REPUBLIC OF KENYA

SUGAR INDUSTRY STAKEHOLDERS TASKFORCE REPORT

REPUBLIC OF KENYA

REPORT OF THE NATIONAL SUGAR TASK FORCE

DATE: ....

LETTER OF TRANSMITTAL

H.E. Uhuru Kenyatta, C.G.H.
President of the Republic of Kenya and Commander-in-Chief of the Defence Forces,
State House,
NAIROBI.

Your Excellency,

RE: REPORT OF THE SUGAR INDUSTRY STAKEHOLDERS TASKFORCE

Your Excellency, in exercise of the powers vested in you by the Constitution and Laws of Kenya, you directed the appointment of the Sugar Industry Stakeholders Task Force. The Task Force was required to review the entire sugar value chain and identify areas that require interventions such as production, processing and marketing of sugar. It was also to examine the existing policy, institutional, legislative and administrative structures and systems in the sugar industry and recommend comprehensive reforms among other key issues. The Task Force undertook its assignment diligently from December 2018 to May 2019.

We now have the great of pleasure and honour to submit our report to you and to express our gratitude for the opportunity to make our humble contribution towards reforming the sugar sub-sector in Kenya.

MWANGI KIUNJURI, EGH, MGH
CABINET SECRETARY – MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND IRRIGATION

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CHRISTINE CHESARO YEBEI	.... (Joint Secretary)
NABII NABWERA	.... (Joint Secretary)
MICHAEL ABALA WANGA	.... (Joint Secretary)

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ABBREVIATIONS AND ACRONYMS

ACFC	Agro-Chemical and Food Company (Limited)
AFA	Agriculture and Food Authority
AFA –SD	Agriculture and Food Authority – Sugar Directorate
AFC	Agricultural Finance Corporation
CAK	Competition Authority of Kenya
CIDP	County Intergrated Developmet Plan
GDP	Gross Domestic Product
COG	Council of Governors
COMESA	Common Markets for Eastern and Southern Africa
CRF	Coffee Research Foundation
CTU	Cane Testing Unit
EAC	East Africa Community
EASST	East African Societies of Sugarcane Technologists
FTA	Free Trade Area
GoK	Government of Kenya
HA	Hectares
ICT	Information Communication Technology
IBEC	Intergovernmental Budget and Economic Council
IGRTC	Intergovernmental Relations Technical Committee
ILO	International Labour Organisation
KALRO	Kenya Agriculture Livestock Research Organization
KARI	Kenya Agricultureal Research Insiutute
KCPAC	Kenya Consumer Protection Advisory Committee
KEBS	Kenya Bureau of Standards
KEPHIS	Kenya Plant Health Inspectorate Services
KESMA	Kenya Sugar Cane Manufacturers Association
KESREF	Kenya Sugar Research Foundation
KETRACO	Kenya Electricity Transmission Company
KISCOL	Kwale International Sugar Company Limited
KNTC	Kenya National Trading Corporation
KPLC	Kenya Power & Lighting Company
KRA	Kenya Revenue Authority
KSSCT	Kenya Society of Sugar Cane Technologists
LREB	Lake Region Economic Bloc
MOALF&I	Ministry of Agriculture Livestock Fisheries & Irrigation
MT	Metric Tons
NEMA	National Environment Management Authority
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
PAYE	Pay as You Earn
PCPB	Pest Control Products Board
SADC	Southern Africa Development Community
SAP	Structural Adjustment Programme
SDF	Sugar Development Funf
SDL	Sugar Dvelopment Levy
SRI	Sugar Research Institution
TCD	Tons Cane Per Day
TCH	Tons Cane per Hectare
TORs	Terms of Reference
TRF	Tea Research Foundation
VAT	Value Added Tax

FOREWORD

The Kenya sugar sub-sector plays a vital role in the agricultural sector and the Kenyan economy. The industry contributes to food security, employment creation, regional development and improved livelihoods for more than 8 million Kenyans. It is a source of income for over 400,000 small-scale farmers who supply over 90% of the milled cane.

Currently, Kenya is comparatively a high cost sugar producer which is attributed mainly to inefficiencies across the entire value chain. This not only renders the industry uncompetitive but makes Kenya an attractive destination for imports from the region and globally. The imports from low cost producers dampen sugar prices creating financial constraints when the local mills cannot offload locally produced sugar to the market.

The sugar sub-sector is facing unprecedented challenges which have drastically affected cane and sugar production. Key among them include; high cost of production, acute cane shortage, low productivity, inefficiencies across the value chain, weak regulatory framework, high indebtedness, weak extension support, low value addition initiatives, cyclic markets, uncontrolled and illegal sugar imports, poor governance, ageing equipment, obsolete technology, and delayed payment to cane farmers.

There has been a decline in total area under cane since 2015 from 223,605 Hectares (Ha) to 191, 215 Ha in 2018, with a corresponding decline in yield from 66 Tons per Ha to the current 55 Tons per Ha. The cane milled during the two years also declined from 7,164,790 MT to 4,751,605 MT in the same period representing 45% of the total cane requirement for all the factories. The decline was largely attributed to farmer's withdrawal from cane farming as a result of low farm returns due to delayed harvesting, delayed payments, high cost of input and services, poor quality seed and limited access to credit facilities for cane development, following the scrapping of Sugar Development Levy (SDL). This low cane supply has led to milling underage cane of low sucrose content by all millers, contributing to low milling efficiencies relative to regional producers. This also exacerbates the situation for the public owned mills which are disadvantaged by ageing and obsolete equipment and poor governance.

In this respect, His Excellency Uhuru Muigai Kenyatta, the President and Commander in Chief of the Defense forces of the Republic of Kenya, directed that a Taskforce of Sugar Industry Stakeholders be established to examine the challenges ailing the industry and make appropriate recommendations for the development of the sub-sector. The Taskforce was therefore established under the Gazette Notice No. 11711 of 9th November 2018.

In execution of its mandate, the Task Force invited members of the public to submit memoranda, considered views from expert presentation and extensively reviewed other successful sugar models from countries in the Common Markets for Eastern and Southern Africa (COMESA) region and internationally. Further, the taskforce held public participation meetings in all the sugar growing areas.

This report, therefore proposes key recommendations, which are aimed at transforming the industry to a competitive and well-regulated sugar sector. In arriving at these recommendations, the Task Force was cognizant of the need to provide a practical and cost effective framework for their implementation.

MWANGI

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ACKNOWLEDGEMENT

We most sincerely thank H.E. Uhuru Muigai Kenyatta the President of the Republic of Kenya and Commander in Chief of the Defense forces, for the trust bestowed on the Taskforce members to undertake this onerous task. This is a clear demonstration of the personal commitment and desire on the part of H.E. the President to reform the sugar sub-sector with an overall goal of making the industry sustainable and enhancing the smallholder cane growers' income and welfare.

We would like to express oursincere appreciation to the Ministry of Agriculture, Livestock, Fisheries and Irrigation (MOALF&I) for the facilitation, which made the task a success and the Lake Region Economic Bloc (LREB) secretariat for playing host to the members during the experts presentation, public submission and report writing.

We are also grateful for the inputs provided by various Government institutions and Departments towards this work such as: Government Ministries, Departments and Agencies, County Governments in the sugar growing areas, Members of the National Assembly and Senate.

We feel deeply indebted to the many Kenyans and all the industry stakeholders and institutions who participated in this process for their valuable views, memoranda, submissions, comments and suggestions that contributed to the development of this Sugar Industry Stakeholders Taskforce Report.

Finally, many thanks to the Task Force Members and the Secretariat for their tireless efforts towards accomplishing this noble task.

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EXECUTIVE SUMMARY

Sugar cane as a crop was introduced to Kenya in 1902 and initially milled by jaggeries. The first sugar factory was established in 1922 in Miwani Kisumu District, followed by Ramisi in the coastal region in 1927. After independence, the Government explicitly expanded its vision of the role and importance of the sugar industry as set out in Sessional Paper No. 10 of 1965 which sought inter alia, to accelerate the socio-economic development, redress regional economic imbalances, promote indigenous entrepreneurship and promote foreign investment through joint ventures. Kenya attained self-sufficiency in 1980 and 1981, by producing 401,239 MT against a demand 299,514 in 1980 and 368,970 MT against a demand of 324,054 in 1981.

Recognizing the importance of the sector, the Government and the private sector have been involved in the promotion of the industry through direct investments mainly on factories for processing cane and other related infrastructure. Currently, there are 14 sugar factories in the country with a combined capacity to process 41,000 Tons of Cane per Day (TCD). Despite these investments, self-sufficiency in sugar has remained elusive over the years as consumption continues to outstrip supply. For instance in 2018, sugar production was 490,704 MT against a consumption of 1,012,399 MT, giving a shortfall of 521,695 MT, and the deficit being imported from the regional and global markets. Given this trend, Kenya remains a net importer despite the availability of adequate milling capacity and land for cane development. There is need therefore to radically reengineer the current way of doing business in order to turn the industry to a competitive and sustainable sub-sector.

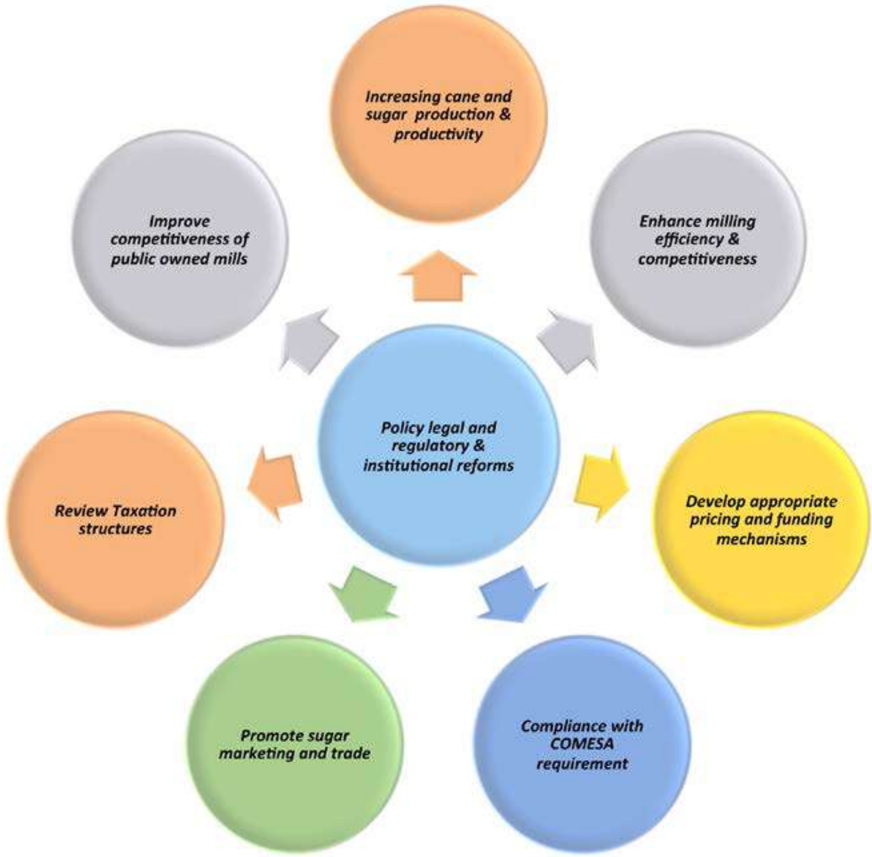
In the last five years cane availability has consistently not matched the factory capacity hence the mills have not been able to meet their cane requirements. At an average factory efficiency level of 80%, cane requirement will be 9.84 Million MT which translates to sugar production of 1.09 Million MT per annum. Currently the area under cane is 191,215 Ha producing 4.75 Million MT of cane against a requirement of 263,959 Ha under cane to produce 9.8 Million MT of cane (assuming a yield of 65 Tons Cane per Hectare (TCH).

The industry continues to face several challenges which include high cost of production, high debt portfolio, acute cane shortage, declining yields, low value addition initiatives, innefficiencies, inadequate research and extension, ageing equipment, obsolete technology, mismanagement of state owned mills, reduced incomes to farmers and weak regulatory framework among others.

The main challenge of the sugar industry therefore is how to strategically manage the various components of the value chain in order to make them efficient, competitive resulting in the industry's profitability.

The Task Force therefore analysed the qualitative information presented by various stakeholders in the industry and identified Eight (8) key recommendations which upon implementation will address issues ailing the sugar industry. The benefits include increased productivity, efficient processing, value addition, improved industry incomes, a conducive legislative environment and ultimately increased sugar production that meets local demand and surplus for export. The seven key recommendations are summarized in diagram 1 below and are anchored in policy, legal, regulatory and institutional reforms.

Diagram 1: Key 8 recommendations



1. Increasing cane, sugar production and productivity to enhance sugar industry competiveness

i. Enhance Research and Extension

There are low research and extension initiatives to facilitate the development and uptake of early maturing, disease resistant and high sucrose varieties leading to low cane production and productivity. This is mainly attributed to the lack of funding for the Sugar Research Institute (SRI) and consequent inability to attract/retain specialised researchers. This report has provided a raft of recommendations whose implementation will provide for adequate funding for research, development of research facilities in agro-ecological zones, enhancement of extension services and capacity building.

ii. Increase cane production and productivity

There has been a decline in cane production and productivity and decline in sugar production. This has not only led to lack of competitiveness in the region, but has threatened the sustainability of the sector. There is urgent need therefore to increase cane production and productivity, ensure prompt payment to farmers and synchronize cane development to match mill requirement. There is need also to adopt irrigation technologies, cost effective models of production, harvesting, transportation and processing, promotion of enterprise diversification, strengthen farmer institutions and provide a conducive regulatory framework for the industry to thrive.

iii. Farmer support

a) Strengthen grower institutions

With the collapse of out-grower institutions, farmers have had to rely on the sugar factories for service provision, input supply and financing, which among other things compromises the farmers' bargaining power to negotiate with millers on various issues including cane prices, cost of input and cost of transport among others. It is therefore recommended that County Governments in sugar growing zones should organize and revitalize farmer led institutions to wean farmers from dependence on the millers for credit and other services including extension. There is also need to support the development of a farmers' apex body and capacity build all farmer organizations on the application of good governance principles of these organizations to ensure adequate representation and fulfilment of their mandate.

b) Prompt payment

Delayed payment has demotivated farmers leading to low re-investment in subsequent crops and abandonment of cane farming. Delayed payments also force farmers to divert cane to other mills who may pay promptly but at unfairly low rates. This has contributed to the impoverishment of the sugar cane farming community as cane farming is mainly their source of livelihood. The Taskforce therefore recommends that farmer/miller contracts that require that farmers to be paid within seven days be developed and enforced.

2. Enhancing milling efficiency and competiveness of sugar and co-products;

i. Reduce Cost of production

Kenya is comparatively a high cost sugar producer attributed mainly to inefficiencies across the entire value chain, right from cane development, harvesting, transport, milling and marketing, high cost of inputs, labour, credit, among others. The average cost of producing a ton of sugar is USD 800 compared to an average CIF value of USD 550 of sugar from the region or USD 450 of sugar from the global market. The inefficiencies contribute to the overall cost of production and ultimately the cost of sugar. This not only renders the industry uncompetitive but makes Kenya an attractive destination for imports from the region and globally. The imports from low cost producers dampen sugar prices creating financial constraints when the local mills cannot offload locally produced sugar to the market.

To address these challenges, there is urgent need to develop and implement an efficiency and cost reduction strategy along the entire value chain. This is envisaged to enhance the overall efficiency of the industry, reduce the cost of production and sugar.

ii. Synchronize milling capacity with cane availability

There has been lack of synchrony across the industry between factory installed capacities and cane availability. This has resulted in acute cane shortage, underutilization of factory capacity, poor conversion rate, low sugar yield, ultimately leading to poor cash flow, lower grower prices and late payment of farmers.

The current operating environment (free for all), does not obligate the farmer to supply cane to any designated miller with raw material. Similarly, the miller is not obligated to buy the farmers' sugar cane. This promotes cane poaching which a source of disorder, leads to acute cane shortages, harvesting of immature cane, low productivity, low efficiency in the value chain, low sugar production, high cost of production, high sugar prices and the need for importation. It also denies the farmer support for cane development from the miller, as the miller has no assurance of benefiting from this investment in cane development. On the other hand, during over supply, there is delay in harvesting, leading to increase in harvesting age, quality deterioration, poor ratooning and farmers disposing cane at unfavorable prices. This also discourages farmers from re-planting, creating a shortage in the long run.

To address this, the Taskforce recommends that in addition to the gazettement of regulations, a code of practice should be developed and enforced. It is also recommended that regional cane catchment areas be established, whereby two or more mills are clustered within a defined geographical 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.

iii. Value addition

The sugar sub-sector in Kenya is largely a producer of sugar and molasses as a by-product. There are efforts in some of the mills to diversify into cogeneration, Ethanol, refined sugar, paper and briquette production. These initiatives have however not exhausted the existing potential in the industry despite the sufficient demand for value added products in the market. The products include molasses based, bagasse based products, refined sugar and fertilizer from filter mud. The industry therefore has not been able to enlarge its revenue base hence contributing towards the high cost of production. This has also denied farmers the opportunity to benefit from the sale of value added products as is the practice globally.

It is recommended that we promote value addition by developing and implementing viable Strategic Business Units for value added products. This will be achieved by providing incentives to attract investments targeted at product diversification, value addition into refined sugar, cogeneration, Ethanol, Paper, Board manufacture, Briquette and Pharmaceuticals.

3. Promote favourable sugar marketing and trade

Kenya is currently a net importer of sugar mainly from COMESA countries. Whenever there is an acute shortage, the country imports from COMESA on duty free basis. This occasionally leads to oversupply and glut in the market, dampening local sugar prices and adversely impacting on both price and demand. In addition, Kenya does not produce refined sugar, and therefore meets this need through importation of refined sugar, creating an opportunity for diversion of the same to the consumer market.

In addition, a sizable amount of uncustomed sugar is smuggled into the country through the porous borders. This causes a distortion in the market, compromised sugar quality and loss of government revenue. It was also noted some countries within the COMESA region are capitalizing on the Rules of Origin as provided under the COMESA Treaty, to export sugar to Kenya from other Countries which results to dumping.

In the past, millers have been allowed to import sugar during periods of shortage. This creates conflict of interest where the millers now tend to concentrate on sugar importation as opposed to sugar milling. This explains why there is depressed miller investment in cane development.

In the short term, the Taskforce recommends that control measures be put in place to ensure imports do not exceed the deficit and inhibit illegal imports through porous border points. This will be achieved by developing an effective regulatory framework and stakeholder engagement in coordinating Sugar import/export in compliance with the COMESA Safeguards under Article 10 and Article 28. The Taskforce also recommends that millers be prohibited from importing sugar to meet the national deficit.

In the medium term, the Taskforce recommends that all the available production capacities be utilized efficiently to meet the national shortfall and have surplus for export.

4. Compliance with the COMESA recommendations

Kenya is a signatory to the COMESA Free Trade Agreement which provides for quota free and duty free access of all commodities from member states. Under the COMESA Free Trade Area (FTA) agreement, sugar from partner states access the Kenyan market on a duty free, quota free basis. Kenya applied for protection for the sugar sector by way of a safeguard under Article 61 of the COMESA Treaty so that sugar exports from COMESA to Kenya are subject to customs duties. The safeguard was first implemented in March 2002 for an initial period of twelve (12) months and subsequently renewed nine times by the Council of Ministers.

The primary objective of the safeguard was to accord Kenyan sugar producers, protection for some time. Over this period farmers and millers, in collaboration with Government and other concerned stakeholders, were expected to address the constraints leading to the non-competitiveness of the sector by undertaking ten strategic interventions.

The COMESA safeguards extension ends in 2021 and the Country is still lagging behind in implementing two outstanding conditions out of ten initially given; that is transition from cane payment model based on weight to one based on quality and privatization of public owned mills. The industry is expected to have met these outstanding conditions and be competitive by 2021. It is therefore recommended that all efforts be put in place to ensure Kenya is self-sufficient in sugar production by 2021 on a cost effective basis. If Kenya is to continue complying with COMESA conditions, there will be need to expedite the privatization of public owned mills and transition to quality based payment.

5. Pricing and funding mechanism that enhances income to stakeholders

i. Pricing

The current pricing mechanism provides for payment based on weight and not quality. This neither promotes the development of quality cane nor contributes towards the industry's competitiveness. Some of the factories have invested in value addition however, the farmer does not benefit from proceeds from the sale of value added products. In addition the determination of costs of input, services and credit to the farmer is unilaterally taken by service providers at the exclusion of the farmer. The high cost of inputs, services and credit therefore erode farmers' profit margins. It is recommended that the industry expedites the transition to quality based payment, the pricing mechanism provides for benefit sharing between farmers and millers of proceeds from sugar and value added products and the scope of the Sugar cane Pricing formulabe expanded to include pricing mechanisms for all cane related charges paid by the farmer.

ii. Inadequate funding

Before the establishment of the Sugar Development Fund (SDF), cane production was financed by millers and individual farmers. With the introduction of the Sugar Development Levy (SDL) in 1992, the fund grew to become the single largest source of funding for research, cane development, factory rehabilitation and infrastructure development. The de-gazettement of SDL in 2016 largely contributed to inadequate funding for research, cane development and factory rehabilitation, resulting in low research initiatives, cane shortage and low factory efficiencies. For instance the then Kenya Sugar Research Foundation (KESREF) was effectively funded by the SDF. Under this arrangement, Kshs. 610 Million was disbursed to KESREF in 2013/14 financial year as compared to Kshs 56 Million to SRI in the financial year 2017/18. This represents a 91% reduction in research funding and has completely paralyzed the institute.

It is recommended that Sugar Development Levy (SDL) be reinstated as a source of affordable credit to support the industry's financial requirements.

6. Taxation structures in the sugar sector to create incentives for investment

Sugar is not classified as a basic food item and hence attracts Value Added Tax (VAT) currently at 16%. In 2002 the Government introduced 16% VAT of on transportation thereby increasing the overall cost of cane transport. This tax is often passed on to the farmer, further reducing his profits from sugarcane production. Taxation on agricultural machinery was abolished in 2006 even though VAT is still charged on spare parts. County governments also levy cess for transportation of agricultural produce either directly or through other parties. Taxation therefore accounts for 26% of the production costs.

To address this, the Taskforce recommends that sugar be classified as a food item and both National and County Governments review the taxation regime to create a tax friendly investment environment.

7. Improve competitiveness of public-owned sugar factories

Public owned mills have unique challenges which include high debt portfolio, lack of working capital, ageing equipment, obsolete technology, governance issues, inability to pay farmers and employees promptly, low factory efficiencies and high cost of production. Muhoroni and Miwani sugar companies continue to operate under prolonged receivership, which has affected their technical and financial performance.

In the short term, it is recommended that the Boards and management of the public owned mills be restructured to respond to the current need of turning around these companies. There is also urgent need to mobilize resources from both National and County Governments to keep the mills running and ensure farmers, employees and suppliers are paid promptly.

In the medium term, there is need to enhance the financial and technical capacity of these mills through financial restructuring and mobilizing resources for capital injection from strategic investors. This will allow for expansion of operations, rehabilitation and modernization.

8. Policy, Legal, Regulatory and institutional reforms

i. Develop Industry Policy

There are a number of challenges that relate to and arise from the current Policy, Legal, Regulatory and institutional framework. This calls for reforms which include the development of an industry Policy to facilitate a conducive environment for developing the sector.

ii. Gazettement of Regulations

The Crops Act No. 16 of 2013 gives provision for the development of crop regulations, which provide for registration and licencing, production, processing, marketing and distribution. The regulations also provide for the obligations of each stakeholder and the compliance framework.

The industry has operated without regulations since 2001. This has created an environment of disorder in the sector, non-adherence to existing standards and laws and failure to honour contracts and obligations, making the industries strive towards competitiveness difficult. It is therefore recommended that the gazettement of industry regulations be expedited.

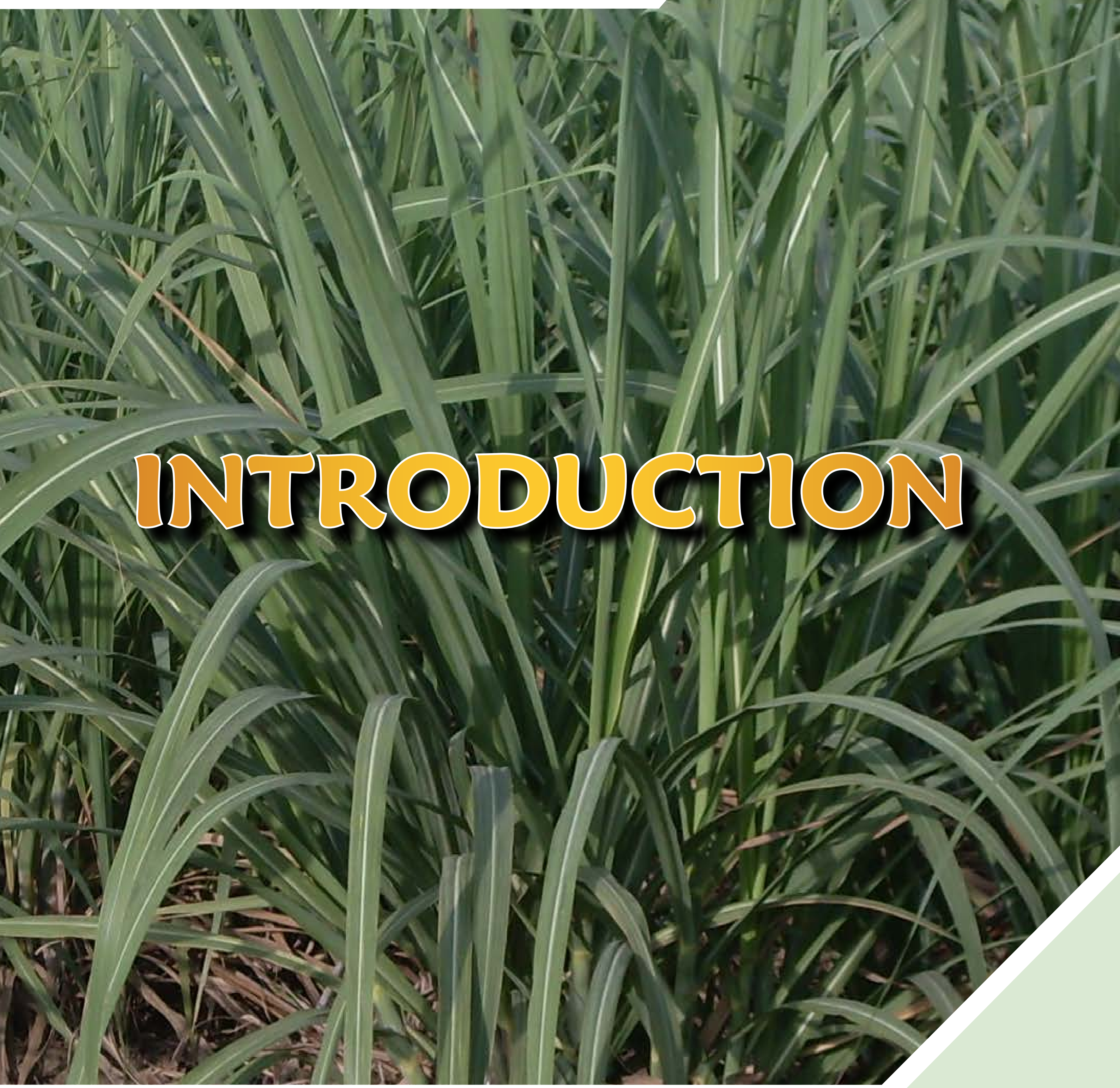
iii. Review of various Acts of Parliament

Some of the existing laws relating to the sugar sub-sector are inadequate to address the current and emerging challenges, while others do not align to the Kenya 2010 Constitution. On the other hand, it has been observed that there is a need for a stand-alone legislation for the sugar sector that provides for a legal regime, an independent regulator and research institute. This therefore calls for legal reforms as the bedrock for a thriving industry.

iv. Establishment of Sugar Sector Stakeholders Committee

There has been lack of a governance structure to coordinate cane production, supply and processing in the industry. This has led to cane poaching, farmer exploitation, inadequate financial and technical support for farmers, long distance hauling of cane leading to wastage and staleness, high cost of transport, harvesting of immature cane and consequent loss of income, acute cane shortage and overall disharmony in the sub-sector. Consequently, there has been distorted investment priorities in the industry including excessive investment in weighbridges, long haul transport and sugar importation among others, at the expense of cane development and processing. It is recommended that a Sugar Sector Stakeholders Committee (SSSC) comprising representatives of key stakeholders be established, as a way of providing a self-governance framework for coordination of industry activities.

1 Chapter One



INTRODUCTION

1.1. SUGAR INDUSTRY IN KENYA

The agricultural sector is a major driver of Kenya's economy and livelihoods for the majority of Kenyans contributing 26% directly to the Gross Domestic Product (GDP) and a further 25% indirectly through linkages with agro-based and associated industries.

The Kenya sugar sub-sector plays a vital role in the agricultural sector and the Kenyan economy. The industry contributes to food security, employment creation, regional development and improved livelihoods for more than 8 million Kenyans. It is a source of income for over 400,000 small-scale farmers who supply over 90% of the milled cane. The sugar crop is envisaged to play a bigger role not only in the achievement of the Vision 2030 goals but also the Government's Big 4 agenda as an enabler in food and nutrition security and manufacturing sector.

Sugarcane is grown in 14 counties spread across Western, Nyanza, Rift Valley and Coastal regions mainly on small-scale farms. Kenya has the potential to produce enough sugar to satisfy her domestic demand and provide surplus for export. There are 14 sugar factories with a total installed milling capacity of 41,000 TCD. This requires over 9.8 Million Tons of cane per annum which translates to 1.09 Million tons of sugar. This therefore exceeds the annual demand of table sugar. Due to many challenges and inefficiencies in the value chain, the industry has been unable to meet domestic demand. In the year 2018 local sugar mills produced 490,704 MT being 57% of the domestic requirements of table sugar which currently stands at 850,000 MT. This is a decline from 639,741 MT in 2016 representing a 23% decline.

Kenya has an annual requirement of 160,000 MT of refined sugar, which the country does not currently produce. The deficit of both table and refined sugar is met through importation from the COMESA region and globally.

1.2. TASKFORCE OF SUGAR INDUSTRY STAKEHOLDERS

In view of the challenges facing the industry H.E. the President and Commander in Chief of the Defense Forces of Kenya Uhuru Muigai Kenyatta directed that a Taskforce of the Sugar Industry Stakeholders be established to examine the challenges bedeviling the sub-sector and make appropriate recommendations for the development of the sugar industry in Kenya.

In this regard, a Taskforce was established under the Gazette Notice No. 11711 of 9th November 2018 whose Terms of Reference were to:

a) Review the policy, legal, regulatory and institutional framework of the sugar industry and make appropriate recommendations;
b) Review past, present and emerging challenges facing the sugar industry and make appropriate recommendations;
c) Review the sugar industry value chain including research and make appropriate recommendations;
d) Review importation and taxation structures in the sugar sector and make appropriate recommendations;
e) Undertake an absolute and comparative assessment of the sugar industry's competitiveness in the East African Community (EAC), COMESA and globally, and make appropriate recommendations;
f) Undertake an analysis of the roles of different stakeholder segments, and make recommendations on how stakeholders can collaborate amongst themselves and with the National and County governments to develop the sugar sub-sector;

g) Identify and evaluate the most suitable strategic interventions to revitalize the state owned sugar mills;
h) Review the pricing mechanisms in the sugar sector and make appropriate recommendations;
i) Review funding mechanism and make appropriate recommendations;
j) Address all other issues that may revitalize the sugar industry;
k) Develop a comprehensive report with recommendations to be implemented in the short term, medium term and long term.

1.3. METHODOLOGY

The Taskforce under took the following initial activities in order to effectively discharge its mandate:-

i. Set up a secretariat to carry out the administrative and logistical aspects of its mandate;
ii. Established sub-committees consisting of members of the Taskforce to examine various thematic issues within the sugar industry value chain;
iii. Held an initial meeting and members of the Taskforce interpreted the Terms of Reference (TORs) and the expected outputs of theTaskforce;
iv. Adopted operational rules of theTaskforce and other ground rules;
v. Held secondary data and reports review meetings. Some of the past reports and legislations reviewed are:
    - ✓ A roadmap for bio-fuels in Kenya – Obstacles and opportunities
    - ✓ AFA Act 2013
    - ✓ Baseline study for sugar agribusiness in Kenya by Kenana
    - ✓ Comparative assesement of the competitiveness of sugar production in the COMESA region
    - ✓ Constituion of Kenya 2010
    - ✓ Crops Act No of 2013
    - ✓ Export Prossessing Zone report on the Sugar Industry
    - ✓ Kakamega Tasforce Report
    - ✓ Kenya Anti-corruption Commission review of the Policy, Legal and Regulatory framework for the sugar sub-sector in Kenya
    - ✓ Land Commission report
    - ✓ Proposal for the Revival of the Sugar Industry by Sugar Veterans Consultative Forum
    - ✓ Situational Analysis of Energy Industry, Policy and Stragey for Kenya
    - ✓ Sessional paper No. 12 of 2012 on write off of Excess Gvenment of Kenya debt owed by the public sector owned Sugar Companies
    - ✓ Sessional Paper No. 4 on Energy
    - ✓ Study on Sugarcane transport cost
    - ✓ Vision 2010.

vi. Invite received, considered and analysed data, reports, experts opinions/ presentations, memoranda from members of the public, various stakeholders and institutions in the sugar sub-sector. Those who made presentations to the taskforce are:

- ✓ Competition Authority
- ✓ Privatization Commission
- ✓ Kenya National Federation of Sugar cane Farmers
- ✓ Kenya Union of Sugar Plantation workers
- ✓ Sugar Industry by Sugar Veterans Consultative Forum
- ✓ MOALF&I
- ✓ Miller Bwire – Legal expert
- ✓ Fred Oketch - Sugar expert in processing
- ✓ Pierre Redinger – Agriculture Manager, Trasmara Sugar Company
- ✓ Prof. Larry Gumbe – Expert in restructuring
- ✓ Kwale International Sugar Company
- ✓ Kwale Sugarcane Farmers Cooperative

vii. Held public participation forums in all the sugar cane growing venues and met sugar cane farmers, millers, farmer organizations, cooperatives societies, unions, outgrower institutions, local leaders, elected leaders, cane tranporters, cane cutters employees, suppliers and other relevant stakeholders in the following venues:

- ✓ Busia Sugar Industries
- ✓ Butali Sugar Company
- ✓ Chemelil Sugar Company
- ✓ Kibos & Allied Sugar Company
- ✓ Kwale Sugar Company
- ✓ Miwani Sugar Company
- ✓ Muhoroni Sugar Company
- ✓ Mumias Sugar Company
- ✓ Nyachenge Market Centre (Nyamarambe)
- ✓ Nzoia Sugar Company (Mabanga FTC)
- ✓ Olepito Sugar Company
- ✓ Soin Sugar Company (Kipsitet)
- ✓ South Nyanza Sugar Company
- ✓ Sukari Industries
- ✓ Transmara Sugar Company
- ✓ West Kenya Sugar Company
- ✓ Kwale International Sugar Company
- ✓ Sugar Importers

viii. Held two high level leadership meetings at Grand Royal Swiss Hotel, Kisumu.

ix. Prepared an interim report of the Taskforce giving highlights of short term and long term measures that the both the National and County Governmnets and all other stakeholders are supposed to undertake;

x. Held a stakeholder validation meeting.

xi. Prepared the final report that documented the work of the Taskforce and set out the recommendations of the Taskforce, with the implementation framework.

In line with its TORs, theTaskforce assessed and interpreted its assignment as follows—

a) Review the policy, legal, regulatory and institutional framework of the sugar industry and make appropriate recommendations;

The members examined the Constitution of Kenya 2010, Vision 2030 and relevant policies mainly related to sugar industry especially on production, processing, marketing and taxation. The members also interrogated various Acts of Parliament governing the sub-sector including regulatory, labour, environmental, consumer protection, enterprise management, energy, resource management and utilization and fiscal laws. Laws relating to powers and functions of National and County Government were also reviewed. The Taskforce further reviewed the various legal findings in past court decisions.

b) Review past, present and emerging challenges facing the sugar industry and make appropriate recommendations;

The members examined the challenges across the sugar value chain including: Research, cane production, cane processing, marketing, financing and regulatory framework. Appropriate recommendations to address these challenges were made.

c) Review importation and taxation structures in the sugar sector and make appropriate recommendations;

The Taskforce examined the existing sugar importation and taxation regimes, identified the shortcomings and made appropriate recommendations.

d) Undertake an absolute and comparative assessment of the sugar industry's competitiveness in the East African Community (EAC), COMESA and globally, and make appropriate recommendations;

The team sought the establish the comparative cost of production with a view to making recommendations that would provide for increased competitiveness in the region.

e) Undertake an analysis of the roles of different stakeholder segments, and make recommendations on how stakeholders can collaborate amongst themselves and with the National and County governments to develop the sugar sub-sector;

The roles of industry stakeholder were defined and recommendations made that would promote harmony, order, and synergy in the industry. The implementation of these recommendations is also envisaged to lead to enhanced efficiency, reduced cost of production, increased production and productivity.

f) Identify and evaluate the most suitable strategic interventions to revitalize the state owned sugar mills;

The taskforce reviewed the current status of public owned mills, their technical and financial performance, their relationship with the farmers and suppliers in general. The Taskforce gave a raft of recommendations to address the unique challenges of public owned sugar mills.

g) Review the pricing mechanisms in the sugar sector and make appropriate recommendations;

The taskforce reviewed the cane pricing formula which takes into account cane weight, net ex-factory sugar price and farmer sharing ratio. The team also noted other pricing aspects in the industry that should be brought under the ambit of the Sugar Cane Pricing Committee.

h) Review funding mechanism and make appropriate recommendations;

A review of the funding model was undertaken and recommendations made. This will mainly address the issue of funding for research and cane development.

2 Chapter Two

BACKGROUND INFORMATION

2.1. HISTORY OF THE SUGAR SUB-SECTOR

Sugar cane was introduced to Kenya in 1902 and initially milled by jaggeries. The first sugar factory was established in 1922 in Miwani Kisumu District, followed by Ramisi in the coastal region in 1927. After independence, the Government explicitly expanded its vision of the role and importance of the sugar industry as set out in Sessional Paper No. 10 of 1965 which sought, inter alia, to:

i. Accelerate socio-economic development
ii. Redress regional economic imbalances
iii. Promote indigenous entrepreneurship
iv. Promote foreign investment through joint ventures.

In pursuit of the above goals, the Government established five additional factories in the 1960s and 1970s: Muhoroni (1966), Chemelil (1968), Mumias (1973), Nzoia (1978), and South Nyanza (1979).

The establishment of the public owned factories was predicated on the need to:

- Achieve self-sufficiency in sugar with surplus for export in a globally competitive market
- Generate gainful employment and create wealth
- Supply raw material for sugar related industries
- Promote economic development in the rural economy and beyond through activities linked to the sugar industry.

Following this investment in capacity expansion, statistics from the then Kenya Sugar Authority indicate that Kenya attained self-sufficiency in 1980 and 1981, by producing 401,239 MT against a demand 299,514 MT in 1980 and 368,970 MT against a demand of 324,054 MT in 1981.

The successful implementation of the expansion programme in the earlier years has been attributed to:

a) The regulatory and manpower development systems that were put in place by the Government;
b) Engagement of a Technical Management Agency;
c) Facilitation of frequent training of manpower by the then Kenya Sugar Authority and overseas exposures for technical personnel in countries such as Mauritius;
d) The industry had a competent human resource base with the requisite expertise;
e) The management of the sugar mills had plans for the selection of high yielding cane varieties and adequate quantity. There was synchronised planning between mills requirement and sugar cane supply; and
f) There was adequate acreage to service the mills.

With the liberalization of the economy in 1980, the sugar sector attracted private investment. Since 1981, nine private owned mills have been established with a potential for more.

Table 1: List of sugar factories

	Company	County	Year	Capacity TCD
1.	Miwani (In receivership)	Kisumu	1922	-
2.	Ramisi Sugar (Defunct)	Kwale	1927	-
3.	Muhoroni (In receivership)	Kisumu	1966	2200
4.	Chemelil Sugar Company	Kisumu	1968	3000
5.	Mumias Sugar Company	Kakamega	1973	8400
6.	Nzoia Sugar Company	Bungoma	1978	3000
7.	West Kenya Sugar Company	Kakamega	1981	4200
8.	Sonysugar Sugar Company	Migori	1989	3000
9.	Soin Sugar Company	Kericho	2006	150
10.	Kibos Sugar Company	Kisumu	2008	3000
11.	Butali Sugar Company	Kakamega	2011	2500
12.	Transmara Sugar Company	Narok	2011	3000
13.	Sukari Sugar Company	Homa-Bay	2012	2800
14.	Kwale International Sugar Company	Kwale	2014	3000
15.	Ole Pito Sugar Company	Busia	2017	1250
16.	Busia Sugar Company	Busia	2018	1500
	TOTAL			**41000**

2.2. KEY STAKEHOLDERS IN THE SUGAR INDUSTRY

Sugar sector stakeholders are the players involved in every stage of sugar production right from the farm through processing, to the consumer. The tertiary level stakeholders are the user of the co-products. Key stakeholders were identified and described as follows:

a) Farmers

Farmers are recognized by the Crops Act 2013 as growers who produce sugarcane or any other scheduled crop in Kenya for the manufacture of sugar. Therefore the farmer includes both those who own outgrower farms as well as the nucleus estates within the zone and supply cane to the millers. Outgrower farmers supply over 90% of the cane milled. Majorly outgrower farmers comprise 95% of small-scale and 5% large scale farmers.

b) Farmer Institutions

Farmer institutions include Outgrower Companies, Societies, Community based organizations, Unions and Savings and Credit Co-operative Societies. These institutions draw their membership from sugarcane farmers who grow and supply cane to fatories. Majority of the farmer institutions were created as channels for mobilizing farmers and for the supply of credit, among others. However, they have not adequately performed the tasks for which they were created. Management of most of these institutions is weak and riddled with leadership challenges. In addition the Outgrower Companies and some Cooperative Societies have huge debts.

c) National Government

The Government of Kenya (GoK) through Ministry of Agriculture, Livestock Fisheries and Irrigation (MOALF&I) has the overall responsibility for the industry's development. The National Government has a role of supporting the industry through regulation, enhancement of competition and fairplay, and provision of an enabling environment for all stakeholders. Currently, the GoK through the National Treasury is the largest shareholder of the public owned mills and has remained a major financier of their operations.

Other agencies under the national Government include Kenya Bureau of Standards (KEBS), National Environmental Management Authority (NEMA), Kenya Revenue Authority (KRA), Kenya Plant Health Inspectorate Services (KEPHIS), Pest Control Products Board (PCPB) and Competition Authority of Kenya (CAK).

d) County Governments

The Constitution of Kenya 2010 introduced a new dynamic relevance to the sugar sector with the devolution of certain functions to the county governments. The County Government is responsible for the implementation of agriculture policy, crops husbandry, plant and animal disease control among others.

The Intergovernmental Relations Technical Committee (IGTRC) and Council of Governors (COG) as mandated by the Intergovernmental Relations Act 2012 facilitate intergovernmental relations between the national and county governments and amongst county governments by ensuring consultation, coordination and cooperation.

e) Sugar Directorate

The Agriculture and Food Authority-Sugar Directorate (AFA-SD) was established under the Agriculture and Food Authority Act 2013 as one of the Directorates of AFA. The AFA Act 2013 and the Crops Act 2013 seek to streamline the agricultural sector and introduce new governance and supervisory structures in order to better coordinate agriculture in a devolved dispensation. This is through the consolidation of the laws governing the development, regulation and promotion of agriculture.

f) Sugar Research Institute

The Sugar Research Institute (SRI) is the research arm of the industry established under the Kenya Agriculture Livestock Research Organization (KALRO) Act of 2013. SRI has the mandate to conduct research and develop appropriate technologies, products and services for the production of sugar cane and related crops, the milling of such crops, utilization and marketing of sugar and its co-products. The Institute is also required to carry out tests and disseminate improved production technologies, in collaboration with stakeholders, to the users of such technologies.

g) Millers

Millers are licensed to operate a sugar or a jaggery mill for the production of sugar and other products. The millers have an association; Kenya Sugar Manufacturers Association (KESMA) that advocates for their interests. Millers are a critical stakeholder in the sugarcane industry because of the role they play in processing and value addition. The profitability and strength of the industry depends on how efficiently they operate.

Jaggeries are small scale mills that produce jaggery as an end product. They process about 10% of the available cane and therefore provide an alternative market for farmers' cane. Most of the jaggeries operate outside the existing legal framework, contributing to the challenges of synchronization and cane shortage. Under the new regime it is envisaged that Jagerries will operate within the legal and regulatory framework like all other mills.

h) Distillers

Distillers process molasses as feedstock into Ethanol and its derivatives. The Agro-Chemical and Food Company Limited (ACFC) and Kisumu Molasses plant, currently operating as Spectra International were established in line with the Government's Policy on blending fuel with Ethanol. When the programme failed to take off, the factories diversified into production of spirits, yeasts and other molasses based products. Recent distillery installations include London Distillers, Mumias and Kibos Sugar Companies amongst others.

i) Kenya Society of Sugarcane Technologists (KSSCT)

Kenya Society of Sugarcane Technologists (KSSCT) is an affiliate body of both the International and East African Societies of Sugarcane Technologists (EASST). It is an association of technical professionals in the sugar value chain and draws its membership from individual and corporates with interest in the sugar industry.

j) Cane cutters

Cane cutters are individuals contracted either by a farmer or a mill to harvest sugar cane.

k) Cane Transporters

Cane transporters are firms and individuals traditionally contracted by farmers to transport cane from the farms to the factory.

l) Other Industry Stakeholders

Other industry stakeholders include consumers, importers, financial institutions, special interest groups and agro dealers.

m) Stakeholder collaboration

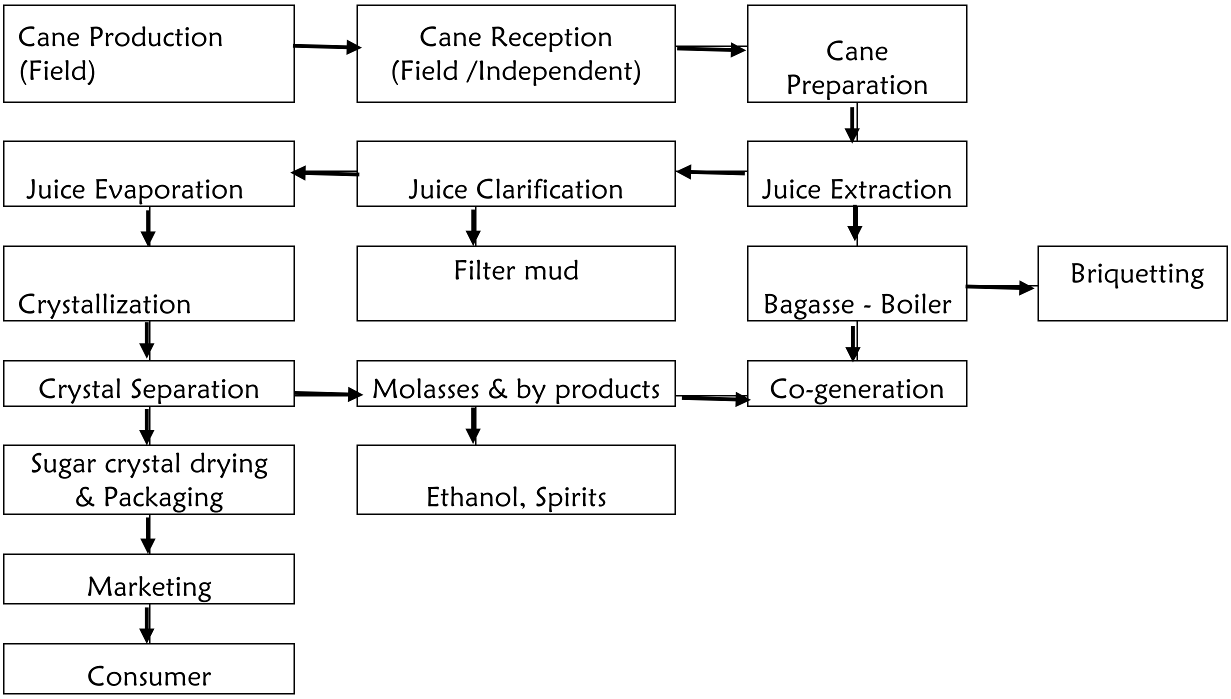
This report has recommended the establishment of a governance framework that will enhance stakeholder collaboration, stregthened by a strong regulatory framework that defines distinct roles of all players in the value chain and mitigates against conflict of interest. The framework provides for an apex body comprising representatives of key stakeholders, growers, millers, regulator, Sugar Research Institute, County and National Governments. The zones will be governed by regional committees and each region will be expected to have its own research facility to work within that agro-ecological zone.

2.3. SUGAR PROCESS FLOW

Sugar is made from sugarcane plant grown in the farms. The cane is harvested and transported to the mill where it is received, weighed and shredded. The juice in the cane is extracted. The juice has impurities which are separated in a clarification process and thereafter treated with phosphate, lime and heat. The clarified juice obtained is then concentrated through evaporation of water to form syrup. The syrup is processed into massecuite. The massecuite is processed in centrifugation process where sugar crystals are separated from the liquid (molasses), thereafter dried, packaged and taken to market.

The main by products from this process are bagasse, filter mud and molasses. Bagasse is further used in co-generation plant to produce steam and electric power, filter mud can be used in the farms as farm manure and molasses products include animal feeds, Ethanol, spirits, yeast and Carbon Dioxide.

Figure 2: Sugar process flow



3 Chapter Three

CHALLENGES FACING THE SUGAR INDUSTRY

3.1. INTRODUCTION

The sugar industry continues to experience a number of challenges that threaten its sustainability. These include high cost of production, inadequate cane supply, low productivity across the value chain, inadequate regulatory framework, poor governance, indebtedness, low research initiatives, low value addition initiatives, cyclic markets, uncontrolled and illegal sugar imports, poor governance, ageing equipment and delayed payment to cane farmers, employees and suppliers among others.

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

This chapter therefore seeks to analyse the challenges along the value chain and give appropriate recommendations to address them.

3.2. RESEARCH AND DEVELOPMENT

The country's main agricultural research institution currently is KALRO-SRI. It was established by the KALRO Act, No.17 of 2013, through merging of Kenya Agricultural Research Institute (KARI), Coffee Research Foundation (CRF), Tea Research Foundation of Kenya (TRF) and Kenya Sugar Research Foundation (KESREF). KARI was primarily funded by the government and key development partners while research on coffee, tea and sugarcane was financed through respective commodity levies and development partners. In the sugar industry, SRI is supposed to play the critical role of availing improved technologies to enhance farm productivity and factory efficiency. Prior to the merger, the former KESREF now SRI had developed and released 21 high yielding, high sucrose and early maturing varieties. The functions of the SRI are to:

a) Generate and disseminate knowledge, improved technologies and innovations for sugar crops production systems;

b) Generate and disseminate appropriate sugar processing technologies, products and services;

c) Contribute to formulation of appropriate policies and identification of appropriate market options for an integrated sugar industry;

d) Develop effective and sustainable institutional capacity for undertaking research in all aspects of sugar production; and

e) Enhance availability of information on sugar crops production and sugar processing technologies.

Research and development in the sugar industry is supposed to cover the entire value chain. However, the most visible research is limited to seed cane variety development and soil testing. Research was previously funded by the SDL. Currently, the institute is funded by the exchequer, however limited resources have been voted for this function.

a) Inadequate Research

There has been reduced focus on sugar research to the disadvantage of the industry. This has mainly been due to inadequate funding especially after the merger. To enable the institute focus on sugar research and ensure that the dedicated funds are restricted to sugar research, there is need to establish an independent sugar research institute.

The agro-ecological conditions of the sugar growing regions vary and hence require focused research that will enable the development of agro-ecological suitable varieties. The lack of this focused research has led to low productivity and even crop failure in some instances.

Recommendations

i. *Re-establish an independent public sugar research institute;*

ii. *Establish research field stations to undertake agro-ecological research; and*

iii. *Reinstate the SDL to support the research institute.*

b) Lack of variety development and control framework

The industry lacks a robust variety development programme and consequently is heavily dependent on legacy varieties. This exposes the industry to significant risks arising from environmental changes and evolution of new pests and diseases, with the potential of wiping out significant area under cane production. Yields have also consistently declined in the sector despite various interventions. There is also a lack of a variety control framework that governs the research, multiplication and transfer of seed cane across regions.

Recommendations

i. *Establish a variety development and release programme jointly with stakeholders, to mitigate risks against crop failure due to pests and diseases; and*

ii. *Develop a protocol and legal framework.*

c) Limited research scope

Research is key to addressing productivity challenges along the entire sugar value chain and assuring the industry's sustainability. However, research has predominantly concentrated on cane varietal development and soil testing. There is need therefore for SRI to expand its scope to cover the entire sugar value chain in line with their mandate.

Recommendations

i. *Increase funding to enable SRI carry out research across the value chain; and*

ii. *Restructure the research institute to address the challenges across the value chain.*

d) Lack of diversification in sources of raw material

Sugar cane has been the single source of raw material for sugar production. Studies have shown that alternative sources like sugar beet can also be developed in areas that are ecologically suitable. There is limited research in sugar beet farming and development of appropriate milling technologies, which would go a long way in increasing economic opportunities and making Kenya attain self-sufficiency in sugar production.

Recommendation

i. *Promote research in alternative sources of raw material.*

3.3. SUGARCANE PRODUCTION

a) Decline in cane production

The cyclic nature of sugar cane production is attributed to farmer apathy due to delayed payments, lack of synchronization between cane supply and milling capacity, unsuitable cane varieties, poor crop husbandry practices leading to decline in yields and adverse weather conditions.

There has been a decline in total area under cane since 2015 from 223,605 Hectares (Ha) to 191,215 Ha in 2018, with a corresponding decline in yield from 66 Tons per Ha to the current 55 Tons per Ha. The cane milled during the two years also declined from 7,164,790 MT to 4,751,605 MT in the same period representing 45% of the total cane requirement for all the factories. The graphs below indicate this trend.

Graph 1: Trend in area under cane

Graph 2: Trend in Cane delivered to factories

The total installed mill capacity as at 2018 stood at 41,000 TCD. The factories however operated at an average efficiency of 68% translating to capacity utilization of 24,600 TCD.

Table 2: Milling Capacity, efficicency and capacity utilization

YEAR	INSTALLED CAPACITY	CAPACITY UTILIZATION	EFFICIENCY
2013	35250	28,200.00	80
2014	38250	28,576.58	74.7
2015	38250	26,296.88	68.8
2016	38250	26,220.38	68.6
2017	39500	19,268.10	48.8
2018	41000	24,600.00	60

SOURCE: AFA KENYA

In the last five years cane availability has consistently not matched the factory capacity hence the mills have not been able to meet their cane requirements. At an average factory efficiency level of 80%, cane requirement will be 9.84 Million MT which translates to sugar production of 1.09 Million MT per annum. Currently the area under cane is 191, 215 Ha producing 4.75 Million MT of cane against a requirement of 263,959 Ha under cane to produce 9.8 Million MT of cane (assuming a yield of 65 Tons Cane per Hectare (TCH).

Table 3: Cane requirement, actual production, cane deficit and financial requirements

YEAR	INSTALLED CAPACITY	FACTORY EFFICIENCY	CAPACITY UTILIZATION	CANE REQUIREMENT	IDEAL SUGAR PRODUCTION	ACTUAL CANE PRODUCED	DEFICIT IN CANE SUPPLY	DEFICIT CANE ACREAGE	FINANCING REQUIRED
2013	35250	80%	28,200.00	8,460,000.00	940,000.00	6,673,725	1,786,275.00	27,481.15	2,748,115,384.62
2014	38250	80%	30,600.00	9,180,000.00	1,020,000.00	6,409,929	2,770,071.00	42,616.48	4,261,647,692.31
2015	38250	80%	30,600.00	9,180,000.00	1,020,000.00	7,164,790	2,015,209.94	31,003.23	3,100,322,984.62
2016	38250	80%	30,600.00	9,180,000.00	1,020,000.00	7,151,670	2,028,330.25	31,205.08	3,120,508,069.23
2017	39500	80%	31,600.00	9,480,000.00	1,053,333.33	4,751,605	4,728,394.76	72,744.53	7,274,453,476.92
2018	41000	80%	32,800.00	9,840,000.00	1,093,333.33	4,973,410	4,866,590.00	74,870.62	7,487,061,538.46

Source: AFA KENYA.

Recommendations

i. *Financial and technical support to farmers to develop cane;*

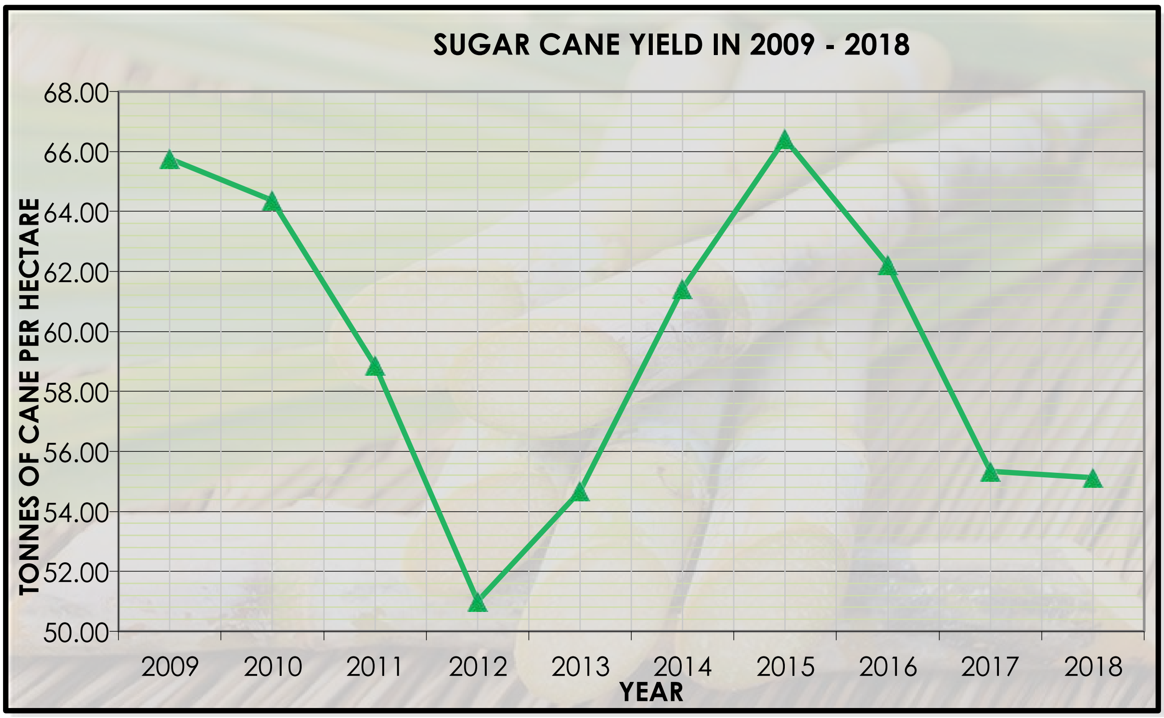
ii. *Introduce cane in new areas that are ecologically suitable for cane farming: and*

iii. *Adopt irrigation farming to mitigate against adverse weather.*

b) Decline in cane yields

Past studies have shown that the industry can attain yields as high as 120 TCH under rain fed conditions, which can further be enhanced by irrigation. However the average cane yield for the industry was 66.41 and 53.34 tonnes per hectare in 2017 and 2018 respectively. The decline is attributed to poor crop husbandry practices, low uptake of irrigation technologies, change in weather patterns, low adoption of improved varieties, low quality non-certified seed, poor soil testing and extended usage of inorganic fertilizer (DAP & Urea) leading to increasing soil acidity that negatively impacting soil health.

Graph 3: Trend in Cane yields



Recommendations

i. *Enforce farmer miller contracts that require cane to be harvested at maturity;*
ii. *Develop and implement incentives for adoption of new technologies along the value chain;*
iii. *Strengthen the technical expertise of the research institute to improve its advisory capacity to County Agriculture extension services;*
iv. *Invest in irrigation;*
v. *Adopt Soil fertility management practices; and*
vi. *Provide financial services to farmers.*

c) *Low irrigation initiatives*

There is continued reliance on rain fed production in the industry. There is need to invest in irrigation infrastructure in order to increase acreage under irrigation for increased yields. Irrigation increases productivity and shortens maturity period to 10 - 12 months compared to 15 -18 of rain fed cane. Lack of irrigation makes the cane vulnerable to drought and reduced yields, which raises average cost of production.

Research trials have demonstrated the potential for increasing sugarcane productivity through irrigation. Despite the findings, only Kwale International Sugar Company Limited (KISCOL) in the Coast has invested in irrigation on commercial basis in their Nucleus Estate. Some millers e.g. Muhoroni, Nzoia and Chemelil sugar companies have initiated irrigation pilot projects using factory effluent water but this has not been sustainable.

Recommendation

i. *Develop effective irrigation infrastructure in collaboration with National Government.*

d) Poor synchrony in cane development to match mill requirement

There is poor material resource planning leading to misalignment in crop production and processing resulting in cane surplus/deficit. During periods of surplus cane production, there is a tendency of delayed harvesting leading to over mature cane and farmers are forced to dispose cane below cost. On the other hand, when there is undersupply, factories tend to harvest immature cane, to the disadvantage of farmers, given the fact that payment is made based on weight. This has been exacerbated by lack of and or weak enforcement of the contractual arrangements between farmers and millers.

Recommendations

i. *Develop systems that will ensure synchronization of milling capacity and sugarcane supply by:*
   - ✓ *Millers to determine annual mill cane requirements;*
   - ✓ *Developing farmer miller contracts that correspond to the requisite cane supply; and*

ii. *The regulator to ensure that the miller has adequate planned supply that matches factory capacity before licence issuance/renewal.*

e) Delayed payment to farmers

Delayed payment has demotivated farmers leading to low re-investment in subsequent crops and abandonment of cane farming. Delayed payments also force farmers to divert cane to other mills who may pay promptly but at unfairly low rates.

Recommendations

i. Establish regional cane catchment areas whereby two or more mills are clustered within a defined geographical region and farmers have the freedom to contract with any miller within the region;

ii. Enforce provisions within the farmer/miller contract that require that farmers be paid within seven days, failure to which the miller is penalised; and

iii. The farmer/miller contract should provide for an exit clause upon breach of contract.

f) High cost of cane production leading to uncompetitiveness

The current cost of cane production ranges between Kshs. 100,000 to Kshs. 120,000 per Ha. The costs include land development, input supply and credit among others. At an optimum yield of 65 TCH, the sugarcane cost of every ton of sugar is Kshs. 38,000 (USD 380) which is higher than the cost of sugar in some of the competing countries within the region. The cost of cane comprises 67% of the overall cost of production.

To exacerbate the high cost of production, the miller charges interest for supply of goods, services and credit that ultimately erode the profits of the famer. There is need therefore to develop a cost mechanism that guarantees low cost of production and high returns to the farmer.

Recommendations

i. *Introduce cost reduction management technologies along the value chain;*

ii. *Facilitate bulk procurement of farm inputs and machinery; and*

iii. *The scope of the cane pricing committee to consider all chargers recoverable from the farmer.*

g) Harvesting and transportation inefficiencies

Inefficient cane harvesting and transport systems impact negatively on the quality of cane and increases farm and transit losses. The losses are mainly due to poor harvesting practices such as harvesting premature cane, long collection periods and transit wastage. Cane harvesting brokerage is on the rise due to proliferation of weighbridges outside the formal cane production area. Bribery in various forms is also prevalent in the sector at the time of harvesting, which increases the farmers' cost of production. This cost is further compounded by the fact that there is unregulated sugarcane transportation across the zones and catchments.

Recommendations

i. *Develop harvesting & transport guidelines to reduce infield, transit losses and staleness index by:*
   - ✓ *Capacity building on cane harvesting;*
   - ✓ *Improving infrastructure that is; road/rail network, and harvesting equipment;*
   - ✓ *Modifying transport units to minimize transit losses;*
   - ✓ *Synchronizing milling requirements with cane harvesting to minimize loses;*
   - ✓ *Eliminating unethical practices in harvesting and transport;*

ii. *The scope of the cane pricing committee to consider all chargers recoverable from the farmer including transport; and*

iii. *Farmer miller contract to safeguard abuse of buyer power.*

h) Lack of transparency at the weighbridge

Farmers cited their inability to access the weighbridge records putting to question the credibility of the tonnage declared by the miller. It was also noted that farmers or their representatives do not have access to the weighbridge denying them an opportunity to verify their cane tonnage. Concerns have constantly been raised by farmers about the accuracy of weigh bridges and transparency of factory staff manning the weighbridges.

Recommendations

i. Full automation of weighbridges to enhance transparency on cane tonnage including message alerts to the farmer;

ii. In the interim, the out-grower organizations should monitor farmer's interests at the weighbridge; and

iii. The regulator to engage Weights and Measures to undertake random audits and calibration on a regular basis.

i) Inadequate support for cane development and extension services

There is inadequate support in the provision of farm inputs, access to affordable credit and technical services. This leads to poor crop husbandry practices and affects quality and productivity.

Recommendations

i. *The County Governments to take up their role of crop husbandry as envisaged in the S*chedule four of the Constitution;

ii. *Facilitate extension services, variety and soil matching, disease and pest controls, soil and plant tissue testing;*

iii. *Promote sustainable Soil Fertility Management practices to increase yields; and*

iv. Facilitate the development of effective irrigation infrastructure.

j) Low adoption of early maturing varieties

Early maturity is a desirable trait in sugar breeding and variety development. Early maturity contributes to higher returns to the farmer over time in terms of harvest cycles. This when complimented with optimal yield in biomass and sucrose content, addresses the multiple challenges of low productivity at farm and factory levels, high cost of production arising from high cane prices, low mill capacity utilisation and cane shortages. However, adoption rates for new varieties is low due to inadequate sensitization on the benefits of these varieties and the fact that their yields decline if not harvested on time. In the absence of enforceable farmer miller contracts, the millers often delay cane harvesting during seasons of excess cane supply to the detriment of the farmer.

Recommendations

i. *Enhance extension services;*
ii. *Bulking of early maturing varieties;*
iii. *Farmer sensitization on early maturing varieties;*
iv. *Farmer miller contracts; and*
v. *Timely harvesting or early maturing varieties to encourage farmer uptake.*

k) Low farm diversification initiatives

Sugar cane farmers have consistently engaged in mono-cropping despite the existing potential to diversify by intercropping sugarcane with suitable food crops. This will not only diversify the farmer's revenue base but will enhance food security in the farming community.

Cane farming requires that the land periodically be left fallow to enable it regenerate. Most farmers have consistently kept the land under cane, deteriorating the soils and consequently compromising the yields. In other sugar growing countries, regeneration has been enhanced by planting short term crops such as oats which are ploughed back into the soil before replanting sugarcane. This helps the successful maintenance of more ratoons.

Recommendations

i. *Develop guidelines on land use to promote diversification into food and fodder along with sugarcane, to optimize on income and enhance food security; and*
ii. *Farmer sensitization on the need, methods and benefits of diversification.*

l) Collapse of Out-grower institutions

With the collapse of out-grower institutions, farmers have had to rely on the millers for service provision, input supply and financing, which among other things compromises the farmers' bargaining power to negotiate with millers on various issues including cane prices, cost of input, and cost of transport among others.

Recommendations

i. *County Government to organize and revitalize farmer led institutions to wean farmers from dependence on the millers for credit and other services including extension; and*
ii. *Capacity building and application of good governance principles of farmer organizations to ensure adequate representation.*

m) Diminishing Land sizes

Over the years, there has been land sub-division leading to diminishing land sizes for cane farming. This does not allow the farmers to enjoy the economies of scale, as the minimum land requirement for profitable cane farming is at least two and half acres. There is need therefore to identify modalities that will enable farmers enjoy economies of scale.

Recommendation

i. *Facilitate block farming to enable farmer's pool resources for bulk procurement of farm inputs, services and machinery.*

3.4. SUGAR PROCESSING

a) Inefficiency and high cost of sugar production

The cost of production especially in public owned mills is comparatively high due to ageing and obsolete equipment, inefficiencies along the value chain, low value addition initiatives, inadequate cane supply, poor infrastructure, harvesting immature cane, bloated workforce, high cost of credit and poor governance among others.

Recommendations

i. *Develop and implement an industry cost cutting strategy along the entire value chain to reduce cost of production and increase efficiency;*

ii. *In the short term, restructure Boards and management of the public owned mills; and*

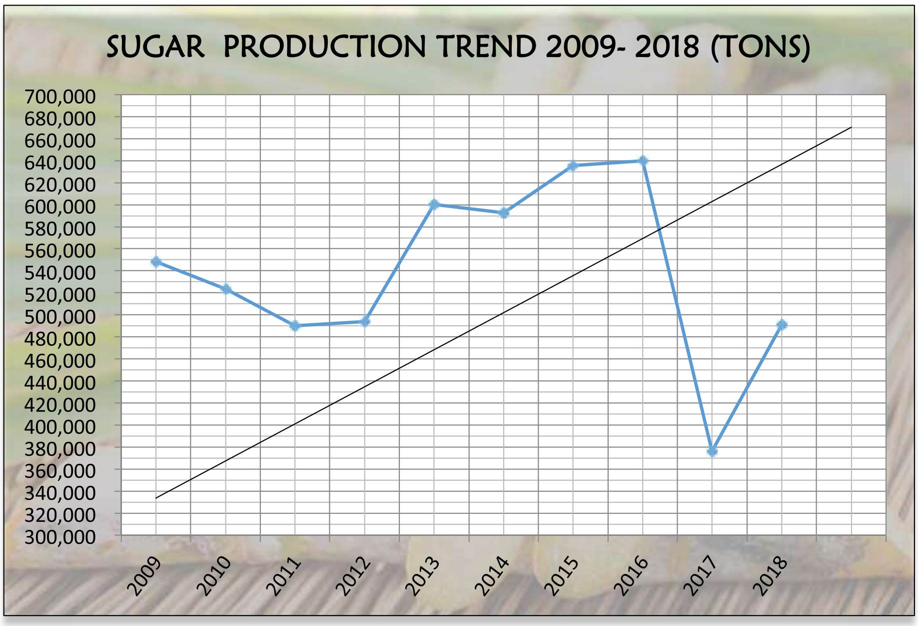
iii. *Invest in value addition to widen the industry's revenue base and reduce the overall cost of production.*

b) Unsynchronized cane development leading to Cane shortage/oversupply

Cane shortage leads to underutilization of factory capacity which affects factory conversion efficiency leading to poor conversion rate, low sugar yield in processing and resultant high cost of production. This also leads to poor cash flow, late payment of farmers and or lower grower prices. Severe sugar cane shortages as witnessed in the industry since 2014 to date is a consequence of poaching of contracted cane, harvesting immature cane, low productivity, low investment in cane development by millers and growers and low access to credit for cane development among other factors.

During over supply, there is delay in harvesting, leading to increase in harvesting age, quality deterioration, poor ratooning and farmers disposing cane at unfavorable prices. This also discourages farmers from re-planting, creating a shortage in the long run. Acute cane shortage led to a sharp decline in sugar production as indicated in the graph below:

Graph 4: Trend in sugar production



Recommendations

i. Gazettement and enforcement of Sugar Regulations;

ii. Development and enforcement of rules and codes of practice in cane production and manufacturing;

iii. Ban harvesting of immature cane in the Rules and regulations;

iv. Develop and implement an inter-mill cane transfer mechanism to stabilize the cane supply cycles;

v. The regulator to ensure that the miller has adequate planned supply of cane that matches factory capacity before licence issuance/renewal;

vi. Penalties against the miller for occasioning loss to farmer/industry be computed based on consequential loss calculation for harvesting immature cane;

vii. Data driven planning of cane production to match factory capacities;

viii. Clusters of factories within a region(s) to facilitate synchrony in planning production, cane supplies and resource mobilization; and

ix. Enforce farmer miller contracts to ensure cane harvesting is done at optimal age.

c) Lack of a governance structure to coordinate cane production, supply and processing

There has been lack of a governance structure to coordinate cane production, supply and processing in the industry. This has led to cane poaching, farmer exploitation, inadequate financial and technical support for farmers, long distance hauling of cane leading to wastage and staleness, high cost of transport, harvesting of immature cane and consequent loss of income, acute cane shortage and overall disharmony in the sub-sector. As a result, there has been distorted investment priorities in the industry including excessive investment in weighbridges, long haul transport and sugar importation among others, at the expense of cane development and processing.

There is need therefore to establish a governance framework for coordination of the industry activities. The members will be nominated by their respective stakeholder institutions and appointed by the Cabinet Secretary. The regions will be governed by regional committees and each region should prioritize the research areas within their agro-ecological regions. This is in tandem with Article 6(3) for the decentralization of services.

Recommendations

i. Establish a stakeholders' committee, comprising farmers, millers, regulator, research institute, national government and county government; and

ii. Develop a code of conduct for the industry.

d) Poor infrastructure – Roads, Drainages, Culverts

Infrastructure comprises the physical and non-physical basic facilities and installations that support the sector in its mechanical and technical productivity operations. For the Sugar industry, infrastructure includes roads, bridges, culverts, trans-loading stations, irrigation infrastructure, weighbridges and Information Communication Technology (ICT) Networks. In majority of the regions, the road network, bridges and culverts are inadequate in terms of coverage, design and maintenance. Many roads are impassable especially during rainy seasons and this results in a high turn-around time on delivery, high in-transit losses and the overall, low efficiency and competitiveness of the industry. Poor infrastructure also results in high transport costs that is met by the farmer, which impacts on the overall cost of production.

Recommendations

i. *National and County Governments their respective responsibilities in infrastructure development and maintenance as provided for in the Constitutions;*

ii. *Reinstate SDL to finance infrastructure development in the industry; and*

iii. *Millers to attract additional investment for plant, equipment and other factory related infrastructure.*

e) Inadequate ICT Infrastructure

One of the contributing factors to inefficiency in the industry is the high cost of production and lack of synchrony between mill capacity and cane supply. This can be attributed to the low adoption of ICT technology that allows for the integration of automated systems right from the planning to sugar marketing. An automated system will also address the concerns raised by farmers about the credibility of the weighbridges.

Recommendation

i. *Adoption of data driven integrated systems across the industry.*

f) Cane fires

Cane fires are prevalent in the dry seasons of December to February and June to August. Fires are either accidental, arson or planned. Invariably, burnt cane deteriorates faster than green cane and hence compromises the cane yield. At factory processing, significant burnt cane lowers speed of processing and yields more molasses at expense of sugar, especially with deteriorated burnt cane representing a direct loss to the miller and farmer in a quality based payment system.

Recommendations

i. *Develop an insurance package for the farmers;*

ii. *Millers to initiate appropriate risk management measures to minimize cane fires; and*

iii. *Provide for penalties of non-accidental fires in the regulation.*

g) Weakness in regulatory mechanism

The industry has hitherto operated without a Policy and supportive regulations to facilitate the implementation of existing legislations. This has paved way for disharmony in the sector, cane poaching, proliferation of weighbridges that do not match cane development and ultimately acute cane shortage. Industry stakeholders have also not adhered to contractual obligations owing to the gap created by the lack of regulations.

Recommendation

i. *Finalize and publish the policy and sugar regulations.*

3.5. VALUE ADDITION

The sugar sub-sector in Kenya is largely a producer of sugar and molasses as by product. There is inadequate investment in development of value added products despite the existence of a huge potential in the industry and sufficient demand for valued added products in the market. These include molasses based products, bagasse based products, refined sugar and fertilizer from filter mud. Consequently, the industry has not been able to enlarge its revenue base hence contributing towards the high cost of production of sugar. This has also denied farmers the opportunity to benefit from the sale of value added products as is the practice globally.

There are efforts in some of the mills to diversify into cogeneration, Ethanol, refined sugar, paper and briquette production. These initiatives have however not exhausted the existing potential and demand.

Recommendations

i. *Promote valued addition in the existing mills;*
ii. *Licensing of new mills should require provision for deliberate plans to invest in value added products;*
iii. *Attract investments targeted at product diversification and value addition into refined sugar, cogeneration, Ethanol, Paper, Board manufacture, Briquette and Pharmaceuticals;*
iv. *Negotiate with Kenya Electricity Transmission Company (KETRACO) to develop the requisite infrastructure for transfer of cogenerated electricity from the mills to the nearest Kenya Power and Lighting Company (KPLC) sub-stations; and*
v. *Develop and Implement viable Strategic business units for value added products.*

3.6. PRICING MECHANISM

Traditionally, cane was largely marketed through outgrower institutions, who also supported farmers by providing services and inputs. However, out-grower institutions have weakened and become ineffective in farmer representation, forcing the farmers to deal directly with the millers. Cane prices were set and regulated by the Ministry of Agriculture. Upon enactment of the Sugar Act 2001, a Sugarcane Pricing Committee comprising of members of critical stakeholders was established, in line with the provisions of the Act, with the specific mandate of setting cane prices.

a) High Transports costs and transit losses

Recent studies indicate that significant amount of cane is spilled in the transportation process. Most of the haulage trailers are open sided, presenting opportunities for predators, cane spillage especially for poorly arranged cane and poor state of infrastructure. Since farmers are paid based on weight, there is a tendency to overload to maximize returns while optimizing on the cost of transport. This overloading also provides an occasion for spillage.

Farmer's returns are eroded by high transport costs as these are pegged on the distance from the factory. In addition the process of determining the transport costs many at times does not involve the farmers. Since cane transport is unregulated the transport rates across zones and factory catchments vary to the disadvantage of some farmers.

Table 4: Industry transport payment rates

Rates in Kshs./km/tonne					
Zone	Distance	Kibos	Sony	Mumias	Nzoia
A	0 - 4	400	466	394	413.45
B	4.1 - 8	450	541	502	501.75
C	8.1 - 12	525	637	636	591.11
D	12.1 - 16	600	735	719	682.24
E	16.1 - 20	660	831	818	771.99
F	20.1 - 24	790	928	943	861.36
G	24.1 - 28	820	1024	1029	949.65
H	28.1 - 32	860	1120	1137	1039.02
I	32.1 - 36	920	1216	1233	1127.2
J	36.1 - 40	990	1312	1346	1216.67
K	40.1 - 44	1070	1408	1488	1305.92
L	44.1 - 48	1155	1571	1655	1395.16

Source: Log & Associate Study on Sugarcane Transport Cost

Recommendations

i. *The scope of the cane pricing committee to consider all chargers recoverable from the farmer; and*

ii. *Develop a code conduct that specifies the industry standards for cane transportation.*

b) Delayed payments

Some of the millers do not meet their contractual obligations to pay farmers for cane deliveries as stipulated by the contract. This delay translates to lost opportunity and financial losses attributed to time value of money, accumulative cost of credit and force farmers to dispose cane to other millers below cost. The delays also make it difficult to enforce the farmer/miller contract on subsequent deliveries. The price index does not take into consideration delayed harvesting.

Recommendations

i. *Enforce provisions within the farmer/miller contract that require that farmers be paid within seven days, failure to which the miller is penalised;*

ii. *Provide an exit clause/novation that provides for an exit upon breach of contract.*

iii. *Strengthen outgrower institutions for effective representation and better bargaining power on behalf of the farmer;*

iv. *Provide in the regulations for be miller to me liable to pay interest on delayed payment at market rate; and*

v. *Gazettement and enforcement of Sugar Regulations.*

c) Inadequate representation of the farmer in price bargaining

Initially, the ougrower companies negotiated for favorable cane prices with the miller. The collapse of outgrower institutions weakened the bargaining power of the farmer with the miller on various issues including cane prices, cost of input among others.

Recommendations

i. *Revitalize farmer institutions to strengthen the bargaining power and wean farmers from dependence on the millers for credit and services; and*

ii. *Capacity building and application of good governance principles of farmer organizations to ensure adequate representation and good governance.*

d) Cane payment formula

The cane price is based on a formula which takes into account cane weight, net ex-factory sugar price and farmer sharing ratio. This formula depends largely on sugar price leaving out other co products such as molasses, co-generated electricity among others. It does not create incentives for farmers to develop quality cane and millers to diversify into other co-products. In addition, some millers do not adhere to the existing cane pricing formula to the disadvantage of the farmers.

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.

Sugar cane pricing formula currently 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.

Recommendations

i. *The Sugarcane Pricing Committee to provide a mechanism that remunerates farmers for other products derived from processing of cane;*

ii. *Ensure adherence to negotiated cane pricing formula;*

iii. *Transition to payment based on quality;*

iv. *Enforcement of contracts between farmers and millers;*

v. *The scope of the Sugar cane pricing formula should be extended to include pricing mechanisms for all other cane related charges paid by the farmer. These include cost of transport, cost of credit, extension service among others;*

vi. *The pricing formula to include an index that takes into consideration delayed harvesting; and*

vii. *Gazettement and enforcement of Sugar Regulations.*

3.7. SUGAR MARKETING

Prior to 1992, the Government controlled the marketing and distribution of sugar in the country through the Kenya National Trading Corporation (KNTC), regulating producer and consumer prices, distribution margins up to the retail level.

The controlled pricing regime was liberalized in 1992 as part of the Structural Adjustment Programme (SAP). Liberalization not only meant that individual mills market their own sugar but also opened the local market to relatively cheaper imported sugar, mainly from the EAC and COMESA region. These changes posed a challenge to sugar companies who were unprepared to deal with the marketing and distribution of sugar in the market.

Kenya currently produces 48% of her domestic sugar requirement, making the country a net importer of sugar. The total sugar requirement in the country is estimated at 1,000,000 MT metric tons, made up of 850,000 Tons Table sugar and 150,000 Tons of industrial use sugar. The industry has the potential of producing over 1.09 Million MT of sugar which would meet the domestic demand and provide a sustained surplus for export to the wider COMESA region which is generally a net importing region. Due to industry inefficiencies, this capacity is currently underutilized.

The table below indicates the sugar production figures in the last ten years.

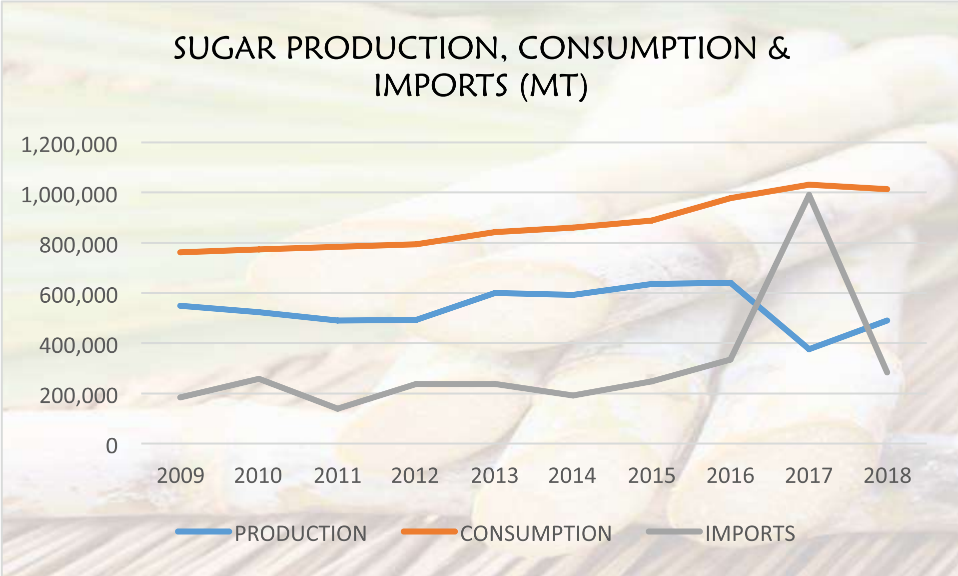
Table 5: Production, Consumptions and Imports

YEAR	SUGAR PRODUCTION	SUGAR CONSUMPTION	IMPORTS		
			MILL BROWN	WHITE REFINED	TOTAL
2012	493,937	794,844	84,990	153,599	238,589
2013	600,179	841,957	103,792	134,253	238,045
2014	592,668	860,084	62,709	129,412	192,121
2015	635,674	889,233	99,600	147,789	247,389
2016	639,741	978,746	172,888	161,221	334,109
2017	376,111	1,031,055	829,871	159,748	989,619
2018	490,704	1,012,399	122,121	162,048	284,169

SOURCE: AFA KENYA

In view of the national deficit of table sugar and the fact that Kenya does not currently produce industrial sugar, Kenya has had to import the deficit of table sugar largely from COMESA and industrial sugar from the world market.

Graph 5: Current trend in production, consumption and imports.



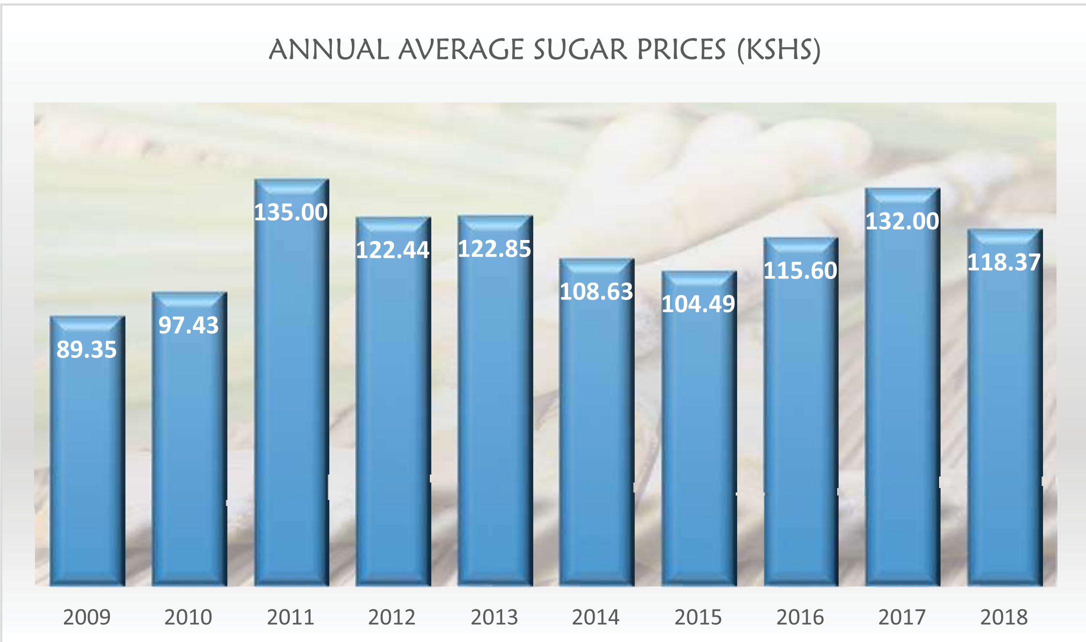
Over the years sugar demand has increased owing to population increase, expanding middle class and change in lifestyle. On the other hand domestic production has been on the decline, necessitating increase in imports to bridge the growing demand gap.

The industry also produces other products including co-generated electricity, molasses, Ethanol, Jaggery and briquettes. Though the markets for these products are not fully developed, the millers have a way of marketing them.

a) Sugar importation

Kenya is currently a net importer of sugar mainly from COMESA countries. Whenever there is an acute shortage, the country imports from COMESA on duty free basis. This

Graph 6: Average Sugar prices



occasionally leads to oversupply and glut in the market, dampening local sugar prices hence adversely impacting on both price and demand.

Lack of a nationwide availability of local affordable sugar especially along the long porous borders encourage seepage of illegal sugar into the country. This sugar is not only cheaper but its quality cannot be vouched for, exposing consumers to health risks.

Kenya does not produce refined sugar, it therefore has to meet this need through importation, creating an opportunity for diversion of the same to the consumer market.

In the past, millers have been allowed to import sugar during periods of shortage. This creates conflict of interest where the millers now tend to concentrate on sugar importation as opposed to sugar milling, to the detriment of the local sugar industry.

Recommendations

i. *Effective regulatory framework and oversight mechanism for coordinating sugar import/export supported by;*
   - ✓ *Clearly defined rules guidelines and regulations for sugar imports/export to curb excessive importation and ensure a stable market;*
   - ✓ *Monitoring of national sugar stocks and projection;*
   - ✓ *Privatization of public owned mills to enhance capacity utilization;*

ii. *Increase border surveillance in collaboration with other Government agencies;*

iii. *Increase efficiency and competitiveness to ensure adequate sugar production to meet national demand and minimize profit advantage for imports;*

iv. *Millers to develop a marketing framework which ensures access of local sugar (Especially in marginal border points) in the entire country at competitive prices;*

v. *Ban miller importation of sugar;*

vi. *Encourage and develop capacity for refined sugar; and*

vii. *Constant monitoring on the usage of refined sugar imported into the country.*

b) Packaging and traceability

There are regulatory provisions on standards of sugar packaging. However, enforcement still remains a major challenge, leading to the retailing of sugar whose quality and origin is unknown.

Recommendation

i. *KEBS to undertake its role in enforcing regulations on repackaging of both locally produced and imported sugar.*

3.8. MARKETING OF VALUE ADDED PRODUCTS

I. MOLASSES

a) Inadequate Supply of Molasses

There is lack of implementation of the existing regulations on exportation of molasses. This has led to illegal exportation to neighboring countries by traders, depleting national stocks.

In the recent past, there has been acute cane shortage leading to frequent unscheduled factory closures. This has resulted in inconsistent production of molasses and inability to secure a steady market therefore making the industry an unreliable source of molasses supply.

Currently, distribution permits are pegged on annual production projections. In instances of low production, permit holders are unable to get adequate supply affecting the end users of the product.

Recommendations

i. *Implement the existing regulatory framework to curb the illegal exportation of molasses;*

ii. *Develop a regulatory framework to facilitate trade and use of molasses; and*

iii. *Increased efficiency at all levels of the value chain to ensure a steady supply.*

b) Lack of quality standards

There are no quality standards for molasses. This creates an opportunity for adulteration and manufacturing of illicit brew resulting in negative socio-economic consequences.

Recommendations

i. *Develop quality standards to guide on the production and appropriate utilization of molasses; and*

ii. *Anchor in the regulations measures that curb illegal use.*

II. ETHANOL

There is a global increase in the use of bio-fuels to replace fossil fuels as part of the reduction in environmental pollution and initiatives to stem global warming. This has been further strengthened by the need to find affordable alternatives in view of the increase in oil prices, making ethanol a more cost effective product.

In view of the industry's current capacity to develop bio-ethanol, a strategy to provide a framework that would promote development of a self-sustaining bio-fuel sector was developed. The strategy also sought to optimize on social and environmental benefits.

a) Policy and Regulatory framework

There is a policy provision for the production, blending and marketing of Ethanol. Despite this provision, the industry has not taken advantage of the opportunity to produce and market Ethanol in sufficient quantities.

Recommendation

i. *Enforce the existing Policy and regulatory framework that facilitates motor fuel blending;*

ii. *Tax incentives to promote growth and development of biofuel sector; and*

iii. *Promote the use of Ethanol to create adequate demand that will facilitate the use of cane juice for fuel production as an alternative market for sugar cane.*

b) Research

There is low research and sensitization initiatives on the economics of Bio-ethanol use in the country. The Sugar Research Institute should increase research and sensitization of the economic benefits of Ethanol use.

Recommendation

i. *Adopt research findings on Bio-ethanol production and its economic advantage.*

c) Inadequate supply of Ethanol

The main producers of Ethanol are ACFC and Mumias Sugar Company. Their total production is way below the existing Ethanol demand. This is exacerbated by the under performance of the sector, making the industry an unreliable source of Ethanol supply. It has also led to the industry's inability take advantage of the opportunity presented by the existing policy on blending of petroleum, which allows for up to 10% blending ration (E-10).

Despite the great potential in the sector, there has been low investments in ethanol production.

Recommendations

i. *Increased efficiency along the value chain for increased ethanol production;*
ii. *Promote investments in ethanol production; and*
iii. *Molasses distribution to the strategic biofuel distilleries be prioritized for sustainable*
iv. *supply to the industry.*

d) Potential for negative socio-economic effects.

Ethanol can be used as feedstock into production of illicit brew, leading to adverse socio-economic effects.

Recommendation

i. *Anchor in the regulations measures that curb illegal use of ethanol.*

III. CO-GENERATED ELECTRICITY

Bagasse is a residual product from cane milling and is raw material for power generation. The industry has potential to generate up to 190 MW of electricity from this source, which is currently under-exploited. This co-generated power is enough for the industry's needs with surplus to feed in to the National Grid.

Mumias Sugar Company installed a modern power cogenerating plant for commercial use originally at a feed in tariff of 6 US cents per MW, which has recently been renegotiated to 10 US Cents per MW. The rest of the factories produce at a lower scale for consumption by the respective factories. Mumias is currently not producing cogenerated electricity due to lack of raw material.

a) Policy and Regulatory framework

There is a supportive policy and regulatory framework for the production and marketing of cogenerated electricity. Despite the great potential in the industry, cogeneration has not attracted sufficient investment.

Recommendation

i. *Encourage millers to take advantage of the existing opportunity and supportive framework for the production and use of co-generated electricity.*

b) Co-generated power transmission

In the current Power Purchase Agreement, the miller is required to develop the infrastructure for transmitting electricity from the mill to the nearest sub-station. This is a capital intensive venture that should be borne by KETRACO

Recommendation

i. *The Government through KETRACO should provide transmission lines from the mill to the substation, as an incentive for cogeneration.*

c) Low supply of bagasse

The industry over the last years has suffered acute cane shortage. Effectively, the mills are unable to get sufficient bagasse to co-generate electricity for commercial use.

Recommendation

i. *Increase cane supply to ensure sustained supply of bagasse.*

d) Policy framework for production and use of briquette

Briquette is made from bagasse and has a high potential for use as alternative fuel for domestic and industrial use.

The industry has the potential to produce excess bagasse if the available installed capacity is fully utilized. Its adoption has however been slow, hence the need for a supportive policy framework that promotes the use of briquettes. Its use would go a long way in supporting our national objective to conserve the diminishing forest cover.

Recommendations

i. *Develop and implement a Policy and strategy that will promote the production, distribution and use of briquettes;*
ii. *Provide incentives that promote the use of briquettes and other bio-fuels as an alternative source to wood fuel; and*
iii. *Provide tax incentives on briquette making equipment to attract investment in briquette production and promote small and medium scale enterprises.*

IV. JAGGERY

Jaggeries provide alternative market for farmers' cane. However, most of them operate outside the regulatory framework and hence do not have cane development programmes to meet their demand. To fully integrate them in the sugar sub-sector, the draft regulations provide for registration of jaggery mills and as such will be required to invest in cane development among others, prior to registration.

a) Legal and regulatory environment

Majority of the jaggery operators are unregistered and hence their operations are unregulated. Most of them do not adhere to set quality standards.

The regulation of the jaggery sector has not been synchronized between national and county governments, giving room for disparities in requirements for their registration and operation.

Recommendations

i. *Ensure compliance with the existing standards on jaggery production; and*
ii. *Synchronized regulation of the sector between national and county Governments.*

b) Raw material supply

Most Jaggery operators do not have cane development programmes and therefore tend to rely on cane developed/contracted to other millers. This results in distortion of cane supply to registered mills.

Recommendations

i. *The regulator should ensure that jaggeries operate within the existing regulatory framework; and*
ii. *Licencing of jaggery mills should be pegged on cane development programmes;*

3.9. TRADE

Kenya is a signatory to the COMESA Free Trade Agreement which provides for quota free and duty free access of all commodities from member states. Under the COMESA FTA agreement, sugar from partner states access the Kenyan market on a duty free, quota free basis.

Kenya applied for protection for the sugar sector by way of a safeguard under Article 61 of the COMESA Treaty so that sugar exports from COMESA to Kenya are subject to customs duties. The safeguard was implemented in March 2002 for an initial period of twelve (12) months and subsequently renewed nine times by the Council of Ministers as follows:-

a) Initial safeguard of 12 months – March 2002 to February 2003;
b) First extension of 12 months – March 2003 to February 2004;
c) Second extension of 4 years – 1 March 2004 to 28 February 2008;
d) Third extension of 4 years – 1 March 2008 to 28 February 2012;
e) Fourth extension of 2 years – March 2012 to February 2014;
f) Fifth extension of 1 year – March 2014 to February 2015;
g) Sixth extension of 1 year – March 2015 to February 2016;
h) Seventh extension of 1 year - March 2016 to February 2017
i) Eighth extension of 2 years - March 2017 to February 2019.
j) Ninth extension of 2 years - March 2019 to February 2021.

Kenya has been granted sufficient time to be regionally and globally competitive. However, the country is still lagging behind in efforts to transform the sector.

a) *High cost of locally produced sugar*

The cost of producing a ton of sugar in Kenya is on average USD 800, which is uncommpetitive and makes Kenya an attractive market for sugar imports from the region. The table below indicates the CIF values of imports from various countries within COMESA:

Table 6: CIF values of sugar from countries in the region

COUNTRY	CIF VALUE (USD PER TON)
Madagascar	543.92
Malawi	540.93
Mauritius	532.03
Eswatini (Formerly Swaziland)	484.13
Uganda	670.01
Zambia	580.47
Zimbabwe	541.86

SOURCE: KRA DATABASE

Recommendation

i. *Efficiency along the value chain to reduce cost of production and ensure competitiveness.*

a) Uncoordinated sugar importation

Sugar imports from COMESA trading under the FTA is duty free while sugar from the rest of world (excluding that gazetted under the Duty Remission Scheme) attracts import duty of 100%. Whenever there is an acute shortage of sugar, the Government opens a window for importation of sugar from COMESA and the global market duty free. The importation of such sugar is often uncoordinated leading to over importation and flooding of the local market.

Recommendations

i. In the short term Kenya should not import quantities beyond the deficit;
ii. Sugar from the world market should attract 100% duty; and
iii. Optimize utilization of existing capacity to ensure adequate production to meet national demand and enhance industry competitiveness.

b) Smuggled Sugar

A sizable amount of uncustomed sugar is smuggled into the country through the porous borders. This causes a distortion in the market, compromises in quality and leads to loss of government revenue.

Recommendation

i. Enhance inter-agency surveillance to curb sugar smuggling.

c) Sugar Dumping

Some countries within the COMESA region are capitalising on the Rules of Origin as provided under the COMESA Treaty, to export sugar to Kenya from other Countries which is resulting to dumping.

Recommendations

i. Increase production and efficiency to ensure self-sufficiency and protection of the local industry;
ii. Enhance inter-agency surveillance to enforce COMESA provisions on rules of origin; and
iii. Negotiate with COMESA to ensure that net importing countries within COMESA do not export to Kenya.

3.10. COMPLIANCE WITH THE COMESA SAFEGUARDS REQUIREMENTS UNDER ARTICLE 10 AND ARTICLE 28

The COMESA safeguards extension ends in 2021 and the Country is still lagging behind in implementing the two outstanding conditions out of ten; that is transition from cane payment model based on weight to one that is based on quality and privatization of public owned mills. The industry is expected to have met the outstanding conditions and be competitive by 2021.

Recommendations

i. All efforts must be put in place to ensure Kenya is self-sufficient in sugar production by 2021 on a cost effective basis;
ii. Commence payment based on quality by 2021; and
iii. Commence privatization of public owned mills by June 2019

4 Chapter Four

SUGAR INDUSTRY FUNDING

4.1. INTRODUCTION

Cane farming and processing are capital intensive. Funding in the industry today is from equity and limited Government funding for public owned mills.

Before the establishment SDF, cane production was financed by millers and individual farmers. With the introduction of the SDL in 1992, the fund grew to become the single largest source of funding for research, cane development, factory rehabilitation and infrastructure development. The de-gazettement of SDL in 2016 largely contributed to inadequate funding for research, cane development and factory rehabilitation, resulting in low research initiatives, acute cane shortage and low factory efficiencies.

4.2. FINANCIAL CHALLENGES IN THE INDUSTRY

a) Lack of access to affordable Credit

Due to the poor performance of the industry, the extended period of loss making for public owned mills and lack of access to affordable credit, the industry currently lacks adequate funding to support critical functions including research, cane development, maintenance and infrastructure development.

Recommendations

i. *Re-introduction of the SDL at the rate of 7% to support the industry; – Specifically Research, cane development, infrastructure development, factory rehabilitation and administration; and*

ii. *Ring fence the fund for research, development, regulation and promotion of the sugar industry.*

b) Inadequate funding for research

Prior to the establishment of KALRO, the then KESREF was funded by the SDF. Under this arrangement, an average of Kshs. 610 Million was dedicated to KESREF in the financial year 2013/14 compared to Kshs. 56 Million to SRI in the financial year 2017/18. This represents a 91% reduction in funding. This has resulted in low research initiatives, non-attraction and retention of qualified researchers and lack of capacity building for staff and County extension staff. In addition, donors have shown limited interest in funding sugar research. This lack of funding has completely paralyzed the institute.

Recommendations

i. *Reinstate SDL to support research initiatives;*

ii. *Develop a stakeholder governance structure and accountability framework for research fund; and*

iii. *Promote private investment in research by millers and other institutions in collaboration with the sugar research institute.*

c) Inadequate funding for cane development

Before the establishment of the SDF, cane production was financed by the millers and individual farmers. With the introduction of the SDL in 1992, the fund grew to become the source of funding for cane development, channeled through millers, out-grower institutions and AFC. The de-gazettement of SDL in 2016, has negatively affected cane development as farmers are no longer able to access affordable credit. Most of the public owned mills are no longer able to effectively support cane farming as the resources earlier dedicated to cane development have dwindled due to their poor financial performance and losses through cane poaching.

Recommendations

i. *Reinstate SDL to support cane development; and*

ii. *Strengthen credit management systems.*

d) Indebtedness of the farmers and farmer organizations

Due to the poor performance of the factories and their inability to pay farmers promptly, declining incomes, factory inefficiencies, high cost of inputs and services and poor governance, farmers and farmer organizations have been unable to repay loans lend to them from the SDF. The inability to pay these loans means the fund cannot revolve for the benefit of more farmers and sustainability.

Table 7: Outgrower Companies' debt to SDF as at 31st March 2019

LOANEE	PRINCIPAL	INTEREST	LEVEL OF DEBT
Muhoroni Outgrowers Co.	305,392,528.04	85,142,057.34	390,534,585.38
Miwani Outgrowers Co.	11,111,557.20	3,057,048.15	14,168,605.35
Chemelil Outgrowers Co.	185,237,035.00	85,963,763.56	271,200,798.56
Nandi Escarpment Out. Co.	115,182,819.80	33,765,712.13	148,948,531.93
Nzoia Outgrowers Company	360,725,277.08	46,828,029.20	407,553,306.28
Busia Outgrowers Company	95,078,164.71	15,733,465.27	110,811,629.98
Mumias Outgrowers Company	212,793,018.75	65,657,532.84	278,450,551.59
West Kenya Outgrowers Co.	82,492,527.54	14,986,751.62	97,479,279.16
Sony Outgrowers Company	371,090,577.30	105,110,360.51	476,200,937.81
Lubao Jaggery Factory	29,026,693.90	1,611,356.00	30,638,049.90
Muhoroni Multipurpose Co-op Union	67,105,600.86	14,941,492.33	82,047,093.19
Kisumu Sugarbelt Co-op Union	98,868,495.85	33,366,292.83	132,234,788.69
TOTALS	**1,934,104,296.03**	**506,163,861.77**	**2,440,268,157.80**

SOURCE: AFA KENYA

Recommendations

i. *It is recommended that a verification and subsequent write off of the debt to the farmers from the SDL funds be undertaken; and*

ii. *Strengthen credit management systems.*

5 CHAPTER FIVE

COMPETITIVENESS OF PUBLIC-OWNED SUGAR FACTORIES

5.1. INTRODUCTION

The Kenya sugar industry comprise fourteen milling factories five of which are public owned. These public mills are:

I. Chemelil Sugar Company
II. Miwani Sugar Company (In Receivership)
III. Muhorony Sugar Company (In receivership)
IV. Nzoia Sugar Company
V. South Nyanza Sugar Company

KEY RATIOS	CV	SONY	CSC	NSC	MISC-R	MUSC-R	MSC
Return on Investment	> 0	-0.33	-0.16	-0.19	-0.14	-0.66	-0.96
Net Profit margin	> 0	-0.79	-1.13	-0.89	-0.71	-0.50	-10.81
Expense ratio	< 1	1.74	2.01	1.73	0.93	1.45	7.74
Human resources effectiveness-cost	≤ 0.35	0.52	0.73	0.33	0.19	0.07	0.89
Debt ratio	≤ 0.5	0.92	1.58	3.93	22.57	24.98	1.91
Current ratio	≥ 1	0.26	0.08	0.02	0.01	0.04	0.03
Total Assets turnover	> 1	0.42	0.15	0.21	0.19	1.31	0.09
Accounts Receivable Days	≤ 60	7	82	17	17	68	167
Inventory days	≤ 30	63	150	71	4	75	94
Accounts payable Days	≤ 90	366	1,668	2,494	31,725	4,403	3,142
Borrowings- others in Kshs billions			.094		2.3		7.8
Borrowing- GK in Kshs billions		1.6	3.4	14.3	3.7	9.5	4.8
Total Borrowing in Kshs billions		1.6	3.5	14.3	6	9.5	12.6
Taxes, penalties and fines in Kshs billions		3	2.6	6.9	17.3	15.6	
Net worth in Kshs. billions		0.5	-2.6	-37.3	-22.9	-26.2	-14.4

Source: Data analysis for selected ratios from the Company's Financial Statements for FY 2017/18

By June 2009, the five Public owned companies were already in financial distress. In 2013, the National Assembly approved specific write off of government debt owed by these companies under a defined restructuring programme that entails partial divesture of government interest. The programme was, however, stopped through litigation mainly High Court petition No. 187 of 2016 (County Government of Bungoma & 4 others vs Privatization Commission and Another) which was struck off by the court on the grounds that the matter be dealt with through the intergovernmental structures in the first instance.

Due to the delays, the financial situation of the companies since then worsened. As at June 2018, the situation was as follows: First, the current ratio for a sound trading company should be at least 1. However, the current ratios for the five companies are far below the threshold- Sony is 0.3; Chemilil is 0.1, Nzoia is 0.02; Miwani is 0.01; Muhoroni is 0.04 and Mumias is 0.03. This indicates that the companies face serious liquidity problems and thus unable to pay their current debts as they fell due resulting into accumulated arrears in employees payments including statutory and third party remittances, farmers Owings and trade payables. This was exacerbated by penalties and fines on agency taxes not paid.

Secondly, the debt ratio for a sound trading company should be at least 0.5 and below. The companies have extremely high debt ratio namely, Sony Sugar Company had a debt ratio of 0.92 meaning 92% of its assets were financed by debt and therefore nearly technically insolvent. The other five companies were technically insolvent because their liabilities exceeded their assets namely for Chemilil the liabilities were 1.6 times more than assets (or debt ratio 158%); Nzoia Sugar liabilities were 4 times more than assets (or debt ratio 393%); Mumias liabilities were 1.9 times more than assets (or debt ratio 191%). Miwani Sugar in receivership was 23 times more than assets (or debt ratio 2257%) and Muhoroni in receivership had liabilities 25 times more than assets (or debt ratio 2498%). This indicated that the long-term lenders which is government was not protected as the loans were barely serviced. Thus total outstanding loans, taxes, penalties and fines due to government are in the tune of Kshs. 90.4 billion (Sony is Kshs.6.2 billion; Chemilil is Kshs. 6.1 billion, Nzoia Sugar Company is Kshs.21.2 billions); Miwani Sugar Company is Kshs.27 billion ; Muhoroni Sugar Company is Kshs.25.1 billion and Mumias Sugar Company is Kshs. 4.8 billion excluding taxes, penalties and fines.

Thirdly, the companies have for a long time incurred losses resulting into negative returns on investment. Thus, due to the accumulated losses, the companies' net worth had been systematically eroded to the extent that by June 2018, only Sony Sugar Company had a positive net worth of Kshs. 0.5billion. The other five companies had a deficit shareholders fund, that is, negative equity; Chemilil (Kshs.-2.6billion), Nzoia Sugar Company (Kshs.-37.3 billion); Miwani Sugar Company (Kshs.-22.9 billion); Muhoroni Sugar Company (Kshs.-26.2 billion) and Mumias Sugar Company (Kshs. -14.4).

The human resources effectiveness cost exceeds the threshold of 35% of the revenue earned with Mumias Sugar Company leading with 89 %. Therefore, most of the companies not only bore more staff than they needed but also continued to have substantial arrears in staff payments including statutory and third party remittances. Therefore, due to poor governance exacerbated by external factors, the resources of these companies were not prudently used.

Of the nine private companies, the Government has 20% shareholding in Mumias Sugar Company, hence its continuous involvement in the same.

5.2. CHALLENGES OF PUBLIC OWNED MILLS

Public owned mills are faced with a myriad of challenges ranging from poor governance inadequate capital, high debt portfolio, ageing and obsolete technology, operational inefficiency, labor related issues and prolonged receivership.

a) Poor Governance

One of the major contributing factors to the non-performance of public owned mills is poor governance. This is characterized by mismanagement of public resources, blotted workforce, non-adherence to procurement laws and dyfunctional organization structure that does not respond to current and emerging challenges. This is the major reason for the high indebtedness in terms substantial amounts of money owed to farmers, suppliers and employees for raw material, goods and services rendered, huge unservised loans and interest to financiers, compounded by stiff competition from poorly regulated imports/ smuggling, loss making operations and failed projects that have left the companies with huge debt burden without corresponding assets. This has made it very difficult for the industry to attract fresh funds particularly from commercial sources.

The politicization of Boards of Directors has compounded the challenges of service delivery because of lack of capacity and requisite experience to turn around these institutions.

The government has had to undertake financial bail outs of these institutions despite fact that they continue to mill and sell sugar and co-products.

Recommendations

i. *In the short term, restructure Boards and management of the public owned mills to respond to the current need of turning around these companies;*

ii. *Rationalize the organization structure to ensure that an optimum number of staff is retained and well remunerated; and*

iii. *Ensure adherence and enforcement of all laws and guidelines on good governance.*

b) Lack of capital and high debt

In 2013, the National Assembly approved write off of excess debt (for the period up to June 2009) and conversion of some of the debt backed by assets to equity. The approved restructuring was expected to take place immediately as part of the implementation of the privatization of the mills. Implementation of the write-off was linked to the privatization in view of some of the conditions by the National Assembly, which required the write off to be implemented as a part of a comprehensive restructuring process. The write off was also delayed in view of the implications on companies under receivership, to ensure restructuring objectives were met. The current financial status of these mills is as indicated below:

Table 8: Public Sugar Companies' financial status as at June 2018

South Nyanza Sugar Company (SONY)

ITEM	AMOUNT
Non-Current assets	5,003,587,000
Current assets	1,296,163,000
Total Assets	**6,299,750,000**
Non-current liabilities	889,366,000
Current liabilities	4,903,038,000
Total liabilities	**5,792,404,000**
Equity and liabilities	**507,346,000**

Chemelil Sugar Company (CSC)

ITEM	AMOUNT
Non-Current assets	4,047,448,956
Current assets	545,892,701
Total Assets	**4,593,341,658**
Non-current liabilities	4,215,550,305
Current liabilities	3,085,598,122
Total liabilities	**7,301,148,427**
Equity and liabilities	**-2,707,806,769**

Miwani Sugar Company (In receivership) (MISC-IR)

ITEM	AMOUNT
Non-Current assets	915,223,446
Current assets	147,573,989
Total Assets	**1,062,797,435**
Non-current liabilities	683,768,700
Current liabilities	23,308,634,055
Total liabilities	**23,992,402,755**
Equity and liabilities	**-22,929,605,320**

Muhoroni Sugar Company (In receivership) (MUSC-IR)

ITEM	AMOUNT
Non-Current assets	136,332,000
Current assets	957,045,000
Total Assets	**1,093,377,000**
Non-current liabilities	238,281,000
Current liabilities	27,079,548,000
Total liabilities	**27,317,829,000**
Equity and liabilities	**-26,224,452,000**

Nzoia Sugar Company (NSC)

ITEM	AMOUNT
Non-Current assets	12,520,182,000
Current assets	1,093,405,000
Total Assets	**13,613,587,000**
Non-current liabilities	4,118,298,000
Current liabilities	44,190,664,000
Total liabilities	**48,308,962,000**
Equity and liabilities	**-34,695,375,000**

Mumias Sugar Company (MSC)

ITEM	AMOUNT
Non-Current assets	15,107,367,000
Current assets	628,242,000
Total Assets	**15,735,609,000**
Non-current liabilities	8,487,721,000
Current liabilities	21,632,991,000
Total liabilities	**30,120,712,000**
Equity and liabilities	**-15,735,609,000**

c) Ageing and obsolete technology and operational inefficiency

The public owned mills operate ageing mills with obsolete technologies. This is exacerbated by the lack of maintenance of these mills due to lack of funds. Inevitably the mills currently operate below fifty percent of their installed capacities due to lack of cane, milling of immature cane, poor maintenance of mills and equipment. As a result, these mills cannot break even and consequently accumulate debt on a daily basis.

Recommendations

i. *In the short term mobilize resources from both National and County Governments (as appropriate) to keep the mills running and ensure farmers and employees are paid promptly;*

ii. *Mobilize resources for capital injection through a strategic investor as approved by parliament in 2015 to enable the companies meet their financial requirements;*

iii. *Financial restructuring of public owned mills as approved by parliament in 2013;*

iv. *Conversion of additional GoK and Kenya Sugar Board debt by public mills from July 2009 todate, to additional GoK equity in the companies;*

v. *Negotiate with banks and other creditors for the restructuring of other debts;*

vi. *Enhance industry viability by strengthening the regulatory and operational framework;*

vii. *Re-constitute the sugar privatization steering Committees to ensure representation of respective County Governments and farmer organizations; and*

viii. *In cognizance of the fact that Mumias Company is no longer a public mill, it is recommended that a revitalization committee be appointed to work with the Board, National and County Governments and other key stakeholders to identify and implement an effective restructuring plan;*

d) Labor related issues

Most of the public sugar mills have a bloated workforce, contributing towards the high cost of labor and consequently high cost of production. This strains the resources available for staff development necessary for high performance.

Table 9: Wage employment in public owned mills as at June 2018

AREA	MUHORONI	SONY	NZOIA	CHEMELIL	MUMIAS
Agriculture	117	320	216	130	
Factory	350	281	160	281	989
Human Resource	66	120	78	115	
Finance & Admin	62	69	132	99	294
Others	6	135	409	6	15
Sub-Total	601	925	995	631	
Casuals	203	1,015	1,514	406	
TOTAL NUMBER	**804**	**1,940**	**2,509**	**1,037**	**1,298**
Compensation		506,000,000	330,000,000	486,000,000	1.246,000,000

Currently some of the state-owned mills have accumulated arrears of unpaid salaries to their employees for several months. Statutory deductions have also not been remitted to the relevant agencies including Pay as You Earn (PAYE), National Hospital Insurance Fund (NHIF), National Social Security Fund (NSSF), Cooperative and welfare deductions.

The mills are required to adhere to proper health and safety standards in order to avoid injuries and diseases at work. Public owned mills have however failed to comply with this requirement exposing them to work related accidents and financial compensation claims. This has resulted in a number of litigation and money paid as compensation which hitherto would have gone into improving conditions at work.

Recommendations

i. *Pay outstanding salary arrears as soon as possible; and*
ii. *Enforce and comply with the provisions of all labor laws.*

e) Inadequate skilled personnel

The industry lacks adequate skilled manpower in the specific productive areas such as agronomy, processing, factory technology, operations and engineering. There are low levels of innovation and professional expertise unlike in the case of advanced sugar producing countries.

Recommendations

i. *Capacity building and apprenticeship;*
ii. *Establish a national sugar training institute for capacity building; and*
iii. *Appointment of Boards of Directors and Management on specific skills set and competencies.*

f) Prolonged receivership

Muhoroni and Miwani sugar companies have remained under receivership for a prolonged period, which has subjected them to a continuous transition state. This has deprived them of adequate cash for working capital, maintenance and has also adversely affected the farming activities as these mills are unable to pay farmers on time for cane deliveries. One of the mills under receivership has been closed for almost thirty years. This calls for urgent need to determine the future operation of these factories.

Recommendation

i. *Conclusion of the receivership process be expedited.*

6 CHAPTER SIX

TAXATION IN THE SUGAR INDUSTRY

6.1. INTRODUCTION

Sugar is not classified as a basic food item and hence attracts VAT currently at 16%. One fundamental aspect of taxation in the sugar industry is that the tax rates are equal for both local and imported sugar, with the exception of the crop cess in some Counties and out-grower levies.

In 2002 the Government introduced 16% VAT on transportation thereby increasing the overall cost of cane transport. This tax is often passed on to the farmer further reducing his profits from sugarcane production.

Taxation on agricultural machinery was abolished in 2006. This has however not translated into reduced cost of machinery for the farmer. In addition, VAT is still charged on spare parts. County governments also levy cess for transportation of agricultural produce either directly or through other parties.

Taxation therefore is high in the sugar industry and accounts for 26% of the production costs. These multiple taxes include; Sugar Cess (1%), Corporate Tax (30%), Value Added Tax (16%) and Excise Duty on farm inputs. Fuel and spares are also taxed making transportation and other mechanised operations in the industry costly.

Table 10: A Comparative Analysis of Taxation of Sugar Vis-À-Vis Other Agricultural Products in Kenya

AGRICULTURAL PRODUCTS	VAT	CROP CESS LEVY	OUTGORWER-SOCIETY LEVY	OTHER TAXES	TOTAL TAXES
Sugar	16%	1%	2%	1%	20%
Maize/ maize flour	NIL	1%	NIL	NIL	1%
Wheat/ wheat flour	0%	1%	NIL	NIL	1%
Coffee	16%	1%	NIL	NIL	17%
Tea	16%	1%	NIL	NIL	17%
Tobacco	16%	1%	NIL	130***	147%

Source: KPMG Study of the Taxation Regime,

*** Excise Duty on excisable processed tobacco

Compared to other commercially grown crops in Kenya, other than Tobacco, sugar is relatively more highly taxed.

Table 11: A comparative analysis of the taxation regime of the sugar industry in other countries

COUNTRY	VAT	SUGAR LEVY	SUBSIDY	OTHER TAXES (LEVIES, CESSSES E.T.C)	TOTAL TAXES
Kenya	16%	-	-	4%	20%
Uganda	18%	2%	-	-	20%
Tanzania	18%	Based on USD 2.75/tonne	-	1.5% to 6%	24%
Rwanda	18%	-	-	-	18%
Sudan	10%	-	-	5.6	15.6%
Eswatini	14%	-	-	-	14%
Egypt	10%		-	-	10%
Mauritius	0%	6% &8%			8%
Zambia	16%	-	-	-	16%
South Africa	14%		-	-	14%
Malawi	16.5%	-	-	-	16.5%

Source: KPMG Study of the Taxation Regime

From the above, taxation in the Kenya sugar industry is comparatively higher than that in other jurisdictions and especially so, when compared with the leading sugar exporting countries in Africa. Further, the price of sugar at the consumer level attracts VAT.

6.2. TAXATION RELATED CHALLENGES

a) *Classification of sugar as a food item*

Sugar is not classified as a basic food item and hence attracts VAT currently at 16%. Sugar is however a critical component in the food industry as it is an additive that enhances taste, flavour, texture, fermentation and preservation.[1]

Section 77 of the PFM Act empowers the Cabinet Secretary in charge of Finance to waive a national tax, a fee or charge imposed by the National Government and its entities.

Recommendation

i. *Classify sugar as food item.*

b) *High cost of input*

Taxation on agricultural machinery was abolished in 2006. This has however not translated into low cost of machinery, and hence unaffordable to farmers. On the other hand VAT is still charged on spare parts, fuel and other process consumables making them expensive to procure as they are mostly imported and are subject to taxation. The high cost of inputs and the taxation regime leads to an erosion of farmer earnings and increases the overall cost of production.

Recommendation

i. *Review the taxation regime to create a tax friendly investment environment including duty waivers on high end industry inputs such as fertilizer, diesel, farm implements, and plant and factory equipment.*

c) *Levies Charged at County Level*

County governments levy cess for transportation of agricultural produce either directly or through other parties. This goes to further burden the farmers.

Recommendation

i. *The National and County Governments should rationalize levies and taxes to improve farmer earnings and support investment in the sector.*

1 http://www.ift.org/newsroom/news-releases/2015/august/18/5-reasons-why-sugar-is-added-to-food.aspx

7 CHAPTER SEVEN

POLICY, LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORK

7.1. OVERVIEW

Until 2001, the sugar sector operated under the Agriculture Act Cap 318. In 1973, the Kenya Sugar Authority was established under the Kenya Sugar Authority Order, (Cap 318) to promote and foster the effective and efficient development of sugar cane for the production of white sugar. In 1992, the SDL was introduced to finance critical activities within the sugar industry value chain, that is, crop husbandry, plant maintenance, infrastructure development and research.

The Sugar Act No.10 of 2001 came into force to provide for the development, regulation and promotion of the sugar industry and the establishment of powers and functions of the Kenya Sugar Board (KSB). This was the first legislation dedicated to the industry aimed at strengthening the sector. It saw the creation of the KSB as an institution charged with the responsibility to implement the Act. Section 33 of the Act required the Minister to make regulations to give effect to the Act, specifically, to regulate and control production, manufacturing, marketing, importation or exportation of sugar and its products, licensing and fees chargeable.

In this regard a set of Regulations were gazetted including those relating to Elections of Board of Directors in 2002, imposition of Levy order in 2007, imports, exports and by-products in 2008 and Arbitration Tribunal Rules in 2008. However, the most important General Regulations required to operationalize the Act, specifically relating to production, manufacturing and marketing were never gazetted leading to the dysfunctional environment in the sugar industry.

Following the promulgation of the Constitution of Kenya, 2010 which introduced a devolved system of governance, there was need to align respective legislation with the Constitutional provisions.

In 2013, the Crops Act No. 16 of 2013 came into force to provide for the growth and development of agricultural crops. Further, the Agriculture and Food Authority Act No. 13 came into force to provide for the consolidation of the laws on the regulations and promotion of Agriculture generally, the Authority and the roles of National and County Government in agriculture, in line with the relevant provisions of the Fourth Schedule of the Constitution.

Consequently, AFA was established as a culmination of the agriculture sector reforms that began in 2003. The purpose of the reforms was to consolidate the numerous pieces of legislations within the agriculture sector to address the overlap of functions, obsolete legislations and to benefit from economies of scale.

The AFA and Crops Acts provide for attendant regulations to be developed. These regulations have been drafted but not gazetted five years post-enactment. Major aspects of the law are therefore yet to be properly operationalised. With ensuing failure to have the requisite regulations in place, the sugar sector is at an all-time low.

This chapter therefore provides an analysis of the policy, legal and regulatory framework of the Sugar industry.

7.2. VISION 2030 AND BIG FOUR AGENDA

Vision 2030 aims at transforming Kenya into a newly industrialised middle income country providing a high quality life to all citizens by the year 2030. This policy recognises private sector as the engine of development, implying the need for a mean and lean government. The Big Four Agenda places sugar as one of the agro-processing target crops to help move manufacturing from 8% to 16% and thereby contributing to 20% increased GDP.

The country is currently implementing Medium Term Plan (MTP) III under the Vision 2030 Third Pillar, but the agricultural sector and the sugar sub-sector are yet to develop specific comprehensive policies that relate to price, income, supply and production. MTP III is aimed at achieving the following:

i. *Three tiered fertiliser cost reduction;*
ii. *Branding Kenya farm produce;*
iii. *Development of Agricultural land use master plan; and*
iv. *Development of irrigation schemes;*

The above objectives fall under the Economic Pillar where the agriculture sector is one of the enablers for the realisation of Vision 2030 and the Big Four Agenda, specifically, Food Security and Manufacturing (value addition).

As a result of lack of enabling policies, the sugar sub-sector has lagged in achieving the four objectives mentioned above.

Recommendation

i. *Validate and adopt the draft National Sugar Policy for implementation*

7.3. CONSTITUTION OF KENYA, 2010

The Constitution, being the over-arching law, provides the legal foundation upon which the Agriculture sector draws its legal and regulatory framework, specifically:

a) The National Values and principles of Governance under Article 10

The Constitution recognises sharing of power, sustainable development, participation, equality, equity, transparency, accountability, integrity and good governance as some of the values and principles of governance. In recent years, in view of the challenges facing the sub-sector, there has not been sustainable development within the sugar cane farming community. Moreover, the sub-sector has been bedevilled by serious governance issues which if unchecked will cause its collapse.

b) Economic and Social Rights under Article 43

Every person has the right to be free from hunger, adequate food of acceptable quality, health, housing, water and sanitation, social security, and education. Despite the fact that sugar cane farming is expected to be one of the drivers of economic empowerment in the farming community, the sector still faces challenges of food insecurity and low incomes.

c) Consumer Rights under Article 46

The provision creates consumer rights to products of reasonable quality; information necessary to gain the full benefits from such products and protection of their health, safety and economic interests (right price); and the right to compensation for loss and injury arising from defects in the products. The industry is still a high cost producer, subjecting consumers to high cost of sugar. Non adherence to existing packaging standards may also subject consumers to sugar whose quality has not been verified.

d) Distribution of functions and powers of National and County Governments under Article 186 and Fourth Schedule

The Article and Fourth Schedule of the Constitution define and allocate the respective responsibilities with regard to agriculture, to each level of government. The defunct Transition Authority (TA) further unbundled the functions and gazetted vide legal notice No. 116 dated 9th August 2013.

National Government is responsible for agricultural policy, agricultural research and promotion of technology delivery, regulation and control of inputs and products from agriculture sector; protection of the environment and natural resources; general principles of land planning and co-ordination of planning by the Counties; public investment; consumer protection; capacity building and technical assistance to Counties; management of control of pests and diseases in crops; promotion of market access and product development.

The County Government is responsible for the implementation of agriculture policy, crop husbandry, plant and animal disease control amongst others.

Despite the foregoing provisions, there is misunderstanding in the implementation of the respective functions of National and County Government, thereby impeding proper implementation of the Constitution.

Recommendation

i. *Adhere to the unbundled functions on Agriculture and/or renegotiate the implementation of the unbundled functions in line with article 187 of the Constitution by the two levels of Government.*

e) Regulation of Land use and property Article 66(1)

The Article mandates the State to regulate the use of any land in the interest of land-use planning and Parliament to enact legislation ensuring that investments in property benefit the local communities and the economies.

Currently, the nucleus land is either owned by the company or leased from Government, either National or County. There is need to provide for conditions regarding and limiting the use for which the nucleus land is intended.

Recommendations

i. *The Government should provide a national land use plan as contemplated under Article 66 of the Constitution, which includes rules contemplated under Section 11 of Crops Act; and*
ii. *During partial transfer of shareholding, the change in the use of nucleus land should be classified as a shareholder reserved matter necessitating a special resolution. The grant and lease document to specify land use purpose as being; cane growing and related activities.*

7.4. CROPS ACT NO.16 OF 2013

a) Development of Regulations

Section 40 requires the development of Regulations to operationalize sections of the Crops Act, 2013 that require regulations. Currently, regulations have not been developed and gazetted as contemplated by section 40.

Recommendation

i. *The Cabinet Secretary should develop, gazette and implement General Regulations and Import and Export regulations of the Act.*

b) Regulation of Scheduled crops

Section 16, provides that the Cabinet Secretary may prescribe regulations for the procedure on registration of Dealers. The mandatory requirement for the registration of all dealers as defined is not pragmatic.

Recommendation

i. *The provision be amended by deleting the word "shall" and replacing with "may". This provides the Cabinet Secretary with the discretion to determine the category of dealers to be registered.*

c) Licensing responsibility

In section 18, licensing responsibility is allocated to both levels of Government (National and County Governments). The Constitution under the Fourth schedule allocates The National Government the responsibility for

i. *Norms and standards, functions, programmes and tasks - Part 1 Section 29;*
ii. *International Trade - Section 1; and*
iii. *Consumer protection – Section 14.*

County Government has a responsibility for:

i. *Crop husbandry and plant disease control - Part 2 (7); and*
ii. *Trade – Section 7.*

There has been lack of consensus on the licencing roles between national and county governments.

Recommendation

i. *Each level of government to issue licences for the respective areas of responsibility in consultation with the other level of government.*

d) Manufacturing Licenses

Section 20 (6) requires 30 days gazettement inviting objection for issuance of Manufacturing License which stifles business as the entrepreneur at this juncture has invested massive resources.

Recommendation

i. *Amend the Act by deleting the section and providing for registration of a sugar mill project and gazzettement calling for objections before commencement of the project and*
ii. *Establish a joint committee for the purpose of issuing manufacturing licences*

e) Dispute Resolution by Arbitration

Section 41 provides for arbitration as a dispute resolution mechanism. Currently, there is no dispute resolution mechanism in place, resulting in numerous litigation cases in the sugar industry.

Recommendations

i. *The Constitution under Article 159(1) (c) promotes the use of alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution. Section 41 should be amended to consider other forms of Alternative Dispute Resolution other than Arbitration;*
ii. *Intergovernmental disputes will be resolved under the alternative dispute resolution mechanism as provided in the Inter-governmental Relations Act, No. 2 of 2013; and*
iii. *It is also recommended that a sugar sector tribunal be set up to provide a mechanism for the alternative dispute resolution for disputes in the sector.*

f) Pricing and Soil Management

Several aspects originally dealt in the repealed Agriculture Act were assimilated in to the Crops Act 2013, except for matters of pricing and soil management.

Recommendation

i. *Amend the Crops Act, 2013 to provide for pricing and soil management to guide the sector.*

7.5. AGRICULTURE AND FOOD AUTHORITY ACT NO.13 OF 2013

a) Functions of the Authority

There is a potential conflict area between the functions of the County Government and the National Government as set out under Section 4 (b) in accordance with the Fourth Schedule. Issues dealing with crop production, marketing, grading, storage, collection, transportation and warehousing are functions assigned to the County Government by the Constitution.

Recommendation

i. *Review the section 4 (b) to comply with the Fourth Schedule of the Constitution regarding the assigned functions of the County Government.*

b) Constitution of Board of the Authority

Section 5(1) of the Act provides for the establishment of a Board of the Authority to provide policy direction on the regulation of scheduled crops and undertake administration of the Crops Act. The board has never been constituted since the enactment of the Act in 2013. The Authority is thus not properly constituted in accordance with the law and therefore unable to effectively discharge its mandate.

Recommendations

i. *In the short term there is urgent need to appoint the Board to operationalize the functions of the Crops Act No.13 of 2013 and Agriculture and Food Authority Act No. 16 of 2013; and*
ii. *In the medium-term, introduce a stand-alone legislation for the sugar industry.*

c) Rules on preservation, utilization and development of agricultural land

Section 22 (b) requires the Cabinet Secretary to provide the manner in which occupiers shall farm their land in accordance with the rules of good husbandry. This is a policy issue on land use that sits with National Government.

Recommendation

i. *The Cabinet Secretary Ministry – MOALF&1 to provide policy guidelines on land use.*

d) Participation of farmers

Section 40 (1) provides for participation of registered farmers organisation to the exclusion of individual farmers' participation. This creates a problem of non-inclusivity which contravenes Article 10 of the Constitution.

Recommendation

i. *Amend Section 40(1) to provide for participation of individual farmers who are not registered in any organisation in line with the Constitutional threshold on Public Participation.*

e) Rules on agreements between farmers and farmer organizations

Section 40 (2) provides for the development of rules on agreements between farmers and farmer organizations and procedures for internal democracy in such organizations. The rules are yet to be developed and therefore making it impossible to enforce agreements. The lack of rules on agreement between farmers and farmer organizations disadvantages the farmer as this may expose the farmer to exploitation.

Recommendation

i. *The Cabinet Secretary MOALF&I should develop rules relating to enforcement of agreements and procedures of internal functioning in the farmer organizations.*

f) Funds of the Authority

Section 16(3) provides for the Levies imposed under the Act. It is necessary that each Levy charged should be utilised for the respective crops. The SDL was the significant financier of the industry. Its de-gazzettement has adversely affected the overall performance of the industry.

Recommendations

i. *Re-introduction of the SDL at the rate of 7% on the ex-factory for locally manufactured sugar and CIF value on imported sugar to support the industry; and*
ii. *Ring fence the fund for research, development, regulation and promotion of the sugar industry.*

7.6. KENYA AGRICULTURE AND LIVESTOCK RESEARCH ACT NO. 17 OF 2013

The Act provides for the establishment of KALRO and the co-ordination of agricultural research activities in Kenya. With respect to the sugar sub-sector, SRI under KALRO has the mandate to undertake research. Research however is driven by focus and the need to address unique specific needs and requirements of an industry. This enables researchers specialise in reinforcing focus in research areas which assures effectiveness of outputs.

Prior to the establishment of KALRO, the then KESREF was funded by the SDF. Under this arrangement, an average of Kshs. 610 Million was dedicated to KESREF in financial year 2013/14 compared to Kshs 56 Million to SRI in the financial year 2017/18. Evidently there has been inadequate funding for the institute, resulting in low research initiatives, attraction and retention of qualified researchers and lack of capacity building for existing staff.

There has been reduced focus on sugar research to the disadvantage of the industry. To enable the institute focus on sugar research and ensure that the dedicated funds are restricted to sugar research, there is need to establish an independent sugar research institute.

In this regard, the stakeholders recommended that the SDL be re-instated to finance among others, research activities in the sector. The stakeholders also recommended that the Fund be ring-fenced for the identified funding components. Further, the stakeholders recommended that there should be an accountability Financial Monitoring Reporting (FMR) mechanism for proper utilisation of the funds allocated to SRI.

The Stakeholders also proposed that SRI should establish regional centres for purposes of ecological specific research and multiplication of varieties. The seed cane variety protocol that will ensure scientific transfer of technology; variety control and multiplication should be developed. South Africa and Australia have legislation on variety control.

Recommendations

i. *Re-establish an independent public sugar research institute;*
ii. *Establish regional research stations in sugarcane growing regions.;*
iii. *Encourage other institutions/mills to participate in sugar research to compliment efforts*
iv. *by the institute;*
v. *Establish Financial Monitoring Reporting (FMR) mechanism under the institute; and*
vi. *Develop a protocol of scientific transfer of technology (testing of alien seed); variety control and multiplication.*

7.7. DRAFT SUGAR (GENERAL) REGULATIONS

The sugar sub-sector has lacked regulations for proper conduct of its business since 2001. The Crops Act No. 16 of 2013 gives provision for the development of crop regulations under Section 40. Efforts to develop the Draft Sugar (General) Regulations to operationalize the Act commenced in 2014 through various stakeholder consultations. There is a working document on the draft regulations and stakeholder views are still being received and considered.

The Draft Sugar (General) Regulations cover registration and licencing, production, processing, marketing, distribution (including storage, collection, and transportation) research and attendant rules. There are also draft Regulations on Importation and Exportation of Sugar and it by-products.

The absence of industry regulations has created an environment of disorder in the sector, making difficult the drive towards competitiveness.

Recommendation

i. *Expedite the gazettement of industry regulations.*

7.8. CONSUMER PROTECTION ACT NO. 46 OF 2012

The Consumer Protection Act contains provisions relating to Consumer Rights, unfair practices and procedures for consumer remedies.

Section 3 (4) provides that the purposes of the Act are to promote and advance the social and economic welfare of consumers in Kenya by—

(a) Establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;

(b) Reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers;

(c) Promoting fair and ethical business practices;

(d) protecting consumers from all forms and means of unconscionable, unfair, unreason able, unjust or otherwise improper trade practices including deceptive, misleading, unfair or fraudulent conduct;

It is imperative to note that protection of the consumers of sugar cuts across the entire value chain including importation. The necessary legislation and institutions to protect the consumer are in place but require enforcement.

Recommendations

i. KEBS should ensure that quality standards for both imported and locally manufactured sugar are adhered to;

ii. The AFA-SD should seek accreditation to have laboratories for quality checks on local and imported sugar;

iii. AFA-SD in collaboration with other government agencies should undertake sugar verification on questionable origins and quality, prior to importation of sugar to ascertain origin and quality of production;

iv. AFA-SD should ensure that there are sufficient stocks of affordable sugar available to the consumer for stable prices; and

v. Enhance synergies between the relevant multi-agencies that regulate quality of goods. AFA-SD, KEBS, KRA, Kenya Consumer Protection Advisory Committee (KCPAC), Ministry of Foreign Affairs, State Department of International Trade and relevant Kenyan mission should collaborate on matters of market intelligence, quality assurance and consumer protection.

7.9. STANDARDS ACT CAP 496

The Act provides for standardisation of the specification of commodities and establishes the KEBS. The key functions of the KEBS in relation to sugar industry include:

i. Promotion of standards including testing for compliance in line with specifications;

ii. Controlling the use of standardization marks and distinctive marks; and

iii. Undertaking educational work in connection with standardization;

The necessary legislation and institutions required to promote standardisation in the sugar-sub-sector are in place but there has been inadequate enforcement of the same.

Recommendations

i. Continuous collaboration between the AFA-SD, KEBS and proposed SSSC to ensure enforcement of standards in the sugar sub-sector; and

ii. (KEBS) to undertake capacity building AFA-SD and Country Governments on standards as per its mandate.

7.10. PUBLIC FINANCE MANAGEMENT ACT. 2012 AND STATE CORPORATIONS ACT CAP 446

The Public Finance Management Act on one hand provides for the effective management of public finances in accordance with the principles set out in the Constitution, its oversight and accountability responsibilities. It also provides for the monitoring by the National Treasury of the management of the finances of public enterprises and investments; the financial aspects of risk management strategies and governance structures; the financial performance of state corporations and the manner of handling serious financial problems when encountered.

Section 92(3) of the PFM Act provides that if a State organ or other public entity encounters a serious financial problem or anticipates serious challenges in performing its financial function or meeting its financial commitments, it shall immediately:

(a) Seek solutions to resolve the financial problems;

(b) Notify the Cabinet Secretary or the County Executive Committee member for finance where the State organ is a county government organ;

(c) Notify the Controller of Budget and the Commission on Revenue Allocation; and

(d) Inform the Intergovernmental Budget and Economic Council (IBEC), of the nature of the financial problem and proposed remedial measures.

Section 187 of the PFM Act establishes the IBEC as a forum for the consultation and cooperation between the National government and County governments on among others matters relating to budgeting, the economy, financial management and the integrated development at both levels of government. Section 187 of the PFM Act and Section 104 of the County Government Act provides for the development of County Integrated Development Plans (CIDP) which enable counties to prioritise the use of their resources in development and service delivery. There is evident failure by County Governments to provide for facilitation of sugar sub-sector in their respective County Integrated Development Plans.

The State Corporations Act on the other hand makes provision for the establishment, control and regulation of state corporations. All state corporations are required to adhere to the provisions of the Act. Further, the Code of Governance of State Corporations in Kenya (Mwongozo) of 2015 provides policy guidelines on management, governance and oversight in line with Article 10 of the Constitution.

As a result of non-adherence of the provisions of the two Acts on resources management, the public owned and controlled sugar mills have faced serious financial problems leading to their inability to meet their financial commitments. In addition, the sugar sector has been bedevilled by governance issues which have adversely affected their performance and are likely to cause their collapse.

Recommendations

i. Improve governance and oversight functions both at management and board level;

ii. The Parliament and the National Treasury to play its oversight role on the governance of state-owned sugar mills;

iii. Strict adherence to requirements of the State Corporations Act, Mwongozo and the principles of public finance on the prudent use of resources should address poor governance that have bedevilled the state-owned sugar mills;

iv. *There is need to conduct a management and forensic audit of public owned mills and related sugar institutions to give confidence to prospective strategic partners;*

v. *County Governments to provide for facilitation of sugar sub-sector in their respective County Integrated Development Plans; and*

vi. *Structural changes in company ownership to inject additional capital, managerial expertise, innovation and technology among others.*

7.11. THE COMPETITION ACT NO.12 OF 2010 AS AMENDED

The Competition Act promotes and safeguards competition in the national economy; protects consumers from unfair and misleading market conduct; and provides for the establishment of the Competition Authority and the Competition Tribunal.

The functions of the Authority in relation to the Sugar industry include:

I. *Protection of competition and consumer welfare;*

II. *Investigation of impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;*

Under the current operating environment with lack of regulations there is a risk of creating market dominance which could lead to monopoly.

Recommendation

I. The process of licensing of new mills and divestiture of public mills should ensure diversity in ownership, in line with the provisions of the AFA Act section 44.

7.12. MILL CATCHMENT AREA IN THE SUGAR SECTOR

Cane shortage is largely attributed to poor governance structures leading to miller competition for scarce cane supply. In view of the need for coordination of cane farming and supply activities, it is proposed that cane catchment regions be created each comprising of two or more sugar mills where farmers in the region shall have an option to contract/ supply cane to a miller of their choice within the catchment region.

The Competition Act No. 12 of 2010 (as amended) prohibits restrictive trade practices (including agreements and decisions). Under Section 21(1) it specifically provides that:

> 'Agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya, are prohibited, unless they are exempt in accordance with the provisions of Section D of this Part."

Sub-sections 21(2) and (3) specifically speak to practices such as mill catchment area, commonly referred to as 'zoning'. They prohibit Agreements, decisions and concerted practices which *divides markets by allocating customers, suppliers, areas or specific types of goods or services.*

The law however provides for exemptions, that is, instances where restrictive trade practices are allowed under certain circumstances. Part D of the Competition Act provides for exemption of Certain Restrictive Practices. Section 25(1) provides that:

'an undertaking or association of undertakings may apply to the Authority to be exempted from the provisions of Section A or B of this Part in respect of—

a) any agreement or category of agreements;

b) any decision or category of decisions;

c) any concerted practice or category of concerted practices.

The application for an exemption should be made in the prescribed form and manner, accompanied by such information as may be prescribed or as the Authority may reasonably require. Upon receipt of an application, the Competition Authority shall give notice by publishing a notice in the Gazette indicating the nature of the exemption sought by the applicant and calling upon interested persons to submit to the Authority, within thirty days of the publication of the notice, any written representations which they may wish to make in regard to the application.

Section 26(1) provides that after consideration of an application for exemption and any representations submitted by interested persons, the Authority shall make a determination in respect of the application, and may—

a) grant the exemption;

b) refuse to grant the exemption, and notify the applicant accordingly with a statement of the reasons for the refusal; or

c) issue a certificate of clearance stating that in its opinion, on the basis of the facts in its possession, the agreement, decision or concerted practice or the category of agreements, decisions or concerted practices does not constitute an infringement of the prohibitions contained in Section A or B of this Part.

The Act under Sections 26(2) and (3) provides the key considerations which will guide the Authority in granting exemptions to prohibited trade practices which include:

i. exceptional and compelling reasons of public policy as to why the agreement, decision, concerted practice or category of the same, ought to be excluded from the prohibitions;

ii. Whether the exemption will contribute to or result in maintaining or promoting exports;

iii. Whether the exemption will contribute to or result in improving, or preventing decline in the production or distribution of goods or the provision of services;

iv. Whether the exemption will contribute to or result in promoting technical or economic progress or stability in any industry;

v. Whether the exemption will contribute to or result in obtaining a benefit for the public which outweighs or would outweigh the lessening in competition that would result, or would be likely to result, from the agreement, decision or concerted practice or the category of agreements, decisions or concerted practices.

Section 26(4) provides that 'the Authority may grant an exemption subject to such conditions and for such period as the Authority may think fit.'

Relating the above provisions to the sugar sector, and particularly on mill catchment area (zoning), the practice falls under the contemplated exemptions under the Act. This would require the Regulator of the sector (AFA) to make the requisite application to the Competition Authority which would then publish a Gazette Notice allowing any written representations from interested parties within thirty days of the publication of the notice.

This process essentially allows for public participation of interested parties including cane farmers and millers who can provide any representations in support of or against the application to the Authority.

Alternatively, in terms of the process of obtaining exemptions, Section 30(2) provides that 'the Competition Authority may, with the approval of the Cabinet Secretary, by notice in the Gazette, exclude any category of decisions, practices or agreements by or between undertakings from the application of the provisions relating to exemptions. In this regard, AFA can submit a request for consideration of exemption of mill catchment area (zoning) under this section. However, from preliminary consultations clarified that mill catchment areas does not impede competitiveness and therefore does not require application for exemption.

From a legal standpoint the mill catchment area (Regional zoning) is allowable.

From the technical standpoint, regional zoning:

I. will contribute to optimum capacity utilization, increased sugar production to meet national demand with surplus for export;

II. will contribute to and result in improving the industry and preventing its decline, as one of the major challenges affecting the sector is cane poaching; This improvement would be reflected in:

   - ✓ Restored order in the industry and creation of a suitable operating environment for it to thrive.
   - ✓ Mill cane synchronization for increased efficiency, increased sugar production and optimum incomes to farmers.
   - ✓ Curbed cane poaching which when unchecked leads to loss of investments, low incomes to farmers, harvesting of immature sugar cane, factory inefficiency, breaching of farmer miller contracts and industry disputes.
   - ✓ Miller accountability to the source of raw materials (farmer).
   - ✓ Strengthened miller-farmer contractual relationships.
   - ✓ Reduced cost of transport and increased incomes to the farmers as a result of reducing the distances for cane transportation. (cane transport costs are borne by farmers and are dependent on the distances from farm to the weighbridge)
   - ✓ Promotes investor confidence as investors require an assurance of raw material supply.

III. will contribute to and result in promoting technical (extension) and economic progress and stability in the industry;

IV. Will contribute to and result in obtaining a benefit for the public arising from increased efficiency, reduced cost of production and consequently reduced cost of sugar.

Exclusive zoning means one farmer is obligated to supply cane to one mill, at the exclusion of any other. This goes against the provision of the law and the rights of both the farmers and the miller.

The current operating environment (free for all), does not obligate the farmer to supply cane to any designated miller with raw material. Similarly, the miller is not obligated to buy the farmers' sugar cane. This promotes cane poaching which is a source of disorder, leads to cane supply shortages, inefficiency in the value chain, high cost of production, low sugar production, need for importation and high sugar prices. It also denies the farmer support for cane development from the miller as the miller has no assurance that they will benefit from this investment in cane development.

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

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

Recommendations

i. *Delineation of sugar regions as follows:*

- ✓ *Central region (Kisumu, Southern Nandi sub-counties and Kericho Counties);*
- ✓ *Upper western region (Bungoma, Kakamega excluding Mumias area, Trans-Nzoia and Uasin-gishu Counties);*
- ✓ *Lower western region (Mumias area, Busia and Siaya Counties);*
- ✓ *Southern region (Migori, Homa Bay, Kisii and Narok Counties);*
- ✓ *Coastal region (Kwale, Tana River and Lamu Counties); and*

ii. *Farmers shall have an enforceable contract with a mill of their choice within the region.*

7.13. ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT NO. 8 OF 1999 AS AMENDED

The Environmental Management and Coordination Act provides for an appropriate legal and institutional framework for the management of the environment.

The relevance of the legislation to the sugar sub-sector relates to environmental impact assessments. The Act categorises sugar mills as high risk projects which require submission of Environmental Impact Assessment study report which includes measures for pollution control (noise, effluent) and soil management under Section 58(2) (Legal Notice 150 of 16th June 2016, Section 2(9)(q)).

There are cases of pollution in some of the factories especially with regard to effluent management.

Recommendations

i. *Continuous collaboration between AFA-SD and NEMA to ensure enforcement of environmental standards in the sub-sector;*

ii. *NEMA should undertake capacity building of AFA-SD and Country Governments on environmental standards as per its mandate.*

7.14. FERTILIZERS AND ANIMAL FOOD STUFFS ACT CAP 345

The Act regulates the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs and substances of animal origin intended for the manufacture of such fertilizers and foodstuffs.

The cost of production in the industry is high. One of the components that contribute to this high cost of production is the cost of farm inputs including fertilizer. The country has not taken advantage of the existing opportunity to manufacture fertilizer, which would go a long way in reducing the cost of fertilizer and the overall cost of production.

Recommendation

i. *Investment in fertiliser production and blending in collaboration with KEBS and KEPHIS for quality control.*

7.15. PEST CONTROL PRODUCTS ACT CAP 346

The Act regulates the importation, exportation, manufacture, distribution and use of products used for the control of pests and of the organic function of plants and animals.

Currently, the sugar yields have declined due to lack of adequate skills in pest and disease control and low extension services, despite the existence of the legal and regulatory framework. The main diseases experienced include smut whip, sugarcane mosaic virus, and ratoon stunting disease, sugar cane yellow-leaf syndrome and red rot. The main pests include yellow sugar-cane aphid, nematodes, sugar-cane grub, stock borer and sugar cane scale insect.

Recommendation

i. *AFA-SD, SRI and the County governments should collaborate with the Pest Control Products Board (PCPB) to ensure proper pest control and sugar cane husbandry through extension services.*

7.16. PLANT PROTECTION ACT CAP 324

The Act provides for rules for the purpose of preventing and controlling attacks by or the spread of pests or diseases. Key areas covered by the Act include:

a) the methods of planting, cleaning, cultivating and harvesting to be adopted, and the precautions and measures to be taken by any person for the purpose of preventing or controlling attacks by, or the spread of, any pest or disease;

b) reporting of the occurrence of any pest or disease;

c) the disinfection, treatment, destruction and disposal of any unhealthy plant, or of any plant appearing to be infected with any pest or disease, or of anything whatever, whether of a nature similar to a plant or not, likely to infect any plant with any pest or disease;

d) the disinfection, fumigation and treatment of any building, vehicle, aircraft or vessel suspected of being or having been used for the storage or conveyance of anything likely to infect any plant with any pest or disease; and

e) The quarantine of infected areas.

Currently, there sugar yields have been low due to pest and disease among others, despite the existence of the legal and regulatory framework on preventing and controlling attacks by or the spread of pests or diseases.

Recommendation

i. *Continuous collaboration between the institute, AFA-SD, KEPHIS and KEBS to ensure enforcement of plant protection standards in the sugar sub-sector.*

7.17. PUBLIC HEALTH ACT CAP 242 AND FOOD, DRUGS AND CHEMICAL SUBSTANCES ACT CAP 254

The Food, Drugs and Chemical Substances Act provides for the prevention of adulteration of food, drugs and chemical substances. The Food, Drugs and Chemical Substances Act prohibits the sale of unwholesome, poisonous or adulterated food and use of deception. The Public Health Act provides for securing and maintaining health. The sugar industry has faced issues relating to adulteration of its products and by-products such as molasses. This has indeed been a growing quality concern in the sugar industry and is in contravention of provisions these Acts.

Recommendations

i. *Continuous collaboration between AFA-SD, KEBS and the Public Health (Standards) Board, Central Board of Health to ensure enforcement of public health standards in the sugar sub-sector; and*

ii. *Regulations under these Acts should be properly implemented.*

7.18. PHARMACY AND POISONS BOARDS ACT CAP 244

The Act provides for the control of the profession of pharmacy and the trade in drugs and poisons. In terms of the sugar sector, its relevance is with respect to poisons which may be used for agricultural purposes such as pesticides and herbicides. The Act requires that dealers in such poisons be licenced for control purposes.

There is low sensitization to the sugar farming community on proper handling of pesticides and herbicides, which could lead to contamination or poisoning.

Recommendation

i. *Continuous collaboration between the AFA-SD and the Pharmacy and Poisons Board to ensure enforcement of poisons standards in the sugar sub-sector and adequate sensitization of the farming community.*

7.19. EMPLOYMENT LAWS (EMPLOYMENT ACT OF 2007, LABOUR RELATIONS ACT NO. 14 of 2007, WORK INJURY BENEFITS ACT 2007, OCCUPATIONAL HEALTH AND SAFETY ACT 2007, LABOUR INSTITUTIONS ACT 2007.

The Employment Act declares and defines the fundamental rights of employees, to provide basic conditions of employment of employees and regulates employment of children. With respect to the sugar industry, there is need to adhere to the provisions of the Employment Act. Currently, State-owned mills have failed to pay salaries to their employees for several months, and statutory deductions have not been remitted to the relevant agencies including Pay as You Earn (PAYE).

The Labour Relations Act consolidates the laws relating to trade unions and trade disputes, provides for the registration, regulation, management and democratisation of trade unions and employers organisations or federations, promotes sound labour relations through the protection and promotion of freedom of association, encourages effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development. With respect to the sugar industry, because of non-payment of employees of state-owned mills, there is looming unrest in the sector which is complicated further by non-remittance of their union membership dues to Kenya Union of Sugar Plantation Workers.

Work Injury Benefits Act provides for compensation to employees for work related injuries and diseases contracted in the course of their employment. It is imperative that employers adhere to proper health and safety standards in order to avoid injuries and diseases at work. Where injuries or diseases are occasioned at work, the employees must be adequately compensated. It is advisable for employers to provide group medical and accidental covers to employees. Health and safety equipment have not been provided to employees in the industry, thereby exposing them to risk of injuries at work. Further, some of the mills cannot afford to provide the requisite medical and work injury benefits insurance covers to the employees.

Occupational Health and Safety Act provides for the safety, health and welfare of workers and all persons lawfully present at workplaces, and the establishment of the National Council for Occupational Safety and Health. With respect to the sugar industry, health and safety equipment have not been provided to employees, thereby exposing them to risk of injuries at work. This is a contravention of the provisions of the Act and the International Labour Organisation (ILO) Standards.

The Labour Institutions Act establishes labour institutions, and provides for their functions, powers and duties. Given the poor performance of the industry, sugar mills do not meet the contractual and statutory obligations. In addition, employees are inhibited from participating effectively in collective bargaining arrangements.

Recommendation

i. *Enforcement and compliance with the provisions of Employment Act of 2007, Labour Relations Act No. 14 of 2007, Work Injury Benefits Act 2007, Occupational Health and Safety Act 2007 and Labour Institutions Act 2007.*

7.20. COUNTY GOVERNMENTS ACT NO. 17 OF 2012 AND INTERGOVERNMENTAL RELATIONS ACT NO. 2 OF 2012

The County Governments Act gives effect to Chapter Eleven of the Constitution; and provides for county governments' powers, functions and responsibilities to deliver services.

According to the Fourth Schedule of the Constitution and the County Governments Act, the County Government is responsible for the implementation of agriculture policy, crop husbandry, plant and animal disease control amongst others.

Despite having made significant progress in implementation of unbundled functions as provided for in the fourth schedule, there are still challenges in the implementation of the respective functions of National and County Government, proper implementation of the Constitution and the County Governments Act.

The Inter-Governmental Relations Act No. 2 of 2012 establishes a framework for consultation and cooperation between the National and County Governments and amongst County Governments; and establishes mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the Constitution.

There is in place sectoral committees on agriculture to address functional issues between the two levels of Government. Section 23 of the Act provides for the establishment of Joint Committees to meet the objects of the IGRA. One such committee is the Joint Agricultural Sectoral Committee.

Recommendations

i. *Define the unbundled functions on Agriculture and/or renegotiate the implementation of the unbundled functions in line with article 187 of the Constitution by the two levels of Government; and*

ii. *The sugar sub-sector should use the existing intergovernmental structures as provided in the IGRA to address disputes on sugar matters that are inter-governmental in nature.*

7.21. NATIONAL LAND COMMISSION ACT NO. 5 OF 2012

The Act makes provision as to the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission; to give effect to the objects and principles of devolved government in land management and administration.

Section 5(1) of the Act provides for the function of the Commission (NLC) pursuant to Article 67(2) of the Constitution to include:

- ✓ Management of public land on behalf of the national and county governments;
- ✓ Initiating investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress; and
- ✓ Monitoring and having oversight responsibilities over land use planning throughout the country among others.

With regard to the sugar industry, there is a perception by a large segment of the stakeholders that nucleus land is communal land. Pursuant to its function, the National Land Commission (NLC) undertook an investigation into present and historical land injustices relating to land under the sugar industry. The report by the NLC referenced NLC/Chairman/Vol XXII/99 of 28th July 2018 revealed that there are two sets of nucleus estate land, one owned by the County Government and leased to the millers for purposes of cane growing, and another set which was compulsorily acquired by the state for cane growing, currently owned by state-owned mills.

Following the stakeholder engagement, the views expressed were that the nucleus land should neither be sold, nor its use changed from sugar cane growing and related purposes. Accordingly, it is therefore recommended with regard to public-mills that the use of nucleus land should be classified as a shareholder reserved matter necessitating a special resolution (75%). The grant and lease document to specify land use purpose, that is, cane growing and related activities.

With respect to County Government owned nucleus land under lease, the use of land should remain for cane growing and related purposes.

Recommendations

i. *Maintain land use for cane growing and related activities in both categories of nucleus land ownership; and*

ii. *Cause a restriction to be entered into the Land register with respect to nucleus land restricting land use for cane growing and related purposes.*

7.22. CLIMATE CHANGE ACT NO.11 OF 2016

The Act makes provision for a regulatory framework for enhanced response to climate change and provides for a mechanism and measures to achieve low carbon climate development. Section 3(2) provides that the Act shall be applied in all sectors of the economy by the national and county governments to:

- ✓ Mainstream climate change responses into development planning, decision making and implementation;
- ✓ Build resilience and enhance adaptive capacity to the impacts of climate change; and
- ✓ Formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change.

It has been noted that due to climatic changes and seasonality of rainfall, the quality and quantity of the yields has drastically dropped and over-dependence on rain-fed agriculture does not guarantee mills supply of adequate cane throughout the year. Consequently, the stakeholders proposed the need for climate change adaption measures such as dam construction and water harvesting pans for irrigation purposes and afforestation.

The stakeholders further proposed the need to consider carbon credit trading from the sugar cane plantation.

Recommendation

i. *Construction of dams and water pans to support cane irrigation.*

7.23. THE ENERGY ACT NO.1 OF 2019

The Energy Act consolidates the laws relating to energy, provides for National and County Government functions in relation to energy, establishes the powers and functions of the energy sector entities; promotes renewable energy; exploration, recovery and commercial utilization of geothermal energy; regulates the midstream and downstream petroleum and coal activities; regulates the production, supply and use of electricity and other energy forms.

The Act obligates the Government to facilitate the provision of affordable energy services to all persons in Kenya. It specifically provides that 'the Cabinet Secretary shall develop a conducive environment for the promotion of investments in energy infrastructure development, including formulation of guidelines in collaboration with relevant county agencies on the development of energy projects and to disseminate the guidelines among potential investors''.

The Act also provides for a renewable energy feed-in tariff system with the objective of:

- ✓ catalysing the generation of electricity through renewable energy sources;
- ✓ encouraging locally distributed generation thereby reducing demand on the network and technical losses associated with transmission and distribution of electricity over long distances;

- ✓ encouraging uptake of, and stimulate innovation in, renewable energy technology; and
- ✓ reducing greenhouse gas emissions by lessening reliance on non-renewable energy resources.

Bagasse being a by-product of sugar falls within the definition of a source of renewable energy, that is, non-fossil energy generated from natural non-depleting resources including biological waste energy. Currently, several mills are utilizing bagasse for generation of energy for utilization within the mills. The stakeholder engagement revealed the difficulty in investing in bagasse for electricity generation because of the high costs associated with it. Few mills are able to generate energy to feed in to the national grid, yet bagasse is a readily an available raw material.

Recommendations

i. The Government should encourage uptake of, and stimulate innovation in, renewable energy technology relating to bagasse by constructing the requisite infrastructure for power transmission to the nearest power station and providing a profitable feed in tariff; and

ii. The Government should develop a conducive environment for the promotion of investments in energy infrastructure development from bagasse, including formulation of guidelines in collaboration with relevant county agencies on the development of energy projects and to disseminate the guidelines among potential investors.

7.24. INTERNATIONAL INSTRUMENTS: COMESA AND EAC

Kenya is a member of the EAC Customs Union, the COMESA-FTA and various other bilateral and multilateral agreements. The multiple regional economic configurations have conflicting regulatory frameworks and trade protocols.

Kenya has had a number of disputes with COMESA and EAC member states over sugar related trade issues while implementing existing protocols and treaties. These issues have touched on rules of origin and common external tariffs. In addition, due to different levels of development of member states, there has been disagreements especially over signing of Economic Partnership Agreements EPAs.

Recommendations

i. Active engagement in the harmonization of sugar trade policy through the Tripartite Free Trade area which encompasses the COMESA, EAC and Southern Africa Development Community (SADC) configurations;

ii. Participation in regional and international trade negotiations to enter into agreements that favour the growth, and development of the sugar industry; and

iii. Proposal for establishment of timelines in resolving trade disputes.

7.25. JUDICIAL PRECEDENTS IN THE SUGAR INDUSTRY

As noted in the foregoing chapters, the sugar industry is bedevilled by a myriad of challenges, a number of which have found themselves in the courts of law for determination and direction. The courts have had to pronounce themselves on the state of the sugar sector and made recommendations on progressing the sector. Some of the judicial expressions include the following:

High Court Petition No. 187 of 2016 (County Government of Bungoma and four others Vs. Privatization Commission & another)

In this case, the petitioners challenged the decision by the Privatization Commission of privatizing five public sugar milling companies. The Court struck out the petition on grounds that the petition touched on intergovernmental relations disputes on concurrent functions which ought to be resolved by organs under the Intergovernmental Relations Act in the first instance before resorting to court. The Petitioners questioned the extent of the County Government's agricultural role vis-a-vis the National Government's agricultural policy role, particularly, its substantive public investment function with respect to sugar milling factories, which were the subject of the privatization programme.

West Kenya Sugar Company Limited v Agricultural Fisheries and Food Authority & 11 others [2017] eKLR

In this case, the petitioner alleged an entitlement of an exclusive zone for the cane grown in Kabras. The Court in its considered opinion stated that 'the law as it stands does not provide for exclusive zones for any miller. Indeed, the Competition Act, No. 12 of 2010 and Section 3 of the Crops Act seem to frown upon the practice…'

The above positions were also taken in a number of cases seen below

- ***i. Nairobi High Court HCCC 206 of 2010 West Kenya Sugar Company Limited vs. Kenya Sugar Board and Butali Sugar Mills Limited;***
- ***ii. Kakamega High Court Judicial Review No. 3 of 2013 Republic vs. Kenya Sugar Board ex-parte West Kenya Sugar Company Limited;***
- ***iii. Kisumu High Court Civil Case No. 175 of 2012 Chemelil Sugar Company Limited vs. West Kenya Sugar Company Limited;***
- ***iv. Kakamega High Court Civil Case No. 223 of 2012 Mumias Sugar Company Limited & Others vs. West Kenya Sugar Company Limited.***

It is instructive to note that the substance of the authorities above rejected the notion of monopoly by sugar millers, both under the Sugar Act, 2001 and under the Crops Act, 2013.

Republic v Agriculture Fisheries and Food Authority & 3 others Ex-Parte West Kenya Sugar Company Limited [2015] eKLR- at paragraphs 154 and 155:

In this case, the Court articulated the role of Agriculture Food Authority as ***'vital to the smooth implementation of the respective functions of the National Government and County Governments set out in the Fourth Schedule of the Constitution in so far as Agricultural Policy and Agriculture are concerned'.*** While noting the important governance role of AFFA in the sugar industry, the Court further recognized the need for farmer representation in AFFA by stating that

'the object of incorporation of Farmer's representatives in AFA is to ensure that the farmers who are the major stakeholders in the Agriculture industry participate in the process of decision making in the said industry'.

Republic v Agriculture Fisheries and Food Authority & 3 others Ex-Parte West Kenya Sugar Company Limited [2015] eKLR- at paragraph 195:

The court in this case highlighted the sensitive nature of the sugar sector and the need to resolve issues amicably. The Court further indicated the need for co-existence of millers without incessant litigation by categorically stating that:

'…The applicant and Butali must learn to co-exist in an atmosphere of civilized competition without resorting to Machiavellian tactics with the legal process as the go-between…'

Republic v Agriculture Fisheries and Food Authority & 3 others Ex-Parte West Kenya Sugar Company Limited [2015] eKLR- paragraph 179-180:

The Court in this case highlighted the need for legislative reform to define Section 20(6) of the Crops Act, 2013 by stating that:

'That this provision is problematic is not in doubt. However, that is an issue that cannot be blamed on the respondents. It is for Parliament to correct that anomaly…'

The need for sectoral reforms in the sugar industry cannot be further buttressed following a sampling of the precedents above.

8 CHAPTER EIGHT

SUMMARY OF STAKEHOLDER VIEWS

8.1. INTRODUCTION

In line with the constitutional requirement for public participation, the Taskforce of Sugar Industry Stakeholders invited members of the public, sugar cane growers, farmer's organizations, cooperative societies, unions, out-grower institutions, millers, local leaders, elected leaders, cane transporters, cane cutters, importers, government institutions and all other relevant stakeholders in the sugar industry. The purpose was to receive their views, proposals and recommendations that will support the revival, development and sustainability of a competitive sugar industry.

The public hearings were advertised in the public media to take place as per the table below:

DAY AND DATE	COUNTY	VENUE	TIME
Wednesday 13th March 2019	Homa Bay	Sukari Sugar Company	9:00 am
	Kisumu	Chemelil Sugar Company	9:00 am
	Kakamega	Mumias Sugar Company	9.00 am
	Bungoma	Nzoia Sugar Company	2:30 pm
Thursday 14th March 2019	Migori	SONY Sugar Company	9:00 am
	Kisumu	Muhoroni Sugar Company	9:00 am
	Busia	Olepito Sugar Company	9:00 am
	Kericho	Soin Sugar Company	2:30 pm
	Busia	Busia Sugar Industries Ltd	2:30 pm
Friday 15th March 2019	Narok	Transmara Sugar Company	9:00 am
	Kisii	Nyachenge Market Centre	2:30 pm
	Kisumu	Kibos Sugar Company	9:00 am
	Kisumu	Miwani	2:30 pm
	Kakamega	Butali Sugar Company	9:00 am
	Kakamega	West Kenya Sugar Company	2:30 pm

During the forums the stakeholders gave their views on various topics as discussed below:

8.2. POLICY, LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORK

REGION	VIEWS
Chemelil	Amend the Crops Act to enhance industry focus
	Finalize and enforce Sugar Industry Regulations
	Amend the Crops Act
	Align the Acts governing the industry to the Constitution
	Create and executive Board with representation from MOALF&I, millers, Farmers, County Governments and AFA

Muhoroni	Gazzette industry regulations
	The regulations should be gazetted to bring harmony and peace in the sector
	Reinstate Sugar Act
Kibos	Bring back sugar Act
	Develop and implement sugar policy
	Gazzette regulations
	Institute and apex body
Soin	Develop the sugar Policy and Regulations
Miwani	Gazettement and enforcement of sugar regulations
South Nyanza	Reinstate the Sugar Act
	Develop Sugar Industry Policy
	Gazzette sugar and enforcement regulations
	Create an independent body to manage the sugar sector
	Establish the sugar tribunal
	Review of Crops Acts to align with the Constitution and delist sugar from the Crops Act
Sukari	Bring back the Sugar Arbitration Tribunal
Transmara	Strengthen Sugar Tribunal
Mumias	Reinstate the Sugar Act and provide for a Stakeholders body to manage the Sugar Sector based in Kisumu
	Develop, and industry Policy, Gazette and enforce regulations
	Establish an Executive Board to administrate sugar matters
	Establish Sugar Arbitration Tribunal
Nzoia	Reinstate the Sugar Act and provide for a Stakeholders body to manage the Sugar Sector based in Kisumu
	Develop, and industry Policy, Gazette and enforce regulations
	Re-establish the Kenya Sugar Board
	Re-establish the Sugar Arbitration Tribunal
Butali	Reinstate the Sugar Act and provide for a Stakeholders body to manage the Sugar Sector based in Kisumu
	Develop, and industry Policy, Gazette and enforce regulations
	Re-establish the Kenya Sugar Board
	Establish an independent Sugar Research Institute
West Kenya	Reinstate the Sugar Act and provide for a Stakeholders body to manage the Sugar Sector based in Kisumu
	Develop, and industry Policy, Gazette and enforce regulations
Busia	Reinstate the Sugar Act
	Develop, and industry Policy, Gazette and enforce regulations
	National Executive Board to manage the industry
Olopito	Reinstate the Sugar Act
	Develop, sugar Policy Gazette and enforce regulations
	Reinstate the Sugar Arbitration Tribunal
Kwale International	Sugar Directorate should be independent of AFA, to deal effectively with sugar matters. The headquarters should be in Kisumu with a branch at Kwale
Stakeholder institutions (farmers and employees	Gazette and enforce regulations
	Develop a Sugar Policy
	Develop an in dependent Sugar Act
	Re-establish the Sugar Arbitration Tribunal
	Abolish AFA and Crops Act and re-establish the Kenya Sugar Board

The stakeholders in all the regions the Taskforce visited emphasized on the urgent need to develop a sugar industry Policy, Gazzette and implement the Sugar Regulations and develop a stand-alone Sugar Act that will facilitate the existence of stand-alone Sugar regulatory body and research institute. The stakeholders also proposed of an apex stakeholder body with regional branches for self-governance. The Act should also provide for the re-establishment of the Sugar Arbitration Tribunal to handle industry disputes.

The stakeholders were also of the view that the AFA Act 2013 and the Crops Act should be aligned to the Constitution.

8.3. PRIVATIZATION OF PUBLIC OWNED MILLS

REGION	VIEWS
Chemelil	Write off old GoK loans
	Privatize public mills
	Transfer Chemelil Sugar Company Assets to the County Government to lease the mill to private investors.
Muhoroni	Immediate write-off of current debt
	Bring a strategic partner to inject capital
	Do not support company merger as this will lead to loss of jobs.
	Merge Muhoroni and Agrochemical
	Protect job loss upon privatization
	Establish a mechanism to protect the company against looting and misappropriation during transition.
	Secure employees' compensation and provide employee and farmers shareholding
	Land should not be sold to private investors
	The land issue should be addressed upon privatization
	Land be transferred to the strategic investor on lease for 10 years renewable
	Have a better framework for farmers share in privatization so that it does not go the Mumias way
Kibos	Transfer assets to County Governments so that they can lease out the mill
	No factory merger
	Consider setting aside shares for farmers
	The new investor should consider employing people from the community
	Miwani nucleus belongs to the community and should be leased to the investors
	Strategic investor should be sought with the following shareholding: Strategic Investor 51% National Government 25% Famers 24% to be held in trust by the County Government
Soin	There should be no factory merger upon privatization
	Only the factory should be sold. The Counties (Kisumu and Kericho) will negotiate with investor on lease of nucleus land
	Secure farmers share upon privatization
	Recommend a debt write off
Miwani	Farmers should be allowed to buy shares upon privatization
	Remove receivers – pay off outstanding loans
	Land should remain with the Government
	Expedite privatization
	Identification of investors should be transparent
	The investor should consider the plight of famers and employees who served the factory before in collapsed
	Do not support factory merger upon privatization
	Optimize use of nucleus estate currently lying idle

South Nyanza	Write off the debts for millers and out-growers institution debts
	Stagger privatization process and handle factory by factory,
	Injection of capital to the public owned mills
	Restructuring of the workforce
	Government to provide funding for rehabilitation of the state owned mills,
	Proposed shareholding; 60% to famers 20% to County Government; 10% to employees and 10% to National Government,
	Send –off package for staff needs to be guaranteed,
	Write off debt and transfer the factory to County Government.
	Engage a strategic partner (51%) and County Government 49%
	Some group of farmers were opposed to privatization and recommended a debt write off, injection of funds by both National and County Government.
	Land be owned by County Government and leased for cane farming
Sukari	State owned miller should not be bailed out. Instead let them be privatised,
Transmara	Public mill should not be privatized instead they should be supported and strengthened to act a check on the private cartels (price stabilisers)and offer CSR
	Others had the opinion that public mills should be privatized immediately
Mumias	Though Mumias Sugar Company is a Private entity, the share ownership a structure does not give any private shareholder a controlling Majority other than Government with 20% shares
	Invite a strategic Partner with a controlling Majority to invest in MSC (including Booker Tate)
Nzoia	Write off debt miller and outgrower debt
	Privatize public mills
	Some group of farmers were opposed to privatization
Butali	Privatize public mills immediately
	Farmers and worker be allowed to buy shares
West Kenya	Privatize all Public Mills
Olopito	Privatize all Public Mills but protect against monopoly by one investor
	Privatization should be limited to machinery/equipment and not nucleus land
Stakeholder institutions (farmers and employees	Debt write off
	Support privatization
	Attract a Strategic Partner
	Transfer land to County Government who will lease the same to private investor

There were divergent views on the subject of privatization. Majority of the stakeholders support privatization of public mills after debt write off. They support the identification of strategic investors with proven record to take over public mills. The stakeholders also emphasized that the privatization process should protect against industry monopoly by one investor. The privatization process should secure shares for farmers and employees.

There were concerns that during the intervening and transition period, the Government should support these factories to continue operating and establish a mechanism to protect the company against looting and misappropriation.

In the Nyando sugar belt, majority of the farmers do not support factory merger upon privatization as this will lead to job losses and possible farmer marginalization. They however propose that Muhoroni Sugar Company (in receivership) and Agrochemical Food Company can be merged as they are complementary.

A section of stakeholders were opposed to privatization. They proposed that the public mills should be transferred to the Counties, who will lease the same to strategic investors.

Despite the divergent views on the mode of privatization, there was a unanimous proposal that land should be held in trust by the County Governments and not sold to strategic investors. The same should be leased to the investors on condition that its use is ring-fenced for cane development only.

8.4. ZONING IN THE SUGAR INDUSTRY

REGION	VIEWS
Chemelil	Create five regional cane cutting areas
Muhoroni	Support zoning should be done for sustainability as this will encourage extension service from miller
Kibos	Support zoning, create 5 regional cane catchment areas
	Zones be governed by regional committees
	Each region should have its own research facility to work within that agro-ecological zone
	Support zoning – on condition that farmers have options
Soin	Do not support zoning, farmers should supply cane to a mill of choice
	Opposed to zoning
Miwani	Some farmers were opposed to zoning
	Another group of farmers support regional zoning
South Nyanza	Support zoning and that its operation and enforceability should be properly defined.
Sukari	Do not support zoning as it causes monopoly and lack of freedom,
	Support regional zoning blocks to bring order
Transmara	Each factory to have its own designated cane catchment area
	Support zoning, with regulations to protect farmers and millers
Mumias	Create Regional zones that cluster at least three Mills together
	Re-enforce contractual cane farming
Nzoia	Support factory zoning. Licencing of new factories should be based on cane catchment zone
Butali	Establish regional zones to facilitate planning and bring discipline and order
West Kenya	Sugar cane farmer be at liberty to supply their cane to their preferred miller and miller be at liberty to purchase cane from willing farmers as long as such cane is not contracted by a different miller.
Busia	There should be zoning of regional clusters (minimum of 3 mills per zone)
Olopito	A section of farmers and the Miller supported a free for all cane market operation but with contracts.
	Another Section proposed Regional zones that cluster at least three Mills together.
Stakeholder institutions (farmers and employees	Support regional zoning
	Farmer contract with a miller of choice

There were divergent views on the subject on zoning. Majority of the stakeholders support regional zoning. This is a cluster of at least two or more factories in a region, where a farmer is free to enter into an enforceable contract with a mill of choice within the region.

Another section of farmers and one miller do not support zoning as it is alleged to cause monopoly. They prefer a free for all scenario where a miller can get cane from any catchment area and any farmer can supply to any mills irrespective of distance and commitment to cane development.

8.5. SUGAR IMPORTATION

REGION	VIEWS
Chemelil	Regulate sugar importation within the quarterly deficit
	Sell sugar through a single government marketing agency
	KNTC to import the sugar deficit
Muhoroni	There should be a sugar sector policy which should address issues of importation
Kibos	A Committee appointed by the Executive Board to determine how much sugar needs to be imported and advise the regulator on these quantities
	Millers to import 50% based on their production capacity KNTC to bring 50%
Miwani	KNTC to determine the quantities to be imported
South Nyanza	Millers should not be licensed to import sugar
	Regulated by a stakeholders body
Transmara	Strict measures to curb sugar importation
	Importation should be managed by a body consisting of millers, farmers and consumers
Mumias	Ban Millers from importation of Sugar
	Millers should not be licensed to import sugar
	Ensure that the regulations provide for a stakeholders Sugar Importation Committee that includes Millers, Farmers, both levels of Government and Regulator
Nzoia	Ban Millers from importation of Sugar
	Ensure that the regulations provide for a stakeholders Sugar Importation Committee that includes Millers, Farmers, both levels of Government and Regulator
Butali	Sugar importation to be controlled by a stakeholder committee
	Stop sugar importation and empower sugar cane farmers
West Kenya	Ensure that the regulations provide for a stakeholders Sugar Importation Committee that includes Millers, Farmers, both levels of Government and Regulator
	Impose Taxes and duties on imported sugar
Busia	Ban Millers from importation of Sugar
	Ensure that the regulations provide for a stakeholders Sugar Importation Committee that includes Millers, Farmers, both levels of Government and Regulator
Olopito	Ensure that the regulations provide for a stakeholders Sugar Importation Committee that includes Millers, Farmers, both levels of Government and Regulator.
	Stop haphazard sugar imports
	Importation should be undertaken by millers subject to approval and KEBS certification
Kwale International	Sugar imports should be regulated to ensure that only the identified annual deficit is allowed into the country. This should be restricted to KNTC at 50% and millers at 50% ratio. The quantum for millers should be allocated based on their milling capacity.

The stakeholders were unanimous that importation must be controlled and managed by a stakeholders committee. However, two schools of thought emerged on who should import. A majority of stakeholders emphasized that millers must not be licensed to import sugar as it leads to conflict of interest and undermines the industry's efforts to increase production towards self-sufficiency. They proposed that controlled importation should be undertaken by a government agency, preferably the Kenya National Trading Corporation (KNTC), while another section were of the view that traders should import based on approved quota by the stakeholders committee. A section of the millers proposed that millers should also be allowed to import based on a milling capacity.

The stakeholders emphasized the need for the regulator, Kenya Bureau of Standards and other Government agencies to enforce the existing regulations on sugar importation.

8.6. SUGARCANE PRICING AND FARMERS PAYMENT

REGION	VIEWS
Chemelil	Operationalize the Cane Pricing Committee
	Operationalize installed cane testing units
Muhoroni	Farmer should be involved in cane pricing. Farmers to benefit from proceeds of value added products
	Payment to farmers should be based on sucrose content
Kibos	Revive pricing committee and have farmer representation
	Committee on cane pricing – farmers should benefit from co- products
	Farmers should be paid based on proceeds from sugar and co- products
Soin	Farmers should benefit from sell of by-products by millers
Miwani	Pricing Committee be established, which should consider increasing the ratio of sharing profits between farmers and millers to 75:25
South Nyanza	Minimum price setting
	Develop a system in which farmers can benefit from by- products of cane.
	Develop an all cost factor pricing model
Sukari	Develop enforceable contracts
Transmara	Retain price of 2.5% for the purpose of paying farmers at the end of the season
	Farmers payment be within reasonable specified time, failure to which penalties should be levied to the miller and paid to the farmer as interest
	There should be a published Pricing Policy
Mumias	Formula based on weight is not beneficial to the farmer as it does not take into consideration earnings from byproducts.
	Ensure regulations provide for a stakeholders Pricing committee that include Farmers, Millers, Government and Regulator
	Pricing formula should enable farmers benefit from co-products
Nzoia	Formula based on weight is not beneficial to the farmer as it does not take into consideration earnings from byproducts.
	Ensure regulations provide for a stakeholders Pricing committee that include Farmers, Millers, Government and Regulator
Butali	Ensure regulations provide for a stakeholders Pricing committee that include Farmers, Millers, Government and Regulator
	The Pricing formula must ensure the farmer earns from all other valuable by products from Sugar Cane including power, ethanol, fertilizer, briskets etc.
	National Executive Board to determine cane prices
	Farmers should be paid within seven days from delivery
West Kenya	Ensure regulations provide for a stakeholders Pricing committee that include Farmers, Millers, Govt and Regulator
	The Pricing formula must ensure the farmer earns from all other valuable by products from Sugar Cane including power, ethanol, fertilizer, briskets etc.
	Cane Pricing Committee should comprise Outgrower Organization and sugar Company Management
Busia	Pricing to be determined by the Sugar Pricing Committee
Olopito	The Pricing formula must ensure the farmer earns from all other valuable by products from Sugar Cane including power, ethanol, fertilizer, briskets etc.

On the matter of sugar cane pricing the stakeholders were unanimous that a Cane Pricing Committee comprising farmers, millers, governments and the regulator should be established to determine cane prices. Further, the pricing formula should factor all costs incurred by the farmer and ensure that farmers benefit from the proceeds of value added products. The stakeholders urged for the expeditious implementation of payment based on quality.

The farmers proposed that payment for cane delivered to the factories should be paid within seven days, failure to which penalties should be levied to the miller and paid to the farmer as interest.

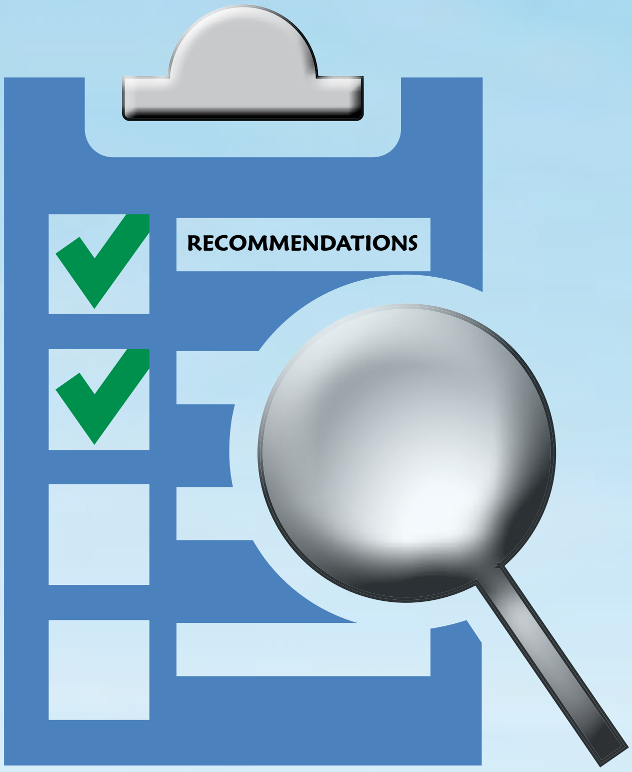
8.7. INDUSTRY FUNDING

REGION	VIEWS
Chemelil	Provide access to affordable credit for cane development and asset financing
	Subsidize or zero rate agro inputs
	Provide affordable credit to farmers
	Reinstate the Sugar Development Levy
Muhoroni	Establish sustainable funding mechanism for the industry
	Re-instate SDL
Kibos	Reinstate levy – should be under the Executive Board
	Bring back Sugar Board and the SDL
Soin	Bring back the SDL but define who will manage the fund
Miwani	Re-introduction of SDL
South Nyanza	Re-introduction of SDL
	CESS committee be established consisting of millers, farmers, the County Government so as to monitor the implementation of road maintenance
Sukari	CESS money deducted should be properly managed for the purpose of infrastructure development through a committee comprising of millers, farmers and county Government,
	Re-introduce the SDL to support farmers in cane development, infrastructure support and maintenance of the machine
Transmara	Re-instate SDL
	The government to provide programs which avail affordable loans and relaxed requirements,
Mumias	Re-instate SDL
	Establish a farmers advance scheme
	Pay farmers within seven days
Nzoia	Re-instate SDL
	Expedite immediate farmer arrears payments
Butali	Re-instate SDL to be managed by regional
	National and County Governments to facilitate access to affordable funding
West Kenya	Re-instate SDL
	The funds should be disbursed to the farmers
	Allow sugar companies to utilize cess fund to improve infrastructure
Busia	Re-instate SDL
Olopito	Re-instate SDL but each farmer should have his/her own account with the mill – access to funds should be proportionate to cane delivered
Kwale International	Reinstate SDL to provide funding to support development of irrigation infrastructure for farmers

Following the removal of the SDL, faced challenges in accessing affordable credit which has adversely affected the performance at both the farm and factory level. Consequently, stakeholders recommended the reinstatement of the SDL at 7% to provide access to affordable credit for cane development, factory rehabilitation, research and asset financing.

CESS money deducted by millers and submitted to the County Government should be well managed for the purpose of infrastructure development through a committee comprising of millers, farmers and county Government.

9 CHAPTER NINE



SUMMARY OF RECOMMENDATIONS

9. SUMMARY OF RECOMMENDATIONS

The recommendations were summarized in line with the TORs as follows:

9.1. INCREASING SUGAR CANE PRODUCTION AND PRODUCTIVITY

To increase cane production and productivity, the following shall be undertaken;

a) ***Enhance research into high yielding disease resistant and early maturing varieties***

Short term	i.	Promote research in alternative sources of raw material;
	ii.	Develop a protocol and legal framework for variety transfer;
	iii.	AFA-SD, SRI and the County governments should collaborate with the Pest Control Products Board (PCPB) to ensure proper pest control and sugar cane husbandry through extension services;
	iv.	Continuous collaboration between the institute, AFA-SD, KEPHIS and KEBS to ensure enforcement of plant protection standards in the sugar sub-sector;
	v.	Increase funding to enable SRI carry out research across the value chain;
Medium Term	vi.	Establish a variety development and release programme jointly with stakeholders, to mitigate risks against crop failure due to pests and diseases;
	i.	Restructure the research institute to address the challenges across the value chain; and
	ii.	Establish research field stations to undertake agro-ecological research.

b) ***Provide financial and extension support to farmers to increase cane production and productivity***

Short term	i.	County Governments to take up their role of crop husbandry as envisaged in the Schedule four of the Constitution; extension services, variety and soil matching, disease and pest controls, soil and plant tissue testing;
	ii.	Introduce cane in new areas that are ecologically suitable for cane farming;
	iii.	Promote sustainable Soil Fertility Management practices to increase yields;
	iv.	Bulking of early maturing varieties;
	v.	Farmer sensitization on early maturing varieties;
	vi.	Timely harvesting or early maturing varieties to encourage farmer uptake;
	vii.	Enforce farmer miller contracts that require cane to be harvested at maturity;
Medium Term	i.	Financial support to farmers to enable them develop cane;
	ii.	Develop and implement incentives for adoption of new technologies along the value chain;
	iii.	Strengthen the technical expertise of the research institute to improve its advisory capacity to County Agriculture extension services; and
	i.	Develop effective irrigation infrastructure and adopt irrigation farming to mitigate against adverse weather.

c) ***Reduce cost of cane production***

Medium Term	i.	Facilitate block farming to enable farmer's pool resources for bulk procurement of farm inputs, services and machinery; and
	ii.	Investment in fertiliser production and blending in collaboration with KEBS and KEPHIS for quality control in line with the provisions of the Fertilizers and Animal Food Stuffs Act Cap 345.

d) ***Enhance harvesting and transportation efficiencies***

Short term	i.	Synchronizing milling requirements with cane harvesting to minimize loses;
	i.	Improving infrastructure that is; road/rail network, and harvesting equipment;
	i.	Eliminating unethical practices in harvesting and transport;
	i.	A tripartite agreement between farmers, millers and transporters registered by the regulator to ensure fair transport pricing and
	i.	Capacity building on cane harvesting
Medium Term	i.	Modifying transport units to minimize transit losses.

e) ***Transparency at the weighbridge***

Short term	i.	In the interim, the farmer or a representative should monitor farmer's interests at the weighbridge;
	i.	The regulator to engage Weights and Measures to undertake random audits and calibration on a regular basis; and
Medium Term	i.	Full automation of weighbridges to enhance transparency on cane tonnage including message alerts to the farmer.

f) ***Increase farm level diversification initiatives***

Short term	i.	Farmer sensitization on the need, methods and benefits of diversification; and
Medium Term	i.	Develop guidelines on land use to promote diversification into food and fodder along with sugarcane, to optimize on income and enhance food security.

g) ***Strengthen Out-grower institutions***

Short term	i.	County Government to organize and revitalize farmer led institutions to wean farmers from dependence on the millers for credit and other services including extension; and
	i.	Capacity building and application of good governance principles of farmer organizations to ensure adequate representation.

9.2. ENHANCING MILLING EFFICIENCIES AND COMPETITIVENESS

To enhance milling efficiency and competitiveness, the following shall be undertaken:

a) ***Reduce cost of production at factory level***

Medium Term	i.	Develop and implement an industry cost cutting strategy along the entire value chain to reduce cost of production and increase efficiency; and
	i.	Invest in value addition to widen the industry's revenue base and reduce the overall cost of production.

b) ***Synchronized cane development to Cane supply***

Short term	i.	Ban harvesting of immature cane in the Rules and Regulations;
	ii.	Develop and implement an inter-mill cane transfer mechanism to stabilize the cane supply cycles;
	iii.	Millers to determine annual mill cane requirements;
	iv.	Developing farmer miller contracts that correspond to the requisite cane supply;
	v.	The regulator to ensure that the miller has adequate planned supply of cane that matches factory capacity before licence issuance/renewal;
	vi.	Penalties against the miller for occasioning loss to farmer/industry be computed based on consequential loss calculation for harvesting immature cane;
	vii.	Data driven planning of cane production to match factory capacities;
	viii.	Establish regional cane catchment areas whereby two or more mills are clustered within a defined geographical region to facilitate synchrony in planning production, cane supplies and resource mobilization as follows: ✓ *Central region (Kisumu, Southern Nandi sub-counties and Kericho Counties);* ✓ *Upper western region (Bungoma, Kakamega excluding Mumias area, Trans-Nzoia and UasinGishu Counties);* ✓ *Lower western region (Mumias area, Busia and Siaya Counties);* ✓ *Southern region (Migori, Homa Bay, Kisii and Narok Counties);* ✓ *Coastal region (Kwale, Tana River and Lamu Counties); and*
	ix.	Farmers shall have an enforceable contract with a mill of their choice within the region.

c) ***Invest in value addition***

Short term	i.	Licensing of new mills should require provision for deliberate plans to invest in value added products;
Medium Term	i.	Promote valued addition in the existing mills;
	i.	Attract investments targeted at product diversification and value addition into refined sugar, cogeneration, Ethanol, Paper, Board manufacture, Briquette and Pharmaceuticals;
	ii.	Develop and Implement viable Strategic business units for value added products;
	iii.	Negotiate with Kenya Electricity Transmission Company (KETRACO) to develop the requisite infrastructure for transfer of cogenerated electricity from the mills to the nearest Kenya Power and Lighting Company (KPLC) sub-stations; and
	iv.	Develop a conducive environment for the promotion of investments in energy infrastructure development from bagasse, including formulation of guidelines in collaboration with relevant county agencies on the development of energy projects and to disseminate the guidelines among potential investors.

d) ***Adopt and develop ICT Infrastructure across the value chain***

Medium Term	i.	Adoption of data driven integrated systems across the industry.

e) ***Establish governance structures to coordinate cane production, supply and processing***

Short term	i.	Establish a stakeholders' committee, comprising farmers, millers, regulator, research institute, national government and county government; and
	ii.	Development and enforcement of rules, standards and codes of practice in cane production and manufacturing.

f) ***Develop infrastructure***

Short term	i.	National and County Governments their respective responsibilities in infrastructure development and maintenance as provided for in the Constitutions; and
Medium Term	i.	Millers to attract additional investment for plant, equipment and other factory related infrastructure.

g) ***Mitigate against cane fires***

Short term	i.	Provide for penalties of non-accidental fires in the regulations;
	i.	Millers to initiate appropriate risk management measures to minimize cane fires; and
Medium Term	i.	Develop an insurance package for the farmers.

9.3. PRICING MECHANISM

To facilitate pricing mechanism that enhances income to stakeholders, the following shall be undertaken:

a) ***Review the cane payment formula***

Short term	i.	The Sugarcane Pricing Committee to provide a mechanism that remunerates farmers for other products derived from processing of cane;
	ii.	Ensure adherence to negotiated cane pricing formula;
	iii.	The pricing formula to include an index that takes into consideration delayed harvesting;
	iv.	The scope of the Sugar Cane Pricing Formula be extended to include pricing mechanisms for all other cane related charges paid by the farmer, including cost of transport, cost of credit, extension service among others; and
	v.	Transition to payment based on quality;

b) ***Ensure prompt payments to farmers***

Short term	i.	Enforce provisions within the farmer/miller contract that require that farmers be paid within seven days, failure to which the miller is penalised in line with the provisions in the regulations
	ii.	Provide an exit clause/novation that provides for an exit upon breach of contract;
	iii.	Strengthen outgrower institutions/Cooperatives for effective representation and better bargaining power on behalf of the farmer; and
	iv.	Provide in the regulations for the miller to be liable to pay interest on delayed payment at market rate.

9.4. ENHANCING SUGAR MARKETING AND TRADE

To promote favourable sugar marketing and trade both locally and internationally which guarantee sustainable supply of quality and affordable products to consumers, the following shall be undertaken;

a) ***Increase sugar production***

Medium Term	i.	Optimize utilization of existing capacity to ensure adequate production to meet national demand and enhance industry competitiveness.

b) ***Reducing cost of locally produced sugar***

Medium Term	i.	Improve efficiency along the value chain to reduce cost of production and ensure competitiveness.

c) ***Proper coordination of sugar importation***

Short term	i.	Ban millers from importation of sugar;
	ii.	In the short term Kenya should not import quantities beyond the deficit;
	iii.	Sugar from the world market except COMESA and EAC should attract 100% duty;
	iv.	Clearly defined rules guidelines and regulations for sugar imports/export to curb excessive importation and ensure a stable market;
	v.	Monitoring of national sugar stocks and projection by the regulator;
	vi.	Increase border surveillance in collaboration with other Government agencies;
	vii.	Constant monitoring on the usage of refined sugar imported into the country;
Medium Term	i.	Millers to develop a marketing framework which ensures access of local sugar (Especially in marginal border points) in the entire country at competitive prices;
	i.	Increase efficiency and competitiveness to ensure adequate sugar production to meet national demand and minimize profit advantage for imports; and
	ii.	Encourage and develop capacity for refined sugar.

d) ***Mitigate against sugar smuggling and dumping***

Short term	i.	Enforcement of existing laws and regulations,
	ii.	Enhance inter-agency surveillance to curb sugar smuggling;
	iii.	Negotiate with COMESA to ensure that net importing countries within COMESA do not export to Kenya;
	iv.	Enhance inter-agency surveillance to enforce COMESA provisions on rules of origin; and
Medium Term	i.	Increase production and efficiency to ensure self-sufficiency and protection of the local industry.

e) ***Packaging and traceability***

Short term	i.	KEBS to undertake its role in enforcing regulations on repackaging of both locally produced and imported sugar.

f) ***Marketing of value added products***

Short term	i.	Enforcement of the existing regulatory framework to curb the illegal exportation of molasses;
	ii.	Developing a regulatory framework to facilitate trade and use of molasses;
	iii.	Anchoring in the regulations measures that curb illegal use;
Medium Term	i.	Developing quality standards to guide on the production and appropriate utilization of molasses; and
	i.	Increased efficiency at all levels of the value chain to ensure a steady supply.

g) ***Ethanol***

Short term	i.	Enforce the existing Policy and regulatory framework that facilitates motor fuel blending;
	ii.	Promote the use of Ethanol to create adequate demand that will facilitate the use of cane juice for fuel production as an alternative market for sugar cane;
	iii.	Adopt research findings on Bio-ethanol production and its economic advantage;
	iv.	Promote investments in ethanol production;
	v.	Anchor in the regulations measures that curb illegal use of ethanol;
	vi.	Molasses distribution to the strategic biofuel distilleries be prioritized for sustainable supply to the industry;
Medium Term	i.	Tax incentives to promote growth and development of biofuel sector; and
	i.	Increased efficiency along the value chain for increased ethanol production.

h) ***Co-Generated Electricity***

Short term	i.	Encourage millers to take advantage of the existing opportunity and supportive framework for the production and use of co-generated electricity;
	ii.	Increase cane supply to ensure sustained supply of bagasse; and
Medium Term	i.	The Government through KETRACO should provide transmission lines from the mill to the substation, as an incentive for cogeneration.

i) ***Briquettes***

Medium Term	i.	Develop and implement a Policy and strategy that will promote the production, distribution and use of briquettes;
	ii.	Provide incentives that promote the use of briquettes and other bio-fuels as an alternative source to wood fuel; and
	iii.	Provide tax incentives on briquette making equipment to attract investment in briquette production and promote small and medium scale enterprises.

j) ***Jaggery***

Short term	i.	Ensure compliance with the existing standards on jaggery production;
	ii.	Synchronized regulation on jaggery between national and county Governments;
	iii.	Licencing of jaggery mills should be pegged on cane development programmes; and
	iv.	The regulator ensuring that jaggeries operate within the existing regulatory framework.

9.5. COMPLIANCE WITH THE COMESA SAFEGUARD CONDITIONS

To ensure compliance with COMESA Safeguard conditions as provided under Article 10 and Article 28, the following shall be undertaken:

Short term	i.	Commence privatization process of public owned mills by June 2019;
Medium Term	i.	All efforts must be put in place to ensure Kenya is self-sufficient in sugar production by 2021 on a cost effective basis; and
	i.	Commence payment based on quality by 2021.

9.6. FUNDING MECHANISM

To provide a funding mechanism to support various components in the value chain, the following shall be undertaken:

a) ***Reinstate the Sugar Development Levy***

Short term	i.	Ring fence the fund for research, development, regulation and promotion of the sugar industry; and
Medium Term	i.	Re-introduction of the SDL at the rate of 7% to support the industry; – Specifically Research, cane development, infrastructure development, factory rehabilitation and administration.

b) ***Enhance research funding***

Short term	i.	Promote private investment in research by millers and other institutions in collaboration with the sugar research institute;
Medium Term	i.	Develop a stakeholder governance structure and accountability framework for research fund;
	ii.	Verification and subsequent write off of the debt to the farmers from the SDL funds be undertaken; and
	i.	Strengthen credit management systems.

9.7. REVITALIZATION OF PUBLIC OWNED MILLS

To revitalize the public owned mills, the following shall be undertaken:

a) ***Proper governance***

Short term	i.	Ensure adherence and enforcement of all laws and guidelines on good governance;
	ii.	In the short term, restructure boards and management of the public owned mills to respond to the current need of turning around these companies; and
Medium Term	i.	Rationalize the organization structure to ensure that an optimum number of staff is retained and well remunerated.

b) ***Address the capital needs, technology adoption, modernization and indebtedness of public owned mills.***

Short term	i.	Re-constitute the sugar privatization steering Committees to ensure representation of respective County Governments and farmer organizations;
	ii.	In the short term mobilize resources from both National and County Governments (as appropriate) to keep the mills running and ensure farmers and employees are paid promptly;
	iii.	Mobilize resources for capital injection through a strategic investor as approved by parliament in 2015 to enable the companies meet their financial requirements;
	iv.	Financial restructuring of public owned mills as approved by parliament in 2013;
	v.	Conversion of additional GoK and Kenya Sugar Board debt by public mills from July 2009 todate, to additional GoK equity in the companies;
	vi.	Negotiate with banks and other creditors for the restructuring of other debts;
	vii.	In cognizance of the fact that Mumias Company is no longer a public mill, it is recommended that a revitalization committee be appointed to work with the Board, County Governments and other key stakeholders to identify and implement an effective restructuring plan;
	viii.	Conclusion of the receivership process be expedited; and
	ix.	Enhance industry viability by strengthening the regulatory and operational framework.

c) ***Promotion of competitive environment in the sugar industry***

Short term	i.	Licensing of new mills and divestiture of public owned mills should ensure diversity in ownership, in line with the provisions of section 44, AFA Act.

d) ***Adhere to labour laws on staff benefits and compensations***

Short term	i.	Pay outstanding salary arrears as soon as possible; and
	ii.	Enforce and comply with the provisions of all labor laws.

e) ***Inadequate skilled personnel***

Short term	i.	Capacity building an apprenticeship;
	ii.	Appointment of Boards of Directors and Management on specific skills set and competencies; and
Medium Term	i.	Establish a national sugar training institute for capacity building.

9.8. TAXATION STRUCTURE

To provide a conducive taxation regime, the following shall be undertaken:

a) ***Classification of sugar as a food item***

Medium Term	i.	Classify sugar as food item.

b) ***Review taxation on farm inputs, equipment and spares***

Medium Term	i.	Review the taxation regime to create a tax friendly investment environment including duty waivers on high end industry inputs such as fertilizer, diesel, farm implements, and plant and factory equipment.

c) ***Review tax regime at county and national level***

Medium Term	i.	The National and County Governments should rationalize levies and taxes to improve farmer earnings and support investment in the sector.

9.9. POLICY, LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORK

To provide a Policy, Legal, Regulatory and Institutional framework that will provide a conducive environment for the industry to thrive, the following shall be undertaken:

a) ***Finalization of policies, gazettement of sugar regulations and development of policy***

Short term	i.	Finalization of National Sugar Policy for implementation; and
	ii.	Finalize, Gazette and Implement General (Sugar Crop) Regulations and Import and Export regulations of the Crops Act.

b) ***Constitution of Kenya, 2010***

Short term	i.	Adhere to the unbundled functions on Agriculture and/or renegotiate the implementation of the unbundled functions in line with article 187 of the Constitution by the two levels of Government.

c) ***County Governments Act and Inter-governmental relations***

Short term	i.	The sugar sub-sector should use the existing intergovernmental structures as provided in the IGRA to address disputes on sugar matters that are inter-governmental in nature;
	ii.	Define the unbundled functions on Agriculture and/or renegotiate the implementation of the unbundled functions in line with article 187 of the Constitution by the two levels of Government; and
	iii.	Intergovernmental disputes will be resolved under the alternative dispute resolution mechanism as provided in the Inter-governmental Relations Act, No. 2 of 2013;

d) ***Crops Act No.16 of 2013***

Short term	i.	Amend Section 16 by deleting the word "Shall" and replacing with the word "May". This will provide the Cabinet Secretary with the discretion to determine the category of dealers;
	ii.	Each level of government to issue licences for the respective areas of responsibility in consultation with the other level of government.
	iii.	Establish a joint committee for the purpose of issuing manufacturing licences;
	iv.	Amend the Act by deleting the section and providing for registration of a sugar mill project and gazzettement calling for objections before commencement of the project;
	v.	Amend Section 41 to consider other forms of Alternative Dispute Resolution other than Arbitration. The Constitution under Article 159(1) (c) promotes the use of alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution;
	vi.	Establishment of a sugar tribunal to provide for a mechanism for the alternative dispute resolution for disputes in the sector;
	vii.	Amend Section 20 (6) by deleting the section and providing for registration of a sugar mill project and gazzettement calling for objections before commencement of the project; and
Medium Term	i.	Amend the Crops Act, 2013 to provide for pricing and soil management to guide the sector;

e) ***Agriculture And Food Authority Act No.13 Of 20***

Short term	i.	Review section 4(b) on functions of the Authority to comply with the Fourth Schedule of the Constitution;
	ii.	Amend Section 40(1) to provide for participation of individual farmers who are not registered in any organisation in line with the Constitutional threshold on Public Participation;
	iii.	In the short term, appointment of Board of the Authority under Section 5(1) of the Act to provide policy direction on the regulation of the scheduled crops and undertake administration of the Crops Act;
	iv.	The Cabinet Secretary MOALF&I to develop rules relating to enforcement of agreements and procedures of internal functioning in the farmer organizations;
Medium Term	i.	In the mid-term, introduce a stand-alone legislation for the sugar industry; and
	ii.	The Cabinet Secretary Ministry – MOALF&1 to provide policy guidelines on land use in accordance with the rules of good husbandry.

f) *Kenya Agriculture and Livestock Research Act No. 17 of 2013*

Medium Term	i. Re-establish an independent public sugar research institute; ii. Encourage other institutions/mills to participate in sugar research to compliment efforts by the institute; iii. Establish Financial Monitoring Reporting (FMR) mechanism under the institute; iv. Develop a protocol of scientific transfer of technology (testing of alien seed); variety control and multiplication; and
	i. Establish regional research stations.

g) *Regulation of land use and property Land use*

Short term	i. Upon privatization, a restriction to be entered in the grant and lease document to specify land use purpose (cane growing and related activities); ii. Maintain land use for cane growing and related activities in both categories of nucleus land ownership; and
Medium Term	i. National Government to develop land use plan.

h) *Consumer protection on sugar including imports through enforcement of necessary legislation by various institutions*

Short term	i. KEBS should ensure that quality standards for both imported and locally manufactured sugar are adhered to; ii. AFA-SD in collaboration with other government agencies should undertake sugar verification on questionable origins and quality, prior to importation of sugar to ascertain origin and quality of production; iii. AFA-SD should ensure that there are sufficient stocks of affordable sugar available to the consumer for stable prices; iv. Enhance synergies between the relevant multi-agencies that regulate quality of goods. AFA-SD, KEBS, KRA, Kenya Consumer Protection Advisory Committee (KCPAC), Ministry of Foreign Affairs, State Department of International Trade and relevant Kenyan mission should collaborate on matters of market intelligence, quality assurance and consumer protection; v. (KEBS) to undertake capacity building AFA-SD and Country Governments on standards as per its mandate as provided under the Standards Act Cap 496; and
Medium Term	i. AFA to establish accredited laboratories for quality checks on sugar produced both locally and imported.

i) *Promote good corporate governance in public owned mills*

Short term	i. Improve governance and oversight functions both at management and board level; ii. The Parliament and the National Treasury to play its oversight role on the governance of state-owned sugar mills; iii. Strict adherence to requirements of the State Corporations Act, Mwongozo and the principles of public finance on the prudent use of resources should address the poor governance that have bedevilled the state-owned sugar mills; iv. Conduct a management and forensic audit of public owned mills and related sugar institutions. v. Structural changes in company ownership to inject additional capital, managerial expertise, innovation and technology among others and vi. County Governments to provide for facilitation of sugar sub-sector in their respective County Integrated Development Plans;

j) ***Environmental management***

Short term	i.	Continuous collaboration between AFA-SD and NEMA to ensure enforcement of environmental standards in the sub-sector; and
	ii.	Capacity building of AFA-Sugar Directorate and Country Governments on environmental standards by NEMA.

k) ***Improve the quality of products and by-products in the sugar industry***

Short term	i.	Enforcement of public health standards in the sugar sub-sector;
	ii.	Enforcement of Regulations under Public Health Act Cap 242 and Food, Drugs and Chemical Substances Act Cap 254; and
	iii.	Enforcement of poisons standards under the Pharmacy and Poisons Boards Act Cap 244 in the sugar sub-sector.

l) ***Improve basic conditions of employment of employees, trade unions and trade disputes; promotes sound labour relations and expeditious dispute settlement, conducive to social justice and economic development.***

Short term	i.	Enforcement and compliance with the provisions of Employment Act of 2007, Labour Relations Act No. 14 of 2007, Work Injury Benefits Act 2007, Occupational Health and Safety Act 2007 and Labour Institutions Act 2007.

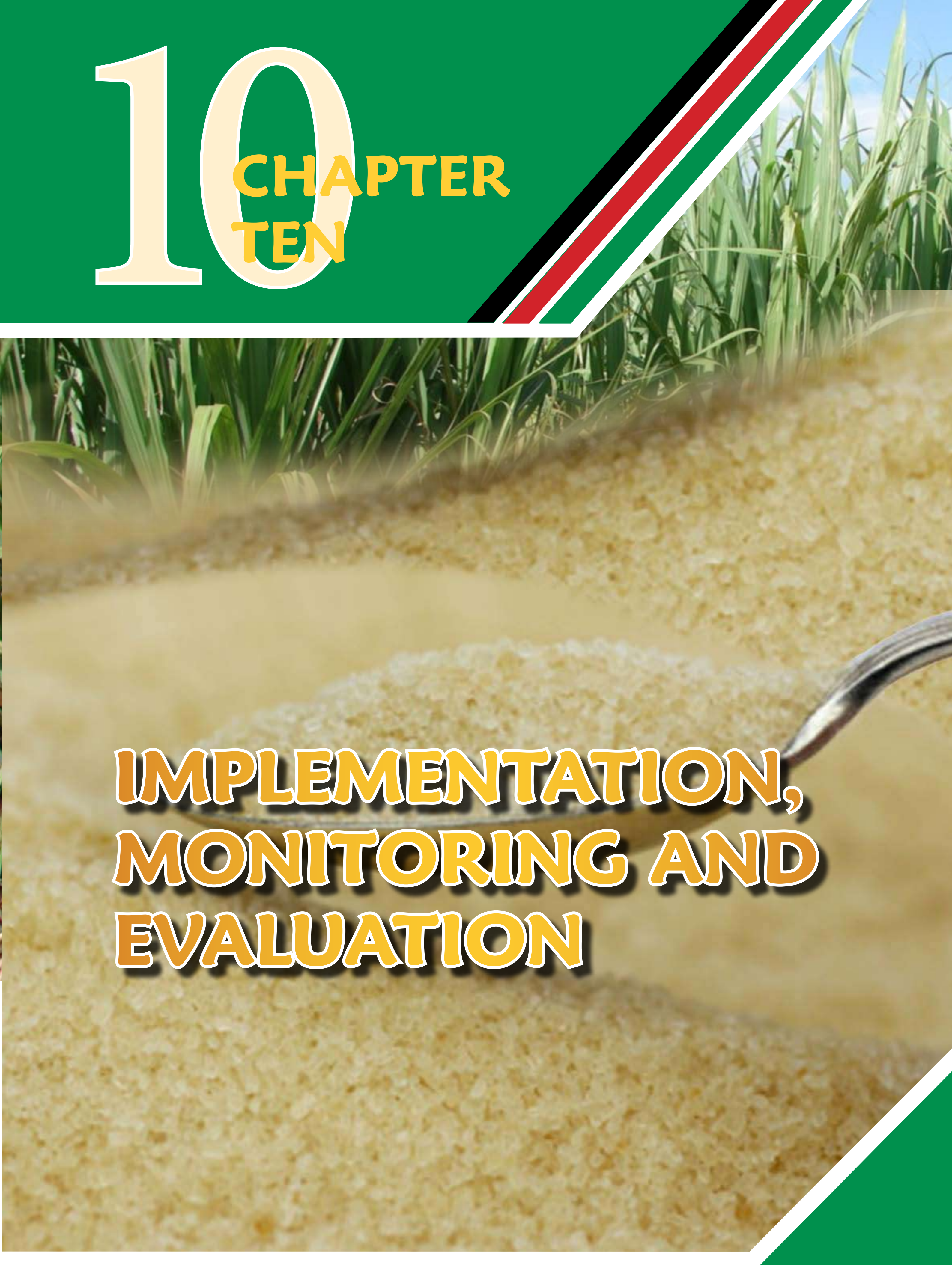
m) ***Facilitate disputes resolution between Kenya and COMESA, EAC member states over sugar related trade issues.***

Short term	i.	Active engagement in the harmonization of sugar trade policy through the Tripartite Free Trade area which encompasses the COMESA, EAC and Southern Africa Development Community (SADC) configurations;
	ii.	Participation in regional and international trade negotiations to enter into agreements that favor the growth, and development of the sugar industry; and
Medium Term	iii.	Advocacy for establishment of timelines in resolving trade disputes in COMESA

10

CHAPTER TEN

IMPLEMENTATION, MONITORING AND EVALUATION



10.1. TASKFORCE REPORT IMPLEMENTATION PLAN

The implementation of this taskforce report will require:

a) *Definition of roles for all actors involved;*

b) *Coordinating structures for collaboration and partnerships between various stakeholders from both public and private sector;*

c) *A framework for monitoring and evaluation to track progress of implementation*

d) *Periodic taskforce report review meetings to refocus the realization of set objectives and finally; and*

e) *A commitment by various stakeholders to avail the requisite resources.*

In order for the taskforce report to realize its set objectives, the key players in the value chain must participate in its implementation. In line with the provisions of the Kenya Constitution 2010, certain functions in the agriculture sector have been assigned to the County Government. This therefore calls for collaboration and the execution of the respective roles of both National and County Governments.

The taskforce report implementation will be rolled out in phases and in line with the identified short, medium and long-term as outlined in the implementation matrix. Phased three-year implementation plans will be developed by the Ministry and AFA in collaboration with the county governments and the private sector within the framework of the inter-governmental relations structure to facilitate coordinated implementation of this taskforce report.

10.2. INSTITUTIONAL SET-UP FOR TASKFORCE REPORT IMPLEMENTATION

The framework of the inter-governmental relations structure will be used to facilitate coordinated implementation of this taskforce report. Both the national and county government will ensure that they have in place applicable structures for coordination and collaboration amongst the various players in the industry towards the successful implementation of the taskforce report. This shall be achieved through quarterly stakeholder forums such as meetings, conferences and conventions.

10.3. RESOURCES MOBILIZATION FOR TASKFORCE REPORT IMPLEMENTATION

The National and County governments will budget and allocate funds towards the implementation of this Taskforce report. The private sector will partner with government in financing joint activities in addition to investing in opportunities created within the industry for profit.

10.4.TASKFORCE REPORT IMPLEMENTATION MONITORING AND EVALUATION

To ensure the successful implementation of the taskforce report, it is critical that a robust and fully functional Monitoring and Evaluation system be put in place. This shall require the formation and operationalization of a Committee comprising of key industry stakeholders and a secretariat whose main role will be to assess the status of implementation and advice on any necessary realignment. The committee shall on quarterly basis review status of the taskforce report implementation and endeavour to ensure closure of any gaps that may emerge from time to time. A committee comprising of the following representation is proposed for appointment to steer the implementation of these resolutions:

a. Ministry of Agriculture Livestock, Fisheries and Irrigation
b. Council of Governors
c. The National Treasury
d. Agriculture and Food Authority
e. Sugar Research Institute
f. Farmers
g. Millers
h. Privatization Commission
i. Intergovernmental Relations Technical Committee (IGRTC)
j. Intergovernmental Budget and Economic Council (IBEC)
k. Attorney General's Office
l. Secretariat

10.5. IMPLEMENTATION MATRIX

An implementation matrix below has been developed to facilitate implementation.

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
RESEARCH AND DEVELOPMENT						
Inadequate Research	Establish four research field stations to undertake agro-ecological research	480	Research field station	Available varieties suitable for various agro-ecological zones Closer access to a research station	National & County Governments	June 2021
Lack of variety development and control framework	Establish a variety development and release programme to mitigate risks against crop failure due to pests and diseases	112	Variety development and release programme	Multiple adaptable varieties Increased sugarcane production and productivity Increased acreage under cane	SRI, Farmers Millers, County Governments	June 2020
	Develop a protocol and legal framework	5	Variety development and control programme.	Crop protection, production and productivity increased.	SRI, County Governments	June 2019
Limited research scope	Increase funding to enable SRI carry out research across the value chain	15	Research output in all aspect of value addition.	Development of all other sugarcane related value chain. Increased cane production and productivity.	National & County Governments Development partners	June 2020
	Restructure the research institute to address the challenges across the value chain	100	Restructure sugar research institute.	Increased efficiency. Increased Production and productivity.	National & County Government	June 2020
Lack of diversification in sources of raw material	Promote research in alternative sources of raw material	50	Research output on the ecological and economic suitability of sugarcane.	Diversified sources of raw materials. Socioeconomic benefits. Overall increase in sugar production.	SRI, County Governments	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
SUGARCANE PRODUCTION						
Decline in cane production	Financial and technical support to farmers to develop cane	250	Farmers support initiative.	Increased cane production. Increased industry efficiency. Reduced cost of production. Social economic benefit.	National and County Government, Miller, Farmers institutions,	June 2020
	Introduce cane in new areas that are ecologically suitable for cane farming	180	Increased area under cane production.	Increased cane production. Social-economic benefit	SRI, Farmers, Miller	Continuous
Low adoption of early maturing varieties	Enhance extension services	100	Increased uptake of early maturing varieties,	Increased sugar production and productivity	County Government, SRI	Continuous
	Bulking of clean material for planting	100	Available clean planting materials	Increased sugar production and productivity	SRI, County Government.	Continuous
	Timely harvesting of early maturing varieties to encourage farmer uptake	Nil	Enforced farmers and millers contracts.	Increased sugar production and productivity	SRI, County Government	Continuous
	Farmer sensitization on early maturing varieties	10	Increased uptake of high yielding varieties.	Increased sugar production and productivity	SRI County Government	Continuous
Decline in cane yields	Enforce farmer miller contracts that require cane to be harvested at maturity (Budget Under the Regulatory Function)	Nil	Farmer millers contract enforcement	Ensure steady cane supplies, Increased productivity, Harmony in the sector,	Farmers, Miller, AFA-SD	Continuous
	Develop and implement incentives for adoption of new technologies along the value chain	45	Incentive for adoption of new technologies along the value chain.	Increased production and productivity, Reduced cost of production, Efficiency	SRI, Farmer, County Government,	June 2021

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Research institute to have a technical and advisory service linked to County Agriculture extension service (County and SRI to undertake within their Mandates and budgets)	Nil	Technical and advisory services linkages between SRI and County Government	Increased sugarcane production and productivity, Reduced cost of production.	SRI Farmers, Millers, County Government	Immediate
	Strengthen the technical expertise of the research institute to improve its advisory capacity to County Agriculture extension services (County and SRI to undertake within their Mandates and budgets)	Nil	Effective County extension services	Increased technical support to farmers	SRI, Farmers,	June 2020
	Adopt Soil fertility management practices (Budget under the County Extension function)	Nil	Soil fertility management	Enhanced soil health	SRI, Farmer, Miller County Government	Immediate
	Provide financial services to farmers for new cane development	7,500	Multiple affordable financial options for farmers	Increased sugarcane production, Reduced cost of credit, Socio-economic	Millers, Out-grower institutions, Financial Institutions, National and County Government	June 2021
Diminishing land sizes	Facilitate block farming to enable farmer's pool resources for the procurement of goods and services.	Nil	Block farming to achieve economies of scale	✓ Reduced cost of production ✓ Increased incomes to farmers ✓ Increased efficiency	SRI, Farmers, Millers, National & County Governments	June 2020

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Low irrigation initiatives	Develop effective irrigation infrastructure by contracting dams and water pans to support irrigation	37,000	Irrigation infrastructure	✓ Increased cane production and productivity ✓ Reduced cost of cane production ✓ Reduce dependency on rain fed farming	Farmers, Millers County, Governments Financial institutions	June 2022
Poor synchrony in cane development to match mill requirement	Develop systems that will ensure synchronization of milling capacity and sugarcane supply by: a) Determining annual mill cane requirements	Nil	✓ Established mill cane requirements by each miller ✓ Cane development plans	✓ Increased efficiency ✓ Ensures a steady supply ✓ Increased productivity ✓ Reduced cost of production ✓ Harmony in the sector	Millers, AFA-SD, County Governments	Immediate
	b) Developing farmer miller contracts that correspond the requisite cane supply	Nil	Farmer miller contracts	✓ Increased efficiency ✓ Ensures a steady supply ✓ Increased productivity ✓ Reduced cost of production ✓ Harmony in the sector	Millers, AFA-SD, County Governments	Immediate
High cost of cane production leading to uncompetitiveness	Facilitate bulk procurement of farm inputs and machinery	Nil	✓ Reduced cost of fertilizer ✓ Increased production and productivity	✓ Millers, AFA-SD, County Governments	Farmer organizations, Agro dealers, National & County Governments,	June 2020
Harvesting and transportation inefficiencies	Develop harvesting & transport guidelines to reduce infield, transit losses and staleness index by: a) Capacity building on cane harvesting	10	Capacity building programmes	✓ Good harvesting practices ✓ Reduced infield and transit loss ✓ Enhanced ratoon management ✓ Increased industry efficiency ✓ Reduced cost of production	SRI, Millers, Farmers, County Government	June 2020
	b) Improve infrastructure (roads, bridges and culverts including light rails)	750	Develop a comprehensive multi agency infrastructure development programme	✓ Minimize transit losses ✓ Reduce turn-around time ✓ Reduce maintenance costs ✓ Reduced fuel costs ✓ Reduced cost of transportation ✓ Increased industry efficiency ✓ Reduced cost of production	Millers County Government GOK	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	c) Modify transport units to minimize transit losses and increase capacity	Nil	Modified transport units	✓ Minimize transit losses ✓ Reduced cost of transportation ✓ Increased industry efficiency ✓ Reduced cost of production	Millers, Transporters National and County Government	June 2020
	d) Ensure synchronized milling requirements with cane harvesting to minimize loses.	Nil	✓ Annual cane requirement plans ✓ Cane development committee attached to a mill	✓ Adequate cane supply ✓ Harvesting cane at maturity ✓ Increased productivity ✓ Increased sugar production ✓ Increased industry efficiency ✓ Reduced cost of production ✓ Harmony in the sector	Farmers Millers AFA-SD SRI	Immediate
	e) Eliminate unethical practices in harvesting & transport	Nil	✓ Industry code of conduct. ✓ Harvesting and transportation contracts ✓ System for mechanized harvesting	✓ Reduced costs to the farmer ✓ Harvesting cane at maturity ✓ Increased industry efficiency ✓ Contributes towards reduced cost of production ✓ Harmony in the sector ✓ Enhanced efficiency in harvesting	AFA-SD Millers Farmers Transporters Harvesters	Continuous
	A tripartite agreement between farmers, millers and transporters registered by the regulator to ensure fair transport pricing.	Nil	Tripartite agreement	✓ Stable and equitable transport costs ✓ Increased industry efficiency ✓ Contributes towards reduced cost of production	Farmers, Millers Transporters, AFA-SD, County Government	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Lack of transparency at the weighbridge	Full automation of weighbridges to enhance transparency on cane tonnage including message alerts to the farmer	10	Automated weighbridges	✓ Increased transparency at the weighbridge ✓ Improved governance ✓ Contributes towards reduced cost of production ✓ Enhanced farmer incomes	Millers AFA-SD County Government Farmers'	June 2021
	In the interim, the out-grower organizations should monitor farmer's interests at the weighbridge	Nil	Farmers' representation at the weighbridge	✓ Increased transparency at the weighbridge ✓ Contributes towards reduced cost of production ✓ Enhances farmer incomes	Farmers' institutions, Millers, County Government, AFA-SD	Immediate
	The regulator to engage Weights and Measures to undertake random audits and calibration on a regular basis	Nil	✓ Random weighbridge audits and calibration ✓ Service level agreements	✓ Increased transparency at the weighbridge ✓ Contributes towards reduced cost of production ✓ Enhances farmer incomes	AFA-SD County Governments	Immediate
Inadequate support for cane development and extension services	The County Governments to take up their role of crop husbandry as envisaged in the Schedule four of the Constitution: extension, variety and soil matching, disease and pest controls, soil and plant tissue testing	Nil	Enhanced extension service	✓ Increased production and productivity ✓ Reduced cost of production ✓ Increased efficiency	SRI Millers Farmers County Governments Pest Control Board	Continuous
	Promote sustainable Soil Fertility Management practices to increase yields	Nil	Soil health Fertility Management programmes	✓ Increased production and productivity ✓ Reduced cost of production ✓ Increased efficiency	SRI, Millers, PCB, Farmers, County Governments	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Low adoption of early maturing varieties	Bulking of early maturing varieties	100	Early maturing varieties	Increased production and productivity	SRI, Millers, Farmers, County Governments	Continuous
	Farmer sensitization on early maturing varieties	Nil	Increased uptake	Increased production and productivity	SRI, Millers, Farmers, County Governments	Continuous
	Timely harvesting or early maturing varieties to encourage farmer uptake	Nil	Increased uptake	Increased production and productivity	SRI, Millers, Farmers, County Governments	Continuous
Low farm diversification initiatives	Develop guidelines on land use to promote diversification into food and fodder along with sugarcane, to optimize on income and enhance food security	30	Increased farm diversification by farmers	✓ Enhanced food security ✓ Increased farmer incomes ✓ Increased industry ✓ Reduced cost of production	SRI, Millers Farmers, County Governments	June 2021
	Farmer sensitization on the need, methods and benefits of diversification	Nil	✓ Sensitization programmes ✓ Increased farm diversification by farmers	✓ Enhanced food security ✓ Increased farmer incomes ✓ Increased efficiency ✓ Contributes towards reduced cost of production	SRI, Millers, Farmers, County Governments	Immediate
Diminishing Land sizes	Facilitate block farming to enable farmer's pool resources for bulk procurement of farm inputs, services and machinery.	Nil	Block farms	✓ Reduced cost of production ✓ Increase efficiency ✓ Increased production and productivity	National and County governments	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
SUGAR PROCESSING						
Inefficiency and high cost of sugar production	Develop and implement an industry cost cutting strategy along the entire value chain to reduce cost of production and increase efficiency	40	Industry cost cutting strategy across the value chain	✓ Reduced cost of production ✓ Increased efficiency ✓ Increased profitability	National and County Government Millers Farmers	June 2020
	Invest in value addition to widen the industry's revenue base and reduce the overall cost of production	Nil	Value added products	✓ Reduced cost of production ✓ Increased efficiency ✓ Increased profitability	Millers, Farmers, National and County Government	June 2022
Unsynchronized cane development leading to Cane shortage/ oversupply	Ban harvesting of immature cane in the Rules and regulations	Nil	Provisions than ban harvesting of immature cane in the rules and regulations	✓ Increased production and productivity ✓ Industry efficiency ✓ Reduced cost of production ✓ Harmony in the industry ✓ Increased incomes in the industry	CS MOALF&I AFA-SD Millers Farmers County Governments	June 2019
	Develop and implement an inter-mill cane transfer mechanism to stabilize the cane supply cycles	Nil	Inter-mill cane transfer mechanism	✓ Industry efficiency ✓ Reduced cost of production ✓ Enhanced harmony in the industry	Millers, Farmers CS MOALF&I AFA-SD, County Governments	June 2019
	Millers to determine annual mill cane requirements	Nil	Annual mill cane plans	✓ Increased industry efficiency ✓ Ensures a steady supply ✓ Increased production and productivity ✓ Reduced cost of production ✓ Harmony in the sector	Millers Farmers AFA-SD	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Develop farmer miller contracts that correspond to the requisite cane supply	Nil	Farmer miller contracts that correspond with requisite cane supply	✓ Increased industry efficiency ✓ Ensures a steady supply ✓ Increased production and productivity ✓ Reduced cost of production ✓ Harmony in the sector	Millers Farmers AFA-SD	June 2019
	The regulator to ensure that the miller has adequate planned supply of cane that matches factory capacity before licence issuance/ renewal	Nil	✓ Cane development plans by the miller ✓ Farmer miller contracts	✓ Increased industry efficiency ✓ Ensures a steady supply ✓ Increased production and productivity ✓ Reduced cost of production ✓ Harmony in the sector	AFA - SD Millers Farmers	Immediate
	Penalties against the miller for occasioning loss to farmer/industry be computed based on consequential loss calculation for harvesting immature cane	Nil	Provisions in farmer miller contracts that provide for penalties to millers harvesting immature cane	✓ Optimum incomes to the industry ✓ Increased production and productivity ✓ Reduced cost of production ✓ Order and harmony	AFA-SD Millers Farmers	June 2019
	Data driven planning of cane production to match factory capacities	Nil	✓ Data driven cane development plans by the miller ✓ Farmer miller contracts	✓ Increased industry efficiency ✓ Ensures a steady supply of cane ✓ Increased production productivity ✓ Reduced cost of production ✓ Harmony in the sector	AFA - SD Millers Farmers	Immediate
	Clusters of factories within a region(s) to facilitate synchrony in planning production, cane supplies and resource mobilization	25	✓ Defined regions within the regulations ✓ Sensitization for stakeholders on how the regional model operates	✓ Reduced cane poaching ✓ Increased production productivity ✓ Reduced cost of production ✓ Steady cane supply and sugar production ✓ Order and harmony	AFA - SD Millers Farmers County Governments	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Farmers within the region shall have a contract with a mill of their choice.	Nil	Farmer miller contracts	✓ Reduced cane poaching ✓ Increased production and productivity ✓ Reduced cost of production ✓ Steady cane supply and sugar production ✓ Order and harmony	AFA - SD Millers Farmers	June 2019
	Enforce farmer miller contracts to ensure cane harvesting is done at optimal age.	Nil	Farmer miller contracts	✓ Increased incomes to the industry ✓ Steady cane supply ✓ Increased production and productivity ✓ Reduced cost of production ✓ Order and harmony	AFA - SD Millers Farmers	Immediate
Lack of a governance structure to coordinate cane production, supply and processing	Establish a stakeholders' committee, comprising farmers, millers, regulator, research institute, national government and county government	10	Stakeholders' body, comprising key stakeholders, with presence in each of the regions/cluster for self-governance.	✓ Self-governance to enhance order and harmony ✓ Reduced industry disputes ✓ Facilitate ease of regulation ✓ Increased cane supply ✓ Adherence to contractual obligations	Millers Farmers Transporters AFA - SD County Governments	June 2019
	Development and enforcement of rules, standards and code of practice in cane production and manufacturing.	10	Code of practice	✓ Increased industry efficiency ✓ Reduced industry disputes ✓ Facilitate ease of regulation ✓ Law and order ✓ Adherence to contractual obligation	Millers Farmers Transporters AFA - SD County Governments	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Poor infrastructure – Roads, Drainages, Culverts	National and County Governments their respective responsibilities in infrastructure development and maintenance as provided for in the Constitutions;	Nil	A comprehensive multi agency infrastructure development programme	✓ Minimize transit losses ✓ Reduce turn-around time ✓ Reduce maintenance costs ✓ Reduced fuel costs ✓ Reduced cost of transportation ✓ Industry efficiency ✓ Reduced cost of production ✓ Enhanced synergy	Millers National and County Governments	Immediate
	Millers to attract additional investment for plant, equipment and other factory related infrastructure.	Nil	Increased investment for plant, equipment and other factory related infrastructure	✓ Reduced cost of credit ✓ Expansion and modernization ✓ Increased sugar production ✓ Industry efficiency	Millers Investors Financiers	June 2020
Inadequate ICT Infrastructure	Adoption of data driven integrated systems across the industry.	100	Data driven integrated systems across the industry.	✓ Industry efficiency ✓ Synchrony cane production and milling requirement	Millers	June 2020
Cane fires	Develop an insurance package for the farmers	10	Insurance package	✓ Assured farmer incomes ✓ Reduced cost of production	Millers, Farmers, AFA – SD, County Governments	June 2020
	Millers to initiate appropriate risk management measures to minimize cane fires	Nil	✓ Miller strategies to minimizing cane fires ✓ Provisions in contracts on how burnt cane will be handled	✓ Minimized incidences of cane fires ✓ Increased production productivity	Millers Farmers AFA – SD County Governments	Immediate
	Provide for penalties of non-accidental fires in the regulations.	Nil	Penalties of non-accidental fires in the regulations.	✓ Minimized incidences of cane fires ✓ Increased production productivity	Millers, Farmers, AFA – SD, County Governments	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
VALUE ADDITION						
Investment in value addition	Promote valued addition in the existing mills;	Nil	Valued addition projects in existing mills	✓ Increased industry revenues ✓ Increased incomes ✓ Efficiency ✓ Reduced cost of production ✓ Socio-economic benefits	Millers	June 2021
	Licensing of new mills should require provision for deliberate plans to invest in value added products	Nil		✓ Increased industry revenues ✓ Increased incomes ✓ Efficiency ✓ Reduced cost of production ✓ Socio-economic benefits	AFA – SD County Governments	Continuous
	Attract investments targeted at product diversification and value addition into refined sugar, cogeneration, Ethanol, Paper, Board manufacture, Briquette and Pharmaceuticals	Nil	Investments in product diversification and value addition	✓ Increased industry revenues ✓ Increased incomes ✓ Efficiency ✓ Reduced cost of production ✓ Socio-economic benefits ✓ Technology transfer	Millers National and County Governments	June 2022
	Develop and Implement viable Strategic business units for value added products.	Nil	Strategic business units for value added products	✓ Increased industry revenues ✓ Reduces cost of production ✓ Socio-economic benefits ✓ Increased efficiency	Millers Investors Financiers	June 2022

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
PRICING MECHANISM						
Delayed payments	Enforce provisions within the farmer/ miller contract that require that farmers be paid within seven days, failure to which the miller is penalized	Nil	Provisions in the farmer/ miller contract for payment of farmers within 7 days	✓ Increased and timely income to farmers ✓ Increased production and productivity ✓ Increased efficiency ✓ Enhanced harmony	Farmers Millers AFA-SD	June 2019
	Develop and enforce farmer/miller contract which provides for an exit clause/Novation upon breach of contract	Nil	Provision for an exit clause/novation in the farmer/miller contract	✓ Increased and timely income to farmers ✓ Increased production and productivity ✓ Efficiency ✓ Increased sugar production ✓ Harmony in the sector	Farmers Millers AFA-SD County Governments	June 2019
	Strengthen outgrower institutions for effective representation and better bargaining power on behalf of the farmer	Nil	Strong farmers organizations	✓ Better farmer representation ✓ Enhanced services to the farmers ✓ Increased incomes to farmers ✓ Reduced cost of cane production	Farmer organizations County Governments	June 2019
	Provide in the regulations for be miller to me liable to pay interest on delayed payment at market rate.	Nil	Provisions in farmer miller contracts that provide for payment of interest on delayed payment	✓ Increased and timely incomes to farmers ✓ Increased production and productivity ✓ Reduced cost of production ✓ Order and harmony	AFA-SD Millers Farmers	June 2019
Inadequate representation of the farmer in price bargaining	Revitalize farmer institutions to strengthen the bargaining power and wean farmers from dependence on the millers for credit and services	**See above**	Strong farmer organizations	✓ Lower cost of credit ✓ Increased farmer participation ✓ Better farmer representation ✓ Enhanced services to the farmers ✓ Increased incomes to farmers ✓ Reduced cost of cane production	Farmer organizations County Governments	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Capacity building and application of good governance principles of farmer organizations to ensure adequate representation and good governance.	20	Good governance of farmer organizations	✓ Better representation ✓ Enhanced services to the farmers ✓ Increased farmer participation ✓ Transparency and accountability	Farmers Organization AFA – SD County Government	Continuous
Cane payment formula	The Sugarcane Pricing Committee to provide a mechanism that remunerates farmers for other products derived from processing of cane;	5	Mechanism that remunerates farmers for other products derived from processing of cane.	✓ Increased incomes to farmers ✓ Increased production and productivity	Millers Farmers AFA-SD County Government	June 2019
	Ensure adherence to negotiated cane pricing formula	Nil	Cane pricing formula	✓ Increased incomes to farmers ✓ Increased production and productivity ✓ Enhanced order and harmony in the sector	AFA-SD Millers Farmers County Governments	June 2019
	Enforcement of contracts between farmers and millers	Nil	Farmer miller contracts	✓ Increase production productivity ✓ Increased and timely income to farmers ✓ Reduced cost of production	Farmers Millers SD County Governments	Continuous
	The scope of the Sugar cane Pricing formula should be extended to include pricing mechanisms for all other cane related charges paid by the farmer. These include cost of transport, cost of credit, extension service among others	Nil	Streamlined pricing for all services and inputs	✓ Reduced cost of cane farming & transport ✓ Increased incomes to farmers ✓ Increased cane development due to enhanced earnings ✓ Enhanced transparency in the pricing of services and inputs	National Government – to anchor the scope of the pricing Committee in the Act	June 2019
	The pricing formula to include an index that takes into consideration delayed harvesting	Nil	Pricing formula that takes into consideration delayed harvesting	✓ Timely harvesting ✓ Increased efficiency ✓ Increase production and productivity ✓ Better incomes to farmers	Pricing Committee	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
SUGAR MARKETING						
Sugar importation	Effective regulatory framework and oversight mechanism for coordinating sugar import/export supported by a) Clearly defined rules guidelines and regulations for sugar imports/export to curb excessive importation	Nil	Rules guidelines and regulations for sugar imports/export	✓ Optimal sugar imports during shortage ✓ Stabilized sugar market for the benefit of consumers, farmers and all stakeholders ✓ Enhanced order and harmony in the sector	AFA –SD CS - MOALF&I	June 2019
	b) Monitoring of national sugar stocks and projection	Nil	✓ Regular monitoring ✓ Strict approvals for imports	✓ Optimal levels of sugar availability ✓ Stabilized sugar market	AFA-SD, Millers, KRA, KEBS	Continuous
	Increase border surveillance in collaboration with other Government agencies	5	Inter-agency collaboration framework on surveillance	✓ Reduced illegal imports ✓ Optimal levels of sugar availability ✓ Stabilized sugar market for the benefit of consumers, farmers and all stakeholders	AFA – SD, KRA, KEBS, County Governments Ministry of Interior and Coordination of National Government	Continuous
	Increase efficiency and competitiveness to ensure adequate sugar production to meet national demand and minimize profit advantage for imports	Nil	Development and dissemination of cost reduction and efficiency programme	✓ Reduced cost of production ✓ Increased efficiency ✓ Increased sugar production to meet national demand and surplus for export ✓ Increased profits to the industry	SRI Millers Farmers AFA – SD County Governments	June 2022

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Millers to develop a marketing framework which ensures access of local sugar (Especially in marginal border points) in the entire country at competitive prices	Nil	An industry marketing and distribution framework targeted at ensuring availability in marginal border points	✓ Sugar availability across the county ✓ Reduced cost of distribution to marginal border points arising from synergies ✓ Reduced illegal import ✓ Stabilized sugar market and prices ✓ Increased profitability	Millers National and County Governments	June 2021
	Ban miller importation of sugar	Nil	No sugar imports from millers	✓ Mitigate against conflict of interest ✓ Investment in cane development by millers ✓ Increased sugar production to meet national demand	AFA- SD MOALF&I KRA millers	Immediate
	Encourage and develop capacity for refined sugar	Nil	✓ Incentives to promote production ✓ Negotiation with EAC to support establishment of local refineries ✓ Established sugar refineries	✓ Adequate supply of national requirements of refined sugar ✓ Curbs diversion of refined sugar to the market ✓ Stabilized sugar market and prices ✓ Increased profitability ✓ Foreign exchange saving through import substitution	National Government County Governments Millers Investors Financiers	June 2022
	Constant monitoring on the usage of refined sugar imported into the country.	Nil	Inter-agency collaborative framework on monitoring of the usage of refined sugar	✓ Zero diversion of refined sugar for table use ✓ Stabilized sugar market and prices	KEBS, AFA-SD, Users of industrial sugar, County Government	Continuous
Packaging and traceability	KEBS to undertake its role in enforcing regulations on repackaging of both locally produced and imported sugar.	Nil	Sugar packaging that meets the required standards	✓ Food safety ✓ Traceability ✓ Reduced illegal importation ✓ Stabilized sugar prices and market	KEBS AFA-SD	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
MARKETING OF VALUE ADDED PRODUCTS -						
MOLASSES						
Inadequate Supply of Molasses	Implement the existing regulatory framework to curb the illegal exportation of molasses	Nil	Eliminate molasses exportation	✓ Steady supply of molasses to meet existing demand ✓ Increased production for distilleries and other users of molasses ✓ Increased profitability	KRA AFA-SD County Government	June 2019
	Develop a regulatory framework to facilitate trade and use of molasses	10	Existing regulatory framework	✓ Order in molasses trading ✓ Curbed illegal use of molasses ✓ Quality assurance ✓ Consumer protection	KEBS AFA- SD KRA	June 2019
	Increased efficiency at all levels of the value chain to ensure a steady supply.	Nil	Development and dissemination of cost reduction and efficiency programme	✓ Increased industry efficiency ✓ Reduced cost of production ✓ Increased molasses production ✓ Increased profits to the industry	SRI, Millers, Farmers, AFA – SD, County Governments	June 2022
Lack of quality standards	Develop quality standards to guide on the production and appropriate utilization of molasses	Nil	Existing standards	✓ Curbed illegal use of molasses ✓ Quality assurance ✓ Consumer protection	KEBS AFA- SD Millers	June 2020
	Anchor in the regulations measures that curb illegal use of molasses	Nil	Provisions in the regulations to curb illegal use of molasses	✓ Curbed illegal use of molasses ✓ Quality assurance ✓ Consumer protection	KEBS, AFA- SD Millers, County Governments	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
ETHANOL						
Policy and Regulatory framework	Enforce the existing Policy and regulatory framework that facilitates motor fuel blending;	5	Enforcement of existing policy	✓ Bio-fuel blending (E-10) ✓ Reduced cost of fuel ✓ Reduced cost of production ✓ Increased profits ✓ Foreign exchange saving through import substitution	National Government Distilleries	Immediate
	Tax incentives to promote growth and development of biofuel sector	Nil	✓ Tax incentives ✓ Increased investments in bio-fuel subsector	✓ Increased ethanol production ✓ Reduced cost of fuel ✓ Reduced cost of production ✓ Increased profits ✓ Foreign exchange saving through import substitution	National Government Investors	June 2020
	Promote the use of Ethanol to create adequate demand that will facilitate the use of cane juice for fuel production as an alternative market for sugar cane.	5	Incentives to promote the use of Ethanol to create adequate demand	✓ Increased demand for ethanol ✓ Increased incomes to farmers ✓ Reduced cost of fuel ✓ Reduced cost of production ✓ Increased profits ✓ Foreign exchange saving through import substitution	National and County Governments Distilleries Petroleum companies	Immediate
Research	Adopt research findings on Bio-ethanol production and its economic advantage.	Nil	✓ Sensitization on Bio-ethanol production ✓ Increased investments in bio-fuel subsector	✓ Increased ethanol uptake ✓ Reduced cost of fuel ✓ Reduced cost of production ✓ Increased profits ✓ Foreign exchange saving through import substitution	SRI AFA-SD Distilleries Investors	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Inadequate supply of Ethanol	Increased efficiency along the value chain for increased ethanol production	Nil	Development and dissemination of cost reduction and efficiency programme	✓ Increased industry efficiency ✓ Reduced cost of production ✓ Increased ethanol production ✓ Increased profits to the industry	SRI, Millers, Farmers, AFA – SD, County Governments	June 2022
	Promote investments in ethanol production	Nil	Investment in ethanol production	✓ Increased ethanol production ✓ Reduced cost of fuel ✓ Increased profits ✓ Foreign exchange saving through import substitution	National and County Governments	Continuous
	Molasses distribution to the strategic biofuel distilleries be prioritized for sustainable supply to the industry.	Nil	✓ Annual molasses requirements by biofuel distilleries ✓ Supply programme by millers	✓ Steady supply of raw material ✓ Increased ethanol production ✓ Reduced cost of production ✓ Increased profitability	Millers distilleries	Immediate
Potential for negative socio-economic effects.	Anchor in the regulations measures that curb illegal use of ethanol.	Nil	Provisions in the regulations that curb illegal use of ethanol	✓ Curbed illegal use of ethanol ✓ Quality assurance ✓ Consumer protection	KEBS AFA- SD	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
CO-GENERATED ELECTRICITY						
Policy and Regulatory framework	Encourage millers to take advantage of the existing opportunity and supportive framework for the production and use of co-generated electricity.	Nil	✓ Incentives to millers to invest in cogeneration for commercial purposes ✓ Increased investment in cogeneration	✓ Increased production of cogenerated electricity for commercial purposes ✓ Reduced cost of production ✓ Increased efficiency ✓ Higher productivity ✓ Increased incomes to farmers ✓ Increased national electricity supply	National and County Governments KPLC KETRACO Millers	Immediate
Co-generated power transmission	The Government through KETRACO should provide transmission lines from the mill to the substation, as an incentive for cogeneration	Nil	KETRACO provision for development of requisite infrastructure for transfer of cogenerated electricity	✓ Increased industry revenues ✓ Increased incomes to farmers ✓ Reduced cost of production ✓ Increase power supply in the country	Millers AFA-SD KETRACO National and County Governments	June 2022
Low supply of bagasse	Increase cane supply to ensure sustained supply of bagasse.	Nil	Farmer support initiatives for increased cane production	✓ Increased cane production therefore increased bagasse production ✓ Increased cogenerated electricity ✓ Reduced cost of production ✓ Increased profits to the industry ✓ Increased electricity supply	Farmers Millers Farmers Organization County Governments SRI	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
BRIQUETTES						
Policy framework for production and use of briquette	Develop and implement a Policy and strategy that will promote the production, distribution and use of briquettes	5	A robust strategy that will promote the production, distribution and use of briquettes	✓ Increase briquette demand ✓ Increased briquette production ✓ Increased incomes to farmers ✓ Reduced cost of production ✓ Industry efficiency ✓ Economic development through rural enterprise development ✓ Environmental preservation	National and County Governments Millers Investors	June 2020
	Provide incentives that promote the use of briquettes and other bio-fuels as an alternative source to wood fuel	Nil	Incentives that promotes the use of briquettes and other bio-fuels to as an alternative source to wood fuel.	✓ Increase briquette demand and production ✓ Increased incomes to farmers ✓ Reduced cost of production ✓ Industry efficiency ✓ Economic development through rural enterprise development ✓ Environmental preservation	National and County Governments Millers Investors	June 2020
	Provide tax incentives on briquette making equipment to attract investment in briquette production and promote small and medium scale enterprises.	Nil	Incentives that promotes the use of briquettes and other bio-fuels to as an alternative source to wood fuel.	✓ Increase briquette demand ✓ Increased briquette production ✓ Increased incomes to farmers ✓ Reduced cost of production ✓ Increased industry efficiency ✓ Economic development through rural enterprise development ✓ Environmental preservation	National and County Governments County Governments Millers Investors	June 2020

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
JAGGERY						
Legal and regulatory environment	Ensure compliance with the existing standards on jaggery production	Nil	Enforce existing standards on jaggary production	✓ Quality assurance ✓ Consumer protection	AFA – SD, KEBS, Jaggary Millers, Farmers	June 2019
	Synchronized regulation of the sector between national and county Governments.	Nil	Unbundling of regulatory roles between national and county governments	✓ Enhance order and harmony in the sector ✓ Increased efficiency ✓ Improve Service delivery	National & County Governments IGTRC	June 2019
Raw material supply	Licensing of jaggery mills should be pegged on cane development programmes	Nil	Cane development plans by jagerry millers before licensing Farmer miller contracts	✓ Increased industry efficiency ✓ Ensures a steady supply ✓ Increased productivity ✓ Increased jaggary production ✓ Reduced cost of production ✓ Ensures harmony in the sector	County Government AFA - SD Jaggary Millers Farmers	June 2019
	The regulator should ensure that jaggeries operate within the existing regulatory framework.	Nil	Enforce requirements for jaggery licensing and other requirements	✓ Order and harmony in the sector ✓ Steady cane supply ✓ Increased efficiency ✓ Quality assurance ✓ Consumer protection	AFA - SD County Governments Jaggary Millers Sugar Millers	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
TRADE						
High cost of locally produced sugar	Efficiency along the value chain to reduce cost of production and ensure competitiveness.	Nil	✓ Development and dissemination of cost management technologies ✓ Development of an efficiency index for the industry based on best practice ✓ Optimum capacity utilization	✓ Reduced cost of production ✓ Industry efficiency ✓ Increased sugar production to meet national demand and surplus for export ✓ Reduced sugar imports ✓ Increased incomes to farmers ✓ Increased industry profitability ✓ Foreign exchange saving through import substitution	SRI Millers Farmers AFA – SD County Governments	June 2022
Uncoordinated sugar importation	In the short term Kenya should not import quantities beyond the deficit	Nil	No licensing of imports beyond the requisite deficit	✓ Optimum levels of sugar supply ✓ Stabilized sugar prices and market	AFA -SD	Immediate
	Sugar from the world market should attract 100% duty	Nil	100% duty on sugar from the world market	✓ Optimum levels of sugar supply ✓ Stabilized sugar prices and market	AFA –SD KRA National Treasury	Immediate
	Optimize utilization of existing capacity to ensure adequate production and enhance industry competitiveness.	Nil	✓ Efficiency index for the industry based on best practice ✓ Expansion and modernization ✓ Optimum capacity utilization	✓ Reduced cost of production ✓ Industry efficiency ✓ Increased sugar production to meet national demand and surplus for export ✓ Reduced sugar imports ✓ Increased industry profitability ✓ Foreign exchange saving through import substitution	SRI Millers Transporters Farmers AFA – SD County Governments	June 2021

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Smuggled Sugar	Enhance inter-agency surveillance to curb sugar smuggling.	Nil	Inter-agency collaboration framework on surveillance	✓ Reduced illegal imports ✓ Optimal levels of sugar availability ✓ Stabilized sugar market for the benefit of consumers, farmers and all stakeholders	AFA – SD, KRA, KEBS, County Governments National Government	Immediate
Sugar Dumping	Increase production and efficiency to ensure self-sufficiency and protection of the local industry	Nil	✓ Cost management technologies ✓ An efficiency index for the industry based on best practice ✓ Optimum capacity utilization	✓ Reduced cost of production ✓ Industry efficiency ✓ Increased sugar production ✓ Reduced sugar imports ✓ Increased industry profitability ✓ Foreign exchange saving through import substitution	SRI Millers Transporters Farmers AFA – SD County Governments KRA	June 2022
	Enhance surveillance to enforce COMESA provisions on rules of origin	Nil	Inter-agency collaboration framework on surveillance	✓ Reduced imports from non-COMESA regionals coming in as COMESA sugar ✓ Fair trade ✓ Stabilized sugar market for the benefit of consumers, farmers and all stakeholders	AFA – SD KRA KEBS	Immediate
	Negotiate with COMESA to ensure that net importing countries within COMESA do not export to Kenya.	Nil	Provisions in the COMESA protocol that inhibit net importing countries from exporting sugar to member states	✓ Reduced imports from non-COMESA regionals coming in as COMESA sugar ✓ Fair trade ✓ Stabilized sugar market for the benefit of consumers, farmers and all stakeholders	AFA – SD KRA KEBS	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
COMPLIANCE WITH THE COMESA SAFEGUARDS UNDER ARTICLE 10 AND ARTICLE 28 Nil						
Compliance	All efforts must be put in place to ensure Kenya is self-sufficient in sugar production by 2021 on a cost effective basis	Nil	Self-sufficiency	✓ Regional and global competitiveness ✓ Industry profitability ✓ Stabilized sugar prices and market	All industry stakeholders	June 2021
	Commence payment based on quality by 2021	50	Cane payment based on quality	✓ Increased production and productivity ✓ Increased efficiency ✓ Increased income s	Farmers Millers	June 2021
	Commence privatization of public owned mills by June 2019	Nil	Privatization of Public owned mills	✓ Regional and global competitiveness ✓ Industry profitability	All industry stakeholders	June 2019
SUGAR INDUSTRY FUNDING						
Lack of access to affordable Credit	Re-introduction of the SDL at the rate of 7% to support the industry – Specifically Research, cane development, infrastructure development, factory rehabilitation and administration	Nil	Sugar Development Fund	✓ Reduced cost of credit ✓ Increased cane and sugar production ✓ Reduced cost of production ✓ Industry efficiency ✓ Enhanced technology transfer	National and County Governments	June 2020
	Ring fence the fund for research, development, regulation and promotion of the sugar industry	Nil	Ring-fenced SDF funds for industry development promotion and regulation	✓ Adequate funding for the industry ✓ Increased sugar production ✓ Low cost of credit	National and County Government	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Inadequate funding for research	Develop a stakeholder governance structure and accountability framework for research fund	10	Stakeholder governance structure	✓ Optimum utilization and accountability for research funding ✓ Increased research	Farmers, Millers National and County Governments	June 2020
	Promote private investment in research by millers and other institutions in collaboration with the sugar research institute.	Nil	Increased funding for research	✓ Development of all sugar cane value chains ✓ Increased production and productivity of high yielding disease tolerance varieties ✓ Increased sugar production ✓ Industry efficiency ✓ Reduced cost of production	SRI Private investors National and County Governments	Immediate
Inadequate funding for cane development	Strengthen credit management systems	20	Sugar development Fund	✓ Reduced cost of credit ✓ Reduced cost of production ✓ Increased cane and sugar production ✓ Industry efficiency	National Government	June 2020
Indebtedness of the farmers and farmer organizations	Verification and subsequent write off of the debt to the farmers from the SDL funds be undertaken	30	Debt write off for outgrower companies	✓ Increased cane development ✓ Reduced cost of credit ✓ Cleaned balance sheets for farmer organizations will enable them to attract credit to support farming activities	National Government	June 2020
	Strengthen credit management systems.	2	Credit management system	✓ Proper credit management ✓ Reduced cost of credit ✓ Reduced cost of production ✓ Industry efficiency ✓ Increased sugar production ✓ Financial discipline	Farmers, Millers AFA-SD, Famer organizations, Financiers, County Government	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
COMPETITIVENESS OF PUBLIC-OWNED SUGAR FACTORIES						
Poor Governance	In the short term, restructure Boards and management of the public owned mills to respond to the current need of turning around these companies	Nil	New board and management of public owned mills	✓ Increased efficiency ✓ Improved Corporate Governance	National Government	June 2019
	Rationalize the organization structure to ensure that an optimum number of staff is retained and well remunerated	1,500	Optimum human resource establishment	✓ Increased efficiency ✓ Reduced cost of production	National Government	June 2020
	Ensure adherence and enforcement of all laws and guidelines on good governance.	Nil	Good governance	✓ Increased efficiency ✓ Reduced cost of production	National Government	Immediate
Lack of capital and high debt, ageing equipment, obsolete technology and operational inefficiency	In the short term mobilize resources from both National and County Governments (as appropriate) to keep the mills running and ensure farmers and employees are paid promptly	2,500	Prompt payments of farmers, employees and service providers	✓ Continuity in cane development ✓ Mitigate against litigation ✓ Staff motivation	National and County Governments	June 2019
	Mobilize resources for capital injection through a strategic investor as approved by parliament in 2015 to enable the companies meet their financial requirements	Nil	Strategic investment in public owned mills	✓ Expansion and modernization ✓ Optimal capacity utilization ✓ Increased industry efficiency ✓ Reduced cost of production ✓ Increased sugar production	National Government	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Financial restructuring of public owned mills as approved by parliament in 2013	Nil	Financial restructuring of public owned mills through debt write off, debt restructure, injection of capital off among others	✓ Enhanced financial performance of the sector ✓ Strategic investment in public owned mills ✓ Increased efficiency ✓ Reduced cost of credit Reduced cost of production	National Government County Government Financial institutions Strategic investors	June 2019
	Conversion to equity of additional GoK/Sugar Board debts from July 2009 to date	Nil	Debt conversion	✓ Reduce cash outflows after restructuring	National Government Parliament	June 2019
	Negotiate with banks and other creditors for the restructuring of other debts	Nil	Debt restructuring	✓ Reduced cost of credit	National Government Parliament	June 2019
	Re-constitute the sugar privatization steering Committees to ensure representation of respective County Governments and farmer organizations	Nil	Sugar privatization steering Committee with stakeholder representation	✓ Stakeholder consensus on privatization	Farmers Millers National & County Government	Immediate
	In cognizance of the fact that Mumias Company is no longer a public mill, it is recommended that a revitalization committee be appointed to work with the Board, County Government of Kakamega and other key stakeholders to identify and implement an effective restructuring plan	10	Strategic investment in MSC	✓ Expansion and modernization ✓ Optimal capacity utilization ✓ Increased efficiency ✓ Increased factory profitability ✓ Increased sugar production	National and County Governments	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Labor related issues	Pay outstanding salary arrears as soon as possible	Nil	Payment of salary arrears	✓ Staff motivation ✓ Mitigate against litigation	National Government	June 2019
Inadequate skilled personnel	Capacity building, apprenticeship	50	In mill and inter-mill apprenticeship programmes	✓ Enhanced human resource capacity ✓ Knowledge transfer to younger generations	Millers	Immediate
	Establish a national sugar training institute for capacity building	250	National Sugar Training Institute	✓ Enhanced human resource capacity ✓ Increased specialization and sustainability	AFA –SD, SRI National and County Governments	June 2022
	Appointment of Boards of Directors and Management on specific skills set and competencies.	Nil	Competent Board and Management	✓ Enhanced human resource capacity ✓ Efficiency	National Government Millers	Continuous
Prolonged receivership	Conclusion of the receivership process be expedited.	Nil	Concluded receivership	✓ Proper operation of the mills ✓ Access to working capital	National Government	June 2019
TAXATION IN THE SUGAR INDUSTRY						
Classification of sugar as a food item	Classify sugar as food item.	Nil	Sugar classification	✓ Reduced cost of production ✓ Increased strategic investment in the sector ✓ Expansion and modernization ✓ Increased efficiency	National Government	June 2020
High cost of input	Review the taxation regime to create a tax friendly investment environment including duty waivers on high end industry inputs such as fertilizer, diesel, farm implements, and plant and factory equipment.	Nil	✓ Tax regime review ✓ Tax incentives	✓ Reduced cost of production ✓ Increased production ✓ Increased strategic investment in the sector ✓ Expansion and modernization ✓ Increased efficiency	National Government	June 2020
Levies charged at County Level	The National and County Governments should rationalize levies and taxes to improve farmer earnings and support investment in the sector.	Nil	✓ Tax regime review ✓ Tax incentives	✓ Reduced cost of credit ✓ Reduced cost of production ✓ Increased production ✓ Increased strategic investment in the sector ✓ Expansion and modernization ✓ Increased efficiency	National and County Governments Industry stakeholders	June 2020

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
POLICY, LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORK						
VISION 2030 AND BIG FOUR AGENDA	Validate and adopt the draft National Sugar Policy for implementation	10	✓ Validate draft Policy ✓ Adopt Industry Policy	✓Industry Growth ✓Clarity of focus ✓Promotes proper coordination of the sector ✓Increased efficiency	Industry stakeholders CS MOALF&I	June 2019
CONSTITUTION OF KENYA, 2010	Adhere to the unbundled functions on Agriculture and/ or renegotiate the implementation of the unbundled functions in line with article 187 of the Constitution by the two levels of Government.	Nil	Adherence to the unbundled and/ or renegotiated implementation of the unbundled functions in line with the Constitution	✓Delineates roles, providing synergy and harmony between the two levels of Government ✓Increased efficiency	National and County Governments IGTRC	June 2019
Regulation of Land use and property Article 66(1)	The Government should provide a national land use plan as contemplated under Article 66 of the Constitution, which includes rules contemplated under Section 11 of Crops Act	10	National land use plan	✓Sustained sugar cane and sugar production ✓Diversification at farm level ✓Enhanced food Security ✓Environmental protection	National and County Governments IGTRC	June 2020
	During partial transfer of shareholding, the change in the use of nucleus land should be classified as a shareholder reserved matter necessitating a special resolution. The grant and lease document to specify land use purpose as being; cane growing and related activities.	Nil	Land be classified as a shareholder reserved matter necessitating a special resolution, upon partial transfer of shareholding of public owned mills.	✓Safeguarded interest of industry stakeholders on land ✓Sustained sugar cane and sugar production	National and County Governments IGTRC	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
CROPS ACT NO.16 OF 2013						
Regulation of Scheduled crops	The Cabinet Secretary should develop, gazette and implement General Regulations and Import and Export regulations of the Act.	5	Gazetted General Regulations and Import and Export regulations	✓ Order and harmony ✓ Increased industry efficiency ✓ Sugar production to meet national demand and surplus for export ✓ Reduced cost of production ✓ Minimize illegal imports	CS MOALF&I	June 2019
	Provision be amended by replacing the word "shall" and with "may" to provide CS the discretion to determine the category of dealers to be registered.	Nil	Amended draft regulations	✓ Allow for definition of dealers to be registered, for practical application	CS MOALF&I County Governments	June 2019
Licensing responsibility	Amend the Act by deleting the section and providing for registration of a sugar mill project and gazzettement calling for objections before commencement of the project.	5	✓ Defined licensing roles ✓ Licensing framework	Delineates licensing roles, providing synergy and harmony between the two levels of Governmen	National and County Governments IGTRC	June 2019
Manufacturing Licenses	Establish a joint committee for the purpose of issuing manufacturing licenses	20	Provision in the Act for calling for objections before registration and commencement of a sugar the project.	✓ Provide for registration of a project, which is not in the Act as it currently is. ✓ Guard against project commencement before calling for objections	AFA-SD County Government	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
Dispute Resolution by Arbitration	Article of the Constitution 159(1) (c) promotes the use of alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution. Section 41 should be amended to consider other forms of Alternative Dispute Resolution other than Arbitration	5	Amendment of section 41 to consider other forms of Alternative Dispute Resolution other than Arbitration.	✓ Order and harmony in the sector ✓ Reduced cost of arbitration and litigation ✓ Reduces time of dispute resolution	National and County Governments	June 2019
	Intergovernmental disputes will be resolved under the alternative dispute resolution mechanism as provided in the Inter-governmental Relations Act, No. 2 of 2013	5	Implement Intergovernmental dispute resolution mechanism	✓ Order and harmony in the sector ✓ Reduced cost of arbitration and litigation ✓ Reduces time of dispute resolution	National and County Governments IGTRC	Continuous
	A sugar sector tribunal be set up to provide a mechanism for the alternative dispute resolution for disputes in the sector.	100	Establish Sugar Arbitration Tribunal	✓ Order and harmony in the sector ✓ Reduced cost of arbitration	National and County Governments	June 2019
Pricing and Soil Management	Amend the Crops Act, 2013 to provide for pricing and soil management to guide the sector.	5	Amended Crops Act 2013 to provide for pricing and soil management to guide the sector.	✓ Enhance soil health ✓ Increase production and productivity ✓ Reduced cost of production ✓ Industry efficiency ✓ Environmental conservation	National and County Governments	June 2020

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
AGRICULTURE AND FOOD AUTHORITY ACT NO.13 OF 2013						
Functions of the Authority	Review the section 4 (b) to comply with the Fourth Schedule of the Constitution.	5	✓Defined functions ✓Operational framework	Delineates functions, providing synergy and harmony between the two levels of Government	National and County Governments IGTRC	June 2019
Constitution of Board of the Authority	In the short term there is urgent need to appoint the Board to operationalize the functions of the Crops Act No.13 of 2013 and Agriculture and Food Authority Act No. 16 of 2013	Nil	An AFA Board	✓Strategic leadership ✓Compliance with the requirements of the law	CS MOALF&I	June 2019
	In the mid-term, introduce a stand-alone legislation for the sugar industry.	50	Stand-alone legislation for the industry	✓Effective regulation of the sector	CS MOALF&I	June 2020
Rules on preservation, utilization and development of agricultural land	The Cabinet Secretary Ministry – MOALF&I to provide policy guidelines on land use.	20	✓Policy on land use ✓Implementation	✓Ensuring availability of adequate and suitable land for cane development	CS MOALF&I	June 2020
Participation of farmers	Amend Section 40(1) to provide for participation of individual farmers who are not registered in any organization in line with the Constitutional threshold on Public Participation.	Nil	✓Amended section to provide for participation of individual farmers ✓Implementation	✓Farmer inclusivity in decision making processes ✓Transparency ✓Compliance with constitutional provisions	CS MOALF&I	June 2019
Rules on agreements between farmers and farmer organizations	The Cabinet Secretary MOALF&I should develop rules relating to enforcement of agreements and procedures of internal functioning in the farmer organizations.	Nil	Developed rules on agreements relating to enforcement of agreements	✓Order and harmony ✓Reduced litigation	MOALF&I	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
KENYA AGRICULTURE AND LIVESTOCK RESEARCH ACT NO. 17 OF 2013						
Following succession of the Kenya Sugar Research Foundation, by KALRO, there has been reduced focus on sugar research especially due to significantly reduced budget allocation, to the disadvantage of the industry.	Re-establish an independent public sugar research institute	20	An independent public sugar research institute	✓ Increased research for multiple adaptable varieties ✓ Increased sugar cane production and productivity	National and County Government	June 2020
	Establish regional research centres	Nil	Regional centres	✓ Better access to research services by farmers ✓ Increased production and productivity	National Government County Government	June 2022
	Encourage other institutions/mills to participate in sugar research to compliment efforts by the institute	Nil	Private investment in research	✓ Increase research initiatives ✓ Increased production and productivity	National Government County Government	June 2020
	Establish Financial Monitoring Reporting (FMR) mechanism under the institute	10	Financial Monitoring Reporting (FMR) mechanism under SRI	✓ Optimum utilization of resources ✓ Increase research initiatives ✓ Increased production and productivity	National Government County Government	June 2020
	Develop a protocol of scientific transfer of technology (testing of alien seed); variety control and multiplication.	5	Protocol scientific transfer of technology	✓ Increase research initiatives ✓ Increased production and productivity	National Government County Government	June 2020

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
CONSUMER PROTECTION ACT NO. 46 OF 2012						
Consumer protection	KEBS should ensure that quality standards for both imported and locally manufactured sugar are adhered to	Nil	Quality standards for sugar and related products	✓ Quality assurance ✓ Consumer protection ✓ Environmental protection ✓ Adherence to standards by industry	KEBS AFA –SD	Immediate
	The AFA-SD should seek accreditation to have laboratories for quality checks on local and imported sugar	10	✓ Laboratories ✓ Accreditation	✓ Quality assurance ✓ Consumer protection ✓ Environmental protection ✓ Adherence to standards by industry	KEBS Kenya Accreditation Service AFA –SD	June 2020
	AFA-SD in collaboration with other government agencies in undertaking sugar verification on questionable origins and quality, prior to importation of sugar to ascertain origin and quality of production	Nil	Sugar verification on questionable origins and quality, prior to importation of sugar	✓ Reduced importation of non-COMESA sugar coming as COMESA sugar ✓ Stabilized sugar prices and market	AFA-SD KEBS KRA Department of Radiation	Immediate
	AFA-SD should ensure that there are sufficient stocks of affordable sugar available to the consumer for stable prices	Nil	✓ Regular monitoring and updates of sugar ✓ Strict approvals for imports that do not exceed the deficit	✓ Optimal levels of sugar availability ✓ Stabilized sugar market for the benefit of consumers, farmers and all stakeholders	AFA-SD KRA KEBS	Continuous
	AFA-SD, KEBS, KRA, Kenya Consumer Protection Advisory Committee (KCPAC), Ministry of Foreign Affairs, State Department of International Trade and relevant Kenyan mission should collaborate on matters of market intelligence, quality assurance and consumer protection.	Nil	Inter-agency collaboration framework on surveillance	✓ Quality assurance ✓ Consumer protection ✓ Optimal levels of sugar availability ✓ Stabilized sugar prices market for the benefit of consumers, farmers and all stakeholders	AFA – SD National & County Governments Government	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
STANDARDS ACT CAP 496						
Standards	Continuous collaboration between the AFA-SD, KEBS and proposed SSSC to ensure enforcement of standards in the sugar sub-sector	Nil	Industry standards	✓ Quality assurance ✓ Consumer protection ✓ Adherence to standards by the sugar industry	AFA – SD KEBS	Continuous
	KEBS to undertake capacity building AFA-SD and Country Governments on standards as per its mandate.	Nil	Capacity building on standards	✓ Quality assurance ✓ Consumer protection ✓ Adherence to standards by the sugar industry	AFA – SD KEBS County Governments	Immediate
PUBLIC FINANCE MANAGEMENT ACT. 2012 AND STATE CORPORATIONS ACT CAP 446						
Non-adherence of the provisions of the Public Finance Management Act. 2012 And State Corporations Act Cap 446 on resources management	Improve governance and oversight functions both at management and board level	Nil	Improved governance and oversight functions at management and board level.	✓Efficient utilization of resources ✓Growth in the sector ✓Increased efficiency ✓Reduced cost of production ✓Industry competitiveness	Public mills AFA-SD National and County Governments	Immediate
	The Parliament and the National Treasury to play its oversight role on the governance of state-owned sugar mills	Nil	Improved governance of state owned mills	✓Efficient utilization of resources ✓Growth in the sector ✓Increased efficiency ✓Reduced cost of production ✓Industry competitiveness	National Treasury Parliament Public owned mills	Continuous
	Strict adherence to requirements of the State Corporations Act, Mwongozo and the principles of public finance on the prudent use of resources should address poorgovernance that have bedeviled the state-owned sugar mills	Nil	Improved governance of state owned mills	✓Efficient utilization of resources ✓Growth in the sector ✓Increased efficiency ✓Reduced cost of production ✓Industry competitiveness	Board and management of Public owned mills, State Corporations MOALF&I National Treasury	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
	Conduct a management and forensic audit of public owned mills and related sugar institutions to give confidence to prospective strategic partners	100	Due diligence and Forensic audit of public owned mills	✓ Increased investment in the sector ✓ Mitigates financial governance risks ✓ Improved governance	State Corporations MOALF&I National Treasury	June 2019
	Structural changes in company ownership to inject additional capital, managerial expertise, innovation and technology among others.	Nil	Structural change in company ownership	✓ Attraction of investment ✓ Capital injection for expansion and modernization ✓ Industry growth ✓ Efficiency	National and County Governments	June 2019
THE COMPETITION ACT NO.12 OF 2010 AS AMENDED						
Mill licensing and divestiture	The process of licensing of new mills and divestiture of public owned mills should ensure diversity in ownership, in line with the provisions of the AFA Act section 44.		Divestiture of public owned mills should ensure diversity in ownership	✓ Diversified ownership in the industry ✓ Safeguard against monopolistic tendencies ✓ Promotes healthy competitions	National and County Governments	June 2019
Mill catchment area	Delineation of sugar regions to Central region, Upper wester, Lower western, Southern and Coastal regions		Caner catchment area	Increased sugar production Increased efficiency Order and harmony in the industry	National And County Government	June 2019

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT NO. 8 OF 1999 AS AMENDED						
Instances of pollution in some of the factories with regard to effluent management	Continuous collaboration between AFA-SD and NEMA to ensure enforcement of environmental standards in the sub-sector	Nil	Collaborative framework	✓ Environmental protection ✓ Enhanced public health	AFA, Water Resources Authority, Public Health, NEMA	Continuous
	NEMA should undertake capacity building of AFA-SD and Country Governments on environmental standards as per its mandate.	Nil	Capacity building	✓ Environmental protection ✓ Enhanced public health	AFA, Water Resources Authority, Public Health, NEMA	Immediate
FERTILIZERS AND ANIMAL FOOD STUFFS ACT CAP 345						
The cost of farm inputs including fertilizer contributes to the high cost of production.	Investment in fertilizer production and blending in collaboration with KEBS and KEPHIS for quality control	Nil	Local production of fertilizer	✓ Reduced cost of fertilizer ✓ Increased production and productivity ✓ Reduced cost of production ✓ Increased industry efficiency	KEBS, KEPHIS National and County Governments Investors	June 2020
PEST CONTROL PRODUCTS ACT CAP 346						
The sugar yields have declined due to lack of adequate skills in pest and disease control	AFA-SD, SRI and the County governments should collaborate with the Pest Control Products Board (PCPB) to ensure proper pest control and sugar cane husbandry through extension services.	Nil	Collaborative framework between PCPB, AFA-SD, SRI and the county governments	✓ Increased pest and disease control ✓ Mitigate against crop failure ✓ Increased production and productivity ✓ Reduced cost of production ✓ Increased industry efficiency	AFA-SD, SRI, Pest Control Board, National and County Governments	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
PLANT PROTECTION ACT CAP 324						
The sugar yields have declined due to lack of adequate skills in pest and disease control	Continuous collaboration between the institute, AFA-SD, KEPHIS and KEBS to ensure enforcement of plant protection standards in the sugar sub-sector.	Nil	Collaborative framework between AFA-SD, SRI, KEPHIS, KEBS and the county governments	✓ Increased pest and disease control ✓ Mitigate against crop failure ✓ Increased production and productivity ✓ Reduced cost of production	AFA-SD, SRI, PCB, National and County Governments	Continuous
PUBLIC HEALTH ACT CAP 242 AND FOOD, DRUGS AND CHEMICAL SUBSTANCES ACT CAP 254						
Adulteration of its products and by-products such as molasses. This has indeed been a growing quality concern in the sugar industry and is in contravention of provisions these Acts.	Continuous collaboration between AFA-SD, KEBS and the Public Health (Standards) Board, Central Board of Health to ensure enforcement of public health standards in the sugar sub-sector	Nil	Collaborative framework between AFA, KEBS Central Board of Health	✓ Assured food safety ✓ Quality standards	AFA-SD, KEBS, Public Health County Government	Continuous
	Regulations under these Acts should be properly implemented.	30	Implementation	✓ Assured food safety ✓ Quality standards	AFA-SD, KEBS, Public Health County Government	Immediate
PHARMACY AND POISONS BOARDS ACT CAP 244						
Low sensitization on proper handling of pesticides and herbicides, which could lead to contamination or poisoning.	Continuous collaboration between the AFA-SD and the Pharmacy and Poisons Board to ensure enforcement of poisons standards in the sugar sub-sector and adequate sensitization of the farming community.	Nil	✓ Sensitization programmes ✓ Implementation	✓ Food safety ✓ Mitigates against contamination and poisoning	AFA-SD Pharmacy and Poisons Board County Governments	Continuous

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
EMPLOYMENT LAWS (EMPLOYMENT ACT OF 2007, LABOUR RELATIONS ACT NO. 14 of 2007, WORK INJURY BENEFITS ACT 2007, OCCUPATIONAL HEALTH AND SAFETY ACT 2007, LABOUR INSTITUTIONS ACT 2007						
Given poor performance of the industry, sugar mills, do not meet the contractual and statutory obligations.	Enforcement and compliance with the provisions of Employment Act of 2007, Labor Relations Act No. 14 of 2007, Work Injury Benefits Act 2007, Occupational Health and Safety Act 2007 and Labor Institutions Act 2007.	Nil	Enforcement of existing Acts	✓ Improved working conditions ✓ Enhanced employee benefits ✓ Improved employee bargaining power	National and County Governments Millers Employees	Immediate
COUNTY GOVERNMENTS ACT NO. 17 OF 2012 AND INTERGOVERNMENTAL RELATIONS ACT NO. 2 OF 2012						
There is failure by County Governments to provide for facilitation of sugar sub-sector in their respective CIDPs	County Governments to provide for facilitation of sugar sub-sector in their respective County Integrated Development Plans	Nil	Integration of the sugar sub-sector in the agriculture sector of the Counties Integrated Development Plans.	✓ Increased investment in sugar sub-sector ✓ Increased production and productivity ✓ Enhanced service provision ✓ Reduced cost of production	County Governments Controller of budgets	June 2019
Proper implementation of the Constitution and the County Governments Act	The sugar sub-sector may use the existing intergovernmental structures as provided in the IGRA to address disputes on sugar matters that are inter-governmental in nature.	Nil	Dispute resolution through the existing intergovernmental structures as provided in the IGRA	✓ Harmony ins the industry ✓ Reduced cost of litigations	National and County Governments IGTRC	Immediate

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
NATIONAL LAND COMMISSION ACT NO. 5 OF 2012						
Land use	Maintain land use for cane growing and related activities in both categories of nucleus land ownership	Nil	Secured land for cane development	Increased production	National and County Governments NLC	June 2019
	Cause a restriction to be entered into the Land register with respect to nucleus land restricting land use for cane growing and related purposes.	Nil	Secured land for cane development	Increased production	National and County Governments National Land Commission	June 2019
THE ENERGY ACT No. 2019						
Use of renewable energy	Encourage uptake of, and stimulate innovation in, renewable energy technology by constructing the requisite infrastructure for power transmission to the nearest power station and providing a profitable feed in tariff	Nil	✓ Infrastructure for transfer of cogenerated electricity ✓ Favorable feed in Tarrif	✓ Inreased profitability to farmers and millers	KETRACO	June 2022
	Develop a conducive environment for the promotion of investments in energy infrastructure development from bagasse, including formulation dissemination of guidelines on the development of energy projects to potential investors.	20	Investments in energy infrastructure	Inreased profitability to farmers and millers	National and County Governments	June 2022

CHALLENGES	ACTIVITY	ESTIMATED COSTS KSHS (MILLIONS)	OUTPUT	IMPACT	BY WHO	TIMELINES
INTERNATIONAL INSTRUMENTS: COMMON MARKET FOR EAST AND SOUTHERN AFRICA (COMESA) AND THE EAST AFRICAN COMMUNITY (EAC)						
Disputes with COMESA and EAC member states on rules of origin and common external tariffs.	Active engagement in the harmonization of sugar trade policy through the Tripartite Free Trade area which encompasses the COMESA, EAC and Southern Africa Development Community (SADC) configurations	Nil	Harmonization of trade policy by the Tripartite FTA which encompasses the COMESA, EAC and SADC configurations.	✓ Harmony in the COMESA EAC and SADC trading environments ✓ Stabilized local sugar market	AFA-SD Ministry of Foreign Affairs Department of International Trade	Continuous
	Participation in regional and international trade negotiations to enter into agreements that favor the growth, and development of the sugar industry	Nil	Agreements that favor the growth, and development of the sugar industry.	✓ Stabilized local sugar market ✓ Growth, and development of the sugar industry	AFA-SD, Ministry of Foreign Affairs, Department of International Trade	Continuous
	Proposal for establishment of timelines in resolving trade disputes.	Nil	Adoption of timelines in resolving trade disputes in COMESA and EAC	✓ Timely dispute resolution ✓ Promotion of harmony and trade		June 2020

Notes:

1. *** Activity to be undertaken under the existing function and budget**
2. ****Annually in the first three years and subsequent funding will be from the proposed Sugar Development Levy**

ANNEXES

1. Taskforce Gazzette Notice
2. Windsor Resolutions
3. High-level leadership meeting Resolutions
4. Validation meeting resolutions
5. Newspaper advert on stakeholder consulations
6. Stakeholder views report
7. Draft Sugar Policy
8. Land Commission report
9. Sessional paper No. 12 of 2012 on write off of Excess Gvenment of Kenya debt owed by the public sector owned Sugar Companies