through the provision of effective extension services;</p> <p>(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar</p>	<p>Amend by deleting clause 4 and replace with the following new clauses 4:</p> <p><b><u>Functions of the Board</u></b></p> <p>4. (1) The Board shall—</p> <p>(a) <u>capacity build and provide technical assistance to the county governments to regulate, develop and promote the sugar industry;</u></p> <p>(b) co-ordinate the activities of individuals and organizations within the industry; and</p> <p>(c) facilitate equitable access to the benefits and resources of the industry by all interested parties.</p> <p>(2) Without prejudice to the generality of subsection (1), the Board shall —</p> <p>(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;</p> <p>(b) act as an intermediary between the industry and the Government;</p> <p><u>c) establish linkages with other government agencies and research institutions to enhance</u></p>	<p>To align to the provisions of the Part 1 sections 1, 9, 29 and 32 of the Fourth Schedule to the Constitution, which stipulates the mandate of the national government as inter alia, setting and enforcement of standards, international trade and capacity building and technical assistance to counties. Development and regulation of the sugar sub-sector is a function fully devolved to County Governments.</p> <p>We further opine that the Bill as it is, does not respect the functional and institutional integrity of the county governments and as such should be amended accordingly.</p>

	<p>market;</p> <p>(e) facilitate the arbitration of disputes among interested parties;</p> <p>(f) facilitate the export of local sugar;</p> <p>(g) promote and encourage the use of environmentally friendly technologies in the industry;</p> <p>(h) provide advisory services to growers, out-grower institutions and millers;</p> <p>(i) facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines</p> <p>(j) represent the industry in such organizations as are relevant for the promotion of the industry;</p> <p>(k) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;</p> <p>(l) collect, collate and analyze industry statistics and maintain a data base for the industry;</p> <p>(m) licence sugar mills;</p> <p>(n) enforce and monitor compliance with</p>	<p><u>quality assurance and research and facilitate the flow of research findings to interested parties;</u></p> <p>(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;</p> <p>(e) facilitate the arbitration of disputes among interested parties;</p> <p>(f) facilitate the export of local sugar;</p> <p>(g) promote and encourage the use of environmentally friendly technologies in the industry;</p> <p>(h) <u>in collaboration with county governments</u>, facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.</p> <p>(i) represent the industry in such organizations as are relevant for the promotion of the industry;</p> <p>(j) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;</p> <p>(k) collect, collate and analyze industry statistics and maintain a data base for the industry;</p>	
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	<p>standards along the value chain;</p> <p>(o) facilitate value addition and product diversification in the sugar sub-sector;</p> <p>(p) formulate and implement a strategic plan for the sugar sub-sector at least every once every five years;</p> <p>(q) formulate guidelines on an efficient and economical transportation of sugar;</p> <p>(r) conduct local and international sugar market intelligence and advise stakeholders accordingly;</p> <p>(s) establish linkages with other government agencies and research institutions to enhance quality assurance and research;</p> <p>(t) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and</p> <p>(u) perform such other functions as may, from time to time, be assigned by the interested parties.</p>	<p>(l) enforce and monitor compliance with standards along the value chain;</p> <p>(m) facilitate value addition and product diversification in the sugar sub-sector;</p> <p><u>(n) in consultation with county governments, formulate a national strategic plan for the sugar sub-sector at least every once every five years;</u></p> <p><u>(o) in consultation with county governments, formulate guidelines on an efficient and economical transportation of sugar;</u></p> <p>(p) conduct local and international sugar market intelligence and advise stakeholders accordingly;</p> <p>(q) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and</p> <p>(r) perform such other functions as may, from time to time, be assigned by the interested parties.</p>	
<p>5. functions of county governments</p>	<p>5. the County Government shall—</p> <p>(a) issue sugar cane nursery certificates;</p> <p>(b) offer and coordinate extension services on sugar production and</p>	<p>Amend by deleting clause 5 and replace with the following new Clause 5:</p> <p><u>Functions of the County Government</u></p>	<p>To align to the provisions of Part 2 sections 1 and 7 of the Fourth Schedule to the Constitution which stipulates that the agriculture and trade development and regulation of agriculture and trade</p>

	<p>milling in the respective county;</p> <p>(c) in collaboration with the Board and law enforcement agencies, enforce regulations within the county;</p> <p>(d) monitor and report incidences of pests and disease outbreaks and take appropriate action in collaboration with the Board and other relevant government agencies; and</p> <p>(e) Establish an efficient road network for movement of sugarcane, delivery of other services and general development of the sugar industry.</p>	<p>4(1). Each <u>County Executive Committee Member</u> shall:</p> <p>(a) issue sugar cane nursery certificates;</p> <p>(b) <u>licence sugar mills and warehouses in the county;</u></p> <p>(c) <u>formulate and implement the county sugar sub-sector strategic plan;</u></p> <p>(d) <u>offer and coordinate the provision of advisory and extension services to growers, out-grower institutions and millers in the county;</u></p> <p>(e) Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties;</p> <p>(f) enforce county and national legislation on sugar industry code of practice and other industry standards;</p> <p>(g) in collaboration with the Board and law enforcement agencies, enforce of regulations within the county;</p> <p>(h) enforce policies and guidelines on corporate governance in growers' institutions and millers;</p> <p>(i) monitor and report of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and</p>	<p>excluding international trade are functions fully devolved to County Governments.</p> <p>Therefore, it is our considered opinion that in accordance the aforementioned provisions of the Constitution, the Board cannot licence sugar mills as this is trade development in the county but can only regulate imports and exports.</p>
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		<p>other relevant government agencies; and</p> <p>(j) establish an efficient road network for the movement of sugar cane, delivery of other services and general development of the sugar industry.</p>	
<p>PART III LICENSING AND REGISTRATION</p> <p>18. Requirement of a license to operate a mill</p>	<p>18 (1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence issued by the Board upon recommendation by the relevant County Government for that purpose</p>	<p>Amend clause 18 to read as follows:</p> <p><u>18 (1) A person shall not operate a sugar mill, a jaggery mill or warehouse sugar unless he or she is a holder of a valid licence issued by the relevant County Government for that purpose.</u></p>	<p>As explained elsewhere in this document, under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses.</p>
<p>19: Issue of licence and licence fees</p>	<p>19. (1) A person shall apply to the Board for a licence to operate a sugar mill or a jaggery mill in the prescribed form.</p> <p>(2) The Board shall not issue a licence under this Act unless —</p> <p>(a)...</p> <p>(5) There shall be payable for issue of a license, such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.</p>	<p>Amend by deleting the clause 19(1) (2) and (5) and replace with the following new Clause 19(1) and (2):</p> <p><u>19. (1) A person shall apply to the County Executive Committee Member for a licence to operate a sugar mill, warehouse or a jaggery mill in the prescribed form and accompanied by the prescribed fee.</u></p> <p><u>(2) The County Executive Committee Member shall not issue a licence under this Act unless —</u></p> <p>(a)...</p> <p><u>(c) it is satisfied that the applicant has paid the prescribed fee.</u></p>	<p>Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses which is under the purview of the National Government under the Fourth Schedule.</p>

22: Registration of millers	22. (1) A person shall not conduct the business of a miller unless he or she is registered by the Board and the premises in which the business is conducted is specified in the register.  (2) The Board shall issue to every miller registered under this section, a certificate of registration specifying the premises at which milling may be carried on by the miller.	Amend to read as follows:  <u>22. (1) A person shall not conduct the business of a miller unless he or she is registered by the Board and the regional zone in which the miller shall be conducting business specified in the register,</u>  (2) The Board shall issue to every miller registered under this section, <u>a certificate of registration specifying the regional zone and premises at which milling may be carried on by the miller.</u>	This is to align to the proposed requirement of zoning sugar production according to regions across the Country.
25. Management of the Institute.	25. The Management of the Institute shall vest in a Board which shall consist of- (a)... (e) the chief executive office of the Kenya Agricultural Livestock and Research Organization;	Amend clause 25 by introducing a new sub-clause immediately after sub-clause (e) to read as follows:  <u>(eA) one person nominated by the Council of Governors</u>	To provide for representation of the County Governments in the Board of the Institute. Research has a significant impact on the functions of the County Governments. It is therefore imperative that the counties are represented in the Institute.
29. Appointment of crop inspectors	29(1) The Board may appoint qualified persons to be crop inspectors for purposes of this Act. (2) For purposes of subsection (1), the Board may, by regulations prescribe the qualifications for appointment as a crop inspector.	Amend to read as follows:  <u>29(1) The Board and County Executive Committee Member</u> may appoint qualified persons to be crop inspectors for purposes of this Act.  <u>(2) For purposes of subsection (1), the Board may in consultation with County Executive Committee Members,</u> by regulations prescribe the qualifications for appointment as a crop inspector.	To provide for appointment of crop inspectors by the County Governments for purposes of effective implementation of the Act.
34. Sugar Development Levy	34(7) the Sugar Development Levy collected under	Amend clause 34(7)(d) to read as follows:	To align to the provision of the Fourth Schedule to the Constitution which bestows

	<p>subsection (2) shall be apportioned as follows:</p> <p>(a) Fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;</p> <p>(b) Twenty per centum shall be applied by Board in the furtherance or exercise of any function or power of the Board;</p> <p>(c) Twenty per centum shall be directly remitted to the institute; and</p> <p>(d) Forty five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.</p>	<p>34(7) the Sugar Development Levy collected under subsection (2) shall be apportioned as follows:</p> <p>(a)...</p> <p><u>(d) Forty five per centum shall be remitted directly to the sugar growing counties on a pro rata basis to be applied for infrastructure development in the sugar subsector.</u></p>	<p>upon the County Governments with the responsibility of regulation and development of Agriculture, trade, county transport among others. Infrastructure development in the sugar subsector is therefore the responsibility of the respective County Governments hence the Fund should be appropriated to them.</p>
57: Regulations	<p>57. (1) The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act.</p>	<p>Amend to read as follows:</p> <p><u>57. (1) The Cabinet Secretary, in consultation with the Board and County Governments may make regulations generally for the better carrying into effect of the provisions of this Act.</u></p>	<p>The process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.</p>

**Conclusion**

The centrality of devolution in the agriculture sector is something that cannot be wished away in the revitalization of the sugar industry and as such it should be emphasized in the Sugar Bill, 2019. Regulation and development of agriculture and trade under the Fourth schedule to the Constitution means that the registration and licensing of sugar millers and warehouses except those dealing with imports and exports should be done at the County level by the respective County Government and the information shared with the Board for purposes of National statistics.

We therefore urge the Senate to be guided by the Constitution and the Sugar Task Force Report, 2019 in this important process of development of the sugar legislation that will aid the National

Government, County Governments and all the stakeholders in the sugar industry in this noble process of revitalization.

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
1	PART I - PRELIMINARY	Interpretation "Farm Gate"	The definition of farm gate has been retained to mean "Prices received by farmers for their sugarcane at the location of the farm;"	Farm Gate to mean "Cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas."	This is important for the farmers since most are not close to the factories and as such the distance can be a challenge and a burden in terms of costs of transportation. By reducing the costs of transportation it's a win for the farmer.
2		Interpretation "Mill Gate"	Mill Gate means a site where sugarcane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop.	We propose the definition to "A site where sugarcane is received at the respective factory weighbridge. "	This definition brings out the function of the Mill Gate which is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory of the receiving centers
3		Interpretation "Sugar Catchment Area"	"Sugar Catchment Area" as defined in the proposed amendment definitions section to mean A specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board under the first schedule.	Propose to delete ".....purposes of election to the Board under the first schedule ....." And adopt the above definition in totality.	The above definition is important as it shall focus on the substance of the sugar catchment area as a factor in clustering a region i.e. the soil conditions, weather and other factors.

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
4	PART II - ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD	6 (1) (a) Composition of the Board	A non-executive Chairperson elected by the board from among the representatives of growers on the board and appointed by the cabinet secretary;	Propose to add "among the representatives of the growers <u>and the Millers</u> on the Board and appointed by the cabinet secretary.	Both growers and millers are major stakeholders so the millers should also have a chance to chair the Board.
5		6 (1) (b) Composition of the Board	Five representatives elected by growers from each sugar catchment area as per the first schedule.	We propose also section 6(b) be amended to read (b) <i>Three representatives nominated by the farmers' apex body from each sugar catchment area as per the first schedule</i> "	This will allow for one representative from the western region, one from Central region and one from Southern region which are the major players in the sugar industry. It will also give the recognized farmers apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board. The farmers have a structured way to front their representative without undue influence. The farmers' apex body was mandated to advocate for the farmers' interests.
6		6 (1) (c) Composition of the Board	One representative elected by sugar millers who is knowledgeable in sugar technology and value addition.	<i>Propose that "three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition;"</i>	The bill has already recognized Kenya Sugar Manufacturers Association as the Millers' apex body. It would be prudent for the bill to allow the apex body to nominate at least three

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
7	PART III – LICENSING & REGISTRATION	Issue of license and license fees -19	To add (9)	Add .....“ New licenses shall be issued whereby distance from existing mills are a minimum of 40km radius apart.	representatives as they are key stakeholders. This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry too. To protect the investments of already existing mills and to welcome investors.
8		Sugar import 20(1)(a)	Provide evidence that the sugar they intend to import is not available in the local market.		This function should not be left open to the sugar importers. This is the responsibility of the sugar board to determine the sugar deficit in the country at any one time. The onus is not on the importer.
9	Sugar Import 20(1) (d)		To add since there is lack of the designated people to carry out the imports	We propose to add this to the sub-section “imports of gap sugar should be the sole responsibility of sugar millers based on their market share “	Importation of sugar to fill the deficit in the market affects the millers and sugarcane growers directly due to the negative impact of large quantities of cheap duty-free imported sugar. The plunge in sugar prices depresses the local sugar industry and causes untold suffering to both the millers and the growers. In the maize, wheat, dairy and tea sectors, it is the miller who

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
10	PART IV- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE	Management of the Institute 25 (b)	Five persons elected by growers from each of the sugar catchment area under the First Schedule	We propose to Amend Section 25(b) by deleting "... Elected by the growers ..." And replace with "... nominated by the farmers' apex body from the designated sugar catchment regions...."	imports the deficit. Sugar should also be considered in the same vein. The amendment will ensure that the farmers have a structured way to front their representative without undue influence AND the millers have a representative in this very important institution as key stakeholders.
11		Management of the Institute 25 (e)	The Chief Executive Officer of the Kenya Agricultural Livestock and Research organization	Delete "Kenya Agricultural Livestock and Research Organization" and replace with "Kenya Sugar Research Institute."	This is a new body being set up which is not Under the ambit of KAIRO.
12		Management of the Institute 25 (f)	The Director General who shall be an ex officio member	Propose to remove and replace by One person nominated by the apex body of the Sugar millers as the millers are not represented and they are a major stakeholder.	The Act removes the Sugar Directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA in the Board. To be replaced by one sugar miller representative.
13	PART V 29-32	Appointment of Crop Inspectors	Appointment of Crop Inspectors 29(1), (2) Entry and inspection (30) (a,b,c) Powers of Entry (31) (a,b,c,d,e,f,g) (2)(3)	<i>This clause to be deleted in its entirety since the work of the inspectors is a replication of other agencies already set in place in the sugar industry i.e. KRA, KEBS, Sugar Directorate</i>	The sugar industry is already over regulated with more than 40 licenses that already have the regulatory entities that deal with the same. The Sugar Board ensures the millers comply with the licenses

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
14	PART VI - FINANCIAL PROVISIONS	Sugar Development Levy 34 (7)(a)	Obstruction of Inspectors (1)(2) Fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers	<i>etc</i> We propose to Amend Section 34(7) (a) which provides for the apportionment of the Sugar Development Levy by deleting " <i>Fifteen per centum ...</i> " to read " <i>Twenty per centum... </i> " and adding " <i>cane development programme...</i> " <i>The provision will read as follows: "Twenty per centum shall be applied by the Board for income or price stabilization and cane development for sugar growers".</i>	before releasing the annual milling license. This will ensure that the funds are well provided for all programmes associated with cane development.  This will increase sugarcane yields and will generate more income for farmers by applying the right inputs and correct agronomic practices.
15		34 (7)(c)	Twenty per centum shall be remitted directly to the institute	We also propose to Amend 34(7)(b) by deleting twenty per centum and replacing with fifteen per centum	The amounts involved are huge and reallocating Five per centum from this to item to the development of the sugarcane growers will bring greater gains to the industry and will not adversely affect the Board.
16		34 (7)(c)	Twenty per centum shall be remitted directly to the institute	We also propose to Amend 34(7)(c) providing for the percentage of the Sugar Development Levy to be channeled to Sugar Research by	This will clarify that funds are specific for Sugar Research institutions, as may be established.

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
17	PART VIII - MISCELLANEOUS PROVISIONS	Inspection for quality and Safety 50 (1) (a,b,c,)	Inspection for quality and Safety	This clause to be deleted in its entirety since the work is a replication of other agencies	Its the role of NEMA a body that has been mandated with the duty and which adequately carries it out.
18		Inspection for quality and Safety 50 (1) (d, e)	Inspection for quality and Safety	This clause to be deleted in its entirety since the work is a replication of other agencies	Its the role of KEBS a body that has been mandated with the duty.
19		Rights of growers in a privatized company 54 (1) (a)		We propose to delete in its entirety as the same is not admissible in the privately-owned mills where the growers do not need any representation in the management as they are not investment capital contributors.	It is not practicable in law and will discourage private investment.
20		Rights of growers in a privatized company 54 (1) (b)		We propose to Delete in its entirety. Directorship should be allocated based on their investment	It is not practicable in law and will discourage private investment.
21		Representative of a grower in a private milling. 55 (1,2,3)		To be removed in its entirety it is not applicable.	It is not practicable in law and negates the Constitution of Kenya 2010.

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
22	FIRST SCHEDULE	DELINEATION OF SUGAR CATCHMENT COUNTIES	<p>Rift Region - Kericho, Nandi and Uasin Gishu Upper Western Bungoma and Trans Nzoia Lower Western Region Busia, Kakamega, Siaya and Vihiga Southern Region Homa Bay, Kisumu, Migori and Narok Coastal Region Kwale, Lamu and Tana River</p>	<p>To be amended to represent regions as opposed to counties by deleting "Counties" and replacing with "Regions" and delineate as follows;</p> <p>Central Region Kericho, Kisumu and Nandi. Upper Western Region - Bungoma, Kakamega, Trans Nzoia and Uasin Gishu. Lower Western Region - Busia, Mumias and Siaya. Southern Region - Homabay, Kisii, Migori and Narok. Coastal Region - Kwale, Lamu and Tana River.</p>	<p>The Parliament proposal will leave the Rift Region orphaned with no operational sugar mill. This is economic suicide and should not be allowed to be established in Law. At the same time, the Southern Region covering Homa Bay, Kisumu, Migori and Narok is provided with more than 8 factories, 7 of which are in operation.  Our proposal is that Kericho and Nandi in the Rift Region which are currently being served by Sugar Factories in Kisumu County be included in a Region to be known as <u>Central Region</u> comprising Kericho, Nandi, Kisumu and Siaya served by Muhoroni Sugar, Chemelil Sugar, Kibos Sugar and Soin Sugar.  It would fit in with the recommendations of the Sugar Task Force Report Page 62 attached</p>

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
23	THIRD SCHEDULE GUIDELINES FOR AGREEMENTS BETWEEN PARTIES IN THE SUGAR INDUSTRY	(Interpretation)	"sugar lobby group" means a registered group of people comprising of farmers and growers from the sugar catchment areas championing the rights of sugar stakeholders.	The Third Schedule of the Bill providing for Sugar Lobby Groups should be amended by Deleting " <i>Sugar lobby groups</i> " and to be replaced by " <i>Sugarcane Growers Apex Body</i> ".	This is because lobby groups do not have the objectivity to steer the sugarcane grower's issues in a joint and clear perspective as compared to an apex body.  The interpretation of Sugar lobby Groups in the Third Schedule should be amended by deleting "..... <i>registered sugar lobby groups</i> 'and replace with " <i>Sugarcane Growers Apex Body</i> ." The reason for this is same as the above reason.
24	PART 2 - ROLES OF	5.(a) (Role of Millers)	Harvest, weigh at the farm gate, transport and	We propose to amend clause 5(a) by deleting " <i>harvest</i> ..." and "	The two are the sole responsibility of the grower. The miller can only

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NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
	INSTITUTIONS IN THE INDUSTRY		mill the sugar cane supplied from the growers' fields and the nucleus estates efficiently and make payments to the sugarcane growers as specified in the agreement.	transport..."	take the sole responsibility of harvesting and transporting his own nucleus sugarcane. Entrenching this in the Act will result in an untenable situation on the ground.
25		5.(d) (Role of Millers)	Pay the sugar-cane farmer within 15 days of accepting delivery or otherwise, pay interest on the sum due at market rates, plus a penalty of 3 per cent per month on late payment	We propose to amend clause 5(d) by deleting "...within 15 days..." and replace with "...within a maximum of 30 days..."	<i>30 days is practical as not other crops are paid within 15 days.</i>
26		5.(g) (Role of Millers)	Ensure that mobile weighbridges are closer to growers: and	We propose to amend clause 5(g) by deleting "...mobile..."	<i>Weighbridges are not mobile.</i>
28	PART 3 - SUGARCANE PRICING COMMITTEE	Sugar Pricing Committee 7 (2) (d)	one representative from the sugar lobby groups;	We propose this to be deleted in its entirety	The amendment will ensure that the farmers have a structured way to front their representative without undue influence.
29		Sugarcane Pricing Committee 7 (4) (d)	To add	The formula shall take into consideration the peculiarities of each region	The central region has different soils and climate from all other regions rendering its rendement much lower than the rest.

KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA) SUBMISSION TO THE AGRICULTURE COMMITTEE OF  
THE SENATE ON THE SUGAR BILL 2019

NO	SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
30		Sugarcane Pricing Committee 7 (6)	The sugar-cane prices set by the committee under sub paragraph (4) shall be reviewed after every six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane pricing	We propose to amend clause 6 providing for review of sugar cane prices by deleting " ... <i>thirty six months</i> ... "and replacing with " <i>... one month</i> ..."	The one month will provide a realistic and sufficient time for the committee to regularly review the prices as per the market forces demand. Which in turn will be a win-win situation for the farmers and the millers to benefit from the running price for the month.
31	PART 4 - RELATIONSHIP BETWEEN THE OUTGROWER INSTITUTION & THE MILLER	Outgrower Institution and miller agreement	Whole PART 4	To expunge in entirety	There is no longer any outgrower institution on the ground the current regulations deal with relationships between the miller and the sugarcane growers directly.
32	PART 5 - RELATIONSHIP BETWEEN THE OUTGROWER INSTITUTION & THE GROWER	Outgrower Institution and grower agreement Clause 9	Whole PART 5	To expunge in entirety	There is no longer any outgrower institution on the ground the current regulations deal with relationships between the miller and the sugarcane growers directly.

The Clerk of the Senate  
Twelfth Parliament/Sixth Session  
The Senate  
Republic of Kenya  
Parliament  
NAIROBI

Email – [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke)  
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**RE: THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2019) –  
SUBMISSION OF MEMORANDA FROM THE KENYA SUGAR  
MANUFACTURERS ASSOCIATION (KESMA)**

The Kenya Sugar Manufacturers' Association (KESMA) is a duly registered Association with the Registrar of Societies, bringing together Sugar Millers in Kenya. We have registered office bearers and a fully functioning office based at the 7<sup>th</sup> Floor of the Reinsurance Plaza, Oginga Odinga Street, in Kisumu City. We are recognized by the Sugar Directorate/AFA as the Apex Body for sugar manufacturers in Kenya.

The main objective of KESMA is to represent the interests of the sugar millers. The Association is registered with AFA and the Sugar Directorate as the Apex Association of Sugar Millers in Kenya. We enjoy a cordial and mutual relationship with the Sugar Directorate, that engenders the smooth operations of the sugar sub-sector in Kenya.

The industry contributes huge amounts of taxes to both the National Treasury and the County Treasuries and its success will be of great benefit to the country on all fronts. Bringing sanity to it through the enactment of this Sugar Bill will attract both local direct investment and Foreign Direct Investment that will boost the manufacturing sector; increase tax revenue, food security and employment among others.

The President of the Republic of Kenya, His Excellency President Uhuru Muigai Kenyatta, caused a Taskforce of Sugar Industry Stakeholders to be established under the Ministry of Agriculture, Livestock and Fisheries; that would examine the challenges ailing the industry and make appropriate recommendations for the development of the sub-sector.

A gazette notice No. 11711 of 9<sup>th</sup> November 2018 established the Taskforce which intensively and extensively carried out its mandate, taking into consideration views of members of the public, experts, desktop studies of successful sugar models from various countries in COMESA and internationally; ensuring well attended and

documented public participation meetings were held in all sugar growing areas to collect public views. These were collated, discussed; challenges pin-pointed and recommendations made, which were further presented to the industry stakeholders for ratification. The final recommendations were presented in a Sugar Industry Stakeholders Taskforce Report in February 2020 to the President.

We are very grateful to the National Assembly for its interest and efforts to revive the industry by proposing and deliberating extensively on the Sugar Bill 2019 currently before the Senate.

We are convinced that the Sugar Bill 2019 will bring sanity, law and order to the sugar sub-sector in Kenya and will greatly improve on the industry which impacts on the socio-economic lives of approximately 6 million Kenyans in the Western part and the coastal regions of Kenya. The sub-sector's backward and forward linkages are felt across the length and breadth of the Nation of Kenya.

We as KESMA wish to further enhance the quality of the document that has been submitted to the Senate by Parliament. Our inputs into the document are majorly informed by the recommendations of the Sugar Industry Taskforce Report. We can only try to improve on what has already been handed over to the Senate for final approval towards enactment.

Our proposals have been carefully thought out, presented to you in a clear manner with justifications for each proposal that will make it easy to understand their practicability on the ground.

We hereby, request, humbly and respectfully that our proposals be considered and that we be given an opportunity, to appear before the Agriculture Committee to expound further on them. With the wealth of experience and wisdom available in the Senate, we believe the future of the sugar industry in Kenya is bright.

Jayantilal Patel  
CHAIRMAN

MEMORANDUM

VIA EMAIL

ON THE PROPOSED: THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO 68 of 2019)

Reference: Section 30

Rationale for Change:

It is impossible to allocate shares of 51% to growers:

1-as there is very complex equity valuation processes that require to be conducted as a mathematical fundamental basis.

2-growers may not have the finance to acquire the 51% shareholding.

3-ownership and control need to be separated.

4-it may lead to poor interest from bidders for the rest of the shareholding.

5-it may prevent the privatization from progressing to the detriment of the growers themselves.

6-privatization is determined by the Privatization Act.

Proposed Change:

30 (a) an appropriate percentage be reserved for growers in the privatized sugar factories;

(b) growers be represented on the Board of Directors of privatized milling companies in line with their shareholding.

Regards,  
AMISH GUPTA

**KONGEREN MULTI-PURPOSE CO-OP SOCIETY LTD**

**P. O.BOX 11, KIPTUGUMO**

**06/03/2022.**

**Bettandy66@gmail.com,**  
**0722876631,**

**TO THE SENATE CLERK,**  
**csenate@parliament.go.ke**  
**Cc: senatescalf@parliament.go.ke**

**RE: THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 68**  
**OF 2019.**

The above subject matter refers. I hereby make proposals on behalf of our members as follows;

The repeal of the sugar Act 2001 in 2013 to pave way for, AFA has greatly affected cane farming and farmers' fortunes in our country.

The clamour for a new sugar Act has been on since then.

Our main proposals are;

1. **Sugar Growers Apex body/lobby;** here it is good to appreciate that for effective representation farmers need a strong voice. Some current National bodies have been held hostage by sectarian interests and become moribund; unable to effectively represent farmers.

In our honest submission the CS Agriculture should register more than one. Apex body that meet certain set criteria.

**2. CLAUSE 18.**

This clause is the most contentious of them all.

The distribution of the sugar levy fund should be mainly to the farmers. We therefore submit as follows;

- a. a) 35% shall be used by the Board for, top up of price stabilization by treasury.

The Treasury been the main source of funds for the stabilization and not farmers stabilizing their own prices.

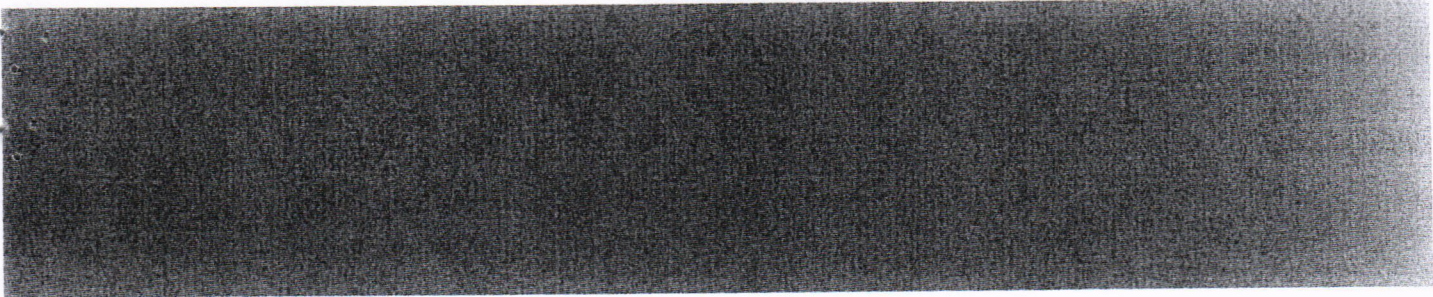
- b. 10% for use by the Board ( Administrative expenses should not take a big percentage)
- c. 15% for research.
- d. 35% for infrastructure development.

Add: e) 5% to fund activities of the Apex bodies for, effective lobby and representation of farmers.

Looking forward to prompt passage and operationilization of the Bill.

**FOR AND ON BEHALF OF KONGEREN MULTI-PURPOSE CO-OP SOCIETY LTD.**

**ANDREW BETT  
ID 92331000**



MEMORANDUM ON SUGAR  
BILL 2019 AT THE SENATE



Microsoft account

**Smallholders Sugarcane Farmers Association of Kenya**  
**(SHSFAK)** [Company address]

### Introduction:

Smallholders Sugarcane Farmers Association of Kenya (SHSFAK) is a membership organization formed to advocate for the rights of sugarcane farmers in Kenya. SHSFAK membership spreads across all the milling zones of SUKARI, SONY, Transmara, Chemelil, Miwani, Muhuroni, Busia, Nzoia, Olepito, Kibos and Butali with six thousand four hundred sugarcane farmers.

### Our issues:

For the purposes of developing this memorandum, we involved our members through telephone conversation. We consulted 2 of our representatives from each milling factory totaling to 22 members. We summarized their views as follows:

1. **Composition of the Board:** Sec6(1)(b) five representatives elected by growers from each sugar factory areas as per First Schedule

#### **We propose the following amendment;**

Five representatives **appointed by growers apex body** from each sugar factory areas as per First Schedule

#### **Reason:**

The millers and politicians sponsor their candidates who are not sugarcane farmers to represent their interest. This complicates our participation on matters of the industry as they serve the interests of the sponsors.

2. **Powers of the Board,** Sec9 (a) Impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act;

We propose to amend as follows:

Impose a **one percent** levy or levies upon growers and millers **to finance growers apex body** for the purposes of giving effect to the provisions of this Act;

#### **Reason:**

This will give independence to farmer apex body so that it does not rely on government or millers for support. In fact, it will improve farmers voice.

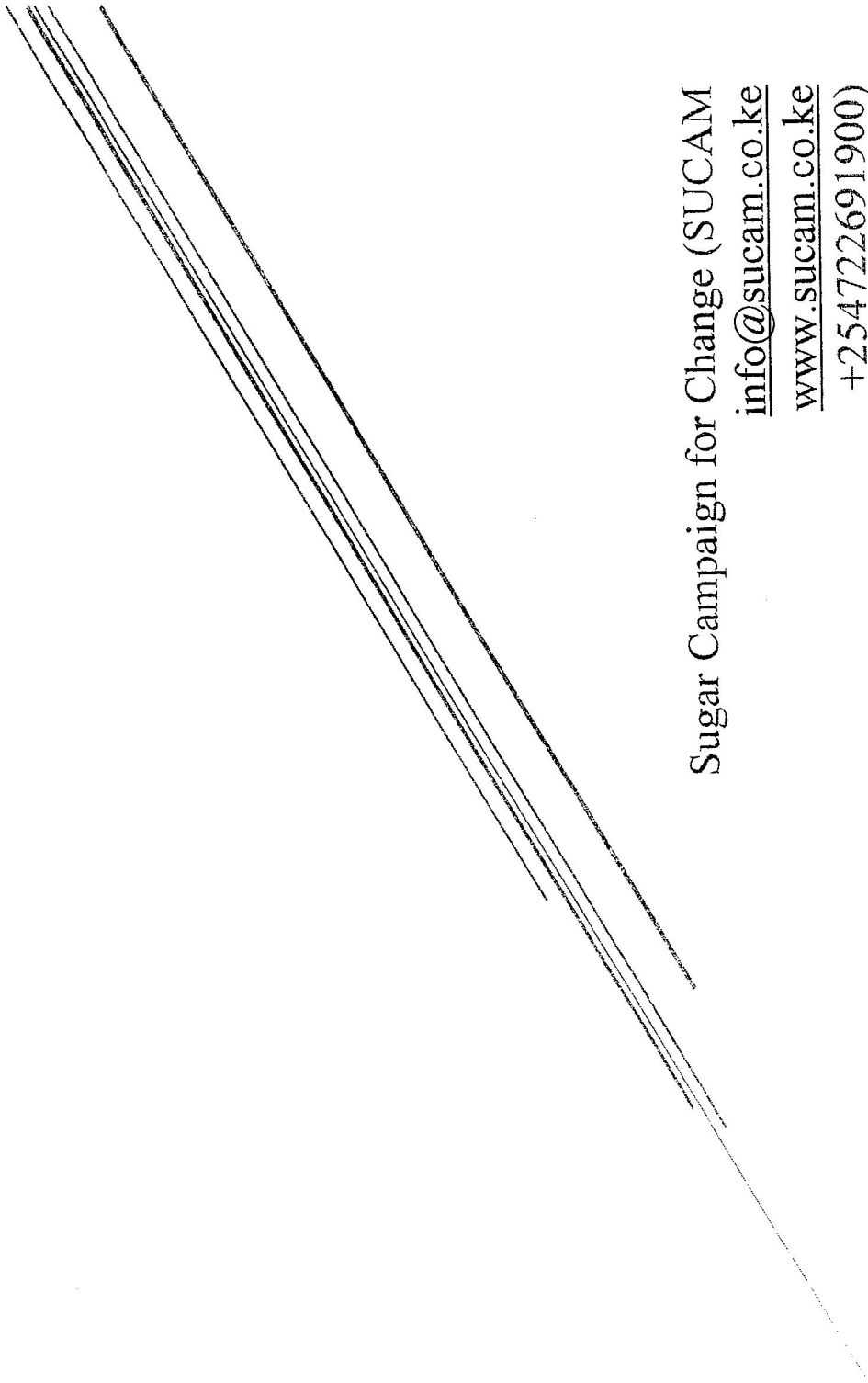
Looking forward for amendments.

Yours, Stephen Ole Narupa

National chairman small holders sugarcane farmers association of kenya.

PROPOSED AMENDMENTS TO SUGAR BILL

2019



Sugar Campaign for Change (SUCAM  
[info@sucam.co.ke](mailto:info@sucam.co.ke)  
[www.sucam.co.ke](http://www.sucam.co.ke)  
(+254722691900)

**Introduction:**

Sugar Bill 2019 was drafted to address public policy issues bedeviling the sugar industry. The main public policy issues in sugar industry are competitiveness, productivity, production, efficiency and competition. To great extent, the bill has addressed these public policy issues but has however the following gaps that MUST be addressed by the Senate.

These gaps include glossing over farmers' representation, inadequate sugar development levy allocation to cane development and incomplete cane pricing system.

In the above regards, summary of our memorandum include the followings:

1. Growers' apex body with roles based on best practices and financed by growers themselves. We propose to have the apex body be in charge of nominating their members to all the industry organs Including: Five directors to Kenya Sugar Board; Three members to Cane Pricing Committee; Five members to Board of Sugar Research Institute and One member to the board of private milling companies
2. Provision of a minimum levy charged per ton support activities of growers apex body
3. Proportionate allocation of the sugar development levy

**Expected result:**

1. Improved efficiency through planned cane development, harvesting and transporting coordinated by Apex Body
2. Improved net income to the sugarcane farmer as a result of reduced cost of farm input and services and remunerative cane price
3. Adequate cane production synchronized with milling capacity and improved productivity due availability of affordable, adequate and accessible funds for cane development.

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
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SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
Part I; PRELIMINARY	Interpretation Page 4	"sugar catchment area" means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board under the First Schedule;	"sugar catchment area" means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of nomination to the Board under the First Schedule;	Elections in the newly designated areas is impossible due to geographical barriers.  This is a departure from traditional zoning of the sugar belts in Kenya.  It will negatively affect regional balancing of farmer representation in the industry.
PART II— ESTABLISHMENT, POWERS AND FUNCTIONS OF KENYA SUGAR BOARD	Sec6.(2) Composition of the Board, Page 9	Sec6(1)(b) five representatives elected by growers from each sugar catchment areas as per First Schedule Page 9	Sec6(1)(b)(c) five representatives from each sugar catchment areas as per First Schedule <b>nominated by growers apex body</b>	Direct election of farmers' board directors failed. This was because of the followings:  1. <b>Lack of farmer register.</b> This gave room to hired goons to vote repeatedly to their candidates in multiple stations. 2. <b>Lack of independent electoral body with capacity</b> resulted into compromised, falsified results announced 3. <b>Lack of accountability system.</b> Directors were not answerable to farmers. They never held farmers meetings to brief us because we never voted for them 4. <b>Sugarcane farmers did not benefit.</b> Directors served the interests of their sponsors by <i>awarding import permits and approving sugar Development Fund loans.</i>  In summary, democracy was abused throughout the lifetime of the previous Board. This can only be addressed by growers apex body nominating their representatives.
	9. Powers of the Board, Page 10	Sec9(a) Impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act; Page 10  Sec9(b) Impose a levy upon growers of no less than shillings ten per ton of cane delivered for support of the farmers apex body, to undertake the following roles;  (a) Represent growers in sugarcane pricing committee	Sec9(a) Impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act;  Sec9(b) Impose a levy upon growers of no less than shillings ten per ton of cane delivered for support of the farmers apex body, to undertake the following roles;  (a) Represent growers in sugarcane pricing committee	<b>If left to Regulations, it will not see light of the day</b>  Growers should finance activities of apex body due to the followings reasons:  1. <b>Traditional membership support:</b> Through this, the growers will demand for efficient service provision and effective representation from the apex body. This is best practice world over. 2. <b>Fund apex body activities:</b> undertaking research

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PART III— LICENSING AND REGISTRATIO N	New Registration of growers  Page 15	New	<p>Sec9(b) the above levy shall be deducted by millers and collected by Board for onward forwarding to growers apex body;</p> <p>(b) Represent farmers at the weighbridge (c) Organize farmers into block farming system, (d) develop cane development plan in conjunction with the millers, (e) develop cane harvesting and transport plan in conjunction with the millers, (f) organize for bulk procurement of farm inputs and services (g) Facilitate development and implementation of Sugar Industry Agreements between the growers and millers;</p> <p>Add sec 23(1): Every sugarcane grower, for purposes of accessing economies of scale, shall have the freedom—</p> <p>(a) register with an out-grower institution and any other organisation representing the interests of sugar farmers; (b) all out-grower institutions and any other organization representing the interests of sugar farmers shall register with an growers apex body of their choice that has capacity of representing their interests; (c) where a farmer has entered into an agreement with an organisation representing the interest of such farmer, the Board shall respect and enable the carrying out of the terms of such agreement</p>	<p>on advocacy issues, competent negotiation with millers, farmers (members) education</p> <p>3. <b>Reduction of cost of production:</b> a. As it is now, it takes a farmer to spend a minimum of Kshs3,000 to deliver to the factory a tractor of 4-7 tons. This is illegal levy get permit, extra payment to cane cutters, loaders and tractor driver</p> <p><i>Giving Ksh70,00 to apex body instead of Kshs3,000 is a good business deal to growers</i></p> <p>b. Eliminate supplying costly farm input and services by millers. Millers give cane production input and services on credit at inflated prices which becomes exploitative when coupled with interest charges.</p> <p>c. Losses incurred due to late harvesting, non-harvesting, harvested but not collected cane. These are factors that contribute farmers abandoning cane farmers. <i>Apex body participation in production, harvesting and transport planning will address this</i></p> <p>4. Improved bargaining power to ensure fair trade</p> <p>5. Improved market intelligence</p> <p>Registration of farmers was provided in the Crops Act 2013. However, it has the following benefits:</p> <ol style="list-style-type: none"> <li>1. Improved sustainability through creation of economies of scale;</li> <li>2. Improved logistics in terms of harvesting and transportation facilities;</li> <li>3. Assist in ensuring undertaking good cane husbandry—soil testing, applying recommendable input;</li> <li>4. Lowering of transaction costs as a result of bulk buying;</li> <li>5. Improved access to best available technology to improve production efficiencies and quality of products;</li> <li>6. Ensure that there are value adding and agro-processing facilities.</li> </ol>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PART IV— ESTABLISHMENT OF KENYA RESEARCH Institute	Sec25 Management of the Institute Page 18	25(b) five persons elected by growers from each of the sugar catchment areas under the First Schedule	25(b) five persons from each of the sugar catchment areas under the First Schedule appointed by growers apex body	Under Kenya Sugar Research Foundation, the growers apex body used to nominate its representative. This traditional wisdom still superior to direct election of farmer. However in the same way with the case of Kenya Sugar Board; there is lack of farmer register and lack of independent electoral body.
PART VI— FINANCIAL PROVISIONS	Sec34 Funds of the Board. Page 21	Sec34. (7) The sugar development levy collected under subsection(2) shall be apportioned as follows – (a) fifteen percent shall be applied by the Board for income or price stabilization for sugar growers; (b) twenty percent shall be applied by the Board in the furtherance or exercise of any function or powers of the Board; (c) twenty percent shall be remitted directly to the Institute; and (d) twenty percent shall be applied for infrastructure for the sugar sub-sector on a pro rata basis	Sec34. (7) The purpose for which the Fund is established is to provide sustainable affordable credit and advances to the sugar industry for the purposes of— (a) forty eight percent shall be applied by the Board for income or price stabilization for sugar growers; (b) twenty four percent shall be remitted directly to the Institute; (c) one percent shall be applied by the Board in the factory rehabilitation and maintenances; (d) twenty four percent shall be applied by the Board in the furtherance or exercise of any function or powers of the Board and Board of Trustees; (e) four percent shall be applied for infrastructure for the sugar sub-sector on a pro rata basis	The distribution is based on the Sugar Industry Stakeholders Taskforce Report 2019, Budgeted Implementation Matrix:  1. <b>Cane production and Pricing mechanism:</b> to address decline in cane production, low adoption of early maturing varieties, decline in cane yield, low irrigation initiatives, harvesting and transportation inefficiencies, lack of transparency at the weighbridges, low farm diversification initiatives, Inadequate representation of the farmer in price bargaining totalling Kshs 8.992billion (47%)  2. <b>Sugar processing:</b> to address inefficiency and high cost of sugar production, unsynchronized cane development leading to Cane shortage/ oversupply, lack of a governance structure to coordinate cane production, supply and processing, inadequate ICT Infrastructure and cane cane fires totalling Kshs195million (1%)  3. <b>Poor infrastructure – Roads, Drainages, Culverts</b> National and County Governments their respective responsibilities in infrastructure development and maintenance as provided for in the Constitutions. <b>Taskforce Report Recommendation)</b> But awarded Ksh750 – (4%)  4. <b>Research:</b> inadequate research, irrigation establishment totalling to Kshs4.497 - (24%)  5. <b>Administration:</b> sugar importation, marketing of value added products, compliance, funding research, for governance and rehabilitation, Sugar Training Institute, regulations totalling to Kshs4.482billion – (24%)
	Sec34 Funds	New	(4) The Fund shall be managed by a Board of Trustees which shall consist of—	The purposes for which the Sugar Development Fund may be applied, promote good corporate governance and

SECTION OF THE BILL	SUB-HEADING OF SUGARBILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PART V-- MISCELLANEOUS	Sec 27 Safeguard measures	27. (1) Subject to such regional and international trade agreements to which Kenya is a	<p>(a) the Permanent secretary to the Treasury or a representative nominated by him in writing;</p> <p>(b) the Permanent Secretary in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing;</p> <p>(c) the Chief Executive Officer of the Board;</p> <p>(d) 2 members representing sugarcane growers apex body</p> <p>(e) 1 member representing millers apex body</p> <p>(f) 2 members appointed by the Minister on the basis of their professional and managerial capacity;</p> <p>(g) the managing trustee, who shall be an ex officio member and the Secretary to the Board of trustees.</p> <p>(5) The members of the Board of Trustees shall elect a chairman from amongst themselves.</p> <p>(6) Every appointment under paragraph (d) shall be by name and by notice in the Gazette and shall be for a term of three years which shall be renewable once.</p> <p>(7) No person shall be appointed as a Managing Trustee unless such a person holds a degree from a university recognized in Kenya and has at least five years' experience in financial management.</p> <p>(8) The Managing Trustee shall be appointed by the Minister through a competitive process and shall hold office for a period of three years which shall be renewable</p>	<p>accountability levels by placing the administration of the Sugar Development Fund in the hands of a Board of Trustees with a specified mandate and fiduciary responsibilities</p> <p>However, management of Sugar Development Fund by Board of Trustees with technical administration capacity while KSB remain supervisor is the best governance option. This is because analysis of performance of the scrapped SDL paints bad picture;</p> <ol style="list-style-type: none"> <li>The Fund was mismanaged and the industry has nothing to show. The state of government mills is worse than before the establishment of the funds. Disbursement of trillions of shillings for factory rehabilitation and maintenance cannot be accounted for</li> <li>Loans given without guarantee and due supervision to government mills were not refunded resulting into huge debts compounding into trillion of Kenyan shillings</li> <li>Loan given to these mills were diverted to salary and paying other suppliers,</li> <li>Reports on Out-grower companies; MOCO, BOCO, NOCO, MUSOCO, SOC, COC and WECO implicate former directors of KSB in mismanagement of loans advanced to these firms has not been acted upon;</li> <li>SDF loans given to-cane growers by AFC were recovered, whether the cane was harvested or not;</li> <li>All SDF loans given on credit to cane farmers were recovered but not submitted by millers or out-grower companies to the Board.</li> </ol> <p>Sugar importation control is supposed to be done by the government in consultation with key stakeholders; sugarcane growers and sugar millers</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
PROVISIONS		party, all sugar imports into the country shall be subject to the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Sugar Import and Export Committee comprising of;	<p>the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Sugar Import and Export Committee comprising of;</p> <p>(a) Chairman of Kenya Sugar Board;</p> <p>(b) the Permanent Secretary in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing;</p> <p>(c) the Permanent Secretary in the Ministry for trade and industry or his representative nominated by him in writing;</p> <p>(d) Two representatives nominated by Sugarcane Growers Apex Body in writing;</p> <p>(e) Representative nominated by Millers Apex Body in writing</p>	
PART VIII— MISCELLANEOUS	Sec55 Representative of a grower in a private milling company Page 32	Sec55(2) In appointing director representing growers under subsection 1 above, the milling company shall consider in the first instance, the leaders of the out-grower institutions within the sugar-cane catchment area within the sugar mill is located	Sec55(2) In appointing director representing growers under subsection 1 above, the milling company shall write to the apex body for nomination of one the leaders of the out-grower institutions within the sugar-cane catchment area within the sugar mill is located	This will avoid millers appointing one of their sympathizers. The miller sympathizer may not work in harmony with farmer interests.
Third schedule Part 11: Sugarcane Fires and Pricing	SECOND SCHEDULE Sec7 Sugar Cane	Sec7 (1)The Committee shall comprise of:- (d)three persons nominated by the sugar cane growers from sugarcane catchment region	Sec7 (1)The Committee shall comprise of:- (d)three persons nominated by the growers apex body from sugarcane catchment region	Growers Committee members should be nominated by the apex body to avoid millers sponsoring their friends at the Committee

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
SECOND SCHEDULE	Pricing Committee. Page 43	<p>7(4) The Committee shall come up with the pricing formula and in doing so shall take into account the—</p> <p>(a) pricing mechanisms for all other cane related charges paid by the farmer; and</p> <p>(b) an index that takes into consideration delayed harvesting; (c) transportation cost per tonne per kilometre of sugarcane.</p>	<p>8(4) The Committee shall come up with the pricing formula and in doing so shall take into account the—</p> <p>(a) pricing mechanisms for all other cane related charges paid by the farmer; and</p> <p>(b) an index that takes into consideration delayed harvesting; (c) transportation cost per tonne per kilometre of sugarcane.</p> <p>(d) Fair and Remunerative Price (FRP) which is a floor price which the farmers would receive even when sugar prices fall to a level which leads to prices lower than FRP;</p> <p>(e) Fixed Division of Proceeds ratio 67% to growers and 33% to millers</p>	<p><b>Price fluctuations:</b> Cane price instability has resulted in inadequate cane production forcing millers to operate below capacity. Pricing stabilization through creating a floor price will fair and remunerative price. Cane production will increase.</p> <p><b>History of Cane payment:</b> in the period of <b>1981-1990</b> Overall greater emphasis was given to cane growers as they received 55% of the sugar revenue and the miller got 45%. In <b>1991-200</b>, the government policy shifted emphasis from grower to miller on average the growers received 48% of the sugar revenue and the miller 52%. From <b>2001 to date</b>, the growers and miller have had equal share of the revenue at 50%. Basing on the Sugar Stakeholders Taskforce Report, the cost of cane comprises 67% of the overall cost of production. The government policy should now shift emphasis from miller to grower. On average the grower should receive 67% of the sugar revenue and the miller 33%.</p>
		<p>7(6) The sugar-cane prices set by the committee under sub paragraph (2) shall be reviewed after every thirty six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane</p>	<p>8.(6) The sugar-cane prices set by the committee under sub paragraph (2) shall be reviewed regularly as dictated by prevailing market forces provided that the Committee may, with the prior approval of the Board, Or delete the entire section</p>	<p>This is a malicious insert by millers to control the sugarcane prices contrary to free market economy This will be an exploitation of poor sugarcane farmers</p>

SECTION OF THE BILL	SUB-HEADING OF SUGAR BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	REASON FOR THE AMENDMENT
		pricing.		



# KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

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E-mail: sugarcane federation@yahoo.com

9<sup>th</sup> MARCH 2022

TO

Clerk of the Senate  
csenate@parliament.go.ke

**THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO.68 OF 2019)**

**SUBMISSION OF MEMORANDUM**

**Ref: invitation Daily Nation Tuesday March 1, 2022.**

We, the undersigned leaders of sugarcane growers under our umbrella apex organization KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS; RECOGNISING the importance of THE SUGAR BILL, 2019 for the purposes of the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Sugar Board, and connected purposes.

And

APPRECIATING the initiative and efforts of all those involved in its preparation;

**HUMBLY WISH TO STATE AS FOLLOWS:**

WHEREAS Sugarcane growers in Kenya produce more than 90% of all the sugarcane milled into, on average, 600,000 tons of sugar annually, valued at the retail price of kshs 120,000 per ton totaling to a total value Kshs.72 billion, these very sugarcane growers have been held hostage and exposed to exploitation throughout the history of our sugar industry due to the absence of a just and fair sugar law and related regulations;

THAT for example, sugarcane farmers have desperately continued to grow sugarcane in spite of losses which we calculated at Kshs.3047 per ton on 3,325,433 tons of sugar totaling Kshs.16, 226,594,351 for the years 2011-2020.

**To advocate, lobby for favourable national policy on sugarcane growing and unite all the sugarcane farmers of Kenya together with their institutions for the development of a sustainable welfare and improving economically**

THAT KRA carelessly under collected Kshs.20 billion on VAT on sugar while businessmen smiled all the way to the Bank with profits of Kshs.148 billion during the same period.

WHEREAS history tells us that Africans were used as slaves under forced labor on sugar plantations in America and the Caribbeans to make huge profits for Europeans, there is no reason why we Africans in Kenya, being free people, not being slaves should continue growing sugarcane not for our own benefit but for the exclusive benefit of non-farmers.

THAT while anticipating that the Sugar Bill 2019 would provide a level playing ground for the operations of all stakeholders,

THIS DOCUMENT now before the Senate has instead, turned out to be a dangerous scheme laden with openly divisive and discriminatory bias, well calculated to exacerbate perpetual cane growers' exploitation, slow down cane development, cause farmers disillusionment, to trigger abandonment of sugarcane cultivation, create the need for increased sugar imports by the untouchables and eventually destroy the sugar industry in Kenya.

THAT This Sugar Bill must be corrected at this stage to halt and reverse the current signs of abuse of human rights, economic marginalization, germinating neo-colonialism and racism, tribal marginalization, political marginalization, highly visible corruption and regrettably ambivalence and lack of concern by political leaders in sugar growing Counties.

THAT we believe that corrections should be made to make the Bill a better instrument for the sugar industry and purpose that

All words clauses, phrases and sentences that deliberately undermine, degrade and be little the dignity of cane growers be removed from the Sugar Bill.

All definitions of sugarcane growers' representatives be properly structured.

All such phrases such as "lobby groups" to represent cane growers are an abuse to farmers who already have and elected and registered Kenya National Federation of Sugarcane Farmers.

All misleading interpretations such as the one for catchment area should be removed without debate.

THAT Kenya National Federation of Sugarcane Farmers must be recognized as the sugarcane growers Apex Body- the evidence is annexed herewith.

THAT Section 53 (f) on page 32 is badly written in order to prevent the cane growers from raising funds through levies. THIS MUST BE CORRECTED. The

Sugar Board has no place under this section. It is just the authority to levy as part of the Bill.

**Advocacy**

THAT the role of the Sugarcane Growers Apex Body be clearly defined and included in the Sugar bill.

THAT the advocacy role of the Sugarcane Growers Apex Body be removed from the roles of out growers' institution.

That the provisions for appropriation of the SDL should be made properly with a serious view of the needs of the industry at this time in our view cane development should be given the budget allocation even 50%.

**THEREFORE**

AS LEADERS Of the Sugarcane Growers, we request Hon. Members to consider and agree to our proposals as stated above and as contained in the attached matrix.

***WE SEEK AUDIENCE WITH THE COMMITTEE.***

***Signed.***

# KNFSF NEB MEETING 4. 9/3/2022

AT KIPUMU AFA BOARD ROOM,

DISCUSSION ON AMENDMENT TO SUKAR BILL BY FEDERATION.

## ATTENDANCE LIST:

	NAME	POSITION	BRANCH	SIGNATURE
1.	Abraham Juma	CHAIRMAN	BUSIA	
2.	Charles Angumba	Member	Muhoroni	
3.	MARY MILCENT OLUOCH	V-Chair Lady	Muhoroni	
4.	Zachary Obara	Kisii Representative member		
5.	PHILIP LUTOMETLI	Member	BUTALI	
6.	JAMES KIMALEMU SANIQUA	MEMBER	NZIOA	
7.	Mattias Odema	Member	SUKARI	
8.	GEORGE DILLENY RABALIGA	Chair/PWB	SONY	
9.	CALEB ODHAMBWA SITHIWA	BRANCH SEC CSC	CHEMELLIL - MUMINGI	
10.	EUNICE A. ATICO	MEMBER	CHEMELLIL	
11.	BENARA OKELLO OBYANGO	MEMBER	SUKARI	
12.	STEPHEN OLUSE	MEMBER	BUSIA	
13.	WILLIAM KOPPI	AG. TREASURER	BUTALI	
14.	Sylvester Kala	member	Muhoroni	
15.	Simon Wesekere	Deputy Sec	MUMINGI	
16.	JOHN O. OMOLO	CHAIRMAN SONY	SUKAR	
17.	SISYLIVE N. TETO	W. REP	NZIOA	
18.	Stephen Walubi	W/Sec/Sec.	NZIOA	
19.	Meshack Shatumba		BUTALI	
20.	ESERA O OKOH	Sec Sukari	SONY	
21.	Francis Mungu Waswa	CEO	MUMINGI	
22.	DAN OPOLLO	2 <sup>ND</sup> D/SEC	MUMINGI	
23.	KILION OSUR ANSANGO	1 <sup>ST</sup> D/CHAIRMAN	MUHORONI	
24.	LEAH CHEPKWAY	COORDINATOR	SONY	

SECTION OF SUGAR BILL 2019	SUB-HEADING OF SUGAR BILL	ITEM IN THE BILL	PROPOSED CHANGES/QUERIES	REASONS FOR PROPOSED CHANGES/QUERIES
PART 1	PRELIMINARY	<p>Short title Interpretation</p> <p>“Sugar catchment area” means a specific geographical area where farmers are clustered within a suitable catchment area for purposes of election to the Board under the First schedule.</p>	<p><b>DELETE WHOLE</b></p> <p><b>REPLACE WITH</b></p> <p>“Sugarcane catchment area” means a specific geographical area where the Board in consultation with the relative County Government has licensed and assigned to more than one miller, based on milling capacity, crop development, sugarcane procurement, more latitude for farmers to market their cane to two or more mills and so as to mitigate the agony of farmers being chained to one unperforming miller and also to reduce the tendencies of monopoly experienced in one single zone.</p>	<p>The interpretation in the Bill is misleading and ambiguous.</p> <p>Catchment area is a much enlarged factories area able to accommodate more than two or more sugar mills unlike in the past where a miller was licensed to operate within a radius of up to a maximum of forty kilometers.</p> <p>IT MUST NOT BE LINKED TO SUGARCANE FARMERS REPRESENTATION IN THE SUGAR BOARD.</p>

	<p>" Sugarcane growers apex body"</p>	<p>" Sugarcane growers apex body" means a national sugarcane farmers and out grower organization under the First Schedule gazette as such by the cabinet secretary for the time being responsible for agriculture.</p>	<p>DELETE WHOLE</p> <p><b>REPLACE WITH</b></p> <p>" Sugarcane growers apex body means a national sugarcane farmers organization known as <b>KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS.</b></p>	<p>KNFS is the only apex body</p> <p>This Sugar Law should recognize <b>KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS</b> Justification and proof by attached annexes.</p>
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PART II	ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD.	6. Composition of the Board  (b) Five representatives elected by growers from each sugar catchment area as per the First Schedule.	<p><b>DELETE WHOLE</b></p> <p><b>REPLACE WITH</b></p> <p>(b) seven representatives elected by growers based on constituent sugar mills as per FIRST SCHEDULE part 2.</p> <p><b>Upper Western</b> Reps Nzoia, Naitiri, Butali, W. Kenya (83,78 ha) 2</p> <p><b>Lower Western</b> Mumias, Busia, Olepito (21,773 ha) 1</p> <p><b>Central</b> Chemelil, Muhoroni, Kibos, Soin Miwani (38,235 ha) 1</p> <p><b>Southern</b> Sony sugar, Sukari, Transmara, Kisii (39,669 ha) 2</p> <p><b>Coast</b> Kwale (3262ha) 1</p>	<p>Based on actual and weighted land under sugarcane in the out growers (year 2020)</p> <p>Avoid representation based on political boundaries of countries as proposed in the Bill.</p> <p>Mumias Ha were zero but sugar mill is under rehabilitation and it is expected that over 20,00 ha will come under cane to bring Ha. In lower Western to over 40,000.</p>

<p><b>PART IV</b></p> <p><b>ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE.</b></p>	<p>23. ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE.</p>	<p>25. MANAGEMENT OF THE INSTITUTE.</p> <p>(b) Five persons elected by growers from each of the sugar catchment areas under the First Schedule.</p>	<p>(6) One representative elected by sugar millers who is knowledgeable in sugar technology and value addition.</p>	<p>© Three representatives elected by sugar millers</p> <p>Delete " who is knowledgeable in sugar technology and value addition."</p> <p>It will be fair to have a miller to represent Western, Central, Southern / Coast regions.</p> <p>Such representation existed under sugar Act 2001.</p>	
			<p>(b) <b>DELETE</b></p> <p>Five representatives nominated by Kenya National Federation of Sugarcane Farmers from the catchment areas.</p>	<p>7</p>	
					<p>This is a normal procedure Worldwide</p>

<p><b>PART VI</b> <b>FINANCIAL</b> <b>PROVISIONS</b></p>	<p>33. FUNDS OF THE BOARD</p>	<p>33 SUGAR DEVELOPMENT LEVY (7) (a) 15% cane development (b) 20% sugar Board c 20% Research (d) 45% Infrastructure 100%</p>	<p>(7) (a) 25% cane development (b) 20% sugar Board © 15% Research (d) 25% Infrastructure c 10% sugar Mills rehabilitation (f) 2% sugar Technologists support (h) 3% sugarcane Farmers Apex Body Support.</p> <p><b>EXPLANATION</b></p> <p><u>Assumption</u></p> <p>Domestic sugar production at 2% kshs. 600,00 tons x 90,000 x 2/100= <b>1,080,000,000ksh.</b></p> <p><b>Imports</b> 400,000tons x 60,000 x 10/100=<b>2,400,000,000ksh</b> Total Tax Collection <b><u>KSHS. 3,480,000,000</u></b></p> <p><b>APPLICATION</b></p>	<p>?</p> <p>To go back to the original purpose of the levy and in consideration of increased costs of inputs and the need for increase sugarcane production 45% for infrastructure is out of proportion-it is alarming</p>
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<p><b>PART VII</b></p>	<p><b>ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL</b></p>	<p><b>40.</b> <b>ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL</b></p> <p>(b) four other members being persons with expert knowledge of the matters likely to come before the tribunal and who are not persons with direct material interest in the sugar industry, all of who shall be</p>	<p>30% Cane development - <b>1,044,000,000</b> 20% sugar Board <b>696,000,000</b> 15% Research Institute <b>522,000,000</b> 25% Infrastructure <b>870,000,000</b> 3% Sugarcane Farmers Apex Body support <b>104,400,000</b></p> <p><b>100% TOTAL</b> Kshs. <b><u>3,480,000,000</u></b></p>	
		<p>(b) delete the following "---- and who are not persons with direct material interest in the sugar industry, all of who shall be appointed by the Chief Justice in consultation with the Attorney General and Council of County Governors.</p> <p><b>RE WORD TO READ</b></p> <p>(b) four other members with expert knowledge of the</p>		<p>In other successful sugar producing jurisdictions such as Mauritius and South Africa. This is what happens;</p> <p><b>MAURITIUS</b> The Tribunal includes One independent member, One representative of millers,</p>

<p><b>PART VIII MISCELLANEOUS PROVISIONS</b></p>			<p>matters likely to come before the tribunal two of whom shall be appointed by the farmers apex organization and two who shall be appointed by KESMA.</p>	<p>Two representatives of planters</p> <p><b>SOUTH AFRICA</b> The Tribunal includes</p> <p>One person appointed by the South Africa Sugar Association</p> <p>Two persons appointed by the millers Association</p> <p>Two persons appointed by the Growers Association.</p>
<p><b>SUGAR INDUSTRIES AGREEMENTS</b></p>	<p>53. (f) the enforcement of levies upon growers and millers for the purpose of enabling the Board to fulfill any obligation incurred by it in accordance with its constitution.</p>	<p><b>DELETE AND RE-WORD TO READ</b> 53. (b) the enforcement of levies upon growers for the purpose of enabling the Farmers Apex Organization to fulfill any obligation in accordance with its constitution.</p> <p>e.g</p> <p>the enforcement of a 0.30% levy of the price per ton of sugarcane in accordance</p>	<p>This clause of the Bill is badly and maliciously written to deny funding of the farmer's apex organization.</p> <p>It should be noted that clause 53 is dealing with Sugar Industry Agreements between</p>	

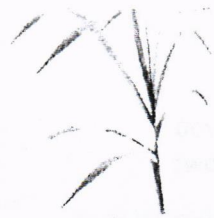
with Article 12.2.1.1 (7) in the constitution of Kenya National Federation of Sugarcane Farmers which says;  
"The Governing Council shall impose on all growers a levy the amount of such levy expressed as a rate per tonne of sugarcane supplied to the miller.

(8) when a levy is so imposed the miller shall deduct at source the amount due to the Federation from the proceeds of any sale of sugarcane of the grower and remit the same direct to the Federation.

the GROWERS AND MILLERS  
GROWERS AND OUT GROWERS  
INSTITUTIONS AND MILLERS AND OUT GROWERS  
INSTITUTIONS.

**The BOARD IS NOT PARTY to this clause.**

THE BOARD does not have another Constitution apart from its establishment under this Bill.  
Hon. Members should support our proposal since there is no interference with the funds of the Board.



# KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

Methodist Church, Behind Kibuye Market Kilifi Road  
P.O. Box 19404-40123 KISUMU  
EMAIL: [sugarcanefederation@yahoo.com](mailto:sugarcanefederation@yahoo.com) / [info@knfsf.co.ke](mailto:info@knfsf.co.ke)



OUR REF: Senate/Sugar Bill 2019/MEMO/Mar-2022

DATE: 22/03/2022

YOUR REF:.....

Committee Chair,  
Hon. Njeru Ndwiga, Senator for Embu County,  
Senate Standing Committee on Agriculture, Livestock & Fisheries,

For immediate attention

Dear Sir,

**RE: URGENT LETTER OF CONCERN PETITIONING SENATE ASSEMBLY ON WORKING WITH  
SUSPENDED FACTION OF KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS**

Kenya National Federation of Sugarcane Farmers (KNFSF) was formed and registered in January 2015 to represent the interests of the cane growers. Millers out of mischief sponsored wrangles among the officials, nearly breaking-up the Federation.

As a result of the infight, on 12<sup>th</sup> October, 2018, Governing Council suspended 3 officials: - Chairman, Chief Executive Officer and Organizing Secretary. They got a stay order, which proceeded to full hearing sponsored.

Kakamega High Court on 29<sup>th</sup> October 2021, made ruling by dismissing the case as premature (*see attachment*). However, the officials continued to conduct the Federation businesses including engagement with Senate in total disregard to the court ruling.

**The Suspended Officials Sponsored by Kenya Millers Association (KESMA)**

Traditional wisdom is clear about the roles of farmer and miller representative organizations; whose interests run parallel.

When the suspended officials of Federation was having zoom presentation to Senate on 22/3/2022, they were hosted at KESMA offices at Re-insurance Plaza in Kisumu. Surprisingly, the content of the presentation was agreed on. This is conflict of interests.

The same group of the Federation went to court, financed by KESMA to suspend implementation of the gazzetted Crops (Sugar) General Regulations 2020. The long awaited Regulations was the only hope of the vulnerable smallholding cane farmers to return to remunerative cane farming. The Sugar Regulations provides for pricing system, seed system, cane development, harvesting and transporting program and Sugar Industry Agreements. These are cost reduction strategies that result in competitiveness.

The suspended officials presented before your Honorable Committee through a zoom call on 22/3/2022. Some of their proposals are reasons for our wrangles. This is why, it was

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*To advocate, lobby for favourable national policy on sugarcane growing and unite all the sugarcane farmers of Kenya together with their institutions for the development of a sustainable welfare improving and economically rewarding Sugar Industry*

decided during our Extra-ordinary General Meeting held on 24/3/ 2022 to write to you disowning their presentation. We however drew the following views to the Bill as below:

**Proposed memorandum to the Senate:**

Clause	Proposal	Justification
C2 interpretation page 4	<b>Delete</b> "sugar catchment area"	It's has been an area of controversy sponsored by millers. Farmers enjoy current arrangement where we can supply our cane to any willing mill with good terms irrespective of geographical location.
C6 Composition of the Board; page 9	Amend as follows: (1)(b) <i>Eight representatives nominated by the farmers' apex body</i>	1. Former Board had 7 farmers representatives. Additional coastal representative is fair progression 2. Maintain traditional former Board electoral areas defined by the Ministry with additional one for coastal area. 3. Nomination is a recommendation by National Taskforce Report 20219. Besides, direct elections of farmer Board was characterized by violence
C9 Powers of the Board page 11	Amend Sec (9) by adding another before sub-section Sec9(b) <b>Impose a levy upon growers of 0.5 percent per ton of cane delivered for support of the farmers apex body</b>	An independent farmer apex body will ensure the following benefits to grower: 1. representation at weighbridges will eliminate falsification of farmers record 2. bulk farm input purchase ensure economies of scale 3. bloc soil testing, ploughing, harvesting will ensure increased productivity
C22: Registration of growers page 15	Add Sec 23(1): <b>Every sugarcane grower, for purposes of accessing economies of scale, shall have the freedom to register with an out-grower institution and any other organisation representing the interests of sugar farmers</b>	Through this the industry will have accurate and updatable farmer register. This will help for the purpose accessing support from government. The support including access to credit facilities is best managed through farmer groups. It is easy to organize for access to group services such as bloc sampling soil testing assigned to farmers with unique identity and location
C25 Management of the Institute Page 18	Sec25(b) <b>eight</b> persons nominated by growers apex body	We are for nomination; not for election because it will be abused and mockery of democracy. Like with the Board, the Institute management should also be led by growers
C34 Funds of the Board. Page 21	Sec34. (7) <b>forty percent</b> shall be applied by the Board for income or price stabilization for sugar growers;	Fifteen percent is too little to undertake cane development, cane price stabilization, purchase of transport fleet and farm tractors
C55 Representative of a grower in a private milling company Page 32	Sec55(2) In appointing director representing growers under subsection 1 above, <b>the milling company shall write to the apex body for nomination of one</b> the leaders of the out-grower institutions within the sugar mill is located	One of the most innovative way of ensuring involvement of growers in the management of the sugar industry The apex body should be given the freedom to nominate from out-grower institutions who are her members to represent the farmers interests in the milling company.
FIRST SCHEDULE Delineation of Sugar catchment areas/ Sugar catchment Counties page 35	<b>Delete the entire First Schedule</b>	This matter of delineation of the industry should be treated by the Regulations. This is because industry is fast growing with new investments both at the farm and process level. An apex body will provide Counties with accurate information for purposes of accountability
THIRD SCHEDULE PART 3: Sugarcane fires and Cane Pricing page 42	Amend by deleting sugarcane fires to read as follows: PART 3: CANE PRICING	Any brain will tell you that best cane is burnt cane if it is harvested and milled in 2 days after harvesting as trash level lowest and can cutters work is eased at the field.
Sugarcane fires page 42	<b>Delete entire Sec6 of Third Schedule Part 3</b>	Delayed payment is used as deterrent against farmers torching their cane to influence harvesting when harvesting program fails. Millers will use provision to frustrate and exploit us.
Sugarcane Pricing Committee page 42	Amend by adding Sec7(4)(e): <b>Sharing ratio of 60% to 40% to farmers and millers respectively</b>	According to Sugar Stakeholders Taskforce Report, farmer cost comprises 67% It is best practice internationally

**Signed by the Federation delegates as per the attached list of attendance below:**

*To advocate, lobby for favourable national policy on sugarcane growing and unite all the sugarcane farmers of Kenya together with their institutions for the development of a sustainable welfare improving and economically rewarding Sugar Industry*

EXTRA ORDINARY GENERAL MEETING

THE KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS  
 HELD AT MUSEUM VIEW HOTEL,  
 24 MAR 2002  
 ATTENDANCE LIST

No	Name	Branch	Position	Contact	Signature
1	STEFAN MURONGI OKAL	KIBOS	CHAIRMAN	0709750887	[Signature]
2	CHARLES DEOLA OMBINI	MIBOS	MEMBER	0710 835144	[Signature]
3	JAMES ODHIAI MESHIAI	MWAWI	CHAIRMAN	0708218085	[Signature]
4	Silva Bweli	MWAWI	Women Rep	0717773051	[Signature]
5	DANIEL ONDENYI	WIK	Member	0722257110	[Signature]
6	EDDAD P. ONGRO	SUKA-RI	SECRETARY	0713162885	[Signature]
7	MARY A. OJUDA	SUKA-RI	MEMBER SECRETARY	0714220050	[Signature]
8	JOSEPH K. SURUM	SUKA-RI	Member	0714441205	[Signature]
9	Paul J. Ojoro	MIBOS	Joint Director	07196627302	[Signature]
10	MARY R. OGOJA	SOMNY	TREASURER	0726988045	[Signature]

THE NENYA NATIONAL FEDERATION OF BIRGACANE PARADISES  
 EXTRA ORDINARY GENERAL MEETING  
 HELD AT MUSEUM VERA HOTEL  
 24<sup>th</sup> MARCH 2012  
 ATTENDANCE LIST

No	Name	Branch	Position	Contact	Signature
1	STEPHEN KUMURU	M/NORTH	TREASURER	0756732419 0712514021	
2	HARRY LINDA DORVILLE	SONET SECRETARY	SECRETARY	0723808533 0737255340	
3	JOSEPH CHEPKWORY	SONET	SECRETARY	0723583584	
4	Michael Adum	Secretariat	DCED	0713382202	
5	Wilson Kivua	Member	Secretary	0733079938	
6	Pamella Matsa	Mumias	Secretary	0718258480	
7	Cyprien Muleca	Mumias	Member	0721974456	Pamella
8	Jaakson Lekeey	Transmara	Member	07196732	Cyprien
9	Agness Cherobon	Transmara	Member	0718154475	Norloma
10	Patrus Shuger	Transmara	Member	072726223 0720860375	Cherobon Shuger

THE KENYA NATIONAL FEDERATION OF SOUVENIR PAINTERS  
**EXTRA ORDINARY GENERAL MEETING**  
 HELD AT MUSEUM VIKIYO JOMU  
 24<sup>th</sup> MARCH, 2022  
 ATTENDANCE LIST

No.	Name	Branch	Position	Contact	Signature
1	JACKSONIA SAMWALOTO	SUKAQI	CHAIRMAN	0725388710	
2	STEPHEN OLENAHURA	KRAMURU	MEMBER	0715182085	
3	ANGEL KENT	SOIN	BRANCH MEMBER	072287631	
4	LINDAH SHIKHIGA	NISST KENTA	MEMBER	0714145498	
5	ELIZABETH MUTENDE	WEST KENYA	TREASURER	0720572721	
6	NDSRAT NELIMA	N. KENYA	SECRETARY	072261002	
7	SALINA JEPITO	RHEMURU	V. SECRETARY	0724104188	
8	ELPHAS NJENDI	W. KENYA	MEMBER	072587728	
9	NATHAN KUTOTO	W. KENYA	MEMBER	0720836983	
10	WITELIFE WIRAPUWA BIKO	NZOIA	BRANCH CHIEF	2722236960	

THE KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS  
 HELD AT ARBUSHOM VIEW HOTEL  
 24th MARCH, 2022  
 ATTENDANCE LIST

No	Name	Branch	Position	Contact	Signature
1.	Collata Joppygo	Miwani	Member	0715081325	Absent with apology
2.	Henry B. Lukito	Ngora	Member	0726621651	"
3.	Nelson Okukip	Chenellu	Farmer	0715081325	"
4.	Caroline Akoo Omulo	Kibos	Farmer	0711931948	"
5.	Stephen Ochieng Ombao	Kibos	Farmer	0715 897444	"
6.	Sammy K. Langat	W. Kenya	Farmer	0706 892754	"
7.	Margaret X. Atulo	Ngora	Farmer	0720494434	"
8.	Salina Jigitau	Miwani	Member	0706676300	"
9.	John D. Maina	W. Kenya	Farmer	0720473609	"
10.	ISABEL Musunku	Transmara	Member	0721498568	"

THE KENYA NATIONAL FEDERATION OF SUGARCANE EARNERS  
 EXTRA ORDINARY GENERAL MEETING  
 HELD AT MUSIUM VIEW HOTEL  
 24<sup>TH</sup> MARCH 2022  
 ATTENDANCE LIST

No	Name	Branch	Position	Contact	Signature
1.	Margy Awiti	Sulani	Member	07774781	Margy
2.	Joseph Rotich	SOIN	Member	0722 256703	Rotich
3.	Stephen A. Okumu	MUMUGU	Member	0714355709	Okumu
4.	SPT Kiprotich	Muroni Member	Member	079451585	Chopkanyi
5.	David Okalo	Muroni Member	Member	0710 62357	Okalo
6.	Esther Jepketer	Eutale	Member	0710 811810	Mpendu Sulani
7.	Mafu Juma Simiyu	Ngoria	Member	0707933292	
8.	Wickily Matibo Odera	Muhoroni	Member	0710 209 494	Agrent Sulani Kiprotich
9.	Johnston Shauri	Kansuara	Member	0727630334	
10.	Nathan Zuilolo	W. Kenya	Member	0700 836970	

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT KAKAMEGA  
CIVIL DIVISION  
CIVIL SUIT NO. 30 OF 2018

IBARAHIM JUMA  
STEPHEN WALUBI  
FRANCIS MUNGO WASWA (Chairman, Organizing Secretary  
and Executive Officer of the Kenya National  
Federation of Sugarcane Farmers, a Society)

JECKONIA OYOO  
ESERA OKOTH  
STEPHEN OLE NARUPA

VERSUS

PLAINTIFFS

1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT

ORDER

THIS CASE COMING UP for ruling of the Defendants Preliminary Notice of Objection dated 8<sup>th</sup> day of November 2018, before HIS LORDSHIP W. MUSYOKA, Judge and UPON considering the submissions by counsels for all parties.

IT IS HEREBY ORDERED THAT:-

1. The suit is dismissed.
2. Costs awarded to the Defendants.

ISSUED UNDER my HAND and the SEAL of this Honourable court this 29<sup>th</sup> day of October 2021.

DATED AT KAKAMEGA this 29<sup>th</sup> day of March 2022.

  
DEPUTY REGISTRAR

HIGH COURT-KAKAMEGA

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT KAKAMEGA  
CIVIL SUIT NO. 30 OF 2018

IBRAHIM JUMA.....1<sup>ST</sup> PLAINTIFF  
STEPHEN WALUBI.....2<sup>ND</sup> PLAINTIFF  
FRANCIS MUNGO WASWA.....3<sup>RD</sup> PLAINTIFF  
(Chairman, Organizing Secretary and Chief Executive Officer of the  
Kenya National Federation of Sugarcane Farmers, a Society)

VERSUS

JECKONIA OYOO.....1<sup>ST</sup> DEFENDANT  
ESERA OKOTH.....2<sup>ND</sup> DEFENDANT  
STEPHEN OLE NARUPA.....3<sup>RD</sup> DEFENDANT

RULING

1. The suit herein was commenced, on 1<sup>st</sup> November 2018, by way of a plaint, dated 31<sup>st</sup> October 2018, by the plaintiffs, against the defendants, principally seeking a permanent injunction order to stop them from implementing resolutions passed during a meeting held between 12<sup>th</sup> and 18<sup>th</sup> October 2018. It was filed simultaneously with a Motion, dated 31<sup>st</sup> October 2018, under certificate of urgency, seeking a variety of temporary injunctions. From the pleadings, it would appear that both sides were either members or officials of the same organization, the Kenya National Federation of Sugarcane Farmers (KNFS).
2. The 2<sup>nd</sup> defendant entered appearance. He did not file defence. Instead, he filed an application, dated 7<sup>th</sup> November 2018, seeking stay of the proceedings and reference of the dispute to arbitration in terms of Article 14:14 of the Constitution and Rules of the Society.
3. Then Rauto & Company, Advocates, entered appearance for all the defendants, on 8<sup>th</sup> November 2018, together with a notice of preliminary objection, of even date, arguing that the court lacked jurisdiction over the

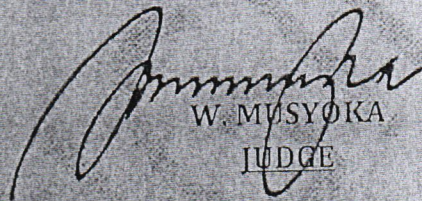
matter by virtue of section 18 of the Societies Act, Cap 108, Laws of Kenya, the matter was *sub judice* as the Registrar of Societies had received a complaint from the plaintiffs, dated 22<sup>nd</sup> October 2018 and 25<sup>th</sup> October 2018, and that the the Constitution of the society provided that disputes amongst members should, in the first instance, be referred to a dispute resolution mechanism.

4. Directions were given for disposal of the preliminary objection by way of written submissions. Both sides filed their respective written submissions. Midstream, before the preliminary objection was resolved, the plaintiffs withdrew the case against the 2<sup>nd</sup> defendant, but the 2<sup>nd</sup> defendant insisted on being paid costs. Directions were given for written submissions limited to that issue of costs. Eventually, it was agreed that the preliminary issue be canvassed, without abandoning the matter of costs.
5. I have perused through the written submissions and the noted the arguments made by both sides.
6. Section 18 of the Societies Act provides for resolution of disputes as to officers of a society, and requires that where the Registrar of Societies is of the view that a dispute as occurred amongst members as to its officials, and the Registrar is not satisfied as to who the legitimate officials are, he may, by written order, require the society to provide him with evidence of settlement of the dispute, and proper appointment of lawful officers of the society or institution of proceedings for settlement of the dispute. If the order is not complied with within a given period, he may proceed to cancel registration of the society.
7. The dispute herein revolves around the procedure deployed by the society, for the removal of the plaintiffs as officials of the society, which ought to bring the matter squarely within section 18 of the Societies Act.

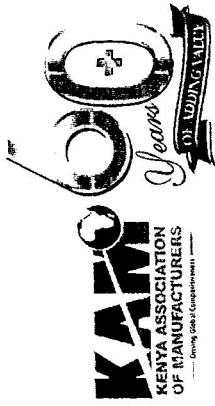
8. Under Article 14.14 of the Constitution of the Society, any dispute between members should, in the first place, be referred to a dispute resolution committee, and, if that fails, to the Sugar Industry Arbitration Tribunal. The plaintiffs have not demonstrated that they had availed themselves of the same prior to coming to court.

9. I agree with the defendants, that the plaintiffs ought to exhaust all the mechanisms for dispute resolution, provided for under the Societies Act and the Constitution of their organization, before coming to court. The suit herein is premature, and it is accordingly dismissed with costs. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS  
.....29<sup>th</sup>..... DAY OF .....October....., 2021

  
W. MUSYOKA  
JUDGE





**MEMORANDUM ON THE SUGAR BILL, 2019 (As amended)**

Submitted to

**J.M NYEGENYE,  
THE CLERK, SENATE  
PARLIAMENT BUILDINGS, NAIROBI.**

Presented By

**PHYLIS WAKIAGA, CHIEF EXECUTIVE,  
KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

**MARCH 2022 - NAIROBI, KENYA**

## **1.0 INTRODUCTION**

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through her strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value add industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya playing a critical role. The EAC region integration is expected to spur the manufacturing sector enhancing intra-EAC trade in value added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Service ranging from **Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood and Furniture; Electric and Electronic; Building, Mining and Construction; Agro-Processing.**

## **2.0 PROPOSED AMENDMENTS TO THE SUGAR BILL, 2019**

In response to the call for public participation on the afore-referenced Bill, we propose the following amendments to be considered before the draft Bill is enacted:

CLAUSE	PROPOSAL	JUSTIFICATION
<p>Clause 2 Interpretation</p>	<p>We propose to amend the definition of 'farm gate' to mean cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas.</p> <p>We propose to amend the definition of 'mill gate' to mean a site where sugarcane is received at the respective factory weighbridge.</p> <p>We propose to amend the definition of 'sugar catchment area' by deleting the phrase "for purposes of election to the Board under the First Schedule" appearing immediately after the second "area".</p> <p>We propose to add the definition of Industrial sugar to read as follows:  <i>"Industrial sugar" means a white crystalline carbohydrate used as a sweetener and preservative sugar, which complies with the specifications set by the body for the time being responsible for setting standards.</i></p>	<ul style="list-style-type: none"> <li>This is important for the farmers since most are not close to the factories and as such, the distance can be a challenge and a burden in terms of costs of transportation.</li> <li>By reducing the costs of transportation it's a win for the farmer.</li> <li>This definition brings out the function of the Mill Gate which is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory of the receiving centers.</li> <li>To focus on the substance of the sugar catchment area as a factor in clustering a region, that is, the soil conditions, weather and other factors.</li> <li>Industrial Sugar is meant for manufacturing only. It is not manufactured in Kenya and therefore, should be distinct.</li> <li>The distinction between raw sugar and Industrial Sugar is based on the sucrose content as given by the polarimeter readings and not based on suitability for consumption.</li> </ul>
<p>Clause 6 Composition of the Board</p>	<p>We propose subclause (1)(b) be amended to read:  <i>(b) Three representatives nominated by the farmers' apex body from each sugar catchment area as per the first schedule"</i></p>	<ul style="list-style-type: none"> <li>This will allow for one representative from the western region, one from Central region and one from Southern region which are the major players in the sugar industry.</li> <li>It will also give the recognized farmers apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board.</li> <li>The farmers will have a structured way to front their representative without undue influence.</li> </ul>

			<ul style="list-style-type: none"> <li>The farmers' apex body was mandated to advocate for the farmers' interests.</li> <li>It would be prudent for the Bill to allow the apex body to nominate at least three representatives as they are key stakeholders.</li> <li>This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry too.</li> <li>This amendment aims to promote the sugar industry by ensuring that only the main stakeholders are licensed by the Board.</li> <li>This will protect the investments of already existing mills and to welcome other investors.</li> <li>We make this proposal because this function should not be left open to the sugar importers.</li> <li>This is the responsibility of the sugar board to determine the sugar deficit in the country at any one time.</li> <li>The onus should not be on the importer.</li> <li>This amendment will ensure that the farmers have a structured way to front their representative without undue influence.</li> </ul>
		<p>We propose to amend subclause (1)(c) be amended to read:</p> <p><i>Three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition.</i></p>	
Clause 19 Issuance of licence and licence fees		<p>We propose to amend this clause to read as follows:</p> <p><i>Only stakeholders in the sugar industry, including but not limited to sugar millers, including manufacturers of products whose raw material is sugar for industrial use, farmers bodies, or government agencies will be licensed to import or export sugar.</i></p> <p>We further propose to amend this clause by adding a new subclause (9) to read as follows:</p> <p><i>(9) New licenses shall be issued whereby distance from existing mills are a minimum of 40km radius apart.</i></p>	
Clause 20 Sugar Import		<p>We propose to amend this clause by deleting subclause (1)(a) in its entirety.</p>	
Clause 25 Management of the Kenya Sugar Research Institute		<p>We propose to amend paragraph (b) of this clause by deleting the words "elected by the growers" appearing immediately after the word "persons" and substituting therefor with the words "nominated by the farmers"</p>	

	<p>apex body from the designated sugar catchment regions".</p> <p>We propose to amend paragraph (e) of this clause by deleting the words "Kenya Agricultural Livestock and Research Organization" appearing immediately after the words "of the" and substituting therefor the words "Kenya Sugar Research Institute".</p> <p>We propose to amend paragraph (f) of this clause by deleting it and replacing it with one person nominated by the apex body of the Sugar millers.</p>	<ul style="list-style-type: none"> <li>• The millers will also have a representative in this key institution as key stakeholders.</li> <li>• This proposal is guided by the notion that this is a new body being set up which is not under the ambit of KALRO.</li> <li>• The millers are not represented, and they are a major stakeholder.</li> <li>• Further, the Bill removes the Sugar Directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA in the Board.</li> </ul>
<p>Clause 29 Appointment of Crop Inspectors</p>	<p>We propose to amend this clause by deleting it in its entirety.</p>	<ul style="list-style-type: none"> <li>• We propose the deletion of this clause since the work of the inspectors is a replication of other agencies already set in place in the sugar industry, that is, KRA, KEBS, Sugar Directorate, etc.</li> <li>• In addition to this, the sugar industry is already overregulated with more than 40 licenses that already have the regulatory entities that deal with the same.</li> <li>• The Sugar Board ensures that the millers/users comply with the licenses before releasing the annual licenses.</li> </ul>
<p>Clause 34 Sugar Development Levy</p>	<p>We propose to amend subclause (1) to exclude industrial sugar users from imposition of the sugar development levy to read as follows:</p> <p><i>"The Cabinet Secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported</i></p>	<p>We propose to retain clause 34(1) on the Sugar Development Levy and only exclude industrial sugar based on the following reasons:</p> <ul style="list-style-type: none"> <li>• Kenya lacks the capacity to produce industrial sugar which necessitates the need to import it from countries outside the East African Community (EAC).</li> <li>• The proposal to levy 10% Sugar Development Levy (SDL) will increase the cost of doing business for manufacturers in</li> </ul>

	<p><i>sugar excluding industrial sugar to be known as Sugar Development Levy”.</i></p>	<p>Kenya. For instance, major users like KBL and UDV, it is estimate that the cost of taxes and levies subject to industrial sugar importation will increase by 60-62%.</p> <ul style="list-style-type: none"> <li>• Currently levies and taxes include imposed on sugar include 10% import duty (imports from outside COMESA but within EAC Quota), 16% VAT, IDF, RDL and Merchant Shipping Services fee. The levies described are exclusive of the fees charge for registration to Sugar Directorate (Kshs 200,000) and the import permit (Kshs 100,000 annually).</li> <li>• Unintended consequences of the levy include increased illicit trade. In this case, products like alcohol, illicit trade is currently estimated at 44% (490mn litres) of all the alcohol consumed in Kenya according to WHO 2018 report. The level of illicit is currently even higher due to increased pressure on consumer spending reeling from the negative impact of Covid-19.</li> <li>• The proposed levy will intensify declining consumer spending power due to increased direct cost of goods sold.</li> </ul>
	<p>We propose to amend subclause (7)(a) by-</p> <ol style="list-style-type: none"> <li>a) deleting the words “Fifteen per centum” and substituting therefor the words “Twenty per centum” and</li> <li>b) adding the words “and cane development” immediately after the word “stabilization”</li> </ol> <p>The provision will read as follows:  <i>“Twenty per centum shall be applied by the Board for income or price stabilization and cane development for sugar growers”.</i></p>	<ul style="list-style-type: none"> <li>• This will ensure that the funds are well provided for all programmes associated with cane development.</li> <li>• This will also increase sugarcane yields and will generate more income for farmers by applying the right inputs and correct agronomic practices.</li> </ul>

	<p>We propose to amend subclause (7)(c) of this clause by deleting the words "twenty per centum" and substituting therefor the words "fifteen per centum"</p> <p>We further propose to amend this subclause (7)(c) by clarifying that the funds may be channeled to different sugar institutions.</p>	<ul style="list-style-type: none"> <li>• The amounts involved are huge and reallocating Five per centum from this item to the development of the sugarcane growers will bring greater gains to the industry and will not adversely affect the Board.</li> <li>• The proposal to channel the funds to different institutions will help underline that the funds are specific for Sugar Research institutions, as may be established.</li> <li>• The Board should not be allocated this duty as the work will be a replication of other agencies.</li> <li>• KEBS and NEMA already do most of the tasks contemplated in this clause.</li> <li>• They should therefore remain the sole national agencies that carry out these tasks.</li> </ul>
<p>Clause 50 Inspection for quality and safety</p>	<p>We propose to amend this clause by deleting it in its entirety.</p>	<ul style="list-style-type: none"> <li>• Requirement of reporting on a daily basis is impractical and would result into increased cost of business.</li> <li>• Given that an importer of sugar is required to get a pre-import approval, it would be reasonable to file returns per consignment/for the quantity approved after the sugar has been utilized.</li> <li>• Such returns should be in a prescribed form requiring information on the imports, sales, and stock.</li> </ul>
<p>Clause 51 Safeguard Measures</p>	<p>We propose to amend this clause to require the Board to ensure that importers report on their sugar transactions per consignment, and not daily.</p> <p>Amend Section 51(2) (b) to read:</p> <p><i>"importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licences"</i></p> <p>We propose to amend this clause by deleting it in its entirety.</p>	<ul style="list-style-type: none"> <li>• The same should not be admissible in the privately owned mills where the growers are not investment capital contributors.</li> <li>• Further, this will discourage private investment in the sugar mills.</li> <li>• This clause will not be applicable and may lead to legal tussles once implemented.</li> </ul>
<p>Clause 54 Rights of growers in a privatized company</p>	<p>We propose to amend this clause by deleting it in its entirety.</p>	
<p>Clause 55</p>		

Representative of a grower in a private milling company.		<ul style="list-style-type: none"> <li>It will also discourage private investment.</li> </ul>
<b>First schedule</b>		
Delineation of sugar catchment areas	<p>We propose to amend this clause to represent regions as opposed to counties by deleting "Counties" and replacing with "Regions" and delineate as follows;</p> <p><b>Central Region</b> Kericho, Kisumu and Nandi.</p> <p><b>Upper Western Region</b> Bungoma, Kakamega, Trans Nzoia and Uasin Gishu.</p> <p><b>Lower Western Region</b> Busia, Mumias and Siaya.</p> <p><b>Southern Region</b> Homabay, Kisii, Migori and Narok.</p> <p><b>Coastal Region</b> Kwale, Lamu and Tana River</p>	<ul style="list-style-type: none"> <li>This proposal will leave the Rift Region orphaned with no operational sugar mill.</li> <li>This is tantamount to economic suicide and should not be allowed to be established in Law.</li> <li>At the same time, the Southern Region covering Homa Bay, Kisumu, Migori and Narok is provided with more than 8 factories, 7 of which are in operation.</li> <li>Our proposal is that Kericho and Nandi in the Rift Region which are currently being served by Sugar Factories in Kisumu County be included in a Region to be known as Central Region comprising Kericho, Nandi, Kisumu and Siaya served by Muhoroni Sugar, Chemelil Sugar, Kibos Sugar and Soin Sugar.</li> <li>This would also fit in with the recommendations of the Sugar Task Force Report Page 62.</li> <li>This would ensure that all the sugarcane farmers are adequately taken care of, rather than the current proposal that has discriminated against the sugarcane farmers in the Rift Valley Region, leaving them without a sugar factory to supply their sugarcane to.</li> </ul>
<b>Third Schedule</b>		
Interpretation Paragraph (2)	We propose to amend paragraph (2) of the Third Schedule by deleting the words "sugar lobby group" and substituting therefor the words "Sugarcane Growers Apex Body".	<ul style="list-style-type: none"> <li>This is because lobby groups do not have the objectivity to steer the sugarcane grower's issues in a joint and clear perspective as compared to an apex body.</li> </ul>

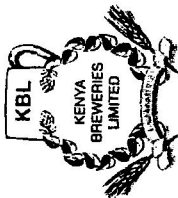
<p>Paragraph (5) The role of the miller</p>	<p>We propose to amend paragraph 5(a) by deleting the words "harvest" and "transport".</p>	<ul style="list-style-type: none"> <li>• The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane.</li> <li>• Entrenching this in the Act will result in an untenable situation on the ground.</li> </ul>
	<p>We propose to amend paragraph 5(d) by deleting the figure "15" appearing immediately after the word "within" and substituting therefore the figure "30".</p>	<ul style="list-style-type: none"> <li>• We propose to increase the period for paying farmers from 15 days to 30 days as the latter is more practical.</li> <li>• Further, no other crops are paid within 15 days. This amendment will therefore align the Act with best industry practice.</li> </ul>
	<p>We propose to amend paragraph 5(g) by deleting the word "mobile" appearing immediately after the word "that".</p>	<ul style="list-style-type: none"> <li>• The justification is that weighbridges are not mobile.</li> </ul>
<p>Paragraph (7) Sugarcane Pricing Committee</p>	<p>We propose to amend paragraph (2)(d) by deleting it in its entirety.</p>	<ul style="list-style-type: none"> <li>• The amendment will ensure that the farmers have a structured way to front their representative without undue influence.</li> </ul>
	<p>We propose to amend this paragraph by inserting a new subparagraph (4): (4) the peculiarities of each region.</p>	<ul style="list-style-type: none"> <li>• This proposal is premised on the fact that the central region has different soils and climate from all other regions rendering its yields much lower than the rest.</li> </ul>
	<p>We propose to amend subparagraph (6) by deleting the words "thirty-six months" appearing immediately after the word "every" and substituting therefor with "one month".</p>	<ul style="list-style-type: none"> <li>• The one month will provide a realistic and sufficient time for the committee to regularly review the prices as per the market forces demand.</li> <li>• This will in turn will be a win-win situation for the farmers and the millers to benefit from the running price for the month.</li> </ul>
<p>Part 4- Relationship between the Outgrower</p>	<p>We propose for the deletion of this Part in its entirety.</p>	<ul style="list-style-type: none"> <li>• There is no longer any outgrower institution on the ground.</li> <li>• The current regulations deal with relationships between the miller and the sugarcane growers directly.</li> </ul>

<p>Institution and the Miller</p>		
<p>Part 5 - Relationship between the Outgrower Institution and the Grower.</p>	<p>We propose for the deletion of this Part in its entirety.</p>	<ul style="list-style-type: none"> <li>• There is no longer any outgrower institution on the ground.</li> <li>• The current regulations deal with relationships between the miller and the sugarcane growers directly.</li> </ul>



MEMORANDUM ON SUGAR BILL NATIONAL ASSEMBLY BILL NO. 68 2019

No	Provision/ Reference in the Bill e.g., Clause 1	Proposal	Justification
2		<p>Definition of a licence amended as follows:</p> <p><i>"Licence" means a licence issued by the Board to a miller, importer or exporter of sugar.</i></p>	<ul style="list-style-type: none"> <li>Section 19 (8) provides that a person shall not import or export sugar without a valid licence issued by the Board.</li> <li>The amendment will ensure clarity and consistency in the licensing requirement under the Act.</li> </ul>
20		<p>Section 20 amended to read:</p> <p><i>(1) A person who imports sugar into Kenya shall upon registration:</i></p> <p><i>(a) provide evidence that the sugar they intend to import is not available in the local market; and</i></p> <p><i>(b) Provide a sample of the sugar to be imported.</i></p> <p><i>(2) A person who imports sugar shall, prior to importation of each consignment:</i></p> <p><i>(a) Provide pre-import verification certificate from the country of origin; and</i></p> <p><i>(b) Obtain pre-import approval from the Board.</i></p>	<ul style="list-style-type: none"> <li>Aimed to provide clarity on the requirements at the point of registration and at the point of importing each consignment without increasing the cost of doing business on sugar importers.</li> <li>The provision is not clear if the 3 four requirements are at the time of importation or which are a one off or annual requirement.</li> <li>Requiring sugar importers to provide evidence on the need for industrial sugar import and samples for each consignment duplicates effort this would remain the same for an importer during the validity of a sugar import licence, which is renewed annually. Further, such a request would lead to increased inefficiencies in sugar imports and higher cost of doing business.</li> <li>Kenya has no capacity to produce industrial sugar which necessitates the need to import it from countries outside the East African Community (EAC).</li> </ul>
22		<p>Section 22 to be amended to include the words "importer or exporter of sugar" after each mention of the word 'miller'.</p>	<ul style="list-style-type: none"> <li>Provide clarity and certainty on registration requirement for sugar importers and exporters.</li> <li>Provide consistency in the licence and registration requirement.</li> <li>To prevent discrimination against importers and exporters of sugar.</li> <li>Imposition of a registration fee and annual renewal fee for importers of sugar increases the cost of doing business, yet such imports are necessitated by lack of industrial sugar produced in Kenya.</li> </ul>
34 (1)		<p>Amended to remove imposition of sugar development levy on imported sugar. Section 34(1) to read:</p>	<ul style="list-style-type: none"> <li>Kenya has no capacity to produce industrial sugar which necessitates the need to import it from countries outside the East African Community (EAC).</li> </ul>

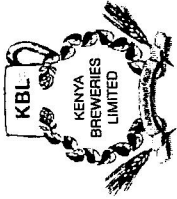


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No	Provision/ Reference in the Bill e.g., Clause 1	Proposal	Justification
		<p>(1) <i>The Cabinet Secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar to be known as Sugar Development Levy.</i></p>	<ul style="list-style-type: none"> <li>The proposal to levy 10% Sugar Development Levy (SDL) as per the Parliamentary Committee report under Clause 18 will increase the cost of doing business for manufacturers in Kenya. For KBL and UDV, we estimate that the cost of taxes and levies subject to industrial sugar importation will increase by 60-62%. Currently levies and taxes include 10% import duty (imports from outside COMESA<sup>1</sup> but within EAC Quota), 16% VAT, IDF, RDL and Merchant Shipping Services fee. The levies described are exclusive of the fees charge for registration to Sugar Directorate (Kshs 200,000) and the import permit (Kshs 100,000 annually).</li> <li>Unintended consequences of the levy include increased illicit alcohol trade, which is currently at 44% (490mn litres) of all the alcohol consumed in Kenya according to WHO 2018 report. The level of illicit is currently even higher due to increased pressure on consumer spending reeling from the negative impact of Covid-19. The proposed levy will intensify declining consumer spending power due to increased direct cost of goods sold, which is estimated to increase by approximately Kshs 100million annually for KBL and UDV.</li> </ul>
34 (2)		<p>Amend the clause to read: The levy shall be payable at such rate as may be specified in the order-gazetted by the of the relevant Committee of the National Assembly after considering the views of the Cabinet Secretary responsible for Finance</p>	<ul style="list-style-type: none"> <li>The clause bestows a great deal of discretion to the CS Agriculture to levy taxes. Money Bill type of provisions should have adequate oversight from Parliament and National Treasury to avoid exploitation of the public interest, promote better and transparent fiscal coordination.</li> </ul>
34 (4)		<p>Amend the clause as follow: - All the money received in respect of the levy shall be paid to the Consolidated Fund and later disbursed to the Board and if not paid on or before the date prescribed by the order the</p>	<ul style="list-style-type: none"> <li>Section 34(4) as currently drafted contravenes the Constitution of Kenya and Public Finance Management Act 2012 (PFMA), which provide that all public funds raised or received by or on behalf of the national government should</li> </ul>

<sup>1</sup> Thailand, South Africa, Malaysia & Denmark



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No	Provision/ Reference in the Bill e.g., Clause 1	Proposal	Justification
		amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board	be pooled into a Consolidated Fund and spending of such amounts should be approved by Controller of Budget on request by National Treasury.
	34 (5)	Delete clause 34(5)	<ul style="list-style-type: none"> <li>the fine of 5% on the outstanding amount of unpaid SDL is too punitive. Fines and other sanctions within the proposed Bill adequately cover the Board/ govt. from loss of funds.</li> </ul>
	41	Amend Section 41 to allow for sugar importers and exporters to bring disputes to the Sugar Arbitration Tribunal relating to sugar imports/exports  Amend to introduce Section 41(1) (e) to read: <i>(e) Disputes relating to sugar imports and exports arising from implementation of this Act.</i>	<ul style="list-style-type: none"> <li>Provide for a dispute resolution mechanism for disputes arising from the implementation of the Sugar Act by sugar importers and exporters.</li> <li>To promote fair administration of sugar import and export matters as guaranteed by Article 47 of the Constitution and the Fair Administrative Action Act.</li> </ul>
	51	Amend Section 51 to require the Board to ensure that importers report on their sugar transactions per consignment, and not on a daily basis.  Amend Section 51(2) (b) to read: "importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licences"	<ul style="list-style-type: none"> <li>Requirement of reporting on a daily basis is impractical and would result into increased cost of business.</li> <li>Given that an importer of sugar is required to get a pre-import approval, it would be reasonable to file returns per consignment/for the quantity approved after the sugar has been utilized. Such returns should be in a prescribed form requiring information on the imports, sales, and stock.</li> </ul>



**Submission of Memoranda on the Sugar Bill (National Assembly, Bill No. 68 of 2019)**

**By the Sugar Traders Association of Kenya.**

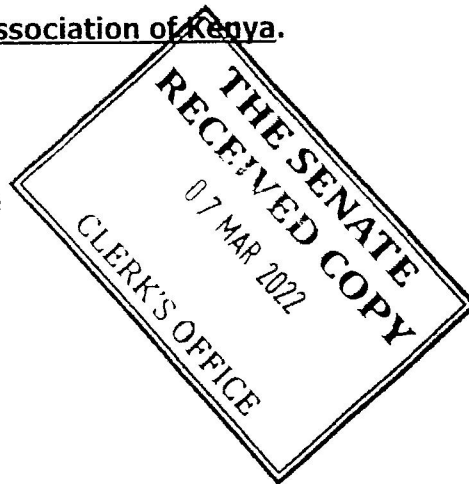
To:

The Clerk of the Senate

Parliament buildings

Nairobi

**Introduction.**



5<sup>th</sup> March, 2022

The Sugar Traders Association of Kenya (hereinafter "**the Association**") is a registered under the Kenyan Societies Act (CAP. 108) and the rules made thereunder. *We have attached a Certificate of Registration Number R.53481 for your reference and records.*

The Association currently has over 100 members comprising of local sugar traders, importers, exporters and generally traders and marketers of sugar within and without the territory of Kenya.

The Association is guided by a Constitution that declares its objectives as:-

- a) Promote the interest of sugar traders;
- b) Promote value chain interlocutors;
- c) Consolidate membership of sugar traders;
- d) Promote self-regulation of sugar trading, participation in local and international intercultural exchange programs;
- e) Serve as a one stop link with the government on sugar trading;
- f) Enhance and regulate the trading of sugar;
- g) Develop and transform the sugar sector; and

h) Promote exportation of sugar in Kenya and its neighbouring countries.

From the foregoing, it is clear that the place of sugar traders in the sugar industry is a crucial one and this premise informs our response to the call for public participation and submission of memoranda on the Sugar Bill, 2019 (hereinafter "**the Sugar Bill**") that was made on the 1<sup>st</sup> March, 2022.

### **The Sugar Bill, 2019**

The preamble of the Sugar Bill describes it as a Bill to provide for the development, regulation and promotion of the sugar industry and to provide for the establishment, powers and functions of the Kenya Sugar Board and connected purposes.

The Sugar Bill seeks to reinstate the Sugar Act which was repealed by the Crops Act, 2013 (No. 16 of 2013); a significant policy shift that our Association fully supports.

The Sugar Bill also seeks to reinstate the Kenya Sugar Board whose mandate was taken over by the Directorate of Agriculture and Food Authority (AFA).

### **Section 2, 3, 4 & 6 of the Sugar Bill**

Our Association joins issue with the definition of an "**interested party**" as adopted by the previous drafts of the Sugar Bill. The Bills under Section 2 consistently define the interested party to mean **the government, millers, growers and out-growers**. The Sugar Bill before the Senate has not adopted a definition of an "**interested Party.**"

The definition of the interested party should inform the membership of the Kenya Sugar Board established under Section 3 and 6 of the Sugar Bill.

h) Promote exportation of sugar in Kenya and its neighbouring countries.

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The definition of the interested party should inform the membership of the Kenya Sugar Board established under Section 3 and 6 of the Sugar Bill.

### **Are sugar traders key stakeholders in the Sugar Industry?**

Under Section 6 of the Sugar Bill the Kenya Sugar Board shall be constituted as follows:-

- a) a non-executive Chairperson elected by the Board from among the representatives of growers on the Board and appointed by the Cabinet Secretary;
- b) five representatives elected by growers from each sugar catchment area as per the first schedule;
- c) one representatives elected by millers and appointed by the Cabinet Secretary;
- d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative of the principle secretary in writing;
- e) two persons nominated by the Council of County Governors who is knowledgeable in extension services and management of farmer institutions;
- f) the Principal Secretary to the Treasury or a representative of the principle secretary in writing; and
- g) the Chief Executive of the Board appointed under section 14 who shall be an *ex-officio* member and the secretary to the Board.

It would be an onerous undertaking to meet the objectives of the Sugar Bill including facilitating the equitable access derived from the sugar industry without having a representative of the sugar traders in the Kenya Sugar Board.

The Kenya Sugar Board and the Sugar Traders Association of Kenya share similar objectives as demonstrated in this submissions and the Sugar industry would be better served with the input of the sugar traders at the Board level.

The Association's interventions would help to streamline policy control including the control of sugar imports and curing of the perennial question why private millers continue to make profits while state owned millers drown in crippling losses.

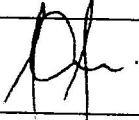
It would be impracticable and in defiance of logic to hope that the membership of Millers who are well represented in the Kenya Sugar Board, as constituted in the Sugar Bill, will adequately represent the interest of sugar traders who are a vital cog in the sugar industry.

The Kenya Sugar Board that will be tasked with licensing and regulation of sugar traders as part of its wide mandate will be making policy and administrative decisions that affect sugar traders and it would conform with values and principles under Article 10 of the Kenyan Constitution in particular, good governance, equity, inclusiveness, non-discrimination, transparency and accountability, if the traders were given a position in the Kenya Sugar Board.

We also wish to submit that consumer welfare cannot be guaranteed in the terms of Article 46 of the Constitution if the sugar traders are sidelined without representation in the Kenya Sugar Board.

### **Recommendations**

1. We propose the amendment of the definition section to include a definition of "interested party" under Section 2 of the Sugar Bill to include sugar traders who are key stakeholders in the sugar industry and have been clearly discriminated in the Sugar bill.
2. We propose the amendment of Section 6 of the Sugar Bill to include a representative of the Sugar Traders Association of Kenya in the Kenya Sugar Board. We have attached a draft amendment to this memoranda for your consideration..

NO.	NAME	DESIGNATION	SIGNATURE
1.	ADHAN SHEIKH ABDULLAHI	SECRETARY GENERAL	

SOCG/80364

REPUBLIC OF KENYA



THE SOCIETIES RULES, 1968

(Rule 4)

CERTIFICATE OF REGISTRATION R. 50481

DEPUTY

Registrar of Societies, Kenya Society

MARIA CORETTI NYARUKI

SUGAR TRADERS ASSOCIATION OF KENYA

that I have this day registered the

under section 10 of the Societies Act

NAIROBI

3RD

day of

FEBRUARY

21

Dated at

*[Signature]*

Deputy Registrar of Societies

## Presentation to Chairperson Committee of Agriculture on the draft Sugar Bill 2019.

Sugarcane growers' apex body

1. There should be one overall apex body for sugarcane growers in Kenya. This organization should be the umbrella body for the growers and should be a membership organization for the various organizations in the catchment areas
2. Currently there are number of organizations representing sugarcane farmers at different levels i.e. Cooperative Societies, out grower's companies, which are operating at sub-county and county levels and Kenya Association of Sugarcane and Allied Products (KASAP), Kenya Sugarcane Growers Association, (KESGA), and Kenya National Federation of Sugarcane Farmers all operating at the National level. Kenya National Federation of Sugarcane Farmers have been rejected by Sugarcane farmers across the Sugar zones when they supported zoning of farmers. Their members have filed several Court cases against the government i.e. Petition No. 5 of Bungoma High Court, Kisumu ELC Petition No. 5 of 2020, Bungoma Constitutional Petition No. 6 of 2020, Nairobi Constitutional Petition No. E262 of 2020, Eldoret High Court Petition Number 14 of 2020, Kisumu ELC JR E00A of 2020. Just to mention a few, Justice W Musyoka of High Court in Kakamega Civil Suit No. 30 of 2018 ruling on the leadership of the Federation put the last Nail on the coffin of the Federation and its leadership Hence leaving Kenya Association of Sugarcane & Allied products and Kenya Sugarcane Growers Association together with small holders as the Farmers National Organizations. In view of the above, Sugar Directorate, Agriculture and Food Authority together with the Ministry of Agriculture through the Cabinet Secretary have been smoothly working with.
  - i. KASAP Registration No. SOC/77940, through which i was appointed to the National Cane Pricing Committee by the Cabinet Secretary, copy of letter attached
  - ii. Nomination of Nashon Oliech Osieko through a Gazette notice No. 8824 to the Price stabilization to the Task Force through Kenya National Alliance of Sugarcane Farmers Organizations is a manifestation that KNASFO is currently the Umbrella body representing Sugarcane Farmers.
  - iii. Federation is a miller's mouthpiece and does not represent farmers. this is manifested in a memo submitted by Phyllis Wakiaga, (Chief Executive of Kenya Association of Manufacturers (KAM)) Clause 6 p.g. 3.
3. We propose that the sugarcane growers' apex body be KNASFO prominently provided for in the sugar bill 2019 on condition that a template be stabilized to guide formation of the Kenya National Alliance Of Sugarcane Farmers' Originations (KNASFO) which will without doubt accommodate all groups/ Associations i.e. KASAP, KESGA and Federation whose proposed constitution will be made available before the bill is enacted.

4. This alliance (KNASFO) should be fully-fledged organization with offices and staff with regular and reliable funding from Sugar Development Levy (SDL) to manage and operate the affairs of the cane growers

5. Kenya National federation of sugarcane farmers is currently faced with many court battles, which weakened it. These include manipulatable / rudderless leadership easy to swing with petty handouts from clients and exploiters of farmers, endless leadership squabbles, lock of funds and compliance with the requirements of the societies act.

6. We are very aware that all previous presentation to these committees were the works of Kenya Sugarcane Manufacturers Association, KESMA and their cronies i.e. Federation.

7. Advocacy function of the proposed apex body KNASFO must be clearly stated in the sugar bill in order to provide the national voice and representation of the farmers.

The millers body 'KENYA SUGAR MANUFACTURERS ASSOCIATION' IS PROVIDED FOR.

#### **THE CANE GROWERS APEX BODY MUST;-**

I. Clause 35 of Sugar Bill 2019 provides Fund.

Should be managed by Trust

#### **Distribution**

- Sugar Growers Price Stabilization – 30%
- Sugar Board – 10%
- Research – 20%
- Infrastructure – 37%
- Apex Body KNASFO – 2%
- Sugar Technologist – 1%

#### **II. Board Representation**

We propose for nomination to the board of directors. We

propose for nomination of grower to the board

1. Rift – Kericho, Nandi, Uasin Gishu
2. Upper Western – Bungoma and Trans Nzoia
3. Lower Western Region – Busia, Kakamega, Siaya & Vihiga
4. South Region - Homabay, Kisumu, Migori & Narok
5. Coast Region – Kwale, Lamu & Tana River

Our proposal is to increase regions to eight by adding three more thus;

- Nyando Sugar Belt
- Upper Western add one
- Kisii and Yala be given slots

#### **III. Clause 49 of the Bill**

Importation fine of 10 million, which is too small. This should be pegged on amount of import.

#### IV. Clause 55 of the Bill

Representation into the private mills for two years, which needs to be increased to three.

#### **Sugarcane Pricing Committee.**

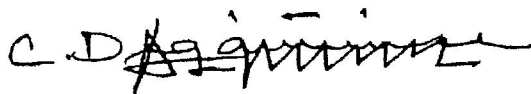
- a. The apex body KNASFO nominates three persons to the committee.
- b. Two millers
- c. Sugarcane prices set by the committee shall be reviewed after every 36 months not realistic. This should be reviewed after every two months.
- d. Two representatives from the County government

#### **Functions of Outgrowers' Institutions i.e. Cooperative Societies.**

- Out growers companies
- Service delivery

#### **Sugar Arbitration Tribunal**

**Presented by:**



**Charles Atiang' Atiang'**

**Chairperson**

**Tel: 0720 483 651**

**Cc: CHAIR OF AGRICULTURE COMMITTEE**

# ANNEX 5

Matrix on consideration of public submissions on the Bill.

THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

THE STAKEHOLDERS' VIEWS TO THE SUGAR BILL, NATIONAL ASSEMBLY BILLS NO. 68 OF 2019

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE'S OBSERVATIONS
1.	2 <i>Interpretation</i>	KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA)	<p>Replace the definition of the word "Farm Gate" with "Cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas."</p> <p><b>Justification</b> This is important for the farmers since most are not close to the factories and as such the distance can be a challenge and a burden in terms of costs of transportation. By reducing the costs of transportation it's a win for the farmer.</p>	Partially approved, to amend to capture the meaning of farm gate that is where the sugarcane is received and weighed.
2	2 <i>Interpretation</i>		<p>Replace the definition of the word Mill Gate with "A site where sugarcane is received at the respective factory weighbridge."</p> <p><b>Justification:</b> This definition brings out the function of the Mill Gate which is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory or the receiving centers.</p>	Approved to capture the meaning of mill gate which is the receiving point at the mill where sugarcane is received and weighed.

3			<p>Amend by deleting the words "purposes of election to the Board under the first schedule" from the definition of the word "Sugar Catchment Area"</p> <p><b>Justification:</b> The above definition is important as it shall focus on the substance of the sugar catchment area as a factor in clustering a region i.e. the soil conditions, weather and other factors.</p>	<p>Rejected. The bill provides for election of farmers representatives. The purpose of the catchment areas is to therefore determine the electoral regions for purposes election</p>
4	2 <i>Interpretation</i>	<p><b>KENYA SUGAR TRADERS ASSOCIATION (KSTA)</b></p>	<p>Add the definition of the word "interested party"</p> <p><b>Justification:</b> The previous draft Sugar Bills under Section 2 consistently defined the term "<i>interested Party</i>" to mean the government, millers, growers and out-growers. The Sugar Bill before the Senate has not adopted a definition of an "interested Party." The definition of the interested party should inform the membership of the Kenya Sugar Board established under Section 3 and 6 of the Sugar Bill.</p>	<p>Rejected.</p>
5	2 <i>Interpretation</i>	COG	<p>Amend the definition of license to read as follows: A license issued by a county</p>	<p>Rejected. Under the Bill, licensing is a function of the Board.</p>

			<p>government to millers</p> <p><b>Justification:</b> Under the fourth schedule to the Constitution, agriculture and trade development regulation has been devolved to county governments. It therefore follows that county governments license the millers operating in their respective jurisdiction.</p>	
6	2	COG	<p>Amend the word "zone" to read "regional zones" and then amend the definition to read as follows: Regional catchment areas whereby two or more mills are clustered within a defined region as provided for under the second schedule.</p> <p><b>Justification:</b> Other countries with vibrant sugar economies like Mauritius, South Africa and India have successfully implemented regional/geographical zones in which their sugar mills operates</p>	<p>Rejected, the word Zone is not defined in the Bill.</p>
7	4	COG	<p>Amend by deleting clause 4 and replacing with following new clause: <b>Functions of the Board</b> 4(1) The functions of the board shall— a) Capacity build and provide technical assistance to the county governments to regulate, develop</p>	<p>Rejected, the functions of the County Government are already provided for in the Bill.</p>

	<p>and promote the sugar industry;</p> <p>b) Coordinate the activities of individual and organisations within the industry; and</p> <p>c) Facilitate equitable access to the benefits and resources of the industry by all interested parties.</p> <p>.....</p> <p>(2) Without prejudice to the generality of subsection (1), the Board shall —</p>		
	<p>(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;</p> <p>(b) act as an intermediary between the industry and the Government;</p> <p>c) <u>establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate the flow of research findings to interested parties</u></p>		
	<p>(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;</p> <p>(e) facilitate the arbitration of disputes among interested parties;</p> <p>(f) facilitate the export of local</p>		

	<p>sugar;</p> <p>(g) promote and encourage the use of environmentally friendly technologies in the industry;</p> <p>(h) <u>in collaboration with county governments, facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.</u></p> <p>(i) represent the industry in such organizations as are relevant for the promotion of the industry;</p> <p>(j) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;</p> <p>collect, collate and analyze industry statistics and maintain a data base for the industry; enforce and monitor compliance with standards along the value chain;</p> <p>(m) facilitate value addition and product diversification in the sugar sub-sector;</p> <p>(n) <u>in consultation with county governments, formulate a national—</u>  <u>strategic—plan for the sugar sub-sector</u></p>	

			<p>at least once every five years;</p> <p>(o) <u>in consultation with county governments, formulate guidelines on an efficient and economical transportation of</u> sugar; local and international sugar market intelligence and advise stakeholders accordingly;</p> <p>(q) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and perform such other functions as may, from time to time, be assigned by the interested parties.</p>	<p><b>Justification:</b> To align to the provisions of part 1, sections 1, 9, 29 and 32 of the fourth schedule to the Constitution.</p>	<p>Rejected. These functions are provided for in the Bill.</p>
8	5	<p><i>Functions of County Governments</i></p>	COG	<p>Amend by deleting clause 5 and replacing thereof new clause 5 to read as follows: <b>Functions of County Governments</b> 4(1). Each <u>County Executive Committee Member</u> shall: (a) issue sugar cane nursery certificates; (b) <u>licence sugar mills and</u></p>	

		KSTA	<p>warehouses in the county;</p> <p>(c) <u>formulate and implement the county sugar sub-sector strategic plan;</u></p> <p>(d) <u>offer and coordinate the provision of advisory and extension services to growers out-grower institutions and millers in the county;</u></p> <p>Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties;</p> <p>enforce county and national legislation on sugar industry code of practice and other industry standards;</p> <p>in collaboration with the Board and law enforcement agencies, enforce of regulations within the county;</p> <p>(h) <u>enforce policies and guidelines on corporate governance in growers' institutions and millers;</u></p> <p>monitor and report of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies; and</p> <p>establish an efficient road network for the movement of sugar cane, delivery of other services and general development of the sugar industry.</p>	<p>Rejected. Mwangozo code recommends a maximum of</p>
9	6	Compositi	Amend to include a representative of the Kenya Sugar Traders Association in	Rejected. Mwangozo code recommends a maximum of

<i>on of the Board</i>		<p>the composition of the Kenya Sugar Board.</p> <p><b>Justification:</b> The Kenya Sugar Board and the Sugar Traders Association of Kenya share similar objectives as demonstrated in this submissions and the Sugar industry would be better served with the input of the sugar traders at the Board level.</p> <p>It would be impracticable and in defiance of logic to hope that the membership of Millers who are well represented in the Kenya Sugar Board, as constituted in the Sugar Bill, will adequately represent the interest of sugar traders who are a vital cog in the sugar industry. That consumer welfare cannot be guaranteed in the terms of Article 46 of the Constitution if the sugar traders are sidelined without representation in the Kenya Sugar Board.</p>	<p>nine (9) members yet the Board as currently constituted has 10 members. The Committee however included a representative of the Kenya Sugarcane Traders Association in the Composition of the Sugar Pricing Committee.</p>
10	KESMA	<p>Amend by adding "among the representatives of the growers and the millers on the Board and appointed by the cabinet secretary." to paragraph (a) of section 6(1).</p> <p><b>Justification:</b></p>	<p>Partially Rejected. amend to provide for the Chair to be appointed by the president according to Mwongozo code.</p>

			Both growers and millers are major stakeholders so the millers should also have a chance to chair the Board.	
11	6(1) b <i>Composition of the Board</i>	KESMA	<p>Amend by replacing with "Three representatives nominated by the farmers' apex body from each sugar catchment area as per the first schedule"</p> <p><b>Justification:</b> This will allow for one representative from the western region, one from Central region and one from Southern region which are the major players in the sugar industry. It will also give the recognized farmers apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board. The farmers have a structured way to front their representative without undue influence. The farmers' apex body was mandated to advocate for the farmers' interests.</p>	<p>Rejected. Mwingozo code recommends a maximum of nine (9) members yet the Board as currently constituted has 10 members. On the issue of nomination of farmers representative was rejected.</p>

12	6(1)c <i>Composition of the Board</i>	KESMA	<p>Amend to read as follows: "three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition;"</p> <p><b>Justification:</b> The bill has already recognized Kenya Sugar Manufacturers Association as the Millers' apex body. It would be prudent for the bill to allow the apex body to nominate at least representatives as they are key stakeholders. This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry too.</p>	<p>Rejected. Mwongozo code recommends a maximum of nine (9) members yet the Board as currently constituted has 10 members.</p>
13	18 <i>Requirement of a license to operate a mill</i>	COG	<p>Amend clause 18 to read as follows:</p> <p>18(1) A person shall not operate a sugar mill, jaggery mill, or warehouse sugar unless he or she is a holder of a valid licence issued by the relevant county government for that purpose.</p> <p><b>Justification:</b> As explained elsewhere in this document, under the fourth schedule to the Constitution agriculture and trade development and regulation has been devolved to county governments. It therefore follows that county</p>	<p>Rejected. For ease of regulation and coordination licences should be left to the Board.</p>

			<p>governments license the millers operating in their respective jurisdictions. The board should only issue export/import licenses.</p>	
14	<p><b>19</b> <i>Issue of License and License fees</i></p>	<p><b>KESMA</b></p>	<p>Amend to add subsection 9          “New licenses shall be issued whereby distance from existing mills are a minimum of 40km radius apart.”  <b>Justification:</b>          To protect the investments of already existing mills and to welcome investors.</p>	<p>Rejected. To encourage competition and growth.</p>
15	<p><b>19</b> <i>Issue of License and License fees</i></p>	<p><b>COG</b></p>	<p>Amend by deleting clause 19(1) and (2) and replacing thereof with the following clauses:          (1) A person shall apply to the county executive committee member for a license to operate a sugar mill, warehouse or jaggery mill in the prescribed form and accompanied by the prescribed fees.          (2) The county executive committee member shall not issue a license under this Act unless—          (a).....          (c) it is satisfied that the applicant has paid the prescribed fee.</p> <p><b>Justification:</b>          Under the fourth schedule to the Constitution, agriculture and trade development and regulation has been</p>	<p>Rejected. For ease of coordination, the Board to license millers.</p>

f16	20(1) a <i>Sugar Import</i>	KESMA	<p>devolved to county governments. It therefore follows that county governments should license the millers operating in their respective jurisdictions. The board should only issue export/import licenses which is under the purview of the national government.</p> <p>Provide evidence that the sugar they intend to import is not available in the local market.  <b>Justification:</b>  This function should not be left open to the sugar importers. This is the responsibility of the sugar board to determine the sugar deficit in the country at any one time. The onus is not on the importer.</p>	
			<p>Rejected. Whereas the importers will be required to provide evidence of a deficit, the Board will have powers to issue a licence on the merit of each application.</p>	

17	20(1) <i>Sugar import</i>	KESMA	<p><b>Insert new clause 20(1) d to read as follows:</b></p> <p>“imports of gap sugar should be the sole responsibility of sugar millers based on their market share.”</p> <p><b>Justification:</b></p> <p>This is because there is lack of designated people to carry out imports. Importation of sugar to fill the deficit in the market affects the millers and sugarcane growers directly due to the negative impact of large quantities of cheap duty-free imported sugar. The plunge in sugar prices depresses the local sugar industry and causes untold suffering to both the millers and the growers. In the maize, wheat, dairy and tea sectors, it is the miller who imports the deficit. Sugar should also be considered in the same vein.</p>	<p>Rejected. Any person should have the right to import sugar so long as they have been granted approval by the Sugar Board.</p>
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18	22 <i>Registration of millers</i>	COG	<p>Amend clause 22 to read as follows:</p> <p>(1) <u>A person shall not conduct the business of a miller unless he or she is registered by the board and the regional zone in which the miller shall be conducting business specified in the register,</u> and</p> <p>(2) The board shall issue to every miller registered under this section, a <u>certificate of registration specifying the regional zone and premises at which milling may be carried on by the miller.</u></p> <p><b>Justification:</b> This is to align to the proposed requirement of zoning sugar production according to the regions across the country.</p>	Rejected. To encourage competition, Millers should not be restricted.
19	25(b) <i>Management and composition of the institute</i>	KESMA	<p>Amend Section 25(b) by deleting the words "... Elected by the growers ..." And replacing therefor the words "... nominated by the farmers' apex body from the designated sugar catchment regions...."</p> <p><b>Justification:</b> The amendment will ensure that the farmers have a structured way to front their representative without undue</p>	Rejected. From the views of the stakeholders, farmers will exercise their democratic rights better through direct election.

			influence AND the millers have a representative in this very important institution as key stakeholders.	
20	<b>25(e)</b> <i>Management and composition of the Institute</i>		Amend by deleting the words “Kenya Agricultural Livestock and Research Organization” and replacing with “Kenya Sugar Research Institute.” <b>Justification:</b> This is a new body being set up which is not Under the ambit of KALRO.	Rejected. Paragraph (f) provides for the DG who will be the CEO of the Institute. The CEO of KALRO will sit in the Board of the institute as a member.
21	<b>25(f)</b> <i>Management and composition of the Institute</i>		Delete and replace with One person nominated by the apex body of the Sugar millers as the millers are not represented and they are a major stakeholder. <b>Justification:</b> The Act removes the Sugar Directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA in the Board. To be replaced by one sugar miller	Approved partially, to include representative of the sugar Millers.

22			representative.	
25	<i>Management and composition of the Institute</i>	COG	<p>Amend clause 25 by <i>adding a new subclause</i> immediately after subclause (e) to read as follows:  <b>(eA) One person nominated by the Council of Governors.</b></p> <p><b>Justification:</b>  To provide for representation of the county governments in the board of the institute. Research has a significant impact on the functions of the county governments. It is therefore imperative that the counties are represented in the institute.</p>	Approved. This is a major stakeholder in the sugar industry.
23	30	AMISH	<p>Amend clause 30 to read as follows:  (a) an appropriate percentage be reserved for growers in the privatized sugar factories;</p>	Approved with modification. The Black's Law Dictionary defines privatization as the sale of enterprises owned by public companies to private companies.

			<p>(b) growers be represented on the Board of Directors of privatized milling companies in line with their shareholding.</p> <p><b>Justification:</b></p> <p>It is impossible to allocate shares of 51% to growers:</p> <ol style="list-style-type: none"> <li>1) as there is very complex equity valuation processes that require to be conducted as a mathematical fundamental basis.</li> <li>2) Because growers may not have the finance to acquire the 51% shareholding.</li> <li>3) Because ownership and control need to be separated.</li> <li>4) Because it may lead to poor interest from bidders for the rest of the shareholding.</li> </ol>	<p>The clause speaks to shares held by the Government in private companies Amend to have growers allocated at least 50% of the shareholding held by government in the privatized companies.</p>
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	<p>5) It may prevent the privatization from progressing to the detriment of the growers themselves.</p> <p>6) Because privatization is determined by the Privatization Act.</p>		
<p>24</p>	<p>29</p> <p>Appointm ent of crop inspectors</p>	<p>COG</p>	<p>Amend clause 29 to read as follows: 29 (1) The board and county executive committee member may appoint qualified persons to be crop inspectors for purposes of this Act. (2) For purposes of subsection (1), the Board may <u>in consultation with County Executive Committee members</u>, by regulations prescribe the qualifications for appointment as a crop inspector.</p> <p><b>Justification:</b> To provide for appointment of crop</p>
<p>Partially approved. The Board to consult with COG because this is a function of the county government.</p> <p>Rename the crop inspectors to inspectors because their role is broad and includes inspection of premises.</p>			

			inspectors by county governments for effective implementation of this Act.	
25	<b>PART IV (29-32)</b> <i>Appointment of Crop Inspectors</i>	<b>KESMA</b>	Delete the entire part.  <b>Justification:</b> The sugar industry is already over regulated with more than 40 licenses that already have the regulatory entities that deal with the same. The Sugar Board ensures the millers comply with the licenses before releasing the annual milling license.  Hence the work of the inspectors is a replication of other agencies already set in place in the sugar industry i.e. KRA, KEBS, Sugar Directorate etc .	Rejected. The purpose of the levy is to raise enough revenue to facilitate the development of the sugar industry and offer support for farmers. The Sugar development levy needs to be applied across the Board on all the industry players.
26	<b>34</b> <i>Sugar Development Levy</i>	<b>KONGEREN MULTIPURPOSE CO-OP LIMITED</b>	Amend clause 34(7) as follows:  a) 35% shall be used by the Board for, top up of price stabilization by treasury. The Treasury should be the main source of funds for the stabilization and not farmers stabilizing their own prices. b) 10% for use by the Board	Clause to be amended to read as follows a) 45% for price stabilisation. It's more important. b) 10% for the board c) 20% for research... d) 25% for infrastructure

<p>development .... The new proposed subsection (e) was rejected.</p>	<p>(Administrative expenses should not take a big percentage) c) 15% for research. d) 35% for infrastructure development. <b>And inserting a new subsection:</b> (e) 5% to fund activities of the Apex bodies for, effective lobby and representation of farmers.</p>	
<p>Approved by increasing the allocation to price stabilisation to 45% instead of 20%.</p>	<p>Amend to read as follows: “Twenty per centum shall be applied by the Board for income or price stabilization and cane development for sugar growers”. <b>Justification:</b> By deleting fifteen and replacing with twenty, this will ensure that the funds are well provided for all programmes associated with cane development, This will increase sugarcane yields and will generate more income for farmers by applying the right inputs and correct</p>	<p>27 34(7) a Sugar development Levy KESMA</p>

agronomic practices.

28	34(7) b <i>Sugar Development Levy</i>	KESMA	<p>Amend 34(7)(b) by deleting twenty per centum and replacing with fifteen per centum</p> <p><b>Justification:</b> The amounts involved are huge and reallocating five per centum from this to item to the development of the sugarcane growers will bring greater gains to the industry and will not adversely affect the Board.</p>	<p>Rejected. The Board to be allocated 10%.</p>
29	34(7) c <i>Sugar Development Levy</i>	KESMA	<p>Amend 34(7)(c) providing for the percentage of the Sugar Development Levy to be channeled to Sugar Research by deleting ...." Institute...." and replace with ".....Sugar Research Institutions...."</p> <p><b>Justification:</b> This will clarify that funds are specific for Sugar Research institutions, as may</p>	<p>Rejected. Under the Interpretation clause, the Bill defines institute to mean the Kenya Sugar Research Institute established under section 23.</p>

			<p>be established.</p>	
30	34(7)d	COG	<p>Amend clause 34(7) d to read as follows:</p> <p>34(7) The sugar Development Levy collected under subsection shall be apportioned as follows:</p> <p>(a) ....</p> <p>(d) Forty-five per centum shall be remitted directly to the sugar growing countries on a pro rata basis to be</p>	<p>Rejected. The fund will be better managed at a central point. The issue of apportionment will be provided for by the regulations.</p>

			<p>applied for infrastructure development in the sugar subsector.</p> <p><b>Justification:</b> To align to the provisions of the fourth schedule to the Constitution which bestows upon the county governments with the responsibility of regulation and development of agriculture, trade county transport among others. Infrastructure development in the sugar subsector is therefore the responsibility of the respective county government hence the Fund should be appropriated to them.</p>	
31	50(2) a, b and c <i>Inspection for quality and safety</i>	KESMA	<p>Amend by deleting 50(2) a, b and c.</p> <p><b>Justification:</b> It's the role of NEMA a body that has been mandated with the duty and which adequately carries it out</p>	Rejected. The Board is better placed to undertake these functions in collaboration with NEMA.

32	50(2) d & e <i>Inspection for quality and safety</i>	KESMA	<p><b>Amend by deleting 50(2) d &amp; e.</b></p> <p><b>Justification:</b> It's the role of KEBS a body that has been mandated with the duty.</p>	<p>Rejected. The Board is better placed to undertake these functions in collaboration with NEMA.</p>
33	54(1) a Rights of growers in a privatized company		<p>Delete in its entirety</p> <p><b>Justification:</b> This is not admissible in the privately owned mills where the growers do not need any representation in the management as they are not investment capital contributors. It is not practicable in law and will discourage private investment.</p>	<p>Approved with modification. The Black's Law Dictionary defines privatization as the sale of enterprises owned by public companies to private companies. The clause speaks to shares held by the Government in private companies Amend to have growers allocated at least 50% of the shareholding held by government in the privatized companies.</p>
34	54(1)b Rights of growers in a privatized company		<p>Proposal to delete this in its entirety.</p> <p><b>Justification:</b> Directorship should be allocated based on their investment. It is not practicable in law and will discourage private investment.</p>	<p>Approved with modification. The Black's Law Dictionary defines privatization as the sale of enterprises owned by public companies to private companies. The clause speaks to shares held by the Government in private companies Amend to have growers allocated at</p>

				<p>least 50% of the shareholding held by government in the privatized companies.</p>
35	<p>55 (1, 2, &amp; 3)  Representatives of a grower in a private milling.</p>		<p>Delete in its entirety because it is not applicable.  It is not practicable in law and negates the Constitution of Kenya 2010.</p>	<p>Approved with modification.  The Black's Law Dictionary defines privatization as the sale of enterprises owned by public companies to private companies.  The clause speaks to shares held by the Government in private companies Amend to have growers allocated at least 50% of the shareholding held by government in the privatized companies.</p>

36	57 <i>Regulations</i>	COG	<p>Amend to read as follows:</p> <p><b>57(1)</b> The Cabinet Secretary, in consultation with the Board <u>and County Governments</u> may make regulations generally for the better carrying into effect the provisions of this Act.</p> <p><b>Justification:</b> The process of making of the regulations should be consultative hence the Cabinet Secretary needs to consult with the County Governments and the Board.</p>	<p>Approved. There is need for consultation between both arms of Government. Agriculture is a devolved function.</p>
37	First Schedule <i>(Deletion of Sugar Catchment Counties)</i>	KESMA	<p>Amend by deleting the word 'counties' and replacing with 'regions' and delineate as follows: <b>Central Region</b> Kericho, Kisumu and Nandi. <b>Upper Western Region</b> – Bungoma,</p>	<p>Approved partially to reorganize the regions based on their geographical proximity for ease of coordination of the election.</p>

	<p>Kakamega, Trans Nzoia and Uasin Gishu.</p> <p><b>Lower Western Region</b> - Busia, Mumias and Siaya.</p> <p><b>Southern Region</b> - Homabay, Kisii, Migori and Narok.</p> <p><b>Coastal Region</b> - Kwale, Lamu and Tana River.</p> <p><b>Justification:</b></p> <p>The Parliament proposal will leave the Rift Region orphaned with no operational sugar mill. This is economic suicide and should not be allowed to be established in Law. At the same time, the Southern Region covering Homa Bay, Kisumu, Migori and Narok is provided with more than 8 factories, 7 of which are in operation. Our proposal is that Kericho and Nandi in the Rift Region which are currently being</p>	

			<p>served by Sugar Factories in Kisumu County be included in a Region to be known as Central Region comprising Kericho, Nandi, and Kisumu served by Muhoroni Sugar, Chemelil Sugar, Kibos Sugar and Sony Sugar. It would fit in with the recommendations of page 62 of the Sugar Task Force Report. This would ensure that all the sugarcane farmers are adequately taken care of, rather than the current proposal that has discriminated against the sugarcane farmers in the Rift Valley Region, leaving them without a sugar factory to supply their sugarcane to.</p> <p>Additionally, this will be to follow presidential taskforce recommendations. Kericho Nandi and Uasingishu don't have a factory.</p> <p>Also, players are also required to</p>	
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38	Third Schedule PART I Paragraph h 2	KESMA	<p>restrict themselves to their regions to avoid unfair competition.</p> <p>Amend by deleting "Sugar lobby groups" and to be replaced by "Sugarcane Growers Apex Body".</p> <p><b>Justification:</b> This is because lobby groups do not have the objectivity to steer the sugarcane grower's issues in a joint and clear perspective as compared to an apex body.</p>	<p>Approved. Delete the term sugar lobby groups and its definition.</p> <p>There are registered farmers bodies which are better placed to advance farmers interests.</p>
39	Third Schedule 5(a) <i>Role of the miller</i>	KESMA	<p>Amend clause 5(a) by deleting "...harvest..." and "transport..."</p> <p><b>Justification:</b> The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. Entrenching this in the Act will result in</p>	Rejected.

			an untenable situation on the ground.	
40	Third Schedule 5(d) <i>Role of the miller</i>	KESMA	Amend clause 5(d) by deleting “..within 15 days...” and replace with “...within a maximum of 30 days...” <b>Justification:</b> 30 days is practical as not other crops are paid within 15 days.	Rejected. Farmers should be paid within a relatively short time.
41	Third Schedule 5(g) <i>Role of the miller</i>	KESMA	Amend clause 5(g) by deleting “..mobile...” <b>Justification:</b> Weighbridges are not mobile	Rejected. Although currently there are no mobile weighbridges, the clause can be retained for posterity
42	Third Schedule 7(2) d <i>Composition of the Sugar Pricing Committee</i>	KESMA	Delete in entirety. The amendment will ensure that the farmers have a structured way to front their representative without undue influence.	Approved.
43	Third Schedule 7(4)d		Insert new subclause 7(4) d to read as follows:	Approved. To take into consideration the peculiarity of each region.

44	<p><i>Sugarcane Pricing Committee (Pricing Formula)</i></p>		<p>(d) The formula shall take into consideration the peculiarities of each region.</p> <p><b>Justification:</b> The central region has different soils and climate from all other regions rendering its renderment much lower than the rest.</p>	
	<p>Third Schedule 7 (6) <i>Sugarcane Pricing Committee (Review of sugarcane prices)</i></p>	<p>KESMA</p>	<p>Amend by providing for review of sugar cane prices by deleting "... thirty-six months..." and replacing with "... one month..."</p> <p><b>Justification:</b> The one month will provide a realistic and sufficient time for the committee to regularly review the prices as per the market forces demand. Which in turn will be a win-win situation for the farmers and the millers to benefit from</p>	<p>Approved with modifications. To amend the time frame of review of sugar prices to 3 months. The period of 36 months is too long.</p>

			the running price for the month.	
45	Third Schedule PART 4 <i>Relations hip between Outgrower r Institutions and the Miller</i>	KESMA	Delete in entirety <b>Justification:</b> There is no longer any outgrower institution on the ground the current regulations deal with relationships between the miller and the sugarcane growers directly.	Rejected. The committee was informed that some of the out-growers' companies are still operational and further more will be revived once the Sugar industry becomes vibrant again
46	Third Schedule PART 5 <i>Relations hip between Outgrower r Institutions and the Grower</i>	KESMA	To expunge in entirety. <b>Justification:</b> There is no longer any outgrower institution on the ground the current regulations deal with relationships between the miller and the sugarcane growers directly.	Rejected. The committee was informed that some of the out-growers' companies are still operational and further more will be revived once the Sugar industry becomes vibrant again
47	New Clause	KONGEREN MULTIPURP OSE CO-OP LIMITED	Proposal to establish Sugar Growers Apex body/lobby. <b>Justification:</b> It is good to appreciate that for effective representation, farmers need a strong voice. Some current	Rejected. Under the third schedule, the Bill sets out the functions of out grower institutions



**THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES**  
**FURTHER MATRIX ON STAKEHOLDERS' VIEWS ON THE SUGAR BILL, NATIONAL ASSEMBLY BILLS**  
**NO. 68 OF 2019**

NO	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
1.	2 <i>Interpretation</i>	Kenya Breweries Limited   Udv (Kenya) Limited Subsidiaries Of The Eabl Group	<p>Amend the definition of licence to mean a licence issued by the Board to a miller, <b>importer or exporter of sugar.</b></p> <p><b>Justification:</b> Section 19 (8) provides that a person shall not import or export sugar without a valid licence issued by the Board.</p> <ul style="list-style-type: none"> <li>The amendment will ensure clarity and consistency in the licensing requirement under the Act.</li> </ul>	Adopted. To bring on board all the licences that are provided for under the Act.
2.	2 <i>Interpretation</i>	SUGAR CAMPAIGN FOR CHANGE (SUCAM)	<p>Amend the definition of <b>sugar catchment areas</b> to mean a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of <b>nomination</b> to the Board under the First Schedule;</p> <p><b>Justification:</b> Elections in the newly designated areas is impossible due to geographical barriers. This is a departure from traditional zoning of the sugar-belts in Kenya. It will negatively affect regional balancing of farmer representation in the industry.</p>	Rejected. The Bill provides for the election of farmers representatives. The purpose of the catchment areas is to therefore determine the electoral regions. However, for ease of coordination the committee agreed to align the electoral regions to geographical regions.

3.	2 <i>Interpretation</i>	KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS (KNFS)	<p>Amend the definition of sugar catchment area to mean: A specific geographical area where the board in consultation with the relevant county government has licensed and assigned to more than one miller based on milling capacity, crop development, sugarcane procurement, more latitude for farmers to market their cane to two or more mills, and so as to mitigate the agony of farmers being chained to one unperforming miller and also to reduce the tendencies of monopoly experienced in one single zone.</p> <p><b>Justification:</b> The interpretation in the Bill is misleading and ambiguous.</p> <p>Catchment area is much enlarged factories area able to accommodate more than two or more sugar mills unlike in the past where a miller was licensed to operate within a radius of a maximum of up to 40 kilometers.</p> <p>It must not be linked to sugarcane farmers representation in the sugar board.</p>	<p>Rejected. The Bill provides for election of farmers representatives. The purpose of the catchment areas is to therefore determine the electoral regions for purposes election. However, for ease of coordination the committee agreed to align the electoral regions to geographical regions.</p>
4.	2	KNFS	<p>Amend the definition of sugarcane growers' apex body to read as follows:</p>	<p>Rejected. The committee resolved to delete the</p>

	<i>Interpretation</i>		<p>“Sugarcane growers apex body” means a national sugarcane farmers organization known as Kenya National Federation of Sugarcane Farmers.</p> <p>Justification: KNFS is the only apex body.</p>	<p>definition from the Bill because the words has not been used in the Bill.</p>
5.	<p>2 <i>Interpretation</i></p>	<p>KENYA ASSOCIATION OF MANUFACTURERS (KAM)</p> <p>Amend the definition of farm gate to mean <i>cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas.</i></p> <p><b>Justification</b> This is important for the farmers since most are not close to the factories and as such, the distance can be a challenge and a burden in terms of costs of transportation. By reducing the costs of transportation it's a win for the farmer.</p>	<p>Approved. Bill defines a farm gate to mean “prices received by farmers for their sugarcane at the location of farm;” Under part 2(5)(a) the of the Second schedule the Bill sets out one of the role of the millers as -</p> <p>(a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the growers’ fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;</p> <p>Therefore, the word as currently defined does not capture the meaning of a catchment area.</p>	<p>Approved. Based on</p>
6.	2	KAM	Amend the definition of ‘mill gate’ to	

	<i>Interpretation</i>		mean a site where sugarcane is received at the respective factory weighbridge. Justification: This definition brings out the function of the Mill Gate which is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory of the receiving centers.	different stakeholders' views on the issue, A mill gate means Sugarcane receiving area at the mill.
7.	<i>Interpretation</i>	KAM	Amend the definition of 'sugar catchment area' by deleting the phrase "for purposes of election to the Board under the First Schedule" appearing immediately after the word "area". Justification: To focus on the substance of the sugar catchment area as a factor in clustering a region, that is, the soil conditions, weather and other factors.	Rejected. The Bill provides for election of farmers representatives. The purpose of the catchment areas is to therefore determine the electoral regions for purposes election
8.	<i>Interpretation</i>	Ministry Of Agriculture	Delete the definition of "farm gate" Justification: It does not convey the correct industry meaning	Partially approved, to amend to capture the meaning of farm gate that is where the sugarcane is received and weighed.
9.	<i>Interpretation</i>	MINISTRY OF AGRICULTURE	Amend by deleting the definition of mill gate and substitute therefor the following new definition  "a site designated as such by the Authority where sugarcane weighing and sugarcane testing facilities have been set up;"	Approved to capture the meaning of mill gate which is the receiving point at the mill where sugarcane is received and weighed.

			<p><b>Justification:</b> The definition has only been used once The definition provided is for a sugar cane nursery and not for a mill gate.</p>	
10.	2 <i>Interpretation</i>	MINISTRY OF AGRICULTURE RE	<p>Delete the words "to a miller" from the definition of the word "licence" <b>Justification:</b> Licence is not only issued to the millers but also to importers and exporters of sugar.</p>	Approved. To capture all the licences that are provided for under the Act.
11.	2 <i>Interpretation</i>		<p>Insert new definition of industrial sugar to read as follows: "Industrial sugar" means a white crystalline carbohydrate used as a sweetener and preservative sugar, which complies with the specifications set by the body for the time being responsible for setting standards. <b>Justification:</b> Industrial Sugar is meant for manufacturing only. It is not manufactured in Kenya and therefore, should be distinct. • The distinction between raw sugar and Industrial Sugar is based on the sucrose content as given by the polarimeter readings and not based on suitability for consumption.</p>	Rejected.

12.	4 <i>The Functions of the Sugar Board</i>	MINISTRY OF AGRICULTURE	<p>Insert the words 'sugar cane and sugar co-products' before and after the word sugar respectively Delete and substitute therefor the following 'perform such other function as may be conferred on it by this Act or any other written law'</p> <p><b>Justification:</b> To cover key aspects of transportation in the industry. Assignments of the roles to the board should be done within the provisions of the written law.</p>	The stakeholder is not clear on which part of Clause is referring to.
13.	6(1) b <i>Composition of the Kenya Sugar Board</i>	KNFSCF	<p>Amend by deleting 6 (1) (b) and replacing with <i>seven representatives elected by growers based on constituent sugar mills as per FIRST SCHEDULE part 2</i></p> <p><b>Justification:</b> Based on actual and weighted land under sugarcane in the outgrowers (year 2020). Avoid representation based on political boundaries of countries as proposed in the Bill. Mumias hectares was zero but sugar mill is under rehabilitation and is expected that over 2000 ha will come under to bring hectares in lower western to 40,000.</p>	The committee resolved to retain the number of regions but align them to the geographical regions for ease of coordination.

14.	6(1) b <i>Composition of the Kenya Sugar Board</i>	SMALL HOLDERS SUGARCANE FARMERS ASSOCIATION OF KENYA(SHSF AK)	<p>Amend to read as follows:  <i>"Five representatives appointed by growers' apex body from each sugar factory areas as per First Schedule"</i></p> <p><b>Justification:</b>  The millers and politicians sponsor their candidates who are not sugarcane farmers to represent their interest. This complicates our participation on matters of the industry as they serve the interests of the sponsors.</p>	Rejected. Let farmers elect their representatives.
15.	6(1) b <i>Composition of the Kenya Sugar Board</i>	SUCAM	<p>Amend to read as follows:  <i>"Five representatives from each sugar catchment areas as per First Schedule nominated by growers apex body."</i></p> <p><b>Justification:</b>  Direct election of farmers' board directors failed. This was because of the followings:  1. <b>Lack of farmer register.</b> This gave room to hired goons to vote repeatedly to their candidates in multiple stations.  2. <b>Lack of independent electoral body with capacity</b> resulted into compromised, falsified results announced  3. <b>Lack of accountability system.</b> Directors were not answerable to farmers. They never held farmers'</p>	Rejected. Farmers to elect their representatives.

16.	6 (1) b <i>Composition of the Kenya Sugar Board</i>	KAM	<p>meetings to brief us because we never voted for them</p> <p>4. <b>Sugarcane farmers did not benefit.</b> Directors served the interests of their sponsors by <i>awarding import permits and approving sugar Development Fund loans.</i></p> <p>In summary, democracy was abused throughout the lifetime of the previous Board. This can only be addressed by growers' apex body nominating their representatives.</p> <p>Amend clause 6(1) b to read as follows: (b) Three representatives nominated by the farmers' apex body from each sugar catchment area as per the first schedule"</p> <p><b>Justification:</b> This will allow for one representative from the western region, one from Central region and one from Southern region which are the major players in the sugar industry.</p> <ul style="list-style-type: none"> <li>• It will also give the recognized farmers apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board.</li> <li>• The farmers will have a structured way to front their representative without undue influence. The farmers' apex body was mandated to advocate for the farmers' interests.</li> </ul>	Rejected. This will overstretch the Board. Mwangozo recommends a maximum of nine members of the Board.
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17.	6(1) c <i>Composition of the Sugar Board</i>	KNFSCE	Amend to read as follows: "Three representatives elected by sugar millers."  The part that reads <b>who is knowledgeable in sugar technology and value addition</b> is deleted.  <b>Justification:</b> It will be fair to have a miller representing western, southern/coast and central regions.	Rejected. This will overstretch the Board. Mwingozo recommends a maximum of nine members of the Board. The millers have one representative in the Board.
18.	6(1) c <i>Composition of the Kenya Sugar Board</i>	KAM	Amend sub-clause 6(1)(c) be amended to read: <i>Three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition.</i> <b>Justification:</b> It would be prudent for the Bill to allow the apex body to nominate at least three representatives as they are key stakeholders. This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry too.	Rejected. This will overstretch the Board. Mwingozo recommends a maximum of nine members to the Board. The millers have one representative in the board.
19.	6 <i>Composition of the Kenya Sugar Board</i>	MINISTRY OF AGRICULTURE	Insert the words 'of Directors' after the word 'Board' on the marginal note.  <b>Justification:</b> To clarify the Board referred to is the "Board of Directors" and not "Kenya Sugar Board"	Rejected. Clause 6 provides for the composition of the Kenya Sugar Board which is established under clause 4.

20.	8	<i>Vacation of office</i>	MINISTRY OF AGRICULTURE	Delete the word 'of' appearing after the word 'Board'  <b>Justification:</b> Grammar error correction	Approved. To correct the grammatical error.
21.	9	<i>Powers of the Board</i>	MINISTRY OF AGRICULTURE	Insert the words "by notice in the Gazette" before the word 'impose' <b>Justification:</b> To clarify the instrument by which the levy is imposed.	Rejected. The mode of imposition of the levy is provided for under Clause 34 of the Bill.
22.	9	<i>Powers of the Sugar Board</i>	MINISTRY OF AGRICULTURE	Delete the words "growers and millers" and substitute therefor the words "value chain players."  <b>Justification:</b> To widen the scope of the powers of the board to impose levy on relevant stakeholders.	Approved. To cater for other value chain players like importers.
23.	9(a)	<i>Powers of the Board</i>	SHSFAK	Impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act; Sec9(b) Impose a levy upon growers of <u>no less than shillings ten per ton of cane delivered</u> for support of the farmers' apex	Rejected. Public funds cannot be used to fund private bodies. The Farmers bodies may come up with structures for members to contribute

		<p>body, to undertake the following roles;</p> <ul style="list-style-type: none"> <li>(a) Represent growers in sugarcane pricing committee</li> <li>(b) Represent farmers at the weighbridge</li> <li>(c) Organize farmers into block farming system,</li> <li>(d) develop cane development plan in conjunction with the millers,</li> <li>(e) develop cane harvesting and transport plan in conjunction with the millers,</li> <li>(f) organize for bulk procurement of farm inputs and services</li> <li>(g) Facilitate development and implementation of Sugar Industry Agreements between the growers and millers;</li> </ul> <p>Sec9(b) <u>the above levy shall be deducted by millers and collected by Board for onward forwarding to growers apex body;</u></p> <p><b><u>Justification:</u></b></p> <p><i>If left to Regulations, it will not see light of the day</i></p> <p>Growers should finance activities of apex body due to the followings reasons:</p> <ol style="list-style-type: none"> <li>1. <b>Traditional membership support:</b> Through this, the growers will demand</li> </ol>	<p>towards funding of this bodies.</p>
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for efficient service provision and effective representation from the apex body. This is best practice world over.

2. **Fund apex body activities:**  
undertaking research on advocacy issues, competent negotiation with millers, farmers (members) education
3. **Reduction of cost of production:**
  - a. As it is now, it takes a farmer to spend a minimum of Kshs3,000 to deliver to the factory a tractor of 4-7 tons. This is illegal levy get permit, extra payment to cane cutters, loaders and tractor driver

*Giving Ksh70.00 to apex body instead of Kshs3,000 is a good business deal to growers*

- b. Eliminate supplying costly farm input and services by millers. Millers give cane production input and services on credit at inflated prices which becomes exploitative when coupled with interest charges.
- c. Losses incurred due to late harvesting, non-harvesting, harvested but not collected cane. These are factors that contribute farmers abandoning cane farming. *Apex body participation in*

			<p><i>production, harvesting and transport planning will address this</i></p> <p>4. Improved bargaining power to ensure fair trade; and</p> <p>5. Improved market intelligence.</p>	
24.	9(a) <i>Powers of the Board</i>	SHSFAK	<p>Impose a <b>one percent</b> levy or levies upon growers and millers to <b>finance growers apex body</b> for the purposes of giving effect to the provisions of this Act;</p> <p><b>Justification:</b> This will give independence to farmer apex body so that it does not rely on government or millers for support. In fact, it will improve farmers voice.</p>	<p>Rejected. Public funds cannot be used to fund private bodies. The Farmers bodies may come up with structures for members to contribute towards funding of this bodies.</p>
25.	19 <i>Issue of licence and licence fees</i>	KAM	<p>Amend clause 19 to read as follows: <i>Only stakeholders in the sugar industry, including but not limited to sugar millers, including manufacturers of products whose raw material is sugar for industrial use, farmers bodies, or government agencies will be licensed to import or export sugar.</i></p> <p><b>Justification:</b> This amendment aims to promote the sugar industry by ensuring that only the main stakeholders are licensed by the Board.</p>	<p>Rejected. Import of sugar cannot be restricted to a few players. The Bill provides for a requirement of pre-import approval by the Board.</p>
26.	19	KAM	<p>Amend this clause by adding a new sub-clause (9) to read as follows:</p>	<p>Rejected. To encourage competition and growth.</p>

27.	<i>Issue of licence and licence fees</i>		<p>(9) New licenses shall be issued whereby distance from existing mills are a minimum of 40km radius apart.</p> <p><b>Justification:</b> This will protect the investments of already existing mills and to welcome other investors.</p>	
	<i>20 Sugar Import</i>	KBL/UDV LIMITED	<p>Amend clause 20 to read as follows:</p> <p>(1) A person who imports sugar into Kenya shall upon registration: (a) provide evidence that the sugar they intend to import is not available in the local market ; and (b) Provide a sample of the sugar to be imported.</p> <p>(2) A person who imports sugar shall, prior to importation of each consignment:</p> <p>(a) Provide pre-import verification certificate from the country of origin; and (b) Obtain pre-import approval from the Board.</p> <p><b>Justification:</b> Aimed to provide clarity on the requirements at the point of registration and at the point of importing each consignment without increasing the cost of doing business on sugar importers.</p> <ul style="list-style-type: none"> <li>• The provision is not clear if the 3 four requirements are at the time of importation or which are a one off or annual</li> </ul>	<p>Rejected. The requirements are captured under Clause 20 of the Bill. The licence will be issued annually upon fulfilment of these requirements.</p>

			<p>requirement.</p> <ul style="list-style-type: none"> <li>• Requiring sugar importers to provide evidence on the need for industrial sugar import and samples for each consignment duplicates effort this would remain the same for an importer during the validity of a sugar import licence, which is renewed annually. Further, such a request would lead to increased inefficiencies in sugar imports and higher cost of doing business.</li> <li>• Kenya has no capacity to produce industrial sugar which necessitates the need to import it from countries outside the East African Community (EAC).</li> </ul>	
28.	<i>20(1)</i> <i>Sugar Import</i>	KAM	<p>Amend by deleting sub-clause (1)(a) in its entirety.</p> <p><b>Justification:</b> this function should not be left open to the sugar importers. • This is the responsibility of the sugar board to determine the sugar deficit in the country at any one time. • The onus should not be on the importer.</p>	<p>Rejected. Whereas the importers will be required to provide evidence of a deficit, the Board will have powers to issue a licence on the merit of each application.</p>
29.	<i>20(1)</i> <i>Sugar Import</i>	MINISTRY OF AGRICULTURE	<p>Delete clause 20(1) and substitute therefor the following new clause</p> <p>20(1) "A person who imports sugarcane or sugar into Kenya shall prior to importation obtain pre-import approval from the Board."</p> <p><b>Justification:</b></p>	<p>Rejected. There is need to put regulative measures in place which will ensure that sugar imports are of good quality and to curb flooding of the market with imported sugar.</p>

			<p>(a) It's the mandate of the Board to provide evidence of the sugar deficit in the local market;</p> <p>(b) It is impractical for an importer to provide a sample before getting a pre-approval from the Board; and</p> <p>(c) Pre-import verification certificate from the country of origin is one of the conditions for Pre-import approvals.</p>	
30.	20(3) <i>Sugar Import</i>	MINISTRY OF AGRICULTURE	<p>Delete Sub Clause (3)</p> <p><u>Justification:</u> If the ministry's proposal on amendment of clause 20(1), which addresses both importation of sugarcane and sugar is considered, then there is no need for sub-clause (3)</p>	Rejected. The clause provides for regulation of importation of sugarcane
31.	22 <i>Registration of millers</i>	KBL/UDV LIMITED	<p>Amend to include the words "importer or exporter of sugar" after each mention of the word 'miller'.</p> <p><u>Justification:</u> To provide clarity and certainty on registration requirement for sugar importers and exporters.</p> <ul style="list-style-type: none"> <li>• Provide consistency in the licence and registration requirement.</li> </ul>	Rejected. Importers and exporters do not have to be registered under this clause. Clause 20 already provides that sugar importers need to get pre-import approval from the Board.

			<ul style="list-style-type: none"> <li>• To prevent discrimination against importers and exporters of sugar. Imposition of a registration fee and annual renewal fee for importers of sugar increases the cost of doing business, yet such imports are necessitated by lack of industrial sugar produced in Kenya.</li> </ul>	
32.	<b>24</b> <i>Functions of the Kenya Sugar Research Institute</i>	MINISTRY OF AGRICULTURE	<p>Insert a new function immediately after clause 24(2) x to read as follows:</p> <p><b>24(2) y</b> <i>To conduct research into sugarcane processing.</i></p> <p><b>Justification:</b> To widen the scope of research to include sugar processing.</p>	<p>Rejected. Clause 24, extensively provides for research, and in particular clause (b),(s) and (t) provides for research in the processing field.</p>
33.	<b>25</b> <i>Composition of the Board of the Research Institute</i>	SUCAM	<p>Amend to read as follows:</p> <p><i>“Five persons from each of the sugar catchment areas under the First Schedule appointed by growers’ apex body.”</i></p> <p><b>Justification:</b> Under Kenya Sugar Research Foundation, the growers’ apex body used to nominate its representative. This traditional wisdom still superior to direct election of farmer. However, in the same way with the case of Kenya Sugar Board; there is lack of farmer register and lack of independent</p>	<p>Rejected. Let farmers exercise their democratic right by electing their representatives directly.</p>

34.	25 <i>Kenya Sugar Research Institute</i>	KNFSCF	<p><b>electoral body.</b> Amend to read as follows: <i>Five representatives nominated by Kenya National Federation of Sugarcane farmers from the catchment areas.</i></p> <p><b>Justification:</b> This is a normal working procedure.</p>	Rejected. Let farmers exercise their democratic right by electing their representatives directly
35.	25 <i>Composition of the Sugar Research Institute</i>	KAM	<p>Amend paragraph (b) of this clause by deleting the words “elected by the growers” appearing immediately after the word “persons” and substituting therefor with the words “nominated by the farmers”</p> <ul style="list-style-type: none"> <li>• This amendment will ensure that the farmers have a structured way to front their representative without undue influence.</li> <li>• apex body from the designated sugar catchment regions”</li> <li>• The millers will also have a representative in this key institution as key stakeholders.</li> </ul>	Rejected. Let farmers exercise their democratic right by electing their representatives directly
36.	25(e) <i>Composition of the Sugar Research Institute</i>	KAM	<p>Amend paragraph (e) of this clause by deleting the words “Kenya Agricultural Livestock and Research Organization” appearing immediately after the words “of the” and substituting therefor the words “Kenya Sugar Research Institute”.</p> <p><b>Justification:</b> This proposal is guided by the notion that this is a new body being set up which is not under the ambit of KALRO.</p>	Rejected. Clause 25 provides for the position of Director General who will be the CEO of the Board. The CEO of KALRO will sit in the Board as a member.

37.	25(f) <i>Composition of the Sugar Research Institute</i>	KAM	Amend paragraph (f) of this clause by deleting it and replacing it with one person nominated by the apex body of the Sugar millers. • The millers are not represented, and they are a major stakeholder. • Further, the Bill removes the Sugar Directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA in the Board.	Rejected. The Director General is the CEO of the Board and hence subclause (f) cannot be deleted.
38.	25 <i>Management of the Kenya Research Institute</i>	MINISTRY OF AGRICULTURE RE	Amend the clause by adding the following members into the composition and inserting the following new sub clauses after sub-clause (f):  g. The principal secretary in the Ministry for the time being responsible for matters relating to Agriculture or a representative nominated by the Principal Secretary in writing; h. One representative elected by sugar millers who is knowledgeable in sugar technology and value addition; and i. One person nominated by the Council of County Governors who is knowledgeable in extension services and management of farmer institutions.  <b>Justifications:</b>	Partially approved. To add a representative of COG and the millers. Although the Board already has 9 members in line with Mwingozo, the inclusion of the two members to the Board who are major stakeholders in the Sugar industry is paramount.

			<p>1. Inclusion of a line ministry representative is a requirement under the State Corporations Act;</p> <p>2. Millers are major consumers of research findings;</p> <p>3. Council of Governors representative is very necessary as agriculture including extension is a devolved function.</p>	
39.	29 <i>Appointment of Crop Inspectors</i>	KAM	<p>Delete in its entirety</p> <p>We propose the deletion of this clause since the work of the inspectors is a replication of other agencies already set in place in the sugar industry, that is, KRA, KEBS, Sugar Directorate, etc. • In addition to this, the sugar industry is already overregulated with more than 40 licenses that already have the regulatory entities that deal with the same. • The Sugar Board ensures that the millers/users comply with the licenses before releasing the annual licenses.</p>	<p>Rejected.</p> <p>Clause 30 provides for entry and inspection by crop inspectors. The Board is taxed with issuance of several licences and therefore there is need to conduct inspection of various players before issuance of licence.</p>
40.	34 <i>Sugar Development Levy</i>	MINISTRY OF AGRICULTURE	<p>Delete the word "sugar" and substitute therefor the words "sugarcane"</p> <p><b>Justification:</b> Growers grow sugarcane and not sugar.</p>	<p>Rejected. Clause 34 provides that the levy will be applied to both domestic sugar and imported sugar, therefore the word sugar is suitable.</p>
41.	34	KAM	Amend sub-clause (1) to exclude industrial	Rejected. The purpose of

<p><b>Sugar Development Levy</b></p>	<p>sugar users from imposition of the sugar development levy to read as follows: "The Cabinet Secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar excluding industrial sugar to be known as Sugar Development Levy</p> <p><b>Justification:</b></p> <p>We propose to retain clause 34(1) on the Sugar Development Levy and only exclude industrial sugar based on the following reasons: • Kenya lacks the capacity to produce industrial sugar which necessitates the need to import it from countries outside the East African Community (EAC). • The proposal to levy 10% Sugar Development Levy (SDL) will increase the cost of doing business for manufacturers in sugar excluding industrial sugar to be known as Sugar Development Levy". Kenya. For instance, major users like KBL and UDV, it is estimate that the cost of taxes and levies subject to industrial sugar importation will increase by 60-62%. • Currently levies and taxes include imposed on sugar include 10% import duty (imports from outside COMESA but within EAC Quota), 16% VAT, IDF, RDL and Merchant Shipping Services fee. The levies described are exclusive of the fees charge</p>	<p>the levy is to raise enough revenue to facilitate the development of the sugar industry and offer support for farmers. The Sugar development levy needs to be applied across the Board on all players.</p>
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			<p>for registration to Sugar Directorate (Kshs 200,000) and the import permit (Kshs 100,000 annually). • Unintended consequences of the levy include increased illicit trade. In this case, products like alcohol, illicit trade is currently estimated at 44% (490mn litres) of all the alcohol consumed in Kenya according to WHO 2018 report. The level of illicit is currently even higher due to increased pressure on consumer spending reeling from the negative impact of Covid-19. • The proposed levy will intensify declining consumer spending power due to increased direct cost of goods sold</p>	
42.	34 <i>Sugar Development Levy</i>	KNFSCF	<p>Amend to read as follows:  a) 25% for cane development  b) 20% to the sugar board  c) 15% for research  d) 25% for infrastructure  e) 2% for sugar technologists' support  f) 3% for sugarcane farmers apex body support.</p> <p><b>Justification:</b>  To go back to the original purpose of the levy and in consideration of increased costs of inputs and the need for increased sugarcane production.  45% for infrastructure is out of proportion-</p>	Rejected. The committee however agree to increase the allocation on development and research.

43.	34(1) <i>Sugar Development Levy</i>	KBL/UDV LIMITED	<p>it is alarming.</p> <p>Amend to remove imposition of sugar development levy on imported sugar. Section 34(1) to read:</p> <p><i>(1) The Cabinet Secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar to be known as Sugar Development Levy</i></p> <p><u>Justification:</u></p> <p>Kenya has no capacity to produce industrial sugar which necessitates the need to import it from countries outside the East African Community (EAC)</p> <p>The proposal to levy 10% Sugar Development Levy (SDL) as per the Parliamentary Committee report under Clause 18 will increase the cost of doing business for manufacturers in Kenya. For KBL and UDV, we estimate that the cost</p>	<p>Rejected. The purpose of the levy is to raise enough revenue to facilitate the development of the sugar industry and offer support for farmers. The Sugar development levy needs to be applied across the Board on all players.</p>
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of taxes and levies subject to industrial sugar importation will increase by 60-62%. Currently levies and taxes include 10% import duty (imports from outside COMESA1 but within EAC Quota), 16% VAT, IDF, RDL and Merchant Shipping Services fee. The levies described are exclusive of the fees charge for registration to Sugar Directorate (Kshs 200,000) and the import permit (Kshs 100,000 annually).

- Unintended consequences of the levy include increased illicit alcohol trade, which is currently at 44% (490mn litres) of all the alcohol consumed in Kenya according to WHO 2018 report. The level of illicit is currently even higher due to increased pressure on consumer spending reeling from the negative impact of Covid-19. The proposed levy will intensify declining consumer spending power due to

			<p>increased direct cost of goods sold, which is estimated to increase by approximately Kshs 100million annually for KBL and UDV.</p>	
44.	34(2) <i>Sugar Development Levy</i>	KBL/UDV LIMITED	<p>Amend the clause to read: <i>"The levy shall be payable at such rate as may be specified in the order gazetted by the of the relevant Committee of the National Assembly after considering the views of the Cabinet Secretary responsible for Finance."</i></p> <p><b><u>Justification:</u></b></p> <p>The clause bestows a great deal of discretion to the CS Agriculture to levy taxes. Money Bill type of provisions should have adequate oversight from Parliament and National Treasury to avoid exploitation of the public interest, promote better and transparent fiscal coordination.</p>	Rejected.

45.	34(4) <i>Sugar Development Levy</i>	KBL/UDV LIMITED	<p>Amend the clause to read as follow: -</p> <p><i>“All the money received in respect of the levy shall be paid to the Consolidated Fund and later disbursed to the Board and if not paid on or before the date prescribed by the order the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.”</i></p> <p><b>Justification:</b></p> <p>Section 34(4) as currently drafted contravenes the Constitution of Kenya and Public Finance Management Act 2012 (PFMA), which provide that all public funds raised or received by or on behalf of the national government should be pooled into a Consolidated Fund and spending of such amounts should be approved by Controller of Budget on request by</p>	<p>Rejected. Article 206(1) provides for monies collected on behalf of the Government that may be excluded from being deposited into the Consolidated Fund. Paragraph (1) exempts monies that are reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose. The Bill under clause 35 establishes Sugar Development Fund for this purpose.</p>
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			National Treasury.	
46.	<b>34(5)</b> <i>Sugar Development Levy</i>	KBL/UDV LIMITED	Delete this clause.  <b>Justification:</b>  The fine of 5% on the outstanding amount of unpaid SDL is too punitive. Fines and other sanctions within the proposed Bill adequately cover the Board/govt. from loss of funds.	Rejected. The Penalty is meant to act as a deterrence from non-payment or evasion of levy.
47.	<b>34(7)</b> <i>Sugar Development Levy Apportionment</i>	SUCAM	Amend to read as follows: <b>Sec34. (7) The purpose for which the Fund is established is to provide sustainable affordable credit and advances to the sugar industry for the purposes of—</b> <i>(a) forty eight percent shall be applied by the Board for income or price stabilization for sugar growers;</i> <i>(b) twenty four percent shall be remitted directly to the Institute;</i> <i>(c) one percent shall be applied by the Board in the factory rehabilitation and maintenances;</i> <i>(d) twenty four percent shall be applied by the Board in the furtherance or exercise of any function or powers of the Board</i>	Rejected. The committee however agree to increase the allocation for development and research.

*and Board of Trustees;*

**Justification:**

The distribution is based on the Sugar Industry Stakeholders Taskforce Report 2019, Budgeted Implementation Matrix:

1. **Cane production and Pricing mechanism:** to address decline in cane production, low adoption of early maturing varieties, decline in cane yield, low irrigation initiatives, harvesting and transportation inefficiencies, lack of transparency at the weighbridges, low farm diversification initiatives, Inadequate representation of the farmer in price bargaining totaling Kshs 8.992Billion (47%)
2. **Sugar processing:** to address inefficiency and high cost of sugar production, unsynchronized cane development leading to Cane shortage/ oversupply, lack of a governance structure to coordinate cane production, supply and processing, inadequate ICT Infrastructure and cane fires totaling Kshs 195million (1%)
3. **Poor infrastructure – Roads, Drainages, Culverts National and**

			<p>County Governments their respective responsibilities in infrastructure development and maintenance as provided for in the Constitutions. <i>Taskforce Report Recommendation</i>)  But awarded Ksh750 – (4%)</p> <p>4. <b>Research:</b> inadequate research, irrigation establishment totaling to Kshs4.497 - (24%)</p> <p>5. <b>Administration:</b> sugar importation, marketing of value added products, compliance, funding research, for governance and rehabilitation, Sugar Training Institute, regulations totaling to Kshs4.482Billion – (24%)</p>	
48.	34(7) <i>Sugar Development Levy</i>	KAM	<p>Amend subclause (7)(a) by</p> <p>a) deleting the words “Fifteen per centum” and substituting therefor the words “Twenty per centum” and</p> <p>b) adding the words “and cane development” immediately after the word “stabilization” The provision will read as follows: “Twenty per centum shall be applied by the Board for income or price stabilization and cane development for sugar growers”.</p> <p>Justification:  This will ensure that the funds are well</p>	<p>Rejected. The committee however agree to increase the allocation for development and research.</p>

	<p>provided for all programmes associated with cane development. • This will also increase sugarcane yields and will generate more income for farmers by applying the right inputs and correct agronomic practices.</p>			
<p>49.</p> <p><i>34(7) c</i></p> <p><i>Sugar Development Levy</i></p>	<p>KAM</p> <p>Amend sub-clause (7)(c) of this clause by deleting the words “twenty per centum” and substituting therefor the words “fifteen per centum”</p> <p>Further amend sub-clause (7)(c) by clarifying that the funds may be channeled to different sugar institutions.</p> <p><b>Justification:</b></p> <p>The amounts involved are huge and reallocating Five per centum from this item to the development of the sugarcane growers will bring greater gains to the industry and will not adversely affect the Board.</p> <p>The proposal to channel the funds to different institutions will help underline that the funds are specific for Sugar Research institutions, as may be established.</p>		<p>Rejected. The committee however agree to increase the allocation for development and research.</p>	
<p>50.</p> <p><i>40</i></p> <p><i>Establishment of the Sugar Arbitration</i></p>	<p>KNFSCF</p> <p>Amend clause 40 to read as follows:</p> <p><i>“Four other members with expert knowledge of the matters likely to come before the Tribunal two of whom shall be</i></p>		<p>Rejected. The court needs to be impartial.</p>	

		<p><i>appointed by the farmers' apex organization and two who shall be appointed by KESMA."</i></p> <p><b>Justification:</b> in other successful sugar producing jurisdictions such as Mauritius and South Africa, this is what happens:</p> <p><b>Mauritius:</b> The tribunal includes one independent member, one representative of millers, and two representatives of farmers.</p> <p><b>South Africa</b> One person appointed by the South Africa Sugar Association, two persons appointed by the millers' association, and two persons appointed by the growers' association.</p>	
51.	<p><b>41</b> <i>Jurisdiction of the Sugar Arbitration Tribunal</i></p>	<p>MINISTRY OF AGRICULTURE</p> <p>Delete the word growers under clause b (iii)</p> <p><b>Justification:</b> Growers is a repetition of clause 41(1)a</p>	<p>Approved. Subparagraph (iii) is a repetition of paragraph (a) . they both speak to disputes between farmers(growers).</p>
52.	<p><b>41</b> <i>Jurisdiction of the Sugar Arbitration</i></p>	<p>KBL/UDV LIMITED</p> <p>Amend Section 41 to allow for sugar importers and exporters to bring disputes to the Sugar Arbitration Tribunal relating to sugar imports/exports Amend to introduce Section 41(1) (e) to read: (e) Disputes</p>	<p>Rejected. The tribunal has Jurisdiction to consider matters from other interested parties.</p>

	<i>Tribunal</i>		<p>relating to sugar imports and exports arising from implementation of this Act.</p> <p><b>Justification:</b>          To provide for a dispute resolution mechanism for disputes arising from the implementation of the Sugar Act by sugar importers and exporters.</p> <ul style="list-style-type: none"> <li>• To promote fair administration of sugar import and export matters as guaranteed by Article 47 of the Constitution and the Fair Administrative Action Act.</li> </ul>	
53.	<i>50 Inspection for quality and safety</i>	KAM	<p>Delete it in its entirety</p> <p><b>Justification:</b>          The Board should not be allocated this duty as the work will be a replication of other agencies. • KEBS and NEMA already do most of the tasks contemplated in this clause. • They should therefore remain the sole national agencies that carry out these tasks.</p>	<p>Rejected. Under clause 22(4) before issuing licence, it is a prerequisite for the Board to ascertain the fitness of a premises to carry out the business for which it seeks to be licenced for, hence the need for inspection.</p>
54.	<i>51 Safeguard Measures</i>	KBL/UDV LIMITED	<p>Amend Section 51 to require the Board to ensure that importers report on their sugar transactions per consignment, and not on a daily basis. Therefore, section 51(2) (b) should read: "importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licences".</p>	<p>Approved. The committee concurred with the stakeholder's views.</p>

			<p><b>Justification:</b> Requirement of reporting on a daily basis is impractical and would result into increased cost of business.</p> <ul style="list-style-type: none"> <li>• Given that an importer of sugar is required to get a pre-import approval, it would be reasonable to file returns per consignment/for the quantity approved after the sugar has been utilized. Such returns should be in a prescribed form requiring information on the imports, sales, and stock.</li> </ul>	
55.	<p><b>Clause-51 Safeguard Measures</b></p>	KAM	<p>Amend this clause to require the Board to ensure that importers report on their sugar transactions per consignment, and not daily. Amend Section 51(2) (b) to read: “importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licences’ Justification: Requirement of reporting on a daily basis is impractical and would result into increased cost of business. • Given that an importer of sugar is required to get a pre-import approval, it would be reasonable to file returns per consignment/for the quantity approved after the sugar has been utilized. • Such returns should be in a prescribed form requiring information on the imports, sales, and stock.</p>	<p>Approved. The committee concurred with the stakeholder's views</p>

56.	51 <i>Safeguard Measures</i>	SUCAM	<p>Amend to read as follows:</p> <p>27. (1) Subject to such regional and international trade agreements to which Kenya is a party, all sugar imports into the country shall be subject to the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Sugar Import and Export Committee comprising of;</p> <p>(a) Chairman of Kenya Sugar Board;</p> <p>(b) the Permanent Secretary in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing;</p> <p>(c) the Permanent Secretary in the Ministry for trade and industry or his representative nominated by him in writing;</p> <p>(d) Two representatives nominated by</p>	<p>Rejected. Under clause 20 of the Bill, the Board is mandated to regulate sugarcane imports and exports.</p> <p>The Board encompasses representatives from the National Government, County Governments, farmers and millers.</p>
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		<p>Sugarcane Growers Apex Body in writing;</p> <p><b>(e) Representative nominated by Millers Apex Body in writing</b></p> <p><u>Justification:</u>  Sugar importation control is supposed to be done by the government in consultation with key stakeholders; sugarcane growers and sugar millers.</p>	
57.	53(0) <i>Sugar Industry Agreements</i>	<p>KNFSCF</p> <p>Amend to read as follows;</p> <p>53(b) the enforcement of levies upon growers for the purpose of enabling the Farmers Apex Organisation to fulfil any obligation in accordance with its constitution.</p> <p>For example,  the enforcement of 0.30% levy of the price per ton of sugarcane in accordance with article 12.2.1.1 in the Constitution of Kenya National Federation of Sugarcane</p>	<p>Rejected. Public funds cannot be used to fund private bodies.  The Farmers bodies may come up with structures for members to contribute towards funding of this bodies.</p>

	<p>Farmers which says:</p> <p>The Governing Council shall impose on all growers a levy the amount of such a levy expressed as a rate per tonne of sugarcane supplied to the miller.”</p> <p>8. Where a levy is so imposed, the miller shall deduct at source the amount due to the Federation from the proceeds of any sale of any sugarcane of the grower and remit the same direct to the Federation.</p> <p><b><u>Justification:</u></b></p> <p>This clause is badly drafted to deny funding to the farmers’ apex organization.</p> <p>Clause 53 deals with the sugar industry agreements between millers and growers and out growers institutions and millers and millers and out grower institutions and growers and out grower institutions.</p>	

			<p>The board is not party to this clause.</p> <p>The board does not have another constitution apart from establishment under this Bill. Honorable members should support our proposal since there is no interference with the funds of the board.</p>	
58.	<i>54 Rights of growers in a privatized company</i>	KAM	<p>Delete in its entirety</p> <p>Justification:</p> <p>The same should not be admissible in the privately owned mills where the growers are not investment capital contributors. • Further, this will discourage private investment in the sugar mills.</p>	<p>Approved. The Black's Law Dictionary defines privatization as the sale of enterprises owned by public companies to private companies.</p> <p>The clause speaks to shares held by the Government in private companies Amend to have growers allocated at least 50% of the shareholding held by government in the privatized companies.</p>
59.	<i>55 Representative of a grower in a private milling company</i>	KAM	<p>Delete in its entirety</p> <p>Justification:</p> <p>This clause will not be applicable and may lead to legal tussles once implemented. It</p>	<p>Rejected.</p>

60.	<p>55(2)</p> <p><i>Representative of a farmer in a milling company</i></p>	<p>SUCAM</p>	<p>will also discourage private investment</p> <p>Amend to read as follows:          In appointing director representing growers under subsection 1 above, <u>the milling company shall write to the apex body for nomination of one</u> the leaders of the out-grower institutions within the sugar-cane catchment area within the sugar mill is located</p> <p><b>Justification:</b>          This will avoid millers appointing one of their sympathizers. The miller sympathizer may not work in harmony with farmer interests.</p>	<p>Rejected. Clause 55(2) provides that in appointing a director representing farmers, the milling company shall consider the leaders of the out-grower institutions within the sugarcane catchment area. This provision will ensure that farmers are represented in the milling companies.</p>
61.	<p>FIRST</p>	<p>KNFSCF</p>	<p>Retain the part that lists the areas and</p>	<p>Approved with</p>

62.	<b>FIRST SCHEDULE</b>	KAM	<p>number it as (a)  <b>Rift Region</b>  <b>Upper Western</b>  <b>Lower Western</b>  <b>Southern region</b>  <b>Coastal region</b></p> <p><b>Justification:</b>  Retained for purposes of enhanced cane development, sugarcane procurement, and marketing of sugarcane farms by farms NOT for Election</p> <p>Introduce new paragraph (b) as New Framers Electoral Areas  <b>Upper Western</b>  Nzoia, Naitiri, Butali, W. Kenya  <b>Lower Western</b>  Mumias, Busia, Olepito  <b>Central</b>  Chemelil, Muhoroni, Kibos, Soin Miwani  <b>Southern</b>  Sony Sugar, Sukari, Transmara  <b>Coast</b>  Kwale</p> <p><b>Justification:</b>  Sugar mills areas are the correct reference as the electoral constituencies.</p> <p>Amend this clause to represent regions as opposed to counties by deleting "Counties"</p>	<p>Modification. To align the sugar catchment areas with geographical regions for ease of coordination. Also, to ensure each Region has at least a ONE Sugar Mill serving it.</p> <p>Approved with Modification. To align the</p>
	<p><b>SCHEDULE</b>  <b>Delineation of sugar catchment areas</b></p>			

	<p><i>Delineation of sugar catchment areas</i></p>		<p>and replacing with “Regions” and delineate as follows;</p> <p>Central Region          Kericho, Kisumu and Nandi.          Upper Western Region Bungoma, Kakamega, Trans Nzoia and Uasin Gishu.          Lower Western Region Busia, Mumias and Siaya.          Southern Region          Homabay, Kisii, Migori and Narok.          Coastal Region Kwale, Lamu and Tana River</p> <p><b>Justification:</b>          This proposal will leave the Rift Region orphaned with no operational sugar mill. This is tantamount to economic suicide and should not be allowed to be established in Law.          At the same time, the Southern Region covering Homa Bay, Kisumu, Migori and Narok is provided with more than 8 factories, 7 of which are in operation. Our proposal is that Kericho and Nandi in the Rift Region which are currently being served by Sugar Factories in Kisumu County be included in a Region to be known as Central Region comprising Kericho, Nandi, Kisumu and Siaya served by Muhoroni Sugar, Chemelil Sugar, Kibos Sugar and Soim Sugar.</p>	<p>sugar catchment areas with geographical regions for ease of coordination. Also, to ensure each Region has at least a ONE Sugar Mill serving it.</p>
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			<p>This would also fit in with the recommendations of the Sugar Task Force Report Page 62.</p> <p>This would ensure that all the sugarcane farmers are adequately taken care of, rather than the current proposal that has discriminated against the sugarcane farmers in the Rift Valley Region, leaving them without a sugar factory to supply their sugarcane to.</p>	
63.	<p><b>THIRD SCHEDULE PART 1 Paragraph 2</b></p>	KAM	<p>Amend paragraph (2) of the Third Schedule by deleting the words "sugar lobby group" and substituting therefor the words "Sugarcane Growers Apex Body"</p> <p>Justification: This is because lobby groups do not have the objectivity to steer the sugarcane grower's issues in a joint and clear perspective as compared to an apex body.</p>	<p>Approved with modifications. Delete the term sugar lobby groups and its definition. There are registered associations who will represent farmers interests..</p>
64.	<p><b>THIRD SCHEDULE Part 2 Paragraph 4</b></p> <p><i>The role of out-grower institutions</i></p>	KNFSCF	<p>Amend by deleting paragraphs 4(a) to (d)</p> <p><b>Justification:</b> These are functions of advocacy of the apex body.</p>	<p>Rejected. Out growers are also farmers representatives.</p>
65.	<p><b>THIRD SCHEDULE Part 2</b></p>	KAM	<p>Amend paragraph 5(a) by deleting the words "harvest" and "transport".</p>	<p>Proposal rejected. Clause to remain as it is.</p>

	<p><i>Paragraph 5</i> <i>The role of millers</i></p>		<p><b>Justification</b> The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. • Entrenching this in the Act will result in an untenable situation on the ground.</p>	
66.	<p><i>THIRD SCHEDULE Part 2 Paragraph 5</i> <i>The role of millers</i></p>	KAM	<p>Amend paragraph 5(d) by deleting the figure "15" appearing immediately after the word "within" and substituting therefore the figure "30"</p> <p><b>Justification</b> We propose to increase the period for paying farmers from 15 days to 30 days as the latter is more practical. • Further, no other crops are paid within 15 days. This amendment will therefore align the Act with best industry practice.</p>	Rejected. Farmers should be paid within a relatively short time. Farmers to be paid within 15 days.
67.	<p><i>THIRD SCHEDULE Part 2 Paragraph 5</i> <i>The role of millers</i></p>	KAM	<p>Amend paragraph 5(g) by deleting the word "mobile" appearing immediately after the word "that".</p> <p><b>Justification</b> The justification is that weighbridges are not mobile</p>	Rejected. Although currently there are no mobile weighbridges, the clause can be retained for posterity.
68.	<p><i>THIRD SCHEDULE Part 3 Guidelines for Agreements</i></p>	KNFS	<p>Amend by inserting a definition of "<i>Kenya National Federation of Sugarcane Farmers</i>" to mean the national apex umbrella organization of sugarcane farmers registered under the Societies Act.</p>	Rejected. The body is not established by a statute.

	<i>between parties in the sugar industry</i>		<p><b>Justification:</b> It should not have been omitted.</p>	
69.	<b>THIRD SCHEDULE Part 3 Paragraph 7(1)</b> <i>The composition of the Sugar Pricing Committee</i>	SUCAM	<p>Amend to read as follows: The Committee shall comprise of:- (d) three persons nominated by the growers' apex body from sugarcane catchment region</p> <p><b>Justification:</b> Growers Committee members should be nominated by the apex body to avoid millers sponsoring their friends at the Committee</p>	Rejected.
70.	<b>THIRD SCHEDULE PART 3 Paragraph 7</b>	KNFSCF	<p>Amend paragraph 7 to read as follows: <i>(c) Four persons nominated by Kenya National Federation of Sugarcane Farmers. "</i></p> <p><i>And to delete paragraph 7(d)</i></p> <p><b>Justification:</b> Nomination in the same manner as Kenya Sugar Manufacturers Association being the apex body of the millers. KNFS being the apex body of the farmers should not be bypassed.</p> <p>Some of the sugar lobby groups are busybodies hired by cartels to complicate</p>	Approved partially to delete paragraph 7(d).

	<p>matters against the interest of the farmers. Let them join the federation and speak from inside.</p>		<p>Rejected.</p>
<p>71. <i>THIRD SCHEDULE PART 3 Paragraph 7(4)</i> <i>Sugar Pricing Committee-formula</i></p>	<p>SUCAM</p>		<p>Amend section 7(4) by adding paragraphs (d) and (e) as follows:  <b>(d) Fair and Remunerative Price (FRP)</b> which is a floor price which the farmers would receive even when sugar prices fall to a level which leads to prices lower than FRP;  <b>(e) Fixed Division of Proceeds ratio 67% to growers and 33% to millers</b></p> <p><u>Justification:</u>  <b>Price fluctuations:</b> Cane price instability has resulted in inadequate cane production forcing millers to operate below capacity. Pricing stabilization through creating a floor price will fair and remunerative price. Cane production will increase.</p> <p><b>History of Cane payment:</b> in the period of 1981-1990 Overall greater emphasis was given to cane growers as they received</p>

			<p>55% of the sugar revenue and the miller got 45%. In 1991 -2000, the government policy shifted emphasis from grower to miller on average the growers received 48% of the sugar revenue and the miller 52%. From 2001 to date, the growers and miller have had equal share of the revenue at 50%. Basing on the Sugar Stakeholders Taskforce Report, the cost of cane comprises 67% of the overall cost of production. The government policy should now shift emphasis from miller to grower. On average the grower should receive 67% of the sugar revenue and the miller 33%.</p>	
72.	<p><b>THIRD SCHEDULE PART 3 Paragraph 7(6)</b> <i>Sugar Pricing Committee</i></p>	SUCAM	<p>Amend to read as follows: The sugar-cane prices set by the committee under sub paragraph (2) shall be reviewed <u>regularly as dictated by prevailing market forces</u> provided that the</p>	<p>Approved with modifications. To amend the time frame of review of sugar prices to 3 months. The period of 36months is too long.</p>

			<p>Committee may, with the prior approval of the Board,</p> <p>Alternatively, the stakeholder proposes the <i>delete of the entire section.</i></p> <p><b><u>Justification:</u></b></p> <p>This is a malicious intent by millers to control the sugarcane prices contrary to free market economy</p> <p>This will be an exploitation of poor sugarcane farmers.</p>	
73.	<p><b>THIRD SCHEDULE</b>  <b>Part 3</b>  <b>Sugar Pricing Committee</b></p>	KAM	<p>Amend paragraph (2)(d) by deleting it in its entirety.</p> <p><b>Justification:</b></p> <p>The amendment will ensure that the farmers have a structured way to front their representative without undue influence.</p>	<p>Approved. To ensure that farmers have a structured way to front their representative</p>
74.	<p><b>THIRD SCHEDULE</b></p>	KAM	<p>Amend this paragraph by inserting a new</p>	<p>Approved. To factor in different varieties that are</p>

<p><i>Part 3 Paragraph 7 Sugar Pricing Committee</i></p>		<p>subparagraph (4): <i>(4) the peculiarities of each region.</i></p> <p><b>Justification:</b> This proposal is premised on the fact that the central region has different soils and climate from all other regions rendering its yields much lower than the rest</p>	<p>produced from different regions.</p>
<p>75. <b>THIRD SCHEDULE</b> <i>Part 3 Paragraph 7 Sugar Pricing Committee</i></p>	<p>KAM</p>	<p>Amend subparagraph (6) by deleting the words "thirty-six months" appearing immediately after the word "every" and substituting therefor with "one month".</p> <p><b>Justification:</b> The one month will provide a realistic and sufficient time for the committee to regularly review the prices as per the market forces demand. • This will in turn will be a win-win situation for the farmers and the millers to benefit from the running</p>	<p>Approved with modifications. To amend the time frame of review of sugar prices to 3 months. The period of 36months is too long.</p>

76.	<b>THIRD SCHEDULE</b> <i>Part 4</i> <i>The Relationship between Out grower institutions and the miller</i>	KAM	price for the month.  Delete the part in its entirety.  Justification:  There is no longer any outgrower institution on the ground. • The current regulations deal with relationships between the miller and the sugarcane growers directly.	Rejected. The committee was informed that some of the out-growers companies are still operational and further more will be revived once the Sugar industry becomes vibrant again.
77.	<b>THIRD SCHEDULE</b> <i>Part 5</i> <i>The Relationship between Out grower institutions and the Grower</i>	KAM	Delete the part in its entirety.  Justification:  There is no longer any outgrower institution on the ground. • The current regulations deal with relationships between the miller and the sugarcane growers directly	Rejected. The committee was informed that some of the out-growers companies are still operational and further more will be revived once the Sugar industry becomes vibrant again.
78.	<b>FOURTH SCHEDULE</b> <i>Paragraph 1</i> <i>Resignation</i>	KNFSCF	Amend to read as follows:  <i>“Any member of the tribunal may at any time in writing to the chief justice or other</i>	Rejected. Clause 40(b) provides that the other four members of the sugar arbitration tribunal shall be appointed by the Chief

			<p><u>appointing authority resign his office.”</u></p> <p><b>Justification:</b></p> <p>Whereas the Chairman of the Tribunal is appointed by the Chief Justice, other members of the tribunal are appointed by other authorities.</p>	<p>Justice (CJ). There is no other appointing authority other than the CJ</p>
79.	<p><b>FOURTH SCHEDULE</b> <i>Paragraph 3</i></p>	KNFSCF	<p>Amend to read as follows:</p> <p>In the event of inability of any member of the tribunal to attend for the purpose of any particular proceedings the Chief Justice <u>or any other appointing authority</u> may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment.</p>	<p>Rejected. Clause 40(b) provides that the other four members of the sugar arbitration tribunal shall be appointed by the Chief Justice (CJ). There is no other appointing authority other than the CJ</p>
80.	<p><i>New clause</i> <b>Registration of Growers</b></p>	SUCAM	<p>Add a new clause under <b>PART III: LICENSING AND REGISTRATION</b> to read as follows: Every sugarcane grower, for purposes of accessing economies of scale, shall have the freedom—</p>	<p>Approved. To provide for registration of growers.</p>

	<p>(a) register with an out-grower institution and any other organisation representing the interests of sugar farmers;</p> <p>(b) all out-grower institutions and any other organization representing the interests of sugar farmers shall register with an growers apex body of their choice that has capacity of representing their interests;</p> <p>(c) where a farmer has entered into an agreement with an organisation representing the interest of such farmer, the Board shall respect and enable the carrying out of the terms of such agreement</p>	
	<p><b>Justification:</b> Registration of farmers was provided in the Crops Act 2013. However, it has the following benefits:</p> <ol style="list-style-type: none"> <li>1. Improved sustainability through creation of economies of scale;</li> <li>2. Improved logistics in terms of harvesting and transportation facilities;</li> <li>3. Assist in ensuring undertaking good cane husbandry –soil testing, applying recommendable input;</li> <li>4. Lowering of transaction costs as a result of bulk buying;</li> </ol>	

		<p>5. Improved access to best available technology to improve production efficiencies and quality of products;</p> <p>6. Ensure that there are value adding and agro-processing facilities.</p>	
81.	<p><i>New Clause On Funds of the Board</i></p>	<p>SUCAM</p> <p>Insert new clause 34(4) after 34(3) to read as follows:  <i>(4) The Fund shall be managed by a Board of Trustees which shall consist of—</i>  <i>(a) the Permanent secretary to the Treasury or a representative nominated by him in writing;</i>  <i>(b) the Permanent Secretary in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing;</i>  <i>(c) the Chief Executive Officer of the Board;</i>  <i>(d) 2 members representing sugarcane growers apex body</i>  <i>(e) 1 member representing millers apex body</i>  <i>(f) 2 members appointed by the Minister on the basis of their professional and managerial capacity;</i>  <i>(g) the managing trustee, who shall be an ex officio member and the Secretary to the Board of trustees.</i></p>	<p>Approved. As proposed by the stakeholder.</p>

	<p><i>(5) The members of the Board of Trustees shall elect a chairman from amongst themselves.</i></p> <p><i>(6) Every appointment under paragraph (d) shall be by name and by notice in the Gazette and shall be for a term of three years which shall be renewable once.</i></p> <p><i>(7) No person shall be appointed as a Managing Trustee unless such a person holds a degree from a university recognized in Kenya and has at least five years' experience in financial management.</i></p> <p><i>(8) The Managing Trustee shall be appointed by the Minister through a competitive process and shall hold office for a period of three years which shall be renewable.</i></p>
	<p><b>Justification:</b>  The purposes for which the Sugar Development Fund may be applied, promote good corporate governance and accountability levels by placing the administration of the Sugar Development Fund in the hands of a Board of Trustees with a specified mandate and fiduciary responsibilities  However, management of Sugar Development Fund by Board of Trustees with technical administration capacity</p>

			<p>while KSB remain supervisor is the best governance option. This is because analysis of performance of the scraped SDL paints bad picture;</p> <ol style="list-style-type: none"> <li>1. The Fund was mismanaged and the industry has nothing to show. The state of government mills is worse than before the establishment of the funds. Disbursement of trillions of shillings for factory rehabilitation and maintenance cannot be accounted for</li> <li>2. Loans given without guarantee and due supervision to government mills were not refunded resulting into huge debts compounding into trillion of Kenyan shillings</li> <li>3. Loans given to these mills were diverted to salary and paying other suppliers,</li> <li>4. Reports on Out-grower companies; MOCO, BOCO, NOCO, MUSOCO, SOC, COC and WECO implicate former directors of KSB in mismanagement of loans advanced to these firms has not been acted upon;</li> <li>5. SDF loans given to cane growers by AFC were recovered, whether the cane was harvested or not;</li> <li>6. All SDF loans given on credit to cane farmers were recovered but not</li> </ol>	
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82.	NEW CLAUSE	KNFSCF	submitted by millers or out-grower companies to the Board.	<p>Rejected. Under the third schedule, the Bill sets out the functions of out grower institutions.</p> <p>Add a new clause to read as follows: The functions and roles of the Kenya National Federation of Sugarcane Farmers are:</p> <ol style="list-style-type: none"> <li>1. Promoting and representing the interests of growers;</li> <li>2. Negotiating or arranging on behalf of such grower members the terms of supply of sugarcane to the factory (Contracts)</li> <li>3. Representing growers in the sugarcane pricing committee;</li> <li>4. Nominating growers' representatives for appointment to anybody controlling, regulating or advising on any matter or issues affecting the sugar industry or agriculture in general in Kenya.</li> <li>5. Normally engage sugarcane apex institutions with responsibility for regulation and governance in resolving sugarcane growers challenges.</li> </ol>
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# ANNEX 6

Committee Stage amendments to the Sugar Bill, (National Assembly Bills No. 68 of  
2019)

17<sup>th</sup> May, 2022

The Clerk of the Senate,  
Parliament Buildings,

**NAIROBI.**

**RE: COMMITTEE STAGE AMENDMENTS TO THE SUGAR BILL, NATIONAL ASSEMBLY BILLS NO. 68 OF 2019**

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NOTICE is given that Sen. Peter Njeru Ndwiga, Chairperson, Committee on Agriculture, Livestock and Fisheries intends to move the following amendments to the Sugar Bill, National Assembly Bills No. 68 of 2019, at the Committee Stage—

**CLAUSE 6**

THAT clause 6 of the Bill be amended in subclause (1) by deleting paragraph (a) and substituting therefore the following new paragraph—

- (a) a chairperson appointed by the President by notice in the *Gazette*.

**CLAUSE 8**

THAT clause 8 of the Bill be amended in the introductory phrase by deleting the word “of” appearing immediately after the words “of the Board”.

**CLAUSE 9**

THAT clause 9 of the Bill be amended in paragraph (a) by deleting the words “growers and millers” appearing immediately after the words “or levies upon” and substituting therefor the words “value chain players”.

**CLAUSE 25**

THAT clause 25 of the Bill be amended —

- (a) by numbering the existing provision as subclause (1);

(b) in subclause (1) by –

(i) deleting the word “Cabinet Secretary” appearing immediately after the words “appointed by the” in paragraph (a) and substituting therefor the words “President by notice in the *Gazette*”;

(ii) inserting the following new paragraphs immediately after paragraph (b) —

(ba) one person nominated by the Council of County Governors; and

(bb) one person, who has knowledge and experience in matters relating to sugar technology and value addition, elected by sugar millers;

(iii) inserting the words “and secretary to the Board” immediately after the words “an ex official member”;

(b) inserting the following new subclause immediately after subclause (1) —

(2) The Cabinet Secretary shall appoint the members under subsection (1)(b), (ba) and (bb) by notice in the *Gazette*.

#### **CLAUSE 27**

**THAT** clause 27 of Bill be amended in paragraph (a) by inserting the words “of trustees” immediately after the words “by the Board”.

#### **PART V**

**THAT** the Bill be amended in the heading to Part V by deleting the word “CROP” appearing immediately after the words “APPOINTMENT OF”.

#### **CLAUSE 29**

**THAT** clause 29 of the Bill be amended —

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) The Board may, in consultation with the Council of County Governors, appoint such qualified persons as it considers necessary to be inspectors for the purposes of this Act.

- (b) in subclause (2) by inserting the words “in consultation with the Council of County Governors” immediately after the words “subsection (1) the Board”; and
- (c) in the marginal note by deleting the word “crop” appearing immediately after the words “Appointment of”.

#### **CLAUSE 34**

**THAT** clause 34 of the Bill be amended—

- (a) in subclause (4) by inserting the words “of Trustees” immediately after the words “to the Board”;
- (b) by deleting subclause (6);
- (c) by deleting subclause (7) and substituting therefor the following new subclause—

(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—

- (a) forty-five per centum shall be applied by the Board of trustees for income or price stabilization for sugar growers;
- (b) ten per centum shall be remitted to the Board for furtherance or exercise of any function or power of the Board;
- (c) twenty per centum shall be remitted directly to the Institute;
- (d) twenty per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis; and
- (e) five per centum shall be applied by the Board of trustees for the administrative expenses of the Fund.

#### **CLAUSE 35**

**THAT** clause 35 of the Bill be amended in subclause (1) by inserting the words “of Trustees” immediately after the words “by the Board”

#### **CLAUSE 41**

**THAT** clause 41 of the Bill be amended—

- (a) by renumbering the existing provision as clause 41; and
- (b) in paragraph (b) by deleting subparagraph (iii).

**CLAUSE 51**

**THAT** clause 51 of the Bill be amended in subclause (2) by deleting the words “on daily basis” appearing immediately after the words “sales and stock” in paragraph (b) and substituting therefor the word “per consignment in the prescribed form”.

**CLAUSE 54**

**THAT** clause 54 of the Bill be amended in—

(1) paragraph (a) by inserting the words “shares held by the government in” immediately after the words “shareholding of all”; and;

(2) paragraph (b) by deleting the expression “51%” appearing at the beginning of the paragraph.

**CLAUSE 57**

**THAT** clause 57 of the Bill be amended —

(a) in subclause (1) by inserting the word “and the Council of County Governors” immediately after the words “with the Board”;

(b) in subclause (2) by inserting the following new paragraphs immediately after paragraph (i) —

(j) the manner of apportionment of the levy provided for under section 34(7)(d) to the respective Counties; and

(k) the procedure for the election of farmers’ representatives under section 6(b) and 25(b).

**NEW CLAUSE 22A**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 22—

Registration of  
growers.

**22A.** (1) A person or entity shall not carry out the business of a sugar grower unless such person is registered by the respective county

government in which the business is to be undertaken.

(2) A county government shall not charge a fee for the registration of a person as a sugar grower under subsection (1).

(3) Each county government shall keep and maintain a register of persons registered under subsection (1).

(4) A register under subsection (3), shall include—

(a) the name of the sugar grower;

(b) the location, size and parcel number of the land on which the sugar plantation is located; and

(c) such other particulars as may be prescribed by the county executive committee member in the respective county legislation.

(5) Each county executive committee member shall submit to the Board a copy of the register under subsection (3) on the fifth day of every month.

(6) Any person may inspect the register and obtain a copy of an extract from the register, upon payment of the prescribed fee.

(7) Each county executive committee member shall prescribe, in county legislation, the form and procedure for the application for registration under subsection (1).

## NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 35—

### NEW CLAUSE 35A

Establishment of a  
Board of Trustees

35A. (1) There is established a Board to be known as the Board of Trustees.

(2) The Board of Trustees shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing such other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate

**NEW CLAUSE 35B**

Headquarters of the Board of Trustee

**35B.** The headquarters of the Board of Trustees of the Fund shall be in Nairobi.

**NEW CLAUSE 35C**

Composition of the Board of Trustee.

**35C.** (1) The Board of Trustees shall consist of—

- (a) a chairperson appointed by the President, who shall be a person with knowledge and experience in matters relating to finance;
- (b) the Cabinet Secretary or a representative designated in writing;
- (c) the Cabinet Secretary of the ministry responsible for matters relating to finance or a representative designated in writing;
- (d) three members appointed by the Cabinet Secretary of whom—
  - (i) two shall be nominated by the registered sugar farmers associations; and
  - (ii) one shall be a person qualified and competent in the field of sugar production, financial accounting, management or marketing.
- (e) one person nominated by the Council of County

Governors with knowledge of the Sugar industry;  
and

(f) a chief executive officer of the of the Board of Trustees, who shall be the secretary.

(2) The Cabinet Secretary shall, in nominating the members of the under subsection (1)(d), take into account regional balance and gender parity.

### NEW CLAUSE 35D

Functions and powers of  
the Board of Trustees

**35D.** (1) The powers and functions of the Board of Trustees shall be to —

- (a) collect sugar development levy imposed under section 34 of this Act;
- (b) manage the resources of the Fund;
- (c) mobilize additional resources for the Fund;
- (d) formulate sound policies for the regulation and management of the Fund;
- (e) keep and maintain audited accounts of the Fund and publish the accounts in the manner prescribed by the National Treasury;
- (f) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;
- (g) receive any gifts, donations, grants or endowments made to the Fund, and to make legitimate disbursements;
- (h) carry out such other functions as may be assigned by the Cabinet Secretary or conferred under any other law.

### NEW CLAUSE 35E

Remuneration of the  
Board of Trustees

**35E.** The members of the Board of Trustees shall be paid such remuneration or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine.

#### **NEW CLAUSE 35F**

Tenure of office.

**35F.** (1) A member of the Board of Trustees appointed under section 35A(1)(d) and (e) shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

#### **NEW CLAUSE 35G**

Vacation of office.

**35G.** A person ceases to be a member of the Board of trustees if that person —

- (a) is absent, without reasonable cause, for three consecutive meetings of the Board of trustees;
- (b) becomes an officer, agent or member of staff of the Board of trustees;
- (c) resigns in writing addressed, in the case of the chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of at least six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of the office by reason of mental or physical infirmity; or
- (g) dies.

#### **NEW CLAUSE 35H**

Chief  
officer.

executive

**35H.**(1) There shall be a chief executive officer of the Board of Trustees who shall be competitively recruited and appointed by the Board of trustees on such terms and conditions as the Board of trustees shall determine.

(2) A person is qualified for appointment as the chief executive officer if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least ten years' experience in senior management;  
and

(d) meets the requirements of Chapter Six of the Constitution.

(3) The chief executive officer shall hold office for a term of five years and is eligible for re-appointment for one further term based on performance.

#### **NEW CLAUSE 35I**

Staff of the Board  
of the Trustees.

**35I.** (1) The Board of Trustees may employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Board of Trustees under this Act and upon such terms and conditions of service as the Board of Trustees may determine.

(2) The persons employed under subsection (1) shall be competitively recruited.

#### **NEW CLAUSE 35J**

meetings of the  
Board of Trustees.

**35J.** The provisions of the second schedule as to the conduct of business and affairs of the Board shall apply, with such modifications as shall be necessary, to the conduct of meetings of Board of Trustees.

#### **FIRST SCHEDULE**

**THAT** Bill be amended by deleting the First schedule and substituting therefor the following new schedule—

**FIRST SCHEDULE**  
**[S.2, 6(1)(b) and 25(b)]**  
**DELINEATION OF SUGAR CATCHMENT AREAS**  
**SUGAR CATCHMENT REGIONS.**

<b>Regions</b>	
Central	Kericho, Nandi, Kisumu
Upper Western	Bungoma, Kakamega, Trans Nzoia, Uasin Gishu
Lower western	Busia, Mumias, Siaya
Southern	Homabay, Kisii, Migori and Narok
Coastal	Kwale, Lamu, Tana River.

**THIRD SCHEDULE**

**THAT** the third schedule of the Bill be amended —

- (a) in paragraph 2 by deleting the definition of the word “sugar lobby group”;
- (b) in paragraph 3 by inserting the word “minimum” immediately after the word review.
- (c) in paragraph 7 by —
  - (i) deleting subparagraph (2)(d) and substituting therefor the following new subparagraph—
    - (g) one person representing the Sugar Traders Association.
  - (ii) inserting the following new subparagraph immediately after subparagraph (4)(c) —
    - (d) climate, soil topology and other natural features of each region;
  - (iii) deleting the words “thirty-six” appearing immediately after the words “reviewed after every” in subparagraph (6) and substituting therefor the word “three”.

## CLAUSE 2

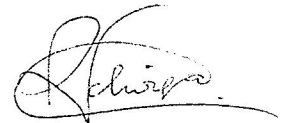
THAT clause 2 of the Bill be amended—

- (a) in the definition of the word “licence”; by inserting the words “importer or exporter” immediately after the words “board to a miller” and
- (b) deleting the definition of the word mill gate;
- (c) deleting the definition of the word “sugarcane growers apex body”
- (d) inserting the following new definitions in their proper alphabetical sequence—

“farm gate” means a site set up by a miller or designated as such by the Board where sugarcane weighing and sugarcane testing facilities have been set up; and

“value chain players” includes growers, millers, importers and exporters.

Dated on 18<sup>th</sup> May, 2022.



Sen. Njeru Ndwiga,

*Chairperson*

*Committee on Agriculture, Livestock and Fisheries.*