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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – (FIFTH SESSION)

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

REPORT ON THE CONSIDERATION OF THE SUGAR BILL (NATIONAL
ASSEMBLY BILL NO. 68 OF 2019)

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

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THE NATIONAL ASSEMBLY
PAPERS LAID

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TABLED BY: CHAIR, DC - AGRICULTURE & LIVESTOCK
HON. ILLAS KIPKOECH, MP

CLERK: FINLAY MURIKI

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Sugar Bill 2018 (National Bill No. 68 of 2019) which was published on 1st October, 2019 and read a First Time on Tuesday 5th November, 2019 and committed to the Departmental Committee on Agriculture and Livestock pursuant to Standing Order 127.

The Bill seeks to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of this Bill will restore the roles of the Kenya Sugar Board currently granted to the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Reestablishment of the Kenya Sugar Board, the Sugar Development Levy and the Sugar Development Fund shall address the challenges faced by the industry like; non-payment of farmers by public sugar companies, increased costs of sugar production, declining land acreage under sugar, lack of markets for sugar, failure to control imports and exports of sugar, poor management of sugar companies and lack of research and cane development initiatives.

Following placement of adverts in the print media on 6th November, 2019 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to article 118(1)(b) of the Constitution and Standing Order 127(3) the Committee received memoranda from eight (8) stakeholders.

The Committee noted that, most of the amendments proposed to the Bill by stakeholders were opposed to clustering of the sugar catchment areas into zones. This was very contentious and causing a lot of uproar among the stakeholders, therefore a need to remove zonings wherever it appears in the Bill.

Further there was need to constitute the Board with members representing the farmers from sugar catchment areas to ensure that there was regional representation.

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 the House the report of the Committee on its consideration of the Sugar Bill (National Assembly Bill No. 68 of 2019). 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 wishes to thank all the stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contribution towards the preparation and production of this report.

HON. SILAS KIPKOEACH TIREN, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

PART 1

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* and mandated to :-
 - a. 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;
 - b. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - c. **To study and review all the legislation referred to it;**
 - d. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e. 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;
 - f. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
 - g. To examine treaties, agreements and conventions;
 - h. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - j. 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 of the Standing Orders, the Committee is mandated to consider matters of; Agriculture, Livestock, Irrigation, Fisheries development, production and Marketing.
3. In executing its mandate, the Committee oversees the following government Departments:
 - a. The State Department for Crop Development & Agricultural Research
 - b. The State Department for Livestock
 - c. The State Department for Fisheries, Aquaculture and the Blue Economy

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Agriculture and Livestock was reconstituted by the House in July, 2020 and comprises of the following Members:

Chairperson

Hon. Silas Kipkoech Tiren, MP
MP for Moiben Constituency

Jubilee Party

Vice - Chairperson

Hon. Catherine Waruguru MP
MP for Laikipia County

Jubilee Party

Hon. Maison Leshomo, M.P
MP for Samburu County
KANU

Hon. Dr. Chrisantus Wamalwa, CBS, MP
MP for Kiminini Constituency
FORD Kenya Party

Hon. Majumbe Kalasinga, M.P
MP for Kabuchai Constituency
Ford Kenya Party

Hon. Jude Njomo, M.P
MP for Kiambu Constituency
Jubilee Party

Hon. Janet Jepkemboi Sitienei, M.P
MP for Turbo Constituency
Independent

Hon. (Dr.) John Mutunga, M.P
MP for Tigania West Constituency
Jubilee Party

Hon. Martin Peters Owino, M.P
MP for Ndhiwa Constituency
Orange Democratic Movement Party

Hon. Yegon Brighton Leonard, M.P
MP for Konoin Constituency
Jubilee Party

Hon. Ferdinand Wanyonyi, M.P
MP for Kwanza Constituency
FORD Kenya Party

Hon. Simba Arati, M.P
MP for Dagoreti North Constituency
Orange Democratic Movement Party

Hon. Cecily Mbarire, MGH, M.P
Nominated Member
Jubilee Party

Hon. Adan Haji Yusuf, M.P
MP for Mandera West Constituency
EFP Party

Hon. Julius Kibiwott Melly, M.P
MP for Tinderet Constituency
Jubilee Party

Hon. Geoffrey Odanga, M.P
MP for Matayos Constituency
Orange Democratic Movement Party

Hon. Joyce Kamene, M.P
MP for Machakos County
WDM-Kenya Party

Hon. Gabriel Kago Mukuha, M.P
MP for Githunguri Constituency
Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Members of the Secretariat:

Head of Secretariat

Mr. Ahmad Kadhi

Senior Clerk Assistant

Mr. Nicodemus Maluki
Second Clerk Assistant

Mr. Alex Mutuku
Sergeant At- Arms

Mr. Eugene Luteshi
Ngetich
Audio Officer

Mr. David Ngeno
Research Officer II

Ms. Clarah Kimeli
Senior Legal Counsel

Mr. Ahmad Yakubu
Media Relations Officer

Mr. Robert

Fiscal Analyst II

PART II

2.0 OVERVIEW OF THE SUGAR BILL, 2019

2.1 ANALYSIS OF THE BILL

6. 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 granted to the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.
7. The Member indicates that since 2013, ineffective stewardship of the sugar industry by the Agriculture and Food Authority has contributed to—
 - i. non-payment of farmers by public sugar companies;
 - ii. increased costs of sugar production;
 - iii. declining land acreage under sugar;
 - iv. lack of markets for sugar;
 - v. failure to control imports and exports of sugar;
 - vi. poor management of sugar companies; and
 - vii. lack of research and cane development initiatives.
8. The reestablishment of the Kenya Sugar Board, the Sugar Development Levy and the Sugar Development Fund shall address these challenges.

2.2 REVIEW OF THE SUGAR BILL, 2019

9. **PART I (Clauses 1 to 2)** of the Bill contains preliminary provisions.
10. **PART II (Clause 3 to 13)** of the Bill contains provisions on the establishment, powers and functions of the Kenya Sugar Board. Clause 3 charges the Board with the overall task of regulating, developing and promoting the sugar industry as well as facilitating the equitable access to the benefits derived from the industry.
11. **PART III (Clauses 14 to 16)** of the Bill contains provisions on licensing and registration of sugar and jaggery millers.
12. **PART IV (Clauses 17 to 24)** of the Bill contains financial provisions. Clause 18 establishes the Sugar Development Levy to be paid at such rate as is specified by the Cabinet Secretary responsible for matters related to Agriculture by order in the Gazette. Clause 9 establishes the Sugar Development Fund into which the Levy is to be paid in addition to monies granted to or voted into the Fund by the National Assembly.
13. **PART V (Clauses 27 to 32)** of the Bill contains miscellaneous provisions. Clause 30 restates the rights of sugar growers to fifty-one percent (51% shareholding of all privatized sugar companies and directorship of milling companies. Clause 31 establishes a Sugar Arbitration Tribunal to settle disputes arising under the Bill.
14. **PART VI (Clause 33)** of the Bill contains provisions on delegated power. It delegates legislative powers to the Cabinet Secretary responsible for matters related to Agriculture to make regulations for the better carrying into effect of the provisions of the Bill.

15. **PART VII (Clauses 34 to 35)** of the Bill contains consequential amendments to the Agriculture and Food Authority Act, 2013 and the Crops Act, 2013 in so far as they relate to the sugar industry.

16. **PART VIII (Clauses 36 to 38)** of the Bill contains savings and transitional provisions. Clause 36 and 37 transfers all the staff and the assets and liabilities of the Sugar Directorate of the Agriculture and Food Authority to the proposed Kenya Sugar Board, respectively. Clause 38 saves all pending proceedings and claims relating to the sugar industry currently handled by the Agriculture and Food Authority and ascribes them to the proposed Kenya Sugar Board.

PART III

3.0 PUBLIC PARTICIPATION /STAKEHOLDERS' SUBMISSIONS

17. Following the call for memoranda from the public through the placement of adverts in the print media on September, 2019 requesting for comments from the public on the Bill, the Committee received memoranda from the following:
- i. The Ministry of Agriculture, Livestock, Fisheries & Cooperatives;
 - ii. Council of Governors;
 - iii. Kenya Sugar Manufacturers Association;
 - iv. West Kenya Sugar Company Ltd;
 - v. Natural Justice;
 - vi. Kenya National Federation of Sugarcane Farmers;
 - vii. Sugar Campaign for Change (SUCAM); and
 - viii. Hon. Saulo Wanambisi Busolo, Douglas M. Barasa and Moses Khaemba Wasike.

The stakeholders submitted as follows:

3.1 MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES

In their memorandum Ref. AG/LDD/442/1/43/A dated 1st July, 2020 submitted through the Office of the Attorney General, the Ministry proposed the following amendments:

CLAUSE 2

18. Amend the definition of "*interested parties*" by deleting it in its entirety.

Committee's Observations

- i. The term "*interested parties*" has been defined in the Bill to mean the Government, millers, growers or out-grower institutions.
- ii. The term has been used in the Bill in clause 4(1) (c), 4(2) (d), 4(2) (e), 4(2) (o), Paragraph (1) of Part 1 of the Second Schedule, and Paragraph (3) (f) of Part 2 of the Second Schedule.

Committee's recommendation

The Committee agreed to the proposed amendment in principle but recommended that the definition "*interested parties*" be substituted with "*Stakeholder*".

19. Amend definition of the word "*outgrower*" as follows; "*outgrower*" means a person who has a sugarcane farm in a catchment area and who has in force a cane supply contract or lease agreement in respect of the sugar-cane grown on such farm";

Committee observation

- i. In the Bill, the term "*outgrower*" has been defined to mean a person who has a sugarcane farm in a zone and who has in force a cane supply contract in respect of the sugarcane grown on such farm.
- ii. The Ministry's proposed definition uses the words "*catchment area*" instead of "*zone*" and introduces the aspect of lease agreement.

Committee recommendation

The Committee agreed to the proposed definition but recommended that the words "*or lease agreement*" be deleted.

20. Amend definition of the words “out-grower institution” as follows: “Out-grower institution” means an out-grower institution registered under the Companies Act, 2015, the Co-operative Societies Act (Cap. 490), or any other organization registered under any other law that the stakeholder forum may approve”;

Committee observation

The Ministry’s proposed definition deletes the words “Trade Unions Act (Cap. 233)”. The definition had referred to a statute which had been repealed by the Labour Relations Act.

Committee Recommendation

The Committee agreed to the proposed definition.

21. Amend definition of the word “licence” as follows; “licence” means a licence issued by the Board to a miller upon recommendation by the respective County Government”;

Committee Observation

The Committee observed that the Bill defines “licence” to mean a licence issued by the Board to a miller.

Committee Recommendation

The Committee rejected the proposed amendment.

22. Insert the following new definitions: “sugar export licence” means a licence issued to a person by the Board allowing such holder to export out of Kenya”; “sugar import licence” means a licence issued to a person by the Board allowing such holder to import in to Kenya”; and “stakeholder” means a person with significant interest in the sugar industry and includes government, millers, growers and out-grower institutions”;

Committee Observations:

- i. The definition “sugar export licence” is a proposed new definition; however, the definition ought to have been used in the Bill or proposed in the amendments;
- ii. The definition “sugar import licence” is a proposed new definition; however, the definition ought to have been used in the Bill or proposed in the amendments;
- iii. The definition “stakeholder” is a new definition which seeks to replace the definition “interested parties”.

Committee Recommendations

- i. The Committee rejected the new definitions “sugar export licence” and “sugar import licence” because the definitions have not been used in the Bill or proposed in the amendments.
 - ii. The Committee agreed to the proposed new definition “stakeholder”.
23. Amend the definition of sugar by deleting it in its entirety and replacing it with the following; “sugar” means sucrose in its crystalline or solution form, intended for human consumption or other use”;

Committee Observations

- i. The Ministry’s proposed definition deletes the words “in any of its recognized commercial forms”.
- ii. The definition in the Bill should include raw sugar and industrial sugar.

Committee Recommendation

The Committee rejected the proposed amendment and recommended the definition as provided in the Bill should include raw sugar and industrial sugar and sugar recognized in commercial form.

24. Amend the definition of “*sugarcane*” to read as follows: “*Any plant or part of a plant of the genus saccharum or any of its hybrid*”;

Committee Observation

The Committee observed that the amendment corrects the grammar by use of the words “*its hybrid*” instead of “*hybrid of sugarcane*”.

Committee Recommendation

The Committee agreed to the proposed amendment.

25. Delete the definition of “zone” and replace it with “regional catchment area” as follows: “regional catchment area” means a specific geographical area where two or more mills are clustered within a suitable geographical region and farmers have the freedom to contract Cane with any miller within the region;

Committee Observation

The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “regional catchment area” is appropriate.

Committee Recommendation

The Committee agreed to the proposed amendment and further proposed that the appropriate definition would be “sugar catchment area”

26. Insert the following new definition: “County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective County;

Committee Observation

The Committee observed that the definition is a new one; there is need to provide for the same to cater for the county governments

Committee Recommendation

The Committee agreed to the proposed amendment.

27. *Insert the following new definition; “association” means a registered group comprised of smallholder sugarcane growers, co-operative societies, sugar estates, sugar unions, sugar millers, traders or companies, which have been recognised by the Board;*

Committee Observation

The Committee made the following observations:

- i. This is a proposed new definition;
- ii. In the Second Schedule, the Kenya Sugar-cane Growers Association and the Kenya Sugar Manufacturers Association are the two associations that have been defined.

Committee Recommendation

The Committee rejected the proposed amendment since the word “association” has been used in the Second Schedule in phrases of words. The probable section to be amended would be definition of terms in the Second Schedule.

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

Committee Observation

The Committee observed that the definition is a new one.

Committee Recommendation: The Committee agreed to the proposed amendment.

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

Committee Observation

The Committee made the following observations:

- i. The definition is a new one;
- ii. The definition has not been used in the Bill; however, paragraph (6) (a) of the Second Schedule uses the term “farm gate”.

Committee Recommendation

The Committee agreed to the proposed amendment.

30. Insert the following new definition: “sugarcane growers apex body” means a national sugarcane farmers organisation gazetted as such by the Cabinet Secretary for the time being responsible for Agriculture;

Committee Observation

The Committee observed that the definition is a new one.

Committee Recommendation

The Committee agreed to the proposed amendment.

Clause 4

31. Delete clause 4(2) (n) and inserting the following additional clauses after clause 4(2) (n):

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

(o) promote the attractiveness of the industry by facilitating value addition and product diversification in the sugar sub-sector;

(p) formulate and implement a strategic plan for the sugar sub-sector at least once every five (5) years.

(q) formulate guidelines on an efficient and economical transportation of sugar.

Committee recommendation

The Committee agreed to the proposed amendment except that it rejected the proposed

deletion of paragraph (n).

Clause 5

32. Amend clause 5(1) (a) by deleting it in its entirety and replacing with the following:
- i. a non-executive chairperson appointed by the Cabinet Secretary from among the nominated Board members and appointed by the Cabinet Secretary;

Committee recommendation

The Committee rejected the proposed amendment.

33. Amend clause 5(1) (b) by deleting it in its entirety and replacing with the following: one representative, elected by sugar growers from amongst persons with knowledge of farmer organisation and mobilization;

Committee recommendation

The Committee rejected the proposed amendment.

34. Amend clause 5(1) (c) by deleting it in its entirety and replacing with the following; one representative, elected by sugar millers with knowledge in sugar technology, and value addition;

Committee recommendation

The Committee agreed to the proposed amendment.

35. Amend clause 5(1) (d) as follows; (d) a representative of the Principal Secretary for the time being in charge agriculture with knowledge and experience of agronomy,

Committee recommendation

The Committee rejected the proposed amendment by limiting to a specific field takes away the discretion of the Cabinet Secretary

36. *Proposed amendment:* Clause 5(1) (e) by deleting it in its entirety and replacing with following: (e) one person nominated by the Council of County Governors with sound knowledge of extension services and management of farmer institutions;

Committee recommendation

The Committee agreed to the proposed amendment.

37. *Proposed amendment:* Amend clause 5(1) (f) by deleting it in its entirety and replacing with the following:

A representative of the Principal Secretary for the time being responsible for the National Treasury;

Committee recommendation: The Committee agreed to the proposed amendment.

38. Amend the clause 5(1) (g) by deleting the words "and secretary to the Board."

Committee recommendation

The Committee rejected the proposed amendment.

39. Insert the following clauses after clause 5(1) (g) to read as follows:

(h) A representative of the Principal Secretary for the time being responsible for industrialization; one person nominated by the State agency for the time being responsible for sugar research with sound knowledge in sugar cane development.

Committee recommendation: The Committee rejected the proposed amendment.

40. Amend clause 5(2) by deleting it in its entirety and replacing with the following:
(2) The members of the Board specified in section 5(1) above shall be appointed by the Cabinet Secretary.

Committee recommendation

The Committee rejected the proposed amendment.

Clause 9

41. Amend clause 9 by deleting the words "the Cabinet Secretary on the advice of"

Committee recommendation:

The Committee rejected the proposed amendment.

Clause 10

42. Amend clause 10(2) by deleting it in its entirety and replacing it with the following:
(a) holds a relevant degree from a university recognized in Kenya;
(b) has at least ten years knowledge and experience from a relevant field;
(c) has at least five years' experience in a position of senior management;
(d) meets the provision of chapter six of the Constitution.

Committee recommendation

The Committee agreed to the proposed amendment.

43. Insert a new clause 10B as follows:
(1) There shall be a corporation secretary who shall be the secretary to the Board
(2) The terms and conditions of service for the corporation secretary shall be determined by the Board.

Committee recommendation

The Committee rejected the proposed amendment; the Board will cater for the position of the Corporation Secretary under its job establishment.

Clause 14

44. Amend clause 14(1) by amending to read:
A person shall not operate a sugar mill or a jaggery mill or import or export sugar unless he or she is a holder of a current licence issued by the Board upon recommendation by the respective County Government for that purpose.

Committee recommendation

The Committee agreed to the proposed amendment.

45. Amend clause 14(2) by deleting it in its entirety and replacing it with the following:
"A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

Committee recommendation

The Committee agreed to the proposed amendment except to borrow the language used in clause 28(3) in relation to “a fine not exceeding three times the domestic value of the Sugar in respect of which the offence is committed”.

Clause 15

46. Amend clause 15 by amending clause (1) as follows; “Adding the words or to import or export sugar after the words jiggery mill.”

Committee recommendation

The Committee agreed to the proposed amendment.

47. Insert a new subclause (7) as follows:

“A person shall not import or export sugar without an export or import authority issued by the Board.”

Committee recommendation

The Committee agreed to the proposed amendment.

Clause 16

48. Amend to read as follows:

16(1) A person shall not conduct the business of a miller unless he or she is registered by the Board and within the regional catchment area in which the miller shall be conducting

business specified in the Certificate of Registration;

(2) The Board shall issue to every miller registered under this section, a certificate of registration specifying the regional catchment area and premises at which milling may be carried on by the miller as provided for under the Second Schedule.

Committee Observation

The Committee observes that sun-clause 2 provides for registration of the actual premise where a miller is to conduct business which is more specific for purposes of inspection to check compliance as opposed to a general registration of a catchment area.

Committee recommendation

The Committee rejected the proposed amendment.

New Clause 17

49. Amend the Bill by introducing a new clause 17 as follows:

17A. (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country meets;

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

The Committee agreed to the proposed amendment but noted that the proposed amendment should have been to clause 26. The Committee also recommended that the provision should provide for a penalty and should be a ground for withdrawal of a licence.

Clause 18

50. Amend clause 18(1) as follows, The Cabinet Secretary may, in consultation with the Board, by order in the gazette, impose a levy of 2% of ex-factory price on domestic sugar and 5% of CIF value on imported sugar to be known as the Sugar Development Levy.

Committee recommendation

The Committee agreed broadly on the establishment of a Sugar Development Levy but noted that imposition of a levy of 2% was too high. The Committee recommended that the proposed 5% of CIF value on imported sugar should be increased to 10%. The Committee further recommended that the provision should provide for apportionment of the levy.

Clause 19

51. Amend by introducing new sub clauses (3) and (4) to read as follows:

- (1) There is established a Fund to be known as the Sugar Development Fund which shall be administered by the Board.
- (2) The Sugar Development Fund shall consist of:
 - a) the Sugar Development Levy;
 - b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;
 - c) any moneys provided by the National Government for the purposes of the Fund;
 - d) any moneys provided by a county assembly for the purposes of the Fund; and
 - e) Moneys from any other source approved by the Board.
- (3) The Sugar Development Fund shall be used to undertake research in the sugar industry, sugar cane development and infrastructure development.
- (4) The Cabinet Secretary shall make Regulations for the management of the fund in furtherance of the objects of the Board.

The Committee agreed to the proposed amendment and further recommended for provision on apportionment of the funds as follows:

- a) Thirty per centum for price stabilisation;
- b) Twenty per centum for sugar research;
- c) Twenty per centum for crop development;
- d) Twenty five per centum for infrastructure development;
- e) Five per centum for farmers' institutional support.

New Clause 20

52. Amend the Bill by introducing a new clause 20 and renumbering it sequentially 20A.
- (1) The Board may appoint qualified persons to be sugar inspectors for the purpose of this Act.
 - (2) For purposes of subsection (1), the Board may by regulations prescribe the qualifications for the sugar inspectors.

Committee recommendation

The Committee agreed to the proposed amendment.

New Clause 21

53. Amend the Bill by introducing a new clause 21 as follows:

21A.

(1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- a) perform the functions or exercise the powers conferred by this Act or any other
 - a. written law;
- b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- c) demand the production by a licence holder of the licence for examination;
- d) seize and remove any article or thing in respect of which the inspector has reasonable
- e) grounds for believing that an offence under this Act is being or has been committed; or
- f) do any other thing authorized under this Act.

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

(3) A person who hinders or obstructs an inspector duly exercising any of the powers conferred by this Act or who fails to give any information reasonably required commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.

Committee recommendation

The Committee agreed to the proposed amendment.

Clause 22

54. Delete the clause in its entirety.

Committee recommendation

The Committee agreed to the proposed amendment.

Clause 25

55. Amend clause 25(1) to read:

The Board shall, at least once in every year, convene an annual stakeholders meeting.

56. Delete the clause in its entirety.

Committee recommendation

The Committee rejected the proposed amendments.

Clause 27

57. Amend clause 27(1) to read:

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

The Ministry has also proposed that in clause 27, it should be augmented by adding very clearly that:

- a. only deficit should be imported on monthly basis on specific tonnage.
- b. importers should be reporting to the Board on their imports, sales and stock on daily basis same as millers.

Committee recommendation

The Committee agreed to the proposed amendment save for the following amendments: Only deficit should be imported on a quarterly basis on specific tonnage and not on a monthly basis as proposed; Penalty should be prescribed.

Clause 28

58. Amend clause 28(3) as follows:

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

Committee recommendation

The Committee noted that the proposed amendment does not change the text in clause 28(3) of the Bill.

Clause 29

59. Amend clause 29(1) by deleting subclause (1) in its entirety and replacing it with the following:

There shall be for the purposes of this Act agreements between growers and millers, growers and out-grower institutions and millers and out-grower institutions.

Committee recommendation

The Committee rejected the proposed amendment.

60. Amend clause 29(3) (e) by deleting the word "impose" after the word penalty and substituting it with "enforce".

Committee recommendation

The Committee agreed to the proposed amendment.

61. Amend clause 29(3) (f) by deleting the clause in its entirety.

Committee recommendation

The Committee recommended that paragraph (f) be amended by deleting the word "imposition" and substituting therefor the word "enforcement".

Clause 30

62. Amend by deleting clause 30 in its entirety.

Clause 31

63. Amend clause 31(1) to read:

There is established a tribunal to be known as the Sugar Arbitration Tribunal for the purpose of arbitrating disputes arising between any parties under this Act.

Committee recommendation

The Committee noted that the proposed amendment does not alter the text in clause 31(1) of the Bill.

64. Amend clause 31(2) (b) by deleting it and substituting it with the following:
(a) four other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct interest in the sugar industry, all of who shall be appointed by the Cabinet Secretary.

Committee recommendation:

The Committee rejected the proposed amendment, however noted that there is need to prescribe qualification for the members of the Tribunal.

65. Amend by deleting clause 31(3) and replacing with the following:

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

Committee recommendation:

The Committee agreed to the proposed amendment but recommended that the renewal should be subject to effective performance.

66. *Proposed amendment:* New

There is established an advisory body to be known as the Sugar Stakeholders Council

composed of representatives of stakeholders in the sugar industry. Members of the Council shall be appointed by the CS from amongst members nominated by stakeholders as follows:

- (1) The membership of the Council shall consist of:
 - a. farmer representative from each of the regional catchment areas
 - b. two representatives from the recognized farmer sugar organizations;
 - c. two members nominated by the recognized Millers Association;
 - d. two members representing the Sugar Importers;
 - e. one member representing the sugar exporters;
 - f. a representative from the national body responsible for sugar research;
 - g. a representative from the consumer federation nominated by the national consumer federation;
 - h. a representative of the Cabinet Secretary responsible for agriculture;
 - i. five designates from the Council of Governors with knowledge and experience in
 - j. the sugar sector who shall be nominated by the Council of Governors and
 - k. representing each of the catchment areas
- (4) In making nominations for the members in clause (1) above, the stakeholders shall have regard to:
 - a. provisions of chapter six of the Constitution;
 - b. knowledge and experience in the sugar industry.
- (4) In discharge of its advisory function, the Council shall
 - a. review and approve the Board's long-term policies in all aspects of the sugar industry, including production, manufacture, trade and value addition;
 - b. review and approval of the Board's five-year strategic plan;
 - c. review and approve of an industry self-regulating code of conduct;
 - d. advocate for allocation and access of resources in the sugar sector;
 - e. foster good intergovernmental relations between county and national governments on sugar industry matters;
 - f. approve the Board's long-term policies on labour and energy in the sugar sector.
- (5) Members of the Sugar Stakeholder Council shall serve for a non-renewable term of three years renewable once.
- (6) The Sugar Stakeholder Council shall meet twice a year.
- (7) The remuneration for the members of the Sugar Stakeholder Council shall be as prescribed by the Salaries and Remuneration Commission on council meetings.
- (8) The Cabinet Secretary shall appoint a Chairperson of the Sugar Stakeholders Council from amongst members of the Council.
- (9) The Chairperson of the Council may resign from office by a letter addressed to the Cabinet Secretary.
- (10) Where the Chairman of the Council is temporarily unable to discharge his functions due to illness, absence from Kenya or other cause, the Council may appoint one of their own to act in his place.
- (11) The Council shall make rules to regulate its meetings and the conduct of business at such meetings.
- (12) The Council may establish working groups and committees as it deems necessary.

Committee Observation

The Committee noted that some of the functions proposed for the proposed Council are already functions assigned to the Board whereas some can be handled at the Stakeholders General meeting as envisaged in Clause 25 of the Bill.

Committee recommendation:

The Committee rejected the proposed amendment.

Clause 33

67. Remove the word “may” and replace with the word “shall” to read:

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

Committee recommendation

The Committee agreed to the proposed amendment.

68. Amend clause 33(2) by adding the following new clauses after subclause (c)

- (a) registration and licensing procedures;
- (b) regulating the entire value chain in the sugar sub-sector;
- (c) Guidelines on the establishment of weigh bridges in consultation with the County Governments;
- (b) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
- (c) Guidelines on production and import of sugar to ensure adequate sugar availability in the country;
- (f) General industry agreements between farmers and processors of sugar crops;
- (g) Minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments; and
- (h) Regional Cane Catchment Areas within which a defined geographical region, in consultation with County Governments;
- (i) Guidelines on cane harvesting and transportation;
- (j) Guidelines for agreements between parties in the sugar industry;
- (k) regulations establishing the Sugar Cane Pricing Committee

Committee recommendation

The Committee agreed to the proposed amendment.

Clause 36

69. Amend to read as follows:

The staff of the Sugar Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall, subject to suitability interviews, be staff of the Board.

Committee recommendation

The Committee rejected the proposed amendment; the proposal by the Ministry will not give the staff a chance to give their views regarding the process of suitability. The Ministry responsible shall determine criteria once a Board is in place

70. Insert the following new provision

All funds, assets and other property, movable and immovable, which immediately before the commencement of the Crops Act and Agriculture and Food Authority Act, were existing and relating to sugar, by virtue of this paragraph, vest in the Board.

71. All funds, assets and other property, movable and immovable, which have been acquired after the commencement of the Crops Act and Agriculture and Food Authority Act, relating to sugar and were vested on Agriculture and Food Authority shall by virtue of this paragraph, vest in the Board.

Delete clause 36 in its entirety as it is already covered.

Committee observation: Conflicting proposal

Committee Recommendation. The proposal is rejected

First Schedule

72. *Proposed amendment:* Amend clause 2(4) by deleting the word “seven” after the word “members” and substituting it with the words “two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.”

Committee recommendation: The Committee agreed to the proposed amendment.

73. *Proposed amendment:* Amend clause 2(5) and (6) by deleting it in its entirety and replacing it with the following:

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

Committee recommendation: The Committee agreed to the proposed amendment.

74. *Proposed amendment:* Amend clause 2(7) by deleting the words “vice chairperson”.

Committee recommendation: The Committee agreed to the proposed amendment.

Second Schedule

75. *Proposed amendment:* Amend paragraph 2 of the Second Schedule by deleting the definition “Kenya Sugarcane Growers Association” and substituting therefor the definition “Kenya National Federation of Sugarcane Farmers.”

Committee recommendation: The Committee rejected the proposed amendment since the sugar sector has many lobby groups

76. *Proposed amendment:* Amend by deleting paragraph 8 and replacing with the following new paragraph 8:

8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”) comprising:

Chief Executive Officer of the Board, three representatives from the Kenya Sugar Manufacturers Association and three representatives from the Growers apex body Kenya National Federation of Sugarcane Farmers, representative from National Government, Representative from County Government and representative from the Sugar Research Institute.

(2) The main objectives of the Committee shall be to:

- a. review sugar cane prices;
- b. provide a mechanism that remunerates farmers for other products delivered from the processing of cane;
- c. ensure adherence to negotiated cane pricing formula;
- d. transition to payment based on quality; and
- e. enforcement of contracts between farmers and millers.

(3) The Committee shall come up with the pricing formula and in doing so shall take

into account the—

- (i) pricing mechanisms for all other cane related charges paid by the farmer; and
- (ii) an index that takes into consideration delayed harvesting.

Committee recommendation:

The Committee agreed to the proposed amendment subject to the following amendments:

- Include registered lobby groups in the committee.
 - Amend the proposed paragraph 8 (3) by inserting a new subparagraph to provide for transportation cost per tonne per kilometre of sugarcane.
77. *Proposed amendment:* Amend Part 2 of the Second Schedule in paragraph 6(a) by deleting the word “farm gate” and replacing with the word “mill gate”.
78. *Proposed amendment:* Amend Part 3 of the Second Schedule in paragraph 8(3):
The Sugar Pricing Committee to determine the price, considering all prevailing factors.
79. *Proposed amendment:* Amend Part 4 in paragraph 9(2) by adding the words “at prevailing market rates” and not the 3% penalty as it currently reads.
80. *Proposed amendment:* Amend Part 4 paragraph 12(d) (iv) by deleting all the words “shall refer the matter to the Sugar Arbitration Tribunal” and replace with the words “intervene”.
81. *Proposed amendment:* Amend paragraph 12(h) by deleting the words “buying point” and replace with “mill gate”. This is where such tickets are available.
82. *Proposed amendment:* Amend paragraph 15(1) by replacing Kenya Sugar Authority with the Kenya Sugar Board.
83. *Proposed amendment:* Insert the following new Part 7 immediately after Part 6:
7. DELINEATION OF SUGAR CATCHMENT REGIONS s. 16
17. (1) The following shall be delineated regional sugar catchment areas that shall guide the licensing of mills clustered within a geographical region:
- a. Central Region comprised of Kisumu, Southern Nandi and Kericho Counties;
 - b. Upper Western Region comprised of Bungoma, Kakamega excluding Mumias Area, Trans Nzoia, Northern Nandi and Uasin-Gishu Counties;
 - c. Lower Western Region composed of Mumias area, Busia and Siaya Counties;
 - d. Southern Region composed of Migori, Homa Bay, Kisii and Narok Counties;
and
 - e. Coastal Region composed of Kwale, Tana River and Lamu Counties;
- (2) The Board shall have the mandate to create new regions depending on assessed potential of the area, in order to ensure fair and proper delineation of resource and miller location to the best interests of the miller and growers.

Committee recommendation

The delineation of regions is a welcome move, the Committee therefore agrees to the same and makes amendments to that effect as reflected in the recommendation part of this report.

3.2 Council of Governors

84. Proposed amendments: Amend by deleting definitions of the words “licence” and “zones” and replace with the following:

“licence” means a licence issued by a county government to a miller;

“regional zones” means regional cane catchment areas whereby two or more mills are clustered within a defined region as provided for under the Second Schedule;

Introduce the following definition:

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

Justification for the proposed amendments:

- (a) Under the Fourth Schedule to the Constitution, agriculture and trade development and regulation has been devolved to county governments, it therefore follows that county governments license the millers operating in their respective jurisdiction;

- (b) Other countries with vibrant sugar sectors like Mauritius, South Africa and Northern India have successfully implemented regional/geographical zones in which their sugar mills operate. It is therefore recommended that Kenya adopts this model.

Committee Observations: The Committee made the following observations:

- (a) The Council of Governors (COG) proposes to amend the definition of licence so that it is to be issued by a county government instead of the Board;
- (b) Under the Fourth Schedule to the Constitution, the national government is assigned the agricultural policy function whereas county governments have been assigned the agriculture function including crop and animal husbandry; livestock sale yards; county abattoirs; plant and animal disease control; and fisheries;
- (c) County governments have been assigned the function of trade development and regulation, including trade licences (excluding regulation of professions);
- (d) The COG also proposes the use of the term “regional zones” instead of “zones” as used in the Bill which is a similar proposed amendment by the Ministry of Agriculture on “regional catchment area”.

Committee Recommendations: The Committee made the following recommendations:

- (a) The Committee rejects the proposed definition of “licence” as proposed;
- (b) The Committee agrees to the proposed new definition “regional zones” in principle but recommends that the text as proposed by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives be adopted;
- (c) The Committee agrees to the proposed new definition “County Executive Member”.

Clause 3

85. *Proposed amendment:* Amend by introducing a new sub-clause (3) immediately after clause 3(2) to read as follows:

3(3) The headquarters of the Board shall be Kisumu City but the Board may establish branches at any place in Kenya.

Justification for the proposed amendment: The main objective of the Board is to regulate, develop and promote the sugar industry, it is therefore important the headquarters of the Board is located in a place close to the growers and millers as such we recommended Kisumu given that the western region is the biggest producer of sugar in Kenya.

Committee recommendation The Committee rejected the proposed amendment.

Clause 5

86. *Proposed amendment:* Amend by deleting the entire clause 5 and replace with the following new clause 5 to read as follows:

5(1). The Board shall comprise—

- a. the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture;
- b. the Principal Secretary to the Treasury;
- c. four people nominated by the Council of County Governors;
- d. three people nominated by the association representing millers in Kenya; and
- e. five representatives elected by growers;
- f. the Chief Executive of the Board appointed under section 10 who shall be an ex officio member and the secretary to the Board.

(2) The members of the Board specified in section 5(1) above shall be appointed by the Cabinet Secretary.

(3) The members of the Board shall elect the chairperson and vice-chairperson from amongst themselves during the first meeting of the Board after appointment.

(4) A member of the Board other than an ex officio member shall hold office for a period of three years, but shall be eligible for reappointment or re-election, as the case may be, for one further term.

Justification for the proposed amendment: This is to allow for adequate representing of the stakeholders in the sugar industry. It is therefore our considered opinion that the Board as proposed in the Bill will not be able to adequately represent the interests of the various stakeholders in the sugar industry hence should be amended as per our proposal.

Committee recommendation: The Committee rejected the proposed amendment, the Board should be highly represented by the main actors in the industry who are the growers.

87. Proposed amendment: Amend to read as follows:

10(2) A person shall be qualified for appointment under this section if he or she—

- a. holds a degree from a university recognized in Kenya in agriculture, economics or business administration; and
- b. has at least ten years' experience in a managerial capacity.

Justification for the proposed amendment: The Council opines that the five years' experience recommended in the Bill is not sufficient and recommends that the same be increased to at least to years' experience. The revitalization of the sugar industry requires some with more than 10 years managerial capacity.

Committee recommendation: The Committee rejected the proposed amendment; the five years in the view of the Committee is sufficient.

Clause 14

88. Proposed amendment: Amend by deleting the entire clause 14 and replace with the following new clause 14:

14. (1) A person shall not operate a sugar mill, warehouse or a jiggery mill unless he or she is a holder of current licence issued by the respective County Government for that purpose.

Justification for the proposed amendment:

Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses.

Committee Observation: The Committee observes that the export and import trade is a function of the national government hence the same should be regulated by a national government body.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 15

89. Proposed amendment: Amend by deleting the clause 15(1) and replace with the following new clause 15(1):

15. (1) A person shall apply to the County Executive Committee Member for a licence to operate a sugar mill, sugar warehouse or a jiggery mill in the prescribed form.

(2) The County Executive Committee Member shall not issue a licence under this Act unless—

- (a) It is of the opinion that the applicant is a fit and proper person to hold such a licence;
- (b)...

Justification for the proposed amendment: Under the Fourth Schedule to the Constitution, agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licences which is under the purview of the National Government under the Fourth Schedule.

Committee Observation: The Committee observes that the regulation that is envisaged here is for purposes of quality assurance and not trade development with respect to sugar.

Committee recommendation: The Committee rejected the proposed amendment.

90. **Proposed amendment:** Amend clause 15(4) to read as follows—

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

Justification for the proposed amendment: It is important that the Board sets out the fees chargeable by the respective County Government across the country for uniformity but only upon consultation of the Cabinet Secretary and County Governments.

Committee Observation: The Committee observes that since the Board has been given the function of licencing, therefore the function of prescribing fees payable follows.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 16

91. **Proposed amendment:** Amend clause 16 to read as follows:

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

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

Justification for the proposed amendment: This is to align to the proposed requirement of zoning sugar production according to regions across the country.

Committee recommendation: The Committee rejects the proposed amendment since it introduces zoning in the sugar sector which majority of the stake holders are of the opinion that it is punitive to all the actors in the sugar sector.

Clause 19

92. **Proposed amendment:** Amend by introducing new sub clause (3) and (4) to read as follows—

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

(2) The Sugar Development Fund shall consist of—

- a. the Sugar Development levy;
- b. any funds provided by bilateral or multilateral donors for the purposes of the Fund;
- c. any moneys provided by the National Assembly for the purposes of the Fund;
- d. any monies provided by a county assembly for the purposes of the Fund; and
- e. moneys from any other source approved by the Board.

(3) The Sugar Development Fund shall be used to undertake research in the sugar industry, sugar cane development, factory rehabilitation and infrastructure development.

(4) The Board in consultation with the Cabinet Secretary and County Governments shall put in place mechanism to provide for contributions by the County Governments as provided for under section 19(1) (d) above.

Justification for the proposed amendment: This is to provide for clarity as to which fund is being referred under clause 19 and also ensure that the Sugar Development are ring fenced for purposes of research, development of sugar cane and rehabilitation of factories which has been identified as the major challenges facing the sugar industry.

Committee recommendation: The Committee agreed to the proposed amendment and further recommended for provision on apportionment of the funds as follows:

- a) Thirty per centum for price stabilisation;
- b) Twenty per centum for sugar research;

- c) Twenty per centum for crop development;
- d) Twenty five per centum for infrastructure development;
- e) Five per centum for farmers' institutional support.

Clause 27

93. *Proposed amendment:* Amend by deleting the clause 27 and replace with the following new clause 27:

27. (1) Subject to such regional and international trade agreements to which Kenya is a party, sugar imports into the Kenya shall only be allowed by the Cabinet Secretary whenever there is a prevailing sugar deficit as reported by the Board and subject to the prevailing import duties, taxes and other tariffs.

(2) Any miller shall not be allowed to import sugar into the country.

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

(4) A person contravenes section 27(2) shall be liable to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both.

Justification for the proposed amendment: Importation of sugar into the country needs to be curtailed in order to promote and develop the sugar industry. As such, we propose that sugar should only be imported into country in instances where it has been certified by the Board that there is sugar deficit and that miller should never be allowed to import sugar due to clear issues of conflict of interests.

Committee recommendation: The Committee agreed to the proposed amendment.

Clause 30

94. *Proposed amendment:* Amend by deleting clause 30 and replace with the following new clause 30:

Shareholding by growers

30. Notwithstanding any other provision in this Act or any other written law to the contrary, the shareholding of public millers shall be—

- a. 51% of shares be held by private investor;
- b. 25% of the shares be held by the respective County Government where the Miller is situated; and
- c. 24% of shares be held by Growers.

Justification for the proposed amendment: This is to allow for the privatization of the sugar mills for purposes of developing the industry while taking into account the interest of the growers.

Clause 33

95. *Proposed amendment:* Amend to read as follows—

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

Justification for the proposed amendment: The process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.

Committee recommendation: The Committee agreed to the proposed amendment except for the substitution of "may" with "shall" to read as follows:

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

Clause 36

96. *Proposed amendment:* Amend to read as follows:

36. The staff of the Sugar Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board for a period of one year after which the Board shall conduct suitability interviews and placement in accordance with this Act.

Justification for the proposed amendment: This is to align it to clause 11 of the Bill which allows the Board to appoint such officers and staff for proper discharge of its functions under the Act.

Committee recommendation: The Committee rejected the proposed amendment; The Ministry responsible shall determine criteria once a Board is in place. Retaining staff from the Sugar Directorate does not preclude future employment by the Board.

97. *Proposed amendment: Amend paragraph 2(4) to read as follows:*

2. (4) The quorum for the conduct of the business of the Board shall be two-thirds members.

Justification for the proposed amendment: This is to align it to our proposal on the membership of the Board as stated elsewhere in this document.

Committee recommendation: The Committee agreed to the proposed amendment.

98. *Proposed amendment:* Amend Part 3 by deleting paragraph 8 and replacing with the following new paragraph 8:

8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”) comprising representatives from the Kenya Sugar Board, Kenya Sugar Manufacturers Association and the Kenya Sugarcane Growers Association.

(2) The main objectives of the Committee shall be to:

- a. review sugar cane prices which shall be determined on the basis of sucrose content.
- b. provide a mechanism that remunerates farmers for other products derived from processing of cane;
- c. ensure adherence to negotiated cane pricing formula;
- d. transition to payment based on quality; and
- e. enforcement of contracts between farmers and millers

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

- (i) pricing mechanisms for all other cane related charges paid by the farmer; and
- (ii) an index that takes into consideration delayed harvesting;

(4) The formula set out in subparagraph (3) shall be subject to change as agreed upon by the Committee.

(5) The exercise of determining the sucrose content of sugarcane for the purpose of sugarcane pricing shall be carried out by a sugar cane testing unit to be set up by the Committee.

Justification for the proposed amendment: The current pricing formula also provides for payment based on weight and not quality. This neither promotes the development of quality cane nor contribute towards the industry’s competitiveness.

Further, it also focuses on cane pricing, excluding pricing mechanisms for all other cane related charges paid by the farmer. These include the cost of transport, cost of credit, harvesting extension service among others. This formula does provide for losses arising from delayed harvesting hence there is need for a paradigm shift.

Recommendation: The Committee therefore will be proposing amendments on Paragraph 8 as indicated in the recommendation section of this report.

Second Schedule

99. *Proposed amendment: Add the following new Part 7 immediately after Part 6:*

7. DELINEATION OF SUGAR REGIONAL ZONES s. 16

17. (1) The following shall be delineated sugar regional zones that shall guide milling.
- i. Central Region composed of Kisumu, Nandi and Kericho counties;
 - ii. Upper Western Region composed of Bungoma, Kakamega excluding Mumias area, Trans Nzoia and Uasin-Gishu Counties;
 - iii. Lower Western Region composed of Mumias area, Busia and Siaya Counties;
 - iv. Southern Region composed of Migori, Homa Bay, Kisii and Narok Counties; and
 - v. Coastal Region composed of Kwale, Tana River and Lamu Counties.

Justification for the proposed amendment: It is appropriate therefore to establish regional cane catchment areas whereby two mills are clustered within a defined region and farmers have the freedom to contract with any miller within the region. This will also provide a conducive environment for inter-mill cane transfer within the mill catchment areas.

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

Committee recommendation: The delineation of regions is a welcome move, the Committee therefore agrees to the same and makes amendments to that effect as reflected in the recommendation part of this report.

3.3 Natural Justice

100. *Proposed amendment:* The meaning of “interested parties” should be expanded to include local communities living close to sugar industries.

Alternatively, the phrase “local communities” should be defined to mean any persons living within the vicinity of a sugar industry and who is likely to be affected by the operations of the industry.

Justification for the amendment: Sugar industries have several adverse impacts on the lives of communities residing close to the establishments. These range from social, economic and environmental impacts.

Sugar factories are commonly known for the production of by-products such as bagasse, which can be potentially harmful to the environment and human health if not handled carefully. For this reason, local communities who are likely to be greatly affected by such projects must have the greatest say as was stated in the case of *Save Lamu & 5 Others v. NEMA & Amu Power*, Tribunal Appeal No. NET 196 of 2016.

As persons whose interests are greatly affected by sugar projects, local communities must be included as interested parties who must be involved in any decision-making processes in the sugar industry.

Committee Observations: The Committee made the following observations:

- (a) The Ministry of Agriculture, Livestock, Fisheries and Cooperatives had proposed deletion and replacing of “interested parties” with “stakeholder” as follows:

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

- (b) The Committee agreed to the proposed definition of “stakeholder” which takes into account the proposal by Natural Justice as long as the communities have a significant interest in the sugar industry.

Committee Recommendation: The Committee agreed to the Ministry of Agriculture, Livestock, Fisheries and Cooperatives’ proposed definition “stakeholder” which takes into

account the proposal by the Natural Justice as long as the communities have significant interest.

Clause 4

101. *Proposed amendment: Amend by deleting the entire clause 4 and replacing with the following* new clause 4:

Functions of the County Government and the Board

4 (1) The County Government shall—

- a. register sugar growers and traders;
- b. issue sugar cane nursery certificates;
- c. issue sugar milling, jiggery mill and warehousing licences;
- d. offer and coordinate of extension services on sugar production and milling in the respective county;
- e. inspect sugarcane nurseries, millers, 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 of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies; and
- j. establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

(2) The Board shall—

- a. regulate and issue certificates or licenses on imports and exports of sugar;
- b. develop and coordinate capacity activities for county governments and other industry players;
- c. in consultation with county governments, develop enforce regulations, industry code of practice and other quality standards in the sugar industry;
- d. collect, collate and maintain a sugar industry data base and disseminate information to the industry players;
- e. conduct local and international sugar market intelligence and advise stakeholders accordingly;
- f. establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- g. in consultation with county government, develop and promote policies and strategies for the sugar industry;
- h. develop and enforce the sugar industry standards and industry code of practice in collaboration with the Kenya Bureau of Standards and county governments; and
- i. facilitate equitable access to the benefits and resources of the industry by all interested parties.

Justification for the proposed amendment: According to Part 2 sections 2 and of the Fourth Schedule to the Constitution and the Kenya Gazette Supplement No. 116 of 9th August, 2013, development and regulation of agriculture and trade excluding international trade which is under the purview of the National Government, are functions devolved to County Governments. It is therefore imperative that the Sugar Bill, 2019 takes cognizance of this fact and as such should be amended in accordance with our proposal to provide for the functions of the County Governments and the Board. In doing so, the Act will recognize the

institutional and functional integrity of the county level of government as provided for under Article 189 of the Constitution.

Committee recommendation: The Committee agreed generally to provide for the functions of the county government and the functions of the Board but not to delete clause 4 in its entirety and replacing it with the proposed amendment by the Council of Governors.

On the proposed functions of the County Government, the Committee recommended as follows:

- I. The Committee agreed to paragraphs (b), (d), (g), (i), and (j);
- II. The Committee rejected paragraphs (a), (c), (e), (f), and (h) since these functions ought to be performed by the Board.

On the proposed amendments to the Board, the Committee agreed to paragraphs (e) and (f) and rejected the other paragraphs.

102. **Proposed amendment:** The Kenya Sugar Board should not only be a body corporate with perpetual succession but also an independent body.

Justification for the proposed amendment: Having an independent body will ensure that the Kenya Sugar Board conducts its mandates without any interference from political spheres or any other government institutions.

Committee recommendation: The Committee rejected the proposed amendment because Semi-Autonomous Government Agencies (SAGAs) are dependent on parent ministries hence cannot be fully independent.

3.4 Sugar Campaign for Change (SUCAM)

103. **Proposed amendment:** Delete the definition of "Board".

Justification for the amendment:

(i) Multiple roles envisioned for the Sugar Board are inconsistent and internally incoherent. Some duties are promotional and these are clearly inconsistent with a regulatory function. Others are arbitral but since the Board is also a licensing agent, it is not clear how it can facilitate an arbitral role if the issue arises in the context of licensing. The Board formulates policies that the Sugar Bill then mandates it to implement. From a regulatory standpoint, the key question is whether the board can be neutral in the application of policies that it has itself formulated.

(ii) Not compliant with the Constitution of Kenya 1: national government, which is Kilimo House, is responsible for national policy formulation, national standards and norms and the legislation as set out in Article 191 and the Fourth Schedule of the Constitution. Kenya Sugar Board is not equal to this.

Justification#3: Not compliant with the Constitution of Kenya 2: Creation of Kenya Sugar Board as proposed by the Bill has usurped county-level functions as are specified in the Article 183 and Fourth Schedule of the Constitution of Kenya. It is expected that the functions of development, including day to day operations to implement national policies, standards and norms are responsibilities of the county governments. Where does the Board fit, unless it's a creation of the county government as special directorate for the sugar industry?

iii) Free market economy paradigm: The bill was designed in an old template when the government dominated the sugar industry business in a controlled market economy. When the government controlled cane production through state owned factory nucleus estates and out-growers organized around out-grower companies; provider of research extension services; when the government was sole processor of sugar; and undertake marketing through Kenya National Trading Corporation. The government would provide incentives to promote cane production through fixing cane price, interest rate for credits to farmers. Today, all state owned sugar mills and

out-grower institutions have collapsed leaving the industry with independent farmers and private millers. In this paradigm, this old model of cash-crop acts in a controlled system should not be used.

Committee Observation: The Committee observed that the Bill proposes the establishment of the Kenya Sugar Board. The entity is envisaged to perform critical functions which will be geared to enhance the development of the sugar industry.

Committee Recommendation: The Committee rejected the proposed deletion of the definition "Board". The Board is a critical institution in carrying out policies which is a function of the national government under the Constitution.

104. **Proposed amendment:** Delete the definition of "zone".

Justification for the proposed amendment:

- i. It is irrelevant to paradigm shift from controlled to a free market. Farmers currently supply mills of their choice, thanks to the advice of the President on Mashujaa Day 2018 celebration that farmers 'to sell their cane to factories that are well managed and pay well'
- ii. It is a breach of Competition Act No. 12 of 2010 whose object is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya. Specifically, zoning contravene Competition Act 2010 Sec.21 (1), (2) and (3). Further, while, Competition Authority is expected to grant exemption as provided in Section 26(1), (2) and (3), after the application by AFA, sugar industry does not qualify.
- iii. Its meaning and application was rejected by court cases listed below:
 1. West Kenya Sugar Company Limited v Agricultural Fisheries and Food Authority & 11 others [2017] eKLR
 2. Nairobi High Court HCCC 206 of 2010 West Kenya Sugar Company Limited vs. Kenya Sugar Board and Butali Sugar Mills Limited;
 3. Kakamega High Court Judicial Review No. 3 of 2013 Republic vs. Kenya Sugar Board ex-parte West Kenya Sugar Company Limited;
 4. Kisumu High Court Civil Case No. 175 of 2012 Chemelil Sugar Company Limited vs. West Kenya Sugar Company Limited;
 5. Kakamega High Court Civil Case No. 223 of 2012 Mumias Sugar Company Limited & Others vs. West Kenya Sugar Company Limited.
- iv) Zoning was introduced by Repealed Sugar Act 2001 in relation to establishment of mills. However, the Kenya Sugar Board which was implementing the Act realized its derogatory nature, by-passed it and licensed Butali factory which is less than 20KM away from West Kenya. Secondly, they licensed SUKARI Industry which is situated about 35KM away from SONY.

v) Case studies (regimes where zoning failed)

Case study#1: Australia used to assign land for cane production in order to control the level and location of production and growers used to be required to deliver cane to designated mills (Government of Australia, 1992). This measure led to use of marginal land for cane production instead of use of suitable land elsewhere and discouraged the use of best agronomic practices. The present policy is deregulation in the form of enhancement of competition and the removal of cane production area restrictions.

Case study#2: In India, the Rangarajan Committee found that the prevailing regulation of cane reservation area and approval of the minimum distance from sugar mills was against the best interest of development of the industry (Government of India, 2017); consequently, the committee specifically recommended the phased elimination of cane reservation area and

bonding which has been implemented in one State and also the dispensing with the minimum distance criteria.

Case study#3: On its part, Pakistan has been applying the measure of sugar cane production zones or 'catchments areas' around sugar mills which compelled a grower within the zone to supply cane to the mill in the zone (Khushk, 2010). It was found that the measure gave monopolistic power to the miller which became worse when cane has been harvested as it deteriorates quickly. This zoning has recently been abolished by the government in favour of the commercial approach.

Committee Observation: The Committee observed that the current definition of "zone" has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition "regional catchment area" is appropriate.

Committee Recommendation: The Committee agreed to the proposed amendment however the same be substituted with sugar catchment area

105. **Proposed amendment:** Insert the following new definition of "cess".
"cess" means a levy deducted from the farmers' earnings at 1%, for the purposes of the Sugar Development Fund for allocation to county government and farmers' apex body on equal basis.

Justification for the proposed amendment:

- i. Cane crop Cess has been a 1% deduction from cane farmers earning by the sugar factories and remitted to relevant county governments for maintenance of roads in cane growing areas. However, it has no legal basis as Local Government Act (Cap.265) was repealed by County Governments Act which has no reference on cess. We need a principal act reference from which the county governments will domesticate their laws on the same.
- ii. There is a need for more sources of funding for sugar development funds
- iii. Apex farmer organization is vulnerable due to lack of funding resulting into lack of effective representation and sometimes being misused by industry elites.
- iv. County governments have national allocation for roads which should be used to support cane growing in their respective areas. They do not need cess for this function.
- v. Sugar Development Funds allocation for infrastructure in the sugarcane growing areas is adequate to maintain and develop the roads.

Committee Observation: The Committee observed that the definition "cess" is a new one.

Committee Recommendation: The Committee rejected the proposed amendment since the same has not been used in the Bill.

106. **Proposed amendment:** Insert the definition "farm gate" as follows:
"farm gate" prices received by farmers for their sugarcane at the location of farm. Thus the costs of transporting from the farm gate to the nearest market or first point of sale and market charges (if any) for selling the produce are adjusted for these costs to arrive at farm gate prices.

Rationale for the proposed amendment:

- i. Farmers incur high cost of transport charged arbitrarily by transporters eroding their profit margin
- ii. Losses incurred by farmers during harvesting, loading and transporting are huge and affects the farmer negatively. Transferring this burden to the contractors will improve efficiency in the industry.

Committee Observation: The Committee observed that the term "farm gate" has been used in the Bill but does not require a definition as proposed by the stakeholder.

Committee Recommendation: The Committee rejected the proposed amendment since it does not take care of sugarcane sold in the farm.

107. *Proposed amendment:* Insert a new definition of “minimum price contract”. “minimum price contract” means a forward contract between the sugarcane grower and sugar milling company which guarantees the sugarcane grower a minimum price at delivery.

Justification for the proposed amendment: This type of arrangement will protect sugarcane growers from price fluctuations in the market.

Committee Observation: The Committee observed that the proposed amendment is on a new definition; however, the term has not been used in the Bill.

Committee Recommendation: The Committee rejected the proposed amendment, The Sugar Cane Pricing Committee shall be setting up prices; if there is need for the same it can be regulated through a delegated legislation.

108. *Proposed amendment:* Delete Kenya Sugar Board and replace with various industry organs with specific powers and functions.

Justification for the proposed amendment: The roles of state corporations (Kenya Sugar Board included) in the devolved system of government are still unclear. Attempted twinning in service delivery between the Board and county government in the entire Bill is an unnecessary regulatory burden that merely attempts to circumvent accusation of usurping of county-level functions by KSB.

Committee recommendation: The Committee rejected the proposed amendment. The Committee was not persuaded with the alternative of replacing the proposed Kenya Sugar Board with various industry organs with specific powers and functions. The proposal was unclear as to what consisted the industry organs and what their specific powers and functions would be.

109. *Proposed amendment:* Delete all references to “Board” and substitute with “respective county government”

Justification for the proposed amendment: In compliance with Article 183 and Schedule Four of the Constitution and Sect 29 of the AFA Act, it is expected that the functions of development, including day to day operations to implement national policies, standards and norms are responsibilities of the county governments. These include matters such as approving sugar processing factories, out-grower institutions and dealers in sugar and the setting up of sugarcane pricing formula.

Committee Observation: The Committee the committee observes that there is need to create a distinct function of the County government with respect to sugar which it shall recommend in its amendments to the Bill.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 17

110. *Proposed amendment:* Delete clause 17

Justification for the proposed amendment: We proposed no Kenya Sugar Board.

Committee observation: The Committee observes that there is need to provide for sources of funds for the Board.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 19

111. *Proposed amendments:* Amend the entire sub-sections by deleting ‘Board’

Amend by deleting Sec19 (e)

Amend by adding sub-section 19(f) cess deducted from sugarcane farmers

Justification for the proposed amendments: Sugar development levy was de-gazetted in 2016 due to government policy regarding consumer levies. Proposal for its reintroduction is not aligned to public finance objectives.

Introducing another reliable source of funds from Cess will ensure sustainability of the fund

Note#1: Fund model: the fund could have established in the similar format with Commodities Development Fund of Sec 9 of Crops Act 2013. Secondly, it could have been established in a similar manner in which Coffee cherry fund – which is a revolving fund to coffee farmers.

Note#2: Management of the Sugar Development Fund: A better option would be to grant management of the fund to a financial institution at a fee. To ensure that there are no cost over-runs in such an arrangement, the fees charged by the financial institutions for the management of the Fund should be benchmarked against what it now costs to have Fund managed by the Board of Trustees.

Committee observation: The Committee notes that—

- (a) cess as a source of fund may be appropriated by the County Assembly as provided for in Clause 19(2)(d);
- (b) a levy is arrived at pursuant to a charge of a product or a service and used for identified services in this case improvement of sugar sector and research. Creating as a revolving fund may not serve the intended purpose;
- (c) The Fund being established is a public fund.

Committee recommendation: The Committee rejected the proposed amendment.

112. *Proposed amendment:* PART 2—ROLES OF INSTITUTIONS IN THE INDUSTRY

Sec3. The role of the Kenya Sugar Board

Delete this section

Multiple roles envisioned for the Sugar Board are inconsistent and internally incoherent. Some duties are promotional and these are clearly inconsistent with a regulatory function. Others are arbitral but since the Board is also a licensing agent, it is not clear how it can facilitate an arbitral role if the issue arises in the context of licensing. The Board formulates policies that the Sugar Bill then mandates it to implement. From a regulatory standpoint, the key question is whether the board can be neutral in the application of policies that it has itself formulated.

113. *Proposed amendment:* Sec4. The role of the Kenya Sugar Research Foundation

Comment: As regards research, the bill vests the role in the Kenya Sugar Research Foundation. But the core research function is narrowly tailored to sugar-cane varieties and agronomic practices conducive to high yields. Crucially, the Foundation has the duty itself to raise funds to support research.

Amend to add:

Research and Development, R&D, in the sugar industry needs to be expanded into industrial economics of producing sugar and its by-products,

Sugar R&D should be funded by government from the national budget. The actual amount spent should be calculated as a percentage of the sugar industry's contribution to GDP

Justification for the proposed amendment:

In today's world assessments of whether a country is spending enough on R&D are made against the proportion of its GDP that it spends on it. Given the centrality of factors such as sucrose content in the price of cane, support for research that seeks to improve such content should surely be a top priority. There is a misconception that sugar R&D is a sugar industry problem. It is not. Outside of a few profitable research areas, there isn't a real private market

for research. After all, the Kenya Revenue Authority, KRA, gets to keep 1.5% of revenues it collects in a year as its budget.

114. *Proposed amendment:* PART 3—SUGARCANE FIRES AND CANE PRICING

Sec8: Cane pricing policy

Add the following elements:

Sec8(6) Provision to work out minimum guaranteed price by the committee (Example: that the committee will determine minimum cane price for farmers in order to cover productions costs)

Sec8(7) Provision for a framework on working fair sharing ratio (Example: the sharing ratio shall be determined from time to time putting into considerations 1) best practices, 2) proportionate contributions)

Sec8(8) Provision to have a framework that ensures computation of cane price reflective of farm-gate value

3.5 Kenya Sugar Manufacturers Association (KESMA)

115. *Proposed amendment:* Amend by deleting the definitions of the terms 'licence and 'zone' and by replace with the following:

'licence' means a licence issued by a County Government upon assessment and recommendation of the Board to a miller;

'sugar export licence' means a licence issued to a person by the Board allowing such holder to export out of Kenya such quantity of sugar as is specified therein;

'sugar import licence' means a licence issued to a person by the Board allowing such holder to import in to Kenya such quantity of sugar as is specified therein;

"Certificate of Registration" means a certificate of sanction issued by the Board to an applicant investor authorizing and/or permitting the investor to construct a sugar milling factory at a particular place in the specified region;

"Regions" means regional cane catchment areas wherein a maximum of three sugar millers shall be clustered within a defined region as provided for in the Second Schedule as created and redefined by the Board from time to time;

Add the following definition:

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

Justification for the proposed amendments:

- a. At the heart of the sugar sector is the availability of sugar cane and its sufficiency to service all the competing millers without interruption.
- b. Sugarcane quantities have been declining with time, a scarcity that has significantly affected the sugar sector.
- c. An investigation in the reason for declining quantities confirmed the bases for declining to be declining investment for cane development, sugar cane poaching, and laissez faire, where millers fail to engage farmers in cane development sufficient with their mills capacities or at all, and resort to purchasing already developed sugarcane, wherever it may be found.
- d. The few farmers who engage in cane development spending their resources meant for their mills, end up making losses, because the developed cane is then poached and sold to predator millers, who themselves do not engage in development. Sustained poaching then discourages the millers from engaging any cane development for fear of poaching, a tragic event that then leaves cane development only to the famers, who, without support only manage smaller quantities.

- e. The events above have over the years shrunk the quantities of sugarcane and in turn drastically affected the sector.
- f. After sufficient consideration of the matter, KESMA having also discussed with other stakeholders favours creation of sugarcane administrative units, with uniform benefit and enforcement mechanisms, christened REGIONS.
- g. REGIONS shall be delineated equitably, that is considering the geographical distances to mills within the REGION and potential for can growing within the REGION. Each REGION is to have multiple millers, than one, to even up to 3 mills, and the millers become restricted from sourcing sugar cane from other REGIONS save their own. This is the statutory impetus for these millers to collaborate with the famers to develop sugarcane sufficient for their uptake, and sustainability. This is to address any concerns of monopoly and or what would be the residual right of the famers to sell their crop.
- h. The REGIONS to have uniform set of regulations including payment maximum timelines, to eradicate the inequality that would occur is some farmers in some REGIONS are to get better consideration including harvesting timelines and or payment timelines.
- i. The flexibility to be in place to address extreme cases, where there is overproduction in some REGIONS resulting in glut. In such instances, there to be allowance for controlled inter-REGIONS sale of sugarcane.
- j. Any flouting of the requirements to be an offence under the Act.
- k. If the concept of REGIONS becomes enacted and implemented, it shall guarantee an end to cane poaching, shall ensure optimum utility of the potential for cane production, there shall be stability in the industry, which shall no doubt lead to increased production of sugarcane, translating to increased production of sugar, translating in high income to Government in taxes, high income to farmers for their bigger market, and stable production for millers, and attract investment in the sector.
- l. The idea above is proposed as the anti-thesis to the perennial problem which has ravaged the sector without answer.
- m. The Sugar Bill as proposed reiterates the repealed Sugar Act of 2001, which offered no solutions. In fact, the inclusion of zone at section 2 of the Bill, is a replica of section 2 in the repealed Act, whose delineation of zone was very problematic and resulted in litigation. In the said litigation the Courts were categorical that section 2 defining zone did not mean an exclusive zone for any miller of the 40 km radial distance. This was the decision of the High Court in Kakamega High Court Constitutional Petition No. 26 of 2014 West Kenya Sugar Company Limited vs. Agriculture, Fisheries and Food Authorities, Butali Sugar Mills Limited & Others, Kakamega High Court Civil Case No. 223 of 2012 Mumias Sugar Company Limited & Others vs. West Kenya Sugar Company Limited, among other cases.
- n. Existence of zones in the repealed law, for the 13 years that the Sugar Act was in existence did not assist the sector. It brought more confusion and prejudice, wherefore the bold, equitable and progressive idea of REGIONS is clearly and demonstrably the apt solution, that should be enacted and implemented.
- o. The adoption of the REGIONS shall not violate any law and or rights under the Constitution, in any event it is shall be an exemption that qualifies under Article 24 of the Constitution.

Committee Observation: The Committee observed that —

- a) On the proposed definition of "licence" the committee observed that the licencing that is envisaged in the Act is related to functions assigned to the Board hence the licence should be issued by the Board;
- b) On the proposed definition of "sugar export licence and sugar import licence" the committee observed that the same is not necessary however there is need for the National government to regulate import and export of sugar;
- c) On the proposed definition of "certificate of registration" the committee observes that the same can be provided for under regulations; and

On the issue of regions the Committee agrees that zoning restricts farmers choices of where to sell their sugar-cane.

116. *Proposed amendment:* Amend by adding to section 3, a subsection (3), and the new sub section to provide as follows:

'Section 3(3). The headquarters of the board shall be at Kisumu City within the County Government of Kisumu, however the board shall have liberty to establish branches within the Republic of Kenya as the board shall determine.

Justification for the proposed amendment: The efficiency in regulation of the sugar sector as has been necessitated by the enactment of the Bill, shall be achieved by stationing the Regulator closer to the sector, which is largely County Government of Kisumu, County Government of Kakamega, County Government of Busia, County Government of Vihiga, County Government of Homa Bay, County Government of Migori, County Government of Narok, and County Government of Kwale. Legislating the headquarters of the Board to be Kisumu shall make the Board accessible to the primary stakeholders, and shall be comparatively central to all stakeholders and shall no doubt increase efficiency in regulation of the sector.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 4

117. *Proposed amendment:* Amend by deleting the entire Clause 4 and replace with the following Clause 4:

Functions of the County Governments and the Board

4(1) The County Governments shall:

- a. Register sugar growers and traders;
- b. Issue sugar milling, jiggery and warehousing licences after recommendation of the Board;
- c. Offer and coordinate of extension services on sugar production and milling in the respective County;
- d. Inspect sugarcane nurseries, millers, jaggeries and warehouses located within their respective Counties;
- e. Register sugar growers and traders within their respective Counties;
- f. Enforce county and national legislation on sugar industry code of practice and other standards;
- g. In collaboration with the Board and law enforcement agencies, enforce regulations made under the Act, within the county;
- h. Enforce policies and guidelines on corporate governance in growers' institutions and millers;
- i. Monitor and report incidences of pest and disease outbreaks and taking appropriate action on collaboration with the Board and other agencies of government; and
- j. In collaboration with the Board, establish an efficient road network for movement of sugarcane, delivery of other services and general development of the sugar industry.

2. The Board shall:

- a. issue letters of Comfort to intending applicants for Certificates of Registration to for construction of sugar mills and jaggeries;
- b. issue Certificate of Registration to millers and jaggeries for construction of sugar milling plants and jaggeries;
- c. receive applications for licences by millers, jaggeries and warehousing of sugar from applicants, consider them and recommend to the respective County Governments, on successful applicants, who shall then pay requisite fees and receive the licences from the respective County Governments;
- d. regulate and issue certificates of imports and exports of sugar;
- e. develop and coordinate capacity activities for county governments and other industry players;
- f. in consultation with county governments develop and enforce regulations, industry code of practice and other quality standards in the sugar industry;
- g. collect, collate and maintain a sugar industry data base and disseminate information to the industry players;
- h. conduct local and international sugar establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- i. establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- j. develop and enforce the Sugar Industry standards and Industry code of practice in collaboration with the Kenya Bureau of Standards and county governments; and
- k. facilitate equitable access to the benefits and resources of the industry by all.

Justification for the proposed amendment: In keeping with provisions of Article 189 of the Constitution delineating functions of the National and County Governments, as is more succinctly done in Part 2 of the Fourth Schedule to the Constitution of Kenya, and the Kenya Gazette Supplement No. 116 of 9th August 2013, development and regulation of agriculture and trade, excluding international trade are functions vested in the county governments. For the Sugar Bill, and eventually Act, to pass Constitutional threshold of legitimacy, the functions of the county governments and the national government (Board) must be clearly delineated, as has been done in the proposed amendments. The amendments have been crafted so as to achieve a balance between vestiture of the duty and need to ensure efficiency in its execution.

Committee observation: The Committee observed that that there's need to provide for distinct roles of county governments.

Clause 5

118. *Proposed amendment:* Amend by deleting the entire clause 5 and replace with the following new clause 5, as follows

5(1). The board shall comprise-

- a) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture;
- b) the Principal Secretary to the Treasury;
- c) the Principal Secretary for Industrialization;
- d) Three people nominated by the apex association representing millers in Kenya; and
- e) Five representatives nominated by the apex farmers association Kenya National Federation of Sugarcane Farmers;
- f) Three persons nominated by the Council of County Governors;
- g) The Chief Executive of the Board appointed under section 10 who shall be an ex-officio member and a secretary to the Board.

(2) The members of the Board specified in Section 5(1) above shall be appointed by the Cabinet Secretary.

(3) The members of the Board shall elect the chairperson and vice-Chairperson from amongst themselves during the first meeting of the Board after appointment.

(4) A member of the Board other than an ex-officio member shall hold office for a period of three years but shall be eligible for re-appointment or re-election, as the case may be, for one further term.

Justification for the proposed amendment: The sugar sector is diversified, affecting millions of Kenyans and cross cutting in terms of sectors it affects. In keeping with the provisions of the Constitution Article 10, for public participation in decision making and governance, it is necessary to have representative Board to achieve the foregoing imperatives.

Committee recommendation: The Committee rejected the proposed amendment. The proposed composition is more than the recommended number under the *Mwongozo* guidelines, further the millers and the growers are represented by the Board.

Clause 10

119. *Proposed amendment:* Amend clause 10(2) as follows—

10(2) A person shall be qualified for appointment under this section if he or she –

a. Holds a degree from a university recognized in Kenya in agriculture, economics or business administration; and

b. Has at least ten years' experience in a managerial capacity.

Justification for the proposed amendment: The office of the CEO occupies a very important role in the coordination of the affairs of the Board, and in turn the sector. To deal with the complex issues that characterize the sector, it is necessary that persons encumbering top managerial positions in the Board have sufficient experience to match the challenges. 10 years is generally reasonable.

Committee recommendation: The Committee rejected the proposed amendment, the five years in the view of the Committee is sufficient.

Clause 14

120. *Proposed amendment:* Amend by deleting the entire clause 14 and replace with the following new clause 14:

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

Justification for the proposed amendment: We reiterate the justification offered hereinabove of the need to defer to the Constitution vesting the function of developing and regulating agriculture to the County Governments.

Committee Observation: The Committee observes that the export and import trade is a function of the national government hence the same should be regulated by a national government body.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 15

121. *Proposed amendment:* Amend by deleting the entire clause 15(1) and replace with the following new Clause 15(1):

15. (1) A person shall first present to the Board its application for the milling licence in the prescribed form for primary assessment and recommendation;

(2) Upon recommendation approving issuance of the licence, the successful party shall then apply to the County Executive Committee Member for a licence to operate a sugar mill, sugar warehouse or a jaggery mill in the prescribed form upon first (2) The Board shall not

recommend issuance of a licence under this Act unless it is of the opinion that the applicant is a fit and proper person to hold such a licence;

Amend to read as follows:

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

15(5) The Board shall revoke the manufacturing licence of a miller whose conformity to the licensing conditions falls below the 50% mark after being assessed by the Board, provided that an affected miller shall first be given a notice of one year to comply and opportunity to be heard in defence before the revocation.

15(6) A miller has right to appeal within 21 days to the tribunal the decision of the Board revocation.

15(7) The manufacturing licence may be reinstated to a miller who subsequently satisfies the licensing conditions.

15(8). A person who operates a sugar mill without a manufacturing licence commits an offence and shall be liable, on conviction, to a fine not exceeding Ten Million shillings, or to imprisonment for a term not exceeding five years or both.

15(9). A person shall not operate a sugar refinery plant without the specific registration and licence by the Board in consultation with the County Government.

15(10). Only millers who have been in operation for ten years or more shall be eligible to be registered and licensed to operate a sugar refinery plant.

15(11) A person who operates a sugar refinery without a license commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or both.

15(12) An Importer operating a sugar ware house without a licence shall be liable to a fine not exceeding Ten Million shillings, or to imprisonment for a term not exceeding five years or both.

Committee recommendation: The Committee rejected the proposed amendment except for the proposed clause 15(12).

Clause 16

122. *Proposed amendment:* Amend to read as follows:

16(1) A person shall not conduct the business of a miller unless he or she is registered by the Board and the regional catchment area in which the miller shall be conducting business specified in the Certificate of Registration;

(2) The Board shall issue to every miller registered under this section, a certificate of registration specifying the regional catchment area and premises at which milling may be carried on by the miller as provided for under the Second Schedule.

Committee Observation: The Committee observes that sub-clause 2 provides for registration of the actual premise where a miller is to conduct business which is more specific for purposes of inspection to check compliance as opposed to a general registration of a catchment area.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 18

123. *Proposed amendment:* Amend 18(1), as follows;

The Cabinet Secretary may, in consultation with the board, by order in the gazette, impose a levy of 4% on domestic sugar and 10% on imported sugar to be known as the Sugar Industrial Development Levy.

Justification for the proposed amendment:

- i. This will stabilize sugar prices in the market for both domestic and imported sugars to safeguard the farmers' sugarcane prices resulting in increased sugarcane production thus guaranteeing farmers source of income and livelihood.

- ii. It will help stop the dumping of cheap imported sugar in the Kenyan market which is currently very lucrative for briefcase traders who do not support the government in achieving our vision 2030
- iii. The revival of the sugar sector will be boosted by the collections from the higher percentage of sugar development levy levied on imported sugar. Unrestricted imports is one of the major reason that led to the collapse of the sugar industry
- iv. A special formula to be developed by the cane pricing committee that will ensure farmers get a guaranteed minimum price for cane so that they can have good economic returns from cane farming.

Committee recommendation: The Committee agreed broadly on the establishment of a Sugar Development Levy but noted that imposition of a levy of 4% was too high. The Committee recommended agreed to the proposed 10% of CIF value on imported sugar. The Committee further recommended that the provision should provide for apportionment of the levy.

124. *Proposed amendment:* Amend by adding Clause 18(7), as follows:

'Farmer Development Levy of Kshs.15 per tonne of sugarcane delivered to miller of which Kshs. 10 will be deductible and payable to the farmers apex body Kenya National Federation of Sugarcane Farmers while Kshs 5 deductible will be payable to the farmers outgrowers, Companies/cooperatives/ associations , or such amount as shall be set from time to time, by the Board shall be charged and shall be administered and distributed by the Miller amongst recognized and gazetted farmers' apex body and the individual farmers' out growers institution on a or manner provided for in the Regulations, and to be applied to operation costs of the out grower bodies'.

Committee recommendation: The Committee rejected the proposed amendment because the levy will be an additional cost to the sugar growers.

125. *Proposed amendment:* Amend by introducing new sub Clauses (3) and (4) to read as follows

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

2) The Sugar Development Fund shall consist of-

- a. the Sugar Development levy;
- b. any funds provided by bilateral or multilateral donors for the purposes of the Fund;
- c. any moneys provided by the National Assembly for the purposes of the Fund.
- d. any moneys provided by a country assembly for the purposes of the Fund; and
- e. moneys from any other source approved by the Board

(3) The Sugar Development Fund shall be used to undertake research in the sugar industry, sugar cane development and infrastructure development.

(4) The Board in consultation with the Cabinet Secretary and County Governments shall put in place mechanisms to provide for contributions by the County Governments as provided for under section 19(1)(d) above.

Justification for the proposed amendment: Delete factory rehabilitation which should be the responsibility of the mill owners.

Committee recommendation: The Committee agreed to the proposed amendment and further recommended for provision on apportionment of the funds as follows:

- a) Thirty per centum for price stabilisation;
- b) Twenty per centum for sugar research;
- c) Twenty per centum for crop development;
- d) Twenty five per centum for infrastructure development;
- e) Five per centum for farmers' institutional support.

Clause 22

126. *Proposed amendment:* Delete clause 22

Justification for the proposed amendment: No funds likely to become available. There is bad history of abuse.

Committee recommendation: The Committee agreed to the proposed amendment.

127. *Proposed amendment:* The section be augmented by outlining the parties attending to be:

20 representatives Apex body of all millers.

40 representatives

Growers Apex body Out growers 2 representatives Institutions/cooperatives of each miller

10 County representatives

Justification for the proposed amendment: This is something that will help understand the growth and transparency and accountability of the industry since it has never before been in existence. Further since an AGM entails deliberations and possibly votes, there should be commensurate representation.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 29

128. *Proposed amendment:* Amend clause 29(c) by inserting the following words "in consultation with stakeholders".

Justification for the proposed amendment: The formula now in force is contentious, millers have not accepted as farmers control the investments benefits by of the millers in the factories.

Committee recommendation: The Committee agreed to the proposed amendment.

129. *Proposed amendment:* Amend clause 29(f) by inserting the words "in consultation with stakeholders".

Justification for proposed amendment: Purpose of the levies should be clear to the millers and importers.

Committee observation: The roles of the Institutions have been set out in the Second Schedule.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 27

130. *Proposed amendment:* Amend by deleting the Clause 27 and replace with the following new clause 27:

27. (1) Subject to such regional and international trade agreements which Kenya is a party, sugar imports into the Kenya shall only be allowed by the Cabinet Secretary whenever there is a prevailing sugar deficit as reported by the Board and shall be subject to the prevailing import duties, levies, taxes and other tariffs.

(2) The Board and Cabinet Secretary shall only sanction and allow importation of sugar in Kenya to meet the strict deficit as determined by the Board;

(3) Of the quantity of sugar allowed to be imported, sugar millers shall be allocated an importation quota of 50%;

(4) The remaining 50% shall be allowable and assigned to other parties seeking to import and who shall be vetted to ensure that they have capacity to import the quantities applied for and have capacity to handle the imported consignment including safe storage;

(5) Industrial Sugar imported in to Kenya shall only be used as raw materials, and shall not be sold or offered for re-sale;

(6) All parties licensed to import sugar in to Kenya, shall report to the Board on weekly basis on the status of the consignment imported, until when the said consignment shall be wholly utilized in manufacturing, and or wholly sold and transferred to third parties;

(7) The National and County Governments shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices.

(4) A person who contravenes section 27(5) and (6) or who imports sugar or industrial sugar in to Kenya without a licence shall be liable to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both.

Committee recommendation: The Committee rejected to the proposed amendment except for subclause (4) subject to slight modifications including enhancement of punishment from two million shillings to ten million shillings and forfeiture of sugar to government.

131. *Proposed amendment:* Clause 27(1)

The clause to be augmented by adding very clearly that:

a. Only deficit should be imported on monthly basis on specific tonnage.

Importers should be reporting to the Board of their imports, sales and stock on daily basis same as millers.

Justification for the proposed amendment:

- a. Uncontrolled imports have seriously harmed the sector. They have affected pricing of locally produced sugar, and have yielded losses, locally. It is necessary that the State adopts protectionists approaches where only necessary quantities are imported, to help nurture the sugar sector in Kenya.
- b. Glut in imported sugar has resulted in nationwide prejudice as can be readily noted, resulting in reactionary measures of Government including Parliamentary sessions and the Presidency setting up a Taskforce on the sector. It is necessary for precautionary measures, than reactionary, for the causalities of the sector are heavy, and takes an appreciable time to recover.

Which has been happening all the time and cause losses to the millers by sugar prices dropping and eventually reduction on farmers cane rates.

Massive losses in revenue to stakeholders and taxes to the government

Committee recommendation: The Committee agreed to the proposed amendment save for the following amendments:

- Only deficit should be imported on a quarterly basis on specific tonnage and not on a monthly basis as proposed;
- Penalty should be prescribed.

Clause 30

132. *Proposed amendment:* Amend by deleting clause 30 in its entirety.

Justification for the proposed amendment: The provision in the Bill is by itself and implication unconstitutional. Firstly, the sugar sector has several stakeholders, growers, millers, traders, importers, mentioning a few. It shall be discriminatory to provide for rights of Growers alone, and fail to provide for rights of other stakeholders. Secondly and in any event, Growers as stakeholders are sufficiently provided for in the Act, they are represented in the Board by the highest number of representatives than any other stakeholder, there is established the Arbitration Tribunal for Growers to seek redress for any individual or collective prejudice suffered, they may suffer. There is then the Cane Pricing Committee on which the Growers are represented to ensure that the Growers' interests are represented first hand. There is also recognition of Grower bodies and even, statutory monetary support to these Grower organizations.

It is thus needless, to now again statutorily impose Growers in to management of miller boards, even private millers.

It shall be unconstitutional to impose growers in to management of companies, and force these companies to have society of growers, against their will.

Further, such provisions shall defeat the practical sense of privatization; its common ground that investment in sugar milling plants is astronomical. It is grossly unrealistic for a statute to contemplate that an investor shall invest such huge sums of money in a labour intensive and volatile industry, and have his business managed by other persons. Further, as indicated above, investment in sugar milling plants is in hundreds of millions of shillings. If 51% of shareholding in privatized companies is allocated to Growers, do these Growers have hundreds of Millions to invest?

The said Clause should be deleted.

133. *Proposed amendment:* Clause 30(a)

The Section should be deleted, and matter left to the Privatization Commission, which is obligated to allow public participation.

Justification for the proposed amendment:

- a. When national and County governments give up on the management of the mills by injecting billions of shillings into the plants which are not recoverable.
- b. With the current situation no private investor will come.
- c. Leaving it to the Privatization Commission shall be more expedient, because the matter can be discussed in detail. For instance already the Commission dealt with the matter and stakeholders agreed on distribution of representation as follows:

We go by the allotment done by the privatization commission that divided as follows:

51%- Investor

25%- County Government

24%-Farmers(trust)

134. *Proposed amendment:* Delete clause 30(b)

- a. This provision should be deleted, as concerns private milling companies
- b. So far as public mills are concerned, even as they become privatized, the position of the representation in the directorship should be allocated according to the shareholding.

Justification for the proposed amendment:

This provision should be deleted, as concerns private milling companies, to the extent that it purports to install growers on management boards of all milling companies at 51% or at all, including private millers, should be deleted. In the stated phraseology it is grossly unconstitutional

So far as public millers are concerned, it is a decision that has been agreed upon by the privatization commission and stakeholders.

Clause 31

135. *Proposed amendment:* Amend clause 31(1)

Establish one main fully fledged and functional Tribunal based in Kisumu and with 5 other regional registries for serving the farmers

Justification for the proposed amendment: To bring the Tribunal closer to the stakeholders for faster dispensation of justice.

Committee recommendation: The Committee rejected the proposed amendment.

136. *Proposed amendment:* Amend by deleting clause 31(3) and replacing with the following:

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

Justification for the proposed amendment: To allow for two equal periods of three years each subject to performance and evaluation.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 33

137. *Proposed amendment:* Amend clause 33(1) by deleting the word 'may' and replacing with the word "shall". The provision should read as follows:

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

Justification for the proposed amendment: To compel Cabinet Secretary to make regulations. This is not optional.

It is a must and he/she will have a timeline of two months to comply. It is also a must with stakeholder consultation/participation.

Committee recommendation: The Committee agreed to the proposed amendment.

138. *Proposed amendment:* Amend to read as follows:

36. The staff of the Sugar Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board for a period of one year after which the board shall conduct suitability interviews and placement in accordance with this Act.

139. *Proposed amendment:* Key players namely the CEO and other Heads of Departments must be recruited afresh competitively.

Justification for the proposed amendment: The Board should not accept staff who did not perform and who were instrumental in the decline of the sugar industry.

Committee recommendation: The Committee rejected the proposed amendment; The Ministry responsible shall determine criteria once a Board is in place. Retaining staff from the Sugar Directorate does not preclude future employment by the Board.

140. *Proposed amendment:* Paragraph 2(4): (4)

The quorum for the conduct of the business shall be seven members.

Amend to read as follows:

'2(4) The quorum for the conduct of the business of the Board shall be two-thirds members, provided that for a quorum to be reached, there must be present a representative of each cluster to say government, Growers, millers and County Governments and further a minimum of 2 representatives from the governments representatives.

Justification for the proposed amendment: This is shall ensure that on each occasion that the Board convenes, there is representative representation as contemplated by Parliament.

Committee recommendation: The Committee rejected the proposed amendment. Once a Board is constituted all the Board members are equal irrespective of the nominating authority.

Second schedule

141. *Proposed amendment:*

PART 2.

ROLES OF INSTITUTION IN THE INDUSTRY (second schedule)

5. The role of out grower institutions

Delete paragraph (e) and insert the role of Sugarcane Pricing Committee.

Justification for the proposed amendment: Refer to Sugarcane Pricing Committee.

142. *Proposed amendment:*

6. The role of the miller

Paragraph (a)

Delete the word "farm gate" and replace with the word "mill weighbridge"

Justification for the proposed amendment:

No weighing of sugarcane is being done at the farm to warrant the definition of "farm gate".

143. *Proposed amendment:*

(6) The role of Miller

Paragraph 6(d)

Delete '30 Days' and replace with '7 Days'

Justification for the proposed amendment: This is the compliance with current and agreed practice of payment within 7 Days and this will deter poaching of cane by other millers.

144. *Proposed amendment:* Insert a new clause

(8) Cane Pricing Policy

(1) There shall be a Sugarcane Pricing committee (herein for referred to as "the committee) comprising the representatives from the Kenya Sugar Board, Kenya Sugar Manufacturers Association and the Kenya Sugarcane Growers Association.

145. *Proposed amendment:*

8(3) Sugarcane Pricing Formula

This formula is not suitable. The CTU units are already installed at all mills and have not been activated by the Kenya Sugar Board

In the absence of the non-function C.T.U units the weight basis formula will apply.

Justification for the proposed amendment: Need for further negotiation and deliberation with the stakeholders. There is no law and order where there are now more weighbridges than the sugar mills.

CTUs are only installed at sugar mills. Need further investigations on how weighbridges are established and under what authority.

146. *Proposed amendment:*

PART 4 RELATIONSHIP BETWEEN CANE GROWERS/ INSTITUTION AND THE MILLER

9. Out growers and miller agreement

9(2)

Add the words "at market rates' and not the 3% penalty as it currently reads

Justification for the proposed amendment: Causes extra cost implication to the miller on cost of sugar.

147. *Proposed amendment:*

12 (d) (iv) Remove all the words "shall refer the matter to the sugar Arbitration Tribunal" and replace with the words "intervene and cause the cane to be harvested"

Justification for the proposed amendment: Taking such a matter to the Tribunal is time consuming and a waste of resources.

148. *Proposed amendment:*

12(h)

Remove words "buying point" and replace with "Mill weighbridge" This is where such tickets are available.

Justification for the proposed amendment: This cannot be possible especially with weighbridges erected everywhere by private millers without due regard and processes.

149. *Proposed amendment:*

15(1)

Add to include KRA,, Anti counterfeit Authority, Kenya Manufactures Authority, Kenya Sugar Millers Association Kenya National Federation of Sugarcane Farmers, should be included in the Proposed Committee on sugar inspection and certification on imports.

3.6 West Kenya Sugar Co. Ltd.

150. *Proposed amendment:* The definition of "zoning" and its use in the Bill is unconstitutional and should be deleted.

Proposed Justification for the amendment:

- a. The proposed re-introduction of zoning is an illegality in itself because on various occasions the courts have declared that farmers have a freedom to contract and Article 40 of the Constitution protects their proprietary rights in their produce.
- b. The idea of zoning is being strongly propagated mostly by state sugar millers who in themselves are inefficient and are only seeking legal protection to force farmers to deliver cane to them even when they pay poorly and late;
- c. This will stifle free market and result in subsidization of inefficient companies in a given county by farmers and other stakeholders in other counties that have prudently managed their resources;
- d. It will contravene section 21(3) (b) of the Competition Act (No. 12 of 2010) prohibits industry or sector players or regulators from dividing markets by allocating customers, suppliers, areas or specific types of goods or services;
- e. In *West Kenya Sugar Company Ltd Vs. Kenya Sugar Board* (Nairobi High Court Civil Case No. 206), the High Court through Hon. Lady Justice Martha Koome ruled that since Kenya is a free capitalist state in which citizens enjoy freedom to contract, sugar cane farmers had the prerogative to sell their produce to whichever miller offered then at the best price.
- f. This decision was subsequently upheld by a three-judge bench in the case of *West Kenya Sugar Company Ltd. Vs. Butali Sugar Mills Ltd & 8 Others* (Kakamega High Court Constitutional Petition No. 26 of 2014) where the court went further to state that policy/phenomenon of exclusive sugar cane zones contravenes the Competition Act.
- g. The re-introduction of sugar zones is neither feasible nor rational because the following operational matters are yet to be addressed:
 - How will borders be defined?
 - How will farmers be convinced to go on one side or the other?
 - How will the existing contract with farmers be dealt with?
 - How and why should farmers incur extra cost and efforts to apply for a permit?
 - How is arable land suitable for cane production considered keeping in mind food security, forests, escarpments?
 - How are mill capacities taken into consideration?

Committee Observation: The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “sugar catchment area” is appropriate.

Committee Recommendation: The Committee agreed to the proposed deletion.

3.7 Kenya National Federation of Sugarcane Farmers

151. **Proposed amendment:** Delete the definition of “zone” and replace with catchment areas for cane development and sourcing of cane for each millers within a region.

Justification for the proposed amendment: Contentious. Not practical and not applicable. No exclusive zone thus be replaced with regions as it is more workable with.

Committee Observation: The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “regional catchment area” is appropriate.

Committee Recommendation: The Committee agreed to the proposed deletion.

152. **Proposed amendment:** Amend paragraphs (b) and (c) as follows:

(b) six representatives nominated by Kenya National Federation of Sugarcane Farmers. The apex body for growers and gazetted by the Cabinet Secretary.

(c) Three representatives nominated by the Millers and gazetted by the Cabinet Secretary.

Justification for the proposed amendment: For paragraph (b), this number is recommended by the Executive Board of the Federation.

For paragraph (c), the number be arrived at after consultations with millers.

Committee recommendation: The Committee rejected the proposed amendment and recommended that the sugar lobby groups should be represented in the Sugar cane Pricing Committee

153. *Proposed amendment:* Under clause 19(1) (d), which county assembly?

Committee observation: The Committee noted that the county assembly needed not be specified.

Clause 21

154. *Proposed amendment:* Under clause 21(2) (e), which building? Where?

Committee recommendation: The Committee rejected the proposed amendment.

155. *Proposed amendment:* Delete clause 22

Justification for the proposed amendment: Who are the trustees? No funds likely to become available. There is bad history of abuse.

Committee recommendation: The Committee agreed to the proposed amendment.

156. *Proposed amendment:* Under clause 25(1), those to attend: All millers 20 delegates

Growers apex body 20 delegates

Out growers Institutions 20 delegates

County delegates 20

Justification for the proposed amendment: To specify who should attend as this activity did not hold any throughout the life of the past Kenya Sugar Board. It is a necessary activity.

Committee recommendation: The Committee rejected the proposed amendment.

157. *Proposed amendment:* Amend clause 27(1) to provide that only deficit should be imported on monthly basis on specific quota.

Justification for the proposed amendment: Haphazard and uncontrolled imports as happened in 2017 ruin our sugar market.

Committee recommendation: The Committee agreed to the proposed amendment save for the following amendment: only deficit should be imported on a quarterly basis on specific tonnage and not on a monthly basis as proposed.

158. *Proposed amendment:* Amend clause 29(c) by inserting the words "in consultation with stakeholders".

Justification for the proposed amendment: The formula now in force is contentious. Growers have not accepted it.

Committee recommendation: The Committee agreed to the proposed amendment.

159. *Proposed amendment:* Amend clause 30(a) to provide for allotment done by the Privatization Commission that divided as follows:

51%-Investor

25%- County Government

24%- Farmers (trust)

Justification for the proposed amendment: Looks like a circus? Clarification necessary as this is already been agreed by the stakeholders.

160. *Proposed amendment:* Clause 30(b)

Idea is good, but what has happened to privatization and writing off or excess debt of state owned sugar mill so as to give them a new lease? The position of the representation the directorship be allocated according to the shareholding.

Justification for the proposed amendment: Looks like a circus! Clarification necessary.

161. *Proposed amendment:* Amend clause 31(1) to establish one main fully fledged and functional tribunal based in Kisumu and with five other regional registries for serving the farmers

Justification for the proposed amendment: To bring the tribunal closer to the stakeholders for faster dispensation of justice and effect their rulings with full powers.

Committee recommendation: The Committee rejected the proposed amendment.

162. *Proposed amendment:* Amend clause 31(3) to provide for one further term of a period not exceeding six years.

Justification for the proposed amendment: To allow for two equal periods of three years each subject to performance and evaluation.

Committee recommendation: The Committee rejected the proposed amendment.

163. *Proposed amendment:* Amend clause 33(1) to remove the word "may" and replace with the word "shall" to read:

The Cabinet Secretary shall make regulations generally for the better carrying into effect of the provisions of the Act within two months of enactment.

Justification for the proposed amendment: To compel Cabinet Secretary to make regulations. This is not optional. It is a must and he/she will have a timeline two months to comply. It is also a must with stakeholder consultation/participation.

Committee recommendation: The Committee agreed to the proposed amendment subject to further modifications as follows:

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

164. *Proposed amendment:* Amend clause 36 to provide that key players namely the CEO and other Heads of Departments must be recruited afresh competitively.

Justification for the proposed amendment: The Board should not accept staff who did not perform and who were instrumental in the decline of the sugar industry.

Committee recommendation: The Committee rejected the proposed amendment; The Ministry responsible shall determine criteria once a Board is in place. Retaining staff from the Sugar Directorate does not preclude future employment by the Board.

165. *Proposed amendment:* Amend by deleting paragraph 8 and replacing with the following new paragraph 8:

8.(1) There shall be a Sugar Cane Pricing Committee (herein after referred to as "the Committee") comprising the Chief Executive Officer of the Board, three representatives from the Kenya Sugar Manufacturers Association and three representatives from the Growers apex body Kenya National Federation of Sugarcane Farmers.

(2) The main objectives of the Committee shall be to:

- a. review sugar cane prices;
- b. provides a mechanism that remunerates farmers for other products delivered from the processing of cane;
- c. ensure adherence to negotiated cane pricing formula;
- d. transition to payment based on quality; and
- e. Enforcement of contracts between farmers and millers

(3) The Committee shall come up with the pricing formula and in doing so shall take into account the-

- a. pricing mechanisms for all other cane related charges paid by the farmer; and
- b. an index that takes into consideration delayed harvesting

(4) The formula set out in sub-paragraph (3) shall be subject to change as agreed upon by the Committee.

(5) The exercise of determining the sucrose content of sugarcane for the purpose of sugarcane pricing shall be carried out by a sugar-cane testing unit to be set up by the Committee.

Committee observation: There is need to set up a Sugar Cane pricing Committee which shall be reviewing and negotiating sugar cane prices. The Composition of the Committee to be key players in the sugar industry.

Committee Recommendation: The Committee therefore will be proposing amendments on Paragraph 8 as indicated in the recommendation section of this report.

New Paragraph

166. Add the following new part 7 immediately after part 6:

7. DELINEATION OF SUGAR CATCHMENT REGIONS s.16

17(1). The following shall be delineated regional sugar catchment areas that shall guide milling.

- a. Central Region comprised of Kisumu, Southern Nandi and Kericho Counties;
- b. Upper Western Region comprised of Bungoma, Kakamega excluding Mumias Area, Trans Nzoia, Northern Nandi and Uasin-Gishu Counties;
- c. Lower Western Region composed of Mumias area, Busia and Siaya Counties;
- d. Southern Region composed of Migori, Homa Bay, Kisii and Narok Counties; and
- e. Coastal Region composed of Kwale, Tana River and Lamu Counties;

(2) The Board shall have the mandate to create new Regions depending on assessed potential of the area, in order to ensure fair and proper delineation of resource and miller location to the best interests of the miller and growers.

Committee recommendation: The Committee agreed to the proposed amendment subject to the following amendment:

FOURTH SCHEDULE		[S. 5]
DELINEATION OF SUGAR CATCHMENT AREAS		
SUGAR CATCHMENT AREAS	COUNTIES	
UPPER REGION	Nandi, Kericho, Uasin Gishu Kisumu, Migori, Homa Bay and Narok counties	
LOWER REGION	Bungoma, Trans Nzoia, Kakamega, Siaya and Busia counties	
COASTAL REGION	Kwale, Tana River and Lamu counties	

167. *Proposed amendment:* Amend the Second Schedule, Part 1, paragraph 2 by deleting the definition "Kenya Sugarcane Growers Association" and replacing with "Kenya National Federation of Sugarcane Farmers" registered under the Societies Act (Cap. 108);

Justification for the proposed amendment: Kenya Sugarcane Growers Association merged with Kenya National Sugarcane Growers Union to form Kenya National Federation of Sugarcane Farmers in year 2014, which is now the apex body of sugarcane farmers in Kenya.

168. *Proposed amendment:* Amend Part 2, paragraph 5, subparagraph (g) by deleting Kenya Sugarcane Growers Association and replace with Kenya National Federation of Sugarcane Farmers.

Justification for the proposed amendment: Kenya Sugarcane Growers Association merged with Kenya National Sugarcane Growers Union to form Kenya National Federation of Sugarcane Farmers in year 2014, which is now the apex body of sugarcane farmers in Kenya.

169. *Proposed amendment:* Amend Second Schedule, Part 1, Paragraph 6(a) by deleting the words “farm gate” and replace with the word “mill weighbridge”.

Justification for the proposed amendment: No weighing of sugarcane is being done at the farm to warrant the definition of “farmgate”.

170. *Proposed amendment:* Amend Second Schedule, Part 1, Paragraph 6(d) by deleting 30 days and replacing with 7 days.

Justification for the proposed amendment: This is in compliance with current and agreed practice of payment within 7 days.

171. *Proposed amendment:* Amend Second Schedule, Part 1, Paragraph 8(1) by deleting “Kenya Sugarcane Growers Association and replace it with Kenya National Federation of Sugarcane Farmers.

Justification for the proposed amendment: Kenya Sugarcane Growers Association merged with Kenya National Sugarcane Growers union to form Kenya National Federation of Sugarcane Farmers in year 2014, which is now the apex body of sugarcane farmers in Kenya.

172. *Proposed amendment:* Second Schedule, Part 1, Paragraph 8(3)

This formula is not suitable. It is not workable. It is contentious.

Justification for the proposed amendment: Need for further negotiation and deliberation as without law and order there are now more weighbridges than the CTUs. CTUs are only installed at sugar mills. Need further investigations on how weighbridges are established and under what authority.

173. *Proposed amendment:* Amend Second Schedule, Part 4, Paragraph 9(2) by inserting the words “at market rates, plus a penalty of 8 percent per month”.

Justification for the proposed amendment: This was an omission.

174. *Proposed amendment:* Amend Second Schedule, Part 5, Paragraph 11(1) by inserting the words “an out grower institution” which will be in conjunction with “Kenya National Federation of Sugarcane Farmers.

Justification for the proposed amendment: The out growers institution cannot perform advocacy to the grower where it is the same institution providing the services.

175. *Proposed amendment:* Amend Second Schedule, Part 5, Paragraph 12 (d) (iv) by deleting the words “shall refer the matter to the Sugar Arbitration Tribunal” and replace with the words “intervene and cause the cane to be harvested”.

Justification for the proposed amendment: Taking such a matter to the Tribunal is time consuming and a waste of resources.

176. *Proposed amendment:* Amend Second Schedule, Part 5, Paragraph 12(h) by deleting the words “buying point” and replace with “Mill weighbridge”. This is where such tickets are available.

Justification for the proposed amendment: There is a lot of confusion especially with weighbridges erected everywhere by private millers without due regard and processes.

177. *Proposed amendment:* Amend Second Schedule (Guidelines for Agreements between Parties in the Sugar Industry Agreements)

5(a)- (h)

The role of advocacy and the roles of providing services should be separated.

Advocacy should be left to Kenya National Federation of Sugarcane Farmers. Services should be left to out growers institutions.

Justification for the proposed amendment: Out growers institutions need to be strengthened to provide services to growers and should not be embroiled in rivalry with advocacy which is the mandate of the Farmers Federation.

178. *Proposed amendment:* Amend Second Schedule, Part 6, Paragraph 15(1) to create a Sugar Industry Agreement as part of the Sugar Bill 2019.

Justification for the proposed amendment:

1. This sugar agreement is an important document. This agreement specifies the core functions of the sugar industry. It is a long and detailed write up which should be taken on board. It is the missing link in our sugar industry.
2. KRA, KESMA and Kenya National Federation of Sugar Farmers, Anti counterfeit Authority, Kenya Manufacturers Authority, Kenya Sugar Millers Association should be included in the proposed committee on sugar inspection and certification on imports.

3.8 Sugar Campaign for Change

179. *Proposed amendment:* Amend clause 4(1) (a) to assign the function to the Ministry of Agriculture

Justification for the proposed amendment: National government, is responsible for national policy formulation, national standards and norms and the legislation that provides for such national policy under Article 191 and Schedule Four.

Committee recommendation: The Committee rejected the proposed amendment; the Committee noted that functions assigned to a Board are generally done in consultation with the relevant Ministry.

180. *Proposed amendment:* Amend clause 4(1) (b) and (c) to assign the function to the respective county government.

Justification for the proposed amendment: County governments are responsible for implementation of such national policies, standards and norms in their areas as provided in Article 183 and Schedule Four.

Committee recommendation: The Committee rejected the proposed amendment.

181. *Proposed amendment:* Delete clause 4(2) (a)

Justification for the proposed amendment: It is the obligation of all stakeholders to participate in policy process.

Committee recommendation: The Committee rejected the proposed amendment since public participation is to be done at the time of preparation of an actual policy. The clause only assigns the function

182. *Proposed amendment:* Amend clause 4(2) (b) to assign the function to miller/grower association.

Justification for the proposed amendment: The association should be farmers' and millers' representative.

Committee recommendation: The Committee rejected the proposed amendment; the Board is composed of a representative from the millers

183. *Proposed amendment:* Amend clause 4(2) (c) to assign the function to Sugar Research Institute and County Government.

Justification for the proposed amendment: This is always the role of research institute and county government.

Committee recommendation: The committee agreed with the stake holder for the function of research to be assigned to the Institute.

184. *Proposed amendment:* Amend clause 4(2) (d) to assign the function to miller/grower association

Justification for the proposed amendment: The industry will be information symmetry to enable production planning.

Committee recommendation: The Committee rejected the proposed amendment; the millers and growers participate through representation at the Sugar Cane Pricing Committee

185. *Proposed amendment:* Amend clause 4(2) (e) to assign the function to the Sugar Arbitration Tribunal.

Justification for the proposed amendment: Tribunal empowered undertake this role.

Committee recommendation: The Committee agreed the proposed amendment, the Tribunal should be assigned this function.

186. *Proposed amendment:* Amend clause 4(2) (f) to assign the function to miller/grower association.

Justification for the proposed amendment: Special agency has capacity to achieve this.

Committee recommendation: The Committee rejected the proposed amendment; facilitation does not mean the Board will carry out the business of importation but aid the industry stakeholders to export.

187. *Proposed amendment:* Amend clause 4(2) (g) to assign the function to the Sugar Research Institute.

Justification for the proposed amendment: Research Institute has the technical capacity to undertake this role.

Committee recommendation: The Committee rejected the proposed amendment, promotion of use of environmentally friendly technologies can be done through regulations and guidelines.

188. *Proposed amendment:* Amend clause 4(2) (h) to assign the function to miller/grower association

Justification for the proposed amendment: It is the role of miller/grower association to acquire and share.

Committee recommendation: The Committee rejected the proposed amendment, advisory can be done through regulation and guidelines.

189. *Proposed amendment:* Amend clause 4(2) (i) to assign the function to miller/grower association

Justification for the proposed amendment: The Agency will have all the data required from both sides, while miller/grower will have specific data from their areas of operation.

Committee recommendation: The Committee rejected the proposed amendment the regulation of the same can be done through regulation

190. *Proposed amendment:* Amend clause 4(2) (j) to assign the function to miller/grower association.

Justification for the proposed amendment: The industry should only be represented by key stakeholders.

Committee recommendation: The Committee rejected the proposed amendment advisory can be done through regulation and guidelines.

191. *Proposed amendment:* Amend clause 4(2) (k) to assign the function to the Ministry of Agriculture.

Justification for the proposed amendment: National government role

Committee recommendation: The Committee rejected the proposed amendment, advisory can be done through regulation and guidelines..

192. *Proposed amendment:* Amend clause 4(2) (l) to assign the function to miller/grower association.

Justification for the proposed amendment: Agency to collect trade data, miller/grower to give farm and process data.

Committee recommendation: The Committee rejected the proposed amendment, advisory can be done through regulation and guidelines..

193. *Proposed amendment:* Amend clause 4(2) (m) to assign the function to county governments.

Justification for the proposed amendment: Constitutional role

Committee recommendation: The Committee rejected the proposed amendment, advisory can be done through regulation and guidelines.

194. *Proposed amendment:* Amend clause 4(2) (n) to assign the function to Ministry of Agriculture.

Justification for the proposed amendment: The Ministry has the powers to undertake the role.

Committee recommendation: The Committee rejected the proposed amendment, advisory can be done through regulation and guidelines.

195. *Proposed amendment:* Delete the entire section:

Justification for the proposed amendment: The purpose of registration and the results of registration of sugarcane miller portend unnecessary costs and are bad law.

Committee Observation: The Committee observes that there is need to regulate the premise within which sugar is produced for purposes of inspection and compliance.

Committee recommendation: The Committee rejected the proposed amendment.

196. *Proposed amendment:* Amend clause 18(1) to read:

18. (1) The Cabinet Secretary may, by order in the Gazette, impose a levy on domestic and imported sugar to be known as the Sugar Development Levy.

Justification for the proposed amendment: Board is not applicable

Committee Observation: the Committee notes that the Board should be consulted by the Cabinet Secretary since the Board will be doing direct monitoring and evaluation in the sector.

Committee recommendation: The Committee rejected the proposed amendment

197. *Proposed amendment:* Amend clause 29(d) to read:

29(d) the functions to be executed by the Sugar Arbitration Tribunal in the execution of the agreement.

Justification for the proposed amendment: The best practice is to have all the agreements registered by the sugar arbitration tribunal for ease of enforcement.

Committee recommendation: The Committee rejected the proposed amendment it however recommended for disputes related to sugar to be adjudicated by the Tribunal at the first instance. The same to be included in the relevant Clause.

198. *Proposed amendment:* Amend clause 29(e) to read:

(e) the granting of powers to the Tribunal to impose penalties prescribed in the agreement for the contravention of, or failure to comply with any term of the agreement;

Committee recommendation: The Committee rejected the proposed amendment. The provision deals with levies as opposed to penalties.

199. *Proposed amendment:* Amend clause 29(f) to read:

(f) the imposition of levies upon growers and millers for the purpose of enabling the Tribunal to fulfill any obligation incurred by it in accordance with its constitution

Justification for the proposed amendment: It is the work of the sugar arbitration tribunal to administer the Sugar Industry Agreements by having them registered by the Tribunal, hearing and deciding on complains raised by the parties including compensations.

Committee recommendation: The Committee rejected the proposed amendment. The provision delas with levies as oppose to penalties. The Tribunal does not impose levies.

3.9 Hon. Saulo Wanambisi Busolo, Douglas M. Barasa and Moses Khaemba Wasike

200. The above residents of Bungoma County and stakeholders in the Sugar Sector opposed to the Sugar Bill, 2019 as presented their memorandum as follows:

- (i) The Bill was anti Devolution: The Bill was offending the Constitutional Division of Power between the National and county Government. The Bill was not conforming to the division of powers under the Fourth Schedule of

the Constitution because it seeks to restore the role of defunct Kenya Sugar Board under the Cabinet Secretary for the time being responsible for matters agriculture.

- (ii) The Bill defeats the official agricultural policy post to the promulgation of the 2010 constitution: under the Fifth Schedule of the Constitution, Parliament was required to enact various kinds of legislations to ensure that various laws relating to deferent sectors would be enacted to conform to the provisions of the new Constitutions and the devolved systems of government. In this regard, in 2013 Parliament enacted the Crops Act whose objectives are clearly set out.
- (iii) Re- introduction of Sugar Development Levy is Unconstitutional: Considering that, agriculture is devolved function, it means that an institution under the National Government such as the proposed Kenya Sugar Board does not have Constitutional authority to levy the Sugar Development Levy to deal with matters that fall under the jurisdiction of respective county governments in the area sugar cane is grown.

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations:

1. The County governments have been assigned functions related to agriculture and trade in agriculture under the Fourth Schedule of the Constitution, it is therefore imperative to assign specific roles and functions to the County governments;
2. Clustering the sugar catchment areas into zones have been very contentious and causing a lot of uproar among the stakeholders, there is therefore need to remove zonings wherever it appears in the Bill and sugar catchment regions used in place.
3. There is need to constitute the Board with members representing the farmers from sugar catchment areas to ensure that there is regional representation;
4. On the Board the Committee observes that-
 - (a) there is need to provide for the term of the board;
 - (b) there is need to provide for vacation of office of board members;
 - (c) there is also need to include representatives of crucial stakeholders such as the Council of Governors; and
 - (d) there is need to also provide for a framework that enables the board to establish its own Committees.
5. The Committee also notes that there is need to provide for the qualifications of the Chief Executive Officer of the Board.
6. There is need to provide for regulation of sugar import into the country and the criteria to be met before importation is done;
7. There is need to establish the Sugar Research Institute with functions related to research and policy;
8. There is need to provide for appointment of crop inspectors with specific functions and a framework that facilitates crop inspection;

9. There is need to create a proper framework for the Sugar Disputes Tribunal;
 10. There is need to provide a framework for quality, safety and health control measures related to sugar; this will ensure quality standardization, health standards and environmental standards; and
-
11. There is need to provide a framework for inspection of licenced premises and general safety of the environment;

PART IV

5.0 COMMITTEE RECOMMENDATIONS

The Committee having considered the Sugar Bill, 2019 recommends that the House approves the Bill with amendments as proposed in the schedule

PART V
SCHEDULES OF PROPOSED AMENDMENTS
CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Interpretation.

2. In this Act—

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

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

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

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

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

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

“Fund” means the Sugar Development Fund established under section 19;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

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

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

“Kenya Sugar Research Institute” means Kenya Sugar Research Institute established under section 16A;

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

“member” means a member of the Board appointed under section 5;

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

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

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

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

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

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

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board under the Fourth Schedule;

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

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

“Tribunal” means the Sugar Arbitration Tribunal established under section 24A;

CLAUSE 3

THAT, the Bill be amended in Clause 3 by deleting paragraph (e).

CLAUSE 4

THAT, Clause 4 of the Bill be amended in in subclause (2) by inserting the following new paragraphs immediately after paragraph (m)—

- (ma) enforce and monitor compliance with standards along the sugar value chain;
- (mb) facilitate value addition and product diversification in the sugar sub-sector;
- (mc) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (md) formulate guidelines on an efficient and economical transportation of sugar;
- (me) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (mf) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Functions of
county
governments.

4A. The County Government shall—

- (a) issue sugar cane nursery certificates;
- (b) offer and coordinate extension services on sugar production and milling in the respective county;
- (c) in collaboration with the Board and law enforcement agencies, enforce regulations within the county;
- (d) monitor and report incidences of pests and disease outbreaks and taking appropriate

- action in collaboration with the Board and other relevant government agencies; and
- (e) establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

CLAUSE 5

THAT, clause 5 of the Bill be amended in—

(a) sub-clause (1)—

- (i) by deleting the words “and appointed by the Cabinet Secretary” appearing in paragraph (b) and substituting therefor the words “from each sugar catchment as per the Fourth Schedule in the following manner—
- (i) one person from the coastal catchment area;
 - (ii) two persons from the upper catchment area; and
 - (iii) two persons from the lower catchment area,
- and who shall not be from the same county or ethnicity.
- (ii) by deleting paragraph (c) and substituting therefor the following new paragraph—
- “(c) one representative, elected by sugar millers with knowledge in sugar technology and value addition;”
- (iii) by deleting paragraph (d) and substituting therefor the following new paragraph—
- “(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;”
- (iv) by deleting paragraph (e) and substituting therefor the following new paragraph—
- “(e) one person nominated by the Council of County Governors with knowledge in extension services and management of farmer institutions;”
- (v) by deleting paragraph (f) and substituting therefor the following new paragraph—
- “(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by deleting subclause (2);

(c) by inserting the following new subclauses immediately after subclause (3)—

“(4) The Cabinet Secretary shall, appoint members under subsection (1) (b), (c) and (e) by notice in the *Gazette*.

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

(d) by deleting subclause (3);

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 5—

Term of appointment of 5A. (1) The persons appointed under section 5(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 5(1) (b), (c) and (e) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times.

Vacation of office. of 5B. A person shall cease to be a member of the Board of Directors if such person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Committees of the Board. 7A. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

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

CLAUSE 10

THAT, clause 10 be amended by deleting subclause (2) and substituting therefor the following new subclause—

- “(2) A person shall be qualified for appointment under this section if he or she—
- (a) holds a relevant degree from a university recognized in Kenya;
 - (b) has at least ten years knowledge and experience from a relevant field;
 - (c) has at least five years experience in a position of senior management;
 - (d) meets the provision of chapter six of the Constitution.”

CLAUSE 14

THAT, clause 14 be amended—

- (a) in subclause (1) by inserting the words “upon recommendation by the respective County Government for that purpose immediately after the word “Board”;

- (b) by deleting subclause (2) and substituting therefor the following new subclause—

“(2) A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence

and shall be liable on conviction to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or ten million shillings, whichever is the higher, or to imprisonment for a term not exceeding five years, or to both."

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) by renumbering the subclauses appearing after subclause (2) as (3), (4), (5), (6), and (7);
- (b) by inserting a new subclause immediately after the renumbered subclause (7) as follows:
“(8) A person shall not import or export sugar without an export or import a valid licence issued by the Board.”

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 15—

Sugar Import.

15A. (1) A person who imports sugar into Kenya shall prior to importation —

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

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

NEW PART IIIA AND IIIB

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

PART IIIA- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE

Establishment of the Kenya Sugar Research Institute.

16A. (1) There is hereby established a body to be known as the Kenya Sugar Research Institute.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its

Functions of
the Institute.

functions under this Act, which may lawfully be done or performed by a body corporate.

16B. (1) The Institute shall—

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

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

- (a) formulate policy and make policy recommendations to the Cabinet Secretary on sugar research;
- (b) prioritise areas for, and co-ordinate, sugar research in Kenya in line with the national policy on sugar;
- (c) determine and advise the Government on the resource requirements for sugar research in Kenya both at the national and county level;
- (d) regulate, monitor and ensure that all sugar research undertaken by other institutions or persons undertaking sugar research is consistent with the national priorities specified in the relevant policy documents;
- (e) formulate or approve medium and long term research plans, strategies and budgets of the Institute;
- (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute ;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;
- (i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) perform such other functions as may be conferred on it by this Act or any other written law;

- (m) breeding of sugarcane varieties suited for various agro-ecological areas of Kenya;

- (n) conducting research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- (o) appraising technologies on land preparation, drainage and water management for economical cane production;
- (p) studying and monitoring of pests and diseases that affect sugarcane and recommending appropriate control strategies;
- (q) developing agronomic packages for sugarcane maintenance and management;
- (r) instituting socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;
- (s) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- (t) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- (u) promoting the transfer of sugar technology based on applied research through relevant extension mechanisms;
- (v) fostering research on sustainable productivity, environmental issues, human safety at field and factory levels; and
- (w) collaborating with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Institute's mission.
- (x) analyse soil and plant samples for advisory purposes; and
- (y) offer modular courses on various aspects of cane management and practices

Composition of the Board of the Institute.

16C. The Board of the Institute shall comprise of-

- (a) a chairperson appointed by the Cabinet Secretary with a background in agricultural research or related field;
- (b) three persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
- (c) two persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
- (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
- (e) the chief executive officer of the Board;
- (f) the chief executive officer of the Kenya Agricultural Livestock and Research Organization;

Application. **16D.** The provisions of section 5A, 5B, 7, 8 and 9 shall apply to the Board of the Institute *mutatis mutandis* with necessary modification.

Sources of funds of the Institute. **16E.** The funds of the Institute shall consist of-

- (a) monies remitted by the Board from the sugar development levy;
- (b) any monies received by the Institute from grants and donations; and
- (c) monies from any other source as approved by the responsible Ministry.

Chief Executive Officer of the Institute. **16E.** (1) There shall be a Chief Executive Officer of the Institute who shall be appointed by the Board whose terms and conditions of service shall be determined by the Board in the instruments of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under this section if he or she-

- (a) holds a degree from a university recognized in Kenya in agricultural research, soil and seed research, soil science or related field;
- (b) has at least five years' experience in managerial capacity; and
- (c) meets the provisions of Chapter six of the Constitution.

PART IIIB – APPOINTMENT OF CROP INSPECTORS

Appointment of crop inspectors. **16F.** (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

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

Entry and inspection. **16G.** A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

Powers of entry.

- (a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

16H. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (a) perform the functions or exercise the powers conferred by this Act or any other written law;
- (b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (c) demand the production by a licence holder of the licence for examination;
- (d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (e) do any other thing authorized under this Act.

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

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

Obstruction of inspectors.

16I. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

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

CLAUSE 18

THAT, clause 18 be amended—

- (a) in subclause (1) by inserting the words “ten per centum of CIF value on” immediately after the words “domestic and”;
- (b) by inserting the following new subclause immediately after subclause (6)—

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

 - (a) fifty per centum shall be applied by the Board for income or price stabilization for sugar growers;
 - (b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
 - (c) twenty per centum shall be remitted directly to the Sugar Research Institute;

- (d) fifteen per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.

CLAUSE 22

THAT, the Bill be amended by deleting clause 22.

NEW PART IV A

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

**PART IVA- ESTABLISHMENT OF THE SUGAR
ARBITRATION TRIBUNAL**

Establishment
of the Sugar
Arbitration
Tribunal.

24A. (1) There is hereby established Tribunal to be known as the Sugar Arbitration Tribunal.

(2) The Tribunal shall consist of—

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

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

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

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

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

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

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

Jurisdiction of
the Tribunal.

24B. (1) The Tribunal shall determine—

- (a) disputes between sugarcane farmers;
- (b) disputes between sugarcane farmers and the following—

- (i) out grower institutions;
- (ii) millers;
- (iii) growers; or
- (iv) other interested party;

- (c) disputes relating to cane pricing;
- (d) disputes relating to contract farming,

Determination of disputes.

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

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

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

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

Powers of the Tribunal.

24D. The Tribunal shall have the powers of the High Court

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to summon witnesses and to require the production of documents;
- (d) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—
 - (i) the protection of the members of the Tribunal from suit;
 - (ii) the form of summonses to witnesses;
 - (iii) to giving or fabricating of false evidence;
 - (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
 - (v) the appearance of advocates; shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

Removal of members of the Tribunal.

24E. The Judicial Service Commission may remove a member of the Tribunal if the member—

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence;
- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or
- (e) is otherwise unable or unfit to discharge the functions of the office.

Vacancy.

24F. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment.

Secretary of the Tribunal.

24G. The Judicial Service Commission shall appoint the Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Remuneration of members and staff of the Tribunal.

24H. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

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

CLAUSE 26

THAT, the Bill be amended by deleting clause 26 and substituting therefor the following new clause—

Quality, safety and health control measures.

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

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

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

- (a)

(a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and

(b) withdrawal of his or her licence.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

Inspection for quality and safety.

26A. (1) The Board shall carry out physical inspection of premises licenced under section 15 quarterly to ensure that safety and health standards are followed—

(2) Every person licenced under this Act shall—

- (a) not discharge any, affluent dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment;
- (b) not release smoke or any air pollutant to the air that pollutes the environment;
- (c) manage any hazardous waste and materials;
- (d) not import any hazardous waste;
- (e) not mislabel any sugar or jaggery; and
- (f) not aid or abet illegal trafficking of sugar or related substances;

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

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

CLAUSE 27

THAT, the Bill be amended by deleting clause 27 and substituting therefor the following new clause—

Safeguard measures.

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

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

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

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

(4) A person who contravenes the provision of this section commits an offence and shall be liable, on conviction, to a fine not

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

CLAUSE 29

THAT, clause 29 of the Bill be amended in subclause (3)—

- (a) in paragraph (e) by deleting the word “impose” appearing after the words “to the Board to” and substituting therefor the word “enforce”;
- (b) in paragraph (c) by inserting the words “, in consultation with stakeholders,” immediately after the words “agricultural produce”; and
- (c) in paragraph (f) by deleting the word “imposition” appearing at the beginning of the paragraph and substituting therefor the word “enforcement”.

CLAUSE 31

THAT, the Bill be amended by deleting Clause 31.

CLAUSE 33

THAT, Clause 33 of the Bill be amended—

- (a) in subclause (1) by deleting the word “may” and substituting therefor the words “shall in consultation with the Board and county governments”;
- (b) in subclause (3) by inserting the following new paragraphs immediately after paragraph (a) —
 - “(aa) the establishment of weigh bridges;
 - (ab) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
 - (ac) production and import of sugar to ensure adequate sugar availability in the country;
 - (ad) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;
 - (ae) minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments;
 - (af) cane harvesting and transportation;”

FIRST SCHEDULE

THAT, the Second Schedule to the Bill be amended—

- (a) by inserting the following heading:

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

- (b) in paragraph 2(4) by deleting the words “seven members” and substituting therefor the words “two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.”
- (c) in paragraph (2) by deleting subparagraph (5) and substituting therefor the following new subparagraph—

“(5) The chairperson shall preside at every meeting at which he or she is present but, in his or her absence, the members shall elect one of their members to preside who

shall with respect to that meeting and the business transacted thereat have all the powers of the chairperson.”

- (d) in paragraph (2) by deleting subparagraph (6);
- (e) in paragraph 2(7) by deleting the words “or the vice chairperson” appearing immediately after the words “the Chairperson”

SECOND SCHEDULE

THAT, the Second Schedule to the Bill be amended—

- (a) in paragraph (1) by deleting the word “agreements” appearing before the word “define” and substituting therefor the word “guidelines”;

(b) in paragraph (2) —

- (i) by deleting the word “agreements” appearing at the opening paragraph and substituting therefor the word “guidelines”;

(ii) by deleting the definition of the “Kenya Sugar Research Foundation”

by deleting the definition “Kenya Sugarcane Growers Association”

- (iii) by deleting the definition “Kenya Sugar Research Foundation” and substituting therefor the following new definition—

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

- (iv) by inserting the following new definition—

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

- (c) in paragraph 3 by deleting sub paragraph (f);

(d) by deleting paragraph 4;

(e) in paragraph (5)—

- (i) by deleting subparagraph (g) and substituting therefor the following new subparagraph—

“(g) make representations to the Sugar cane Pricing Committee;”

- (ii) by deleting the words “Kenya Sugar-cane Growers Association” appearing in subparagraph (h) and substituting therefor the words “registered sugar lobby groups”

(f) in paragraph (6)—

- (i) by deleting the expression “30 days” appearing in subparagraph (d) and substituting therefor the expression “15 days”;

(ii) by inserting the following subparagraph immediately after paragraph (f)—

“(fa) weigh sugarcane at a mobile weighbridge located at a defined radius from a farmer’s farm gate as prescribed in the regulation”

(iii) by deleting paragraph (h)

- (g) in paragraph (7) in subparagraph 2(b) by deleting the word “zones” appearing at the end of the subparagraph and substituting therefor the words “sugar catchment region”;

(h) by deleting paragraph 8 and substituting therefor the following new paragraph—

Sugar Cane Pricing Committee. 8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as "the Committee").

(2) The Committee shall comprise of—

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

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

- (a) review sugar cane prices;
- (b) provide a mechanism that remunerates farmers for other products delivered from the processing of cane;
- (c) ensure adherence to negotiated cane pricing formula;
- (d) transition to payment based on quality; and
- (e) enforcement of contracts between farmers and millers.

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

- (a) pricing mechanisms for all other cane related charges paid by the farmer; and
- (b) an index that takes into consideration delayed harvesting;
- (c) transportation cost per tonne per kilometre of sugarcane.

(5) The Board shall offer Secretariat services to the Committee

THIRD SCHEDULE

THAT, the Third Schedule to the Bill be amended by —

- (a) deleting paragraph (4) and (5);
- (b) inserting the following new paragraph immediately after paragraph 6—
“(6A) The quorum of the Tribunal shall be three members”; and
- (c) deleting paragraph (8).

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately after the Third Schedule—

FOURTH SCHEDULE

[S. 5]

DELINEATION OF SUGAR CATCHMENT AREAS

SUGAR CATCHMENT AREAS	COUNTIES
UPPER REGION	Nandi, Kericho, Uasin Gishu Kisumu, Migori, Homa Bay and Narok counties
LOWER REGION	Bungoma, Trans Nzoia, Kakamega, Siaya and Busia counties
COASTAL REGION	Kwale, Tana River and Lamu counties

SIGNED 

HON. SILAS KIPKOEACH TIREN, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

DATE 29/06/2021

MINUTES OF THE 35th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON THURSDAY 17TH JUNE, 2021 IN THE MEDIA CENTRE, MAIN PARLIAMENT BUILDING, AT 11.00 AM.

PRESENT

- | | |
|---|-------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 4. Hon. Yegon Brighton Leonard, MP. | |
| 5. Hon. Adan Haji Yussuf, MP. | |
| 6. Hon. Geoffrey Odanga, MP. | |
| 7. Hon. Joyce Kamene, MP. | |
| 8. Hon. Martin Peters Owino, MP. | |
| 9. Hon. Majimbo Kalasinga, MP. | |
| 10. Hon. Dr. John Kanyuithia Mutunga, MP. | |

APOLOGIES

1. Hon. Ferdinand Wanyonyi, MP.
2. Hon. Cecily Mbarire, MGH, MP.
3. Hon. Maison Leshoomo, MP.
4. Hon. Janet Jepkemboi Sitienei, MP
5. Hon. Jude Njomo, MP.
6. Hon. Simba Arati, MP.
7. Hon. Gabriel Kago Mukuha, MP.
8. Hon. Julius Kibiwott Melly, MP.

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|------------------------|
| 1. Mr. Ahmad Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Clarah Kimeli | - | Legal Counsel |
| 3. Mr. Luteshi Eugene | - | Audio Officer |
| 4. Mr. Moses Musembi | - | Office Assistant |

MIN.NO. DC/A&L 171/2021: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past Eleven o'clock. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L172 /2021: CONSIDERATION OF THE SUGAR BILL, 2019

The Committee deliberated the proposed amendments and adopted as follows:

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Interpretation. 2. In this Act—

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

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

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

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

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

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

“Fund” means the Sugar Development Fund established under section 19;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

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

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

“Kenya Sugar Research Institute” means Kenya Sugar Research Institute established under section 16A;

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

“member” means a member of the Board appointed under section 5;

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

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

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

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

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

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

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board under the Fourth Schedule;

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

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

“Tribunal” means the Sugar Arbitration Tribunal established under section 24A;

CLAUSE 3

THAT, the Bill be amended in Clause 3 by deleting paragraph (e).

CLAUSE 4

THAT, Clause 4 of the Bill be amended in in subclause (2) by inserting the following new paragraphs immediately after paragraph (m)—

- (ma) enforce and monitor compliance with standards along the sugar value chain;
- (mb) facilitate value addition and product diversification in the sugar sub-sector;
- (mc) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (md) formulate guidelines on an efficient and economical transportation of sugar;
- (me) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (mf) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Functions of
county
governments.

4A. The County Government shall—

- (a) issue sugar cane nursery certificates;
- (b) offer and coordinate extension services on sugar production and milling in the respective county;
- (c) in collaboration with the Board and law enforcement agencies, enforce regulations within the county;
- (d) monitor and report incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies; and
- (e) establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

CLAUSE 5

THAT, clause 5 of the Bill be amended in—

(a) sub-clause (1)—

(i) by deleting the words “and appointed by the Cabinet Secretary” appearing in paragraph (b) and substituting therefor the words “from each sugar catchment as per the Fourth Schedule in the following manner—

- (i) one person from the coastal catchment area;
- (ii) two persons from the upper catchment area; and
- (iii) two persons from the lower catchment area, and who shall not be from the same county or ethnicity.

(ii) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) one representative, elected by sugar millers with knowledge in sugar technology and value addition;”

(iii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;”

(iv) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) one person nominated by the Council of County Governors with knowledge in extension services and management of farmer institutions;”

(v) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by deleting subclause (2);

(c) by inserting the following new subclauses immediately after subclause (3)—

“(4) The Cabinet Secretary shall, appoint members under subsection (1) (b), (c) and (e) by notice in the *Gazette*.

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

(d) by deleting subclause (3);

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 5—

Term of appointment of 5A. (1) The persons appointed under section 5(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 5(1) (b), (c) and (e) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times.

Vacation of office. of 5B. A person shall cease to be a member of the Board of Directors if such person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Committees of the Board. 7A. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

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

CLAUSE 10

THAT, clause 10 be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) A person shall be qualified for appointment under this section if he or she—

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

CLAUSE 14

THAT, clause 14 be amended—

- (a) in subclause (1) by inserting the words “upon recommendation by the respective County Government for that purpose immediately after the word “Board”;
- (b) by deleting subclause (2) and substituting therefor the following new subclause—
“(2) A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or ten million shillings, whichever is the higher, or to imprisonment for a term not exceeding five years, or to both.”

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) by renumbering the subclauses appearing after subclause (2) as (3), (4), (5), (6), and (7);
- (b) by inserting a new subclause immediately after the renumbered subclause (7) as follows:
“(8) A person shall not import or export sugar without an export or import a valid licence issued by the Board.”

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 15—

Sugar Import.

15A. (1) A person who imports sugar into Kenya shall prior to importation —

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

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

NEW PART IIIA AND IIIB

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

PART IIIA- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE

Establishment
of the Kenya
Sugar Research
Institute.

16A. (1) There is hereby established a body to be known as the Kenya Sugar Research Institute.

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

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

Functions of
the Institute.

16B. (1) The Institute shall—

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

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

- (a) formulate policy and make policy recommendations to the Cabinet Secretary on sugar research;
- (b) prioritise areas for, and co-ordinate, sugar research in Kenya in line with the national policy on sugar;
- (c) determine and advise the Government on the resource requirements for sugar research in Kenya both at the national and county level;
- (d) regulate, monitor and ensure that all sugar research undertaken by other institutions or persons undertaking sugar research is consistent with the national priorities specified in the relevant policy documents;
- (e) formulate or approve medium and long term research plans, strategies and budgets of the Institute;
- (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute ;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;
- (i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) perform such other functions as may be conferred on it by this Act or any other written law;

- (m) breeding of sugarcane varieties suited for various agro-ecological areas of Kenya;
- (n) conducting research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- (o) appraising technologies on land preparation, drainage and water management for economical cane production;
- (p) studying and monitoring of pests and diseases that affect sugarcane and recommending appropriate control strategies;
- (q) developing agronomic packages for sugarcane maintenance and management;
- (r) instituting socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;
- (s) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- (t) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- (u) promoting the transfer of sugar technology based on applied research through relevant extension mechanisms;
- (v) fostering research on sustainable productivity, environmental issues, human safety at field and factory levels; and
- (w) collaborating with the Government, the industry,

universities and other national and international organizations for the purpose of furthering the Institute's mission.

- (x) analyse soil and plant samples for advisory purposes; and
- (y) offer modular courses on various aspects of cane management and practices

Composition of the Board of the Institute.

16C. The Board of the Institute shall comprise of-

- (a) a chairperson appointed by the Cabinet Secretary with a background in agricultural research or related field;
- (b) three persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
- (c) two persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
- (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
- (e) the chief executive officer of the Board;
- (f) the chief executive officer of the Kenya Agricultural Livestock and Research Organization;

Application.

16D. The provisions of section 5A, 5B, 7, 8 and 9 shall apply to the Board of the Institute *mutatis mutandis* with necessary modification.

Sources of funds of the Institute.

16E. The funds of the Institute shall consist of-

- (a) monies remitted by the Board from the sugar development levy;
- (b) any monies received by the Institute from grants and donations; and
- (c) monies from any other source as approved by the responsible Ministry.

Chief Executive Officer of the Institute. **16E.** (1) There shall be a Chief Executive Officer of the Institute who shall be appointed by the Board whose terms and conditions of service shall be determined by the Board in the instruments of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under this section if he or she-

- (a) holds a degree from a university recognized in Kenya in agricultural research, soil and seed research, soil science or related field;
- (b) has at least five years' experience in managerial capacity; and
- (c) meets the provisions of Chapter six of the Constitution.

PART IIIB – APPOINTMENT OF CROP INSPECTORS

Appointment of crop inspectors. **16F.** (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

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

Entry and inspection. **16G.** A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

- (a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

Powers of entry. **16H.** (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon

any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (a) perform the functions or exercise the powers conferred by this Act or any other written law;
- (b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (c) demand the production by a licence holder of the licence for examination;
- (d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (e) do any other thing authorized under this Act.

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

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

Obstruction
of inspectors.

16I. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

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

CLAUSE 18

THAT, clause 18 be amended—

- (a) in subclause (1) by inserting the words “ten per centum of CIF value on” immediately after the words “domestic and”;
- (b) by inserting the following new subclause immediately after subclause (6)—

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

 - (a) fifty per centum shall be applied by the Board for income or price stabilization for sugar growers;
 - (b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
 - (c) twenty per centum shall be remitted directly to the Sugar Research Institute;

- (d) fifteen per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.

CLAUSE 22

THAT, the Bill be amended by deleting clause 22.

NEW PART IV A

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

**PART IVA- ESTABLISHMENT OF THE SUGAR
ARBITRATION TRIBUNAL**

Establishment
of the Sugar
Arbitration
Tribunal.

24A. (1) There is hereby established Tribunal to be known as the Sugar Arbitration Tribunal.

(2) The Tribunal shall consist of—

- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court; and
 - (b) four other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of who shall be appointed by the Chief Justice in consultation with the Attorney-General and the Council of County Governors.
- (3) The Chairperson and members of the Tribunal shall serve on part-time basis.

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

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

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

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

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

Jurisdiction of
the Tribunal.

24B. (1) The Tribunal shall determine—

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

Determination
of disputes.

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

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

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

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

Powers of the Tribunal.

24D. The Tribunal shall have the powers of the High Court —

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to summon witnesses and to require the production of documents;
- (d) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—
 - (i) the protection of the members of the Tribunal from suit;
 - (ii) the form of summonses to witnesses;
 - (iii) to giving or fabricating of false evidence;
 - (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
 - (v) the appearance of advocates; shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the

Tribunal in like manner as they apply to Commissions of Inquiry.

Removal of members of the Tribunal.

24E. The Judicial Service Commission may remove a member of the Tribunal if the member—

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence;
- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or
- (e) is otherwise unable or unfit to discharge the functions of the office.

Vacancy.

24F. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment.

Secretary of the Tribunal.

24G. The Judicial Service Commission shall appoint the Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Remuneration of members and staff of the Tribunal.

24H. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

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

CLAUSE 26

THAT, the Bill be amended by deleting clause 26 and substituting therefor the following new clause—

Quality, safety and health control measures. 26. (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country meets—

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

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

- (a)
 - (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and
 - (b) withdrawal of his or her licence.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

Inspection for quality and safety. 26A. (1) The Board shall carry out physical inspection of premises licenced under section 15 quarterly to ensure that safety and health standards are followed—

(2) Every person licenced under this Act shall—

- (a) not discharge any, affluent dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment;

- (b) not release smoke or any air pollutant to the air that pollutes the environment;
- (c) manage any hazardous waste and materials;
- (d) not import any hazardous waste;
- (e) not mislabel any sugar or jaggery; and
- (f) not aid or abet illegal trafficking of sugar or related substances;

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

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

CLAUSE 27

THAT, the Bill be amended by deleting clause 27 and substituting therefor the following new clause—

Safeguard
measures.

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

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

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

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

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

CLAUSE 29

THAT, clause 29 of the Bill be amended in subclause (3)—

- (a) in paragraph (e) by deleting the word “impose” appearing after the words “to the Board to” and substituting therefor the word “enforce”;
- (b) in paragraph (c) by inserting the words “, in consultation with stakeholders,” immediately after the words “agricultural produce”; and
- (c) in paragraph (f) by deleting the word “imposition” appearing at the beginning of the paragraph and substituting therefor the word “enforcement”.

CLAUSE 31

THAT, the Bill be amended by deleting Clause 31.

CLAUSE 33

THAT, Clause 33 of the Bill be amended—

- (a) in subclause (1) by deleting the word “may” and substituting therefor the words “shall in consultation with the Board and county governments”;
- (b) in subclause (3) by inserting the following new paragraphs immediately after paragraph (a) —
 - “(aa) the establishment of weigh bridges;
 - (ab) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
 - (ac) production and import of sugar to ensure adequate sugar availability in the country;
 - (ad) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;
 - (ae) minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments;
 - (af) cane harvesting and transportation;”

FIRST SCHEDULE

THAT, the Second Schedule to the Bill be amended—

(a) by inserting the following heading:

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

(b) in paragraph 2(4) by deleting the words “seven members” and substituting therefore the words “two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.”

(c) in paragraph (2) by deleting subparagraph (5) and substituting therefor the following new subparagraph—

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

(d) in paragraph (2) by deleting subparagraph (6);

(e) in paragraph 2(7) by deleting the words “or the vice chairperson” appearing immediately after the words “the Chairperson”

SECOND SCHEDULE

THAT, the Second Schedule to the Bill be amended—

(a) in paragraph (1) by deleting the word “agreements” appearing before the word “define” and substituting therefor the word “guidelines”;

(b) in paragraph (2) —

(i) by deleting the word “agreements” appearing at the opening paragraph and substituting therefor the word “guidelines”;

(ii) by deleting the definition of the “Kenya Sugar Research Foundation”

by deleting the definition “Kenya Sugarcane Growers Association”

(iii) by deleting the definition “Kenya Sugar Research Foundation” and substituting therefor the following new definition—

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

(iv) by inserting the following new definition—

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

- (c) in paragraph 3 by deleting sub paragraph (f);
- (d) by deleting paragraph 4;
- (e) in paragraph (5)—
 - (i) by deleting subparagraph (g) and substituting therefor the following new subparagraph—
 - “(g) make representations to the Sugar cane Pricing Committee;”
 - (ii) by deleting the words “Kenya Sugar-cane Growers Association” appearing in subparagraph (h) and substituting therefor the words “registered sugar lobby groups”
- (f) in paragraph (6)—
 - (i) by deleting the expression “30 days” appearing in subparagraph (d) and substituting therefor the expression “15 days”;
 - (ii) by inserting the following subparagraph immediately after paragraph (f)—
 - “(fa) weigh sugarcane at a mobile weighbridge located at a defined radius from a farmers farm gate as prescribed in the regulations”
 - (iii) by deleting paragraph (h)
- (g) in paragraph (7) in subparagraph 2(b) by deleting the word “zones” appearing at the end of the subparagraph and substituting therefor the words “sugar catchment region”;
- (h) by deleting paragraph 8 and substituting therefor the following new paragraph—

Sugar Cane Pricing Committee. 8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”).

(2) The Committee shall comprise of —

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

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

- (a) review sugar cane prices;

- (b) provide a mechanism that remunerates farmers for other products delivered from the processing of cane;
 - (c) ensure adherence to negotiated cane pricing formula;
 - (d) transition to payment based on quality; and
 - (e) enforcement of contracts between farmers and millers.
- (4) The Committee shall come up with the pricing formula and in doing so shall take into account the—
- (a) pricing mechanisms for all other cane related charges paid by the farmer; and
 - (b) an index that takes into consideration delayed harvesting;
 - (c) transportation cost per tonne per kilometre of sugarcane.
- (5) The Board shall offer Secretariat services to the Committee

THIRD SCHEDULE

THAT, the Third Schedule to the Bill be amended by —

- (a) deleting paragraph (4) and (5);
- (b) inserting the following new paragraph immediately after paragraph 6—
“(6A) The quorum of the Tribunal shall be three members”; and
- (c) deleting paragraph (8).

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately after the Third Schedule—

FOURTH SCHEDULE

[S. 5]

DELINEATION OF SUGAR CATCHMENT AREAS

SUGAR CATCHMENT AREAS COUNTIES

UPPER REGION

Nandi, Kericho, Uasin Gishu Kisumu,
Migori, Homa Bay and Narok counties

LOWER REGION

Bungoma, Trans Nzoia, Kakamega, Siaya
and Busia counties

COASTAL REGION

Kwale, Tana River and Lamu counties

MIN.NO. DC/A&L /2021: ANY OTHER BUSINESS

The Committee was informed that: -

1. The Ministry of Agriculture Livestock, Fisheries and Cooperatives had invited the members to a Stakeholders meeting to deliberate on Food Security and Food safety Policy in Mombasa. The Meeting would bring together experts to deliberate on the aforementioned. The Committee resolved to attend.

MIN.NO. DC/A&L174 /2020: ADJOURNEMENT

The meeting thereafter was adjourned at twelve noon to another date to be scheduled by way of notice.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date. 28/06/2021.....

MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON WEDNESDAY 5TH MAY, 2021 HELD IN COMMITTEE ROOM, 5TH FLOOR CONTINENTAL HOUSE AT 10.00AM

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Jude Njomo, MP | |
| 6. Hon. Gabriel Kago Mukuha, MP. | |
| 7. Hon. Joyce Kamene, MP. | |
| 8. Hon. Yegon Brighton Leonard, MP. | |
| 9. Hon. Martin Peters Owino, MP. | |
| 10. Hon. Geoffrey Odanga, MP. | |
| 11. Hon. Maison Leshoomo, MP. | |
| 12. Hon. Ferdinand Wanyonyi, MP. | |
| 13. Hon. Cecily Mbarire, MGH, MP. | |
| 14. Hon. Dr. John Kanyuithia Mutunga, MP | |
| 15. Hon. Simba Arati, MP | |
| 16. Hon. Adan Haji Yussuf, MP. | |
| 17. Hon. Janet Jepkemboi Sitienei, MP | |

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 2. Ms. Clara Kimeli | - | Legal Counsel |
| 3. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 4. Mr. Luteshi Eugene | - | Audio Officer |
| 5. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L057/2021: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past eleven. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 058/2021: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE SUGAR BILL, 2019

The Committee considered the Committee stage amendments and agreed to the following amendments:

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Interpretation.

2. In this Act—

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

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

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

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

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

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

“Fund” means the Sugar Development Fund established under section 19;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

“grower” means a person who produces sugar-cane or any crop in Kenya for the manufacture of sugar but does not include an out-grower institution;

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

“Kenya Sugar Research Foundation” means Kenya Sugar Research Foundation established under section 16A

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

“member” means a member of the Board appointed under section 5;

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

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

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

“out-grower institution” means an out-grower institution registered under the Companies Act, 2015, the Co-operative Societies Act (Cap. 490) or any other organization registered under any other law that the annual general meeting may approve;

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

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

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

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board as per the Fourth;

“sugarcane growers apex body” means a national sugarcane farmers organisation gazetted as such by the Cabinet Secretary for the time being responsible for agriculture;

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

“Tribunal” means the Sugar Arbitration Tribunal established under section 24A;

CLAUSE 3

THAT, the Bill be amended in Clause 3 by deleting paragraph (e).

CLAUSE 4

THAT, Clause 4 of the Bill be amended in in subclause (2) by inserting the following new paragraphs immediately after paragraph (m)—

- (ma) enforce and monitor compliance with standards along the sugar value chain;
- (mb) facilitate value addition and product diversification in the sugar sub-sector;
- (mc) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (md) formulate guidelines on an efficient and economical transportation of sugar;
- (me) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (mf) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Functions of
county
governments.

4A. The County Government shall—

- (a) issue sugar cane nursery certificates;
- (b) offer and coordinate extension services on sugar production and milling in the respective county;

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

CLAUSE 5

THAT, clause 5 of the Bill be amended in—

(a) sub-clause (1)—

(i) by deleting the words “and appointed by the Cabinet Secretary” appearing in paragraph (b) and substituting therefor the words “from each sugar catchment as per the Fourth Schedule in the following manner—

- (i) one person from the coastal catchment area;
- (ii) two persons from the upper catchment area; and
- (iii) two persons from the lower catchment area,

and who shall not be from the same county or ethnicity.

(ii) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) one representative, elected by sugar millers with knowledge in sugar technology and value addition;”

(iii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;”

(iv) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) one person nominated by the Council of County Governors with knowledge in extension services and management of farmer institutions;”

(v) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by deleting subclause (2);

(c) by inserting the following new subclauses immediately after subclause (3)—

“(4) The Cabinet Secretary shall, appoint members under subsection (1) (b), (c) and (e) by notice in the *Gazette*.

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

(d) by deleting subclause (3);

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 5—

Term of appointment of **5A.** (1) The persons appointed under section 5(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 5(1) (b), (c) and (e) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times.

Vacation of office. **5B.** A person shall cease to be a member of the Board of Directors if such person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Committees of the Board.

7A. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

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

CLAUSE 10

THAT, clause 10 be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) A person shall be qualified for appointment under this section if he or she—

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

CLAUSE 14

THAT, clause 14 be amended—

- (a) in subclause (1) by inserting the words “upon recommendation by the respective County Government for that purpose immediately after the word “Board”;

(b) by deleting subclause (2) and substituting therefor the following new subclause—

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

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) by renumbering the subclauses appearing after subclause (2) as (3), (4), (5), (6), and (7);
- (b) by inserting a new subclause immediately after the renumbered subclause (7) as follows:

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

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 15—

Sugar Import.

15A. (1) A person who imports sugar into Kenya shall prior to importation —

- (a) provide evidence that the sugar they intend to import are not available in the local market;

- (b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and
- (c) obtain pre-import approval from the Board.

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

NEW PART IIIA AND IIIB

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

PART IIIA- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH FOUNDATION

Establishment of the Kenya Sugar Research Foundation.

16A. (1) There is hereby established a body to be known as the Kenya Sugar Research Foundation.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;

Functions of the
Foundation.

- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

16B. (1) The Foundation shall—

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

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

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

- (e) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;
- (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Foundation;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;
- (i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) perform such other functions as may be conferred on it by this Act or any other written law;
- (m) breeding of sugarcane varieties suited for various agro-ecological areas of Kenya;
- (n) conducting research on nutritional requirements of sugarcane in order to provide recommendations on

- the appropriate fertilizers;
- (o) appraising technologies on land preparation, drainage and water management for economical cane production;
 - (p) studying and monitoring of pests and diseases that affect sugarcane and recommending appropriate control strategies;
 - (q) developing agronomic packages for sugarcane maintenance and management;
 - (r) instituting socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;
 - (s) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
 - (t) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
 - (u) promoting the transfer of sugar technology based on applied research through relevant extension mechanisms;
 - (v) fostering research on sustainable productivity, environmental issues, human safety at field and factory levels; and
 - (w) collaborating with the Government, the industry, universities and other national and international

organizations for the purpose of furthering the Foundation's mission.

- (x) analyse soil and plant samples for advisory purposes; and
- (y) offer modular courses on various aspects of cane management and practices

PART IIIB – APPOINTMENT OF CROP INSPECTORS

Appointment of
crop inspectors.

16C. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

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

Entry and
inspection.

16D. A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

- (a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

Powers of entry.

16E. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon

any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (a) perform the functions or exercise the powers conferred by this Act or any other written law;
- (b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (c) demand the production by a licence holder of the licence for examination;
- (d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (e) do any other thing authorized under this Act.

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

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

Obstruction of inspectors.

16F. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

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

CLAUSE 18

THAT, clause 18 be amended—

- (a) in subclause (1) by inserting the words “ten per centum of CIF value on” immediately after the words “domestic and”;
- (b) by inserting the following new subclause immediately after subclause (6)—
 - “(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—
 - (a) fifty per centum shall be applied by the Board for income or price stabilization for sugar growers;
 - (b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
 - (c) twenty per centum shall be remitted directly to the Sugar Research Foundation;
 - (d) fifteen per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.

CLAUSE 22

THAT, the Bill be amended by deleting clause 22.

NEW PART IV A

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

PART IVA- ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL

Establishment of
the Sugar
Arbitration
Tribunal.

24A. (1) There is hereby established Tribunal to be known as the Sugar Arbitration Tribunal.

(2) The Tribunal shall consist of—

- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court; and

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

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

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

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

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

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

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

Jurisdiction of the
Tribunal.

24B. (1) The Tribunal shall determine—

(a) disputes between sugarcane farmers;

(b) disputes between sugarcane farmers and the following-

- (i) out grower institutions;
- (ii) millers;
- (iii) growers; or
- (iv) other interested party;

(c) disputes relating to cane pricing;

(d) disputes relating to contract farming,

Determination of
disputes.

24 C. (1) The Tribunal shall determine any dispute before it

expeditiously, but in any case shall determine a dispute within a period of three months from the date the dispute is lodged.

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

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

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

Powers of the
Tribunal.

24D. The Tribunal shall have the powers of the High Court

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to summon witnesses and to require the production of documents;
- (d) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—
 - (i) the protection of the members of the Tribunal from suit;
 - (ii) the form of summonses to witnesses;
 - (iii) to giving or fabricating of false evidence;
 - (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
 - (v) the appearance of advocates; shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

Removal of members of the Tribunal.

24E. The Judicial Service Commission may remove a member of the Tribunal if the member—

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence;
- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or

(e) is otherwise unable or unfit to discharge the functions of the office.

Vacancy.

24F. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment.

Secretary of the Tribunal.

24G. The Judicial Service Commission shall appoint the Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Remuneration of members and staff of the Tribunal.

24H. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

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

CLAUSE 26

THAT, the Bill be amended by deleting clause 26 and substituting therefor the following new clause—

Quality, safety and health control measures.

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

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

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

- (a)
 - (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and
 - (b) withdrawal of his or her licence.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

Inspection for
quality and safety.

26A. (1) The Board shall carry out physical inspection of premises licenced under section 15 quarterly to ensure that safety and health standards are followed—

(2) Every person licenced under this Act shall—

- (a) not discharge any, affluent dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment;

- (b) not release smoke or any air pollutant to the air that pollutes the environment;
- (c) manage any hazardous waste and materials;
- (d) not import any hazardous waste;
- (e) not mislabel any sugar or jaggery; and
- (f) not aid or abet illegal trafficking of sugar or related substances;

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

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

CLAUSE 27

THAT, the Bill be amended by deleting clause 27 and substituting therefor the following new clause—

Safeguard
measures.

27. (1) The Board shall ensure, subject to such regional and international trade agreements to which Kenya is a party, that

all sugar imports into the country are subject to all the prevailing import duties, taxes and other tariffs.

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

(a) only sugar deficit in the country shall be imported on a quarterly basis on specific tonnage;

(b) importers report to the Board on their imports, sales and stock on daily basis.

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

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

CLAUSE 29

THAT, clause 29 of the Bill be amended in subclause (3)—

- (a) in paragraph (e) by deleting the word “impose” appearing after the word “to the Board to” and substituting therefor the word “enforce”;
- (b) in paragraph (c) by inserting the words “, in consultation with stakeholders,”;
- (c) in paragraph (f) by deleting the word “imposition” appearing at the beginning of the paragraph and substituting therefor the word “enforcement”.

CLAUSE 31

THAT, the Bill be amended by deleting Clause 31.

CLAUSE 33

THAT, Clause 33 of the Bill be amended—

- (a) in subclause (1) by deleting the word “may” and substituting therefor the words “shall in consultation with the Board and county governments”;
- (b) in subclause (3) by inserting the following new paragraphs immediately after paragraph (a) —
 - “(aa) the establishment of weigh bridges;
 - (ab) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
 - (ac) production and import of sugar to ensure adequate sugar availability in the country;
 - (ad) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;
 - (ae) minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments;
 - (af) cane harvesting and transportation;”

FIRST SCHEDULE

THAT, the Second Schedule to the Bill be amended—

- (a) by inserting the following heading:

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

- (b) in paragraph 2(4) by deleting the words “seven members” and substituting therefore the words “two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.”

- (c) in paragraph (2) by deleting subparagraph (5) and substituting therefor the following new subparagraph—

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

- (d) in paragraph (2) by deleting subparagraph (6);

- (e) in paragraph 2(7) by deleting the words “or the vice chairperson” appearing immediately after the words “the Chairperson”

SECOND SCHEDULE

THAT, the Second Schedule to the Bill be amended—

- (a) in paragraph (1) by deleting the word “agreements” appearing before the word “define” and substituting therefor the word “guidelines”;

- (b) in paragraph (2) —

(i) by deleting the word “agreements” appearing at the opening paragraph and substituting therefor the word “guidelines”;

(ii) by deleting the definition of the “Kenya Sugar Research Foundation”

(iii) by deleting the definition “Kenya Sugarcane Growers Association” and substituting therefor the following new definition—

“Kenya National Federation of Sugarcane Farmers” means the registered growers apex body; and

(iv)) by deleting the definition “Kenya Sugar Research Foundation” and substituting therefor the following new definition—

“Kenya Sugar Research Foundation” means the Kenya Sugar Research Foundation established under Part IIIA of this Act.

(c) in paragraph 3 by deleting sub paragraph (f);

(d) by deleting paragraph 4;

(e) by deleting paragraph 8 and substituting therefor the following new paragraph—

Cane pricing
policy.

8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”).

(2) The Committee shall comprise—

- (a) Chief Executive Officer of the Board;
- (b) three representatives from the Kenya Sugar Manufacturers Association;
- (c) four representatives from the Growers apex body Kenya National Federation of Sugarcane Farmers;
- (d) representative from national government;
- (e) representative from county government; and
- (f) representative from the Kenya Sugar Research Foundation.

(2) The main objectives of the Committee shall be to:

- (a) review sugar cane prices;

- (b) provide a mechanism that remunerates farmers for other products delivered from the processing of cane;
- (c) ensure adherence to negotiated cane pricing formula;
- (d) transition to payment based on quality; and
- (e) enforcement of contracts between farmers and millers.

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

- (a) pricing mechanisms for all other cane related charges paid by the farmer; and
- (b) an index that takes into consideration delayed harvesting;
- (c) transportation cost per tonne per kilometre of sugarcane.

(f) in paragraph (5)—

- (i) by deleting subparagraph (g) and substituting therefor the following new subparagraph—

“(g) make representations to the Sugar cane Pricing Committee;”

- (ii) by deleting the words “Kenya Sugar-cane Growers Association” appearing in subparagraph (h) and substituting therefor the words “Kenya National Federation of Sugarcane Farmers”

(g) in paragraph (6)—

- (i) by deleting the expression “30 days” appearing in subparagraph (d) and substituting therefor the expression “15 days”;

(ii) by inserting the following subparagraph immediately after paragraph (f)—

“(fa) ensure that mobile weighbridges are closer to growers;”

(iii) by deleting paragraph (h)

(h) in paragraph (7) in subparagraph 2(b) by deleting the word “zones” appearing at the end of the subparagraph and substituting therefor the words “sugar catchment region”.

THIRD SCHEDULE

THAT, the Third Schedule to the Bill be amended by —

(a) deleting paragraph (4) and (5);

(b) inserting the following new paragraph immediately after paragraph 6—

“(6A) The quorum of the Tribunal shall be three members”; and

(c) deleting paragraph (8).

NEW SCHEDULE

THAT, the Bill be amended by inserting the following new schedule immediately after the Third Schedule—

FOURTH SCHEDULE

[S. 5]

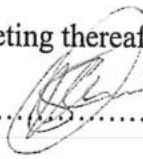
DELINEATION OF SUGAR CATCHMENT AREAS

SUGAR CATCHMENT AREAS COUNTIES

UPPER REGION	Nandi, Kericho, Uasin Gishu Kisumu, Migori, Homa Bay and Narok counties
LOWER REGION	Bungoma, Trans Nzoia, Kakamega, Siaya and Busia counties
COASTAL REGION	Kwale, Tana River and Lamu counties

MIN.NO. DC/A&L/059/2020: ADJOURNEMENT

The meeting thereafter was adjourned at twenty minutes past two o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date 29/06/2021.....

MINUTES OF THE 20TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON WEDNESDAY 14TH APRIL, 2021 HELD IN COMMITTEE ROOM, 2ND FLOOR CONTINENTAL HOUSE AT 11.00AM

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Jude Njomo, MP | |
| 6. Hon. Gabriel Kago Mukuha, MP. | |
| 7. Hon. Joyce Kamene, MP. | |
| 8. Hon. Yegon Brighton Leonard, MP. | |
| 9. Hon. Martin Peters Owino, MP. | |
| 10. Hon. Geoffrey Odanga, MP. | |
| 11. Hon. Maison Leshoomo, MP. | |
| 12. Hon. Ferdinand Wanyonyi, MP. | |
| 13. Hon. Cecily Mbarire, MGH, MP. | |
| 14. Hon. Dr. John Kanyuithia Mutunga, MP | |
| 15. Hon. Simba Arati, MP | |
| 16. Hon. Adan Haji Yussuf, MP. | |
| 17. Hon. Janet Jepkemboi Sitienei, MP | |

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 2. Ms. Clara Kimeli | - | Legal Counsel |
| 3. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 4. Mr. Luteshi Eugene | - | Audio Officer |
| 5. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L048/2021: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past eleven. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 049 /2021: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE SUGAR BILL, 2019

The Committee considered the Committee stage amendments and agreed to the following amendments:

CLAUSE 10

THAT, clause 10 be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) A person shall be qualified for appointment under this section if he or she—

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

CLAUSE 14

THAT, clause 14 be amended—

- (a) in subclause (1) by inserting the words “upon recommendation by the respective County Government for that purpose immediately after the word “Board”;
- (b) by deleting subclause (2) and substituting therefor the following new subclause—

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

CLAUSE 15

THAT, clause 15 of the Bill be amended—

- (a) by renumbering the subclauses appearing after subclause (2) as (3), (4), (5), (6), and (7);
- (b) by inserting a new subclause immediately after the renumbered subclause (7) as follows:

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

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 15—

Sugar Import.

15A. (1) A person who imports sugar into Kenya shall prior to importation —

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

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

NEW PART IIIA AND IIIB

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

**PART IIIA- ESTABLISHMENT OF THE KENYA SUGAR
RESEARCH FOUNDATION**

Establishment of
the Kenya Sugar
Research
Foundation.

16A. (1) There is hereby established a body to be known as the Kenya Sugar Research Foundation.

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

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

Functions of the
Foundation.

16B. (1) The Foundation shall—

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

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

- (a) formulate policy and make policy recommendations to the Cabinet Secretary on sugar research;
- (b) prioritise areas for, and co-ordinate, sugar research in Kenya in line with the national policy on sugar;
- (c) determine and advise the Government on the resource requirements for sugar research in Kenya both at the national and county level;
- (d) regulate, monitor and ensure that all sugar research undertaken by other institutions or persons undertaking sugar research is consistent with the national priorities specified in the relevant policy documents;
- (e) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;
- (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Foundation;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;
- (i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;

- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) perform such other functions as may be conferred on it by this Act or any other written law;
- (m) breeding of sugarcane varieties suited for various agro-ecological areas of Kenya;
- (n) conducting research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- (o) appraising technologies on land preparation, drainage and water management for economical cane production;
- (p) studying and monitoring of pests and diseases that affect sugarcane and recommending appropriate control strategies;
- (q) developing agronomic packages for sugarcane maintenance and management;
- (r) instituting socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;

- (s) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- (t) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;
- (u) promoting the transfer of sugar technology based on applied research through relevant extension mechanisms;
- (v) fostering research on sustainable productivity, environmental issues, human safety at field and factory levels; and
- (w) collaborating with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Foundation's mission.
- (x) analyse soil and plant samples for advisory purposes; and
- (y) offer modular courses on various aspects of cane management and practices

PART IIIB – APPOINTMENT OF CROP INSPECTORS

Appointment of crop inspectors.

16C. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

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

Entry and
inspection.

16D. A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

- (a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

Powers of entry.

16E. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (a) perform the functions or exercise the powers conferred by this Act or any other written law;
- (b) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (c) demand the production by a licence holder of the licence for examination;
- (d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (e) do any other thing authorized under this Act.

(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1) shall

render such reasonable assistance as may be required by the inspector.

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

Obstruction of inspectors.

16F. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

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

CLAUSE 18

THAT, clause 18 be amended—

- (a) in subclause (1) by inserting the words “ten per centum of CIF value on” immediately after the words “domestic and”;
- (b) by inserting the following new subclause immediately after subclause (6)—

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

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

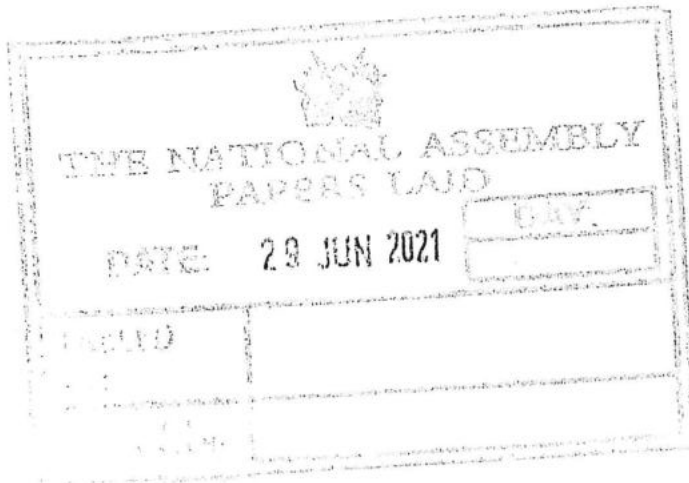
MIN.NO. DC/A&L/050/2020: ADJOURNEMENT

The meeting thereafter was adjourned at twenty minutes past eleven o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date.....28/06/2021.....



MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON THURSDAY 8TH APRIL, 2021 HELD IN COMMITTEE ROOM, 5TH FLOOR CONTINENTAL HOUSE AT 9.30AM

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Jude Njomo, MP | |
| 6. Hon. Gabriel Kago Mukuha, MP. | |
| 7. Hon. Joyce Kamene, MP. | |
| 8. Hon. Yegon Brighton Leonard, MP. | |
| 9. Hon. Martin Peters Owino, MP. | |
| 10. Hon. Geoffrey Odanga, MP. | |
| 11. Hon. Maison Leshoomo, MP. | |
| 12. Hon. Ferdinand Wanyonyi, MP. | |
| 13. Hon. Cecily Mbarire, MGH, MP. | |
| 14. Hon. Dr. John Kanyuithia Mutunga, MP | |
| 15. Hon. Simba Arati, MP | |
| 16. Hon. Adan Haji Yussuf, MP. | |
| 17. Hon. Janet Jepkemboi Sitienei, MP | |

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 2. Ms. Clara Kimeli | - | Legal Counsel |
| 3. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 4. Mr. Luteshi Eugene | - | Audio Officer |
| 5. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L047/2021: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past eleven. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 048 /2021: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE SUGAR BILL, 2019

The Committee considered the Committee stage amendments and agreed to the following amendments:

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Interpretation.

2. In this Act—

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

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

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

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

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

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

“Fund” means the Sugar Development Fund established under section 19;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

“grower” means a person who produces sugar-cane or any crop in Kenya for the manufacture of sugar but does not include an out-grower institution;

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

“Kenya Sugar Research Foundation” means Kenya Sugar Research Foundation established under section 16A

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

“member” means a member of the Board appointed under section 5;

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

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

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

“out-grower institution” means an out-grower institution registered under the Companies Act, 2015, the Co-operative Societies Act (Cap. 490) or any other organization registered under any other law that the annual general meeting may approve;

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

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

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

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board as per the Fourth;

“sugarcane growers apex body” means a national sugarcane farmers organisation gazetted as such by the Cabinet Secretary for the time being responsible for agriculture;

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

“Tribunal” means the Sugar Arbitration Tribunal established under section 24A;

CLAUSE 3

THAT, the Bill be amended in Clause 3 by deleting paragraph (e).

CLAUSE 4

THAT, Clause 4 of the Bill be amended in in subclause (2) by inserting the following new paragraphs immediately after paragraph (m)—

- (ma) enforce and monitor compliance with standards along the sugar value chain;
- (mb) facilitate value addition and product diversification in the sugar sub-sector;
- (mc) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (md) formulate guidelines on an efficient and economical transportation of sugar;
- (me) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (mf) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Functions of
county
governments.

4A. The County Government shall—

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

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

CLAUSE 5

THAT, clause 5 of the Bill be amended in—

(a) sub-clause (1)—

- (i) by deleting the words “and appointed by the Cabinet Secretary” appearing in paragraph (b) and substituting therefor the words “from each sugar catchment as per the Fourth Schedule in the following manner—
 - (i) one person from the coastal catchment area;
 - (ii) two persons from the upper catchment area; and
 - (iii) two persons from the lower catchment area,and who shall not be from the same county or ethnicity.
- (ii) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) one representative, elected by sugar millers with knowledge in sugar technology and value addition;”
- (iii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;”
- (iv) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) one person nominated by the Council of County Governors with knowledge in extension services and management of farmer institutions;”

(v) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by deleting subclause (2);

(c) by inserting the following new subclauses immediately after subclause (3)—

“(4) The Cabinet Secretary shall, appoint members under subsection (1) (b), (c) and (e) by notice in the *Gazette*.

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

(d) by deleting subclause (3);

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 5—

Term of appointment of **5A.** (1) The persons appointed under section 5(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 5(1) (b), (c) and (e) shall be appointed at different times so that their

respective expiry of terms of office shall fall at different times.

Vacation of office.

5B. A person shall cease to be a member of the Board of Directors if such person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Committees of the Board.

7A. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt to sit in the committees established under subsection (1), such other persons

whose knowledge and skills are necessary for the performance of the functions of the Board.

MIN.NO. DC/A&L/048/2020: ADJOURNEMENT

The meeting thereafter was adjourned at twenty minutes past one o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date 28/06/2021.....

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON WEDNESDAY 7TH APRIL, 2021 HELD IN COMMITTEE ROOM, 5TH FLOOR CONTINENTAL HOUSE AT 11.00AM

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Jude Njomo, MP | |
| 6. Hon. Gabriel Kago Mukuha, MP. | |
| 7. Hon. Joyce Kamene, MP. | |
| 8. Hon. Yegon Brighton Leonard, MP. | |
| 9. Hon. Martin Peters Owino, MP. | |
| 10. Hon. Geoffrey Odanga, MP. | |
| 11. Hon. Maison Leshoomo, MP. | |
| 12. Hon. Ferdinand Wanyonyi, MP. | |
| 13. Hon. Cecily Mbarire, MGH, MP. | |
| 14. Hon. Dr. John Kanyuithia Mutunga, MP | |
| 15. Hon. Simba Arati, MP | |
| 16. Hon. Adan Haji Yussuf, MP. | |
| 17. Hon. Janet Jepkemboi Sitienei, MP | |

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 2. Ms. Clara Kimeli | - | Legal Counsel |
| 3. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 4. Mr. Luteshi Eugene | - | Audio Officer |
| 5. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L044/2021: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past eleven. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 045/2021: CONSIDERATION OF COMMITTEE STAGE AMENDMENTS TO THE SUGAR BILL, 2019

The Committee considered the Committee stage amendments and agreed to the following amendments:

CLAUSE 2

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

Interpretation.

2. In this Act—

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

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

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

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

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

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

“Fund” means the Sugar Development Fund established under section 19;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

“grower” means a person who produces sugar-cane or any crop in Kenya for the manufacture of sugar but does not include an out-grower institution;

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

“Kenya Sugar Research Foundation” means Kenya Sugar Research Foundation established under section 16A

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

“member” means a member of the Board appointed under section 5;

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

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

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

“out-grower institution” means an out-grower institution registered under the Companies Act, 2015, the Co-operative Societies Act (Cap. 490) or any other organization registered under any other law that the annual general meeting may approve;

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

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

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

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board as per the Fourth;

“sugarcane growers apex body” means a national sugarcane farmers organisation gazetted as such by the Cabinet Secretary for the time being responsible for agriculture;

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

“Tribunal” means the Sugar Arbitration Tribunal established under section 24A;

CLAUSE 3

THAT, the Bill be amended in Clause 3 by deleting paragraph (e).

CLAUSE 4

THAT, Clause 4 of the Bill be amended in in subclause (2) by inserting the following new paragraphs immediately after paragraph (m)—

- (ma) enforce and monitor compliance with standards along the sugar value chain;
- (mb) facilitate value addition and product diversification in the sugar sub-sector;
- (mc) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (md) formulate guidelines on an efficient and economical transportation of sugar;
- (me) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (mf) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Functions of
county
governments.

4A. The County Government shall—

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

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

CLAUSE 5

THAT, clause 5 of the Bill be amended in—

(a) sub-clause (1)—

- (i) by deleting the words “and appointed by the Cabinet Secretary” appearing in paragraph (b) and substituting therefor the words “from each sugar catchment as per the Fourth Schedule in the following manner—
 - (i) one person from the coastal catchment area;
 - (ii) two persons from the upper catchment area; and
 - (iii) two persons from the lower catchment area,and who shall not be from the same county or ethnicity.
- (ii) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) one representative, elected by sugar millers with knowledge in sugar technology and value addition;”
- (iii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;”
- (iv) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) one person nominated by the Council of County Governors with knowledge in extension services and management of farmer institutions;”

(v) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by deleting subclause (2);

(c) by inserting the following new subclauses immediately after subclause (3)—

“(4) The Cabinet Secretary shall, appoint members under subsection (1) (b), (c) and (e) by notice in the *Gazette*.

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

(d) by deleting subclause (3);

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 5—

Term of appointment **5A.** (1) The persons appointed under section 5(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 5(1) (b), (c) and (e) shall be appointed at different times so that their

respective expiry of terms of office shall fall at different times.

Vacation of office.

5B. A person shall cease to be a member of the Board of Directors if such person—

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Committees of the Board.

7A. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt to sit in the committees established under subsection (1), such other persons

whose knowledge and skills are necessary for the performance of the functions of the Board.

MIN.NO. DC/A&L/046/2020: ADJOURNEMENT

The meeting thereafter was adjourned at twenty minutes past one o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date..28/06/2021.....

MINUTES OF THE 17TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON THURSDAY 25TH MARCH , 2021 HELD IN COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE AT 12.00 (NOON)

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Jude Njomo, MP | |
| 6. Hon. Gabriel Kago Mukuha, MP. | |
| 7. Hon. Joyce Kamene, MP. | |
| 8. Hon. Yegon Brighton Leonard, MP. | |
| 9. Hon. Martin Peters Owino, MP. | |
| 10. Hon. Geoffrey Odanga, MP. | |

APOLOGIES

1. Hon. Maison Leshoomo, MP.
2. Hon. Ferdinand Wanyonyi, MP.
3. Hon. Cecily Mbarire, MGH, MP.
4. Hon. Dr. John Kanyuithia Mutunga, MP
5. Hon. Simba Arati, MP
6. Hon. Adan Haji Yussuf, MP.
7. Hon. Janet Jepkemboi Sitienei, MP

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 2. Ms. Clara Kimeli | - | Legal Counsel |
| 3. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 4. Mr. Luteshi Eugene | - | Audio Officer |
| 5. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L041/2021: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past noon. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 042 /2021: CONSIDERATION OF SUBMISSION FROM STAKEHOLDERS ON THE BILL, 2019

The Committee considered the submission from the stakeholders and resolved as follows: -

Clause 30

Stakeholders' Submissions

- (i) **The Ministry of Agriculture, Livestock, Fisheries & Cooperatives**

Proposed amendment: Amend by deleting clause 30 in its entirety.

(ii) Council of Governors

Proposed amendment: Amend by deleting clause 30 and replace with the following new clause 30:

Shareholding by growers

30. Notwithstanding any other provision in this Act or any other written law to the contrary, the shareholding of public millers shall be—

(a) 51% of shares be held by private investor;

(b) 25% of the shares be held by the respective County Government where the Miller is situated; and

(c) 24% of shares be held by Growers.

Justification for the proposed amendment: This is to allow for the privatization of the sugar mills for purposes of developing the industry while taking into account the interest of the growers.

(iii) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend clause 30(a) to provide for allotment done by the Privatization Commission that divided as follows:

51%-Investor

25%- County Government

24%- Farmers (trust)

Justification for the proposed amendment: Looks like a circus? Clarification necessary as this is already been agreed by the stakeholders.

Proposed amendment: Clause 30(b)

Idea is good, but what has happened to privatization and writing off or excess debt of state owned sugar mill so as to give them a new lease? The position of the representation the directorship be allocated according to the shareholding.

Justification for the proposed amendment: Looks like a circus! Clarification necessary.

(iv) Kenya Sugar Manufacturers Association

Proposed amendment: Amend by deleting clause 30 in its entirety.

Justification for the proposed amendment: The provision in the Bill is by itself and implication unconstitutional. Firstly, the sugar sector has several stakeholders, growers, millers, traders, importers, mentioning a few. It shall be discriminatory to provide for rights

of Growers alone, and fail to provide for rights of other stakeholders. Secondly and in any event, Growers as stakeholders are sufficiently provided for in the Act, they are represented in the Board by the highest number of representatives than any other stakeholder, there is established the Arbitration Tribunal for Growers to seek redress for any individual or collective prejudice suffered, they may suffer. There is then the Cane Pricing Committee on which the Growers are represented to ensure that the Growers' interests are represented first hand. There is also recognition of Grower bodies and even, statutory monetary support to these Grower organizations.

It is thus needless, to now again statutorily impose Growers in to management of miller boards, even private millers.

It shall be unconstitutional to impose growers in to management of companies, and force these companies to have society of growers, against their will.

Further, such provisions shall defeat the practical sense of privatization; its common ground that investment in sugar milling plants is astronomical. It is grossly unrealistic for a statute to contemplate that an investor shall invest such huge sums of money in a labour intensive and volatile industry, and have his business managed by other persons. Further, as indicated above, investment in sugar milling plants is in hundreds of millions of shillings. If 51% of shareholding in privatized companies is allocated to Growers, do these Growers have hundreds of Millions to invest?

The said Clause should be deleted.

Proposed amendment: Clause 30(a)

The Section should be deleted, and matter left to the Privatization Commission, which is obligated to allow public participation.

Justification for the proposed amendment:

- a. When national and County governments give up on the management of the mills by injecting billions of shillings into the plants which are not recoverable.
- b. With the current situation no private investor will come.
- c. Leaving it to the Privatization Commission shall be more expedient, because the matter can be discussed in detail. For instance already the Commission dealt with the matter and stakeholders agreed on distribution of representation as follows:

We go by the allotment done by the privatization commission that divided as follows:

51%- Investor

25%- County Government

24%-Farmers(trust)

Proposed amendment: Delete clause 30(b)

- a. This provision should be deleted, as concerns private milling companies
- b. So far as public mills are concerned, even as they become privatized, the position of the representation in the directorship should be allocated according to the shareholding.

Justification for the proposed amendment:

- a. This provision should be deleted, as concerns private milling companies, to the extent that it purports to install growers on management boards of all milling companies at 51% or at all, including private millers, should be deleted. In the stated phraseology it is grossly unconstitutional

So far as public millers are concerned, it is a decision that has been agreed upon by the privatization commission and stakeholders.

Clause 31

Stakeholders' Submissions

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend clause 31(1) to read:

There is established a tribunal to be known as the Sugar Arbitration Tribunal for the purpose of arbitrating disputes arising between any parties under this Act.

Committee recommendation: The Committee noted that the proposed amendment does not alter the text in clause 31(1) of the Bill.

Proposed amendment: Amend clause 31(2) (b) by deleting it and substituting it with the following:

(b) four other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct interest in the sugar industry, all of who shall be appointed by the Cabinet Secretary.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend by deleting clause 31(3) and replacing with the following:

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

Committee recommendation: The Committee agreed to the proposed amendment but recommended that the renewal should be subject to effective performance.

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

Justification for the proposed amendment: To compel Cabinet Secretary to make regulations. This is not optional.

It is a must and he/she will have a timeline of two months to comply. It is also a must with stakeholder consultation/participation.

Committee recommendation: The Committee agreed to the proposed amendment.

Clause 36

Stakeholders' Submissions

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend to read as follows:

36. The staff of the Sugar Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall, subject to suitability interviews, be staff of the Board.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Insert the following new provision

All funds, assets and other property, movable and immovable, which immediately before the commencement of the Crops Act and Agriculture and Food Authority Act, were existing and relating to sugar, by virtue of this paragraph, vest in the Board.

Proposed amendment: All funds, assets and other property, movable and immovable, which have been acquired after the commencement of the Crops Act and Agriculture and Food Authority Act, relating to sugar and were vested on Agriculture and Food Authority shall by virtue of this paragraph, vest in the Board.

Proposed amendment: Conflicting proposal:

Delete clause 36 in its entirety as it is already covered.

(ii) Council of Governors

Proposed amendment: Amend to read as follows:

36. The staff of the Sugar Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board for a period of one year after which the Board shall conduct suitability interviews and placement in accordance with this Act.

Justification for the proposed amendment: This is to align it to clause 11 of the Bill which allows the Board to appoint such officers and staff for proper discharge of its functions under the Act.

(iii) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend clause 36 to provide that key players namely the CEO and other Heads of Departments must be recruited afresh competitively.

Justification for the proposed amendment: The Board should not accept staff who did not perform and who were instrumental in the decline of the sugar industry.

(iv) Kenya Sugar Manufacturers Association

Proposed amendment: Amend to read as follows:

36. The staff of the Sugar Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board for a period of one year after which the board shall conduct suitability interviews and placement in accordance with this Act.

Proposed amendment: Key players namely the CEO and other Heads of Departments must be recruited afresh competitively.

Justification for the proposed amendment: The Board should not accept staff who did not perform and who were instrumental in the decline of the sugar industry.

First Schedule

Stakeholders' Submissions

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend clause 2(4) by deleting the word "seven" after the word "members" and substituting it with the words "two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote."

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend clause 2(5) and (6) by deleting it in its entirety and replacing it with the following:

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

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend clause 2(7) by deleting the words "vice chairperson".

Committee recommendation: The Committee agreed to the proposed amendment.

(ii) Council of Governors

Proposed amendment: Amend paragraph 2(4) to read as follows:

2. (4) The quorum for the conduct of the business of the Board shall be two-thirds members.

Justification for the proposed amendment: This is to align it to our proposal on the membership of the Board as stated elsewhere in this document.

Committee recommendation: The Committee agreed to the proposed amendment.

(iii) Kenya Sugar Manufacturers Association

Proposed amendment: Paragraph 2(4): (4)

The quorum for the conduct of the business shall be seven members.

Amend to read as follows:

‘2(4) The quorum for the conduct of the business of the Board shall be two-thirds members, provided that for a quorum to be reached, there must be present a representative of each cluster to say government, Growers, millers and County Governments and further a minimum of 2 representatives from the governments representatives.

Justification for the proposed amendment: This is shall ensure that on each occasion that the Board convenes, there is representative representation as contemplated by Parliament.

Committee recommendation: The Committee rejected the proposed amendment.

(iv) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend by deleting paragraph 8 and replacing with the following new paragraph 8:

8.(1) There shall be a Sugar Cane Pricing Committee (herein after referred to as “the Committee”) comprising the Chief Executive Officer of the Board, three representatives from the Kenya Sugar Manufacturers Association and three representatives from the Growers apex body Kenya National Federation of Sugarcane Farmers.

(2) The main objectives of the Committee shall be to:

(a) review sugar cane prices;

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

(c) ensure adherence to negotiated cane pricing formula;

(d) transition to payment based on quality; and

(e) Enforcement of contracts between farmers and millers

(3) The Committee shall come up with the pricing formula and in doing so shall take into account the-

- (i) pricing mechanisms for all other cane related charges paid by the farmer; and
- (ii) an index that takes into consideration delayed harvesting

(4) The formula set out in sub-paragraph (3) shall be subject to change as agreed upon by the Committee.

(5) The exercise of determining the sucrose content of sugarcane for the purpose of sugarcane pricing shall be carried out by a sugar-cane testing unit to be set up by the Committee.

Proposed amendment:

Add the following new part 7 immediately after part 6:

7. DELINEATION OF SUGAR CATCHMENT REGIONS s.16

17(1). The following shall be delineated regional sugar catchment areas that shall guide milling.

- a. Central Region comprised of Kisumu, Southern Nandi and Kericho Counties;
- b. Upper Western Region comprised of Bungoma, Kakamega excluding Mumias Area, Trans Nzoia, Northern Nandi and Uasin-Gishu Counties;
- c. Lower Western Region composed of Mumias area, Busia and Siaya Counties;
- d. Southern Region composed of Migori, Homa Bay, Kisii and Narok Counties; and
- e. Coastal Region composed of Kwale, Tana River and Lamu Counties;

(2) The Board shall have the mandate to create new Regions depending on assessed potential of the area, in order to ensure fair and proper delineation of resource and miller location to the best interests of the miller and growers.

Committee recommendation: The Committee agreed to the proposed amendment subject to the following amendment:

Rift region: Nandi, Kericho and Uasin Gishu counties

Nyanza region: Kisumu, Migori, Homa Bay, Narok counties

Upper Western region: Bungoma and Trans Nzoia counties

Lower Western region: Kakamega, Siaya and Busia counties

Coastal region: Kwale, Tana River and Lamu counties

Second Schedule

Stakeholders' Submissions

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend paragraph 2 of the Second Schedule by deleting the definition “Kenya Sugarcane Growers Association” and substituting therefor the definition “Kenya National Federation of Sugarcane Farmers.”

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend by deleting paragraph 8 and replacing with the following new paragraph 8:

8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”) comprising:

Chief Executive Officer of the Board, three representatives from the Kenya Sugar Manufacturers Association and three representatives from the Growers apex body Kenya National Federation of Sugarcane Farmers, representative from National Government, Representative from County Government and representative from the Sugar Research Institute.

(2) The main objectives of the Committee shall be to:

- (a) review sugar cane prices;
- (b) provide a mechanism that remunerates farmers for other products delivered from the processing of cane;
- (c) ensure adherence to negotiated cane pricing formula;
- (d) transition to payment based on quality; and
- (e) enforcement of contracts between farmers and millers.

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

- (i) pricing mechanisms for all other cane related charges paid by the farmer; and
- (ii) an index that takes into consideration delayed harvesting.

Committee recommendation: The Committee agreed to the proposed amendment subject to the following amendments:

- Increase of representatives from the growers apex body Kenya National Federation of Sugarcane Farmers from three to four;
- Substitution of Sugar Research Institute with Kenya Sugar Research Foundation

- Amend the proposed paragraph 8 (3) by inserting a new subparagraph to provide for transportation cost per tonne per kilometre of sugarcane.

Proposed amendment: Amend Part 2 of the Second Schedule in paragraph 6(a) by deleting the word “farm gate” and replacing with the word “mill gate”.

Proposed amendment: Amend Part 3 of the Second Schedule in paragraph 8(3):

The Sugar Pricing Committee to determine the price, considering all prevailing factors.

Proposed amendment: Amend Part 4 in paragraph 9(2) by adding the words “at prevailing market rates” and not the 3% penalty as it currently reads.

Proposed amendment: Amend Part 4 paragraph 12(d) (iv) by deleting all the words “shall refer the matter to the Sugar Arbitration Tribunal” and replace with the words “intervene”.

Proposed amendment: Amend paragraph 12(h) by deleting the words “buying point” and replace with “mill gate”. This is where such tickets are available.

Proposed amendment: Amend paragraph 15(1) by replacing Kenya Sugar Authority with the Kenya Sugar Board.

Proposed amendment: Insert the following new Part 7 immediately after Part 6:

7. DELINEATION OF SUGAR CATCHMENT REGIONS s. 16

17. (1) The following shall be delineated regional sugar catchment areas that shall guide the licensing of mills clustered within a geographical region:

- (a) Central Region comprised of Kisumu, Southern Nandi and Kericho Counties;
- (b) Upper Western Region comprised of Bungoma, Kakamega excluding Mumias Area, Trans Nzoia, Northern Nandi and Uasin-Gishu Counties;
- (c) Lower Western Region composed of Mumias area, Busia and Siaya Counties;
- (d) Southern Region composed of Migori, Homa Bay, Kisii and Narok Counties; and
- (e) Coastal Region composed of Kwale, Tana River and Lamu Counties;

(2) The Board shall have the mandate to create new regions depending on assessed potential of the area, in order to ensure fair and proper delineation of resource and miller location to the best interests of the miller and growers.

(ii) Council of Governors

Proposed amendment: Amend Part 3 by deleting paragraph 8 and replacing with the following new paragraph 8:

8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”) comprising representatives from the Kenya Sugar Board, Kenya Sugar Manufacturers Association and the Kenya Sugarcane Growers Association.

(2) The main objectives of the Committee shall be to:

- (a) review sugar cane prices which shall be determined on the basis of sucrose content.
- (b) provide a mechanism that remunerates farmers for other products derived from processing of cane;
- (c) ensure adherence to negotiated cane pricing formula;
- (d) transition to payment based on quality; and
- (e) enforcement of contracts between farmers and millers

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

- (i) pricing mechanisms for all other cane related charges paid by the farmer; and
- (ii) an index that takes into consideration delayed harvesting;

(4) The formula set out in subparagraph (3) shall be subject to change as agreed upon by the Committee.

(5) The exercise of determining the sucrose content of sugarcane for the purpose of sugarcane pricing shall be carried out by a sugar cane testing unit to be set up by the Committee.

Justification for the proposed amendment: The current pricing formula also provides for payment based on weight and not quality. This neither promotes the development of quality cane nor contribute towards the industry’s competitiveness.

Further, it also focuses on cane pricing, excluding pricing mechanisms for all other cane related charges paid by the farmer. These include the cost of transport, cost of credit, harvesting extension service among others. This formula does not provide for losses arising from delayed harvesting hence there is need for a paradigm shift.

Proposed amendment: Add the following new Part 7 immediately after Part 6:

7. DELINEATION OF SUGAR REGIONAL ZONES s. 16

17. (1) The following shall be delineated sugar regional zones that shall guide milling.

1. Central Region composed of Kisumu, Nandi and Kericho counties;
2. Upper Western Region composed of Bungoma, Kakamega excluding Mumias area, Trans Nzoia and Uasin-Gishu Counties;
3. Lower Western Region composed of Mumias area, Busia and Siaya Counties;
4. Southern Region composed of Migori, Homa Bay, Kisii and Narok Counties; and
5. Coastal Region composed of Kwale, Tana River and Lamu Counties.

Justification for the proposed amendment: It is appropriate therefore to establish regional cane catchment areas whereby two mills are clustered within a defined region and farmers have the freedom to contract with any miller within the region. This will also provide a conducive environment for inter-mill cane transfer within the mill catchment areas.

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

(iii) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend the Second Schedule, Part 1, paragraph 2 by deleting the definition “Kenya Sugarcane Growers Association” and replacing with “Kenya National Federation of Sugarcane Farmers” registered under the Societies Act (Cap. 108);

Justification for the proposed amendment: Kenya Sugarcane Growers Association merged with Kenya National Sugarcane Growers Union to form Kenya National Federation of Sugarcane Farmers in year 2014, which is now the apex body of sugarcane farmers in Kenya.

Proposed amendment: Amend Part 2, paragraph 5, subparagraph (g) by deleting Kenya Sugarcane Growers Association and replace with Kenya National Federation of Sugarcane Farmers.

Justification for the proposed amendment: Kenya Sugarcane Growers Association merged with Kenya National Sugarcane Growers Union to form Kenya National Federation of Sugarcane Farmers in year 2014, which is now the apex body of sugarcane farmers in Kenya.

Proposed amendment: Amend Second Schedule, Part 1, Paragraph 6(a) by deleting the words “farm gate” and replace with the word “mill weighbridge”.

Justification for the proposed amendment: No weighing of sugarcane is being done at the farm to warrant the definition of “farmgate”.

Proposed amendment: Amend Second Schedule, Part 1, Paragraph 6(d) by deleting 30 days and replacing with 7 days.

Justification for the proposed amendment: This is in compliance with current and agreed practice of payment within 7 days.

Proposed amendment: Amend Second Schedule, Part 1, Paragraph 8(1) by deleting “Kenya Sugarcane Growers Association and replace it with Kenya National Federation of Sugarcane Farmers.

Justification for the proposed amendment: Kenya Sugarcane Growers Association merged with Kenya National Sugarcane Growers union to form Kenya National Federation of Sugarcane Farmers in year 2014, which is now the apex body of sugarcane farmers in Kenya.

Proposed amendment: Second Schedule, Part 1, Paragraph 8(3)

This formula is not suitable. It is not workable. It is contentious.

Justification for the proposed amendment: Need for further negotiation and deliberation as without law and order there are now more weighbridges than the CTUs. CTUs are only installed at sugar mills. Need further investigations on how weighbridges are established and under what authority.

Proposed amendment: Amend Second Schedule, Part 4, Paragraph 9(2) by inserting the words “at market rates, plus a penalty of 3 percent per month”.

Justification for the proposed amendment: This was an omission.

Proposed amendment: Amend Second Schedule, Part 5, Paragraph 11(1) by inserting the words “an out grower institution” which will be in conjunction with “Kenya National Federation of Sugarcane Farmers.

Justification for the proposed amendment: The out growers institution cannot perform advocacy to the grower where it is the same institution providing the services.

Proposed amendment: Amend Second Schedule, Part 5, Paragraph 12 (d) (iv) by deleting the words “shall refer the matter to the Sugar Arbitration Tribunal” and replace with the words “intervene and cause the cane to be harvested”.

Justification for the proposed amendment: Taking such a matter to the Tribunal is time consuming and a waste of resources.

Proposed amendment: Amend Second Schedule, Part 5, Paragraph 12(h) by deleting the words “buying point” and replace with “Mill weighbridge”. This is where such tickets are available.

Justification for the proposed amendment: There is a lot of confusion especially with weighbridges erected everywhere by private millers without due regard and processes.

Proposed amendment: Amend Second Schedule (Guidelines for Agreements between Parties in the Sugar Industry Agreements)

5(a)- (h)

The role of advocacy and the roles of providing services should be separated.

Advocacy should be left to Kenya National Federation of Sugarcane Farmers. Services should be left to out growers institutions.

Justification for the proposed amendment: Out growers institutions need to be strengthened to provide services to growers and should not be embroiled in rivalry with advocacy which is the mandate of the Farmers Federation.

Proposed amendment: Amend Second Schedule, Part 6, Paragraph 15(1) to create a Sugar Industry Agreement as part of the Sugar Bill 2019.

Justification for the proposed amendment:

1. This sugar agreement is an important document. This agreement specifies the core functions of the sugar industry. It is a long and detailed write up which should be taken on board. It is the missing link in our sugar industry.
2. KRA, KESMA and Kenya National Federation of Sugar Farmers, Anti counterfeit Authority, Kenya Manufacturers Authority, Kenya Sugar Millers Association should be included in the proposed committee on sugar inspection and certification on imports.

(iv) Kenya Sugar Manufacturers Association

Proposed amendment:

PART 2.

ROLES OF INSTITUTION IN THE INDUSTRY (second schedule)

Page 1078

5. The role of outgrower institutions

Delete paragraph (e) and insert the role of Sugarcane Pricing Committee.

Justification for the proposed amendment: Refer to Sugarcane Pricing Committee.

Proposed amendment:

6. The role of the miller

Paragraph (a)

Delete the word “farm gate” and replace with the word “mill weighbridge”

Justification for the proposed amendment:

No weighing of sugarcane is being done at the farm to warrant the definition of “farm gate”.

Proposed amendment:

(6) The role of Miller

Paragraph 6(d)

Delete ‘30 Days’ and replace with ‘7 Days’

Justification for the proposed amendment: This is the compliance with current and agreed practice of payment within 7 Days and this will deter poaching of cane by other millers.

Proposed amendment: Insert a new clause

(8) Cane Pricing Policy

(1) There shall be a Sugarcane Pricing committee (herein for referred to as “the committee) comprising the representatives from the Kenya Sugar Board, Kenya Sugar Manufacturers Association and the Kenya Sugarcane Growers Association.

Proposed amendment:

8(3) Sugarcane Pricing Formula

This formula is not suitable. The CTU units are already installed at all mills and have not been activated by the Kenya Sugar Board

In the absence of the non-function C.T.U units the weight basis formula will apply.

Justification for the proposed amendment: Need for further negotiation and deliberation with the stakeholders. There is no law and order where there are now more weighbridges than the sugar mills.

CTUs are only installed at sugar mills. Need further investigations on how weighbridges are established and under what authority.

Proposed amendment:

PART 4 RELATIONSHIP BETWEEN CANE GROWERS/ INSTITUTION AND THE MILLER

Page 1079

9. Out growers and miller agreement

9(2)

Add the words “at market rates’ and not the 3% penalty as it currently reads

Justification for the proposed amendment: Causes extra cost implication to the miller on cost of sugar.

Proposed amendment:

12 (d) (iv) Remove all the words “shall refer the matter to the sugar Arbitration Tribunal” and replace with the words “intervene and cause the cane to be harvested”

Justification for the proposed amendment: Taking such a matter to the Tribunal is time consuming and a waste of resources.

Proposed amendment:

12(h)

Remove words “buying point” and replace with “Mill weighbridge” This is where such tickets are available.

Justification for the proposed amendment: This cannot be possible especially with weighbridges erected everywhere by private millers without due regard and processes.

Proposed amendment:

15(1)

Add to include KRA,, Anti counterfeit Authority, Kenya Manufactures Authority, Kenya Sugar Millers Association Kenya National Federation of Sugarcane Farmers, should be included in the Proposed Committee on sugar inspection and certification on imports.

(v) SUCAM

Proposed amendment: PART 2—ROLES OF INSTITUTIONS IN THE INDUSTRY

Sec3. The role of the Kenya Sugar Board

Delete this section

Multiple roles envisioned for the Sugar Board are inconsistent and internally incoherent. Some duties are promotional and these are clearly inconsistent with a regulatory function. Others are arbitral but since the Board is also a licensing agent, it is not clear how it can facilitate an arbitral role if the issue arises in the context of licensing. The Board formulates policies that the Sugar Bill then mandates it to implement. From a regulatory standpoint, the key question is whether the board can be neutral in the application of policies that it has itself formulated.

Proposed amendment: Sec4. The role of the Kenya Sugar Research Foundation

Comment: As regards research, the bill vests the role in the Kenya Sugar Research Foundation. But the core research function is narrowly tailored to sugar-cane varieties and agronomic practices conducive to high yields. Crucially, the Foundation has the duty itself to raise funds to support research.

Amend to add:

Research and Development, R&D, in the sugar industry needs to be expanded into industrial economics of producing sugar and its by-products,

Sugar R&D should be funded by government from the national budget. The actual amount spent should be calculated as a percentage of the sugar industry's contribution to GDP

Justification for the proposed amendment:

In today's world assessments of whether a country is spending enough on R&D are made against the proportion of its GDP that it spends on it. Given the centrality of factors such as sucrose content in the price of cane, support for research that seeks to improve such content should surely be a top priority. There is a misconception that sugar R&D is a sugar industry problem. It is not. Outside of a few profitable research areas, there isn't a real private market

for research. After all, the Kenya Revenue Authority, KRA, gets to keep 1.5% of revenues it collects in a year as its budget.

Proposed amendment: PART 3—SUGARCANE FIRES AND CANE PRICING

Sec8: Cane pricing policy

Add the following elements:

Sec8(6) Provision to work out minimum guaranteed price by the committee (Example: that the committee will determine minimum cane price for farmers in order to cover productions costs)

Sec8(7) Provision for a framework on working fair sharing ratio (Example: the sharing ratio shall be determined from time to time putting into considerations 1) best practices, 2) proportionate contributions)

Sec8(8) Provision to have a framework that ensures computation of cane price reflective of farm-gate value

MIN.NO. DC/A&L/043/2020: ADJOURNEMENT

The meeting thereafter was adjourned at twenty five minutes past one o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date.....29/06/2021.....

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON SUNDAY MARCH 7TH, 2021 AT ENGLISH POINT, MARINA, MOMBASA AT 9.30AM

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Cecily Mbarire, MGH, MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Gabriel Kago Mukuha, MP. | |
| 6. Hon. Adan Haji Yussuf, MP. | |
| 7. Hon. Simba Arati, MP. | |
| 8. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 9. Hon. Joyce Kamene, MP. | |
| 10. Hon. Jude Njomo, MP | |
| 11. Hon. Yegon Brighton Leonard, MP. | |
| 12. Hon. Martin Peters Owino, MP. | |

APOLOGIES

1. Hon. Maison Leshoomo, MP.
2. Hon. Ferdinand Wanyonyi, MP.
3. Hon. Dr. John Kanyuithia Mutunga, MP
4. Hon. Janet Jepkemboi Sitienei, MP
5. Hon. Geoffrey Odanga, MP.

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Ahmad Kadhi | - | Senior Clerk Assistant |
| 2. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 3. Mr. Salem Lorot | - | Legal Counsel |
| 4. Ms. Clara Kimeli | - | Legal Counsel |
| 5. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 6. Mr. Luteshi Eugene | - | Audio Officer |
| 7. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L034/2021: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past nine o'clock. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 035/2021: CONSIDERATION OF THE SUBMISSION FROM STAKEHOLDERS ON THE SUGAR BILL, 2019

The Committee considered the submission from the stakeholders and resolved as follows: -

Clause 5

(i) Ministry of Agriculture, Livestock, Fisheries and Cooperatives

Proposed amendment: Amend clause 5(1) (a) by deleting it in its entirety and replacing with the following:

(a) a non-executive chairperson appointed by the Cabinet Secretary from among the nominated Board members and appointed by the Cabinet Secretary;

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 5(1) (b) by deleting it in its entirety and replacing with the following:

(b) one representative, elected by sugar growers from amongst persons with knowledge of farmer organisation and mobilization;

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 5(1) (c) by deleting it in its entirety and replacing with the following:

(c) one representative, elected by sugar millers with knowledge in sugar technology, and value addition;

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend clause 5(1) (d) as follows:

(d) a representative of the Principal Secretary for the time being in charge agriculture with knowledge and experience of agronomy;

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Clause 5(1) (e) by deleting it in its entirety and replacing with following:

(e) one person nominated by the Council of County Governors with sound knowledge of extension services and management of farmer institutions;

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend clause 5(1) (f) by deleting it in its entirety and replacing with the following:

A representative of the Principal Secretary for the time being responsible for the National Treasury;

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend the clause 5(1) (g) by deleting the words “and secretary to the Board.”

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Insert the following clauses after clause 5(1) (g) to read as follows:

(h) a representative of the Principal Secretary for the time being responsible for industrialization;

(i) one person nominated by the State agency for the time being responsible for sugar research with sound knowledge in sugar cane development.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 5(2) by deleting it in its entirety and replacing with the following:

(2) The members of the Board specified in section 5(1) above shall be appointed by the Cabinet Secretary.

Committee recommendation: The Committee rejected the proposed amendment.

(ii) Council of Governors

Proposed amendment: Amend by deleting the entire clause 5 and replace with the following new clause 5 to read as follows:

5(1). The Board shall comprise—

(a) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture;

(b) the Principal Secretary to the Treasury;

(c) four people nominated by the Council of County Governors;

(d) three people nominated by the association representing millers in Kenya; and

(e) five representatives elected by growers;

(f) the Chief Executive of the Board appointed under section 10 who shall be an ex officio member and the secretary to the Board.

(2) The members of the Board specified in section 5(1) above shall be appointed by the Cabinet Secretary.

(3) The members of the Board shall elect the chairperson and vice-chairperson from amongst themselves during the first meeting of the Board after appointment.

(4) A member of the Board other than an ex officio member shall hold office for a period of three years, but shall be eligible for reappointment or re-election, as the case may be, for one further term.

Justification for the proposed amendment: This is to allow for adequate representing of the stakeholders in the sugar industry. It is therefore our considered opinion that the Board as proposed in the Bill will not be able to adequately represent the interests of the various stakeholders in the sugar industry hence should be amended as per our proposal.

Committee recommendation: The Committee rejected the proposed amendment.

(iii) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend paragraphs (b) and (c) as follows:

(b) six representatives nominated by Kenya National Federation of Sugarcane Farmers. The apex body for growers and gazetted by the Cabinet Secretary.

(c) Three representatives nominated by the Millers and gazetted by the Cabinet Secretary.

Justification for the proposed amendment: For paragraph (b), this number is recommended by the Executive Board of the Federation.

For paragraph (c), the number be arrived at after consultations with millers.

Committee recommendation: The Committee rejected the proposed amendment.

(iv) Kenya Sugar Manufacturers Association

Proposed amendment: Amend by deleting the entire clause 5 and replace with the following new clause 5, as follows

5(1). The board shall comprise-

- a) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture;
- b) the Principal Secretary to the Treasury;
- c) the Principal Secretary for Industrialization;
- d) Three people nominated by the apex association representing millers in Kenya; and
- e) Five representatives nominated by the apex farmers association Kenya National Federation of Sugarcane Farmers;
- f) Three persons nominated by the Council of County Governors;
- g) The Chief Executive of the Board appointed under section 10 who shall be an ex-officio member and a secretary to the Board.

(2) The members of the Board specified in Section 5(1) above shall be appointed by the Cabinet Secretary.

(3) The members of the Board shall elect the chairperson and vice-Chairperson from amongst themselves during the first meeting of the Board after appointment.

(4) A member of the Board other than an ex-officio member shall hold office for a period of three years but shall be eligible for re-appointment or re-election, as the case may be, for one further term.

Justification for the proposed amendment: The sugar sector is diversified, affecting millions of Kenyans and cross cutting in terms of sectors it affects. In keeping with the provisions of the Constitution Article 10, for public participation in decision making and governance, it is necessary to have representative Board to achieve the foregoing imperatives.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 9

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend clause 9 by deleting the words “the Cabinet Secretary on the advice of”

Committee recommendation: The Committee rejected the proposed amendment.

Clause 10

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend clause 10(2) by deleting it in its entirety and replacing it with the following:

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

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert a new clause 10B as follows:

- (1) There shall be a corporation secretary who shall be the secretary to the Board
- (2) The terms and conditions of service for the corporation secretary shall be determined by the Board.

Committee recommendation: The Committee rejected the proposed amendment

(ii) Council of Governors

Proposed amendment: Amend to read as follows:

10(2) A person shall be qualified for appointment under this section if he or she—

(a) holds a degree from a university recognized in Kenya in agriculture, economics or business administration; and

(b) has at least ten years experience in a managerial capacity.

Justification for the proposed amendment: The Council opines that the five years experience recommended in the Bill is not sufficient and recommends that the same be increased to at least ten years' experience. The revitalization of the sugar industry requires some with more than 10 years managerial capacity.

Committee recommendation: The Committee rejected the proposed amendment.

(iii) Kenya Sugar Manufacturers Association

Proposed amendment: Amend clause 10(2) as follows—

10(2) A person shall be qualified for appointment under this section if he or she —

(a) Holds a degree from a university recognized in Kenya in agriculture, economics or business administration; and

(b) Has at least ten years' experience in a managerial capacity.

Justification for the proposed amendment: The office of the CEO occupies a very important role in the coordination of the affairs of the Board, and in turn the sector. To deal with the complex issues that characterize the sector, it is necessary that persons encumbering top managerial positions in the Board have sufficient experience to match the challenges. 10 years is generally reasonable.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 14

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend clause 14(1) by amending to read:

A person shall not operate a sugar mill or a jaggery mill or import or export sugar unless he or she is a holder of a current licence issued by the Board upon recommendation by the respective County Government for that purpose.

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend clause 14(2) by deleting it in its entirety and replacing it with the following:

“A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

Committee recommendation: The Committee agreed to the proposed amendment except to borrow the language used in clause 28(3) in relation to “a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed”.

(ii) Council of Governors

Proposed amendment: Amend by deleting the entire clause 14 and replace with the following new clause 14:

14. (1) A person shall not operate a sugar mill, warehouse or a jiggery mill unless he or she is a holder of current licence issued by the respective County Government for that purpose.

Justification for the proposed amendment:

Under the Fourth Schedule to the Constitution agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licenses.

Committee recommendation: The Committee rejected the proposed amendment.

(iii) Kenya Sugar Manufacturers Association

Proposed amendment: Amend by deleting the entire clause 14 and replace with the following new clause 14:

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

Justification for the proposed amendment: We reiterate the justification offered hereinabove of the need to defer to the Constitution vesting the function of developing and regulating agriculture to the County Governments.

Committee recommendation: The Committee rejected the proposed amendment.

(iv) SUCAM

Proposed amendment: Delete all references to “Board” and substitute with “respective county government”

Justification for the proposed amendment: In compliance with Article 183 and Schedule Four of the Constitution and Sect 29 of the AFA Act, it is expected that the functions of

development, including day to day operations to implement national policies, standards and norms are responsibilities of the county governments. These include matters such as approving sugar processing factories, out-grower institutions and dealers in sugar and the setting up of sugarcane pricing formula.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 15

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Amend clause 15 by amending clause (1) as follows:

“Adding the words or to import or export sugar after the words jiggery mill.”

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert a new subclause (7) as follows:

“A person shall not import or export sugar without an export or import authority issued by the Board.”

Committee recommendation: The Committee agreed to the proposed amendment.

(ii) Council of Governors

Proposed amendment: Amend by deleting the clause 15(1) and replace with the following new clause 15(1):

15. (1) A person shall apply to the County Executive Committee Member for a licence to operate a sugar mill, sugar warehouse or a jiggery mill in the prescribed form.

(2) The County Executive Committee Member shall not issue a licence under this Act unless—

(a) it is of the opinion that the applicant is a fit and proper person to hold such a licence;

(b)...

Justification for the proposed amendment: Under the Fourth Schedule to the Constitution, agriculture and trade development and regulation has been devolved to County Governments, it is therefore follows that County Governments license the millers operating in their respective jurisdiction. The Board should only issue export or import licences which is under the purview of the National Government under the Fourth Schedule.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 15(4) to read as follows—

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

Justification for the proposed amendment: It is important that the Board sets out the fees chargeable by the respective County Government across the country for uniformity but only upon consultation of the Cabinet Secretary and County Governments.

Committee recommendation: The Committee rejected the proposed amendment.

(iii) Kenya Sugar Manufacturers Association

Proposed amendment: Amend by deleting the entire clause 15(1) and replace with the following new Clause 15(1):

15. (1) A person shall first present to the Board its application for the milling licence in the prescribed form for primary assessment and recommendation;

(2) Upon recommendation approving issuance of the licence, the successful party shall then apply to the County Executive Committee Member for a licence to operate a sugar mill, sugar warehouse or a jaggerymill in the prescribed form upon first (2) The Board shall not recommend issuance of a licence under this Act unless –

(a) it is of the opinion that the applicant is a fit and proper person to hold such a licence;

(b) ...

Amend to read as follows:

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

15(5) The Board shall revoke the manufacturing licence of a miller whose conformity to the licensing conditions falls below the 50% mark after being assessed by the Board, provided that an affected miller shall first be given a notice of one year to comply and opportunity to be heard in defence before the revocation.

15(6) A miller has right to appeal within 21 days to the tribunal the decision of the Board revocation.

15(7) The manufacturing licence may be reinstated to a miller who subsequently satisfies the licensing conditions.

15(8). A person who operates a sugar mill without a manufacturing licence commits an offence and shall be liable, on conviction, to a fine not exceeding Ten Million shillings, or to imprisonment for a term not exceeding five years or both.

15(9). A person shall not operate a sugar refinery plant without the specific registration and licence by the Board in consultation with the County Government.

15(10). Only millers who have been in operation for ten years or more shall be eligible to be registered and licensed to operate a sugar refinery plant.

15(11) A person who operates a sugar refinery without a license commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or both.

15(12) An Importer operating a sugar ware house without a licence shall be liable to a fine not exceeding Ten Million shillings, or to imprisonment for a term not exceeding five years or both.

Committee recommendation: The Committee rejected the proposed amendment except for the proposed clause 15(12).

MIN.NO. DC/A&L/036/2020: ADJOURNEMENT

The meeting thereafter was adjourned at twenty minutes past eleven o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**

Date.....

MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK HELD ON FRIDAY MARCH 5TH, 2021 AT ENGLISH POINT, MARINA, MOMBASA AT 2.30PM

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Cecily Mbarire, MGH, MP. | |
| 4. Hon. Julius Kibiwott Melly, MP. | |
| 5. Hon. Gabriel Kago Mukuha, MP. | |
| 6. Hon. Adan Haji Yussuf, MP. | |
| 7. Hon. Simba Arati, MP. | |
| 8. Hon. Dr. Chrisantus Wamalwa, CBS. MP. | |
| 9. Hon. Joyce Kamene, MP. | |
| 10. Hon. Jude Njomo, MP | |
| 11. Hon. Yegon Brighton Leonard, MP. | |
| 12. Hon. Martin Peters Owino, MP. | |

APOLOGIES

1. Hon. Maison Leshoomo, MP.
2. Hon. Ferdinand Wanyonyi, MP.
3. Hon. Dr. John Kanyuithia Mutunga, MP
4. Hon. Janet Jepkemboi Sitienei, MP
5. Hon. Geoffrey Odanga, MP.

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Ahmad Kadhi | - | Senior Clerk Assistant |
| 2. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 3. Mr. Salem Lorot | - | Legal Counsel |
| 4. Ms. Clara Kimeli | - | Legal Counsel |
| 5. Mr. Alex Mutuku | - | Sergeant Art- Arms |
| 6. Mr. Luteshi Eugene | - | Audio Officer |
| 7. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L027 /2021: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past two o'clock. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 028 /2021: CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE SUAGR BILL, 2019

The Committee considered the proposed amendments by the stakeholders to the Bill as follows: -

CLAUSE 2

Stakeholders' Submissions

(i) Ministry of Agriculture, Livestock, Fisheries and Cooperatives

Proposed amendment: Amend the definition of “interested parties” by deleting it in its entirety.

Committee Observations:

- (a) The term “interested parties” has been defined in the Bill to mean the Government, millers, growers or out-grower institutions;
- (b) The term has been used in the Bill in clause 4(1) (c), 4(2) (d), 4(2) (e), 4(2) (o), Paragraph (1) of Part 1 of the Second Schedule, and Paragraph (3) (f) of Part 2 of the Second Schedule.

Committee recommendation: The Committee agreed to the proposed amendment in principle but recommended that the definition “interested parties” be substituted with “stakeholder”.

Proposed amendment: Amend the definition “outgrower” as follows: “outgrower” means a person who has a sugarcane farm in a catchment area and who has in force a cane supply contract or lease agreement in respect of the sugar-cane grown on such farm;

Committee observation: The Committee made the following observations:

- (a) In the Bill, the term “outgrower” has been defined to mean a person who has a sugar-cane farm in a zone and who has in force a cane supply contract in respect of the sugarcane grown on such farm;
- (b) The Ministry’s proposed definition uses the words “catchment area” instead of “zone” and introduces the aspect of lease agreement.

Committee recommendation: The Committee agreed to the proposed definition but recommended that the words “or lease agreement” be deleted.

Proposed amendment: Amend the definition “out-grower institution” as follows:

“out-grower institution” means an out-grower institution registered under the Companies Act, 2015, the Co-operative Societies Act (Cap. 490), or any other

organization registered under any other law that the stakeholder forum may approve;

Committee observation: The Ministry's proposed definition deletes the words "Trade Unions Act (Cap. 233)". The definition had referred to a statute which had been repealed by the Labour Relations Act.

Committee Recommendation: The Committee agreed to the proposed definition.

Proposed amendment: Amend the definition "licence" as follows:

"licence" means a licence issued by the Board to a miller upon recommendation by the respective County Government;

Committee Observation: The Committee observed that the Bill defines "licence" to mean a licence issued by the Board to a miller.

Committee Recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Insert the following new definitions:

"sugar export licence" means a licence issued to a person by the Board allowing such holder to export out of Kenya;

"sugar import licence" means a licence issued to a person by the Board allowing such holder to import in to Kenya;

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

Committee Observations: The Committee made the following observations:

- (a) The definition "sugar export licence" is a proposed new definition; however, the definition ought to have been used in the Bill or proposed in the amendments;

- (b) The definition “sugar import licence” is a proposed new definition; however, the definition ought to have been used in the Bill or proposed in the amendments;
- (c) The definition “stakeholder” is a new definition which seeks to replace the definition “interested parties”.

Committee Recommendations: The Committee made the following recommendations:

- (a) The Committee rejected the new definitions “sugar export licence” and “sugar import licence” because the definitions have not been used in the Bill or proposed in the amendments.
- (b) The Committee agreed to the proposed new definition “stakeholder”.

Proposed amendment: Amend the definition of sugar by deleting it in its entirety and replacing it with the following:

“sugar” means sucrose in its crystalline or solution form, intended for human consumption or other use;

Committee Observations: The Committee made the following observations:

- (a) The Ministry’s proposed definition deletes the words “in any of its recognized commercial forms”;
- (b) The definition in the Bill should include raw sugar and industrial sugar;

Committee Recommendation: The Committee rejected the proposed amendment and recommended the definition as provided in the Bill should include raw sugar and industrial sugar.

Proposed amendment: Amend the definition of sugarcane to read:

Any plant or part of a plant of the genus *saccharum* or any of its hybrid;

Committee Observation: The Committee observed that the amendment corrects the grammar by use of the words “its hybrid” instead of “hybrid of sugarcane”.

Committee Recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Delete the definition of “zone” and replace it with “regional catchment area” as follows:

“regional catchment area” means a specific geographical area where two or more mills are clustered within a suitable geographical region and farmers have the freedom to contract cane with any miller within the region;

Committee Observation: The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “regional catchment area” is appropriate.

Committee Recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert the following new definition:

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

Committee Observation: The Committee observed that the definition is a new one.

Committee Recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert the following new definition:

“association” means a registered group comprised of smallholder sugarcane growers, co-operative societies, sugar estates, sugar unions, sugar millers, traders or companies, which have been recognised by the Board;

Committee Observation: The Committee observed that the definition is a new one.

Committee Recommendation: The Committee

Proposed amendment: Insert the following new definition:

“association” means a registered group comprised of smallholder sugarcane growers, co-operative societies, sugar estates, sugar unions, sugar millers, traders or companies, which have been recognised by the Board;

Committee Observation: The Committee made the following observations:

- (a) This is a proposed new definition;
- (b) In the Second Schedule, the Kenya Sugar-cane Growers Association and the Kenya Sugar Manufacturers Association are the two associations that have been defined.

Committee Recommendation: The Committee rejected the proposed amendment since the word “association” has been used in the Second Schedule in phrases of words.

Proposed amendment: Insert the following new definition:

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

Committee Observation: The Committee observed that the definition is a new one.

Committee Recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert the following new definition:

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

Committee Observation: The Committee made the following observations:

- (a) The definition is a new one;
- (b) The definition has not been used in the Bill; however, paragraph (6) (a) of the Second Schedule uses the term “farm gate”.

Committee Recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert the following new definition:

“sugarcane growers apex body” means a national sugarcane farmers organisation gazetted as such by the Cabinet Secretary for the time being responsible for Agriculture;

Committee Observation: The Committee observed that the definition is a new one.

Committee Recommendation: The Committee agreed to the proposed amendment.

(ii) Council of Governors

Proposed amendments: Amend by deleting definitions of the words “licence” and “zones” and replace with the following:

“licence” means a licence issued by a county government to a miller;

“regional zones” means regional cane catchment areas whereby two or more mills are clustered within a defined region as provided for under the Second Schedule;

Introduce the following definition:

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

Justification for the proposed amendments:

- (a) Under the Fourth Schedule to the Constitution, agriculture and trade development and regulation has been devolved to county governments, it therefore follows that county governments license the millers operating in their respective jurisdiction;
- (b) Other countries with vibrant sugar sectors like Mauritius, South Africa and Northern India have successfully implemented regional/geographical zones in which their sugar mills operate. It is therefore recommended that Kenya adopts this model.

Committee Observations: The Committee made the following observations:

- (a) The Council of Governors (COG) proposes to amend the definition of licence so that it is to be issued by a county government instead of the Board;
- (b) Under the Fourth Schedule to the Constitution, the national government is assigned the agricultural policy function whereas county governments have been assigned the agriculture function including crop and animal husbandry; livestock sale yards; county abattoirs; plant and animal disease control; and fisheries;
- (c) County governments have been assigned the function of trade development and regulation, including trade licences (excluding regulation of professions);
- (d) The COG also proposes the use of the term “regional zones” instead of “zones” as used in the Bill which is a similar proposed amendment by the Ministry of Agriculture on “regional catchment area”.

Committee Recommendations: The Committee made the following recommendations:

- (a) The Committee rejects the proposed definition of “licence” as proposed;
- (b) The Committee agrees to the proposed new definition “regional zones” in principle but recommends that the text as proposed by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives be adopted;
- (c) The Committee agrees to the proposed new definition “County Executive Member”.

(iii) Natural Justice

Proposed amendment: The meaning of “interested parties” should be expanded to include local communities living close to sugar industries.

Alternatively, the phrase “local communities” should be defined to mean any persons living within the vicinity of a sugar industry and who is likely to be affected by the operations of the industry.

Justification for the amendment: Sugar industries have several adverse impacts on the lives of communities residing close to the establishments. These range from social, economic and environmental impacts.

Sugar factories are commonly known for the production of by-products such as bagasse, which can be potentially harmful to the environment and human health if not handled carefully. For this reason, local communities who are likely to be greatly affected by such projects must have the greatest say as was stated in the case of *Save Lamu & 5 Others v. NEMA & Amu Power*, Tribunal Appeal No. NET 196 of 2016.

As persons whose interests are greatly affected by sugar projects, local communities must be included as interested parties who must be involved in any decision-making processes in the sugar industry.

Committee Observations: The Committee made the following observations:

- (a) The Ministry of Agriculture, Livestock, Fisheries and Cooperatives had proposed deletion and replacing of “interested parties” with “stakeholder” as follows:

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

- (b) The Committee agreed to the proposed definition of “stakeholder” which takes into account the proposal by Natural Justice as long as the communities have a significant interest in the sugar industry.

Committee Recommendation: The Committee agreed to the Ministry of Agriculture, Livestock, Fisheries and Cooperatives’ proposed definition “stakeholder” which takes into account the proposal by the Natural Justice as long as the communities have significant interest.

(iv) Sugar Campaign for Change (SUCAM)

Proposed amendment: Delete the definition of “Board”.

Justification for the amendment:

(i) Multiple roles envisioned for the Sugar Board are inconsistent and internally incoherent. Some duties are promotional and these are clearly inconsistent with a regulatory function. Others are arbitral but since the Board is also a licensing agent, it is not clear how it can facilitate an arbitral role if the issue arises in the context of licensing. The Board formulates policies that the Sugar Bill then mandates it to implement. From a regulatory standpoint, the key question is whether the board can be neutral in the application of policies that it has itself formulated.

(ii) Not compliant with the Constitution of Kenya 1: national government, which is Kilimo House, is responsible for national policy formulation, national standards and norms and the legislation as set out in Article 191 and the Fourth Schedule of the Constitution. Kenya Sugar Board is not equal to this.

Justification#3: Not compliant with the Constitution of Kenya 2: Creation of Kenya Sugar Board as proposed by the Bill has usurped county-level functions as are specified in the Article 183 and Fourth Schedule of the Constitution of Kenya. It is expected that the functions of development, including day to day operations to implement national policies, standards and norms are responsibilities of the county governments. Where does the Board fit, unless it's a creation of the county government as special directorate for the sugar industry?

iii) Free market economy paradigm: The bill was designed in an old template when the government dominated the sugar industry business in a controlled market economy. When the government controlled cane production through state owned factory nucleus estates and out-growers organized around out-grower companies; provider of research extension services; when the government was sole processor of sugar; and undertake marketing through Kenya National Trading Corporation. The government would provide incentives to promote cane production through fixing

cane price, interest rate for credits to farmers. Today, all state owned sugar mills and out-grower institutions have collapsed leaving the industry with independent farmers and private millers. In this paradigm, this old model of cash-crop acts in a controlled system should not be used.

Committee Observation: The Committee observed that the Bill proposes the establishment of the Kenya Sugar Board. The entity is envisaged to perform critical functions which will be geared to enhance the development of the sugar industry.

Committee Recommendation: The Committee rejected the proposed deletion of the definition “Board”.

Proposed amendment: Delete the definition of “zone”.

Justification for the proposed amendment:

(i) It is irrelevant to paradigm shift from controlled to a free market. Farmers currently supply mills of their choice, thanks to the advice of the President on Mashujaa Day 2018 celebration that farmers ‘to sell their cane to factories that are well managed and pay well’

(ii) It is a breach of Competition Act No. 12 of 2010 whose object is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya. Specifically, zoning contravene Competition Act 2010 Sec.21 (1), (2) and (3). Further, while, Competition Authority is expected to grant exemption as provided in Section 26(1), (2) and (3), after the application by AFA, sugar industry does not qualify.

iii) Its meaning and application was rejected by court cases listed below:

1. West Kenya Sugar Company Limited v Agricultural Fisheries and Food Authority & 11 others [2017] eKLR
2. Nairobi High Court HCCC 206 of 2010 West Kenya Sugar Company Limited vs. Kenya Sugar Board and Butali Sugar Mills Limited;

3. Kakamega High Court Judicial Review No. 3 of 2013 Republic vs. Kenya Sugar Board ex-parte West Kenya Sugar Company Limited;

4. Kisumu High Court Civil Case No. 175 of 2012 Chemelil Sugar Company Limited vs. West Kenya Sugar Company Limited;

5. Kakamega High Court Civil Case No. 223 of 2012 Mumias Sugar Company Limited & Others vs. West Kenya Sugar Company Limited.

iv) Zoning was introduced by Repealed Sugar Act 2001 in relation to establishment of mills. However, the Kenya Sugar Board which was implementing the Act realized its derogatory nature, by-passed it and licensed Butali factory which is less than 20KM away from West Kenya. Secondly, they licensed SUKARI Industry which is situated about 35KM away from SONY.

v) Case studies (regimes where zoning failed)

Case study#1: Australia used to assign land for cane production in order to control the level and location of production and growers used to be required to deliver cane to designated mills (Government of Australia, 1992). This measure led to use of marginal land for cane production instead of use of suitable land elsewhere and discouraged the use of best agronomic practices. The present policy is deregulation in the form of enhancement of competition and the removal of cane production area restrictions.

Case study#2: In India, the Rangarajan Committee found that the prevailing regulation of cane reservation area and approval of the minimum distance from sugar mills was against the best interest of development of the industry (Government of India, 2017); consequently, the committee specifically recommended the phased elimination of cane reservation area and bonding which has been implemented in one State and also the dispensing with the minimum distance criteria.

Case study#3: On its part, Pakistan has been applying the measure of sugar cane production zones or 'catchments areas' around sugar mills which compelled a grower within the zone to supply cane to the mill in the zone (Khushk, 2010). It was

found that the measure gave monopolistic power to the miller which became worse when cane has been harvested as it deteriorates quickly. This zoning has recently been abolished by the government in favour of the commercial approach.

Committee Observation: The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “regional catchment area” is appropriate.

Committee Recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Insert the following new definition of “cess”.

“cess” means a levy deducted from the farmers’ earnings at 1%, for the purposes of the Sugar Development Fund for allocation to county government and farmers’ apex body on equal basis.

Justification for the proposed amendment:

- (i) Cane crop Cess has been a 1% deduction from cane farmers earning by the sugar factories and remitted to relevant county governments for maintenance of roads in cane growing areas. However, it has no legal basis as Local Government Act (Cap.265) was repealed by County Governments Act which has no reference on cess. We need a principal act reference from which the county governments will domesticate their laws on the same.
- ii) There is a need for more sources of funding for sugar development funds
- iii) Apex farmer organization is vulnerable due to lack of funding resulting into lack of effective representation and sometimes being misused by industry elites.
- iv) County governments have national allocation for roads which should be used to support cane growing in their respective areas. They do not need cess for this function.
- v) Sugar Development Funds allocation for infrastructure in the sugarcane growing areas is adequate to maintain and develop the roads.

Committee Observation: The Committee observed that the definition “cess” is a new one.

Committee Recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Insert the definition “farm gate” as follows:

“farm gate” prices received by farmers for their sugarcane at the location of farm. Thus the costs of transporting from the farm gate to the nearest market or first point of sale and market charges (if any) for selling the produce are adjusted for these costs to arrive at farm gate prices.

Rationale for the proposed amendment:

(i) Farmers incur high cost of transport charged arbitrarily by transporters eroding their profit margin

(ii) Losses incurred by farmers during harvesting, loading and transporting are huge and affects the farmer negatively. Transferring this burden to the contractors will improve efficiency in the industry.

Committee Observation: The Committee observed that the term “farm gate” has been used in the Bill but does not require a definition as proposed by the stakeholder.

Committee Recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Insert a new definition of “minimum price contract”.

“minimum price contract” means a forward contract between the sugarcane grower and sugar milling company which guarantees the sugarcane grower a minimum price at delivery.

Justification for the proposed amendment: This type of arrangement will protect sugarcane growers from price fluctuations in the market.

Committee Observation: The Committee observed that the proposed amendment is on a new definition; however, the term has not been used in the Bill.

Committee Recommendation: The Committee rejected the proposed amendment.

(v) Kenya Sugar Manufacturers Association (KESMA)

Proposed amendment: Amend by deleting the definitions of the terms ‘licence and ‘zone’ and by replace with the following:

‘licence’ means a licence issued by a County Government upon assessment and recommendation of the Board to a miller;

‘sugar export licence’ means a licence issued to a person by the Board allowing such holder to export out of Kenya such quantity of sugar as is specified therein;

‘sugar import licence’ means a licence issued to a person by the Board allowing such holder to import in to Kenya such quantity of sugar as is specified therein;

“Certificate of Registration” means a certificate of sanction issued by the Board to an applicant investor authorizing and/or permitting the investor to construct a sugar milling factory at a particular place in the specified region;

“Regions” means regional cane catchment areas wherein a maximum of three sugar millers shall be clustered within a defined region as provided for in the Second Schedule as created and redefined by the Board from time to time;

Add the following definition:

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

Justification for the proposed amendments:

(i) At the heart of the sugar sector is the availability of sugar cane and its sufficiency to service all the competing millers without interruption.

(ii) Sugarcane quantities have been declining with time, a scarcity that has significantly affected the sugar sector.

(iii) An investigation in the reason for declining quantities confirmed the bases for declining to be declining investment for cane development, sugar cane poaching, and laissez faire, where millers fail to engage farmers in cane development sufficient with their mills capacities or at all, and resort to purchasing already developed sugarcane, wherever it may be found.

The few farmers who engage in cane development spending their resources meant for their mills, end up making losses, because the developed cane is then poached and sold to predator millers, who themselves do not engage in development. Sustained poaching then discourages the millers from engaging any cane development for fear of poaching, a tragic event that then leaves cane development only to the famers, who, without support only manage smaller quantities.

(iv) The events above have over the years shrunk the quantities of sugarcane and in turn drastically affected the sector.

(v) After sufficient consideration of the matter, KESMA having also discussed with other stakeholders favours creation of sugarcane administrative units, with uniform benefit and enforcement mechanisms, christened REGIONS.

(vi) REGIONS shall be delineated equitably, that is considering the geographical distances to mills within the REGION and potential for can growing within the REGION. Each REGION is to have multiple millers, than one, to even up to 3 mills, and the millers become restricted from sourcing sugar cane from other REGIONS save their own. This is the statutory impetus for these millers to collaborate with the famers to develop sugarcane sufficient for their uptake, and sustainability. This is to address any concerns of monopoly and or what would be the residual right of the famers to sell their crop.

(vii) The REGIONS to have uniform set of regulations including payment maximum timelines, to eradicate the inequality that would occur is some farmers in some REGIONS are to get better consideration including harvesting timelines and or payment timelines.

(viii) The flexibility to be in place to address extreme cases, where there is overproduction in some REGIONS resulting in glut. In such instances, there to be allowance for controlled inter-REGIONS sale of sugarcane.

(ix) Any flouting of the requirements to be an offence under the Act.

(x) If the concept of REGIONS becomes enacted and implemented, it shall guarantee an end to cane poaching, shall ensure optimum utility of the potential for cane production, there shall be stability in the industry, which shall no doubt lead to increased production of sugarcane, translating to increased production of sugar, translating in high income to Government in taxes, high income to farmers for their bigger market, and stable production for millers, and attract investment in the sector.

(xi) The idea above is proposed as the anti-thesis to the perennial problem which has ravaged the sector without answer.

(xii) The Sugar Bill as proposed reiterates the repealed Sugar Act of 2001, which offered no solutions. In fact, the inclusion of zone at section 2 of the Bill, is a replica of section 2 in the repealed Act, whose delineation of zone was very problematic and resulted in litigation. In the said litigation the Courts were categorical that section 2 defining zone did not mean an exclusive zone for any miller of the 40 km radial distance. This was the decision of the High Court in Kakamega High Court Constitutional Petition No. 26 of 2014 West Kenya Sugar Company Limited vs. Agriculture, Fisheries and Food Authorities, Butali Sugar Mills Limited & Others, Kakamega High Court Civil Case No. 223 of 2012 Mumias Sugar Company Limited & Others vs. West Kenya Sugar Company Limited, among other cases.

(xiii) Existence of zones in the repealed law, for the 13 years that the Sugar Act was in existence did not assist the sector. It brought more confusion and prejudice, wherefore the bold, equitable and progressive idea of REGIONS is clearly and demonstrably the apt solution, that should be enacted and implemented.

(xiv) The adoption of the REGIONS shall not violate any law and or rights under the Constitution, in any event it shall be an exemption that qualifies under Article 24 of the Constitution.

Committee Observation: The Committee observed that

Committee Recommendation: The Committee rejected the proposed amendment.

(vi) West Kenya Sugar Co. Ltd.

Proposed amendment: The definition of “zoning” and its use in the Bill is unconstitutional and should be deleted.

Proposed Justification for the amendment:

(i) The proposed re-introduction of zoning is an illegality in itself because on various occasions the courts have declared that farmers have a freedom to contract and Article 40 of the Constitution protects their proprietary rights in their produce.

(ii) The idea of zoning is being strongly propagated mostly by state sugar millers who in themselves are inefficient and are only seeking legal protection to force farmers to deliver cane to them even when they pay poorly and late;

(iii) This will stifle free market and result in subsidization of inefficient companies in a given county by farmers and other stakeholders in other counties that have prudently managed their resources;

(iv) It will contravene section 21(3) (b) of the Competition Act (No. 12 of 2010) prohibits industry or sector players or regulators from dividing markets by allocating customers, suppliers, areas or specific types of goods or services;

(v) In *West Kenya Sugar Company Ltd Vs. Kenya Sugar Board* (Nairobi High Court Civil Case No. 206), the High Court through Hon. Lady Justice Martha Koome ruled that since Kenya is a free capitalist state in which citizens enjoy freedom to contract, sugar cane farmers had the prerogative to sell their produce to whichever miller offered then at the best price.

This decision was subsequently upheld by a three-judge bench in the case of West Kenya Sugar Company Ltd. Vs. Butali Sugar Mills Ltd & 8 Others (Kakamega High Court Constitutional Petition No. 26 of 2014) where the court went further to state that policy/phenomenon of exclusive sugar cane zones contravenes the Competition Act.

(vi) The re-introduction of sugar zones is neither feasible nor rational because the following operational matters are yet to be addressed:

- How will borders be defined?
- How will farmers be convinced to go on one side or the other?
- How will the existing contract with farmers be dealt with?
- How and why should farmers incur extra cost and efforts to apply for a permit?
- How is arable land suitable for cane production considered keeping in mind food security, forests, escarpments?
- How are mill capacities taken into consideration?

Committee Observation: The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “regional catchment area” is appropriate.

Committee Recommendation: The Committee agreed to the proposed deletion.

(vii) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Delete the definition of “zone” and replace with catchment areas for cane development and sourcing of cane for each millers within a region.

Justification for the proposed amendment: Contentious. Not practical and not applicable. No exclusive zone thus be replaced with regions as it is more workable with.

Committee Observation: The Committee observed that the current definition of “zone” has elicited opposition from various stakeholders and has been subject to litigation. Instead, the definition “regional catchment area” is appropriate.

Committee Recommendation: The Committee agreed to the proposed deletion.

Clause 3

Stakeholder Submissions

(i) Council of Governors

Proposed amendment: Amend by introducing a new sub-clause (3) immediately after clause 3(2) to read as follows:

3(3) The headquarters of the Board shall be Kisumu City but the Board may establish branches at any place in Kenya.

Justification for the proposed amendment: The main objective of the Board is to regulate, develop and promote the sugar industry, it is therefore important the headquarters of the Board is located in a place close to the growers and millers as such we recommended Kisumu given that the western region is the biggest producer of sugar in Kenya.

Committee recommendation: The Committee rejected the proposed amendment.

(ii) Natural Justice

Proposed amendment: The Kenya Sugar Board should not only be a body corporate with perpetual succession but also an independent body.

Justification for the proposed amendment: Having an independent body will ensure that the Kenya Sugar Board conducts its mandates without any interference from political spheres or any other government institutions.

Committee recommendation: The Committee rejected the proposed amendment because Semi-Autonomous Government Agencies (SAGAs) are dependent on parent ministries hence cannot be autonomous.

(iii) Sugar Campaign for Change (SUCAM)

Proposed amendment: Delete Kenya Sugar Board and replace with various industry organs with specific powers and functions.

Justification for the proposed amendment: The roles of state corporations (Kenya Sugar Board included) in the devolved system of government are still unclear. Attempted twinning in service delivery between the Board and county government in the entire Bill is an unnecessary regulatory burden that merely attempts to circumvent accusation of usurping of county-level functions by KSB.

Committee recommendation: The Committee rejected the proposed amendment. The Committee was not persuaded with the alternative of replacing the proposed Kenya Sugar Board with various industry organs with specific powers and functions. The proposal was unclear as to what consisted the industry organs and what their specific powers and functions would be.

(iv) Kenya Sugar Manufacturers Association

Proposed amendment: Amend by adding to section 3, a subsection (3), and the new subsection to provide as follows:

‘Section 3(3). The headquarters of the board shall be at Kisumu City within the County Government of Kisumu, however the board shall have liberty to establish branches within the Republic of Kenya as the board shall determine.

Justification for the proposed amendment: The efficiency in regulation of the sugar sector as has been necessitated by the enactment shall be Bill, shall be achieved by stationing the Regulator closer to the sector, which is largely County Government of Kisumu, County Government of Kakamega, County Government of Busia, County Government of Vihiga, County Government of Homa Bay, County Government of Migori, County Government of Narok, and County Government of Kwale. Legislating the headquarters of the Board to be Kisumu shall make the Board accessible to the primary stakeholders, and shall be comparatively central to all stakeholders and shall no doubt increase efficiency in regulation of the sector.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 4

Stakeholder Submissions

(a) Ministry of Agriculture, Livestock, Fisheries and Cooperatives

Proposed amendment: Delete clause 4(2) (n) and inserting the following additional clauses after clause 4(2) (n):

- (n) enforce and monitor compliance with standards along the sugar value chain;
- (o) promote the attractiveness of the industry by facilitating value addition and product diversification in the sugar sub-sector;
- (p) formulate and implement a strategic plan for the sugar sub-sector at least once every five (5) years.
- (q) formulate guidelines on an efficient and economical transportation of sugar.

Committee recommendation: The Committee agreed to the proposed amendment except that it rejected the proposed deletion of paragraph (n).

(b) Council of Governors

Proposed amendment: Amend by deleting the entire clause 4 and replacing with the following new clause 4:

Functions of the County Government and the Board

4 (1) The County Government shall—

- (a) register sugar growers and traders;
- (b) issue sugar cane nursery certificates;
- (c) issue sugar milling, jiggery mill and warehousing licences;
- (d) offer and coordinate of extension services on sugar production and milling in the respective county;

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

(2) The Board shall—

- (a) regulate and issue certificates or licenses on imports and exports of sugar;
- (b) develop and coordinate capacity activities for county governments and other industry players;
- (c) in consultation with county governments, develop enforce regulations, industry code of practice and other quality standards in the sugar industry;
- (d) collect, collate and maintain a sugar industry data base and disseminate information to the industry players;
- (e) conduct local and international sugar market intelligence and advise stakeholders accordingly;
- (f) establish linkages with various government agencies and research institutions to enhance quality assurance and research;

(g) in consultation with county government, develop and promote policies and strategies for the sugar industry;

(h) develop and enforce the sugar industry standards and industry code of practice in collaboration with the Kenya Bureau of Standards and county governments; and

(i) facilitate equitable access to the benefits and resources of the industry by all interested parties.

Justification for the proposed amendment: According to Part 2 sections 2 and of the Fourth Schedule to the Constitution and the Kenya Gazette Supplement No. 116 of 9th August, 2013, development and regulation of agriculture and trade excluding international trade which is under the purview of the National Government, are functions devolved to County Governments. It is therefore imperative that the Sugar Bill, 2019 takes cognizance of this fact and as such should be amended in accordance with our proposal to provide for the functions of the County Governments and the Board. In doing so, the Act will recognize the institutional and functional integrity of the county level of government as provided for under Article 189 of the Constitution.

Committee recommendation: The Committee agreed generally to provide for the functions of the county government and the functions of the Board but not to delete clause 4 in its entirety and replacing it with the proposed amendment by the Council of Governors.

On the proposed functions of the County Government, the Committee recommended as follows:

- I. The Committee agreed to paragraphs (b), (d), (g), (i), and (j);
- II. The Committee rejected paragraphs (a), (c), (e), (f), and (h) since these functions ought to be performed by the Board.

On the proposed amendments to the Board, the Committee agreed to paragraphs (e) and (f) and rejected the other paragraphs.

(c) Kenya Sugar Manufacturers Association

Proposed amendment: Amend by deleting the entire Clause 4 and replace with the following Clause 4:

Functions of the County Governments and the Board

4(1) The County Governments shall:

- (a) Register sugar growers and traders;
- (b) Issue sugar milling, jiggery and warehousing licences after recommendation of the Board;
- (c) Offer and coordinate of extension services on sugar production and milling in the respective County;
- (d) Inspect sugarcane nurseries, millers, jaggeries and warehouses located within their respective Counties;
- (e) Register sugar growers and traders within their respective Counties;
- (f) Enforce county and national legislation on sugar industry code of practice and other standards;
- (g) In collaboration with the Board and law enforcement agencies, enforce regulations made under the Act, within the county;
- (h) Enforce policies and guidelines on corporate governance in growers' institutions and millers;
- (i) Monitor and report incidences of pest and disease outbreaks and taking appropriate action on collaboration with the Board and other agencies of government; and
- (j) In collaboration with the Board, establish an efficient road network for movement of sugarcane, delivery of other services and general development of the sugar industry.

2. The Board shall:

- (a) issue letters of Comfort to intending applicants for Certificates of Registration to for construction of sugar mills and jaggeries;

- (b) issue Certificate of Registration to millers and jaggeries for construction of sugar milling plants and jaggeries;
- (c) receive applications for licences by millers, jaggeries and warehousing of sugar from applicants, consider them and recommend to the respective County Governments, on successful applicants, who shall then pay requisite fees and receive the licences from the respective County Governments;
- (d) regulate and issue certificates of imports and exports of sugar;
- (e) develop and coordinate capacity activities for county governments and other industry players;
- (f) in consultation with county governments develop and enforce regulations, industry code of practice and other quality standards in the sugar industry;
- (g) collect, collate and maintain a sugar industry data base and disseminate information to the industry players;
- (h) conduct local and international sugar establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- (i) establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- (j) develop and enforce the Sugar Industry standards and Industry code of practice in collaboration with the Kenya Bureau of Standards and county governments; and
- (k) facilitate equitable access to the benefits and resources of the industry by all.

Justification for the proposed amendment: In keeping with provisions of Article 189 of the Constitution delineating functions of the National and County Governments, as is more succinctly done in Part 2 of the Fourth Schedule to the Constitution of Kenya, and the Kenya Gazette Supplement No. 116 of 9th August 2013, development and regulation of agriculture and trade, excluding international trade are functions vested in the county governments.

For the Sugar Bill, and eventually Act, to pass Constitutional threshold of legitimacy, the functions of the county governments and the national government (Board) must be clearly delineated, as has been done in the proposed amendments. The amendments have been crafted so as to achieve a balance between vestiture of the duty and need to ensure efficiency in its execution.

Committee recommendation: The Committee rejected the proposed amendment.

(d) Sugar Campaign for Change

Proposed amendment: Amend clause 4(1) (a) to assign the function to the Ministry of Agriculture

Justification for the proposed amendment: National government, is responsible for national policy formulation, national standards and norms and the legislation that provides for such national policy Article 191 and Schedule Four.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(1) (b) and (c) to assign the function to the respective county government.

Justification for the proposed amendment: County governments are responsible for implementation of such national policies, standards and norms in their areas as provided in Article 183 and Schedule Four.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Delete clause 4(2) (a)

Justification for the proposed amendment: It is the obligation of all stakeholders to participate in policy process.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (b) to assign the function to miller/grower association.

Justification for the proposed amendment: The association should be farmers' and millers' representative.

Committee recommendation: The Committee rejected the proposed amendment

Proposed amendment: Amend clause 4(2) (c) to assign the function to Sugar Research Institute and County Government.

Justification for the proposed amendment: This is always the role of research institute and county government.

Proposed amendment: Amend clause 4(2) (d) to assign the function to miller/grower association

Justification for the proposed amendment: The industry will be information symmetry to enable production planning.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (e) to assign the function to the Sugar Arbitration Tribunal.

Justification for the proposed amendment: Tribunal empowered undertake this role.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (f) to assign the function to miller/grower association.

Justification for the proposed amendment: Special agency has capacity to achieve this.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (g) to assign the function to the Sugar Research Institute.

Justification for the proposed amendment: Research Institute has the technical capacity to undertake this role.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (h) to assign the function to miller/grower association

Justification for the proposed amendment: It is the role of miller/grower association to acquire and share.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (i) to assign the function to miller/grower association

Justification for the proposed amendment: The Agency will have all the data required from both sides, while miller/grower will have specific data from their areas of operation.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (j) to assign the function to miller/grower association.

Justification for the proposed amendment: The industry should only be represented by key stakeholders.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (k) to assign the function to the Ministry of Agriculture.

Justification for the proposed amendment: National government role

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (l) to assign the function to miller/grower association.

Justification for the proposed amendment: Agency to collect trade data, miller/grower to give farm and process data.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (m) to assign the function to county governments.

Justification for the proposed amendment: Constitutional role

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 4(2) (n) to assign the function to Ministry of Agriculture.

Justification for the proposed amendment: The Ministry has the powers to undertake the role.

Committee recommendation: The Committee rejected the proposed amendment.

MIN.NO. DC/A&L/029/2020: ADJOURNEMENT

The meeting thereafter was adjourned at ten minutes past seven o'clock.

Signed.....

**HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)**



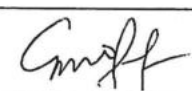
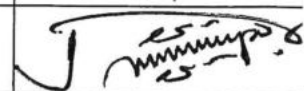

Date.....

THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK
MEMBERS ATTENDANCE SCHEDULE

DATE: 17-JUNE-2021 **START:** 10.30 am **END:** 1.30 pm

VENUE: MEDIA CENTER

AGENDA: ADOPTION OF REPORT - SACAR BILL

	NAME	TITLE	SIGNATURE
1.	Hon. Silas Kipkoech Tiren, MP.	CHAIRPERSON	
2.	Hon. Catherine Waruguru, MP.	VICE-CHAIRPERSON	
3.	Hon. Maison Leshoomo, MP.	Member	
4.	Hon. Ferdinard Wanyonyi, MP.	Member	
5.	Hon. Dr. Chrisantus Wamalwa, CBS, MP.	Member	
6.	Hon. Simba Arati, MP.	Member	
7.	Hon. Cecily Mbarire, MGH, MP.	Member	
8.	Hon. Jude Njomo, MP.	Member	
9.	Hon. Adan Haji Yussuf, MP.	Member	
10.	Hon. Janet Jepkemboi Sitienei, MP.	Member	
11.	Hon. Julius Kibiwott Melly, MP.	Member	
12.	Hon. Gooffrey Odanga, MP.	Member	
13.	Hon. Martin Peters Owino, MP.	Member	
14.	Hon. Joyce Kamene, MP.	Member	
15.	Hon. Yegon Brighton Leonard, MP.	Member	
16.	Hon. Dr. John Kanyuithia Mutunga, MP.	Member	
17.	Hon. Gabriel Kago Mukuha, MP.	Member	
18.	Hon. Majimbo Kalasinga, MP	Member	

COMMITTEE CLERK

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DIRECTOR.....

Proposed amendment: New

There is established an advisory body to be known as the Sugar Stakeholders Council composed of representatives of stakeholders in the sugar industry. Members of the Council shall be appointed by the CS from amongst members nominated by stakeholders as follows:

- (1) The membership of the Council shall consist of:
 - (a) farmer representative from each of the regional catchment areas
 - (b) two representatives from the recognized farmer sugar organizations;
 - (c) two members nominated by the recognized Millers Association;
 - (d) two members representing the Sugar Importers;
 - (e) one member representing the sugar exporters;
 - (f) a representative from the national body responsible for sugar research;
 - (g) a representative from the consumer federation nominated by the national consumer federation;
 - (h) a representative of the Cabinet Secretary responsible for agriculture;
 - (i) five designates from the Council of Governors with knowledge and experience in the sugar sector who shall be nominated by the Council of Governors and representing each of the catchment areas.
- (3) In making nominations for the members in clause (1) above, the stakeholders shall have regard to:
 - (a) provisions of chapter six of the Constitution;
 - (b) knowledge and experience in the sugar industry.
- (4) In discharge of its advisory function, the Council shall
 - (a) review and approve the Board's long-term policies in all aspects of the sugar industry, including production, manufacture, trade and value addition;
 - (b) review and approval of the Board's five-year strategic plan;
 - (c) review and approve of an industry self-regulating code of conduct;
 - (d) advocate for allocation and access of resources in the sugar sector;
 - (e) foster good intergovernmental relations between county and national governments on sugar industry matters;
 - (f) approve the Board's long-term policies on labour and energy in the sugar sector.

(5) Members of the Sugar Stakeholder Council shall serve for a non-renewable term of three years renewable once.

(6) The Sugar Stakeholder Council shall meet twice a year.

(7) The remuneration for the members of the Sugar Stakeholder Council shall be as prescribed by the Salaries and Remuneration Commission on council meetings.

(8) The Cabinet Secretary shall appoint a Chairperson of the Sugar Stakeholders Council from amongst members of the Council.

(9) The Chairperson of the Council may resign from office by a letter addressed to the Cabinet Secretary.

(10) Where the Chairman of the Council is temporarily unable to discharge his functions due to illness, absence from Kenya or other cause, the Council may appoint one of their own to act in his place.

(11) The Council shall make rules to regulate its meetings and the conduct of business at such meetings.

(12) The Council may establish working groups and committees as it deems necessary.

Committee recommendation: The Committee rejected the proposed amendment.

(ii) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend clause 31(1) to establish one main fully fledged and functional tribunal based in Kisumu and with five other regional registries for serving the farmers

Justification for the proposed amendment: To bring the tribunal closer to the stakeholders for faster dispensation of justice and effect their rulings with full powers.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend clause 31(3) to provide for one further term of a period not exceeding six years.

Justification for the proposed amendment: To allow for two equal periods of three years each subject to performance and evaluation.

Committee recommendation: The Committee rejected the proposed amendment.

(iii) Kenya Sugar Manufacturers Association

Proposed amendment: Amend clause 31(1)

Establish one main fully fledged and functional Tribunal based in Kisumu and with 5 other regional registries for serving the farmers

Justification for the proposed amendment: To bring the Tribunal closer to the stakeholders for faster dispensation of justice.

Committee recommendation: The Committee rejected the proposed amendment.

Proposed amendment: Amend by deleting clause 31(3) and replacing with the following:

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

Justification for the proposed amendment: To allow for two equal periods of three years each subject to performance and evaluation.

Committee recommendation: The Committee rejected the proposed amendment.

Clause 33

Stakeholders’ Submissions

(i) The Ministry of Agriculture, Livestock, Fisheries & Cooperatives

Proposed amendment: Remove the word “may” and replace with the word “shall” to read:

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

Committee recommendation: The Committee agreed to the proposed amendment.

Proposed amendment: Amend clause 33(2) by adding the following new clauses after subclause (c)

- (a) registration and licensing procedures;
- (b) regulating the entire value chain in the sugar sub-sector;
- (c) Guidelines on the establishment of weigh bridges in consultation with the County Governments;
- (d) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
- (e) Guidelines on production and import of sugar to ensure adequate sugar availability in the country;
- (f) General industry agreements between farmers and processors of sugar crops;
- (g) Minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments; and

- (h) Regional Cane Catchment Areas within which a defined geographical region, in consultation with County Governments;
- (i) Guidelines on cane harvesting and transportation;
- (j) Guidelines for agreements between parties in the sugar industry;
- (k) regulations establishing the Sugar Cane Pricing Committee

Committee recommendation: The Committee agreed to the proposed amendment.

(iv) Council of Governors

Proposed amendment: Amend to read as follows—

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

Justification for the proposed amendment: The process of making of the regulations should be consultative, hence the Cabinet Secretary needs to consult the Board and County Governments.

Committee recommendation: The Committee agreed to the proposed amendment except for the substitution of “may” with “shall” to read as follows:

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

(v) Kenya National Federation of Sugarcane Farmers

Proposed amendment: Amend clause 33(1) to remove the word “may” and replace with the word “shall” to read:

The Cabinet Secretary shall make regulations generally for the better carrying into effect of the provisions of the Act within two months of enactment.

Justification for the proposed amendment: To compel Cabinet Secretary to make regulations. This is not optional. It is a must and he/she will have a timeline two months to comply. It is also a must with stakeholder consultation/participation.

Committee recommendation: The Committee agreed to the proposed amendment subject to further modifications as follows:

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

(vi) Kenya Sugar Manufacturers Association

Proposed amendment: Amend clause 33(1) by deleting the word ‘may’ and replacing with the word “shall”. The provision should read as follows:

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Sugar Bill, 2019 (National Assembly Bill No. 68 of 2019)
2. The Alcoholic Drinks Control (Amendment) Bill, 2019 (National Assembly Bill No. 70)

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Sugar Bill, 2019 (National Assembly Bill No. 68 of 2019) seeks to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. Enactment of this Bill will restore the roles of the Kenya Sugar Board currently granted to the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

The Alcoholic Drinks Control (Amendment) Bill, 2019 (National Assembly Bill No. 70) Seeks to amend the Alcoholic Drinks Control Act No. 4 of 2010 to empower the Cabinet Secretary to prescribe the hours within which electronic advertisement of alcoholic drinks shall be done. This is in order to reduce the exposure to children and other vulnerable persons in the community such as recovering alcoholics of unsuitable content on alcohol consumption.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3). **The Sugar Bill, 2019 (National Assembly Bill No. 68 of 2019)** stands committed to the Departmental Committee on Agriculture and Livestock while the **Alcoholic Drinks Control (Amendment) Bill, 2019 (National Assembly Bill No. 70)** stands committed to the Departmental Committee on Administration and National Security, for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the respective Committees invite interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Building, Nairobi**; or emailed to clerk@parliament.go.ke; to be received on or before **Tuesday, 12th November, 2019 at 5.00 pm.**

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

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