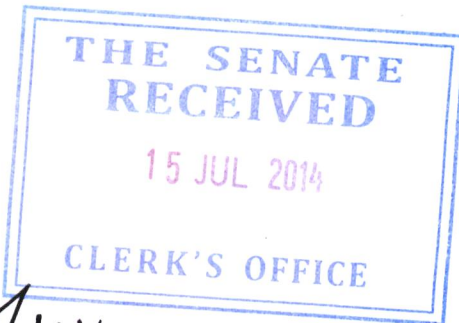


MEMO



To : **The Speaker**
Thro' : Clerk
From : Director Committee Services
Date : 15th July, 2014

Approved
~~XXXXXXXXXX~~
16/7/14

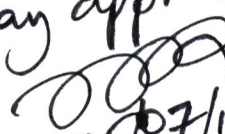
SUBJECT: REPORT ON PETITION BY TEA FARMERS OF KISII COUNTY CONCERNING HIGH TAXATION AND LOW BONUS EARNINGS BY TEA FARMERS.


The Senate Standing Committee of Agriculture Livestock and Fisheries on Wednesday 18th June 2014, held a meeting with the Ministry of Agriculture, Livestock and Fisheries, Tea Board of Kenya, The East African Tea Trade Association and the Kenya Tea Development Agency regarding a petition by Sen. Christopher Obure on behalf of tea farmers in Kisii County concerning high taxation on tea and low bonus earnings by Tea farmers.

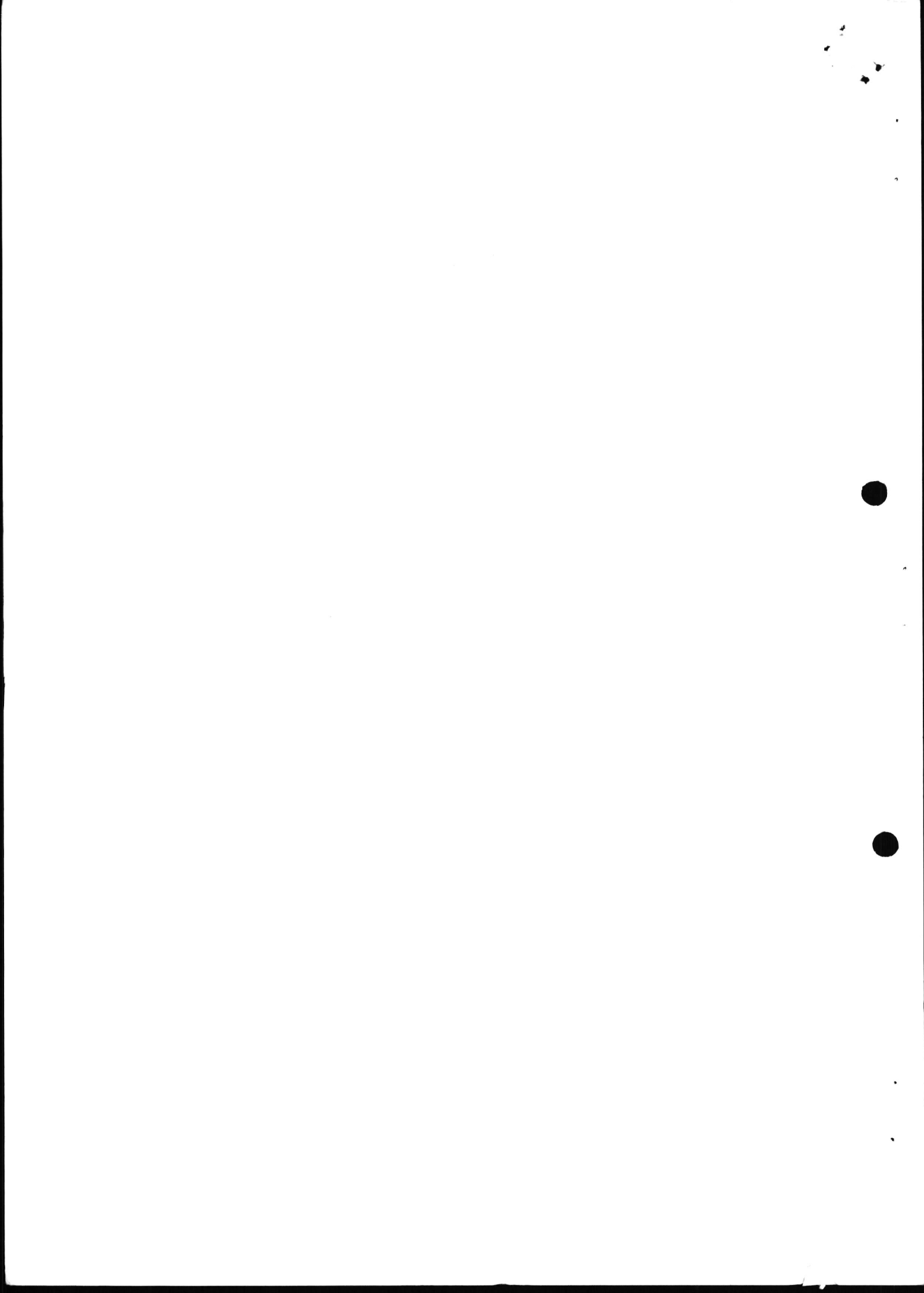
Attached please find the report to be laid on the table of the Senate for approval.


Njenga Njuguna

Hon. Speaker

You may approve for tabling.

15/7/14

Paper laid by the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on 17th July, 2014 -




REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – SECOND SESSION - 2014

PETITION REPORT

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

**THE PLIGHT OF TEA FARMERS OF KISII COUNTY CONCERNING HIGH
TAXATION ON TEA AND LOW BONUS EARNINGS BY TEA FARMERS**

JULY 2014

**CLERKS CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI**

July 2014

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LIST OF ACRONYMS AND ABBREVIATIONS

CBA	Collective Bargaining Agreements
CS	Cabinet Secretary
CUF	Common User Facility
EAC	East African Community
EATTA	East Africa Tea Trade Association
GDP	Gross Domestic Product
KCC	Kenya Cooperative Creameries
KFA	Kenya Farmers' Association
KTDA	Kenya Tea Development Agency
TREO	Tax Remission for Export Office
VAT	Value Added Tax

1. PREFACE

Mr. Speaker Sir,

It is my honour and pleasure to present to the Senate of the Republic of Kenya, the report of the Senate Standing Committee on Agriculture, Livestock and Fisheries on the Petition by the farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers. The names, addresses and other details are appended hereto pursuant to the Senate Standing Order 220.

Mr. Speaker Sir,

On Wednesday 16th April, 2014, the Senator for Kisii County, Sen. Chris Obure, tabled a Petition on behalf of tea farmers from Kisii County pursuant to Article 37 and 119 of the Constitution.

The petitioners drew the attention of the Senate to the following:-

- i. THAT, the recent hiking of taxation on tea for export by raising the amount of Advalorem Levy has negatively impacted on the tea industry which is one of Kenya's leading foreign exchange earners contributing 4% of the Gross Domestic Product (GDP) of our country;
- ii. THAT, crippling the tea industry which is a major pillar of Kenya's Agriculture Sector that is expected to enable the planned 10% annual growth as projected in Kenya's Vision 2030 will greatly undermine the growth of the country and put many livelihoods into jeopardy, noting that the tea industry promotes industrialization, employment, family incomes, commerce and growth of small enterprises;
- iii. THAT, the value and contribution of the tea industry to the economies of the producing counties, like Kisii is so immense that it is virtually the economic lifeline for a large majority of the population while noting that Kisii region including its neighbour Nyamira County hosts 12 of Kenya Tea Development Agency (KTDA) processing factories and that the majority of people in the region depend on tea production, processing, support services and infrastructure;
- iv. THAT, the destruction of or turbulence in the industry will therefore destroy entire families and have a devastating socio-economic ripple effect;

- v. THAT, in the absence of frustrations and turbulence in the industry, farmers are ready to continue and expand their production while mentoring new farmers, including their offspring to join tea production to increase Kenya's total output and supply to the ever expanding local and international markets which will not only increase the country's foreign exchange earnings but also improve incomes and livelihoods;
- vi. THAT, to encourage output and expansion, the National Government should abolish or minimize punitive taxes on inputs, services and exports as they will only make production and processing expensive and thereby make our teas uncompetitive leading to alienation of both traditional and potential markets;
- vii. THAT, the introduction of the Advalorem Levy on tea exports at 1% by the Minister for Agriculture on 27th January, 2012 raising it from the original 0.46% per kg which was levied at source dramatically raised the cost of Kenyan tea meant for export and exposed our produce to unfair competition from other tea exporting countries. The new levy was later to be adopted in the "Kones Bill" which was enacted into law;
- viii. THAT, the consequence of this additional taxation was immediate as Kenyan tea at the Mombasa auction was immediately snubbed by buyers as it became more expensive and hence we lost clients to competitors and consequent reduced sales and revenue for KTDA;
- ix. THAT, on the first week of implementation (sale 9) held on 1st March, 2012, there was confusion and uncertainty in the market and that in the subsequent auction (sale 10), KTDA tea reduced in demand and had to be discounted by 3 US cents per kg, whereas tea from competing countries including Uganda, Rwanda, and Tanzania achieved higher prices and appreciated by between 5 and 22 US cents per kg;
- x. THAT, appeals by leading stakeholders to review the imposition of this levy with a view to scrapping it altogether have not been heeded as well as other appeals for the rate to be charged based on kilogrammes instead of as a percentage of value or to enable Tea Board of Kenya to permit industry players to make monthly payments in arrears for direct sales have gone unheeded;

- xi. THAT, a direct intervention by KTDA through writing to the Cabinet Secretary for Agriculture directly has not been addressed;
- xii. THAT, as a direct consequence of this haphazard taxation and maintenance of 10% for tea access roads and Tea Research Foundation, Kenya tea has alienated buyers and drastically reduced KTDA incomes leading to small holder farmers being actively lobbied to reduce production even as payments have become irregular;
- xiii. THAT, the cure does not lie in asking farmers to reduce production of tea but in abolishing the Ad Valorem Tax to make Kenyan tea more competitive in world markets;
- xiv. THAT, massive drops in incomes for KTDA and its factories have exposed them more than ever before to illegal tea poaching (black market purchase of harvested tea leaves) by private companies taking advantage of farmers financial desperation;
- xv. THAT, desperate, poor small holder tea producers frustrated by reduced pay for their produce or long delays in payment from KTDA factories who end up giving their produce to tea poachers have been pushed into financial crises that are ruining whole families and livelihoods;
- xvi. THAT, this unfortunate window of opportunity for private tea companies indulging in black market tactics will make them grow in muscle, displace KTDA including snatching their experienced and qualified factory workers and farmers thus turn the tea industry into a vampire as the unmitigated commercial interests of private companies will undermine and jeopardize farmers' rights;
- xvii. THAT, the scaring away of Kenya's traditional clients in the tea export market due to higher costs will be too expensive in terms of past investments in winning them over and necessary new efforts to woo them back;
- xviii. THAT, part of the designated use for some of the unnecessary taxes on tea like works on tea access roads, among others, is a duplication since such can effectively be done by Constituency Roads Fund and other existing public roads funds managed by County Governments; and

xix. THAT, the higher taxation is causing the type of disruption in the industry that threatens to run down and completely kill KTDA similar to what happened in the past with major farmers' institutions like Kenya Cooperative Creameries (KCC), Kenya Farmers' Association (KFA), among others, which led to loss of jobs and a sharp rise in poverty levels amongst the affected communities.

The Petitioners confirmed that the matter is not the subject of litigation or suite in any court of law or any legal body.

Mr. Speaker Sir,

The petitioners' prayer was that the Senate of the Republic of Kenya does the following:-

- i. identifies all taxes currently imposed on tea and payable by stakeholders in the tea industry;
- ii. Investigates the effect of each of the taxes on:-
 - a. production;
 - b. processing;
 - c. local sales;
 - d. exportation of Kenya tea;
 - e. incomes to farmers; and
 - f. payment to workers in factories and farms.
- iii. Investigates the justification for imposition of the tea levies;
- iv. Identifies the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
- v. Interrogates the plans, if any, of the Ministry responsible for Agriculture concerning the tea industry taxation related problems; and
- vi. Interrogates the plans, if any, by the National Government to mitigate the continued losses suffered by KTDA and farmers due to the taxes.
- vii. Institutes the necessary measures to abolish the Ad Valorem Levy on tea exports introduced on 27th January 2012 along with other burdensome taxes on tea exports.

Following the tabling of the petition and in line with the Standing Order No. 224 (1), the Speaker directed the Standing Committee on Agriculture, Livestock and

Fisheries to investigate the matter and table the report in the House within 60 days.

The Committee held a total of three (3) sittings to deliberate on the petition. The Committee received both oral and written submission from the following key stakeholders: the Ministry of Agriculture, Livestock and Fisheries, the National Treasury, Tea Board of Kenya, the East African Tea Trade Association (EATTA) and the Kenya Tea Development Agency Holdings Limited (KTDA). From the evidence gathered, the Committee concluded that the Government should intervene to on the high taxation on tea and low bonus earning by the tea farmers in Kenya.

Committee Composition

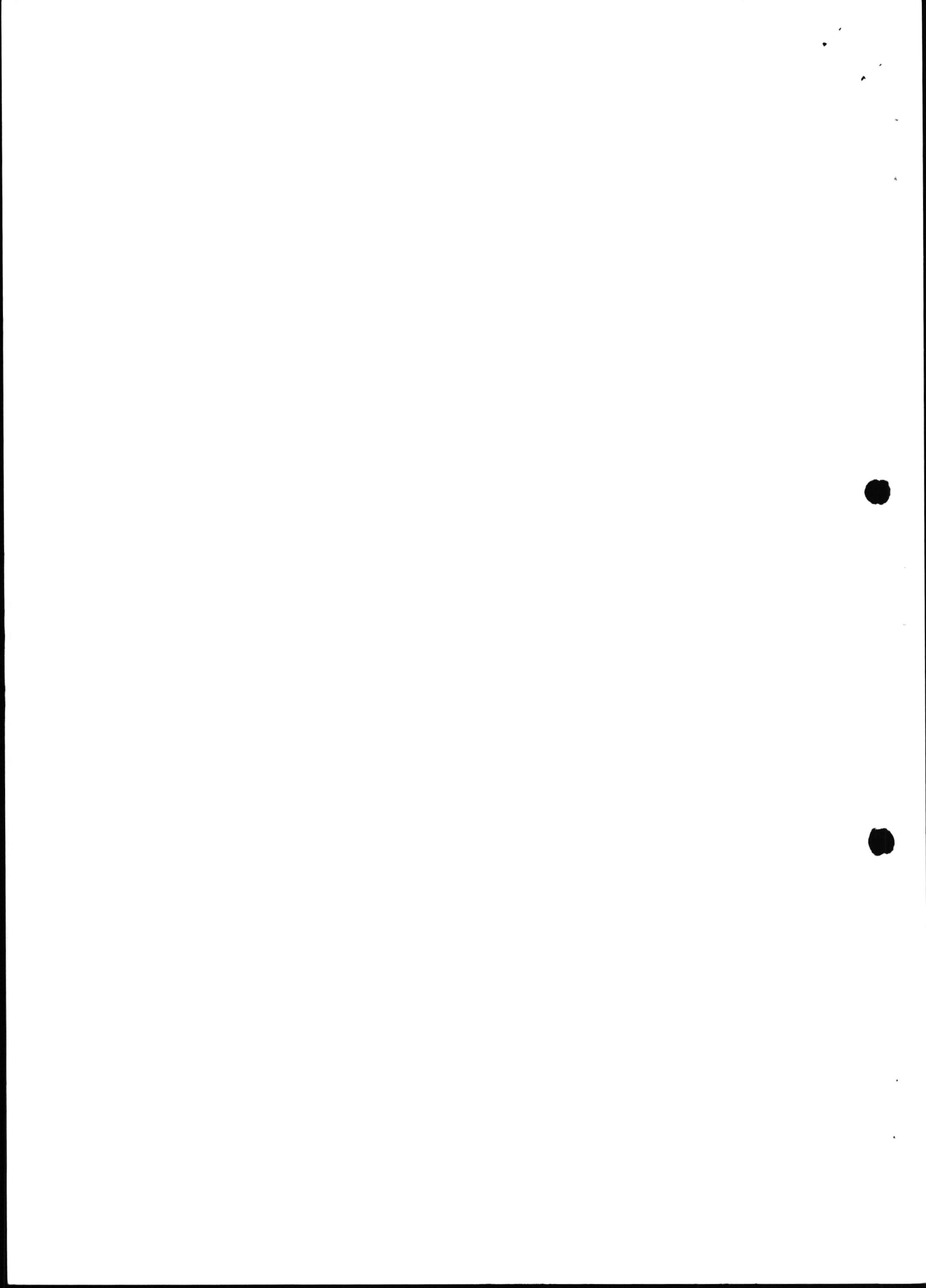
The Committee comprises the following Members:

1. Sen. Kiraitu Murungi, MP **-Chairman**
2. Sen. Henry Tiole Ndiema, MP **- Vice Chairman**
3. Sen. Mungai James Kiarie, MP
4. Sen. Peter Mositet Korinko, MP
5. Sen. Stephen Olentutu, MP
6. Sen. Emma Mbura, MP
7. Sen. John Munyes, MP
8. Sen. Otieno Kajwang' Mp
9. Sen. Madzayo Stewart Mwachiru, MP

Committee sittings

The Committee held a total of three (3) sittings and received oral and written memoranda from the following stakeholders:-

- i. The Cabinet Secretary Ministry of Agriculture, Livestock and Fisheries
- ii. Submissions from the National Treasury
- iii. Submissions from the East African Tea Trade Association (EATTA)
- iv. Submission from the Kenya Tea Development Agency Holdings Limited (KTDA)



SUMMARY RECOMMENDATIONS

The Committee recommends that:-

1. The Legal Notice No.8 of 2012 on the Tea Ad Voletem Levy Regulations, 2012 should be revoked as it deviated from the recommendations of the 2006 Tea Task Force Report that had recommended the introduction the Levy.
2. Although the Tea Cess, has successfully addressed maintenance of rural access roads, alternative arrangements should be made by the County governments to budget for this roads as this is one of the devolved functions.
3. The Committee recommends the removal of 16% VAT on locally produced and consumed tea with a view to encouraging local consumption of Kenya's tea.
4. The Committee recommends an immediate constitution of the Tea Board of Kenya (TBK) that is inclusive of all key Stakeholders.
5. The Government to investigate the operations of the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.
6. The Government to review all the Taxes and Levies with a view to creating an enabling environment to improve Kenya's tea sector.

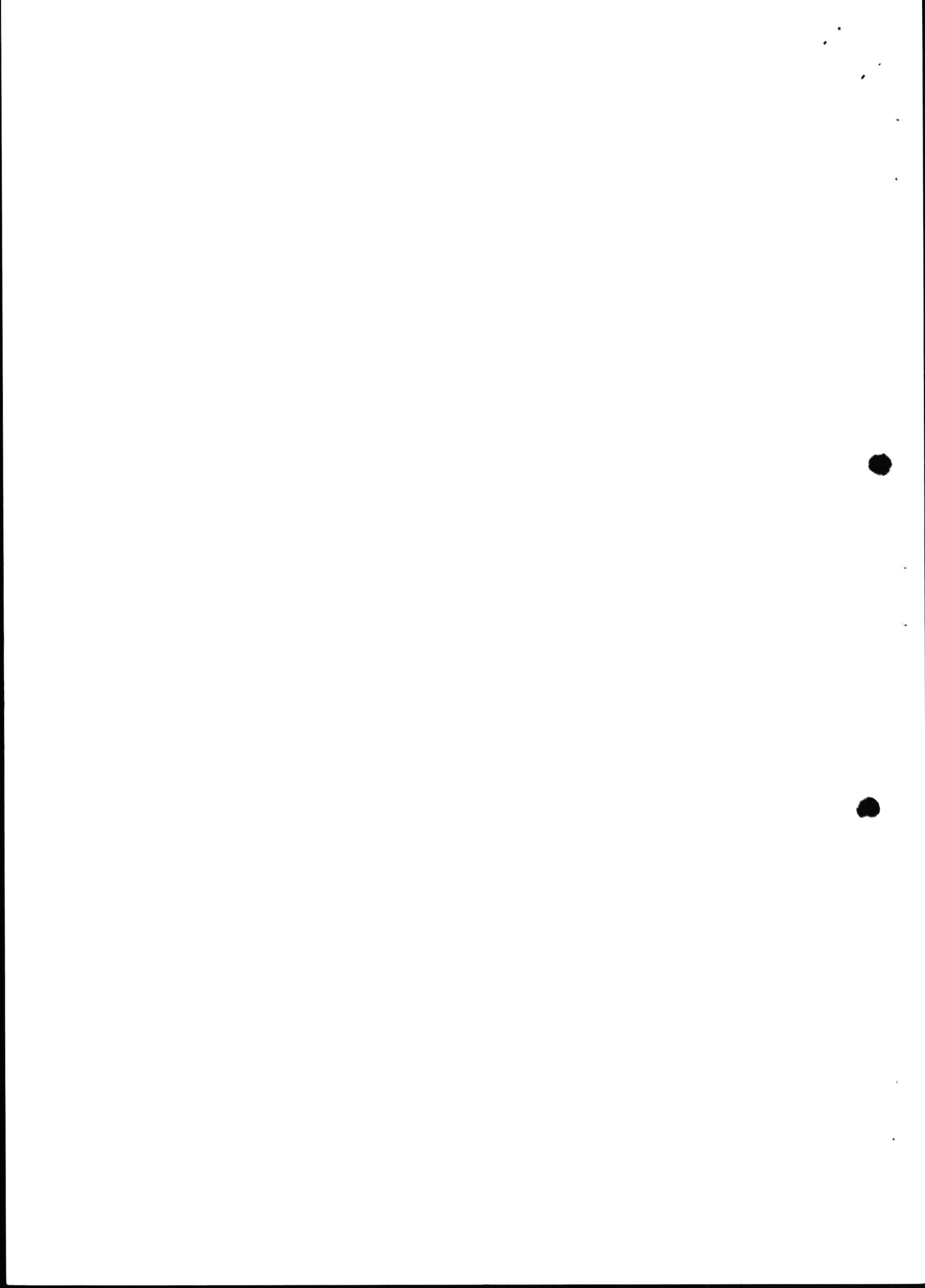
2. ACKNOWLEDGMENTS

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the Senate for the necessary support and services extended to the Committee to execute its work.

As Chairperson, I must thank Members of the Committee for their patience, sacrifice, endurance and hard work despite their other commitments and tight schedules, in their endeavor to deliberate on this petition.

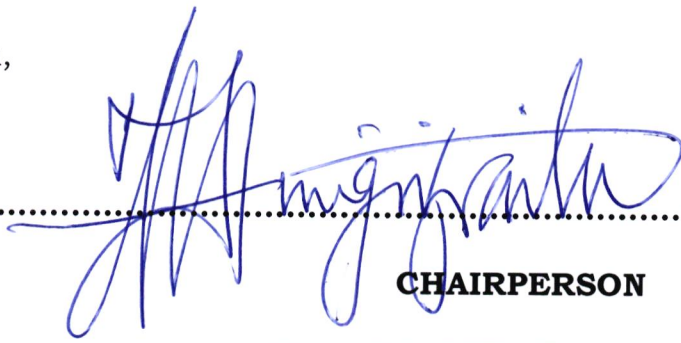
Mr. Speaker, Sir,

On behalf of the Committee, I now have the honour and pleasure to present the Report and Recommendations to the House.



Thank You,

Signed



CHAIRPERSON

SEN. KIRAITU MURUNGI, EGH

Date:

15/7/14

3. INTRODUCTION

- i. Kenya is the largest producer of tea after India and China; it is the largest exporter of tea in the world, having an advantage that tea grows all year round. Kenya's tea is of the highest quality in the world.
- ii. Kenya tea industry attracts a total of forty two (42) taxes and levies payable to the tea industry stakeholders.
- iii. The Ad Valorem Levy was introduced by amendments in the Tea Act CAP 343 through the legal Notice No.8 and 9 of 27th January, 2012 to replace the Manufacturing Cess following the recommendations made by the Tea Taskforce in 2006. The objective of the amendments was to increase the funding of the Tea Board of Kenya and its research arm- The Tea Research Foundation of Kenya (TRFK) while at the same time relieve the grower the burden of financing the two institutions.
- iv. Whereas the Manufacturing Cess was being levied at a rate of 46 Kenya Cents per kilogramme of manufactured tea and at the point of manufacturing, the Ad Valorem is payable at the rate of 1% of the Customs Value for made tea exports or imports. In this regard, the burden of financing the Tea Board of Kenya (TBK) and Tea Research Foundation of Kenya (TRFK) was shifted from the tea grower to the tea exporter. The amount collected is allocated to TBK (50%), TRFK (40%) and Tea Industry Infrastructure (10%) to undertake their mandates.
- v. At the current average export value of USD 2.43 (Ksh 211), the impact of this levy is about Ksh 2.11per Kg of made tea. Assuming that this levy was to be passed by the buyer/exporter to the grower contrary to the Act, the impact will be Ksh. 050per Kg of greenleaf delivered to the factory for processing.
- vi. Although the reason for charging of this levy is in line with the Government Policy that allows regulatory bodies to be financed by their respective industries as the stakeholders are the ultimate beneficiaries from the use of the Levy. The levy has, however penalized, the higher priced finally picked tea produced by the small scale farmer. The result of the levy discourages the producer who produces quality tea for the producer who does not. The levy has resulted to unintended consequence. Kenya should protect its image as a producer of premium quality tea that is in high demand worldwide from blending with lower quality teas and any tax or levy that hurts this image should be scrapped.

4. SUBMISSION FROM STAKEHOLDERS

The Committee received submissions from the Ministry of Agriculture, Livestock and Fisheries, the National Treasury, Tea Board of Kenya, the East African Tea Trade Association (EATTA) and the Kenya Tea Development Agency Holdings Limited (KTDA) all responding to the Petitioner's prayer (**the submissions as annexed to the report**), and established the following:-

5. COMMITTEE FINDINGS

1) **Committee findings on the petitioners' prayer to identify all taxes currently imposed on tea and payable by stakeholders in the tea industry.**

The committee established that there are more than forty two (42) taxes, duty, license fees, and levies facing stakeholders in the Kenya's Tea Value chain as follows:

THE TAXES PAYABLE TO THE TEA INDUSTRY STAKEHOLDERS:

Table 1: Taxes, duty, licenses, fees and Levies Facing Stakeholders in the Tea Value Chain

ITEM	Type	Payee	Rate of payment	Frequency	National/tea sector	Stakeholders bearing the Cost
Government Taxes						
1.	Corporate Tax	Tax	KRA	30 % on profit	Paid in installments	National All Companies
2.	Value Added Tax	Tax	KRA	16% on Vatable products	Monthly	National All companies
3.	Import Declaration	Tax	KRA	2.75 % of Value	At point of export	National All Importers/
4.	Furnace Oil import tax	Tax	KRA	Kshs 0.6/litre	Daily	National All companies
5.	Vehicle advance tax	Tax	KRA	1500/ ton of commercial vehicle	Annual	National All companies
6.	Motor Vehicle Inspection	Tax	KRA	1000/ commercial vehicle per	Annual	National All companies

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
7.	Withholding Tax	Tax	KRA	5% of dividends	Annual	National	All companies
8.	Fuel for agric operations	Duty	KRA	Kshs 10,305 per Cbm	Daily	National	All companies
Registration fees							
9.	Buyers at Tea Auction	Fees	TBK	10,000	Annual	Tea sector	Buyers
10.	Brokers	Fees	TBK	10,000	Annual	Tea sector	Tea brokers
11.	Warehousemen	Fees	TBK	10,000	Annual	warehouse	warehouse
12.	Tea importer	Fees	TBK	10,000	Annual	Tea sector	Importers
13.	Tea Manufacturing License	Fees	TBK	7,500	Annual	Tea sector	Tea Factories
14.	Tea Auction Organizers	Fees	TBK	10,000	Annual	Tea sector	EATTA
15.	Tea Packers	Fees	TBK	2,000	Annual	Tea sector	Packers
16.	Management agent	Fees	TBK	25,000	Annual	Tea sector	Tea farmers
17.	EATTA Membership	subscription	EATTA	30,000	Annual	Tea Sector	Producers, Buyers, warehouse men, brokers, packers
Levies							
18.	Ad valorem levy	levy	TBK	1% customs value of tea	For each consignment	Tea sector	Bulk Exporter-Buyer/
19.	Mombasa Municipal Port Health Charges	Levy	County Government	Kshs 5,000	Annual	County Government	Tea warehouse men, tea packers

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
20.	Mombasa Municipal Annual License Fee	Levy	County Government	Kshs 10,000	Annual	County Government	All Tea companies
21.	Land Rates	Levy	County Government	0.3-0.75% percent of undeveloped value	Annually	National	All Tea companies
22.	Inspection and Grading Fee (KEPHIS)	Levy	KEPHIS	5,000/= per single consignment & 10,000/= per multiple consignment to one consignee inspected	Consignment	National	Tea factories (contract exports), tea buyers, tea packers
23.	KEPHIS SPS Certificate	Levy	KEPHIS	Kshs 1000	Weekly	National	Tea factories (contract exports); tea warehouse
24.	KEBS Product	Levy	KEBS	0.2% of value of made tea ≤ Kshs	Annually	National	Exporter/Importers
25.	KEBS Quality Standard	Levy	KEBS	0.2% of value of made tea ≤ Kshs 400,000	Quarterly	National	Tea factories, tea packers
26.	NEMA Environmental audit	Levy	NEMA	0.1% of investment costs	Annual	National	Tea factories
27.	K.P.A Port Charges (40 feet)	Levy	Kenya Ports Authority	Kshs 9,000	At time of loading	National	Tea buyers, tea packers, tea factories
28.	K.P.A Port Terminal Handling	Levy	Kenya Ports Authority	Kshs 2000 per 20 Feet Container	At time of loading	National	Tea buyers, tea packers, tea factories
29.	Directorate of Industry Training Levy (DIT) National Industrial	Levy	NITA	Kshs 50 per employee	Monthly	National	Tea factories; Tea warehouse men, buyers, brokers

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
30.	Merchant Shipping Surcharge Fee	Levy	Kenya Maritime Authority	Kshs 10 per tonne	Annual	National	Tea buyers, tea packers, tea factories (direct exports)
31.	Chamber of Commerce Certificate of	Levy	Chamber of Commerce	0.025 % of the gross value tea sold	Annual	National	Buyers, packers
Cess							
32.	Agricultural Produce	Cess	County Govern	1% of gross value of green	Monthly	Tea sector	Tea farmers
Licenses							
33.	Fuel Wood Movement	License	County Government	300 per vehicle trip	Daily	National	Tea factories
34.	Waste Water Regulations	License	NEMA	Kshs 100,000	Annually	National	Tea factories
35.	Department of Occupationa	License	DOHS	Kshs 2,060	Annually	National	Tea factories, warehouse
36.	Seizure of scales	License	Weights & Measur	Kshs 2,010	Annually	National	Tea Companies /
37.	Water Permit	License	Water Resources Board	Kshs 4,600	Annually	National	Tea factories
38.	Underground Water Tank license	License	Ministry of Health	Kshs 1000	Annually	National	Tea factories
39.	Food & Drugs	License	F&D Board	Kshs 1000	Annually	National	Tea factories, packers, warehouse men
40.	Mombasa Municipal Parking Ticket per	Levy	County Council	Kshs 1,700 per day	Annually	National	All companies

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
	truck						
KTDA Management Fees							
41.	KTDA		KTDA	2.5% of the net sale	Monthly	Tea sector	Tea farmers
Brokers Fees							
42.	Tea Brokers	fees	Brokers	0.75% Producers and 0.5% Buyers	Daily	Tea sector	Tea Producers, Buyers

2) Committee findings on the petitioners' prayer to investigate the effect of each of the taxes on following:-

- a. Effect on production:** the combination of the various taxes and the depressed tea prices has made tea business not lucrative in the short term. Some growers reduce/abandon inputs for the farms. Potential growers are also discouraged from entering this market. These could lead to decline in tea production.
- b. Effect on processing:** Factories are expected to comply with the levies such as material movement, waste water regulations, etc. In order to comply, factories incur substantial capital expenditure in order to align its processes with the expectation.
- c. Effect on local sales:** All local tea sales attract VAT at 16% hence making tea expensive and beyond the purchasing means for the local target market. The packaging materials for local tea are imported and attract custom duty that is also passed to the local consumer.

According to the Ministry of Agriculture, Value Added Tax on Tea Sales (VAT) is charged on local teas sales at the point of consumption at a rate of 16%. The tax is passed onto the consumer. However, tea for export is exempt from VAT./compared to total production, the only output that is subject to VAT is 5%, since 95% is exported. Assuming, that the retail price of tea is USD 5.29 (Ksh 460) per kg, the consumer pays K.sh 63.45 as VAT.

The effect of VAT on the local sales makes the tea expensive to low income earners and less competitive compared to imported valued added teas.

d. Effects on Exportation of Kenya Tea: Ad Valorem tax at 1% of the value is to be borne by the buyers. This has made consumers prefer teas from other countries that do not have this tax. As such, the demand of Kenya tea is reduced hence the price. Ad Valorem tax came into force pm 27th February, 2012 to replace the manufacturing cess that was being charged at Kshs. 0.46 per Kg of made tea. Manufacturing cess was payable monthly by KTDA to Tea Board of Kenya and was annually averaging Kshs 87m (Compared to the Kshs. 533m above from Ad Valorem tax).

The enactment of the East Africa Community Common Markets Protocol in July 2010 paved way for free movement of the factors of production across the five East African Community (EAC) signatories. The Partner States agreed to eliminate tariff, non-tariff and technical barriers to trade; harmonize and mutually recognize standards and implement a common trade policy for the Community. The Mombasa auction is a multi origin auction that has tea against the objectives of the EAC Common market to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of the Partner States and their citizens.

The high taxes are not there for other East African teas and this makes Kenyan teas more expensive and therefore less attractive. Moreover, the process involved in accounting paying Ad Valorem tax is quite bureaucratic.

This indeed makes payment of the tax become a deterrent from buying Kenyan tea. The amount involved is also significant and use of the same is not clear as a benefit to the farmers.

e. Effects on income to farmers: Over the years, the cost of production has been going up due to inflation. Coupled with depressed prices, taxes and levies (cess), the farmers' earnings are reduced.

It is important to note that factories have put in place various austerity measures to manage the costs inflation. However, the depressed industry performance has affected the cash flows of some factory hence have to borrow (inter factory) in the short term to finance the growers payment.

f. Effects on payment to workers in factories and farms: Generally, all factories have been able to pay workers obligations as they fall due. However, the depressed industry performance has affected the cash flows of some factories hence have to borrow (inter factory) in the short term to finance these obligations. The depressed performance of the sub sector also means the

salaries of the farm workers (especially pluckers) stagnates over a longer period despite the increased cost of living.

Payment to workers in factories and farms according to the Ministry of Agriculture are direct labour costs which have been rising as a result of Collective Bargaining Agreements (CBA), these increases the cost of production.

3) Committee findings on the petitioners' prayer to investigate the justification for imposition of the tea levies.

The Ministry of Agriculture, Livestock and Fisheries submitted the following justifications on the imposition of Tea Levies:

i. Agricultural Production Cess

- The Cess money is utilized to maintain rural access road in the tea growing areas, thereby assisting timely delivery of Greenleaf to the factories, reduces wastage, reduce transport costs and therefore improves on quality of teas.
- The Committee finds that although this the true, the Constitution has since tasked the county governments with the responsibility of maintaining rural access roads in the counties.

ii. Advalorem Levy

- The objective of the levy is to alleviate the burden of financing the Tea Board of Kenya (TBK) and Tea Research Foundation of Kenya (TRFK) from the tea grower to the tea exporter. The levy has increased the funding of the TBK and TRFK to effectively execute their mandate.
- The Committee finds that the introduction of Ad valorem Levy did not go through a proper consultation framework with the industry players and that calculation of the levy from a fixed amount per kilo to one percent of the value of tea is centrally to the recommendation of the Tea Task Force Report recommendation. The introduction of the levy Ad valorem levy is a punitive tax on an already overburdened sector.

- #### **iii. The imposition of Advalorem Levy on imported tea:** the value added teas, which are imported into the country, are charged at one percent (%) import value. This low levy is advantageous to the imported teas making the market share of foreign value added teas to continually increase denying local producers competitive advantage in the local market. Unless mitigated, the initiatives by smallholder factories registering as packers to value add tea will be curtailed.

- iv. **Tea Board of Kenya (TBK) Registration fees and Licenses:** the Tea Act Regulations of 2008 introduced annual registration fees of all the tea stakeholders. The regulations were necessary to maintain order in the industry. The regulations also enacted a fee for application and renewal for processing, charged according to the application category. Given the individual firm's overall turnover, the fee is negligible.
- v. **East Africa Tea Trade Association (EATTA) Fees:** the East Africa Tea Trade Association is a voluntary membership based institution, which organizes tea auction in Mombasa. EATTA has set rules and regulation that govern members who are drawn from the region. EATTA charge member's subscription fee and other fees for services rendered.
- vi. **Other Levies:** the tea stakeholders are also subjected to other levies and taxes administered by other statutory institutions for the services rendered.

4) Committee findings on the petitioners' prayer to identify the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down.

The Ministry's opinion on the expansion potential and economic opportunities if unnecessary taxes are removed is as follows:

- The taxes are applicable to most other industries in Kenya and the tea industry is not an exception. Similar and more taxes are even higher in other key competing countries like India and Sri Lanka.
- In this regard, the ministry's position is that some of the taxes e.g. Agriculture Produces Cess should be reviewed downwards since County Governments have the mandate and resources for maintaining the rural access roads. Taxes, levies and fees that are not discriminatory to the tea industry should be maintained.

5) Committee findings on the petitioners' prayer to interrogate the plans, if any, of the Ministry responsible for Agriculture concerning the tea industry taxation related problems.

The Ministry of Agriculture in conjunction with other Government departments/agency is in the process of streamlining the tax refund system under Tax Remission for Export Office (TREO) as delay in tax refund ties up capital for reinvestment.

6) Committee findings on the petitioners' prayer to interrogate the plans, if any, by the National Government to mitigate the continued losses suffered by KTDA and farmers due to the taxes.

Whereas the current price fluctuations in the global market are due to increased supply, perpetuated by Kenya's overreliance on one tea product, the Government is in the process of establishing a Common User Facility (CUF) to promote value addition and products diversification. KTDA and Stakeholders are being encouraged to diversify into other tea products such as Green and Orthodox tea, whose prices in the world market is not affected by the current glut in production.

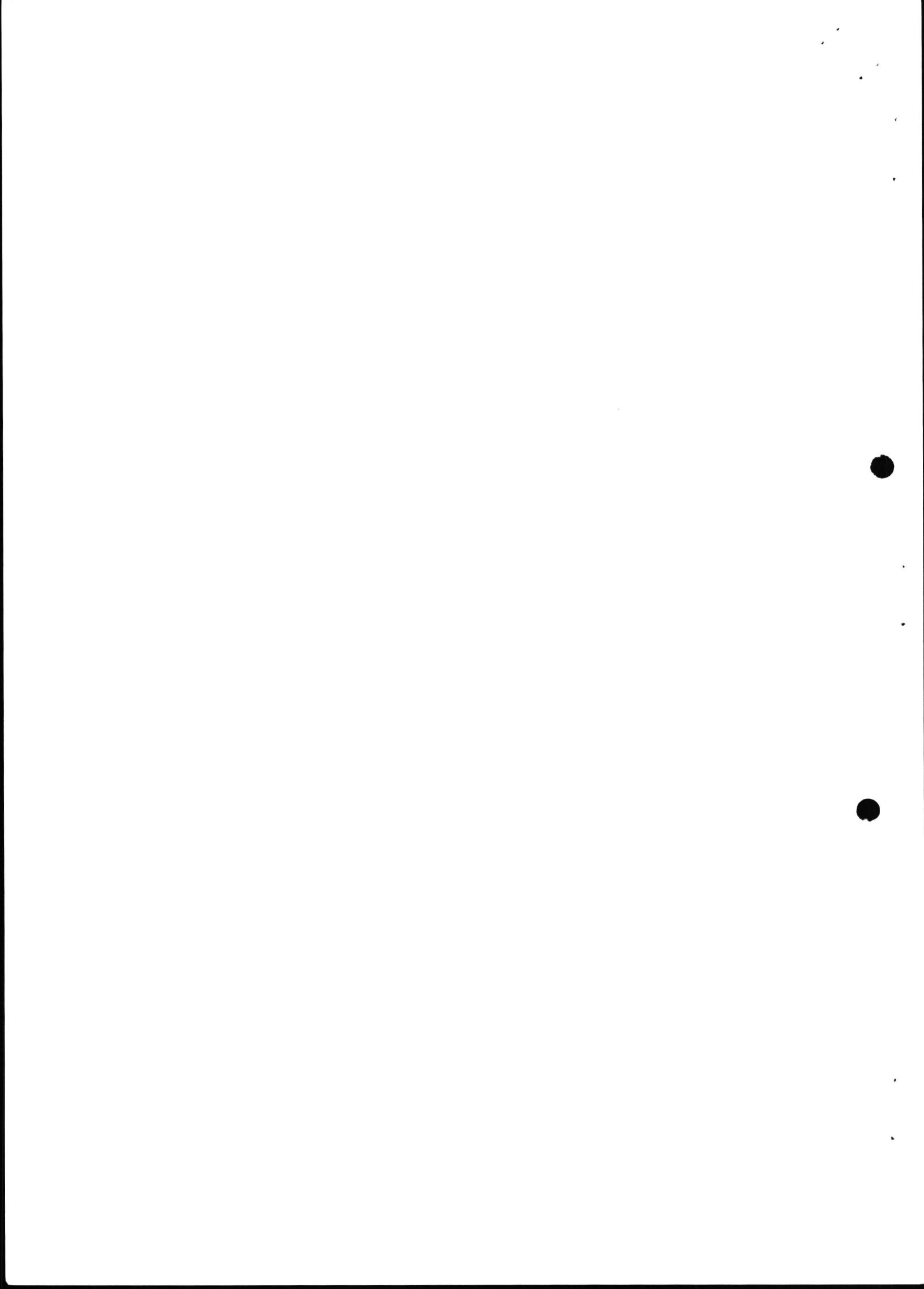
6. SUMMARY OF RECOMMENDATIONS

The Committee recommends as follows:-

1. The Legal Notice No.8 of 2012 on the Tea Ad Voletem Levy Regulations, 2012 should be revoked as it deviated from the recommendations of the 2006 Tea Task Force Report that had recommended the introduction the Levy.
2. Although the Tea Cess, has successfully addressed maintenance of rural access roads, alternative arrangements should be made by the County governments to budget for this roads as this is one of the devolved functions.
3. The Committee recommends the removal of 16% VAT on locally produced and consumed tea with a view to encouraging local consumption of Kenya's tea.
4. The Committee recommends an immediate constitution of the Tea Board of Kenya (TBK) that is inclusive of all key Stakeholders.
5. The Government to investigate the operations of the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.
6. The Government to review all the Taxes and Levies with a view to creating an enabling environment to improve Kenya's tea sector.

2. CONCLUSION

The Committee concludes that there are too many taxes and levies in Kenya's tea industry and this is a major reason as to why Kenya's tea industry is underperforming. The Committee will conduct a conclusive study of all the other challenges that are undermining Kenya's tea industry and make recommendations to the Senate.



ANNEXES

1. **The minutes of the Committee proceedings on the Petition**
2. **Copy of the Petition**
3. **Legal Notice No. 8**
4. **Submissions by Stakeholders**

MINUTES OF THE 10TH SITTING OF THE STANDING COMMITTEE OF AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON WEDNESDAY 18TH JUNE, 2014 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, AT 11.00 AM.

PRESENT

- | | |
|--|--------------------------|
| 1. Sen. Kiraitu Murungi | -Chairperson |
| 2. Sen. Henry Tiolo Ndiema | -Vice Chairperson |
| 3. Sen. Peter Mositet | |
| 4. Sen. Justice (Rtd) Madzayo Stewart Mwachiru | |
| 5. Sen. John Munyes | |

ABSENT WITH APOLOGY

1. Sen. Mungai James Kiarie
2. Sen. Emma Mbura
3. Sen. Stephen Ole Ntutu
4. Sen. Otieno Kajwang

IN ATTENDANCE

Senate Staff

- | | |
|-------------------|-------------------------|
| 1. Emmy Chepkwony | -Senior Clerk Assistant |
| 2. Crispus Njogu | - Clerk Assistant |
| 3. Stephen Maru | -Serjeant At Arms |

MIN. NO. 58/2014 PRAYER

The Chairman called the meeting to order fifteen minutes past eleven O'clock. The prayers were said by the Committee Clerk.

MIN. NO. 59/2014 ADOPTION OF THE AGENDA

The agenda was proposed by Sen. Justice (Rtd) Stewart Madzayo and seconded by Sen. John Munyes.

MIN. NO. 60/2014 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 9th sitting were confirmed as the true record of the proceedings by the members present and signed by the Chairman. The minutes were proposed by Sen. Henry Ndiema and seconded by Sen. Kiraitu Murungi.

MIN. NO. 61/2014 MATTERS ARISING

1. Under Min. No. 45/2014: High Level Workshop. The Committee asked that a report of the Committee High Level Workshop held on 5th June 2014 to 8th June 2014 be finalized for Committee adoption at its next sitting.
2. Under Min. No. 38/2014: The budget office to submit a report on the functions funded by both County and National governments under agriculture, livestock and fisheries.

MIN. NO. 62/2014 HOUSE KEEPING

1. The Committee was informed about upcoming foreign trips. The Committee proposed to visit Senegal and Ethiopia instead of Nigeria the proposed dates being the 1st week of August, 2014.
2. The Committee was informed about a petition that was submitted by Sen. Christopher Obure regarding high taxation on tea and low bonus earnings by tea farmers. The Committee resolved to hear the Petition on 2nd July 2014. The following stakeholders to be invited to the meeting to provide submissions on the Petition:
 - i. Cabinet Secretary National Treasury
 - ii. Cabinet Secretary Agriculture, Livestock and Fisheries
 - iii. Sen. Chris Obure- Sponsor of the Petition
 - iv. Kenya Tea Authority (KTDA) (Management and Regional Chairpersons)
 - v. Tea Board of Kenya
3. The Committee Deliberated on its report on the Food Security in Baringo County and resolved that members take copies and submit comments in the next Committee sitting.

MIN.NO.63/2014 ADJOURNMENT

There being no other business and the time being forty five minutes past eleven O'clock the meeting adjourned.

Signed:


Chairperson- Sen. Kiraitu Murungi

Date: 9/7/14

MINUTES OF THE 11TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE LIVESTOCK AND FISHERIES HELD ON WEDNESDAY 2ND JULY, 2014 IN THE 3RD FLOOR BOARDROOM, KICC BUILDING, AT 9:30AM.

PRESENT

- | | |
|----------------------------|--------------------------|
| 1. Sen. Kiraitu Murungi | -Chairperson |
| 2. Sen. Henry Tiolo Ndiema | -Vice Chairperson |
| 3. Sen. Peter Mositet | |
| 4. Sen. Emma Mbura | |
| 5. Sen. Otieno Kajwang | |
| 6. Sen. Christopher Obure | |

ABSENT WITH APOLOGY

1. Sen. Mungai James Kiarie
2. Sen. Justice (Rtd) Madzayo Stewart Mwachiru
3. Sen. Stephen Ole Ntutu
4. Sen. John Munyes

IN ATTENDANCE SECRETARIAT

- | | |
|-------------------|-------------------------|
| 1. Emmy Chepkwony | -Senior Clerk Assistant |
| 2. Crispus Njogu | - Clerk Assistant |
| 3. Stephen Maru | -Serjeant At Arms |

IN ATTENDANCE: MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

- | | |
|-----------------------|---------------------------------------|
| 1. Ms. Anne Onyango | - Agriculture Secretary |
| 2. Mr. T. Nyongesa | - Head of Parliamentary Business Unit |
| 3. Mr. Dominic Kitaka | - Parliamentary Business Unit |

IN ATTENDANCE: KENYA TEA DEVELOPMENT AGENCY

- | | |
|----------------------|-------------------|
| 1. Mr. Simeon Rugutt | -Senior Manager |
| 2. Mr. Benson Ngari | -Finance Director |

IN ATTENDANCE: TEA BOARD OF KENYA

- | | |
|--------------------------|----------------------------|
| 1. Ms. Elizabeth Kimenyi | -Acting Managing Director |
| 2. Ms. Phrasiah Mwangi | -Finance and Admin Manager |

IN ATTENDANCE: EAST AFRICA TEA TRADE ASSOCIATION

Mr. Edward Mudibo

-Managing Director

MIN. NO. 64/2014: PRAYER

The Chairman called the meeting to order fifteen minutes past Ten O'clock. The prayers were said by the Committee Clerk.

MIN. NO. 65/2014: CHAIRMAN OPENING REMARKS

- The Chairman stated the reason for the meeting was to consider a petition presented to the Senate by Sen. Christopher Obure, Senator for Kisii County regarding High Taxes on tea and low bonus earning by tea farmers.
- He stated the Committee's mandate to include all matters Agriculture Livestock and Fisheries. Article 96 (1) of the constitution states that the Senate represents the counties and serves to protect interests of the counties and their governments. He informed the meeting of the Committee's commitment to protect interests of the tea farmers in the counties. The Chairman noted with concern that while the tea industry was one of the best managed agricultural subsectors in Kenya; it was now under threat with falling tea prices and for the first time in KTDA'S history it had failed to pay bonuses to tea farmers.

MIN. NO. 66/2014: REMARKS BY SEN. CHRISTOPHER OBURE

- Sen. Christopher Obure presented his petition. He stated that tea farmers both large and small scale shared the same concerns, when it came to high taxes and low bonus earnings. The increase of advalorem Levy from 0.46% per kg to 1% per kg on 27th January 2012 by the Minister of Agriculture had dramatically raised the cost of Kenyan tea meant for export. It had exposed Kenya's tea for export to unfair competition from other tea exporting countries.
- KTDA had to discount Kenyan tea by 3 US Cents per Kg whereas tea from competing countries appreciated by between 5 and 22 US Cents per kg. He stated that Kenya was the only country among the 9 tea exporting countries in the Mombasa Tea Auction that charges Advalorem tax and this had resulted in losing traditional tea markets. Sen. Obure also noted that in addition to the advalorem levy, tea farmers were subjected to many more taxes which were eating in to their bottom line earnings.

MIN. NO. 67/2014: PRESENTATION BY THE KENYA TEA DEVELOPMENT AGENCY

- KTDA was put to task over reports of manipulating prices of the highest tea grade in the Mombasa auction. The Finance Director of KTDA informed the Committee that KTDA had responded to a newspaper article on 29th June 2014 that KTDA was manipulating the price of the highest tea grade. He stated that the article was completely false and ill-founded. He stated that the daily's thought they were communicating with a source from Kenya Tea Board which was not the case. He said that it was impossible to interfere with prices at the Mombasa auction.
- He provided a response to the petition. A report detailing twenty four (24) taxes imposed on tea and payable by stakeholders, the effects of these taxes on production, processing, local sales, exportation, and income to farmers. He noted that while Kenya was the third largest producer of tea, it was the largest exporter. It was noted that tea prices had reduced by almost 30% and that had affected the cash flow. The reduced cash flow had resulted in non-payment of tea bonuses to farmers. On the advalorem tax, it is supposed to be absorbed by the buyers however the farmers are currently bearing it. It is costing the farmers 532 million shillings while the green leaf tax another tax imposed on tea farmers is costing the farmer 432 million shillings.
- The report presented also showed the history and organizational structure of KTDA, as well as current trading environment, factories performance and initiatives.

MIN. NO. 68/2014: PRESENTATION BY THE EAST AFRICA TEA TRADE ASSOCIATION (EATTA)

- EATTA presented a memorandum on the need for review of the Tea Advalorem Levy regulations. It was stated that EATTA had 175 members drawn from 9 countries. EATTA principle mandate is to run the weekly Mombasa Tea Auction Center currently the largest auction center in the world and the only one dealing with teas from more than one country. The managing director stated that the Advalorem levy had impacted the cost of Kenyan tea and buyers now preferred non Kenyan tea due to cost. He added that in addition to the Advalorem tax, there were an additional 42 taxes imposed on the tea from leaf to cup making the number of taxes

to be 43. He proposed that the Advalorem tax needs to be reviewed so that instead of being a percentage of value of the tea it becomes a fixed amount per kilogram of tea as proposed in the 2006 Tea task Force report. The fixed amount should not exceed Ksh 1 per Kilogram of made tea.

- Although Advalorem Levy was supposed to support the operations of the Tea Board of Kenya, the Board had not had a sitting for the last twenty eight (28) months.

MIN.NO. 69/2014: PRESENTATION BY THE MINISTRY OF AGRICULTURE AND THE TEA BOARD OF KENYA

- The Ministry presented a report detailing forty two (42) taxes and levies imposed on tea industry in Kenya. The taxes affected the production and income to farmers, processing, local sales, exportation of tea and payment to workers in factories and farms. The Ministry also presented a justification for imposition of tea levies. It was stated that the tea levies go as far as maintaining rural access roads and financing the Tea Board of Kenya among other operations.
- The Ministry explained that taxes are applicable to most other industries in Kenya and the Tea industry is no exception. The Ministry's position is that some of the taxes e.g. Agriculture Produce Cess should be reviewed downwards.

Committee Concerns

The members sought to appraise on the following:

1. Although Advalorem Levy was supposed to support the operations of the Tea Board of Kenya, the Board had not had a sitting for the last twenty eight (28) months. The concern was as to why the Tea Board of Kenya needed funding yet its operations are management by the Ministry of Agriculture, Livestock and Fisheries.
2. Whether the idea of introducing the Advalorem tax to transfer cost from farmer to exporter has worked.
3. Concerns on bad publicity on Kenya's tea in particularly by CNN and the activities by Tea Board of Kenya to address/counter the bad press.
4. The Committee wanted to know what Tea Board of Kenya is doing to market Kenya's tea and to facilitate access to alternative markets.

5. If it was possible to remove the Agriculture Cess Levy to ease the burden on the already overtaxed tea industry.
6. The possibility to remove the 16% VAT on locally produced and consumed tea to motivate and increase local consumption.
7. The concerns that the Legal Notice No.8 of 2012 on the Tea Ad Valorem Levy Regulations, 2012 had deviated from the recommendations of the 2006 Tea Task Force Report that recommended that the Ad Valorem Levy be charged on the kilogramme instead of as a percentage value tea.
8. Why the Cabinet Secretary had not constituted the Tea Board of Kenya (TBK) that is inclusive of all key stakeholders.
9. The operations in the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.

MIN.NO.70/2014: ADJOURNMENT

There being no other business and the time being thirty five minutes past One O'clock the meeting was adjourned.

Signed:.....

Chairperson- Sen. Kiraitu Murungi

Date:9/7/14.....

MINUTES OF THE 12TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE LIVESTOCK AND FISHERIES HELD ON WEDNESDAY 9TH JULY, 2014 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS, AT 11:00AM.

PRESENT

1. Sen. Kiraitu Murungi -Chairperson
2. Sen. Henry Tiolo Ndiema -Vice Chairperson
3. Sen. Peter Mositet
4. Sen. Justice (Rtd) Madzayo Stewart Mwachiru
5. Sen. Stephen Ole Ntutu

ABSENT WITH APOLOGY

1. Sen. Emma Mbura
2. Sen. Otieno Kajwang
3. Sen. Mungai James Kiarie
4. Sen. John Munyes

IN ATTENDANCE SECRETARIAT

1. Emmy Chepkwony -Senior Clerk Assistant
2. Crispus Njogu - Clerk Assistant
3. Stephen Maru -Serjeant At Arms

MIN. NO. 71/2014: PRAYER

The Chairman called the meeting to order at ten minutes past Eleven O'clock. The prayers were said by the Committee Clerk.

MIN. NO. 72/2014: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the chairman after being proposed and seconded as follows:

- i. Minutes of 10th Sitting held on Wednesday 18th June, 2014 were proposed by Sen. Henry Tiolo Ndiema and seconded by Sen. Stephen Olentutu.
- ii. Minutes of 11th Sitting held on Wednesday 2nd July, 2014 were proposed by Sen. Peter Mositet and seconded by Sen. Henry Tiolo Ndiema.

MIN. NO. 73/2014: DELIBERATIONS ON THE COMMITTEE REPORTS

The Committee deliberated and adopted the following reports

- i. Report on the Status of food security in Baringo county
- ii. Report on the high –Level workshop with Stakeholders in the Agriculture, Livestock and fisheries sectors
- iii. Petition Report on the Plight of tea farmers of Kisii County concerning high taxation and low bonus earnings on tea farming.

1. Min. No. 73/2014 (i): Deliberation and Adoption of the Status Report on Food Security in Baringo County.

The Committee made the following findings and observations which are based on the oral and written submissions made by the stakeholders and recommended as follows:

- i. **Budgetary/Resources Allocations:** The Committee notes that the total budgetary allocation for the county from the national government is limited to transform the county in terms of irrigation from the current 6500 acres of land under irrigation of its potential 150,000 acres as an alternative to stamp out food insecurity in the county.
 - ✓ It recommends that the national government considers allocating a conditional grant under agriculture for a sizeable irrigation project in Baringo County.
 - ✓ Baringo County should be considered for Equalization Fund. This is for the reason that the County is ASAL and face perennial drought situation, similar or even worse than the other neighbouring ASAL counties that receive Equalization Fund.
- ii. **Insecurity:** The Committee observes that the contribution of cattle rustling to food insecurity in the County, loss of life, Internally Displaced Persons, and property loss require quick and lasting solution.
 - ✓ The National Government to initiate a policy to address the challenge of cattle rustling within the next six months;
 - ✓ The National Government to allocate a special fund for infrastructure in cattle rustling prone areas to aid in effective communication;

- ✓ The National Government to deploy more police service officers to the county to arrest the security situation;
 - ✓ The Senate to enact an act of Parliament to amicably stop cattle rustling; and
 - ✓ The National Government to compensating the IDPS as a result of cattle rustling in Baringo County, a compensation modality to be tabled before the Senate in the next four (4) months;
- iii. **Water/ Irrigation:** the County needs to move away from rain fed agriculture and invest in irrigation agriculture. The Baringo County Government to conduct borehole repairs, fuel subsidies, promote water harvesting and storage in areas where rains areas continuing, including harvesting storm water and spring protection; and the National Government to build more dams in Baringo County.
- iv. **Environmental Conservation:** the Committee observes that environmental conservation measures to mitigate on disaster like floods, landslides and siltation is urgent in Baringo County.
- v. The County Government to lay strategies to protect water catchment areas by funding a forestation programmes in this areas and in schools. Check dams to be established along the main rivers to allow for water harvesting downstream which will be useful both in irrigation by communities along the rivers and in reducing the effects of floods.
- vi. The Committee observed that the County lacks a **Disaster Risk Management Framework** that outlines specific action points towards providing sustainable remedies for Disaster Risk Reduction.

The Committee Recommends as follows:

The County Government to establish the following within the financial year 2014/2015:

- ✓ A Disaster Information Management and Early Warning System that adopts modern technologies like GIS;
- ✓ Establish County Disaster Contingency Fund;
- ✓ Participatory Disaster Risk Analysis;
- ✓ Set up County Disaster Risk Management Committee (CDRMC);

- ✓ The County to develop a County Disaster Response Center and Disaster Management Policy.
 - ✓ The County government to establish a communication strategy to handle disaster in a timely manner.
- vii. The Committee finds that the role of **inter-governmental collaborations** in addressing food insecurity is crucial.
- ✓ The National Government to set up unconditional grant to purchase food of Ksh. 50million per month for the next six months as a short term strategy to address the hunger situation.
 - ✓ Resource mobilizations to secure enough resources especially in addressing long terms strategies towards food security.
- viii. The Committee finds that research is crucial in food security and recommends that science, technology and innovation should be mainstreamed in county development. Deployment of modern technologies in farming, undertaking of proper soil analysis, intensifying research for appropriate crop seeds and animal breeds for ASAL areas and scaling up budgetary allocation for research is the only way of increasing productivity for suitable development.
- ix. The Committee observes that, despite the efforts by Kenya in 2011 to develop the National Food and Nutrition Security Policy(FNSP) aimed at adding value , building synergies and assisting with the implementation of existing national and sectoral policies and strategies to effectively address issues of food insecurity and malnutrition in Kenya, efforts so far have not successfully managed to address issues of malnutrition comprehensively.

The Committee recommends that National Government develop an overarching policy that integrates food and nutrition initiatives.

2. Min. No. 73/2014 (ii): Deliberation and Adoption of the Report on the high -Level workshop with Stakeholders in the Agriculture, Livestock and fisheries sectors

The Committee adopted its report with the following recommendations to guide the Committee in defining its Strategic Plan and Work Plan:

- i. The Senate to propose a legislation to establish a National Food Security Authority.

- ii. Both the National and the County Governments to invest more in irrigation both in large and small scale farms, to avoid over reliance on rain, which has been erratic and especially in view of the climate change concerns.
- iii. Establish a basket fund to support food security interventions, and have all interested donors well-coordinated.
- iv. Invest and upscale research and innovation in the agricultural sector and adoption of modern technology in farming.
- v. Measures to be put in place to add value to products and improve marketing structures to enhance income.
- vi. To avoid post-harvest losses and also contamination of produce, measures to be taken to improve storage and handling facilities.
- vii. Enhance measures to control animal and plant diseases and ensure food safety
- viii. Fast track structural governance reforms and necessary legislation at National and County level to address the current challenges.
- ix. Increase the budgetary allocation both at National and County levels to at least 10% in accordance with the Maputo Declaration.
- x. Ensure availability of agricultural inputs at appropriate costs and in a timely manner.
- xi. Enhance availability of credit to farmers at affordable interest rates. In this respect, AFC to be supported financially.
- xii. Develop policies, legislation and other measures to protect and enhance agricultural land productivity. Control conversion of land to other uses and fragmentation and where possible encourage consolidation.
- xiii. Urgent intervention to ensure that all Kenyans have adequate food and where there is need for relief, appropriate mechanisms to identify and target the vulnerable to be put in place. Food security committees to be established immediately at the National and County levels to coordinate food availability issues.
- xiv. Take policy and legislative measures to ensure increased, sustainable and appropriate exploitation of inland and sea fishing.
- xv. Measures to be put in place to encourage Kenyans to diversify on food consumption preferences to avoid over reliance on maize.

3. Min. No. 73/2014 (iii): Deliberation and Adoption of the Petition Report on the Plight of tea farmers of Kisii County concerning high taxation and low bonus earnings on tea farming.

The deliberated on its report and made the following recommends:-

1. The Legal Notice No.8 of 2012 on the Tea Ad Valorem Levy Regulations, 2012 is revoked as it deviated from the recommendations of the 2006 Tea

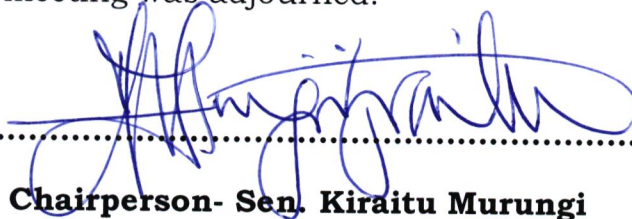
Task Force Report that recommended that the Ad Valorem Levy be charged on the kilogramme instead of as a percentage value tea.

2. Agricultural Production Cess, although has successfully addressed maintenance of rural access roads, alternative arrangements should be made by the County governments to budget for this roads as this is one of the devolved functions.
3. The Committee recommends the removal of 16 % VAT on locally produced and consumed tea with a view to encouraging local consumption of Kenya's tea.
4. The Committee recommends an immediate constitution of the Tea Board of Kenya (TBK) that is inclusive of all key stakeholders.
5. The Government to investigate the operations in the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.
6. The Government to review all the Taxes and Levies with a view to creating an enabling environment to improve Kenya's tea sector.

MIN.NO.70/2014: ADJOURNMENT

There being no other business and the time being thirty five minutes past One O'clock the meeting was adjourned.

Signed:.....



Chairperson- Sen. Kiraitu Murungi

Date: 9/7/14

**PETITION PRESENTED BY SEN. CHRIS OBURE
ON BEHALF OF PETITIONERS PURSUANT TO
ARTICLE 37 AND 119 OF THE CONSTITUTION
AND STANDING ORDER 220**

[Handwritten initials]

Hon. Speaker **Approved**
You may approve the ~~petition~~
petition for presentation - 16/4/14

SWG/HR
15/4/14

Received
16/6/2014
[Signature]

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

**PETITION PRESENTED BY SEN. CHRIS OBURE ON BEHALF OF
PETITIONERS PURSUANT TO ARTICLE 37 AND 119 OF THE
CONSTITUTION AND STANDING ORDER 220**

We, the undersigned-

Citizens of the Republic of Kenya, duly registered voters and tax payers and tea farmers of Kisii County residing in Kisii County, and whose names, signatures and other details are appended hereto pursuant to the Standing Orders of the Senate, authorize Sen. Christopher Mogere Obure, Senator for Kisii County to countersign and present this Petition to the Senate.

Draw the attention of the Senate to the following-

- i) THAT, the recent hiking of taxation on tea for export by raising the amount of Advalorem Levy has negatively impacted on the tea industry which is one of Kenya's leading foreign exchange earners contributing 4% of the Gross Domestic Product (GDP) of our country;
- ii) THAT, crippling the tea industry which is a major pillar of Kenya's Agriculture Sector that is expected to enable the planned 10% annual growth as projected in Kenya's Vision 2030 will greatly undermine the growth of the country and put many livelihoods into jeopardy, noting that the tea industry promotes industrialization, employment, family incomes, commerce and growth of small enterprises;
- iii) THAT, the value and contribution of the tea industry to the economies of the producing counties, like Kisii is so immense that it is virtually the economic lifeline for a large majority of the population while noting that Kisii region including its neighbour Nyamira County hosts 12 of Kenya Tea Development Agency (KTDA) processing factories and that the majority of people in the region depend on tea production, processing, support services and infrastructure;
- iv) THAT, the destruction of or turbulence in the industry will therefore destroy entire families and have a devastating socio-economic ripple effect;

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

- v) THAT, in the absence of frustrations and turbulence in the industry, farmers are ready to continue and expand their production while mentoring new farmers, including their offspring to join tea production to increase Kenya's total output and supply to the ever expanding local and international markets which will not only increase the country's foreign exchange earnings but also improve incomes and livelihoods;
- vi) THAT, to encourage output and expansion, the National Government should abolish or minimize punitive taxes on inputs, services and exports as they will only make production and processing expensive and thereby make our teas uncompetitive leading to alienation of both traditional and potential markets;
- vii) THAT, the introduction of the Advalorem Levy on tea exports at 1% by the Minister for Agriculture on 27th January, 2012 raising it from the original 0.46% per kg which was levied at source dramatically raised the cost of Kenyan tea meant for export and exposed our produce to unfair competition from other tea exporting countries. The new levy was later to be adopted in the "Kones Bill" which was enacted into law;
- viii) THAT, the consequence of this additional taxation was immediate as Kenyan tea at the Mombasa auction was immediately snubbed by buyers as it became more expensive and hence we lost clients to competitors and consequent reduced sales and revenue for KTDA;
- ix) THAT, on the first week of implementation (sale 9) held on 1st March, 2012, there was confusion and uncertainty in the market and that in the subsequent auction (sale 10), KTDA tea reduced in demand and had to be discounted by 3 US cents per kg, whereas tea from competing countries including Uganda, Rwanda, and Tanzania achieved higher prices and appreciated by between 5 and 22 US cents per kg;
- x) THAT, appeals by leading stakeholders to review the imposition of this levy with a view to scrapping it altogether have not been heeded as well as other appeals for the rate to be charged based on kgs instead of as a percentage of value or to enable Tea Board of Kenya to permit

industry players to make monthly payments in arrears for direct sales have gone unheeded;

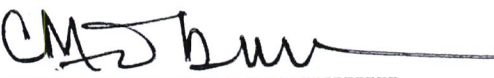
- xi) THAT, a direct intervention by KTDA through writing to the Cabinet Secretary for Agriculture directly has not been addressed;
- xii) THAT, as a direct consequence of this haphazard taxation and maintenance of 10% for tea access roads and Tea Research Foundation, Kenya tea has alienated buyers and drastically reduced KTDA incomes leading to small holder farmers being actively lobbied to reduce production even as payments have become irregular;
- xiii) THAT, the cure does not lie in asking farmers to reduce production of tea but in abolishing the Advalorem tax to make Kenyan tea more competitive in world markets;
- xiv) THAT, massive drops in incomes for KTDA and its factories have exposed them more than ever before to illegal tea poaching (black market purchase of harvested tea leaves) by private companies taking advantage of farmers financial desperation;
- xv) THAT, desperate, poor small holder tea producers frustrated by reduced pay for their produce or long delays in payment from KTDA factories who end up giving their produce to tea poachers have been pushed into financial crises that are ruining whole families and livelihoods;
- xvi) THAT, this unfortunate window of opportunity for private tea companies indulging in black market tactics will make them grow in muscle, displace KTDA including snatching their experienced and qualified factory workers and farmers thus turn the tea industry into a vampire as the unmitigated commercial interests of private companies will undermine and jeopardize farmers' rights;
- xvii) THAT, the scaring away of Kenya's traditional clients in the tea export market due to higher costs will be too expensive in terms of past investments in winning them over and necessary new efforts to woo them back;
- xviii) THAT, part of the designated use for some of the unnecessary taxes on tea like works on tea access roads, among others, is a duplication since Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

such can effectively be done by Constituency Roads Fund and other existing public roads funds managed by County Governments; and
xix) THAT, the higher taxation is causing the type of disruption in the industry that threatens to run down and completely kill KTDA similar to what happened in the past with major farmers' institutions like Kenya Cooperative Creameries (KCC), Kenya Farmers' Association (KFA), among others, which led to loss of jobs and a sharp rise in poverty levels amongst the affected communities.

WE, confirm that this matter is not the subject of litigation or suite in any court of law or any legal body.

WHEREFORE, your humble petitioners pray that the Senate -

- 1) identifies all taxes currently imposed on tea and payable by stakeholders in the tea industry;
- 2) investigates the effect of each of the taxes on:-
 - a. production;
 - b. processing;
 - c. local sales;
 - d. exportation of Kenya tea;
 - e. incomes to farmers; and
 - f. payment to workers in factories and farms.
- 3) investigates the justification for imposition of the tea levies;
- 4) identifies the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
- 5) interrogates the plans, if any, of the Ministry responsible for Agriculture concerning the tea industry taxation related problems; and
- 6) interrogates the plans, if any, by the National Government to mitigate the continued losses suffered by KTDA and farmers due to the taxes.



Sign: 

(Sen. Chris Obure)

KISII COUNTY

Date: 15th April 2014

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

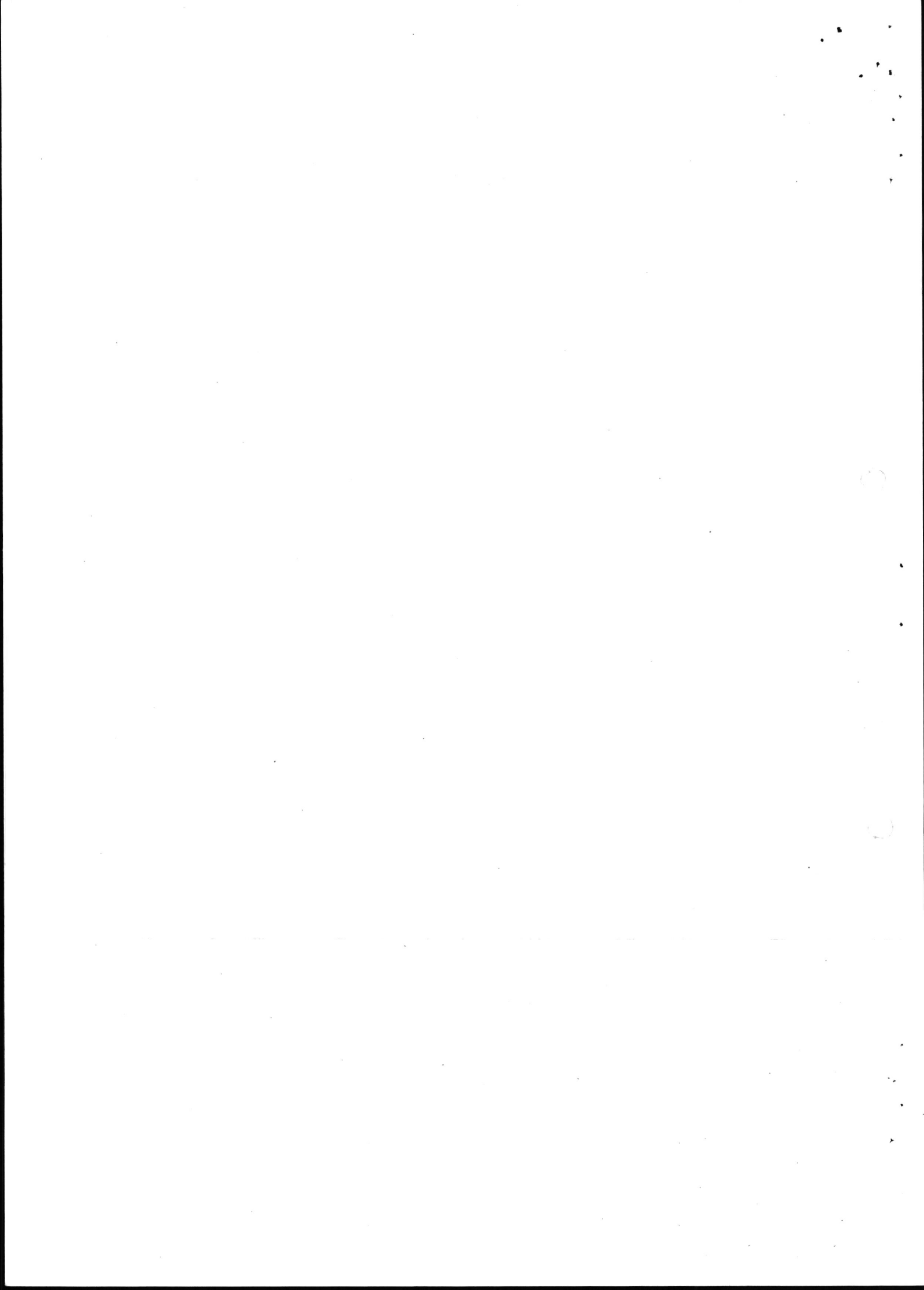
CONSITUENCY	NAME OF THE FARMER	I.D NO.	NO. OF THE BUYING CENTRE	FARMER NO.	BOX NO	SIGN
KITUTU SOUTH	JOHNNYANGAU ORUKO	6543819	H10	1201	749 KISII	JOHN
BONCHARI	JOHNNYABARO MBOSERO	1588167	OG54	76	809750 KISII 897	
BOBASI	GEORGE NYANDIKA MAYIEKA	5949491	04 NC 04	125	500 KISII	
BOMACHOGE BORABU	ONYANCHA OMOKE SOSPETER	1135033	OG2	1556	8 KENYENYA 57	Onoke
S. MOGIRANGO	FLORENCE ONYIEGO OSORO	911077	OG028	0216	3378 KISII	Florence
KITUTU NORTH	JONAH MATTA ARETO MATA	1166941	T11	2026	1558 KISII	ARETO
KITUTU NORTH Bomachoge Chache	SAMWEL ONGERA OGESAGWA	5845547	OG10	440	1978 KISII	Ogesagwa

CONSTITUENCY	NAME OF FARMER	ID NO.	NO. OF THE BUYING CENTRE	FARMER NUMBER	BOX NO.	SIGNATURE
NYARIBARI MASABA	ESTHER KEMUNTO ABERI	7284334	KK12	0339	149, GESUSU	Esther
NYARIBARI CHACHE	CHRISTINE ONYANCHA	7223268	KK057	073	1240 KISII	christine.

And counter signed by myself



HON. CHRIS OBURE (SENATOR, KISII COUNTY)



LEGAL NOTICE No. 8

THE TEA ACT

(Cap 343)

IN EXERCISE of the powers conferred by section 25 of the Tea Act, the Minister for Agriculture, in consultation with the Board, makes the following regulations –

THE TEA (*AD VALOREM* LEVY) REGULATIONS, 2011

1. These Regulations may be cited as the Tea (*Ad Valorem* Levy) Regulations, 2012 and shall commence one month after the date of publication.
2. In these Regulations, unless the context otherwise requires-

“*Ad valorem* levy” means a per centum of the value of all made tea imposed by the Minister at the point of export or import in accordance with Section 18 of the Act;

“Authorized agent” means a representative appointed by the Board to collect *ad valorem* levy on its behalf;

“Customs value: means the export or import value of the made tea upon which the *Ad Valorem* Levy is assessed”,

“Kenya Standard 1927:2005 Tea Packets and Containers-Specifications (KS1927: 2005)” means the Kenya Standard that specifies the requirements and methods of test for tea packets and containers, applicable to tea packaging for retail in the form of tea bags, tea packets, instant tea and ready to drink containers but does not include tea sacks.

“Point of export” means a designated customs border point at which made tea is taken out of Kenya to any place outside Kenya;

“Point of import” means a designated customs border point at which made tea is brought into Kenya from any place outside Kenya;

3. The Minister imposes an ad valorem levy payable at the rate of 1% per centum of the customs value for made tea exports or imports.
4. The Ad Valorem Levy imposed under paragraph 3 shall not apply to made tea imports imported in bulk into Kenya for blending and re-export.
5. Any made tea packed in Kenya in accordance with Kenya Standard 1927:2005 Tea packets and containers - Specification (KS1927: 2005) or an equivalent standard shall be exempt from payment of the ad valorem levy.
6. A tea exporter or importer shall pay an ad valorem levy to the Board or its collection agent based on the customs value of each consignment of made tea at the point of export or import.
7. Upon payment of the ad valorem levy the Board or its authorized agent shall issue the tea exporter or importer with a receipt.
8. Where the levy is paid to an authorized agent under paragraph 6 the authorized agent shall remit the amount of the levy collected to the Board not later than the tenth day of the following month.
9. A tea exporter or importer shall provide information on all export and import consignments to the Board in Form V and W of the First Schedule of The Tea (Licensing, Registration and Trade) Regulations 2008.
10. A tea exporter or tea importer who provides false information required under Regulation 9 *is* shall be guilty of an offence and liable upon conviction to the penalties provided under Section 23 of the Act.
11. A tea exporter or importers shall provide receipts to the Board or its collection agent as proof of payment of the requisite ad valorem levy.

12. Any Ad valorem levy which remains unpaid shall be recovered by the Board as a civil debt due to it from the person by whom it is payable.
13. Any Ad valorem levy that remains unpaid for thirty days or more shall attract interest at commercial bank rates, prevailing at the time the levy becomes due, until it is fully paid.
14. The Board or its authorized agent shall, upon successful processing of the customs documentation, verify the tea export or import consignment.
15. The Board shall upon verification, issue a Release Order in Form A set out in the First Schedule.
16. The Board shall not issue a Release Order if an exporter or importer unless that person has complied with the provisions of the Act.
17. The Board may cancel the export or import Release Order if an exporter or importer contravenes the provisions of the Act.
18. Legal Notice No. 331 of 1994 is revoked.

FIRST SCHEDULE

FORM A

(r.9)

TEA EXPORT/IMPORT RELEASE ORDER

Name of Exporter/Importer.....

Postal Address.....

Contact Person and Designation.....

Telephone/Mobile No/Fax.....

E-mail Address.....

Tea Export/Import Registration No.....

Issue Date.....

Customs Entry No and Date.....

Net Weight (Kgs made tea).....

Physical location of consignment.....

.....

Signature of Exporter/Importer or Authorized Agent

Date

FOR OFFICIAL USE ONLY

Release Authority Stamp

Name Signature Date

For and on behalf of Tea Board of Kenya

Made on the 24th January, 2012

SALLY KOSGEI

Minister for Agriculture

REPUBLIC OF KENYA



**MINISTRY OF AGRICULTURE, LIVESTOCK
AND FISHERIES**

**RESPONSE TO THE PETITION ON HIGH TAXES ON TEA AND LOW
BONUS EARNING BY TEA FARMERS PRESENTED TO THE SENATE BY
SEN. CHRIS OBURE, SENATOR FOR KISII COUNTY ON BEHALF OF
TEA FARMERS IN KISII COUNTY**

JULY 2014

RESPONSE TO PETITION ON HIGH TAXES ON TEA AND LOW BONUS EARNING BY TEA FARMERS

1.0 BACKGROUND

The Senator for Kisii County Sen. Chris Obure presented a petition on behalf of tea farmers of Kisii County that the recent hiking of taxation on tea for export by raising the amount of Ad Valorem Levy has negatively impacted on the tea industry exposing Kenya's Tea to unfair competition from other exporting countries.

The cabinet secretary is invited to a committee meeting scheduled for 2nd July, 2014 to address issues raised in the petition. The response to address the following;

1. Identify all taxes currently imposed on tea and payable by stakeholders in the tea industry;
2. Explain the effect of each of the taxes on:-
 - i) Production;
 - ii) Processing;
 - iii) Local sales;
 - iv) Exportation of Kenya tea; and
 - v) Payment to workers in factories and farms.
3. Provide justification for imposition of the tea levies;
4. Provide the Ministry's thinking on the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
5. Issue administrative and policy advice on the taxation related challenges in the tea industry;
6. State Government plans, to mitigate the continued losses suffered by KTDA and farmers due to taxes.

2.0 RESPONSE

2.1 THE TAXES PAYABLE TO THE TEA INDUSTRY STAKEHOLDERS:

Table 1: Taxes, duty, licenses, fees and Levies Facing Stakeholders in the Tea Value Chain

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
Government Taxes							
1.	Corporate Tax	Tax	KRA	30 % on profit	Paid in installments	National	All Companies
2.	Value Added Tax	Tax	KRA	16% on Vatable products	Monthly	National	All companies
3.	Import Declaration Fee	Tax	KRA	2.75 % of Value	At point of export	National	All Importers/
4.	Furnace Oil import tax	Tax	KRA	Kshs 0.6/litre	Daily	National	All companies
5.	Vehicle advance tax	Tax	KRA	1500/ ton of commercial vehicle	Annual	National	All companies
6.	Motor Vehicle Inspection Booking	Tax	KRA	1000/ per commercial vehicle	Annual	National	All companies
7.	Withholding Tax	Tax	KRA	5% of dividends	Annual	National	All companies
8.	Fuel for agric operations	Duty	KRA	Kshs 10,305 per Cbm	Daily	National	All companies
Registration fees							
9.	Buyers at Tea Auction	Fees	TBK	10,000	Annual	Tea sector	Buyers
10.	Brokers	Fees	TBK	10,000	Annual	Tea sector	Tea brokers
11.	Warehousemen	Fees	TBK	10,000	Annual	warehousemen	warehousemen

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
12.	Tea importer	Fees	TBK	10,000	Annual	Tea sector	Importers
13.	Tea Manufacturing License	Fees	TBK	7,500	Annual	Tea sector	Tea Factories
14.	Tea Auction Organizers	Fees	TBK	10,000	Annual	Tea sector	EATTA
15.	Tea Packers	Fees	TBK	2,000	Annual	Tea sector	Packers
16.	Management agent	Fees	TBK	25,000	Annual	Tea sector	Tea farmers
17.	EATTA Membership	subscription	EATTA	30,000	Annual	Tea Sector	Producers, Buyers, warehousemen, brokers, packers
Levies							
18.	Ad valorem levy	levy	TBK	1% customs value of tea	For each consignment	Tea sector	Bulk Exporter-Buyer/ Factories for contract
19.	Mombasa Municipal Port Health Charges	Levy	County Government	Kshs 5,000	Annual	County Government	Tea warehousemen, tea packers
20.	Mombasa Municipal Annual License Fee	Levy	County Government	Kshs 10,000	Annual	County Government	All Tea companies
21.	Land Rates	Levy	County Government	0.3-0.75% percent of undeveloped value	Annually	National	All Tea companies

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
22.	Inspection and Grading Fee (KEPHIS)	Levy	KEPHIS	5,000/= per single consignment & 10,000/= per multiple consignment to one consignee inspected	Consignment	National	Tea factories (contract exports), tea buyers , tea packers
23.	KEPHIS SPS Certificate	Levy	KEPHIS	Kshs 1000	Weekly	National	Tea factories (contract exports); tea warehousemen, packers
24.	KEBS Product Conformity	Levy	KEBS	0.2% of value of made tea ≤ Kshs	Annually	National	Exporter/Importers
25.	KEBS Quality Standard	Levy	KEBS	0.2% of value of made tea ≤ Kshs 400,000	Quarterly	National	Tea factories, tea packers
26.	NEMA Environmental audit	Levy	NEMA	0.1% of investment costs	Annual	National	Tea factories
27.	K.P.A Port Charges (40 feet Container)	Levy	Kenya Ports Authority	Kshs 9,000	At time of loading	National	Tea buyers, tea packers, tea factories (direct
28.	K.P.A Port Terminal Handling Charges	Levy	Kenya Ports Authority	Kshs 2000 per 20 Feet Container	At time of loading	National	Tea buyers, tea packers, tea factories (direct
29.	Directorate of Industry Training Levy (DIT) National Industrial Training Authority(NITA)	Levy	NITA	Kshs 50 per employee	Monthly	National	Tea factories; Tea warehousemen, buyers, brokers, auction organizer, management agents

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
30.	Merchant Shipping Surcharge Fee	Levy	Kenya Maritime Authority	Kshs 10 per tonne	Annual	National	Tea buyers, tea packers, tea factories (direct exports)
31.	Chamber of Commerce Certificate of Origin	Levy	Chamber of Commerce	0.025 % of the gross value tea sold	Annual	National	Buyers, packers
Cess							
32.	Agricultural Produce Cess	Cess	County Government	1% of gross value of green leaf	Monthly	Tea sector	Tea farmers
Licenses							
33.	Fuel Wood Movement	License	County Government	300 per vehicle trip	Daily	National	Tea factories
34.	Waste Water Regulations	License	NEMA	Kshs 100,000	Annually	National	Tea factories
35.	Department of Occupational Health & Safety license	License	DOHS	Kshs 2,060	Annually	National	Tea factories, warehousemen, packers
36.	Seizure of scales	License	Weights & Measures	Kshs 2,010	Annually	National	Tea Companies/ Factories
37.	Water Permit	License	Water Resources Board	Kshs 4,600	Annually	National	Tea factories
38.	Underground Water Tank license	License	Ministry of Health	Kshs 1000	Annually	National	Tea factories
39.	Food & Drugs	License	F&D Board	Kshs 1000	Annually	National	Tea factories, packers,

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
							warehousemen
40.	Mombasa Municipal Parking Ticket per truck	Levy	County Council	Kshs 1,700 per day	Annually	National	All companies
KTDA Management Fees							
41.	KTDA		KTDA	2.5% of the net sale	Monthly	Tea sector	Tea farmers
Brokers Fees							
42.	Tea Brokers	fees	Brokers	0.75% Producers and 0.5% Buyers	Daily	Tea sector	Tea Producers, Buyers

2.2 EFFECT OF THE TAXES

2.2.1 Production and Income to Farmers

a) Agricultural Produce Cess.

The tea Cess is charged at the point of production at the rate of 1% of gross value of green leaf. The Cess is collected by the Tea Board of Kenya and disbursed to the Tea factories and the District Cess Committee. Eighty percent (80%) is remitted to the DTC and Tea factories while 20% is given to County Government for their general use. The Cess money is used for the purposes of maintenance of rural access road in the tea growing areas. Rural roads improvement help in timely delivery of Greenleaf to the factories, reduces wastage, reduce transport costs and therefore improves on quality of teas.

b) Duty on Fuel for agric operations.

The duty on fuel for agricultural operations is charged at Kshs 10,305 per cubic metre applicable nationally. This duty increases the cost of production.

c) KTDA Management and brokerage fees

Management agency fees are deducted by KTDA at 2.5% of the net sales for services, while Brokerage fee is charged by Tea Brokers at 0.75% to producers and 0.25% to buyers. Some of the services offered by KTDA include; field advisory services, transportation of Greenleaf, factory management, marketing and administrative services among others while brokerage firms provide sales expertise at the tea auction as spelt out in the management agreements. These services improve tea productivity, enhance efficiencies at the factories and facilitate the marketing of the smallholders' made tea.

2.2.2 Processing

(a) Value Added Tax (VAT)

In the tea industry, business firms buy items inclusive of VAT such as; furnace oil, plant and equipment, vehicles and packaging materials. The VAT is ultimately passed on to the consumer.

- The tax effect suppresses direct demand from local traders for private sales ex-warehouse Mombasa hence tea producers are not able to take advantage of direct sales to the local firms.
- The application of VAT for locally packed teas effectively increases the price of local tea hence affecting domestic consumption.

(b) Other Charges

Other taxes applicable to the tea industry as applicable to other industries include: Corporate tax (normal Government corporate)- 30% of net profit; National Industrial Training Authority (NITA)- Kshs 50 per employee; Standards Levy (KEBS)- 0.2% of value of made tea \leq Kshs 400,000; Environmental Impact Assessment Levy (NEMA)- 0.1% of investment costs; Inspection and Grading Fee (KEPHIS)- 5,000/= per single consignment & 20,000/= per multiple consignment to one consignee inspected; SPS Certificate (KEPHIS)-Kshs 600; Import duty on packaging material (Government)- 25% of CIF Value; Import Declaration Form (Government)- 2.75 % of Value.

2.2.3 Local sales

a) Value Added Tax on Tea Sales

VAT is charged on local teas sales at the point of consumption at a rate of 16%. The tax is passed onto the consumer. However, tea for export is exempt from VAT. Compared to total production, the only output that is subject to VAT is 5%, since 95%

MEMO

THE SENATE
RECEIVED
15 JUL 2014
CLERK'S OFFICE

To : **The Speaker**
Thro' : Clerk
From : Director Committee Services
Date : 15th July, 2014

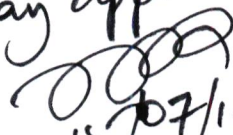
Approved
~~XXXXXXXXXX~~
16/7/14


SUBJECT: REPORT ON PETITION BY TEA FARMERS OF KISII COUNTY CONCERNING HIGH TAXATION AND LOW BONUS EARNINGS BY TEA FARMERS.

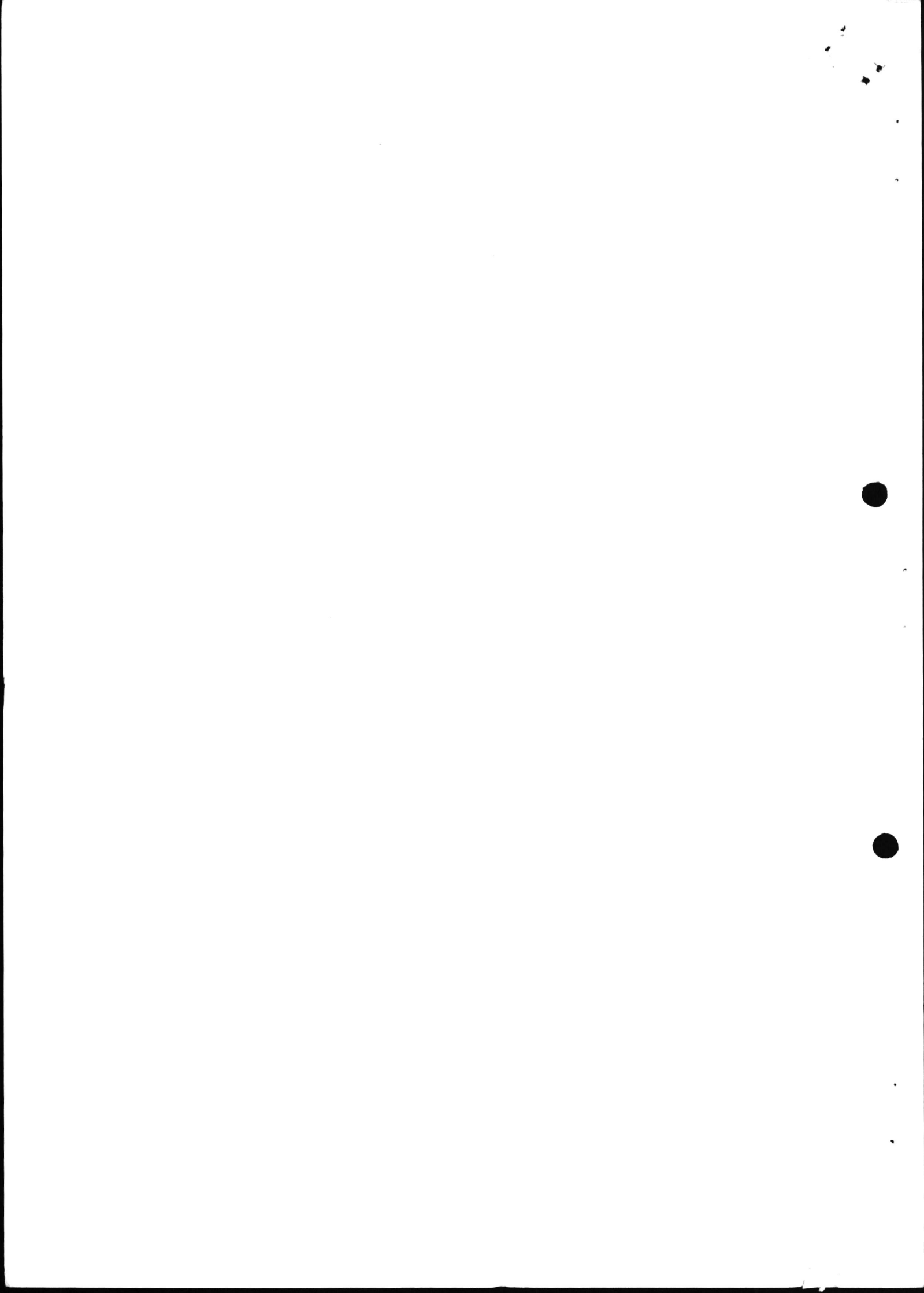
The Senate Standing Committee of Agriculture Livestock and Fisheries on Wednesday 18th June 2014, held a meeting with the Ministry of Agriculture, Livestock and Fisheries, Tea Board of Kenya, The East African Tea Trade Association and the Kenya Tea Development Agency regarding a petition by Sen. Christopher Obure on behalf of tea farmers in Kisii County concerning high taxation on tea and low bonus earnings by Tea farmers.

Attached please find the report to be laid on the table of the Senate for approval.


Njenga Njuguna

Hon. Speaker
You may approve for tabling.

15/7/14

Paper laid by the Chairperson
of the Standing Committee on
Agriculture, Livestock and Fisheries
on 17th July, 2014 -




REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – SECOND SESSION - 2014

PETITION REPORT

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

**THE PLIGHT OF TEA FARMERS OF KISII COUNTY CONCERNING HIGH
TAXATION ON TEA AND LOW BONUS EARNINGS BY TEA FARMERS**

JULY 2014

**CLERKS CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI**

July 2014

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LIST OF ACRONYMS AND ABBREVIATIONS

CBA	Collective Bargaining Agreements
CS	Cabinet Secretary
CUF	Common User Facility
EAC	East African Community
EATTA	East Africa Tea Trade Association
GDP	Gross Domestic Product
KCC	Kenya Cooperative Creameries
KFA	Kenya Farmers' Association
KTDA	Kenya Tea Development Agency
TREO	Tax Remission for Export Office
VAT	Value Added Tax

1. PREFACE

Mr. Speaker Sir,

It is my honour and pleasure to present to the Senate of the Republic of Kenya, the report of the Senate Standing Committee on Agriculture, Livestock and Fisheries on the Petition by the farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers. The names, addresses and other details are appended hereto pursuant to the Senate Standing Order 220.

Mr. Speaker Sir,

On Wednesday 16th April, 2014, the Senator for Kisii County, Sen. Chris Obure, tabled a Petition on behalf of tea farmers from Kisii County pursuant to Article 37 and 119 of the Constitution.

The petitioners drew the attention of the Senate to the following:-

- i. THAT, the recent hiking of taxation on tea for export by raising the amount of Advalorem Levy has negatively impacted on the tea industry which is one of Kenya's leading foreign exchange earners contributing 4% of the Gross Domestic Product (GDP) of our country;
- ii. THAT, crippling the tea industry which is a major pillar of Kenya's Agriculture Sector that is expected to enable the planned 10% annual growth as projected in Kenya's Vision 2030 will greatly undermine the growth of the country and put many livelihoods into jeopardy, noting that the tea industry promotes industrialization, employment, family incomes, commerce and growth of small enterprises;
- iii. THAT, the value and contribution of the tea industry to the economies of the producing counties, like Kisii is so immense that it is virtually the economic lifeline for a large majority of the population while noting that Kisii region including its neighbour Nyamira County hosts 12 of Kenya Tea Development Agency (KTDA) processing factories and that the majority of people in the region depend on tea production, processing, support services and infrastructure;
- iv. THAT, the destruction of or turbulence in the industry will therefore destroy entire families and have a devastating socio-economic ripple effect;

- v. THAT, in the absence of frustrations and turbulence in the industry, farmers are ready to continue and expand their production while mentoring new farmers, including their offspring to join tea production to increase Kenya's total output and supply to the ever expanding local and international markets which will not only increase the country's foreign exchange earnings but also improve incomes and livelihoods;
- vi. THAT, to encourage output and expansion, the National Government should abolish or minimize punitive taxes on inputs, services and exports as they will only make production and processing expensive and thereby make our teas uncompetitive leading to alienation of both traditional and potential markets;
- vii. THAT, the introduction of the Advalorem Levy on tea exports at 1% by the Minister for Agriculture on 27th January, 2012 raising it from the original 0.46% per kg which was levied at source dramatically raised the cost of Kenyan tea meant for export and exposed our produce to unfair competition from other tea exporting countries. The new levy was later to be adopted in the "Kones Bill" which was enacted into law;
- viii. THAT, the consequence of this additional taxation was immediate as Kenyan tea at the Mombasa auction was immediately snubbed by buyers as it became more expensive and hence we lost clients to competitors and consequent reduced sales and revenue for KTDA;
- ix. THAT, on the first week of implementation (sale 9) held on 1st March, 2012, there was confusion and uncertainty in the market and that in the subsequent auction (sale 10), KTDA tea reduced in demand and had to be discounted by 3 US cents per kg, whereas tea from competing countries including Uganda, Rwanda, and Tanzania achieved higher prices and appreciated by between 5 and 22 US cents per kg;
- x. THAT, appeals by leading stakeholders to review the imposition of this levy with a view to scrapping it altogether have not been heeded as well as other appeals for the rate to be charged based on kilogrammes instead of as a percentage of value or to enable Tea Board of Kenya to permit industry players to make monthly payments in arrears for direct sales have gone unheeded;

- xi. THAT, a direct intervention by KTDA through writing to the Cabinet Secretary for Agriculture directly has not been addressed;
- xii. THAT, as a direct consequence of this haphazard taxation and maintenance of 10% for tea access roads and Tea Research Foundation, Kenya tea has alienated buyers and drastically reduced KTDA incomes leading to small holder farmers being actively lobbied to reduce production even as payments have become irregular;
- xiii. THAT, the cure does not lie in asking farmers to reduce production of tea but in abolishing the Ad Valorem Tax to make Kenyan tea more competitive in world markets;
- xiv. THAT, massive drops in incomes for KTDA and its factories have exposed them more than ever before to illegal tea poaching (black market purchase of harvested tea leaves) by private companies taking advantage of farmers financial desperation;
- xv. THAT, desperate, poor small holder tea producers frustrated by reduced pay for their produce or long delays in payment from KTDA factories who end up giving their produce to tea poachers have been pushed into financial crises that are ruining whole families and livelihoods;
- xvi. THAT, this unfortunate window of opportunity for private tea companies indulging in black market tactics will make them grow in muscle, displace KTDA including snatching their experienced and qualified factory workers and farmers thus turn the tea industry into a vampire as the unmitigated commercial interests of private companies will undermine and jeopardize farmers' rights;
- xvii. THAT, the scaring away of Kenya's traditional clients in the tea export market due to higher costs will be too expensive in terms of past investments in winning them over and necessary new efforts to woo them back;
- xviii. THAT, part of the designated use for some of the unnecessary taxes on tea like works on tea access roads, among others, is a duplication since such can effectively be done by Constituency Roads Fund and other existing public roads funds managed by County Governments; and

xix. THAT, the higher taxation is causing the type of disruption in the industry that threatens to run down and completely kill KTDA similar to what happened in the past with major farmers' institutions like Kenya Cooperative Creameries (KCC), Kenya Farmers' Association (KFA), among others, which led to loss of jobs and a sharp rise in poverty levels amongst the affected communities.

The Petitioners confirmed that the matter is not the subject of litigation or suite in any court of law or any legal body.

Mr. Speaker Sir,

The petitioners' prayer was that the Senate of the Republic of Kenya does the following:-

- i. identifies all taxes currently imposed on tea and payable by stakeholders in the tea industry;
- ii. Investigates the effect of each of the taxes on:-
 - a. production;
 - b. processing;
 - c. local sales;
 - d. exportation of Kenya tea;
 - e. incomes to farmers; and
 - f. payment to workers in factories and farms.
- iii. Investigates the justification for imposition of the tea levies;
- iv. Identifies the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
- v. Interrogates the plans, if any, of the Ministry responsible for Agriculture concerning the tea industry taxation related problems; and
- vi. Interrogates the plans, if any, by the National Government to mitigate the continued losses suffered by KTDA and farmers due to the taxes.
- vii. Institutes the necessary measures to abolish the Ad Valorem Levy on tea exports introduced on 27th January 2012 along with other burdensome taxes on tea exports.

Following the tabling of the petition and in line with the Standing Order No. 224 (1), the Speaker directed the Standing Committee on Agriculture, Livestock and

Fisheries to investigate the matter and table the report in the House within 60 days.

The Committee held a total of three (3) sittings to deliberate on the petition. The Committee received both oral and written submission from the following key stakeholders: the Ministry of Agriculture, Livestock and Fisheries, the National Treasury, Tea Board of Kenya, the East African Tea Trade Association (EATTA) and the Kenya Tea Development Agency Holdings Limited (KTDA). From the evidence gathered, the Committee concluded that the Government should intervene to on the high taxation on tea and low bonus earning by the tea farmers in Kenya.

Committee Composition

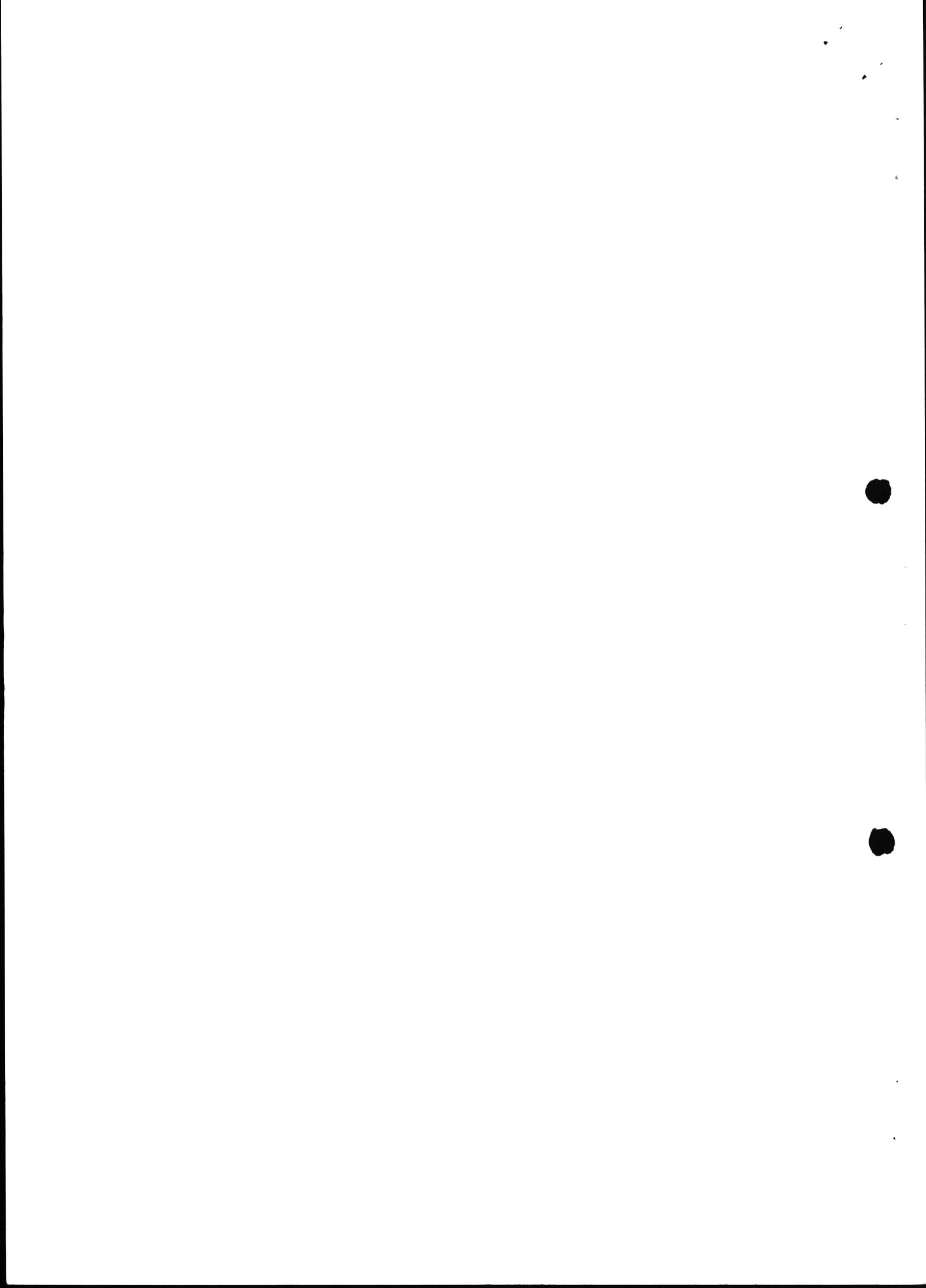
The Committee comprises the following Members:

1. Sen. Kiraitu Murungi, MP **-Chairman**
2. Sen. Henry Tiolo Ndiema, MP **- Vice Chairman**
3. Sen. Mungai James Kiarie, MP
4. Sen. Peter Mositet Korinko, MP
5. Sen. Stephen Olentutu, MP
6. Sen. Emma Mbura, MP
7. Sen. John Munyes, MP
8. Sen. Otieno Kajwang' Mp
9. Sen. Madzayo Stewart Mwachiru, MP

Committee sittings

The Committee held a total of three (3) sittings and received oral and written memoranda from the following stakeholders:-

- i. The Cabinet Secretary Ministry of Agriculture, Livestock and Fisheries
- ii. Submissions from the National Treasury
- iii. Submissions from the East African Tea Trade Association (EATTA)
- iv. Submission from the Kenya Tea Development Agency Holdings Limited (KTDA)



SUMMARY RECOMMENDATIONS

The Committee recommends that:-

1. The Legal Notice No.8 of 2012 on the Tea Ad Volverem Levy Regulations, 2012 should be revoked as it deviated from the recommendations of the 2006 Tea Task Force Report that had recommended the introduction the Levy.
2. Although the Tea Cess, has successfully addressed maintenance of rural access roads, alternative arrangements should be made by the County governments to budget for this roads as this is one of the devolved functions.
3. The Committee recommends the removal of 16% VAT on locally produced and consumed tea with a view to encouraging local consumption of Kenya's tea.
4. The Committee recommends an immediate constitution of the Tea Board of Kenya (TBK) that is inclusive of all key Stakeholders.
5. The Government to investigate the operations of the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.
6. The Government to review all the Taxes and Levies with a view to creating an enabling environment to improve Kenya's tea sector.

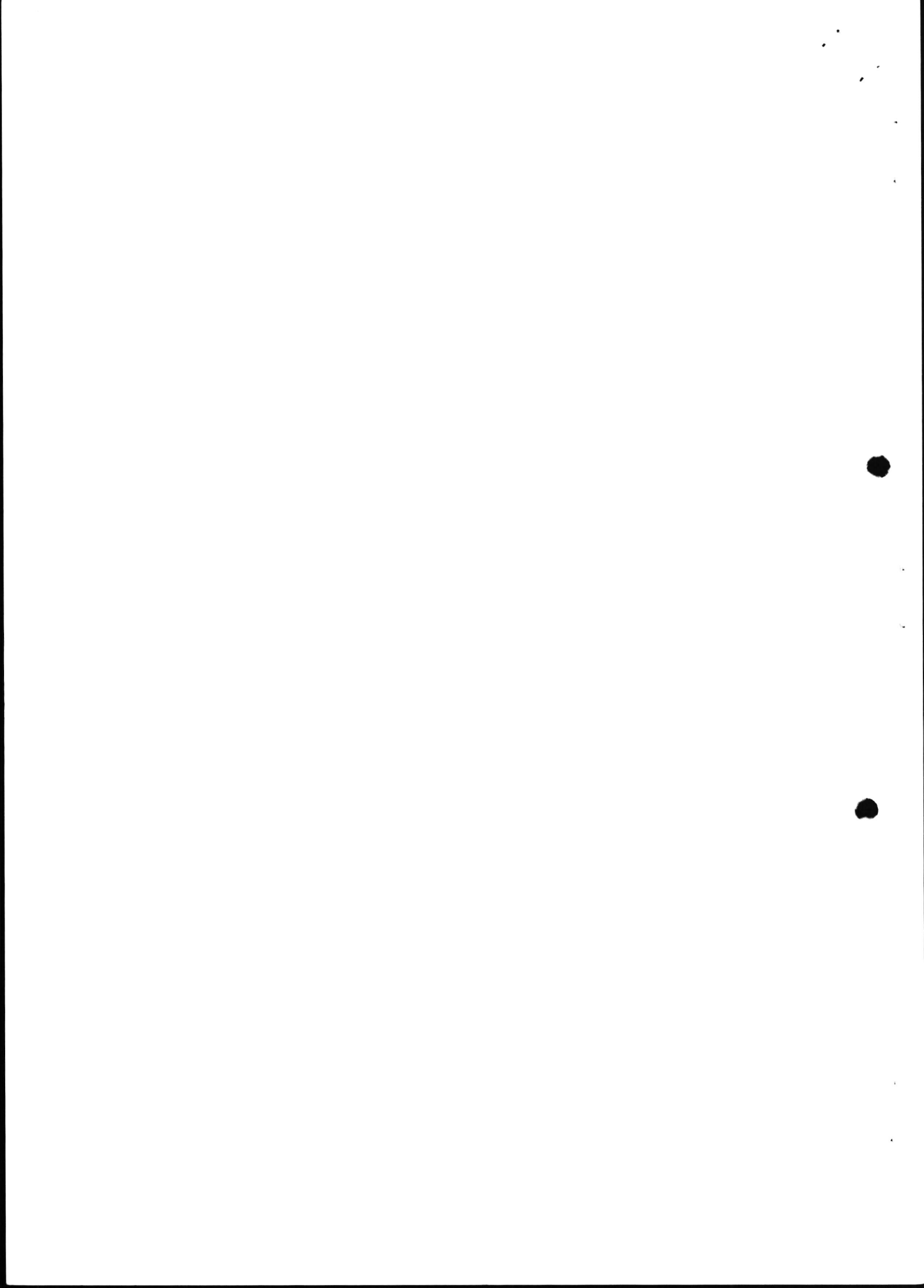
2. ACKNOWLEDGMENTS

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the Senate for the necessary support and services extended to the Committee to execute its work.

As Chairperson, I must thank Members of the Committee for their patience, sacrifice, endurance and hard work despite their other commitments and tight schedules, in their endeavor to deliberate on this petition.

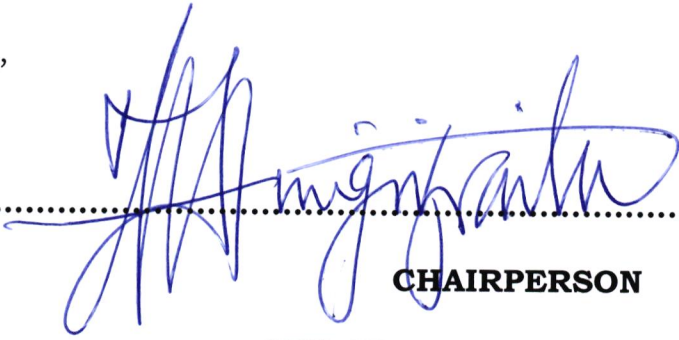
Mr. Speaker, Sir,

On behalf of the Committee, I now have the honour and pleasure to present the Report and Recommendations to the House.



Thank You,

Signed

A handwritten signature in blue ink, appearing to read 'Kiraitu Murungi', written over a dotted line.

CHAIRPERSON

SEN. KIRAITU MURUNGI, EGH

Date:

15/7/14

3. INTRODUCTION

- i. Kenya is the largest producer of tea after India and China; it is the largest exporter of tea in the world, having an advantage that tea grows all year round. Kenya's tea is of the highest quality in the world.
- ii. Kenya tea industry attracts a total of forty two (42) taxes and levies payable to the tea industry stakeholders.
- iii. The Ad Valorem Levy was introduced by amendments in the Tea Act CAP 343 through the legal Notice No.8 and 9 of 27th January, 2012 to replace the Manufacturing Cess following the recommendations made by the Tea Taskforce in 2006. The objective of the amendments was to increase the funding of the Tea Board of Kenya and its research arm- The Tea Research Foundation of Kenya (TRFK) while at the same time relieve the grower the burden of financing the two institutions.
- iv. Whereas the Manufacturing Cess was being levied at a rate of 46 Kenya Cents per kilogramme of manufactured tea and at the point of manufacturing, the Ad Valorem is payable at the rate of 1% of the Customs Value for made tea exports or imports. In this regard, the burden of financing the Tea Board of Kenya (TBK) and Tea Research Foundation of Kenya (TRFK) was shifted from the tea grower to the tea exporter. The amount collected is allocated to TBK (50%), TRFK (40%) and Tea Industry Infrastructure (10%) to undertake their mandates.
- v. At the current average export value of USD 2.43 (Ksh 211), the impact of this levy is about Ksh 2.11 per Kg of made tea. Assuming that this levy was to be passed by the buyer/exporter to the grower contrary to the Act, the impact will be Ksh. 050 per Kg of greenleaf delivered to the factory for processing.
- vi. Although the reason for charging of this levy is in line with the Government Policy that allows regulatory bodies to be financed by their respective industries as the stakeholders are the ultimate beneficiaries from the use of the Levy. The levy has, however penalized, the higher priced finally picked tea produced by the small scale farmer. The result of the levy discourages the producer who produces quality tea for the producer who does not. The levy has resulted to unintended consequence. Kenya should protect its image as a producer of premium quality tea that is in high demand worldwide from blending with lower quality teas and any tax or levy that hurts this image should be scrapped.

4. SUBMISSION FROM STAKEHOLDERS

The Committee received submissions from the Ministry of Agriculture, Livestock and Fisheries, the National Treasury, Tea Board of Kenya, the East African Tea Trade Association (EATTA) and the Kenya Tea Development Agency Holdings Limited (KTDA) all responding to the Petitioner's prayer (**the submissions as annexed to the report**), and established the following:-

5. COMMITTEE FINDINGS

1) **Committee findings on the petitioners' prayer to identify all taxes currently imposed on tea and payable by stakeholders in the tea industry.**

The committee established that there are more than forty two (42) taxes, duty, license fees, and levies facing stakeholders in the Kenya's Tea Value chain as follows:

THE TAXES PAYABLE TO THE TEA INDUSTRY STAKEHOLDERS:

Table 1: Taxes, duty, licenses, fees and Levies Facing Stakeholders in the Tea Value Chain

ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost	
Government Taxes							
1.	Corporate Tax	Tax	KRA	30 % on profit	Paid in installments	National	All Companies
2.	Value Added Tax	Tax	KRA	16% on Vatable products	Monthly	National	All companies
3.	Import Declaration	Tax	KRA	2.75 % of Value	At point of export	National	All Importers/
4.	Furnace Oil import tax	Tax	KRA	Kshs 0.6/litre	Daily	National	All companies
5.	Vehicle advance tax	Tax	KRA	1500/ ton of commercial vehicle	Annual	National	All companies
6.	Motor Vehicle Inspection	Tax	KRA	1000/ commercial vehicle per	Annual	National	All companies

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
7.	Withholding Tax	Tax	KRA	5% of dividends	Annual	National	All companies
8.	Fuel for agric operations	Duty	KRA	Kshs 10,305 per Cbm	Daily	National	All companies
Registration fees							
9.	Buyers at Tea Auction	Fees	TBK	10,000	Annual	Tea sector	Buyers
10.	Brokers	Fees	TBK	10,000	Annual	Tea sector	Tea brokers
11.	Warehousemen	Fees	TBK	10,000	Annual	warehouse	warehouse
12.	Tea importer	Fees	TBK	10,000	Annual	Tea sector	Importers
13.	Tea Manufacturing License	Fees	TBK	7,500	Annual	Tea sector	Tea Factories
14.	Tea Auction Organizers	Fees	TBK	10,000	Annual	Tea sector	EATTA
15.	Tea Packers	Fees	TBK	2,000	Annual	Tea sector	Packers
16.	Management agent	Fees	TBK	25,000	Annual	Tea sector	Tea farmers
17.	EATTA Membership	subscription	EATTA	30,000	Annual	Tea Sector	Producers, Buyers, warehouse men, brokers, packers
Levies							
18.	Ad valorem levy	levy	TBK	1% customs value of tea	For each consignment	Tea sector	Bulk Exporter-Buyer/
19.	Mombasa Municipal Port Health Charges	Levy	County Government	Kshs 5,000	Annual	County Government	Tea warehouse men, tea packers

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
20.	Mombasa Municipal Annual License Fee	Levy	County Government	Kshs 10,000	Annual	County Government	All Tea companies
21.	Land Rates	Levy	County Government	0.3-0.75% percent of undeveloped value	Annually	National	All Tea companies
22.	Inspection and Grading Fee (KEPHIS)	Levy	KEPHIS	5,000/= per single consignment & 10,000/= per multiple consignment to one consignee inspected	Consignment	National	Tea factories (contract exports), tea buyers, tea packers
23.	KEPHIS SPS Certificate	Levy	KEPHIS	Kshs 1000	Weekly	National	Tea factories (contract exports); tea warehouse
24.	KEBS Product	Levy	KEBS	0.2% of value of made tea ≤ Kshs	Annually	National	Exporter/Importers
25.	KEBS Quality Standard	Levy	KEBS	0.2% of value of made tea ≤ Kshs 400,000	Quarterly	National	Tea factories, tea packers
26.	NEMA Environmental audit	Levy	NEMA	0.1% of investment costs	Annual	National	Tea factories
27.	K.P.A Port Charges (40 feet)	Levy	Kenya Ports Authority	Kshs 9,000	At time of loading	National	Tea buyers, tea packers, tea factories
28.	K.P.A Port Terminal Handling	Levy	Kenya Ports Authority	Kshs 2000 per 20 Feet Container	At time of loading	National	Tea buyers, tea packers, tea factories
29.	Directorate of Industry Training Levy (DIT) National Industrial	Levy	NITA	Kshs 50 per employee	Monthly	National	Tea factories; Tea warehouse men, buyers, brokers

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
30.	Merchant Shipping Surcharge Fee	Levy	Kenya Maritime Authority	Kshs 10 per tonne	Annual	National	Tea buyers, tea packers, tea factories (direct exports)
31.	Chamber of Commerce Certificate of	Levy	Chamber of Commerce	0.025 % of the gross value tea sold	Annual	National	Buyers, packers
Cess							
32.	Agricultural Produce	Cess	County Govern	1% of gross value of green	Monthly	Tea sector	Tea farmers
Licenses							
33.	Fuel Wood Movement	License	County Government	300 per vehicle trip	Daily	National	Tea factories
34.	Waste Water Regulations	License	NEMA	Kshs 100,000	Annually	National	Tea factories
35.	Department of Occupationa	License	DOHS	Kshs 2,060	Annually	National	Tea factories, warehouse
36.	Seizure of scales	License	Weights & Measur	Kshs 2,010	Annually	National	Tea Companies /
37.	Water Permit	License	Water Resources Board	Kshs 4,600	Annually	National	Tea factories
38.	Underground Water Tank license	License	Ministry of Health	Kshs 1000	Annually	National	Tea factories
39.	Food & Drugs	License	F&D Board	Kshs 1000	Annually	National	Tea factories, packers, warehouse men
40.	Mombasa Municipal Parking Ticket per	Levy	County Council	Kshs 1,700 per day	Annually	National	All companies

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
	truck						
KTDA Management Fees							
41.	KTDA		KTDA	2.5% of the net sale	Monthly	Tea sector	Tea farmers
Brokers Fees							
42.	Tea Brokers	fees	Brokers	0.75% Producers and 0.5% Buyers	Daily	Tea sector	Tea Producers, Buyers

2) Committee findings on the petitioners' prayer to investigate the effect of each of the taxes on following:-

- a. Effect on production:** the combination of the various taxes and the depressed tea prices has made tea business not lucrative in the short term. Some growers reduce/abandon inputs for the farms. Potential growers are also discouraged from entering this market. These could lead to decline in tea production.
- b. Effect on processing:** Factories are expected to comply with the levies such as material movement, waste water regulations, etc. In order to comply, factories incur substantial capital expenditure in order to align its processes with the expectation.
- c. Effect on local sales:** All local tea sales attract VAT at 16% hence making tea expensive and beyond the purchasing means for the local target market. The packaging materials for local tea are imported and attract custom duty that is also passed to the local consumer.

According to the Ministry of Agriculture, Value Added Tax on Tea Sales (VAT) is charged on local teas sales at the point of consumption at a rate of 16%. The tax is passed onto the consumer. However, tea for export is exempt from VAT./compared to total production, the only output that is subject to VAT is 5%, since 95% is exported. Assuming, that the retail price of tea is USD 5.29 (Ksh 460) per kg, the consumer pays K.sh 63.45 as VAT.

The effect of VAT on the local sales makes the tea expensive to low income earners and less competitive compared to imported valued added teas.

d. Effects on Exportation of Kenya Tea: Ad Valorem tax at 1% of the value is to be borne by the buyers. This has made consumers prefer teas from other countries that do not have this tax. As such, the demand of Kenya tea is reduced hence the price. Ad Valorem tax came into force on 27th February, 2012 to replace the manufacturing cess that was being charged at Kshs. 0.46 per Kg of made tea. Manufacturing cess was payable monthly by KTDA to Tea Board of Kenya and was annually averaging Kshs 87m (Compared to the Kshs. 533m above from Ad Valorem tax).

The enactment of the East Africa Community Common Markets Protocol in July 2010 paved way for free movement of the factors of production across the five East African Community (EAC) signatories. The Partner States agreed to eliminate tariff, non-tariff and technical barriers to trade; harmonize and mutually recognize standards and implement a common trade policy for the Community. The Mombasa auction is a multi origin auction that has tea against the objectives of the EAC Common market to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of the Partner States and their citizens.

The high taxes are not there for other East African teas and this makes Kenyan teas more expensive and therefore less attractive. Moreover, the process involved in accounting paying Ad Valorem tax is quite bureaucratic.

This indeed makes payment of the tax become a deterrent from buying Kenyan tea. The amount involved is also significant and use of the same is not clear as a benefit to the farmers.

e. Effects on income to farmers: Over the years, the cost of production has been going up due to inflation. Coupled with depressed prices, taxes and levies (cess), the farmers' earnings are reduced.

It is important to note that factories have put in place various austerity measures to manage the costs inflation. However, the depressed industry performance has affected the cash flows of some factory hence have to borrow (inter factory) in the short term to finance the growers payment.

f. Effects on payment to workers in factories and farms: Generally, all factories have been able to pay workers obligations as they fall due. However, the depressed industry performance has affected the cash flows of some factories hence have to borrow (inter factory) in the short term to finance these obligations. The depressed performance of the sub sector also means the

salaries of the farm workers (especially pluckers) stagnates over a longer period despite the increased cost of living.

Payment to workers in factories and farms according to the Ministry of Agriculture are direct labour costs which have been rising as a result of Collective Bargaining Agreements (CBA), these increases the cost of production.

3) Committee findings on the petitioners' prayer to investigate the justification for imposition of the tea levies.

The Ministry of Agriculture, Livestock and Fisheries submitted the following justifications on the imposition of Tea Levies:

i. Agricultural Production Cess

- The Cess money is utilized to maintain rural access road in the tea growing areas, thereby assisting timely delivery of Greenleaf to the factories, reduces wastage, reduce transport costs and therefore improves on quality of teas.
- The Committee finds that although this the true, the Constitution has since tasked the county governments with the responsibility of maintaining rural access roads in the counties.

ii. Advalorem Levy

- The objective of the levy is to alleviate the burden of financing the Tea Board of Kenya (TBK) and Tea Research Foundation of Kenya (TRFK) from the tea grower to the tea exporter. The levy has increased the funding of the TBK and TRFK to effectively execute their mandate.
- The Committee finds that the introduction of Ad valorem Levy did not go through a proper consultation framework with the industry players and that calculation of the levy from a fixed amount per kilo to one percent of the value of tea is centrally to the recommendation of the Tea Task Force Report recommendation. The introduction of the levy Ad valorem levy is a punitive tax on an already overburdened sector.

- #### **iii. The imposition of Advalorem Levy on imported tea:** the value added teas, which are imported into the country, are charged at one percent (%) import value. This low levy is advantageous to the imported teas making the market share of foreign value added teas to continually increase denying local producers competitive advantage in the local market. Unless mitigated, the initiatives by smallholder factories registering as packers to value add tea will be curtailed.

- iv. **Tea Board of Kenya (TBK) Registration fees and Licenses:** the Tea Act Regulations of 2008 introduced annual registration fees of all the tea stakeholders. The regulations were necessary to maintain order in the industry. The regulations also enacted a fee for application and renewal for processing, charged according to the application category. Given the individual firm's overall turnover, the fee is negligible.
- v. **East Africa Tea Trade Association (EATTA) Fees:** the East Africa Tea Trade Association is a voluntary membership based institution, which organizes tea auction in Mombasa. EATTA has set rules and regulation that govern members who are drawn from the region. EATTA charge member's subscription fee and other fees for services rendered.
- vi. **Other Levies:** the tea stakeholders are also subjected to other levies and taxes administered by other statutory institutions for the services rendered.

4) Committee findings on the petitioners' prayer to identify the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down.

The Ministry's opinion on the expansion potential and economic opportunities if unnecessary taxes are removed is as follows:

- The taxes are applicable to most other industries in Kenya and the tea industry is not an exception. Similar and more taxes are even higher in other key competing countries like India and Sri Lanka.
- In this regard, the ministry's position is that some of the taxes e.g. Agriculture Produces Cess should be reviewed downwards since County Governments have the mandate and resources for maintaining the rural access roads. Taxes, levies and fees that are not discriminatory to the tea industry should be maintained.

5) Committee findings on the petitioners' prayer to interrogate the plans, if any, of the Ministry responsible for Agriculture concerning the tea industry taxation related problems.

The Ministry of Agriculture in conjunction with other Government departments/agency is in the process of streamlining the tax refund system under Tax Remission for Export Office (TREO) as delay in tax refund ties up capital for reinvestment.

6) Committee findings on the petitioners' prayer to interrogate the plans, if any, by the National Government to mitigate the continued losses suffered by KTDA and farmers due to the taxes.

Whereas the current price fluctuations in the global market are due to increased supply, perpetuated by Kenya's overreliance on one tea product, the Government is in the process of establishing a Common User Facility (CUF) to promote value addition and products diversification. KTDA and Stakeholders are being encouraged to diversify into other tea products such as Green and Orthodox tea, whose prices in the world market is not affected by the current glut in production.

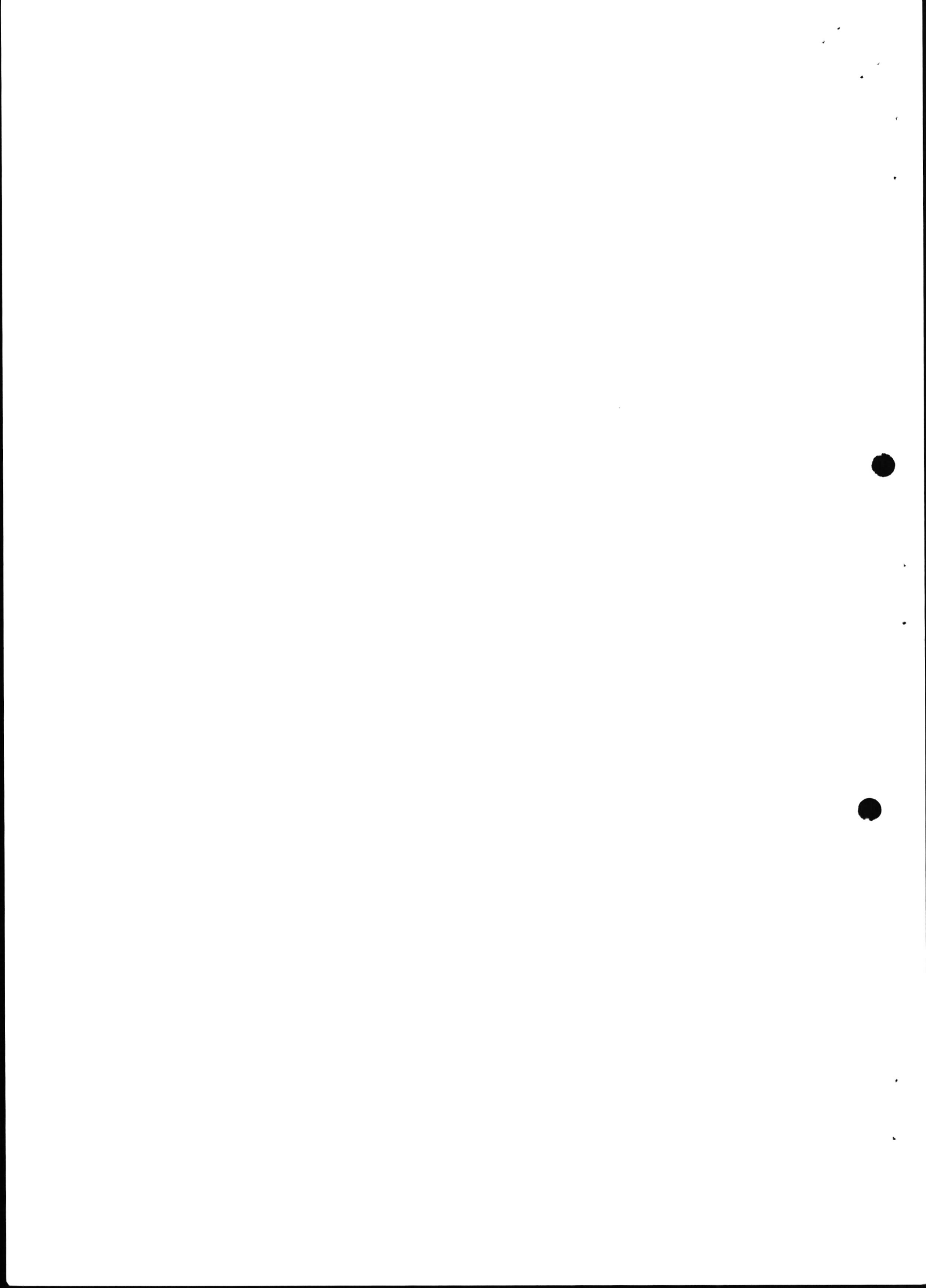
6. SUMMARY OF RECOMMENDATIONS

The Committee recommends as follows:-

1. The Legal Notice No.8 of 2012 on the Tea Ad Voletem Levy Regulations, 2012 should be revoked as it deviated from the recommendations of the 2006 Tea Task Force Report that had recommended the introduction the Levy.
2. Although the Tea Cess, has successfully addressed maintenance of rural access roads, alternative arrangements should be made by the County governments to budget for this roads as this is one of the devolved functions.
3. The Committee recommends the removal of 16% VAT on locally produced and consumed tea with a view to encouraging local consumption of Kenya's tea.
4. The Committee recommends an immediate constitution of the Tea Board of Kenya (TBK) that is inclusive of all key Stakeholders.
5. The Government to investigate the operations of the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.
6. The Government to review all the Taxes and Levies with a view to creating an enabling environment to improve Kenya's tea sector.

2. CONCLUSION

The Committee concludes that there are too many taxes and levies in Kenya's tea industry and this is a major reason as to why Kenya's tea industry is underperforming. The Committee will conduct a conclusive study of all the other challenges that are undermining Kenya's tea industry and make recommendations to the Senate.



ANNEXES

- 1. The minutes of the Committee proceedings on the Petition**
- 2. Copy of the Petition**
- 3. Legal Notice No. 8**
- 4. Submissions by Stakeholders**

MINUTES OF THE 10TH SITTING OF THE STANDING COMMITTEE OF AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON WEDNESDAY 18TH JUNE, 2014 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, AT 11.00 AM.

PRESENT

- | | |
|--|--------------------------|
| 1. Sen. Kiraitu Murungi | -Chairperson |
| 2. Sen. Henry Tiolo Ndiema | -Vice Chairperson |
| 3. Sen. Peter Mositet | |
| 4. Sen. Justice (Rtd) Madzayo Stewart Mwachiru | |
| 5. Sen. John Munyes | |

ABSENT WITH APOLOGY

1. Sen. Mungai James Kiarie
2. Sen. Emma Mbura
3. Sen. Stephen Ole Ntutu
4. Sen. Otieno Kajwang

IN ATTENDANCE

Senate Staff

- | | |
|-------------------|-------------------------|
| 1. Emmy Chepkwony | -Senior Clerk Assistant |
| 2. Crispus Njogu | - Clerk Assistant |
| 3. Stephen Maru | -Serjeant At Arms |

MIN. NO. 58/2014 PRAYER

The Chairman called the meeting to order fifteen minutes past eleven O'clock. The prayers were said by the Committee Clerk.

MIN. NO. 59/2014 ADOPTION OF THE AGENDA

The agenda was proposed by Sen. Justice (Rtd) Stewart Madzayo and seconded by Sen. John Munyes.

MIN. NO. 60/2014 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 9th sitting were confirmed as the true record of the proceedings by the members present and signed by the Chairman. The minutes were proposed by Sen. Henry Ndiema and seconded by Sen. Kiraitu Murungi.

MIN. NO. 61/2014 MATTERS ARISING

1. Under Min. No. 45/2014: High Level Workshop. The Committee asked that a report of the Committee High Level Workshop held on 5th June 2014 to 8th June 2014 be finalized for Committee adoption at its next sitting.
2. Under Min. No. 38/2014: The budget office to submit a report on the functions funded by both County and National governments under agriculture, livestock and fisheries.

MIN. NO. 62/2014 HOUSE KEEPING

1. The Committee was informed about upcoming foreign trips. The Committee proposed to visit Senegal and Ethiopia instead of Nigeria the proposed dates being the 1st week of August, 2014.
2. The Committee was informed about a petition that was submitted by Sen. Christopher Obure regarding high taxation on tea and low bonus earnings by tea farmers. The Committee resolved to hear the Petition on 2nd July 2014. The following stakeholders to be invited to the meeting to provide submissions on the Petition:
 - i. Cabinet Secretary National Treasury
 - ii. Cabinet Secretary Agriculture, Livestock and Fisheries
 - iii. Sen. Chris Obure- Sponsor of the Petition
 - iv. Kenya Tea Authority (KTDA) (Management and Regional Chairpersons)
 - v. Tea Board of Kenya
3. The Committee Deliberated on its report on the Food Security in Baringo County and resolved that members take copies and submit comments in the next Committee sitting.

MIN.NO.63/2014 ADJOURNMENT

There being no other business and the time being forty five minutes past eleven O'clock the meeting adjourned.

Signed:


Chairperson- Sen. Kiraitu Murungi

Date: 9/7/14

MINUTES OF THE 11TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE LIVESTOCK AND FISHERIES HELD ON WEDNESDAY 2ND JULY, 2014 IN THE 3RD FLOOR BOARDROOM, KICC BUILDING, AT 9:30AM.

PRESENT

- | | |
|----------------------------|--------------------------|
| 1. Sen. Kiraitu Murungi | -Chairperson |
| 2. Sen. Henry Tiolo Ndiema | -Vice Chairperson |
| 3. Sen. Peter Mositet | |
| 4. Sen. Emma Mbura | |
| 5. Sen. Otieno Kajwang | |
| 6. Sen. Christopher Obure | |

ABSENT WITH APOLOGY

1. Sen. Mungai James Kiarie
2. Sen. Justice (Rtd) Madzayo Stewart Mwachiru
3. Sen. Stephen Ole Ntutu
4. Sen. John Munyes

IN ATTENDANCE SECRETARIAT

- | | |
|-------------------|-------------------------|
| 1. Emmy Chepkwony | -Senior Clerk Assistant |
| 2. Crispus Njogu | - Clerk Assistant |
| 3. Stephen Maru | -Serjeant At Arms |

IN ATTENDANCE: MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

- | | |
|-----------------------|---------------------------------------|
| 1. Ms. Anne Onyango | - Agriculture Secretary |
| 2. Mr. T. Nyongesa | - Head of Parliamentary Business Unit |
| 3. Mr. Dominic Kitaka | - Parliamentary Business Unit |

IN ATTENDANCE: KENYA TEA DEVELOPMENT AGENCY

- | | |
|----------------------|-------------------|
| 1. Mr. Simeon Rugutt | -Senior Manager |
| 2. Mr. Benson Ngari | -Finance Director |

IN ATTENDANCE: TEA BOARD OF KENYA

- | | |
|--------------------------|----------------------------|
| 1. Ms. Elizabeth Kimenyi | -Acting Managing Director |
| 2. Ms. Phrasiah Mwangi | -Finance and Admin Manager |

IN ATTENDANCE: EAST AFRICA TEA TRADE ASSOCIATION

Mr. Edward Mudibo

-Managing Director

MIN. NO. 64/2014: PRAYER

The Chairman called the meeting to order fifteen minutes past Ten O'clock. The prayers were said by the Committee Clerk.

MIN. NO. 65/2014: CHAIRMAN OPENING REMARKS

- The Chairman stated the reason for the meeting was to consider a petition presented to the Senate by Sen. Christopher Obure, Senator for Kisii County regarding High Taxes on tea and low bonus earning by tea farmers.
- He stated the Committee's mandate to include all matters Agriculture Livestock and Fisheries. Article 96 (1) of the constitution states that the Senate represents the counties and serves to protect interests of the counties and their governments. He informed the meeting of the Committee's commitment to protect interests of the tea farmers in the counties. The Chairman noted with concern that while the tea industry was one of the best managed agricultural subsectors in Kenya; it was now under threat with falling tea prices and for the first time in KTDA'S history it had failed to pay bonuses to tea farmers.

MIN. NO. 66/2014: REMARKS BY SEN. CHRISTOPHER OBURE

- Sen. Christopher Obure presented his petition. He stated that tea farmers both large and small scale shared the same concerns, when it came to high taxes and low bonus earnings. The increase of advalorem Levy from 0.46% per kg to 1% per kg on 27th January 2012 by the Minister of Agriculture had dramatically raised the cost of Kenyan tea meant for export. It had exposed Kenya's tea for export to unfair competition from other tea exporting countries.
- KTDA had to discount Kenyan tea by 3 US Cents per Kg whereas tea from competing countries appreciated by between 5 and 22 US Cents per kg. He stated that Kenya was the only country among the 9 tea exporting countries in the Mombasa Tea Auction that charges Advalorem tax and this had resulted in losing traditional tea markets. Sen. Obure also noted that in addition to the advalorem levy, tea farmers were subjected to many more taxes which were eating in to their bottom line earnings.

MIN. NO. 67/2014: PRESENTATION BY THE KENYA TEA DEVELOPMENT AGENCY

- KTDA was put to task over reports of manipulating prices of the highest tea grade in the Mombasa auction. The Finance Director of KTDA informed the Committee that KTDA had responded to a newspaper article on 29th June 2014 that KTDA was manipulating the price of the highest tea grade. He stated that the article was completely false and ill-founded. He stated that the daily's thought they were communicating with a source from Kenya Tea Board which was not the case. He said that it was impossible to interfere with prices at the Mombasa auction.
- He provided a response to the petition. A report detailing twenty four (24) taxes imposed on tea and payable by stakeholders, the effects of these taxes on production, processing, local sales, exportation, and income to farmers. He noted that while Kenya was the third largest producer of tea, it was the largest exporter. It was noted that tea prices had reduced by almost 30% and that had affected the cash flow. The reduced cash flow had resulted in non-payment of tea bonuses to farmers. On the advalorem tax, it is supposed to be absorbed by the buyers however the farmers are currently bearing it. It is costing the farmers 532 million shillings while the green leaf tax another tax imposed on tea farmers is costing the farmer 432 million shillings.
- The report presented also showed the history and organizational structure of KTDA, as well as current trading environment, factories performance and initiatives.

MIN. NO. 68/2014: PRESENTATION BY THE EAST AFRICA TEA TRADE ASSOCIATION (EATTA)

- EATTA presented a memorandum on the need for review of the Tea Advalorem Levy regulations. It was stated that EATTA had 175 members drawn from 9 countries. EATTA principle mandate is to run the weekly Mombasa Tea Auction Center currently the largest auction center in the world and the only one dealing with teas from more than one country. The managing director stated that the Advalorem levy had impacted the cost of Kenyan tea and buyers now preferred non Kenyan tea due to cost. He added that in addition to the Advalorem tax, there were an additional 42 taxes imposed on the tea from leaf to cup making the number of taxes

to be 43. He proposed that the Advalorem tax needs to be reviewed so that instead of being a percentage of value of the tea it becomes a fixed amount per kilogram of tea as proposed in the 2006 Tea task Force report. The fixed amount should not exceed Ksh 1 per Kilogram of made tea.

- Although Advalorem Levy was supposed to support the operations of the Tea Board of Kenya, the Board had not had a sitting for the last twenty eight (28) months.

MIN.NO. 69/2014: PRESENTATION BY THE MINISTRY OF AGRICULTURE AND THE TEA BOARD OF KENYA

- The Ministry presented a report detailing forty two (42) taxes and levies imposed on tea industry in Kenya. The taxes affected the production and income to farmers, processing, local sales, exportation of tea and payment to workers in factories and farms. The Ministry also presented a justification for imposition of tea levies. It was stated that the tea levies go as far as maintaining rural access roads and financing the Tea Board of Kenya among other operations.
- The Ministry explained that taxes are applicable to most other industries in Kenya and the Tea industry is no exception. The Ministry's position is that some of the taxes e.g. Agriculture Produce Cess should be reviewed downwards.

Committee Concerns

The members sought to appraise on the following:

1. Although Advalorem Levy was supposed to support the operations of the Tea Board of Kenya, the Board had not had a sitting for the last twenty eight (28) months. The concern was as to why the Tea Board of Kenya needed funding yet its operations are management by the Ministry of Agriculture, Livestock and Fisheries.
2. Whether the idea of introducing the Advalorem tax to transfer cost from farmer to exporter has worked.
3. Concerns on bad publicity on Kenya's tea in particularly by CNN and the activities by Tea Board of Kenya to address/counter the bad press.
4. The Committee wanted to know what Tea Board of Kenya is doing to market Kenya's tea and to facilitate access to alternative markets.

5. If it was possible to remove the Agriculture Cess Levy to ease the burden on the already overtaxed tea industry.
6. The possibility to remove the 16% VAT on locally produced and consumed tea to motivate and increase local consumption.
7. The concerns that the Legal Notice No.8 of 2012 on the Tea Ad Valorem Levy Regulations, 2012 had deviated from the recommendations of the 2006 Tea Task Force Report that recommended that the Ad Valorem Levy be charged on the kilogramme instead of as a percentage value tea.
8. Why the Cabinet Secretary had not constituted the Tea Board of Kenya (TBK) that is inclusive of all key stakeholders.
9. The operations in the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.

MIN.NO.70/2014: ADJOURNMENT

There being no other business and the time being thirty five minutes past One O'clock the meeting was adjourned.

Signed:.....

Chairperson- Sen. Kiraitu Murungi

Date:9/7/14.....

MINUTES OF THE 12TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE LIVESTOCK AND FISHERIES HELD ON WEDNESDAY 9TH JULY, 2014 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS, AT 11:00AM.

PRESENT

- | | |
|--|--------------------------|
| 1. Sen. Kiraitu Murungi | -Chairperson |
| 2. Sen. Henry Tiolo Ndiema | -Vice Chairperson |
| 3. Sen. Peter Mositet | |
| 4. Sen. Justice (Rtd) Madzayo Stewart Mwachiru | |
| 5. Sen. Stephen Ole Ntutu | |

ABSENT WITH APOLOGY

1. Sen. Emma Mbura
2. Sen. Otieno Kajwang
3. Sen. Mungai James Kiarie
4. Sen. John Munyes

IN ATTENDANCE SECRETARIAT

- | | |
|-------------------|-------------------------|
| 1. Emmy Chepkwony | -Senior Clerk Assistant |
| 2. Crispus Njogu | - Clerk Assistant |
| 3. Stephen Maru | -Serjeant At Arms |

MIN. NO. 71/2014: PRAYER

The Chairman called the meeting to order at ten minutes past Eleven O'clock. The prayers were said by the Committee Clerk.

MIN. NO. 72/2014: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the chairman after being proposed and seconded as follows:

- i. Minutes of 10th Sitting held on Wednesday 18th June, 2014 were proposed by Sen. Henry Tiolo Ndiema and seconded by Sen. Stephen Olentutu.
- ii. Minutes of 11th Sitting held on Wednesday 2nd July, 2014 were proposed by Sen. Peter Mositet and seconded by Sen. Henry Tiolo Ndiema.

MIN. NO. 73/2014: DELIBERATIONS ON THE COMMITTEE REPORTS

The Committee deliberated and adopted the following reports

- i. Report on the Status of food security in Baringo county
- ii. Report on the high –Level workshop with Stakeholders in the Agriculture, Livestock and fisheries sectors
- iii. Petition Report on the Plight of tea farmers of Kisii County concerning high taxation and low bonus earnings on tea farming.

1. Min. No. 73/2014 (i): Deliberation and Adoption of the Status Report on Food Security in Baringo County.

The Committee made the following findings and observations which are based on the oral and written submissions made by the stakeholders and recommended as follows:

- i. **Budgetary/Resources Allocations:** The Committee notes that the total budgetary allocation for the county from the national government is limited to transform the county in terms of irrigation from the current 6500 acres of land under irrigation of its potential 150,000 acres as an alternative to stamp out food insecurity in the county.
 - ✓ It recommends that the national government considers allocating a conditional grant under agriculture for a sizeable irrigation project in Baringo County.
 - ✓ Baringo County should be considered for Equalization Fund. This is for the reason that the County is ASAL and face perennial drought situation, similar or even worse than the other neighbouring ASAL counties that receive Equalization Fund.
- ii. **Insecurity:** The Committee observes that the contribution of cattle rustling to food insecurity in the County, loss of life, Internally Displaced Persons, and property loss require quick and lasting solution.
 - ✓ The National Government to initiate a policy to address the challenge of cattle rustling within the next six months;
 - ✓ The National Government to allocate a special fund for infrastructure in cattle rustling prone areas to aid in effective communication;

- ✓ The National Government to deploy more police service officers to the county to arrest the security situation;
 - ✓ The Senate to enact an act of Parliament to amicably stop cattle rustling; and
 - ✓ The National Government to compensating the IDPS as a result of cattle rustling in Baringo County, a compensation modality to be tabled before the Senate in the next four (4) months;
- iii. **Water/ Irrigation:** the County needs to move away from rain fed agriculture and invest in irrigation agriculture. The Baringo County Government to conduct borehole repairs, fuel subsidies, promote water harvesting and storage in areas where rains areas continuing, including harvesting storm water and spring protection; and the National Government to build more dams in Baringo County.
- iv. **Environmental Conservation:** the Committee observes that environmental conservation measures to mitigate on disaster like floods, landslides and siltation is urgent in Baringo County.
- v. The County Government to lay strategies to protect water catchment areas by funding a forestation programmes in this areas and in schools. Check dams to be established along the main rivers to allow for water harvesting downstream which will be useful both in irrigation by communities along the rivers and in reducing the effects of floods.
- vi. The Committee observed that the County lacks a **Disaster Risk Management Framework** that outlines specific action points towards providing sustainable remedies for Disaster Risk Reduction.

The Committee Recommends as follows:

The County Government to establish the following within the financial year 2014/2015:

- ✓ A Disaster Information Management and Early Warning System that adopts modern technologies like GIS;
- ✓ Establish County Disaster Contingency Fund;
- ✓ Participatory Disaster Risk Analysis;
- ✓ Set up County Disaster Risk Management Committee (CDRMC);

- ✓ The County to develop a County Disaster Response Center and Disaster Management Policy.
 - ✓ The County government to establish a communication strategy to handle disaster in a timely manner.
- vii. The Committee finds that the role of **inter-governmental collaborations** in addressing food insecurity is crucial.
- ✓ The National Government to set up unconditional grant to purchase food of Ksh. 50million per month for the next six months as a short term strategy to address the hunger situation.
 - ✓ Resource mobilizations to secure enough resources especially in addressing long terms strategies towards food security.
- viii. The Committee finds that research is crucial in food security and recommends that science, technology and innovation should be mainstreamed in county development. Deployment of modern technologies in farming, undertaking of proper soil analysis, intensifying research for appropriate crop seeds and animal breeds for ASAL areas and scaling up budgetary allocation for research is the only way of increasing productivity for suitable development.
- ix. The Committee observes that, despite the efforts by Kenya in 2011 to develop the National Food and Nutrition Security Policy(FNSP) aimed at adding value , building synergies and assisting with the implementation of existing national and sectoral policies and strategies to effectively address issues of food insecurity and malnutrition in Kenya, efforts so far have not successfully managed to address issues of malnutrition comprehensively.

The Committee recommends that National Government develop an overarching policy that integrates food and nutrition initiatives.

2. Min. No. 73/2014 (ii): Deliberation and Adoption of the Report on the high -Level workshop with Stakeholders in the Agriculture, Livestock and fisheries sectors

The Committee adopted its report with the following recommendations to guide the Committee in defining its Strategic Plan and Work Plan:

- i. The Senate to propose a legislation to establish a National Food Security Authority.

- ii. Both the National and the County Governments to invest more in irrigation both in large and small scale farms, to avoid over reliance on rain, which has been erratic and especially in view of the climate change concerns.
- iii. Establish a basket fund to support food security interventions, and have all interested donors well-coordinated.
- iv. Invest and upscale research and innovation in the agricultural sector and adoption of modern technology in farming.
- v. Measures to be put in place to add value to products and improve marketing structures to enhance income.
- vi. To avoid post-harvest losses and also contamination of produce, measures to be taken to improve storage and handling facilities.
- vii. Enhance measures to control animal and plant diseases and ensure food safety
- viii. Fast track structural governance reforms and necessary legislation at National and County level to address the current challenges.
- ix. Increase the budgetary allocation both at National and County levels to at least 10% in accordance with the Maputo Declaration.
- x. Ensure availability of agricultural inputs at appropriate costs and in a timely manner.
- xi. Enhance availability of credit to farmers at affordable interest rates. In this respect, AFC to be supported financially.
- xii. Develop policies, legislation and other measures to protect and enhance agricultural land productivity. Control conversion of land to other uses and fragmentation and where possible encourage consolidation.
- xiii. Urgent intervention to ensure that all Kenyans have adequate food and where there is need for relief, appropriate mechanisms to identify and target the vulnerable to be put in place. Food security committees to be established immediately at the National and County levels to coordinate food availability issues.
- xiv. Take policy and legislative measures to ensure increased, sustainable and appropriate exploitation of inland and sea fishing.
- xv. Measures to be put in place to encourage Kenyans to diversify on food consumption preferences to avoid over reliance on maize.

3. Min. No. 73/2014 (iii): Deliberation and Adoption of the Petition Report on the Plight of tea farmers of Kisii County concerning high taxation and low bonus earnings on tea farming.

The deliberated on its report and made the following recommends:-

1. The Legal Notice No.8 of 2012 on the Tea Ad Valorem Levy Regulations, 2012 is revoked as it deviated from the recommendations of the 2006 Tea

Task Force Report that recommended that the Ad Valorem Levy be charged on the kilogramme instead of as a percentage value tea.

2. Agricultural Production Cess, although has successfully addressed maintenance of rural access roads, alternative arrangements should be made by the County governments to budget for this roads as this is one of the devolved functions.
3. The Committee recommends the removal of 16 % VAT on locally produced and consumed tea with a view to encouraging local consumption of Kenya's tea.
4. The Committee recommends an immediate constitution of the Tea Board of Kenya (TBK) that is inclusive of all key stakeholders.
5. The Government to investigate the operations in the Mombasa Tea Auction with a view to enhancing transparency and addressing concerns on the alleged malpractices and to discourage dumping of low quality tea in the Kenya's market.
6. The Government to review all the Taxes and Levies with a view to creating an enabling environment to improve Kenya's tea sector.

MIN.NO.70/2014: ADJOURNMENT

There being no other business and the time being thirty five minutes past One O'clock the meeting was adjourned.

Signed:.....

Chairperson- Sen. Kiraitu Murungi

Date: 9/7/14

**PETITION PRESENTED BY SEN. CHRIS OBURE
ON BEHALF OF PETITIONERS PURSUANT TO
ARTICLE 37 AND 119 OF THE CONSTITUTION
AND STANDING ORDER 220**

Handwritten initials/signature

Hon. Speaker **Approved**
You may approve the ~~petition~~
petition for presentation 16/4/14

Signature
15/4/14

Received
16/6/2014
Signature

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers .

**PETITION PRESENTED BY SEN. CHRIS OBURE ON BEHALF OF
PETITIONERS PURSUANT TO ARTICLE 37 AND 119 OF THE
CONSTITUTION AND STANDING ORDER 220**

We, the undersigned-

Citizens of the Republic of Kenya, duly registered voters and tax payers and tea farmers of Kisii County residing in Kisii County, and whose names, signatures and other details are appended hereto pursuant to the Standing Orders of the Senate, authorize Sen. Christopher Mogere Obure, Senator for Kisii County to countersign and present this Petition to the Senate.

Draw the attention of the Senate to the following-

- i) THAT, the recent hiking of taxation on tea for export by raising the amount of Advalorem Levy has negatively impacted on the tea industry which is one of Kenya's leading foreign exchange earners contributing 4% of the Gross Domestic Product (GDP) of our country;
- ii) THAT, crippling the tea industry which is a major pillar of Kenya's Agriculture Sector that is expected to enable the planned 10% annual growth as projected in Kenya's Vision 2030 will greatly undermine the growth of the country and put many livelihoods into jeopardy, noting that the tea industry promotes industrialization, employment, family incomes, commerce and growth of small enterprises;
- iii) THAT, the value and contribution of the tea industry to the economies of the producing counties, like Kisii is so immense that it is virtually the economic lifeline for a large majority of the population while noting that Kisii region including its neighbour Nyamira County hosts 12 of Kenya Tea Development Agency (KTDA) processing factories and that the majority of people in the region depend on tea production, processing, support services and infrastructure;
- iv) THAT, the destruction of or turbulence in the industry will therefore destroy entire families and have a devastating socio-economic ripple effect;

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

- v) THAT, in the absence of frustrations and turbulence in the industry, farmers are ready to continue and expand their production while mentoring new farmers, including their offspring to join tea production to increase Kenya's total output and supply to the ever expanding local and international markets which will not only increase the country's foreign exchange earnings but also improve incomes and livelihoods;
- vi) THAT, to encourage output and expansion, the National Government should abolish or minimize punitive taxes on inputs, services and exports as they will only make production and processing expensive and thereby make our teas uncompetitive leading to alienation of both traditional and potential markets;
- vii) THAT, the introduction of the Advalorem Levy on tea exports at 1% by the Minister for Agriculture on 27th January, 2012 raising it from the original 0.46% per kg which was levied at source dramatically raised the cost of Kenyan tea meant for export and exposed our produce to unfair competition from other tea exporting countries. The new levy was later to be adopted in the "Kones Bill" which was enacted into law;
- viii) THAT, the consequence of this additional taxation was immediate as Kenyan tea at the Mombasa auction was immediately snubbed by buyers as it became more expensive and hence we lost clients to competitors and consequent reduced sales and revenue for KTDA;
- ix) THAT, on the first week of implementation (sale 9) held on 1st March, 2012, there was confusion and uncertainty in the market and that in the subsequent auction (sale 10), KTDA tea reduced in demand and had to be discounted by 3 US cents per kg, whereas tea from competing countries including Uganda, Rwanda, and Tanzania achieved higher prices and appreciated by between 5 and 22 US cents per kg;
- x) THAT, appeals by leading stakeholders to review the imposition of this levy with a view to scrapping it altogether have not been heeded as well as other appeals for the rate to be charged based on kgs instead of as a percentage of value or to enable Tea Board of Kenya to permit

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

industry players to make monthly payments in arrears for direct sales have gone unheeded;


- xi) THAT, a direct intervention by KTDA through writing to the Cabinet Secretary for Agriculture directly has not been addressed;
- xii) THAT, as a direct consequence of this haphazard taxation and maintenance of 10% for tea access roads and Tea Research Foundation, Kenya tea has alienated buyers and drastically reduced KTDA incomes leading to small holder farmers being actively lobbied to reduce production even as payments have become irregular;
- xiii) THAT, the cure does not lie in asking farmers to reduce production of tea but in abolishing the Advalorem tax to make Kenyan tea more competitive in world markets;
- xiv) THAT, massive drops in incomes for KTDA and its factories have exposed them more than ever before to illegal tea poaching (black market purchase of harvested tea leaves) by private companies taking advantage of farmers financial desperation;
- xv) THAT, desperate, poor small holder tea producers frustrated by reduced pay for their produce or long delays in payment from KTDA factories who end up giving their produce to tea poachers have been pushed into financial crises that are ruining whole families and livelihoods;
- xvi) THAT, this unfortunate window of opportunity for private tea companies indulging in black market tactics will make them grow in muscle, displace KTDA including snatching their experienced and qualified factory workers and farmers thus turn the tea industry into a vampire as the unmitigated commercial interests of private companies will undermine and jeopardize farmers' rights;
- xvii) THAT, the scaring away of Kenya's traditional clients in the tea export market due to higher costs will be too expensive in terms of past investments in winning them over and necessary new efforts to woo them back;
- xviii) THAT, part of the designated use for some of the unnecessary taxes on tea like works on tea access roads, among others, is a duplication since
Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

such can effectively be done by Constituency Roads Fund and other existing public roads funds managed by County Governments; and
xix) THAT, the higher taxation is causing the type of disruption in the industry that threatens to run down and completely kill KTDA similar to what happened in the past with major farmers' institutions like Kenya Cooperative Creameries (KCC), Kenya Farmers' Association (KFA), among others, which led to loss of jobs and a sharp rise in poverty levels amongst the affected communities.

WE, confirm that this matter is not the subject of litigation or suite in any court of law or any legal body.

WHEREFORE, your humble petitioners pray that the Senate -

- 1) identifies all taxes currently imposed on tea and payable by stakeholders in the tea industry;
- 2) investigates the effect of each of the taxes on:-
 - a. production;
 - b. processing;
 - c. local sales;
 - d. exportation of Kenya tea;
 - e. incomes to farmers; and
 - f. payment to workers in factories and farms.
- 3) investigates the justification for imposition of the tea levies;
- 4) identifies the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
- 5) interrogates the plans, if any, of the Ministry responsible for Agriculture concerning the tea industry taxation related problems; and
- 6) interrogates the plans, if any, by the National Government to mitigate the continued losses suffered by KTDA and farmers due to the taxes.



Sign: 

(Sen. Chris Obure)

KISII COUNTY

Date: 15th April 2014

Petition presented by Farmers of Kisii County concerning high taxation on tea and low bonus earnings by tea farmers

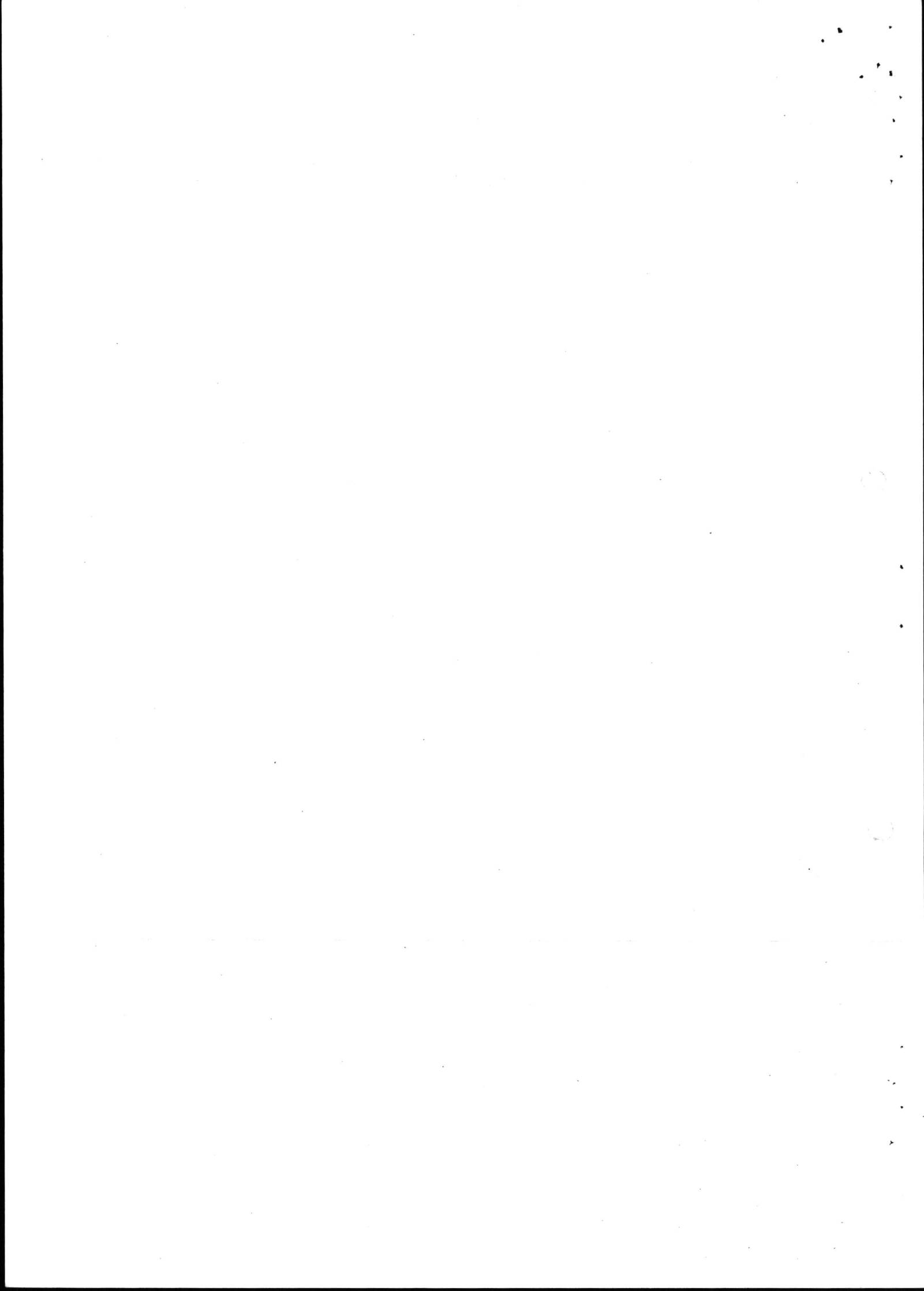
CONSITUENCY	NAME OF THE FARMER	I.D NO.	NO. OF THE BUYING CENTRE	FARMER NO.	BOX NO	SIGN
KITUTU SOUTH	JOHNNYANGAU ORUKO	6543819	H10	1201	749 KISII	JOHN
BONCHARI	JOHNNYABARO MBOSERO	1588167	OG54	76	809750 KISII 897	
BOBASI	GEORGE NYANDIKA MAYIEKA	5949491	04 NC 04	125	500 KISII	
BOMACHOGE BORABU	ONYANCHA OMOKE SOSPETER	1135033	OG2	1556	5 KENYENYA 57	Onoke
S. MOGIRANGO	FLORENCE ONYIEGO OSORO	911077	OG028	0216	3378 KISII	Florence
KITUTU NORTH	JONAH MATTA ARETO M K S I T A	1166941	T11	2026	1558 KISII	ARETO
KITUTU NORTH Bomachoge Chache	SAMWEL ONGERA OGESAGWA	5845547	OG10	440	1978 KISII	Ogesagwa

CONSTITUENCY	NAME OF FARMER	ID NO.	NO. OF THE BUYING CENTRE	FARMER NUMBER	BOX NO.	SIGNATURE
NYARIBARI MASABA	ESTHER KEMUNTO ABERI	7284334	KK12	0339	149, GESUSU	<i>Esther</i>
NYARIBARI CHACHE	CHRISTINE ONYANCHA	7223268	KK057	073	1240 KISII	<i>christine.</i>

And counter signed by myself



HON. CHRIS OBURE (SENATOR, KISII COUNTY)



LEGAL NOTICE No. 8

THE TEA ACT

(Cap 343)

IN EXERCISE of the powers conferred by section 25 of the Tea Act, the Minister for Agriculture, in consultation with the Board, makes the following regulations –

THE TEA (*AD VALOREM* LEVY) REGULATIONS, 2011

1. These Regulations may be cited as the Tea (*Ad Valorem* Levy) Regulations, 2012 and shall commence one month after the date of publication.
2. In these Regulations, unless the context otherwise requires-

“*Ad valorem* levy” means a per centum of the value of all made tea imposed by the Minister at the point of export or import in accordance with Section 18 of the Act;

“Authorized agent” means a representative appointed by the Board to collect *ad valorem* levy on its behalf;

“Customs value: means the export or import value of the made tea upon which the *Ad Valorem* Levy is assessed”;

“Kenya Standard 1927:2005 Tea Packets and Containers-Specifications (KS1927: 2005)” means the Kenya Standard that specifies the requirements and methods of test for tea packets and containers, applicable to tea packaging for retail in the form of tea bags, tea packets, instant tea and ready to drink containers but does not include tea sacks.

“Point of export” means a designated customs border point at which made tea is taken out of Kenya to any place outside Kenya;

“Point of import” means a designated customs border point at which made tea is brought into Kenya from any place outside Kenya;

3. The Minister imposes an ad valorem levy payable at the rate of 1% per centum of the customs value for made tea exports or imports.
4. The Ad Valorem Levy imposed under paragraph 3 shall not apply to made tea imports imported in bulk into Kenya for blending and re-export.
5. Any made tea packed in Kenya in accordance with Kenya Standard 1927:2005 Tea packets and containers - Specification (KS1927: 2005) or an equivalent standard shall be exempt from payment of the ad valorem levy.
6. A tea exporter or importer shall pay an ad valorem levy to the Board or its collection agent based on the customs value of each consignment of made tea at the point of export or import.
7. Upon payment of the ad valorem levy the Board or its authorized agent shall issue the tea exporter or importer with a receipt.
8. Where the levy is paid to an authorized agent under paragraph 6 the authorized agent shall remit the amount of the levy collected to the Board not later than the tenth day of the following month.
9. A tea exporter or importer shall provide information on all export and import consignments to the Board in Form V and W of the First Schedule of The Tea (Licensing, Registration and Trade) Regulations 2008.
10. A tea exporter or tea importer who provides false information required under Regulation 9 *is* shall be guilty of an offence and liable upon conviction to the penalties provided under Section 23 of the Act.
11. A tea exporter or importers shall provide receipts to the Board or its collection agent as proof of payment of the requisite ad valorem levy.

12. Any Ad valorem levy which remains unpaid shall be recovered by the Board as a civil debt due to it from the person by whom it is payable.
13. Any Ad valorem levy that remains unpaid for thirty days or more shall attract interest at commercial bank rates, prevailing at the time the levy becomes due, until it is fully paid.
14. The Board or its authorized agent shall, upon successful processing of the customs documentation, verify the tea export or import consignment.
15. The Board shall upon verification, issue a Release Order in Form A set out in the First Schedule.
16. The Board shall not issue a Release Order if an exporter or importer unless that person has complied with the provisions of the Act.
17. The Board may cancel the export or import Release Order if an exporter or importer contravenes the provisions of the Act.
18. Legal Notice No. 331 of 1994 is revoked.

FIRST SCHEDULE

FORM A

(r.9)

TEA EXPORT/IMPORT RELEASE ORDER

Name of Exporter/Importer.....

Postal Address.....

Contact Person and Designation.....

Telephone/Mobile No/Fax.....

E-mail Address.....

Tea Export/Import Registration No.....

Issue Date.....

Customs Entry No and Date.....

Net Weight (Kgs made tea).....

Physical location of consignment.....

.....

Signature of Exporter/Importer or Authorized Agent

Date

FOR OFFICIAL USE ONLY

Release Authority Stamp

Name Signature Date

For and on behalf of Tea Board of Kenya

Made on the 24th January, 2012

SALLY KOSGEI

Minister for Agriculture

REPUBLIC OF KENYA



**MINISTRY OF AGRICULTURE, LIVESTOCK
AND FISHERIES**

**RESPONSE TO THE PETITION ON HIGH TAXES ON TEA AND LOW
BONUS EARNING BY TEA FARMERS PRESENTED TO THE SENATE BY
SEN. CHRIS OBURE, SENATOR FOR KISII COUNTY ON BEHALF OF
TEA FARMERS IN KISII COUNTY**

JULY 2014

RESPONSE TO PETITION ON HIGH TAXES ON TEA AND LOW BONUS EARNING BY TEA FARMERS

1.0 BACKGROUND

The Senator for Kisii County Sen. Chris Obure presented a petition on behalf of tea farmers of Kisii County that the recent hiking of taxation on tea for export by raising the amount of Ad Valorem Levy has negatively impacted on the tea industry exposing Kenya's Tea to unfair competition from other exporting countries.

The cabinet secretary is invited to a committee meeting scheduled for 2nd July, 2014 to address issues raised in the petition. The response to address the following;

1. Identify all taxes currently imposed on tea and payable by stakeholders in the tea industry;
2. Explain the effect of each of the taxes on:-
 - i) Production;
 - ii) Processing;
 - iii) Local sales;
 - iv) Exportation of Kenya tea; and
 - v) Payment to workers in factories and farms.
3. Provide justification for imposition of the tea levies;
4. Provide the Ministry's thinking on the expansion potential and economic opportunities when the unnecessary taxes are removed or substantially scaled down;
5. Issue administrative and policy advice on the taxation related challenges in the tea industry;
6. State Government plans, to mitigate the continued losses suffered by KTDA and farmers due to taxes.

2.0 RESPONSE

2.1 THE TAXES PAYABLE TO THE TEA INDUSTRY STAKEHOLDERS:

Table 1: Taxes, duty, licenses, fees and Levies Facing Stakeholders in the Tea Value Chain

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
Government Taxes							
1.	Corporate Tax	Tax	KRA	30 % on profit	Paid in installments	National	All Companies
2.	Value Added Tax	Tax	KRA	16% on Vatable products	Monthly	National	All companies
3.	Import Declaration Fee	Tax	KRA	2.75 % of Value	At point of export	National	All Importers/
4.	Furnace Oil import tax	Tax	KRA	Kshs 0.6/litre	Daily	National	All companies
5.	Vehicle advance tax	Tax	KRA	1500/ ton of commercial vehicle	Annual	National	All companies
6.	Motor Vehicle Inspection Booking	Tax	KRA	1000/ per commercial vehicle	Annual	National	All companies
7.	Withholding Tax	Tax	KRA	5% of dividends	Annual	National	All companies
8.	Fuel for agric operations	Duty	KRA	Kshs 10,305 per Cbm	Daily	National	All companies
Registration fees							
9.	Buyers at Tea Auction	Fees	TBK	10,000	Annual	Tea sector	Buyers
10.	Brokers	Fees	TBK	10,000	Annual	Tea sector	Tea brokers
11.	Warehousemen	Fees	TBK	10,000	Annual	warehousem	warehousemen

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
12.	Tea importer	Fees	TBK	10,000	Annual	Tea sector	Importers
13.	Tea Manufacturing License	Fees	TBK	7,500	Annual	Tea sector	Tea Factories
14.	Tea Auction Organizers	Fees	TBK	10,000	Annual	Tea sector	EATTA
15.	Tea Packers	Fees	TBK	2,000	Annual	Tea sector	Packers
16.	Management agent	Fees	TBK	25,000	Annual	Tea sector	Tea farmers
17.	EATTA Membership	subscription	EATTA	30,000	Annual	Tea Sector	Producers, Buyers, warehousemen, brokers, packers
Levies							
18.	Ad valorem levy	levy	TBK	1% customs value of tea	For each consignment	Tea sector	Bulk Exporter-Buyer/ Factories for contract
19.	Mombasa Municipal Port Health Charges	Levy	County Government	Kshs 5,000	Annual	County Government	Tea warehousemen, tea packers
20.	Mombasa Municipal Annual License Fee	Levy	County Government	Kshs 10,000	Annual	County Government	All Tea companies
21.	Land Rates	Levy	County Government	0.3-0.75% percent of undeveloped value	Annually	National	All Tea companies

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
22.	Inspection and Grading Fee (KEPHIS)	Levy	KEPHIS	5,000/= per single consignment & 10,000/= per multiple consignment to one consignee inspected	Consignment	National	Tea factories (contract exports), tea buyers , tea packers
23.	KEPHIS SPS Certificate	Levy	KEPHIS	Kshs 1000	Weekly	National	Tea factories (contract exports); tea warehousemen, packers
24.	KEBS Product Conformity	Levy	KEBS	0.2% of value of made tea ≤ Kshs	Annually	National	Exporter/Importers
25.	KEBS Quality Standard	Levy	KEBS	0.2% of value of made tea ≤ Kshs 400,000	Quarterly	National	Tea factories, tea packers
26.	NEMA Environmental audit	Levy	NEMA	0.1% of investment costs	Annual	National	Tea factories
27.	K.P.A Port Charges (40 feet Container)	Levy	Kenya Ports Authority	Kshs 9,000	At time of loading	National	Tea buyers, tea packers, tea factories (direct
28.	K.P.A Port Terminal Handling Charges	Levy	Kenya Ports Authority	Kshs 2000 per 20 Feet Container	At time of loading	National	Tea buyers, tea packers, tea factories (direct
29.	Directorate of Industry Training Levy (DIT) National Industrial Training Authority(NITA)	Levy	NITA	Kshs 50 per employee	Monthly	National	Tea factories; Tea warehousemen, buyers, brokers, auction organizer, management agents

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
30.	Merchant Shipping Surcharge Fee	Levy	Kenya Maritime Authority	Kshs 10 per tonne	Annual	National	Tea buyers, tea packers, tea factories (direct exports)
31.	Chamber of Commerce Certificate of Origin	Levy	Chamber of Commerce	0.025 % of the gross value tea sold	Annual	National	Buyers, packers
Cess							
32.	Agricultural Produce Cess	Cess	County Government	1% of gross value of green leaf	Monthly	Tea sector	Tea farmers
Licenses							
33.	Fuel Wood Movement	License	County Government	300 per vehicle trip	Daily	National	Tea factories
34.	Waste Water Regulations	License	NEMA	Kshs 100,000	Annually	National	Tea factories
35.	Department of Occupational Health & Safety license	License	DOHS	Kshs 2,060	Annually	National	Tea factories, warehousemen, packers
36.	Seizure of scales	License	Weights & Measures	Kshs 2,010	Annually	National	Tea Companies/ Factories
37.	Water Permit	License	Water Resources Board	Kshs 4,600	Annually	National	Tea factories
38.	Underground Water Tank license	License	Ministry of Health	Kshs 1000	Annually	National	Tea factories
39.	Food & Drugs	License	F&D Board	Kshs 1000	Annually	National	Tea factories, packers,

	ITEM	Type	Payee	Rate of payment	Frequency	National/ tea sector	Stakeholders bearing the Cost
							warehousemen
40.	Mombasa Municipal Parking Ticket per truck	Levy	County Council	Kshs 1,700 per day	Annually	National	All companies
KTDA Management Fees							
41.	KTDA		KTDA	2.5% of the net sale	Monthly	Tea sector	Tea farmers
Brokers Fees							
42.	Tea Brokers	fees	Brokers	0.75% Producers and 0.5% Buyers	Daily	Tea sector	Tea Producers, Buyers

2.2 EFFECT OF THE TAXES

2.2.1 Production and Income to Farmers

a) Agricultural Produce Cess.

The tea Cess is charged at the point of production at the rate of 1% of gross value of green leaf. The Cess is collected by the Tea Board of Kenya and disbursed to the Tea factories and the District Cess Committee. Eighty percent (80%) is remitted to the DTC and Tea factories while 20% is given to County Government for their general use. The Cess money is used for the purposes of maintenance of rural access road in the tea growing areas. Rural roads improvement help in timely delivery of Greenleaf to the factories, reduces wastage, reduce transport costs and therefore improves on quality of teas.

b) Duty on Fuel for agric operations.

The duty on fuel for agricultural operations is charged at Kshs 10,305 per cubic metre applicable nationally. This duty increases the cost of production.

c) KTDA Management and brokerage fees

Management agency fees are deducted by KTDA at 2.5% of the net sales for services, while Brokerage fee is charged by Tea Brokers at 0.75% to producers and 0.25% to buyers. Some of the services offered by KTDA include; field advisory services, transportation of Greenleaf, factory management, marketing and administrative services among others while brokerage firms provide sales expertise at the tea auction as spelt out in the management agreements. These services improve tea productivity, enhance efficiencies at the factories and facilitate the marketing of the smallholders' made tea.

2.2.2 Processing

(a) Value Added Tax (VAT)

In the tea industry, business firms buy items inclusive of VAT such as; furnace oil, plant and equipment, vehicles and packaging materials. The VAT is ultimately passed on to the consumer.

- The tax effect suppresses direct demand from local traders for private sales ex-warehouse Mombasa hence tea producers are not able to take advantage of direct sales to the local firms.
- The application of VAT for locally packed teas effectively increases the price of local tea hence affecting domestic consumption.

(b) Other Charges

Other taxes applicable to the tea industry as applicable to other industries include: Corporate tax (normal Government corporate)- 30% of net profit; National Industrial Training Authority (NITA)- Kshs 50 per employee; Standards Levy (KEBS)- 0.2% of value of made tea \leq Kshs 400,000; Environmental Impact Assessment Levy (NEMA)- 0.1% of investment costs; Inspection and Grading Fee (KEPHIS)- 5,000/= per single consignment & 20,000/= per multiple consignment to one consignee inspected; SPS Certificate (KEPHIS)-Kshs 600; Import duty on packaging material (Government)- 25% of CIF Value; Import Declaration Form (Government)- 2.75 % of Value.

2.2.3 Local sales

a) Value Added Tax on Tea Sales

VAT is charged on local teas sales at the point of consumption at a rate of 16%. The tax is passed onto the consumer. However, tea for export is exempt from VAT. Compared to total production, the only output that is subject to VAT is 5%, since 95%

is exported. Assuming, that the retail price of tea is USD 5.29 (K.sh 460) per Kg, the consumer pays K.sh 63.45 as VAT.

The effect of VAT on the local sales makes the tea expensive to low income earners and less competitive compared to imported value added teas.

2.2.4 Exportation of Kenya tea

a) Ad Valorem Levy

The Levy was introduced by amendments in the Tea Act CAP 343 through the Legal Notice No. 8 and 9 of 27th January 2012 to replace the Manufacturing Cess following the recommendations made by the **Tea Taskforce in 2007**. The objective of the amendments was to increase the funding of the Tea Board of Kenya and its research arm- The Tea Research Foundation of Kenya (TRFK) while at the same time relieve the grower the burden of financing the two institutions.

Whereas the Manufacturing Cess was being levied at a rate of **46 Kenya Cents** per Kilogramme of manufactured tea and at the point of manufacturing, the Ad valorem is payable at the rate of **1%** of the Customs Value for made tea exports or imports.

In this regard, the burden of financing the Tea Board of Kenya (TBK) and Tea Research Foundation of Kenya (TRFK) was shifted from the tea grower to the tea exporter. The amount collected is allocated to TBK (50%), TRFK (40%) and Tea Industry Infrastructure (10%) to undertake their mandates.

At the current average export value of **USD 2.43 (K.sh 211)**, the impact of this levy is about **K.sh. 2.11 per Kg** of made tea. Assuming that this levy was to be passed by the buyer/exporter to the grower contrary to the Act, the impact will be **K.sh 0.50 per Kg** of Greenleaf Delivered to the factory for processing.

The reason for charging of this levy is in line with the Government Policy that allows regulatory bodies to be financed by their respective industries as the Stakeholders' are the ultimate beneficiaries from the use of the Levy.

b) Other exportation taxes

Other taxes that are paid on exportation as is the case with all other export commodities include:

- i) Mombasa Municipal Port Health Charges- Kshs 5,000;
- ii) KPA Likoni Ferry per truck loaded with tea Levy- Kshs 10,500;
- iii) Mombasa Municipal Annual License Fee- Kshs 10,000;
- iv) Chamber of Commerce Certificate of Origin-0.025 % of the gross value tea sold;
- v) K.P.A Port Charges (40 feet Container)- K.sh 9,000;
- vi) K.P.A Port Terminal Handling Charges (40Feet Container); K.sh 2,000;
- vii) Merchant Shipping Superintendent (MSS) fee-K.sh Kshs 10 per tonne.

2.2.5 Payment to workers in factories and farms.

Payments to workers in factories and farms are direct labour costs which have been rising as a result of Collective Bargaining Agreements (CBA). These increases the cost of production.

2.3 JUSTIFICATION FOR IMPOSITION OF TEA LEVIES

(i) Agricultural Produce Cess - The Cess money is utilized to maintain rural access road in the tea growing areas, thereby assisting timely delivery of Greenleaf to the factories, reduces wastage, reduce transport costs and therefore improves on quality of teas.

(ii) Ad valorem levy - The objective of the levy is to alleviate the burden of financing the Tea Board of Kenya (TBK) and Tea Research Foundation of Kenya (TRFK) from the tea grower to the tea exporter. The levy has increased the funding of the Tea Board of Kenya and Tea Research Foundation of Kenya (TRFK) to effectively execute their mandates.

The imposition of Ad valorem levies on imported tea: The value added teas, which are imported into the country, are charged at 1 percent import value. This low levy is advantageous to the imported teas making the market share of

foreign value added teas to continually increase denying local producers competitive advantage in the local market. Unless mitigated, the initiatives by smallholder factories registering as packers to value add tea will be curtailed.

(iii)TBK Registration fees and Licenses – The Tea Act Regulations of 2008 introduced annual registration fees of all the tea stakeholders. The regulations were necessary to maintain order in the industry. The regulations also enacted a fee for application and renewal for processing, charged according to the application category. Given the individual firm’s overall turnover, the fees is negligible.

(iv)East Africa Tea Trade Association (EATTA) Fees – The East Africa Tea Trade Association is a voluntary membership based institution, which organizes the tea auction in Mombasa. EATTA has set rules and regulation that govern members who are drawn from the region. EATTA charge members’ subscription fee and other fees for services rendered.

(v)Other Levies – The tea stakeholders are also subjected to other levies and taxes administered by other statutory institutions for the services rendered.

2.4 THE MINISTRY’S THINKING ON THE EXPANSION POTENTIAL AND ECONOMIC OPPORTUNITIES IF UNNECESSARY TAXES ARE REMOVED

The taxes are applicable to most other industries in Kenya and the Tea industry is not an exception. Similar and more taxes are even higher in other key competing countries like India and Sri Lanka. In this regard, the Ministry’s position is that some of the taxes e.g. Agriculture Produce Cess should reviewed downwards since County Governments have the mandate and resources for maintaining the rural access roads. Taxes, levies and fees that are not discriminatory to the tea industry should be maintained.

2.5 ADMINISTRATIVE POLICY ADVICE ON THE TAXATION RELATED CHALLENGES

The Ministry in conjunction with other Government departments/agency is in the process of streamlining the tax refund system under Tax Remission for Export Office (TREO) as delay in tax refund ties up capital for reinvestment.

2.6 GOVERNMENT PLAN TO MITIGATE THE LOSSES INCURRED BY FARMERS

Whereas the current price fluctuations in the Global market are due to increased supply, perpetuated by Kenya's overreliance on one tea product, the Government is in the process of establishing a Common User Facility (CUF) to promote value addition and products diversification.

KTDA and stakeholders are being encouraged to diversify into other tea products such as Green and Orthodox tea, whose prices in the world market are not affected by the current glut in production.

MEMORANDUM ON THE NEED FOR A REVIEW OF THE TEA AD VALOREM LEVY REGULATION

Introduction

East Africa Tea Trade Association (EATTA) is a voluntary, non-profit umbrella body representing the interests of the tea industry in Africa. EATTA has 175 members drawn from 9 countries (Kenya, Uganda, Tanzania, Rwanda, Burundi Democratic Republic of Congo, Malawi, Madagascar and Mozambique) all actively engaged in growing, buying, broking and warehousing of tea. 90% of the members are based in Kenya.

EATTA's principal mandate is to run the weekly Mombasa Tea Auction Centre, currently the largest Tea auction centre in the world and the only one dealing in teas from more than one country.

Importance of tea to the economy

Kenya earned Kshs 114 billion in 2013; 67% of this volume was traded through the Tea Auction Centre. Being the dominant producer in Africa and commanding the largest exportable surplus from any tea growing country, the Mombasa auction and Kenya tea in particular is closely watched by all quality tea importers in the world.

The table in annex 1 shows the top ten export markets for Kenyan tea and the amount earned from them. More than 4 million Kenyans directly or indirectly earn a living from tea. Tea generates 4% to the Kenya GDP.

Tea Task force and Ad Valorem Levy

In 2006, a task force to look into the challenges facing the tea industry recommended, among other issues, an introduction of a tea promotion levy to fund Tea Board of Kenya's marketing activities. The levy was to be paid at the export point at the rate of Kshs 0.54 per kilogram of made tea. This was to be in addition to the Kshs 0.44 collected from tea producers as manufacturing cess. On 27th January, 2012 the Minister of Agriculture gazzetted the amended Tea (Ad Valorem Levy) Regulations, 2012 introducing a levy to be charged at 1% of customs value at the point of export. Producers and buyers have complained that there should have been consultations prior to implementation of this levy as it is exorbitantly high.

The average price of Kenya tea in sale 16 of 16th April was \$3.11 upto the shipment point (FOB), the point the levy is charged. one percent of \$ 3.11 is US cents 3 which is equivalent to Kshs 2.50, up from the Kshs 0.46 cents the farmers have been paying. This is an increase of slightly over 500%.

While the Government has insisted that stakeholders are represented in the Tea Board through elected representatives, stakeholders feel that such fundamental decisions that can have serious implications to the trade ought to have been given wider consultation.

Eroding importers Confidence

Although Kenya is the third largest producer of tea after India and China, it is the largest exporter of tea in the world, having an advantage that tea grows all year round. With the current

calls by producers to boycott plucking due to this added levy, the confidence that overseas buyers have on the continued availability of Kenya tea may start being eroded. These overseas packers sign annual supply contracts with producers and such threats like boycotting plucking will make them look elsewhere. Moreover, if the Western consumer organizations such 'Fair-trade' or 'Rainforest Alliance' who are paying additional cash premiums for Kenya teas could easily cancel these premiums if they feel that the Government is overtaxing the farmers. In the last two months the levy has been in force, prices of good quality non Kenya teas sold through the auction have risen substantially while those from Kenya have stagnated. The levy is discriminative as it targets only Kenya teas and not those from the neighboring countries.

A Case for the Review of the Ad Valorem Levy

Tea Task Force of 2006

In 2006, a task force was formed by the Minister for Agriculture to look into the challenges facing the tea industry and to offer solutions to the same. The task force among other recommendations proposed to introduce a tea promotion levy to fund the Tea Board of Kenya marketing activity. The levy was to be pegged at 54 cts per kilogram of made tea. This levy was to be added onto the already existing manufacturing cess charged at 46cts per kilogram of made tea

EATTA is of the opinion that the levy will hurt the

Tea industry for the following reasons

1. Ad Valorem Levy is a regressive tax

The ad valorem levy penalizes the higher priced finely picked quality tea produced by the small scale farmer. The result of the levy is to discourage the producer who produces quality tea for the producer who does not. This will have the unintended consequence of damaging the image of Kenya as a producer of premium quality tea that is in high demand worldwide for blending with lower quality teas.

2. Escalating costs of factor inputs

The tea industry is grappling with increased costs of factor inputs, for example labour costs have gone up an average of **173%** between 2001 and 2011. The cost of oil based fertilizer has gone up **146%** in that period. The cost of electricity has gone up **92%** and the cost of diesel has gone up **345%**. In that period the tea industry has benefited from a surge in average price of **175%** from the **\$ 1.62** average price in 2001. Calculations reveal that if the average price of tea were to decline to **\$ 1.80** based on the prevailing costs of production, most tea producers would have to close down as the business model would not be able to sustain the costs. The ad valorem levy is a punitive tax on an already overburdened sector.

3. Increased bureaucracy

In view of the many shipping instructions that an exporter processes, daily payments of the ad valorem levy will mean a lot of man hours are used making payments and following up with documentation. Also related to this Tea Board has to approve the export documentation before they are presented to Customs and Port Officials. These two work on 24 hour cycles while Tea

Board of Kenya is still on an 8 hour work cycle. This discrepancy will result in exporters experiencing delays in loading their tea on vessels for export.

4. Inequitable treatment of Kenya teas

The enactment of the East Africa Community Common Markets Protocol in July 2010 paved the way for free movements of the factors of production across the five EAC signatories. The Partner States agreed to eliminate tariff, non-tariff and technical barriers to trade; harmonize and mutually recognize standards and implement a common trade policy for the Community. The Mombasa auction is a multi origin auction that has tea from 9 countries being bought weekly. The fact that the levy is specifically on Kenya tea goes against the objectives of the EAC Common market to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of the Partner States and their citizens.

5. Increased regulation

Vision 2030 states that Kenya will raise incomes in agriculture through **commercially oriented** and modern agriculture. The emphasis on commercially oriented is assumed to refer to private sector driven. The tea industry in East Africa is primarily driven by the private sector. Experience has shown that when properly regulated and operating under competitive market conditions, the private sector can generally achieve more than the public sector. It is unfortunate that in some cases licenses and levies are not used as a means to regulate business entry and activities in areas where business activities may have security, health or safety implications but are used as a mechanism to raise revenue for the regulatory authority.

6. Inadequate consultation

Tea Board of Kenya states that the ad valorem levy was introduced “following consultations with industry stakeholders” and that “a series of consultations were held with representatives of the East African Tea Traders Association (EATTA), Kenya Tea Growers Association (KTGA) and the Kenya Tea Development Agency (KTDA) Ltd. The reality is that the only consultation was a meeting in August 2011 where the subject of ad valorem was raised and briefly discussed before the meeting moved onto other subjects. TBK’s statement is contradicted by the sequence of events of the legislative process and timing of the Tea (Amendment) Bill and the Tea Amendment Act which preceded the August 2011 meeting.

If there was any will or wish by the TBK to open up the proposal of ad valorem to “stakeholder consultations” it should and would have been done prior to the relevant legislation being enacted- not after.

7. Departure from task force report recommendations

The Tea Task Force Report recommended a review of Section 18 (1) of the Act : “to provide for a Tea Promotion levy at an initial rate of Kshs 0.54 of made tea, to be charged at the point of sale and collected by the Kenya Revenue Authority. This will be in addition to the existing Manufacturing Cess of Kshs .0.46 per Kg charged to producers. According to the Task Force this would increase funding for the two operations from sh140 million per annum to sh340 million per annum- an increase of 143%.

Tea Board of Kenya has instead changed the calculation from being a fixed amount per kilo to one percent of the value of tea. At the prevailing prices in the auction in sale 34 of 21st August

2012 where the average price for 1 Kg of Kenya tea is \$ 3.43, one percent is Kshs 2.92 per kilo of made tea. This is an astronomical **520%** of the **46 cts** manufacturing cess. It only takes **4 months** to accumulate the Kshs 340 million envisaged as the annual collection of the promotion levy in the 2006 Task Force Report.

Instead of raising Kshs. 340 million based on production on an annual basis, Tea Board of Kenya stands to fetch an astronomical Kshs. 1 billion (based on 1% of the over Kshs. 100 billion of the value of tea exported in 2011.). It is not clear to the tea industry stakeholders how Tea Board of Kenya shall utilize the anticipated excess Kshs.660 million.

EATTA's Policy Position

Studies carried out the world over have shown that Governments that want to improve economic activity and growth prefer to create an enabling environment by facilitating the bottlenecks that businesses are exposed to. An example of what Tea Board of Kenya can do is harmonize the payments made by the tea industry to various bodies i.e. create a single window payment system. The government should be doing everything it can to reduce regulation. This is essential if growth, productivity and employment are to be the economic goals.

In relation to ad valorem levy we request that:

1. The levy needs to be reviewed so that instead of being a percentage of the value of the tea it becomes a **fixed amount per kilogram** of tea as proposed in the 2006 Tea Task Force Report.
2. The fixed amount should **not exceed Kshs 1 per kilogram** of made tea.
3. The levy should be **collected at the producer level** just as was the case with the manufacturing cess and not at the point of export.
4. The **frequency of collection** should be restored to monthly collection in arrears not in advance.
5. There should be adequate **representation** of the stakeholders in the utilization of the levy, with clear cut budgetary provisions backed by prioritized activities that require implementation.

Annexes

1. Top ten destinations for Kenyan tea in 2011

Country	Quantity in kilograms	%
PAKISTAN	80,810,694	19%
EGYPT	79,955,481	19%
UK	68,315,829	16%
AFGHANISTAN	44,446,959	11%
SUDAN	26,119,755	6%
RUSSIA	17,458,854	4%
U.A.E	22,604,275	5%
YEMEN	14,803,961	4%
IRELAND	3,781,692	1%
KAZAKHSTAN	11,932,985	3%

2. Comparative Analysis of the impact of the Tea Levy

Based on Per Kilogram Rate against 1% on Value

Year	Quantity of tea (Kgs)	Manufacturing cess 0.46 cts per Kg (Kshs)	Value of Teas in Kshs	New levy if charged at 1% on value in Kshs
2007	369,606,176	170,018,840	43,146,406,584	431,464,066
2008	345,816,830	159,075,741	62,199,689,001	621,996,890
2009	314,198,371	144,531,250	69,603,265,870	696,032,659
2010	399,006,377	183,542,933	97,740,139,239	977,401,392
2011	377,912,178	173,839,601	109,408,775,996	1,094,087,760

3. Other taxes and levies in the tea industry

Besides the above, the tea industry pays the below taxes;

1. Corporate tax 30% on profit.
2. VAT on locally sold teas.
3. NEMA – Kshs 100,000.00 waste water regulation license.
4. County Council – Kshs 300.00 – wood fuel movement permits.
5. Furnace oil tax Kshs 0.6 per litre.
6. Tea Producer License Kshs 10,000.00 per year.
7. Auction organizer license Kshs 10,000.00 per year.
8. Tea Buyer License Kshs 10,000.00 per year.
9. Green Leaf cess – 1% of green leaf gross value.
10. Mombasa Port Health – Kshs 1,000.00 per shipping document.
11. KEPHIS – Kshs 5,000.00 per shipping document.
12. Kenya Bureau of standards – Kshs 0.2% of invoice value - standards fee.
13. Directorate of Industrial Training – Kshs 300.00 per employee.
14. Chamber of Commerce (COO) – 0.025% invoice value per shipment.
15. Dept of Occupational health license – Kshs 2,060.00 annual.



KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED

TEA INDUSTRY TAXES AND THEIR EFFECT: Presentation to Senate

July 2014

Benson Ngari,
Finance & Strategy Director
For Group CEO

Presentation Outline

- ❑ KTDA history..... Pg 2
- ❑ Organization structures and governance.....Pg 3-8
- ❑ Our formal response to Senate.....Pg 9-11
- ❑ Current trading environment.....Pg 11-16
- ❑ Factories PerformancePg 17-22
- ❑ Factories Initiatives.....Pg 23-31
- ❑ Challenges, Mitigations and Way forward.....Pg 32-33

HISTORY OF KTDA

The KTDA metamorphosis (A history of Evolution & Revolution)	
Year	Activity in Phase
1950's	Small-holder cultivation commences
1957	<ol style="list-style-type: none"> 1. First Small-holder Tea Factory started in Ragati, Nyeri 2. Factory management through a management agreement with multinational tea companies
1960	Special Crops Development Authority established
1964	<ol style="list-style-type: none"> 1. The Kenya Tea Development Authority established under the Agriculture Act (Cap 318) Section 191. (Legal Notice No.42). 2. KTDA (authority) takes over small-holder management from multinational tea companies.
1991	Parastatal Reform Strategy Paper developed, listing KTDA among other Strategic Parastatals for privatization.
1999	KTDA Order revoked through Legal notice No.44.
2000	KTDA (Authority) was transformed into a private company, KTDA (Agency) Ltd on 30 th June 2000 & registered under the Companies Act. (45 factories)

KTDA Group Overview 2013

Factories annual sales turnover	Over Kshs 69.2 billion in 2013; 75% paid to farmer
Established staff	Approximately 8,000 across the factories.
No. of growers	Over 565,000 small-holder farmers, also shareholders
Managed Companies	66 Tea Factories, KTDA Farmers Company (100% owned by tea farmers), and 2 Tea Estates (Kagochi & Kangaita farms)
Subsidiary Companies & Investments	KTDA Management Services Ltd (KTDA MS), Chai Trading Company Ltd (CTCL), Majani Insurance Brokers (MIB), Kenya Tea Packers Ltd (KETEPA), Greenland Fedha Ltd (GLF), KTDA Power Company Ltd (KTPC), KTDA Foundation (handles CSR Initiatives), Family Bank
Principal Activities	Leaf Husbandry, Field Logistics, Processing, Procurement, Quality Assurance, Warehousing, Blending, Packaging, Trading, Marketing, Customer-Service, and Insurance brokerage. Financial services, Machinery Fabrication & Assembly
Average factory turnover	Kshs 1.0 Billion per year

KTDA's relationship with factory companies

Through a Management Agreement with the tea factory companies (Principals), KTDA (MS) is contracted to: -

- **Develop and maintain tea cultivation & husbandry;**
- **Collect, weigh and handle green leaf delivered;**
- **Manufacture green leaf into made tea;**
- **Market the manufactured tea;**
- **Pay farmers for green leaf delivered;**
- **Develop and provide sound technical, financial and managerial services and infrastructure.**
- **Provision of input to farmers.**

Mandate of Factory Company

The Principals mandate through factory Board is to:

- ✓ **Appoint the managing agent;**
- ✓ **Approve annual budgets;**
- ✓ **Approve quarterly & annual accounts;**
- ✓ **Approve payment to farmers;**
- ✓ **Approve major capital expenditures;**
- ✓ **Approve procurements;**
- ✓ **Approve new projects;**
- ✓ **Appoint tea brokers;**
- ✓ **Appoint factory staff;**
- ✓ **Appoint auditors & company secretary;**
- ✓ **Preside over AGMs;**

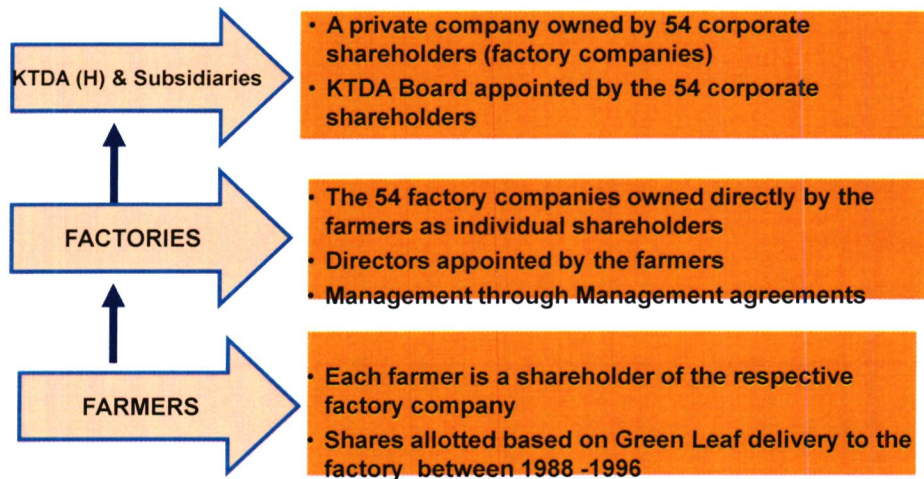
Management Fee

The Agent has been compensated for all these services as follow: -

- 1983 – 3% of gross revenue.
- 1984 – 5% of gross revenue.
- 2000 – 3% of net revenue.
- 2005 – 2.5% of net revenue.

- Market rate between 6 & 7% of gross revenue.

Small Holder ownership structure



A unique model that empowers the farmer from the grassroots, a world's first.

CONTRIBUTION OF THE SMALLHOLDER TEA SUB-SECTOR TO THE ECONOMY

- ✓ Dependants (direct & indirect) - About 10% of Kenyan population. (4 million)
- ✓ Contribution to GDP about 4%.
- ✓ Ownership 100% by the small scale tea farmers.
- ✓ Employs about 8,000 staff across the country.
- ✓ Promotes rural infrastructure & industrialization.
- ✓ Accounts for about 60% of national tea output.
- ✓ Contribution to foreign exchange earnings in 2012 was about Kshs 60B.

6

KTDA Model

- ❑ Creates Synergy and economies of scale and has been successful in bringing together 600,000 farmers to tap into various skill sets e.g. Engineers, Marketers, Accountants, Lawyers, Agriculturalists, Operational Experts etc.
- ❑ Has managed to effectively manage tea as a cash crop over the years.
- ❑ The challenge we are currently facing is due to cash flow constraints caused by drastic tea prices decline. However, this is a cyclical situation that will reverse.

KTDA (MS) mission & vision

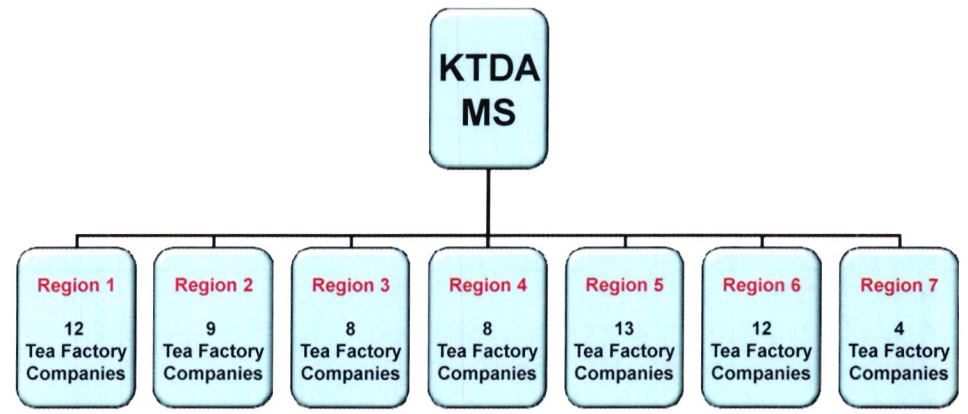
MISSION:

“To provide effective management services to the tea sector for efficient production, processing and marketing of high quality teas.

VISION:

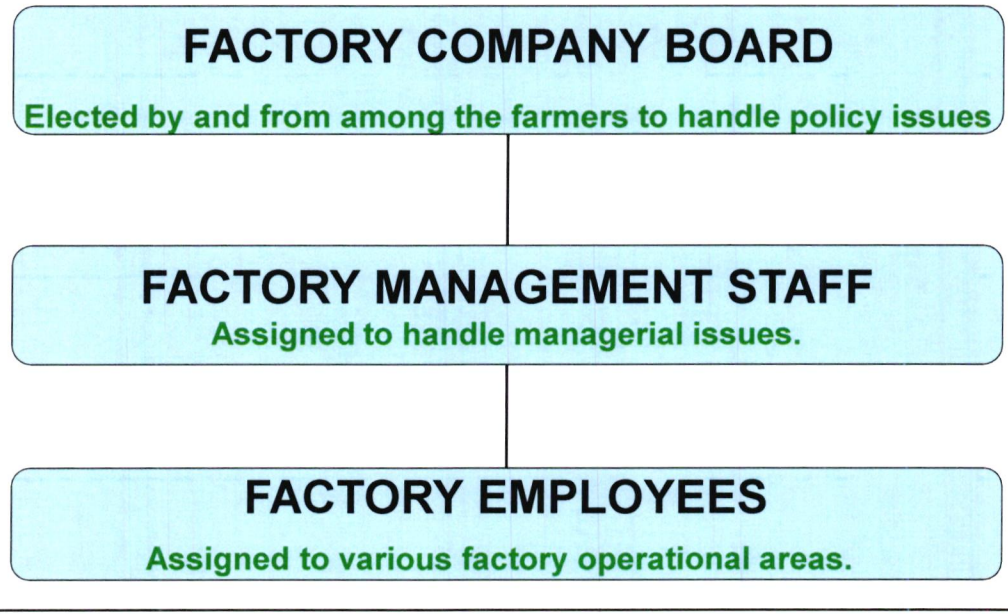
“To be the leading management and marketing company of high quality tea products and services in the world.”

KTDA (MS) Operational Structure



✓ Total - 66 processing factories

Factory Structure



Factory Structure

- Factories separate legal entities from KTDA.
- Farmers are shareholders & suppliers of raw materials to factories.
- Farmers elect buying centre committees (5 members)
- Farmers elect directors from each of 6 electoral areas for a term of 3 years.
- Directors are confirmed at factory AGMs.
- Directors empowered to run factories directly or through management companies.
- Factory directors represent the principal under the management agreement.

CURRENT TRADING ENVIRONMENT



KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED
 KTDA FARMERS BUILDING | P.O. Box 30213 GPO 00100 Nairobi
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 E-mail: info@ktdateas.com | Site: www.ktdateas.com

Ref: FIN/1/FSD

Date: 1st July 2014

Mr. J. M. Nyegenye, CBS,
 Clerk of the Senate,
PARLIAMENT

Dear Sir,

RE: TEA INDUSTRY TAXES AND THEIR EFFECT

Reference is made to your letter SENATE/SCALF/CORR/2014/(137), dated 24TH June 2014 regarding the tea industry taxes and effect of such taxes in the tea industry.

We take this early opportunity to thank the Senate for taking the initiative to interrogate the various tax regimes and their effect in the tea industry and we look forward to your favourable recommendations.

Below is our itemized response to the issues you raised in your letter:-

- 1) **Taxes currently imposed on tea and payable by stakeholders-** The table below indicates the various taxes and their effect. We have included approximate annual amounts for your appreciation.

ITEM (TAX OR LEVY)	EFFECT ON						Annual Amounts in Kshs
	PRODUCTION	PROCESSING	LOCAL SALES	EXPORT ATION	INCOME TO FARMERS	PAYMENT TO WORKERS	
Advalorem tax				YES	YES	YES	532,764,498
Green Leaf Cess					YES		493,759,853
Tea manufacturing and tea packers license	YES				YES	YES	634,500
Business Permit	YES		YES	YES	YES	YES	2,145,000
Product Conformity Standardization Mark)					YES		2,105,400
KBS Standards Levy				YES	YES		23,600,000
Training & DIT Levy					YES		450,450
Excise Duty on Fuel Oil					YES		92,579
Excise Duty on AGO				YES	YES		51,999,586

Excise Duty on financial transactions					YES		6,674,592
Vehicle Advance Tax	YES				YES		0
Vehicle Inspection Booking Fees	YES				YES		792,000
VAT					YES		0
Corporation Tax					YES		375,670,980
Waste Water Regulations		YES					6,600,000
Occupation Health & Safety					YES	YES	135,960
Asseizure of Scales					YES		1,386,000
Water Permit	YES	YES				YES	303,600
Land Rates					YES		255,97
Licence to operate underground tank					YES		114,721
Material movement permit		YES			YES		4,659,729
Food and Drugs					YES		234,500
Withholding Tax					YES	YES	31,132,640
Inspection Fee					YES		2,715,600
							1,538,228,161

- 2) **Effect on Production-** The combination of the various taxes and the depressed tea prices has made tea business not lucrative in the short term. Some growers reduce/abandon inputs to the farms. Potential growers are also discouraged from entering this market. These could lead to decline in tea production.
- 3) **Effects on Processing-** Factories are expected to comply with the levies such as material movement, waste water regulations, etc. In order to comply factories incur substantial capital expenditure in order to align its processes with the expectation.
- 4) **Effect on local sales-** All the local tea sales attracts VAT at 16% hence making tea expensive hence beyond the purchasing means for the local target market. The packaging materials for local tea are imported and attract custom duty that is also passed to the local consumer.
- 5) **Effect on exportation of Kenya tea-** Advalorem tax at 1% of the value is to be borne by the buyers. This has made buyers prefer teas from other countries that do not have this tax. As such, the demand of Kenya tea is reduced hence the price. Advalorem tax came into force on 27th February 2012 to replace the manufacturing cess that was being charged at Kshs 0.46 per Kg of made tea. Manufacturing cess was payable monthly by KTDA to Tea Board of Kenya and was annually averaging Kshs 87m (Compared to the Kshs 533m above from Advalorem tax).

The high taxes are not there for other East Africa teas and this makes Kenyan teas more expensive and therefore less attractive. Moreover, the process involved in accounting and paying advalorem tax is quite bureaucratic.

This indeed makes payment of the tax become a deterrent from buying Kenyan tea. The amount involved is also significant and use of the same is not clear as a benefit to the farmers.

- 6) **Effect on income to farmers-** Over the years the cost of production has been going up due to inflation. Coupled with depressed prices, taxes and levies (cess), the farmers earnings is reduced. It is important to note that factories have put in place various austerity measures to manage the costs inflation. However, the depressed industry performance has affected the cash flows of some factories hence have to borrow (inter factory) in the short term to finance the growers payment.
- 7) **Effect on Payment to workers in factories and farms-** Generally, all factories have been able to pay workers obligations as they fall due. However, the depressed industry performance has affected the cash flows of some factories hence have to borrow (inter factory) in the short term to finance these obligations. The depressed performance of the sub sector also means the salaries of the farm workers (especially pluckers) stagnates over a longer period despite the increased cost of living.

We have attached a number annexures for your appreciation that the current tea industry is caused by a combination of factors that includes global over production of tea and political instability in our key markets.

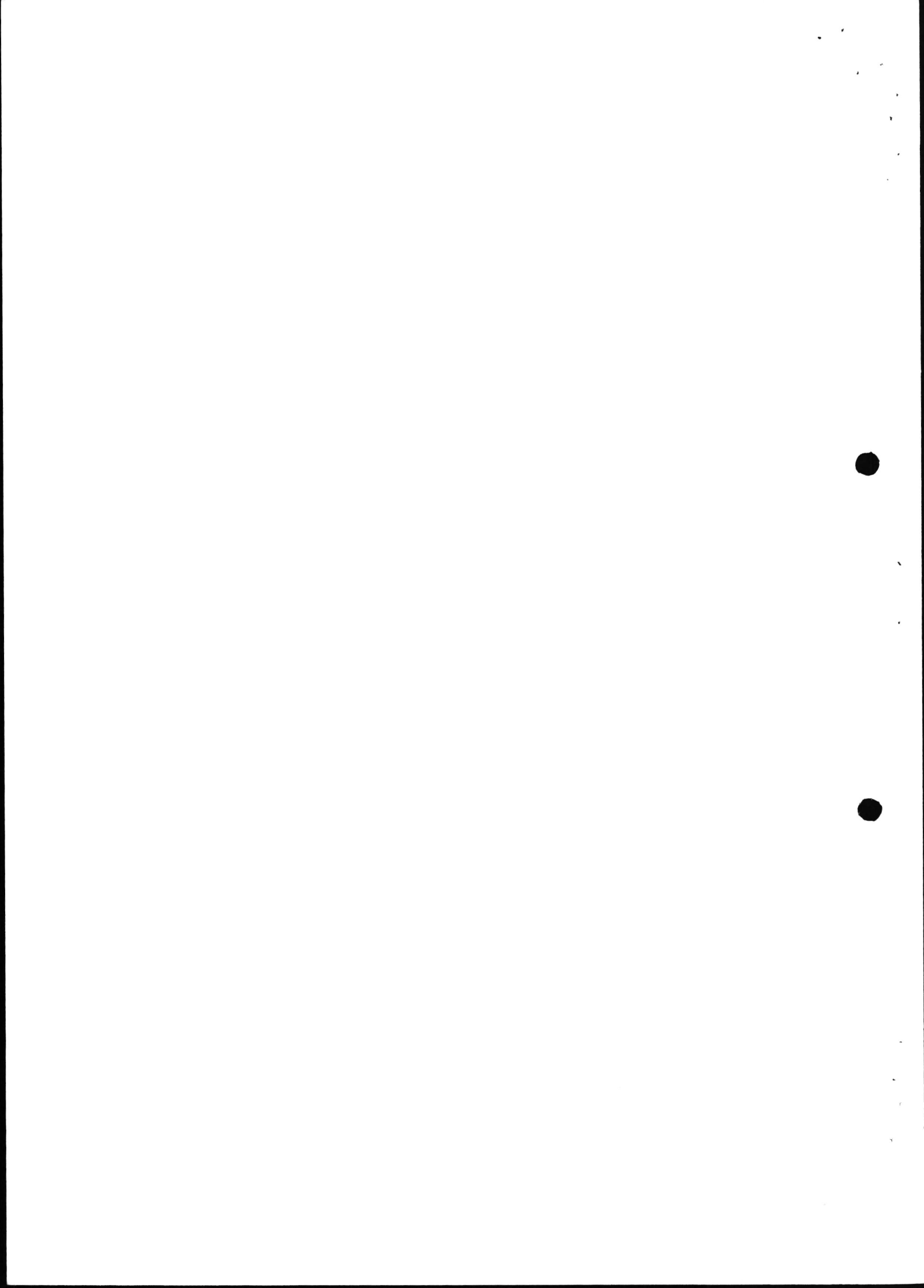
We trust that the above explanations, read together with the other presentation annexures, have addressed the issues raised. We will be glad to provide further clarification where needed.

Yours faithfully,

KENYA TEA DEVELOPMENT AGENCY LTD



BENSON NGARI
FINANCE & STRATEGY DIRECTOR
●R/GROUP C.E.O



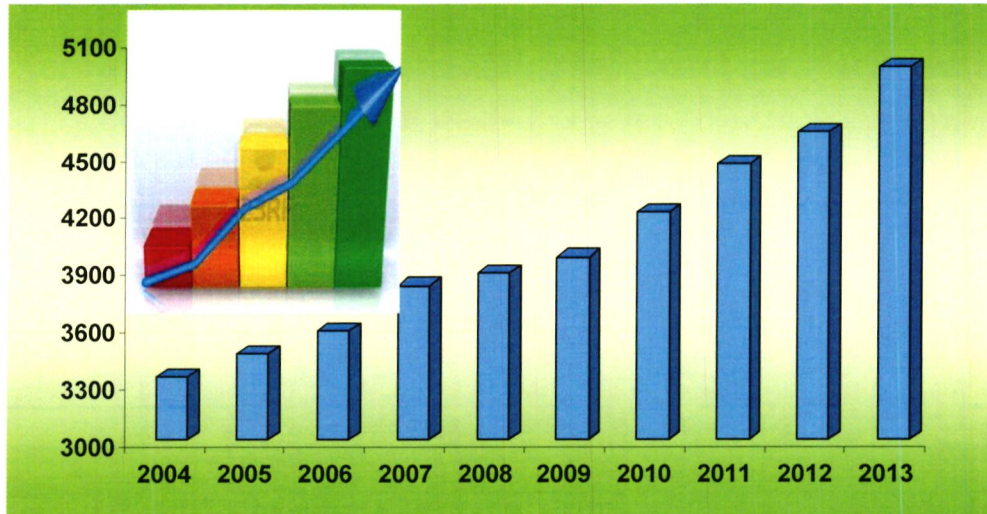
12

CURRENT TRADING ENVIRONMENT - highlights

- ❑ All major tea producing countries registered average of 8% increase in 2013 except Indonesia and Turkey. Kenya registered 22% increase.
- ❑ Kenya produced 432 m kgs of tea in 2013 versus 369 m kgs in 2012. Extra 63m kgs.
- ❑ In 2013, 384m kgs of tea sold at the auction compared to 320m kgs in 2012.
- ❑ April 2014, Green leaf production from 943m to 948m-1%
- ❑ April 2014- Made tea production declined from 218m to 217 m-0.5%
- ❑ April 2014 - Sales increase from 192m to 218 m-14% -
- ❑ April 2014 -KTDA prices have dropped from 3.41 to 2.50-27%
- ❑ In 2008, tea prices dropped drastically by 32% from US\$ 2.60 in August to US\$ 1.77 in December thus affecting farmer's earnings.
- ❑ Average warehouse stock holding period 3-yr average is 43.76 days
- ❑ The short term situation may look bleak, but in the long term, prices will rebound as production and consumption balances out

PRODUCTION TRENDS – MILLION KG

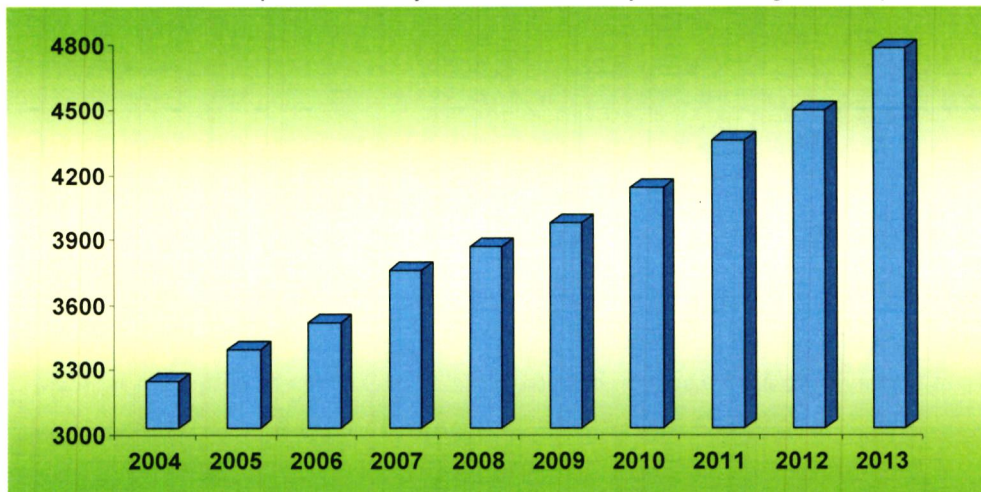
Global Tea Production increased by 49.0% for the last 10 years equivalent to an average of 4.90% p.a.



Period	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Volume	3334	3457	3579	3813	3979	3965	4200	4453	4624	4968

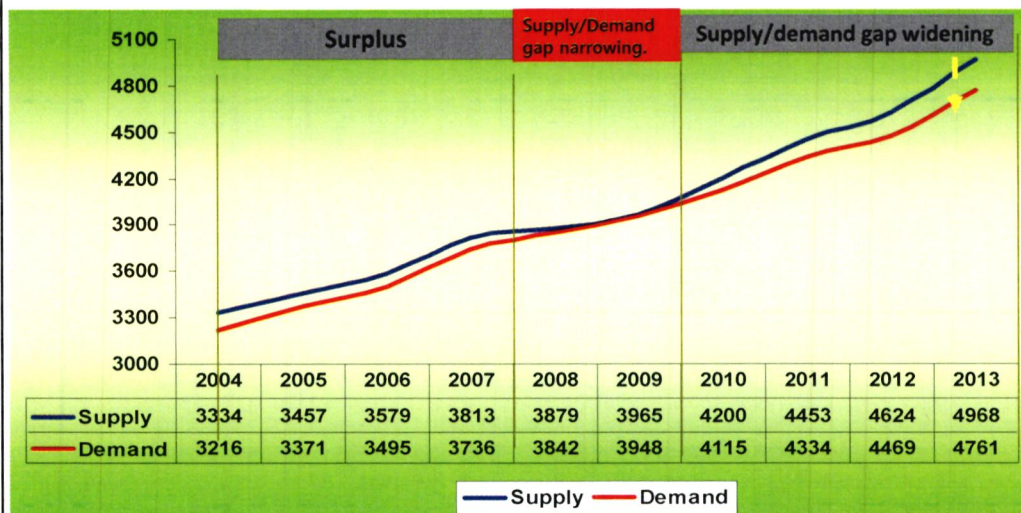
CONSUMPTION TRENDS - MILLION KG

Global Tea Consumption increased by 48.04% for the last 10 year or an average of 4.80% p.a.



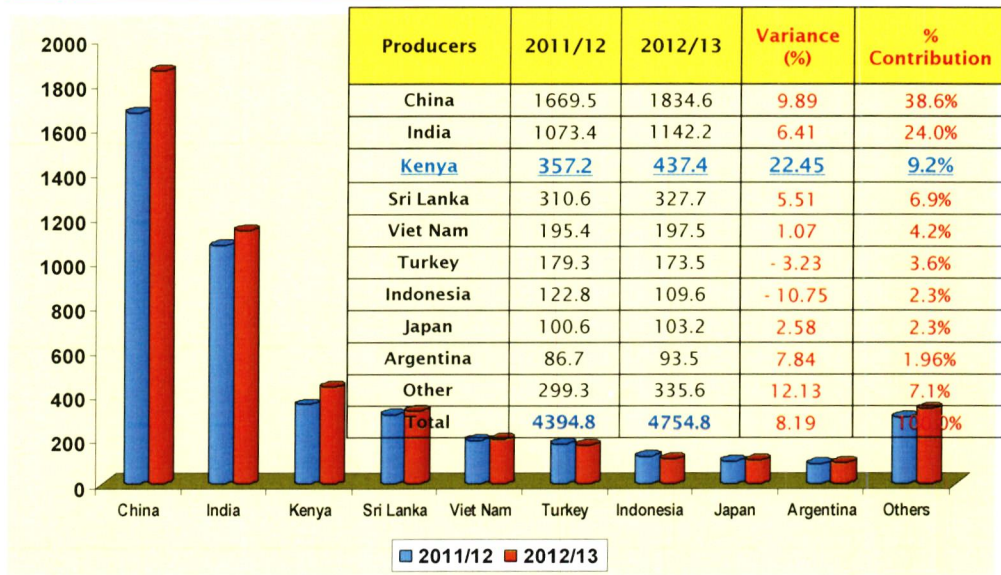
Period	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Demand	3216	3371	3495	3736	3842	3948	4115	4334	4469	4761

PRODUCTION VS. CONSUMPTION - MILLION KG



Global production increasing by 13.5% compared to consumption increase of 9.05% only - 5% gap.

MAJOR TEA PRODUCING COUNTRIES - MILLION KG



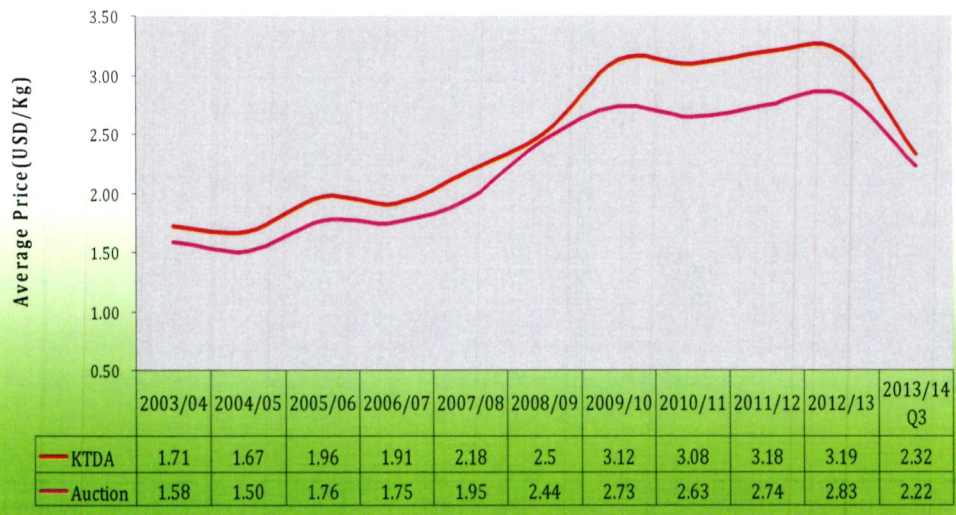
In 2012/13, Kenya was 3rd in global tea production with a share of 9.2%.

KTDA 10 YEAR AUCTION SALES/PRICE TREND



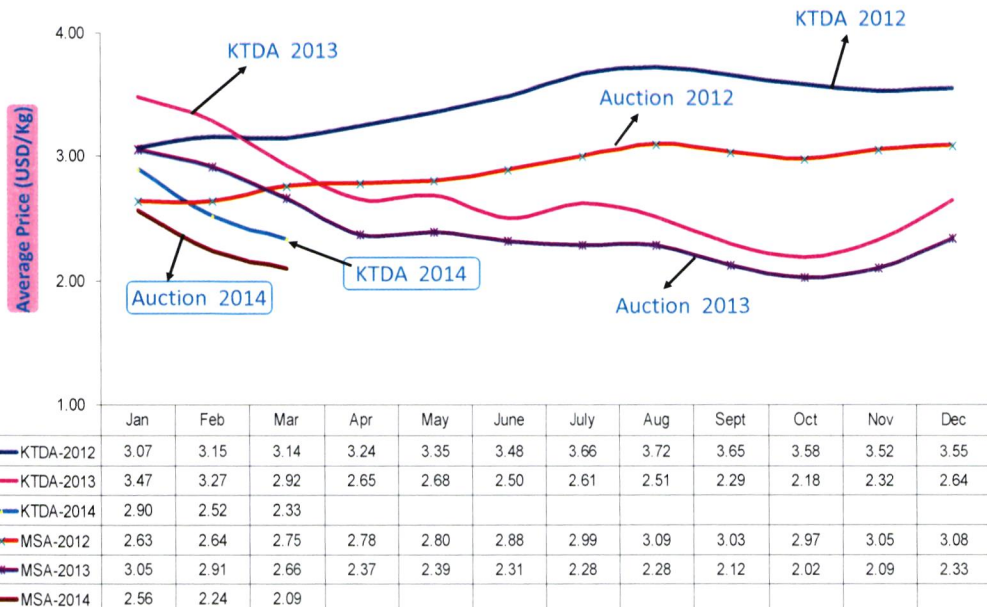
Price Movement Reflects Supply Dynamics

AUCTION AVERAGE PRICES KTDA vs AUCTION-2003-04-2013/14

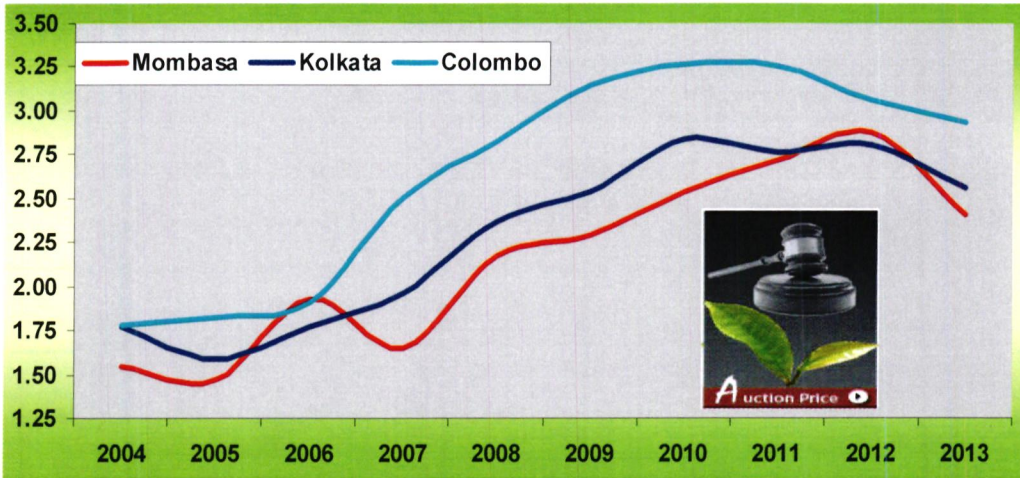


□ KTDA Average prices have consistently been higher than average Mombasa Prices

MOMBASA AUCTION MONTHLY PRICE TRENDS-JAN-DEC 2012-2014



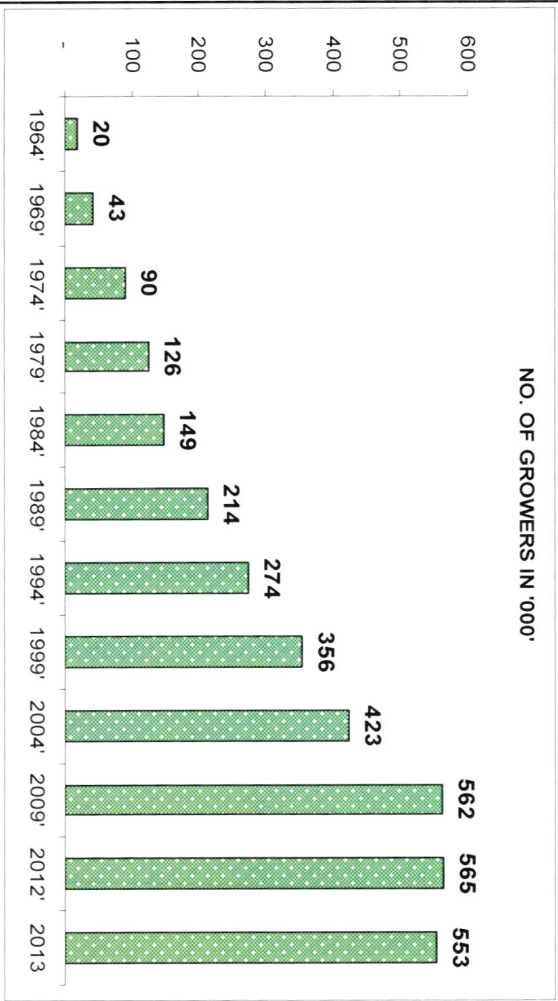
AVERAGE PRICES - US\$/ KG



Auction Center	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Mombasa	1.55	1.47	1.93	1.66	2.18	2.29	2.54	2.72	2.88	2.41
Kolkata	1.77	1.59	1.77	1.96	2.37	2.54	2.84	2.76	2.81	2.56
Colombo	1.78	1.83	1.91	2.51	2.83	3.15	3.27	3.26	3.06	2.94

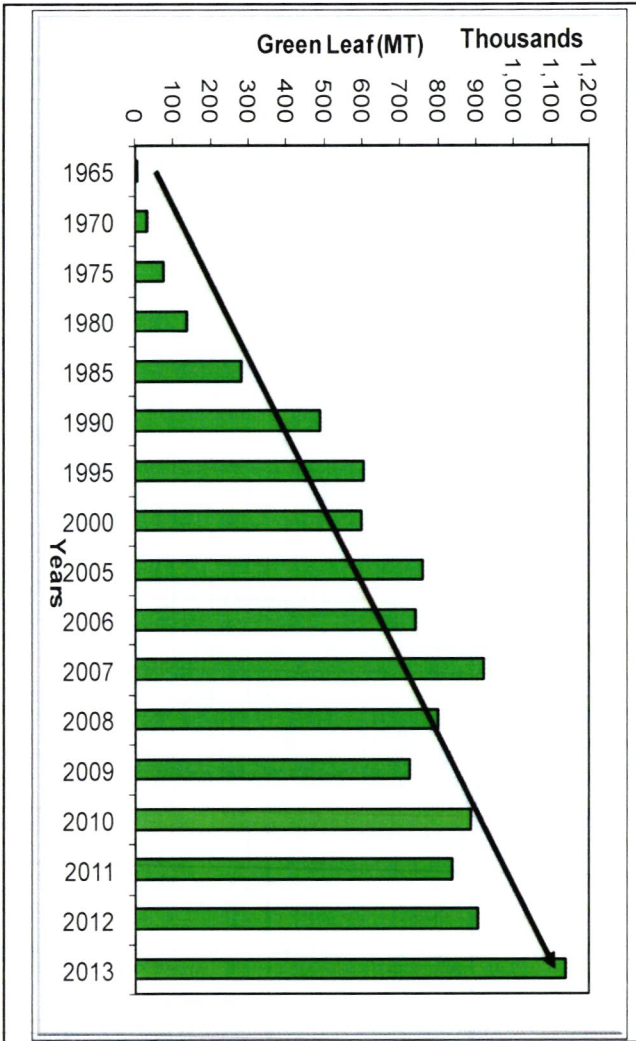
FACTORIES PERFORMANCE

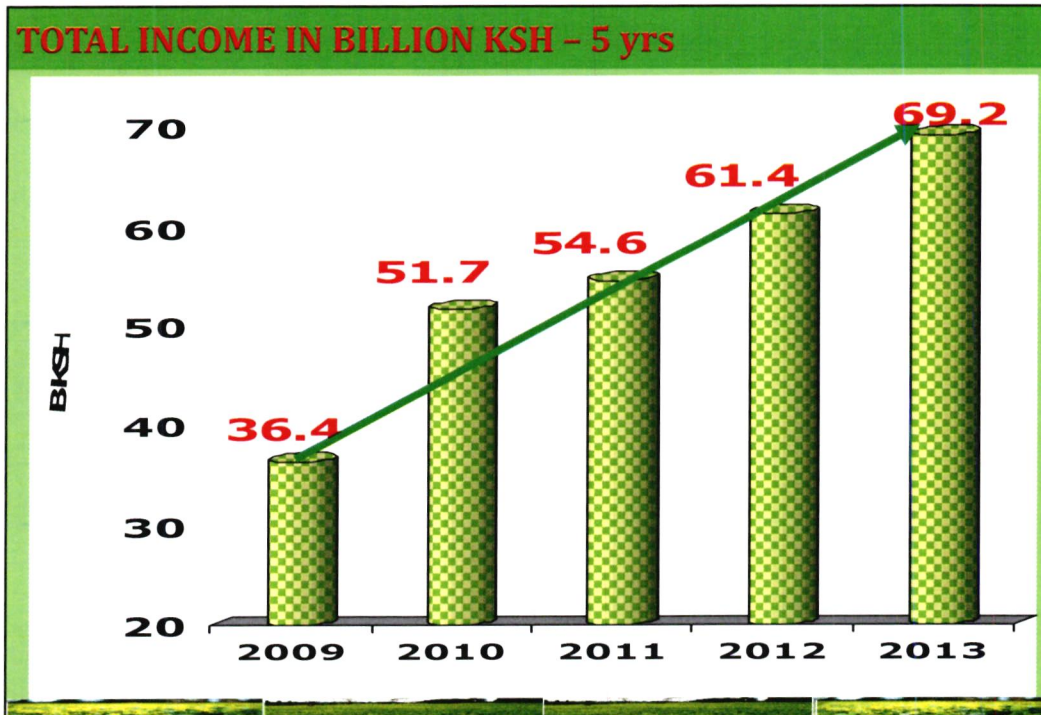
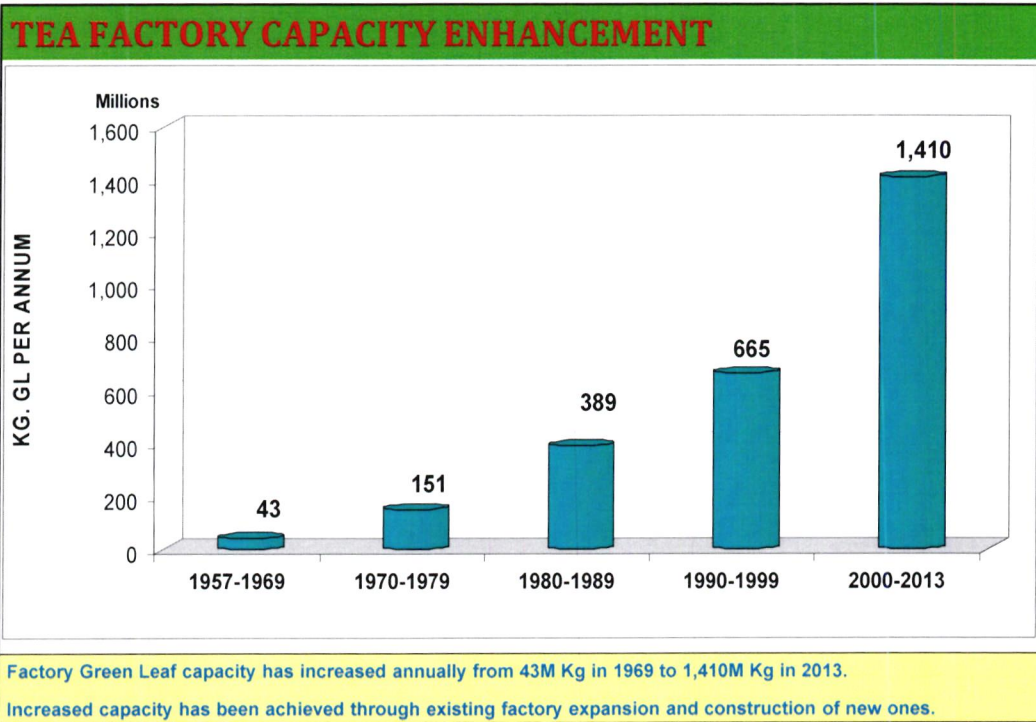
SMALL-HOLDER TEA GROWERS

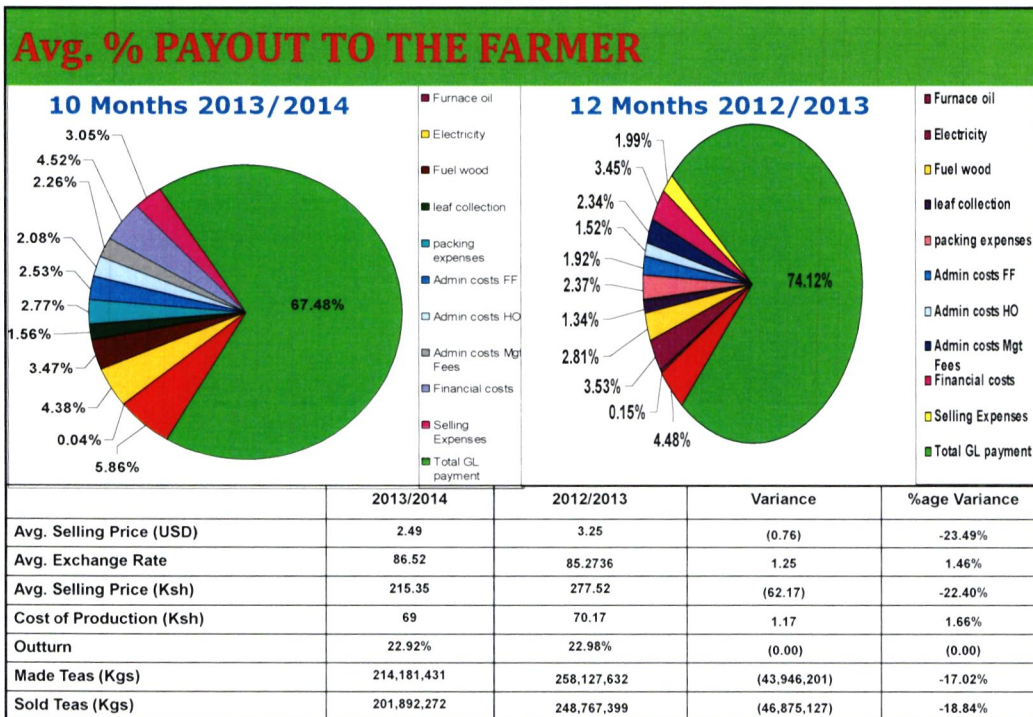
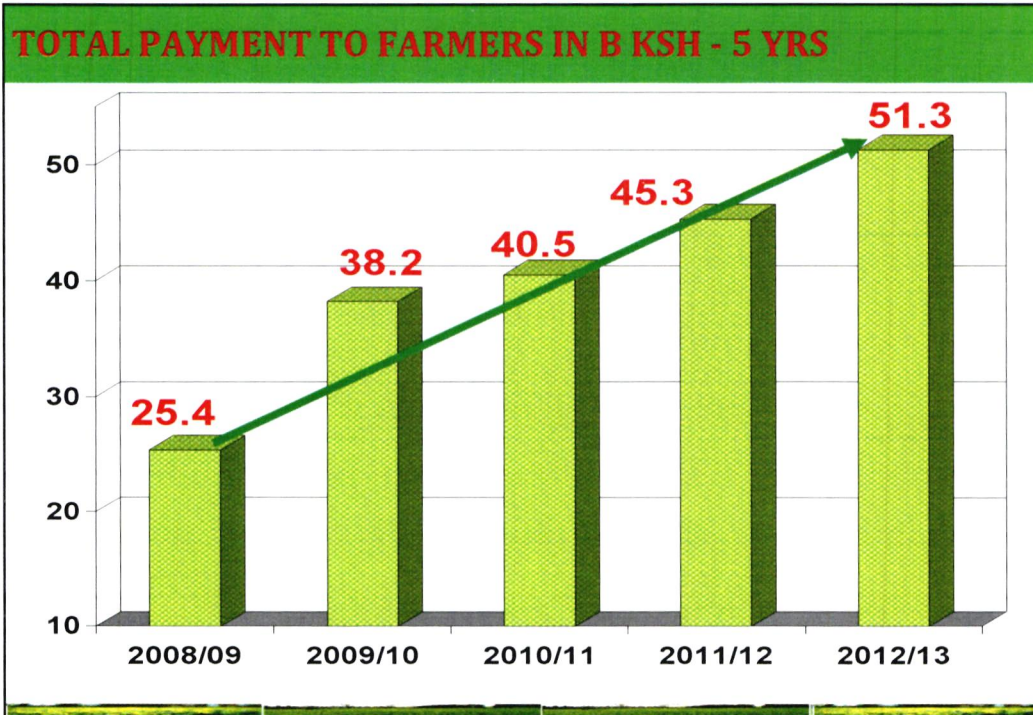


Number of growers increased from 19,775 in 1964 to over 550,000 currently

GREEN LEAF PRODUCTION 1964-2013



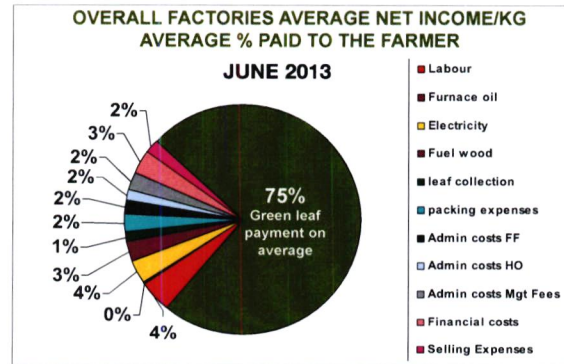
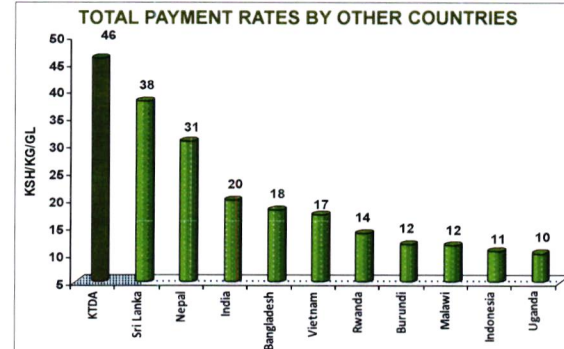
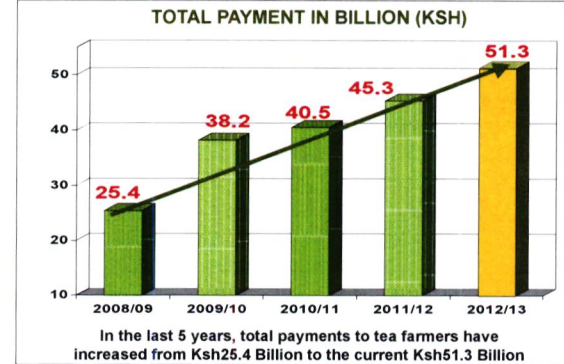




TEA GROWERS PAYMENT 2012/2013 FINANCIAL YEAR BONUS PAYOUT PER FACTORY



FACTORIES	2011/2012	2012/2013		TOTAL PAYMENT 2012/2013		% of Revenue Paid to Farmers
	2ND PAYMENT (BONUS)	2ND PAYMENT (BONUS)	2ND PAYMENT (BONUS)	Initial monthly payment at Ksh 14 Kg /GL Plus 2nd payment (Bonus)		
	APPROVED RATE PER KG/GL (BONUS) KSHS	APPROVED RATE PER KG/GL (BONUS) KSHS	AMOUNT OF BONUS IN KSHS MILLION	TOTAL PAY RATE PER KG/GL IN KSHS	TOTAL AMOUNT IN KSH MILLION	
REGION 1						
KAMBAA	38.00	35.50	573	49.50	800	73%
KAGWE	40.10	36.20	826	50.20	1,146	77%
THETA / KURI	36.00	30.05	814	44.05	1,193	72%
GACHEGE	35.70	30.10	475	44.10	696	72%
MATAARA	38.50	34.70	485	48.70	681	74%
NJUNU	40.20	37.00	566	51.00	780	77%
NGERE	42.50	39.40	1,131	53.40	1,533	79%
IKUMBI	40.50	38.10	622	52.10	851	74%
GACHARAGE	37.05	35.60	526	49.60	732	77%
NDUTI	37.00	35.70	506	49.70	704	76%
MAKOMBOKI	40.60	37.10	844	51.10	1,162	77%
Average/Sub-Total	38.74	35.40	7,369	49.45	10,279	75%
REGION 2						
GATUNYU	39.00	32.00	566	46.00	814	77%
KIRU	37.00	30.00	581	44.00	853	72%
KANYENYAINI	39.16	31.25	548	45.25	794	75%
GITHAMBO	39.00	31.00	585	45.00	850	77%
CHINGA	39.20	34.00	566	48.00	800	77%
GITUGI	42.50	38.00	483	52.00	661	77%
GATHUTHI	45.20	41.20	678	55.20	909	79%
IRIAINI	39.00	33.05	514	47.05	732	77%
RAGATI	40.00	33.00	545	47.00	776	73%
Average/Sub-Total	40.01	33.72	5,068	47.47	7,188	76%
REGION 3						
KANGAITA	39.15	36.81	605	50.81	835	77%
NDIMA	40.05	35.35	637	49.35	890	77%
KIMUNYE	42.05	40.20	823	54.20	1,109	79%
MUNUNGA	42.60	40.21	888	54.21	1,197	79%
THUMAITA	40.50	37.60	713	51.60	979	78%
MUNGANIA	41.45	38.00	767	52.00	1,049	78%
RUKURIRI	42.50	38.70	746	52.70	1,016	79%
KATHANGARIRI	40.20	37.00	527	51.00	726	76%
Average/Sub-Total	41.06	37.98	5,706.06	52.12	7,801.61	78%
REGION 4						
KINORO	42.60	37.00	696	51.00	960	77%
WERU	40.50	31.00	547	45.00	794	74%
IMENTI	48.15	41.00	816	55.00	1,095	82%
KIONYO	41.10	35.20	874	49.20	1,222	77%
GITHONGO	41.25	34.00	395	48.00	557	76%
KIEGOI / IGEMBE	34.50	30.50	600	44.50	875	72%
MICHIMIKURU	37.55	33.25	592	47.25	842	74%
Average/Sub-Total	40.81	34.56	4,520	48.69	6,345	76%
REGION 5						
TEGAI / TOROR	36.20	26.50	952	40.50	1,456	72%
LITEIN / CHELAL	32.00	24.00	689	38.00	1,091	68%
KAPKATET	35.30	28.20	775	42.20	1,160	75%
MOMUL	36.50	28.30	779	42.30	1,165	75%
KAPKOROS / TIRGAGA	33.50	28.15	1,604	42.15	2,402	74%
KAPSET / ROROK	36.25	27.50	974	41.50	1,469	74%
MOGOGOSIEK / KOBEL	32.45	26.00	1,304	40.00	2,006	73%
Average/Sub-Total	34.60	26.95	7,077	40.99	10,748	73%
REGION 6						
NYANSIONGO	40.00	32.05	538	46.05	773	72%
NYANKOBA	34.50	27.20	417	41.20	632	71%
TOMBE	36.20	29.69	550	43.69	810	72%
KEBIRIGO	34.00	26.10	434	40.10	666	70%
GIANCHORE	32.50	27.00	373	41.00	566	74%
SANGANYI	34.00	26.15	486	40.15	747	73%
OGEMBO / EBEBEGE	33.00	23.50	622	37.50	993	68%
NYAMACHE / ITUMBE	35.50	28.00	696	42.00	1,044	71%
KIAMOKAMA / RIANYAMWAMU	32.25	26.15	548	40.15	841	67%
Average/Sub-Total	34.66	27.32	4,665	41.12	7,072	71%
REGION 7						
CHEBUT / KAPTUMO	30.50	23.00	669	37.00	1,076	69%
MWDETE	30.60	24.00	361	38.00	571	70%
KAPSARA	26.20	21.00	134	35.00	224	60%
Average/Sub-Total	29.10	22.67	1,164	37.04	1,870	66%
AVERAGE/GRAND TOTAL	37.51	31.65	35,569	45.65	51,304	75%



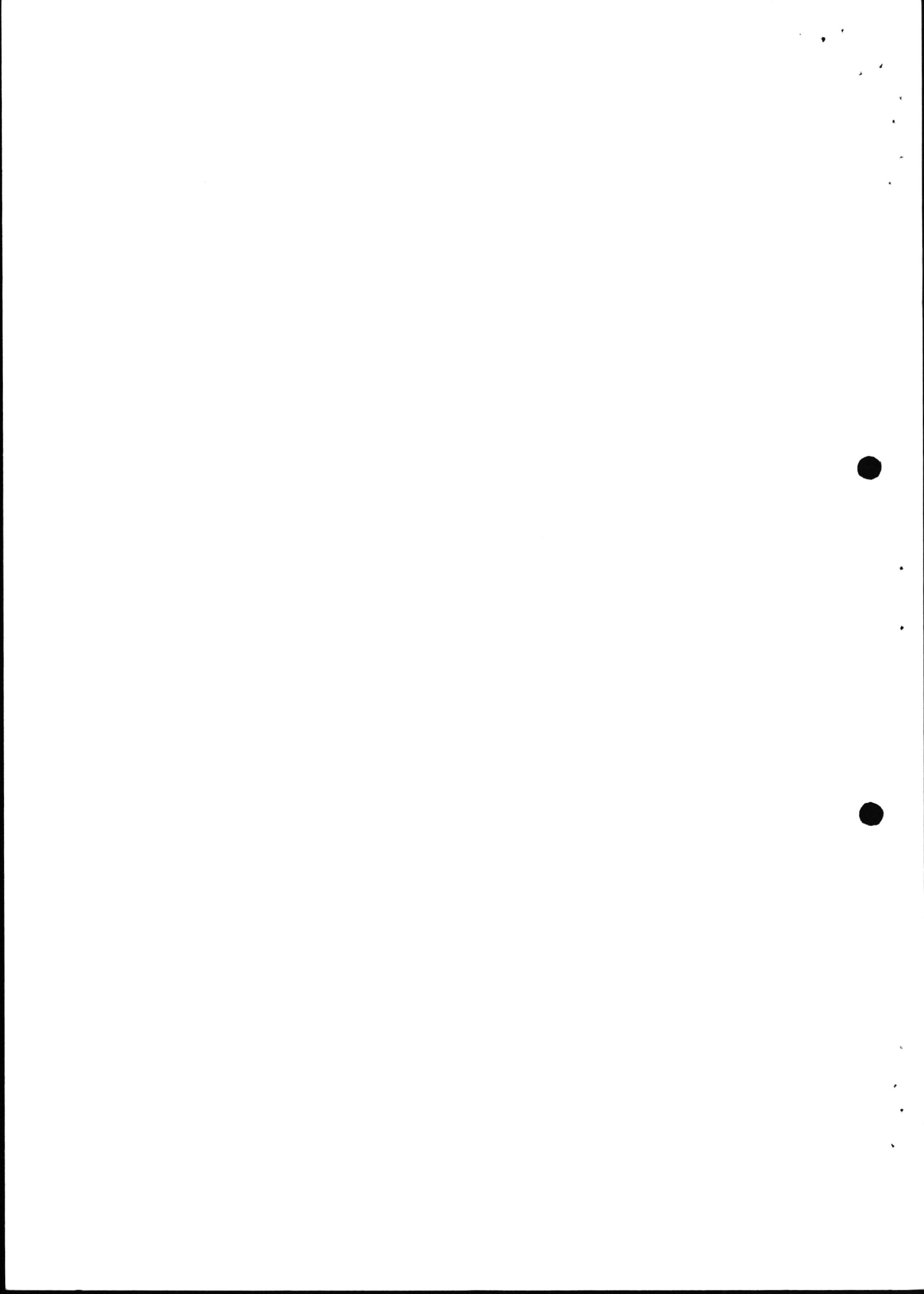
HIGHLIGHTS

- Gross revenue totalled Ksh69 billion for 2012/13 financial year compared to Ksh 61 billion recorded in 2011/12.
- Total payment to the growers is Ksh51.30 billion at an average rate of KSh45.65 per kg/Green leaf.
- The amount to be released to the growers as second payment is Ksh35.6 billion compared to the previous year's amount of Ksh33.99 billion.
- Ksh15.73 billion has been paid to all growers as initial monthly payment at an average rate of Ksh14.00 per Kg/Green leaf compared to Kshs11.3 billion at an average rate of Kshs12.50 per Kg/Greef leaf the previous year.
- The total production of green leaf increased in 2012/13 financial year to 1.1 billion kilogrammes up from 907 million delivered in the previous year.

NOTE:

- GL denotes Green Leaf (which is the basis of payment to the tea farmers).
- On average four (4) kilograms of Greenleaf tea is used to produce 1kg of made tea.
- The KTDA factory network has 66 tea processing factories owned by 54 Factory Companies.

About 560,000 small scale tea farmers are both suppliers of Green Leaf to their respective tea processing factories and shareholders in the Factory Companies.

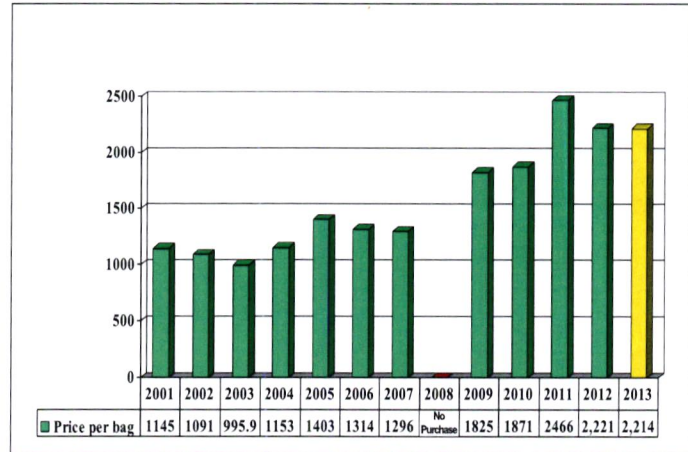


FERTILIZER FOR SMALL-SCALE TEA FARMERS

2013 FERTILIZER COST PER BAG

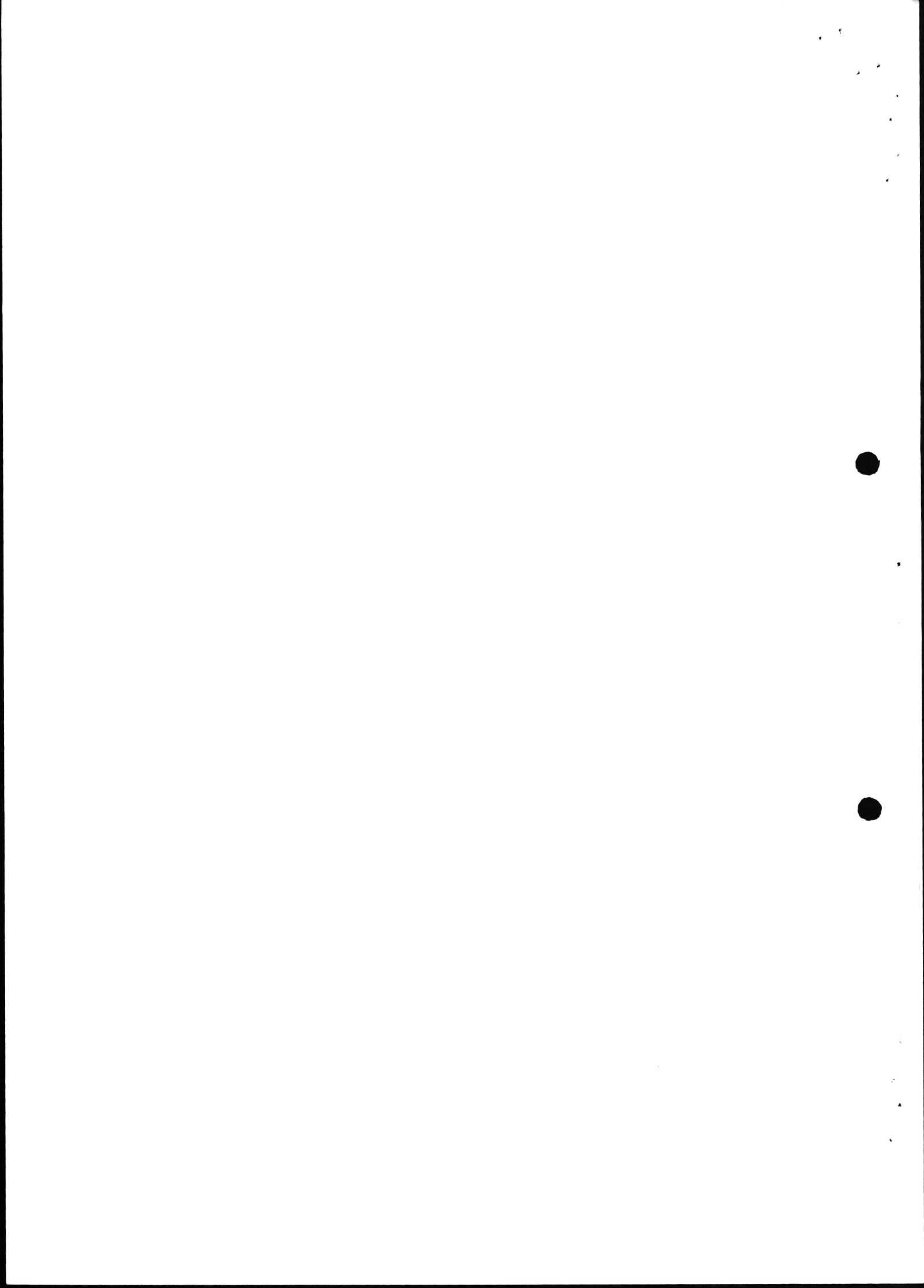


FACTORY	COST/BAG KSHS(2013)	COST/BAG KSHS(2012)
REGION 1		
KAMBAA	2,149	2,158
KAGWE	2,143	2,159
THETA / KURI	2,142	2,159
GACHEGE	2,142	2,165
MATAARA	2,159	2,166
NJUNU	2,135	2,165
NGERE	2,150	2,167
IKUMBI	2,159	2,168
GACHARAGE	2,167	2,176
NDUTI	2,149	2,167
MAKOMBOKI	2,157	2,170
REGION 2		
GATUNGURU	2,183	2,187
KIRU	2,174	2,187
KANYENYAINI	2,168	2,180
GITHAMBO	2,159	2,179
CHINGA	2,179	2,186
GITULI	2,185	2,191
GATHI	2,186	2,197
IRIAINI	2,169	2,188
RAGATI	2,178	2,192
REGION 3		
KANGAITA	2,164	2,189
NDIMA	2,179	2,187
KIMUNYE	2,177	2,189
MUNUNGA	2,188	2,192
THUMAITA	2,183	2,188
MUNGANIA	2,175	2,193
RUKURIRI	2,183	2,199
KATHANGARIRI	2,182	2,191
REGION 4		
KINORO	2,207	2,212
WERU	2,197	2,207
IMENTI	2,215	2,220
KIONYO	2,211	2,222
GITHONGO	2,219	2,226
KIEGOI / ISEMBE	2,245	2,249
MICHIMIKURU	2,234	2,237
REGION 5		
TEGAT / TOROR	2,229	2,239
LITEIN / CHELAL	2,233	2,249
KAPKATET	2,248	2,252
TIRGAGA	2,263	2,273
OLKURUONE	2,206	2,215
MOKI	2,240	2,248
KAPKOROS	2,256	2,265
KAPSET / ROROK	2,233	2,250
MOGOSIEK / KOBEL	2,250	2,260
REGION 6		
NYANSIONGO	2,268	2,262
NYANKOBA	2,268	2,267
TOMBE	2,273	2,271
KEBIRIGO	2,250	2,256
GIANCHORE	2,261	2,261
SANGANYI	2,255	2,254
OGEMBO / EBEREGE	2,288	2,288
NYAMACHE / ITUMBE	2,290	2,288
KIAMOKAMA / RIANYAMWAMU	2,279	2,277
REGION 7		
CHEBUT / KAPTUMO	2,251	2,249
MUDETE	2,268	2,265
KAPSARA	2,279	2,293
AVERAGE	2,214	2,221



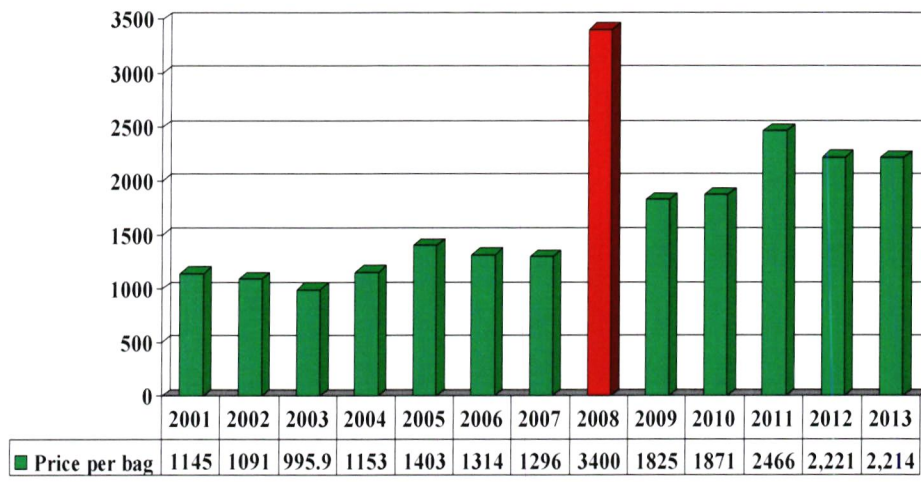
HIGHLIGHTS

- Kenya Tea Development Agency (Management Services) Ltd recently imported 65,184 metric tonnes of NPK26:5:5 fertilizer valued at Kshs. 2.9 Billion on behalf of 560,000 small-scale tea farmers. The fertilizer has been distributed to the farmers through the 68 KTDA-managed tea factories in Kenya and Rwanda.
- This year the cost of a 50kg bag was Kshs 2,214 on average compared to Kshs. 2,221 last year. The price includes C&F Mombasa, financing cost, clearing, forwarding, handling and port charges, as well as cost of local transport to respective factories. The new Railway levy of 1.5% increased the overall cost.
- The favourable price this year was occasioned by utilization of investment income from the fertilizer suspense deduction from the tea farmers.
- KTDA (Management Services) Ltd purchases the fertilizer funded through a bank loan under the KTDA Fertilizer Credit Scheme. Farmers make repayments in easy monthly instalments.
- Fertilizer application is crucial to better tea yield and leaf quality, KTDA teas are hand picked to maintain the high plucking standard of two-leaves and a bud that ensures teas are of the highest quality.



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FERTILISER COST PER BAG



The cost per bag for 2008 is an estimate. The group did not buy fertiliser that year due to the high quoted cost per bag.

> **KTDA farmers have never received Government subsidy like other crops**

KTDA FACTORIES INITIATIVES

Focusing on real problems in the field.

Gaps in Tea Farms



Pests & Disease management



Proper pruning

1. FFS Extension methodology

Facilitation in Special Topics



- Improved Productivity.
- Better Quality.
- Improved Earnings.
- Better ecosystem.

4. Farm Management



Farm Level Activities



2. Productivity Improvement

- Infilling.
- Pruning.
- Tipping.
- Plucking.
- Fertilizer application.




3. Continued extension & Support

Output


Techniques

KTDA - Moving towards Quality and Operational Excellence


Desired Sustainable Tea Farmer




Tea Farm



Livestock production




Agro forestry



Sustainable Gardening & Nutrient management






Leaf Collection Initiatives


Roads maintenance & Fleet modernization
Fleet Monitoring System
Constant weight bags
Bus Stop/Logistics Assistant

Phased out Old Fleet



Modern Fleet:



Five Year Replacement Policy



Output:

1. Efficient Leaf collection.
 - Improved Haulage rate (currently at 132 Kgs/Km)
 - Improved vehicle turnabout time (from 3 to 2.39Hours)
2. Cost Effectiveness.
 - Less on Maintenance (Spares)
 - Less fuel Consumption (diesel)
3. Improved quality of green Leaf.
4. Improved service delivery

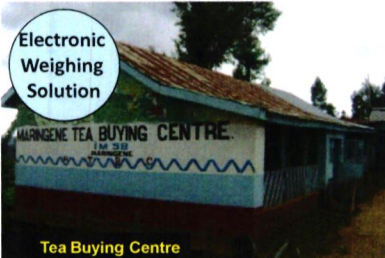
Improved Roads

No of vehicles


Year	No of vehicles
2002	890
2006	754
2010	420
2012	469
2013	411
2014	431

Electronic Weighing Solution



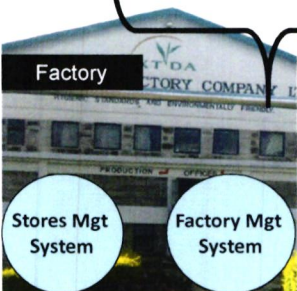
Tea Buying Centre

Fleet Mgt System



ICT


Factory

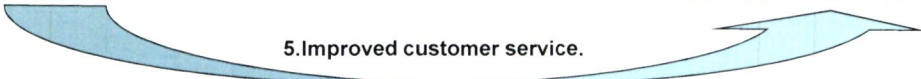


Stores Mgt System

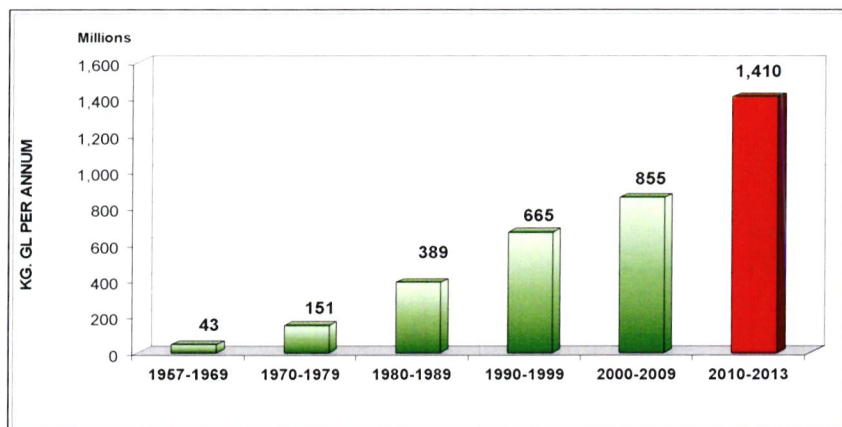
Factory Mgt System

1. Enhanced Efficiency/accuracy.
2. Timely decision making.
3. Cost effectiveness.
4. Motivated staff.
5. Improved customer service.





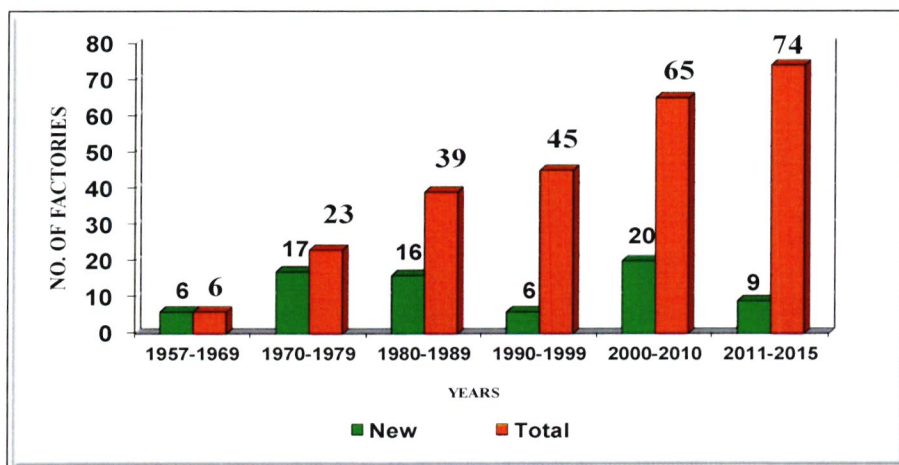
FACTORY CAPACITY ENHANCEMENT



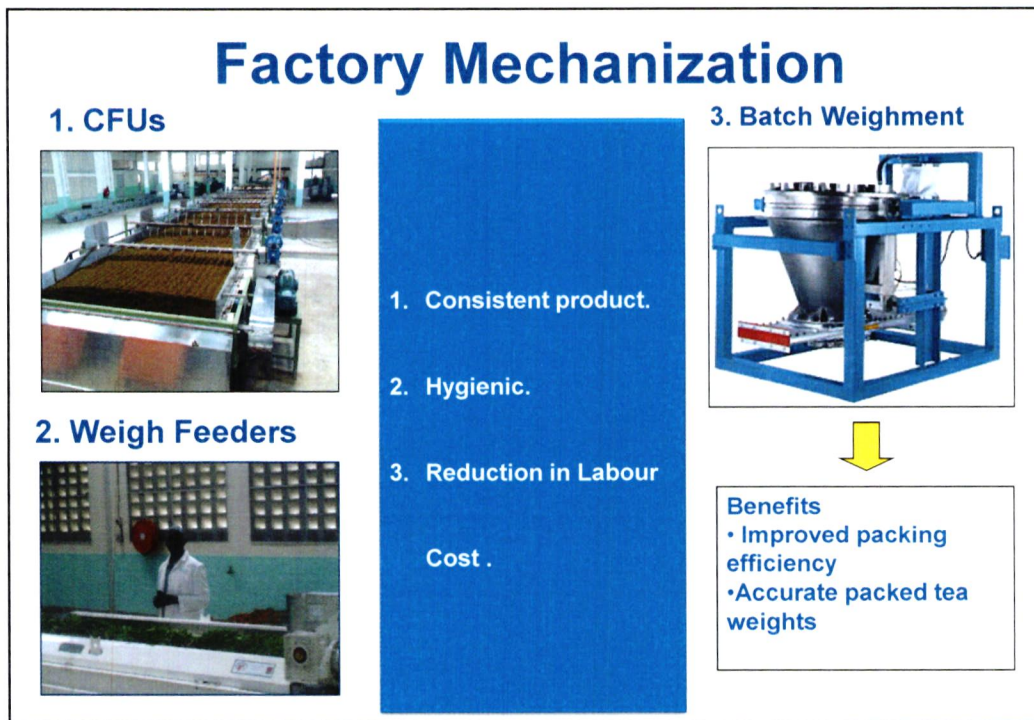
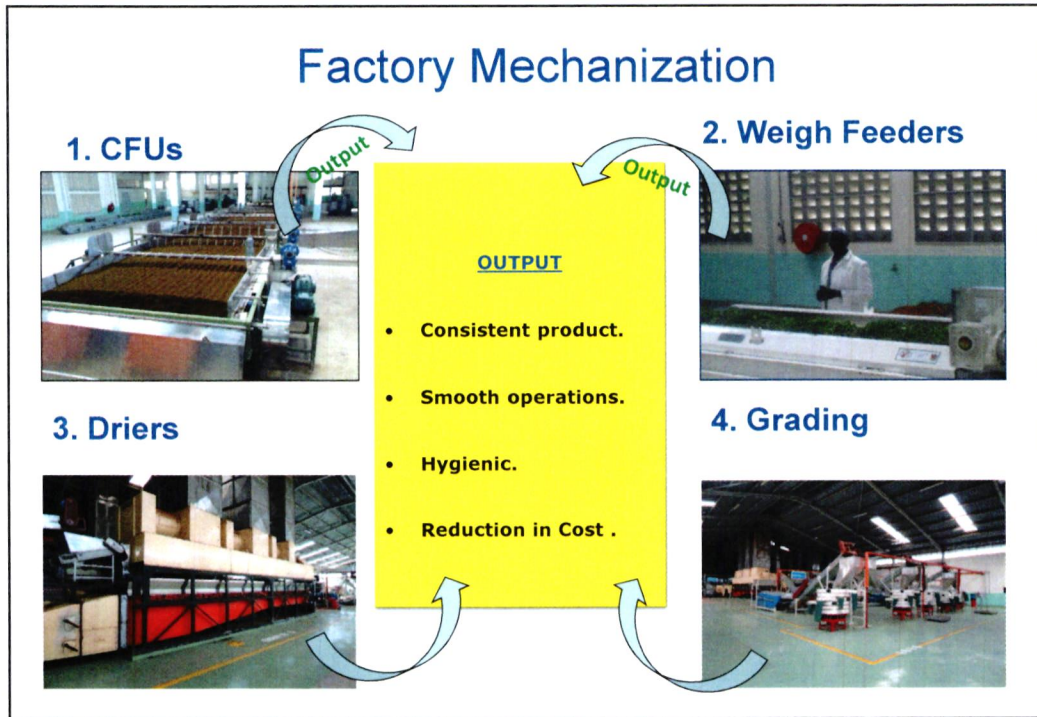
Increased capacity has been achieved through existing factory expansion and construction of new ones. Current expansions will provide a total additional capacity of 908,140 kilograms. Olenguruone is now operational.

KTDA -MS: Seeking Growth and Operational Excellence

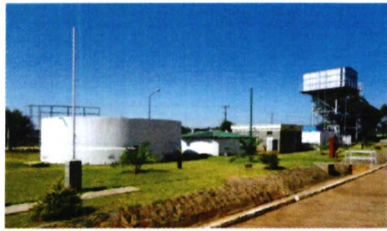
Factory Construction



A total of 9 new factories planned and are in different stages, equity contributions underway for their construction. Olenguruone is the new now operational



Environmental/Waste mgt



Green Treatment and elimination of effluent from the factories.



Establishment of wetlands and compact system for treating and eliminating effluent from the factories.

Mini Hydro Projects



1. Diversion of the River to the canal



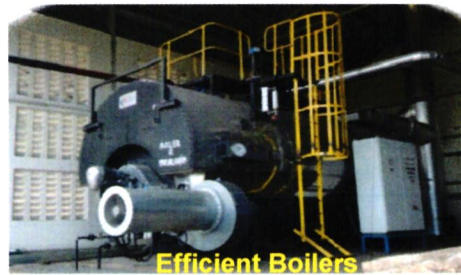
3. Power House

2. The head pond



Out put – 0.9MW
Factory requirement – 0.5MW

Energy Initiatives



KTDA - MS: Seeking Growth and Operational Excellence

Energy Initiatives

•About 14,000 acres of land purchased for tree planting with 7,000 acres currently planted

Cost effective handling of firewood in sheds.



Energy efficient motors

Efficient Boilers



Environmental/Waste mgt

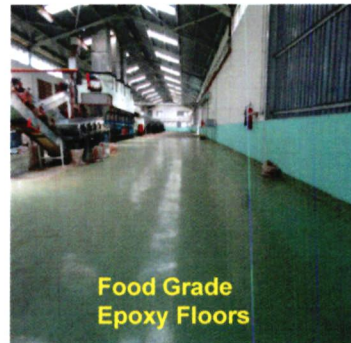
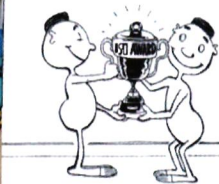


Establishment of wetlands and compact system for treating and eliminating effluent from the factories.

KTDA -MS: Seeking Growth and Operational Excellence

Quality Assurance

Paving – of the factory apron.



Replacement of Asbestos



Output:

1. Cleaner work place.
2. Assured product safety.
3. Enhanced product demand.

Research and Development Initiatives



- Adoption of slip sheet technology - reduced dependence on wood pallets
- Reduced labour cost.
- Environmentally sustainable
- All factories are using 2 ply paper sacks from April 2013, 15.4% saving from previous 3ply paper sacks translating to Ksh 58.3M per year.



Challenges, Mitigations and Way forward

Current challenges

1. Fluctuating exchange rates.
2. Rising cost of production (labour, energy & farm inputs)
3. Intensifying competition locally & globally.
4. Lack of incentives for value addition and product diversification.
5. Poor infrastructure e.g Tea Roads & Quality of Power.
6. Numerous levies and taxes.
7. Increasing consumer and market requirements (certifications).
8. Decreasing smallholder farm sizes.
9. Increasing levels of poverty (activism, hawking).

Intervention Measures

1. **Energy cost reduction initiatives;**
 - Mini Hydro projects.
 - Wood - fuel projects.
 - Alternative energy sources e.g. coal, solar, wind.
2. **Modernization and efficiency improvements**
 - CFU's, weigh feeders.
 - Machinery and fleet replacement through asset financing.
 - Electronic Weighing Solution.
 - Investment in modern ICT platform to support Business.
3. **Product and market diversification**
 - TVAP Orthodox initiatives.
 - Market certification (Fair Trade, Rainfall Alliance, GMP, ISO GMP, HACCP)
4. **Others**
 - Adoption of modern governance management structure.
 - Development of new markets.
 - Joint venture proposals.
 - Long term supply contracts.

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Way Forward

- Communication to stakeholders; government, tea farmers, banks etc
- Consistent quality in order to maintain competitiveness
- Ensure farmers second payment is made promptly and to borrow where necessary to ensure the payment is done.
- Enforce austerity measures
- Continuous market/client engagements
- New markets development through trade promotions e.g. China, CIS, ASEAN etc
- New products development ; Orthodox etc
- Pursue possibility of forward contracts.
- Request government to zero-rate VAT on local sales for export and services
- Request government to review ad valorem levy
- Accelerate VAT refunds (current- ksh.448million)
- Pursue Government to Government agreements for tea sales in Russia and China

