REPUBLIC OF KENYA

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THE SENATE

THIRTEENTH PARLIAMENT | THIRD SESSION

.....

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

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

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

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The Senate,
First Floor, Parliament Buildings,
NAIROBI.

MARCH, 2024

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LIST OF ABBREVIATIONS/ACRONYMS

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

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

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

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

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

The Committee also oversees the following State Agencies among others-

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

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

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

MEMBERSHIP OF THE COMMITTEE

The Committee is comprised of the following Members-

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

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) is an Act of Parliament to provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board and for connected purposes.

Mr. Speaker Sir,

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

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

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

Mr. Speaker Sir,

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

Pursuant to the provisions of Article 118 and standing order 145(5) of the Senate Standing Orders, the Standing Committee on Agriculture, Livestock and Fisheries invited interested members of the public to submit their representations on the Bill. The Committee sent invitations and met with the following stakeholders – Ministry of Agriculture and Livestock Development, Kenya Sugar Manufacturers Association, the Council of Governors, the Kenya Agricultural and Livestock Research Organization, the Commodities Fund and the Kenya National Federation of Sugarcane Farmers. The Committee conducted public participation on the Bill in the following four (4) sugar

belt counties Kisumu, Kakamega, Bungoma and Busia. In total, the Committee received oral and written submissions from forty-five (45) stakeholders.

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

Summary of Committee Observations

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

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

Summary of Committee Recommendation

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

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

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

Mr. Speaker Sir,

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

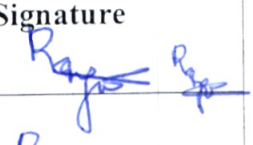
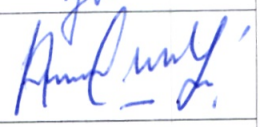
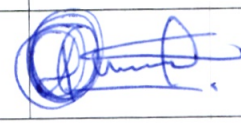
Signed..... Date 26/3/2024

CHAIRPERSON: SEN. JAMES KAMAU MURANGO, MP,

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

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

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

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

CHAPTER ONE

1.1. BACKGROUND

1. The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) is an Act of Parliament to provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board and for connected purposes.

2. The Bill seeks to provide for the development, regulation and promotion of the sugar industry; for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes. The object of the Bill is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill shall restore the roles of the Kenya Sugar Board currently undertaken by the Sugar Directorate of Agriculture and Food Authority established under the AFA Act, 2013. A copy of the Bill is attached to this Report as (*Appendix 2*).

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

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

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

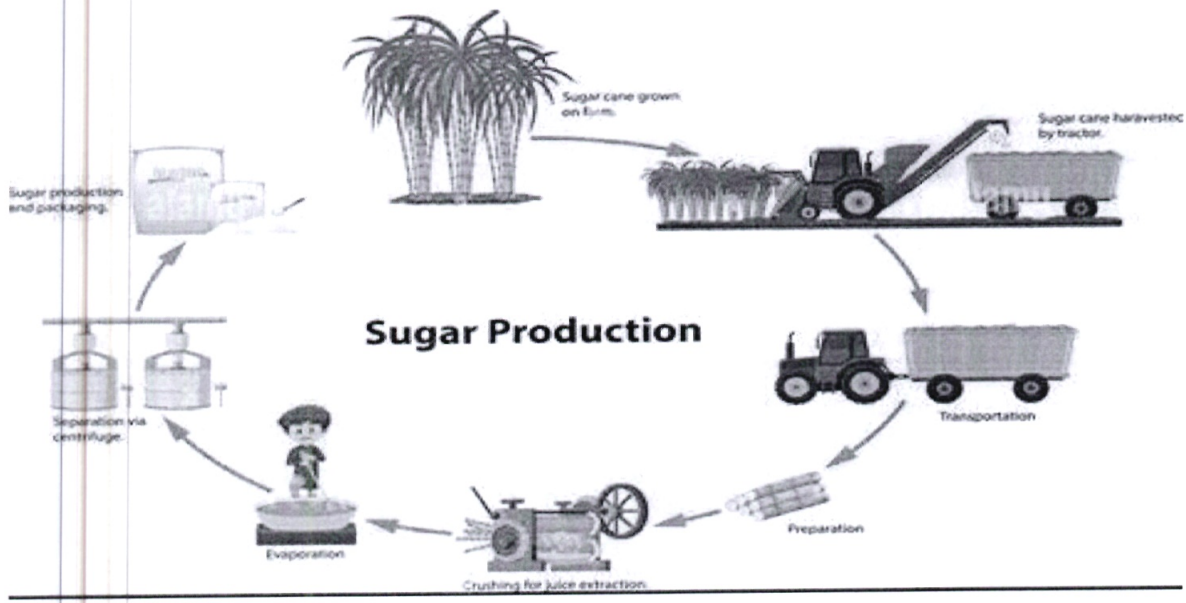
1.2. SITUATIONAL ANALYSIS ON THE SUGAR SECTOR IN KENYA

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

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

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

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



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

1.2.1. Challenges facing Sugar Sector in Kenya

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

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

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

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

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

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

1.2.2. Sugar Industry Funding

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

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

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

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

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

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

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

1.3. LEGAL FRAMEWORK ON THE SUGAR SECTOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.4. INSTITUTIONAL FRAMEWORK

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

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

(i) The Sugar Research Institute (SRI)

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

(ii) Farmers' Institutions

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

(iii) Millers

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

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

(iv) Kenya Society of Sugarcane Technologists (KSSCT)

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

a) OVERVIEW OF THE BILL

48. The Bill proposes the following-

1) **PART I – PRELIMINARY**

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

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

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

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

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

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

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

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

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

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

e) The Board members shall possess a degree in any field and shall serve for a term of three years renewable once.

f) Clause 9 provides for the powers of the Board which include; the power to impose levy upon growers and millers.

g) Clause 14 provides for the office of the chief executive officer of the Board and sets out the qualification as; a relevant degree, ten years' experience in a relevant field and five years' experience in senior management.

h) Clause 18 makes it a prerequisite for a person intending to operate a sugar mill to be registered and issued with a certificate by the Board. In issuing the certificate, the Board shall ensure that the premises where milling is carried out meets the environmental and safety standards. Further, contravention of the provision is an offense punishable by a fine of not more than ten million- or five-years imprisonment.

i) Clause 19 obligates growers to be registered by a miller who receives their cane. In this regard a miller shall not offer milling services to unregistered growers. Contravention of the section is an offense which is punishable by a fine of not less than one million shillings or a fine of not less than one year.

3) PART III – LICENCING AND REGISTRATION

j) Clause 20 sets a requirement for any person operating a sugar mill or a jaggery mill to be a holder of a current license issued by the Board upon recommendation by the relevant county government. Further, contravention of this provision is an offense punishable by a fine of not more than ten million- or 5-years imprisonment.

k) Clause 21 sets the conditions for issuance of a license as; being fit to hold a license and having sufficient knowledge, experience and capacity to conduct the milling business.

l) Clause 23 prohibits importation of sugar or its by-products without a valid license issued by the Board. The clause further sets the following additional requirements -

i. evidence of non-availability of the sugar in the market;

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

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

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

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

5) PART V - APPOINTMENT OF SUGAR INSPECTORS

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

6) PART VI - FINANCIAL PROVISIONS

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

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

7) PART VII- THE SUGAR ARBITRATION TRIBUNAL

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

8) PART - MISCELLANEOUS PROVISIONS

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

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

CHAPTER TWO

2.1. OVERVIEW OF THE PUBLIC PARTICIPATION ON THE BILL

2.1.1. INTRODUCTION

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

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

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

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

2.2. SUBMISSIONS FROM STAKEHOLDERS AND COMMITTEE RESOLUTION

2.2.1. Submissions on Part I- Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Committee disagreed with this proposal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.3. Part III-Licensing and Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.5. Part V- Appointment of Sugar Industry Inspectors

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

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

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

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

Nzoia Sugar Company proposes the addition of the term "factory inspectors" to the heading for enhanced clarity. This modification is rationalized by the fact

that inspections encompass not only crops and land but also premises within the scope of examination.

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

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

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

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

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

2.2.6. Part IV- Financial Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.7. Part VIII- Miscellaneous Provisions

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

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

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

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

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

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

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

The provision already exists in the Bill.

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

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

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

The proposal is already covered under Clause 58.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.8. Part IX- Provision on Delegated Powers

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

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

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

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

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

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

2.2.8.1. First Schedule

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

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

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

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

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

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

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

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

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

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

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

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

In addressing these diverse perspectives, it's crucial to strike a balance between zoning and a free market to ensure sustainable growth in the sugar industry. This includes providing farmers with flexibility in choosing millers while encouraging investments in cane development, infrastructure, and technological advancements. Collaboration between stakeholders, informed by the unique

challenges and opportunities in each region, will be key to achieving long-term success and resilience in Kenya's sugar sector.

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

2.3. General Comments

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

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

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

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

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

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

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

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

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

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

2.4. Specific prayers to the Committee from different Stakeholders.

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

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

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

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

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

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

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

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

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

CHAPTER THREE

3.1. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1.2. COMMITTEE OBSERVATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2. COMMITTEE RECOMMENDATIONS

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

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

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

LIST OF APPENDICES

Appendix 1	Minutes of the Standing Committee on Agriculture, Livestock and Fisheries
Appendix 2	The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022)
Appendix 3	Advertisement published in the *Daily Nation* and *Standard* newspapers on Friday, 20th October, 2023
Appendix 4	Matrix of the submission received by the Committee on each clause of the Bill and on general matters relating to the Bill
Appendix 5	Amendments on The Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022)
Appendix 6	Copy of stakeholder submission on the Bill

APPENDIX 1: MINUTES

MINUTES OF THE NINETY-FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON TUESDAY, 26TH MARCH, 2024 AT HILTON GARDEN INN AT 11:00 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
3.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
4.	Sen. Daniel Kitonga Maanzo, MP	-	Member
5.	Sen. David Wafula Wakoli, MP	-	Member
6.	Sen. Beth Kalunda Syengo, MP	-	Member

ABSENT WITH APOLOGIES

1.	Sen. Wahome Wamatinga, MP	-	Member
2.	Sen. Allan Kiprotich Chesang, MP	-	Member
3.	Sen. Moses Kajwang, MP	-	Member

SECRETARIAT

1.	Mr. Boniface Lenairoshi	-	Deputy Director
2.	Ms. Gloria Wawira	-	Clerk Assistant I
3.	Ms. Caroline Njue	-	Clerk Assistant II
4.	Ms. Regina Munyao	-	Legal Counsel II
5.	Mr. Gilbert Juma	-	Legal Counsel II
6.	Mr. Hillary Cheruiyot	-	Research Officer III
7.	Ms. Violet Nalianya	-	Media Relations Officer
8.	Ms. Rose Ometere	-	Audio Officer
9.	Ms. Farhiya Ali	-	Sergeant-at- Arms

MIN/SEN/SCA/639/2024- PRAYER

The Chairperson called the meeting to order at 11.30 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/640/2024- **ADOPTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Daniel Kitonga Maanzo, MP seconded by Sen. Beth Syengo, MP and MP as follows -

1. Prayer;
2. Adoption of the Agenda;
3. ***Consideration and adoption of the Report on the Sugar Bill, 2022 (National Assembly Bills no. 34 of 2022);***
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/641/2024- **CONSIDERATION AND ADOPTION OF THE REPORT ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)**

The report on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) was considered and adopted having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Beth Syengo, MP.

MIN/SEN/SCA/642/2024- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/643/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 1:45 p.m. and the next meeting will be by notice.

SIGNED: .....DATE: .....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE NINETY- THIRD SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON TUESDAY, 26TH MARCH, 2024 AT HILTON GARDEN INN AT 9:00 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
3.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
4.	Sen. Daniel Kitonga Maanzo, MP	-	Member
5.	Sen. David Wafula Wakoli, MP	-	Member
6.	Sen. Beth Kalunda Syengo, MP	-	Member

ABSENT WITH APOLOGIES

1.	Sen. Wahome Wamatinga, MP	-	Member
2.	Sen. Allan Kiprotich Chesang, MP	-	Member
3.	Sen. Moses Kajwang, MP	-	Member

SECRETARIAT

1.	Mr. Boniface Lenairoshi	-	Deputy Director
2.	Ms. Gloria Wawira	-	Clerk Assistant I
3.	Ms. Caroline Njue	-	Clerk Assistant II
4.	Ms. Regina Munyao	-	Legal Counsel II
5.	Mr. Gilbert Juma	-	Legal Counsel II
6.	Mr. Hillary Cheruiyot	-	Research Officer III
7.	Ms. Violet Nalianya	-	Media Relations Officer
8.	Ms. Rose Ometere	-	Audio Officer
9.	Ms. Farhiya Ali	-	Sergeant-at- Arms

MIN/SEN/SCA/633/2024- PRAYER

The Chairperson called the meeting to order at 9.30 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/634/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Alexander Munyi Mundigi, MP seconded by Sen. Beth Syengo, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of:
    i. Minutes of the 83rd sitting held on Friday, 1st March, 2024;
    ii. Minutes of the 84th sitting held on Saturday, 2nd March, 2024;
    iii. Minutes of the 85th sitting held on Sunday, 3rd March, 2024;
    iv. Minutes of the 86th sitting held on Thursday, 7th March, 2024;
    v. Minutes of the 87th sitting held on Monday, 11th March, 2024;
    vi. Minutes of the 88th sitting held on Tuesday, 12th March, 2024;
    vii. Minutes of the 89th sitting held on Friday, 15th March, 2024;
    viii. Minutes of the. 90th sitting held on Saturday, 16th March, 2024;
    ix. Minutes of the 91st sitting held on Tuesday, 19th March, 2024; and
    x. Minutes of the 92nd sitting held on Thursday, 21st March, 2024.
4. Matters arising;
5. ***Consideration of Amendments to the Sugar Bill, 2022 (National Assembly Bills, No, 34 of 2022);***
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/635/2024- CONFIRMATION OF MINUTES

The Confirmation of Minutes of the Eighty-Third sitting held on Friday, 1st March, 2024 were confirmed as a true record having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Beth Syengo, MP.

The Confirmation of Minutes of the Eighty-Fourth sitting held on Saturday, 2nd March, 2024 were confirmed as a true record having been proposed by Sen. Beth Syengo, MP and seconded by Sen. David Wafula Wakoli, MP.

The Confirmation of Minutes of the Eighty – Fifth sitting held on Sunday, 3rd March, 2024 were confirmed as a true record having been proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Beth Syengo, MP.

The Confirmation of Minutes of the Eighty – Sixth sitting held on Thursday, 7th March, 2024 were confirmed as a true record having been proposed by Sen. Beth Syengo, MP and seconded by Sen. Alexander Munyi Mundigi, MP

The Confirmation of Minutes of the Eighty-Seventh sitting held on Monday, 11th March, 2024 were confirmed as a true record having been proposed by Sen. Beth Syengo, MP and seconded by Sen. David

The Confirmation of Minutes of the Eighty -Eighth sitting held on Tuesday, 12th March, 2024 were confirmed as a true record having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Beth Syengo, MP;

The Confirmation of Minutes of the Eighty – Ninth sitting held on Friday, 15th March, 2024 were confirmed as a true record having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Beth Syengo, MP.

The Confirmation of Minutes of the Ninetieth sitting held on Saturday, 16th March, 2024 were confirmed as a true record having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Beth Syengo, MP

The Confirmation of Minutes of the Ninety - First sitting held on Tuesday, 19th March, 2024 were confirmed as a true record having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Enoch Kiio Wambua, MP.

The Confirmation of Minutes of the Ninety – Second sitting held on Thursday, 21st March, 2024 were confirmed as true record having been proposed by Sen. Beth Syengo, MP and seconded by Sen. Alexander Munyi Mundigi, MP.

MIN/SEN/SCA/636/2024- **MATTER ARISING**

Under Ex MIN/SEN/SCA/631/2024 **ANY OTHER BUSINESS**

The Committee resolved to include the word independent before the words commercial grower.

MIN/SEN/SCA/637/2024- **CONSIDERATION OF AMENDMENTS TO THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS, NO, 34 OF 2022**

Clause 6: That, Clause 6 of the Bill, be amended by inserting the following subclause immediately after subclause (3).

Subclause (4), the members of the board shall reflect gender and regional balance in accordance with the Constitution. That is one position for a youth or a person living with disability and the other one a top up of either a man or woman whoever will be the minority.

Clause 19: That Clause 19 of the Bill be amended by substituting subclause (1) with the following provision –

(1) A miller shall not purchase sugar crop from, or accept sugar crop delivered by a grower and a grower shall not sell or deliver sugar crop to a miller, unless the –

a) Grower is registered with, and has in force a valid supply agreement with the miller;
b) Factory of the miller is situated within the grower's catchment area; or
c) Grower has an exception from the Board as provided for under section 19A.

PART III

That the heading to Part III be amended by deleting the words "and registration" appearing immediately after the word
19A The Board may exempt a commercial cane grower from the restriction on supply of cane within a catchment area, provided that-

a) the millers factory is temporarily broken down:
b) there is an oversupply of cane to the miller; and
c) the mill is located within the same catchment area,

19B. A miller may enter into a contract of cane supply with another miller if—

(a) the millers factory is temporally broken down; or

(b) there is an oversupply of cane to the miller; and

the mill is located within the same catchment area.
Clause 29: That Clause 29 of the Bill be amended –

(i) by deleting paragraph (d) and substituting therefore with the following new clause –
d) one person with knowledge of the sugar industry nominated by the Council of Governors;
(ii) in paragraph (e) by deleting the words "nominated by universities" appearing immediately after the words "one person" and substituting therefore the words 'representing the universities nominated by the Commission on University Education".

Clause 38:

That Clause 38 that provides for

a) In paragraph (b) by inserting the words "and shall be remitted to the Kenya Sugar Research and Training Institute"
b) In paragraph (d) by deleting the words "managed by Kenya Rural Roads. Authority of the catchment area" appearing immediately before the words "maintenance" and substitute therefore the words "of county roads and hall be remitted to the county government as a conditional grant on prorate basis"

Clause 43: amend to include that the Cabinet Secretary lays the report on the operations of the Board before National Assembly and Senate.

Clause 59: That the Bill be amended by deleting Clause 59.

Clause 60: That Clause 60 of the bill be amended in subclause (2) by inserting the following new subclause immediately after paragraph (k).

(ka) The procedure for election of farmers and millers representatives to the Board and the pricing Committee

New Clauses: That Clause 2 of the Bill be amended by deleting the definition of the term "sugar catchment area" to read "a geographical area where growers and millers are restricted in the delivery and receipt of cane respectively.

MIN/SEN/SCA/637/2024- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/638/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 11:00 a.m. and the next meeting will be by notice.

SIGNED: .....DATE: .....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE NINETY-SECOND (92ND) SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON THURSDAY, 21ST MARCH, 2024 AT THE FIRST FLOOR BOARDROOM, RED CROSS BUILDING 10:00 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
3.	Sen. Daniel Kitonga Maanzo, MP	-	Member
4.	Sen. David Wafula Wakoli, MP	-	Member
5.	Sen. Beth Kalunda Syengo, MP	-	Member

ABSENT WITH APOLOGIES

1.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
2.	Sen. Wahome Wamatinga, MP	-	Member
3.	Sen. Allan Kiprotich Chesang, MP	-	Member
4.	Sen. Moses Kajwang, MP	-	Member

SECRETARIAT

1.	Ms. Gloria Wawira	-	Clerk Assistant I
2.	Ms. Caroline Njue	-	Clerk Assistant II
3.	Ms. Regina Munyao	-	Legal Counsel II
4.	Mr. Hillary Cheruiyot	-	Research Officer III
5.	Ms. Violet Nalianya	-	Media Relations Officer
6.	Ms. Pamela Kimwatan	-	Protocol Officer
7.	Ms. Rose Ometere	-	Audio Officer
8.	Ms. Farhiya Ali	-	Sergeant-at- Arms

MIN/SEN/SCA/626/2024- PRAYER AND INTRODUCTIONS

The Chairperson called the meeting to order at 10.00 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/627/2024- **ADOPTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Daniel Kitonga Maanzo, MP seconded by Sen. Beth Syengo, MP and MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of:
    i. Minutes of the 83rd sitting held on Friday, 1st March, 2024;
    ii. Minutes of the 84th sitting held on Saturday, 2nd March, 2024;
    iii. Minutes of the 85th sitting held on Sunday, 3rd March, 2024;
    iv. Minutes of the 86th sitting held on Thursday, 7th March, 2024;
    v. Minutes of the 87th sitting held on Monday, 11th March, 2024; and
4. Matters arising;
5. Meeting with stakeholders Ministry of Agriculture, COG, LSK, KEPSA, and KNCCI On the Nuts and Oil Crops Development Bill, 2023 (Senate Bills No. 47 of 2023)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/628/2024- **CONFIRMATION OF MINUTES**

The confirmation of minutes was deferred to the next meeting.

MIN/SEN/SCA/629/2024- **MATTER ARISING**

The agenda on matters arising was deferred to the next meeting.

MIN/SEN/SCA/630/2024- **MEETING WITH STAKEHOLDERS ON THE NUTS AND OIL CROPS DEVELOPMENT BILL, 2023 (SENATE BILLS NO. 47 OF 2023)**

The invited stakeholders were late in attending the meeting the Committee resolved that they submit written memoranda for the consideration of the Committee.

MIN/SEN/SCA/631/2024- **ANY OTHER BUSINESS**

Members deliberated on matters that were pending on the Sugar Bill, 2022 and resolved as follows-

i. On the delineation of sugar catchment areas, the delineated catchment areas remain as outlined in the first schedule

ii. In the case of the breakdown of factories and overproduction of cane by outgrowers, the Bill introduces a provision that allows millers to enter into an agreement where the affected miller whose machinery has broken down may enter an agreement to have cane processed by another miller or out-growers may supply cane to miller outside of their catchment area subject to the approval of the board.

iii. Introduce a provision to allow a commercial grower to seek the approval of the board to deliver cane outside of their designated catchment area.

iv. Members reiterated that the catchment areas are for purposes of delivery of cane and election of representatives.

v. The Committee table its report on its consideration of the Sugar Bill, 2022 on Tuesday, 26th March 202.

vi. The Committee retreats to conclude and adopt its report on the Sugar Bill, 2022

MIN/SEN/SCA/632/2024- DATE OF NEXT MEETING AND ADJOURNMENT

The meeting adjourned at 10:20 a.m. and the next meeting will be by notice.

SIGNED: .....**DATE:** 26/3/24.....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE NINETY FIRST SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON TUESDAY, 19TH MARCH, 2024 IN GROUND FLOOR BOARDROOM, COUNTY HALL BUILDING AT 10:00 A.M.

PRESENT

1. **Sen. Alexander Munyi Mundigi, MP** - **Vice-Chairperson**
2. Sen. Wahome Wamatinga, MP - Member - Chairing
3. Sen. David Wafula Wakoli, MP - Member
4. Sen. Enoch Kiio Wambua, CBS, MP - Member
5. Sen. Daniel Kitonga Maanzao, MP - Member

ABSENT WITH APOLOGIES

1. **Sen. James Kamau Murango, MP** - **Chairperson**
2. Sen. Beth Kalunda Syengo, MP - Member
3. Sen. Allan Kiprotich Chesang, MP - Member
4. Sen. Moses Kajwang, MP - Member

SECRETARIAT

1. Ms. Gloria Wawira - Clerk Assistant I
2. Ms. Caroline Njue - Clerk Assistant II
3. Ms. Regina Munyao - Legal Counsel
4. Mr. Hillary Cheruiyot - Research Officer
5. Ms. Belinda Ogolla - Research Officer
6. Ms. Violet Nalianya - Media Relations Officer
7. Mr. Simon Muinde - Audio Officer
8. Ms. Fahiya Ibrahim - Sergeant-at- Arms
9. Mr. Joseph Lekisima - Fiscal Analyst
10. Ms. Pamela Kimwattan - Protocol Officer

MIN/SEN/SCA/619/2024- PRAYER

The Chairperson called the meeting to order at 10.35 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/620/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Daniel Maanzo, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of:
   i. Minutes of the 83rd sitting held on Friday, 1st March, 2024;
   ii. Minutes of the 84th sitting held on Saturday, 2nd March, 2024;
   iii. Minutes of 85th sitting held on Sunday 3rd March, 2024;
   iv. Minutes of the 86th sitting held on Minutes of the sitting held on Thursday, 7th March, 2024;
   v. Minutes of the 87th sitting held on Monday, 11th March, 2024.
4. Matters arising;
5. ***Consideration of the Matrix on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022);***
6. Any Other Business; and
7. Adjournment.

MIN/SEN/SCA/621/2024: CONSIDERATION OF MINUTES OF THE PREVIOUS SITTING

The consideration of the minutes of the previous sittings was deferred.

MIN/SEN/SCA/622/2024: MATTERS ARISING

There were no matters arising.

MIN/SEN/SCA/623/2024- CONSIDERATION OF THE MATRIX ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

The Committee was taken through the matrix on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) as follows:

1. Sugar Catchment area

Mumias Sugar Company proposed that a catchment area should be defined as a zone in which a miller is restricted to buy cane and a grower to deliver cane. This is to curb free

markets and ensure predictability in sugarcane supply. It will also enable implementation of sugarcane incentives to growers.

Committee Resolution
The Committee resolved that the zones be as they are in the taskforce report and that zones be for both elections which will be rotational, representations and production.

2. Clause 4 – Functions of the Board
The Council of Governors proposed clause 4(2) (m) be amended to read "*register and license exporters, importers*". This is to align with the provisions of Part I Sections 1,9,29 and 32 of the Fourth Schedule to the Constitution. The Bill does not respect the functional and institutional integrity of County Governments.

Committee Resolution
The Committee rejected this proposal. There is need to have a centralized system to licence all value chain actors. The County Government will have representation in the Board. The Board will issue licences where need be.

3. Sugarcane Growers Apex
Oletipo Sugar Farmers proposed that instead of establishing cooperative societies, out grower societies should be established instead. This is because the previous out grower facilities fleeced farmers.

Committee Resolution
The Committee resolved to reject this proposal. This is because clause 2 defines an out-grower apex body to mean a company registered under the societies Act for the purpose of championing for the rights of growers. The out growers must be anchored in law so that they benefit like the other societies to give roles to the out-growers.

4. Industry
The Sugar Traders Association of Kenya proposes that the Bill defines industry to mean the sugar industry in Kenya and includes the growing of sugar cane and any other sugar producing crop, manufacturing, refining, warehousing, marketing and transportation of sugar and disposal of sugar and its by-products. This should be amended to include traders. This is because, the failure to include sugar traders as part of the definition for the sugar industry removes them as stakeholders in the sugar industry despite their significant interest in the sector. The exclusion of the sugar traders is discriminatory.

Committee Resolution
The Committee rejected this proposal.

5. New Clause – Headquarters of the Board

Various stakeholders proposed that an amendment should be made for the headquarters of the Board to be in Kakamega or Kisumu. This is because sugarcane farming is largely done in western part of Kenya and therefore it would be proper if the Board is brought closer to farmers.

Committee Resolution

The Committee rejected this proposal and resolved that the headquarters remains in Nairobi.

6. Clause 5 - Functions of the County Government

The Council of Governors proposed that new clauses on issue of nursery certificates, register and license of sugar and jaggery mills etc. should be added to the clause 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 excluding international trade are functions fully devolved to County Governments.

Committee Resolution

The Committee resolved to accept the proposal but with modifications.

7. Composition of the Board

Ms. Metrine, a member of the County Assembly of Bungoma County and the sugarcane farmers from Nandi proposed that the clause should be amended to ensure that gender balance is observed in the appointments made to the Board. This is to ensure compliance with the constitutional principle of a third gender rule.

Committee Resolution

The Committee resolved to provide for a general provision on gender balance.

8. Clause 21(6)

Kenya Sugarcane Manufacturers Association (KESMA) proposed that a new clause 21(6) should be introduced to enable the application of the Competition Act to the sugar industry. The clause should provide that no miller will be provided with a license to control more than 30% of the market share. This is because its against section 23 of the competition Act which prohibits any conduct that amounts to abuse of buyer power in a market in Kenya. Sugar poaching should be considered as abuse of dominant position and therefore should be prohibited. The proposal will protect small millers and to eradicate abuse of dominance by one sugar company in the sugar industry.

Committee Resolution

The Committee resolved to reject the proposal. This is to moderate the importation of sugar to curb or allow the farmers to give priority to sugar mills and out grower companies.

9. Clause 26- Duties of millers and retailers

The West Sugar Company Limited proposed that repackaging of sugar by companies and supermarkets should be banned.

Committee Resolution

The Committee rejected this proposal and retained what is in the Bill.

10. The Governor, Bungoma County proposed that repackaged sugar should bear information on the origin of the sugar.

Committee Resolution

The proposal is already covered in the Bill.

11. Clause 29 – Management of the Institute

The Council of Governors proposed that clause 29(1) should be amended to provide for a representative of the County Government as "(ca) one person with knowledge and experience in the agricultural sector nominated by the Council of Governors appointed by the Cabinet Secretary". This is because County Governments are integral in the implementation of the research proposals in the sector, it is therefore imperative they are represented in the Board.

Committee Resolution

The Committee resolved to accept this proposal and remove KALRO and replace by the COG. It also resolved to replace Universities with the Commission for University Education (CUE).

12. The **Sugar Traders Association of Kenya** proposed to include traders in the Sugar Research and Training Institute. This is because from the listed objectives of this statutory body the sugar traders who are major players in the sugar sector are entitled to representation.

Committee Resolution

The Committee resolved to reject this proposal.

13. The **Sugar Traders Association of Kenya** proposed that the President should appoint the chairperson of the Institute.

Committee Resolution

The Committee proposed to reject this proposal and retain that the CS should appoint the chairperson as is in the Bill.

14. The **Sugar Traders Association of Kenya** proposed the deletion of the provision that the director general of KALRO to sit on the Board. This is because there will be no value addition from this.

Committee Resolution
The Committee resolved to accept this proposal since having two directors sitting in one Board may cause conflicts.

15. Clause 33- Appointment of Sugar Industry Inspectors
The **Council of Governors** proposed that Clause 33(1) be amended by introducing a sub-clause (1a) immediately after clause (1). To provide for appointment of county sugar industry inspectors for purposes of effective implementation of the Act by the County Governments.

Committee Resolution
The Committee resolved to reject this proposal and leave it as it is in the Bill. The legal counsel will advise on an alternative word to use in clause 35(f) on the powers of the inspectors.

16. Nzoia Sugar Company proposed to insert the word ***"factory inspectors"*** in the heading.

Committee Resolution
The Committee resolved to reject this proposal since its already covered in the Bill.

17. Clause 53 – Quality safety and health control measures
Mr. David G. Okello, farmer from Muhoroni proposed insertion to regulate the importation of raw sugar. This is because raw sugar has been imported before under the guise that they are for further processing. In most cases they end up in the local market in that crude/unhealthy form. Currently, there is no miller in the Country with facilities for further processing.

Committee Resolution
The Committee accepted this proposal

18. Clause 58 – Sugarcane Pricing Committee
KEGSA proposed amending clause 58(2) (c) to read as "two persons nominated by the grower's apex bodies"

Committee Resolution
The Committee resolved to reject this proposal as its already covered in the Bill.

19. KEGSA also proposed the inclusion of the Sugar traders in the Sugar Pricing Committee. The committee is tasked with the formulation of a pricing formulae. This is all to be done in exclusion of the Sugar Traders. The matters of sugar pricing and sugar pricing formulae directly affect Sugar Traders and they should be represented in the Committee.

Committee Resolution
The Committee resolved to reject this proposal since the pricing formulae is in regards to cane.

20. The Kenya National Federation of Sugarcane Farmers (Busia Branch) proposed to amend the Bill to include the **farmer representatives, millers, county and national government officials in the Sugarcane Pricing Committee**.

Committee Resolution The Committee resolved to reject this proposal since its already covered ion the Bill.

21. Mr. David Okello, farmer from Muhoroni proposed to amend to provide that one of the representatives of farmers and County Governments should be an accountant.

Committee Resolution
The Committee rejected this proposal.

22. Clause 59 – Representative of a grower in a private milling company

The Kenya Sugar Manufacturers Association propose the deletion of the whole clause. The provision is not legally tenable as the directorship of private mills is regulated by the Companies Act. The provision will create absurdity in the running of private milling entities. Further, the clause discriminates against the board composition in private sugar mills.

Committee Resolution
The Committee rejected this proposal.

23. Clause 60 – Regulations
The Council of Governors proposed an amendment to read "60. (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."
This is because the process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.

Committee Resolution
This provision is already in the Bill.

MIN/SEN/SCA/624/2024- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/625/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 2:30 p.m. and the next meeting will be by notice.

SIGNED: .....DATE: 26/8/24.....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE EIGHTY-SEVENTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON MONDAY, 11TH MARCH, 2024 AT CHEMILIL SPORTS COMPLEX IN KISUMU COUNTY AT 10:00 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	Sen. David Wafula Wakoli, MP	-	Member
3.	Sen. Beth Kalunda Syengo, MP	-	Member

ABSENT WITH APOLOGIES

1.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
2.	Sen. Daniel Kitonga Maanzo, MP	-	Member
3.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
4.	Sen. Wahome Wamatinga, MP	-	Member
5.	Sen. Allan Kiprotich Chesang, MP	-	Member
6.	Sen. Moses Kajwang, MP	-	Member

SECRETARIAT

1.	Ms. Gloria Wawira	-	Clerk Assistant I
2.	Ms. Caroline Njue	-	Clerk Assistant II
3.	Mr. Reinhardt Choge	-	Clerk Assistant III
4.	Ms. Regina Munyao	-	Legal Counsel II
5.	Mr. Hillary Cheruiyot	-	Research Officer III
6.	Ms. Violet Nalianya	-	Media Relations Officer
7.	Ms. Rose Ometere	-	Audio Officer
8.	Ms. Benard Marwara	-	Sergeant-at- Arms

MIN/SEN/SCA/592/2024- PRAYER AND INTRODUCTIONS

The Chairperson called the meeting to order at 10.00 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/593/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Beth Syengo, MP and seconded by Sen. Wahome Wamatinga, MP as follows-

1. Prayer and introductions;
2. Introductory remarks on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022);
3. **Overview Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) in Kakamega County;**
4. **Submissions by the Public on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) in Kakamega County; and**
5. Closing remarks and adjournment.

MIN/SEN/SCA/594/2024- INTRODUCTORY REMARKS ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

The area Senator welcomed the members of the public to the public participation forum and urged them to be as transparent as they can be so that all their issues can be factored in the Bill and make the sugar sector better than it has been.

It was brought to the attention of the Committee that there had been reported cases of people burning cane at night. The main issue of concern on the Bill is zoning and that their region has been placed in a zone that is away from Kisumu.

MIN/SEN/SCA/595/2024- OVERVIEW OF THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN KISUMU COUNTY

The Sponsor of the Bill Sen. David Wafula Wakoli, MP gave an overview of what the Bill provides as follows:

i. Establishment of the Kenya Sugar Board whose mandate shall be, to regulate, promote and develop the sugar industry, coordinate activities of value chain actors, and to promote equitable access to benefits and resources of the industry by all interested parties;
ii. Licencing and registration - a requirement for any persons operating a sugar mill or a jaggery mill to be a holder of a current licence issued by the Board upon recommendation by the relevant county government;
iii. Establishment of the Kenya Sugar Research and Training Institutes (STRI) managed by a Board of directors;
iv. Appointment of sugarcane inspectors – who shall comprise of crop, factory, warehouse and transport inspectors. In performance of their duties, the inspectors

shall have powers to enter a building, inspect and require information as necessary; and

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

MIN/SEN/SCA/596/2024- **SUBMISSIONS BY THE PUBLIC ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN KISUMU COUNTY**

The public submitted that:

1. All farmers arrears had been cleared by the President and what was pending was the workers arrears which are yet to be cleared;
2. The catchment areas should be amended to include two (2) Directors, one from the upper side and the other from the lower side;
3. They supported the task force report fully;
4. They supported creation of the Kenya Sugar Board and they recommend that the headquarters to be in the Western Region preferably Kisumu or Kakamega. They preferred Kisumu because of the International Airport and the Port/Harbor;
5. Farmers should be paid within seven (7) days after cane delivery to the millers;
6. Millers within the central region should make arrangements to factor in paying farmers for the by – products e.g., molasses, bagasse, filter mud, ethanol and power generation; and
7. On zoning, some farmers were not supporting Soko Huru at all but they support Soko Huru within their sugar catchment area, where a farmer can deliver cane to any factory within their region.

MIN/SEN/SCA/597/2024- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/598/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 3:15 p.m. and the next meeting will be by notice.

SIGNED: .....**DATE:** 26/3/24.....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE EIGHTY-FOURTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON SATURDAY 1ST MARCH, 2024 AT NZOIA SUGAR COMPANY GUEST HOUSE IN BUNGOMA COUNTY AT 10:30 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	Sen. Beth Kalunda Syengo, MP	-	Member
3.	Sen. David Wafula Wakoli, MP	-	Member

ABSENT WITH APOLOGIES

1.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
2.	Sen. Wahome Wamatinga, MP	-	Member
3.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
4.	Sen. Allan Kiprotich Chesang, MP	-	Member
5.	Sen. Daniel Kitonga Maanzao, MP	-	Member
6.	Sen. Moses Kajwang, MP	-	Member

SECRETARIAT

1.	Ms. Gloria Wawira	-	Clerk Assistant I
2.	Ms. Caroline Njue	-	Clerk Assistant III
3.	Mr. Reinhardt Choge	-	Clerk Assistant III
4.	Ms. Regina Munyao	-	Legal Counsel II
5.	Mr. Gilbert Juma	-	Legal Counsel II
6.	Mr. Hillary Cheruiyot	-	Research Officer III
7.	Ms. Violet Nalianya	-	Media Relations Officer
8.	Ms. Rose Ometere	-	Audio Officer
9.	Ms. Sarah Rukwaro	-	Sergeant-at- Arms

IN ATTENDANCE

1. H.E. RT. Hon. Kenneth Lusaka, EGH,	-	Governor, Bungoma County
2. Hon. John Makali, MP	-	Kandui Constituency
3. Hon. Bishop Caleb Wanjala	-	MCA, Member Agriculture Committee
4. Mr. Michael Meru	-	County Commissioner

MIN/SEN/SCA/573/2024- PRAYER

The Chairperson called the meeting to order at 11.00 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/574/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Beth Kalunda Syengo, MP and seconded by Sen. David Wafula Wakoli, MP as follows-

1. Prayer and introductions;
2. Introductory remarks on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022);
3. **Overview Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) Bungoma County;**
4. **Submissions by the Public on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) in Bungoma County; and**
5. Closing remarks and adjournment.

MIN/SEN/SCA/575/2024 INTRODUCTORY REMARKS ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

The area Senator warmly welcomed members of the public to the public participation forum, emphasizing the importance of transparency. He urged attendees to openly share their concerns to ensure that all issues are considered in the Bill, with the aim of enhancing the sugar sector.

The Governor of Bungoma County informed the Committee that the County Executive had submitted their views and recommendations. He emphasized the crucial role of devolution in the agricultural sector, stressing the need to safeguard it. The Governor highlighted that devolution's significance cannot be overstated in the revitalization of the sugar industry and should be underscored in the Sugar Bill of

2022. According to the Fourth Schedule of the Constitution, the regulation and development of agriculture and trade fall under the jurisdiction of the County Governments. Therefore, he suggested that licensing for imports and exports should be managed at the county level, with relevant information shared with the Board for national statistical purposes.

MIN/SEN/SCA/576/2024: **OVERVIEW SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN BUNGOMA COUNTY**

The sponsor of the Bill Sen. David Wafula Wakoli, MP provided an overview of what the Bill provides as follows:

1. Establishment of the Kenya Sugar Board, tasked with regulating, promoting, and developing the sugar industry, as well as coordinating activities among value chain participants and ensuring equitable access to industry benefits and resources for all stakeholders;
2. Licensing and registration requirements, mandating that individuals operating sugar mills or jaggery mills hold a valid license issued by the Board, upon recommendation from the respective county government;
3. Creation of the Kenya Sugar Research and Training Institutes (STRI), to be managed by a board of directors;
4. Appointment of sugarcane inspectors, comprising crop, factory, warehouse, and transport inspectors. These inspectors will possess the authority to enter buildings, conduct inspections, and request necessary information in the performance of their duties; and,
5. Establishment of a Sugar Tribunal, composed of a chairperson and four other members appointed by the Chief Justice. The tribunal's jurisdiction will encompass the resolution of disputes among stakeholders within the sugar industry.

MIN/SEN/SCA/577/2024: **SUBMISSIONS BY THE PUBLIC ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN BUNGOMA COUNTY**

The public submitted that:

a) The Chairperson and Members of the Agriculture Committee should safeguard devolution, as the public looks to them for protection;

b) Employees of Nzoia Sugar Company have gone unpaid for twenty-four (24) months, despite the President's assurance that they would receive three (3) months' salary initially;
c) Advocates for the reinstatement of the sugar board;
d) Licensing of sugar mills should be overseen by Counties for clear statistics;
e) Officials on the board should prioritize the interests of farmers and hail from sugarcane-growing regions;
f) Outgrowers should be empowered to provide seeds;
g) Sugar Factories should be permitted to import sugar to stabilize prices, improve quality, and enhance cash flow in our factories;
h) The Bill should address the protection of catchment areas, as sugar cultivation takes 18 to 24 months to mature, preventing losses due to encroachment;
i) Repackaging of sugar should require consent from the factory, and the packaging should clearly indicate the factory's name;
j) Sugarcane should be weighed at the farm, and farmers should be compensated based on weight;
k) Cane testing should be based on sucrose content rather than weight;
l) Adequate funding should be allocated to the Sugar Research Institute to develop certified seed cane varieties;
m) Part IX of the bill lacks clarity regarding farmers' taxation and percentages.
n) The Sugar Board to be located in Bungoma;
o) Concerns about Clause 35(f) granting excessive powers to inspectors without clear reporting mechanisms, leaving room for corruption; and
p) Criticism that the Bill overlooks the welfare of sugar sector workers.

MIN/SEN/SCA/578/2024- ANY OTHER BUSINESS

The Committee resolved to visit the National Cereals and Produce Board offices in Bungoma County following reports of incidents at the institution the previous day. Disruptions occurred when farmers sought to obtain fertilizer. There were reports of parties engaging in illicit activities like the resale of fertilizer and a lack of sufficient supply.

The Committee was informed that:

1. There had been delays in the delivery of fertilizer and the NCPB site manager was in Nairobi to establish the cause of the delays;
2. On the previous day, the NCPB and County Government teams had conducted surveys of fertilizer-selling centres to be managed by the Counties;
3. Fertilizer is issued on a first come first served basis and there is not a sufficient supply of planting fertilizer;

4. Whereas 7,875 bags of top-dressing fertilizer were available in the store they could not be issued to farmers who needed planting fertilizer;
5. The County Government should hasten the process of setting up fertilizer-selling centres and securing more fertilizer to reduce pressure on the NCPB centre;
6. It was reiterated that the registration of farmers was undertaken by the Ministry of Agriculture and Livestock Development and fertilizer was issued based on the number of acres per registered farmer. Farmers received a code via text message stating the number of bags they were entitled to from the NCPB depot.
7. It was highlighted that in instances where some farmers require more bags than others, a max of 4 bags is issued per farmer based on availability in the store; and
8. Bungoma County needs 150,000 bags of fertilizer to satisfy the County's needs.

MIN/SEN/SCA/579/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 3:30 p.m. and the next meeting will be by notice.

SIGNED: .....**DATE:** 26/3/24.....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE EIGHTY-FIFTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON SUNDAY 2ND MARCH, 2024 AMBA COURT IN BUSIA COUNTY AT 10:30 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	Sen. Beth Kalunda Syengo, MP	-	Member
3.	Sen. David Wafula Wakoli, MP	-	Member

ABSENT WITH APOLOGIES

1.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
2.	Sen. Wahome Wamatinga, MP	-	Member
3.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
4.	Sen. Allan Kiprotich Chesang, MP	-	Member
5.	Sen. Daniel Kitonga Maanzao, MP	-	Member
6.	Sen. Moses Kajwang, MP	-	Member

SECRETARIAT

1.	Ms. Gloria Wawira	-	Clerk Assistant I
2.	Ms. Caroline Njue	-	Clerk Assistant III
3.	Mr. Reinhardt Choge	-	Clerk Assistant III
4.	Ms. Regina Munyao	-	Legal Counsel II
5.	Mr. Gilbert Juma	-	Legal Counsel II
6.	Mr. Hillary Cheruiyot	-	Research Officer III
7.	Ms. Violet Nalianya	-	Media Relations Officer
8.	Ms. Rose Ometere	-	Audio Officer
9.	Ms. Sarah Rukwaro	-	Sergeant-at- Arms

IN ATTENDANCE

1.	Mr. Arthur Odera	-	Deputy Governor, Busia County

2. Hon. Monicah Mung'ala	-	MCA, Special elect
3. Hon. Beatice Kahati	-	MCA
4. Hon. Peter K. Talam	-	MCA, Bukhayo West
5. Hon. Richard Okelo	-	MCA
6. Hon. Johnvoster Okech	-	MCA, Kingandole Ward
7. Hon. Makhoha O. Bonventure	-	MCA, Bukhayo Central
8. Hon Eunice Wandera	-	MCA
9. Mr. Mkok	-	CEC Agriculture
10. Dr. George S. Mukok	-	CECM Agriculture
11. Mr. Mwachaunga Chaunga	-	County Commissioner
12. Mr. Ahmed M. Abdille, HSC	-	County Police Commander
13. Mr. Charles Atiang Atiang	-	KASAP
14. Ms. Mercy Imo	-	Chief Officer Livestock
15. Mr. Kennedy Otieno	-	Crops Officer
16. Mr. Innocent Omboko	-	County Attorney
17. Mr. David Kithale	-	Parliamentary Liaison Officer, SDA

MIN/SEN/SCA/580/2024- PRAYER

The Chairperson called the meeting to order at 10.45 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/581/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Beth Kalunda Syengo, MP as follows-

1. Prayer and introductions;
2. Introductory remarks on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022);
3. **Overview Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) Busia County;**
4. **Submissions by the Public on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) in Busia County; and**
5. Closing remarks and adjournment.

MIN/SEN/SCA/582/2024 INTRODUCTORY REMARKS ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

The area Senator extended a warm welcome to members of the public attending the participation forum, urging them to prioritize transparency. He stated that their openness would ensure that all pertinent issues are considered in the Bill, to significantly improve the sugar sector.

The Deputy Governor of Busia County highlighted that 29,000 acres of land in Busia are dedicated to sugarcane cultivation. The County proposed that the sugar development levy should be shared with Counties to support sugar-related development initiatives. Regarding extension services, they proposed that the relevant clause should require that "millers shall provide extension services" instead of leaving it as is currently worded "may". On licensing, it was recommended that the county's role should extend beyond mere recommendation when a miller applies for a milling license.

MIN/SEN/SCA/583/2024: **OVERVIEW SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN BUSIA COUNTY**

The Sponsor of the Bill Sen. David Wafula Wakoli, MP provided an overview of the Bill as follows:

1. Establishment of the Kenya Sugar Board, tasked with regulating, promoting, and developing the sugar industry, as well as coordinating activities among value chain participants and ensuring equitable access to industry benefits and resources for all stakeholders;
2. Licensing and registration requirements, mandating that individuals operating sugar mills or jaggery mills hold a valid license issued by the Board, upon recommendation from the respective county government;
3. Creation of the Kenya Sugar Research and Training Institutes (STRI), to be managed by a board of directors;
4. Appointment of sugarcane inspectors, comprising crop, factory, warehouse, and transport inspectors. These inspectors will possess the authority to enter buildings, conduct inspections, and request necessary information in the performance of their duties; and
5. Establishment of a Sugar Tribunal, composed of a chairperson and four other members appointed by the Chief Justice. The tribunal's jurisdiction will encompass the resolution of disputes among stakeholders within the sugar industry.

MIN/SEN/SCA/584/2024: **SUBMISSIONS BY THE PUBLIC ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN BUSIA COUNTY**

The public submitted that:

i. The sugar sector is grappling with challenges such as sugarcane poaching, premature harvesting, issues with catchment areas, and problems related to contracting and double contracting;

ii. The 1% sugar levy deducted from farmers for road and feeder road construction should remain under the jurisdiction of the county, and there should be no increase in the levy percentage;
iii. Busia County has only two sugar factories and no farmers have been contracted to grow sugarcane under Mumias Company in Busia County;
iv. Busia County has faced transportation challenges for over 30 years having had to transport the harvested sugarcane to far flung factories;
v. Some participants submitted against zonning particularly in Busia County. They noted that Busia County is not designated as a specific zone but falls under the lower western zone. Consequently, farmers should have the freedom to sell their sugarcane wherever they choose;
vi. It was recommended that the sugar board be situated in Kisumu or Kakamega, where the sugar production is concentrated. Board officials should include representation from farmers, the Council of Governors, National Government officials, and a chairperson elected by farmers;
vii. Farmers should receive dividends from sugarcane by-products like molasses; and,
viii. The sugar importation committee should include representation from farmers.

MIN/SEN/SCA/585/2024- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/586/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 2:30 p.m. and the next meeting will be by notice.

SIGNED: .....**DATE:** 26/3/24 7th March 2024

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE EIGHTY-SIXTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON THURSDAY, 7TH MARCH, 2024 IN THE FIRST FLOOR BOARDROOM, REDCROSS BUILDING AT 10:00 A.M.

PRESENT

1. **Sen. James Kamau Murango, MP** - **Chairperson**
2. **Sen. Alexander Munyi Mundigi, MP** - **Vice-Chairperson**
3. Sen. Daniel Kitonga Maanzo, MP - Member
4. Sen. Enoch Kiio Wambua, CBS, MP - Member
5. Sen. Wahome Wamatinga, MP - Member
6. Sen. David Wafula Wakoli, MP - Member

ABSENT WITH APOLOGIES

1. Sen. Beth Kalunda Syengo, MP - Member
2. Sen. Allan Kiprotich Chesang, MP - Member
3. Sen. Moses Kajwang, MP - Member

SECRETARIAT

1. Ms. Gloria Wawira - Clerk Assistant I
2. Ms. Caroline Njue - Clerk Assistant II
3. Ms. Regina Munyao - Legal Counsel II
4. Mr. Gilbert Juma - Legal Counsel II
5. Mr. Hillary Cheruiyot - Research Officer III
6. Ms. Violet Nalianya - Media Relations Officer
7. Ms. Rose Ometere - Audio Officer
8. Ms. Benard Marwara - Sergeant-at- Arms

MIN/SEN/SCA/587/2024- PRAYER

The Chairperson called the meeting to order at 10.17 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/588/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Wahome Wamatinga, MP as follows-

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of-
   i. Minutes of the 82nd sitting held on Thursday, 29th February, 2024;
   ii. Minutes of the 83rd sitting held on Friday, 1st March, 2024;
   iii. Minutes of the 84th sitting held on Saturday, 2nd March, 2024; and
   iv. Minutes of the 85th sitting held on Sunday, 3rd March, 2024.
4. ***Consideration of the matrix on submissions on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) (Committee Paper No. 71).***
5. Any other Business; and
6. Adjournment.

MIN/SEN/SCA/587/2024 CONFIRMATION OF MINUTES

Minutes of the eighty-second (82nd) sitting held on Thursday, 29th February 2024. were confirmed as a true record of the proceeding having been proposed by Sen. Wahome Wamatinga, MP and seconded by Sen. David Wafula Wakoli, MP.

The confirmation of minutes of the eighty-third, eighty-fourth and eighty-fifth sittings was deferred.

MIN/SEN/SCA/588/2024: OVERVIEW SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN BUSIA COUNTY

1. **Part I of the bill (Interpretation)**

a) *The Commodities Fund* proposed that the definition of the word *'Fund'* be deleted and there was no rationale that was given.

Committee Resolution

The Committee resolved to reject the definition. This is because the definition is necessary for the establishment of the Sugar Development Fund which is sector-specific to the sugar industry.

b) *Sugar Catchment area* – Mumias Sugar Company proposed that the definition of 'sugar catchment area' should be redefined to mean a zone in which a miller is restricted to buy cane and a grower to deliver cane. This is to curb the free markets and ensure predictability in sugarcane supply. It will also enable the implementation of sugarcane incentives to growers.

Committee Resolution

The Committee resolved to redefine the definition of catchment area to mean a zone in which a miller is restricted to buy cane and a grower to deliver cane for purposes of both election purposes and cane development.

c) *Industry* The Sugar Traders Association of Kenya noted that the definition of the word industry as it is in the bill does not include traders. They proposed that the definition should be amended to include traders. The rationale was that the failure to include traders as part of the definition for the sugar industry removes them as stakeholders in the sugar industry despite their significant interest in the sector. The exclusion of the sugar traders is discriminatory.

Committee Resolution

The Committee resolved to reject the proposal.

2. Council of Governors proposed that an amendment be done to provide that a license can be issued by the respective County Government or Board as the case may be. This is to align with the provisions of the Bill. County Governments are supposed to license millers while the Board licenses importers and exporters.

Committee Resolution

The Committee resolved to defer this matter.

3. The Kenya National Federation of Sugarcane Farmers (Busia Branch) proposed to amend the Bill to provide that the Kenya Sugar Board be based in Kakamega or Kisumu City.

Committee Resolution

The Committee resolved that the headquarters of the Board will be determined by the County that has the largest acreage of sugarcane.

4. Clause 4 on the functions of the Board, The Council of Governors proposed that clause 4(2) (m) should read as 'register and license exporters, importers so as to align with the provisions of Part I Sections 1,9,29 and 32 of the Fourth Schedule to the Constitution. The Bill does not respect the functional and institutional integrity of County Governments.

Committee Resolution

The Committee resolved to reject this proposal. Licenses should be issued by the Board.

5. Clause 5 on the Functions of County Governments, the Council of Governors proposed that clause should be deleted and be replaced by a new Clause so as to align 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 excluding international trade are functions fully devolved to County Governments.

Committee Resolution

The Committee resolved to pend this proposal where applicable to assign roles that are devolved to the county government.

6. Clause 5(a) on the Functions of the County Governments, the KASAP, SUCAM, KESGA, CSGASA and SHSFAK proposed to amend to provide for the establishment of cess committee at each milling zones comprising of growers, millers, Kenya Rural Access Authority, and county government. This may create bureaucracy and conflict will delay implementation.

Committee Resolution

The Committee resolved to reject this proposal to maintain the quality of seedlings. Since County governments will work in collaboration with the Sugar Research Institute to propagate quality seeds.

7. Clause 5(e) on Maintaining of efficient road network, the KASAP, SUCAM, KESGA, CSGASA and SHSFAK proposed to amend the clause to provide for the establishment of cess committee at each milling zone comprising of growers, millers, Kenya Rural Access Authority and county government. This is because the roads in the sugar belt are in deplorable condition yet growers are charged 1 % of total tonnes delivered. The levy is submitted to counties without a framework for rehabilitation of county roads. Currently, cess is illegally deducted from farmers with no legal framework.

Committee Resolution

The committee has decided to approve the proposal. The responsibility for managing the funds collected from cess will be entrusted to the County Government. The Committee proposed that cess revenue collected from sugar-related actitivities should be ringfenced to support infrastructure specifically in the sugar-growing areas.

8. Clause 6 on establishment, powers and functions of the Board, the Kenya Sugarcane Growers Association (KESGA) proposed that the chairperson of the Bord should be elected from amongst the elected farmers' representations.

Committee Resolution

The Committee resolved to reject this proposal. The Mwongozo guidelines on governance recommend that Chairpersons to a board be appointed by the president.

9. On Composition of the Board, it was proposed to amend the Bill to ensure that gender balance is observed in the appointments made to the Board to ensure compliance with the constitutional principle of a third gender rule.

Committee Resolution

The Committee resolved to accept this proposal and provide a general clause on gender.

10. The Sugar Traders Association of Kenya proposed that a clause be introduced to include a representative of the traders in the membership of the Board.

Committee Resolution

The Committee resolved to reject this proposal.

11. Clause 18(5) on registration of millers, there was a proposal to amend the word '*may*' to '*shall'* to compel millers to offer extension services to ensure efficiency.

Committee Resolution

The Committee resolved to reject this proposal.

MIN/SEN/SCA/590/2024- ANY OTHER BUSINESS

1. The Committee resolved to conduct public participation on the Sugar Bill, 2022 (National Assembly Bills No. 22 of 2022) at Chemilil Sport Complex in Kisumu County from 10th -12th March, 2024.
2. The Committee resolved to continue consideration of the matrix of submission at the next meeting.

MIN/SEN/SCA/591/2024- DATE OF NEXT MEETING AND ADJOURNMENT

The meeting adjourned at 11:56 a.m. and the next meeting will be by notice.

SIGNED: .....**DATE:** 26/3/24.....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE EIGHTY-THIRD SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON FRIDAY 1ST MARCH, 2024 AT KAKAMEGA SOCIAL HALL IN KAKAMEGA COUNTY AT 10:30 A.M.

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	Sen. Beth Kalunda Syengo, MP	-	Member
3.	Sen. David Wafula Wakoli, MP	-	Member

ABSENT WITH APOLOGIES

1.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
2.	Sen. Wahome Wamatinga, MP	-	Member
3.	Sen. Enoch Kiio Wambua, CBS, MP	-	Member
4.	Sen. Allan Kiprotich Chesang, MP	-	Member
5.	Sen. Daniel Kitonga Maanzao, MP	-	Member
6.	Sen. Moses Kajwang, MP	-	Member

IN ATTENDANCE

SECRETARIAT

1.	Ms. Gloria Wawira	-	Clerk Assistant I
2.	Ms. Caroline Njue	-	Clerk Assistant III
3.	Mr. Reinhardt Choge	-	Clerk Assistant III
4.	Ms. Regina Munyao	-	Legal Counsel II
5.	Mr. Gilbert Juma	-	Legal Counsel II
6.	Mr. Hillary Cheruiyot	-	Research Officer III
7.	Ms. Violet Nalianya	-	Media Relations Officer
8.	Ms. Rose Ometere	-	Audio Officer
9.	Ms. Sarah Rukwaro	-	Sergeant-at- Arms

IN ATTENDANCE

1. Sen. Dr. Boni Khalwale, MP	-	Senator Kakamega County
2. Hon. Muteshi Sylvia	-	MCA
3. Hon. Josephat Walukha	-	MCA
4. Hon Geoffrey Sikolia	-	MCA
5. Ms. Joyce Opondo	-	Secretary, KESMA
6. Mr. William Kopi	-	Chairperson, Butali Sugarcane Farmers
7. Mr. Ibrahim Juma	-	Chair, KNFSF
8. Mr. Musa Ekaya	-	Bunge la Haki
9. Eng. Mukhwana Mohamed	-	Sugar Farmers Ass.
10. Mr. George W. Sagalla	-	Mumias Sugar Limited
11. Mr. Kilion Osur	-	Secretary General, KNFSF

MIN/SEN/SCA/566/2024- PRAYER

The Chairperson called the meeting to order at 10.54 a.m. followed by a word of prayer.

MIN/SEN/SCA/567/2024- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. David Wafula Wakoli, MP and seconded by Sen. Beth Kalunda Syengo, MP as follows-

1. Prayer and introductions;
2. Introductory remarks on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022);
3. **Overview Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) in Kakamega County;**
4. **Submissions by the Public on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022) in Kakamega County; and**
5. Closing remarks and adjournment.

MIN/SEN/SCA/568/2024 INTRODUCTORY REMARKS ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022)

The area Senator highlighted that one of the contentious issues was on zoning and that the principle behind zoning limits free markets. He explained that zoning forces farmers to take their cane to only one area irrespective of the amount being paid.

He further proposed the implementation of a regulation requiring millers to affiliate with out-grower associations. This would ensure that during sugar shortages, importation occurs, with 50% sourced from companies and the remaining 50% from out-growers.

MIN/SEN/SCA/569/2024: **OVERVIEW SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN KAKAMEGA COUNTY**

The sponsor of the Bill Sen. David Wafula Wakoli, MP outlined the key provisions of the Bill as follows:

1. Establishment of the Kenya Sugar Board, tasked with regulating, promoting, and developing the sugar industry, as well as coordinating activities among value chain participants and ensuring equitable access to industry benefits and resources for all stakeholders;
2. Licensing and registration requirements, mandating that individuals operating sugar mills or jaggery mills hold a valid license issued by the Board, upon recommendation from the respective County government;
3. Creation of the Kenya Sugar Research and Training Institutes (STRI), to be managed by a board of directors;
4. Appointment of sugarcane inspectors, comprising crop, factory, warehouse, and transport inspectors. These inspectors will possess the authority to enter buildings, conduct inspections, and request necessary information in the performance of their duties; and,
5. Establishment of a Sugar Tribunal, composed of a chairperson and four other members appointed by the Chief Justice. The tribunal's jurisdiction will encompass the resolution of disputes among stakeholders within the sugar industry.

MIN/SEN/SCA/570/2024: **SUBMISSIONS BY THE PUBLIC ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 34 OF 2022) IN KAKAMEGA COUNTY**

The Chairperson of the Agriculture Committee in the Assembly emphasized the need for a thorough examination of Part V of the Bill. He expressed concern that appointed inspectors must not intimidate millers and farmers. Additionally, he highlighted the importance of ensuring that the sugar board is geographically closer to Kakamega.

Submission from Killion - Killion's submission advocated for zoning aligned with the recommendations of the task force report. Zoning should be restricted to specific catchment areas, allowing farmers to sell their cane solely within their regulated zone or region.

The Butali Sugarcane Farmers Association, represented by Chairperson Mr. William Kopi, highlighted that while the free-market economy has its benefits, it's not entirely accessible to everyone. They advocated for zoning structured around regional catchment areas. Additionally, they put forward a proposal for the reinstatement of the sugar board.

Representing the workers in the sugar industry, Mr. Francis Wagara emphasized the vital role of farmers and stressed the importance of ensuring their well-being to preserve their employment opportunities. They expressed support for the implementation of zoning measures.

Ms. Joyce Opondo, representing KESMA, emphasized aligning regional considerations with the recommendations outlined in the task force report. Additionally, she proposed that in situations of sugar deficits necessitating importation, both millers and out-growers should receive an equitable share of 50%.

Butali Sugar Mills proposed that independent farmers should have the freedom to supply cane to any buyer. They expressed that limitations faced by contracted farmers led to the emergence of regional issues including zonning. They emphasized that regional considerations should not put undue pressure on farmers or foster excessive competition. Regarding Clause 19, they highlighted that its current drafting implies zoning is solely determined by electoral boundaries.

Mr. Ibrahim Juma highlighted that numerous challenges within the sugar industry emerged following the establishment of AFA and the removal of the sugar board. He emphasized the necessity of catchment area zoning for efficient crop management, clarifying that zoning should facilitate farmers' proximity to mills rather than being solely determined by electoral boundaries. He advocated against the restriction of farmers to a single miller, proposing that each catchment area should ideally host at least three or more mills. Regarding advocacy efforts, he suggested that the apex body should concentrate solely on advocacy rather than engaging in commercial activities, with out-growers assuming responsibility for farmer welfare and advocacy. As millers, he expressed opposition to the concept of soko huru.

Civil Society representative Mr. Musa Ekeya endorsed regional zoning. Concerning Clause 6(a), he suggested that rather than the president appointing the non-executive member, farmers on the board should have the authority to make this appointment.

MIN/SEN/SCA/571/2024- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/572/2024- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 2:30 p.m. and the next meeting will be by notice.

SIGNED: .....**DATE:** 26/3/24.....

SEN. JAMES KAMAU MURANGO, MP
(CHAIRPERSON)

MINUTES OF THE SEVENTIETH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON THURSDAY, 16TH NOVEMBER, 2023 AT COMMITTEE ROOM 4, MAIN PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1.	**Sen. James Kamau Murango, MP**	- **Chairperson**
2.	**Sen. Alexander Munyi Mundigi, MP**	- **Vice-Chairperson**
3.	Sen. Enoch Kiio Wambua, CBS, MP	- Member
4.	Sen. Wahome Wamatinga, MP	- Member
5.	Sen. Allan Kiprotich Chesang, MP	- Member
6.	Sen. Daniel Kitonga Maanzo	- Member
7.	Sen. Beth Kalunda Syengo, MP	- Member
8.	Sen. David Wafula Wakoli, MP	- Member
9.	Sen. Aaron Cheruiyot, MGH, MP	- Majority Leader/ Friend of the Committee
10.	Sen. Okiya Omtatah, MP	- Friend of the Committee
11.	Sen. Samson Cherarkey, MP	- Friend of the Committee

ABSENT WITH APOLOGIES

1.	Sen. Moses Kajwang, MP	- Member

IN-ATTENDANCE

1.	H.E. Rt. Hon. Ken Lusaka	- Chairperson Agriculture Committee, Council of Governors
2.	Ms. Babra Elizabeth Kakai	- Director, Governors Press Unit, Bungoma County Government
3.	Mr. Benson Loktari	- Council of Governors
4.	Mr. Robert Kiteme	- Council of Governors

5. Ms. Brenda Waithaka	-	Kenya Agricultural and Livestock Research Organisation
6. Ms. Roseline Wambua	-	Commodities Fund
7. Mr. Silas Nyaga	-	Commodities Fund
8. Mr. Christopher Sifuna	-	Chairperson, Kenya Sugar Growers Association
9. Mr. Killion Osur	-	Chairperson, Kenya National Federation of Sugar Farmers
10. Mr. Ibrahim Juma	-	Deputy Chairperson, Kenya National Federation of Sugar Farmers
11. Mr. Esera Olodi Okoth	-	Kenya National Federation of Sugar Farmers
12. Mr. Jayonti Patel	-	Chairperson, Kenya Sugar Manufacturers Association
13. Mr. R. S. Chatthe	-	Vice Chairperson, Kenya Sugar Manufacturers Association
14. Ms. Joyce Opondo	-	Secretary, Kenya Sugar Manufacturers Association
15. Mr. Amos Suge	-	Kwale International Sugar Company
16. Mr. Benard Soi	-	West Valley Sugar Company Limited
17. Mr. Fredrick Coomba	-	Transmara Sugar Company Limited
18. Mr. Rakesa K. R. Bvaji	-	Mumias Sugar 2021 Limited

SECRETARIAT

1. Ms. Caroline Njue	-	Clerk Assistant
2. Mr. Reinhardt Choge	-	Clerk Assistant
3. Ms. Regina Munyao	-	Legal Counsel
4. Ms. Belinda Ogolla	-	Research Officer
5. Mr. Hillary Cheruiyot	-	Research Officer
6. Ms. Violet Nalianya	-	Media Relations Officer
7. Ms. Rose Ometere	-	Audio Officer
8. Mr. Javan Loriko	-	SAA
9. Mr. Ian Mugo	-	SAA

MIN/SEN/SCA/487/2023- PRAYER

The Chairperson called the meeting to order at 10.18 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/488/2023- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. David Wakoli, MP and seconded by Sen. Wahome Wamatinga, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. **Consideration of Committee Paper No. 62 on the meeting with -**
   a) The Ministry of Agriculture and Livestock Development;
   b) The Kenya Sugar Manufacturers Association;
   c) The Council of Governors;
   d) The Kenya Agricultural and Livestock Research Organization;
   e) The Commodities Fund;
   f) Kenya Sugar Outgrowers Association; and
   g) Kenya National Federation of Sugarcane Farmers;
   to deliberate on stakeholder submissions on the Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022);
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/489/2023- CONSIDERATION OF COMMITTEE PAPER NO. 62 ON THE MEETING WITH STAKEHOLDERS ON THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO 34 OF 2022)

Submission from the Council of Governors

The Rt. Hon. Ken Lusaka made his presentation on the Amendments proposed by the Council of Governors. He noted that some of the proposed functionalities granted to the proposed Sugar Board encroach into the functions of the County Government. This is noting that the County Governments are already licencing Coffee Millers and therefore proposed that they should licence Sugar millers.

Submission from the Kenya Agricultural and Livestock Research Organization

The Agency only noted one item in the Bill on research, they proposed that the research function on matters Sugar should be domiciled in the Organisation and so should the monies apportioned towards Sugar research and crop development.

Submission from the Commodities Fund

The Committee noted that the Chief Executive Officer of the Commodities Fund had not sent the team representing her with prerequisite letters stating her absence. The Committee therefore resolved to accept the submissions for consideration in the Matrix of submissions without presentation before the Committee.

Submission from Kenya Sugarcane Growers Association

The Chairperson of the Association called for the inclusion of the writing off of public millers debts in the Bill, but the Committee resolved that the matter was not in the mandate of the Committee.

Submission from Kenya National Federation of Sugarcane Farmers

The Chairperson proposed that the current delineation of sugar catchment areas was unsatisfactory and suggested following the recommendations as proposed by the Sugar taskforce report.

Submission from Kenya Sugar Manufacturers Association

The Chairperson representing the various Private Mills in the country made his introduction and allowed the members accompanying him to introduce themselves.

The Committee was informed that current delineation of Sugar catchment areas would never sort out the current free-for-all nature that has brought the sugar industry to its knees, therefore following the recommendations of the Sugar taskforce report would alleviate the situation.

Further they decried the forced addition of a grower representative on the Boards of the private millers as this is already regulated by the Companies Act, No. 17 of 2015 and it further infringes on the rights of the private investors.

MIN/SEN/SCA/490/2023- ANY OTHER BUSINESS

There was no other business.

MIN/SEN/SCA/491/2023- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 01.40 pm and the next meeting will be by notice.

SIGNED: .....**DATE: .....23/11/2023**.....

SEN. JAMES KAMAU MURANGO, MP

(CHAIRPERSON)

MINUTES OF THE SIXTY-NINTH SITTING OF THE SENATE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES, HELD ON THURSDAY, 16TH NOVEMBER, 2023 AT COMMITTEE ROOM 4, MAIN PARLIAMENT BUILDINGS AT 9.00 AM

PRESENT

1.	**Sen. James Kamau Murango, MP**	-	**Chairperson**
2.	**Sen. Alexander Munyi Mundigi, MP**	-	**Vice-Chairperson**
3.	Sen. Wahome Wamatinga, MP	-	Member
4.	Sen. Beth Kalunda Syengo, MP	-	Member
5.	Sen. Edwine Sifuna, MP	-	Friend of the Committee

ABSENT WITH APOLOGIES

1.	Sen. Enoch Kiio Wambua, CBS, MP,	-	Member
2.	Sen. Daniel Kitonga Maanzo, MP	-	Member
3.	Sen. Allan Kiprotich Chesang, MP	-	Member
4.	Sen. David Wafula Wakoli, MP	-	Member
5.	Sen. Moses Kjwang, MP	-	Member

SECRETARIAT

1.	Ms. Caroline Njue	-	Clerk Assistant
2.	Mr. Reinhardt Choge	-	Clerk Assistant
3.	Ms. Regina Munyao	-	Legal Counsel
4.	Ms. Belinda Ogolla	-	Research Officer
5.	Mr. Hillary Cheruiyot	-	Research Officer
6.	Ms. Violet Nalianya	-	Media Relations Officer
7.	Ms. Rose Ometere	-	Audio Officer

MIN/SEN/SCA/479/2023- PRAYER

The Chairperson called the meeting to order at 10.18 a.m. followed by a word of prayer and introductions.

MIN/SEN/SCA/480/2023- ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Alexander Mundigi, MP and seconded by Sen. Wahome Wamatinga, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes the –
    a) Forty-Ninth Sitting held on Tuesday, 8th August 2023;
    b) Minutes of the Sixty-Seventh sitting held Thursday, 2nd November, 2023; and
    c) Minutes of the Sixty- Eighth sitting held on Tuesday 14th November, 2023.
4. Matters Arising;
5. ***Committee Paper No. 60 on the consideration of the Sugar Bill, 2022 (National Assembly Bills No.34 2022);***
6. ***Committee Paper No. 61 on the adoption of the Report on the Coffee Bill, 2023 (Senate Bills No. 10 of 2023)***
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/SCA/481/2023- CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The minutes of the Forty-Ninth, Sixty Seventh and Sixty Eighth meetings were deferred to the next meeting.

MIN/SEN/SCA/482/2023- MATTERS ARISING

This was deferred to the next meeting.

MIN/SEN/SCA/483/2023- CONSIDERATION OF THE SUGAR BILL, 2022 (NATIONAL ASSEMBLY BILLS NO 34 OF 2022)

The Committee was taken through the Sugar bill. The **Principal Object of the Bill** is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill shall restore the roles of the Kenya Sugar Board currently undertaken by the Sugar Directorate of Agriculture and Food Authority established under the AFA Act, 2013.

The Bill seeks 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

The Bill proposes to establish the Kenya Sugar Board, the Kenya Sugar Research Institute; and the Sugar Arbitration Tribunal.

MIN/SEN/SCA/484/2023- **ADOPTION OF REPORT ON THE COFFEE BILL, 2023 (SENATE BILLS NO. 10 OF 2023**

The Committee did not adopt the report on the Coffee Bill as the chairperson raised some issues on the licensing of Coffee direct sales. The licensing was to be given to four companies as coffee direct sales agents by Agriculture and Food Authority.

It was resolved that the report will be tabled on Tuesday, 21st November, 2023 after consultations on the matter have been done.

MIN/SEN/SCA/485/2023- **ANY OTHER BUSINESS**

There was no other business.

MIN/SEN/SCA/486/2023- **DATE OF NEXT MEETING AND ADJOURNMENT**

The meeting adjourned at 10.10 am and the next meeting will be by notice.

21/11/23

SIGNED: .....DATE: .....

SEN. JAMES KAMAU MURANGO, MP

(CHAIRPERSON)

APPENDIX 2: BILL

REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 34 of 2022)

THE SUGAR BILL, 2022

(A Bill published in the Kenya Gazette Supplement No. 150 of 2023 and passed by the National Assembly, with amendments, on September 27th, 2023)

N.A. /B/No. 34/2023

THE SUGAR BILL, 2022
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—Registration of millers.
19—Registration of a grower to a factory.
20—Requirements of licence to operate a mill.
21—Issuance of licence and licence fees.
22—Conditions of licence.
23—Sugar import.
24—Safeguard measures.
25—Industrial sugar.
26—Duties of millers and retailers.
PART IV—ESTABLISHMENT OF THE KENYA SUGAR RESEARCH AND TRAINING INSTITUTE
27—Establishment of the Kenya Sugar Research and Training Institute.
28—Functions of the Institute.
29—Management of the Institute.
30—Application.
31—Funds of the Institute.
32—Managing Director of the Institute.
PART V—APPOINTMENT OF SUAGR INDUSTRY

INSPECTORS
33—Appointment of crop inspectors.
34—Entry and inspection.
35—Powers of entry.
36—Obstruction of inspectors.
PART VI—FINANCIAL PROVISIONS
37—Funds of the Board.
38—Sugar Development Levy.
39—Sugar Development Fund.
40—Financial year.
41—Annual estimates.
42—Accounts and audit.
43—Annual report.
PART VII— ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL
44—Establishment of the Sugar Arbitration Tribunal.
45—Jurisdiction of the Tribunal.
46—Determination of disputes.
47—Powers of the Tribunal.
48—Removal of members of the Tribunal.
49—Vacancy.
50—Secretary of the Tribunal.
51—Remuneration of members and staff of the Tribunal.
PART VIII—MISCELLANEOUS PROVISIONS
52—Annual general meeting.
53—Quality, safety and health control measures.
54—Inspection for quality and safety.
55—Offences and penalties.
56—Sugar industry agreements.
57—General penalty.
58—Sugarcane Pricing Committee.
59—Representative of a grower in a private milling company.
PART IX—PROVISIONS ON DELEGATED POWERS
60—Regulations.
PART X—CONSEQUENTIAL AMENDMETS
61—Amendment of First Schedule to No.13 of 2013.
62—Amendment of First Schedule to No. 16 of 2012.
PART IX—SAVINGS AND TRANSITIONAL PROVISIONS

63—Transfer of staff.

64—Transfer of assets and liabilities.

65—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—PROVISIONS AS TO THE MEETINGS AND PROCEDURE OF THE TRIBUNAL

THE SUGAR BILL, 2022

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, 2022.

Interpretation.

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

"agreements" means agreements specifying the standard provisions governing the rights and obligations of growers, millers, out-growers, transporters and other value chain actors 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;

"Fund" means the Sugar Development Fund established under section 39;

"guidelines" means the guidelines for agreements between parties in the sugar industry set out in the regulations;

"grower" means a person who produces sugar-cane or any crop in Kenya for the manufacture of sugar;

"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;

"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;

"Institute" means the Kenya Sugar Research and Training Institute established under section 27;

"jaggery mill" means bare minimum technology equipment used to crush sugarcane to produce sugarcane juice which is processed through boiling to produce jaggery;

"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 designed as such by the Board where sugar crops are received, weighed or tested;

"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;

"retailer" means any person licensed to carry out retail business in Kenya and includes a supermarket, departmental store, retail shop, wholesale shop, distribution agency or a hawker;

"stakeholder" means a person with significant interest in the sugar industry and includes growers, out-growers, millers, transporters and other value chain actors in the industry;

"sugar" means crystalline or liquid sucrose derived from sugar crop in any of its recognised commercial forms, intended for human consumption or other use and includes jaggery, raw, brown, plantation (mill) white and industrial sugar;

"sugar beet' means any plant or part of a plant of the genus Beta or any of its hybrid that is grown for sugar production;

"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 and *gazetted*_as such by the Cabinet Secretary for the time being responsible for agriculture;

"sugarcane growers apex body" mean a national organization registered under the Societies Act whose membership shall comprise of mill level registered and contracted farmers' institutions and groups championing the rights under a cane supply agreement and in the catchment areas listed under the First Schedule and gazetted as such by the Cabinet Secretary for the time being responsible for Agriculture; *Cap 108*

"sugar crop" means a crop grown for the purpose of sugar production including sugarcane and sugar beet;

"sugarcane manufacturer's apex body" means a national body, composed of sugar and jaggery millers registered under the Societies Act, with the main objective being to lobby for the interest of the registered millers; *Cap 108*

"Tribunal" means the Sugar Arbitration Tribunal established under section 44.

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 value chain actors 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 flow of research findings to the interested parties;

(d) monitor and regulate the domestic market with a view to identify any distortion in the sugar market and advise the Government and interested parties on any corrective measures to be taken;

(e) advise the national and county governments on agricultural levies for purposes of planning, enhancing harmony and promotion of equity in the sugar industry;

(f) facilitate the sale, import and export of sugar and sugar products;

(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) in collaboration with county governments, implement an equitable mechanism for the pricing of sugar crop and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines;

(j) collaborate with national and international trade bodies on sugar related matters;

(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) register and license sugar and jaggery mills, exporters, importers and dealers;

(n) enforce and monitor compliance with standards along the sugar value chain;

(o) promote and advise on strategies for value addition and product diversification in the sugar industry;

(p) in consultation with the county governments and other stakeholders, formulate a strategic plan for the sugar sub-sector at least once every five years;

(q) in consultation with the county governments, formulate guidelines on an efficient, safe and economical transportation of sugar, sugar crop and disposal of unutilized by-products;

(r) gather and disseminate market information on regional and global supply chain dynamics for the benefit of stakeholders;

(s) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

(t) ensure that there is adequate public participation

and consultation with growers in its decision making affecting the sugar industry and its stakeholders;

(u) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and

(v) perform such other functions as may be conferred on it by this Act or any other written law.

Functions of county governments.

5. The County Government shall—

(a) issue certificates and inspect sugar crop nurseries in collaboration with the Kenya Sugar Research and Training Institute;

(b) offer and coordinate extension services on sugar crop production 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) maintain 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 appointed by the President;

(b) five representatives elected by growers from each sugar catchment area as per the First Schedule;

(c) two representatives each elected by private and public owned sugar mills who are 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; 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.

(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 fifteen years 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) (a), (b), (c) and (e) shall serve for a term of three years renewable for one further term upon election or nomination as the case may be.

(2) Members of the Board under section 6(1)(a), (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 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 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 through a competitive process 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.

Registration of millers.

18. (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 in accordance with regulations made under this Act.

(2) The Board shall issue to each 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 registration or certification of registration made or issued under this section.

(4) In issuing certificates of registration under sub-section (3), 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.

Registration of a grower to a factory.

19. (1) A miller shall not purchase sugar crop from, or accept sugar crop delivered by, a grower and a grower shall not sell or deliver sugar crop to a miller, unless that grower is registered in respect of the factory of the miller for the supply of sugar crop.

(2) No miller shall, without reasonable cause, refuse to accept or collect sugar crop for the manufacture of sugar delivered by a grower in accordance with a cane supply agreement.

(3) A miller or a grower who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not less than one million shillings or three times the market value of sugar in respect of which the offence is committed, whichever is greater, or to imprisonment for a term not less than one year, or to both such fine and imprisonment.

PART III–LICENSING AND REGISTRATION

Requirement of a licence to operate mill.

20. (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.

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

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

Conditions of a license.

22. (1) A license issued under this Act shall be subject to such conditions as the Board may determine and as prescribed in regulations.

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

Sugar import.

23. (1) A person shall not import or export sugar crop, sugar or sugar by-products without a valid licence issued by the Board in accordance with regulations made under this Act.

(2) A holder of a valid import or export licence shall not import or export sugar crop, sugar or sugar by-products unless they have obtained a pre-import permit or pre-export approval from the Board in accordance with regulations made under this Act.

(3) 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.

(4) 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.

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

Safeguard measures.

24. (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 sub-section (1), the Board shall ensure that—

(a) sugar shall be imported in the country only when there is sugar deficit and for a specific tonnage; and

(b) importers report to the Board on their imports, sales and stock as may be determined by the Board.

(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 value of the domestic sugar in respect of which the offence is committed, or two million shillings, whichever is higher, or to imprisonment to a term not exceeding ten years, or to both.

Industrial sugar.

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

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

Duties of millers and retailers.

26. (1) Every miller shall supply sugar and other sugar products to the domestic market in a package that satisfies the trade principle of traceability.

(2) Every retailer shall sell sugar products in a package that satisfies the trade principle of traceability.

(3) The Cabinet Secretary shall within six months of the enactment of this Act, make regulations for the better implementation of the provisions of this section.

(4) Any person who contravenes the provisions of this section commits and offence and shall, upon conviction, be

liable to imprisonment for a term not exceeding two years or a fine not exceeding one million shillings or both.

PART IV- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH AND TRAINING INSTITUTE

Establishment of the Kenya Sugar Research and Training Institute.

27. (1) There is hereby established a body to be known as the Kenya Sugar Research and Training 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.

28. (1) The Institute shall—

(a) promote, co-ordinate and regulate research in sugar, sugar crop, sugar by-products, sugar technologies and management practices.

(b) expedite equitable access to research information, resources, sugar technologies and innovations and promote the application of research findings in the development of the sugar industry.

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

(a) formulate policy and make policy recommendations in respect of sugar research, development and training to the Board in line with the national policy on sugar;

(b) determine and advise the Board on the resource requirements for sugar research in Kenya both at the national and county level;

(c) 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;

(d) formulate or approve medium and long term research plans, strategies and budgets of the Institute;

(e) 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;

(f) support and promote the training and capacity building in relation to sugar industry research;

(g) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;

(h) 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 industry research;

(i) conduct training in industry best practice and value-addition;

(j) ensure continuance of performance improvement in the field of sugar industry research;

(k) breed and promote sugarcane varieties suited for various agro-ecological areas of Kenya;

(l) conduct research on nutritional requirements of sugar crop in order to provide recommendations on the appropriate inputs;

(m) appraise technologies on land preparation, drainage and water management for economical cane sugar crop production;

(n) study and monitor pests and diseases that affect sugar crop and recommend appropriate control strategies;

(o) develop agronomic packages for sugar crop maintenance and management;

(p) institute socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;

(q) test, design and evaluate farm machinery transport and factory equipment for efficient sugar production;

(r) promote transfer of sugar industry technology based on applied research through relevant training and extension mechanism;

(s) foster research on sustainable productivity, environmental issues, human safety at field and factory levels;

(t) collaborate with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Institute's mission;

(u) charge fees or levies for rendered services and products;

(v) offer modular courses on various aspects of sugar industry technologies, innovations and management practices.

(w) perform such other function as may be conferred on it by this Act or any other written law.

Management of the Institute.

29. (1) The Management of the Institute shall vest in the Board of Directors which shall consist of—

(a) a chairperson appointed by the Cabinet Secretary through a competitive process in consultation with the Public Service Commission;

(b) one person nominated by sugarcane growers' apex body;

(c) one person nominated by sugarcane manufacturers apex body;

(d) one person nominated by the input supply system;

(e) one person nominated by universities;

(f) the Principal Secretary for the time being responsible for National Treasury or a

representative appointed in writing;

(g) the Principal Secretary for the time being responsible for Agriculture or a representative appointed in writing;

(h) the Director General of the Kenya Agricultural Livestock and Research Organization; and

(i) the Managing Director who shall be an *ex-officio* member.

(2) A person shall not be appointed as a chairperson of the Board of Directors of the Institute unless the person holds at least a degree or its equivalent in agricultural research or a related field from an institution recognised in Kenya and has at least ten years' experience in the sugar industry.

Application.

30. 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.

31. The funds of the Institute shall consist of-

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

(b) such monies as may accrue to or vest in the Board in the course of the exercise of its functions under this Act;

(c) monies from any other source as approved by the Board of Directors and Ministry responsible; and

(d) levies and fees accruing from rendered services and products.

Managing Director of the Institute.

32. (1) There shall be a Managing Director of the Institute who shall be appointed through a competitive process by the Board of the Institute and whose terms and conditions of service shall be determined by the Board in consultation with the Public Service Commission 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 doctorate degree in agricultural studies,

agronomy plant genetics and breeding, soil science or a related field 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 provisions of chapter six of the Constitution.

PART V– APPOINTMENT OF SUGAR INDUSTRY INSPECTORS

Appointment of crop inspectors.

33. (1) The Board shall appoint qualified sugar industry inspectors for purposes of undertaking its functions under this Act or any other written law.

(2) Notwithstanding any other provision of this Act or any other written law, the sugar industry inspector shall comprise of—

(a) a crop inspector;

(b) a factory inspector;

(c) a warehouse and transportation inspector; and

(d) any other inspector that the Board may consider necessary.

(3) A person shall not be appointed as a sugar industry inspector unless such person holds an academic or professional qualification prescribed by the Board.

(4) The Board shall maintain a register of persons qualified to be appointed as sugar industry inspectors.

(5) A person shall not be appointed as a sugar industry inspector unless such person is registered by the Board.

(6) The Board may appoint any other government agency as a sugar industry inspector for purposes of this Act.

(7) The Cabinet Secretary shall make Regulations for the better implementation of the provisions of this section.

Entry and inspection.

34. 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.

35. (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;

(f) 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

36. (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. inspectors.

(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

37. The funds of the Board shall comprise— Funds of the Board.

(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;

(c) all monies from any other source provided for or donated or lent to the Board; and

(d) the Sugar Development Levy.

38. (1) The Cabinet Secretary shall in consultation with the Board, by order in the *gazette*, impose a levy on domestic sugar not exceeding four per centum of the value and a four per centum of CIF value on imported sugar to be known as the Sugar Development Levy. 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 or her by way of the levy on or before the date prescribed by the order, a sum equal to three 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 Sugar Development Levy collected under subsection (2) shall be appropriated as follows—

(a) fifteen per centum shall be applied for factory development and rehabilitation;

(b) fifteen per centum shall be applied for research and training;

(c) forty per centum shall be applied for cane development and productivity enhancement;

(d) fifteen per centum shall be applied for infrastructural development and maintenance and shall be managed by Kenya Rural Roads Authority of the catchment area.

(e) ten per centum shall be applied for the administration of the Board; and

(f) five per centum shall be applied for the furtherance and exercise of the functions of sugarcane farmers organisations.

Sugar Development Fund.

39. (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.

40. The financial year of the Board shall be the period of twelve months ending on the thirtieth of June in every year.

Annual estimates.

41. (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.

42. (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 50(1) of the Public Audit Act (No.34 of 2015) shall, with necessary modifications, apply to any report made under this section.

Annual report.

43. (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

44. (1) There is hereby established a Tribunal to be

known as the Sugar Arbitration Tribunal.

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 in economics, trade, law, agriculture, research and engineering with at least five years' experience in arbitration, all of who shall be appointed by the Chief Justice through a competitive recruitment process.

(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 Third Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

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

45. (1) The Tribunal shall determine—

Jurisdiction of the Tribunal.

(a) disputes between sugar crop farmers;

(b) disputes between sugar crop farmers and the following-

(i) out grower institutions;

(ii) millers;

(iii) other interested parties;

(c) disputes relating to cane pricing;

(d) disputes relating to contract farming;

(e) disputes between millers; and

(f) disputes between any other interested parties.

Determination of disputes.

46. (1) The Tribunal shall expeditiously determine any dispute before, 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 within thirty days 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.

47. 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;

(c) to order the payment of costs; and

(d) to order that 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.

48. 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.

49. 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.

50. 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.

51. (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.

52. (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.

53. 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 standards and issues as set by the body from time to time being responsible for public health.

Inspection for quality and safety.

54. (1) The Board shall carry out physical inspection of premises licenced under section 21 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.

(3) 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.

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

Offences and penalties.

55. (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.

Sugar industry agreements.

56. (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) Without prejudice to the generality of subsection

(1), 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) the right of a grower to grow a sugar crop on their land;

(c) 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;

(d) 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;

(e) the functions to be executed by the Board in the execution of the agreement;

(f) 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

(g) 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.

General penalty.

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

(2) A person convicted of an offence under this Act for which no other penalty is provided for shall be liable—

(a) in the case of a first conviction, to a fine not less than one million shillings or three times the market value of the sugar in respect of which the offence is committed, whichever is greater, or imprisonment for a term not less than one year, or to both such fine and imprisonment; and

(b) in the case of a second or subsequent

conviction, to a fine not less than three million shillings or three time the market value of the sugar in respect to which the offence is committed, whichever is greater, or to imprisonment for a term not less than two years, or to both such fine and imprisonment.

Sugarcane pricing committee.

58. (1) There shall be a Sugarcane Pricing Committee (hereinafter referred to as "the committee").

(2) The Committee shall comprise of—

(a) a nominee of the Board;

(b) one person nominated by the sugar manufacturers' apex body;

(c) two persons nominated by the sugar growers' apex body;

(d) the Principal Secretary responsible for finance or a representative appointed in writing;

(e) the Principal Secretary responsible for matters related to Agriculture or a representative appointed in writing;

(f) two representatives from county government nominated by the Council of Governors; and

(g) a nominee of the Sugar Research and Training Institute.

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

(a) review sugarcane prices in consultation with the Sugar Research and Training Institute;

(b) provide a mechanism that remunerates farmers for other products delivered from the processing of the cane;

(c) ensure adherence to the negotiated cane processing formula;

(d) transition to payment based on quality; and

(e) enforce contracts between farmers and millers.

(4) The Committee shall come up with a pricing formula and in doing so shall take into account the—

(a) pricing mechanism for all other cane related charges paid by the farmer;

(b) an index that takes into consideration delayed harvesting;

(c) transportation cost per tonne per kilometre of sugarcane;

(d) inflation and adjustment cost of production; and

(e) formula as provided by the Sugar Research and Training Institute.

(5) The Board shall offer secretarial services to the Committee.

(6) The sugarcane prices set by the Committee under subsection (3) shall be reviewed after three months provided that the Committee may, with prior approval of the Board, undertake an early review of the sugarcane pricing.

Representative of a grower in a private milling company.

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

PART IX –PROVISIONS ON DELEGATED POWERS

Regulations.

60. (1) The Cabinet Secretary shall in consultation with county governments and 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 and collection centres;

(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;

(i) cane harvesting and transportation;

(j) the conditions with respect to the delivery, measurement, examination and testing of sugar crop;

(k) the seizure by an inspector of books, documents and sugar crop which, in the opinion of the inspector, may afford evidence of a contravention of this Act and the doing of such other things as may appear to the inspector to be necessary for ascertaining whether compliance has been made with this Act; and

(l) penalties for non-adherence to sugar industry agreements.

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

PART X —CONSEQUENTIAL AMENDMENTS

Amendment of the First Schedule

61. The Agriculture and Food Authority Act, 2013 is

amended in the First Schedule by deleting paragraph 1(ii). to No. 13 of 2013.

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

62. The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the words "Sugarcane.....Saccharum spp".

PART XI —SAVINGS AND TRANSITIONAL PROVISIONS

Transfer of Staff.

63. (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 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. No. 13 of 2013.

(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.

64. 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.

65. 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 29(b)]

DELINEATION OF SUGAR CATCHMENT AREAS

SUGAR CATCHMENT AREA	COUNTIES
Rift Catchment Area	Kericho, Nandi and Uasin

	Gishu
Upper Western	Bungoma, and Trans Nzoia
Lower Western Catchment Area	Busia, Kakamega, Siaya and Vihiga
Southern Catchment Area	Homa Bay, Kisumu, Migori, Narok and Kisii
Coastal Catchment Area	Kwale, Lamu, and Tana River

SECOND SCHEDULE [Section 10]

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

Meetings.

1. (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.

2. (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.

3. 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.

4. 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 authorized by the Board for that purpose.

THIRD SCHEDULE [Section 44.]

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 or she 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 27th September, 2023.

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

APPENDIX 3: ADVERTISEMENT

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 17th October, 2023 and Wednesday, 18th October, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 3rd November, 2023 at 5.00 p.m**.

	Bill	**Committee Referred To**	**Email Address**
a)	The Public Holidays (Amendment) Bill, 2023 (Senate Bills No. 31 of 2023)	Standing Committee on National Security, Defence and Foreign Relations	senate.nsdfr@parliament.go.ke
b)	The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
c)	The Public Transport (Motorcycle Regulation) Bill, 2023 (Senate Bills No. 38 of 2023)	Standing Committee on Roads, Transportation and Housing	roadstranshousingcomm.senate@parliament.go.ke
d)	The Public Finance Management (Amendment) Bill, 2023 (Senate Bills No. 40 of 2023)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
e)	The Street Vendors (Protection of Livelihood) Bill, 2023 (Senate Bills No. 41 of 2023)	Standing Committee on Trade, Industrialization and Tourism	tradeindtourismcomm.senate@parliament.go.ke

f)	The Energy (Amendment) Bill, 2023 (Senate Bills No. 42 of 2023)	Standing Committee on Energy	energycommittee.senate@parliament.go.ke
g)	The Sugar Bill, 2023 (National Assembly Bills No. 34 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries	agriculturelfcommittee.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at http://www.parliament.go.ke/the-senate/house-business/bills.

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

APPENDIX 4: MATRIX

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

STAKEHOLDERS VIEWS ON THE SUGAR BILL, 2022

(NATIONAL ASSEMBLY BILLS BILL NO. 34 OF 2022)

No.	CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE OBSERVATIONS/ COMMENTS AND DETERMINATION
1.	2- **Interpretation**	Commodities Fund	Delete the definition of the word **"Fund"**	No rationale given.	Disagreed. The definition is necessary for the establishment of the Sugar Development Fund which is sector-specific to the sugar industry.
		Council of Governors	Amend to provide that a licence can be ***issued by respective County Government or Board as the case may be;***	To align with the provisions of the Bill. County Governments are supposed to licence millers while the Board licenses importers and exporters.	The committee Disagreed this proposal. There is need to have a centralised system to licence all value chain actors. The county Government will have representation in the Board.
2.	**Sugar Catchment area**	Mumias Sugar Company.	Define to mean a zone in which a miller is restricted to buy cane and a grower to deliver cane	To curb free markets and ensure predictability in sugarcane supply.	The committee accepted the proposal to define a catchment area to mean a zone in which a miller is

				It will also enable implementation of sugarcane incentives to growers.	restricted to buy cane and a grower to deliver cane
3.	**Sugarcane grower's apex body.**	Oletipo Sugar farmers	Establish cooperative societies not out grower societies.	Previous out grower facilities fleeced farmers.	Disagreed. Clause 2 defines out grower apex body to mean an organization registered under the societies Act for the purpose of championing the rights of growers. Cooperative societies are registered under the Societies Act. The purpose of the Sugar Act is not to establish farmers organization but rather to recognise their existence and set out their role in the sugar industry.
4.	**Industry**	The Sugar Traders Association of Kenya	The Bill defines industry to mean the sugar industry in Kenya and includes the growing of sugar cane and any other sugar producing crop, manufacturing, refining, warehousing, marketing and transportation of sugar and disposal of sugar and its by-products. Amend to include traders.	The failure to include the sugar traders as part of the definition for the sugar industry removes them as stakeholders in the sugar industry despite their significant interest in the sector. The exclusion of the sugar traders is discriminatory.	Disagreed. The stake holder doesn't substantially contribute to the production regulation and promotion of sugar industry. Which is the main purpose of the legislation.
5.		• Kenya National Federation of	Amend the Bill to provide that the Kenya Sugar Board be	That sugar came faming is largely done in the western part	Disagreed. The committee noted the need to devolve

	New Clause – Headquarters of the Board.	Sugarcane Farmers (Busia Branch) • Mr. Muge (Busia Boda Boda rider • Asul Anyango • Anthlus Mugo.	based in Kakamega or Kisumu City.	of Kenya and therefore it would be proper if the Board is brought closer to the farmers. ~~To bring the Board closer to~~ Sugar cane farmers	services to the counties. It however took cognisance of the fact that there is already an existing infrastructure in Nairobi. The committee recommended that the headquarters be retained in Nairobi but be devolved gradually to Kisumu.
		• Central region-KNFSF	Be established in Kisumu	Kisumu has an international port and Habour.	
6.	**4-Functions of the Board**	Council of Governors	Amend clause 4(2) (m) to read as follows: ***4(2) (m). register and license exporters, importers***;	To align with the provisions of Part 1 Sections 1,9,29 and 32 of the Forth Schedule to the Constitution. The Bill does not respect the functional and institutional integrity of County Governments.	The committee Disagreed this proposal. There is need to have a centralised system to licence all value chain actors. The county Government will have representation in the Board.
7.	**5- Functions of County Governments**	Council of Governors	Proposes the following functions to be added to clause 5- (a) issue sugar cane nursery certificates; (b) <u>register and licence sugar and jaggery mills, warehouses and other dealers except importers and exporters in the county;</u>	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 excluding international trade are functions fully devolved to County Governments.	

			(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 ;** (e) Inspect sugarcane mills, jaggeries and warehouses located within their respective counties; (f) enforce county and national legislation on sugar industry code of practice and other industry standards; (h) enforce policies and guidelines on corporate governance in growers' institutions and millers;; and (j) Replace the word maintain with establish road networks. (k) develop and regulate sugarcane growers institutions in accordance to this Act and any other relevant law.		

	5. (a) Functions of County Governments	KASAP, SUCAM, KESGA, CSGASA AND SHSFAK.	Delete the entire section	• Licencing will be an avenue of county employees harassment of farmers who will be doing of seed multiplication. • Licensing will increase cost of production. • There is no seed system in place.	The committee Disagreed this proposal. • Agricultures is a devolved function and therefore the role is properly placed under the county government. • The counties will work in collaboration with the Sugar Research Institute in propagation of quality seedlings.
	5(e) Maintain efficient road network.	KASAP, SUCAM, KESGA, CSGASA AND SHSFAK.	Amend to provide for establishment of cess committee at each milling zones comprising of growers, millers, Kenya Rural Access Authority, and county government.	• The roads in the sugar belt are in deplorable conditions yet growers are charged 1% of total tonnes delivered. The levy is submitted to counties without a framework for rehabilitation of county roads. • Currently cess is illegally deducted from farmers with no legal framework.	The committee Disagreed this proposal because it may create bureaucracy and conflict which will delay implementation. Further, collection and utilization of Cess is governed by county laws.
		David G. Okello-Mkulima-Muhoroni	Fifteen per centum shall be applied for infrastructural development and maintenance and shall be managed by Kenya Rural Roads Authority of the catchment area	Counties face a lot of challenges especially on finances.	Pending.

			Insert a new clause that stipulates that – Kenya Sugar Board together with the County Government and KURA will the assess the entire Sugar belt roads once a year with a view to allocating funds to the roads that are in dire need of repair. At this stage, it will not matter whether it is a County Road or KURA.(Money should not be given to the County. Kenya Sugar Board can work with the County to identify Contractors.	There is need for harmony when it comes to issues relating to infrastructure.	Pending
8.	**6. Establishment, powers and functions of the Board**.	• Kenya Sugarcane Growers Association (KESGA), • Anthlus Muge.	The chairperson to the Board should be elected from amongst the elected farmers representatives.		Disagreed. *Mwongozo* guidelines on governance recommends that a Chairperson to a board should be appointed by the president.
		Kenya Sugarcane Farmers Association, Musa Ekaye.	Amend clause 6 (1) (a) to read as follows; The chairperson who must be one of the sugarcane farmers elected representatives, shall be elected the chairperson of the Board.	The appointment of a non-executive chairperson by the president will occasion political interference into the affairs of the Board.	

	Composition of the Board.	• Metrine (Member of the County Assembly of Bungoma County). • Sugarcane frmers from Nandi.	Amend the Bill to ensure that gender balance is observed in the appointments made to the Board	To ensure compliance with the constitutional principle of a third gender rule.	The Committee agrees with the proposal.
		The Sugar Traders Association of Kenya	Include a representative of the Traders in the membership of the Board.	• The Sugar Traders deserve a representative in the Sugar Board because they have a significant interest 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	Disagreed. The stake holder doesn't substantially contribute to the production regulation and promotion of sugar industry. Which is the main purpose of the legislation. Further, Licencing of sugar traders is a function of the county government and not the Board.
9.	**Clause 18-** **Registration of Millers.**	Nandi Sugarcane Farmers	Put in place measures to ensure new millers are licenced	The provision provides for only existing millers	Disagreed. The clause provides for registration and not licencing. However, Clause 4 provides for the functions of the Board which will include 4(2)m licencing of millers

	18.(5) Registration of millers	Dep. Governor . Hon Author Odera.	Amend the word may to compel millers to offer extension services.	To ensure efficiency.	Disagreed. Extension services is a function of the county Governments. The millers may however voluntarily provide this services to farmers.
10.	**19. Registration of growers to a factory.**	KASAP, SUCAM, KESGA, CSGASA AND SHSFAK.	Amend to add an out-grower institution.	To promote development of out grower institutions and cooperatives that provide services to the growers. In absence of out grower institutions, millers will charge exorbitant prices to the services and input to farmers.	Disagreed. The Bill under clause 2 defines an out grower to mean a person who has a sugarcane farm and a in force a supply contract. The definition therefore includes an out-grower company that grows cane
			Amend to provide that growers register with outgrowers institutions and to provide for agreement between growers and outgrowers institutions.	• To provide a framework upon which the government would identify a suitable and qualified apex body to work with. • To ensure sustainability through economies of scale • To offer harvesting and transport services • To provide extension services • Lower transaction costs through bulk buying. • Provide agro-processing facilities and undertake value addition.	
		Dep. Governor, Busia County.	Provide for agreement between millers.		The committee agreed with the proposal to provide for

					agreements between millers to cater for instances where a miller has oversupply of cane or is unable to process cane.
11.	**PART III**	KASAP, SUCAM, KESGA, CSGASA AND SHSFAK.	Amend to read Registration of dealers.	The part does not provide for registration.	The committee agreed with the proposal. The clause only provides for licencing.
12.	**20- Requirement of a license to operate a mill**	Council of Governors	Amend clause 20 to provide that licences to operate a sugar mill or a jaggery shall be issued by the respective County Government.	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 jurisdiction. The Board should only issue export or import licenses.	The committee Disagreed this proposal. There is need to have a centralised system to licence all value chain actors. The county Government will have representation in the Board.
		Dep. Governor, Hon. Arthur Odero.	The Board will issue licences on the recommendation of the county governments.	The role of County Governments should be more that recommending.	
13.	**21- Issue of licence and license fees**	Council of Governors	Amend clauses 21(1) (2) and (4) to align the clauses with clause 20 on the licencing body.	Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it therefore follows that County	The committee Disagreed this proposal. There is need to have a centralised system to licence all value chain actors. The county Government will have representation in the Board.

				Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses.	
	21(6)	KESMA	Proposed introduction of a new section 21 (6) to enable the application of the Competition Act to the Sugar industry. The clause should provide that no miller will be provided with a license to control more than 30% of the market share.	This is against s. 23 of the competition Act which prohibits any conduct that amounts to abuse of buyer power in a market in Kenya. Sugar poaching should be considered as abuse of dominant position and therefore should be prohibited. The proposal will protect small millers and to eradicate abuse of dominance by one sugar company in the sugar industry.	The committee Disagreed this proposal to allow for healthy competition within the industry. The provisions of Clause 19 which sets a requirement of registration of growers for purposes of delivery of cane will curb poaching.
14.	**22- Conditions of a license**	Council of Governors	Amend clause 22(1) to substitute the Board the respective County Government.	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 jurisdiction. The Board should only issue export or import licenses.	The committee Disagreed this proposal. There is need to have a centralised system to licence all value chain actors. The county Government will have representation in the Board.

15.	**23. Sugar imports.**	Kenya Sugarcane Growers Association (KESGA)	Provide a sample of sugar to be imported not necessarily allow a miller to import only the short fall.	The miller is already in the sugarcane business. This will prevent unfit sugar from entering the country.	The committee Disagreed this proposal. Clause 23 (3) (b) provides for provision of a sample of the sugar to be imported. Further, clause 24(3) provides that that the Government shall introduce other safeguard measures to protect the industry from unfair trade practices.
	Clause 23 **(3) (b)**	Nzoia Sugar Company	Amend to provide for a sample that meet the requirement of Kenyan sugar standard and provide pre-import verification certificate from the country of origin.	Quality control	
		Kenya Sugarcane Farmers Association	Provide that sugar to be imported by the millers in the event of a shortfall as opposed to people who are not sugar manufacturers.	Sugar millers have the necessary knowledge regarding sugar and therefore better placed to import sugar as opposed to the non-sugar manufacturers	
	Clause 23- Sugar imports.	KESMA	Amend the clause to provide that 50% of the sugar deficit in Kenya be imported by local millers based on their actual share of production of local sugar.	Millers will ensure sugar imports conform to Kenyan standards. Currently importation of sugar is done by people with no knowledge of the sugar industry and therefore leading to importation of sugar that is unfit for human consumption.	
		Sen. Boni Khalwale	When there is a defecit of sugar supply in Kenya, 50% of the sugar imports should be allocated to out growers societies.		The committee Disagreed this proposal to allow for health competition in the industry.

		Gov. Bungoma.	Sugar millers to be licenced to import sugar	Currently importation of sugar is done by people with no knowledge of the sugar industry and therefore leading to importation of sugar that is unfit for human consumption.	
		Mumias Sugar Company Ltd	Proposes that strict measures should be put in place to regulate sugar importation in Kenya by imposing tariffs and quotas on imported sugar	Protection of local millers	The Committee Disagreed this proposal. Clause 23 and 24 sets out safeguard measures on importation of sugar. The Bill further provides in 60(2) (f) for the Cabinet Secretary in consultation with county government and the Board to come up with regulations.
		Kenya National Federation of Sugarcane Farmers (Busia Branch)	Amend the Bill to establish a sugar importation committee comprising of farmers, millers and government representatives to moderate sugar importation countrywide.		The Committee Disagreed this proposal. Clause 11 of the Bill empowers the Board to establish its committees. Where suitable. Further, empowers the Board to co-opt such other persons to sit in the committee. Setting up a committee to deal with only sugar import will occasion unnecessary expenditure on public resources.

16.	**24. Safeguard measures**	Mumias Sugar Company	Put in place strict measures to regulate importation of sugar by imposing tariffs and quarters on imported sugar.	To protect millers from unfair competition and create a level playing field.	The Committee Disagreed this proposal. Clause 24 provides that sugar shall be imported only when there is a deficit.
		Butali Sugar Mills Limited	Regulate importation of sugar	Sugar imports cause instability in the market which affects mills cash flow and eventually inability to pay farmers leading to stagnation of income and local economy.	
		George Kasawa (Farmer, Nzoia Sugar)	Amend clause 24 to ban the importation of non-COMESA sugar to Kenya	There has been a massive importation of sugar which is unfit for human consumption	The Committee Disagreed this proposal. Clause 23 and 24 sets out safeguard measures on importation of sugar. The Bill further provides in 60(2) (f) for the Cabinet Secretary in consultation with county government and the Board to come up with regulations.
17.	26. Duties of a millers and retailers.	West Sugar Company Limited	Repackaging of sugar by companies and supermarkets should be banned		The committee observed that Clause 26 provides that a retailer shall sell sugar products in a package that satisfies the trade principal of traceability
		Gov. Bungoma	Repackaged sugar should be bear information on the origin of the sugar		

	26.	Nzoia Sugar Company	Replace at the "farm gate" with "weigh at the factory or collection centres"	There was an attempt to enforce the weighing of cane at the farm gate in the repealed sugar Act, 2002 but it met implementation challenges because mobile weigh bridges could not be availed at each farmers field.	The committee observed that the provision is not in the Bill. however, the Bill gives powers to the Cabinet Secretary under clause 60(2) to make regulations prescribing the establishment of weigh bridges and collection centres
		• Matayos sugarcane farmers, • John Orenge	Establish weigh bridges at the farm gate at the millers cost.	To ensure accountability.	
18.	**27. Sugar Research Institute.**	Mumias Sugar Company	Proposes adding a provision on investment in research	To drive innovation and productivity	The Bill under clause 38(6) (f) allocates 15% of the levy to the Sugar Research Institute to be applied for research and training.
	28. Sugar Research and Training Institute.	Mumias Sugar Company	Provide for research.	Prioritize investment in sugarcane research to drive innovation to enhance productivity by introducing fast maturing breeds and adoption of efficient cultivating practices.	Part iv provides for establishment of the Sugar Research Institute whose function in 28(2) include training in in industry best practices and to breed and promote sugarcane varieties suited for various ecological areas.
19.	29- Management of the Institute	Council of Governors	Amend the clause 29(1) to provide for a representative of the County Governments as follows: (ca) One person with knowledge and experience in the agricultural sector	The County governments are integral in the implementations of the research proposals in the sector, it is therefore imperative they are represented in the Board.	The Committee agreed to this proposal. And resolved to replace the nominee of input supply with a nominee of the county governments.

			nominated by the Council of County Governors appointed by the Cabinet Secretary;		
		The Sugar Traders Association of Kenya.	Include of Sugar Traders in the Sugar Research and Training Institute.	From the listed objectives of this statutory body the sugar traders who are major players in the sugar sector are entitled to representation.	Disagreed. The stake holder doesn't substantially contribute to the production regulation and promotion of sugar industry. Which is the main purpose of the legislation.
			The President to appoint a chair person.	Allowed by the state Corporation Act No. 11 of 1986 clause Subsection (1). To meet the Requirement by mwongozo	The committee observed that, a board is not a state corporation and therefore not subject to the State corporation Act.
	29(h)		Delete the provision that The Director general of KALRO to sit in the Board of the Institute	There is no value addition.	The committee accepted this proposal by observing that hhaving two Directors sitting in one board may cause conflicts.
20.	**33- Appointment Sugar Industry inspectors**	Council of Governors	Amend clause 33(1) by introducing a new sub-clause (1a) immediately after sub-clause (1) to read as follows: 33(1) The Board shall appoint qualified sugar industry inspectors for purposes of undertaking its functions under this Act or any other written law. (1a) The respective County	To provide for appointment of county sugar industry inspectors for purposes of effective implementation of the Act by the County Governments.	The Committee Disagreed this proposal. There is need to have a centralised system to inspect all value chain actors. The county Government will have representation in the Board.

			Executive Committee Member may appoint qualified persons as sugar industry inspectors for purposes of undertaking its functions under this Act or any other written law;		
	Part V – Provisions regarding sugar inspectors.	Bungoma Cane Farmers Association	Check on the powers of the inspectors	This will eradicate incidences of corruption by the inspectors	
	33.	Nzoia Sugar Company	Insert the word "factory inspectors" in the heading	The inspection is not limited to crop and land alone. It also includes premises.	The part that the stake holder is referring to was amended. It reads "appointment of sugar industry inspectors" and therefore the proposal is overtaken by events.
	34- Entry and inspection.	Nandi sugarcane farmers.	Provide for onward lending to growers and grower institutions to assit in cane development.		Clause 34 provides for the functions of inspectors. However the Bill under clause 56 provides for sugar industry agreements which under Clause 56(2) (c) includes sugarcane farming contracts on terms and condition of production of cane.

	Clause 35 (1) (f)	George Kasawa (Farmer, Nzoia Sugar)	Amend clause 35 (1) (f) on seizure of items where there is a reasonable cause that an offence has been committed under the Act.	The inspectors currently wield immense powers which are susceptible to abuse.	The Committee Disagreed this proposal. The powers are necessary to ensure compliance by stakeholders.
		Mr. James Etabale (Chairperson of the Agriculture committee of the Kakamega County Assembly)	Amend the Bill to check on the powers of the crop inspectors so as to minimize corruption and oppression by the inspectors.	The inspectors have been given immense powers which may be abused	
21.	**38- Sugar Development Levy**	Commodities Fund	38 (1) Proposes that the per centum should be at the discretion of the Cabinet Secretary based on the current prevailing circumstances. 38(6) Proposes to have fifty five per centum apportioned to the Commodities Fund for purposes of lending for factory and cane development.	No rationale given The Commodities Fund already has policies in place to lend and collect.	The Committee discussed the issue at length and resolved as follows- (a) the 15% that is allocated to research be remitted directly to the Kenya Sugar Research institute and (b) the 15% that is allocated for infrastructure development and maintenance be managed counties as a conditional grant to develop county roads.
		Council of Governors	Amend clause 38(6) to read as follows: 38(6)(a) Twenty per centum shall be remitted directly to the sugar growing counties	To align to the provision of the Fourth Schedule to the Constitution which bestows upon the County Governments with the	

			on a pro rata basis and applied for factory development and rehabilitation; (b) Fifteen per centum shall be applied for research and training; (C) Forty per centum shall be remitted directly to the sugar growing counties on a pro rata basis and applied for cane development and productivity enhancement; (d) Fifteen per centum be remitted directly to the sugar growing counties on a pro rata basis and applied for infrastructural development and maintenance; (e) Five per centum shall be applied for administration of the Board; and (f) five per centum shall be applied for the furtherance and exercise of the functions of the sugarcane farmers organizations.	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.	

		• Nitiri Farmers, David OPala,rasto Ojago • Jeremiah Sunguti-West Sugar	The oppose allocation of 5% of the sugar levy to farmers organizations.	• The organisations don't help farmers. • There are many organizations. • Some organisations are used by millers. • The funds will be mismanaged because there are no accountability systems in place. • 5% be allocated to millers to offer subsidized fertilizer to farmers.	The committee noted that there is a need to empower farmers organization to enable them champion for the rights of growers without any financial influence from other value chain actors.
		Nzoia Out growers Company Ltd	Amend to provide for a levy of 1% of gross cane proceeds to be charged on the growers to cane delivered to factories for out grower institutions.	•	The Bill has apportioned 5% of the levy to farmers organizations which
		Butali Sugar Mills Limited.	Government support to farmers.	Government to offer support to farmers in cane development through financing, reduced taxation and subsidized farm inputs.	Clause 38(6) provides for Sugar cane fund. 40% of the fund shall be allocated to cane development.
		West Sugar Company Limited	The levy should be charged at the rate of – Exports- 5% Miller- 3 % Consumer- 2%		Clause 38 of the Bill provides that the Cabinet Secretary shall impose a levy of 4% on domestic and imported sugar. The levy will be imposed on sugar which is the end product and therefore the cost will be passed on the entire value chain which includes
		Oletipo Sugar Farmers	Levy to be iposed as follws- • Imports and exports- 5% • Local miller 3% • Consumer 2 %	The levy should be spread from miller to consumer to ease the burden on the millers.	

					growers, millers , consumers, exporters, importers among others.
		Nzoia Out growers Co. Ltd	Amend clause 38 (6) (a) – to provide as follows— a) 10% shall be applied by the board for income or price stabilization for sugar growers. b) 5% shall be applied for out grower's institutions to enable them carry out their roles.		The Committee discussed the issue at length and resolved as follows- (a) the 15% that is allocated to research be remitted directly to the Kenya Sugar Research institute and (b) the 15% that is allocated for infrastructure development and maintenance be managed counties as a conditional grant to develop county roads.
22.	39- Sugar Development Fund	Commodities Fund	Proposes the deletion of the clause.	Within the Commodities Fund, there is Sugar Development Fund which does exactly what the clause proposes.	The Commodities fund is established under the crops Act. The Bill removes sugar from the purview of the Crops Act hence the need to establish a fund that is dedicated to the sugar industry.

		Dep. Gov Busia- Athur odera	The levy does not address itself to counties.	Agriculture is a devolved function	The Committee discussed the issue at length and resolved as follows- (a) the 15% that is allocated to research be remitted directly to the Kenya Sugar Research institute and (b) the 15% that is allocated for infrastructure development and maintenance be managed counties as a conditional grant to develop county roads.
		Kenya Union of Plantation and Allied Workers (Chemilil Branch)	70% of the Levy should be allocated to sugarcane development, this will ensure availability of raw materials for the sustenance of the sector.	To ensure availability of raw materials for the sustenance of the sector.	The Committee discussed the issue at length and resolved as follows- (a) the 15% that is allocated to research be remitted directly to the Kenya Sugar Research institute and (b) the 15% that is allocated for infrastructure development and maintenance be managed counties as a conditional grant to develop county roads.

23.	**51(5) Remuneration of members and staff of Tribunal**	Nzoia Sugar Company.	Include the following after the word unfair trade practices like repackages of sugar made locally or imported without the manufactures consent.	The Government shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices.	The Bill does not have a Clause 51(5) However, Clause 26(2) provides that every retailer shall sell products in a package that satisfies the trade principle of traceability. Clause 26(4) further makes contravention of the provision an offence.
24.	**53. Quality, safety and health control measures.**	David G. Okello Mkulima-Muhoroni	Insert a clause to regulate the importation of raw sugar	Raw sugar has been imported before under the guise that they are for further processing. In most cases they end up in the local market in that crude/unhealthy form. Currently, there is no miller in the Country with facilities for further processing.	Clause 53 provides that importer shall ensure that all sugar imported in the country meets the safety standards. The clause does not expressly provide for importation of raw sugar. Further, Clause 60 gives the Cs delegated powers to regulate importation of sugar and its by-products.
25.	**55.Offences and penalties.**	Nandi sugarcane farmers.	Provides for – • mode of election of farmers representatives in private mills. • Mapping of areas and creations of stations where members will vote.		Clause 55 does not provide for elections of directors, however the Committee recommended that the procedure of election of Board members be prescribed by the Cabinet Secretary in the regulations.

26.	**58. Sugarcane Pricing committee**	KESGA Kenya Sugarcane Farmers Association	Amend clause 58 (2) (c) to read as follows; Two persons nominated by sugar grower's apex bodies.		The provision already exists in the Bill.
		The Sugar Traders Association of Kenya	Inclusion of Sugar traders in the Sugar Pricing Committee	The committee is tasked with the formulation of a pricing formulae. This is all to be done in exclusion of the Sugar Traders. The matters of sugar pricing and sugar pricing formulae directly affect Sugar Traders and they should be represented in the Committee	The committee Disagreed this proposal. The pricing formulae is in regards to cane as opposed to refined sugar.
		Kenya National Federation of Sugarcane Farmers (Busia Branch)	Amend the Bill to include the **farmer representatives, millers, county and national government officials in the Sugarcane Pricing Committee**.		The proposal is already covered under clause 58.
		John Orenge	Pricing of cane to be dictated by the current market prices.		Clause 58 (4) & (6) sets out the factors that the Committee shall take into consideration in determining the prices of sugar. Further, sugar prices will be reviewed after every

					3 months which will allow the Committee to factor in the market changes.
		David G. Okello Mkulima-Muhoroni	Amend to provide that one of the representatives of farmers and County Goverments should be an accountant.		The committee Disagreed this proposal. The pricing formulae is based on a scientific formula which will factor in different aspects in the sugar industry which are not limited to accounting. The principal secretary for finance is also a member of the Committee.
	58. New.	Nzoia Sugar Company	Install and maintain appropriate systems and technologies for sampling sucrose content in sugarcane delivered.	Operationalization of cane testing units for measuring sucrose will require that the units are installed at the factory and cane collection centres.	The Bill under clause 58(3) (b) gives powers to the pricing committee to transition payment based on quality as opposed to quality. Further clause 60(2) gives powers to the Cabinet Secretary to make regulation on the conditions with respect the delivery, measurement, examination and testing of sugar crop.
		David G. Okello Mkulima-Muhoroni	Establish well calibrated cane testing units To ensure that sugar is priced based on sucrose levels as opposed to weight.		
27.	58 (3) (b)	• Anthlus Mugo • Central region-KNFSF.	Sugar by products to benefit farmers.		

28.	**59- Representative of a grower in a private milling company**	Kenya Sugar Manufacturers Association	Propose the deletion of the whole clause.	The provision is not legally tenable as directorship of private mills is regulated by the Companies Act. The provision will create absurdity in the running of private milling entities. Further, the clause discriminates against the board composition in private sugar mills.	The Committee accepted the proposal to delete the clause. The Companies Act, 2015 is the primary law governing all private companies in Kenya. Under this law, A private company is governed by its constitutive documents; the Articles and memorandum of Association which bind its shareholders. The decision to appoint members of the Board is therefore vested in the owners of the company for the benefit of the company. As such it may not be legally tenable to have farmers on the Board.
		David G. Okello Mkulima-Muhoroni	Out grower organizations should call for meetings specifically for this purpose and agree on the representatives. Millers should not pick whom they want to deal with.		The Committee agreed to the proposal and recommends that the process of election be provided for in the regulation.

29.	**60- Regulations**	Council of Governors	Amend to read as follows: 60. (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.	The process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.	This provision is already in the Bill under clause 60(1).
		KESGA	Establishment of weigh bridges and collection centres should be on the farms. And the transport charges to be borne by the miller.	so that the farmer can confirm tonnage.	Clause 60 (2) (d) provides that the Cabinet Secretary will make regulations on weigh bridges. The details will be contained in the regulations
		Nzoia Out growers Company Ltd.	Amend to provide that early maturing of cane shall not be later than 12 months and late maturing shall not be later than 20 months and for the ratoon crop not later than 16 months.	The currently provided period for harvesting is too long.	The Bill does not set the maturity period for cane, however Clause 60(2) (i) gives the Cabinet Secretary powers to make regulations on cane harvesting.
30.	**First Schedule-** **Delianation of sugarcane catchment areas.**	Kenya National Federation of Sugarcane Farmers	Proposes Sugar Catchment areas as follows: - **Central Region** (Kisumu, Southern Nandi and Kericho) **Upper Western Region** (Bungoma, Kakamega, Trans-Nzoia, Uasin Gishu and Northern Nandi Counties) **Lower Western Region** (Mumias area, Busia and Siaya Counties)	These are the correct geographical areas as per the taskforce Report recommendations for delineation of the sugar regions. Clustering them by these zones makes more economic sense. It is not practical or viable for farmers to transport cane to various	On the issue of zoning and delineation of catchment areas, the committee resolved as follows; 1. The catchment areas be retained as they appear in the first schedule of the Bill.

			Southern Region (Migori, Homa bay, Kisii and Narok Counties) **Coastal region** (Kwale, Tana River and Lamu Counties).	sugar factories at far distances in the regions.	2. Allow zoning for the purpose of; (a) Delivery of cane (b) Milling of cane (c) Election of Board members 3. A grower is free to deliver cane to a miller within a catchment area so long as they have entered into a cane supply agreement. 3. a commercial grower desirous of supplying cane to a miller outside a catchment area shall apply to the Board for an exemption. 4. provide for agreements between millers to facilitate delivery of cane in instances where; (a) A mill has broken down (b) Over supply of cane
		Butali Farmers Association	Delianation of regions. **Central-** Kisumu, Southern Nandi, and Kericho Upper Western- Bungoma, **Kakamega** - Exluding Mumias area, Tranzoia, Uasingishu, and northern Nandi. **Lower western-** Mumias, Busia and Siaya **Sourthern-** Migori, Kisii, Narok. **Coastal-** Kwale, Tanariver, and Lamu.	The purpose of the regions is to Compel the millers to pay more attention to their region by working on cane development to improve productionfor the benefit of both the millers and farmers.	
		West Kenya Sugar Company Limited.	Delineation of catchment areas.	• This is against the constitution which provides for freedom of association including the right to form, join or participate in activities of association of any kind. • Clustering millers will be a disadvantage to some millers who have interest of supporting the farmers.	

		• Nitiri Farmers, David Opala, Rasto Ojago • Jeremiah Sunguti-West Sugar	The area of representation is very large hence farmers will not be well represented. The representation should be per county.	The purpose of establishment of catchment area is not clear.	
		Busia Sugar Farmers	Catchment areas should not be determined on the basis of counties but rather sugar factories. In this case, they propose that owing to the unique nature of Busia County, the Sugar companies in Busia County (Olepito Sugar and Busia Sugar) should be placed in the same catchment area at the exclusion of Mumias Sugar.	At the time of clustering Sugar Companies into catchment areas, Mumia Sugar was a public company. Currently, Mumias Sugar is a private company and has not participated much in cane development. Further owing to its high crashing capacity compared to Busia Sugar Ltd and Olepito Sugar, the latter companies will be highly disadvantaged.	
		Oletipo Sugarcane Farmers.	Amend to provide that representation to be per county. Each mill should have a representative in the Board.	The regions are very large for one representative.	

		• Mumias Sugar Company Ltd, • Butali Sugarcane Farmers, • Kenya National Federation of Sugarcane Farmers (Kakamega Branch) • Kenya Sugar Manufacturers Association • Mr. James Etabale (Chairperson of the Agriculture committee of the Kakamega County Assembly) • Kenya Sugar Manufacturers Association	**Proposes that clustering of catchment areas as per the Sugar Task Force Report 2020 as follows-** **Central-** Kisumu, Southern Nandi, and Kericho Upper Western- Bungoma, **Kakamega** - Exluding Mumias area, Tranzoia, Uasingishu, and northern Nandi. **Lower western-** Mumias, Busia and Siaya **Sourthern-** Migori, Kisii, Narok. **Coastal-** Kwale, Tanariver, and Lamu	• This will allow farmers the flexibility to sell their cane to an average of three mills. • To reduce on the incidences of cane poaching and protect both the sugar millers and the farmers • To provide a conducive environment for inter-mill cane transfer within the mill catchment areas.	
		• Federation of sugarcane farmers- Central Region. • Busia Sugar Industry Limited	The central region should be allocated two directors since its too big.		

		Kenya National Federation of Sugarcane Farmers (Busia Branch)	Sugar Companies should be clustered in regions (Busia region should only comprise of Olepito and Busia Sugar Company Ltd)	To safeguard Busia County Sugar Mills.	
		Bernard Wanyonyi (Employee Nzoia Sugar Company and the National Chairperson of the Kenya Union of Sugar Plantation and allied workers	Amend the Bill to expressly provide for zoning of sugar industries as opposed to the use of the word "catchment area" as used in the First Schedule.		
	Zoning	Kenya National Federation of Sugarcane farmers.	to a pool of millers within the ıills. **Taskforce Report.** er representation at the national	▪ To be able to exercise the freedom of choice on where to supply cane which is independent and private property. ▪ Extension services are viable and practical within the regions ▪ Cost of transport which is the biggest factor in production and supply of cane, is affordable within the regions. ▪ The proposal was adopted in consultation of farmers and millers. ▪ Free for all has brought down sugar sector and grounded government mills. It has also caused	

				the unregulated setting up of weigh bridges which encourages poaching.	
	Delineation of catchment areas.	Muhoroni Sugar Company Ltd.	Review the zoning down to mill as command zones as micro administrative areas within the regional zones as outlined below. (i) Central Region- Kisumu, Southern Nandi sub counties and Kericho. (ii) Upper Western Region- Bungoma, Kakamega excluding Mumias area,Trans Nzoia, Upper Nandi and Uasingishu counties. (iii) Lower western Region Mumias area, Busia and Siaya counties (iv) Southern Region- Migori Homabay, Kisii, and Narok Counties. (v) Coastal Region- Kwale. Tana River and Lamu Counties. (vi) Other regions as will be defined by the regulator.	The rift valley region as proposed will only have one mill. West valley sugar company whose crashing capacity is way below the available cane in the region. The proposed Southern region spanning from Kisumu County all the way to Kisii and Narok is too large and crowded with 7 sugar companies which will make it difficult to manage.	
	Zoning	Central region- KNFSF	Support zoning with soko huru within the zones.	▪	

	Zoning	West Sugar Company	The stake holder is in support of free market. Catchment areas should only be for the purpose of electing farmers representatives to the Board.	▪ Regional Zoning is a punitive idea is bound to enslave the farmers. ▪ Farmers will have freedom of choosing a miller of their choice. ▪ Zoning will curtail competition which will be detrimental to the farmers	
	Zoning	KASAP, SUCAM, KESGA, CSGASA AND SHSFAK.	In support of no zoning.	It has reduced transport costs through establishment of multiple weigh bridges near the farms.	
	Free market	Kenya National Federation of Sugarcane Farmers. Muhoroni Branch Nyando Sugar Belt.	The farmers from this region object free marketing of sugar cane.	• The region has 4 well established sugar milling companies, namely- (i) West Valley Sugar Company. (ii) Muhoroni Sugar Company (iii)Kibos and allied Sugarcane Milling Company. (iv)Chemilil Sugar Company and (v) Revival of Miwani Sugar Company. • The region is already experiencing cane shortage and therefore allowing other Millers outside the region to source cane from	

				the region will affect supply of cane to the millers established within the region.	
	Zoning	Oletipo Sugar Farmers, Cyrus o. , Janet Achano.	In Support of free market.	Allow farmers to exercise the freedom of choice and association.	
		George Kasawa (Farmer, Nzoia Sugar)	Amend the Bill to provide for the farmers flexibility to supply cane to any miller.	Zoning affects farmers negatively as sometimes they are forced to stay with cane in their farms owing to breakdown of a sugar factory or simply laxity to harvest a farmer's cane.	
		Daniel Butali	Farmers should register with a specific miller	Farmers will be funded by the miller for cane development. A grower should have choice of a pool of three millers	
		Ibrahim Juma	In support of zoning. The zones should have at least 3 millers. Farmers should be free to engage any miller within the region.	It will encourage millers to invest in cane development	
		Matayos Sugarcane farmers	In support of Zoning		

31.	General comments.	Reginal Commissioner meeting with sugarcane millers and other stakeholders.	Meeting resolved to adopt the following resolutions: (i) Impose and enforce ban on night transportation of cane. Impose and enforce on night harvesting of cane. (ii) Development of standard cane supply contract by AFA. (iii)Sugar Mills to operate within their region. (iv)Development of an agreement on modalities of cane transfer across regions. (v) MOUs signed be adhered to and be shared with Regional and County Security teams for enforcement. (vi)No transfer of cane across regions. (vii)Millers to supply a digital register of contracted farmers and to update the registers monthly. (viii) Cane poaching strictly prohibited. (ix)Standard harvesting permit be developed		

			and enforced by AFA Sugar Directorate. (x) Ban on harvesting of immature cane. (xi) Sugar weighing and buying centres located outside a miller's catchment centre be closed immediately. (xii) New and future weighbridges within a region be opened only with the concurrence of AGA Sugar Directorate. (xiii) Reported cases be resolved amicably and withdrawal of the same be considered prorata basis.		
	Farmers' cooperative societies.	West Sugar Company Limited.	Support Creation of cooperatives societies and not out grower societies as proposed in the Bill,	To assist farmers through loans and advances.	The Bill under clause 38(6) (f) proposes 5% of the levy to be applied for furtherance of functions of sugarcane farmers organization.
		Nzoia Out growers Company Ltd.	Establish an Apex body whose membership is corporate and brings together all the out growers' institutions in Kenya.	Negotiate on behalf of all out-grower's institutions in Kenya in any dealings with millers or an association of millers and foster mutual interest of the members association	The legal framework for registering Cooperative is provided under the cooperative societies Act. The initiative to establish

					an umbrella body should emanate from the farmers
		Bramwell Misiko (Farmer, Nzoia Sugar Company)	Amend the Bill to provide for only one out growers institution to advocate for the interests of farmers	Currently there are so many out growers' institutions which are a burden on the farmer. For example, Noco, Kesga, Kesref, Kensgo, and Affa with all making deductions from one entity.	
	Sugar Development Levy.	West Sugar Company Limited.	Support the sugar development levy so reduce the burden of cane development which is currently being borne by the millers.		
	Cess	West Sugar Company Limited.	A mechanism should be put in place to ensure that county governments work hand in hand with millers and farmers in planning and utilization of cess in improving infrastructure in the sugarcane catchment area.		
	New clause	Bernard Wanyonyi (Employee Nzoia Sugar Company and the National Chairperson of the Kenya Union of Sugar Plantation and allied workers	Amend the Bill to cater for the interests of the Employees.	The Bill only protects the interests of the farmers, millers and the out growers' institutions but fails to protect the employees.	Matters of employer-employee relationship are governed by the Employment Act, 2007

	New clause— Out grower institutions.	Sen. Boni Khalwale	Farmers should be organised in out growers' societies.	For provision of subsidies.	
		Ibrahim Juma	Advocacy should be done by farmers' federation. Out growers should be engaged in cane developments.		
		Cyrus O.	Revive out grower institutions.		
		Matayos Sugarcane farmers.	The Government to lower cost of production by providing farm inputs and machinery.		
		Anthlus Mugo	Farmers should benefit from sugar cane by products.		

GENERAL COMMENTS

Mumias Outgrowers Company Limited (MOCO) request for the listing of Kshs. 3.7 Billion owed to the farmers as one of the debts to be cleared by Mumias Sugar Company Limited. They are also requesting the Government to waive MOCO's outstanding loans of Kshs. 278 million owed to the then Kenya Sugar Board guaranteed by Mumias Sugar Company Limited.

New Muhoroni Sugarcane Outgrowers Company Limited (MUSOCO) request for a total write-off of the commodity fund loan of Kshs. 391,930,771.20 for purposes of re-energizing the institution and empowering the sugar farmers for more productivity.

Busia Outgrowers Company Limited (BOCO) request for a waiver of loan amounting to Kshs. 110,811,858.91 owed to Kenya Sugar Board to enable the company to serve farmers effectively.

Muhoroni Multipurpose Cooperative Union request for loan write-off of Kshs. 89,079,333.83 owed to the Commodities Fund to ease the farmers and enable them embark on vigorous cane farming.

West Kenya Outgrowers Company request for a writing off of a debt of Kshs. 97,359,279.16 owed to the Commodities Fund.

Nzoia Outgrowers Company Limited request for a write-off of a debt of Kshs. 407,525,205.40 owed to the Commodities Fund due to the harsh economic times facing the sugar industry in Kenya.

Kisumu Sugarbelt Co-operative Union Limited request for a waiver of outstanding loan amounting to Kshs. 134,285,741.59 owed to the Kenya Sugar Board.

Chemelil Outgrowers Company Limited (COC) request for a waiver of loan amounting to Kshs. 271,200,798.56 owed to the Kenya Sugar Board.

Kenya Sugarcane Growers Association (KESGA) request for a write-off of debts owed by the institution. KESGA has not indicated the loan amount.

APPENDIX 5: AMENDMENTS

25th March, 2024

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE SUGAR BILL, NATIONAL ASSEMBLY BILLS NO. 34 OF 2022.

NOTICE is given that Sen. James Kamau Murango, Chairperson, Standing Committee on Agriculture, Livestock and Fisheries intends to move the following amendments to the Sugar Bill, National Assembly Bills No. 34 of 2022, at the Committee Stage—

CLAUSE 6

THAT Clause 6 of the Bill be amended by

(a) inserting the following new paragraphs immediately after paragraph (e).

(ea) one person of the gender that has the least numbers in the composition of the Board appointed by Cabinet Secretary; and

(eb) one person representing persons living with the disabilities or youth appointed by the council of county governors.

CLAUSE 19

THAT Clause 19 of the Bill be amended by substituting subclause (1) with the following provision—

(1) A miller shall not purchase sugar crop from, or accept sugar crop delivered by a grower and a grower shall not sell or deliver sugar crop to a miller, unless the —

(a) grower is registered with, and has in force a valid supply agreement with the miller;

(b) factory of the miller is situated within the grower's catchment area;or

(c) grower has an exception from the Board as provided for under section 19A.

PART III

THAT the heading to part III of the Bill be amended by deleting the words "and registration" appearing immediately after the word " licencing".

CLAUSE 29

THAT Clause 29 of the Bill be amended —

(a) in subclause (1) —

(i) by deleting paragraph (d) and substituting therefor the following new clause—

(d) one person with knowledge of the sugar industry nominated by the Council of County Governors;

(ii) in paragraph (e) by deleting the words " nominated by universities" appearing immediately after the words " one person" and substituting therefor the words " representing the universities nominated by the Commission on University Education"`

(b) by inserting the following new subclause immediately after subclause (1).

(1A) The Cabinet Secretary shall appoint the members under subsection (1), (a), (b)(c) (d) and (e) by notice in the *Gazette.*

CLAUSE 38

THAT Clause 38 be amended in—

(a) in paragraph (b) by inserting the words " and shall be remitted to the Kenya Sugar Research and Training Institute" immediately after the words " research and training"; and

(b) paragraph (d) by deleting the words " and shall be managed by Kenya Rural Road Authority of the catchment area" appearing immediately after the words " developvement and mantainance" and substitute therefor the words " of county roads and shall be remitted to county governments as a conditional grant on pro rata basis".

CLAUSE 43

THAT clause 43 be amended by inserting the words "and the Senate" immediately after the words " the National Assembly".

CLAUSE 59

That the Bill be amended by deleting clause 59.

CLAUSE 60

THAT clause 60 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (k)

(ka) The procedure for election of farmers and millers representatives to the Board and the pricing committee.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clause immediately after clause 19—

Exemption from cane supply restriction.

19A. The Board may exempt a commercial cane grower from the restriction on supply of cane within a catchment area, provided that—

(a) the grower demonstrates that the supply of cane to a miller within the catchment area is detrimental to their commercial interest;

(b) the grower is not indebted to any miller or outgrower institution within the catchment area; and

(c) no supply agreement exists between the grower and any miller within the catchment area.

Intermillereements.

19B. A miller may enter into a contract of cane supply with another miller if—

(a) the millers factory is temporally broken down; or

(b) there is an over supply of cane to the miller; and

(c) the mill is located within the same catchment area.

CLAUSE 2

That clause 2 of the Bill be amended by deleting the definition of the term "sugar catchment area" and substituting therefore the following new definition-

"Sugar catchment area" means a geographical area as set out in the First Schedule

where-

(a) growers are clustered for purposes of election to the Board; and

(b) growers and millers are restricted to deliver and receive cane respectively.

26TH MARCH

Dated……..2024.

Sen. James Kamau Murango,

Chairperson, Standing Committee on Agriculture, Livestock and Fisheries.

APPENDIX 6: SUBMISSIONS

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
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Our Ref: COG/6/48 Vol. 59 (18)

3rd November 2023

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

Dear Mr. Nyegenye,

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

Referenced is made to your letter referenced **SEN/DSEC/SCA/CORR/25/10/2023/155** dated **26th October, 2023** requesting for submissions on the referenced Bill.

Having reviewed the Bill, the Council of Governors wishes to forward for your consideration the legislative memoranda attached herewith on the **Sugar Bill, 2022 (National Assembly Bills No. 34 of 2022)**

Thank you for the continued support.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

Copy: **All Excellency Governors**

All CECMs responsible for Agriculture

All County Attorneys



COUNCIL OF GOVERNORS

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

TO

SENATE

FROM

THE COUNCIL OF GOVERNORS

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 9th November 2018 to examine the challenges ailing the industry and make appropriate recommendations for the development of the sub-sector presented its report to His Excellency the President of the Republic of Kenya for implementation and thus should guide the proposed legal framework.

Having reviewed the **Sugar Bill, 2022 (National Assembly Bill No. 34 of 2022)** 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, trade and county roads. We therefore recommend that the Senate reviews the Bill to incorporate the following amendments for better implementation of the proposed Act by the County Governments in the revitalization of the sugar industry:

CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Clause 2. Interpretation	**"licence"** means a licence issued by the Board to a miller;	Amend by deleting definitions of the words **"license"** and replace with the following new definition **"licence" means a licence issued by <u>respective County Government or Board as the case may be;</u>**	To align to the provisions of the Bill. The County Governments are supposed to license millers while the Board licenses importers and exporters. It is therefore imperative that the Bill captures the two aspects.
Clause 4: Functions of the Board	4. (2) Without prejudice to the generality of subsection (1), the Board shall — (a) participate in the formulation and implementation of overall	Amend clause 4(2)(m) to read as follows: **<u>4(2)(m). register and license exporters, importers;</u>**	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

	policies, plans and programs of work for the development of the industry; (b) ... (m) register and license sugar and jiggery mills, exporters, importers and dealers;		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. 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.
5. 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)...	Amend by deleting **clause 5** and replace with the following **new Clause 5:** **Function of the County Governments** **4(1). The respective County Governments shall:** **(a) issue sugar cane nursery certificates;** **(b) register and licence sugar and jaggery mills, warehouses and other dealers except importers and exporters 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;**	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 excluding international trade are functions fully devolved to County Governments. 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.

		(e) Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties; **(f) enforce county and national legislation on sugar industry code of practice and other industry standards;** **(g) <u>in collaboration with the law enforcement agencies, enforce of regulations within the county</u>;** **(h) enforce policies and guidelines on corporate governance in growers' institutions and millers;** **(i) 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** **(j) establish an efficient road network for the movement of sugar cane, delivery of other services and general development of the sugar industry.** **(k) <u>develop and regulate sugarcane growers institutions in accordance to this Act and any other relevant law.</u>**	
PART III LICENSING AND REGISTRATION	20 (1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current	Amend clause 20 to read as follows:	As explained elsewhere in this document, under the Fourth Schedule to the Constitution agriculture and trade

20. Requirement of a license to operate a mill	licence issued by the Board upon recommendation by the relevant County Government for that purpose	**20 (1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence <u>issued by the respective County Government.</u>**	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.
21: Issue of licence and licence fees	21. (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) ... (4) There shall be payable for issue of a license, such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.	Amend clauses 21(1) (2) and (4) to read as follows: <u>21. (1) A person shall apply to the respective County Executive Committee Member for a licence to operate a sugar mill, warehouse or a jaggery mill in the prescribed form.</u> <u>(2) The County Executive Committee Member shall not issue a licence under this Act unless —</u> <u>(a) ...</u> <u>(c) it is satisfied that the applicant has paid the prescribed fee and obtained a certificate of registration and compliance from the Board.</u> <u>(4) There shall be payable for issue of a license, such fees as the County Executive Committee Member, may prescribe</u>.	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. We further recommend that the Board issues <u>certificate of compliance</u> to all the sugar mills, jiggery or warehouses before they are license by the County Governments.
22. Conditions of a license	22. (1) A license issued under this Act shall be subject to such conditions as the Board may determine and as prescribed in regulations.	Amend clause 22(1) to read as follows: **22. (1) A license issued under this Act shall be subject to such conditions as the <u>respective County Government</u> may determine and as prescribed in regulations.**	

29. Management of the Institute	29.(1) The Management of the Institute shall vest in a Board which shall consist of (a) A chairperson appointed by the Cabinet Secretary who through a competitive process in consultation with the Public Service Commission; (b) ...;	Amend the clause 29(1) to provide for a representative of the County Governments as follows: **(ca) One person with knowledge and experience in the agricultural sector nominated by the Council of County Governors appointed by the Cabinet Secretary;**	The County governments are integral in the implementations of the research proposals in the sector, it is therefore imperative they are represented in the Board.
33. Appointment of crop inspectors	33(1) The Board shall appoint qualified sugar industry inspectors for purposes of undertaking its functions under this Act or any other written law.	Amend clause 33(1) by introducing a **new sub-clause (1a)** immediately after sub-clause (1) to read as follows: **33(1) The Board shall appoint qualified sugar industry inspectors for purposes of undertaking its functions under this Act or any other written law.** **(1a) The respective County Executive Committee Member may appoint qualified persons as sugar industry inspectors for purposes of undertaking its functions under this Act or any other written law;**	To provide for appointment of county sugar industry inspectors for purposes of effective implementation of the Act by the County Governments.
38. Sugar Development Levy	38(6) the Sugar Development Levy collected under subsection (2) shall be apportioned as follows: (a) Fifteen per centum shall be applied for factory development and rehabilitation; (b) Fifteen per centum shall be applied for research and training;	Amend clause 38(6) to read as follows: **38(6)(a) Twenty per centum shall be remitted directly to the sugar growing counties on a pro rata basis and applied for factory development and rehabilitation;** **(b) Fifteen per centum shall be applied for research and training;**	To align to the provision 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

	(c) Forty per centum shall be applied for cane development and productivity enhancement; (d) Fifteen per centum shall be applied for infrastructural development and maintenance and shall be managed by Kenya Rural Roads Authority of the catchment area; (e) Ten per centum shall be applied for administration of the Board; and (f) five per centum shall be applied for the furtherance and exercise of the functions of the sugarcane farmers organizations	**(c) Forty per centum shall be remitted directly to the sugar growing counties on a pro rata basis and applied for cane development and productivity enhancement;** **(d) Fifteen per centum shall be remitted directly to the sugar growing counties on a pro rata basis and applied for infrastructural development and maintenance;** **(e) Five per centum shall be applied for administration of the Board; and** **(f) five per centum shall be applied for the furtherance and exercise of the functions of the sugarcane farmers organizations**	the respective County Governments hence the Fund should be appropriated to them. Additionally, section 5 of Part 2 to the Fourth Schedule to the Constitution stipulates that County transport, including--**county roads** where most of the road network in the sugar industry fall are functions of the County Governments. We strongly oppose the proposal to have KeRRA manage these roads.
60: Regulations	60. (1) The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act.	Amend to read as follows: **60. (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.**	The process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.

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, 2022. Regulation and development of agriculture and trade under the Fourth Schedule to the Constitution means that the 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 support the National Government, County Governments and all the stakeholders in the sugar industry in this noble process of revitalization.

NZOIA OUTGROWERS CO. LTD.

PRESENTATION TO

THE SENATE COMMITTEE

ON AGRICULTURE AND FOOD

AUTHORITY OF THE SENATE ON

THE SUGAR BILL OF 2022

AT NZOIA GUEST HOUSE

ON 2ND MARCH 2024.

NZOIA OUTGROWERS COMPANY LIMITED

(LIMITED BY GUARANTEE)
P.O BOX 1959 BUNGOMA, KENYA TEL: 020-2036498

TO THE CHAIRPERSON,

COMMITTEE ON AGRICULTURE AND FOOD AUTHORITY OF THE SENATE.

INTRODUCTION.

1. Nzoia outgrowers Company Limited (NOCO) is a Sugar Cane Farmers Organization whose members supply sugarcane to Nzoia Sugar Company. It is a Company limited by Government Guarantee having been incorporated in May 1991. Its Board of Directors is made up of 11 members who include:
    a. 7 Grower Directors elected by sugarcane farmers throughout the Nzoia sugarcane growing zone.
    b. 4 Founder directors made up of :
        - A representative from the miller (Managing Director)
        - A representative from Ministry of Agriculture (County Agriculture Officer)
        - A representative from the Office of the President (County Commissioner)
        - A representative from AFA – Sugar Directorate

    The Company's Core objects are:

    - To represent the farmers' interests to the Central Government, County Government, the Miller and the other Sugar Industry Strategic partners.

- In liaison with the County Government and Miller, organize and provide services and inputs relating to cane development on credit to the cane farmers,

The Company represents an estimated 45,000 farmers on matters relating to cane development.

The Board of Directors of Nzoia Outgrowers Company are satisfied with the sugar bill – 2022 since it addresses most of the problems bedeviling the sugar sector. However they make the following observations which require further clarifications or amendments.

PART II establishment, powers and functions of the Kenya Sugar Board

There is no guarantee that farmers who undertake cane farming in a region have degrees. Thus this section is discriminative on academic grounds and yet is not a requirement when appointing representatives as stated in clause 6(1) (b) on page 1086.

Part VI Financial provisions (pg. 1080)

Clause 34(7): Our proposal is to ammend (a) as follows

a) (i) 10% shall be applied by the board for income or price stabilization for sugar growers

(ii) 5% shall be applied to out growers institutions to enable them carry out their roles.

THIRD SCHEDULE: GUIDELINES FOR AGREEMENTS BETWEEN PARTIES IN THE SUGAR INDUSTRY

Part 2: roles of institutions in the industry (page 1114)

Funding

- For out grower institutions to perform their advocacy roles effectively, a levy of 1% of gross cane proceeds be charged on the growers for cane delivered to factories.

Apex body – KENYA SUGARCANE GROWERS ASSOCIATION (KESGA)

We propose for inclusion an apex body whose membership is corporate that brings together all the out growers institutions in Kenya whose roles shall include amongst others.

- To promote and foster the mutual interest of the members of the association.
- To represent, act for and negotiate on behalf of all outgrowers institutions in Kenya in any dealings with millers or group or association of millers on matters of interest and particularly in determining the division between the miller and the grower regarding the proceeds of sale of sugar and proceeds of any by product arising during processing.
- To encourage and assist the development of farmers organizations and enterprises, and particularly in the purchase of machinery, fertilizers and other materials employed in the production of sugarcane.

Part 4 Relationship Between The Out Grower Institution And The Miller.

Clause 8(1)(e) the period for harvesting is long. We propose:

- Early maturing –not later than 12 months
- Late maturing - not later than 20 months for plant crop
  - not later than 16 months for ratoon crop under normal circumstances

Part 5: Relationship between the out grower institution and the grower

Clause 9 (2): The period for harvesting as stated in this clause contradicts that in

Part 4 clause 8(1) (e). We propose that the period be the same as that given in our correction of clause 8(1) (e) above.

- A clause should also be included to state that if the miller does not comply with the period within which cane should be harvested then the out grower institution shall make an arrangement to deliver the farmers cane to another miller within the same region.

Christopher Sifuna ~~Tel~~. 0705600436
Chairman - Noco Board of Directors

BUTALI SUGARCANE FARMERS ASSOCIATION

P.O BOX 69-50205, WEBUYE

Our Ref:.....

1st March, 2024

Date:.....

Your ref:.....

RE: BUTALI SUGARCANE FARMERS ASSOCIATION INPUT ON THE SUGAR BILL.

As Butali Sugarcane Farmers Association, we are grateful for the opportunity presented by the Senate committee in conducting public participation and seeking to give an opportunity for farmers to give their views on the Sugar Bill.

We have been able to present our views when called upon including having actively participated in the Sugar Taskforce Report, by the National assembly through various drafts of the Bill and most of our view have been incorporated in the Bill. This speaks volumes as our concerns are being paid attention to by our elected leaders. The sugar conference was one of such events which as stakeholders we had consensus on most of the contentious issues affecting the industry and how to move the Bill forward.

We are under the umbrella of the farmers' federation and as such would not wish to bore the committee but we want the issue of regions to be revisited. This we propose that we go back and adopt the regions as delineated in the Sugar Industry Taskforce Report which settled the regions to be;

- **Central Region** (Kisumu, Southern Nandi, and Kericho Counties).
- **Upper Western Region** (Bungoma, Kakamega – excluding Mumias area, Trans-Nzoia, Uasin-Gishu and Northern Nandi Counties.
- **Lower Western Region** (Mumias Area, Busia and Siaya Counties).
- **Southern Region** (Migori, Homabay, Kisii and Narok Counties).
- **Coastal Region** (Kwale, Tana River and Lamu Counties).

The point of having correct regions is an important issue, and should not be misconstrued to protect individuals' interests. Its aim is to so compel the millers pay more attention in their regions by working on cane development to get better production for the benefit of both the farmers and millers. The farmers will benefit by having a number of mills to choose from.

This is a model that has been tried and tested since August 2023 and the same can be adapted easily, since the framework has already been set down and the regulator can speak on the improvement in the sector.

Benefits of Regions

1. To protect the interest of farmers by them being able to hold millers in their region accountable on the services given.
2. To allow miller to provide better and quality extension services to their farmers.
3. Will allow millers to pay attention and vary the extension services given to their farmers on timely basis
4. The cost of transportation will be greatly reduced upon the farmers as practical distances will now be in play.
5. Stabilization of cane production within the regions not to allow over production and under production.
6. Allow for maturity of cane to benefit both the farmer and miller.

Free For All (Soko Huru)

Free for All has been a source of the many challenges the Sugar industry is facing. In 2023, the industry nearly collapsed and as a result in July 2023, the regulator after carefully considering the situation decided to shut down milling operations for 4 months to allow for Sugarcane to mature.

The free for all allows setting up of uncontrolled weighbridges and this has been the biggest contributor to cane poaching and the resultant wars associated with sugar millers harvesting cane in regions they have not developed cane.

We wish to state that the present stability of the industry and availability of mature cane is attributed to the regionalization of the mills where farmers are clustered within a region where there are 3-4 mills.

This provides a farmer with freedom to choose his/her desired mill and enables Millers to easily invest in farmers through cane development within their respective regions.

We kindly ask the committee to consider our above input and make the necessary changes in the Bill for the benefit of farmers.

Yours Faithfully

Chairman

Secretary

Butali Sugarcane Farmers Association

KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

AFC Building, Off Kakamega - Kisumu Highway
C/O P. O. BOX 1287 - 50100 KAKAMEGA, Tel: +254 56 30431 / + 254 65 31499
Email: sugarcanefederation@yahoo.com

01.03.2024

To
The Senate Agriculture Committee
Senate

RE: THE FEDERATION'S POSITION ON THE SUGAR BILL IN THE PUBLIC PARTICIPATION FORUMS.

Farmers have been consistent in their input to the Sugar Bill and the foundation of their input is mirrored in the Sugar Industry Stakeholders Taskforce Report at pages 9-10 and Annexure 6 – Stakeholder Views Report pages 109 – 141.

Over period, since 2021, the farmers have given their views in different forums on what they believe important for the growing of sugarcane and the stability of the industry at large. These different forums/meetings have been at the instance of the industry regulators including;

1. the Agriculture and Food Authority (AFA),
2. the Sugar Directorate,
3. the Ministry of Agriculture, given our views at the National Assembly (Parliament) in its Agriculture committee sittings, not forgetting;
4. Before H.E. The President William Samoei Ruto who on his visit to Western and Nyanza last year we gave our position which was welcomed.

All this culminated in the Sugar Conference which was held in Kakamega (Masinde Muliro University) where all stakeholders in the sugarcane/sugar value chain (Farmers, Millers, Regulators, National & County Leadership and Experts) participated on the 8th & 9th September 2023 and where by consensus, the participants agreed on how to move the Sugar Bill and the Industry forward despite some little challenges. Our discussions shall be mirrored on the below topics for ease of reference;

1. Zoning

The farmers from all sugarcane growing areas in all the aforementioned stakeholder engagements agreed that for the industry to thrive, the suggestion of zoning; where an

independent farmer is bounded to supply his cane to only one Mill is to the farmer's disadvantage where there are 3-4 other mills within the same zone.

In the circumstances, Farmers will not be able to exercise freedom of choice as to where to supply their cane which is private & independent property.

Further, the most important document providing guidance to the industry where the farmers' input was considered is the Sugarcane Industry Stakeholders Taskforce Report which was presented to the then President and which we shall ask the committee of the senate to borrow from in determination of the issue of catchment areas.

2. Regions

To protect our interests, Farmers agreed that adoption of Five Regions within all the Sugarcane Catchment areas in Kenya. The best as previously stated was to cluster 3 - 4 mills within the same region as way of clustering farmers so that they can be able to have maximum benefit of their crop specifically for logistical and economic reasons.

Under the Regions model which was highly adopted in the; Sugar Industry Stakeholder Taskforce Report, the Sugar Conference at Kakamega, and also reflected in the Sugar Bill that Passed through National Assembly and now in Senate, the below advantages were noted;

a) Farmers will have 3- 4 Sugar Mills within a region from which they will have freedom to contract and supply to a Mill of choice for Independent farmers.
b) Extension services have been seen to be only viable & practical within Regions.
c) Cost of transport, which is among the biggest factors in production and supply of sugarcane, is only affordable within regions.

Important to Note is that the above proposition was adopted in consultation with the farmers and the millers and has been in use since August 2023 where the Industry was at its brink of collapse. We are glad to report that as at March 2024, the cane situation has been stabilized across all the cane growing regions and farmers are now looking at supplying mature cane in the respective Mills in their regions.

In our letter dated 20th October 2023, we wrote to the senate expressing our views through the clerk where we stated that we fully Support the Sugar Bill as presented but dissatisfied with the incorrect manner in which the Sugar Catchment Areas were delineated as appearing on the first schedule of the Bill.

The correct delineation is as appearing in the **Sugarcane Industry Taskforce Report** and which we further reiterate for ease of your reference;

- **Central Region** (Kisumu, Southern Nandi, and Kericho Counties).
- **Upper Western Region** (Bungoma, Kakamega – excluding Mumias area, Trans-Nzoia, Uasin-Gishu and Northern Nandi Counties.
- **Lower Western Region** (Mumias Area, Busia and Siaya Counties).
- **Southern Region** (Migori, Homabay, Kisii and Narok Counties).
- **Coastal Region** (Kwale, Tana River and Lamu Counties).

Further, as proposed in the Bill, creating of five regions in the cane catchment areas, has proved as a successful and a practical way of ensuring proper representation for the first time since August, 2023.

The Federation held successful elections of its officials on the 29th August, 2023 and the returns of the elections recorded by the registrar of societies.

- ❖ *This also proves that we need the regions to be delineated in a proper manner for other attendant purposes such as nomination of board members for Kenya Sugar Board and other institutions as envisaged in the Bill.*

3. Free for All

The ***Free for All*** is a predatory opportunistic business model created by the **Sugar Industry Cartels** which should not be given any audience in the current industry situation.

The Free for All has;

a) Brought down the Sugar Sector – if the situation in the recent past is to go by.
b) Brought down to its knees All Government Mills.
c) Caused the unregulated setting up of Weighbridges around Government owned Mills and That has created a high levels of cane poaching of Government Mills owned/developed Sugarcane.

It is the farmers' strong view that the **Free for All** system has messed the Sugar Industry.

Whereas a few people disguised as farmers' representatives might be preaching and advocating the free for all situation, this cannot work and any serious farmer cannot advocate for this.

I know that a few people would wish to push for free for all but this, has proven to be responsible for destroying our sugar sector which is the source of livelihood for thousands of farmers across the country.

Let us not advance few people's interest to the disadvantage of the greater industry stakeholders.

With the above remarks we hereby wish to confirm the above are the contribution of the over 600,000 farmers on these key issues in the Sugar Bill.

Yours Sincerely
For; **Kenya National Federation of Sugarcane Farmers**

Ezra Okoth
Chairman.

Killion Osur Anyango
Secretary

KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

AFC Building, Off Kakamega - Kisumu Highway
C/O P.O. Box 1287 - 50100 KAKAMEGA, Tel: +254 56 30431 / +254 65 31499
E-mail: sugarcanefederation@yahoo.com

30th October2023

Our REF: **KNSFSF/SEN/1(23)**

THE CLERK OF THE SENATE
PARLIAMENT BUILDING,
P.O.BOX 41842 – 00100
NAIROBI.

E – MAIL: clerksenate@parliament.go.ke.

RE: KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS PROPOSED AMMENDMENT IN THE SUGAR BILL 2022

The Kenya National Federation of Sugarcane Farmers,KNFS is the national farmers apex body registered under societies Act.

As the key stakeholders and farmers representatives, we fully support the sugar Bill,2022 however, we would like to express our dissatisfaction on the delineation of the Sugar catchment areas (regions) appearing on first Schedule (s.2,6(1) (b)

The correct geographical areas as per the taskforce Report recommendations for delineation of the sugar regions which we wholly endorse are as follows: -

- Central region (Kisumu, Southern Nandi and Kericho Counties).
- Upper western region (Bungoma, Kakamega, Trans-Nzoia, Uasin-Gishu and Northern Nandi Counties).
- Lower western region (Mumias area, Busia and Siaya Counties).
- Southern region (Migori, Homa Bay, Kisii and Narok Counties).
- Coastal region (Kwale, Tana River and Lamu Counties).

The reasons why we farmers representatives for growers' object to the second version.

a.) Elections of the directors to represent farmers in Kenya sugar board.

In the second version, the central region is merged with southern region clustering seven factories in one region, namely Muhoroni, Chemelil, Miwani, Kibos, Dhiwa, Sony, Transmara and one factory in Kisii County a total of eight mills clustered in one region.

How do you expect a director to campaign from Kisumu County, Homabay County, Migori county, County, Narok County and Kisii County? It is completely impossible.

b). Economic sense

It does not make any economic sense for the millers to transport cane for instance from Kisumu County at the corner Muhoroni Sub – County to Migori or Narok Counties. This will defy logic for zoning.

Secondly, region like Rift valley there is no single mill in Uasin Gishu or Nandi Counties. Only one mill in Kericho County which is upcoming. By clustering Southern region with Central region and Upper western region with Lower western region it will encourage free for all zones thus creating conflicts, lawlessness and poaching of cane by existing weighbridges spread all over. This clustering cannot work.

We therefore appeal to our honorable senators to look into these recommendations as per the Taskforce Report and give it the much consideration it deserves noting that the key stakeholders i.e Farmers, Millers, workers and Government have endorsed the recommendations of the Taskforce report,2020.

Lastly, we support recommendation by our colleagues and fellow stakeholders Kenya Sugar Manufacturers Association (KESMA) and Governors.

For further clarification, kindly invite us to shed more light on the document.

Yours faithfully,

Kilion Osur Anyango

Secretary General

Contact: 0711-216202

The Sugar Bill 2022

First schedule

Delineation of sugar catchment Areas.

Justification for proposed changes

1.Central catchment Area should be as proposed by Task force report.

These areas have always been together for over 50 years i.e. Miwani, Chemilil, Muhoroni ,Soin and kibos.

2. Farmers in Kericho and Nandi have long established farming relations with Kisumu. i.e Kisumu, Kericho, Nandi are immediate neighbours.

3.Geographically, Southern area is too large, and too far from Kisumu to Migori.

4.Rift valley has a small area with no sugar factory.

5.Kericho (Central)/Nandi (upper western)/Uasin Gishu (upper western) are partially divided as per original Taskforce report.

6.It will be too expensive and not practical for candidates campaigning in the Southern region as per the current sugar bill. This large open-ended region will create poaching of cane which is going to result in so many litigations.

7.It will be too expensive and not practical for candidates campaigning in the Western region as per the current sugar bill. This large open-ended region will create poaching of cane which is going to result in so many litigations.

8. The Sugar Bill is forcing ethnicity into the sugar industry by segregating Rift Valley.

9.Farmers in Uasin Gishu and upper Nandi take their cane to nearby Butali, West Kenya and Naitiri sugar mills,in Kakamege catchment areas.

10. It is absolutely not practical nor viable for farmers to transport cane to various sugar factories at far distances in these regions.

KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

THE SENATE RECEIVED
14 MAR 2024
DIRECTOR COMMITTEE SERVICES (DSEC)

THE SENATE RECEIVED
13 MAR 2024
CLERK'S OFFICE SENATE

13/03/2024

TO,

THE CHAIRMAN,

SENATE AGRICULTURAL COMMITTEE,

ATT: HON JAMES MURANGO

THE SENATE RECEIVED
13 MAR 2024
DEPUTY CLERK

(1) DSEC
Kindly deal.
13/03/2023

Dear Sir,

RE: CHALLENGING THE ANNEXED PARALLEL TASK FORCE REPORT FILLED BY ANDREW BETT, A SENIOR EMPLOYEE OF WEST KENYA SUGAR COMPANY LTD

(2) DDSEC (BL)
Kindly deal
14/3/24

I refer to the above subject matter, an employee came to mislead the senate Agricultural committee in the public participation forum scheduled on the 11th March, 2024 at Chemelil Sports Club.

As the farmer representative, the Secretary General of Kenya National Federation of Sugarcane farmers. I wish to put some light on the document presented to you as an exhibit to confirm that farmers had a parallel task force report.

There was no parallel Task Force report, the only recognized report was that led by Hon. Oparanya-the former Governor of Kakamega County. The one presented to you was a campaign strategy for the investor of West Kenya Sugar Company, who was campaigning for free market (Soko Huru). This tactic failed and government recognized the Hon Oparanya Task Force Report which brought all MCAs, MPS, Senators and Governors from the Sugarcane growing region.

Mr. Andrew Bett after failing to convince the farmers on the Soko Huru agenda resigned and joined West Valley Sugar Company, the new sugar mill in Kericho, as a supervisor where he worked for a few months and then hired by West Kenya where he is working now.

(3) Tend Clerk-Agric
Please deal
14.3.24

He introduced himself as a farmer after being brought by his miller to campaign for West Kenya to come back to operate his mobile weighbridge at Kimwani. The senate should use their network system to confirm my statement.

We know the team supporting Soko Huru are out to delay the process of the Bill for their personal gain. On behalf of the farmers, we are condemning their activities in the strongest term possible, that is why we don't want that annexture to be part of the report.

Let Mr. Bett to be clear whether he is on the side of the farmers or the miller West Kenya, that's why we have a lot of court cases in the industry. If you allow their annexture, it may dilute a resolution in our Central Region.

Our general prayer is that since we have six sugar millers in the region, we only request for two slots of directorship so that the Nyanza side to have one director and the Southern Nandi, and Kericho Counties to have another slot of one directorship representation.

As the Secretary General, I am aware that out of 17 sugar millers, only 4 millers are not supporting our agenda of regional sugar catchment area. These four sugar millers are owned by one private miller whose agendas are known.

He doesn't want this bill to pass for him to continue with his cane poaching activities in the industry, as farmers we want order in the industry.

We will be very grateful if the Senate will consider our Task Force Report led by Hon. Oparanya and Professor Anyang' Nyongo.

Best regards.

Yours Faithfully,

KILLION OSUR ANYANGO
SECRETARY GENERAL
FOR AND ON BEHALF OF KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS
CHEMELIL BRANCH
P.O B0X 177 - 40107
MUHORONI
TEL NO: 0712367062

11TH MARCH 2024

MEMORANDUM TO THE SENATE COMMITTEE ON AGRICULTURE

ATTENTION:
THE CHAIRPERSON
SENATE COMMITTEE

PREAMBLE
The union do hereby take this early opportunity to express their utmost gratitude towards the visit by the committee to address pertinent issues affecting the sector and most importantly on the proposed leasing and commercialisation of the five state sugar mills.

We wish to take you through the following perspectives;

1.The union take this early opportunity to embrace the government's move to offset farmers arrears that saw the release of the much anticipated payments to farmers a few months ago,however we still urge the government through the parent ministry to continuously offer support to the sector amidst the past challenges experienced within the sector.

2.The union on the same wavelength do hereby make a formal request to the committee to expedite release of the pending payment of salary arrears and other emoluments to the workers across the sector as part of the recommendation in parliamentary report to the national treasury,the sugar sector having hosted a team of employees who have been disenfranchised by extreme suffering leading to school drop outs and early pregnancies among teenagers.
The union extends it's quest to the government to clear all the pending salary arrears owed to the workers in the sugar sector before the leasing dispensation.

3.As part of the implementation Sugar Task Force Report by the government,the union do express their utmost desire to the committee to enhance better understanding on key issues towards the leasing transition.The aspect of zoning of catchment areas is key to ensure continuity and success of the the sugar sector.We do therefore propose for enhancement of restrictions within the catchment areas.We propose that Kibos Sugar,West Valley,Chemelil and Muhoroni Sugar to be confined to one catchment area as a resource to their sustainability.We do oppose extreme porching of cane by other millers who traverse the boundaries despite the huge geographical gaps.

4.The union wishes to express their support to the government's plan to lease the five state sugar mills.we humbly appeal to the government to engage extensively with all the stakeholders on matters of prominence inclined to the employees welfare,leasing model,transition timelines and the tendering processes to avoid any further litigation that would halt the process.This will guarantee a safe transition with regards to the desired timelines.

5.The union emphasises on the need for the government to innitiate a balancing ratio for sharing of the sugar levy.We propose that 70% of the sugar levy be channelled to the sugarcane development within the industries.The sector has on the past occassions been hit haphazardly by cane shortage and such a move will guarantee continuity interms of availability of raw material for sustenance of the sector in general.

6.The government's plan to revive the sector is highly welcomed and a good step in the right direction.We do therefore empathize on the need for the government to expedite the Implementation of the Sugar Bill 2022 as a measure to restore sanity in the dilapidated sugar sector.

7.The union further underscores the need to institute a proper framework of reinstalling tne previous Kenya Sugar Board as part of the recommendation in the Sugar Bill.This will enhance sustanailbility of the sector through innitiation of better strategies and policies for future prosperity.

We wish to take this last opportunity to thank the entire senate towards this fruitful visit to our company, may God grant you good health, wisdom and power that you may inspire better government policies for the success and prosperity of this great nation Kenya.

Yours Faithfully

Brother Jack Osida
Branch Secretary

Last modified: 22:33

KENYA NATIONAL FEDERATION OF SUGAR CANE FARMERS CENTRAL REGION

PRESENTATION TO THE SENATE COMMITTEE AT CHEMEILI SPORTS CLUB DURING PUBLIC PARTICIPATION

FACTORIES WITHIN THE CATCHMENT AREA:

- MIWANI SUGAR FACTORY
- KIBOS SUGAR FACTORY
- CHEMELIL SUGAR FACTORY
- MUHORONI SUGAR FACTORY
- WEST VALLEY SUGAR FACTORY
- SOIN SUGAR FACTORY

1. We farmers from this region fully support the sugar task force report which was chaired by Hon. Oparanya.

This report went through a serious Public Participation in different forums, where MPs, Senators, Governors and MCAs unanimously recommended clustering 3-4 mills to form a region. We are blessed because our region has 6 sugar mills clustered together.

2. Farmers from our region also support the creating of Kenya Sugar Board and they recommend the headquarter to be established in the Western Region preferably Kisumu or Kakamega.

We prefer Kisumu because of the International Airport and the Port/ Harbor.

3. Farmers should also be paid within 7 days after cane delivery to the millers.

4. The millers within this region should make arrangements to factor in paying farmers, for the by-products e.g molasses, bagasse, filter mud, ethanol and power generation.

5. Zonning: we condemn Soko Huru in the strongest term possible, the only. Arrangement we support is

Soko Huru within our sugar catchment area, where a farmer can deliver cane to any factory within our Central Region.

6. Regional arrangement;

We support regional arrangement as follows:

i. Central Region (Kisumu, Southern Nandi and Kericho Counties)

ii. Upper Western Region (Bugoma, Kakamega, - excluding Mumias area, Tranzoia, Uasin Gishu and Northern Nandi Counties.

iii. Lower Western Region (Mumias area, Busia and Siaya County)

iv. Southern Region (Migori, Homabay, Kisii and Narok County)

v. Coastal Region (Kwale, Tana River and Lamu County)

Further as proposed in the Bill creation of five regions in the cane catchment areas has proved as a successful and a practical way of ensuring a proper representation for the first time since August, 2023.

In conclusion, we the Sugar Cane farmers from the Central Region do hereby support the regional catchment as was recommended by the Sugar Task Force report.

Since the Central Catchment Area is big and has many factories around and given the geographical nature, there should be two Directors. One to come from rift Valley and the other to come from Kisumu County.

We support the five regions as was designed by the task force committee.

Yours Faithfully,

1. Kilion Osur Anyango

for & on behalf of Muhoroni Milling Zone

2. Caleb Ochieng Mageta

for & on behalf of Chemelil Milling Zone

3. Philip Kimaiyo

For & on behalf of Kibos Milling Zone

4. David Rop

For & on behalf of West Valley Milling Zone

5. Zeddekiah Otene

For & on behalf of Miwani Milling Zone

6. Leah Chepkwony

For & on behalf of Soin Milling Zone

KENYA NATIONAL FEDERATION OF SUGAR- CANE FARMERS .

MUHORONI BRANCH NYANDO SUGAR BELT REGION.

DATE: 11/03/2024

TO,

THE SENATE COMMITTEE ON AGRICULTURE.

We Farmers in Nyando Sugar Belt Region comprising Kisumu County, Nandi County and Kericho County hereby OBJECT / REJECT the idea of Free Harvesting system of Sugar cane in our Region due to the following reasons.

i. We cannot allow any other Sugar Milling Company from other regions to come and poach our Sugar – Cane as we have already four (4) well established Sugar Milling Companies in the names of :-
   - **a)** West Valley Sugar Company.
   - **b)** Muhoroni Sugar Company.
   - **c)** Kibos and Allied Sugar cane Milling Company.
   - **d)** Chemelil Sugar Company and other one being revived in the name of Miwani Sugar Company.

ii. Our region experienced acute Sugar Cane shortage the previous years and our above Milling Companies could not operate optimally thus causing their closer for a period of over four months, which created economic crisis in the Counties of Kericho, Nandi and Kisumu respectively to Sugar Cane Farmers due to cane poaching by millers from other regions. We cannot allow this to happen as per Sugar Bill before you as Senate. The Senate should not destroy the Farmers economic well-being because of few individuals.

iii. It is Government Policy that Agriculture is devolved and as such, Investors worth their intelligence and having done good faceability studies should be as able to operate within their regions. Let them not look elsewhere for Supply of Raw Materials (Sugar Cane) from other regions causing economic and fiscal crisis to other regions e.g. they damage Sugar Roads and get away with our cess money (ies).

iv. The Sugar Cane Milling Companies from other Regions erect Weigh Bridges in areas in disgard to other existing ones from our region thus causing crisis and confusion to the farmers.

v. We advise the Senate Committee on Agriculture to reject the idea of free harvesting for all in our Region. As we sit now discussing the bad behavior and SENSELESS planning of Sugar Cane Investors from other regions who want to destroy the Famers economic well-being by harvesting immature cane, there is looming Sugar Cane shortage in Nyando Sugar Belt in the near future, if we adopt the system of free cane poaching (FREE FOR ALL HARVESTING) from other regions.

vi. We therefore say "NO" to Free Harvesting in our Region **EXCEPT** our 4 (Four) Milling Companies. Thank you for your understanding and say "NO" to Free Marketing (Harvesting). Let every Region sort out its problems, without creating problems to other regions.

vii. Honorable Members we really appreciate you because you are of good standing in your Country and thus allowing you to serve your people well without fear or favor.

We wish you well in your endeavors.

Signed

JERIM OLWENY ODADA
Chairman Muhoroni Zone.

MICHAEL SIDIGU
Secretary Muhoroni Zone

7/3/24
DSEC

(1) DSEC
DHS
Kindly deal.

SUBMISSION OF MEMORANDA ON THE SUGAR BILL (NATIONAL ASSEMBLY, BILL NO. 34 OF 2022)

BY THE SUGAR TRADERS ASSOCIATION OF KENYA.

OFFICE OF THE CLERK SENATE
SECRETARY
0 6 MAR 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

06/03/2024

TO:

THE CLERK OF THE SENATE

PARLIAMENT BUILDINGS

NAIROBI

THE SENATE
RECEIVED
0 6 MAR 2024
DEPUTY CLERK

(2) DDSEC
Kindly deal

4TH MARCH, 2024

07/03/2024

INTRODUCTION.

The Sugar Traders Association of Kenya (hereinafter **"the Association"**) is duly 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, generally traders and sellers of sugar within and without the territory of Kenya.

Ms. Gloria
You are training
07/03/24

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, 2022 (hereinafter **"the Sugar Bill"**).

The Sugar Traders have a stake in the sugar industry have a legitimate claim to be included in the decision making process for all matters relating to the industry.

THE SUGAR BILL, 2022

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).

There was most recently the Sugar Bill, 2019 that was never enacted into law. The Sugar Bill, 2022 has consequential provisions that ignore the interests of the Sugar Traders.

Inclusion of Sugar Traders as industry players and stakeholders under Section 2

The Sugar Bill totally ignores Sugar Traders who are represented by our association.

In the **Sugar Bill, "Industry"** is defined as: -

> **"means the sugar industry in Kenya and includes the growing of sugar cane and any other sugar producing crop, manufacturing, refining, warehousing, marketing and transportation of sugar and disposal of sugar and its by-products."**

"Stakeholder" means: -

> **"A person with significant interest in the sugar industry and includes growers, out-growers, millers, transporters and other value chain actors in in the industry."**

The failure to include the sugar traders as part of the definition for the sugar industry removes them as stakeholders in the sugar industry despite their significant interest in the sector. The exclusion of the sugar traders is discriminatory.

Inclusion of Sugar Traders in the Sugar Board under Section 3 and 6.

Our Association joins issue with the failure to include the Sugar Traders in the Sugar Board established under Section 3 and 6 of the Sugar Bill. The Sugar Traders deserve a representative in the Sugar Board.

The inclusion of Sugar Traders in the definition of the sugar industry and stakeholders in the sugar industry under Section 2 of the Sugar Bill would definitely entitle them to a position in the Sugar Board since they have a significant interest 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.

Inclusion of Sugar Traders in the Sugar Research and Training Institute.

The Sugar Bill established the Sugar Research and Training Institute under **Section 27** and its membership under **Section 29**. From the listed objectives of this statutory body the sugar traders who are major players in the sugar sector are entitled to representation.

This Institute, among other things works closely with the Sugar pricing committee on matters of pricing of sugar.

Inclusion of Sugar traders in the Sugar Pricing Committee under Section 58

This committee is established under Section 58 of the Sugar Bill, they are tasked with the formulation of a pricing formulae. This is all to be done in exclusion of the Sugar Traders.

The matters of sugar pricing and sugar pricing formulae directly affect Sugar Traders and they should be represented in the Sugar Pricing Committee to further the ideals of inclusivity, transparency and accountability.

Recommendations

1. We propose the amendment of **"Industry"** and **"Stakeholders"** 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 memorandum for your consideration.
3. We propose the amendment of **Section 29** of the Sugar Bill to include a representative of Sugar Traders in the Sugar Research and Training Institute.
4. We propose the amendment of **Section 58** of the Sugar Bill to include a representative of Sugar Traders in the Sugar Pricing Committee.

NO.	NAME	DESIGNATION	SIGNATURE
1.	ADHAN SHEIKH ABDULLAHI	SECRETARY GENERAL	4/3/2024

KENYA SOCIETY OF SUGARCANE TECHNOLOGISTS

Tel: 254(057) 202074/2020750
Cell Phone: 0722-949882
Fax: 254-572022031
E-mail:kssctkenya@yahoo.com

Al-Imran Plaza
Oginga Odinga Road
P O. Box 1681
KISUMU-KENYA

Your Ref: .....

Date: March 18, 2024

Our Ref: **KSSCT/SEN/3/2022. VOL1**

The Clerk of the Senate
Parliament Buildings
P. O. Box 41842 – 00100
NAIROBI

E-mail: clerk.senate@parliament.go.ke

THE SENATE RECEIVED 19 MAR 2024 DIRECTOR COMMITTEE SERVICES

THE SENATE RECEIVED 19 MAR 2024 DEPUTY CLERK

(1) DSEC
DLS
Kindly deal
19/03/2023

(2) DDSEC (BL)
Kindly deal
19/03/2024

Ms. Gloria
Please deal
19/03/24

Dear Sir,

RE: RECOGNITION AND INCLUSION OF KENYA SOCIETY OF SUGAR-CANE TECHNLOGISTS (KSSCT) AS THE INDUSTRY PROFESSIONAL SOCIETY IN THE SUGAR BILL 2022.

1. BACKGROUND

1.1. Establishment and registration:

Kenya Society of Sugarcane Technologists (KSSCT) is an apex Professional caucus of Kenyan sugar industry that embodies professionals pursuing the cause of ***growth and development*** of sugar in Kenya through consultative and participatory process. The Society was established on **15th April 1979**, and registered on **25th April 1979**. This was the culmination of the benchmark of seven (7) delegates who had attended the 16th International Society of Sugar Cane Technologists (ISSCT} Congress in Sao Paulo Brazil In September 1978, comprising Government and sugar industry professionals and administrators - including Mr. Mayur Madhvani, Julius Makatiani and others[1]. **Kenya Society of Sugarcane Technologists (KSSCT)** is recognized by the Government of Kenya as a Scientific and Industrial Research Organization; it is continuously striving to bring out cost effective and innovative technologies in sugar and sugarcane farming to enhance productivity, quality and competitiveness. It is NOT-FOR-PROFIT Technical organization for Sugar Technologists and Institutions with close OVER 2,000 members drawn mainly from the Milling Companies and also State corporations such as Agriculture and Food Authority - Sugar Directorate (AFA-SD), KALRO-Sugar Research Institute (KALRO-SRI), Kenya Sugar Manufacturing Association (KESMA), Kenya National Federation of Sugarcane Farmers (KNFSF), and individuals with common interests in the aims and objectives of the society as well as various research institutions.

[1] *Mr. Patrick Ogot Mr. Anand Maydur Mr. R. Macarez Mr. William W. Wapakala Mr. Nigel Thomas - General Manager Associated Sugar Company Ramlsi - Agriculture Manager, Mumlas Sugar Company - Agriculture Manager, Chemelil Sugar Company - General Manager, South Nyanza Sugar Company - Factory Manager, Nzoia Sugar Company - Director NSRC, Ministry of Agriculture - General Manager, Chemelil Sugar Company*

1.2. KSSCT ROLE:

The society's role is to promote free exchange and dissemination of technical information among stakeholders in sugar Industry, with focus on sugar value chain. In pursuit of his role, the society emphasizes on –

a) Advancement of technology in improving sugar production;
b) Providing Credible and dependable Professional advice to the Government, the Regulatory Institutions and member institutions to facilitate cost-effective decisions as well as credible and sustainable solutions through non-partisan professional opinion.
c) Facilitating professional competence through specialized relevant training
d) Extending knowledge and application of technology through research, publication of books, journals, periodicals and articles.
e) Promoting environment in which sugar technologists can achieve their professional ambitions through seminars, symposia, and conferences.
f) Building strong resource base, capable of supporting planned programmes in the sugar industry.
g) Publication of work carried out by members & compiling and disseminating information on Research and Development within the Industry and other complementary international societies

1.3. Registered Achievements:

a) Regularly participates in the development, assessment and dissemination of improved Sugar-cane varieties, Improved sugarcane crop management practices, Standardization of methods of analysis and Quality Assurance and also identification and improvement of modern manufacturing methods.
b) The Society produces Periodical manuals for her workshops and General meetings
c) KSSCT is an affiliate of the International Society of Sugar cane Technologists (Headquartered at Mauritius) and East African Society of Sugar cane Technologists (EASSCT)
d) KSSCT has to-date sponsored several Technologists to International conferences in pursuit of Industry development, all through voluntary member contributions
e) KSSCT being the domicile society of Sugar Technologists and Agronomists in the country has carried out vital capacity development of various cadres of workers and professionals in the industry, thus imparting knowledge for improvement of sugar industry performance, more so in absence of a dedicated Sugar Technologist Training Institution in a country seeking self-sufficiency in sugar production.
f) KSSCT has now established a pool of Professional Sugar Technologists with several years of experience and splendid performance track record as well as demonstrated professional competence in their disciplines, making the society an invaluable cradle of consultants ready to support the Industry to excellence.

1.4. **Proposal to Incorporate KSSCT as the Professional Body for the Sugar Industry in the Bill and hence provide budgetary Funding for her operations and development**.

a) We hereby propose and formally seek the Indulgence of the Senate that Kenya Society of Sugar Cane Technologists, being the only Professional Society (Institution) of Sugar Industry Professionals, and that the Institution plays a very vital role in the development and sustainability of Industry Human capacity and promoting Research protocols, and whereas the activities and functions of the Institution are largely through voluntary member support, and whereas this kind of support has seriously depreciated as a result of economic hardships as well as the budgetary shift in the industry as influenced by the entry of Private entrepreneurship in the Industry as well as regulatory changes, We the members of the KSSCT

for and on behalf of the industry professionals present our proposal that a statement be included in the Sugar Bill 2022 to declare thus:

"There shall be a professional Sugar Industry Society/ caucus/ Institution made up by Industry professionals, institutions and voluntary membership determined by the intuition constitution – currently Kenya Society of Sugar Cane Technologists – that shall promote the capacity development, Research and professional practice of the Industry through participation of Industry professionals in various support programs as will be drawn by the society from time to time, and that the Professional Society shall draw a budget that will attract funding from the Sugar Development Fund allocation equivalent to 0.05% of the Annual Fund collection"

1.5. Justification:

a) The Country is rapidly becoming a major regional sugar producer in the COMESA. The Sugar Bill 2022 recognizes that the country has an installed Mill capacity of 41,000TCD – which roughly works to a potential throughput of 12.3million tonnes cane per year based on 300-day milling plan. This is a huge potential that requires regular and sustainable professional guidance that draws participation from as well as the feedback to all the constituent production and milling human capital.

b) There is no dedicated Sugar Technology Institute in Kenya similar to what we have in stronger sugar economies such as India, Mauritius among others. Nearly ALL equipment operators in the industry rely on handed-over skills acquired through on-the-job training and guidance. Furthermore, private entrepreneurs now dominating the industry are NOT keen on providing expensive overseas training opportunities to present-day staff in those foreign Sugar Institutes for fear of losing them after skill acquisition. On the other hand, the trained generation of Professionals who benefitted from comprehensive GoK –sponsored training in the 80s, 90s and early 2000 years are rapidly retiring. The newer generation will greatly benefit from KSSCT-like professional linkages. KSSCT has a huge database of professionals who have trotted the industry since its infancy in the 70s!!

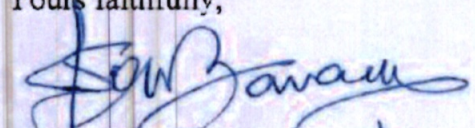
c) There comes need for an independent, unbiased, reliable and dependable professional opinion on matters of the Industry – including professional opinion during dispute resolution, referencing, Training, evaluation and Analysis of Sugar facts – this is the preserve of Kenya Society of Sugar-cane Society where the SUGAR GURUS domicile.

d) Standard development: The KSSCT with her host of Professionals will be best placed to participate in sugar standard development, which will be among the factors necessary for promotion of Trade regionally and beyond.

It is our most honest opinion that this opportunity will be best utilized to bring the Kenya Society of Sugar Cane Technologists to the national map. All the other regional Sugar-cane Technologists Societies are funded by their respective governments – including TSCCT (Tanzania), for instance.

FOR AND ON BEHALF OF THE KENYA SOCIETY OF SUGAR-CANE SOCIETY (KSSCT)

Yours faithfully,



Barack J. Onguko
For the Secretary

THE SENATE
RECEIVED
19 MAR 2024
DIRECTOR COMMITTEE SERVICES
(DSEC)

kbl Est. 1922

THE SENATE
RECEIVED
19 MAR 2024
CLERK'S OFFICE
SENATE

KENYA BREWERIES LIMITED

SUBMISSION OF VIEWS ON THE SUGAR DEVELOPMENT LEVY

Section of the Bill	Proposal	Justification
Section 34(5)	Reduce the penalty from 5% to 1%	• 5% monthly compounding interest on unpaid SDL is punitive. • All non-compliance should be handled through the Judicial process, or withdrawal of licences to operate but not add financial bunden to tax payers.
Section 34 (1)	Amend the clause to read :- The Cabinet Secretary shall in consultation with the Board, by order in the *gazette*, impose a levy on domestic sugar not exceeding four per centum of the value and a four per centum of CIF value on imported sugar, **excluding industrial sugar,** to be known as the Sugar Development Levy. Exempt industrial sugar from Sugar Development Levy (SDL)	• There is no capacity for production of industrial sugar in Kenya (Industry demand is 170k tons per year i.e. 16% of the sugar demand in Kenya) • All industrial sugar is imported into Kenya • Imported sugar is foreign currency denominated which means they hold a huge forex risk in the current operation environment. Imposing SDL on industrial sugar escalate the cost of legitimate products, disadvantaging them against illegal product, particularly for excisable goods. • Cost inflation (circa 30%) is already so high with forex current devaluation, directly affecting imported sugar and the finished goods made from such raw material. • VAT from the industry has increased due to increase in the cost of goods sold/ex-factory cost

(2) DDSEC (BL)
Kindly deal
19/03/2024

(1) DSEC
DLS
Kindly deal.
19/3/2024

(3) Ms. Gloria -
Please deal
19/03/24

Section of the Bill	Proposal	Justification
		• Industrial sugar is subject to other taxes such as KES 5 per kg excise tax. In addition, there is a 35% excise on imported glass used in packaging and other levies proposed to increase such as the Standards Levy. All these levies are making local manufacturers highly uncompetitive. • The Issue of Increased affordability issue is exacerbating the proliferation of illicit alcohol
Section 20 (3)(a) (3) 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;	Delete the clause	• AFA/Sugar Board/ are in a better position to provide evidence that the sugar a business intends to import is not available in the local market. • All accounts are reconciled with them, they have visibility of the licensed millers, capacity, etc for the millers

OFFICE OF THE CLERK-SENATE
SECRETARY
14 MAR 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

THE SENATE
RECEIVED
14 MAR 2024

FROM FRED OKETCH JONAM
MIWANI FARMER
P.O.BOX 46-40100
KISUMU
EMAIL: fredoketch@yahoo.com

THE SENATE
RECEIVED
14 MAR 2024
DEPUTY CLERK

(1) DSEC
DLS
Kindly deal.
14/03/2024

THE CLERK OF THE SENATE
PARLIAMENT BUILDING
P.O.BOX41842-00100
NAIROBI
E-MAIL:clerksenate@parliament.go.ke

(2) DDSEC (BL)
Kindly deal
14/3/2024

SUBJECT: AMMENDMENT TO THE SUGAR BILL 2022

I have seen the Bill as passed by Parliament. Most people are generally very happy that, at long last the sugar industry is bein given positive attention. I have cotributed elsewhere but I need to point about representation of Farmers in Board of Directors of Private Sugar Milling Companies. I request the Senate to consider reviewing this clause in PART VIII.

(3) Lead Clerk - Agric
Please deal
14.3/24

1. **PART VIII: MISCELLENEOUS PROVISIONS**

Representative of grower in a private milling firm:

Clause 59 (2)

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

Suggest the amendment to read as follows:

Clause 59 (2)

In appointing a director representing growers under subsection (1), the milling company shall consider the leaders of out-growers institutions within the sugarcane catchment area in which the sugar mill is located. In the first instance, the out-growers institutions within the sugarcane catchment area will vet and nominate three suitable members for the Miller to pick one person.

JUSTIFICATION FOR AMMENDMENT:

It is understood that such a person will look after interest of the farmer while at the same time be an information link between Company and real farmers (not masqueraders as farmers lobby groups with no fixed abodes and merely registered bodies with register of societies) for harmony of policy formulation. It can be comfortably stated that relationship between millers and farmers in the resent decade or so has been lacking harmony of operating policy and masqueraders as farmers' lobby groups funded by cartels.

One can remember, for example the case of Malava area. Milling started in the earlier days of operations with harmonious relationship between out-grower institution, growers and miller. Plenty of cane was planted by the farmers for the factory. Factory never lacked cane and the farming community was enthusiastic. The harmony seemed to have waned off gradually and it became doubtful eventually if the out-grower institution was encouraged to continue for more cane production. The same scenario can be said of Miwani area and other factory areas. From experience in the sugar industry, when such rot sets in, it normally takes about ten years gradually for the factory go down for lack of cane at the end. Lack of adequate cane in the entire Kenyan sugar industry confirms this. There must be harmonious relationship between cane growing and milling – growers and millers.

There is danger of such persons operating as mere stooges of Millers if it the latter, alone, that is allowed to select them. Rather it should be that the farmer organization/s in the area first names three or so members whom they have vetted and give to the Miller to pick one from.

FRED OKETCH JONAM
Farmer in Miwani.
Email: fredoketch@yahoo.com
Telephone: +254 723842730

8th March 2024

KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS (KNFSF) SONY BRANCH
AWENDO OFFICE OPPOSITE DEPUTY COUNTY COMMISSIONER'S OFFICE
C/o P.O 285-40619 SARE -AWENDO, TEL +254 15541985/+254 20432547
EMAIL: fedsonyfarmers@gmail.com

OUR REF KNFSF/SB/SAC/22024 DATE 13/03/2024
YOUR REF

TO
THE CHAIRMAN,
SENATE AGRICULTURE COMMITTEE,
P. O. BOX
NAIROBI-KENYA.

(1) DSEC
Kindly deal.
14/03/2024

OFFICE OF THE CLERK-SENATE
SECRETARY
13 MAR 2024
P.O.Box 41842 - 00100, NAIROBI

(2) DDSEC(BL)
Kindly deal
14/3/2024

Dear Sir,

RE: SUGAR BILL 2022 PUBLIC PERTICIPATION.

We refer to the above captioned matter.

Hon. chairman sir, our attention have been drawn to the ongoing public participation with regards to the farmers' participation on the Sugar Bill, 2022 whereas your committee have visited various regions to collect the views of farmers concerning this matter. We want humbly request your good chairmanship to remember that there are over 100,000 sugarcane farmers from southern regions whose views needs to be taken and/or heard in the circumstances.

Our region is having three sugar factories and proposed Nyangweta Sugar Company from Kisii County will eventually make it four sugar companies thereof. Southern region covers Migori, Narok, Homa-Bay and Kisii Counties respectively, and we would not need to be put together with Central Region. We are fully in support of the Sugar Task Force Report and want it to be implemented as it is.

Due to the aforestated matters herein above, we do hereby kindly request that our region be given a chance to also participate on the ongoing public participation on the Sugar Bill, 2022 in accordance with Constitution of Kenya (COK) 2010. Otherwise we are fully behind you and urge you to finalize the same for the Sugar Industry to have some orders.

Thank you very much and may our good and loving God provide you with wisdom, courage and knowledge to spearhead the Sugar Bill 2022 and further protect the Industry development for its prosperity.

Yours in regards,

THE SENATE
RECEIVED
14 MAR 2024
DEPUTY CLERK

(3) Head Clerk - Agric
Please Deal
14/3/2024

Argwenge Otieno Adongo
Branch Secretary
For Sony Sugarcane Farmers

THE SENATE
RECEIVED
14 MAR 2024
DIRECTOR COMMITTEE SERVICES
(DSEC)

CC:
1. *National Federation of sugarcane farmers' Chairman*

TO THE CLERK SENATE
Email: clerk.senate@parliament.go.ke

THE SENATE RECEIVED 14 MAR 2024 (DSEC)

THE SENATE RECEIVED 14 MAR 2024 DEPUTY CLERK

OFFICE OF THE CLERK-SENATE SECRETARY 14 MAR 2024 PSC P.O Box 41842 - 00100, NAIROBI

ATTENTION: Mr. Murango (Chairman, Agric. Committee on Sugar Industry)

SUBJECT: ISSUE OF CATCHMENT AREA

I contributed to the Government Task Force public Participation as a Farmer and also as sugar factory technocrat with several years of experience at senior level.

I have followed very closely the Public Participation organized by the Senate Committee of Agriculture Livestock and Fisheries. I have personally been impressed by the way you and your team have conducted the session's right from Kakamega, Nzoia, Busia and Chemelil. I have even submitted my views in writing but what I saw and heard in Chemelil has forced me to come back on the platform and refute some erroneous allegations presented by one party that there were two parallel tasks forces appointed by the Government.

There was only one official Sugar Task Force and I wish that in future contributions made by stakeholders are given on oath that only truth be presented and deviation from that condition earns one some penalty. There was absolutely no truth in that presentation as a parallel task force report. It was a mere position taken by some persons who appeared to operate as guns for hire employed by one notorious miller who has caused havoc in the entire sugar industry. That alleged Parallel report was presented to the official Government Sugar Task Force, considered along with other views before the Task Force gave the final report where the five sugarcane Catchment Areas were reasoned as the best option.

The task force was purely created to look into the ways of pulling the industry from the deep mud where it had landed. It was not for balancing political dispensations and it is not right to introduce tribal issues in an area which already has too many problems. One may be tempted to demand exposure of where tribal issues caused the decline in sugar industry. The Sugar Task Force was composed of highly professional bodies and the good work they did should not be compromised by a few selfish, greedy and unfocused people in Parliament before taking the Bill to Senate. Please take tribal wars out of the sugar Bill.

Best regards.
Fred Oketch Jonam
13th March 2024
Cc Caroline.njue@parliament.go.ke

(1) DLG
DSEC
Kindly deal.

(3) Lead Clerk - Agric
Please Deal.
14.03.24

(2) DDSEC (BL)
Kindly deal
14/03/2024

14/03/2024

To The Chairman, (Mr. Mulango)

Agriculture FS Senate Committee on Sugar industry

Email: agriculturelfcommittee@parliament.go.ke

Cc clerk.senate@parliament.go.ke

Caroline.njue@parliament.go.ke

SUBJECT: SUGAR BILL IN SENATE 2024

I must express gratitude and praise for how you and your Committee conducted the Public Participation on the Sugar Bill 2022 in Kakamega, Nzoia and Busia. I come from Kisumu County but I was not sure when Kisumu farmers would be given an opportunity to present their contributions. That is why I followed the Committee everywhere but I was never given a chance to speak. But after hearing many speakers from the various areas and how you responded, now I have only a few points to raise or stress as follows below:

1. FIRST SCHEDULE [S.2,6(1) and 29 (b)]

DELINEATION OF SUGAR CATCHMENT AREAS
AND
CLAUSE 19

These two items are not in synch.

Clause 19 should be deleted to allow farmers make choice of factory within The officially delineated catchment areas.

Delineation as recommended in the Sugar Task Force Report should be upheld. It must be remembered that this the one single item that absorbed most time of the Sugar Task Force and even caused split in farmer representation where one miller determined to have monopoly in the industry vigorously campaigned and supported the splinter group for the so called "soko huru". No public participation will be more

vigorous than what was witnessed during the task Force We have all witnessed what "soko huru" has done to the industry which has eventually landed the sugar sector in chaos and sugarcane shortage. Splinter farmer groups were formed which spent most of the time battling themselves in courts and had almost no time left for them to help sort out really problems affecting farmers.

Refer to Sugar Task Force Report part 7.1 and 7.2 giving all details and reasons for and against. And majority settled for Catchment area as stipulated in the report.

2. Farmer Apex is mentioned in several places in the Bill but it is not defined who the Farmers' Apex Body is! For example it is cited in Clause 58, (2) (b). The Apex Body details should be pr0perly defined in the Sugar Regulations which shall be made. There needs to be clarity on this Body- its offices, constitution, registration, election etc. It must be only one and all other smaller organization should only be affiliated to it like COTU is for workers' unions.

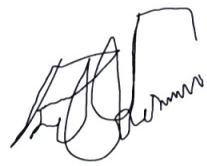
   The Formed Kenya Sugar Board formed, and as was done in defunct Kenya Sugar Authority (KSA), should come out with a modality of creating for Sugar Apex Body and its elections. KSA formed KESGA which cartels forced to splinter. The Millers' Apex Body seems to be intact and should be allowed to continue.

   In connection with Clause38, (6), (f) this farmers' Apex Body and Farmers Organizations affiliated should be funded from PART VI – FINANCIAL PROVISION.
3. **Clause 58, (2), (c).** It must be stressed the nominees of the Sugar growers' must be persons of adequate qualifications to appreciates the technicalities of formulae applied.
   Clause 58, (3), (c) the last word should read "pricing" instead of "processing" formula.
   Clause 58, (3), (d) –transition. A definite length of period must be specified such that this component comes into force as soon as possible. It must be remembered that lethargy in this area made the cane payment formula which was in the Sugar Act 2001 see no light in implementation. The same should **not be repeated in this new dispensation.**

Clause 58, (4), (d) – should be rephrased to state that "cost of processing per tonne of cane should be reported regularly and adjustments made regularly based on variations on costs".

4. PART IX – PROVISIONS ON DELIGATED POWERS

Clause 60, (2). It should be stated that in making Regulations, adequate Public Participation must be done.



FRED OKETCH JONAM
FARMER IN MIWANI
5th March 2024

NB: I have a long background in the Kenyan Sugar Industry. (.Former MD of Muhoroni Sugar Factory, Former Deputy Managing Director of Chemelil Sugar Company, Former Factory Manager and Deputy General Manager of Sony Sugar Company, Former Chairman of Kenya Society of Sugarcane Technologists, Former President of East African Society of Sugarcane Technologists, Consultant for establishment of Kibos, Butali and Busia Sugar Industry Ltd. and a Farmer in Miwani West Location of Kisumu County). All the Factories I have been associated with have been success stories in the periods.

11/3/24
DSEC.

OFFICE OF THE CLERK-SENATE
SECRETARY
0 8 MAR 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

FROM FRED OKETCH JONAM

MIWANI FARMER
P.O.BOX 46-40100
KISUMU
EMAIL: fredoketch@yahoo.com

THE CLERK OF THE SENATE
PARLIAMENT BUILDING
P.O.BOX41842-00100
NAIROBI
E-MAIL:clerksenate@parliament.go.ke

(1) DSEC
DLS.
Note and deal.
8/3/2024

SUBJECT: AMMENDMENT TO THE SUGAR BILL 2022

I have seen the Bill as passed by Parliament. Most people are generally very happy that, at long last the sugar industry is bein given positive attention. I have cotributed elsewhere but I need to point about representation of Farmers in Board of Directors of Private Sugar Milling Companies. I request the Senate to consider reviewing this clause in PART VIII.

(2) DDSEC
Kindly deal
11/03/2024

1. **PART VIII: MISCELLENEOUS PROVISIONS**

   Representative of grower in a private milling firm:

   Clause 59 (2)

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

(3) Ms. Nawiria
Kindly deal
11/03/24

   Suggest the amendment to read as follows:

   Clause 59 (2)

   In appointing a director representing growers under subsection (1), the milling company shall consider the leaders of out-growers institutions within the sugarcane catchment area in which the sugar mill is located. In the first instance, the out-growers institutions within the sugarcane catchment area will vet and nominate three suitable members for the Miller to pick one person.

JUSTIFICATION FOR AMMENDMENT:

THE SENATE
RECEIVED
- 8 MAR 2024
DIRECTOR LEGAL SERVICES

It is understood that such a person will look after interest of the farmer while at the same time be an information link between Company and real farmers (not masqueraders as farmers lobby groups with no fixed abodes and merely registered bodies with register of societies) for harmony of policy formulation. It can be comfortably stated that relationship between millers and farmers in the resent decade or so has been lacking harmony of operating policy and masqueraders as farmers' lobby groups funded by cartels.

One can remember, for example the case of Malava area. Milling started in the earlier days of operations with harmonious relationship between out-grower institution, growers and miller. Plenty of cane was planted by the farmers for the factory. Factory never lacked cane and the farming community was enthusiastic. The harmony seemed to have waned off gradually and it became doubtful eventually if the out-grower institution was encouraged to continue for more cane production. The same scenario can be said of Miwani area and other factory areas. From experience in the sugar industry, when such rot sets in, it normally takes about ten years gradually for the factory go down for lack of cane at the end. Lack of adequate cane in the entire Kenyan sugar industry confirms this. There must be harmonious relationship between cane growing and milling – growers and millers.

There is danger of such persons operating as mere stooges of Millers if it the latter, alone, that is allowed to select them. Rather it should be that the farmer organization/s in the area first names three or so members whom they have vetted and give to the Miller to pick one from.

Dan.

0725078399 - H20n20

FRED OKETCH JONAM
Farmer in Miwani.
Email: fredoketch@yahoo.com
Telephone: +254 723842730

8th March 2024

Joan. Embassy Japan.

THE SENATE RECEIVED 12 MAR 2024 DIRECTOR COMMITTEE SERVICES

DSEC. 12.3.2024

Subject SUGAR BILL 2022

From Sospeter Ngere <sospeterngere@yahoo.com>

To clerk senate <clerk.senate@parliament.go.ke>

Cc agricuturelfcommittee senate <agricuturelfcommittee.senate@parliament.go.ke>

Date Monday March 11, 2024 1:38:39 PM

CAUTION:This Mail Originated from outside of the Organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

OFFICE OF THE SECRETARY PRIVATE SECRETARY 11 MAR 2024 PSC P.O.Box 41842 - 00100, NAIROBI

1 DSEC DLS Kindly deal

12/03/2024

2 DDSEC Kindly deal

12/03/2024

3. Lead Clerk-Agric Please deal 13/3/24

PRESENTATION BY HON JAMES KOYOO MP MUHORONI DURING **SENATE AGRICULTURE**, LIVESTOCK AND FISHERIES **COMMITTEE STAKEHOLDERS' SUBMISSION ON THE SUGAR** BILL 2022 AT CHEMELIL SUGAR COMPLEX ON 11TH MARCH 2024.

On behalf of Muhoroni constituents who are majorly sugarcane farmers may I first welcome the senate to Muhoroni constituency and also to thank you for trying to fast track the passage of the sugar bill which as you are aware stalled in the last Senate of the 12th parliament after the National Assembly had passed the same. The Bii will be a milestone in the efforts to resuscitate the once vibrant sugar industry.

We are aware The Bill has undergone public participation and is currently in the Senate before being enacted into law.

THE SENATE RECEIVED 11 MAR 2024 DEPUTY CLERK

Ve propose

Introduction of sugar development levy

. Reintroduction of Kenya Sugar Board,

stablishment of Sugar Arbitration Tribunal.

'ablishmeny of Kenya Sugar Research Training Institute,

blishment of sugarcane pricing committee.

elineation of sugar catchment area into five zones.

se the introduction of a sugar development levy to be charged on both local and imported sugar to support the local stry.

the national Assembly, the collected levy should be allocated as follows

r the maintenance of local factories,

ocal research training,

velopment for farmers.

o cater for the Sugar Regulation Board

's and infrastructure development in sugar belt regions and managed by the *Kenya Rural Roads Authority*

ective catchment areas.

nt the roles of the Kenya Sugar Board (KSB) currently being undertaken by the Sugar Directorate of the uthority (AFA) established under the Agriculture and Food Authority Act, 2013 revert to the former.

ne farmers across Sugar growing areas have been pushing for the reinstatement of KSB to regulate of operating through AFA, arguing the latter lacked the autonomy to address challenges in the sugar

es from each catchment area will be among those to sit in the Board.

ablishment of a Sugar Arbitration Tribunal for the purpose of arbitrating disputes between and this tribunal should be headed by a person qualified to be a High Court Judge to be

Zimbra

To my fel... order to increase sugar productivity, we propose establishment of Kenya Sugar Research Training Inst... ...inate and regulate research in sugar, sugar by-products and technologies.

We also propose delineation of sugar catchment area in five zones

1. Rift valley covering Kericho, Nandi and Uasin Gishu
2. Upper Western comprising of Bungoma and Trans-Nzoia counties
3. Southern Catchment area has Homa Bay, Kisumu, Migori, Narok and Kisii
4. Lower Western having Busia, Kakamega, Siaya and Vihiga.
5. The Coastal region comprises Kwale, Lamu and Tana River Counties.

This proposal is aimed at removing unhealthy competition amongst millers who have previously resorted to buying premature cane and which weighs less, resulting in low returns to the farmer.

We also propose Establishment of sugarcane pricing committee whose role will be to review sugar prices with two representatives from sugar out growers' apex body among other members.

We urge the committee to consider these views and hope the Senate will fast-track the Bill to be enacted into law to help address myriad challenges that have bedeviled the sugar sector.

0733313853.
0720313853

7/3/24
DSEC

OFFICE OF THE CLERK-SENATE
SECRETARY
06 MAR 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

To The Chairman, (Mr. Mulango)

Agriculture FS Senate Committee on Sugar industry

Email: agriculturelfcommittee@parliament.go.ke

Cc clerk.senate@parliament.go.ke

Caroline.njue@parliament.go.ke

THE SENATE
RECEIVED
06 MAR 2024
DEPUTY CLERK

SUBJECT: SUGAR BILL IN SENATE 2024

I must express gratitude and praise for how you and your Committee conducted the Public Participation on the Sugar Bill 2022 in Kakamega, Nzoia and Busia. I come from Kisumu County but I was not sure when Kisumu farmers would be given an opportunity to present their contributions. That is why I followed the Committee everywhere but I was never given a chance to speak. But after hearing many speakers from the various areas and how you responded, now I have only a few points to raise or stress as follows below:

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AND
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(3) MS Gloria
You are drawing
07/03/24

(1) DSEC
DLG
Kindly deal
06/03/2024

(2) DDSEC
Kindly deal
07/03/2024

vigorous than what was witnessed during the task Force We have all witnessed what "soko huru" has done to the industry which has eventually landed the sugar sector in chaos and sugarcane shortage. Splinter farmer groups were formed which spent most of the time battling themselves in courts and had almost no time left for them to help sort out really problems affecting farmers.

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FRED OKETCH JONAM
FARMER IN MIWANI
5th March 2024

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BENEFITS OF REGION CATCHMENT AREAS.

FARMERS:

1. TO BRING DISCIPLINE IN CANE HARVESTING AS PER PROGRAMME.
2. TO DO CANE DEVELOPMENT WITHIN REGIONS ON SELF-GOVERNANCE OF AREAS WITHIN THREE (3) MILLERS.
3. CONTRACTED CANE BE MONITORED AND SERVICED VERY EASILY WITHIN LOGISTICALLY REACHABLE AREA.
4. SHARING OF EXCESS – OVER MATURE CANE CAN BE TRANSFERRED TO THE NEIGHBORHOOD MILL ON ARRANGEMENTS BY MILL TO MILL.
5. ANY FARMER WHO IS NOT HAPPY WITH THE SERVICES OF 3 MILLS IS FREE TO SELL HIS/HER CANE SUBJECT TO ARRANGEMENTS WITH ANY OTHER REGION.
6. PAYMENTS TO FARMERS MUST BE DONE WITHIN 15 DAYS. THIS IS A MUST AS THIS IS A LONG MATURING CROP OF 18 MONTHS.

MILLERS:

1. MILLERS WILL BE ABLE TO PROGRAMME MAXIMUM MILLING CAPACITY ON PLANNED MONTHLY PROGRAMME ON HARVESTING.
2. MAXIMUM RECOVERY OF SUGAR ON PRODUCTION AND PROFIT.
3. IT IS VERY COMFORTABLE AND EASY TO WORK WITHIN A REGION OF 3 MILLS TO UNDERSTAND EACH OTHER ON SOURCE OF CANE V/S CURRENT PRACTICE OF FREE TO ALL AND IN ALL AREAS.
4. GUARANTEED PAYMENTS CAN BE ACHIEVED IN 15 DAYS.
5. MILLERS CAN PLAN INVESTMENTS OF PLANTS AND BY-PRODUCTS.
6. INVESTORS CAN COME TO THE SECTOR WHEN LAW AND ORDER ARE IN PLACE AND IMPLEMENTED.

BUTALI SUGAR MILLS LIMITED.

BSML SUBMISSIONS TO THE SENATE COMMITTEE PUBLIC PARTICIPATION FOR THE SUGAR BILL 2022 AT KAKAMEGA ON 1ST MARCH 2024

Opening Remarks:

The sugar industry has within the century faced substantial growth as an agricultural & commercial sector contributing substantially to the to the GDP of the Nation and enriching the livelihoods and dignity of many Kenyans. However, due to poor legal and operating frameworks, the industry has faced several challenges which still remain unaddressed and that have led to the near collapse of the industry.

Since 2018, there have been several efforts, meetings and conferences aimed at joining hands to forge a collective approach to revive the industry as we are now and we thank the senate Members for carrying this public participation exercise. We hope that the views presented here will be taken up and aligned to the comprehensive Sugar Industry Taskforce Report Views of 2020 and incorporated into the Sugar Bill 2022.

1. REGIONS

As millers who have made heavy investment in the industry and are fully aware of the challenges faced in serving farmers while operating commercial enterprises, we are in full support of having regional catchment areas where several factories can be clustered together. In the year 2023, AFA & the Sugar Directorate have been engaging stakeholders continuously on this matter who all agreed that the benefits of having regions far outweighed a free for all market. As from December 2023, the directorate has been overseeing the implementation of regions as per the task force report and it has been working really well. Take note that the current operational regions are as per our previous communication to the senate through KESMA.

2. CANE DEVELOPMENT

The free for all market approach has contributed heavily to cane poaching where certain millers indiscriminately harvest cane from all over the sugar belt directly affecting the operations and survival of other millers. This played a major role in the collapse of the government owned mills who could not compete fairly due to lack of cane.

With enforcement of regions, each miller is opportuned and secure to invest in cane development programs for posterity of both the farmers served and the miller by ensuring there is mill cane available. With development programs the miller is also

able to complement the county governments extension services program leading to better yields per acre that will result to increased sugar production and improved incomes for all stakeholders in the country. The instance of cane poaching and parallel harvesting of immature cane will also be reduced.

3. DISPUTE RESOLUTION

Regional catchment areas also enhance relationships between the millers through constant communication and harvesting synchronisation while upholding respect for other Millers' Outgrower-Miller contracts. With ease of regulating the industry through regional frameworks, there will be region appropriate cane varieties, pricing mechanisms, improved road infrastructure, strong CSR programs that benefit locals of the regions and a decrease in litigation which costs the industry time and billions each year that could otherwise be invested in enhancing sugar production and milling activities in the country. The detrimental practice of cane poaching and subsequent harvesting of immature cane will also be well managed.

4. IMPORTS

Regions promote proper industry regulation and growth and fair trade whose eventual outcome is increased incomes, improved livelihoods and self-sufficiency as a country. The decline in the industry was majorly a result of sub-standard regulations which led to lawlessness and decreased performance in the sector. Instead of addressing these challenges, the government opened doors to sugar importation that further affected the industry negatively. Sugar imports brought in at much lower prices cause a lot of instability in the market, affecting millers cash flows and eventually their ability to pay farmers on time leading to stagnation of incomes and local economies. In future as the government seeks to revive and stabilise the industry, we pray that it consults key stakeholders in the process of sugar imports with a view of promoting local sugar production and stabilising both cane and sugar prices within the country.

5. GOVERNMENT SUPPORT - FARMERS

The government should also consider setting up a framework and good channels of supporting farmers directly in cane development endeavours through financing, reduced taxation and subsidies like the current fertilizer distribution. This will encourage farmers to heartily take up cane production and improve on sugarcane production in the country. It will also allow Millers to fortify their core business and to diversify into by product industries to further improve the industry performance and associated benefits for all stakeholders.

KENYA SUGAR MANUFACTURERS ASSOCIATION

REINSURANCE PLAZA | OGINGA ODINGA STREET | P. O. BOX 7661 - 40100 KISUMU
| kesmakenya@gmail.com | Tel: 0110 430 826 | 0732 928 868

for Chairman

29th February 2024

Ref: KESMA/SB/SEN/3/(1)

The Clerk of the Senate,
Parliament Buildings,
P.O. BOX 41842-00100
NAIROBI.
E-mail: clerk.senate@parliament.go.ke

Kind Attention of the Clerk, Agriculture Livestock and Fisheries Committee

KESMA SUBMISSIONS TO THE SENATE COMMITTEE PUBLIC PARTICIPATION HEARINGS FOR THE SUGAR BILL 2022 IN WESTERN KENYA ON 1ST TO 3RD MARCH 2024

Introduction:
Further to the submission of the Kenya Sugar Manufacturers' Association (KESMA) to the Senate in November 2023, we wish to submit further input into the consultations and public participation being held in western Kenya counties as noted above. Our input into the Sugar Bill 2022 rests mainly on

1. The First Schedule, Delineation of Sugar Catchment regions;
2. Section 23 - Sugar Imports;
3. New Clause: Application of Competition Act in the Sugar Industry.

Background:
President His Excellency Uhuru Muigai Kenyatta set up the task force under a Gazette Notice No. 11711 of 9th November 2018 which was co-chaired by the CS of the Ministry of Agriculture, and the Governors of Kakamega County (at the time, the Chairman of the Council of Governors). Other members of the Task Force included the Governor of Kisumu County (His Excellency Prof Peter Anyang Nyongo, His Excellency Hon Z. Okoth Obado, Governor Migori County, His Excellency Hon Stephen Sang, Governor, Nandi County and His Excellency, Hon Wycliffe Wangamati, Governor, Bungoma County. It included the Director of the Sugar Directorate, various Managing Directors of sugar mills, the Chairman of KESMA, Mr Jayanti Patel, the LREB CEO Mr Abala Wanga, the CEO of Kenya National Federation of Sugarcane Farmers Mr Francis Waswa; Hon Nabii Nabwera among others.

The Taskforce carried out extensive desktop and international research of successful models of sugar industries and made consultations with experts, extensive public participation with stakeholders, farmers and leaders in the sugar growing rareas in Kenya. The committee in its wisdom, made recommendations from the views collected and again, presented the same to the public which were agreed upon and incorporated into the **Sugar Task Force Report** presented to His Excellency the President of the Republic of Kenya, for implementation.

Lack of Law and Regulations:

The recommendations of the Task Force Report have been largely incorporated into the Sugar Bill 2022 for which we are very grateful. As major actors in the sugar industry, it is of great concern to us that the current situation in which there are no rules and regulations governing the sugar industry has led to the near collapse of the industry, resulting in large importations of sugar into the country, where as there is capacity already established that can satisfy local demand and even provide for export of the commodity, earning the country foreign exchange.

The Nation of Kenya has in place sufficient capacity in her sugar mills, both public and private, to produce sugar that will make Kenya self-sufficient in sugar, save her foreign exchange and even earn foreign exchange from export of sugar.

It is imperative that this Sugar Bill 2022 ignite confidence in the industry by putting in place the recommendations that were agreed upon and articulated clearly in the Sugar Task Force Report.

1. DELINEATION OF SUGAR CATCHMENT REGIONS:

The lack of rules and regulations impedes on self-sufficiency of sugar production in Kenya. Particularly in the sugar catchment areas, it results in poaching of sugarcane; and harvesting of immature cane leading to dropped yields; low sugar recovery (rendement), poor earnings by sugarcane farmers and lack of support to farmers for cane development as millers who are the main support to farmers are unable to trust that they will access the sugarcane which they have invested in.

The Sugar Task Force Report, in order to address this, recommended Sugarcane Catchment Regions which would allow farmers at least three (3) sugar mills to which they could choose to sell their cane. These Regions would be able to govern themselves and ensure that the current cane poaching is nipped conclusively in the bud. This would also enhance confidence in other potential investors into the sugar sub-sector, further increasing the manufacturing sector and building the economy.

Our main recommendation as **per our attached letter to the Senate which was submitted at Parliament in November 2023 is that the Sugar Catchment Regions, as agreed and recommended in the sugar Task Force Report be upheld**. These are as follows: -

Sugar Task Force Recommendations

Central Region: (Kisumu, Southern Nandi sub-counties and Kericho counties);
Upper Western region: (Bungoma, Kakamega excluding Mumias area, Trans Nzoia Upper Nandi and Uasin Gishu Counties);
Lower Western Region: (Mumias area, Busia and Siaya Counties);
Southern Region: (Migori, Homa Bay, Kisii and Narok Counties);
Coastal Region: (Kwale, Tana River and Lamu Counties).

(A copy of the same is attached herewith including the maps indicating the regions as envisaged in the Report).

Proposals in the Sugar Bill 2022:

First Schedule: Delineation of Sugar Catchment Areas

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

The current sugar Bill has proposed that a new sugar catchment region viz the Rift Valley Region be established comprising Kericho, Nandi and Uasin Gishu Counties. Kisumu County has been merged with Southern Region.

The Rift Valley has only one sugar mill viz West Valley Sugar Company in Kericho, while the Southern zone which is very large and unwieldy to manage, will comprise 7 sugar mills. Kisumu sugar belt is very far removed from the Southern Region making it difficult to govern and will result in difficulties in management and development of the sugar sub-sector.

"Free for All"
The issue of "Free for all" that has bedevilled the sugar industry will never be resolved as farmers will lose out on the opportunity of millers investing in cane development on farmers' fields and providing farmer extension services due to fear of cane poaching. The delineation of sugar catchment regions as proposed in the current Sugar Bill 2022 is a sure case of **"Free for all".**

Benefits of Sugar Catchment Regions:

1. **Increased area under cane through massive cane development by local millers**
   - **(a) Land preparation**
     The central region has unique soil types including black cotton, brown and red soils, some of which need intensive land preparation and drainage to put fallow virgin land into cane plantation. The cost of Cane development is above kShs. 80,000.00 per acre. This is beyond reach for the ordinary farmer and its only

through support by local millers that farmers can afford to prepare the land for cane development. However, local millers can only invest in this activity with the surety that they will harvest the cane and recover their costs.

(b) Cane establishment

Sourcing for quality seed cane planting material for the prepared land is difficult for the ordinary farmer. Planting of uncertified seed cane leads to spread of cane diseases hence low yields. The ordinary farmer needs support from local millers to acquire clean seed cane material. Most farmers cannot afford planting fertilizer and hence need support.

But no local miller will engage in supply of seed cane and fertilizer if not sure of harvesting the cane and recovery of investment.

(c) Cane Maintenance

Farmers can only realise high yields if the effective cane maintenance if done in good time. But most farmers lack resources for weeding, top dressing among other maintenance activities.

The local miller has to support these activities but only if assured of recovering the investment by harvesting the cane when matured.

(d) Collaboration with Research Institutions for Improved Varieties

The local millers have partnered with research institutions to develop improved varieties and latest cane farming technologies. The millers use their extension services for the farmers to adopt these varieties and technologies.

This ensures high yields and quick returns to the farmers. This can only happen if local millers are assured of recovering their investment.

Note: Sugarcane is a long-term crop which matures at a minimum of 20 months for most common varieties. With the high cost of cane development mentioned above and for the farmer to remain with some revenue after recovery, we need to spread the recovery of the initial investment cost across the subsequent harvests i.e plant and several ratoon crops. This takes a period of between 5-7 years.

Therefore, local millers will only invest in this development if assured of harvesting the cane and recovering the investment.

The millers within i.e. current central region have a good working relationship where whenever a farmer diverts contracted cane to another miller, the recovery is done by the receiving miller within the region on behalf of the affected miller. But local millers lose this investment when the cane is diverted to an unknown miller from outside the region.

2. **Maintenance of Access and Feeder Roads Within the Catchment Areas**

The county government has the responsibility of maintaining all sugar roads within the county. In addition to the Roads ministry budget allocation for road maintenance, they also receive revenue for 1% per ton of cane delivered to the millers within the county. This money is not adequate to maintain all the sugar roads within the county.

Millers within the regions have invested a lot in terms of road maintenance equipment. They carry out routine maintenance of roads within the sugarcane catchment areas. These roads improve business activities within the areas

But no miller will invest in this activity for another miller from a different region to benefit from this huge investment in order to prey on their developed cane.

3. **Employment Opportunities for the Local Communities**

The sugar industry attracts a lot of labour at both factory and field level.

Therefore, local millers provide direct and indirect employment to the local communities.

Business is thriving in these areas because of the huge money circulation within the communities coming directly from the sugar millers. This creates growth and development for the communities.

Encouraging outside millers to take sugarcane from the area will create shortage of the cane for the local millers and reduce these opportunities to the locals.

4. **Corporate Social Responsibility (C.S.R)**

Local millers are fully engaged in C.S.R activities to give back to the local communities. They have a responsibility because they benefit from the raw material to their factories. So many schools, churches, food donations and schools' scholarships have been given to the local communities.

But this will seriously be affected if the local millers within the region do not fully benefit from the cane because of illegal sharing with a miller from another catchment region.

5. **Harvesting of Immature Cane**

Farmers can only get high returns if the break-even yields are achieved. This is only achieved if the cane is harvested at maturity age (**See the attached Sugar Industry Status Presentation by the Kenya National Federation of Sugarcane Farmers page 7-8 clearly indicating losses incurred to farmers, millers and the Exchequer from harvesting of immature cane, and indicating the benefits of harvesting mature cane**).

Local millers can easily conform to this requirement because of constant regional collaborations. A miller from another region will not observe cane harvesting age but harvest immature cane carelessly. This happened when there was free market to millers from other regions. This has a potential of killing the whole industry if not checked as has been noted in the recent past and which the industry is yet to recover fully from.

Conclusion:
Therefore, regional zoning where local millers are clustered within a cane catchment area will lead to the growth of the sugar industry.

This allows the sugarcane growers to choose their preferred miller within the catchment area while competition for the cane will ensure better services and support to the farmer, resulting in high quality cane and good returns to both the farmer and the miller.
Kenya is an agricultural country and depends heavily on agriculture to sustain her agro-industrial sector. In order to sustain this sub-sector, which is a major contributor to the National exchequer and to the GDP, poaching of sugarcane must stop. Sugar Catchment Regions must be properly constituted as agreed in the STFR and any serious and legitimate sugarcane farmer will encourage the rules.

Disadvantages of Free Sugarcane Market

1. **Low cane availability**
   If free market is allowed, Local millers will shy away from cane development activities because of fear to lose investment, leading to serious cane shortage

   Cane shortage will lead to low local production leading to importation of sugar.
   Importation of sugar will deplete our dollar reserves.

2. **Increased cane poaching**
   Cane poaching is where a farmer supplies contracted cane to another miller hence the miller loses investment. Free market is a recipe for cane poaching. It is not easy to recover investment when cane is picked by unknown miller from another region.

   The result is:
   i) Low investment in cane development by local millers
   ii) Harvesting of immature cane;
   iii) Low sucrose recoveries;
   iv) Lack of sugarcane for sugar production in the country;
   v) Closure of sugar mills;
   vi) Loss of jobs and livelihoods;
   vii) Loss of payment to farmers;
   viii) Rampant insecurity in the sugar-growing areas;
   ix) Importation of sugar leading to;
   x) Loss of foreign exchange

The cascading effects are too myriad and all negative.

3. **Harvesting of Young Cane**
   Local millers within the region have regular meeting to enforce the harvesting standards. But millers from other regions never co-operate hence encourage wanton destruction of farmers cane by harvesting immature cane.

The farmer is in constant need of money to meet basic needs hence tempted to offer young cane to willing buyer. But the farmer gets less yield hence less revenue to maintain the crop leading to cane shortages.

4. **Collapse of Road Infrastructure Within the sugarcane areas**

The sugarcane poachers from other regions do not maintain local roads. Their main interest is to steal other millers' sugar-cane. They have no interest in cane development nor in creating jobs.

Opening up free market will hinder local millers from engaging in road maintenance, for the same road to be used by a miller from another region to prey on their cane investments.

This will lead to the collapse of the local road network and no access to sugarcane farms.

5. **Disruption of Sugar Industry Regulations**

It is easy for the sugar industry regulator to enforce regulations through regional catchment areas.

It is easier to enforce harvesting age and other requirements in the sugar industry as it is in other crops like Macadamia, avocado and cashew nuts crops by AFA.

Ensuring regional sugar catchments as envisaged in the Sugar Task Force Report will make it easier for the proposed Sugar Board to enhance control and enforce regulations.

NEW CLAUSE – SECTION 21 (6) APPLICATION OF COMPETITION ACT IN SUGAR INDUSTRY:

As is provided for in the Competition Act 2010 which describes abuse of Dominant Position, we propose that no miller will be provided with a license to control more than 30% of the market share.

This is stipulated in **Section 23, Criteria for determining dominant position. Item (2) (b) controls less than forty per cent of the market share but has market power.**

Section 24A of the Competition Act Abuse of buyer power prohibits (1) any conduct that amounts to abuse of buyer power in a market in Kenya or a substantial part of Kenya.

Poaching of sugar-cane as has been noted in the last 10 years should be considered abuse of dominant position and prohibited under the Sugar Act.

Justification:

i) The proposal of 30% is due to the vagaries of weather and very many other factors that are not under control of normal business operations which can lead to a miller easily crossing the 40% mark stipulated in the Competition Act 2010.

ii) This proposal will cushion farmers from the adverse risk on relying on one miller or one group of millers should the group enter into financial difficulties. This will be mitigated by limiting market dominance in the sugar industry.

iii) It will also protect weaker millers from loss of sugarcane crops by dominant players in the sugar industry who prey on sugarcane which they have not invested in due to their muscle power.

SECTION 23: SUGAR IMPORTS:

In the last few years, the importation of deficit sugar in the country has mostly been allocated to players outside the sugar industry. The general feeling is that Sugar Millers cannot be trusted with imports of sugar as they will concentrate on importing sugar to the detriment of engaging in and developing the local sugar industry in favour of importing and packaging cheaper world market sugar.

We in the sugar industry are of a contrary opinion. When there is a deficit of sugar, the Government normally allows other players apart from millers to import duty free sugar. Most of the sugar imported into Kenya carry Certificate of Conformity and Certificate of Origin from Brazil. However, most imports are from Dubai and is sugar that is unfit for human consumption. Local millers have a reputation to uphold and will not wish to destroy their business through importing contaminated sugar.

The AFA Act allows the dairy and cereal industries to import any deficits. There is no valid reason why in Sugar industry, deficits cannot be imported by the local millers. The funds generated within the sugar industry and spent within the value chain will enhance the ecosystem of the sugar industry.

Due to this and in order to keep the industry stable, we propose that the Sugar Bill under sugar imports set aside 50% of sugar deficits to be imported by local sugar millers based on their actual share of production of local sugar in the market which is easily verified by the Sugar Board.

Benefits:

1. It is in the interest of the Government to create such an environment that is socially, economically and environmentally sustainable.

2. Allowing local sugar millers to import sugar deficits will keep the local sugar prices in check; quality of the sugar in check; contraband imports in check; repackaging of sugar in check; and will also maintain all the much-needed jobs in the industry.

3. This will ensure that the sugar industry remains liquid even in low seasons, and millers will not be forced to lay off staff nor hold payments to sugarcane farmers or suppliers.

4. The other 50% can be imported by either the Government body which will bring in buffer stocks, or by private importers.

CONCLUSION:

1. Delineation of Regions:

Based on the above, it is clear that Delineation of The Sugar Catchment Areas as proposed in the current Sugar Bill 2022 will lead to the total collapse of the sugar industry in Kenya.

The sugar industry is one of the highest tax payers in the country. Of late, the returns to the exchequer have taken a marked downturn due to the lack of sugarcane, constant closures and low rate of operations whose roots can be traced to lack of law and order. The Sugar Task Force Report made clear recommendations on how to forestall this and the main one to restore confidence in this sector is to enforce the sugar catchment areas as envisaged. The spirit behind the recommendations came from the grassroots through extensive public participation.

Though the Sugar Bill 2022 has recognized that sugar catchment areas **is** the way to go, the delineation of catchment areas as in the Sugar Bill has left it open to abuse. It is important that the recommendations of the Sugar Task Force Report be recognized and implemented. This is for the betterment of the sugar industry and will ensure high investment and growth; food security; high returns to the GDP; circular economic trends as confidence in the industry grows and export earnings from excess sugar production.

AFA/Sugar Directorate has already started implementing the sugar catchment regions as envisaged in the Sugar Task Force Report and they are working very well. It would be a folly for the Sugar Bill to implement a different model from what was agreed and which is already on the ground and successful.

It is our sincere hope that the sugar catchment areas will be delineated as is envisaged in the Sugar Taskforce Report (Find attached copies of the relevant pages of the Sugar Task Force Report indicating the recommended Regions).

2. Sugar Imports (Section 23):

Importation of deficit sugar by local sugar millers can only enhance the local sugar industry. Our proposal that 50% of the required imports set aside for local millers based on their production percentages into the local market will give the industry a boost and will encourage the production of sugar, more investment, innovations and expansion of the industry. It will also encourage export of sugar once there is sufficiency in sugar production in the country.

Thank you

Ms Joyce A. Opondo
SECRETARY/KESMA

(Att.)

KENYA SUGAR MANUFACTURERS ASSOCIATION

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| kesmakenya@gmail.com | Tel: 0110 430 826 | 0732 928 868

27th October 2023

Ref: KESMA/SB/SEN/10/(1)

The Clerk of the Senate,
Parliament Buildings,
P.O. BOX 41842-00100
NAIROBI.
E-mail: clerk.senate@parliament.go.ke

Kind Attention of the Clerk, Agriculture Livestock and Fisheries Committee

RE: SUBMISSIONS ON THE PROPOSALS FOR AMENDMENT IN THE SUGAR BILL 2022 BY KENYA SUGAR MANUFACTURERS ASSOCIATION (KESMA).

The above matter refers.

As KESMA, we are appreciative of the strides the Sugar Bill 2022 has taken in the National Assembly. We are aware that the same has now been forwarded to the Senate for discussion and approval; and we are confident that Senate will handle the Sugar Bill and expedite it with the urgency it deserves in order to be passed into law to bring sanity to the troubled sugar sector.

We have had various correspondences with the National Assembly on some clauses that based on the Sugar Task Force Report 2020, would enhance the impact of the Sugar Bill. Some have been incorporated except for the issue of the delineation of regions. This is yet to be captured to the satisfaction of various stakeholders.

Taking reference to the Sugar Taskforce Report, the regions have been clearly demarcated as per the various stakeholders' participation meetings that were held by the taskforce. The report provides a solid reference point since the sole purpose of the taskforce was to give recommendations on how best the challenges in the sugar sector can be resolved.

We therefore appeal that those recommendations be incorporated as is. Some of the regions cover a whole or partial county, but are envisioned to cluster farmers in a region to enable them benefit from close proximity to the mills, therefore saving on cane transportation costs for the farmer. In turn, the miller can also extensively within their regions support cane development for sustainability.

We are apprehensive that if the delineation of sugar catchment areas is not dealt with as envisaged by the sugar stakeholders, the issue of "**Free for all**" that has brought the industry to its knees will never be resolved. Farmers will lose out on the opportunity of millers investing in cane development on farmers' fields, and providing farmer extension services due to fear of cane poaching.

Kindly find attached the following:

i. Copy of pages 59-62 Section 7.12 of the Sugar Task Force Report on the proposed regions as envisioned
ii. Two maps providing a visual clarification of the catchment areas as indicated
iii. Page 76 Section 8.4 of the Report which records the public participation carried out on zoning in the sugar industry indicating overwhelming support for sugar catchment areas.
iv. Our letter of 11th September 2023 to Hon Emmanuel Wangwe seeking correction of the proposed sugar catchment regions.

It is our earnest desire, that the delineation of regions remain as envisioned in the Sugar Taskforce Report.

Furthermore, clause 59 of the Bill imposes a representative of growers on a private milling company. The provision is not legally tenable as directorship to private mills (like any other private company) is regulated by the Companies Act, No. 17 of 2015. Consequently, the provision will create an absurdity in the running of private milling entities. Moreover, this clause infringes upon the rights of private investors who have put in substantial monetary resources into the private milling companies. This only amounts to discrimination against the board composition in private sugar mills, unlike other private companies. **We urge that the whole clause 59 of the Bill be deleted in its entirety.**

For any further clarifications, please do not hesitate to call upon the counsel of KESMA to shed more light on the challenges faced in the sugar industry and how the Sugar Bill 2022 can be an effective tool to resolve the same.

We look forward to your indulgence on the matters raised herewith.

Yours Faithfully,
For: KESMA

Joyce A. Opondo (Ms)
SECRETARY/KESMA

iv. *There is need to conduct a management and forensic audit of public owned mills and related sugar institutions to give confidence to prospective strategic partners;*

v. *County Governments to provide for facilitation of sugar sub-sector in their respective County Integrated Development Plans; and*

vi. *Structural changes in company ownership to inject additional capital, managerial expertise, innovation and technology among others.*

7.11. THE COMPETITION ACT NO.12 OF 2010 AS AMENDED

The Competition Act promotes and safeguards competition in the national economy; protects consumers from unfair and misleading market conduct; and provides for the establishment of the Competition Authority and the Competition Tribunal.

The functions of the Authority in relation to the Sugar industry include:

I. *Protection of competition and consumer welfare;*

II. *Investigation of impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;*

Under the current operating environment with lack of regulations there is a risk of creating market dominance which could lead to monopoly.

Recommendation

1. The process of licensing of new mills and divestiture of public mills should ensure diversity in ownership, in line with the provisions of the AFA Act section 44.

7.12. MILL CATCHMENT AREA IN THE SUGAR SECTOR

Cane shortage is largely attributed to poor governance structures leading to miller competition for scarce cane supply. In view of the need for coordination of cane farming and supply activities, it is proposed that cane catchment regions be created each comprising of two or more sugar mills where farmers in the region shall have an option to contract/ supply cane to a miller of their choice within the catchment region.

The Competition Act No. 12 of 2010 (as amended) prohibits restrictive trade practices (including agreements and decisions). Under Section 21(1) it specifically provides that:

> 'Agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya, are prohibited, unless they are exempt in accordance with the provisions of Section D of this Part."

Sub-sections 21(2) and (3) specifically speak to practices such as mill catchment area, commonly referred to as 'zoning'. They prohibit Agreements, decisions and concerted practices which *divides markets by allocating customers, suppliers, areas or specific types of goods or services.*

The law however provides for exemptions, that is, instances where restrictive trade practices are allowed under certain circumstances. Part D of the Competition Act provides for exemption of Certain Restrictive Practices. Section 25(1) provides that:

'an undertaking or association of undertakings may apply to the Authority to be exempted from the provisions of Section A or B of this Part in respect of—

a) any agreement or category of agreements;

b) any decision or category of decisions;

c) any concerted practice or category of concerted practices.

The application for an exemption should be made in the prescribed form and manner, accompanied by such information as may be prescribed or as the Authority may reasonably require. Upon receipt of an application, the Competition Authority shall give notice by publishing a notice in the Gazette indicating the nature of the exemption sought by the applicant and calling upon interested persons to submit to the Authority, within thirty days of the publication of the notice, any written representations which they may wish to make in regard to the application.

Section 26(1) provides that after consideration of an application for exemption and any representations submitted by interested persons, the Authority shall make a determination in respect of the application, and may—

a) grant the exemption;

b) refuse to grant the exemption, and notify the applicant accordingly with a statement of the reasons for the refusal; or

c) issue a certificate of clearance stating that in its opinion, on the basis of the facts in its possession, the agreement, decision or concerted practice or the category of agreements, decisions or concerted practices does not constitute an infringement of the prohibitions contained in Section A or B of this Part.

The Act under Sections 26(2) and (3) provides the key considerations which will guide the Authority in granting exemptions to prohibited trade practices which include:

i. exceptional and compelling reasons of public policy as to why the agreement, decision, concerted practice or category of the same, ought to be excluded from the prohibitions;

ii. Whether the exemption will contribute to or result in maintaining or promoting exports;

iii. Whether the exemption will contribute to or result in improving, or preventing decline in the production or distribution of goods or the provision of services;

iv. Whether the exemption will contribute to or result in promoting technical or economic progress or stability in any industry;

v. Whether the exemption will contribute to or result in obtaining a benefit for the public which outweighs or would outweigh the lessening in competition that would result, or would be likely to result, from the agreement, decision or concerted practice or the category of agreements, decisions or concerted practices.

Section 26(4) provides that 'the Authority may grant an exemption subject to such conditions and for such period as the Authority may think fit.'

Relating the above provisions to the sugar sector, and particularly on mill catchment area (zoning), the practice falls under the contemplated exemptions under the Act. This would require the Regulator of the sector (AFA) to make the requisite application to the Competition Authority which would then publish a Gazette Notice allowing any written representations from interested parties within thirty days of the publication of the notice.

This process essentially allows for public participation of interested parties including cane farmers and millers who can provide any representations in support of or against the application to the Authority.

Alternatively, in terms of the process of obtaining exemptions, Section 30(2) provides that 'the Competition Authority may, with the approval of the Cabinet Secretary, by notice in the Gazette, exclude any category of decisions, practices or agreements by or between undertakings from the application of the provisions relating to exemptions. In this regard, AFA can submit a request for consideration of exemption of mill catchment area (zoning) under this section. However, from preliminary consultations clarified that mill catchment areas does not impede competitiveness and therefore does not require application for exemption.

From a legal standpoint the mill catchment area (Regional zoning) is allowable.

From the technical standpoint, regional zoning:

I. will contribute to optimum capacity utilization, increased sugar production to meet national demand with surplus for export;

II. will contribute to and result in improving the industry and preventing its decline, as one of the major challenges affecting the sector is cane poaching; This improvement would be reflected in:

- ✓ Restored order in the industry and creation of a suitable operating environment for it to thrive.
- ✓ Mill cane synchronization for increased efficiency, increased sugar production and optimum incomes to farmers.
- ✓ Curbed cane poaching which when unchecked leads to loss of investments, low incomes to farmers, harvesting of immature sugar cane, factory inefficiency, breaching of farmer miller contracts and industry disputes.
- ✓ Miller accountability to the source of raw materials (farmer).
- ✓ Strengthened miller-farmer contractual relationships.
- ✓ Reduced cost of transport and increased incomes to the farmers as a result of reducing the distances for cane transportation. (cane transport costs are borne by farmers and are dependent on the distances from farm to the weighbridge)
- ✓ Promotes investor confidence as investors require an assurance of raw material supply.

III. will contribute to and result in promoting technical (extension) and economic progress and stability in the industry;

IV. Will contribute to and result in obtaining a benefit for the public arising from increased efficiency, reduced cost of production and consequently reduced cost of sugar.

Exclusive zoning means one farmer is obligated to supply cane to one mill, at the exclusion of any other. This goes against the provision of the law and the rights of both the farmers and the miller.

The current operating environment (free for all), does not obligate the farmer to supply cane to any designated miller with raw material. Similarly, the miller is not obligated to buy the farmers' sugar cane. This promotes cane poaching which is a source of disorder,

leads to cane supply shortages, inefficiency in the value chain, high cost of production, low sugar production, need for importation and high sugar prices. It also denies the farmer support for cane development from the miller as the miller has no assurance that they will benefit from this investment in cane development.

It is appropriate therefore to establish regional cane catchment areas whereby two or more mills are clustered within a defined region and farmers have the freedom to contract with any miller within the region. This will also provide a conducive environment for inter-mill cane transfer within the mill catchment areas.

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.

Recommendations

i. *Delineation of sugar regions as follows:*

- ✓ *Central region (Kisumu, Southern Nandi sub-counties and Kericho Counties);*
- ✓ *Upper western region (Bungoma, Kakamega excluding Mumias area, Trans-Nzoia and Uasin-gishu Counties);*
- ✓ *Lower western region (Mumias area, Busia and Siaya Counties);*
- ✓ *Southern region (Migori, Homa Bay, Kisii and Narok Counties);*
- ✓ *Coastal region (Kwale, Tana River and Lamu Counties); and*

ii. *Farmers shall have an enforceable contract with a mill of their choice within the region.*

7.13. ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT NO. 8 OF 1999 AS AMENDED

The Environmental Management and Coordination Act provides for an appropriate legal and institutional framework for the management of the environment.

The relevance of the legislation to the sugar sub-sector relates to environmental impact assessments. The Act categorises sugar mills as high risk projects which require submission of Environmental Impact Assessment study report which includes measures for pollution control (noise, effluent) and soil management under Section 58(2) (Legal Notice 150 of 16th June 2016, Section 2(9)(q)).

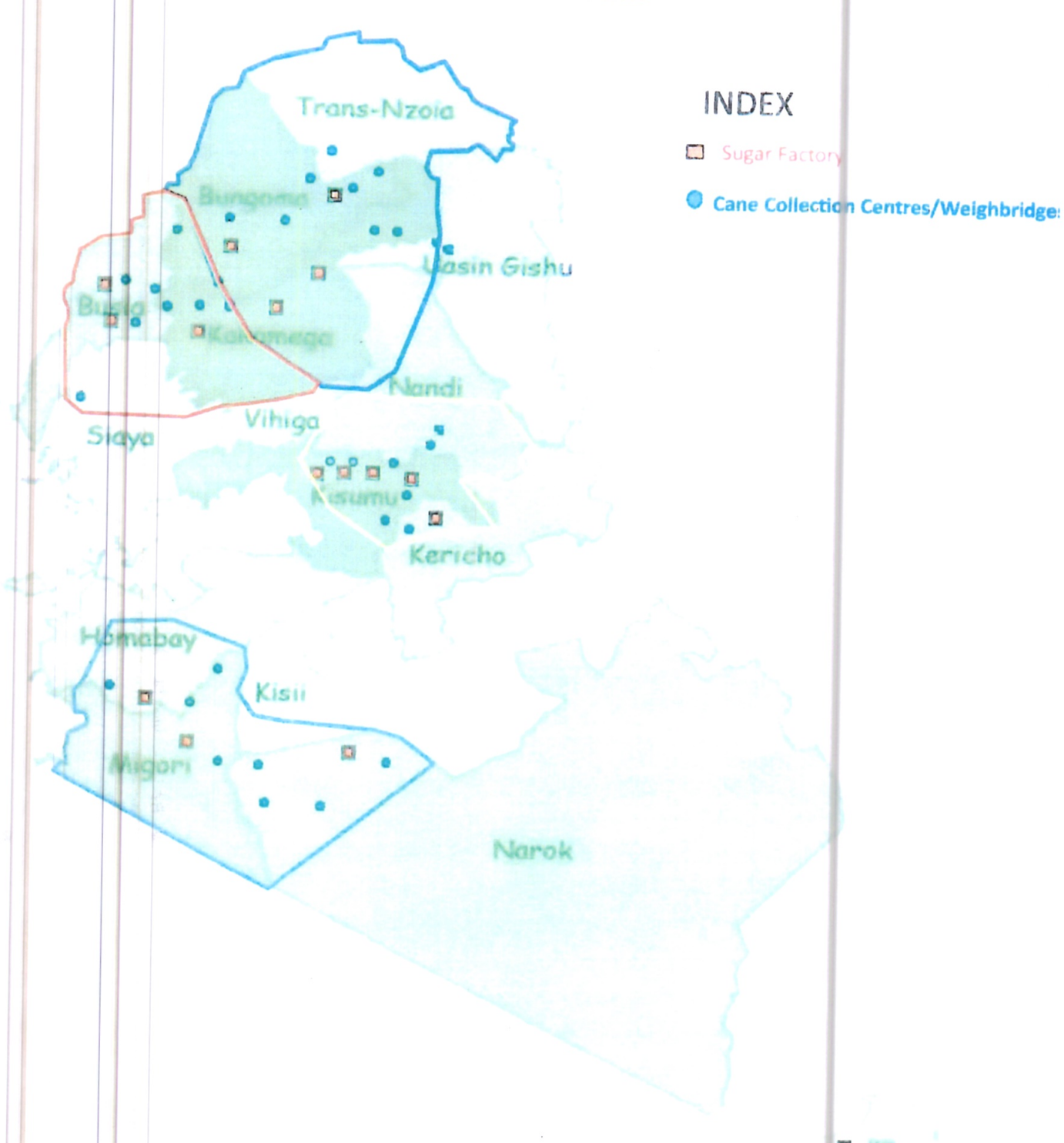
There are cases of pollution in some of the factories especially with regard to effluent management.

Recommendations

i. *Continuous collaboration between AFA-SD and NEMA to ensure enforcement of environmental standards in the sub-sector;*

ii. *NEMA should undertake capacity building of AFA-SD and Country Governments on environmental standards as per its mandate.*

MAP OF SUGAR REGIONS AS PER TASKFORCE REPORT



REGIONS AS PROPOSED IN TASKFORCE REPORT

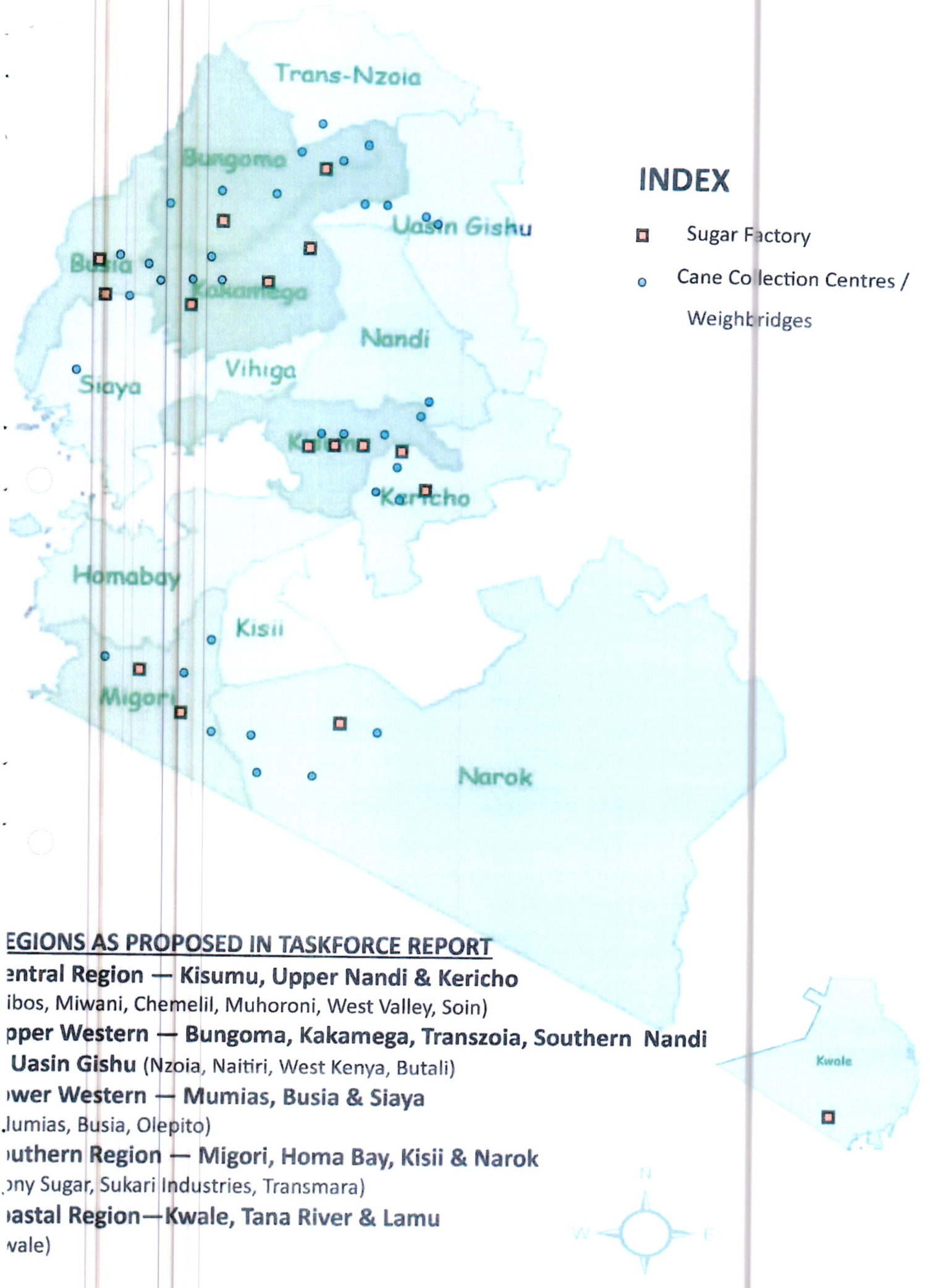
Central Region – Kisumu, Upper Nandi & Kericho

Upper Western – *Bungoma, Kakamega, TransNzoia, Southern Nandi & Uasin Gishu*

Lower Western – *Mumias, Busia & Siaya*

Southern region– *Migori, Homa Bay, Kisii & Narok*

Coastal Region – *Kwale, Tana River & Lamu*



EGIONS AS PROPOSED IN TASKFORCE REPORT

entral Region — Kisumu, Upper Nandi & Kericho
ibos, Miwani, Chemelil, Muhoroni, West Valley, Soin)

pper Western — Bungoma, Kakamega, Transzoia, Southern Nandi
Uasin Gishu (Nzoia, Naitiri, West Kenya, Butali)

wer Western — Mumias, Busia & Siaya
lumias, Busia, Olepito)

uthern Region — Migori, Homa Bay, Kisii & Narok
ony Sugar, Sukari Industries, Transmara)

astal Region—Kwale, Tana River & Lamu
wale)

Despite the divergent views on the mode of privatization, there was a unanimous proposal that land should be held in trust by the County Governments and not sold to strategic investors. The same should be leased to the investors on condition that its use is ring-fenced for cane development only.

8.4. ZONING IN THE SUGAR INDUSTRY

REGION	VIEWS
Chemelil	Create five regional cane cutting areas
Muhoroni	Support zoning should be done for sustainability as this will encourage extension service from miller
Kibos	Support zoning, create 5 regional cane catchment areas
	Zones be governed by regional committees
	Each region should have its own research facility to work within that agro-ecological zone
	Support zoning – on condition that farmers have options
Soin	Do not support zoning, farmers should supply cane to a mill of choice
	Opposed to zoning
Miwani	Some farmers were opposed to zoning
	Another group of farmers support regional zoning
South Nyanza	Support zoning and that its operation and enforceability should be properly defined.
Sukari	Do not support zoning as it causes monopoly and lack of freedom,
	Support regional zoning blocks to bring order
Transmara	Each factory to have its own designated cane catchment area
	Support zoning, with regulations to protect farmers and millers
Mumias	Create Regional zones that cluster at least three Mills together
	Re-enforce contractual cane farming
Nzoia	Support factory zoning. Licencing of new factories should be based on cane catchment zone
Butali	Establish regional zones to facilitate planning and bring discipline and order
West Kenya	Sugar cane farmer be at liberty to supply their cane to their preferred miller and miller be at liberty to purchase cane from willing farmers as long as such cane is not contracted by a different miller.
Busia	There should be zoning of regional clusters (minimum of 3 mills per zone)
Olopito	A section of farmers and the Miller supported a free for all cane market operation but with contracts.
	Another Section proposed Regional zones that cluster at least three Mills together.
Stakeholder institutions (farmers and employees	Support regional zoning
	Farmer contract with a miller of choice

There were divergent views on the subject on zoning. Majority of the stakeholders support regional zoning. This is a cluster of at least two or more factories in a region, where a farmer is free to enter into an enforceable contract with a mill of choice within the region.

Another section of farmers and one miller do not support zoning as it is alleged to cause monopoly. They prefer a free for all scenario where a miller can get cane from any catchment area and any farmer can supply to any mills irrespective of distance and commitment to cane development.

KENYA SUGAR MANUFACTURERS ASSOCIATION

REINSURANCE PLAZA | OGINGA ODINGA STREET | P. O. BOX 7661 - 40100 KISUMU
| kesmakenya@gmail.com | Tel: 0110 430 826 | 0732 928 868

11th September,2023

TO HON. EMMANUEL WANGWE,

As per our letter dated 9th September.2023 kindly note the correct Delineation of Sugar catchment arears (regions).

NOT CORRECT

First Schedule
(s.2,6(1) (b) and 25 (b)
Delineation of sugar catchment areas
As per the Sugar Bill

SUGAR CATCHMENT AREA	COUNTIES
Rift Region	Kericho. Nandi and Uasin Gishu
Upper Western	Bungoma and Transnzoia
Lower Western Region	Busia. Kakamega. Siaya and Vihiga
Southern Region	Homabay. Kisumu. Migori and Narok
Coastal Region	Kwale. Lamu and Tana River

CORRECT VERSION

Correct geographical areas as per the Taskforce recommendations for Delineation of sugar regions are as follows:

- Central region (Kisumu. Southern Nandi and Kericho Counties).
- Upper western region (Bungoma. Kakamega. Trans-Nzoia. Uasin-Gishu and Northern Nandi Counties).
- Lower western region (Mumias area. Busia and Siaya Counties).
- Southern region (Migori. Homa Bay. Kisii and Narok Counties).
- Coastal region (Kwale. Tana River and Lamu Counties)

Thank you.

Yours sincerely.
Joyce Opondo
KESMA SECRETARY

11/3/24
DSEC.

Subject BUSIA SUGAR INDUSTRY LIMITED-MEMORANDUM OF THE SUGAR BILL

From info@busiasugar.com <info@busiasugar.com>

To clerk senate <clerk.senate@parliament.go.ke>

Cc agriculturelfcommittee senate <agriculturelfcommittee.senate@parliament.go.ke>

Date Friday March 8, 2024 8:45:28 AM

CAUTION:This Mail Originated from outside of the Organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Good morning,
Attached herewith please find our memorandum as concerns the public participation held in Busia County on 4th March 2024.

Our request is the attached memorandum be put together with the others that came from Busia County and be submitted wholesomely to the Senate for consideration.

Thank you.

Attachments
Memorandum_of_ther_sugar_bill.pdf (352 kB)

THE SENATE
RECEIVED
11 MAR 2024
DIRECTOR COMMITTEE SERVICES

(1) DGAC.
DLS.
Note and deal.
8/3/2024.

(2) DGAC Secretary,
Please urgently sent the document to DSEC
for DGAC
11/3/2024

(3) DDSEC
Kindly deal
11/03/2024

THE SENATE
RECEIVED
- 8 MAR 2024
DIRECTOR LEGAL SERVICES

(4) Ms. Wawira
Kindly deal
11/03/2024

OFFICE OF THE CLERK-SENATE
SECRETARY
0 8 MAR 2024
PSC
P.O. Box 41842 - 00100, NAIROBI

BUSIA SUGAR INDUSTRY LIMITED

Busia Sugar Industry Limited has reviewed and interrogated the Sugar Bill, 2022 (Bill No. 34 of 2022) passed by the National Assembly, with amendments on September 27, 2023 and the same forwarded to the Senate for consideration. We therefore submit this memorandum to the senate in response to the invitation for public participation that took place on 4th March 2022 at Busia County Senator's office at Amba Court Building, Busia County.

BACKGROUND

There has been a decline in cane production and productivity and decline in sugar production and this can be backed up by a documented Directive from the Sugar Directorate that was addressed to Millers in the 2nd half of 2023 to halt milling operations until there was evidence of mature cane for harvesting. (See the Sugar Directorate letter.)

The issue of decline in sugar production has threatened the sustainability of the sector thereby affecting both the National & County Governments in terms of revenue collection with National Government being forced to import sugar to fill in the deficit realized from the production by the local Millers. The challenge seems far from being tackled and one of the ways the Government can assist is to provide a conducive regulatory framework for the Industry to thrive. We therefore welcome Government's initiative in its attempt to revitalize the Sugar sector and we are confident that the enactment of the current sugar bill into law with the proposed amendments will be a great milestone.

This memorandum highlights Busia Sugar's select views of the proposals included in the Bill as follows:-

THE ISSUE

1. FIRST SCHEDULE- DELIENATION OF SUGAR CATCHMENT AREA

The bill proposes the delineation of the sugar catchment areas to be as follows:-

DELIENATION OF SUGAR CATCHMENT AREAS		
NO.	**SUGAR BILL PROPOSAL**	**Millers**
1	**Rift catchment-** Kericho, nandi and uasin gishu	West Valley, Soin (2)
2.	**Upper western-** Bungoma and trans nzoia	Naitiri, Nzoia (2)
3.	**Lower western-** Busia Kakamega, Siaya, Vihiga	Busia Sugar, Butali, Ole Pito, Kabras and Mumias (5)
4.	**Southern-** Homa bay, Kisumu, Migori, Narok, Kisii	Kibos, Sukari, Trans Mara, Chemelil, Miwani, Muhoroni and Sony (7)
5.	**Coastal-** Kwale, Lamu and Tana River	Kwale International (1)

We hereby propose to amend the first schedule of the Sugar Bill, 2022 by deleting the entire table and replacing it with the table below as captured in the Sugar Industry stakeholders' taskforce report:-

DELIENATION OF SUGAR CATCHMENT AREAS		
NO.	***TASKFORCE PROPOSAL***	***Millers***
1	***Central-*** *Kisumu, southern Nandi sub-counties, Kericho*	*Kibos, Soin ,West Valley, Chemelil, Miwani, Muhoroni (6)*
2.	***Upper Western-*** *Bungoma Kakamega exclude mumias region*	*Butali, Naitiri, Kabras and Nzoia(4)*
3.	***Lower Westen-*** *Mumias, Busia and Siaya*	*Busia Sugar, Ole Pito and Mumias Sugar (3*
4.	***Southern-*** *Migori, Homa bay, Kisii and Narok counties*	*Sukari (Ndhiwa), Trans Mara and Sony (3)*
5.	***Coastal-*** *Kwale, Tana River, Lamu*	*Kwale International(1)*

Justification

The taskforce catchment areas proposal was arrived at after rigorous public participation that involved all key players and stakeholders in the Industry with a keen eye to farmers support, who have gone ahead to back it up through the various letters and in the various forums pushing for its implementation into law.

And whereas the sugar bill proposes a two-miller option for farmers to contract with from the three out of five (3/5) sugar catchment area-*Rift catchment, Upper Western and Coastal Region, (See no. 1, 2 and 5 of the sugar bill proposal table)* the taskforce proposes a three-miller option for farmers to contract with, with the exception of Coastal Region which has 1 miller. Such that the taskforce recommendation has created a catchment region with three and above millers allowing farmers in a catchment area an opportunity to select from three Millers *(See no. 3, 4 and 5 of 2nd table).*

There would be no valid reason why the taskforce recommendation would not be considered and adopted into law as it clearly increases the number of millers that farmers in a catchment area can opt to contract with vis-a vis that of the sugar bill proposal.

If the sugar sector players allow a free for all approach and abandon delineation of catchment areas, the poaching cases will only escalate the resultant effects being loss of investments for the Millers and Revenue for both level of Governments, this will also lower the quality of life for the farmers and the community at large.

To conclude, Investors (Millers) require an assurance of raw material supply to be confident enough to invest; delineation would be one way of achieving this.

KENYA NATIONAL FEDERATION OF SUGAR- CANE FARMERS .

MUHORONI BRANCH NYANDO SUGAR BELT REGION.

DATE: 11/03/2024

TO,

THE SENATE COMMITTEE ON AGRICULTURE.

We Farmers in Nyando Sugar Belt Region comprising Kisumu County, Nandi County and Kericho County hereby OBJECT / REJECT the idea of Free Harvesting system of Sugar cane in our Region due to the following reasons.

i. We cannot allow any other Sugar Milling Company from other regions to come and poach our Sugar – Cane as we have already four (4) well established Sugar Milling Companies in the names of :-
   - **a)** West Valley Sugar Company.
   - **b)** Muhoroni Sugar Company.
   - **c)** Kibos and Allied Sugar cane Milling Company.
   - **d)** Chemelil Sugar Company and other one being revived in the name of Miwani Sugar Company.

ii. Our region experienced acute Sugar Cane shortage the previous years and our above Milling Companies could not operate optimally thus causing their closer for a period of over four months, which created economic crisis in the Counties of Kericho, Nandi and Kisumu respectively to Sugar Cane Farmers due to cane poaching by millers from other regions. We cannot allow this to happen as per Sugar Bill before you as Senate. The Senate should not destroy the Farmers economic well-being because of few individuals.

iii. It is Government Policy that Agriculture is devolved and as such, Investors worth their intelligence and having done good faceability studies should be as able to operate within their regions. Let them not look elsewhere for Supply of Raw Materials (Sugar Cane) from other regions causing economic and fiscal crisis to other regions e.g. they damage Sugar Roads and get away with our cess money (ies).

iv. The Sugar Cane Milling Companies from other Regions erect Weigh Bridges in areas in disgard to other existing ones from our region thus causing crisis and confusion to the farmers.

v. We advise the Senate Committee on Agriculture to reject the idea of free harvesting for all in our Region. As we sit now discussing the bad behavior and SENSELESS planning of Sugar Cane Investors from other regions who want to destroy the Famers economic well-being by harvesting immature cane, there is looming Sugar Cane shortage in Nyando Sugar Belt in the near future, if we adopt the system of free cane poaching (FREE FOR ALL HARVESTING) from other regions.

vi. We therefore say "NO" to Free Harvesting in our Region **EXCEPT** our 4 (Four) Milling Companies. Thank you for your understanding and say "NO" to Free Marketing (Harvesting). Let every Region sort out its problems, without creating problems to other regions.

vii. Honorable Members we really appreciate you because you are of good standing in your Country and thus allowing you to serve your people well without fear or favor.

We wish you well in your endeavors.

Signed

JERIM OLWENY ODADA
Chairman Muhoroni Zone.

MICHAEL SIDIGU
Secretary Muhoroni Zone

MEMORANDUM OF PROPOSALS TO BE CONSIDERED BY THE SENATE OF KENYA IN THE PROPOSED SUGAR BILL 2022 AT CHEMELIL ON 11/03/2024.

The Hon Senator James Kamau Murango, the Senate Committee Chairman on Agriculture, Livestock and Fisheries, your fellow committee members, Hon Senator Tom Ojienda, the host senator, the Senate's secretariat present, County Governor Kisumu, County Commissioner Kisumu, all protocols observed,

First and foremost allow me on behalf of thesugarcane farmers from Nandi County to welcome you to this public participation process on the Proposed Sugar Bill 2022.

Secondly, allow me too to heartily congratulate Hon Emmanuel Wangwe for having have thought through the problems bedeviling the sugarcane farmers which roots to the repeal of the Sugar Act 2001 and having have resuscitated the bill again to give the sub-sector the proper legislation required to propel the industry's development. Hon Wamunyinyi had also made similar proposals in 2019 which culminated to the proposed Sugar Bill 2022. We too thank him for such efforts and showing indications that they care about their farmers.

Whoever collapsed all the legislations on crops and coming up with AFA Act did the agriculture sector of the country a lot of deservice. AFA Act caused a lot of confusion in the agriculture sector than good and the sooner it is collapsed the better.

Thank you too chairman and your committee and the Senate in general for having have considered to subject the bill to a public participation process though the National Assembly only required your concurrence. However you had skipped the Nyando region for reasons best known to you.

We have considered the proposals in the bill and they are good proposals. It largely borrows from the repealed Sugar Act 2001 with some few clauses introduced like the alienation of sugarcane catchment areas which is a welcomed move.

We have few observations to make Hon Chairman and the committee

Among them;

Clause 3-6 and 25 of the bill provides for the formation of the Kenya Sugar Board and The Kenya Sugar Research Institute respectively. However the composition has not guaranteed as a matter of constitutional provisions the principle of the two thirds gender rule and inclusion of persons with disabilities in the committee. What about if the election and nomination process ends in one gender alone, shall it meet the provisions of the constitution?

Clause 18(1) of the proposed bill seemingly blocks new investors from being given license. Why give licenses only to those already having one? What are the mechanisms being put in place to ensure if we have new investors they can easily and procedurally acquire a license without necessarily being blocked by this clause?

Clause 55 provides for the elections /appointments of directors, a clause be provided from direct suffrage. The Regulations should provide mapping of the areas and creation of stations where farmers can participate in identification of their directors.

The first schedule expressively implies processes of identification of representatives to the board and institute and NOT formation of millers' regional blocs. Zoning of farmers is a criminal offence. Farmers should be given the space to deliver their raw materials to millers of their choice.

Clause 34 should provide for express onward lending to growers and grower institutions to assist in cane development and ratoon maintenance.

Signed

NAME	ID NO	SIGN
1- Geoffy K. Kogo	23567114	
2- KILLSON K TALAM	20512076	
3- NOAH TOWETT	26954199	
4- JOEL LANGAT	21713977	
5. STEPHEN TARUS	24088535	
6 DANIEL Ngelechei	13806183	
7 Philip ROTICH	28813145	
8 ALEX KITUA	23500431	
9. ERNEST KEMBOI	16070601	
10. KIPSUTKO Kaech	0637449	
11 ANTONY ROTICH	0713875791	
12 DANIEL ROTICH	0720957877	

MUHORONI
SUGAR COMPANY LTD
(IN RECEIVERSHIP)

Registered Office
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OUR REF: REC/AFA/03/VOL.2/2024 **March 11, 2024**

The Clerk of the Senate,
Parliament Buildings,
P.O. BOX 41842-00100
NAIROBI.

Dear Sir,

PUBLIC PARTICIPATION - THE REPORT OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK ON THE CONSIDERATION OF THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

A. PREAMBLE

Muhoroni Sugar Co ltd (In Receivership) is a fully State-owned sugar mill established 60years ago, currently operating at mill capacity of 2200Tonnes cane per day, and a potential of producing up to 6% aggregate of the national annual sugar production capacity. This company was put under protective receivership in March 2001, and has since operated under Agriculture and Food Authority (AFA) who is also the current sole debenture holder. Muhoroni Sugar is one of the five State-owned mills gazetted for leasing through strategic partnering.

Muhoroni Sugar Co ltd is strategically located at the border of 3 counties – Kisumu, Kericho and Nandi, and plays a very critical economic role by providing ready and reliable market for sugar cane grown in over 20,000Ha of farmland spread across the three Counties, supplied by over 15,000 households.

B. In the report of the Departmental Committee on Agriculture and Livestock on the consideration of the Sugar Bill (National Assembly Bill No 34 of 2022),

Our response covers the following:

i. **First Schedule:** ***Delineation of Sugar Catchment Areas***

The proposal to merge the massive Nyando sugar belt with Southern Region (South Nyanza) is absolutely irrational due to the size, cane area development, region diversity and the numbers as well as capacities of the existing Mills. This also calls more closely to review the zoning down to Mill command zones as micro administrative areas within the Regional zones as outlined below.

Central Region: (Kisumu, Southern Nandi sub-counties and Kericho counties);

Upper Western region: (Bungoma, Kakamega excluding Mumias area, Trans Nzoia Upper Nandi and Uasin Gishu Counties);

Lower Western Region: (Mumias area, Busia and Siaya Counties);

Southern Region: (Migori, Homa Bay, Kisii and Narok Counties);

Coastal Region: (Kwale, Tana River and Lamu Counties).

Other non-sugar cane growing regions: As will be defined by the Regulator from time to time

The current sugar Bill has proposed that a new sugar catchment region viz the Rift Valley Region be established comprising Kericho, Nandi and Uasin Gishu Counties. If Kisumu County is merged with southern region as proposed the bill amendment the Rift Valley Region will remain with only one mill i.e. West Valley Sugar Company in Kericho which has been in operation for only seven months with a capacity way below available cane in the region. The proposed Southern Region spanning from Kisumu County all the way to Kisii and Narok counties would be too large and too crowded to manage with total installed milling capacity of 20,000TCD for the six working mills which represents almost 50% of the national milling capacity (41,000TCD). This is tantamount to an economic disaster and will impede sustainability of the region.

The Rift Valley has only one sugar mill viz West Valley Sugar Company in Kericho; while the Southern zone which is very large and unwieldy to manage, will comprise 7 sugar mills. Kisumu sugar belt is very far removed from the Southern Region making it difficult to govern and will result in difficulties in management and development of the sugar sub-sector.

ii. PART I, PRELIMINARY – (2)

1. Introduce Mill command zone. This will define the catchment area(s) within a specific geographical zone in close proximity to an existing Mill that shall be preferentially supervised by the closest geographically placed Mill. This will enable the clustered farmers to obtain referee recommendations from that Mill for the purposes of funding trusteeship as often required by loaning institutions.
2. That this will also safeguard Millers investment in sugar-cane development, which is not adequately covered in the regional zoning.
3. That the regulator will provide oversight controls to ensure farmers within any Mill that may opt to supply cane to another miller within the regional zone for logical and realistic reasons seeks formal consent of the regulator and the official mill for purposes cane accountability and credit traceability.
4. That this will also curb sugarcane theft.
5. The term catchment area 'sugar catchment area" means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes pf election to the Board under the First Schedule;
    a. This term defines the jurisdiction within which a board member can be elected.
    b. The catchment area, by definition does not identify with a specific miller or millers.
    c. That it be used along with the term "Mill command zone" as defined above.

iii. We also wish to submit the following:

That Nyando sugar zone performed dismally in the last calendar year, leading to total stoppage of 4 months ending 1st November 2023 (ordered by the Regulator – AFA-SD) to alleviate underage cane destruction. This came as a result of:

1. Unstructured cane development – (absence of structured cane development plan)

Over 90% of cane in Kenya is grown by independent out-grower farmers, their output determines cane availability. In absence of a specific supervisory Miller setting the Structures and schedule for deliberate cane development targets in a specified timeline, there is absence of guarantee of sufficient cane development! The Outgrower institutions do not have the capacity.

2. **Non-Structured Cane Development Funding**

Sugar-cane cultivation is a capital intensive enterprise, with crop cycle ranging from 16 – 20months. Current crop development rates lie between 150,000/- to 200,000/- per Ha in Nyando. The subsistence farmers heavily rely on institutional funding to successfully finance their crop. Due to absence of specific revolving fund and non-specific guarantee of specific referee miller under the current dispensation of free market, free zone, no miller is willing to burn fingers and risk funding cane that will go anywhere!. This has resulted in reduced yields from cane farms and increased fallow areas as farmers are either unable to optimally maintain their crop or lack funds to develop cane.

3. **Mill capacities mismatch: expanding beyond available cane**

The Nyando zone has maintained fixed cane growing land if not diminishing area against ever expanding mill capacities. With limited support and lack of focused cane development, Millers have ended up harvesting as low as 10-month old cane, hence perpetuating cane shortage. Millers must regularly declare actual capacities and develop sufficient raw material to match. This should be monitored by the regulator.

4. **Low Technology uptake**

Technology transfer has been slow (partly on account of poorly funded research) as some millers are not too enthusiastic on improving cane variety.

With new quick maturing varieties, shortage could be addressed more quickly – however, Technology transfer phase is currently very low – courtesy of depressed activity at the main research body SRI.

The local millers have partnered with research institutions to develop improved varieties and latest cane farming technologies. The millers use their extension services for the farmers to adopt these varieties and technologies.

This ensures high yield and quick returns to farmers. This can only happen if local millers are assured of recovering their investment; to safeguard this it is necessary to have a micro managed geographical area under the collaborating institution. This is referred to as mill command zone. This will encourage local millers not only to invest n this development but also to support appropriate research for development of beneficial varieties since they are assured of harvesting the cane and recovering the investment.

6. **Maintenance of sugarcane feeder roads within the mill command zone :**

The cane transportation in the black cotton soil regions has a huge impact on the sustainability of the roads. Although the County Governments' collects 1% revenue from cane proceeds as cess the reinvestment has not been realised in most cases we millers take the responsibility of maintaining these roads to provide access to the Outgrower farms at our own expense.

However no miller will invest in this activity for another miller from a different zone to benefit from this huge investment as they will poach on their developed cane, for that matter millers have been cagey on investing on roads with the current situation where the zone is practically inaccessible. This farther emphasizes the need for specific mill command zones as opposed to blanket regional zoning.

Conclusion

The delineation of regions based on the above points, is evidently prudent for maintaining the regional zoning as described in our observation. It is further necessary to balkanize the region into specific mill command areas (zones) to assign specific responsibilities and supervisory authority to each specific resident mill for realization of the purpose of the actions proposed. In the event of non-performance of a specific mill, which is the major fear of the growers, the regulator shall then assume an oversight role and be roped in to institute mitigations of the areas of failure in favour of the affected farmers.

For and on behalf of,

MUHORONI SUGAR COMPANY LTD (IN RECEIVERSHIP)

Harun Kirui

JOINT RECEIVER MANAGER

REPORT OF THE SUGAR FARMERS TASKFORCE

Farmers Input to The Ongoing Dialogue Around the Future Of The Sugar Industry In Kenya

March 2019

Kenya National Alliance Of Sugarcane Farmers Organisations

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EXECUTIVE SUMMARY

In response to a directive from the President, the Cabinet Secretary for Agriculture formed a Sugar Taskforce in late 2018. Sugarcane farmers were concerned, and represented to the CS, unsuccessfully, that NO sugar farmers or their representatives were included in the Task Force. Alarmed, sugarcane farmers organisations came together and resolved to form their own Task force to ensure that the farmers voice is heard in the ongoing deliberations around the sugar sector. This is in line with the principle of public participation enshrined in the Constitution Of Kenya, 2010.

Between January 28th and February 7th 2019 the team visited ALL sugar zones. All meetings were subject to 7 days written notice and open to sugarcane farmers. Politicians and government officials also attended some of the meetings as did a strong contingent from the print and electronic media. All attendees registered, minutes were taken and the proceedings were recorded. Farmers said many things…but they can be summarized in the following:

We, the sugarcane farmers of Kenya make the following resolutions

1. That the sugar industry be completely deregulated by deletion of sugarcane from the First Schedule of the Crops Act 2013.

   Farmers were clear that they want no zoning, no merger of factories, and that the long delayed draft Crops (Sugar) General Regulations be discarded.

2. Complete privatisation of sugar mills and more active support for current and potential private investors.

   Farmers want as many factories open and able to compete for their cane as possible to avoid a situation where they are tied to a mill that is unable to pay for or process their cane. They have suffered too long from the inefficiencies of government owned mills and prefer dealing with the private sector. Those dealing with private millers had issues, but no significant payment delays. Support is needed to clear legal issues around Miwani, Busia and Ramisi, and to have government organisations like the KRA and KEBS have farmers in mind when they close factories down or freeze their accounts. Farmers saw no distinction between central and county governments when they demand that government stays away from their business.

3. Sugar be declared a corruption free zone.

   We welcome the government decision to pay off government sugar mill debts to farmers, but the crooks must not be allowed to get off scot free. Government agencies should work with us and go back 10 years to investigate and prosecute all cases of corruption in the sugar sector. Farmers pointed out that they did not sell their cane to the government, and are tired of seeing the beneficiaries of their sweat - a long list of known board members, MD's, managers and clerks - driving around in big cars while their own children are unable to join Form 1 or attend school due to lack of fees. They

also want an update on the status of the Ksh **7bn** from the Sugar Development Fund that was transferred to the Crop Development Fund.

4. To strengthen our umbrella organisations to provide not just policy advocacy and lobbying, but also modern membership services, assistance in dialogue with the public and private factories, inputs, extension services, access to financial services and the funding of research.

5. That there be a more predictable and transparent process around sugar imports and that some of the funds raised from tariffs, auction of quotas and import levies be directed toward improving the industry

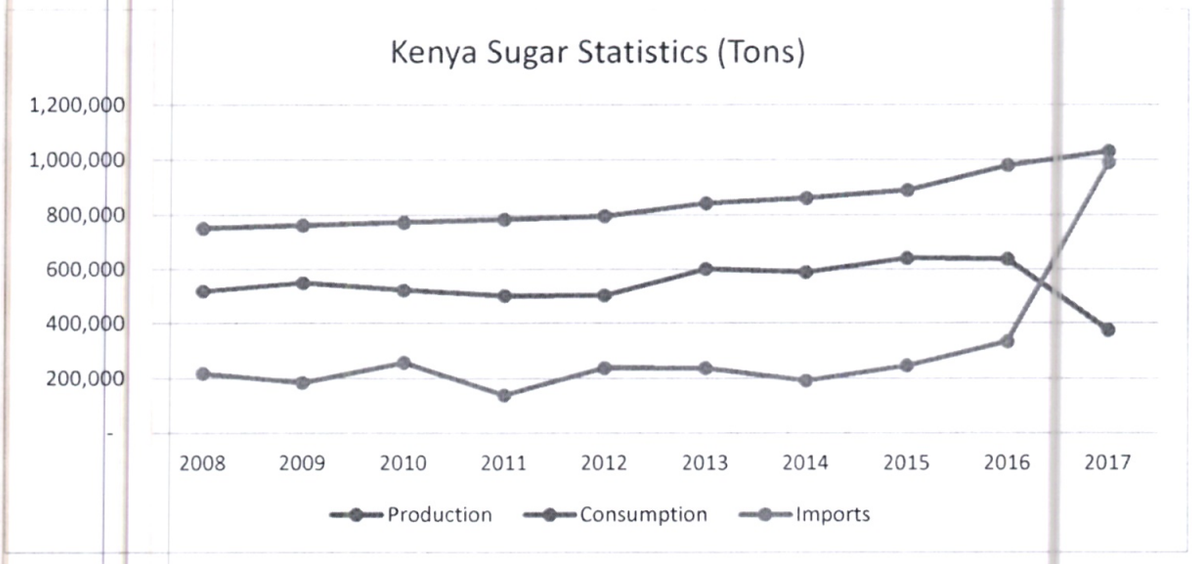
6. To engage with government and the government task Force

Having met 500+ sugarcane farmers in all 16 sugar factory zones, we would like to present these views to, and initiate an ongoing dialogue with, the government task force. Some assistance may be required in this regard.

1. Context

The global market is oversupplied with sugar, an oversupply situation that will continue for the foreseeable future. Global production is 185 MM tons for 2019 with India and Brazil the largest producers with 35 and 30M Mt. Global demand is 176 mmt and stocks are a record 53 mmt. Brazil is the largest exporter and has up to 30 million metric tons to export each year i.e. each year they can export 30 years' worth of Kenya's demand. And 53 years' worth of Kenyan consumption is sitting in ships and in warehouses just waiting to land in Mombasa, or Kismayu to get a share of this market. Global prices are at record lows, with the 10 year low coming in August 2018 with sugar at US 10c/lb, equivalent to Ksh 25,000 per ton, or 25 per kg delivered in Nairobi. Domestic ex-factory prices are currently Ksh 80 per kg

Clearly government policy decisions regarding taxes and duties, import tariffs, excise duty, and VAT has a huge impact on the domestic market situation. With 700,000 tons imported duty free in 2017 the market is oversupplied and domestic prices are low. Enforcement of taxes and duties is another key parameter. When enforcement is lax, imported sugar reaches the market at well below domestic market prices leaving huge sums of money to be divided between importers and government officials – police, KRA etc, who should have done the enforcement. A 30 ton trailer of uncustomed sugar is worth Ksh 1,650,000 of bribes and kickbacks to the importer, and enforcement officials.



Kenyan sugar production peaked around 600,000 tons in 2015. Consumption is slightly over 1 million tons. Imports make up the difference with COMESA countries and Brazil being the main source.

2. The Current Crisis, the government and farmer response

The current crisis comes from four simultaneous, but interrelated occurrences:

— rising domestic sugar prices in the run up to the general and two presidential elections of 2018,
— large duty free imports in late 2017, early 2018, that were available at record low prices
— Government factories unable to pay growers for their cane deliveries
— The closure of Mumias Sugar in April 2018.

The government had given Mumias a bailout of Ksh 1 Bn to pay farmers in mid-2018. Most of this was used to cover other expenses. Just prior to the Jamhuri Day celebrations to be held in Kakamega in December 2018, western Kenya politicians met with the President and he instructed the Minister of Agriculture to form a Task Force to determine the way forward for the industry. Its terms of reference were

a) Review the policy, legal, regulatory and institutional framework of the sugar industry
b) Review the current and emerging challenges facing the sugar industry
c) Review the sugar industry value chain including research and import structures
d) Undertake an assessment of the industry's competitiveness in the East African community, COMESA and internationally
e) Analyse the role of different stakeholder segments and make recommendations on how they can collaborate amongst themselves, and with county and national government to develop the sugar industry
f) Review the pricing and funding mechanisms in the industry
g) Review any matters that may aid in the revitalization of the sugar industry
h) Prepare and submit to the Cabinet Secretary a comprehensive final report with recommendations to be implemented in the short, medium and long term.

The task force of 17 was composed of 3 governors (Kakamega – co Chair, Kisumu and Migori), 1 senator (Kakamega), 1 MP (Navakholo), 7 public servants (Privatization Commission, 2 intergovernmental committees/councils, Ministry of Agriculture, Sugar Directorate, Treasury and Attorney General's Office), 3 sugar factory officers (MD Sony Sugar company, MD Butali Sugar Company, Chairman Mumias) and the CEO of the Kenya National Federation of Sugarcane Farmers. A secretariat of 4 comes from the Ministry of Agriculture, the Agriculture and Food Authority (AFA), the Lake Region Economic Bloc and the Council of Governors.

Alarmed at the lack of farmer representation, a group came together and lobbied for more farmer and expert inclusion in the Task Force. This effort was unsuccessful. The sole farmer representative in the team is an employee of Kenya National Federation of Sugarcane Farmers. The Federation executive of 28 is split 50:50 and is in court over disagreements on their position on matters before the task force. Half the federation executive joined up with other farmer organisations – Kenya Sugarcane Growers Association (KESGA), and the Kenyan Alliance of Sugarcane and Allied Products (KASAP), and the Sugar Campaign for

Change (SUCAM) to form the Kenya National Alliance of Sugarcane Farmers Organisations (KNASFO) in Kisumu on January 7th. They led a demonstration in the town demanding that farmers be paid their arrears before the task force travels around the country seeking their views – using the slogan "Pesa Kwanza". They swore in Hon Saulo Busolo as their Chairman and mandated KNASFO to form their own taskforce and go round the sugar zones seeking farmers' views for presentation to the government taskforce, to the government directly and to the President.

The farmers' taskforce was composed of 7 members and a 3 person secretariat.

Hon Saulo Wanambsi Busolo, Interim Chairman KNASFO, Chair SUCAM, 20 acres cane, Bungoma

Charles Atiang Atyang, Chairman KASAP 4 acres cane, Chemilil, Kisumu

Richard Ochieng Ogendo, Secretary General KESGA, 20 acres cane, Muhoroni, Kisumu

Stephen ole Narupa, Treasurer, KNFSF, 30 acres cane, Transmara, Narok

Jeckonia Oyoo, 1st Deputy Chair, KNFSF, 7 acres, Sukari Industries, Migori

Vitalis Okinda, 5 acres ,

Micheal Arum, CEO SUCAM

Kingsley Mutali, secretariat

Judy Wangila, secretariat

Gem Argwings-Kodhek, consultant

Between January 28th and February 7th 2019 the team visited ALL sugar zones. All meetings were subject to 7 days written notice and open to sugarcane farmers. Politicians and government officials also attended some of the meetings as did a strong contingent from the print and electronic media. All attendees registered, minutes were taken and the proceedings were recorded.

Date	Venue	Factory	County
27th Jan	Mabanga FTC	Nzoia	Bungoma
28th Jan	Kapkatembu ACK Church	Butali	Nandi
29th Jan	Mumias Cultural Centre	Mumias	Kakamega
29th Jan	Malava Friends Church	West Kenya	Kakamega
30th Jan	Busia ATC	Busia, Olepito	Busia
31st Jan	Miwani Catholic Church	Miwani	Kisumu
1st Feb	Mariwa Centre	Muhoroni	Kisumu
1st Feb	Osengeti ACK Church	Chemilil	Kisumu, Nandi
4th Feb	Queens Court Hotel	SONY	Migori
4th Feb	Paris Hall	Sukari Ind.	Migori
5th Feb	Friends Church	Enoosaen, Transmara	Narok
7th Feb	Child Care Center	EASI Ramisi	Kwale
25th Feb	Vunduba Hotel	Farmers Verification	Kisumu
26th Feb	Royal City Hotel	Expert consultations	Kisumu

2.1 SUGARCANE FARMERS RESOLUTIONS

The farmers, through their Taskforce came up with 5 resolutions:

1. That the sugar industry be completely deregulated by deletion of sugarcane from the First Schedule of the Crops Act 2013.
2. Complete privatisation of sugar mills and more active support for current and potential private investors.
3. Sugar be declared a corruption free zone, that farmers' arrears be paid, but that the long line of crooks responsible for the state of the industry not be allowed to get off scot free.
4. To engage with government and the government task Force
5. To strengthen their umbrella organisations

Each of these resolutions is examined in the remaining sections of the report where some of the detail behind the resolutions are presented, an examination of alternatives is given and how the resolution fits into the farmers' vision for the sector in the decade to 2030 and beyond is laid out. Options for implementing the resolutions and the costs involved is also given.

3 DELETION OF SUGARCANE FROM THE FIRST SCHEDULE OF THE CROPS ACT 2013.

This resolution may come as a shock to many readers. But it shows how grave the situation in the industry is and how desperate sugarcane farmers are for a solution and out of the box thinking. They want the governments hand OUT of the industry. This simple amendment would achieve that, and would fit neatly in the upcoming Miscellaneous Amendments Bill. They hope their party leaders and area MP's hear them.

Farmers did not express the wish this in these words. They said "let us be free to deal with the millers without any force or direction from government or the government mills. Sugar has been governed by government laws, regulations and parastatals for decades. The Kenya Sugar Authority Order, 1977, the Sugar Act 2003, and now the Crops Act of 2012 have provided the legal and regulatory framework for the industry.

The Crops Act was part of legislation consolidating and updating 107 pieces of legislation in the agricultural sector, and part of separating regulatory from development roles in the large number of agricultural parastatals that had mushroomed over the years. The agricultural parastatals had 452 board members, 40 MD's, and over 12,000 employees and were a drain on the sector and the farmers, consumers or the national treasury that financed them. The consolidation of legislation is not complete but the formation of the Agriculture and Food Authority (AFA), is one step toward the ultimate aim foreseen in Vision 2030. The Sugar Board has been reduced to a Sugar Desk, but still retains many of the staff and functions of the former, larger, Sugar Board.

Many farmers asked for the return of the Sugar Board. They appreciated the voice they had through electing directors, and they appreciated the Sugar Development Fund as a source of easy to access funds for the sector. Both the Board and the Fund had issues that farmers recognised, but they felt they were better off and had more voice in government policy making in those 'good old days'. The Farmers Taskforce chairman was elected twice to chair the Sugar Board, knew the organisation well, and knows its shortcomings. The primary shortcoming is that even as Chairman, elected by farmers nationwide, he headed a government parastatal under the State Corporations Act, and was subservient to, and had to take directions from the PS Agriculture.

Deletion of sugar from the schedule of the Crops Act would set the industry free. Farmers would be free to build their own organisation, subservient and under the direction of no office – the trade unions COTU or KNUT, the Kenya Flower council or KEPSA – that face government as equals when it comes to dealing with matters in their sector. Many of the functions farmers miss about KSB can be better undertaken by a strong farmers body as detailed below.

3.1 NO ZONING

In more than one meeting farmers talked of police officers being used to arrest tractors carrying cane that the government mill suspected to have been developed, or contracted to them. Farmers, including taskforce members, could not explain why they continued to deliver

cane to factories that were not paying them. During the time of our visits statements by the President in Muhoroni, and by the Deputy President at a meeting with the Council of Governors really resonated with them. Both leaders asked farmers not to deliver cane to factories that were not paying them.

Farmers described the proposed zoning as colonial suppression, or like being a cow tied on a rope that cannot reach good grass or water because of the rope. The desire to be free to sell their cane to any miller able and willing to take their cane, and pay a good price, expeditiously, came up again and again. Farmers around the state mills were aware that their colleagues who delivered to private mills had no payment delays or accumulation of arrears (except Ramisi). Farmers in private factory zones could not understand those who sold to factories known not to be paying.

Public mills, some farmers' organisations and, reportedly, the government task force, were said to be in favour of zoning. This would limit the setting up of weighbridges and buying stations that in some cases are over 150 km away from the sponsoring factory. West Kenya and Kibos Industries have been most active in this regard. However farmers were happy to have competing buyers for their cane, particularly where their only option before was a government mill that would take the cane, but where there would be NO clarity or predictability about when payment would be received. We encountered farmers with arrears going back up to 2 years.

The question of zoning did not only relate to payment. In recent memory – most painfully in the SONY-Transmara zone, farmers could remember having to wait 6 years for their cane to be harvested. The licencing of new factories in places like Busia, Transmara and Butali has given farmers more options than were available in the past where factories had 40km exclusive zones. They welcomed this trend and would like as many new factories as possible to be opened and for those with court cases stopping the development or opening of new factories to withdraw those cases, encourage cane development and compete.

Sugarcane farmers want contracts with sugar factories. But they want contracts that also protect them when the miller does not perform e.g. if harvesting is delayed up to 30 days they be free to sell to another miller. But they felt there is no need to force them only to contract with the closest mill. They pointed out the plight of Mumias farmers. What would happen to farmers in a zone when their mill is closed or lacks funds to buy cane. Sugarcane farmers want to be free just as the producers of other crops are free and have no sympathy with the arguments advanced in favour of zoning.

3.2 NO MERGER OF FACTORIES

There has been a plan mooted for the merger of factories in the Nyando sugar belt i.e. Muhoroni, Chemilil and perhaps Miwani be run as part of a single large new factory. Proponents talk of the economies of scale in a single large factory rather than the 4 factories currently in the zone. Farmers do not want to hear of this suggestion. They point out how Mumias collapsed with all its size. Experts testified that the industry in Kenya is better off

with 2 or 3 smaller plants than one huge one. Weaknesses in management, problems raising capital, and the nature of land tenure where there are many small parcel spread over a large area militate against a merger. The farmers in the Miwani zone want their factory to reopen and have developed detailed plans for how this should be done, the phases and the funding required. This information has been presented to the county Governor.

3.3 Draft Crops (Sugar) General Regulations be discarded

These regulations have been in the works for over a decade. But many problems remain. These include lack of a policy addressing the key issues in the sugar industry, regulatory overreach where the proponents/drafters are trying to amend the parent Crops Act through the regulations, lack of justification for specific regulations and overburdening prospective private investors. The authors are not known to the sugarcane farmers and have not consulted with them. Some of the proposals seem to have beneficial aims and address some of the farmers' wishes, but overall, the farmers feel the draft is far from meeting the required threshold of being ready for enactment. Farmers would prefer that these regulations be withdrawn, and go further to demand that sugar be deleted from Crops Act. Many of the proposed regulations would be better negotiated between a strong farmers body, millers and other players e.g. transporters and weighbridge owners. They do not need to be gazetted by a national government minister. Under the 2010 Constitution agriculture is a devolved function.

4 PRIVATISATION AND ENCOURAGEMENT OF PRIVATE INVESTORS

4.1 PRIVATISATION

Kenya has 16 operational sugar mills. 5 are wholly, majority, or partly owned by the government – Mumias, SONY, Chemilil, Muhoroni and, indirectly, Miwani. The 5 mills are the focus of delayed payments, corruption and other problems. Farmers supplying the private mills have some issues with them, but these problems are far less than those with government mills and do not include payment delays. The farmers' headache is similar to the government headache. The bulk of problems the government has to deal with in the sugar industry come from the minority of mills with government ownership. These problems stretch all the way to the Head of State and his deputy who have had to make policy pronouncements, promises and commitments largely relating to problems with these government mills.

Farmers want the government out of the sugar industry. And for over 15 years the government also has said it wants out. Now is the time to privatise the government mills. The details of exactly how are beyond what farmers were able to lay out but they noted and wish the process would note:

— the lessons and mistakes with the Mumias privatisation
— the farmers wish to be at least part owners, and directors, of the privatised mills
— their ability to raise relatively large sums of money through a per ton check off system. They proposed Ksh 200 per ton. This would amount to Ksh 200 million per year in a 3000 TCD plant
— a desire, according to some farmers, for their payment arrears to be converted to shares.

Many of the legal and political blocks to the privatisation process have been removed. And a number of foreign and domestic investors are keen on investing in the industry. It is time to get the government – national as well as county- out of the sugar business. Government ownership brings with it much baggage that makes running a successful sugar factory in Kenya today near impossible. Sugarcane farmers have suffered long enough from the corruption, bad governance and impunity Kenyans exhibit when government systems are in place.

4.2 MORE FACTORIES

Visiting all the sugarcane zones was eye opening. Over the last 20 years sugar growing has moved into highland areas in the Rift valley that were ever seen as sugar producing zones. Climate change, newly released cane varieties, and challenges in the maize and dairy sectors have encouraged farmers in places like Nandi, Kericho, Trans Nzoia and others to go into sugarcane. And they are happy with the results. Acreage is expanding and they want and will need more factories and processing capacity. The same need for more capacity is seen in the southern areas of Nyanza and Transmara, western Kenya in Siaya and Busia, and new zones

like Tana River and Kwale. Even the relatively crowded Nyando belt could do with more processing capacity and farmers were particularly keen for the reopening of a mill at, or near, Miwani. The point is that Kenya has the land and climate and can produce a lot more cane than is currently the case.

Sugarcane farmers lost Ksh 11bn of potential sales revenue between 2016 and 2017 when production declined by by 37 percent or 2.7 million tons. 2018 statistics are not out yet but are sure to reflect the continuing decline. Much of this is the result of problems at Mumias and farmers there are leaving land fallow, or planning to go back to the maize they used to grow pre 1974. For the farmers still harvesting having new private mills has been their savoir. But it is clear that there is underinvestment in cane development in the zone.

New cane means more processing capacity. Our expert consultation shows the need for new investment in reviving and modernising existing factories and starting new greenfield sites. That is what sugarcane farmers want.

4.3 More Active Facilitation of Private Investors

New investment in sugar processing needs private investors. With about 4 cases needing revival/modernisation and privatisation, and 4 new plants of e.g. 3000 TCD capacity to start the sector needs/can absorb Ksh 20bn (US$200m) of investment in the medium term just for the processing and transport operations. Cane development also needs a huge cash infusion.

New investors are reported to be interested in investing in sugar processing in Kenya with several recent investments showing that the sector remains attractive. However new investors, Particularly those coming from outside the country who are not yet schooled on profitable cane processing in Kenya, look at how the current investors are treated before making their decision. Farmers pointed out uncertainty about the granting and renewal of licences, demonization of private investors in the media, and unhelpful actions by government agencies as discouraging private investment. The Kenya Revenue Authority and Kenya Bureau of Standards were mentioned more than once.

When factory accounts are frozen, or warehouses sealed for inordinate amounts of time, farmers suffer as the factories cannot pay them. At some of the poorly performing government mills farmers reported that Managers are forced to choose between making statutory payments and paying farmers. At Ramisi the warehouse has been sealed for months in the alleged 'mercury' probe. All apparently arbitrary government actions are addressed through payment of kickbacks or slow and costly legal processes to reverse administrative actions. This does not augur well for encouraging the large investments in the sugar industry that cane farmers said they want. There should be more transparency in the process of government agencies exercising lawful enforcement actions against sugar mills.

4.4 Role of National Government

Sugarcane farmers were quite happy with the roles assigned by the Constitution 2010. In the context of the sugar industry and the current crisis those are to make policy, and to bring corrupt people to account through its roles in security and the maintenance of law and order. The Constitution does not imply national government running sugar mills. Nor does it foresee national government making detailed rules around the operation of this, or any other agricultural commodity sector.

Sugarcane farmers had doubts about the diligence of the weights and measures department in checking on weighbridges.

4.5 The Role of County Governments

The roles of county governments are also laid out in the Constitution. Crop husbandry County governments also collect millions of shillings in cess from the sugar industry. Sugarcane farmers a good portion of that to go towards maintaining the roads they use and funding the woefully underfunded agricultural extension services they need. The amount of cess collected from the industry should be made transparent i.e. how much is raised and how it is used.

5 Declare Sugar A Corruption Free Zone, not a Free Corruption zone

5.1 A long history of Corruption, and Impunity,

Farmers were able to report a long and wide ranging list of cases of grand and petty corruption in the sugar industry, some several decades old e.g. around the founding of SONY. The team had the opportunity to talk with the Hon Kassim Mwamzadi who was in parliament from 1963 to 1992 who examples of governance failures, influence peddling and corruption going back to the 1970's and often associated with the funding of elections. Many examples from the time of former presidents, ministers and KSB bosses in the 80's, 90's and 2000's to as late as this year and currently ongoing were also sited. Examples also came from the more recent tenures of several ministers and PS's of Agriculture, boards and managers at KSB, and the now defunct outgrower companies. For each government factory we were regaled with tales of impropriety overseen or indulged in by Presidents, ministers, Board Chairmen, and the long list of MD's and senior officers. And the culture of impropriety filtered through the whole industry all the way down to the officers deciding which cane will be harvested, clerks at the weighbridges, in the finance and computer sections, clerks filling medical claim forms, and, by their own admission, farmers themselves.

Farmers named names, and gave, and documented examples. They see the beneficiaries living large among them driving big cars carrying their healthy well fed children while they struggle to educate and feed theirs. They talked of lacking fare to go from office to office chasing payments, and the need to bribe to get paid. The farmers' pain is real. And some of the examples are so current. They demanded that if government pays arrears the list of farmers to be paid be publically displayed as they are sure many fake farmers are in the list of people lined up for the Ksh 1.9-2.6 bn government is getting ready to pay – even after the recent vetting. Fake farmers, fake deliveries, diversion of farmer tonnage to factory staff, cane from the nucleus estate being added to officers small deliveries were among the example sited. With names.

Farmers want to see beneficiaries of known corruption cases brought to book. They have evidence but can do little. Notwithstanding a 2010 Kenya Anti-Corruption Commission Report that identified corruption, mismanagement and impunity as vices that bedevil the sugar industry, and several high profile cases in the media and even parliament, no individual has ever been jailed for corruption in the sugar sector. And no funds or assets have ever been recovered. Farmers are keen that government pays their arrears, but at many meetings pointed out that they did not sell their cane to Uhuru, or the government, and want those involved in fraud and corruption brought to account.

5.1 Impact on factory efficiency and farmers payments

Factories buy cane and convert it to sugar. However when factories are inefficient – poorly maintained, old technology, and have not had a full and proper maintenance, factory efficiency goes down. In Kenya today average tons of cane to produce a ton of sugar is 12. It should be 8 or 9 in a globally competitive industry.

Experts pointed out that a number of government mills have not had the proper annual out of crop maintenance for 3 years. That annual maintenance can cost between Ksh 600 – 1 Bn per annum. When factories are cash strapped managers just keep them running as best they can. Machines are cannibalised and overall efficiency keeps falling. One of our experts pointed out that with inefficient factories farmers payments are literally burned up in the factory. After paying for process materials and utilities, wages and transport, there literally is no money left to pay farmers. The farmers' money was not stolen, it was "eaten by the machine!"

Currently ex-factory prices are on the order of Ksh 80 per kg, Ksh 4000 per 50 kg bag and Ksh 80,000 per ton. 12 tons of cane is Ksh 4,000 * 12 or Ksh 48, 000. Just for the cane. Transport (Ksh 1000 per ton cane average is another Ksh 12,000). For an inefficient mill cane delivered is Ksh 60,000 of the Ksh 80,000 ex-factory price

Processing (per ton sugar) Ksh 20,000 at the best mills to Ksh 50,000 at the worst mills. This leaves thin margins for the best performing factories, huge losses for the inefficient factories. The inefficient, or inefficiently run factories are all in government hands. That inefficiency makes it difficult for them to pay sugarcane farmers.

The Sugar Pricing Committee uses this cost and returns data to determine indicative cane prices – currently between Ksh 4,200 and 3,800 per ton across the factories. Farmers wanted more transparency in the pricing mechanism, and more input in the price determination negotiation and process. Farmers complained of what seemed to be arbitrary reduction in cane prices at several of the mills during our meetings. They want more openness in price determination, more competition between mills, and stronger farmer re[presentation in factories decisions to alter prices. Naturally they would want higher prices than the ruling Ksh 4000 or so per ton. Factory efficiency is a key determinant in what factories can afford to pay for cane.

Farmers recognised the role of sucrose content in the conversion from cane to sugar and have seen the cane testing units at all the factory gates. They are not functioning and farmers would like more clarity about their role in the future. Currently cane in Kenya is not bought on the basis of sucrose content.

5.2 The Crop Development Fund

Ksh 7 Bn was transferred from the Sugar Development Fund to the Crops Fund in 2013. Farmers expressed worries that they had no information about the money, where it is, how it is accessed, or even if it still exists. They demanded that SDF funds only be used in the sugar industry, and not on other crops or the general administration of the Crop Fund or AFA. They knew the names of those who used to be in charge of the SDF, but have yet to see anyone from the Crops Fund.

The funding of sugar roads was an important contribution of the SDF. This is no longer happening. Farmers were keen that 80 percent of the county cess collected from their cane be used on roads. County officials (agricultural officers in two counties and an MCA in one, were not even aware that sugar cess was being collected and remitted to the county.

6 The need for a Strong farmers Umbrella Organisation

The sugar industry is strewn with a plethora of different organisations. These include the Kenya National Federation of Sugarcane Farmers (KNFSF), Kenya Sugarcane Growers Association (KESGA), the Kenyan Alliance of Sugarcane and Allied Products (KASAP), and the Sugar Campaign for Change (SUCAM). In all meetings farmers were keen to have a strong farmers body and hoped that the Kenya National Alliance of Sugarcane Farmers Organisations (KNASFO) might become that body. They were aware of the history, infighting, and disunity that has plagued the farmers organisations and urged the KNASFO team to remain united but to be aware that many in the industry do not want a strong farmers voice.

There were a range of purposes farmers felt they need a strong national organisation for. They applauded the policy advocacy role being undertaken by the team, but also indicated the need for a range of other services. The roles, structuring, management, membership and financing of such an organisation is beyond the scope of this report but farmers expressed the need in all the meetings we held and tasked the existing team to move the process forward.

Roles, structure, services, budget, membership.

6.1 Policy advocacy and lobbying

There was strong recognition for the need for a united organisation that could give farmers a voice – nationally as well as locally e.g. at the county and factory level.

6.2 Modern membership services

6.2.1 Dialogue and representation at factories – weighbridge, payments

Farmers expressed the need for a strong voice at the factory level. Too often they felt alone dealing with tractor loaders, cane cutters, weighbridge clerks and the agriculture and finance sections of the factories – public as well as private. Many, particularly women, described the difficulty of having to travel seeking services, dealing with and issue, or following a payment. Even relatively simple issues took several costly and time consuming trips and much of the time the issue was not conclusively addressed. The outgrower companies that were to assist farmers with such things also developed the same bad customer service practices as the factories. Many a farmer gave up after many visits following a simple issue. Some, they pointed out, died before their issue was sorted. Having a farmers advocate located at, or near the factory, who could deal with a farmers case and perhaps update by sms and only get the farmer to come when absolutely required would address much of the frustration expressed by sugarcane farmers.

Lack of transparency around weighbridges deserves special mention. In too many meetings farmers expressed doubt about the accuracy of the weighbridges and wondered how often the weights and measures department of national government checked on them. It was difficult

for farmers to follow their deliveries and check the weight given. It was even more difficult to follow the weights and how they are translated/forwarded into payments. They suspected that much of their cane was being diverted to fake farer accounts associated with the clerks manning the reception area. But a simple farmer did not have the wherewithal to follow and audit the process. We were told of cases where farmers were flushed out of a factory office by police called to throw them out of the office because they were allegedly causing a disturbance. Farmers were very bitter about their treatment at cane reception, agriculture and finance offices and had no one to take their complaints to.

Farmers really appreciated the opportunity to come together, meet and share views, issues and problems. They wished they could be having such local area meetings at least twice per year. There have apparently been none in recent times. They appreciated meeting industry leaders from other regions and really appreciated the opportunity to express their views on national television.

6.2.2 Inputs

Over the years many different institutional arrangements for getting inputs and services to farmers have been tried. At different times cooperatives, outgrower institutions, and factory agriculture departments have been tried, all with mixed success and different shortcomings. But the lack of transparency seemed to be the most common underlying factor. Issues around how many cares were ploughed, how many times, how much fertiliser was delivered, at how much per bag, interest rates etc. that usually came to a head 18 months later when the farmers saw their statement and perhaps got a debit balance. Farmers recognised their responsibility to pay more attention to the debits entered in their account but felt the need for a strong farmers organisation to assist them.

Ploughing, seed cane, fertiliser, weeding labor, crop protection and weeding chemicals are the primary inputs cane farmers require. Farmers know it is best to undertake all these activities themselves, but often lack the cash and resort to credit for expensive products and services at unclear interest rates. Farmers expressed the desire for a strong farmers organisation to intervene and explore ways of leveraging on new innovations – like mobile wallets, sms, mobile banking, bulk purchasing and One Acre Fund, Mkopa Solar, asset financing types of schemes to address the problem.

6.2.3 Financial services, and loans

There have been many innovations in access to financial services that sugarcane farmers would want to benefit from. They see online banking platforms and lending to strangers and wondered why a known, registered sugarcane farmer cannot access a similar product. Others talked of a market where they can forward sell their cane once its planted and replace some of the more traditional crop/credit systems prevalent in the sugar belt where brokers can buy a cash strapped farmers field at a significant, often exploitative, discount. Apart from payments for inputs, sugarcane farmers main financing needs were for school fees, medical

emergencies (NHIF?) and household expenses. They tasked the emerging farmers organisation to explore these options with players in the financial and mobile digital space.

6.2.4 Extension services

Sugarcane farmers said they no longer receive any extension services from government or factories. Agricultural extension is a devolved function and counties in the sugar belt seem to have failed in this regard. A strong farmers organisation should agitate for county governments to reinstate extension services.

6.2.5 Funding and management of research

Farmers felt they were not sure what the roles, programs, funding and outputs of the Sugar research stations formally KESREF but now part of KALRO. Farmers said they have had the same varieties – CO 425,900 etc for decades and wonder when they will get new and improved ones. In the emerging highland zones some good work seems to have been done and they have appropriate varieties. However they still need more information about the growth patterns of these varieties to be shared with their factories some of whom seem to be bringing lowland rules of thumb about the age and growth of cane to this new environment.

6.3 Link to other industry organisations

There has been a history of linkages between sugar industry organisations – farmers, millers (KESMA), transporters, policy makers, parliamentary groups (SUPAC). Sugarcane farmers felt that due to the weaknesses and division between their organisations their voice and needs were not being heard or well-articulated. There was no response or outcry from sugar farmers when duty free imports were allowed, nor when the window was extended. There was no farmer response to the government decision that KSB import fertiliser, or that the Sugar Board be abolished and sugar be placed in AFA. When the government task force wanted to meet cane farmers they could only reach them through millers. Farmers need a strong and financially independent organisation to make some of these linkages. They want to engage through their own organisations, not through millers, provincial administration, county governments or other groups.

To justify their place at the policy and dialogue table the sugarcane farmers want a strong organisation. It needs a known office, website, social media presence, email address, bank account and registration. Farmere are keen to be known and registered by name, address, id and mobile phone number. It needs a secretariat with capacity and authority to engage, support analytical work, organise tours and benchmarking locally and even abroad. And eventually, but not yet, free and democratic election of office bearers. If all this can happen they said they are willing to contribute to the funding of such an entity. If they had such a body there would be less crying out for the return of the, less than perfect, Kenya Sugar Board.

7 IMPORTS

Kenya has to import sugar each year. The gap between production and consumption is 300,000 tons per annum and rising. And imports can be landed at well below the domestic cost of production. Farmers made various demands about keeping cheap import out as it impacts them negatively and are blamed for some of the problems at the government run factories. They were disturbed by the silence of their leaders when the duty free import gazette notices were issued.

The world sugar market is not a free, and is distorted by a range of policies countries around the world have put in place to protect domestic producers. Kenya's policy is unclear, and subject to change depending on circumstances, and political expediency. Farmers, as well as the current and potential investors in the industry need clarity about how imports – from COMESA and beyond, will be handled.

Between May and December 2017, at the peak of the political cycle around the elections, Kenya imported 981,000 tons of sugar, duty free. COMESA countries are allowed to bring in 350,000 tons free of duty. Any COMESA sugar beyond this volume is subject to 100 duty. 627,000 tons came from Brazil, outside COMESA in violation of COMESA rules from where we should have sought prior approval. That non-COMESA sugar should have been subjected to a 25 percent levy. The duty waiver transferred billions of shillings – between 10 and 20 Bn- to importers. Some of it, farmers are sure, helped finance the election campaigns. This – sugar financing elections – started happening as far back as the 1960's according to the former MP we interviewed.

The duty waiver was for table sugar. Industrial sugar pays 10 percent duty. Kenya and Tanzania both imposed tariffs on Kenyan manufactured products – juice, ice cream and confectionery suspecting it was made from sugar that did not pay the 10 percent duty. Raw sugar, of which Kibos Industries brought in 150,000 tons, attracts zero duty. 4 companies and SONY Sugar were accused in parliament of selling industrial sugar direct to consumers.

Farmers are disturbed how little they know about the goings on in the sugar import trade and want an atmosphere of more transparency, more consultation and more predictability. Parliamentary investigations one year later are of little use. And farmers noted that some members of parliament were being given money in toilets to influence their votes regarding the parliamentary probe. They wonder who they can trust to hold brief and defend their position. They asked "where are our MP's?".

The farmer consultations generated a range of proposals including:

a) A ban on imports
b) That a single agency be the sole authorised importer
c) That sugar factories be the only authorised importers
d) That the SDF levy on imports be reinstated
e) A transparent auctioning of import quotas.

The worst case scenario is the free for all witnessed in 2017 where unlimited imports were allowed and 1 million tons came in.

Farmers and experts are not sure what the best way forward, but they are sure that they want to be involved in the discussions to determine the policy, formula and way forward. Funds raised from the quota auction can be applied toward the sugar portion of the Crop Development Fund or whatever mechanism evolves from that. One day, perhaps, that money can be managed as an industry fund handled by the umbrella farmers organisation.

The amount of money generated from sugar importation is enough to solve many of the problems in the sugar industry.

8 Link to The Government Task Force

During the time of the Farmers Taskforce the media was replete with provocative statements attributed to Taskforce Members. These included that 'CS should be sacked", 'we will bring 1000 farmers to Nairobi and march on State House to present our views", and the successful slogan "Pesa Kwanza!" by which farmers meant that before government pays their farmers arrears they were unwilling to meet the government taskforce. The press also reported rebuttals where CS Kiunjuri called our team "a bunch of busy bodies", and said that he would never meet us.

Farmers resolved that we present our views to the government task force, the Minister, and the President. They also asked that we, together with them, present them to the former Prime Minister in the hope that the spirit of the 'Handshake' can finally bring political goodwill to solving the plight of the sugarcane farmer.

We are keen to work together for the benefit of the industry, but are most keen that the farmers point of view be given more importance than was apparent in the way the government team was constituted. Farmers were concerned that the task force was dominated by public officials who may hold back on pointing out mistakes made by government, government officials, the cabinet and President that they all, ultimately report to. Those officers may be transferred, retire or be sacked. But the long suffering sugarcane farmers are here to stay.

Farmers must be heard.

They expressed the need to develop a Vision for the industry over the next 10-30 years, they want the industry private sector driven, with a strong farmers voice coming from a strong united farmers organisation. They want more factories, remunerative prices, seamless administrative and contractual arrangements, better yields, improved quality of their soils, to stay in sugar production but to be guided on options for diversification. All they really want can be summarized as improved livelihoods for themselves and future generations of their families. They are sure the government wants the same thing.