Approved
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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

REPORT ON:

THE SUGAR BILL *(NATIONAL ASSEMBLY BILL NO. 34 OF 2022)*

THE NATIONAL ASSEMBLY	
DATE: 06 JUL 2023	DAY: Thursday
TABLED BY:	Hon. Geoffrey Odanga, MP (Member, Agriculture & Livestock Committee)
CLERK-AT THE-TABLE:	Joyce Lemerelle

CLERKS CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

JULY 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
NOPEU	-	National Ordinary People Empowerment Union
AFA	-	Agriculture and Food Authority
TCD	-	Tons of Cane per Day
MT	-	Metric Tonnes
KSh	-	Kenya Shillings
COMESA	-	Common Market for Eastern and Southern Africa
EAC	-	East African Community
KEBS	-	Kenya Bureau of Standards
LN	-	Legal Notice
No.	-	Number
ToRs	-	Terms of Reference
CET	-	Common External Tariffs
KAM	-	Kenya Association of Manufacturers
KESMA	-	Kenya Sugar Manufacturers Association
CoG	-	Council of Governors
KNSAFO	-	Kenya National Sugarcane Farmers Organisations
SUCAM	-	Sugar Campaign for Change
KALRO	-	Kenya Agricultural and Livestock Research Organisation
KNTC	-	Kenya National Trading Corporation
PS	-	Principal Secretary
CS	-	Cabinet Secretary
SDL	-	Sugar Development Levy
CF	-	Commodities Fund
KSB	-	Kenya Sugar Board
SONY	-	South Nyanza
KESMA	-	Kenya Sugar Manufacturers Association
KNFSF	-	Kenya National Federation of Sugarcane Farmers
CSR	-	Corporate Social Responsibility
MD	-	Managing Director
KM	-	Kilometre
KNTC	-	Kenya National Trading Corporation
KNASFO	-	Kenya National Association of Sugarcane Farmer Organisation
KISCOL	-	Kwale International Sugar Company Limited
CIF	-	Cost, Insurance and Freight
FRP	-	Fair and Remunerative Price
AFC	-	Agricultural Finance Corporation
SACCOs	-	Savings and Credit Cooperative Organisations
MW	-	Megawatts
Ha	-	Hectare

LIST OF ANNEXURES

1. Report adoption Schedule
2. Minutes
3. Copy of the newspaper advertisement on public participation
4. Letter inviting stakeholders for meetings with the Committee
5. Stakeholder submission

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Agriculture and Livestock on its consideration of the Sugar Bill *(National Assembly Bill No. 34 of 2022)* which was published on 6th October 2022. The Bill went through the First Reading on 9th November 2022 and was thereafter committed to the Departmental Committee on Agriculture and Livestock for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has sixty-two (62) clauses and seeks to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill is expected to restore the roles of the Kenya Sugar Board currently undertaken by the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Following placement of advertisements in the print media on Tuesday, 14th February 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from six (6) stakeholders.

The Committee also invited stakeholders vide letter REF: NA/DDC/A&L/2023/009 dated 9th March 2023 for a stakeholders' engagement retreat on the Bill which was held at Holiday Inn Hotel, Two Rivers Mall in Nairobi on Friday, 24th March 2023 with twelve (12) stakeholders making oral presentations before the Committee.

Majority of the stakeholders were in support of the Bill, noting that the sugar industry had nosedived since the disbandment of the Kenya Sugar Board. They observed that the Sugar Directorate in the Agriculture and Food Authority had not been felt by players in the sugar industry. Other stakeholders averred that AFA had not been able to effectively discharge its mandate because it had not had a Board of Management since its inception and should therefore be given time to do its role given that a Board had been put in place.

The stakeholders were in support of the re-introduction of the Sugar Development Levy. They observed that the levy would contribute to the improvement of the sugar sector if correctly used. They however differed on the allocation of the SDL. Some proposed that most of the monies collected in the levy should be used for sugar development while others observed that the public milling companies need to be supported through the Levy. Others noted that the Levy was previously misused by public sugar companies and that the companies should therefore not be beneficiaries.

Some stakeholders were in support of zoning of sugar companies while others opposed it. The proponents observed that zoning will protect them from poaching of sugarcane which has occasioned losses on their part given that they usually invest in their farmers through seed provision, ploughing, and fertilizer, among others. The opponents noted that zoning should be done away with because it encourages inefficiencies and subjects farmers to suffer when their cane is not harvested in time.

Some sugarcane farmers were in support of cane quality payment because it will ensure that only farmers that produce good quality sugarcane survive in the industry hence encourage farmers to improve the quality of sugarcane. Sugar manufacturers on their part were not in support of quality payment because agronomic practices by farmers do not allow them to produce sugarcane with high sucrose content and paying farmers on the sucrose content will be unfavourable to farmers.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Emmanuel Wangwe, MP who attended all the meetings that the Committee invited him during consideration of the Bill and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Sugar Bill (*National Assembly Bill No. 34 of 2022*).

It is my pleasure to report that the Committee has considered the Sugar Bill (*N.A. Bill No. 34 of 2022*) and has the honor to report back to the National Assembly with the recommendation that the Bill be **approved with amendments as reported by the Committee**.

Hon. (Dr.) John K. Mutunga, M.P.
Chairperson, Departmental Committee on Agriculture and Livestock

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

    i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
    ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
    iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
    iv. ***To study and review all the legislation referred to it;***
    v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
    vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
    vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
    viii. *To examine treaties, agreements and conventions;*
    ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
    x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
    xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider, agriculture, livestock, food production and marketing.

3. In executing its mandate, the Committee oversees the Ministry of Agriculture and Livestock Development.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Agriculture and Livestock was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson
Hon. (Dr.) John Kanyuithia Mutunga, MP
Tigania West Constituency
UDA Party

Vice-Chairperson
Hon. Brighton Leonard Yegon, MP
Konoin Constituency
UDA Party

Hon. Sabina Wanjiru Chege, CBS, MP
Kitutu Chache North Constituency
Jubilee Party

Hon. Ferdinand Kevin Wanyonyi, MP
Kwanza Constituency
Ford Kenya Party

Hon. Geoffrey Makokha Odanga, MP
Matayos Constituency
ODM Party

Hon. Justice Kipsang Kemei, MP
Sigowet/Soin Constituency
UDA Party

Hon. Jared Okello Odoyo, MP
Nyando Constituency
ODM Party

Hon. Lawrence Mpuru Aburi, MP
Tigania East Constituency
NOPEU Party

Hon. David Kiplagat, MP
Soi Constituency
UDA Party

Hon. Gabriel Gathuka Kagombe, MP
Gatundu South Constituency
UDA Party

Hon. Monicah Muthoni Marubu, MP
Lamu County
Independent Member

Hon. Pamela Njoki Njeru, MP
Embu County
UDA Party

Hon. Patrick Kibagendi Osero, MP
Borabu Constituency
ODM Party

Hon. Peter Kalerwa Salasya, MP
Mumias East Constituency
ODM Party

Hon. Yussuf Mohamed Farah, MP
Wajir West Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Ms. Laureen Omusa Wesonga
Clerk Assistant I/Head of Secretariat

Mr. Victor Kanda Kilimo
Clerk Assistant III

Ms. Brigitta Mati
Legal Counsel I

Mr. David Ng'eno
Research Officer II

Ms. Noelle Chelagat
Media Relations Officer II

Mr. Muhumed Shillow
Research Officer III

Mr. Kelvin Sekani
Audio Officer III

Mr. Ahmednoor Sheikh Hassan
Clerk Assistant III

CPA. Robert Ng'etich
Fiscal Analyst I

Ms. Sheila Chebotibin
Senior Serjeant-At-Arms

Mr. Gerald Kadede
Legal Counsel II

Mr. Richard Sang
Serjeant-At-Arms

PART TWO

2 BACKGROUND OF THE SUGAR INDUSTRY IN KENYA

2.1 INTRODUCTION

6. The development of the sugar industry in Kenya is linked to the history of Asian Agricultural Settlement in the country. The first sugar factory was established in 1922 in Miwani Kisumu District, followed by Ramisi in the Coastal Region in 1927. During post-independence, the Government established five additional factories in the 1960s and 1970s: Muhoroni (1966), Chemelil (1968), Mumias (1973), Nzoia (1978), and South Nyanza (1979).

7. The Kenya sugar sub-sector plays a vital role in the agricultural sector and the Kenyan economy. The industry contributes to food security, employment creation, regional development and improved livelihoods for more than 8 million Kenyans.

8. Sugarcane is grown in 14 counties spread across Western, Nyanza, Rift Valley and Coastal regions, mainly on small-scale farms. Kenya has the potential to produce enough sugar to satisfy her domestic demand and provide surplus for export. There are 14 sugar factories with a total installed milling capacity of 41,000 TCD.

2.2 SITUATIONAL ANALYSIS

9. According to the Sugar Taskforce Report of 2019, Kenya produced 48% of its domestic sugar requirement, making her a net importer of sugar. The total sugar requirement in the country then was estimated at 1,000,000 MT and made up of 850,000 Tonnes of table sugar and 150,000 Tonnes of industrial-use sugar.

10. The industry has the potential of producing over 1.09 million MT of sugar which would meet the domestic demand and provide a sustained surplus for export to the wider COMESA region which is generally a net importing region. Due to industry inefficiencies, this capacity is currently underutilized.

11. The sugar sub-sector has faced a myriad of challenges that have severely affected cane production. These include high cost of production; acute cane shortage; low productivity; inefficiencies across the value chain; weak regulatory framework; high indebtedness; weak extension support; low value addition initiatives; cyclic markets; uncontrolled and illegal sugar imports; poor governance; ageing equipment; obsolete technology; and delayed payment to cane farmers.

12. These challenges have largely contributed towards making Kenya a high-cost sugar producer and consequently a preferred destination for sugar imports, smuggling and dumping from low-cost producers.

2.3 RECOMMENDATIONS OF THE TASKFORCE OF THE SUGAR INDUSTRY

The former President, H.E. Uhuru Kenyatta, directed that a Taskforce comprising of stakeholders in the sugar industry be established. This was as a result of the challenges faced by the sugar industry in Kenya. The Taskforce was established under Gazette Notice No. 11711 of 9th November 2018. The Taskforce embarked on their mandate and made the following recommendations in line with their terms of reference:

13. **Increasing sugarcane production and productivity by:** Enhancing research into high yielding disease resistant and early maturing varieties; Providing financial and extension support to farmers to increase cane production and productivity; Reducing the cost of cane production by facilitating block farming to enable farmer's pool resources for bulk procurement of farm inputs, services and machinery; Enhancing harvesting and transportation efficiencies; Transparency at the weighbridge; Increasing farm level diversification initiatives; and Strengthening out-grower institutions.

14. **Enhancing milling efficiencies and competitiveness by:** Reducing the cost of production at the factory level; Synchronizing cane development to cane supply; investing in value addition; Adoption and development of the ICT Infrastructure across the value chain; Establishing governance structures to coordinate cane production, supply and processing; Developing infrastructure; and mitigating against cane fires.

15. **Pricing mechanism by:** Reviewing the cane payment formula; and ensuring prompt payments to farmers.

16. **Enhancing sugar marketing and trade by:** Increasing sugar production; Improving efficiency along the value chain to reduce cost of production and ensure competitiveness; Proper coordination of sugar importation; Mitigating against sugar smuggling and dumping; Packaging and traceability; Marketing of value-added products; Value addition on ethanol; Encouraging millers to take advantage of the existing opportunity and supportive framework for the production and use of co-generated electricity; Developing and implementing a Policy and strategy that will promote the production, distribution and use of briquettes; and Ensuring compliance with the existing standards on jaggery production.

17. **Compliance with the COMESA safeguard conditions by:** Commencing privatization process of public owned mills by June 2019; putting efforts in place to ensure that Kenya is self-sufficient in sugar production by 2021 on a cost-effective basis; and Commencing payment based on quality of sugarcane by 2021.

18. **Provision of a funding mechanism to support various components in the value chain by:** Reinstating the Sugar Development Levy; and Enhancing research funding.

19. **Revitalization of public owned mills by:** Ensuring adherence and enforcement of all laws and guidelines on good governance; Addressing the capital needs, technology adoption, modernization and indebtedness of public owned mills; Promoting a competitive environment in the sugar industry; Adhering to labour laws on staff benefits and compensations; and Addressing inadequate skilled personnel through capacity building and apprenticeship, appointment of boards of directors and management on specific skills set and competencies; and establishing a national sugar training institute for capacity building.

20. **Taxation structure by:** Classifying sugar as a food item; Reviewing the taxation regime to create a tax friendly investment environment including duty waivers on high end industry inputs such as fertilizer, diesel, farm implements, and plant and factory equipment; and the national and county governments should rationalize levies and taxes to improve farmer earnings and support investment in the sector.

21. **Policy, Legal, Regulatory and Institutional Framework through:** Finalization of policies, gazettement of sugar regulations and development of policy; Reviewing various legislations e.g. the Crops Act No.16 of 2013, the Agriculture and Food Authority Act No.13 Of 2013, and the Kenya Agriculture and Livestock Research Act No. 17 of 2013; Consumer protection on sugar including imports through enforcement of necessary legislation by various institutions; Promoting good corporate governance in public owned mills; Improving the quality of products and by-products in the sugar industry; Improving basic conditions of employment for employees, trade unions and trade disputes, promote sound labour relations and expeditious dispute settlement, conducive to social justice and economic development; and Facilitating dispute resolution between Kenya, COMESA and EAC member states over sugar related trade issues.

2.4 ISSUES TO NOTE IN SAFEGUARDING THE SUGAR INDUSTRY IN KENYA

Sugar Branding

22. Super markets in Kenya have been found to rebrand sugar indicating no label of its origin. The Consumers Federation of Kenya had raised concern about rebranding because of the following reasons: It is inconsistent with the Consumer Protection Act, 2012; Such packaging hardly indicates the actual origin of the repackaged products; Expiry dates are either missing on the packaging and or are decided by the particular supermarket; It contravenes Article 46 of the Constitution, the Public Health Act and related statutes; and the KEBS mark of quality on the items would be for the supermarkets and not the manufacturers.

23. Rebranding of sugar is anchored in section 12 and 13 of the Sugar (Imports, Exports and By-products) Regulations of 2019. The Regulations require a relook to cure the aspects of smuggled sugar into the country.

Regulatory framework: The Sugar (Imports, Exports and By-products) Regulations, 2020 – L.N. No. 125

24. Regulation 8 mandates the Authority to determine the quantity of sugar that may be required from manufacturers for domestic consumption while accounting for any shortfall in the production of sugar in the country.

25. Regulation 9(2)(e) obligates the person who imports sugar to submit to the Authority the certificate of origin of the consignment.

26. Regulation 12 (1) provides that a person shall not pack sugar or a by-product of sugar into a package of different quantity, material or brand from the original packaging without the approval of the Authority and regulation 12(3) provides that a package of an imported consignment, whether repackaged or in its original packaging, shall carry, in bold print, the name and contact details of the manufacturer, country of origin, and the vendor and purchaser of the consignment.

27. Regulation 13 (1) provides that an approved importer of sugar or a by-product of sugar, who wishes to rebrand a consignment, shall apply for a permit from the Authority before rebranding the sugar. This may give room for smuggled sugar to gain entrance into the market.

Taxation on imported sugar to promote local sugar production

28. Kenya is a member of the EAC and COMESA and is bound by the treaties of these organizations in as far as sugar trade is concerned.

29. Kenya has been on COMESA sugar safeguards since 2002 to enable it take measures to improve competitiveness of its sugar industry. The latest two-year extension was scheduled to end in February 2023.

30. Article 57 of the COMESA Treaty states that no member state shall impose, directly or indirectly, on the products of other member states any internal taxation of any kind in excess of that imposed, directly or indirectly, on like products.

31. Kenya should strictly apply the maximum CET of 35% on sugar imports coming from outside the COMESA region.

2.5 WAY FORWARD

In order to safeguard the sugar industry, the following should be implemented:

32. There is need to amend the Sugar (Imports, Exports and By-Products) Regulations, 2019 by banning sugar rebranding through this Bill which will subsequently require the Ministry to delete clauses that allow importers to rebrand sugar and sugar products thereby losing the points of origin. This provision may enable unscrupulous traders to smuggle in products and rebrand them and this may contribute to the killing the local sugar industry.

33. Kenya is bound by the EAC and COMESA treaties on imposing higher taxes on sugar from the member states, the Government needs to impose CET maximum tariff on sugar imported from outside the COMESA region.

34. The Government should implement the recommendations of the Taskforce on Sugar 2019 as highlighted above.

PART THREE

3 OVERVIEW OF THE SUGAR BILL (NATIONAL ASSEMBLY BILL NO. 34 OF 2022)

3.1 INTRODUCTION

35. The Kenya Sugar Authority was established in 1973 under the Kenya Sugar Authority Order (Cap. 318) to promote and foster the effective and efficient development of sugar cane for the production of white sugar. The legislation aimed at strengthening the sugar sector.

36. The Sugar Act No.10 of 2001 came into force to provide for the development, regulation and promotion of the sugar industry and establishment the Kenya Sugar Board (KSB). Pursuant to section 33 of the Sugar Act, 2001, a set of regulations including those relating to Election of Board of Directors in 2002, imposition of the Levy Order in 2007, Imports, Exports and By-Products in 2008 and Arbitration Tribunal Rules in 2008 were gazetted. However, the most important General Regulations required to operationalize the Act, specifically relating to production, manufacturing and marketing were never gazetted leading to the dysfunctional environment in the sugar industry.

37. In 2013, the Crops Act No. 16 of 2013 came into force to provide for the growth and development of agricultural crops. Further, the Agriculture and Food Authority Act No. 13 of 2013 came into force to provide for the consolidation of the laws on the regulation and promotion of agriculture in the country. In effect, the Sugar Act of 2001 was repealed.

38. The sugar sub-sector has lacked regulations for the proper conduct of its business since 2001. The Crops Act No. 16 of 2013 gives provision for the development of crop regulations under Section 40. Efforts to develop the Draft Sugar (General) Regulations to operationalize the Act commenced in 2014 but the Regulations are yet to be gazetted to date.

39. Noting that the sugar sector is at an all-time low ensuing from the failure to have sector specific laws or regulations, an attempt was made in the 12th Parliament to enact the Sugar Bill, 2019 which unfortunately did not materialize before the end of term of the 12th Parliament.

3.2 REVIEW OF THE BILL

The Bill has sixty-two (62) clauses and has the following provisions:

40. The principal object of the Bill is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill shall restore the roles of the Kenya Sugar Board currently undertaken the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Part I: Preliminary

41. Clauses 1 and 2 of the Bill provide for preliminary provisions that is, the short title, interpretation of terms as used in the bill, objects of the Bill and the guiding principles to disaster risk management.

42. ~~The object of the Bill is to provide for the development, regulation and promotion of the sugar~~ industry, to provide for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes.

Part II: Establishment Powers and Functions of the Sugar Board

43. Clauses 3 to 6 of the Bill provide for the establishment of the Kenya Sugar Board as a corporate body with perpetual succession. The main functions of the Board are to, among others, regulate, develop and promote the sugar industry; co-ordinate the activities of individuals and organizations within the industry; and co-ordinate the activities of individuals and organizations within the industry.

44. The Board also takes part in policy formulation and implementation, research, export of local sugar, advisory to local sugar growers, pricing, licensing sugar mills, compliance with set standards, local and international market surveillance among others.

45. Clause 5 provides for the functions of county governments to offer cane nursery certificate, extension services, ensure and enforce compliance with regulations and establish road networks for sugar movements.

46. Clauses 6 to 17 provide for the composition of the Board, the terms of appointment of its members and vacation of office. The powers of the board in performing its functions and the conduct of its business. It Establishes committees of the board, the power of the board to delegate functions and remuneration of board members.

47. The clauses also establish the office of the Chief Executive Officer as an *ex-officio* member of the Board, appointment of staff of the Board and their protection from personal liability in the performance of their duties.

Part III: Licensing and Registration

48. Clauses 19 to 22 of the Bill require anybody who operates a sugar mill or jaggery to obtain a license from the Board. The circumstance under which the Board may decline to issue a license, the times for application or renewal of license, duration and expiry of the license as well as the specifics and purpose of a license.

49. Provides for conditions for importation of sugar, registration of millers and establish offences under the Bill.

Part IV: Establishment of the Kenya Sugar Research Institute

50. Clauses 23 to 28 contain provisions establishing the Kenya Sugar Research Institute as a body corporate with perpetual existence. The functions of the Institute, its management and the funds of the Institute.

Part V: Appointment of Crop Inspectors

51. Clauses 31 and 32 empower the Board to appoint and regulate qualified persons as crop inspectors, the functions and powers of the inspectors, and offences for obstructing the inspectors from performing their functions.

Part VI: Financial Provisions

52. Clauses 33 to 35 provide for funding of the Board outlining monies considered to comprise funds of the Board, the Sugar Development Levy as a fund gazetted by the Cabinet Secretary to be levied on domestic sugar and Sugar Development Fund administered by the Board.

53. Clauses 36 to 39 provide for the financial year, preparation of annual estimates before the commencement of a financial year, records and audit of accounts and preparation of annual report on operations of the Board. The report is submitted to the Cabinet Secretary for tabling before the National Assembly.

Part VII: Establishment of the Sugar Arbitration Tribunal

54. Clauses 40 to 43 establish the Sugar Arbitration Tribunal, its composition, qualification for membership, terms of service, tenure and jurisdiction.

55. Clauses 44 to 43 provide for the powers of the Tribunal in performing their functions, conditions for removal from office of a member of the Tribunal and filling of vacancies in the Tribunal. The Clauses also provide for the appointment of a Secretary to the Tribunal by the Chief Justice and remuneration of the Tribunal and its members of staff.

Part VIII: Miscellaneous Provisions

56. Clauses 48 to 56 provide for saving and transitional provisions.

57. Clause 48 provides for the Board to convene an annual general meeting or special meeting of representatives of millers and growers to consider the annual report and accounts of the Board.

58. Clause 49 provides that all sugar produced locally or imported into the country shall meet the set quality, health and safety control measures and sets penalty for contravention.

59. Clause 50 provides for physical inspection of premises by the Board to ensure quality and safety and provides for penalty for contravention.

60. Clause 51 provides for safeguard measures to protect the industry from unfair trade practices on regional agreements and importation of sugar.

61. Clause 52 provides for offences and penalties under the Bill.

62. Clause 53 provides for guidelines for sugar industry agreements negotiated between the millers and the growers.

63. Clauses 54 and 55 provide for the shareholding rights of the growers in private companies and representation in the Boards of Management.

64. Clause 56 provides for the powers of the cabinet secretary to amend the Third Schedule.

Part IX: Provisions on Delegated Powers

65. Clause 57 provides for the powers of the Cabinet Secretary to make regulations in consultation with the Board to give effect to provisions of the Bill.

Part X: Consequential Amendments

66. Clauses 58 and 59 provide for amendments to the First Schedule to the Agriculture and Food Authority Act, 2013 to restore the roles of the Kenya Sugar Board currently undertaken by the Sugar Directorate of the Agriculture and Food Authority as established by the Act.

Part XI: Savings and Transitional Provisions

67. Clauses 60 to 62 provide for the transfer of staff of the former Kenya Sugar Board before the commencement of the Agriculture and Food Authority Act, 2013 and current staff of the Sugar Directorate, assets and liabilities and all pending legal proceedings and claims to the Kenya Sugar Board upon commencement of the Act.

Schedules to the Bill

68. The First Schedule provides for the delineation of sugar catchment areas.

69. The Second Schedule provides for the conduct of business and affairs of the Board.

70. The Third Schedule provides guidelines for agreements between parties in the sugar industry.

71. The Fourth Schedule has provisions for the meetings and procedure of the tribunal.

72. The Bill delegates legislative powers to the Cabinet Secretary responsible for matters related to agriculture to make regulations for the better carrying into effect of its provisions. It does not limit fundamental rights and freedoms.

73. The Bill affects the functions of county governments as it deals with the functions of agriculture assigned to county governments under Paragraph 1 of Part 2 of the First Schedule to the Constitution.

74. Enactment of the Bill shall occasion additional expenditure of public funds.

PART FOUR

4 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

75. Following the call for memoranda from the public through the placement of adverts in the print media on 14th February 2023 and vide a letter REF: NA/DDC/A&L/2023/009 dated 9th March 2023 inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:

    i. Kwale International Sugar Company Limited
    ii. Kenya Association of Manufacturers
    iii. Commodities Fund
    iv. Kenya Sugar Manufacturers Association
    v. The Sugar Campaign for Change
    vi. The Council of Governors
    vii. Hon. Emmanuel Wangwe, MP
    viii. West Kenya Sugar Company Limited/Sukari Sugar Company
    ix. Kenya National Association of Sugarcane Farmers Organizations
    x. Kenya Agricultural and Livestock Research Organisation
    xi. Ministry of Agriculture and Livestock Development
    xii. Kisumu Sugarbelt Co-operative Union Limited
    xiii. Kenya National Federation of Sugarcane Farmers
    xiv. Out-growers Sukari Sugar Company Limited
    xv. South Nyanza Sugar Company Limited
    xvi. Kenya National Federation of Sugarcane Farmers, Sony Sugar Branch

76. The stakeholders submitted as follows:

4.1 KWALE INTERNATIONAL SUGAR COMPANY LIMITED

In a meeting with the Committee held on Friday, 24th March 2023, Kwale International Sugar Company proposed the following amendments to the Finance Bill 2022:

Clause 2

77. Amend the clause by redefining the word *"Jaggery Mill"* to mean *"rudimentary or bare minimum technology equipment used to crush sugarcane to produce sugarcane juice which is processed through boiling to produce jaggery"*. Jaggery mill is insufficiently described in the Bill and the proposed amendment will provide a proper definition so that every stakeholder can fit into the industry.

Committee's Observation/Recommendation

The Committee observed that the term *"jaggery mill"* had not been defined in the Bill. Their proposal was therefore adopted by the Committee. The Committee further proposed to delete the word *"rudimentary"*

78. Amend definition of the term *"growers"* to *"a person who grows sugarcane or any crop in Kenya capable of producing for sale to a miller and is so registered by the board"*. The purpose of the proposed amendment is to replace produce with grows.

Committee's Observation/Recommendation

The Committee observed that defining the word *"growers"* was not necessary. Their proposal was therefore not adopted by the Committee.

79. Include Kenya Sugar Manufactures Association (KESMA) in the Bill, so that it is the recognized Association for lobbying for the interests of millers. This will give formal recognition and a regulatory framework to the millers on how they can engage or lobby on sugar industry matters.

Committee's Observation/Recommendation

The Committee observed that there is need to have an apex body for millers just as there is one for growers. Definition for *"sugar manufacturers apex body"* was introduced in the Bill.

80. Define *'sugar importer'* to mean *"a miller who has been licensed by the board to import sugar in to the country"*. This is because sugar importation will be done through the sugar millers based on a quota system. The Bill is silent on who is a sugar importer yet, sugar importation meets almost 40-50% of the country's sugar demand making the sugar importer a critical player in the industry. If this is solely left to private dealers as is the case now, we will have people who are not interested in the sugar industry benefiting at the expense of more deserving stakeholders.

Committee's Observation/Recommendation

The Committee observed that it is the role of KSB to determine who imports sugar into the country. Their proposal was therefore not adopted by the Committee.

Clause 4

81. Amend clause 4 (2) (f) to read as follows *"to license import and export of sugar"* this will give powers to the Board to license sugar importers and exporters.

Committee's Observation/Recommendation

The Bill had only mandated the KSB to facilitate the export of sugar. Their proposal was adopted by the Committee as it will allow the Board to facilitate importation of sugar too.

82. Insert the following additional clause under Licensing of Inputs Distributor *"a seller or stockiest of agricultural inputs used in sugarcane cultivation"*. This is to give the Board powers to control the quality of inputs availed in the market which has an impact on the quality of the sugarcane together with effective monitoring of input pricing to avoid high coast of inputs in the industry.

Committee's Observations/Recommendation

There are bodies charged with the responsibility of licensing such distributors such as AGMAC. The proposal was therefore not adopted by the Committee.

83. Give the Board powers to register growers by inserting the following sentence *"The Board shall have the power to register all sugarcane out-growers in the country"*. This will enable the Board to have clear database of all growers in the country and act as a source of reference in determining full area under cane within different catchment areas and also resolving issues around cane poaching.

Committee's Observation/Recommendation

The Committee observed that this function can be done by the various farmer organisations. It was also noted that the Bill provides for a sugar growers apex body which *inter alia* registers farmers. Clause 4 (1) (b) tasks the Board with coordinating activities of the value chain actors.

84. Insert the following as an additional function to the Board *"to monitor the implementations of the provisions of the agreement governing sale of privatized sugar factories and submit report to the cabinet secretary"*. This is because the Board is the regulator of the industry and it should have mandate to give its views on the government's proposed privatization of public sugar mills.

Committee's Observation/Recommendation
The Board can still discharge this function under paragraph 4(2) (u) of the Bill. This proposal was therefore not adopted by the Committee.

Clause 6

85. Amend the composition of the Board as follows: "(a) *The Chairperson should be appointed by the President and shall be from the private sector having experience and knowledge of no less than 15 years in the industry; (b) Principal Secretary of the Ministry responsible for trade or his/her representative; (c) Three representatives of millers proposed by KESMA; (d) Principal Secretary responsible for agriculture or his/her representative; (e) Principal Secretary for National Treasury or his/her representative; (f) Chair of Council of Governors (COG) Committee on Agriculture; and (g) Chief Executive Officer of the Board as an Ex-officio member.*

The Chairperson should be appointed by the President so as to project the importance of the industry to the government's agenda on food security. The Trade Ministry will look into aspects of competition and markets that will make the industry competitive.

Committee's Observation/Recommendation
Their proposal was adopted with amendments.

86. Insert the following to cooperation with agencies: "(a) *The Board shall cooperate with other government ministries, departments and agencies in the implementation of this Act; and (b) For the purpose of part (a), ministries, departments and agencies of government shall accord to the Board such assistance as may be necessary to ensure proper discharge of the functions of the Board"*.

Committee's Observation/Recommendation
The Committee observed that their proposal is already catered for under paragraph 9(g) of the Bill and therefore no need to repeat it.

Clause 8

87. Amend clause 8 by inserting the following new paragraph, *"when their behaviour affects millers or out-growers and he/she ceases to belong to the category of persons he/she is representing in the Board*'. This is relevant when the proposing association withdraws membership or that person ceases to hold office under the terms prescribed within the body.

Committee's Observation/Recommendation
The Committee observed that the provisions in the Bill are standard considerations for vacation from office. Their proposal was therefore not adopted.

Clause 20

88. Amend sub-clause 20 (1) to read as follows: "(a) *The Board shall have the power to issue sugar input licenses and prescribe procedures and regulations for sugar imports; (b) The sugar import licenses issued by the Board shall be subjected to the payment of a fee and upon such terms and conditions as the Board may*

impose; and (c) Before issuing the relevant license under sub-section (1), the Board shall take into account the levels of sugar production and sugar import or export requirements at a particular time.

Committee's Observation/Recommendation
The Committee observed that their proposal had already been provided for in the Bill and was therefore not adopted.

89. Amend sub-clause 20 (2) to read as follows "*a sugar importer who imports sugar into Kenya shall prior to importation: (a) Provide evidence that the sugar that they intend to import is not available in the local market; (b) Provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and (c) Obtain pre-import approval from the Board*".

Committee's Observation/Recommendation
The Committee observed that details on the importation of sugar will be provided in regulations. Their proposal was therefore not adopted.

Clause 25

90. Amend sub-clause 25 (b) to read as follows, "*three representatives elected by growers and two representatives by KESMA*". The purpose is to have more representation in the management board of the research institute to ensure effective varied stakeholders' input and engagement.

Committee's Observation/Recommendation
Growers and representatives of the sugar manufacture's apex body are already part of the directors of the Board, as such, they will still oversight the running of the Institute through the Board. Their proposal was therefore not adopted.

4.2 KENYA ASSOCIATION OF MANUFACTURES

In a meeting with the Committee held on Friday, 24th March 2023, Kenya Association of Manufacturers proposed the following amendments to the Bill:

Clause 2

91. Amend the definition of "*farm gate*" to mean "*cane receiving centers with weighbridges set up by millers in their respective regions or catchment areas*" this is important for the farmers since most are not close to the factories and as such, the distance can be a challenge and a burden in terms of costs of transportation. By reducing the costs of transportation it's a win for the farmer.

Committee's Observation/Recommendation
The Committee observed that there is no need to define the word "farm gate". Definition of the word was therefore deleted.

92. Amend definition of the word '*mill gate*' to read as follows, '*a site where sugarcane is received at the respective factory weighbridge.*' This definition brings out the function of the mill gate that is similar to that of the farm gate as they are both receiving and weighing centers for cane either at the factory of the receiving centers.

Committee's Observation/Recommendation
Their proposal was partly adopted by the Committee. The proposal was adopted with amendments.

93. Amend the definition of *'sugar catchment area'* by deleting the words *"for purposes of election to the Board under the first schedule"* appearing immediately after the second *"area"*. This is to focus on the substance of the sugar catchment area as a factor in clustering a region, that is, the soil conditions, weather and other factors including availability of at least two to three sugar mills that provide the farmer with alternatives on sugarcane market.

Committee's Observation/Recommendation
The Committee observed that the main purpose of having the catchment area was for election of representatives to the Board. As such, deleting the words *"for purposes of election to the Board under the First Schedule"* will negate the notion of having representatives of the Board.

94. Define of *"industrial sugar"* as follows, *"Industrial sugar" means a white crystalline carbohydrate used as a sweetener and preservative sugar, which complies with the specifications set by the body for the time being responsible for setting standards"*. This is because industrial sugar is meant for use in the manufacturing processes and products only. It is not manufactured in Kenya and therefore, should be distinctive. The distinction between raw sugar and industrial sugar is based on the sucrose content as given by the polarimeter readings and not based on suitability for consumption.

Committee's Observation/Recommendation
"Industrial sugar" had not been defined in the Bill. Their proposal was adopted by the Committee.

Clause 6

95. Amend sub-clause 6 (1) (b) to read as follows, *"(b) the representative nominated by farmers' apex body from each sugar catchment area as per the first schedule"*. This will allow for one representative from the Western Region, one from the Central Region and one from the Southern Region who are the major players in the sugar industry. It will also give the recognized farmers' apex body Kenya National Federation of Sugarcane Farmers, the authority to nominate its representatives to the Board. The farmers will have a structured way to front their representative without undue influence. The farmers' apex body is mandated to advocate for the farmers' interests.

Committee's Observation/Recommendation
The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

96. Amend sub-clause 6 (1) (c) to read as follows, *"three representatives nominated by the millers' apex body who are knowledgeable in sugar technology and value addition"*. It would be prudent to allow the millers' apex body to nominate at least three representatives as they are key stakeholders. This will also allow for two more representatives from the sugar millers as they have a major role to play in the industry.

Committee's Observation/Recommendation
The Committee resolved to have two representatives from the sugar manufacturers' apex body, one from the public milling companies and one from the private milling companies and to achieve an odd number. Their proposal was therefore not adopted.

Clause 20

97. Amend sub-clause 20 (1) by deleting paragraph (a) in its entirety. This is because this function should not be left open to the sugar importers. It is the responsibility of the Board to determine the sugar deficit in the country at any one time. The onus should not be on the importer.

Committee's Observation/Recommendation
This is a way of exercising control on the importation of sugar. Their proposal was therefore not adopted by the Committee.

Clause 25

98. Amend sub-clause 25 (b) by deleting the words *"elected by the growers"* appearing immediately after the words *"persons"* and substituting therefore, with the words *"nominated by the farmers' apex body from the designated sugar catchment regions"*. This amendment will ensure that the appointees are selected for the purpose of representing farmers for better uptake of new practices.

Committee's Observations/Recommendations
The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

99. Amend sub-clause 25 (e) by deleting the words *"Kenya Agriculture Livestock & Research Organization"* appearing immediately after the words *"of the"* and substituting the with the words *"Kenya Sugar Research Institute"*. This proposal is guided by the notion that this is a new body being set up which is not under the ambit of KALRO.

Committee's Observation/Recommendation
KALRO is the body charged with agricultural research in the country. It is therefore important for them to be represented in the Institute's board of directors.

100. Amend clause 25 by deleting paragraph (f) in its entirety and replacing it with *"one person nominated by the apex body of the sugar millers"*. The millers are not represented and they are a major stakeholder. Further, the Bill removes the sugar directorate from AFA and places the Sugar Board under the CS Agriculture. This negates the position of AFA on the Board.

Committee's Observation/Recommendation
The Committee observed that millers were not represented in the Institute's board of directors. Their proposal was therefore adopted by the Committee.

Clause 29

101. Amend clause 29 by deleting paragraph (1) in its entirety. This is because the work of inspectors is a replication of other agencies already set in place in the sugar industry, that's, KRA, KEBS, Sugar Directorate. In addition, the sugar industry is already overregulated with more than 40 licenses. The Sugar Board ensures that the millers/users comply with the licenses before releasing the annual licenses.

Committee's Observation/Recommendation
The Committee observed that crop inspectors have the specific purpose of ensuring that the agronomic requirements of sugar crops are met. This role cannot be performed by KRA or KEBS. Their proposal was therefore not adopted by the Committee.

Clause 34

102. Amend sub-clause 34 (1) to read as follows, *"the cabinet secretary shall, in consultation with the Board, by order in the gazette, impose a levy on domestic sugar and a ten per centum of CIF value on imported sugar excluding industrial sugar to be known as Sugar Development Levy"*. This is because Kenya lacks capacity to produce industrial sugar which necessitates the need to import it from countries

outside the East Africa Community (EAC). The proposal to levy 10% Sugar Development Levy (SDL) will increase the cost of doing business for manufactures in Kenya.

Committee's Observation/Recommendation
The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

103. Amend sub-clause 34 (7) (a) to read as follows: *"Twenty per centum shall be applied by the Board for income or price stabilization and cane development for growers."* This will ensure that the funds are well provided for all programmes associated with cane development. This will increase sugarcane yields and will generate more income for farmers by applying the right inputs and correct agronomic practices.

Committee's Observation/Recommendation
The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

104. Amend sub-clause 34 (7) (c) by: (i) deleting the words *"Twenty per centum"* and substituting therefore the words *"Fifteen per centum"*; and (ii) by clarifying that the funds will be channelled to the Sugar Research Institute specifically. The amounts involved are huge and reallocating five per centum from this item to the development of the sugarcane growers will bring greater gains to the industry and will not adversely affect the Board. The proposal to channel the funds to the Sugar Research Institute will help underline that the funds are specific for sugar research.

Committee's Observation/Recommendation
The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 50

105. Delete the clause in its entirety because the Board should not be allocated this duty as the work will be a replication of other agencies. KEBS and NEMA already do most of the tasks contemplated in this clause. They should therefore remain the sole national agencies that carry out this task.

Committee's Observation/Recommendation
One of the functions of the Board is to enforce standards. This can only be done through physical inspection of the premises. Their proposal was therefore not adopted by the Committee.

Clause 51

106. Amend sub-clause 51(2) (b) to read as follows: *"importers report to the Board on their imports, sales and stock per consignment, before renewal of their sugar import licenses."* Requirement of reporting on a daily basis is impractical and would result into increased cost of doing business. An importer of sugar is required to get a pre-import approval it would therefore be reasonable to file returns per consignment for the quantity approved after the sugar has been utilized. Such returns should be in a prescribed form requiring information on the imports, sales and stock.

Committee's Observation/Recommendation

The Committee recommended that the importers will report as the Board will determine. Their proposal was therefore not adopted.

Clause 54

107. Delete the clause in its entirety. This should not be admissible in the privately-owned mills where the growers are not investment capital contributors. Further, this will discourage private investment in the sugar mills.

Committee's Observation/Recommendation

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Their proposal was therefore adopted by the Committee.

Clause 55

108. Delete the clause in its entirety. This clause will not be applicable and may lead to legal tussles once implemented. It will also discourage private investments.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. The Committee adopted KAM's proposal.

First Schedule

109. Amend by deleting the word *"counties"* and replacing with the word *"regions"* and delineate as follows: *"(i) Central Region - Kericho, Kisumu & Nandi; (ii) Upper Western Region - Bungoma, Kakamega, Trans-Nzoia and Uasin Gishu; (iii) Lower Western Region - Busia, Mumias & Siaya; (iv) Southern Region - Homabay, Kisii, Migori & Narok; and (v) Coastal Region - Kwale, Lamu & Tana River"*. This proposal will leave the rift region orphaned with no operational sugar mill. This is tantamount to economic suicide and should not be allowed to be established in law.

Committee's Observation/Recommendation

The Committee observed that the First schedule has provided for election of representatives to the office of member to the Board. Further, the Committee observed that there is need to provide zoning of catchment areas in order to curb irregularities experienced in the catchment areas such as cane poaching, cane agreements not being adhered to. The Committee agreed with the proposal to zoning.

Third Schedule

110. Amend Paragraph (2) of the Third Schedule by deleting the words *"sugar lobby group"* and substituting therefore with the words *"Sugarcane Growers Apex Body"*. This is because lobby groups do not have the objectivity to steer the sugarcane growers' issues in a joint and clear perspective as compared to an apex body.

111. Amend Paragraph (5) (a) by deleting the words *"harvest"* and *"transport"*. The two are the sole responsibility of the grower. The miller can only take the sole responsibility of harvesting and transporting his own nucleus sugarcane. Entrenching this in the Act will result is an untenable situation on the ground.

112.Amend Paragraph (5) (g) by deleting word *"mobile"* appearing immediately after the word *"that"*. This is because weighbridges are not mobile.

113.Amend the Third Schedule by deleting paragraph (2) (d) in its entirety. The amendment will ensure that farmers have a structured way to front their representative without undue influence.

114.Amend sub-paragraph (7) (4) by inserting the following new paragraph (d) *"the peculiarities of each region"*. This proposal is premised on the fact that the central region has different soils and climate from all the other regions rendering its yield much lower than the rest.

115.Amend sub-paragraph 7 (6) by deleting the words *"thirty-six months"* appearing immediately after the word *"every"* and substituting therefore with the words *"one-month"*. The one month will provide a realistic and sufficient time for the Committee to regularly review the prices as per the market forces demand. This will in turn be a win-win situation for the farmers and the millers to benefit from the running price for the month.

116.Delete the entire Part 4 because there are no longer any out-grower institutions on the ground. The current regulations deal with relationships between the miller and the sugarcane grower directly. There is no longer any out-grower institution on the ground. The current regulation deal with relationships between the miller and the sugarcane growers directly. Furthermore, these are issues that can be handled under Sugar Regulations and not in the Act.

Committee's Observation/Recommendation

The Third Schedule to the Bill was deleted in its entirety. The Committee observed that the provisions can be carried in regulations.

4.3 COMMODITIES FUND

In a meeting with the Committee held on Friday, 24th March 2023, Ms. Nancy Cheruiyot, Managing Trustee and Chief Executive Officer, Commodities Fund proposed the following amendments to the Bill:

Clause 34

117.Delete clause 34 in its entirety because the clause seeks to replicate the mandate of Commodities Fund. This will be detrimental to Commodities Fund and cause confusion in the industry. The purposed sugar Board should only concentrate on regulation of the sector and leave the matter of financing-to-financing institutions in place. The sugar development levy should be collected but administration of the lending part left to the Commodities Fund. The issue of infrastructure development should not be left to the Board as this will lead to conflict with the county governments and national government as well. It can also lead to abuse in allocation as the board does not have the capacity to assess the same. The apportionment of the levy should not be left to the board as well but instead the Cabinet Secretary should be the one to determine the apportionment based on the budgetary needs of the benefitting institutions.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the Commodities Fund. Within the Commodities Fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was adopted

Clause 35

118. Delete clause 35 in its entirety because establishing a Sugar Development Fund is replication to what the Commodities Fund is doing. Within the Commodities Fund, is a Sugar Development Fund, which does exactly what this Fund is proposing to do. In the past, the defunct Kenya Sugar Board failed to manage the Sugar Development Fund effectively and efficiently and this led to the current bad loan book of over KSh. 20 billion.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the commodities fund. Within the Commodities fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was adopted.

4.4 KENYA SUGAR MANUFACTURERS ASSOCIATION

In a meeting with the Committee held on Friday, 24th March 2023, Ms. Joyce Opondo, Secretary, KESMA proposed the following amendments to the Sugar Bill, 2022 on behalf of the Association:

119. The Association proposed formation of the Kenya National Federation of Sugarcane Farmers as the apex body. This is because the body is recognized by the Kenya Sugar Board and encompasses all other sugar lobby groups. It also makes it easier for the Government to deal with one entity.

Committee's Observation/Recommendation

The Committee observed that the sugarcane growers' apex body was already defined in the Bill and their proposal will be a repetition. The Committee did not adopt their proposal.

Clause 6

120. Amend sub-clause 6(1) (a) to define "*chairperson*" as a person appointed by the President through a gazette notice. This is in accordance with the Mwongozo code.

Committee's Observation/Recommendation

The Committee observed that this was the standard practice and adopted their proposal.

121. Amend sub-clause 6 (1) (b) by including three (3) farmer representatives. This is to promote equity in the allocation of representation of each stakeholder.

Committee's Observation/Recommendation

The number of farmer representatives is as per the number of catchment areas. This is to ensure that each catchment area is represented in the Board. The Committee did not adopt their proposal.

122. Amend clause 6 (1) (c) by including three (3) sugar mill representatives namely: PS (Ministry of Agriculture), PS (Ministry of Trade and Industry) and County Government. This is to adhere to the Mwongozo Code and to provide equity in representation among the main players in the industry.

Committee's Observation/Recommendation

The Committee recommended that millers be represented by two persons, one from the public mills and the other from the private mills. Additionally, there is no need to have the PS Ministry of Trade and Industry in the Board. Their proposals were therefore not adopted by the Committee.

Clause 18

123.Amend sub-clause 18 (1) by giving the mandate of issuing licenses to county governments. This is because Sugar Catchment Regions have been adopted and therefore, regional counties will be jointly mandated to issue the licenses.

Committee's Observation/Recommendation

Licensing of the sugar and jaggery mills is a role of the national government and shall be exercised through the Board. County governments will issue trade licenses to the milling companies. Their proposal was therefore not adopted.

Clause 20

124.Amend the clause to include *"sugar and sugarcane imports."* The provision should also deal with sugarcane imports.

Committee's Observation/Recommendation

The Committee rejected the proposal.

Clause 25

125.Amend sub-clause (b) as follows: *"three farmers' representatives; one person nominated by the COG; and one person who has knowledge and experience in matters relating to sugar technology and value addition nominated by KESMA."* Further, the representatives mentioned above be appointed by the Cabinet Secretary by notice in the Gazette.

Committee's Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

126.Amend sub-clause 25 (e) by deleting the words *"Kenya Agricultural Livestock and Research Organization"* and replacing with the words *"Kenya Sugar Research Institute."* This is because the position should be left for the miller representative and representation of KALRO in the Sugar Research Board is unnecessary.

Committee's Observation/Recommendation

The Committee observed that KALRO is the body mandated to carry out agricultural research in the country and it is important for the Organisation to be represented in the Institute's Board of Directors.

The Committee recommended representation of the millers in the Institute's Board of Directors.

Clauses 29-32

127.The terms of reference of the crop inspectors should be corrected to reflect the industry as sugar production is both agricultural and industrial. Their TORs should be directed towards sugarcane production and not sugar milling.

Committee's Observation/Recommendation

The Board is mandated to enforce and monitor compliance with standards along the sugar value chains which include the milling companies. This can only be done through inspection of the premises. Their proposal was therefore not adopted by the Committee.

Clause 34

128. Amend sub-clause 34 (1) to read as follows, *"EAC-5%, COMESA- 15%, outside COMESA 25% and Locally produced max 2%"*. This is because imports negatively impact the prices of domestically produced sugar therefore levying them more will encourage the growth of local sugarcane growers.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

Clause 54

129. Amend sub-clause 54 (1) (a) by inserting the words *"shares held by the government in"* immediately after the words *"shareholding of all"*.

130. Amend sub-clause 54 (1) (b) by deleting the expression *"51%"* appearing at the beginning of the paragraph.

Committee's Observation/Recommendation

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Their proposals were therefore adopted by the Committee.

Clause 55

131. Delete clause 55 in its entirely because privately owned sugar mills should not be interfered with by the government and that the government cannot impose directors on them.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. The Committee adopted their proposal.

First Schedule

132. Amend the sugar catchment areas as follows: *"Central Region: Kericho, Nandi, Kisumu; Upper Western region: Bungoma, Kakamega, Trans Nzoia, Uasin Gishu; Lower Western Region: Busia, Mumias, Siaya; Southern Region: Homabay, Kisii, Migori and Narok; and Coastal Region: Kwale, Lamu, Tana River"*. This was proposed by Sugar Stakeholders Task force and reflects the views of the public through public participation that was done by the task force.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Third Schedule

133. Amend Paragraph 2 by deleting the words *"Sugar Lobby Group"* and replacing it with *"Sugarcane Growers Apex Body."*

134. Delete the Third Schedule because the provisions in the Schedule should be left for the Sugar Regulations which will guide the Sugar Act once it is enacted.

Part 2

135. Amend Part 2 by deleting sub-paragraph 5(a), because the provision is irrelevant as farmers have the option of harvesting and transporting their own sugarcane to the sugar mill.

136. Amend Part 2 by deleting sub-paragraph 5 (g) because it provides for mobile weighbridges to be availed to the growers while there are no mobile weighbridges.

Part 3

137. Amend by deleting Clause 7 (2) (d) because there is no need for lobby groups as there is already representation from the key stakeholders in the sector.

138. Insert the following sub-paragraph immediately after sub-paragraph 4(c) *"(d) Climate, soil topology and other natural features of each region"*. This because factories in the Central Region paying the same price as in other zone stand to make losses as the region suffers the disadvantages of a rendement of less than 9.

139. The duration for reviewing sugarcane prices by the sugarcane pricing Committee be amended to three months. This is because three months' period is reasonable for the determination of the prices by the committee.

Parts 4 & 5

140. Delete parts 4 and 5 in their entirety. These provisions should be contained in the Sugar Crop Regulations.

Part 6

141. Amend paragraph 13(1) by deleting the words *"Kenya Sugar Authority"* and substituting with the words *"Kenya Sugar Board"* because the Kenya Sugar Authority has no place in the new Sugar Bill, 2022.

Committee's Observation/Recommendation

The Third Schedule to the Bill was deleted in its entirety. The Committee observed that the provisions can be carried in regulations.

4.5 THE SUGAR CAMPAIGN FOR CHANGE

In a meeting with the Committee held on Friday, 24th March 2023, Mr. Michael Aruru, proposed the following amendments to the Bill on behalf of Sugar Campaign for Change:

142. Amend the definition of *"Sugar Catchment Area"* by deleting the word *"election"* and replacing it with the word *"nomination."*

Committee's Observation/Recommendation

The Committee observed that the sugar catchment area is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Clause 6

143. Amend the clause to include five representatives from each sugar catchment area. This because the election of the farmers' board of directors was compromised by political processes (politicians and community elites).

Committee's Observation/Recommendation

The Committee observed that nomination may be biased and election was the fairest way of choosing the representatives. Their proposal was therefore not adopted.

Clause 9

144. Amend the clause by inserting a new paragraph which provides that the Board should impose a levy upon growers at the rate of ten shillings per ton of cane delivered. The funds collected will be used to support the farmers' apex body in undertaking the following roles: Represent growers in sugarcane pricing committee; Represent farmers at the weighbridges; Organize farmers into block farming system; Develop cane development plans in conjunction with the millers; Develop cane harvesting and transport plan in conjunction with the millers; Organize for bulk farm inputs and services; and Facilitate development and implementation of Sugar industry agreements between the growers and millers. The deduction should be made by the millers and collected by the Board on behalf of the growers' apex body.

Committee's Observation/Recommendation

The Committee observed that the sugarcane apex body should come up with ways of raising funds to cater for its expenses. Their proposal was therefore not adopted.

Clause 23

145. Insert a new paragraph that provides for freedom of farmers to register with other out-grower institutions to access economies of scale. The registration has several benefits such as: Providing a framework to the government for the identification of a qualified apex body to collaborate with; Creation of economies of scale leading to improved sustainability; Improving logistics such as harvesting and transport; Promotion of good cane husbandry, soil testing, applying recommendable inputs; Bulk buying hence lowering transaction costs; Providing access to best technology available in order to improve yield and quality; and Providing value adding and agro-processing facilities.

Committee's Observation/Recommendation

The Committee observed that this can be proposed to farmers through the apex body and therefore no need to include it in the Bill.

Clause 25

146. Insert a new paragraph that provides for the powers to appoint the growers under the First Schedule to the growers' apex body. This is because there is no register for farmers and lack of independent electoral body to carry out elections.

Committee's Observation/Recommendation

The Committee observed that nomination may be biased and election was the fairest was of choosing the representatives. Their proposal was therefore not adopted.

Clause 34

147. Amend sub-clause 34 (7) as follows: "(a) *Forty eight percent to be applied by the board for income or price stabilization for sugar grower; (b) Twenty four percent be remitted directly to the institute; (c) One percent be set aside by the board for factory rehabilitation and maintenances; (d) Twenty four percent for the operations of the Board and Board of Trustees; and (e) Four percent be applied for infrastructure for the sugar subsector on a pro rata basis*". The apportionment above is informed by the Sugar Industry Stakeholders Taskforce Report of 2019.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 35

148. Insert new sub-clause 35 (3) to provide for the management of the Fund by a Board of Trustees consisting of: *"(a) PS, National Treasury or a representative nominated by him in writing; (b) PS responsible for the Ministry in charge of matters relating to sugar or his representative nominated by him in writing; (c) The Chief Executive Office of the Board; (d) 2 Members representing sugar cane growers' apex body; (e) 1 member representing millers' apex body; (f) 2 members appointed by the Minister on the basis of their professional and managerial capacity; and (g) The managing trustee as an ex officio member and secretary to the Board of trustees"*.

149. Insert the following new sub-clause 35 (5), *"The Board of Trustees Chairperson be elected by the members from amongst themselves"*.

150. Insert the following new sub-clause 35(6), *"Every appointment under paragraph (d) shall be for a term of three years renewable once and shall be by name and by notice in the Gazette"*.

151. Insert the following new sub-clause 35(7), *"A person nominated as a Managing Director shall be a holder of degree from a University recognized in Kenya and with at least Five (5) years' experience in Financial management"*.

152. Insert the following new sub-clause 35(8), *"The Managing Trustee shall be appointed by the Minister through a competitive process and shall hold office for a period of three years (renewable)"*.

The above amendments will ensure proper management of the funds of the Board by having qualified members in the Board of Trustees.

Committee's Observation/Recommendation

The Committee observed that putting in place a Board of Trustees to manage the SDL will come with additional costs yet there are institutions in place that can carry out the function. Their proposal was therefore not adopted by the Committee.

Clause 37

153. Amend the sub-clause 27 (1) by deleting the word *"Board"* and replacing it with the words *"Sugar import and export committee"*. The said committee shall have the following members: *"(a) Chairman of Kenya Sugar Board; (b) PS in the Ministry responsible for matters relating to sugar or his representative nominated by him in writing; (c) The PS in the Ministry for Trade and Industry or his representative nominated by him in writing; (d) Two (2) representatives nominated by Sugarcane growers in writing; and (d) Representatives nominated by Millers' apex body in writing"*.

Committee's Observation/Recommendation

The Committee observed that this proposal is not necessary because the role can be executed by the Board.

Clause 54

154. Amend the clause by inserting paragraph (c) that read as follows: *"51% grower shares warehoused in an out-growers mutual fund."* This is because equity reserved for farmers will most likely be sold as soon as shares climb when trading opens after the Initial Public Offer (IPO).

Committee's Observation/Recommendation

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Clause 54 was therefore deleted.

Clause 55

155. Amend sub-clause 55 (2) by deleting the words *"the milling company shall consider in the first instance"* and replacing it with the following words *"the milling company shall write to the apex body for nomination of one of.."* The amendment seeks to avoid the millers' appointment of their sympathizers.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. Clause 55 was therefore deleted.

Third Schedule

156. Amend Part 3 by deleting the words *"sugarcane fires"* to read as follows and substituting with the words *"cane pricing"*.

157. Amend Part 3 by deleting paragraph 6 because the millers may use the provision to frustrate and exploit the farmers through delayed payment in order to deter them from torching their cane to influence harvesting.

158. Amend Part 3 by deleting paragraph 7 (2) (d) and substituting it as follows: *"three persons nominated by the growers' apex body from sugarcane catchment region."* This is because growers' committee members should be nominated by the apex body in a bid to avoid millers providing unfair preferential treatment to their friends at the committee.

159. Amend Part 3 by inserting the following new paragraph 7 (4) (d): *"Fair and Remunerative Price (FRP) which is a floor price which the farmers would receive even when sugar prices fall to a level which leads to prices lower than FRP"*.

160. Amend Part 3 by inserting the following new paragraph 7 (4) (e): *"Fixed division of proceeds ratio 67% and 33% to millers"*. This is because price fluctuations have led to inadequate cane production leading to millers operating below capacity. Therefore, price stabilization will lead to increased production.

161. Amend Part 3 by deleting the words *"thirty-six months"* in paragraph 7 (6) and providing that cane prices set by the committee be reviewed regularly as directed by prevailing market price. This is because the provision is unfair to the farmers and it provides a justification to the millers to control the sugarcane prices contrary to free market economy.

Committee's Observation/Recommendation
The Third Schedule to the Bill was deleted in its entirety. The Committee observed that the provisions can be carried in regulations.

4.6 THE COUNCIL OF GOVERNORS

In a meeting with the Committee held on Friday, 24th March 2023, H.E. Governor Paul Otuoma proposed the following amendments to the Bill on behalf of CoG:

Clause 2

162. Amend by deleting definitions of the word *"license"* and replacing it with the definition of the word *"Regional Zones."* This is because agriculture and trade development is a devolved function under the Fourth Schedule to the Constitution.

Committee's Observation/Recommendation
Licensing of the milling companies is a function of the regulator i.e. the Board. County governments will issue business licenses to the milling companies.

Clause 4

163. Amend sub-clause 4(2) (c) to read as follows: "*Establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate the flow of research findings to the interested parties*".

Committee's Observation/Recommendation
Their proposal was adopted by the Committee.

164. Amend sub-clause 4(2) (i) to read as follows: "*In collaboration with the county governments, facilitate an equitable mechanism for the pricing of sugarcane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines*".

Committee's Observation/Recommendation
The Committee observed that it is important for county governments to be involved in sugarcane pricing and be involved in the disposal of by-products because it is a function of county governments. Their proposal was adopted by the Committee.

165. Amend sub-clause 4(2) (p) to read as follows: "*In consultation with the county governments, formulate a national strategic plan for the sugar subsector at least once every five years*".

Committee's Observation/Recommendation
It is important for county governments to be involved in the formulation of the strategic plan because they are key stakeholders. Their proposal was adopted by the Committee.

166. Amend sub-clause 4(2) (q) to read as follows: "*In consultation with the county governments, formulate guidelines on an efficient and economical transportation of sugar*".

Committee's Observation/Recommendation
County governments are key stakeholders in the formulation of the transportation guidelines. Their proposal was adopted by the Committee.

167. Amend sub-clause 4(2) by inserting the following new paragraph, "*Provide technical assistance and capacity building of the county governments in regulation of the sugar industry*". The amendments proposed in the clause align it to Part 1, Sections 1, 9, 29 and 32 of the Fourth Schedule to the Constitution that outlines the mandate of the National Government as well as the county governments in the agriculture sector.

Committee's Observation/Recommendation

Regulation of the sugar industry is a function of KSB and therefore no need to train counties on regulation of the industry. Their proposal was not adopted by the Committee.

Clause 5

168. Delete the clause in its entirety and substitute it as follows: "*The County Governments through the County Executive Committee Member shall: (a) Issue sugarcane nursery certificates; (b) License sugar mills and warehouses in the country; (c) Formulate and implement the county sugar sub-sector strategic plan; (d) Offer and coordinate the provision of advisory and extension services to growers, out-grower institutions and millers in the country; (e) Inspect sugarcane nurseries, mills, jaggeries and warehouses located within their respective counties; (f) Enforce county and national legislation on sugar industry code of practice and other industry standards; (g) In collaboration with the Board and law enforcement agencies, enforce of regulations within the county; (h) Enforce policies and guidelines on corporate governance in growers' institutions and millers; (i) Monitor and report incidences of pests and disease outbreaks and takin appropriate action in collaboration with the Board and other relevant Government agencies; (j) Establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry; and (k) Develop and regulate sugarcane growers' institutions in accordance to this act and any other relevant laws*". Sections 1 and 7, Part 2 of the Fourth Schedule to the Constitution provide that agriculture and trade development and regulation of agriculture and trade excluding international trade are functions fully devolved to County Governments. Therefore, Sugar mills licensing cannot be done by the Board as this is trade development and therefore falls under the mandate of county governments.

Committee's Observation/Recommendation

The Committee observed that most of the proposals by CoG on the clause are functions of KSB. Their proposals were therefore not adopted by the Committee.

Clause 18

169. Amend sub-clause 18 (1) to read as follows: "*A person shall not operate a sugar mill, a jaggery mill or a sugar warehouse unless he or she is a holder of a valid license issued by the relevant county government for that purpose*". The function of licensing millers belongs to the County Government and it is their mandate to license the millers within their jurisdiction. The Board in this case is only mandated to issue export and import licenses which is under the purview of the National Government.

Committee's Observation/Recommendation

It is the responsibility of KSB to license sugar and jaggery mills and not county governments. Their proposal was therefore not adopted.

Clause 19

170. Amend *Sub-clause 19 (1)* to read as follows: "*A person shall apply to the County the County Executive Committee member for a license to operate a sugar mill, warehouse or a jaggery mill in the prescribed form and accompanied by the prescribed fee*".

171. Amend sub-clause 19 (2) to read as follows: "*The County Executive Committee member shall not issue a license under this Act unless-*"

172. Amend sub-clause 19 (2) by inserting the following new paragraph (c) "*It is satisfied that the applicant has paid the prescribed fee and obtained a certificate of registration and compliance from the Board*".

Committee's Observation/Recommendation
It is the responsibility of KSB to license sugar and jaggery mills and not county governments. Their proposal was therefore not adopted.

Clause 25

173. Amend the clause by inserting the following new paragraph: "*One person with knowledge and experience in the agricultural sector nominated by the Council of County Governors appointed by the Cabinet Secretary*". This is because county governments are integral in the implementation of research proposals in the sector and therefore should have representation in the Board.

Committee's Observation/Recommendation
The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for Counties to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 29

174. Amend sub-clause 29(1) to read as follows: "*The Board and the County Executive Committee Member may appoint qualified persons to be crop inspectors for the purposes of this Act*". This is for effective implementation of the Act.

175. Amend sub-clause 29(2) to read as follows: "*For the purpose of sub-section (1), the Board may in consultation with the County Executive Committee Members, by regulations prescribe the qualifications for appointment as a crop inspector*". This is for effective implementation of the Act, it is necessary to provide appointment of crop inspectors at the county level.

Committee's Observation/Recommendation
County governments have a representative in KSB who will take care of their interests in the appointments.

Clause 34

176. Amend sub-clause 34 (7)(d) to read as follows: "*Forty-five per centum shall be remitted directly to the sugar growing counties on a pro rata basis to be applied for infrastructure development in the sugar sub-sector*". This is because the Fourth Schedule to the Constitution provides that infrastructure development is within the mandate of county governments and therefore the fund should be apportioned to them.

Committee's Observation/Recommendation
The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 57

177. Amend sub-clause 57 (1) to read as follows: "*The Cabinet Secretary, in consultation with the Board and county governments may make regulations generally for the better carrying into effect of the provisions of this Act*". The process of making Regulations should be made consultative hence the Board and the County Governments need to be involved.

Committee's Observation/Recommendation

Counties are key stakeholders in the sugar industry and should therefore be involved in the process of making regulations. Their proposal was adopted by the Committee.

4.7 HON. EMMANUEL WANGWE, MP/SPONSOR OF THE BILL

178. In a meeting with the Committee held on Friday, 24th March 2023, Hon. Wangwe informed the Committee that the Bill seeks to address the following challenges that sugarcane farmers face:

i. Non-payment of farmers by public millers;
ii. Increased cost of sugar production as a result of obsolete technology;
iii. Declining acreage of land;
iv. Lack of markets for sugar;
v. Failure to control import and export of sugar and unfavourable market competition due to cheaper sugar imports;
vi. Poor management of sugar companies;
vii. Lack of research and cane development initiatives; and
viii. Poor maintenance of state-owned milling factories.

4.8 WEST KENYA SUGAR COMPANY LIMITED/SUKARI SUGAR COMPANY

In a meeting with the Committee held on Friday, 24th March 2023, Mr. Jaswant Singh, Chairperson, West Kenya and Sukari Sugar companies proposed the following amendments to the Bill:

Clause 3

179. Introduce a new clause 3 to provide for the Objectives of the Bill as follows: "*The objective of the act is to accelerate the growth and development of the sugar subsector, enhance productivity and incomes of farmers, improve investment climate and efficiency of sugar sub-sector through promotion of the production, processing, marketing and distribution of sugarcane in suitable areas of the country and in particular to –(a) Circumvent unnecessary regulatory bureaucracy in the sugar subsector; (b) Reduce unnecessary levies, taxes or other barriers to free movement of sugar products and provide for rationalized taxation system; (c) Reduce unnecessary regulation or over-regulation of the sugar-subsector; (d) Reduce duplication and overlap of functions among institutions involved in the regulation of sugar sub-sector; (e) Promote competitiveness in the sugar sub-sector; and (f) Attract and promote private investment in the sugar subsector*". This is to elaborate the object and terms of the Act and provide standards of operation for the sugar sub-sector.

Committee's Observation/Recommendation

The Committee observed that the explanation provided in the Long Title of the Bill is sufficient and therefore did not adopt their proposal.

Clause 4

180. Introduce a new clause 4 to provide for the roles of the National and county governments as follows: "*(1) Each County Government shall within its area of jurisdiction be responsible, for agricultural*

matters concerning sugarcane in accordance with Part 2 of the fourth Schedule of the Constitution; (2) The National government shall, for purposes of ensuring uniformity and national standards in the sugar sub-sector, through its legislation and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet secretary on the advice of the Board under this Act or any other written Law. (3) Any Action to be done by the government shall be deemed to have been done if done by an officer of the county government authorized by that Government in that behalf". This is to ensure devolution of Agriculture is recognized as per the Fourth Schedule to the Constitution.

Committee's Observation/Recommendation

This is already provided in the Constitution and other acts hence no need to restate it in the Bill. The proposal was therefore not adopted.

181. Amend sub-clause 4(1) to include the following: *"(da) advise the national government and the county governments on agricultural levies for purposes of planning, enhancing harmony and equity in the sugar sub-sector; (db) carry out such other functions as may be assigned to it by this Act, the Crops Act, Agriculture and Food Authority Act and any written law while respecting the roles of the two levels of government; and (f) administer and manage the Sugar Industry Contributory Development Fund established under this Act".* This is to provide details on the expanded mandate of the Board.

Committee's Observation/Recommendation

The proposal to insert the new paragraph (da) was adopted by the Committee while the one to insert paragraph (db) was rejected because it is provided for under paragraph 4(2) (u) of the Bill.

Clause 5

182. Amend sub-clause 5(1) by deleting paragraph (c) and substituting therefor with the following: *"(c) Four Representatives of the millers elected by the millers and appointed by the Cabinet Secretary; Provided that any miller commanding at least 20 per cent of the domestic sugar production shall be represented on the Board as of right".* The amendment is based on the proposal that the sugar millers' representation be increased based on the fact that they are the key players in the sub-sector and have invested a lot of money in their mills and operations.

Committee's Observations/Recommendation

The proposal is discriminatory to millers who do not command 20% of the domestic sugar production and was therefore not adopted by the Committee.

Clauses 19, 20, 21 and 22

183. Delete the clauses and replace with: *"**19. Registration of Sugarcane dealers**: (1) every dealer in sugarcane shall register with the Board; (2) a person shall Not deal in sugarcane unless the person is registered in accordance with this Act. (3) The Cabinet Secretary shall, in consultation with the relevant County Executive committee member responsible for Agriculture, prescribe regulations providing for the procedure for legislation of sugar dealers and the regulations shall also set out the appeal process in case of refusal or denial of registration. (4) A person who contravenes subsection (2) commits an offence and on conviction be liable to imprisonment for a term not exceed three years or to a fine not exceeding Five minutes or to both".* This is done in a bid to give the process constitutional underpinning by giving certain roles to the County Governments.

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

184."20. **Taxation of sugarcane:** *(1) pursuant to Article 209 of the Constitution, only the National Government may impose, in relation to sugarcane – (a) income tax; (b) Value added Tax; (c) custom duties and other duties on import of agriculture and other aquatic products; and (d) excise duty; (2) County governments may, pursuant to the Fourth Schedule of the Constitution, impose fees for – (a) development of sugarcane within the county; (b) development and regulation of sugarcane markets within the County; (c) Issuance of Trade Licenses to any persons trading in sugar within the County; and (d) Issuance of Licenses for Cooperative Societies dealing with sugarcane within the County; (3) the fees imposed by a County Government under subsection (2) shall not in any way prejudice national economic policies, economic activities across the County boundaries or national mobility of goods, services, capital or labour; and (4) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, 2012 (No. 2 of 2012), put in place mechanisms to avoid double taxation of sugarcane and its products by the two levels of Governments".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

185."21. **Manufacturing Licence:** (1) *A person shall not manufacture or process sugarcane product for sale except under and in accordance with a license issued under this Act;* (2) *An application for a license under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee;* (3) *The Board may, after consultation with the County Executive – (a) Issue a manufacturing License, in accordance with this Act;* (b) *Refuse to issue the License on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;* and (c) *cancel, vary or suspend any license if in the findings of the Board, the license is found to have contravened the regulations made under this Act for the operations of manufacturing or processing entities; and (4) A manufacturing license issued under this section shall, in addition to authorizing the holder to carry on the business set out in the Subsection (1), also authorize the holder to carry out the business of packing and blending sugarcane".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

186."22. **Illegal Manufacture, possession, etc:** *(1) A person who- (a) Manufactures sugarcane for sale in contravention of this Act; (b) Buys, sells, offers for sale, transports or has possession of sugarcane to which the person's knowledge or belief – (i) has been grown, manufactured or processed otherwise than in accordance with this Act; (ii) is from a non-registered grower or dealer of sugarcane, commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment to a term not exceeding five years, or both; and (2) If a person is in possession or has control of sugarcane for which the person is unable to account to the satisfaction of a person authorized under this Act, such scheduled crop shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

187."23. **Issue of Licenses:** *(1) The Board shall issue licenses to applicants subject to such lawful conditions as the authority may determine; (2) every license shall specify the premises upon which the business specified in the license may be carried on (3) Licences issued under this Act shall remain in force until the thirtieth of June next following the date of issue, unless earlier cancelled; (4) There shall be payable for the issue of licenses under this Act such fees as the licensing authority, after consultation with the Cabinet Secretary or County Executive as the case may be, prescribe; (5) The total fees charged under Subsection (4) shall depend* *on the turnover of the dealer and shall not overburden small scale dealers and the cumulative total of all levies and fees payable shall in any event not exceed ten per cent of the gate value of the agricultural or aquatic product; (6) The Licensing authority shall, at least thirty days before granting a license under this Act, give notice of the proposed grant in the gazette and in such other manner as the authority may determine; (7) The notice referred to in Subsection (6) shall – (a) Specify the name or other particulars of the person or class of persons to whom the license is to be granted; (b) State the purpose for the proposed licence and indicate the date such license is proposed to be issued to the successful applicant; and (c) Invite objections to the proposed grant of license and direct that such objections be lodged with the Authority within fourteen days next following the date of the notice; (8) The licensing Authority may after considering objections, if any , made under this section, grant the license applied for, subject to such terms and conditions as may be specified therein; (9) The issuance of a license to an applicant under this Act shall not be withheld without reasonable cause (10) A licence issued under this Act shall not be transferrable".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

188.“**24. Application for Renewal of a Licence:** *An application for the renewal of a licence under this Act shall be made to the Board not later that the First day of the month of June in which the current licence is due to expire but, notwithstanding the foregoing, a late application may be made upon the payment of a late application fee as may be prescribed by the Board".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

189.“**25. Conditions of a Licence:** *(1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the license and to any conditions which may be prescribed; (2) The Board may require that any class of licenses issued to a dealer will be subject to the condition that the dealer engages in actual growing for any given crop; (3) The Board may at any time during the validity of a license – (a) Vary the conditions of the license; or (b) Impose conditions or further conditions on the license".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

190.“**26. Revocation or Alteration of a license:** *The Board may revoke, alter or suspend a licence issued under this Act if in its opinion: (a) An offence under this Act, or in respect of the licensed activity under any other written law has been committed by the license holder or any employee of the license holder; or (b) A condition of the license has been contravened or not complied with".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

191.“**27. Surrender of licence:** *(1) The holder of a license which is revoked shall immediately surrender it to the Board; (2) A license holder may at any time surrender the licence to the Board and the licence shall cease to have effect forthwith".*

Committee's Observation/Recommendation
These details can best be provided in regulations. The Committee did not adopt their proposal.

192."28. **Appeals:** *(1) An applicant for or a holder of a license who is aggrieved by a decision of the licensing Authority on or in respect of - (a) the grant, refusal, renewal, variation or revocation; or (b) the conditions imposed on the grant, renewal or variation, of a licence, may appeal to the Cabinet Secretary; and (2) An appeal under this Section shall be lodged within thirty days from the date on which the appellant first received notice of the decision and determined within 60 days of lodging".*

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

Clause 38

193.Amend by including the following new sub-clauses: "(1) *For the purpose of ensuring effective participation of farmers in the governance of the sugar sub-sector in Kenya, there shall be close consultations with all registered farmer organizations in the development of policies or regulations and before the making of any major decision that has effect on the sugar sub-sector; and (2) The Cabinet Secretary shall make rules* – (a) *To ensure that any agreements including any agreement with regards to contributions by farmers to their organizations, entered into between the farmers and the farmers' organizations to which such farmers belong shall be respected by any third parties; and* (b) *To provide the procedures for internal democracy in the sugar farmers' organization".*

Committee's Observation/Recommendation

These details can best be provided in regulations. The Committee did not adopt their proposal.

Clause 39

194.Amend by inserting the following paragraph "*Subject to regulations made under this Act in relation to registration of sugar growers, any farmer shall have the freedom to grow sugarcane on his or her land and to enter into contact with any sugar dealer or sugar miller for sale of his or her produce".*

Committee's Observation/Recommendation

The Committee observed that clause 39 is a standard provision for all state agencies to submit a report to the Cabinet secretary on the operations of the Board. The proposal was rejected.

Clause 40

195.Amend by inserting the following paragraph *"The National Government, the County Governments, the Board and any other person or authority are hereby prohibited from enacting, making, formulating or implementing any law, regulation, practice or policy to provide for, require or promote the establishment of Geographical Zones for development and procurement of sugarcane from farmers".*

Committee's Observation/Recommendation

Zoning will bring order in the sugar industry. It will eliminate cases of sugarcane poaching which have resulted in losses to the affected millers. This proposal was not adopted by the Committee.

Clause 41

196.Amend by inserting the following paragraph "*The grant of licence to a sugar miller confers upon it the right to access sugarcane from farmers across the country on the principle of freedom of contract in addition to the rights and privileges envisaged in Sections 18-25 of this Act or any other written law".*

Committee's Observation/Recommendation

Zoning will bring order in the sugar industry. It will eliminate cases of sugarcane poaching which have resulted in losses to the affected millers. This proposal was not adopted by the Committee.

Clause 42

197. Amend by inserting the following new paragraph "*Subject to relevant regulations made by the Board, every contributing Sugar farmer, dealer and sugar miller have the right to benefit by application for funds in the Sugar Development contributory Fund for purposes of Cane development and investment in any activity in the value chain in the sugar industry*".

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7). Further the proposed amendment is misplaced. The proposal was rejected

Clause 43

198. Amend by inserting the following paragraph "*In the discharge of its functions under this Act or any other written Law, the Board shall ensure that there are no dominant undertakings in the sugar sub-sector as defined in section 23 of the Competition Act*".

Clause 34

199. Amend by deleting sub-clause 34(1) and replacing it with the following new clause: "*The Cabinet Secretary shall in consultation with the Board, by order in the Gazette, impose a levy on domestic Sugar not exceeding two per centum of the value and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.*

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

200. Amend by deleting sub-clause 34(2) and replacing it with the following: "*The levy shall be charged at such rate as may be described in the order provided that it shall not exceed two per centum of the value of sugar*".

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

201. Amend by deleting sub-clause 34(6) and replacing it with the following: "The sugar levy collected under subsection (2) shall be apportioned as follows: (a) *Seventy-five per centum shall be applied by the Board towards cane development initiatives by cane growers and millers; (b) Ten per centum shall be applied by the Board for income or price stabilization for sugar growers; (c) Five per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board; and (d) Five per centum shall be remitted directly to the Sugar Research Foundation.*

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 35

202. Amend by deleting the words *"which shall be administered by the Board"* in sub-clause 35(1) and substituting therefor with clause 35 A to provide as follows: *"The fund shall be managed by a Board of Trustees to be appointed by the Cabinet Secretary on recommendation of the Board".*

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the Commodities Fund. Within the Commodities Fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

203. Introduce the following new clause 35 B: *"(1) Subject to clause 18(6) above, the Fund shall be used to provide sustainable affordable credit and advances to farmers for all or any of the following purposes – (a) Farm improvement; (b) Farm inputs; (c) Farming operation; (d) Price stabilization; and (e) Any other lawful purpose approved by the Cabinet Secretary; (2) The Cabinet Secretary shall in consultation with the Board shall, from time to time, make rules for the better management of the fund in the best interest of the farmers".* The amendments are proposed to introduce an accountable for the usage of the funds through the establishment of a Board of Trustees to manage the funds.

Committee's Observation/Recommendation

The Committee observed that the proposal seeks to provide for what the sugar development levy is providing for. The Committee has made amendments to clause 34(7) the proposal was rejected.

Clause 54

204. Delete the clause in its entirety because transfer of shares to the cane growers is not reasonable simply because publicly owned sugar mills are owned by all citizens. Upon privatization, the shareholding and directorship of the sugar company should be in accordance with the ownership structure. The clause (Clause 54) purports to oust the Companies Act as the principal law in matters of shareholding and directorship of companies.

Committee's Observations/Recommendations

The Committee observed that sugar mills cannot be compelled to give 51% shareholding to growers. This will discourage investment in the sugar industry. Clause 54 was therefore deleted.

Clause 55

205. Delete the clause in its entirety because the proposal violates the principles of Good Corporate Governance as embodied in the Companies Act and that virtually all sugar milling companies are incorporated under the same. The clause also provides that a legislative order be given by the Parliament to owners of Sugar mill private companies to include a growers' representative in running its affairs. West Sugar Company terms the same as an infringement of privacy contrary to Articles 31 and 40 of the Constitution.

Committee's Observation/Recommendation

It is unfair to force private milling companies to have growers in their board of directors. Clause 55 was therefore deleted.

Clause 7 (Third Schedule)

206.Amend sub-clause 7 (2) by inserting the following new paragraphs: *"(g) One representatives of private sugar millers; (h) One representative of Public sugar Millers; and (i) One person appointed by the Cabinet Secretary who shall not have direct material interest in the sugar industry"*. This is to broaden membership of the Committee (Sugarcane Pricing Committee) and accommodate the stakeholders by having their representative.

207.Amend sub-clause 7 (6) by deleing the word *'Thirty-Six months'* and replacing it with the words *'three months.'* This is because the period (thirty-six months) for early review of the sugarcane pricing is untenable.

Committee Observation/Recommendation

The Committee proposed to delete the Third Schedule because it provides for guidelines to sugar industry agreements.

Clause 30

208.Delete the clause and substitute as follows: *"An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to a cane grower so requesting: (a) enter any land including a nucleus farm, for purposes of inspecting the sugar crop; (b) may require any person found thereon to give such information as the person may require"*. This is because inspection of premises is a function of the Board according to sub-clause 50 (1) and that crop inspectors have no legal basis to inspect factories and other premises of the miller.

Committee's Observation/Recommendation

One of the functions of the Board is to enforce and monitor compliance with standards along the sugar value chains. Factories and other premises of millers are part of the sugar values. This proposal was therefore rejected by the Committee.

Clause 40

209.Amend the clause by deleting sub-clause 40 (3) and replacing it with: *"The Chairperson and members of the Tribunal shall serve on a full-time basis."* This is because the Tribunal is required to determine a dispute within three months from the date the dispute was lodged and it would be unreasonable for it to sit on a part-time basis.

Committee's Observation/Recommendation

Timelines within which disputes are supposed to be determined have been provided in the Bill. The Tribunal will adhere to the timelines regardless of their terms of service.

Clause 57

210.Amend paragraph 57 (2) (h) by deleting the word *'minimum'* because there is no need for a minimum period as this will automatically bring about a maximum period. It should be set at seven to fourteen days.

Committee's Observation/Recommendation

It is important to provide for the minimum time within which farmers are paid. Their proposal was therefore rejected by the Committee.

211.Amend the clause by deleting paragraph 57 (2) (i) because cane harvesting and transportation cannot be regulated by the Board since the two are sole responsibilities of the growers

Committee's Observation/Recommendation

This are important aspects of the sugar industry and it is therefore important to provide regulations on them. Their proposal was not adopted by the Committee.

4.9 THE KENYA NATIONAL ASSOCIATION OF SUGARCANE FARMER ORGANISATION

In a meeting with the Committee held on Friday, 24th March 2023, Hon. Saulo Busolo proposed the following amendments to the Bill on behalf of the Association:

Clause 2

212. Amend by including definition of the word '*agreements*' to mean "*agreements specifying the standard provisions as arrived in specific stakeholder forum in a public participation governing the rights and obligations of growers, millers, out-grower institutions, importers, transporters, research scientists, workers, by-product dealers and traders*". These are stakeholders that must be included.

Committee's Observation/Recommendation

The Committee observed that it is important to recognise sugarcane stakeholders in the definition of the word "*agreements*". Their proposal was therefore adopted.

213. Amend definition of the word '*by-product*' to refer to specific product.

Committee's Observation/Recommendation

The definition provided in the Bill is sufficient. Some of the items mentioned are not by-products of sugarcane.

214. Amend definition of the word '*farm-gate*' by adding prices received by farmers at the mill-gate and weighbridge. There farmers who are close to the factory while others are far away.

Committee's Observation/Recommendation

The Committee observed that definition of "*farm-gate*" was not necessary and it was therefore deleted.

215. Amend definition of the word '*institute*' by adding training component to read as follows; '*Kenya Sugar Research and Training Institute*'. The research and training institute will be used by stakeholders in the sugar industry.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee because it is important to have a sugar industry training industry in the country.

216. Amend the definition of the word '*member*' to mean a member elected to the Board. This is to provide for the direct gazettement of an elected member.

Committee's Observation/Recommendation

Farmers should be given an opportunity to choose their representatives in the Board. This can best be done through elections.

217. Amend by deleting the definition of the word '*mill-gate*' because it is ambiguous.

Committee's Observation/Recommendation
The Committee amended the definition so that it can be relevant to the Bill.

218. Amend definition of the word *'out-grower'* to mean any person or institution that grows sugarcane or any other crop that produces sugar. This is to prevent tying farmers or introducing zoning in a free market.

Committee's Observation/Recommendation
There needs to be order in the sugar industry and this can be enforced through zoning.

219. Amend by deleting definition of the word *'sugar catchment area'* because it is zoning which is outdated.

Committee's Observation/Recommendation
There needs to be order in the sugar industry and this can be enforced through zoning.

220. Amend by deleting definition of *'Sugarcane growers' apex body'* and replacing with *'sugarcane farmers organizations'* because sugarcane farmers are organized around specific mill zones and have no apex body.

Committee's Observation/Recommendation
For better representation of growers, the apex body needs to be national. The regional bodies can be provided for in regulations.

221. Amend definition of the word *'stakeholder'* to include transporters, workers, cane cutters, molasses dealers, and traders in order to be inclusive.

Committee's Observation/Recommendation
Their proposal was adopted by the Committee.

Clause 4

222. Amend paragraph 4 (1) (a) to read as follows: *"regulate the sugar industry"* this is because other key stakeholders are playing the role of promoting the industry.

Committee's Observation/Recommendation
The Board is in-charge of all matters pertaining to the sugar industry including developing and promotion of the industry.

223. Amend the clause by deleting paragraph 4 (1) (c) because it's a function of county governments.

Committee's Observation/Recommendation
This proposal was not adopted by the Committee.

224. Amend paragraph 4 (2) (d) to read as follows: *"the Board shall Monitor and regulate the domestic market with a view to identifying and advising the government and interested parties on any distortions in the sugar market"*. The Board should not only monitor but regulate as well.

Committee's Observation/Recommendation
The Committee adopted their proposal.

225. Amend the clause by deleting paragraph 4 (2) (e) because it is a function of the Sugar Arbitration Tribunal.

Committee's Observation/Recommendation
The Committee observed that the provision is a function of the Tribunal and deleted the paragraph as proposed by the Organisation.

226. Amend paragraph 4 (2) (f) to read as follows: "*facilitate import and export of the local sugar*". This will take care of the export as well.

Committee's Observation/Recommendation
The proposal was only catering for export and not import of sugar. The Committee adopted their proposal.

227. Amend the clause by deleting paragraph 4 (2) (f) because growers and millers have their own boards which can advise.

Committee's Observation/Recommendation
The committee rejected the proposal. The Board should facilitate the import and export of sugar.

228. Amend paragraph 4 (2) (i) to read as follows: "*Implement an equitable mechanism for the pricing of the sugarcane and appropriation of the proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines*". The Board is to implement not to facilitate because there is the pricing committee which will undertake the role.

Committee's Observation/Recommendation
Their proposal was adopted by the Committee.

229. Amend paragraph 4 (2) (m) to read as follows: "*License sugar mills and other stakeholders*". This takes care of the other industry stakeholders.

Committee's Observation/Recommendation
It is not clear who the other stakeholders are. Their proposal was therefore rejected by the Committee.

230. Amend paragraph 4 (2) (p) to read as follows: "*Formulate and implement a strategic plan for the sugar sub-sector anchored on national vision*". To anchor the strategy to the national development agendas.

Committee's Observation/Recommendation
It is important to have timelines for the formulation and implementation of the strategic plan. All strategic plans are aligned to the national vision.

Clause 5

231. Amend the clause by deleting paragraph 5 (a) and transferring the function to Kenya Sugar Institute of Research and Training because it is a county function.

Committee's Observation/Recommendation
The Committee observed that this is a function of county governments and rejected their proposal.

232.Amend by deleting paragraph 5 (e) in its entirety because it is a KERA/KURA/KENHA affair.

Committee's Observation/Recommendation

Sugar growers pay cess to county governments and it is therefore their responsibility to maintain the roads. The Committee did not adopt the proposal.

Clause 6

233.Amend paragraph 6 (1) (a) by deleting the word appointment and replacing with the word gazetted. and adding, the CS shall gazette the chairperson. A non-executive chairperson elected by the Board from among the representatives of the growers on the Board shall be gazetted by the Cabinet Secretary. He is already appointed by farmers. All is remaining is gazettement.

Committee Observation/Recommendation

The Committee rejected the proposal and observed that any amendment to this clause should be in line with Mwongozo Code.

234.Amend by deleting paragraph 6 (1) (b) and replacing it with five representatives nominated by registered farmer organizations. This is because catchment areas are deleted.

Committee's Observation/Recommendation

Catchment areas have not been deleted. Farmer representatives will be elected from each of the catchment areas.

235.Amend sub-clause 6 (2) to read as follows: "*Elected members under sub-section 1(b)(c) and (e) shall be gazetted directly*" because they have been nominated by the farmers.

Committee's Observation/Recommendation

The farmer representatives will be elected by farmers in each of the catchment areas to ensure fairness in the selection. Their proposal was therefore rejected.

236.Amend sub-clause 6 (3) by deleting the degree requirement because farming is not academic.

Committee's Observation/Recommendation

Running the Board is technical and requires qualified persons to properly execute the mandate. Their proposal was therefore rejected.

Clause 7

237.Amend sub-clause 7 (1) by deleting one further term and leaving it open. There are those who work for the interest of the organization.

Committee's Observation/Recommendation

There has to be limits on the number of terms that one serves in the Board. Their proposal was therefore not adopted by the Committee.

238.Amend sub-clause 7 (2) by providing that members will be elected and gazetted at the same time because they are nominated by the farmers.

Committee's Observation/Recommendation

The staggering will ensure that there is institutional memory in the Board. Their proposal was therefore rejected by the Committee.

Clause 14

239. Amend by deleting paragraphs 14 (2) (a), (b), (c) and (d) and replacing with, qualifications set by the Board at the time of appointment. You cannot have a one-set formula, the industry is technology bound and dynamic in nature, therefore skills change rapidly. These are not a matter of academic degrees.

Committee's Observation/Recommendation

Qualifications of the CEO should be provided in the Bill. Their proposal was not adopted by the Committee.

Clause 18

240. Amend sub-clause 18 (1) by deleting the recommendation by county governments and replacing as follows: "*A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current license issued by the Board upon payment of relevant county levies*". The trend is to simplify licensing according to the government agenda as well as best practice.

Committee's Observation/Recommendation

The license is issued by the Board and not county governments. The payment of levies to county governments does not apply.

Clause 19

241. Amend by deleting sub-clause 19 (1) because the prescribed form has not been subjected to public participation.

Committee's Observation/Recommendation

The Committee observed that in drafting regulations, public participation is a major step before the regulations are gazetted.

242. Amend by deleting paragraphs 19(2) (a) and (b) and replacing with: "*The Board shall not issue a license under this Act upon a criterion set from time to time*". This is a regulatory Board therefore will determine at the right time what is appropriate.

Committee's Observation/Recommendation

The Committee rejected the proposal. It observed that the proposed amendment would give rise to various ambiguities.

243. Amend by deleting sub-clause 19 (5) and replacing with: "*There shall be payable the issues of a license, such fees as the Board may determine from time to time*". The necessary regulatory mechanism at the moment will determine.

Committee's Observation/Recommendation

Proposal rejected. The committee observed that the Cabinet Secretary ought to prescribe and not left to the Board to determine

244. Amend sub-clause 19 (7) by deleting the words '*reasonable cause*' and amending to read as follows: "*the issuance of a license to an applicant under this section shall not be withheld without citation of relevant infringed law*". The word reasonable cause is subjective and has no basis in law.

Committee's Observation/Recommendation
The Committee rejected the proposal. The Committee proposed for regulations in order to provide for such causes.

Clause 21

245. Delete the clause in its entirety because it is detrimental to the diversification at the process level which is licensed.

Committee's Observation/Recommendation
The Committee rejected the proposal. The Committee observed that industrial sugar is imported sugar and there is need to license such business.

Clause 22

246. Delete the clause in its entirety because it is repetitive.

Committee's Observation/Recommendation
The Committee rejected the proposal. The Committee observed that it is important to provide for registration of millers.

Clause 23

247. Amend sub-clause 22 (1) to read as follows: "*There is hereby established a body to be known as the Kenya Sugar Research and Training Institute*". The industry has not had a training facility for the stakeholders.

Committee's Observation/Recommendation
The Committee observed that it is important to have a training institute for the sugar industry. Their proposal was therefore adopted by the Committee.

248. Amend by deleting sub-clause 23 (2) in its entirety because it is a department of the Kenya Sugar Board, it's not independent, and there is no need to duplicate.

Committee's Observation/Recommendation
The Committee rejected the proposal and found it fit to have an Institute independent from the Board that will conduct research on sugarcane.

Clause 24

249. Amend by combining paragraphs 24(2) (a) and (b) to read as follows: "*Formulate policy and make policy recommendations in respect of sugar research and development (R&D) to the Board in line with national policy on sugar*". Both sub-clauses are the same.

Committee's Observation/Recommendation
Their proposal was adopted by the Committee.

250. Amend paragraph 24(2) (c) by deleting the word '*Government*' and replacing with the word '*Board*'. Reports to the Board.

Committee's Observation/Recommendation
Their proposal was adopted because the Board will oversight the Institute.

251. Amend paragraph 24(2) (g) by deleting the word *'agriculture'* to read as follows: *"Support and promote training and capacity building in relation to sugar research"*. Research is not limited to agriculture but to sugar.

Committee's Observation/Recommendation
The Institute has been put in place to specifically carry out research on the sugar industry. Their proposal was therefore adopted.

Clause 25

252. Delete entire clause. The Institute should be a department of the Board for better management of research in the sugar subsector.

Committee's Observation/Recommendation
The Committee rejected the proposal and found it fit to have an Institute independent from the Board that will conduct research on sugarcane.

Clause 26

253. Delete the entire clause because it is unnecessary.

Committee's Observation/Recommendation
The Committee observed that this Institute is a state corporation. There are standard provisions for all state corporations that enable smooth operations. The proposal was dropped.

Clause 27

254. Amend paragraph 27 (c) by replacing the word *'ministry'* with the word *'Board'*. Because it's a department of the Board.

Committee's Observation/Recommendation
This proposal was rejected by the Committee. The Committee observed that the Institute may receive other monies from the Ministry for purposes of research. The Ministry is distinct from the Board.

Clause 28

255. Amend sub-clause 28 (1) by deleting the words *"Director General"* and substituting with the words *"Director of Research"* because the Institute is a component of the Board thus the title is inappropriate and secondly, it the Board that shall appoint the Director of research.

Committee's Observation/Recommendation
The Committee rejected the proposal because the committee had proposed its own amendments.

256. Amend paragraphs 28 (2) (a) and (b) to read as follows: *"(2) A person shall be qualified for appointment under this section if the person: (a) Holds a degree in sugar technology from a university recognized in Kenya; and (b) Has some managerial experience"*. An appropriate expert should manage the research institute.

Committee's Observation/Recommendation
The Committee observed that a person with qualifications in agricultural research, soil and seed research or soil science can effectively run the Institute. To be a Director General of the Institute, one needs to have at least five years' experience in a senior managerial position. Their proposals were therefore rejected by the Committee.

Clause 33

257.Amend the clause by inserting new paragraph (d) which reads "*Sugar development levy*".

Committee's Observation/Recommendation

The Sugar Development Levy will be one of the sources of income to the KSB. Their proposal was therefore adopted by the Committee.

258.Amend the clause by inserting the following new paragraph (e) "*Contributory miller farmer scheme*" because it is part of the funding source to promote saving culture and also have available fund for emergency.

Committee's Observation/Recommendation

The Committee observed that there is no such scheme known as *Contributory miller farmer scheme* and therefore cannot be implemented.

Clause 34

259.Amend the clause to read as follows: "*The Cabinet Secretary shall in consultation with the Board by order in the gazette impose a levy on domestic sugar of no more than five percent and twenty per centum of CIF value on imported sugar to be known as sugar development levy*". Kenya produces 1 tonne of sugar at $800 against cheaper producers from within COMESA.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

260.Amend sub-clause 34 (7) to read as follows: "*(7) the sugar development levy collected under subsection (2) shall be apportioned as follows: (a) fifty percent shall be applied to cane development; (b) fourteen percent be applied by the Board for income or price stabilization for sugar growers; (c) ten percent shall be remitted directly to the Institute; (d) ten percent shall be applied by the Board in the factory rehabilitation and maintenances; (e) ten percent shall be applied by the Board in the furtherance or exercise of any function or powers of the Board; and (f) six percent to farmer organizations*". The aim is to strengthen the farmers who are the most vulnerable in the sub-sector.

Committee's Observation/Recommendation

The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 35

261.Amend sub-clause 35 (1) to read as follows: "*There is established a Fund to be known as Sugar Development Fund which shall be administered by an independent Board of Trustees comprising of industry stakeholders appointed by the Cabinet Secretary*". The Board of Trustees will be independent and experts in management of the Fund this will uphold good corporate governance.

Committee's Observation/Recommendation

The Committee observed that the fund should be maintained by the commodities fund. Within the Commodities fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

Clause 60

262. Amend sub-clause 60 (1) to read as follows: "*Upon the commencement of this Act, a person who was a former staff of Sugar Board of Kenya before the commencement of the Agriculture and Food Authority Act 2013 and current staff of the Sugar directorate not being under any notice of dismissal or resignation may upon commencement of this Act be seconded to the Board on performance contract basis*". This will give room for appraisal of the staff.

Committee's Observation/Recommendation

The Committee observed that the clause is a standard provision. Further the Board cannot vet legal proceedings and claims pending. The Board is presumed to take up such legal obligations.

Clause 61

263. Amend sub-clause 61 (2) to read as follows: "*The pension of the seconded staff under the provident fund of the Agriculture and Food Authority – Sugar Directorate may on the commencement of the Act vest on the Board*".

Committee's Observation/Recommendation

The Committee observed that the clause is a standard provision. Further the Board cannot vet legal proceedings and claims pending. The Board is presumed to take up such legal obligations.

Clause 62

264. Amend sub-clause 62 (2) to read as follows: "*All legal proceedings and claims pending in respect to actions and activities to this which this Act apply shall be vetted by the Board*".

Committee's Observation/Recommendation

The Committee observed that the clause is a standard provision. Further the Board cannot vet legal proceedings and claims pending. The Board is presumed to take up such legal obligations

First Schedule

265. Delete the entire schedule because the electoral areas will be determined by the Cabinet Secretary.

Committee's Observation/Recommendation

The Committee observed that the First Schedule is for purposes for election.

4.10 KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANISATION

In their memorandum, Ref: KALRO/LGL/GEN/01/06/VOL.XXV/(114) dated 23rd March 2023, KALRO proposed the following amendments to the Bill:

Clause 23

266. Amend sub-clause 23(1) to establish a body similar to the Kenya Sugar Research Foundation (KESREF). This is because other institutions are reverting to their former e.g. Tea Research Foundation and Kenya Sugar Board.

Committee's Observation/Recommendation

The sugar industry needs to have a standalone sugar research institute for effective research in the sector. Their proposal was therefore rejected by the Committee.

Clause 24

267. Amend sub-clause 24(1) (a) to read as follows: *"Promote, co-ordinate and regulate research in sugarcane, sugar and co-products"*. The Foundation will have the mandate on sugarcane, sugar and co-products.

Committee's Observation/Recommendation

Their proposal was adopted by the Committee.

Clause 25

268. Amend sub-clause 25 (b) to read as follows: *"Five persons with background in agricultural research (minimum of masters degree), elected by growers from each of the sugar catchment areas under the First Schedule"*. Research is technical and requires a vibrant Board to interrogate policy matters of proposals made by research scientists.

Committee's Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 28

269. Amend sub-clause 28(1) to read as follows: *"There shall be a Director General (DG) and Deputy Director General (DDG) of the Institute"*. Borrowing from KALRO, the DG is in charge of policy and fund mobilisation while the DDG is in charge of research.

Committee's Observation/Recommendation

It is not necessary to provide for the position of the deputy director general in the Act. This proposal was therefore rejected by the Committee.

270. Amend sub-clause 28 (2) (a) to read as follows: *"Holds a PhD from a university recognised in Kenya in agricultural research, soil science and seed research or related field"*. Research is an apex in academia and should be led by a senior researcher at PhD level.

Committee's Observation/Recommendation

The Committee observed that the director general of the Institute should have the highest qualifications in their area of training. This proposal was adopted by the Committee.

4.11 MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

In a letter, Ref: MOA/OFTA/13/1/21 dated 24th March 2023, the Principal Secretary, State Department for Crop Development informed the Committee that the Ministry was in the process of strengthening AFA to better perform its mandate and proposed that the Bill should not be progressed with. In a memorandum submitted earlier to the Committee, the Ministry proposed the following amendments to the Bill:

Clause 2

271. Delete the definition of *"farm gate"* because it does not convey the correct industry meaning and it has only been used once in the Bill.

Committee's Observation/Recommendation

Definition of the word *"farm gate"* was deleted because it was not necessary.

272. Delete the definition of "*mill gate*" and replace with the following new definition, "*mill gate means a site designed as such by the Authority where sugarcane weighing and sugarcane testing facilities have been set up*". This is because the definition provided in the Bill is for a sugarcane nursery and not a mill gate.

Committee's Observation/Recommendation
This definition was adopted by the Committee.

273. Delete the definition of "*sugar*" and replace as follows, "*sugar means crystalline or liquid sucrose derived from sugarcane or sugar beet in any of its recognised commercial forms, intended for human consumption or other uses and includes jaggery, raw, brown, plantation (mill) white and industrial sugar*". This is to include in the definition crops from which sugar may be derived and the types of sugar which may be produced.

Committee's Observation/Recommendation
The definition of "*sugar*" provided by the Ministry was more comprehensive and therefore adopted by the Committee.

274. Define "*sugar beet*" as, "*sugar beet means any plant or part of a plant of the genus Beta or any of its hybrid*". This is to expand the scope of sugar crops to include sugar-beet.

Committee's Observation/Recommendation
Sugar beet is also a crop that is used in the production of sugar. The Committee observed that it was important for the definition to be provided in the Bill and therefore adopted their proposal.

275. Amend definition of the word "*license*" by deleting the words "*to a miller*". This is because licenses are not only issued to millers but also to importers and exporters of sugar.

Committee's Observation/Recommendation
The proposal was adopted.

Clause 4

276. Amend sub-clause 4(1) (b) by deleting the words "*individuals and organisations*" and substituting with the word "*actors*". This is to clean the document to properly refer to players within the industry.

Committee's Observation/Recommendation
The proposal was adopted as it caters for all the stakeholders in the sugar industry.

277. Amend the clause by deleting sub-clause 4(2)(e) and substituting it with the following paragraph, "*Establish mechanisms to facilitate expeditious dispute resolution*". This is because arbitration is a formal process that takes a long period to conclude. The amendment will allow for flexibility and expediency in dispute resolution.

Committee's Observation/Recommendation
The Committee observed that the Tribunal is a preserve of the Judiciary and as such there are rules for conduct. The proposal was rejected.

278. Amend the clause by deleting sub-clause 4(2)(f) and substituting it with the following paragraph, "*Facilitate the sale, import and export of sugar and sugar products*". This is to broaden the scope.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

279. Amend the clause by deleting paragraph 4 (2) (j) and replacing it with the following paragraph, "*Collaborate with national and international trade bodies on sugar related matters*" in order to broaden the scope.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

280. Amend by deleting paragraph 4 (2) (n) and substituting with the following paragraph, "*Register and license sugar mills, exporters, importers and dealers*". This is to broaden the scope.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

281. Amend paragraph 4 (2) (n) by inserting the word '*establish*' immediately before the word '*enforce*'. This is to cover key aspects of compliance.

Committee's Observation/Recommendation
The Kenya Bureau of Standards is mandated to establish standards and cannot therefore be a role of KSB. This proposal was rejected by the Committee.

282. Amend by deleting paragraph 4 (2) (o) and replacing with the following paragraph, "*Promote and advise on strategies for value addition and product diversification in the sugar industry*". To broaden the scope.

Committee's Observation/Recommendation
The proposal was adopted.

283. Amend the clause by deleting paragraph 4 (2) (p) because it is an administrative function.

Committee's Observation/Recommendation
It does not harm to have this in the Bill. This proposal was therefore rejected by the Committee.

284. Amend paragraph 4 (2) (q) by inserting the word "*sugarcane*" immediately before the word "*sugar*" and the words "*sugar co-products*" immediately after the word "*sugar*". To cover key aspects of transportation in the industry.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

285. Amend by deleting paragraph 4 (2) (r) and substituting with the following paragraph, "*Facilitate marketing and distribution of sugar and sugar co-products through gathering and dissemination of market information and monitoring of the local and global supply-demand situation*". To broaden the scope.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

286. Amend by deleting paragraph 2 (u) and substituting with the following paragraph, "*Perform such function as may be conferred on it by this Act or any other written law*". Assignment of the roles to the Board should be done within the provision of the law.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

Clause 5

287. Amend paragraph 5 (b) by deleting the words, "*and milling*" because milling is outside the purview of the county government.

Committee's Observation/Recommendation
The proposal was adopted.

Clause 6

288. Amend the clause by deleting paragraph 6 (1) (a) and substituting with the following paragraph, "*a non-executive chairperson appointed by the President by notice in the gazette*". Mwongozo Code on governance on state corporations provides that the President appoints the chairperson.

Committee's Observation/Recommendation
The proposal was adopted.

Clause 8

289. Amend the clause by deleting the word '*of*' appearing after the word '*Board*'. Correcting a grammatical error.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

Clause 9

290. Amend paragraph 9 (a) by inserting the words '*by notice in the Gazette*' before the word '*impose*' in order to clarify the instrument by which the levy will be imposed.

Committee's Observation/Recommendation
This proposal was rejected by the Committee.

291. Amend paragraph 9 (a) by deleting the words '*growers and millers*' and substituting with the words '*value chain players*' so as to widen the scope.

Committee's Observation/Recommendation
The Committee noted that the proposed amendment would widen the scope.

Clauses 18 to 22

292. Rearrange the sections for registration provisions to come before licensing. Registration provisions should precede because it is a prerequisite for licensing and it is used for data capture.

Committee's Observation/Recommendation
The Committee adopted this proposal.

Clause 19

293. Amend by deleting sub-clause 19 (2) because the provision is not necessary as the conditions for issuance of a license will be provided for in the regulations.

Committee's Observation/Recommendation
This proposal was rejected by the Committee.

294. Sub-clause 19 (4) should be made a stand-alone clause so that it covers all licenses issued under this Act. The sub-clause was only addressing milling license hence need to address all other licenses.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

295. Amend the clause by deleting sub-clause 19 (6) because application procedures are best provided for in regulations.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

296. Amend by deleting sub-clause 19 (8) because it is a misplaced provision. It should be moved to sub-clause 20 (1).

Committee's Observation/Recommendation
The proposal was adopted.

297. Introduce the following new paragraphs under sub-clause 19 (8): *"(a) A licensed miller shall not procure cane outside their delineated catchment area; and (b) Regulations for transfer of sugarcane within catchments and mills shall be developed under this Act"*. This is to secure availability and sustainable supply of raw materials for processing by all millers.

Committee's Observation/Recommendation
The proposal was adopted with amendments.

Clause 20

298. Amend the clause by deleting sub-clause 20 (1) and substituting as follows: *"(1) A person shall not import or export sugarcane, sugar or sugar by-products without a valid license issued by the Board in accordance with regulations made under this Act; (2) A holder of a valid import or export license shall not import or export sugarcane, sugar or sugar by-products unless they have obtained a pre-import or pre-export approval from the Board in accordance with regulations made under this Act"*. Application procedures and requirements are best provided in the regulations.

Committee's Observation/Recommendation
The proposal was adopted with amendments.

299. Amend the clause by deleting sub-clause 20 (3) because it is already covered in sub-clause 20 (1).

Committee's Observation/Recommendation
The Committee rejected the proposal because there are instances when the country imports sugarcane.

Clause 21

300. Amend the clause by deleting sub-clause 21 (1) (2) because it is covered under clauses 18 and 19.

Committee's Observation/Recommendation
Clauses 18 and 19 do not provide for industrial sugar. Their proposal was therefore rejected by the Committee.

Clause 22

301. Amend sub-clause 22 (1) by inserting the words "*in accordance with the regulations made under this Act*" immediately after the word "*Board*". Details and procedures for registration will be provided in regulations.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

302. Amend the clause by deleting sub-clause 22 (4) because details and procedures for registration will be provided in the regulations.

Committee's Observation/Recommendation
The Committee observed that regulations will provide for other details, therefore there is need to have the substantive provision in the Bill. The proposal was rejected.

Clauses 23 to 28

303. Amend by deleting the clauses because the Sugar Research Institute is one of the institutes under KALRO.

Committee's Observation/Recommendation
The Committee observed that it is important to have a standalone research institute to carry out research in the sugar industry. This proposal was rejected by the Committee.

Clause 29

304. Amend sub-clause 29 (1) (2) to provide for gazettement by the Board of both Board and county inspectors. The Board will prescribe the qualifications for inspectors in regulations. This is to recognise the shared regulatory roles by both the Board and county governments.

Committee's Observation/Recommendation
The Committee observed that clause 5 provides for the functions of county government. The Board is best fit to undertake crop inspection. The proposal was rejected.

Clause 41

305. Amend paragraph 41 (1) (b) by deleting sub-paragraph (iii) because it is covered under paragraph 41 (1) (a) because growers and farmers are the same.

Committee's Observation/Recommendation
This proposal was adopted by the Committee.

Clause 48

306. Delete clause 48 because conduct of the affairs of the Board are covered under the Second Schedule.

Committee's Observation/Recommendation

The Second Schedules provides for the conduct of meetings of the Board while clause 48 provides for the conduct of meetings of the Board with other stakeholders. Their proposal was rejected by the Committee.

Clause 49

307. Amend the clause by deleting sub-clause 49 (2) because the penalties have been provided for under the standards, public health and environment laws.

Committee's Observation/Recommendation

This proposal was carried by the Committee.

Clause 50

308. Delete clause 50 because it is a function of NEMA under EMCA.

Committee's Observation/Recommendation

One of the functions of the Board is to enforce standards. This proposal was rejected by the Committee.

Paragraph 51

309. Amend paragraph 51 (2) (a) by deleting the words "*quarterly basis*". Move the clause on safeguard measures to part III immediately under clause 20 on sugar imports. Importing sugar on a quarterly basis is difficult to implement. This is a substantive and import related issue and therefore should not be under miscellaneous issues.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

310. Delete paragraph 51 (2) (b) because daily reporting is not practical. However, filing of returns monthly should be considered.

Committee's Observation/Recommendation

This proposal was rejected by the Committee.

311. Amend the clause by deleting sub-clause 51 (4) because the actions proposed under sub-clause 51 (1), (2) and (3) do not give rise to any offense.

Committee's Observation/Recommendation

The provisions under sub-clauses (1), (2) and (3) are to be provided by the Board and therefore do not give rise to any offense. Their proposal was adopted by the Committee.

Clause 53

312. Delete the clause because the guidelines are already covered under paragraph 57 (g) to be prescribed in the regulations.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Clause 55

313. Amend sub-clause 55 (3) by deleting the words "*two years*" and replacing thereof with the words "*three years renewable once*". Two-year period is a short time for one to set leadership and establish structures.

Committee's Observation/Recommendation

The Committee observed that having directorship in private companies is not tenable. The committee proposed the deletion of this clause. The proposal was dropped.

Clause 56

314. Amend the clause by deleting the word "*third*" and replacing with the word "*first*". The Third Schedule has been proposed for deletion.

Committee's Observation/Recommendation

The Committee recommended deletion of the Third Schedule to the Bill.

Clause 57

315. Amend sub-clause 57 (2) by inserting the following new paragraphs, "*(j) To provide for registration procedures for actors under the Act; and (k) To provide for procedures for issuance of pre-import and pre-export approvals*". To add to the list of regulations to be made by the Cabinet Secretary.

Committee's Observation/Recommendation

The proposal to insert paragraph (j) was adopted by the Committee while the one to insert paragraph (k) was rejected.

316. Amend sub-clause 57 (3) by deleting paragraphs (a) and (b) because they are explanatory statements.

Committee's Observation/Recommendation

The Committee observed that the provisions in paragraphs (a) and (b) are in the Constitution hence no need to restate them. Their proposal was adopted by the Committee.

Second Schedule

317. Amend the Schedule by deleting paragraph 1 because it is already covered in clause 8.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

Third Schedule

318. Delete the Schedule because guidelines for agreements between parties in the sugar industry will be provided for in regulations as stipulated in paragraph 57 (g).

Committee's Observation/Recommendation

The provisions in the Third Schedule should be provided in the regulations. The Committee adopted their proposal to delete the Schedule.

Fourth Schedule

319. Amend the Schedule by deleting paragraph 2 (d) because it is already covered in paragraph 2 (2) (c).

Committee's Observation/Recommendation
Their proposal was rejected because paragraph (c) deals with offences involving fraud and dishonesty while paragraph (d) focuses on criminal offences with a sentencing of more than six months. Their proposal was therefore rejected by the Committee.

4.12 KISUMU SUGARBELT CO-OPERATIVE UNION LIMITED

During the field visits to Kibos Sugar and Allied Industries, Miwani Sugar Company, Muhoroni Sugar Company and Chemelil Sugar Company Limited on 15th April 2023, the Committee received the following submission from the Kisumu Sugarbelt Co-operative Union Limited. That:

Clause 2

320. Create a body named *"National Sugarcane Farmers Association"* as apex body for all sugarcane farmers. The creation will bring order in farmer representation instead of persistent wrangling in between several bodies with no clear fixed abodes masquerading as farmers' representatives while farmer interest suffer.

Committees' Observation/Recommendation
The Bill has provided definition for the word *"sugar apex body"* which is an umbrella body for sugarcane farmers.

321. Define the word *"rendement"* as *"the sugar produced expressed as a percentage by weight of the sugarcane crushed"*. This will increase efficiency in sugar production and recoveries. Ratio of cane to sugar produced for a well-run industry should be 9:1 or lower. The ratio 9:1 for cane to sugar recovered implies rendement of 11.1.

Committees' Observation/Recommendation
Their proposal was rejected as it should be provided in regulations.

Clause 6

322. Amend sub-clause 6 (1) (a) to read as follows, *"A non-executive Chairperson elected by the Board from among the representatives of growers on the Board and gazetted by the President"*. Role of the farmer is accorded paramount significance in the industry as only supplier of major raw material and appointed by the highest office in the country.

Committees' Observation/Recommendation
The proposal was adopted by the Committee.

323. Amend sub-clause 6 (1) (b) by giving the farmers' apex body an additional slot in the Board. Farmers and grower representatives should constitute the majority in the Board as the key stakeholders.

Committees' Observation/Recommendation
This proposal was rejected because it is against the *Mwongozo* Guidelines on good governance.

324. Amend sub-clause 6 (1) (c) by deleting the word *"one"* and substituting with the word *"two"*. ~~Farmers and grower representatives should constitute the majority in the Board as the key~~ stakeholders.

Committees' Observation/Recommendation
The Committee observed the need to include more millers. The proposal was adopted with amendments.

325. Amend Clause 6 (1) (h) by adding a representative of Kenya National Trading Corporation to be nominated in writing by the CS, Ministry of Trade and Industry; PS State Department for Crops Development; and representatives of county governments. KNTC will be in charge of importation of sugar in the country in-case of shortfall in production. KNTC as was practiced in the past should receive and distribute all sugar produced locally and do importation in cases of deficit in order to eliminate cartels who have been some of the major causes of failure in sugar industry.

Committees' Observation/Recommendation
The Government is represented in the Board by the PS National Treasury.

Clause 25

326. Amend sub-clause 25 (b) to retain representation of each catchment area (5 in total) and one person nominated by Council of Governors. Each catchment area should elect one representative of suitable and relevant knowledge with experience. The representative will have adequate information about what the institute can do for the area.

Committees' Observation/Recommendation
The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 25 (e)

327. Amend sub-clause 25 (e) by deleting the words, *'Kenya Agricultural Livestock and research Organization'* and replacing with the words, *'Kenya Sugar Research Institute (KESRI)'*. KALRO does not need to be represented in the sugar research board. This position should be left for the second miller representative.

Committees' Observation/Recommendation
KALRO is the institution charged with agricultural research in Kenya. It is therefore important that it is represented in the Institute's board of directors.

Sugar Development Levy

328. Amend it to read as follows: *"Imports from EAC– 5%. COMESA – 15% Outside COMESA- 30 % locally produced sugar – 5%. Application of the Fund shall include a reasonable per centum for running of the Official Sugar Apex Body. Sugar importation for local refining purposes to supply industrial need be levied at 2% and allowed only for factory with registered refinery plant*". Imported sugar frequently includes damped sugar in the world market which must not be allowed to disadvantage local farmers in cane pricing. Funding Farmers' Apex Body will eliminate influence of cartels on Farmers' Representatives so that they can concentrate on their official roles and deliver for the farmers.

Committee's Observation/Recommendation
The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. The proposal was adopted with amendments.

First Schedule

329. On the delineation of sugar catchment areas amend as follows: "*Regions: Central Region (Kericho, Nandi, Kisumu), Upper Western Region (Bungoma, Kakamega, Trans Nzoia, Uasin Gishu) Lower Western Region (Busia, Mumias, Siaya) Southern Region (Homa Bay, Kisii, Migori and Narok) Coastal Region (Kwale, Lamu, Tana River)*". The Act should reflect wishes of the stakeholders.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Third Schedule

330. Amend paragraph 2 by deleting definition of the word *"sugar lobby group"* and replacing with the definition of *"Sugarcane Growers Apex Body"*. Existence of many lobby groups which have always been wrangling in courts brings a lot of confusion in the industry while the plight of farmers they masquerade as representing has gotten worse.

Part 2 (5) (a)

331. Maintain the same for a period to allow the growers develop their own transport units. This to be reviewed from time to time with a definite scheme for getting growers properly equipped or allowing cane transport organization to develop. This is because most growers are dilapidated and do not have transport equipment.

Part 2 (5) (d)

332. Pay sugarcane farmers within one week of cane delivery to the mill. It has been proven that well run mills are paying every week and there should be no reason for backtracking.

Part 3

333. Amend Paragraph 7(2) (d) by deleting the words '*lobby group*' and replacing with the words '*Growers' Apex Body*'. Lobby groups cause chaos in the industry and apex body can take good care of growers' interests.

334. Amend paragraph 7(6) by deleting the words '*thirty-six*' appearing immediately after the words '*review after every*' and substituting therefore the word '*three*'. Three months' period provides a practical duration for which the committee can determine market prices at every given point.

335. Amend Paragraph 13 (1) by deleting the words '*Kenya Sugar Authority*' appearing immediately after the words '*comprising of the*' in sub-paragraph (1) and substituting, therefore with the word '*Kenya Sugar Board*'. The Sugar Bill is restoring the Kenya Sugar Board. The Kenya Sugar Authority has no place in the new Sugar Bill 2022.

336. Sub-heading of the Sugar Bill should be deleted and replaced with '*Appointment of Sugar Crop and Sugar Milling Inspectors*". The decline and failure of sugar industry, apart from other factors mentioned elsewhere, can also be greatly attributed to non-existence of authoritative inspection both in the crop and factory performance.

Committee's Observation/Recommendation

The Committee recommended deletion of the Third Schedule to the Bill.

4.13 KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS

In their memorandum, the Kenya National Federation of Sugarcane Farmers proposed the following amendments to the Bill:

Clause 2

337. Amend definition of the word '*by-product*' to include molasses, ethanol, electricity and bagasse. To specify primary by product from which farmers should benefit.

Committee's Observation/Recommendation

The definition provided in the Bill is sufficient. Some of the items mentioned in the definition are not by-products of sugarcane. This proposal was therefore rejected.

338. Delete the word *"farm gate"* and replace it with the word *"farm gate price"* to mean prices received by farmers for their sugarcane from where cost of transport should be determined. Clarification because *"farm gate"* could mean many other things.

Committee's Observation/Recommendation

Definition of the word *"farm gate"* was deleted by the Committee.

339. Amend definition of *"grower"* by deleting the words *"or any other crop"*. There is no other crop known in Kenya at this moment for the manufacture of sugar with the same name.

Committee's Observation/Recommendation

Sugar beet, a crop that is used for the manufacture of sugar is being introduced in Kenya. The definition in the Bill is therefore sufficient. Their proposal was rejected by the Committee.

340. Amend definition of *"sugar catchment area"* to read as follows: *"a large regional geographical area made up of a cluster of two or more sugar mills suitable for development, procurement, free marketing of sugarcane and forming the electorate for farmers' representation to the sugar Board"*. Catchment area is primary for sugarcane development and procurement. As opposed to a zone of one sugar mill this set up gives more latitude for farmers to market their cane to mills of choice within reasonable transport distance. It frees farmers from enslavement to a mill that does not provide satisfactory services.

Committee's Observation/Recommendation

The Committee observed that the First schedule is provided only for election of representatives to the office of member to the Board. The proposal was rejected.

341. Delete definition of the word *"mill gate"* because the meaning in the Bill is not relevant. Sugarcane varieties are developed on plots at the Research Institute, not at the gate of the mill.

Committee's Observation/Recommendation

The Committee observed that the proposal in Bill ought to be amended in order to reflect what happens on the ground. The proposal was adopted with amendments.

342. Amend definition of the word *"out-grower"* by adding the word *"institution"* or *"corporate"* entity after the words *"means in person"*. Institutions and corporate bodies are also legal persons.

Committee's Observation/Recommendation

The Committee observed that the definition of outgrower was sufficient as is in the Bill. The proposal was rejected.

343. Re-word definition of *"Sugarcane growers' apex body"* to *"Kenya National Federation of Sugarcane Farmers registered under the societies Act for the purpose of national united advocacy of sugarcane farmers interests and gazetted by the Cabinet Secretary for the time being responsible for agriculture"*. Provision in the Bill is misleading. Kenya National Federation of Sugarcane Farmers was established through Government initiative and support. It has dominant representation in all sugarcane growing areas in Kenya. It is misleading to say that this apex body can have a cane supply contract.

Committee's Observation/Recommendation
The Bill has provided definition for the word *"sugar apex body"* which is an umbrella body for sugarcane farmers.

344. Amend definition of *"sugar millers apex body"* by introducing sugar millers' apex body bringing together Kenya Sugar Manufacturers Association registered under the Societies Act and gazetted as such by the Cabinet Secretary for the time being responsible for Agriculture.

Committee's Observation/Recommendation
Definition for millers' apex body was not provided in the Bill. The Committee adopted their proposal.

345. Amend definition of *"out grower institution"* to mean *"an institution formed by growers under the Societies Act or any other relevant law for the purposes of national advocacy of their interests as an Apex Body"* or *"An institution formed by growers and registered under the companies Act the cooperative societies Act or any other relevant law for the purposes of providing services to the growers at mill level"*. Not provided for in the Bill.

Committee's Observation/Recommendation
The committee observed the need to amend clause to in order to provide for out grower institutions but also take into consideration other definitions such as growers and out growers. The proposal was adopted with amendments.

Clause 6

346. Amend paragraph 6 (b) to read as follows: *"Eight Representatives elected by growers from the catchment area as follows one from Rift Region Two from upper western Region Two from lower western region Two from southern region One from coastal region"*. Consider the number of farmers within a particular region or catchment area Rift Region (Kericho, Nandi, Uasin Gishu) - 21,208 farmers Upper western (Bungoma, Trans Nzoia) 72,544 farmers Lower western (Busia, Kakamega, Siaya, Vihiga) 95,006 Southern region (Kisii, H/Bay, Kisumu, Migori, Narok) 76,363 Coastal Region (Kwale) 245.

Committee's Observation/Recommendation
The Committee observed that the proposal was not in line with the Mwongozo code. The proposed eight representatives will make the total number of board members to be thirteen. Mwongozo provides for at least seven to nine members.

347. Amend paragraph 6 (c) to read as follows: *"Three representatives nominated by the sugar millers Apex Body, KESMA"*. Allow for representation based on one for Government owned sugar mills and two for private sugar millers.

Committee's Observation/Recommendation
The Committee amended the Bill to provide for two persons from the millers' apex body, one representing public milling companies and the other representing private milling companies.

Clause 9

348.Amend the clause by re-wording and re-numbering paragraph 9 (a) (i) to read as follows: *"Imposition of a levy or levies upon growers not exceeding two per centum of the price per ton of sugarcane for the purpose of enabling the sugarcane growers Apex Body and mill based out growers' institutions to effectively fulfil their obligation in accordance with their constitutions"*. Out growers' institutions are weak and not effective because they do not have regular and reliable funding.

Committee's Observation/Recommendation

The Committee observed that clause 9 provides generally for the powers of the Board which is among others the imposition of levies. Clause 34 specifically provides for one such kind of levy that is the sugar development levy. The proposal was rejected.

349.Amend paragraph 9 (a) by introducing the Sugar Development Levy. Imposition of a levy on domestic sugar and on imported sugar payable by consumers. This power is not provided for in the sugar Bill Propose that this important item be specifically provided for under this clause and clearly stated as who should pay the levy to remove the current position whereby the incidence of the tax burden is on the farmers.

Committee Observation/Recommendation

The Committee observed that clause 9 provides generally for the powers of the Board which is among others the imposition of levies. Clause 34 specifically provides for one such kind of levy that is the sugar development levy. The proposal was rejected.

Clause 34

350.Amend sub-clause 34 (1) to read as follows: *"The Cabinet Secretary shall in consultation with the Board by order in the Gazette, impose a levy on domestic sugar and at a per centum of CIF value on imported sugar compliant with regional and international trade agreement to which Kenya is a party in respect of prevailing import duties, taxes and other tariffs to be known at the Sugar Development Levy"*. To remove the proposed ten per centum from this section and let the Cabinet Secretary decide the rate in the order to be sure that there is flexibility in case of changes in the protocols.

Committee's Observation/Recommendation

The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. The proposal was adopted with amendments.

351.Amend sub-clause 34 (2) to read as follows: *"The levy shall be payable by sugar consumers at such rate added to the price of domestic sugar production as may be specified in the order"*. This levy is a consumption tax payable by consumers. The reason for this proposed change is to protect the farmers from misinterpretation of the order leading to exploitation and backward passing of the tax burden to the farmer.

Committee's Observation/Recommendation

The Committee observed that clause 34 (2) was sufficient and not ambiguous.

352.Amend paragraph 34 (7) (a) by increasing to forty per centum because sugarcane development is the back bone foundation of sugar business.

Committee's Observation/Recommendation
The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

353. Amend paragraph 34 (7) (d) by reducing to twenty per centum. Infrastructure has other contributions such as county cess, CDF county infrastructure programmes, fuel levy, e.t.c.

Committee's Observation/Recommendation
The Committee observed the necessity of apportioning funds from the levy and proposed its own amendment to clause 34(7).

Clause 48

354. Amend sub-clause 48 (1) by adding, Attendance Millers - 20 delegates Growers – 20 delegates Farmers Apex Body Out-growers' institutions - 20 delegates. This will be specific on the attendees. This activity did not take place throughout the life of the past Kenya Sugar Board and now it is corrected.

Committee's Observation/Recommendation
This proposal can be contained in regulations. It was therefore rejected by the Committee.

355. Amend sub-clause 48 (2) by adding that one of the meetings shall be consideration of Annual Estimates. To enable participation in equitable allocation of funds for functional of the Board throughout the sugar industry.

Committee's Observation/Recommendation
This proposal can be contained in regulations. It was therefore rejected by the Committee.

356. Amend paragraph 52 (2) (f) to read as follows: "*The enforcement of levies upon growers for the purpose of enabling the Sugarcane Growers' Apex Body and mill based out growers' institutions to effectively fulfil their obligations in accordance with their constitution as per clause 9(a)*". Sugarcane farmers' institutions must have funds to run their organizations. The constitutions of these organizations have provided for funding through such levies.

Committee's Observation/Recommendation
The Committee observed that sugarcane farmers apex bodies are a necessity in disseminating information especially if that information involves cane development. The apex body is best suited as a tool in mobilising farmers and also a channel for farmers to air their grievances. Further this is a proposal to amend clause 52 which provides for offences and therefore the proposed amendment is misplaced. The proposal was rejected.

Clause 57

357. Amend sub-clause 57 (4) by deleting the words "*twelve months*" and replace with the words "*two months*". It is now 31 years since the sugar industry was liberalized. Throughout this period sugarcane farmers have borne the brunt of economic injustice with nowhere to go for redress on account of absence of regulations.

Committee's Observation/Recommendation
Two months are not sufficient because of the procedure involved in the approval of regulations. The Committee amended it to six months after enactment of the Bill.

Third Schedule, Part II

358. Amend paragraph 4 to read as follows: *"Functions of sugarcane growers' Apex Body: (a) Promoting and representing the interests of growers; (b) Negotiating or arranging on behalf of such grower members the terms of production and supply of sugarcane to the factories; and (c) Negotiating cane prices with millers through sugarcane growers' Apex Body and Kenya National Federation of Sugarcane Farmers"*. To separate activities of advocacy from service provision.

359. Amend paragraph 4 (d) to read as follows *"Effectively participating in lobbying for favorable government policies in the industry"*.

360. Amend paragraph 4 (b) to read as follows: *"Functions of mill based out grower's institutions i.e. "provision of services"*.

361. Amend paragraph 4 (c) to read as follows: *"Providing financial credit or otherwise arranging finance for such grower members in connection with the production of their sugarcane, including land clearance and preparation, planting, cultivation and tending harvesting, transport and supply of goods and services relating there to"*. To provide services that include business activities in support of sugarcane development and supply which cannot be mixed with advocacy at the same time.

362. Amend paragraph 4 (d) to read as follows: *"Providing or procuring services advice and assistance to such grower members as may be required to carry out or procure the carrying out of such operations for such members"*.

363. Amend paragraph 4 (e) to read as follows: *"Providing or procuring accounting services and books of records for members in respect of their individual operations"*.

364. Delete *"sugar lobby group"*. Not necessary, it will cause confusion. Farmers, millers being the main players are well represented by their institutions. They can hire other experts and consultants as need be.

Third Schedule, Part 3

365. Amend by deleting paragraph 7 (2) (d) in its entirety because it is not necessary. Millers and Farmers are well represented under 7 (2) (b) and (7) (2) (c). Experts or consultants can be hired to advice as necessary.

366. Amend paragraph 7 (3) to read as follows: *"Review sugarcane prices based on (1) Reasonable costs of sugarcane production; (2) The cane price arrived at must cover the costs of its production; (3) Consumption taxes imposed on sugar shall be added to the costs of sugarcane production and sugar production for on onward transmission to the consumers; (4) The farmer/miller sharing ratio shall be 2/3 to the farmer, 1/3 to the miller; (5) Milling efficiency should be pegged at 82% nationally to protect farmers from inefficient mills (i.e. KR); (6) The sugarcane price in the formula shall be Ex-Factory price based on total costs of sugarcane and sugar production NOT Net ex-factory; and (7) Extraneous matter shall be limited to not more than 0.5% compelling delivery of clean cane to the mills"*. This is practiced internationally.

367. Amend paragraph 7 (4) (a) to read as follows: *"pricing mechanisms for all related costs, charges paid, accrued and imputed incurred by the farmer including interest charges administration and inflation"*. Not all costs are paid in cash. Some accrue and are paid later. Time and use of the farmers' vehicle and other equipment must be costed. Inflation is not paid in cash but it affects the value of the cash paid to the farmer.

368.Amend paragraph 7 (4) (b) to read as follows: "*an Index take into consideration delayed harvesting, delayed payments, and harvesting of immature cane*". These are necessary calculations to compensate the farmer e.g. if cane matures at 24 months but it is harvested at 36 months, the farmer will have lost 12 months of a ratoon crop. Assuming that he expects a yield of 75 tons in 24 months the tonnage growth is 75÷24=3.125 tons per month. Hence at a price of KSh. 4,000 per ton the farmer will have lost 12 months x3.125x4,000=KSh. 150,000. Similarly, a farm whose cane is harvested at 12 months instead of 24 months loses KSh. 150,000.

369.Amend paragraph 7 (6) to read as follows: "*The sugarcane pricing committee shall meet quarterly to review the operations under its mandate. Or as necessary in addition to quarterly meetings*". The total mandate of the sugarcane pricing committee is heavy. It cannot be left to be reviewed after 36 months.

Third schedule

370.Re-Arrange Part 6 to Read "*Relationship between the miller and the grower*". This important relationship has been omitted from the Bill. With the exception of some farmers in Muhoroni and Chemelil whose total sugarcane supplies through growers Institution for year 2021 amounted to 667155 tons equivalent to 8.72% of total national cane supplies of 7,647,224 tons from growers 91.27% the cane was supplied by growers who had direct relationship with millers in Kenya.

Committee's Observation/Recommendation

The Committee proposed deletion of the Third Schedule to the Bill.

4.14 OUT-GROWERS SUKARI SUGAR COMPANY LIMITED

In their memorandum, the out-growers proposed the following amendments to the Bill:

Clause 2

371.Amend definition of the word '*agreements*' to read as follows, "*agreements specifying the standard provisions negotiated by all parties governing the rights and obligations of growers, millers, out-grower institutions, transporters, and workers*". This is because the contract should be negotiated and developed by all parties.

Committee's Observation/Recommendation

The Committee observed that it would be prudent to add other industry players. The proposal was adopted with amendments.

372.Amend definition of '*out-grower*' to mean, "*any person or institution who grows sugarcane for the production of sugar and by-productions and who has in force of supply contracts in respect of sugarcane grown on such farm and registered by the Board*". The issue of the catchment area is confusing, it missed the out-grower institution.

Committee's Observation/Recommendation

The Committee observed that the definition provided in the Bill is sufficient and therefore rejected the proposal.

373.Delete definition for the word "*sugar catchment area*". The definition is not necessary as it zones farmers. The CS will gazette electoral areas as was done in the past.

Committee's Observation/Recommendation
Zoning cannot be wished away in the sugar industry because it will bring order in the sector. Their proposal was therefore rejected by the Committee.

374. Amend definition of the word *"stakeholder"* to include transporters, workers, cane cutters, loaders, molasses dealers and traders.

Committee's Observation/Recommendation
The Committee observed that the use of the word "includes" means that all persons who have an interest in the sugar industry are taken into account as stakeholders. The proposal was rejected.

Clause 5

375. Amend the clause by deleting sub-clauses (a), (b), (c) and (d) because county governments have no capacity to undertake these roles.

Committee's Observation/Recommendation
The Committee observed that Agriculture is a devolved function and counties have been facilitated to undertake these roles. The proposal was rejected.

376. Amend sub-clause 5(e) to read as follows, *"establish an efficient road network for the movement of sugarcane through the use of cess fund collected and retained by the miller; managed by a committee comprising five grower representatives and millers"*. Cess should be managed by both miller and out-grower.

Committee's Observation/Recommendation
Collection of cess is a function of county governments. This proposal was rejected by the Committee.

Clause 6

377. Amend sub-clause 6(1) (b) to read as follows, *"five representatives nominated by growers' organisation from electoral areas gazetted by the Cabinet Secretary"*. The last KSB election was characterised by violence, corruption, mismanagement, lack of transparency and rigging.

Committee's Observation/Recommendation
Election is the fairest way of selecting the representatives of farmers. This proposal was rejected by the Committee.

378. Amend sub-clause 6(2) (a) by deleting the word *"appointment"* and replacing with the word *"gazetted"* and add the words, *"the CS shall gazette the chairperson"*. This is because he is already appointed by farmers and only awaiting gazettement.

Committee's Observation/Recommendation
The Committee noted the Mwongozo code and agreed that the chairperson should be appointed by the President and gazetted as such.

379. Amend sub-clause 6(3) by deleting the degree requirement because farming is about practical skills and not degrees. It will deny members the opportunity.

Committee's Observation/Recommendation
The KSB is a professional body that requires a person with the relevant academic qualifications as the chairperson.

Clause 20
380. Amend by deleting sub-clause 20(1) because importers will take advantage.

Committee's Observation/Recommendation
This proposal was rejected by the Committee.

Part IV
381. Delete clause 29, 30, 31 and 32 because it they are oppressive.

Committee's Observation/Recommendation
The Committee observed that the aspect of entry and inspection of land and buildings and also appointment of crop inspectors is vital to the development of sugar industry in Kenya. The proposal was dropped.

Clause 34
382. Amend sub-clause 34(2) to read as follows, *"the Cabinet Secretary shall in consultation with the Board by order in the gazette impose a levy on domestic sugar of no more than two percent and seventy per centum of CIF value on imported sugar to be known as the sugar development levy"*. To discourage surplus sugar imports by cartels.

Committee's Observation/Recommendation
The Committee observed that in accordance to WTO agreements the levy on imported sugar and that of locally manufactured sugar ought to be the same. It was also noted that in 2015 the levy was 4 percentum. The proposal was not adopted.

383. Insert the following new paragraph under sub-clause 34(2), *"the levy imposed under sub-clause (2) shall be collected by millers and disbursed to the Commodities Fund with the Board undertaking the role of supervision"*. For accountability of the money.

Committee's Observation/Recommendation
The Committee observed that there are proper channels of collecting the levy as is being done currently by the commodities fund. Further this is an administrative role which can be performed by the commodities fund in conjunction with the millers and other value chain actors in the sugar industry. The proposal was dropped.

Clause 35
384. Amend sub-clause 35(1) to read as follows, *"There is established a Fund to be known as Sugar Development Fund which shall be administered by an independent Board of Trustees comprising of one grower and two others with extensive knowledge in law, agriculture, banking or economics"*. This is for good corporate governance and accountability of the Fund.

Committee's Observation/Recommendation
~~The Committee observed that the fund should be maintained by the Commodities Fund which~~ currently maintains it. Within the Commodities fund, is a sugar development fund which does

exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

385. Amend paragraph 35(1) (b) to read as follows, "*the Trustees be appointed by the Cabinet Secretary for Agriculture for a term of 3 years renewable once*".

Committee's Observation/Recommendation
The Committee observed that the fund should be maintained by the commodities fund. Within the Commodities fund, is a sugar development fund which does exactly what the fund is proposing to do. The Committee proposed to entrench the Commodities Fund in law. The proposal was rejected.

Clause 40

386. Amend sub-clause 40(4) to read as follows, "*The members of the Tribunal appointed under sub-section (2) shall hold office on appointment basis, and paid salaries and not allowances*". Working on a part-time basis will prolong the dispute resolution.

Committee's Observation/Recommendation
The Committee observed that it is a standard practice for all members serving in a tribunal to serve on a part time basis.

Clause 55

387. Amend sub-clause 55(3) to read, "*a person appointed as director under sub-section (1), shall serve for a term not less than three and a half years*". For institutional memory after election of KSB directors.

Committee's Observation/Recommendation
Clause 55 was deleted by the Committee.

First Schedule

388. Delete the entire Schedule because the electoral areas are to be determined by the Cabinet Secretary and the area under coverage is not realistic.

Committee's Observation/Recommendation
The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. The proposal was not adopted.

Third Schedule, Part 3

389. Amend paragraph 6(2) (a) to include that burnt sugarcane shall only be rejected when it is under 12 months and when it is stale because only underage cane cannot be milled.

390. Amend by deleting paragraph 6(2) (b) because it can be abused by millers who do not have the interest of farmers.

391. Amend paragraph 7(1) (c) to read as follows, "*three persons nominated by the sugarcane growers' organisations*". To provide for nomination by the organisation.

392. Amend by deleting paragraph 7(3) (d) because farmers are not educated on the cane-based payment system.

Committee's Observation/Recommendation
The Third Schedule to the Bill was deleted by the Committee.

4.15 SOUTH NYANZA SUGAR COMPANY LIMITED

In their memorandum, SONY Sugar proposed the following amendments to the Bill:

Clause 54

393. Amend the clause by harmonising it to the Privatisation Act in order to encourage investors to invest in the sugar companies.

Committee's Observation/Recommendation
The Committee deleted the clause 54.

First Schedule

394. Amend the Schedule by grouping Kisumu, Kericho, Nandi and Uasin Gishu under the Rift Region and Kisii and Nyamira added to the Southern Region.

Committee's Observation/Recommendation
The Committee observed that the First schedule is provided for election of representatives to the office of member to the Board. Further, The Committee observed that there is need to provide zoning of catchment areas in order to curb irregularities experienced in the catchment areas such as cane poaching, cane agreements not being adhered to. The Committee agreed with the proposal to zoning.

Third Schedule

395. Amend Part 1 (2) and Part 2 (4) by providing definition for out-grower institutions because the definition in the Bill does not provide the qualifications for an institution to be an out-grower institution.

396. Amend paragraph 5(a) to read as follows, "*weigh the harvested sugarcane on designated and registered weighbridges*". Millers are required to weigh the harvested sugarcane at the farmgate which is not practical.

Committee's Observation/Recommendation
The Third Schedule to the Bill was deleted by the Committee.

4.16 KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS – SONY SUGAR BRANCH

Clause 2

397. Amend definition of "*Sugarcane Growers Apex Body*" to read as follows, "*A national registered organisation whose membership shall be mill level registered farmers' institutions and groups championing the rights under a cane supply contract and in catchment areas under the First Schedule gazette as such by the Cabinet Secretary for the time being responsible for agriculture*".

Committee's Observation/Recommendation
Their proposal was adopted by the Committee.

398. Amend definition of "*Dispute Resolution Committee*" to read as follows, "*A committee established within each Sugar Mill level comprising of two representatives from the miller, 2 farmers' representatives and 1 representative from the county government to resolve all minor disputes arising between the parties within such milling zones*".

Committee's Observation/Recommendation

The Tribunal established in the Bill will resolve all disputes in the sugar sector.

399. Amend definition of "*Agreements*" to read as follows, "*the agreements and/or tripartite cane contact agreement specifying the standard provisions governing the rights and obligations of growers, millers and out-grower institutions in the sugar industry*".

Committee's Observation/Recommendation

The Committee observed that the word tripartite is limiting and therefore rejected the proposal.

400. Amend definition of "*Cess Committee*" to read as follows, "*a committee established within sec.......with full representation of sugarcane farmers who are the main contributors for the monitoring of the utilisation of such funds*".

Committee's Observation/Recommendation

Cess is collected by county governments. The county governments will therefore form the cess committee if they establish that there is need for the committees.

Clause 6

401. Amend paragraph 6(1) (b) to read as follows, "*the five representatives elected by the registered growers' institutions from each sugar catchment area as per the First Schedule*".

Committee's Observation/Recommendation

The Committee observed that there is no need to insert the word "registered" because the sugarcane farmers organisations will ultimately register the farmers. The proposed amendment is superfluous. The proposal was dropped.

Clause 25

402. Amend paragraph 25(b) to read as follows, "*five representatives elected by the registered growers' institutions from each sugar catchment area as per the First Schedule*".

Committee's Observation/Recommendation

The Committee noted that management of the Institute ought to be done by professionals. Hence there was no need for farmers to be represented because the CEO of the Board will ably represent them. The proposal was not adopted.

Clause 34

403. Amend sub-clause 34(7) to include sugarcane farmers apex institutions because the apex body represents all sugarcane growers in the country.

Committee's Observation/Recommendation

The Committee observed that sugarcane farmers apex bodies are a necessity in disseminating information especially if that information involves cane development. The apex body is best suited as a tool in mobilising farmers and also a channel for farmers to air their grievances. The proposal was adopted with amendments.

Clause 40

404. Amend the clause to provide a local dispute resolution mechanism to help deal with other minor matters that can be solved locally within mill level. The committee should comprise of 2 miller representatives, 2 growers' representatives and 1 county government representative who shall be the chairperson.

Committee's Observation/Recommendation

The Tribunal is established in the Bill to resolve all disputes in the sugar industry. The proposal to establish local dispute resolution committees was rejected by the Committee.

Clause 55

405. Amend sub-clause 55(1) to include state owned sugar companies. Growers' representatives should be given full responsibility to nominate growers' representatives to such boards.

Committee's Observation/Recommendation

The Committee proposed deletion of clause 55.

406. The cane pricing committee should be established with proper farmers' representation and in consideration of the five sugar catchment regions and nomination of the said farmers' representatives be done with respective growers' institutions registered with the regulator and with membership across the respective regions.

Committee's Observation/Recommendation

Cane pricing is a function of the Board and therefore no need to put in place a cane pricing Committee. Their proposal was rejected by the Committee.

First Schedule

407. Proposed that zoning be done according to regions as follows: Rift Region (Kericho, Nandi and Uasin Gishu); Coastal Region (Kwale, Lamu and Tana River); Southern Region (Homabay, Kisumu, Migori and Narok); Upper Western Region (Bungoma and Transnzoia); and Lower Western Region (Busia, Kakamega, Siaya and Vihiga).

Committee's Observation/Recommendation

The Committee observed that there is need to provide zoning of catchment areas in order to curb irregularities experienced in the catchment areas such as cane poaching, cane agreements not being adhered to. The Committee agreed with the proposal but with amendments.

408. Include the Kenya National Federation of Sugarcane Farmers as the national sugarcane growers' apex body.

Committee's Observation/Recommendation

The sugarcane growers' apex body is already provided in the Bill.

PART FIVE

5 FIELD VISITS

409. During the stakeholder engagement retreat held on Friday, 24th March 2023 at Holiday Inn Hotel, Two Rivers Mall, the Committee resolved to conduct field visits to sugar companies in order to appreciate the conditions under which they operate, the challenges that they experience in their day-to-day operations, the status of the factories particularly the public mills and to interact with farmers who supply sugarcane to the factories. The Committee conducted field visits as follows:

5.1 WESTERN REGION AND KISUMU COUNTY

410. The Committee undertook field visits between Thursday, 13th and Saturday, 15th April 2023 to the following sugar companies:
   i. West Kenya Sugar Company;
   ii. Butali Sugar Mill;
   iii. Nzoia Sugar Company Limited;
   iv. Mumias Sugar Company Limited;
   v. Busia Sugar Industry Limited;
   vi. Kibos Sugar Company Limited;
   vii. Miwani Sugar Company Limited;
   viii. Chemelil Sugar Company Limited; and
   ix. Muhoroni Sugar Company Limited.

411. During the field visits, the Committee conducted a tour of the companies and established that the privately owned sugar mills were well maintained while the government owned sugar mills were run down and struggling financially.

412. The Committee received the following submissions from sugar company management and out-growers during the field visits:

5.1.1 WEST KENYA SUGAR COMPANY

413. The Company's management and farmers submitted that the SDL should be charged on all sugar imports and exports. These Levy should benefit the farmer through construction of feeder roads and support the community through CSR activities. Farmers recommended that 75% of the levy should be used for purposes of cane development. The Company's management submitted that the Levy should be distributed as follows: 15% price stability; 20% to the KSB; 20% to research; and 45% in infrastructure.

414. The farmers were opposed to zoning proposing that farmers and millers should be left free to develop their relationships and agreements irrespective of their location within the sugarcane catchment areas.

415. Both parties submitted that sugar packaging by supermarkets and sugar millers who rely solely on imports should be banned. Additionally, imports and exports should be regulated.

416. They supported the re-establishment of KSB to regulate operations and relationships of the sugar farmer, sugar miller and the consumer. The Board should have representatives from millers and out-growers. KSB will also address a myriad of challenges facing state owned factories e.g. poor

management, corruption, government interferences, disputes between factories and sugarcane farmers, inadequate funding for cane development etc.

5.1.2 BUTALI SUGAR MILL

417. The Butali sugar management requested the Committee to fast-track consideration of the Sugar Bill, 2022 so as to reinstate the Kenya Sugar Board. They supported the amendments proposed to the Bill by KESMA.

418. They requested the Committee to push the Ministry to develop crop (sugar) regulations to regulate all players in the industry.

419. The management was in support of the introduction of zoning on priority basis.

420. They stated that government owned factories should endeavour to pay farmers on time and embrace good governance

421. Sugar companies were jointly looking for ways to mitigate against harvesting of immature cane. Additionally, they proposed that the Sugar Pricing Committee needs to be reconstituted to address price fluctuations in the industry. Further, CF needs to be empowered to be able to collect the levies and approve funds requests by millers on time.

422. They proposed that VAT needs to be reduced from 16% to 8% in order to improve the business environment.

423. KESMA and KNFSF need to be legally recognised as apex bodies to reactivate out-growers' companies by each mill to represent their farmers. Further, the Sugar Taskforce Report of 2019 should be implemented and regional research centres created in each of the five sugar catchment regions.

5.1.3 NZOIA SUGAR COMPANY LIMITED

424. The famers proposed that the SDL should be imposed on all imports and exports at 5%, local millers at 3% and consumers at 2%. The levy should not be a perpetual fund but have a timeline to morph into a fully-fledged sugarcane farmers' bank. 75% of the levy should be used for purposes of Cane development.

425. The farmers proposed that county governments should work with millers and farmers in the planning and utilization of cess in improving infrastructure in the sugar catchment areas.

426. The farmers opposed zoning and encouraged the Committee to allow the use of farmer-miller agreements irrespective of their location within the sugarcane growing area. They observed that contractual farming is better suited in the current environment.

427. They proposed that a policy banning repackaging of sugar by supermarkets and sugar companies who rely solely on imported sugar mainly for repackaging and selling in their respective brand names be put in place.

428. They also proposed that institutions participating in CSR activities should be given tax rebates. They observed that the future of the sugar industry lies in the energy sector. There should be laws

that encourage power production to the national grid by implementing policies aimed at replacing the fossil fuel generators with environmentally friendly options from the sugar industry.

429. In conclusion, they submitted that farmers should be free to join an organization of their own choice.

5.1.4 MUMIAS SUGAR COMPANY LIMITED

430. The MD, Mumias Sugar Company informed the committee that the Company was under rehabilitation on resumption of operations after almost seven (7) years of closure. He stated that the company had managed to revive three weighbridges and replaced several fuel pumps that were defective.

431. The new management had managed to put almost 1,852 acres of land under cane cultivation. The Company had boosted cane supply by the enrolling 11,456 farmers into the Company's cane supply register.

432. The Company had employed a total of 900 persons on full time basis and 1000 on contractual terms.

433. In order to boost confidence of farmers in the Company, arrears owed to them arising from cane supplied from July 2022 to April 2023 amounting to KSh. 1.7 billion were settled. The price of sugarcane purchased from farmers had increased to KSh. 5,500 per ton.

434. The company had contributed to the revenue of the County Government of Kakamega by paying cess totalling to KSh. 8.2 million. The Company had spent over total KSh. 1.6 billion as capital injected in order to revive the factory.

435. The MD informed the Committee that the Company was faced with several challenges including:
   i. Multiple suits filed against the company. A total of 10 cases were filed allegedly by the Company's competitors and seven (7) were dismissed with the cost of suits awarded in two (2) of them.
   ii. Unfair competition where other sugar millers purportedly engaged in practices such as destruction of cane within the zone of Mumias Sugar Company and persuading farmers contracted by the Company to harvest immature cane and sell to them.
   iii. Terms of the lease agreement provided that the lessee conduct rehabilitation on the Company within 8 to 9 months after execution of the Agreement. This was a tall order because the Company required more time for full rehabilitation.
   iv. The Company had a production capacity of 8,500 tonnes per day. A capacity which the Company was unable to meet due to several reasons such as reduction in availability of cane caused by farmers abandoning sugarcane farming in the region.
   v. Negative media coverage that claimed that the company had imported sugar from Uganda.

436. Mumias Sugar Company supported zoning because other sugar companies had allegedly trespassed into its zone and operated there while it was non-operational due to insolvency for about seven years. Zoning will reduce instances of unfair competition or business practices and increase agricultural produce through calculated investments.

437. The MD informed the Committee that the industry required long-term policies to promote its growth and stability.

5.1.5 BUSIA SUGAR INDUSTRY LIMITED

438. The Company's management supported licensing as provided for in the Bill. They stated that it was important to regulate sugarcane millers through licensing and that the mandate was well domiciled within the proposed KSB.

439. The Company supported zoning with slight proposed amendments to have Mumias Sugar Company area to feature in Kakamega. The Company further stated that delineation will reduce cases of unfair business practices such as cane poaching by enforcing that no miller should establish a cane buying centre or a weighbridge outside the allocated catchment area. They also proposed that sugar mills be established not less than 40 Km radius from another in order to tackle the issue of poaching of young cane by rival millers.

440. The Company fully supported the reinstatement of the Sugar Board as provided in the Bill and claimed that AFA, Sugar Directorate reversed many gains made by the initial KSB.

441. They proposed that the prices of sugarcane should be determined by the market forces of demand and supply and not set by the sugarcane pricing committee.

442. The management proposed that the Government should give millers sugar importation quotas based on production capacity. They further proposed that the allocation be shared between the millers and the KNTC.

443. The management requested the Committee to assist private sugar companies in acquiring idle Government land for cane production in order to increase sugarcane production in the country. This will ensure that sugar production in the country satisfies demand hence therefore reducing the importation of cane or sugar into the country.

444. They also proposed a total ban on repackaging and rebranding of both locally manufactured and imported sugar because it denies millers the intellectual property ownership rights and also interferes with traceability in case of a faulty product.

445. They proposed that environmental protection should be enhanced by compelling sugar companies to exhaust *bagasse briquettes* for fuel as an alternative to firewood.

5.1.6 KIBOS SUGAR COMPANY LIMITED

446. The Company's management supported enactment of the Sugar Bill, 2022 into law with the justification that it will bring a lasting solution to the problems experienced in the sugar industry. Farmer associations also supported the Bill and lauded efforts of the sponsor of the Bill, Hon. Emmanuel Wangwe, MP. They However, brought to the attention of the Committee that enactment of the Bill should be followed up by formulation of regulations to operationalize the proposed Act. They pointed out that the Sugar Industry lacked Regulations for almost two decades therefore hindering interpretation and operation of previous the Act.

447. The management was of the view that the Government's position of restricting importation of sugar was detrimental to the sugar industry because locally produced sugar was not enough to meet the demand due to shortage of sugarcane. They further observed stakeholders in the sugar industry should be given permits to import sugar into the country and do reprocessing.

448. They noted that the cost of producing sugar was relatively high due to the high taxes imposed on every aspect of the industry namely, milling, cost of inputs and heavy taxation on the importation of raw materials. They implored the Committee to look into the issue and work on policies that will reduce taxation on the sugar industry.

449. The management and the farmers supported the establishment of the KSB as provided for in the Sugar Bill, 2022. Farmers expressed concerns regarding the Agriculture and Food Authority, Sugar Directorate, stating that it had proven to be ineffective in carrying out its mandate.

450. Both the management and farmers supported privatization of the government owned sugar mills. They however emphasized that privatization will be ineffective if importation of sugar is uncontrolled.

451. The farmers proposed that farmers board or an apex body should be established of the to deal with representation of farmers on all levels of decision-making including issues such as importation of sugarcane. They gave a framework for the establishment of the board through regulations and midwifed by the Ministry of Agriculture and Livestock Development.

452. The farmers were against the setting up of Cane Testing Units because the few that had been initiated were not functional and therefore served as avenues for embezzlement of funds.

5.1.7 MIWANI SUGAR COMPANY LIMITED

453. The out requested the Committee to help revive the sugar industry in the region. The farmers expressed difficulty in making profit from cane growing despite sugarcane farming being the major economic activity in the area.

454. Farmers advocated for the reestablishment of the Kenya Sugar Board because it would streamline the sugar sector for the benefit of the sugar farmers, millers and consumers. The Board should have representatives elected by grass-root groups.

455. The farmers called upon the Committee to help revive the sugar industry. They were in support of the privatisation of Miwani Sugar Company Limited but requested that public participation is carried out before the privatisation process kicks off.

456. Farmers averred that they should be involved in the management of the Board so as to agitate for their access to farm inputs like subsidized government fertilizers which is necessary for cane development.

457. The Ministry should communicate the intention to import sugar at least three months prior to through a gazette notice. Importation should be clearly communicated to the millers in terms of costs, quantities, and period expected to allow local millers to plan well and forecast.

458. The famers advocated for reintroduction of the SDL and strengthening of its administration to achieve the following: Provide an opportunity for sugar millers to access funding for annual maintenance of their factories and agricultural machinery; allow farmers and millers with nucleus farms to borrow money for cane development; and support construction and maintenance of feeder roads and bridges for easier supply of raw materials to the mills. They proposed that 75% of the levy should go towards sugarcane development.

5.1.8 CHEMELIL SUGAR COMPANY LIMITED

459. In a meeting with farmers at Chemelil Sugar Company, they proposed that grants for maintenance of feeder roads need to be provided and the cess paid to the County Governments of Nandi and Kisumu properly utilized. Further, recommendations made by the Sugar Taskforce should be enhances especially those on zoning.

460. They requested for facilitation and access to farm inputs like subsidised government fertilizer for cane development at the company nucleus estate.

461. The farmers were opposed to privatization of Chemelil Sugar Company citing Mumias Sugar Company as a failed project despite its privatisation.

5.1.9 MUHORONI SUGAR COMPANY LIMITED

462. The farmers and workers were in support of the establishment of KSB as an apex body in the industry. They also proposed that the cess committee should be formed to administer payment of cess to county governments and ensure that a percentage of the cess collected is used to promote and develop the Sugar Industry.

463. The farmers and the workers called for separation of the management of Muhoroni Sugar Company Limited from that of Miwani Sugar company Limited. They stated that both Companies had the same joint receiver managers and that it was necessary to have their own manager separate from that of Miwani Sugar Company because the Company required special attention and the challenges faced by the Company were different from those faced by Miwani Sugar Company.

464. The Company workers cited lack of payment of salaries for a period of up about 46 months. The Company had been the source of livelihood for many residents of the area before its collapse and therefore pointed out the importance of its revival. The workers, through their representatives, called for the privatization of the company in a bid to initiate its revival.

5.2 SOUTH NYANZA REGION AND NAROK COUNTY

465. The Committee undertook field visits between Monday, 8th and Wednesday, 10th May 2023 to the following sugar companies:
   i. Transmara Sugar Company Limited;
   ii. Sukari Sugar Company Limited; and
   iii. SONY Sugar Company Limited

466. The Committee held meetings with the management and sugarcane farmers in the above sugar companies and established that:

5.2.1 TRANSMARA SUGAR COMPANY LIMITED

467. The Sugar Company is located in Kilgoris Sub-County in Narok County. The Company is owned by *Sucriere Des Mascareines* Limited (SML), a Mauritian Company with a shareholding of 71% and local investors with a shareholding of 29%.

468. The Company had contracted 17,000 sugarcane farmers in Narok County and was spending KSh. 9 billion on input to farmers. The Company operates for 11 months in a year and is usually closed between April and May for maintenance.

469. The Company's management informed the Committee that some farmers bridge the contract with the Company so as to evade paying for the inputs. To deal with this, the management proposed that zoning and regulations protecting farmers and factories need to be introduced.

470. The management further observed that there is no mechanism by AFA to check on the growth of sugar companies. The Authority needs to be given more power to regulate the sugar industry.

471. On their part, farmers complained that despite having a 24-month contract with the Company, some sugarcane had stayed in the farms for 50 months mainly because sugarcane production was higher than the company's capacity. They stated that monopoly on their cane needs to be abolished and were therefore not in support of zoning. To address this, they averred that farmers should charge interest to the Company for sugarcane that stays in the farm beyond the contract time.

472. The farmers raised concern about the harsh penalties imposed on them if their sugarcane gets burnt i.e. the sugarcane is paid on sucrose content, the farmer is paid KSh. 400 per tonne, the farmer is paid after three to six months and farmer meets the cost of transporting the sugarcane from their farm to the Company.

473. Additionally, farmers complained of delayed payments, inaccessibility of the Company's management, delays in supply of cane seed, many hidden costs leading to reduced income to the farmers, lack of consultation when coming up with the contract, the CSR activities undertaken by the Company are not commensurate to the profits that they make and payment is only made for sugar and not other by-products like molasses.

5.2.2 SUKARI SUGAR COMPANY LIMITED

474. Sukari Sugar Company Limited is owned by the Rai Group and is located in Ndhiwa Subcounty, Homabay County.

475. In a meeting with the Committee, the management of Sukari submitted that they were in support of the reintroduction of the Kenya Sugar Board and the Sugar Development Levy. They observed that the Kenya Sugar Board should be a regulator and not manager of the SDL. The SDL can be collected by KRA because it has enforcement mechanism and managed by the Commodities Fund.

476. They proposed that the SDL should be distributed mainly to the farmers and millers instead of being used to cater for administrative expenses of KSB. The SDL should be used for construction of bridges, cane development, purchase of machinery for road development and repair of roads to ease accessibility to farms during cane harvesting.

477. The management also supported introduction of the Sugar Tribunal especially to resolve cases between millers and farmers. They observed that there were many cases in court and it takes long for them to be concluded in the court system.

478. Additionally, the management stated that county governments collect cess of 1% of farmers' earnings that is meant to be used for the repair of roads. Sugar companies remit the money to county governments but the roads are not repaired. They proposed that the Bill should prescribe the use of the money.

479. With regards to poaching, they stated that it should not be introduced in the Sugar Bill because it is discriminative and Kenya is a free market. To deal with it, they proposed that contract farming for farmers should be introduced and laws against cane poaching put in place.

480. In conclusion, the management informed the Committee that there was need to enhance research in the sugar sector in order to improve sugarcane varieties. Research will help develop high yielding sugarcane that matures in a short time.

481. On their part, farmers lauded Sukari Sugar Company for quick payment. They received their payment within four (4) to seven (7) days after supplying sugarcane to the Company. They also expressed their gratitude to the Company for their role in cane development, offering of scholarships and maintenance of roads.

482. They also supported the reintroduction of KSB because AFA had done nothing for the sugar sector since its inception. They also supported reintroduction of the SDL and the usage must be clearly stipulated in law in order to ensure accountability. The Levy should be managed by a trustee and not KSB.

483. They complained about bad roads that had made it difficult to transport sugarcane from their farms to the Company, lead to high cost of sugarcane transportation and cane spillage reducing the sugar tonnage.

484. The farmers also observed that extension services need to be reintroduced. They proposed that these services should be domiciled in the National Government because it appeared that county governments were not able to handle them.

485. Additionally, the farmers called for introduction of insurance against burning of sugarcane, crop development should be done by CF, free sugarcane market system (opposed zoning), devolving of the sugar tribunal to county level for accessibility by farmers, clear stipulation of penalties for sugarcane poaching in the contracts, putting in place of regulations on cane poaching and stopping of illegal sugar importation.

5.2.3 SOUTH NYANZA SUGAR COMPANY LIMITED

486. SONY Sugar Company Limited is a government owned sugar company in Uriri Sub-County, Migori County.

487. In a meeting with the Committee, the Company's management observed that there was need to protect public milling companies by writing off historical debts and bailing them out of their debts. In November 2021, the Company requested for KSh. 500 million from the Government and was given KSh. 317 million, KSh. 138 million was used for maintenance of the factory while KSh. 138 billion was used to pay farmers.

488. On how the Company accrued the historical pending bills, the management stated that the Company lost KSh. 4 billion of their investment to cane poaching by private sugar companies. The debts were accrued between 2017 and 2020.

489. The management noted that the sugar subsector needs to be mainstreamed. They were not keen on where the SDL is domiciled as long as there is a levy for the sugar industry.

490. On their part, the out-growers submitted that there should be one sugar industry agreement for all sugar companies prepared by all stakeholders so that interests of all stakeholders are taken care of.

491. They supported reintroduction of the KSB and zoning of sugar catchment areas for order in the industry. They expressed concern in the classification of sugar as a commodity instead of food which has resulted in high taxes.

492. The farmers were opposed to the privatisation of public sugar companies mainly because private sugar mills do not employ locals and if they do, the pay is low; private mills do not maintain roads; and private millers import sugar.

493. The farmers raised concern about obsolete machines in the Company which resulted in high cost of production. They observed that there was need to have a level playing ground for private and public sugar milling companies.

494. The workers' union informed the Committee that employees of the Company were not paid salaries in 2019 and 2020 though the Company was paying the salary arrears. They observed that only 700 workers in the Company were employed on permanent and pensionable terms. Over 900 workers had been working on contractual terms for the last 30 years. They noted that there was need to regulate board meetings because a lot of money was being used to pay board members instead of going into other important areas like paying salary arrears.

5.3 KWALE INTERNATIONAL SUGAR COMPANY LIMITED

495. The Committee undertook a field visit to Kwale International Sugar Company on Friday, 16th June 2023. The Company is located in Msambweni Sub-County, Kwale County. It is owned by Pabari Investments Limited, a Kenyan Company with a shareholding of 80% and Omnicane Limited, a Mauritian Company with a shareholding of 20%.

496. The management informed the Committee that KISCOL has the following components: A 3300 TCD factory; nucleus land; irrigation network comprising of dams, boreholes and bulk water supply system; 18 MW co-generation plant; and out-grower farms.

497. KISCOL is set up where Ramisi Sugar Factory was located. The Company was allocated 15,000 acres (6082 Ha) from the 42,000 acres (17,000 Ha) belonging to Ramisi Sugar Factory and 27,000 acres were set aside for relocation and settlement of squatters. The lease for the 15,000 acres was issued to KISCOL by the National Treasury on behalf of the Government in 2007.

498. The project was projected to attain full commercial operations in March 2015 but this is yet to happen due to the following: Occupation of part of the Company's land (almost 2500 Ha) by squatters which has resulted in court cases; excision of 1,000 Ha from the lease area to extend Base Titanium's Special Mining Lease; and political incitement by local leaders.

499. Sugarcane farmers informed the Committee that the prolonged drought in 2022 led to the drying of sugarcane, consequently, they were not able to service the loans that they had taken from AFC. Resultantly, AFC had auctioned some of their property to recover the loans. They raised concern about the huge sums of money required by AFC before loans are approved.

500. They observed that the cess collected from them by the County Government of Kwale was not used for the intended purpose of repairing roads, bridges and for extension services. They also observed that AFA had not been felt in Kwale County since its inception.

501. In order to improve the livelihood of sugarcane farmers, the farmers proposed that importation of sugar should be done by SACCOs so that farmers are able to sustain themselves during the dry season, an out-grower office should be set up to provide extension services, permits should be provided to KISCOL to plant the improved sugarcane varieties which will increase their yield, and seed cane should be provided to farmers.

502. The farmers supported reintroduction of KSB and requested for the provision of insurance for sugarcane to cover them when their sugarcane gets burnt or when production is affected by unfavourable climatic conditions.

PART SIX

6 COMMITTEE OBSERVATIONS

Having considered the Bill, the Committee observed that enacting the Sugar Bill (*National Assembly Bill No. 34 of 2022*) into law will bring several potential benefits to the sugar industry, including:

6.1 OBSERVATIONS ON THE BILL

503. **Regulating the sugar industry:** The sugar law will help to regulate the sugar industry in Kenya as it will ensure that producers and manufacturers comply with established standards and guidelines. This will help in improving the quality of sugar products and ensure that consumers are protected from harmful or substandard products.

504. **Encouraging investment:** A clear legal framework for the sugar industry will make it easier for investors to understand the regulatory environment and make informed decisions about investing in the sector. This can lead to increased investment in sugar production and processing facilities, which will create jobs and drive economic growth.

505. **Protecting domestic producers:** The Sugar Bill, 2022 has provisions that protect domestic sugar producers from unfair competition from foreign imports. This will help to support local sugar production and ensure that Kenya's sugar industry remains viable and sustainable.

506. **Promoting food security:** The sugar industry is an important part of Kenya's agricultural sector, and promoting the growth and development of the industry can help to promote food security in the country. This is especially important given Kenya's dependence on imported sugar and other food products.

507. **Generating revenue:** A well-regulated sugar industry will generate significant revenue for the Kenyan government through taxes and other fees. This revenue will be used to support important social programs and infrastructure projects.

6.2 OBSERVATIONS FROM THE FIELD VISITS

508. Eleven (11) CTUs had been installed in both public and private sugar companies. All the CTUs were not operational despite the heavy investment used by AFA to put them in place. AFA had the responsibility of operating the CTUs in the pilot stage in both private and public mills.

509. The public sugar companies were run down. The technology used in most of them was outdated resulting in reduced efficiency and effectiveness and high maintenance costs. Additionally, the companies were heavily indebted especially to farmers who supplied cane to them and their employees.

510. The sugarcane varieties in all places visited by the Committee were low yielding. This was attributed to low funding on account of sugar research.

511. AFA's impact had not been felt by farmers and management of sugar companies visited by the Committee.

PART SEVEN

7 COMMITTEE RECOMMENDATION

The Committee having reviewed the Sugar Bill *(National Assembly Bill No. 34 of 2022)* recommends that the House approves the Bill with amendments.

SIGNED.. DATE 5/7/2023

HON. (DR.) JOHN KANYUITHIA MUTUNGA, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

THE NATIONAL ASSEMBLY

DATE: 06 JUL 2023 | DAY: Thursday

TABLED BY: Hon. Geoffrey Odanga (Member, Agriculture and Livestock Committee)

CLERK-AT THE-TABLE: Hemphelle Joyce

REFERENCES

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