REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE
ON
AGRICULTURE, LIVESTOCK AND COOPERATIVES

REPORT ON THE INQUIRY INTO THE RECEIVERSHIP AT THE KENYA PLANTERS COOPERATIVE UNION (KPCU) LTD

PARLIAMENT BUILDINGS
NAIROBI

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TABLE OF CONTENTS

PREFACE

Mr. Speaker, Sir,

The Departmental Committee undertook the investigation into the receivership of Kenya Planters' Cooperative Union (KPCU) after questions relating to the matter became frequent in the House, particularly in the period between 2008 and 2010. The problems confronting the KPCU however had its history following the aftermath of liberalization policies implemented by the Government in the 1990s.

The build-up of the problems which remained unaddressed finally culminated in the KPCU's receivership which was implemented by the Kenya Commercial Bank (KCB) on 19th October, 2009. The company was put under receivership over its failure to service debts amounting to Kshs. 656,595,535/23 at the KCB.

The appointed receiver managers (Deloitte & Touché) gained entry into the KPCU's premises on 4th January, 2010 with the help of the Administration Police after protest by the KPCU directors due to pending court cases regarding receivership matters with KCB.

The Committee conducted the investigation through invitations of the players to present evidence regarding the matters of receivership. The players included **the Board of Directors of the Kenya Planters Cooperative Union (KPCU), Board of Directors and Management of the Kenya Commercial Bank (KCB), Ministry of Cooperative Development and Marketing, Ministry of Agriculture, Receiver Managers from Deloitte and Touché Ltd, Coffee Board of Kenya (CBK), Management of the Kenya Cooperative Coffee Exporters (KCCE), Management of the Cooperative Bank of Kenya and Representatives of the Coffee Farmers**. Except for the Cooperative Bank and the KCCE, all the other players presented their evidence before the Committee.

Apart from the evidence received from the witnesses at Parliament Buildings, the Committee made two visits to the KPCU premises to gain an insight into the activities being undertaken by the receiver managers which revealed of idle facilities with no indication there were plans to revive KPCU's operations.

interventions and politics of coffee worked to complicate the magnitude of the problem.

Mr. Speaker, Sir,

In presenting this report, the Committee would like to record its appreciation and gratitude to all the institutions and Ministries who made contributions during the hearings on the matter. Special thanks to those who had to appear before it more than once to clarify allegations that emerged in the course of the inquiry.

The Committee wishes to express profound appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the necessary support and services extended towards facilitating the Committee to expeditiously execute the hearings and in compiling its report.

I thank all Members of the Committee for their commitment and full participation and input during the inquiry; and to the secretariat staff of the National Assembly, without whose commitment and dedication the work of the Committee would not have been made easy.

Mr. Speaker, Sir,

On behalf of the Committee, I now have the honour and pleasure to present this Report to the House for consideration and adoption.

Thank You

Signed.. **Date**.................... 29th. Feb. 2012.

CHAIRPERSON

(HON. JOHN M. MUTUTHO, MP)

1.0 INTRODUCTION

01. The Departmental Committee on Agriculture, Livestock and Cooperatives is one of the twelve Departmental Committees established under Standing Order No. 198 of the Kenya National Assembly Standing Orders with the mandate and functions:-

   i) *to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*

   ii) *to study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*

   iii) *to study and review all legislation referred to it;*

   iv) *to study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*

   v) *to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by he House or a Minister; and*

   vi) *to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

02. The establishment of Committees by Parliament has also been mainstreamed into Constitution. In reference to the bicameral legislature enshrined in the new Constitution, section 124 (1) of stipulates that:-

   'Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its Committees'.

10. The Hon. (Dr.) Mohammud Sirat, MP
11. The Hon. Benjamin Washiali, MP

08. The Hon. Peris Chepchumba Simam, MP, and the Hon. Kambi Kazungu, MP, were formerly Members of the Committee.

2.0 HISTORICAL PERSPECTIVE OF THE COFFEE INDUSTRY

09. Coffee sector has remained an important component of the Kenyan economy credited for its central role in the alleviation of poverty in the country. An estimated 6 million Kenyans are employed directly or indirectly in the coffee industry.

10. Coffee was first introduced in East Africa region by French missionaries in 1893. It was first grown in Kenya by the British settlers in farms in and at the outskirts of Nairobi. By 1910, coffee had become Kenya's leading export and its fine quality made Kenya gain recognition in the global market.

11. Local institutions were subsequently established to support the sector. These included the Planters Union of Kenya and the Nairobi Curing Company in 1917, and the Coffee Board of Kenya (CBK) in 1931.

12. The Planters Union provided a platform for large estate holders to lobby the British government for participation of Africans in coffee farming, while the Nairobi Curing Company was behind the construction of the first coffee mill in Nairobi.

13. The inception of the CBK helped to create stability in the operations of the sector. It was bestowed with the fuctions to issue licenses for land and commerce, to take over underperforming farms, and to levy taxes.

14. Until 1934, production was concentrated in small number of white-settler large estates. However, following the enactment of **'Native Coffee Growers Act'** in 1934, Kenyans were allowed to own small holder production coffee farms limited to 100 trees on less than one-quarter acre of land and on farm locations away from existing estates.

21. The decline was precipitated by the liberization undertaken in the 1990s by the government coupled with falling world commodity prices. Production and marketing inefficiencies also characterized the sector during the period. Liberalization policy was driven by the World Bank in an effort to promote economies of developing countries, but which failed to achieve success.

22. There are now an estimated 750,000 coffee farmers in the country. They sell their produce through local cooperatives which provide them with extension services, farm inputs, access to credit, and run processing factories.

23. The farmers are represented by about 500 cooperative societies. KPCU also participated in the International Coffee Organization (ICO) forums to gain an insight on the situation in the international coffee trends.

24. The KPCU operated the largest mill in Nairobi and controlled 70 percent of milling capacity in the country. The mills marketed coffee at the coffee auction through marketing agents. Prior to 2002, the CBK was the sole marketing agent but had since issued licenses to other agents following the liberalization of the market.

25. The receivership of the largest miller, KPCU, in 2009 which formed the agenda behind the inquiry by the Departmental Committee of Agriculture, Livestock and Cooperatives, is expected to impact negatively on the coffee industry. In this regard, there is need to identify issues behind receivership with a view to removing pitfalls and to help boost the sector at this time when the world is experiencing coffee business boom from increasing global demand against background of dwindling supply.

3.0 THE KENYA PLANTERS COOPERATIVE UNION (KPCU) AND THE GENESIS OF ITS RECEIVERSHIP

26. KPCU was formed in 1937 by former white settlers who were engaged in coffee farming. It was registered in 1945 under the Company's Ordinance of 1933, and under the Co-operative Societies (Registration) Ordinance of 1931.

31. According to the KPCU management, the organization offered diversified and value-based services to its farmers prior to 1992. The services included:-

i) advances that catered for labour and production costs;
ii) merchandizing services in supply of farm inputs and maintenance of irrigation; and
iii) farm machinery.

32. The KPCU also arranged for lines of credit with banks which were secured through the Wakulima House property, and that farmers secured their advances through coffee crop to KPCU as collateral.

33. According to the KPCU, the liberalization and subsequent reforms undertaken after 1992 marked the genesis of the events that put the organization on the path of liquidity crisis as a result of the following actions:-

1) The Coffee Board, as a regulator, began to license other players in an effort to streamline coffee production, processing and marketing in the sector. Consequently, this paved way for split in coffee cooperatives into ***'miniature units'*** which were ***'highly undercapitalized and unviable'*** due to competition. Examples include Kagima, Mathira, Tetu, Ngariama, Gatukuyu, Kiamwangi, Mwimbi and Igoji.

2) The implementation of an European Union (EU) funded SCIP II programme in the 1992/1993 required the Societies (and farmers) to revoke KPCU in favour of the Cooperative Bank of Kenya as commission agents to qualify for the funding. Consequently, this resulted in exodus of cooperative societies from KPCU and loss of an estimated 75% of its mobilized funds.

3) The KPCU revenues fell sharply due to lost income on commission agency and as a result of failure to recover milling and other charges from cooperatives. This adversely affected KPCU's liquidity and the debt portfolio stood at Kshs. 1.2 billion as at June 1996.

balance sheet. An amount of Kshs 641 million owed to farmers also remained unpaid for six years due to the resulting liquidity crisis.

10) The Coffee Board allowed for subdivision of coffee farms into portions smaller than the ten-acre requirement provided in legislative framework. The farms were subsequently allocated to members of the parent families and sublicenses issued to new owners to deliver coffee. The fragmentation of coffee farms led to the decline in per-capita production, while it also made it illegal for KPCU to recover debts owed by the parent farmers from new sub licensees.

34. These challenges worked to worsen the debt situation at the KPCU due to non-recovery mechanisms occasioned by implementation of poor and inappropriate policies in the coffee sector.

35. The accumulating debts and unserviceable loans led the Kenya Commercial Bank (KCB) to put KPCU under receivership in October 2009. The debts owed to KCB at the time amounted to Kshs 560,536,000 according to the breakdown presented in the table below.

Table showing the bank facilities offered to KPCU by KCB as at 19th October, 2009

Facility	Purpose	Units (000)	Balance	Limit
Overdraft	Working Capital	Kshs	7,235	5,000
Parchment Advances	Revolving Fund	Kshs.	63,138	0
Overdraft	Working Capital	US dollars	999	1,000
Loan Account	Long Term	US dollars	5,400	5,900
Guarantee	Marketing	US dollars	0	1,000
Guarantee	Utility	Kshs.	0	3,568
Total Facilities (Estimated)		Kshs.	560,536	613,708

Source: Kenya Planters Cooperative Union, KPCU, (2010) the Minister also to state the action he would take to resolve the recurrent problem once and for all for the sake of the coffee farmers.

iv) **Other Questions;** regarding the problems of the KPCU were raised on 27th July, 2005, regarding the **Settlement of Farmers' Debt for their Supply of Coffee** to KPCU, and on 27th and 28th November, 2001, regarding the **Liberalization of the Coffee industry** in which new millers were licensed to compete with KPCU.

38. Earlier in 2001, KPCU was also put under receivership notice by KCB who had taken over all its banking facilities. As a result, the Company retrenched a total of 230 employees in an effort to remain afloat.

39. At the same time, a number of Directors of the KPCU also served as Directors with Coffee Board who included:-

i) The late Pithon Mwangi who was Chairperson, Coffee Board of Kenya;
ii) Abraham Mwangi, also served as the Chairperson, Coffee Research Foundation;
iii) The late Herman K Maingi;
iv) Stanley Muchiri, the current Chairperson, Co-operative Bank of Kenya, who took up the position of Director for Muranga Co-operatives after the demise of Pithon Mwangi.

40. With this background, the Committee moved to meet with the various players in the receivership saga to gain an insight and unearth the reasons for the justification for the receivership of the KPCU.

5.0 MEETING WITH THE PARTIES AND THE PROCEEDINGS

41. The Committee met with the various parties in the KPCU receivership saga during its sittings when it received evidence (both written and verbal) relating to the subject matter of the investigation. The witnesses gave information which was analyzed by the Committee in arriving at observations and conclusions on the circumstances that prompted the KPCU's receivership.

3) That, the KCB appointed receivers to KPCU on 19th October, 2009, after the bank had renewed KPCU's banking facilities on 11th August, 2009 **(see annexes 1 and 2A, B, C).** This raised questions as to why the bank opted for receivership two months later.

4) That, the receivership of KPCU was engineered by the Minister for Cooperative Development and Marketing, the Hon. Joseph Nyagah, EGH, MP, working together with the Chairman of the Cooperative Bank, Mr. Stanley Muchiri, in favour of a new marketer outfit, the Kenya Cooperative Coffee Exporters (KCCE) formed in May 2009 **(see annexes 3 and 4).** According to the KPCU, the KCCE was being funded by Cooperative Bank without any collateral, and the Bank seconded its staff, including Ms Lucy Murumba, the Managing Director, KCCE.

5) That, during the period the KCCE was being formed; the KCB started bouncing KPCU cheques indiscriminately which made the Directors of the KPCU to carry out a forensic audit into its KCB accounts **(see annex 5 A and B).** The KPCU hired DCDM Advisory for this task **(see annex 6)** and the preliminary findings pointed to glaring discrepancies bordering fraud.

6) That, the Hon. Joseph Nyagah, the Minister for Cooperative Development and Marketing, was instrumental in spearheading countrywide sensitization campaign and marketing about KCCE to farmers with the help of district Cooperative Officers (DCOs) while castigating the KPCU. According to the KPCU's Board, the Minister coerced and intimidated co-operative societies to revoke coffee marketing contracts with KPCU, and in favour of KCCE.

7) That, on 13th October, 2009, the Minister for Cooperative Development and Marketing issued a gazette notice No. 10929, exempting KCCE from the provisions of the Co-operative Societies Act regarding the membership of its Board **(annex 7).** According to the KPCU, this clearly indicated the Minister's political preferential treatment towards KCCE.

This was despite the KPCU having resisted the actual takeover of its offices by the receivers and had moved to court under a certificate of urgency to protest the move. The move by KPCU was informed by the fact that the forensic audit into the bank accounts was ongoing and it was only upon finalization that the true position of the debt would be established.

13) That, after failing to secure audience with the Minister for Cooperative Development and Marketing on several occasions, to discuss the recovery of KPCU, the KPCU directors sought assistance from the Ministry of Agriculture but were met with a hostile demand that the KPCU Directors should resign and hand over the institution to the Government, KCB and receivers in a letter by the Permanent Secretary, Ministry of Agriculture **(see annex 10).**

14) That, the KPCU could not understand why the two Ministries of Cooperative Development and Marketing, and the Agriculture failed to work out a rescue plan to save KPCU yet the Co-operative Bank, which operated in the same environment with KPCU, had benefitted from about Kshs. 6 billion write-off by the Government in 2006. In the view of the KPCU, the attitude portrayed by the actions of the two ministries reflected could have been a plan to cripple the operations of the giant miller.

15) That, in the efforts to seek Government Intervention and avert the threat of receivership, KPCU directors held discussions at the offices of the Deputy Prime Minister and the Minister of Finance, and the Ministry of Agriculture. During a meeting held on 30th October, 2009, between the Permanent Secretary, Ministry of Agriculture, six KPCU Directors and the Managing Director, the Permanent Secretary informed the KPCU delegation that the Government would partner with the KPCU in a restructuring programme that would facilitate injection of a bail-out-package. However, a week later on 6th November, 2009, the Permanent Secretary changed his position insisting that the KPCU Board must resign as referred in paragraph 44 (13).

In August 2008, the KPCU Board contracted Deloitte Consulting Ltd to conduct a forensic audit to establish if any acts of mischief had been committed by the exited managers. The report together with those involving bank reconciliation statements was never submitted.

20) That, subsequent to the raid by the contingent of armed Administration Police which resulted into the breakage at the KPCU headquarters and its key branches on 4th January, 2010, the action led to the following:-

i. The KPCU Directors were prohibited from accessing the Company's premises and facilities despite being statutorily in office.

ii. Coffee proceeds that had been paid to KPCU accounts by dealers were withheld by the bank, and the funds could not be accessed to pay the affected farmers.

iii. Coffee that was warehoused in KPCU stores was carted away by the receivers and indications were that it had been ferried to KCCE warehouses.

iv. KPCU lost substantial business that would be difficult to quantify since most of the farmers who used to deliver coffee to the Organization have opted for other players due to the fears that their coffee would be seized by the receivers.

v. Coffee theft had been on the increase in factories and farms since farmers could not deliver coffee to the KPCU depots which had been rendered idle.

vi. Employees were not paid their salaries for the months of October, November and December 2009 following the receiver's action to freeze KPCU bank accounts. The receivers also terminated services of close to sixty employees, leading to frustration and hopelessness.

farm inputs, farming operations, farm developments and price stabilization

2) That, the KPCU had a dual registration (under the Companies Act Cap 486 and the Cooperative Societies Act) which complicated its operations and thereby making its management very difficult to execute. Therefore, the Ministry was working towards a better legislation to eradicate this problem.

3) That, due to lack of prudent financial management, the KPCU gave out unsecured loans amounting to over Khs. 3.7 billion which it had failed to recover, and that, there were no records to trace the debtors which made the recovery process difficult to achieve. According to the Minister, the monies could only be written off as bad debts.

4) That, due to non-payment of farmers' debts amounting to Kshs. 150 million and statutory levies amounting to Kshs. 250 million due to Coffee Board of Kenya (CBK), Coffee Research Foundation (CRF) and Kenya Roads Board (KRB), the KPCU's milling and marketing licences were withdrawn by the CBK and which made the operations of KPCU virtually redundant.

5) That, due to KPCU's debt situation, the farmers declined to supply coffee to the miller and this which worsen the financial performance of the institution.

6) That, the Ministry had instituted series of meetings with the KPCU directors to restructure KPCU but which directors changed positions even after agreeing on the way forward.

   For example, the Minister and KPCU had agreed that KPCU was to be restructured into three divisions, namely KPCU milling, KPCU warehousing and KPCU marketing with each of the division having five directors, and that the number of directors be reduced from 15 to 6. According to the Minister, this was rejected by the directors.

14) That, the Kenya Cooperative Coffee Exporters (KCCE) Ltd was formed in 2009 by farmers from Nyeri, Meru and Muranga to assist in marketing coffee since KPCU had not been renewed its marketing licence, and that, they were joined later by Kisii and Machakos Unions.

15) That, the KCCE accounted for export of 15% of coffee while the rest was handled by the Dormans, Sasini and Thika, and that, the coffee prices had improved considerably with Meru region having recorded the highest payment of Kshs. 73.00 per Kg while an average of Kshs. 40.00 per Kg of cherry was recorded in Central province.

16) That, the Cooperative Bank had financed KCCE up to a tune of Kshs. 1 billion without a collateral on the premise that the bank was formed through a cooperative movement initiative, and that, indeed the Cooperative Bank had seconded several high profile staff to run KCCE before it held its elections. The officers included Mr. Stanley Muchiri, Chairman of the Cooperative Bank, and Lucy Murumba, as the Chief Executive Officer.

17) That, the KCCE had since conducted its elections and a new Board was in place composed of 15 members representing the face of Kenya, and that, subsequently, this had informed the decision by the Ministry to exempt KCCE from the Cooperative Societies Act.

However, the Minister could not table the names of the Board members when requested by the Committee to do so.

18) That, KCCE had leased Sagana facility from KPCU and that negotiations were in the process to secure Dandora facility to increase its capacity. The Committee was informed the transactions were undertaken between the KPCU receivers and the KCCE management and that the Ministry was not involved since the receivers reported directly to the appointing firm (KCB).

19) That, the Government had agreed to finance KPCU to a tune of Kshs. 750 million and that, a letter to that effect had been signed by the Deputy Prime Minister and the Minister for Finance **(annex 12).**

injunction made the matter of KPCU receivership active and out of debate pursuant to the sub judice rule.

5) That, the Wakulima House was valued at Kshs. 1.2 billion with a forced resale value of Kshs. 900 million. The management of the KCB could not however explain why the bank opted for receivership before exhausting other available avenues of recovering its monies when the Committee asked why in the first place they chose receivership option over auctioning of the charged property.

6) That, the KCB put KPCU under receivership within two months after renewing its banking facilities because the KCB had not received the audit report of KPCU's accounts for 2007/2008 by Ernst and Young Consultants which revealed apparent overburdened debt at KPCU.

   Although the KCB could not explain the conditions of renewal of loan facilities, the Committee wondered how KPCU could meet those conditions within a short span of two months and which was deemed it had failed and culminating into the receivership.

7) That, the KCB did not issue third party notices to recover its money but instead pursued the receivership option because third party options were not part of debenture agreement.

8) That, the KCB had involved the KPCU's parent Ministries of Cooperative Development and Marketing, and Agriculture, before the decision to pursue the option of receivership. According to the KCB, the discussions with KPCU and the Ministries centred on the need to restructure KCPU in efforts to revive it from collapse and which did not bear fruit.

9) That, the KCB appointed Mr. Daniel Ndonye and Mr. Harveen Gadhoke as receivers under the terms of debenture holding and as individuals, but not as Deloitte and Touché. The receivers' costs were to be borne by the KPCU under the terms of receivership.

view the receivership option was not well thought out on the part of the Management of KCB.

5.4 THE RECEIVER MANAGERS

50. The Committee held meetings with the receiver mangers on four (4) occasions; on 23rd September, 2010, after making a visit to the KPCU premises along Haile Selassie Avenue, and on Thursday, 24th February, 2011; Monday, 28th February, 2011; and Tuesday, 1st March, 2011, at Parliament Buildings.

51. At the KPCU headquarters, the Committee met with Mr. Daniel Ndonye, a joint receiver manager of the KPCU after being appointed by the KCB, and Mr. Julius Muchiri, an employee of Deloitte and Touché. They informed the Committee that:-

1) The receiver Managers were appointed by the KCB without applying for the assignment and that they retained only 42 KPCU employees out of 115 after they took over the KPCU. The excess employees were laid off since only 5% of the KPCU facilities were being utilized in KPCU related activities.

2) The receivers worked and reported to the KCB as per the laws of receivership, and that the work entailed daily operations of the KPCU's warehousing, reviewing security, seeking partners for milling and debt collection, among others.

3) The milling activity at KPCU had stalled after its licence had been withdrawn by Coffee Board of Kenya (CBK), on 28th April, 2010, over unpaid debt amounting to Kshs. 72 million. However, while on a tour of the premises, the Committee was informed that old mills at KPCU had stopped six years earlier.

4) The Co-operative Bank had thrown its support behind MKeMA and Allied, Large and Small Company which sparked a major war with KPCU due to fears it would lose monies it had advanced to coffee farmers.

received were spent in the running the day to day activities of the organization, such as salaries of the employees and allowances to the administration police engaged to man the KPCU premises. No debt repayment to KCB had been undertaken due to inadequate revenue generated.

11) That, the result of the forensic assignment by Deloitte and Touché for the KPCU was completed on 19th September, 2008, and had not been formally released to date owing to outstanding service balance of Kshs. 631,043 from the KPCU.

The receivers informed the Committee that the results were informally discussed with the KPCU directors and nobody else had ever had access to the report.

12) That, the joint receivers had revealed the contents of the forensic report to the KCB prior to the appointment as receivers, and that it was after KCB's own assessment that Harveen Gadhoke and Daniel Ndonye were appointed the receiver managers.

13) That, Deloitte and Touché neither audited the accounts of KCB nor had any assignment with KCB apart from the earlier assignment of receivership of Uchumi Super Markets.

14) That, the receivers had exclusive powers by law to run the organization without calling an Annual General Meeting (AGM). They were however obligated to file receipts and payments to the registrar of companies annually which they had done.

15) That, a total rent amounting to Kshs. 34 million had been collected from lease of KPCU properties since receivership.

This however did not convince the Committee which it required the receivers to provide explanations as to why the figures were low and which had been explained in paragraph 52 (9).

16) That, there was no principal repayment that had been made to KCB debt save for the Kshs. 9 million paid as receivership charges.

5.6 THE COFFEE FARMERS

57. The representatives of coffee farmers held a meeting with the Committee on Tuesday, 31st May, 2011, to present petition against the continued existence of receivers at the giant Kenya Planters Cooperative union (KPCU) headquarters in Nairobi. They explained that the coffee farmers had mobilized themselves from across the country and been cleared by the Police and Provincial Administration to demonstrate in Nairobi that day.

58. The farmers' representatives informed the Committee that they had delivered their petition at Parliament the previous day on Monday, 30th May, 2011. The petition had not however been received by the Committee by the time of the meeting.

59. While thanking the Committee for the audience and opportunity to present their grievances, they informed the committee, as follows:-

    1) That, the KPCU had served them well since its formation despite challenges of coffee farming business. Even at a time when international trade in coffee was down, the farmers still continued to supply coffee to KPCU because they had faith in it.

    2) That, they were concerned that the coffee industry which formed the basis of Kenya's economic growth since being introduced in Kenya by colonialists was experiencing a steady decline without government intervention, especially efforts to recover an estimated Kshs. 3 billion KPCU is owed by various entities **(see list of debtors at annex 11)** before being put under receivership.

    3) That, on 31st August, 2010, the farmers held an annual general meeting (AGM) in Thika to lay strategies on how to save KPCU from collapse in which they resolved to engage the Government on the matter. The meeting was attended by more than three hundred farmers from across the country, and whose Minutes were available for perusal **(see annex 14).**

    4) That, the coffee sector problems worsened in 2009 which culminated in the KPCU being put under receivership by KCB under unclear

commission (KACC) and Criminal investigation Department (CID, moved to investigate the whole process of the coffee sector and the receivership of KPCU with a view of unearthing and thereafter prosecuting those culpable in the KPCU saga.

11) That, the farmers expressed optimism that the KPCU would revert to the farmers due to its multiple roles in all its operations, including milling, marketing and ware housing. Despite its problems, KPCU is a farmers' outfit.

60. The farmers concluded that they had not lost hope in the revival of the KPCU and that they were ready to pay the debt through contributions which they had resolved at Kshs. 1,000 per coffee farmer. The farmers stated the theft of coffee that was becoming rampant following the receivership of KPCU were being engineered by new elitist outfit players in the industry which farmers had no faith in them. The farmers therefore did not deliver coffee to them.

5.7 COFFEE BOARD OF KENYA (CBK)

61. In meetings held between the Committee and the CBK on Tuesday, 7th June, 2011, and Thursday, 9th June, 2011, the Committee was informed that:-

1) the liberalization of the Coffee sector was brought about due to inefficiencies of KPCU in payments to farmers' supplies, delays in remittance of advalorem to Coffee Research Foundation (CRF) and Coffee Board of Kenya (CBK), and withholding of coffee Cess due to Kenya Roads Board (KRB) and Local Authorities;

2) due to competition in the industry, KPCU had lost its market share of 70% in 2002 to command only 10% in October, 2009;

3) regarding non renewal of the KPCU's milling licence, KPCU failed to remit the requisite amount to CBK which had expired on 30th June, 2009, and that KPCU owed CBK a levy amounting to 866,359.53 US dollars as at 15th July, 2010, vide a letter dated 22nd July, 2010, to KPCU from CBK requesting for such payment as a

ii) Amendment of section 49a of the Coffee Act to provide for the above course.

iii) The KPCU to be allowed to do the milling.

iv) The Government to write off the debts of KPCU as in the case of sugar sector and other institutions.

63. He concluded by stating that, in regard to the above amendments, there was a Draft Bill on coffee which was due for publishing and which would seek to address them. The Committee was informed the Bill was still in the domain of the Ministry of Agriculture.

5.8 THE COOPERATIVE BANK AND THE COOPERATIVE COFFEE EXPORTERS (KCCE)

64. The Cooperative Bank and the KCCE were mentioned in the course of receiving evidence regarding this inquiry into the KPCU receivership issues. Subsequently, they were invited to appear before the Committee. They responded by sending confidential documents which after being referred for legal interpretation were found to be active in Court proceedings and therefore subjudice.

6.0 SUMMARY OF THE FINDINGS AND RECOMMENDATIONS

65. The inquiry presented varied, complex and intriguing evidences on the sequence of events leading to the receivership of the KPCU. The evidence provided grounds that pointed out that receivership resulted from culmination of acts that had build up against the KPCU over the years and which hinged on a highly uncoordinated regulatory and policy frameworks worsened by the liberalization pursued in the 1990s by the Government.

66. It emerged that the placement of KPCU under receivership elicited emotional concern and attachment with which the Coffee farmers expressed over the institution and as demonstrated by their willingness to want to make contributions to pay the debt at a rate of Kshs. 1000 per farmer.

ii) The forensic audit of the KPCU accounts, including false entries and interest rates, with KCB before the receivership be finalized by the investigative agencies, the Criminal Investigation Department (CID) and the Ethics and Anti-Corruption Commission (EACC) to ascertain whether the KCB operated ethically in the handling of KPCU accounts, and with a view to commencing criminal investigations in what appeared to be money laundering.

In the investigations, special attention be given to suspicious entry amounting to 772,000 US Dollars in 2006 and double entries in respect of payments made between KCB and KPCU.

iii) The manner in which the KCB moved to appoint officers from Deloitte as receivers be investigated especially that Deloitte Consulting had an existing contractual relationship with KPCU regarding forensic audit of its accounts, and to establish whether the KCB was privy to the privileged information obtained by Deloitte during their engagement in KPCU in the forensic audit exercise. Further, investigations be undertaken to establish whether the allegations of money laundering may have triggered this.

iv) The performance of the receiver managers, Mr. Daniel Ndonye and Mr. David Harveen Gadhoke, at the KPCU be evaluated with a view to making them culpable for any mismanagement that had been caused to KPCU assets, including disappearance of millions of shillings, illegal disposal or theft of critical assets such as ICT facilities and running down of milling facilities from lease to the KCCE.

v) That, the KCB be made liable to the losses incurred at the KPCU as a result of forceful take-over by the receivers against the background of court injunction.

vi) The Government intervenes through a rescue package estimated at Kshs. 1.2 billion towards lifting the receivership and to cover the estimated cost of reviving the operations of the KPCU.

(CID) and the relevant professional body, the Institute of Certified Public Accountants of Kenya (ICPAK), with a view to prosecute him for any professional misconduct in the KPCU scam.

The Committee further recommends that the ICPAK releases its report on the conduct of the two receiver managers as requested by the KPCU and conveyed in written communication to it **(see annex 19).**

75. The Committee noted that the Deloitte consultants failed to submit a forensic audit report to KPCU despite having been paid an amount constituting 90 percent their total fees, and yet hurried to take up the receivership offer by the KCB.

In view of the Committee, the move by the Deloitte to proceed to breach the trust bestowed upon them by the KPCU in hurriedly taking the receivership assignment, was a clear collusion with KCB to defraud KPCU of its assets. The Committee therefore recommends that the Deloitte auditors refunds the money paid to them since the forensic audit no longer serve to satisfy the terms of the contract under which the firm was contracted.

76. While expressing concern over the manner in which the KCB, Receivers, and Co-operative and Agriculture Ministries cooperated and collaborated to forcibly gain entry into KPCU and evict its Directors after the court had declined to grant such orders, the Committee recommends that:-

(i) The players in the eviction, including the Head of the Administration Police, be investigated with a view to prosecuting them for the unlawful access into the KPCU premises.

(ii) The cost of the damage be evaluated and the compensation be borne by the parties in the eviction activity, including the Administration Police for gross abuse of power in supervising an illegal forceful entry into KPCU. No such order had been granted to KCB, and further that the Officer Commanding Station (OCS) at Kamukunji had earlier declined to do so for lack of any such order.

79. The Committee found that the KPCU Board of Directors lacked strategic plans and serious efforts to rid the institution from debts and to make the KPCU competitive in a liberalized market characterized by emergence of newly licensed millers. It was noted that the directors appeared derailed by the coffee politics and tended to want to rely on support from the Ministries any time issues arose at KPCU without own decisiveness and initiatives to address them.

While recalling that senior Management had exited the organization in 2008 on allegations of poor governance at KPCU, the Committee concludes that the institution could still have had internal inefficiencies brought about by lack of competent professionals to provide technical support services in the work of the directors. These inefficiencies and governance issues at KPCU had been earlier been raised in a report funded by the European Union by Cardno Agrisystems Limited, on the Review of the Kenya Planters' Cooperative Union, Letter of Contract No. 2006/129430/1, and dated March 2007 **(see annex 20).**

The frequency with which the directors sought help in vain from the offices of Ministries of Cooperative Development, and Agriculture, in an effort to address issues affecting the KPCU perhaps confirms the Committee's observation.

The Committee therefore recommends that:-

(i) The KPCU be restructured to improve its governance and to allow for effective and efficient discharge of the KPCU's function once KPCU revived its operations; and

(ii) Highly skilled staff be competitively recruited.

80. Noting that the KPCU is farmers' cooperative society and further noting that measures must be undertaken to put the organization back to its operations, the Committee further recommends, as follows:-

1) The Interim Committee elected during the meeting of shareholders held in Thika on 31st August, 2010, following expiry of the term of

10) The Board to pursue all the debtors of the KPCU to recover debts through publishing them in the print media **(see Annex 11 of the Report).**

11) The Board to pursue patent issues affecting KPCU as a Brand, with a view to seeking immediate settlements of all pending claims locally and abroad.

12) The former Board of KPCU whose tenure led to the receivership saga be barred from contesting elections for directorship at the organization for two (2) terms to allow for in-depth conclusion of investigations into the receivership issues.

7.0 CONCLUSION

81. After examining all the evidences and noting its observations and recommendations, the Committee concluded, as follows:-

1) That, there were no serious efforts directed at addressing KPCU woes by all the relevant actors; namely the KPCU, the CBK, and the Ministries of Agriculture, and Cooperative Development and Marketing. Instead, blame game appeared to characterize their responses to the issues affecting the KPCU due to their inability to solve the problems which stood in the way of the performance and debts of the company. Where attempts were made, bottlenecks arose due conflicts of interests and mistrust among the actors.

2) That, operational inefficiencies in the coffee sector brought about by liberalization and inappropriate policies implemented conspired to disrupt the once vibrant coffee sector. This ensured that the farmers earned little from value chain in coffee production, processing and marketing. Yet they have invested heavily in coffee production efforts and in building economy of the country, especially in the post-colonial era.

3) That, with the promising signs in the world's coffee market, the Government should move with speed to revive the giant cooperative institution as the farmers were noted to host a strong will and

82. Overall, the development and implementation of enabling policies and legal framework governing operations of cooperatives, coupled with strong supervisory and inspection mechanisms is paramount. In particular, there is need to address the dual registration of KPCU, as both a Cooperative and a company, which has led to inefficiencies in its operations and losses due to lack of effective supervision. This will contribute to the strengthening of governance of the institution. In addition, expeditious remittances of dues to farmers by both the KPCU and Coffee Board must be implemented without delay in renewed business environment provided by the enabling legislation and supervision by the Capital Market Authority (CMA).