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COUNTY ASSEMBLY OF BUNGOMA

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COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

OFFICE OF THE CLERK

COUNTY ASSEMBLY OF BUNGOMA  
(LPCS)

10 JUL 2025

NOTICE ISSUED  
By: Hon. Benjamin Ochiolla

THIRD ASSEMBLY

COUNTY ASSEMBLY OF BUNGOMA  
(LPCS)

FOURTH SESSION

10 JUL 2025

AD HOC COMMITTEE

TABLED  
By: Hon. Benjamin Ochiolla

REPORT ON THE COLLECTION AND UTILIZATION OF AGRICULTURAL  
CESS IN BUNGOMA COUNTY SINCE SEPTEMBER, 2022 TO MARCH, 2025

Clerk's Chambers

JUNE, 2025

County Assembly Buildings

P.O BOX 1886 - 50200

BUNGOMA, KENYA

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## 1.0 CHAPTER ONE

### 1.1 PREFACE

**Honourable Speaker,**

This report is prepared pursuant to a Motion adopted by the County Assembly on 9th April, 2025, which called for the formation of an Ad-Hoc Committee to scrutinize the collection, waivers, and utilization of Cess in the County. The Motion was moved in accordance with Standing Order No. 58, which empowers the County Assembly to establish special committees to investigate specific matters of public interest. The formation of the Committee was prompted by concerns over the transparency, accountability, and efficiency of Cess administration, particularly with regard to collection, the granting of waivers, and the application of funds collected as prescribed in the Bungoma County Agricultural Produce Cess Act, 2017.

The Committee's mandate draws its legal foundation from Article 209(3) and (4) of the Constitution of Kenya, 2010, which empowers County Governments to impose taxes and charges for services they provide, within the framework established by County legislation. As Cess constitutes one such charge, its management must conform to the principles of fiscal responsibility, transparency, and accountability as laid out in the PFM law and County's Act.

Moreover, Article 210(1) and (2) of the Constitution of Kenya, 2010, Section 59 of the PFM Act, 2012 and Section 15 of the Bungoma County Agricultural Produce Cess Act, 2017 strictly regulates the imposition, waiver, or variation of any tax or licensing fee, mandating that such actions must be legislated and that public records of all waivers, including their justifications, be maintained and reported to the key oversight bodies, specifically the **County Assembly** and the **Auditor-General**.

In line with these legislative provisions, the Ad-Hoc Committee undertook this assignment with the objective of providing a comprehensive assessment of agricultural produce Cess practices within the County. The Committee examined the legal and

administrative frameworks governing Cess collection and utilization, reviewed records relating to waivers, and assessed whether funds collected through Cess were used effectively and in accordance with Section 12 of the Cess Act. This report presents the Committee's findings, observations, and recommendations with a view to enhancing fiscal discipline, ensuring legal compliance, and promoting prudent public financial management in the County.

### **1.2 Membership**

**Honourable Speaker,**

The Committee's membership is as below;

1. Hon. Benjamin Otsiula – Chairperson
2. Hon. Christine Mukhongo - Vice Chairperson
3. Hon. Jack Kawa
4. Hon Francis Chemion
5. Hon. Grace Sundukwa
6. Hon. George Makari
7. Hon. Johnston Ipara
8. Hon. Bernard Kikechi
9. Hon. Job Mukoyandali
10. Hon. Cornelius Makhanu
11. Hon. Alfred Mukhanya

### **1.3 Mandate of the Committee**

**Honourable Speaker,**

The Terms of Reference adopted during the approval of the motion for the Committee's formation guided the Committee's mandate in identifying gaps, inconsistencies, or non-compliance in the current Cess management practices and propose actionable recommendations aimed at improving collection and utilization.

They included establishing;

- a) Entities that have been paying Cess since September, 2022;
- b) Published list of exit points where Cess is collected from;
- c) The existence and operations of the County Cess Committee as established in the Cess Act;
- d) Total revenue collected from Agriculture Cess since September, 2022;
- e) Utilization of the revenue collected through Agricultural Cess and how much was used to construct road infrastructure in areas where Cess is collected.
- f) Percentage submitted to the Separate Road maintenance Account in compliance with the Cess Act.
- g) Whether West Kenya Sugar Company – Naitiri unit is one of the companies paying Cess to the County and if, yes how much has the company paid to the County since September, 2022
- h) Whether the County Government has granted any CESS waivers to West Kenya Sugar Company, Naitiri unit; and if yes, how much?
- i) Waivers given to any other company;
- j) Whether there is any Memorandum of Understanding with any entity with regard to payment of Cess and challenges occasioned by the said memorandum.
- k) Whether lack of allocation of Cess in some cases leads to disputes between stakeholders and the County Government.

The Committee was granted sixty (60) working days from the date of adoption of the Motion to submit its report to the House.

#### **1.4 Scope and Methodology**

**Honourable Speaker,**

The Committee's investigation focused on how Cess is collected, waived, and used in the County. It considered the laws and systems guiding Cess, how well different stakeholders comply, and how transparent and accountable the process is. The review covered Cess-paying groups like farmers' cooperative societies and agricultural processing entities. The Committee also checked whether the money collected was used fairly and effectively, especially for improving roads and supporting agricultural infrastructure development; particularly in road maintenance as is envisaged in the Act.

To carry out its work, the Committee used several methods. It visited Cess-paying entities' sites such as farmers' cooperative societies and factories to observe operations and get firsthand insights into Cess remittance practices and challenges regarding compliance in Cess payment. It also held discussions with County Executive Committee Members in charge of Agriculture, Roads, and Finance to understand each department's role. The Committee further examined financial documents from both the county government and the paying entities to assess how Cess was collected and waived. This helped to identify key issues and support the Committee to conclude the findings and recommendations in this report.

#### **1.5 Acknowledgement**

**Honorable Speaker,**

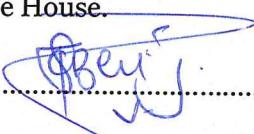
On behalf of the Honorable Members of the Ad Hoc Committee, I wish to express my sincere gratitude to all Members of the Committee for their invaluable contributions throughout the proceedings, culminating in the successful completion of this report.

The Committee also extends its appreciation to the respective County Executive Departments for providing documented information on Cess collection, sharing the Memorandum of Understanding with West Kenya Sugar Company Limited, permitting their field officers to accompany the Committee during field visits to various farmers'

cooperative societies, and for appearing in person to offer critical insights that have informed the narrative and findings of this report. We further acknowledge the cooperation of Cess-paying entities for providing important records, granting access to their premises, and responding to all concerns raised during the investigation.

Special thanks also go to the Offices of the Honorable Speaker and the Clerk of the County Assembly for their unwavering support throughout the preparation of this report.

It is, therefore, my privilege to table this report for consideration and adoption by this Honorable House.

Signed .....  Date ..... 7/7/2025 .....

**(Hon. Benjamin Otsiula, MCA-Khasoko Ward)**

Chairperson, Ad hoc Committee on Cess Collection and Utilization in Bungoma County

## 2.0 CHAPTER TWO

### 2.1 REVIEW OF AGRICULTURAL PRODUCE CESS IN BUNGOMA COUNTY

**Honorable Speaker,**

The Committee's assessment into the terms of reference took a structured approach. The investigation was guided by a set of terms of reference clustered into three thematic areas; with an aim to assess adherence to the Bungoma County Agricultural Produce Cess Act, 2017, transparency in revenue management, and the impact of Cess on local agricultural infrastructure development as envisaged in the Act. The ToRs clustered into three categories are as follows;

1. Review of Cess-paying entities and Cess collection
2. Assessment of Cess Collection points and institutional framework in Bungoma County
3. Assessment of Agricultural Cess utilization, waivers, and institutional agreements in Bungoma County

The findings of the Committee are detailed below.

#### 2.1.1 Review of Cess-paying entities and Cess collection

**Honorable Speaker,**

This section addresses ToR (a), (d), (g) which sought to establish;

- Entities that have been paying Cess since September, 2022;
- Total revenue collected from Agriculture Cess since September, 2022;
- Whether West Kenya Sugar Company – Naitiri unit is one of the companies paying Cess to the County and if yes, how much has the company paid to the County since September, 2022.

### **(1) Cess Paying Entities in Bungoma County**

The Department of Agriculture Livestock, Fisheries, Irrigation and Co-operatives reported the following entities as having paid Cess since 2022 to date:

1. West Kenya Sugar Company Limited
2. Mumias Sugar Company
3. Butali Sugar Company
4. British American Tobacco
5. Busia Sugar Mills
6. Nzoia Sugar Company
7. Kapsara Tea Mills
8. National Cereals and Produce Board
9. Mastermind Tobacco Company

### **Response from the Finance Department**

The Department submitted that not all of the above mentioned Cess paying entities have been remitting Cess. For instance, Nzoia Sugar Company has been experiencing financial challenges that have crippled the Company and thus making Cess realization impossible.

Kapsara Tea Mills and Mastermind Tobacco Company have Cess arrears totaling to Kshs 5 Million and 4.4 Million respectively.

A summary report detailing Cess collection has been appended on this report as **Annexure 1**

### **(2) Total Revenue collected from Agriculture Cess since September, 2022.**

#### **Findings by the Committee**

The information tabulated below was compiled by the *Ad hoc* Committee; collated from various reports received at the County Assembly.

Kshs.53, 460,955 was collected and reported by the Department of Finance and Economic Planning in the Receivers of Revenue Report for the period 2022/23

In the FY2023/24 Kshs.26, 008, 816 was collected; Kshs.21, 615,333 recorded as Cess paid in kind as reported in the CFSP of 2025. Records submitted by West Kenya Sugar Company indicate a sum of Kshs.12, 580,365 that was retained to cover MoU expenses for the period from January- December, 2024; whereas the Department of Roads reported Kshs10, 183,408 for the same. The variance of Kshs1.7M relates to costs incurred in fuel expenses in the months of October, November and December, 2024.

The table below provides the breakdown of **Kshs.97, 525,595** as Cess received by the County per quarter as reported in the Receivers of Revenue Reports from September, 2022 to date.

Quarter	Amount (Kshs)
Sep-22 Q1	15,610,491
	14,275,760
	14,398,598
	9,176,106
Sep-23 Q1	3,981,551
	1,748,011
	12,835,188
	2,709,945
Sep-24 Q1	5,220,000
	4,820,000
	12,749,945
Total	<b>97, 525,595</b>

### Submissions from Cess Paying Entities

#### 1. BAT Kenya

Cess by BAT is paid once per year at the end of the season, around September-December. From documents submitted, Cess due to the County from September, 2022

to March, 2025 was Kshs.5, 379,231. The entire amount was paid in the period and is broken down as below;

October 2022- Kshs.1, 358,699

September 2023- Kshs.1, 637,595

September 2024- Kshs.2, 104,041

**Total amount Kshs. 5,379,231 (provided in the annexure 2)**

As per information submitted by Finance and Economic Planning Department, Cess due from BAT was Kshs.5, 100,335. Cess received was Kshs.5, 403,371. This gives an over payment of Kshs.303, 036 that was received in the financial year 2023/24. The money was a direct transfer to the County account from Standard Chartered Bank. The details are summarized below.

PERIOD	CESS DUE	CESS PAID
2022/23	1,358,699	1,358,699
2023/24	1,637,595	1,940,631
2024/25	2,104,041	2,104,041
<b>TOTAL</b>	<b>5,100,335</b>	<b>5,403,371</b>

## 2. MUMIAS SUGAR

According to documents submitted by Mumias Sugar Company, Cess due to the County Government of Bungoma from September, 2022 to March, 2025 was Kshs.6, 433,360 and was paid to the County as **per annexure 3**.

The factory did not mill between June and November, 2023

The breakdown is as listed below

2022/23 Kshs.1, 207,143

2023/24 Kshs.2, 538,456

2024/25 Kshs.2, 687,854

**Total- Kshs. 6, 433,360**

The entire amount due was paid by cheques that were deposited in KCB and Cooperative Bank accounts.

	Company submission	Finance submission	Dept.	Variance
<b>2022/23</b>	1,207,143	1,168,414		38,729.00
<b>2023/24</b>	2,538,456	2,577,187		(38,731.00)
<b>2024/25</b>	2, 687,854	2,687,854		nil
<b>TOTAL</b>	<b>6,433,455</b>	<b>6,433,455</b>		<b>nil</b>

### 3. West Kenya Sugar Company

According to documents submitted by the Company as **per annexure 4**, Cess due to the County between September, 2022 and March, 2025 was Kshs.104, 465,259. Kshs.78, 600, 512 was paid to the County leaving a balance of Kshs.25, 864,747.

From September, 2022 to June, 2023, Cess due was Kshs.30, 712,316. The entire amount due was paid in the period.

In the Financial year 2023/24, Kshs.33, 233,216 was due; Kshs.25, 401,499 was paid leaving an outstanding balance of Kshs.7, 831,716. These were amounts retained to cover MoU expenses.

For financial year 2024 /25 as at March 2025; Kshs.40, 519,729 was due; Kshs.22, 486,696 was paid leaving an outstanding balance of Kshs.18, 033,030.

The details are summarized in the table below.

DATE	CESS DUE	CESS PAID	BALANCE
2022/23	30,712,316.53	30,712,316.53	-
2023/24	33,233,216.08	25,401,499.14	7,831,716
2024/25	40,519,727.20	22,486,696.00	18,033,030
<b>TOTAL</b>	<b>104,465,259.81</b>	<b>78,600,512.48</b>	<b>25,864,747</b>

The total of Kshs.18, 033,030 and Kshs.7, 831,716 amounts to Kshs.**25, 864,747**; of this, Kshs.12, 580,364 covered MoU expenses as per the West Kenya submissions. The difference of Kshs13, 284,383 due to the County Government of Bungoma as at March, 2025 and is summarized below.

PERIOD	CESS DUE
25-Jan	4,477,771.00
25-Feb	4,604,194.63
25-Mar	4,201,717.57
<b>TOTAL</b>	<b>13, 284,383</b>

The amount of Kshs. 12,580,376 (MoU expenses) is broken down as;

Fuel 38,188 litres translating to Kshs.6, 831,029

Oil and lubricants Kshs.377, 427

Drivers and operators allowances Kshs.2, 984,500

Administration staff allowances Kshs.2, 387,420

The Department of Roads did not submit expenses incurred on the exercise in the period between October and December, 2024

Further, Kshs.24, 707,005 was received from West Kenya in January, 2025 relating to period between February and September, 2024. Payments for the months of

October, November and December were in separate installments as detailed in the table below.

2023/24	CESS DUE	CESS PAID	BALANCE RETAINED
Feb-24	5,445,863.94	3,081,822.00	2,364,042.00
Mar-24	4,944,507.34	1,823,790.34	3,120,717.00
Apr-24	3,588,480.83	1,541,944.83	2,046,536.00
May-24	3,707,496.00	3,407,074.00	300,422.00
Jun-24	3,998,509.00	3,998,509.00	-
<b>TOTAL</b>	<b>21,684,857.11</b>	<b>13,853,140.17</b>	<b>7,831,717.00</b>
<b>2024/25</b>			
Jul-24	4,404,776.00	4,391,616.00	12,460.00
Aug-24	5,297,987.00	3,404,187.00	1,893,800.00
Sep-24	4,134,080.00	3,057,362.00	1,076,718.00
Oct-24	5,045,374.00	4,095,084.00	950,290.00
Nov-24	4,243,823.00	4,243,823.00	-
Dec-24	4,110,004.00	3,294,624.81	815,379.00
<b>TOTAL</b>	<b>27,236,044.00</b>	<b>22,486,696.81</b>	<b>4,748,647.00</b>
			<b>12,580,364.00</b>

The total amount of Kshs.12, 580,364 covered MoU expenses (**Schedule from West Kenya Sugar- Annexure 4**)

#### **Submission by Department of Finance**

According to information received from Finance and Economic Planning Department, Cess due from West Kenya from September, 2022 to March, 2025 was Kshs.79, 194,130. The amount has all been paid in full and therefore there is no balance outstanding.

### **Findings by the Committee**

This position by the Department contradicts what was submitted by West Kenya Sugar Company; where Kshs.104, 465,259 was due to the county, Kshs.78, 600,512 was paid leaving a balance of Kshs.25, 864,747.

#### **4. Busia Sugar Company**

Documents submitted by Busia Sugar Company as **per annexure 5** indicate a collection of Kshs.159, 299 relating to five months in the financial year 2024/25. Management submitted that the Company was not collecting sugarcane from the County in the other periods. All the money collected was banked in a revenue account ending with ...7930 held by the County in KCB. The table below details Cess remittance.

<b>Month</b>	<b>Cess due</b>	<b>Cess paid</b>
Nov-24	41,586.00	41,586.00
Dec-24	63,192.00	63,192.00
Jan-25	29,276.50	29,276.50
Feb-25		-
Mar-25	7,675.50	7,675.50
Apr-25	17,569.00	17,569.00
<b>TOTAL</b>	<b>159,299.00</b>	<b>159,299.00</b>

#### **Submissions by the Department of Finance**

As per documents submitted by Treasury, Busia Sugar Company only owed Cess for two months in financial year 2024/25; a total of Kshs.104, 779 that was paid in full via direct transfer from DTB as tabulated.

<b>MONTH</b>	<b>CESS Due</b>	<b>CESS PAID</b>
Nov-24	41,586	41,586
Dec-24	63,193	63,193
<b>TOTAL</b>	<b>104,779</b>	<b>104,779</b>

## 5. BUTALI SUGAR

As per records submitted by the company as **per annexure 6**, Cess due in the period under review was Kshs.17, 098,334 .The full amounts were paid to the County by cheques.

The amount is broken down as below.

DATE	CESS DUE	CESS PAID	BALANCE
2022/23	5,099,888.00	5,099,888.00	-
2023/24	6,211,187.00	6,211,187.00	-
2024/25	5,787,259.00	5,787,259.00	-
<b>TOTAL</b>	<b>17,098,334.00</b>	<b>17,098,334.00</b>	-

### Submission by the Department

According to information from the Department of Finance and Economic Planning, total Cess due from Butali Sugar in the period was Kshs. 17,261,824. The entire amount was paid by cheques. Kshs.1,470,386 was banked in Cooperative bank while the balance of Kshs.15,791,802 in KCB. The details of Cess paid per year are as tabulated below.

### Findings by the Committee

PERIOD	CESS	CESS PAID
2022/23	4,943,323	4,943,687.00
2023/24	6,531,242	5,931,518
2024/25	5,787,259	6,386,983
<b>TOTAL</b>	<b>17,261,824</b>	<b>17,262,188</b>

## 6. Nzoia Sugar Company

### Submission by the Department

According to information from the Department of Finance and Economic Planning, Kshs.400, 000 was collected from the factory in the month of January, 2024. The company did not submit any report.

## 7. Kikai Farmers' Cooperative Society –Coffee

### Submission by the Department

According to information from the Department of Finance and Economic Planning, the Society paid Cess for November, 2023. A total of Kshs.200, 000 was paid by cheque. No justification was provided as to why Cess was not demanded in the other periods the Society has been in operation.

**(3) Whether West Kenya Sugar Company Naitiri Unit is one of the Companies paying Cess to the County and if yes how much has the Company paid since September, 2022 to March, 2025.**

The Committee established that West Kenya Sugar Company is the leading Cess paying entity to Bungoma County. The Company's Cess due and paid is elaborated in the table below

MONTH 2022/2023	CESS DUE	CESS PAID	BALANCE
Sep-22	4,217,716.88	4,217,716.88	-
Oct-22	3,980,367.30	3,980,367.30	-
Nov-22	3,876,283.12	3,876,283.12	-
Dec-22	3,654,888.75	3,654,888.75	-
Jan-23	4,572,137.07	4,572,137.07	-
Feb-23	2,948,775.81	2,948,775.81	-
Mar-23	2,186,302.85	2,186,302.85	-
Apr-23	2,470,125.90	2,470,125.90	-
May-23	1,671,189.30	1,671,189.30	-
Jun-23	1,134,529.55	1,134,529.55	-
<b>TOTAL</b>	<b>30,712,316.53</b>	<b>30,712,316.53</b>	-
<b>2023/24</b>			

Jul-23	500,151.85	500,151.85	-
Aug-23	263,676.05	263,676.05	-
Sep-23	249,399.15	249,399.15	-
Oct-23	78,243.00	78,243.00	-
Nov-23	247,646.41	247,646.41	-
Dec-23	4,587,376.20	4,587,376.20	-
Jan-24	5,621,866.31	5,621,866.31	-
Feb-24	5,445,863.94	3,081,822.00	2,364,041.94
Mar-24	4,944,507.34	1,823,790.34	3,120,717.00
Apr-24	3,588,480.83	1,541,944.83	2,046,536.00
May-24	3,707,496.00	3,407,074.00	300,422.00
Jun-24	3,998,509.00	3,998,509.00	-
<b>TOTAL</b>	<b>33,233,216.08</b>	<b>25,401,499.14</b>	<b>7,831,716.94</b>
<b>2024/25</b>			
Jul-24	4,404,776.00	4,391,616.00	13,160.00
Aug-24	5,297,987.00	3,404,187.00	1,893,800.00
Sep-24	4,134,080.00	3,057,362.00	1,076,718.00
Oct-24	5,045,374.00	4,095,084.00	950,290.00
Nov-24	4,243,823.00	4,243,823.00	-
Dec-24	4,110,004.00	3,294,624.81	815,379.19
Jan-25	4,477,771.00		4,477,771.00
Feb-25	4,604,194.63		4,604,194.63
Mar-25	4,201,717.57		4,201,717.57
<b>TOTAL</b>	<b>40,519,727.20</b>	<b>22,486,696.81</b>	<b>18,033,030.39</b>
<b>GRAND TOTAL</b>	<b>104,465,259.81</b>	<b>78,600,512.48</b>	<b>25,864,747.33</b>

**2.1.2 Assessment of Cess Collection points and institutional framework in Bungoma County**  
**Honorable Speaker,**

This section addresses ToR (b) and (c) which sought to establish;

- Published list of exit points where Cess is collected from;
- The existence and operations of the County Cess Committee as established in the CESS Act;

The Cess Act categorizes Cess as per Section 10 (1) & (2) into two categories as structured and non-structured Cess for administration purposes

Structured Cess includes all payments to the county government by Agricultural Producers deducted and paid by the individual, company, factory, association or any such entity concerned where the agricultural produce is produced or supplied to be processed and/or stored.

Unstructured Cess includes all payments collected by an authorized officer at County Exit points or any other place as determined by the County Executive Committee Member.

#### **Submission from the Executive on the Cess Exit points in the County**

On the published list of exit points where Cess is collected from, the Department of Agriculture in its response Ref. CGB/MOALFIC/CECM/BCA/VOL.I (013) dated 2<sup>nd</sup> May 2025 alluded that the County currently has 37 active Cess collection points/barriers in eight sub counties on major exit points as toll points for agriculture produce Cess and royalties on building materials.

The submission of the County Executive Committee Member for Finance and Economic Planning Ref: CG/BGM/FIN/CA/REPORT/VOL.5/38 dated 8<sup>th</sup> May, 2025 also indicated 37 No. active Cess collection points in eight sub counties which were proposed and whose gazettlement process had been initiated as per the table below.

No.	Sub county	Ward	Collection point/Barrier
1.	Sirisia	Malakisi/South Kulisiru	Sirisia market
		Lwandanyi	Lwakhakha market
			Malakisi (opposite BAT)
		Namwela	Namwela-Kikai junction
			Wapukha junction
			Kolani
2.	Tongaren	Ndalu/Tabani	Ndalu- Kiminini Mkt (Kapchonge)
			Muliro-kitale road

		Milima	Wabukhonyi
			Naitiri market-hospital road
		Mitua/ soysambu	Matunda (near Nzoia River)
			Mitoto market
		Mbakalo	Nzoia-Lugari road
3.	Mt Elgon	Elgon	Kapsokwony-kimilili road
		kaptama	Kaborom market
		Chepyuk	Masaek
			Kipsigon
		Cheptais	Cheptais (near ACC office)
4.	Webuye West	Sitikho	Sitikho-kuywa road
5.	Webuye East	Maraka	Sajjan
			Nabuyole road
6.	Bumula	West Bukusu	Mayanja Kibuke market
		Sibot	Miluki- sango road
			Mukwa
		Kimaeti	Kimaeti-Impresa road
			Myanga market
		South Bukusu	Mateka market
		Kabula	Wamunyiri
		Bumula	Joy Valley
7.	Kabuchai	Chwele/ Kabuchai	Busakala friends church
		Mukuyuni	Chebukaka-Mpakani road
			Kuywa junction
8.	Kanduyi	Township	Airstrip
		Khalaba	Pamus
		Musikoma	Musikoma junction
			Dismas junction
			Siritanyi

The Department submitted that these Cess Collection points have not been gazetted and that the process is on course. That Department further stated that the omission of Kimilili Sub County was an oversight which shall be corrected and included before gazettlement.

### **Existence and Operations of the County Cess Committee as Established in the Cess Act**

#### **Legal Basis and Composition of the County Cess Committee**

Pursuant to Section 7 (2) of the Bungoma County Agricultural Produce Cess Act, 2017 (**Annexure 7**), the County Cess Committee was established with the following membership structure:

- i. Two representatives from agricultural sector departments
- ii. One representative from finance department
- iii. One representative from Public Administration Department
- iv. One representative from Roads and Public works department
- v. Two representatives from the sugarcane sector
- vi. One representative from coffee sector
- vii. One representative from tea sector
- viii. One representative from tobacco sector
- ix. One representative from maize sector
- x. One youth representative
- xi. One women representative
- xii. One representative from livestock sector
- xiii. One representative from fisheries sector
- xiv. One representative from people with disabilities.

The Chairperson of the Committee shall be elected by members on the 1<sup>st</sup> day of the sitting of the committee. The committee shall have a term of three years and no member may be appointed to represent the agricultural sector for more than two

terms. The Bungoma County Agricultural produce Cess Act 2017 further gives mandate of the County Cess Committee under section 8 of the Act as follows;

1. To oversee the Agricultural Cess programs in the County
2. Enhance collection of Cess in the County
3. Facilitate enforcement of Agricultural Cess legislation
4. Planning and implementation of programs under the agricultural Cess Fund
5. Monitoring and Evaluation of the programs
6. Reporting biannually to the County Executive Committee Members of Agriculture and Finance and Economic Planning on the progress made in the discharge of their functions

#### **Submission by the Department of Finance & Economic Planning**

A response from the County Executive Committee Member for Finance dated 20<sup>th</sup> May 2025 indicated that the Committee was appointed on 13<sup>th</sup> December, 2023 and Gazetted on 30<sup>th</sup> April, 2025 through Gazette Notice No. 5793 for a period of 3 years, with effect from 2<sup>nd</sup> January, 2024 with the following membership

1. David Lupao- Chairperson
2. Mary Munanda
3. Mary Situma
4. Moses Munialo
5. Mercy Grace Werenga
6. Maurine Chebet
7. Kipngetich Chepkwony
8. Wyclife Kisuya Simiyu
9. Christopher Wekesa Sifuna
10. Cyphrene Sabuni
11. Moses Walekhwa
12. Fredrick Wotia
13. Susan Ngera
14. Omoit Lydia
15. Rashid Wekesa Barasa

**16. Dina Nasimiyu Masolo**

The Committee invited the Cess Committee through a letter Ref: CAB/CC/ADH/1 VOL.I (35) dated 14<sup>th</sup> May 2025. During their appearance before the Committee on 21<sup>st</sup> May 2025 at 11:00 a.m. and submitted as follows;

**Submission by the Cess Committee**

- 1) Since inception they only had an inaugural meeting where they elected the Chairperson.
- 2) On reporting biannually to the CECM, Finance and Economic Planning and CECM, Agriculture as a requirement of Section 8 (f) of the Act, the Chairperson submitted that there no report that has been done since the Committee had not been gazetted.

**2.1.3 Assessment of Agricultural Cess utilization, waivers, and institutional agreements in Bungoma County**

**Honorable Speaker,**

This section addresses ToR (e), (f), (h) (i) (j) and (k) which sought to establish;

- Utilization of the Revenue collected through Agricultural Cess and how much was used to construct Road infrastructure in areas where Cess is collected.
- Percentage submitted to the Separate Road maintenance Account in compliance with the Cess Act.
- Whether the County Government has granted any Cess waivers to west Kenya Sugar Company, Naitiri unit and if yes, how much?
- Waivers given to any other company
- Whether there is any memorandum of understanding with any entity with regard to payment of Cess and challenges occasioned by the said memorandum.
- Whether lack of allocation of Cess in some cases leads to disputes between stakeholders and the County Government.

## **Memorandum of Understanding between the County Government of Bungoma and West Kenya Sugar Company (Naitiri Unit)**

The Black's Law Dictionary describes a Memorandum of Understanding in the same definition of a letter of intent to wit; a written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement. In other words; it is non-committal writing preliminary to a contract. In essence it is not meant to be binding.

Making reference to the Memorandum of understanding between the County Government of Bungoma and West Kenya Sugar Company Limited- Naitiri unit, the parties do not expressly state the extent to which they are bound but instead state at **clause 9** thereof that the parties will proceed to execute the works agreed in good faith. Further, **clause 7 (b)** of the said MoU makes reference to section 15 of the Cess Act, 2017 and provides that the CECM will waive Cess payable to the County Government of Bungoma with the approval of the County Assembly; for West Kenya Sugar Company Limited- Naitiri Unit.

The Memorandum of Understanding (MoU) between the **County Government of Bungoma and West Kenya Sugar Company (Naitiri)** was signed on 19<sup>th</sup> January, 2024 and focuses on road rehabilitation in the **West Kenya Sugar Belt Region**. It is provided as **annexure 8**.

- 1) The Department of Roads, Infrastructure and Public Works, is responsible for the management, development, rehabilitation and maintenance of roads in Bungoma County to facilitate the movement of goods and people, enhance the economic development, and create jobs;
- 2) West Kenya Sugar Company Limited is a major producer of sugar and other related products in Bungoma County, and has a vested interest in improving the

road network in the region to increase its market access with farmers, reduce transportation costs, and support the local communities and farmers;

3) The Parties identified the need and the opportunity to collaborate on roads maintenance works in Bungoma County, which will benefit both the Parties and the public;

### **Purpose and Objectives**

The purpose of the MOU was to establish a framework of cooperation between the Parties for the rehabilitation/improvement of roads in Bungoma County.

The objectives are to:

- a) Rehabilitate/ improve approximately 96 Kms of roads in the Bungoma County.
- b) Ensure that the roads are improved according to the required standards and specifications, and are durable, safe, and environment friendly;
- c) Enhance the accessibility and mobility of the Factory equipment, machineries, vehicles and the local population, and reduce the travel time and costs;
- d) Promote the economic growth and social development of Bungoma County, and create employment opportunities for the local labor force.

### **Description**

The following activities were to be undertaken:

- a) Conducting roads inventory of the roads identified to be rehabilitated by both parties in agreement, and generation of a work plan for the roads.
- b) Executing the roads rehabilitation / improvement works, under the supervision and guidance of the County Government and the Factory, and in accordance with the agreed plans and specifications;

- c) Monitoring and evaluating the progress and performance of the works, using the agreed indicators and methods, and reporting the results and challenges to the Parties on a regular basis;
- d) Maintaining and operating the roads after the completion of the Rehabilitation, ensuring their quality and functionality, and addressing any issues or defects that may arise.
- e) The sugar belt regions to be covered were; Tongaren, Webuye East & West and Kimilili.

The Rehabilitation /improvement of roads was to cover the following wards in Tongaren Sub County:

- (a) Mbakalo Ward (15 km)
- (b) Milima Ward (15 km)
- (c) Naitiri/Kabuyefwe Ward (15 km)
- (d) Tongaren Ward (15 km)
- (e) Ndalu/Tabani Ward (15 km)
- (f) Soysambu/Mitua Ward (15 km)
- (g) Ndivisi bridge-Naitiri Market Road (6km)

### **Terms of the Agreement**

The terms and conditions of the agreement were as follows:

#### **Responsibilities:**

The County Government of Bungoma and West Kenya Sugar Company Limited were to share the responsibilities and obligations of the Project, as follows:

#### **The County Government of Bungoma**

- a) Provide the overall policy direction and strategic guidance for the works through the CECM Roads and Public Works.

- b) Provide competent technical staff to supervise the road works through the Chief Officer Roads, Infrastructure and Public Works.
- c) Monitor the implementation of the Project, and ensure its quality and compliance with the agreed standards and specifications; CECM, Roads was responsible for the works.
- d) Coordinate and facilitate the communication and cooperation among the Parties and other stakeholders involved in the Project, and resolve any issues or conflicts that may arise;
- e) Evaluate and report the results and impacts of the Project, and provide feedback and recommendations for improvement.
- f) Provide the following equipment & facility for the works:
  - 1) 2No. Motor graders
  - 2) 2 No. single drum rollers
  - 3) 1No.Excavator
  - 4) 2No.Tippers
  - 5) 1No.Pickup Truck
  - 6) Identify Gravel borrow pits for the Naitiri acquisition

**West Kenya Sugar Company Limited**

- a) Provide fuel and lubricants for the machines, equipment and plant throughout the period (including Mobilization and Demobilization) as per the written request by the representative of the county government of Bungoma based on standard fuel efficiency for equipment
- b) Provide agreed daily allowances for staff of Bungoma County Government attached to the works as per written request by the representative of county government of Bungoma which includes the costs of road inventory, the operators, the supervision, the monitoring and evaluation;
- c) Payment for acquired gravel borrow pits based on certification and recommendations by the County Government of Bungoma

- d) Participate in the execution and supervision of the works
- e) Monitor and report the progress and performance of the works, and provide feedback and suggestions for improvement.

#### **Resources**

- a) West Kenya Sugar Company Limited was to provide the required resources like fuel, lubricants and pay allowances & cost of gravel for borrow pits and all these costs from the waiver of Cess as provided in the Bungoma County Agricultural Produce Cess Act 2017
- b) The Parties would ensure that the funds and resources for the works are used efficiently and effectively and are accounted for.

#### **Written Submissions from the Department of Roads and Public Works**

That Utilization of Cess is managed by the County Department of Finance and Economic Planning. There is no separate Road Maintenance Account that is administered by the Department of Roads, Infrastructure and Public Works.

The following list of Machinery and Equipment were provided by the County Government to support Execution of Works in the Conditions of the MOU entered with Cess entity.

- i. Grader, KCA 349F
- ii. Grader, KCD 728G
- iii. Grader, GKA 554R
- iv. Tipper, KCA 976F
- v. Tipper, KBZ 997B
- vi. Tipper, 39CG 028A
- vii. Roller, KBZ 950B
- viii. Roller, GKA 154Y
- ix. Roller, KCD 294G
- x. Pick-Up MV, KBW 323V

The table below highlights the scope of works and specific locations where these works were implemented

Ward	S.No	Road	KM	Activities Carried Out
Naitiri/Kabuyefwe	1	Junction PAG to Mr. Mukweyu road	1.8	Grading and compaction
	2	Madam Sarah to Mr. Like Kikunzi road	0.5	Grading and compaction
	3	Mr. Alphonzi Siumba road to Siumbwa Primary	1.7	Grading and compaction
	4	Mr. Wanakai junction road to Khakobi	0.3	Grading and compaction
	5	Nyange Busta, Taraja Mbili to Makhavi junction	2.3	Grading and compaction
	6	Sangura Mukhohovi road	1.3	Grading and compaction
	7	Naitiri Salvation Army Church to Shem	0.8	Grading and compaction
	8	Naitiri market to Lukoye Dispensary	0.3	Grading and compaction
	9	Nyagi to Samuel Faro road	1.5	Grading and compaction
	10	Sango Market to Mukisi road	2.0	Grading and compaction
	11	Nabwana junction to Bidii Lungui	1.0	Grading and compaction
	12	Sango SA Secondary School, Ingosi Amani Academy to Sangura road	3.0	Grading and compaction
KM Sub-total			16.5	

Mbakalo Ward	1	Matiang I Catholic, Nabiswa-Kibisi Karima junction	2.70	Grading and compaction
	2	Kibisi Catholic Church – Bilongo Marangachi junction	2.50	Grading and compaction
	3	Peter Wamalwa junction- Madam Jane Simiyu – Mbakalo river	1.40	Grading and compaction
	4	Mr. Black –Karima ACK road	0.60	Grading and compaction
	5	Kibisi Secondary School- Wanjononi road	1.90	Grading and compaction
	6	Nakitare Michelesi – Simwata Mikosi junction	1.20	Grading and compaction
	7	Mbakalo booster – Wesakania – Reuben Mbakalo river	1.40	Grading and compaction
	8	Lukile primary junction – antony junction – Lumikile primary – Otindi Mbakalo river	2.00	Grading and compaction
	9	Khasavuli – Wavukha – Wevumbi- Muchwingi junction	1.40	Grading and compaction
	10	MCA Road	1.00	Grading and compaction
		KM Sub-total	16.1	
	1	Nabing'eng'e Dam – Nabing'eng'e Sec.	1.0	Grading and compaction

	2	Namboko Sec. road	1.0	Grading and compaction
	3	Matisi – Mbakalo Bridge	1.0	Grading and compaction
	4	Bakasa – Mbakalo Bridge	1.0	Grading and compaction
	5	Eluuya Matamano Werangai Road	2.0	Grading and compaction
	6	Eluuya primary Indeche road	1.0	Grading and compaction
	7	Mukuyuni Diocese road	1.5	Grading and compaction
	8	Shivachi Delma Academy Siandaumba	2.0	Grading and compaction
	9	Nandemu siandumba	1.0	Grading and compaction
	10	Maliki market – Rising Star	1.0	Grading and compaction
	11	Binyanya Market- Dkt Eseli primary School	2.0	Grading and compaction
	12	Bondeni – Utubora road	1.0	Grading and compaction
		KM Sub Total	15.5	
Tongaren/Kiminini Ward	1	Matisi Makhonge Road	1.5	Grading and compaction
	2	Olunga Kwoma road	0.7	Grading and compaction
	3	Korokocho – Jeremiah Road	0.9	Grading and compaction
	4	Mumali –Milimani –	1.1	Grading and

		Machakha		compaction
	5	Sikolia Matisi Pr. Ngome road	1.2	Grading and compaction
	6	Welikhe – Namtokholo Road	0.4	Grading and compaction
	7	Sawa Kiminini road	0.7	Grading and compaction
	8	Chelonga road	0.3	Grading and compaction
	9	Check Point Kikwamet Tongareen Road	2.0	Grading and compaction
	10	Makolelwe – Friends Milele road	0.7	Grading and compaction
	11	Binyenya Mkt- Sikulu junction Road	2.0	Grading and compaction
	12	Chonge – Maende – Isaiah Road	2.4	Grading and compaction
	13	Samson – Herbert- Samland junction road	1.1	Grading and compaction
		KM Sub-total	15.0	
Soysambu/Mitua Ward	1	John Situma- Namatore- River Nzoia	2.9	Grading and compaction
	2	Narati junction – Narati Mosque – Mr. Nderitu	3.0	Grading and compaction
	3	Koinange junction – Mr. Lasi Wanjala	0.3	Grading and compaction
	4	Ass. Chief Marani – River Nzoia	2.9	Grading and compaction
	5	Wabukala – River Nzoia	1.9	Grading and compaction

	6	Mitua VTC –Mr. Wasilwa – Mayven river Bridge	1.6	Grading and compaction
	7	Mitoto PAG – Situma High	0.8	Grading and compaction
	8	Wateso junction –Wateso Mama Jane	0.3	Grading and compaction
	9	Mitua primary- Cattle Dip	0.2	Grading and compaction
	10	Wakwetu –Fred Korokoro	0.5	Grading and compaction
	11	Lasi Wanjala – Koinange junction	0.7	Grading and compaction
		KM sub –total	15.1	
Ndalu/Tabani	1	Mwangi –Mapera primary – Minyali	5.1	Grading and compaction
	2	Tabani Market – River Kiminini	3.0	Grading and compaction
	3	Mr. Akoi – Tabani Sec. – Kamau Foot Bridge	1.4	Grading and compaction
	4	T-junction – Kisika	4.6	Grading and compaction
	5	Samaria PAG – Mapera junction	2.4	Grading and compaction
		KM Sub-total	16.5	
		<b>Total KM</b>	<b>97.2</b>	

#### **Public participation Report relating to the MOU and Executed Works**

The projects were identified within the MTEF (Ward Based) and CFSP public participation framework as coordinated by the Department of Finance and Economic Planning.

### **Monitoring and Evaluation Report on execution of the MOU**

No monitoring and evaluation reports were submitted.

### **Expenditure by West Kenya and County Government**

From the submissions by West Kenya Sugar Company (Naitiri Unit), the total amount due out of expenditures on the execution of the MoU is Kshs.12, 580,376. The Department has submitted that the expenditure for the period was Kshs.10, 598,728. The Department of Roads did not include in their submissions expenses worth Kshs 1,765,669 recorded in the months of October to December, 2024 as provided in the table below.

<b>2023/24</b>	<b>CESS DUE</b>	<b>CESS PAID</b>	<b>BALANCE RETAINED</b>
Feb-24	5,445,863.94	3,081,822.00	2,364,042.00
Mar-24	4,944,507.34	1,823,790.34	3,120,717.00
Apr-24	3,588,480.83	1,541,944.83	2,046,536.00
May-24	3,707,496.00	3,407,074.00	300,422.00
Jun-24	3,998,509.00	3,998,509.00	-
<b>TOTAL</b>	<b>21,684,857.11</b>	<b>13,853,140.17</b>	<b>7,831,717.00</b>
<b>2024/25</b>			
Jul-24	4,404,776.00	4,391,616.00	12,460.00
Aug-24	5,297,987.00	3,404,187.00	1,893,800.00
Sep-24	4,134,080.00	3,057,362.00	1,076,718.00
Oct-24	5,045,374.00	4,095,084.00	950,290.00
Nov-24	4,243,823.00	4,243,823.00	-
Dec-24	4,110,004.00	3,294,624.81	815,379.00
<b>TOTAL</b>	<b>27,236,044.00</b>	<b>22,486,696.81</b>	<b>4,748,647.00</b>
			<b>12,580,364.00</b>

In addition, the County Government of Bungoma spent Kshs.2, 440, 000 on the maintenance of machines.

KCA349F Kshs.900, 000

KCD728 Kshs.1, 410,000

KCA976F Kshs.130, 000

During the period, 97.2 Kms of roads were graded and compacted in Tongaren and none was graveled as per the conditions of the MOU.

### **Committee's Findings**

In reference to Clause 7(b) of the MoU it is only an expression of intent and does not constitute a waiver for the following reasons;

- 1) Section 59 of the PFMA and section 15 of the Bungoma Agricultural produce Cess Act 2017 puts the County Executive Committee Member (CECM) for Finance with vested authority to waive or vary certain county revenues. The process typically begins with the submission of a formal waiver request by a company or individual to the County Treasury, clearly stating the Cess amount to be waived, the justification for the request (such as public interest or financial hardship). Conversely, the procedure that was undertaken on this MOU, the County Government is the one that approached West Kenya through several consultative meeting from the local leadership, constituency and county leadership
- 2) No purported waiver has been done in favor of West Kenya Sugar Company Limited, Naitiri Unit by the CECM, Finance.
- 3) No approval of the County Assembly on any waiver has been given pursuant to section 15 of the Cess Act.

## **Procedure for Granting Cess Waivers under the Public Finance Management Act, 2012 and Regulation 64(3)**

**Honourable Speaker,**

The process for granting Cess waivers by County Governments in Kenya is governed primarily by the Public Finance Management Act (PFMA), 2012, supplemented by the Public Finance Management (County Governments) Regulations, 2015. (Cap.412A). Together, these legal instruments provide a structured, transparent, and accountable framework for the waiver of county taxes, fees, or charges, including Cess.

Under Section 59 of the PFMA, the County Executive Committee Member (CECM) for Finance is vested with the authority to waive or vary certain county revenues. However, this authority is not discretionary and must be exercised in compliance with legal, procedural, and financial standards. The process typically begins with the submission of a formal waiver request by a company or individual to the County Treasury, clearly stating the Cess amount to be waived, the justification for the request (such as public interest or financial hardship), and supporting documentation like audited financial statements or operational plans.

Upon receipt, the County Treasury undertakes a thorough evaluation of the request to assess its legal validity, fiscal impact, and alignment with public interest goals. If the application meets the criteria established by law, the CECM for Finance prepares a waiver proposal detailing the name of the applicant, the amount to be waived, justification for the waiver, duration, and legal basis. The waiver must comply with Section 59(1) (c), which requires that any such waiver be authorized by either an Act of Parliament or county legislation.

Before the waiver can take effect, the proposal must be submitted to the County Assembly for approval in accordance with Section 77 of the PFMA. The Assembly holds the power to approve, reject, or amend the proposal. No Cess waiver is valid without formal approval by the Assembly, ensuring legislative oversight and checks on executive power.

In addition, Regulation 64(3) of the Public Finance Management (County Governments) Regulations, 2015 introduces further transparency requirements. This Regulation mandates that any waiver or variation in respect of county taxes, fees, or charges be reported quarterly by the County Treasury. The report must be submitted to key oversight bodies, specifically the County Assembly and the Auditor-General. The Regulation outlines the specific content that must be included in the report:

1. The full name of the person or entity granted the waiver or variation.
2. The amount of revenue affected by the waiver.
3. The financial year to which the waiver applies.
4. The justification for the waiver, based on objective criteria.
5. The legal provision under which the waiver was granted.

This ensures that each waiver is fully documented and traceable, thereby discouraging arbitrary or unauthorized exemptions and reinforcing public trust in county financial management.

Once approved, the waiver is recorded and maintained by the County Treasury, in compliance with Section 59(1) (a), which calls for a public register of all waivers. This record is to be made publicly accessible, detailing the name of the beneficiary, the amount waived, the rationale, and the terms and conditions under which the waiver was granted.

Further, Section 164 of the PFMA requires that all granted waivers be disclosed in the quarterly and annual financial reports of the county. These reports are submitted to the County Assembly and the Controller of Budget, promoting both horizontal and vertical accountability. Additionally, Section 166 ensures that these waivers are subject to independent audit by the Auditor-General to confirm compliance with financial laws and regulations.

Importantly, Section 159 of the PFMA provides a crucial safeguard by holding public officers personally liable for any waiver granted without legal authority. Any officer who

unlawfully authorizes a waiver can face disciplinary action, surcharge, or prosecution for the loss of public funds.

Finally, Section 59(1) (b) ensures equity by prohibiting the exemption of State Officers from paying taxes or charges, including Cess, solely based on their position or status. This prevents the abuse of office and guarantees that all individuals are subject to the same legal standards.

**Submission from the County Executive Committee Member for Finance on the MoU and Waiver**

**Honourable Speaker,**

Reference to the letter CG/BGM/FIN/CA/REPORT/VOL.5/38 dated 8<sup>th</sup> May, 2025; the County Executive Committee Member for Finance stated that the County Government of Bungoma entered into an MOU with West Kenya Sugar Company LTD on the implementation of roads under agricultural Cess. The object of the agreement was to establish a framework of cooperation between the parties for improvement of roads in Bungoma County.

The CECM further submitted that no waivers have been granted in relation to Agricultural Produce Cess; and that the Kshs21M reported in the Fiscal Strategy Paper, 2025 as Cess in kind is as a result of the services rendered by West Kenya Company.

**Note:** Cess in kind refers to a form of taxation or levy where payment is made not in money but in the form of goods or services (road maintenance in areas where agricultural goods are produced) usually agricultural produce.

**Submissions from the CECM Roads, Infrastructure, Transport and Public Works**

The CECM appeared before the Committee on 21<sup>st</sup> May, 2024 at 3:00p.m and submitted as follows; That the Department was aware of the correspondence from the CECM-Finance dated 14<sup>th</sup> March, 2024 regarding the Memorandum of Understanding (MoU) to which a response by the Chief Officer was supposed to submit on the following;

1. Clear duration of the MOU
2. The disclosure of estimated Cess expected within the duration of the contract.
3. Quantified cost of the work to be done.
4. The computed cost of the County Machinery deployed for the same work
  - a) Fuel required for the period
  - b) The staff cost
  - c) The machine maintenance cost
5. The West Kenya Sugar Cane coverage zone in the County with sub county coverage percentage.

**Honourable Speaker,**

The Committee was informed that the objectives of the MoU were achieved to a considerable extent, as outlined in the document. Approximately 70 per cent of the works, specifically grading and compaction of 97.2 kilometres, was completed. However, graveling works were not undertaken due to the unavailability of an operational excavator. Challenges in accessing murram sites were also cited. Additionally, the Department lacked budgetary allocation for the identification of burrow pits. It was also reported that no funds under the Cess payments had been received or utilized.

The CECM submitted that the MoU expenses were quantified at Kshs12M and with a total expenditure of Kshs. 12 million; 97.2 km of roads had been graded and compacted, indicating value for money. That officers involved in the works were compensated for five months, reflecting the actual duration of their engagement. The Committee was further informed that works were carried out up to December, 2024.

**Post-Implementation Maintenance of Roads**

The Committee inquired whether maintenance of the roads was carried out upon completion of the project as stipulated in the MoU; however it was submitted that no maintenance of the roads has been carried out.

### **Exclusion of Certain Sub-Counties and Future Plans:**

Regarding the exclusion of Webuye East, Webuye West and Kimilili Sub-Counties as referenced under Section 5(e) of the MoU, the CECM stated that the initial intention was to roll out the programme in phases of which phase one was completed. Further, he added that the Department is planning to continue with the implementation of phase two upon full operationalization of the Cess Act, with the support of the County Assembly. Further, the Department intends to engage key stakeholders, including *boda boda* operators, in the future programmes.

### **Variance in Machinery Deployment:**

The Committee noted a discrepancy between the machinery committed in the MoU and the ones that were actually deployed during the period. The CECM clarified that some machines broke down necessitating replacement to ensure that works continue as planned. A report on the machines which were availed during the implementation of the works was availed to the Committee.

### **On the Model of Public Participation used through MTEF and CFSP:**

The Department clarified that public participation on the MoU involved consultations with Members of the County Assembly (MCAs) from Tongaren Sub County. The projects were categorized based on implementation modality—those to be undertaken through the Framework, Ward-Based Projects, company-owned machinery, and the MoU arrangement. After consultations the CECM for Roads presented the proposed work-plan to the County Executive Committee for approval. The cabinet approved the proposal which was implemented by the Department.

**Clarification on Expenditure of Kshs. 10 Million (Annexure 6):**

A detailed breakdown of the expenditure of Kshs. 10, 598,728 was submitted to the Committee. The CECM submitted that the amount covered the period of the MoU up to and including September, 2024. (Annexure 9)

**On what activities the tippers were engaged in during the period when no excavation works were done;**

**Honourable Speaker,**

It was reported that during the period when excavation activities stalled, the tippers were utilized to transport single-drum rollers from one site to the other. The equipment deployed included two graders, two single drum rollers, a loader, and a pick-up. The Department explained that mechanical breakdowns of some machines led to their replacement with others already stationed at the site; resulting in a higher number of machines than originally indicated in the MoU.

**Analysis of the Submissions**

**Payment of Daily Allowances to Staff**

**Honourable Speaker,**

Section 6 (b) of the MoU states that West Kenya Sugar Company will provide agreed daily allowances for staff of Bungoma County Government attached to the works as per written request by the representative of County Government of Bungoma which includes the costs of road inventory, the operators, the supervision and the monitoring the evaluation. In this regard; breakfast and lunch allowances paid during the period is as highlighted below;

MONTH	OPERATORS	ADMINISTRATIVE STAFF	TOTAL
FEBRUARY	374,000	597,800	971,800
MARCH	610,300	597,800	1,208,100
MARCH	641,700	-	641,700
APRIL	647,500	622,300	1,269,800
AUGUST	430,800	350,800	781,600
SEPTEMBER	280,500	218,720	499,220
<b>Total</b>	<b>2,984,500</b>	<b>2,387,420</b>	<b>5,371,920</b>

The Committee noted that allowances were not paid in the months of May, June and July yet 210 liters of fuel worth Kshs37, 380 and lubricants worth Kshs275, 502 were utilized

For the months of October, November and December, 10,370 liters of fuel worth Kshs1, 765,669 was utilized. No corresponding allowances were paid to the attached staff. The Department submitted that during this period, works were carried out in Webuye East Sub County under the patronage of the area Member of Parliament.

The Committee observed that payments from West Kenya Limited were credited to employees of the County Department of Roads and Public Works and the disbursements were effected via bank and M-Pesa transfers.

### **Fuel and Lubricants**

Details compiled from the submissions made by West Kenya Sugar limited indicate that Staff allowances were paid up to the month of September, 2024, but fuel was drawn up to December, 2024. Total fuel drawn in the three months was 10,370 liters worth Kshs.1, 678,750. Oil and lubricants worth Kshs.86, 919 was also utilized. Fuel drawn was as follows;

October- 5,830 litres

November- 1,030

December- 3,510

In the month of October, a total of 5,830 litres of fuel was consumed. The following vehicles and machines were listed as having been fueled.

4 double cabin vehicles of registration numbers KCX135K, KCX131K, KBW323V and KBV323V consumed a total of 900 litres

2 rollers registration KBZ950D and KCD294G consumed a total of 1,160 litres

2 Tippers KBZ996D/KBZ997D consumed 500 litres

1 low loader 39CG008A consumed 500 litres

1 administration vehicle 39CG008A consumed 100 litres

A total of 1,030 litres of fuel were consumed between 13<sup>th</sup> and 26<sup>th</sup> November, 2024. The pick-up 39CG042A consumed 200 litres and the grader consumed 400 liters.

According to the list provided, fueling was done up to December 20, 2024. Machines fuelled include low loader, excavator, Tipper, graders and Rollers.

The Tipper consumed a total of 1,810 litres of fuel. The grader consumed 100 litres of fuel in the month.

Other vehicles fueled in December include;

A pick-up of registration number 39CG042A which drew a total of 250 liters of fuel, an administrative vehicle GKA891X which drew 200 liters of fuel in December and a double cabin KCX131X drew 50 liters.

The total amount due from West Kenya including these amounts is therefore Kshs.12, 580,376. This is what has been reported as MoU expenses.

#### **2.1.4 Status of Cess Remittance by Farmers' Cooperative Societies**

**Honorable Speaker,**

**Section 10 (1)** of the Bungoma County Agricultural Produce Cess provides Act that all payments to the County Government by Agricultural Producers shall be deducted and paid by the individual, company, factory, association or any such entity concerned where the agricultural produce is produced or supplied to be processed and /or stored.

**Subsection (3)** of the Act provides that the company or factory referred to subsection (1) shall ensure that all the amounts deducted are remitted to the County Treasury within a period of 30 days from the date of deduction.

**Subsection (5)** provides that the Company, factory, association or any such entity referred to in Subsection (1) shall keep an up to date record of agricultural produce supplied to it and Cess deductions thereof.

The farmers' cooperative societies fall within the description given in section 10 (1) of the Bungoma County Agricultural Produce Cess Act and therefore subject to the provisions of section 10 (1), (3) and (5) and therefore they are under an obligation to pay Cess

**Honorable Speaker,**

Documents obtained from the Agriculture Livestock and Cooperative Societies indicate that the County Government of Bungoma has 93 registered farmers' cooperative societies.

The Committee sampled and visited 36 FCS across the County as listed below

1. Bungoma Cooperative Union
2. Bumula Poultry Farmers' Cooperative Society
3. Bumula Dairy Farmers' Cooperative Society
4. Lukholele Robusta Coffee Growers Cooperative Society
5. Malakisi British American Tobacco (BAT)

6. Sirisia Farmers' Cooperative Society
7. Namang'ofulo Farmers' Cooperative Society
8. Mayekwe Farmers' Cooperative Society
9. Kikai Farmers' Cooperative Society
10. Chebukube Farmers' Cooperative Society
11. Chebwek Farmers' Cooperative Society
12. Mt Elgon Farmers' Cooperative Union LTD
13. Kitaban Farmers' Cooperative Society
14. Cheriwet Farmers' Cooperative Society
15. Kaptama Farmers' Cooperative Society(Milk)
16. Khalaba Farmers' Co-operative Society
17. Musese/Bungoma County Coffee Millers
18. Khachonge Farmers' Cooperative Society
19. Sichei Farmers' Cooperative Society
20. Chenjeni Farmers' Cooperative Society
21. Kibisi Farmers' Cooperative Society
22. Nakoyonjo Farmers' Cooperative Society
23. Chwele Farmers' Cooperative Society
24. Tongaren Dairy Community Driven Dev Coop SACCO
25. Luma Coffee Growers FCS
26. Makhanga FCS
27. Soysambu Farmers' Cooperative Society
28. Naitiri Lungai FCS Ltd
29. Tongaren Dairy Community Driven Dev Coop SACCO
30. Khamulati Fcs
31. Kibingei Fcs
32. Kamusinde Fcs
33. Kituni FCS
34. Misikhu FCS
35. Khalumuli Coop Society
36. Webuye East Poultry SACCO

## **Summary of Committee Findings from the Field Visits**

**Honourable Speaker,**

1. That all the farmers' cooperative societies visited indicated lack of awareness regarding the requirement to remit CESS to the County Government of Bungoma, and confirmed that they had not received any formal communication, sensitization, or guidance from the relevant county departments on this statutory obligation.
2. The Department of Agriculture has not adequately sensitized Farmers' Cooperative Societies on the provisions and requirements of the Bungoma County Agricultural Produce Cess Act, 2017.
3. The FCS made no remittances during the period under review.
4. The FCS submitted that they were not aware that failure to remit CESS attracted penalties and interest as stipulated under the CESS Act.
5. The FCS reported that there had been no formal engagement, sensitization, or educational initiatives by the County Government to guide them on the statutory obligations relating to the collection and remittance of CESS.
6. They demonstrated willingness to pay Cess as long as the County Government guides them on how they are supposed to remit.
7. There exists a union that oversees several cooperative societies, mainly in the coffee sector.
8. The leadership of the union made reference to a directive made by former President H.E Uhuru Kenyatta exempting coffee farmers from paying Cess, effectively de- gazetting Cess remittance for the sector. The Committee did not find records to substantiate the cited directive.

## 3.0 CHAPTER THREE

### 3.1 COMMITTEE'S FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

**Honorable Speaker,**

This chapter presents the Committee's key findings and observations arising from the inquiry into the Cess collection and utilization in Bungoma County since September, 2022 to March, 2025. It responds to the 11 terms of reference that mandate the operations of this Committee. It outlines critical gaps in legal and administrative compliance that have hindered effective realization of optimum Own Source Revenue, to support the county's resource envelope. The chapter offers recommendations towards strengthening institutional capacity and oversight mechanisms that shall ensure growth of the County's economy.

#### 3.1.1 Committee's Findings on the Terms of Reference

**Honourable Speaker,**

These are the findings that the Committee compiled against the Terms of References in the Motion;

**1. On entities that have been paying Cess since September, 2022;**

The Committee established that there are nine (9) Cess paying entities in the County Government of Bungoma for structured Cess. These are; West Kenya Sugar Company Limited, Mumias Sugar Company, Butali Sugar Company, British American Tobacco, Busia Sugar Mills, Nzoia Sugar Company, Kapsara Tea Mills, National Cereals and Produce Board and Mastermind Tobacco Company.

**2. On published list of exit points where Cess is collected from;**

The Committee found that 37 Cess collection points/barriers have been mapped in eight sub counties on major exit points as toll points for unstructured agriculture produce Cess.

**3. The existence and operations of the County Cess Committee as established in the Cess Act;**

The Committee established that there is established a Cess Committee appointed vide a letter dated 13<sup>th</sup> December, 2023. The County Cess Committee was NOT operational for the entire period of its existence since there was no handing over and facilitation.

**4. Total revenue collected from Agriculture Cess since September, 2022;**

The summary of findings on the Cess due to the County of Bungoma in the period September, 2022- March, 2025 as per the submissions made by the Cess paying entities compared to submission by the Department of Finance is tabulated below.

Period	Cess due (Entities Submission)	Cess due (Department of Finance)	variance
2022/23	38,378,046.53	40,756,909.65	(2,378,863.12)
2023/24	43,620,454.08	23,019,875.90	20,600,578.18
2024/25	51,359,637.20	45,308,099.10	6,051,538.10
<b>TOTAL</b>	<b>133,358,137.81</b>	<b>109,084,884.65</b>	<b>24,273,253.16</b>

**5. Utilization of the Revenue collected through Agricultural Cess and how much was used to construct Road infrastructure in areas where Cess is collected.**

The Committee established that there were no disclosures on utilization of Agricultural Produce Cess and no allocation had been earmarked for the construction of Road infrastructure.

**6. Percentage submitted to the Separate Road maintenance Account in compliance with the Cess Act.**

The Committee established that there was neither a separate Roads maintenance account nor allocation for the same. Section 12 of the Bungoma County Agricultural Produce Cess Act however puts this percentage at 90 per cent of the total sum of Agricultural Cess collected.

**7. Whether West Kenya Sugar Company – Naitiri unit is one of the companies paying Cess to the County and; if yes, how much has the company paid to the County since September, 2022.**

The Committee established that West Kenya Sugar Company – Naitiri unit is the leading Cess paying entity in Bungoma County. The Company's Cess due and paid for the review period is elaborated as; Cess due at Kshs.104, 465,259.81, Cess Paid at Kshs.78, 600,512.48; leaving a variance of Kshs. 25,864,747.33

**8. Whether the County Government has granted any CESS waivers to West Kenya Sugar Company, Naitiri unit; and if yes, how much.**

The Committee established that no waiver has been granted to West Kenya Sugar Company, Naitiri unit

**9. Waivers given to any other company;**

The Committee established that no waiver has been granted to any other company.

**10. Whether there is any Memorandum of Understanding with any entity with regard to payment of Cess and challenges occasioned by the said memorandum.**

The Committee established that the County Government entered into an MoU with West Kenya Sugar Company- Naitiri Unit on 19<sup>th</sup> January, 2024 with an aim to focus on road rehabilitation in the West Kenya Sugar Belt Region thus converting related road works costs for the period as Cess paid. It further established that amongst others, the challenges occasioned by the said MoU include the abuse of the terms agreed upon.

**11. Whether lack of allocation of Cess in some cases leads to disputes between stakeholders and the County Government.**

The Committee found that unequal distribution of programs funded through Cess remittances contributed to uneven development and was therefore a potential source of conflict.

**3.1.2 Committee's Observations**

**Honorable Speaker,**

The Ad hoc Committee observed as follows;

1. The County Executive Committee Member (CECM) for Finance failed to advise the Executive Committee Members on the legal requirements governing Cess waivers and the proper Memorandum of Understanding (MoU) approval process. This omission demonstrates a breach of financial laws and procedures, particularly the lack of legal consultation prior to the execution of the MoU. The County Attorney was also not involved at a critical stage, which contravenes the legal requirement that the County Attorney must guide all contractual matters involving the County.
2. The MoU in question was abused from the initiation stage, leading to arrangements that favored external parties at the expense of County revenue. There was no clear cost-benefit analysis or protective clauses to shield the County from financial loss. This indicates a lack of due diligence and strategic foresight in the negotiation and drafting of MoUs, resulting in significant fiscal implications.
3. Since the enactment of the Bungoma County Agricultural Produce Cess Act, 2017, the County has not developed the necessary regulations to operationalize the law. The CECMs for Finance and Agriculture have not demonstrated urgency or commitment to implementing this statutory requirement. As a result, the absence of enabling regulations has led to unstructured and inefficient Cess collection, compromising potential revenue streams. Moreover, there has been no gazettlement of Cess collection points, limiting transparency and accountability.
4. The County Treasury has not opened dedicated bank accounts for Cess collections as mandated under Section 12 of the Bungoma Agricultural Produce Cess Act, 2017. The current practice hampers traceability and compromises the integrity of

revenue management. Furthermore, the required Roads Maintenance Account under the Department of Roads and Public Works remains un-established, in direct contravention of both the Cess Act and the Public Finance Management Act (PFMA). There is also a lack of documented Treasury communications or bank confirmations submitted to the County Assembly for oversight.

5. The Receiver of Revenue has failed to initiate recovery of KES 13 million in outstanding Cess arrears from West Kenya Sugar Company and other known defaulters including Kibos Sugar, Mastermind Tobacco, NCPB, and Kapsara Tea Factory. This negligence has resulted in lost revenue and undermines the County's fiscal position. No official demand notices have been issued, nor has there been documented correspondence or a progress report submitted to the County Assembly. In addition, there is no evidence of communication with coffee millers and farmers' cooperatives regarding their statutory Cess remittance obligations.

6. The County has not conducted any formal sensitization programs targeting key stakeholders such as millers and farmers' cooperative societies. As a result, many entities remain unaware of their legal obligations under the Bungoma County Agricultural Produce Cess Act, 2017 and the Public Finance Management (County Governments) Regulations, 2015. The lack of targeted education campaigns has significantly contributed to low compliance rates and weakened revenue mobilization.

7. The County Cess Committee, as provided for under Section 8 of the Bungoma County Agricultural Produce Cess Act, 2017, has not been reconstituted or operationalized. This failure has resulted in a lack of coordination and oversight of Cess-related activities. The absence of this statutory committee impedes strategic decision-making which is an imperative for effective Cess administration.

8. Farmers' Cooperatives Societies have failed to remit agricultural produce Cess as required by the Bungoma County Agricultural Produce Cess Act, 2017. This non-compliance stems from both weak county enforcement and widespread misinformation—such as the false belief in a 2022 Presidential directive exempting coffee farmers from paying Cess. The cooperatives also reported a lack of sensitization or formal guidance from the County Government on Cess obligations and penalties.

### **3.1.3 Committee's Recommendations**

**Honorable Speaker,**

The Committee recommends as follows;

- 1) **THAT**, the County Executive Committee Member (CECM) for Finance should comply with financial laws and procedures while advising the Executive Committee Members during MOU approval on legal provisions relating to Cess waivers and the MoU approval process. Any future MoU entered into should follow the laid down procedures; further the County Attorney Must advise the County on any contracts the County enters into.
- 2) **THAT**, to safeguard the County's resources and interests, future MoUs should be to the advantage of the County and not the County incurring a loss. The Office of the County Attorney should establish a clear framework for developing and reviewing all MoUs to prevent future financial losses. This should include mandatory cost-benefit analysis, legal review, and input from relevant experts to ensure agreements are financially sound, protect the County's interests and adhere to the laid down approval procedures.
- 3) **THAT**, The CECMs for Finance and Agriculture are directed to jointly develop and submit draft regulations to operationalize the Bungoma County Agricultural Produce Cess Act, 2017. This must be completed within sixty (90) days of the adoption of this report, in accordance with Section 17 of the Cess Act and Section 12 of the Statutory Instruments Act, 2013. Additionally, the CECM for Finance should, within sixty (60) days, gazette all Cess collection points across all the sub-counties to ensure transparency and legal compliance under Section 12 of the Bungoma County Cess Act and to enhance revenue generation from unstructured Cess collections.
- 4) **THAT**, The County Treasury must open dedicated accounts for Cess collection as required under Section 12 of the Bungoma Agricultural Produce Cess Act, 2017. Consequently, the CECM, Finance should facilitate the opening of a separate roads maintenance account under the Department of Roads and Public Works as expressly required under Section 12 of the Bungoma County Agricultural Produce Cess Act, 2017

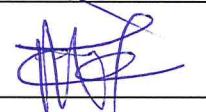
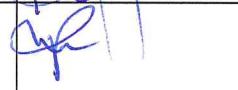
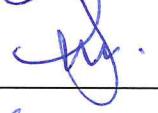
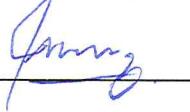
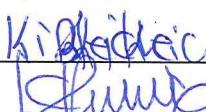
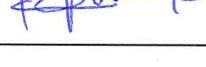
within sixty (60) days of adoption of this report. This requirement is grounded in Section 109(2) (b) of the PFMA and Section 12 of the Bungoma Agricultural Produce Cess Act. Treasury communications and bank confirmations should be submitted to the County Assembly for tracking purposes.

- 5) **THAT**, the Receiver of Revenue should initiate immediate recovery of 13M outstanding Cess arrears from West Kenya Sugar Company, further known defaulters including Kibos Sugar, Mastermind Tobacco, the National Cereals and Produce Board (NCPB), Kapsara Tea Factory, and others. Official demand notices should be issued within sixty (60) days upon adoption of this report; and a detailed progress report submitted to the County Assembly within sixty (60) days. Additionally, the Receiver of Revenue must officially communicate with all coffee millers and Farmers' Cooperative Societies on the requirement to remit Agricultural produce Cess to the County. Evidence of this action should be filed with the County Assembly within sixty (90) days
- 6) **THAT**, within sixty (60) days upon adoption of this report, the Receiver of Revenue in collaboration with the Cooperatives Department should organize and implement a targeted sensitization program to educate these entities namely; millers and Farmers' Cooperative Societies on their legal obligations under the Bungoma County Agricultural Produce Cess Act, 2017 and the Public Finance Management (County Governments) Regulations, 2015. The focus should explicitly dispel misinformation regarding any alleged exemptions, and outline applicable penalties for non-compliance. Evidence of this sensitization including attendance records, Information Education Communication materials, official letters, and media outreach must be compiled and submitted to the County Assembly.
- 7) **THAT**, The County Executive Committee Member for Finance and Economic Planning should formally reconstitute the County Cess Committee , within sixty (90) days upon adoption of this report and structure it in accordance with the provisions of Section 8 of the Bungoma County Agricultural Produce Cess Act, 2017.



## ADOPTION SCHEDULE

We the undersigned Committee members hereby append our signatures in agreement with the contents of this report.

No.	Name	Designation	Signature
1	Hon. Benjamin Otsiula	Chairperson	
2	Hon. Christine Mukhongo	Vice Chairperson	
3	Hon. Jack Kawa	Member	
4	Hon. Grace Sundukwa	Member	
5	Hon. George Makari	Member	
6	Hon. Francis Chemion	Member	
7	Hon. Job Mukoyandali	Member	
8	Hon. Cornelius Makhanu	Member	
9	Hon. Alfred Mukhanya	Member	
10	Hon. Bernard Kikechi	Member	
11	Hon Johnston Ipara	Member	



## ANNEXURES

- 1) Summary of the report on Cess collection in Bungoma County
- 2) BAT Submission
- 3) Mumias Sugar Submissions
- 4) Payment Schedule from West Sugar
- 5) Submission by Busia Sugar
- 6) Submission by Butali Sugar
- 7) The Bungoma County Agricultural Produce Cess Act, 2017
- 8) MoU between the County Government of Bungoma and West Kenya Sugar Millers
- 9) Department of Roads analysis of expenditure

