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**AN ANALYSIS OF THE SUGAR BILL 2016**

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The views expressed in this publication are neither for the Centre for Policy Analysis nor its partners

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## **Abstract**

The Government of the Republic of Uganda in an effort to regulate major key players in the Sugar industry has tabled before Parliament the Sugar Bill 2016. Although the Sugar industry has been in existence in Uganda since 1920, the legislation that was in place at the moment such as the Sugar (control) Act of 1948 and the Sugar Cess Act of 1957 are currently no longer able to propel the Sugar industry to stability and development.

In the past couple of years, the prices of Sugar have been fluctuating going higher and making it difficult for the ordinary Ugandans to buy Sugar. This has led to a public outcry demanding for an explanation for these price fluctuations and also seeking long term solutions to ensure that such incidences do not reoccur. Therefore, the purpose of the Bill is to ensure a sustainable, harmonised and modern Sugar industry in Uganda that serves the domestic market and also the international market.

This paper will examine the underlying weaknesses in the previous legislation that prompted the Government to develop the Sugar Bill 2016. It will also be an investigation into the current Bill, examine the provisions critically, and elucidate the relationship between the national Sugar policy and the Sugar Bill 2016. It will further explore the arguments of different players in the Sugar industry and how they are affected by the Bill and understand perspectives from other jurisdictions that have a thriving Sugar industry. Thereafter, it will provide recommendations to potential issues identified.

The research will be qualitative in nature. Primary and secondary sources of information will be consulted such as the 1995 Constitution of the Republic of Uganda, National Development Plan II, Ministerial Policy Statements, other laws of Uganda, textbooks, the reports of the relevant Parliamentary committees, the Hansard, Civil Society Organisation's reports where necessary, Newspaper articles on the subject matter and any other relevant materials.

## **Introduction**

At the heart of the Sugar Bill 2016, is the Government's desire to develop, regulate and promote the Sugar industry in Uganda. The main objective of the Bill is to make certain that the Sugar industry is sustainable, diversified, harmonised, modern and competitive to meet domestic, regional and International Sugar requirements. Currently, there aren't adequate legal mechanisms in place to regulate the Sugar industry. The Sugar Bill provides a solution to this scenario by providing for clauses which if passed into law would provide the necessary framework for the Sugar industry to develop in an orderly and competitive manner. The Bill is made up of nine parts. Part one provides for the Interpretation of the Bill, part 2 establishes the Uganda Sugar Board, part 3 provides for the Staff of the Board, part 4 creates provisions relating to finances of the board, part 5 provides for the Licensing of mills, part 6 creates Sugar industry agreements, part 7 deals with Sugar cane pricing, part 8 is puts in place the National Sugar Research Institute and part 9 deals with general provisions such as the quality, safety and health of Sugar and safeguard measurements among others.

Although the National Sugar Policy was completed by 2010, the urgency to have the Sugar Bill 2016 passed into law was made necessary by events earlier this year in the months of January to

April. At that time, the price of one kilogram of Sugar in Uganda was costing about 8,500 UGX. This was more than 200% the price that it used to cost in 2016. There was a massive public outcry to the President to intervene and reduce the price. The President responded by warning politicians and those involved in hoarding Sugar to stop the practice. The minister of trade, tourism and Cooperatives, Amelia Kyambadde assured the public that she was doing everything in her power to ensure that the price of Sugar is reduced to that which is affordable for all Ugandans. However, the genesis of the Sugar crisis in Uganda can be attributed to poor weather in leading Sugar producing countries like Brazil and India which led to them producing a major shortage to the world market by at least a million tonnes, war in neighbouring countries like South Sudan which initially got its Sugar supply from North Sudan but now received it from Uganda, and wanton greed in which speculators have taken advantage of the Sugar shortage to profit. (*Sugar shortage in Uganda by Theafricareport.com*)

### **The Bill:**

The Sugar Bill 2016 if passed into law will cover the existing lacunas in the law. The previous legislation in place, the Sugar (control) Act of 1948 and the Sugar Cess Act of 1957 will be repealed. These pieces of legislation are no longer able to match up with the current trend of events in the Sugar industry in Uganda and globally. Also, since they are from the colonial era, they were modelled on serving interests of the colonialists. The current government is keen on ensuring that the Sugar industry develops and is competitive in the region as highlighted in the Sugar policy 2010. Having one comprehensive law to govern the Sugar industry is a welcome development.

The establishment of the Uganda Sugar Board in clause 2 by the Bill is a very positive sign for the development of the Sugar industry in Uganda. According to the National Sugar policy 2010, the government identified the lack of a regulatory institution to manage the Sugar industry as a major weakness that needed to be addressed. The Uganda Sugar Board will be a corporate body with a wide composition in order to have input from key players in the Sugar Industry. The composition will include the Permanent Secretary or Representative from the Ministry of Trade, Ministry of Agriculture and Ministry of Finance. There will be 5 representatives from the Millers and 2 representatives of the out growers. The Chairperson of the Board shall be appointed from the Private Sector as highlighted in Clause 3(3). This promises to foster the Government and Private Sector partnerships which are key for economic development. In Clause 3(8), the Minister will consider the skills and gender in the composition of the Bill. This is a welcome move that will help the Government further its policy of affirmative action in favour of marginalised groups as elucidated in article 32 of the 1995 Constitution of the Republic of Uganda. This Board will help to converge stakeholders together for sharing ideas for promotion of the Sugar industry, export of Sugar and dispute resolution amongst parties involved in the Sugar industry thus ensuring viability of the Sugar industry.

The big Sugar producing countries in the East Africa region Kenya and Tanzania also have Sugar boards running the Sugar industry. The Sugar Board of Tanzania (SBT) was established under the S.3 of the Sugar industry Act of 2001 which after revision in 2009, has conferred power unto the SBT to be the regulatory and licensing body of the Sugar industry in Tanzania. It is also responsible for sustainable development of the Country's sugar as well as achievement of Sugar

self sufficiency and promotion of export. The Kenya Sugar Board (KSB) was established under the Sugar Act of 2001. Under Section 4 of that act, the function of the KSB is to regulate, develop and promote the Sugar industry and also to facilitate equitable access to benefits and resources of the industry to all interested parties. The creation of the Uganda Sugar Board in the Bill whose main functions will be to regulate the Sugar industry in Uganda and ensure access to resources is a welcome development because it will cover the existing lacunas in the regulatory framework for the Sugar industry in Uganda.

The Board has a function to grant a licence in clause (21)6, however the time span of 3 years in which one is expected to commence business can be attributed to the fact that on a large scale in Uganda, many farmers still grow old types of Sugar which only come to fruition after 18 or 20 months. There is need for farmers in Uganda to adopt better varieties that can be ready within 12 months. For example, in Swaziland the variety of Sugar cane planted grows within a period of 12 months and produces even more sugar content than the varieties grown in Uganda. In this way, a farmer who is adversely affected by weather or inadequate financial support or any other challenge in the first year can have another chance in the next year to try again.

Clause 22 of the Bill introduces zoning of cane millers. This is to the effect that sugar mills will be a distance of 25 kilometres in radius to each other. The drafters of the Bill were alive to the concerns of Government published in the National Sugar policy 2010. The Government intends that this will be a way for the Sugar industry to develop since farmers will have access to a big size of land to grow Sugar and will not have to worry about competition from another sugar mill which would be at least 25 kilometres away. Also, this clause will not affect sugar mills that were in existence before commencement of the Act. Much as there is a danger that a monopoly might arise in a particular zone, this will be mitigated in three ways. First, by individual farmers joining their efforts together to form an out grower association such that they can have a collective voice in demanding for better prices as highlighted in part six of the bill dealing with sugar industry agreements. Secondly, the specifications of a particular zone can be changed by the minister to enable more than one miller to exist as indicated in clause 22 (4). Third, the creation of a zone will not affect millers that were already in existence reduces the challenges that would be created by a monopoly.

Clause 25 deals with Sugar cane pricing. This is a proactive clause in the Bill to ensure that cases of exploitation of out growers are reduced. There have been repeated pleas of unfairness voiced by out growers who provide about 50% of the total cane requirement for all major Sugar factories in Uganda (*National Sugar Policy 2010*). In accordance with the provisions of this clause, the farmers will not be paid less than at least 40% after negotiation with the buyers. However, this clause is limited to the price of Sugar only. It does not consider the fact that millers derive financial benefit from by-products of Sugar cane such as bagasse for generating electricity and molasses for ethanol production. Some firms are in the process of starting paper production from cane. It is recommended that the Bill should have a guideline for pricing on these by-products to reduce potential unfairness through unknown prices for these by-products.

The creation of a National Sugar Research Institute is another positive development from the Sugar Bill 2016. The National Research Organisation Act, 2005 set in place a need to have research institutes dedicated to ensuring development of the respective fields in S.18. The

National Sugar Research Institute will have a function to advancing among others, research on varieties of cane that can best grow in the different agro ecological zones of Uganda. The existence of a National Sugar Research Institute will also help to fill the gap of inadequate skilled manpower which had also been identified as a critical weakness in the Sugar industry in Uganda.

Under clause 28, the government can introduce safeguarding measures to protect the Sugar industry from unfair trade practices. This is a welcome initiative. However, these mechanisms could have been expressly stated to aid in providing a conducive environment for the growth of the Sugar industry in Uganda which though has been in existence since the 1920s is still young compared to others in the region such as Kenya and Tanzania. These policies to protect the industry would include prevention of dumping from other countries and providing tax holidays to the industry and cushioning the industry against external shocks like fluctuating prices on the world market.

However, there are some clauses in the Bill that may not have been well thought out. For instance, under clause 4 (5), there is an element of bias. The minister is allowed to remove a member of the board and if the member of the board is not satisfied with that decision, he is required to write to the minister. This creates a situation in which the actions of the minister cannot be checked and held to account for his actions. First, the time in which the aggrieved party is to write to the Minister is unknown. Secondly, to be a judge in your own case is against the rules of natural justice. What would be ideal is for the party aggrieved by the decision of the Minister to have an opportunity to appeal to a neutral party such as a quasi judicial body or a court of law.

In the Interpretation section, the Sugar Bill 2016 defines words that are commonly used but lacked a precise definition. . In the definition of Sugar, it limits this to the recognised commercial forms intended for human consumption or other uses. However, this narrow definition ignores production of sugar for consumption as local brew; this is also a commercial activity that should be considered. Also, in the definition of out grower, it is limited to a person with a Sugar cane farm in a zone and also with a contract to supply the Sugar cane grown on the farm. This definition however, does not include farmers outside the zone who are also involved in supplying Sugar cane.

It is also disappointing that the Bill hardly provides for the regulation of electricity generation from Sugar mills. According to the National Sugar Policy 2010, electricity at the Sugar mills can be generated from bagasse and can be used for irrigation of the land and the surplus sold to the national grid. However, the potential of electricity generated from Sugar mills might not be fully unlocked with this ambiguity. This could also be a source of income to the mill and could help it become self sustaining.

## **CONCLUSION**

Overall, this is a welcome piece of legislation that has been long overdue. It is commended for the potential to fill the lacunas in the current law governing Sugar in Uganda, It also establishes the Uganda Sugar Board which will be a regulator of the Sugar industry, and also introduces zoning of cane millers which will put the millers at least 25 km distance apart. The Bill also protects sugar out growers by ensuring that they are paid at least 40% from proceeds of the

transactions, a National Sugar Research Institute is also established by the Bill that will enable further research, education and improvements in the Sugar industry and it also has safe measures to protect the Sugar industry from negative aspects such as dumping. However, there is still room for improvement on issues such as potential bias on behalf of the Minister who is a judge in his own case, since he dismisses a member of the board and the member of the board only has recourse through writing to the Minister. It is also unfortunate that the Sugar Bill does not provide for regulation of electricity generated from Sugar mills.

The Sugar Bill 2016 has the potential to revolutionize the Sugar industry in Uganda and needs to be strengthened through further consultations with stakeholders and political will to implement it and ensure that the Sugar industry is modern, robust and competitive to meet the demands at a domestic, regional and international level.