Trade Justice Policy Brief on Sugarcane

TRADE JUSTICE POLICY BRIEF ON SUGARCANE SECTOR

This Brief is founded upon KHRC's field work study aimed at understanding the problems that face the sugarcane industry in South Nyanza and how these issues translate into violations of social and economic rights. The focus areas of the study were Ndhiwa in Homabay County; Awendo in Migori County and; Transmara in Kisii County. The study was undertaken in the period of 26th to 29th May 2014.

The issues that stood out from the fieldwork include disunity amongst the farmers, inefficient legislative framework, poor and inequitable pay, poor adherence to the principles of corporate accountability, increased concerns over the implications of the COMESA sugar safeguards, increased HIV/AIDS prevalence in the region and lack of sufficient capacity utilization.

Additionally, the brief provides possible solutions of these issues based on the recommendations elicited from the farmers. These recommendations include proposed regulatory frameworks to be implemented with regards to fair competition practices and fair remuneration. The recommendations also propose measures to strengthen the union of farmers and ensure strict and proper adherence to good governance and accountability.

INTRODUCTION

Sugarcane is a strategic produce and its by-products are raw materials for other products and industries essential to the global economy. Sugarcane farming also serves as an engine for rural development through spill-over effects like establishment of health facilities, schools and trade centres. It is also the main source of livelihood for more than 200,000 small scale farmers in Kenya and over six million people involved in agro-processing, distribution and other related services. However Kenya's sugar sector is plagued with challenges manifested through the fallacy of high demand for sugar and its by-products, on the one hand, and very low prices paid to sugarcane farmers who are unable to adequately provide basic needs for their families on the other[1].

Table 1: Sugar Production and Trade in Kenya, 2005-2010

	2005	2006	2007	2008	2009	2010
Production (tonnes)	516,800	488,100	517,000	520,404	511,900	547,999
Imports (tonnes)	149,664	166,326	230,013	220,176	184,537	195,000
Exports (tonnes)	11,978	14,519	22,267	45,096	2,136	2
Self-sufficient Ratio	79.0	76.3	71.3	74.8	73.7	73.8

[1] Sugarcane Farmers Manifesto 2014; Pg 3

(%)						
Import Dependency Ratio (%)	22.9	26.0	31.7	31.7	26.6	26.2

Source: FAOSTAT & Global Trade Atlas

As shown in table 1, data reveals Kenya is a net importer of sugar with import dependency ratio ranging from 22.9 in 2005 to 31.7 in 2007.

Article 43 of the Constitution of Kenya, in this regard, envisions circumstances that favor the attainment of economic and social rights which facilitate the enjoyment of other fundamental rights and freedoms such as the right to life and human dignity.

APPROACHES

The objectives of the fieldwork were to introduce and educate the participants on Human Rights more especially on socio-economic rights; provide a forum for the discussion of the challenges that sugarcane farmers face; develop solutions aimed at improving the plight of sugarcane farmers in the country; identify various partners mainly at community level; and to forge a clear working relationship between KHRC, KENSFU, the community and other stake-holders.

The fieldwork was mainly carried out in form of Sugarcane Farmers' Dialogue Forums organized by KHRC and KENSFU[2] around the three sugarcane factories within South Nyanza Sugar Zone namely: Sony Sugar Factory, Transmara Sugar Factory and Sukari Sugar Company. The main expected outcome of each of the three stakeholders' dialogue forums was a compilation of views and demands concerning the management of the sugarcane sub-sector of cane farmers and affected stakeholders. The views expressed would form the basis for policy advocacy at the Sugar Stakeholders Engagement Forums.

Other expected outcomes included a more organized and sensitized community/ farmers on the sugar issues and on the privatization process as a well-informed farming community on the impact of trade liberalization on Kenya sugar industry and how they should organize themselves to cop up with liberalized sugar sector.

RESULTS

During the fieldwork, farmers were engaged on several issues contributing to retarded development of the sugar sub-sector in Kenya; amongst them being the fluctuating/dwindling cane prices, cane spillages, delayed harvesting, delayed payments, impunity of factory employees, the implications of expiry of the COMESA safe guard period by April 2014, taxation in the sugar industry at all levels and; the privatisation of Sony Sugar Company as well as the impact of such privatisation on their rights as farmers.

The fieldwork revealed a number of challenges in the sugar sub-sector including:

[2] Kenya National Sugarcane Farmers Union

1. Disunity amongst the farmers

Sugarcane in the focus areas is largely undertaken by small scale farmers. The farmers shared that it was increasingly difficult for an individual to approach the milling companies with their grievances. As such it is beneficial to have a unified voice for the farmers to create a level ground for engagement with the existing milling companies. It is for this reason that the Kenya Sugarcane Union (KENSFU) was created to protect sugarcane farmers in any malpractices, exploitation and any other issues that may affect them in sugar industry in Kenya; amongst other functions.

However, most farmers in the focus areas were not members of KENSFU. The reason for this is that the farmers were not adequately sensitized on the benefits of joining a union.

Additionally, in what can only be termed as sabotage, the millers had declined to make one percent deductions from the farmers' earnings towards union sustainability. This was without any regard to the farmers giving consent to the deductions.

2. Legislative deficiencies

The sugar sub-sector is regulated by a framework of law which is mainly comprised of;

- The Sugar Act, 2001 (repealed)
- The Crops Act, 2013
- Agriculture, Fisheries and Food Authority Act, 2013
- The Economic Partnership Agreements (EPAs) initialled in October, 2014.

The farmers were not well versed with the provisions of the newly enacted Agriculture, Fisheries and Food Authority Act, 2013[3] which repealed the obsolete Agriculture Act[4]. The farmers related this to the fact that they were not consulted prior to the enactment of the law, despite the law affecting them directly as farmers. The farmers also criticized the constitution of the board of authority created in the Act[5] as being constituted of political appointees; rather than the small scale farmers. They also showed concerns over the criteria of appointment which only covered the major crops in Kenya, with no representation from the sugar sector.

KENSFU stated that the Crops Act, 2013, has not provided for a sugar tribunal which was created under the repealed Sugar Act. Additionally sugarcane is one of the crops with breeding program under compulsory certification[6]. However the specified seed crops have not been provided to them.

Farmers continue facing discrimination when it comes to zoning sugarcane areas, criteria they hardly understand. The zoning is done mainly to provide a voice for the farmers through the zoning committees

The sector has also demonstrated lack of an effective competition regulatory framework. The milling companies are monopolies in their respective regions. As such the farmers

[3] Act No 23 of 2013 The Act was commenced on January 2013
[4] Cap 318 of the Laws of Kenya
[5] Section 5(1) of the AFFA Act
[6] First Schedule; Crops Act

in those regions are faced with contract breaches by the milling companies, without a convenient source of redress for the same. On international trade regimes, Kenya is a founder member of the World Trade Organisation (WTO) with an access to more than 90 percent of world markets with Most Favored Nation (MFN) treatment (KIA, 2012). Kenya is also a member to several regional trade organisations and a signatory to various bilateral and multilateral agreements including

i. African Growth and Opportunity Act (AGOA)
ii. EU-ACP Economic Partnerships Agreements (EPAs)
iii. Common Market for Eastern and Southern Africa (COMESA)
iv. East African Community (EAC)

3. Corruption

Farmers expressed concerns that there was rampant corruption amongst the employees of the milling companies. They gave an instance of the weigh bridges where they alleged that the weigh bridges gave inconsistent figures. Additionally the farmers are not allowed to see the sugarcane produce as it is weighed; which exposes them to defraud.

Farmers also complained that corruption in the sector had been perpetuated by the fact that a farmer sacked by one miller for impropriety could easily get employed by another miller. As such the culture of corruption had continued un-abated for long with negative effects to the farmer.

They further cited the Kshs. 200 million that was allocated by the Kenya Sugar Board to facilitate loans to farmers. However at the time of undertaking the fieldwork, the facilities had not yet been made easily accessible to the small-scale farmers. It was submitted that the farmers actually spend more than what they get as loans in following up those loan facilities. Additionally the loans were offered at very high rates which discouraged the farmers from obtaining them.

4. Low wages

The sugar sector is labour intensive and provides direct and regular employment to over 35,000 people. It is the main source of income of these people as well as numerous others in agro processing, distribution and other related services[7].

Farmers complained that sugarcane took two years to mature in the farm but at the time of harvest the returns were disappointing. The sugarcane prices in Sony and Trans Nzoia fell drastically from Kshs. 3,800 to Kshs 1,000 per tonne. The same was witnessed by the farmers in Ndhiwa who complained that Sukari Ltd offered them low prices for sugarcane which augmented poverty.

There were instances of local millers sourcing sugar cane from other regions. This created an impression that the sugarcane produced in the focus areas is low quality which disadvantages the farmers. Farmers claim that the sugarcane in the focus areas was enough to satisfy most, if not in entirety the demand from the millers.

[7] Ibid 1

They shared that there was a massive wastage of produce along the way, owing to overloading of the delivery trucks as well as poor infrastructure.

Also contributing to the low wages is the 16% tax deduction levied on their incomes. It was their opinion that the deduction is largely inconsiderate because the income is also subject to deductions for fertilizer, harvesting, cess and transport.

The farmers further decried the fact that they are not paid bonuses like the coffee and tea farmers.

5. COMESA

Regional integration is in essence meant to introduce a regulatory environment that facilitates trade liberalization. COMESA sugar safeguards have been in place since 2003; thus eliciting questions from stakeholders as to whether the country is ready for an open trade regime.

With Kenya being termed as a high cost sugar production country, the farmers expressed concern that the integration was likely to lead to the importation of cheap sugar which would result in the millers being run out of business. Millers have previously complained that the duty-free imports left them with growing stockpiles of unsold sugar.

Table 2: Kenya's sugar Quotas and Over - **Quota Tariff Rates Applied to imports from COMESA Member Countries**

Year	Quota (1000 tonnes)	Tariff Rate (%)
Before 2008	200	100
2008/09	220	100
2009/10	260	70
2010/11	300	40
2012/13	340	10
2013/14	340	10
2014/5	340	0

Source: KSI, 2009 & USDA-GAIN Report, 2012

6. Corporate Accountability

Farmers shared that the companies did not give due consideration to good corporate responsibility practices. The farmers stated that there was no adequate community representation in the company staff structure. According to the farmers there was a need to have community members as company staff as they would introduce 'indigenous' expertise to the running of the company.

Despite the companies are drawing benefit from the resources of the region, the said benefits have not been extended to the host communities. For instance, farmers shared that SONY Sugar Company was generating electricity in Awendo but had taken no initiative to sponsor installation of street lights in the town.

7. HIV/AIDS Prevalence

The farmers shared that HIV/AIDS prevalence in the region was high. The same had translated to retarded economic growth in the region. KENSFU related the high prevalence rates to irresponsible behavior by the farmers caused by lack of awareness.

8. Privatization of Sugar Sector

Privatisation of state owned companies has been employed as an instrument of industrial reorganization aimed at boosting development. The sugar industry has been plagued with huge outstanding debts which have greatly dissuaded investors from the sector. Privatisation also has some negative spillover effects which include; low prices for producers and massive job losses aimed at raising profit and efficiency.

The participants were concerned that since the government intends to privatize the sugar sector the same would not translate to any benefit for them as sub-sector stakeholders and for the sector as a whole.

9. Lack of sufficient capacity utilization

The sugar industry has an industry standard of Overall Time Efficiency of 82%[8]. However, according to the farmers, this capacity is not sufficiently utilized as a result of delays in harvesting and transportation. Additionally the farmers stated that the overloading of tractors as well as the poor driving skills of the drivers that transport the sugarcane from the farms to the millers causes massive wastage of the produce. Further they complained that the millers occasionally had mechanical failures which resulted in more wastage of their crop.

With the lack of sufficient time efficiency comes delays; most significant being delayed payments to the farmers. They stated that it sometimes took over a year for them to get their dues.

Table 3: Estimates of cane areas harvested for each existing mill in Kenya

Mill	Area (ha)	Percent of total
Muhoroni	8,000	7.6
Chemilil	5,300	5.0
Mumias	35,600	33.7
Nzoia	13,200	12.5
SONY	9,760	9.2
West Kenya	10,700	10.1
Soin	750	0.7
Kibos	7,800	7.4
Butali	7,555	7.2
Transmara	3,320	3.2
Sukari	3,600	3.4
Total	105,585	100

Source: KSB, 2013

IMPLICATIONS AND RECOMMENDATIONS

The Kenyan sugar industry plays a key socio-economic role as the third largest contributor to Kenya's agricultural Gross Domestic Product (GDP) after tea and coffee. Sugar accounts for about 15% of the agricultural GDP[9] and it is a dominant employer and source of livelihoods for most households in Western Kenya.[10], Sugarcane

[8] Kenya Sugar Industry Strategic Plan 2010-2014; Pg. 17

[9] Agriculture directly contributes 26% to the country's GDP and 60% of the export earnings and further indirectly contributes 27% to the GDP through linkages with manufacturing, distribution and service related sectors.

[10] This comprises of former Nyanza, Rift valley and Western Provinces

farming, thus, forms an important vehicle for employment and poverty reduction.

However the sugar industry is still struggling to transform itself into a vibrant, efficient, diversified and competitive industry. The issues that have plagued the industry have resulted in retarded sector and personal development of the stakeholders in the sector. Having identified the issues, farmers had the following recommendations:-

a. In the proposed privatisation of the milling companies the farmers recommended that the priority in share allocation be given to the stakeholders in the respective regions. They further recommended that the state should carry out civic education on the implications of the same. The same should also be conducted with regards to the COMESA safeguards affecting the sugar sub-sector.
b. The farmers recommended that a declaration of the cess collected by the millers as happens with national parks in other parts of the country. This would go a long way into making the millers transparent and accountable for the amounts of cess they collect. in addition, farmers proposed that the millers avail portable weighbridges. This would ensure that the sugarcane produce is weighed at the farms and any loss along the way would be the sole responsibility of the miller. If this was not implementable with immediate effect, the farmers proposed that they should have their representatives at the weighbridges to make sure that farmers see the tonnage of their produce. The representatives would also act on behalf of farmers who are left at home when the sugarcane produce is delivered to the millers.
c. The farmers further shared that they were willing to join the Kenya National Sugar cane union (KENSFU) through paying the Kshs. 100 registration fee and further accepting to be deducted one per-cent (1%) from their earnings for the union sustainability in order for them to be better represented.
d. Farmers proposed that millers should be held accountable for the losses incurred as a result of the delayed payments.
e. KENSFU recommended that a new miller should be introduced to the region to facilitate fair competition amongst the millers.
f. Farmers proposed for the formation of farmer owned co-operatives to provide them with inputs at subsidised rates and whose interests are fairly low. Farmers further proposed that the loans should be given directly to them rather than Kenya Sugar Board who disburse the funds to Agricultural Finance Corporation (A.F.C) and then farmers' apply for the loans from A.F.C.
g. Kenya National Sugar cane Farmers Union (KENSFU) proposed that the millers employ more personnel to

ensure better delivery of services. They stated that they had educated but un-employed youths from the region who can work in the mills.

h. Farmers proposed that the milling companies only buy sugarcane grown in the regions only if the region does not meet the required demand.
i. Kenya National Sugar cane Farmers Union (KENSFU) and small holder farmers advocated for use of modern technologies in sugarcane farming in order for farmers to maximise profits. This is because sugarcane farming is a long-term project. Farmers further made proposals for use of such methods as intercropping and keeping of exotic cattle to further improve their livelihoods.
j. With regards to the HIV/AIDS prevalence in the region the farmers recommended that capacity building on the disease be held in the focus region. Medical assistance should be provided as well to the already infected persons to enable them to live a full and productive life.
k. The farmers stated that the Sugar Stakeholders Engagement Forum should be rolled out. The forum brings together MPs and senators from the sugarcane growing constituencies in South Nyanza, the Governors from Migori and Homa Bay Counties, the managing directors of all the three sugar factories, out growers institutions, cooperatives, CSOs, officers from the ministry of agriculture, both national and county and farmers.

CONCLUSION

The sugar industry has set general policy measures aimed at achieving; self-sufficiency with exportable surplus in sugar production; import substitution strategy to save the country the much needed foreign exchange; social development through employment opportunities and wealth creation, raising the living standards in rural Kenya; infrastructural and rural development through promotion of services such as mechanics, shopkeepers and agro-chemical workers. Sugarcane growing, hence, justified the supply of essential services as roads, rural electrification, housing, health facilities and education centers; and protection of the domestic market, previously served by imported sugar.

At the time of the fieldwork, the views expressed by the participants in the focus areas showed severe deficiencies in the sector. The sector lacks effective legislative and otherwise regulatory frameworks which results in rampant exploitation of farmers and other subsector stakeholders. Retarded capacity utilisation is the major factor contributing to low revenue generation as well as the trickle down effects such as increased poverty levels amongst the farmers. Lack of a vibrant corporate accountability mechanism; coupled with insufficient union representation; has facilitated the commission of violations especially against the subsector stakeholders who are mostly small scale farmers and workers. Privatisation of the sector as well as the open market regime envisioned by the COMESA arrangement further threatens to aggravate the situation. Lack of stakeholder empowerment is also a contributor towards the challenges that plague the sector.

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