

Approved for tabling

REPUBLIC OF KENYA



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17/10/19

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-THIRD SESSION

.....

**SIXTH REPORT OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE
ON THE AUDITED FINANCIAL STATEMENTS FOR
THE COMMODITIES FUND**

OCTOBER, 2019

Directorate of Committee Services
The National Assembly
Parliament of Kenya
NAIROBI

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LIST OF ABBREVIATIONS AND ACRONYMS

AFA	Agriculture and Food Authority
AFFA	Agriculture Fisheries and Food Authority
COK	Constitution of Kenya
FY	Financial Year
KSB	Kenya Sugar Board
MP	Member of Parliament
SDL	Sugar Development Levy

ANNEXURES

Annexure 1

Committee Minutes

Annexure 2

Agriculture and Food Authority Handover Report

CHAIRPERSON'S FOREWORD

Article 95 (4) (c) of the Constitution of Kenya gives the National Assembly power to oversight over national revenue and its expenditure. In fulfillment of these constitutional provisions, the National Assembly Standing Orders has established Committees whose mandate is to examine reports of the Auditor-General to ascertain whether public funds have been utilized in a lawful, authorized, effective, efficient, economical and transparent manner.

This report contains Committee proceedings of its consideration of the reports of the Auditor General on financial statements for the Commodities Fund for financial years 2015/16 and 2016/17 pursuant to provisions of Standing Order No. 205A (e) of the National Assembly Standing Orders.

The Commodities Fund is established under Crops Act no 16 of 2013(Section 9) as a merger of the defunct Coffee Development Fund and Sugar Development Fund. In the initial stages, the Fund operated as a department under the Agriculture and Food Authority (AFA) until amendments to the Crops Act, 2016 were passed. These amendments granted Commodities Fund autonomy from AFA with effective from April, 2016 when the law was operationalized.

The Fund is mandated to provide sustainable and affordable credit and advances to agricultural sector for farm improvement, farm inputs, farming operations, agricultural infrastructure development, support for agricultural value addition initiatives, price stabilization and capacity building. It is managed by a Board of Trustees appointed with the Managing Trustee as its accounting officer.

The Fund plays a very critical role in the development of the agriculture sector, which ultimately contribute to national development of the country. Hence, there is need for proper utilization and accountability of public resources managed by the institution in furtherance of its mandate.

The Committee held a total of nine meetings where it received evidence from Ms. Nancy Cheruiyot, the Managing Trustee, Commodities Fund on various issues raised in the audit report. The Committee further received evidence from Mr. Solomon Odera, the Interim Head, Sugar Directorate-Agriculture and Food Authority (AFA) on issues arising out of operations of the defunct Sugar Directorate whose mandate was transferred to Commodities Fund. The Committee

also received evidence from Mr. Tejveer Rai, Managing Director West Kenya Sugar Company Limited and Mr. S.S Chatthe, the Managing Director, Kibos Sugar & Allied Company Industries regarding loans disbursed to the two companies which were amongst the audit queries raised by the Auditor General.

Both oral and written submissions received formed the basis of observations, findings and recommendations of the Committee as outlined in this report under each of the audit queries. These can also be obtained from the Minutes and Hansard Reports of Committee proceedings.

May I take this opportunity to register my sincere appreciation to my fellow Honorable Members of the Committee, the Offices of the Speaker and the Clerk of the National Assembly, the Office of the Auditor- General, the National Treasury and the Managing Trustee of Commodities Fund for their great contributions which made the work of the Committee and production of this report a success.



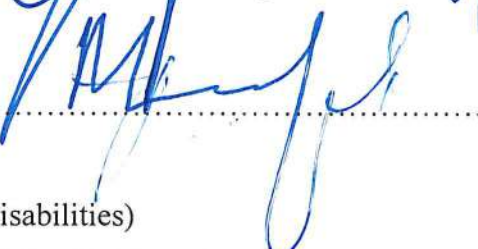



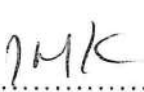
On behalf of the Special Funds Accounts Committee, and pursuant to Standing Order 199(6), it is my pleasant duty and honour to present to this House the report of the Committee on the audited financial statements for Commodities Fund for the financial year 2015/2016 and 2016/2017.

Hon. Kathuri Murungi, M.P.

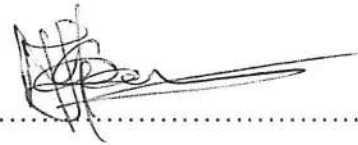
CHAIRPERSON, SPECIAL FUNDS ACCOUNTS COMMITTEE

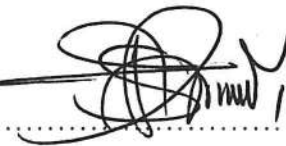
ADOPTION LIST

Pursuant to Standing Order 199, we the undersigned Members of the Special Funds Accounts Committee of the National Assembly do hereby append our signatures to adopt this Report.

- Signature
1. Hon. Kathuri Murungi, M.P. (Chairperson)
Member of Parliament for South Imenti Constituency
Independent Member 
 2. Hon. William Kamuren Chepkut, M.P. (Vice-Chairperson)
Member of Parliament for Ainabkoi Constituency
Independent Member 
 3. Hon. Alfred Agoi Masadia, M.P.
Member of Parliament for Sabatia Constituency
Amani National Congress Party 
 4. Hon. Dennitah Ghata, HSC, M.P.
Nominated Member (representing persons with disabilities)
Orange Democratic Movement Party
 5. Hon. Mark Lomunokol, M.P.
Member of Parliament for Kacheliba Constituency
Party of Development and Reforms.....
 6. Hon. Shakeel Shabbir, CBS, M.P.
Member of Parliament for Kisumu Town East Constituency
Independent Member.....
 7. Hon. Erastus Kivasu Nzioka, M.P.
Member of Parliament for Mbooni Constituency
New Democrats Party 
 8. Hon. Esther Muthoni Passaris, OGW, M.P.
Member of Parliament for Nairobi City County
Orange Democratic Movement Party 
 9. Hon. Geoffrey Omuse, M.P.
Member of Parliament for Teso South Constituency
Orange Democratic Movement Party 
 10. Hon. Dr. Irene Muthoni Kasalu, M.P.
Member of Parliament for Kitui County
Wiper Democratic Party 

11. Hon. James Kamau Wamacukuru, M.P
Member of Parliament for Kabete Constituency
Jubilee Party
12. Hon. Jared Okelo, M.P
Member of Parliament for Nyando Constituency
Orange Democratic Movement Party
13. Hon. Justus Gesito Mugali, M.P.
Member of Parliament for Shinyalu Constituency
Orange Democratic Movement Party
14. Hon. Marwa Maisori Kitayama, M.P
Member of Parliament for Kuria East
Jubilee Party.....
15. Hon. Mohamed Mohamed Ali, M.P.
Member of Parliament of Nyali Constituency
Orange Democratic Movement Party.....
16. Hon. Mwambu M. Mabongah, M.P.
Member of Parliament for Bumula Constituency
Independent Member.....
17. Hon. Rehema Dida Jaldesa, M.P
Member of Parliament for Isiolo County
Jubilee Party
18. Hon. Mohamed Ali Lokiru, M.P
Member of Parliament for Turkana East Constituency
Orange Democratic Movement Party
19. Hon. Abdi Koropu Tepo, M.P
Member of Parliament for Isiolo South Constituency
Kenya Patriots Party






1.0 PREFACE

1.1. Establishment of the Committee

1. The Special Funds Accounts Committee is amongst the three watchdog Committees of the Twelfth Parliament that examine reports of the Auditor-General to ascertain whether public funds have been utilized in a lawful, authorized, effective, efficient, economical and transparent manner. The Committee was established in the fifth session of the Eleventh Parliament following the review of the National Assembly's Standing Orders to enhance the examination of reports of the Auditor General laid before the House.

1.2. Mandate of the Committee

2. The Committee's mandate is contained in the National Assembly's Standing Order 205A to examine the audited accounts laid before the House of:
 - (i) the Equalization Fund;
 - (ii) the Political Parties Fund;
 - (iii) the Judiciary Fund;
 - (iv) the National Government Constituencies Development Fund; and
 - (v) any other Fund established by law as the Speaker may direct.

1.3. Guiding Principles

3. In execution of its mandate, the Committee was guided by core constitutional and statutory principles on public finance management, as well as established customs, traditions and practices. These principles include:

1.3.1. Constitutional Principles on Public Finance

4. Article 201 of the Constitution of Kenya 2010 (CoK, 2010) provides for the fundamental principles that guide all aspects of public finance. These principles are, *inter alia*:
 - (i) Article 201(a) that states that there shall be openness and accountability, including public participation in financial matters;
 - (ii) Article 201(d) that states that public money shall be used in a prudent and responsible way; and
 - (iii) Article 201(e) that requires financial management be responsible and fiscal reporting be clear.

1.3.2. Direct Personal Liability

5. Article 226(5) of the Constitution of Kenya, 2010 is very specific on direct personal responsibility on application of public funds. It provides that, *“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”*.

1.3.3. Obligations of Accounting Officers

6. Section 68 (1) of the Public Finance Management Act, 2012 provides, inter alia, that: *“An accounting officer for a national government entity, Parliamentary Service Commission and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a way that is lawful and authorized, and effective, efficient, economical and transparent.”*
7. The Committee relied on these constitutional and legal provisions as the basis for inviting the managing Trustee of Commodities Fund being the accounting officer to respond to queries raised in the report of the Auditor General. This is in addition to holding all persons entrusted with management of the funds directly and personally liable for any loss of public funds under their trust. The Committee has and will continue to invoke these provisions in its recommendations to ensure that public resources channeled to these public bodies in furtherance of their mandates is utilized for the benefits of Kenyans.

1.4. Committee Membership

Chairperson

Hon. Kathuri Murungi, M.P.

Member for South Imenti Constituency

Independent Member

Vice-chairperson

Hon. William Kamuren Chepkut, M.P.

Member for Ainabkoi Constituency

Independent Member

Members

Hon. Alfred Agoi Masadia, M.P

Member for Sabatia Constituency

Amani National Congress Party

Hon. Erastus Kivasu Nzioka, M.P

Member for Mbooni Constituency

New Democrats Party

Hon. Dennitah Ghati, HSC, M.P.

Nominated Member (representing
Persons with Disabilities)

Orange Democratic Movement Party

Hon. Esther Muthoni Passaris, OGW,
M.P

Member for Nairobi County

Orange Democratic Movement Party

Hon. Mark Lomunokol, M.P

Member for Kacheliba Constituency

Party of Development and Reforms

Hon. Geoffrey Omuse, M.P.

Member for Teso South Constituency

Orange Democratic Movement Party

Hon. Shakeel Shabbir, CBS, M.P

Member for Kisumu Town East
Constituency

Independent Member

Hon. Dr. Irene Muthoni Kasalu, M.P

Member for Kitui County

Wiper Democratic Party

Hon. James Kamau Wamacukuru, M.P.
Member for Kabete Constituency

Jubilee Party

Hon. Jared Okelo, M.P.
Member for Nyando Constituency

Orange Democratic Movement Party

Hon. Justus Gisito Mugali, M.P.
Member for Shinyalu Constituency

Orange Democratic Movement Party

Hon. Marwa Maisori Kitayama, M.P.
Member of Parliament for Kuria East

Jubilee Party

Hon. Mohamed Mohamed Ali, M.P.
Member for Nyali Constituency

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Hon. Mwambu M. Mabongah, M.P.
Member for Bumula Constituency

Independent Member

Hon. Rehema Dida Jaldesa, M.P.
Member for Isiolo County

Jubilee Party

Hon. Mohamed Ali Lokiru, M.P.
Member for Turkana East Constituency
Orange Democratic Movement Party

Hon. Abdi Koropu Tepo, M.P.
Member for Isiolo South Constituency

Kenya Patriots Party

1.5. Committee Secretariat

Ms. Lucy Kimathi
Principal Clerk Assistant II

Ms. Hellen Ekadeli
Clerk Assistant II

Ms. Clarah Kimeli
Senior Legal Counsel

Mr. Josphat Bundotich
Senior Serjeant- at- Arms

Ms. Clare Jerotich Kidombo
Research Officer I

Ms. Catherine Burure
Fiscal Analyst III

Ms. Deborah Mupusi
Media Relations Officer II

Ms. Naserian Kaare
Serjeant-at- Arms III

Ms. Fatuma Abdi
Audio Officer II

2.0 INTRODUCTION

8. Oversight over national revenue and its expenditure is one of the roles of the National Assembly as provided under Article 95 (4) (c) of the Constitution of Kenya, 2010. In addition, Article 229(8) provides that, “*within three months after receiving an audit report, Parliament shall debate and consider the report and take appropriate action*”. Further, Section 68(1) of the Public Finance Management Act, 2012 states that, “*an accounting officer for a national government entity, Parliamentary Service Commission and the Judiciary shall be accountable to the National Assembly*”.
9. In fulfillment of these Constitutional and statutory provisions, the National Assembly Standing Orders has established oversight Committees to examine reports of the Auditor-General to ascertain whether public funds have been utilized in a lawful, authorized, effective, efficient, economical and transparent manner. The Special Funds Accounts Committee is amongst the three Watchdog Committees in the twelfth Parliament which is mandated to examine reports of specific Funds established by law amongst others.
10. It is on this basis that the reports of the Auditor-General on Financial Statements of Commodities Fund for the year ended 30th June, 2016 and 30th June, 2017 were committed to the Special Funds Accounts Committee for scrutiny and thorough examination to ascertain whether public funds had been applied in a lawful, authorized, effective, efficient, economical and transparent manner.

2.1 The Commodities Fund

11. Commodities Fund is established under Crops Act no 16 of 2013(Section 9) as a merger of the defunct Coffee Development Fund and Sugar Development Fund. In the initial stages, the Fund operated as a department under the Agriculture and Food Authority (AFA) until amendments to the Crops Act, 2016 were passed. These amendments granted Commodities Fund autonomy from AFA effective from April, 2016 when the law was operationalized.
12. The Fund is mandated to provide sustainable and affordable credit and advances to agricultural sector for farm improvement, farm inputs, farming operations, agricultural infrastructure development, support for agricultural value addition initiatives, price

stabilization, capacity building and other lawful purpose as approved by the Cabinet Secretary. The Fund is managed by a Board of Trustees appointed by the Cabinet Secretary.

13. Whereas the assets and liabilities of the defunct Coffee Development Fund as at 1st August, 2014 were wholly inherited by Commodities Fund, those of the defunct Sugar Development Fund continued to be under Agriculture Fisheries and Food Authority until 2017.

14. The Fund is yet to be handed over crucial documents pertaining to various loans advanced by Agriculture and Food Authority as contained in the Hand-Over Report dated 1st March, 2019 sharing assets and liabilities between Agriculture and Food Authority and Commodities Fund. This means that audit queries pertaining to these loans will continue recurring in the financial statements of Commodities Fund until all loan documents are submitted by AFA.

3.0 CONSIDERATION OF THE REPORT OF THE AUDITOR GENERAL ON AUDITED FINANCIAL STATEMENTS OF THE COMMODITIES FUND

3.1 REPORT OF THE AUDITOR GENERAL ON AUDITED FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30TH JUNE, 2016

15. Ms. Nancy Cheruiyot, the Managing Trustee, Commodities Fund appeared before the Committee on 14th March, 2019 to respond to audit queries raised in the report of the Auditor-General on the Financial Statements of Commodities Fund for the year ended 30th June, 2016. She was accompanied by:

- (i) Mr. Mwancha Okioma , the Chairman, Board of Trustees, Commodities Fund
- (ii) Mr. Huka Duba, Trustee, Commodities Fund
- (iii) Mr. Eliud M. Kamau, Trustee, Commodities Fund
- (iv) Mr. Silas Nyaga, Finance Manager, Commodities Fund
- (v) Ms. Nesline Gechuki, Legal Manager, Commodities Fund
- (vi) Mr. Godfrey Kinyua, Accountant, Commodities Fund and
- (vii) Ms. Emily Karanja, Legal Officer, Agriculture and Food Authority

3.1.1 AUDIT QUERY NO. 1- LOANS AND ADVANCES FROM EXCHANGE TRANSACTIONS

16. **The statement of financial position as at 30th June 2016 reflects loans and advances totaling Ksh. 8,418,075,000, as disclosed under Note 17(ii) to the financial statements. This balance, however, includes non-performing loans totaling Ksh. 5,565,961,068 advanced to various companies. As previously reported, some of these companies are under receivership with an accrued interest of Ksh. 1,227,735,409. Although full provisions on these long outstanding debts whose recovery remains doubtful has been made, no evidence has been provided for verification showing the actions being taken to ensure recovery of the outstanding loans and accrued interest.**

17. **Further, the loan balance of Ksh. 8,418,075,000 also includes an amount of Ksh. 1,915,615,011 advanced to five sugar companies in 2014/15 including one under**

receivership. Although it has been explained that the loans were processed and disbursed by the Agriculture and Food Authority (AFA) Sugar Directorate, evidence of the board's Minutes approving the loans has not been presented for audit verification. The loan balance of Ksh. 8,418,075,000 further includes Ksh. 260,888,075 in respect of an outstanding loan due from West Kenya Sugar Company, which in turn includes Ksh. 2,464,420 relating to legal fees in dispute. From the foregoing, loans and advances from exchange transactions balance of Ksh. 8,418,075,000 as at 30th June 2016 could not be confirmed as fairly stated.

Management Response

18. The accounting officer, Ms. Nancy Cheruiyot, submitted that the companies under receivership had been unable to repay the outstanding loan balances as a result of cash flow challenges. For instance, Muhoroni Sugar Company (currently under receivership) signed a loan repayment agreement dated 21st February, 2017 to at least pay a cumulative amount of Ksh. 2 Million every month. The company subsequently paid a total of Ksh. 16 million as follows:

28-Feb-17	2,000,000.00
28-Feb-17	2,000,000.00
28-Feb-17	8,000,000.00
25-Apr-17	2,000,000.00
25-Apr-17	2,000,000.00

19. She further submitted that the Fund had received correspondence from the company dated 12th May, 2017 on suspension of the loan repayment citing cane shortage which had resulted into low cash flow, milling of immature cane and the factory operating for only three (3) days a week. She informed that Committee that the Government of Kenya (GoK) through Sessional Paper No. 12 of 2012 on Write off of Excess GoK Debt provided recommendations towards making the five public owned sugar companies run efficiently through restructuring of their balance sheets under privatization process which would result in writing off of excess debt i.e. debt which is over and above the value of the assets. The debt that remains be renegotiated in terms of repayment but this would be done after the privatization process is finalized.

20. She also submitted that loans to the tune of Ksh. 1,915,615,011 were advanced to the companies listed below and were processed and disbursed by Agriculture and Food Authority through (AFA) Sugar Directorate-

Institution	Purpose	Amount Disbursed
Soin Sugar Co.	Factory Rehabilitation	200,000,000.00
Chemelil Sugar Co.	Farmers Arrears	285,089,732.85
Mumias Sugar Co.	Farmers Arrears	219,753,634.30
Sony Sugar Co.	Farmers Arrears	447,474,668.60
Muhoroni Sugar Co.	Farmers Arrears	219,037,093.25
Soin Sugar Co.	Farmers Arrears	20,000,000.00
Chemelil Sugar Co.	Factory Rehabilitation Turbo Alternator	- 13,103,385.75
Chemelil Sugar Co.	Factory Rehabilitation Turbo Alternator	- 21,756.04
Chemelil Sugar Company	Factory Rehabilitation Turbo Alternator	- 11,138,750.00
Mumias Sugar Company	Farmers Arrears	500,000,000.00
TOTALS		1,915,619,020.79

21. The Managing Trustee acknowledged that West Kenya Sugar Co. Ltd had an outstanding loan balance of Ksh. 260,888,075 which included a disputed legal fee of Ksh. 2,464,420. The legal fee was incurred towards perfection of security documentation for a loan of Ksh. 40 Million advanced to the company.
22. The legal fee was paid to Wetangula & Company advocates by the former Kenya Sugar Board on behalf of West Kenya Sugar Company Ltd and their account debited with the cost of the transaction. West Kenya Co. Ltd disputed the cost as high in their view and therefore disputed the figure.

Committee Observations

23. The Committee observed that-

- (i) The Board of Trustees, Commodities Fund instituted measures geared towards enhancing recoverability of the loans. These measures included requests to the Ministry of Agriculture, Livestock and Fisheries for inclusion of sugar loan debt repayment by Government owned sugar mills in their Performance Contracts vide letter of Ref. No. CF/MOA/VOL. 1/1 dated 5th September, 2017;

- (ii) Chances of full recovery of outstanding loans was low given the challenges facing the Sugar Sector in Kenya, where some companies are under receivership;
- (iii) Most loans constituted of arrears owned to farmers and cost incurred towards factory rehabilitation;
- (iv) The Board of Trustees, Commodities Fund had made demands to various companies for loan repayments;
- (v) The accounting officer had issued a 30 day pre-listing notification dated 10th April, 2018 to all its customers of its intention to submit credit information pursuant to regulation 25 (1) of the Credit Reference Bureau Regulations, 2013 to enhance debt repayment;
- (vi) The Board of Trustees, Commodities Fund had been granted approval by the Central Bank of Kenya to be a third party source of credit information to the bureau as per the Credit Reference Bureau Regulations 2013 vide communication dated 21st May 2018;
- (vii) The Board of Trustees, Commodities Fund had made follow-ups with Agriculture and Food Authority (AFA) to provide the required Board minutes to the Auditors. The minutes were later provided;
- (viii) The disputed legal fee under West Kenya Sugar Company Ltd loans had been transferred to financial statements of AFA in the subsequent audit reviews as confirmed by the Auditor General;
- (ix) The Board of Trustees, Commodities Fund was considering seeking authorization from the parent Ministry to write-off doubtful loans, especially those which have remained outstanding for over 10 years; and
- (x) Commodities Fund's financial performance is weak based on the low recovery of advanced loans, which is an impediment towards having it as a revolving fund.

Committee Recommendations

24. The Committee having considered the audit query recommends that-

- (a) The Board of Trustees ensures that outstanding loans are recovered and that the Fund is self-revolving;**

- (b) The Board of Trustees ensures that proper repayment plans are put in place for any loan advanced and that proper securities are placed by borrowers to guarantee the loans;**
- (c) The Board in consultation with the Parent Ministry and approval by the Cabinet Secretary National Treasury, consider writing off loans advanced to Public Mills and Out growers that were inherited by Commodities Fund based on their low recoverability in accordance with Section 69(2) of the Public Finance Management Act, 2012; and**
- (d) The National Assembly to allocate seed capital to the Commodities Fund to enable it revolve and finance their operations.**

3.1.2 AUDIT QUERY NO. 2- CURRENT RECEIVABLES FROM EXCHANGE TRANSACTIONS

- 25. The current receivables from exchange transactions balance of Ksh. 24,208,000 reflected in the statement of financial position as at 30th June 2016, excludes as in the previous year, an amount of Ksh. 146,717,000 due from the defunct Sugar Development Fund in relation to expenses incurred by the Fund on behalf of various institutions some of which are under receivership, prepayments and deposits of Ksh. 100,000 and imprests of Ksh. 1,349,000 from former employees. The balance of Kshs. 24,208,000 is therefore understated by the excluded amounts**

Management Response

- 26. The accounting officer submitted that an amount of Ksh. 146,717,000 due from former Sugar Development Fund in relation to expenses incurred by the Fund on behalf of various institutions some of which are under receivership, prepayments, and deposits of Ksh. 100,000 and Imprests of Ksh. 1,349,000 from former employees were excluded from the figure reported in the statements of financial position.**

27. She further submitted that Commodities Fund is a merger of the defunct Sugar Development and Coffee Development Fund that was operationalized on 1st August, 2014 and established under Crops Act, 2013 Section 9(1).

28. The merger process was guided by the Interim Management Committee (IMC) that was appointed by the then Cabinet Secretary in charge of Ministry of Agriculture, Livestock and Fisheries to oversee operationalization of both AFA and Crops Acts, 2013. The Fund was a directorate within AFA and operated under directive of IMC and Director General AFA who determined the sharing of assets and liabilities of the two former Funds between AFA and Commodities Fund.

29. Whereas the assets and liabilities of the former Coffee Development Fund as at 1st August, 2014 were wholly inherited by Commodities Fund, those of Sugar Development were shared as shown in the table:

ITEM	Assets & Liabilities of SDF As AT 1 st August 2014. KSHS"000"	Taken by AFA KSHS. "000"	Taken by Commodities Fund KSHS"000"
Cash & Cash Equivalent	49,623	49,623	-
Receivables-(Debtors Prepayments)			
	148,166	148,166	-
Receivables -Levy arrears	1,837,694	1,837,694	-
Receivable- Interest on Loans	2,125,718	6,001	2,119,717
Investments (Short Term Deposits)	4,053,033	4,053,033	
Property, Plant & Equipment	3,440	3,440	
Term loan to KSB	54,136	54,136	
Receivables-Long Term Loans	13,072,826	209,927	12,862,899
Total Assets	21,344,638	6,362,020	14,982,616
Liabilities & Reserves			
Trade and Other Payables	252,050	252,050	-
Provisions for Non-performing debts	4,715,224	542,747	4,172,475
Reserves	16,377,364	5,567,223	10,810,141
Total Liabilities & Reserves	21,344,638	6,362,020	14,982,616

30. As illustrated in the table, Commodities Fund was allocated loan book that was held by the Sugar companies and out grower institutions amounting to Ksh. 12,862,899,003 and accrued interest on the same amounting to Ksh. 2,119,717,066. The Fund also inherited book provisions for non-performing loans totaling Ksh. 4,172,474,525. Over all, the net assets taken over by the Fund amounted to Ksh. 10,810,141,000 consisting of debts held by borrowers from Sugar Sector. All other assets and liabilities of the former Sugar Development Fund were taken over by AFA.
31. Debtors amounting to Ksh. 146,717,000 due from former Sugar Development Fund in relation to expenses incurred by the Fund on behalf of various institutions some of which are on receivership, prepayment and deposits of Ksh. 100,000, and Imprests of Ksh. 1,349,000 from former employees are excluded from the statement of Financial Position of Commodities Fund as at 30th June, 2016. The three items were taken over by Agriculture and Food Authority (AFA) which meant Commodities Fund could not report the same in its financial statements.

Committee Observations

32. The Committee observed as follows-

- (i) Upon operationalization of Crops Act, 2013 which created Commodities Fund as a department under Agriculture and Food Authority, a Committee comprising of membership from the merged institutions was tasked with loan appraisal and disbursements made by AFA upon approval by the parent Ministry;
- (ii) Amendments made to Crops Act, 2016, granted Commodities Fund autonomy from Agriculture and Food Authority with effect from April, 2016 when the law was operationalized;
- (iii) Despite operationalization of the law, Agriculture and Food Authority continued to disburse loans on behalf of Commodities Fund, where a total amount of Ksh. 895,725,907.00 was disbursed in the year 2015/16 and 2016/17;
- (iv) Loan repayments amounting to Ksh.140,000,719.35 made to Agriculture and Food Authority (Sugar Directorate) from 1st August, 2014 and which was payable to Commodities Fund had not been transferred to Commodities Fund as agreed despite various letters requesting the same;

- (v) The hand over report of Assets and Liabilities between the former Sugar Development Fund to Commodities Fund dated 1st March, 2019 was incomplete given that some documents to support loans amounting to Ksh. 2,811,344,927.99 disbursed by Agriculture and Food Authority in the period August 2014 to July 2016. Some of the missing documents include:
- a. Approval from the Ministry of Agriculture, Livestock, Fisheries and Irrigation for loan of Ksh. 219,753,634.30 to Mumias Sugar Company as farmers arrears. *The Committee noted that the Ministry had declined to approve the loan vide letter Ref. MOA/A.11/10A/VOL.1/(300) dated 2nd September, 2014 addressed to Mr. Alfred T. Busolo, Interim Director General, AFA by the Principal Secretary. However, AFA went ahead and disbursed the loan in the same month as indicated under page 62 of the hand over report;*
 - b. Loan application letters for loans on farmers arrears to Soin Sugar Company and Mumias Sugar Company amounting to Ksh. 20,000,000.00 and Ksh. 500,000,000.00 respectively for factory rehabilitation;
 - c. Letters of offer/loan agreements for loans amounting to Ksh. 200,000,000.00 advanced to Nzoia Sugar Company for factory rehabilitation;
 - d. Security instruments for loans advanced included debentures and loan agreements may be difficult to realize in case of default;
 - e. The missing documents were subject to audit queries raised in the reports of the Auditor-General for Commodities Fund and hence remain unresolved;
 - f. The Sugar Directorate Fund and the Agriculture and Food Authority operated illegally in disbursing loans on behalf of Commodities Fund and should therefore take responsibility over the loss of public funds;
 - g. Agriculture and Food Authority invoked Section 33 of the Crops Act, 2013 to disburse loans for sugar development. The Section give AFA the authority to use proceeds of any levy imposed under the Act in furtherance of its power or authority; and
 - h. There is overlap on the mandates of Agriculture and Food Authority and Commodities Fund in the current Act.

Committee Recommendations

33. The Committee having considered the audit query recommends that-
- (i) The Ministry responsible for Agriculture to ensure that the overlap of functions between AFA and Commodities Fund is addressed through legislation; and
 - (ii) The accounting officer to take appropriate measures to resolve the outstanding audit issue in accordance with Section 68 (2) (I) of the Public Finance Management Act, 2012.

3.1.3 AUDIT QUERY NO. 3- RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS

34. The receivables from non-exchange transactions balance of Ksh. 42,057,000 reflected in the statement of financial position as at 30 June 2016, and as previously reported excludes Ksh. 1,837,694,000 due from the defunct Sugar Development Fund. Under the circumstance, the accuracy and completeness of the receivables from non-exchange transactions figure of Ksh. 42,057,000 as at 30th June 2016 could not be confirmed.

Management Response

35. The Managing Trustee submitted that non- exchange transactions balance of Ksh. 42,057,000 reflected in the statement of financial position as at 30th June, 2016 and as previously reported excludes Ksh. 1,837,694,000 due from defunct Sugar Development Fund. The amount which relates to sugar levy owed to defunct Sugar Development Fund by sugar companies was taken over by AFA which meant Commodities Fund could not report the same.
36. She further submitted that section 16 (2) of The Agriculture and Food Authority Act, 2013 had specifically given sugar levies to AFA and that the amount had been transferred to AFA and excluded from the financial statement of Commodities Fund in the following year under review.

Committee Observations

37. The Committee observed that-

- (i) The amount of Ksh. 1,837,694,000 due from the defunct Sugar Development Fund which is subject to the audit query had been excluded from the financial statements of Commodities Fund having been taken over by AFA as indicated in the hand over report;
- (ii) There is overlap of mandate between AFA and Commodities Fund under the current law where Section 33 of the Crops Act, 2013 provides that proceeds of any levy imposed shall form part of the general funds and property of the Agriculture and Food Authority and may be used by the Authority in the furtherance or exercise of any function or power of the Authority;
- (iii) The Agriculture and Food Authority continued to advance loans despite the fact that this is a sole mandate of Commodities Fund, hence there exist conflict in mandates of the two institutions under the current Act; and
- (iv) The loans queried are reflected under Agriculture and Food Authority audited financial statements in the subsequent years as confirmed by the Auditor General.

Committee Recommendations

38. The Committee having considered the audit query recommends that-

- (i) **The Cabinet Secretary for Agriculture, livestock and Fisheries ensures that the handing over process on sharing of Assets and Liabilities between the AFA and the Commodities Fund is fast-tracked; and**
- (ii) **The accounting officer, Commodities Fund, takes appropriate measures to resolve the outstanding audit issues in accordance with Section 68 (2) (1) of the Public Finance Management Act, 2012.**

3.1.4 AUDIT QUERY NO. 4- INVESTMENTS

39. As reported in the previous year, an amount of Ksh. 52,237,000 in respect of investments by the defunct Sugar Development Fund placed in Euro Bank which was put under receivership in the 1990's, has not been reflected and disclosed in the financial statements for the year ended 30th June, 2016. In addition, opening investment balance of Ksh.4,203,000,000 as at 1st July, 2014 by the two institutions,

namely Sugar Development Fund and Coffee Development Fund, that formed Commodities Fund have, similarly, not been reflected or disclosed in the financial statements. No satisfactory explanation has been provided for these omissions.

Management Response

40. The Managing Trustee submitted that a total of Ksh. 52,237,000 in respect of investment by the defunct Sugar Development Fund placed in Euro Bank which was put under receivership in the 1990's was not reflected and disclosed in the financial statement of Commodities Fund as at 30th June, 2016. This was due to the fact that all investments of the defunct Sugar Development Fund amounting to Ksh. 4,053,033,000 that included investment amounting to Ksh. 52,237,000 were taken over by AFA during the sharing of Assets and Liabilities as indicated in the hand over report.
41. Consequently, Commodities Fund could not report the same but reported the investment of Ksh.150, 000,000 that belonged to the defunct Coffee Development Fund.

Committee Observations

42. The Committee observed that-
- (i) The amount totaling to Ksh. 52,237,000 under the audit query was taken over by Agriculture and Food Authority and reflected in the audit report for Agriculture and Food Authority as confirmed by the Auditor General; and
 - (ii) The criteria used to divide Assets and Liabilities between Commodities Fund and Agriculture and Food Authority is not anchored in law.

Committee Recommendations

43. **The Committee having considered the audit query recommends that-**
- (i) **The Cabinet Secretary for Agriculture, Livestock and Fisheries to ensure the handover process on sharing of Assets and Liabilities between the AFA and the Commodities Fund is fast-tracked; and**
 - (ii) **The accounting officer, Commodities Fund takes appropriate measures to resolve the outstanding audit issues in accordance with Section 68 (2) (l) of the Public Finance Management Act, 2012.**

3.1.5 AUDIT QUERY NO. 5- TRADE AND OTHER PAYABLES FOR EXCHANGE TRANSACTIONS

44. The statement of financial position as at 30th June, 2016 and as disclosed under Note 18 to the financial statements reflects trade and other payables from exchange transactions totaling Ksh. 32,789,000 which like in the previous year, exclude amounts of Ksh. 5,000,000 and Ksh. 3,062,000 due to Boco-Tractor lease deposit and Fintech Kenya, respectively. This has resulted in understatement of payables by the two amounts. Further, the trade and other payables figure of Ksh. 32,789,000 includes Ksh. 1,983,000 described as unidentified deposits.
45. Further, trade and other payables figure of Ksh. 32,789,000 includes, as disclosed under Note 22 to the financial statements, an amount of Ksh. 18,000,000, being cash receipts from two sugar companies for repayments of loans said to have been advanced by the Agriculture and Food Authority (AFA) during the year. However, no records were available with the Commodities Fund to enable crediting of the amount. In addition, the Crops Act, 2013 does not give the Agriculture and Food Authority the power to advance loans.

Management Response

46. The accounting officer submitted that Trade and other Payables figure of Ksh. 32,789,000 and which excluded Ksh. 5,000, 000 and Ksh. 3,062,000 due to Boco-Tractor lease deposit and Fintech Kenya, respectively were among the items taken over by AFA which meant Commodities Fund could not report the same in its financial statements. The unidentified cash deposits amounting to Ksh. 1,983,000 were subsequently identified and cleared except for Ksh. 72,975 that is still in process of identification.
47. She further submitted that in line with the sectoral changes, lending mandates that was formerly carried out by the former Coffee Development Fund and Sugar Development Fund were transferred to the newly created Commodities Fund. It was expected that Commodities Fund would take all lending to both sugar and coffee sectors.

48. However, in the three years that followed the merger of the two funds, AFA continued to lend to the Sugar Industry instead of forwarding funds meant for lending to Commodities Fund to discharge its mandate.

49. In the first year, a total of Ksh. 1,915,619,020 was lent out and was adopted by Commodities Fund. In the subsequent years a total of Ksh. 895,715,907 was lent out and Commodities Board of Trustees have approved adoption in line with the handover report. The management have gone further to offset the Ksh. 18,000,000 against respective loans.

Committee Observations

50. The Committee observed that-

- (i) The amounts under the audit query were taken over by Agriculture and Food Authority;
- (ii) The Board of Trustees, Commodities Fund had instituted appropriate measures geared towards ease of identification of cash deposit on loan repayments which included a requirement that all persons depositing cash in their accounts include mobile phone and National Identity Card Number in the deposit slips as indicated in a letter Ref. No. CF/FIN/Vol. 7/1153 dated 3rd March 2015 to Co-operative Bank;
- (iii) The criteria used to divide Assets and Liabilities between the Commodities Fund and Agriculture and Food Authority is not anchored in law;
- (iv) The Auditor General had verified that the amounts of Ksh. 5,000,000 and Ksh. 3,062,000 due to Boco-Tractor lease deposit and Fintech Kenya is reported under Agriculture and Food Authority's books of accounts.

Committee Recommendation

51. **The Committee having considered the audit query recommends that-**

- (i) **The Cabinet Secretary for Agriculture, Livestock and Fisheries ensures that the handover process on sharing of Assets and Liabilities between the AFA and the Commodities Fund is fast-tracked; and**
- (ii) **The accounting officer, Commodities Fund takes appropriate measures to resolve the outstanding audit issues in accordance with Section 68 (2) (I) of the Public Finance Management Act, 2012.**

3.1.6 AUDIT QUERY NO. 6- CASH AND CASH EQUIVALENTS

52. The statement of financial positions' cash and cash equivalents balance of Ksh. 1,517,593,000 as at 30th June 2016 and as disclosed under Note 12 (a) to the financial statements, includes Ksh. 21,167,000 and Ksh. 35,000 held in Sidian Bank and Equity Bank respectively. The management has, however, not provided evidence of authority from Treasury for investing funds in these banks. Similarly, the short-term deposits, as disclosed under Note 12 (c) to the financial statements, include Ksh. 505,798,000, Ksh. 463,306,000 and Ksh. 223,027,000 held at Family Bank, Development Bank and Equity Bank respectively. The management has however not provided documentary evidence showing that the Board of Trustees and the management undertook due diligence on the banks before the funds were placed in these institutions.

Management Response

53. The accounting officer submitted that Commodities Fund was unable to produce evidence of the authority from Treasury to invest funds with Equity and Sidian Bank from the defunct Coffee Development Fund. The Fund had inherited all banks accounts of the defunct Coffee Development Fund including authority letters to invest with several approved banks.
54. However, during the audit, one of the letters that approved equity and Sidian banks could not be traced. A replacement letter was sought from the National Treasury which granted one letter covering all approved bank and the anomaly rectified.
55. The Fund invested a total Ksh. 505,798,000, Ksh. 463, 306,000 and Ksh. 223,027,000 with Family Bank, Development Bank, and Equity Bank Respectively. The three banks are amongst the institutions the Fund is authorized to invest its excess liquid funds. Investments are carried out competitively in order to ensure the Fund gets value for its funds. When doing investment, management always consider whether the bank is in good standing as far as the regulator "Central Bank of Kenya" is concerned.
56. All other information in public domain is put into account before a decision to seek an investment quotation from the bank is taken. Management refrains from seeking quotations

and placing funds with institutions that for the time being are reflected in bad light till the regulator (Central Bank) makes a statement on the matter. Management therefore carries its due diligence which informs where quotations for investment are sourced.

Committee Observation

57. The Committee observed that Commodities Fund did not obtain authority to invest surplus funds in accordance with section 28 of the Public Finance Management Act 2012 which requires the Fund to obtain an authority from the National Treasury.

Committee Recommendation

37. **The Committee having considered the audit query recommends that the accounting officer ensures compliance with Section 28 of the Public Finance Management Act 2012 which requires the Fund to obtain an authority from the National Treasury.**

3.2 REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30TH JUNE, 2017

58. Ms. Nancy Cheruiyot, the Managing Trustee, Commodities Fund appeared before the Committee on 19th March, 2019 to respond to audit queries raised in the report of the Auditor-General on the Financial Statements of Commodities Fund for the year ended 30th June, 2017. She was accompanied by:

- (i) Mr. Mwanicha Okioma , the Chairman, Board of Trustees, Commodities Fund
- (ii) Mr. Huka Duba, Trustee, Commodities Fund
- (iii) Mr. Eliud M. Kamau, Trustee, Commodities Fund
- (iv) Mr. Silas Nyaga, Finance Manager, Commodities Fund
- (v) Ms. Nesline Gechuki, Legal Manager, Commodities Fund
- (vi) Mr. Godfrey Kinyua, Accountant, Commodities Fund and
- (vii) Ms. Emily Karanja, Legal Officer, Agriculture and Food Authority

3.2.1 AUDIT QUERY NO. 1- TRANSFER OF ASSETS AND LIABILITIES FROM DEFUNCT SUGAR DEVELOPMENT FUND

59. **Commodities Fund was constituted by merging the Sugar Development Fund and Coffee Development Fund after enactment of Crops Act No.13 of 2013. The Initial investments of Commodities Fund were expected to be inherited and derived from the two defunct funds. However, it has been observed that, while an amount of Ksh. 1,178,153,000 was contributed by the defunct Coffee Development Fund, an amount of Ksh. 4,052,300,000 that was to be contributed by the Sugar Development Fund was instead taken over by the Sugar Directorate under Agriculture and Food Authority (AFA).**

60. **Whereas the assets of the former Coffee Development Fund were automatically taken over by the new formed Commodities Fund, the same did not happen with the assets and liabilities held by the former Sugar Development Fund. There exists no official hand over report or any record to show how the assets and liabilities of the Sugar Development Fund were shared between Agriculture and Food Authority (AFA) and**

Commodities Fund. Consequently the completeness and accuracy of the total net assets and liabilities of Ksh. 10,276,416,000 of the Fund as reflected in the statement of financial position as at 30th June 2017 cannot be confirmed.

Management Response

61. The accounting officer submitted that Commodities Fund was constituted by merging the Sugar Development Fund and Coffee Development Fund on operationalization of Crops Act, 2013 on 1st August 2014.
62. The merger process was guided by the Interim Management Committee (IMC) that was appointed by the then Cabinet Secretary in-charge of Ministry of Agriculture, Livestock and Fisheries to oversee operationalization of both AFA Act 2013 and Crops Acts, 2013. At that point, the Fund was a directorate within AFA and operated under directive of IMC and Director General AFA.
63. She further submitted that whereas the assets and liabilities of the defunct Coffee Development Fund as at 1st August, 2014 were wholly inherited by Commodities Fund, those of Sugar Development were shared in the manner tabulated below:

ITEM	Assets & Liabilities of SDF As AT 1st August 2014. KSH"000"	Taken by AFA KSHS. "000"	Taken by Commodities Fund KSH"000"
Cash & Cash Equivalent	49,623	49,623	-
Receivables-(Debtors Prepayments)	148,166	148,166	-
Receivables –Levy arrears	1,837,694	1,837,694	-
Receivable- Interest on Loans	2,125,718	6,001	2,119,717
Investments (Short Term Deposits)	4,053,033	4,053,033	
Property, Plant & Equipment	3,440	3,440	
Term loan to KSB	54,136	54,136	
Receivables-Long Term Loans	13,072,826	209,927	12,862,899
Total Assets	21,344,638	6,362,020	14,982,616
Liabilities & Reserves			
Trade and Other Payables	252,050	252,050	-
Provisions for Non-performing debts	4,715,224	542,747	4,172,475
Reserves	16,377,364	5,567,223	10,810,141
Total Liabilities & Reserves	21,344,638	6,362,020	14,982,616

64. As illustrated in the table, Commodities Fund was allocated loan book held by Sugar companies and Out grower institutions amounting to Ksh. 12,862,899,000, Accrued Interest amounting to Ksh. 2,119,717,000 and Book Provisions for non-performing loans

totaling to Ksh. 4,172,475,000. Over all, the net assets taken over by the Fund amounted to Ksh. 10,810,141,000 comprising of debts held by borrowers from Sugar Sector.

65. The Managing Trustee also submitted that liquid assets and non-loan receivables totaling to Ksh. 6,362,020,000 were taken by Agriculture and Food Authority. Further, AFA took trade payables amounting to Ksh. 252,050,000 and provisions for non-performing receivables to a tune of Ksh. 542,747,000. This brings to net assets inherited by AFA to Ksh. 6,362,020,000. This position is further affirmed by the handover report. The report shows clearly that Commodities Fund was handed over the loan book and accrued interest on the same.
66. With regard to the current status of the Fund, The Managing Trustee informed the Committee that sharing of assets and liabilities has been formalized through the just concluded hand over report that was prepared and signed by both Agriculture and Food Authority and Commodities Fund.
67. Arising from submissions made by the Managing Trustee in light of the audit query on the transfer of Assets and Liabilities from the defunct Sugar Development Fund, the Committee also invited the Interim Director General of Agriculture and Food Authority to give more information on the Handover process of Assets and Liabilities to Commodities Fund.

Submissions by Mr. Solomon Odera, the Interim Head of Sugar Directorate

68. Mr. Solomon Odera, the Interim Head of Sugar Directorate appeared before the Committee on 7th May, 2019. He was accompanied by;
- (i) Mr. Elias Kiragu- the Interim Manager(Revenue)
 - (ii) Mr. Andrew Osodo- Interim Head, Legal Services and
 - (iii) Mr. James Njue-Interim Chief Accountant
69. Mr. Solomon Odera, the Interim Head of Sugar Directorate submitted as follows:

(i) **On the basis for sharing of Assets and Liabilities between AFA and Commodities Fund;**

- (a) That, upon operationalization of the Agriculture and Food Authority Act, 2013 and Crops Act, 2013, all assets and liabilities of the Fund were immediately taken over by Agriculture and Food Authority with Commodities Fund being an entity within the Agriculture and Food Authority.
- (b) That, amendments were made to the Crops Act, 2016 in April, 2016 which granted Commodities Fund autonomy from Agriculture and Food Authority thus necessitating official hand over of some of the assets and liabilities of the former Kenya Sugar Board including Kenya Sugar Board staff and the Sugar Development Fund loan book;
- (c) That, the handing over of the Kenya Sugar Board staff and loan book had been concluded except that some securities on loans disbursed in the 1990s which required support documents such as loan application letters, letters of offers, confirmed minutes and security application letters were still yet to be submitted.

(ii) **On loans disbursed by AFA on behalf of Commodities Fund since operationalization of Crops Act 2013, which created Commodities Fund;**

70. That, the total amount of loans disbursed for the period 1st July, 2014 to 30th July, 2017 was Ksh. 2,811,344,928 as indicated in the table below-

SDF LOAN DISBURSEMENTS FOR THE PERIOD 1ST JULY 2014 TO 30TH JUNE 2017			
Institution	Purpose	Month of disbursement	Amount Disbursed
2014-2015			
Soin Sugar Co.	Factory Rehabilitation	Aug-14	200,000,000
Chemelil Sugar Co.	Farmers Arrears	Sep-14	285,089,733
Mumias Sugar Co.	Farmers Arrears	Sep-14	219,753,634
Sony Sugar Co.	Farmers Arrears	Sep-14	447,474,669
Muhoroni Sugar Co.	Farmers Arrears	Sep-14	219,037,093
Soin Sugar Co.	Farmers Arrears	Sep-14	20,000,000
Chemelil Sugar Co.	Factory Rehabilitation - Turbo Alternator	Sep-14	13,103,386
Chemelil Sugar Co.	Factory Rehabilitation - Turbo Alternator	Feb-15	21,756

Chemelil Sugar Co.	Factory Rehabilitation - Turbo Alternator	Apr-15	11,138,750
Mumias Sugar Co.	Farmers Arrears	Jun-15	500,000,000
TOTALS			1,915,619,021
2015/16			
Nzoia Sugar Company	Factory Rehabilitation	Nov-15.	200,000,000
Chemelil Sugar Company	Factory Rehabilitation	May-16.	61,436,125
Muhoroni Sugar Co.	Factory Rehabilitation	May-16.	222,963,887
Chemelil Sugar Company	Factory Rehabilitation	Jun-16.	186,782,055
Sub-total			671,182,067

2016/17			
Institution	Purpose	Month Disbursement	Of Amount Disbursed
Muhoroni Sugar Co.	Factory Rehabilitation	Jul-16.	100,000,000
Muhoroni Sugar Co.	Factory Rehabilitation	16-Aug	124,543,840
Sub-total			224,543,840
TOTAL			895,725,907
TOTAL LOAN DISBURSED FOR THE WHOLE PERIOD - KHS.			2,811,344,928

(iii) **On Loan Disbursements**

- (a) That, the government revoked Sugar Development Levy (SDL) on 30th June, 2016. However, there were levy amounts owed by the Mills in arrears. After the revocation, some of the Mills that had levy arrears continued to pay as part of their prior obligations. The payments were made to Agriculture and Food Authority;
- (b) That, Sugar Development Fund was financed through a levy charged on both locally manufactured and imported sugar. The levy, net of what was placed in reserve, was utilized to fund the following activities and shared out as follows:

Prescribed reserves	15% of gross levy
Sharing of remaining 85% of the levy	
Kenya Sugar Board	1.40/4
Kenya sugar research foundation	0.94/4
Road and infrastructure	0.29/4
Cane development	0.66/4
Factory rehabilitation	0.71/4

- (c) That, in line with the sharing formula, allocations towards Cane Development and Factory Rehabilitation components totaled Ksh. 740,889,388.05 broken down as follows:

2014/15	347,110,755.26
2015/16	<u>393,778,632.79</u>
	<u>740,889,388.05</u>

- (d) That, during the same period, loan repayments amounting to Ksh. 140,000,719.35 were received from loanees, an amount that was due to Commodities Fund;
- (e) Upon operationalization of the Agriculture and Food Authority Act, 2013 and Crops Act, 2013, all assets and liabilities of the Fund were immediately taken over by Agriculture and Food Authority with Commodities Fund being an entity within Agriculture and Food Authority. The Ksh. 1,915,619,021 was disbursed during this period;
- (f) That, Loans totaling Ksh. 895,725,907 were disbursed in the period 2015-2017;
- (g) That, Commodities Fund was granted autonomy from Agriculture and Food Authority on April 2016 but the handover of Sugar Development Fund Assets and Liabilities to Commodities Fund was finalized on 1st March 2019. ;
- (h) That, the loans were funded as follows:
- | | |
|--|-----------------------|
| Reserves | – Ksh. 755,725,187.65 |
| Loan repayments received–
(On behalf of Commodities Fund) | – Ksh. 140,000,719.35 |
- (i) That, section 33 of the Crops Act, 2013 provides that proceeds of any levy imposed under the Act form part of the general funds and property of AFA and may be used by AFA in the furtherance or exercise of any function or power of the Authority.
- (j) That, Agriculture and Food Authority lent out Ksh. 895,725,907 on behalf of Commodities Fund, out of which Ksh. 140,000,719.35 was due to the Fund. Therefore an amount of Ksh. 755,725,187 is owed to Agriculture and Food Authority by Commodities Fund;
- (k) The disbursement was treated as injection of additional lending capital to Commodities Fund by Agriculture and Food Authority and the Authority; and
- (l) That, AFA had committed to provide the missing documentations as follows:-

- Seven security instruments for the seven unsecured loans.
 - Approval minutes/concurrence for Mumias loan of Ksh. 219. Million.
 - Three application letters for Soin, Chemilil and Mumias Sugar Companies.
 - Two offer letters/loan agreements for Nzioa and Mumias Sugar Companies.
- (iv) **On Copies of Approvals for Loans disbursed by AFA as indicated on the handover report.**
- (a) That, approval documents for loans of Ksh. 219 million disbursed to Mumias Sugar company could not be traced :and
- (b) That, the Committee grants AFA six (6) months to provide any items that may not have been available at the time of the handover.
- (v) **On the total amount received on loan repayments on short term deposits of Ksh. 4,053,033,000 which was retained by AFA and how the same has been appropriated.**
- (a) That, the stated 15% of all levies received were treated as reserves;
- (b) That, with regard to short term deposits of Ksh. 4,053,000,000 retained by AFA as at 1st August 2014, it comprised of:
- Prescribed reserves had accumulated to Ksh. 3,096,507,000.
 - Amount of Ksh. 956,526,000 came from accumulated reserves.
- (c) That, the Funds were not meant to be given out as loans to sugar companies neither did it include loan repayment money and was put under short term deposit and was utilized as follows:
- | | |
|--------------------------------------|-----------------------------|
| Cane Testing Units (CTU) | 1,961,000,000 |
| Subsidized GOK fertilizer | 1,000,000,000 |
| Grants to (Nzoia sugar company) | 99,000,000 |
| Loan Disbursements 2015 – 2017 (Net) | <u>755,725,187</u> |
| TOTAL DISBURSEMENT | <u>3,815,725,187</u> |

Committee Observations

71. The Committee observed that –

- (i) As at the time of audit review, there was no handing over report by AFA to Commodities Fund as contained in the audit report and therefore it was not possible to ascertain the assets and liabilities transferred to Commodities Fund;

- (ii) The Auditor General had not verified the hand over report dated 1st March, 2019 which indicated that Commodities Fund was handed over Assets of Ksh. 14,982,616,000.00 which comprised of Long-term loans and interest on loans whilst Agriculture and Food Authority took over Assets amounting to Ksh. 6,362,020,000;
- (iii) Assets retained by AFA included short term deposits of Ksh. 4,053,033,000.00 and the Authority continued receiving loan repayment amounts and levies even after creation of Commodities Fund;
- (iv) The amount retained by AFA under short term deposit could be higher than the figure indicated in the hand over report dated 1st March, 2019; and
- (v) Upon enactment of Crops Act No.13 of 2013, the Assets and Liabilities of the defunct Sugar Development Fund and Coffee Development Fund ought to have been fully transferred to Commodities Fund.

Committee Recommendation

- 72. The Committee having considered the audit query recommends that the Cabinet Secretary, Ministry of Agriculture, Livestock, and Fisheries ensures that the Hand Over of Assets and Liabilities to Commodities Fund from Agriculture and Food Authority is completed in a lawful manner within three (3) months of adoption of this report by the House.**

3.2.2 AUDIT QUERY NO. 2- LOANS AND ADVANCES FROM EXCHANGE TRANSACTIONS

3.2.2.1 As previously reported, the statement of financial position as at 30 June 2017 reflects under non-current assets loans and advances totaling to Ksh. 7,246,862,000, and as disclosed in the financial statements. This balance is net of Ksh. 7,796,306,000 in respect of provisions for non-performing loans advanced to various companies some of which are under receivership with accrued interest of Ksh. 2,534,150,000. Although full provision has been made, on these long outstanding debts whose recovery remains doubtful, no evidence has been provided for verification showing the actions being taken to ensure recovery of the outstanding loans and accrued interest.

Management Response

73. The accounting officer submitted that the companies under receivership have been unable to repay the outstanding loan balances as a result of cash flow challenges. Muhoroni Sugar Company (In-Receivership) signed a loan repayment agreement dated 21st February, 2017 to at least pay a cumulative amount of Ksh. 2 Million every month. The company subsequently paid a total of Ksh. 16 million as shown below:

28-Feb-17	2,000,000.00
28-Feb-17	2,000,000.00
28-Feb-17	8,000,000.00
25-Apr-17	2,000,000.00
25-Apr-17	2,000,000.00

74. The Fund received correspondence from the company dated 12th May, 2017 on suspension of the loan repayment in relation to cane shortage citing challenges in cash flow, milling of immature cane and reduction in frequency with which the factory was operating to three (3) days a week.

75. The accounting officer further submitted that the Government of Kenya (GoK) through Sessional Paper No. 12 of 2012 on Write-off of excess GoK Debt had recommended that the five (5) public owned sugar companies be privatized to enhance efficiency in their operations, and that excess debt (debt which is over and above the value of the assets) be written off . The remaining debt would remain and be renegotiated in terms of repayment once privatization process is finalized.

76. The Managing Trustee informed the Committee of the following measures that had been instituted to enhance recoverability of loans:

- (a) The Fund made a request to the then Ministry of Agriculture, Livestock and Fisheries for inclusion of sugar loan debt repayment by Government owned sugar mills in their Performance Contracts for the period 2017/2018 as contained in a letter of Ref. No. CF/MOA/VOL. 1/1 dated 5th September 2017. However, this proposal has not been approval;
- (b) The Fund has also made demands to various companies for loan repayments;

- (c) The Fund had issued a 30 day pre-listing notification dated 10th April, 2018 to all its customers on www.mygov.go.ke of its intention to submit credit information pursuant to regulation 25 (1) of the Credit Reference Bureau Regulations, 2013 to ensure debt repayment;
- (d) On 21st May 2018, the Fund received communication from Credit Info Kenya that Central Bank of Kenya had approved Commodities Fund to be a third party source of credit information to the bureau as per the Credit Reference Bureau Regulations 2013.

Committee Observations

77. The Committee observed that –

- (i) Commodities Fund had inherited huge amounts on outstanding loans inherited from the defunct Sugar Directorate;
- (ii) The Fund had instituted key measures geared towards enhancing recovery of loans;
- (iii) The parent Ministry had declined approval of a proposal by the Fund to include sugar loan debt repayment by government owned sugar mills as part of key performance indicators in the company's Performance Contracts for the period 2017/2018;
- (iv) Some of the companies which owed the loans are under receivership while others are facing liquidity challenges; and
- (v) The audit query was carried over from audited financial statements of the Fund for the year ended June, 2016 and remains unresolved as reported by the Auditor General.

Committee Recommendation

78. **The Committee having considered the audit query recommends that -**

- (i) **The accounting officer continues pursuing the outstanding loans to ensure funds are recovered and that the Fund is self-revolving;**
- (ii) **The Board of Trustees, Commodities Fund ensures proper repayment plans are put in place for any loan advanced and that proper securities are placed by borrowers to guarantee the loans;**

- (iii) **The Board of Trustees, Commodities Fund in consultation with the Parent Ministry and approval by the Cabinet Secretary National Treasury, consider writing off loans advanced to Public Mills and Out growers that were inherited by Commodities Fund based on their low recoverability in accordance to Section 69 of the Public Finance Management Act, 2012;**
- (iv) **The National Assembly allocates seed capital to the Fund to enable it revolve and finance their operations; and**
- (v) **The National Government develops and implements a comprehensive plan geared towards revival of public sugar factories.**

3.2.2.2 The loans and advances balance of Ksh. 7,246,862,000 includes amount of Ksh. 1,915,615,011 advanced to five sugar companies in 2014/15 including one under receivership. Although management explained that the loans were processed and disbursed by the Agriculture and Food Authority (AFA) Sugar Directorate, the management did not produce evidence of guarantors and loan security during the audit to confirm the loans are secure.

Management Response

79. The accounting officer submitted that loans amounting to Kshs. 1,915,615,011 were advanced to the companies listed below and were processed and disbursed by Agriculture and Food Authority through (AFA) Sugar Directorate.

Institution	Purpose	Amount Disbursed	Securities
Soin Sugar Co.	Factory Rehabilitation	200,000,000.00	Debenture with Floating Charge and title deed. (Appendix 2BA)
Chemelil Sugar Co.	Farmers Arrears	285,089,732.85	Loan Agreement (Appendix 2BB)
Mumias Sugar Co.	Farmers Arrears	219,753,634.30	A copy of farmers arrears agreement
Sony Sugar Co.	Farmers Arrears	447,474,668.60	A copy of Loan Agreement (Appendix 2BD)
Muhoroni Sugar Co.	Farmers Arrears	219,037,093.25	A copy of Loan Agreement (Appendix 2BE.)
Soin Sugar Co.	Farmers Arrears	20,000,000.00	Farmers arrears Loan Agreement (Appendix 2BF)

Chemelil Sugar Co.	Factory Rehabilitation - Turbo Alternator	13,103,385.75	Fixed debenture of Kshs.120million provided but not registered.
Chemelil Sugar Co.	Factory Rehabilitation - Turbo Alternator	21,756.04	
Chemelil Sugar Company	Factory Rehabilitation - Turbo Alternator	11,138,750.00	
Mumias Sugar Company	Farmers Arrears	500,000,000.00	A Copy farmer's arrears agreement be provided.
TOTALS		1,915,619,020.79	

80. Securities for Ksh. 1,915,615,011 were availed although some were incomplete. Agriculture and Food Authority which advanced the loans had committed themselves to perfect the securities for the remaining loans as per the hand over report.

Committee Observations

81. The Committee observed that -

- (i) The loans under the audit query were advanced by Agriculture and Food Authority and transferred to Commodities Fund during the hand over process of Assets and Liabilities of the two Institutions;
- (ii) Some securities that were used to advance the loans are non-financial in nature and cannot be used as a charge against the loans. These included Farmers Arrears Loans Agreement and Debentures;
- (iii) Loans advanced as farmers arrears do not qualify as loans under the mandate of Commodities Fund hence their recoverability is low; and
- (iv) The query remains unresolved since the loans have not been recovered and were given without sufficient security.

Committee Recommendations

82. **The Committee having considered the audit query recommends-**

- (i) **That, the then Cabinet Secretary in charge of Agriculture and the Interim-Director General be investigated for any improper conduct, or negligence on failure to secure public funds;**
- (ii) **The Board of Trustees, Commodities Fund ensures proper repayment plans are put in place for any loan advanced and that proper securities are placed by borrowers to guarantee the loans;**

- (iii) **The Board of Trustees, Commodities Fund in consultation with the Parent Ministry and approval by the Cabinet Secretary National Treasury, consider writing off loans advanced to Public Mills and Out growers that were inherited by Commodities Fund based on their low recoverability in accordance to Section 69 of the Public Finance Management Act, 2012;**
- (iv) **The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation ensures that the Hand Over of Assets and Liabilities to Commodities Fund from Agriculture and Food Authority is completed in a lawful manner within three months of adoption of this report by the House; and**
- (v) **The Ethics and Anti-Corruption Commission to investigate all loans disbursed by AFFA after the Commodities Fund was established and whose documentation is unavailable for any fraudulent or corrupt conduct, or negligence and where found culpable be held liable in accordance to Section 202 of the Public Finance Management Act, No.18 of 2012, and Article 226(5) of the Constitution.**

3.2.2.3 The loans and advances balance of Ksh. 7,246,862,000 further includes Ksh. 260,888,075 in respect of an outstanding loan due from West Kenya Sugar Company, which in turn includes Ksh. 2,464,420 relating to legal fees in dispute. From the foregoing, the loans and advances from exchange transactions balance of Ksh. 7,246,862,000 as at 30th June, 2017 cannot be confirmed as fairly stated.

Management Response

83. The Managing Trustee submitted that West Kenya Sugar Co. Ltd had outstanding loan balance of Ksh. 260,888,075 as at 30th June, 2017 which included legal fees of Ksh. 2,464,420 in dispute. The fee was paid to Wetangula and Company Advocates towards perfection of loan securities for a loan of Ksh. 40 million to a Sugar miller. The Company later disputed the cost on the basis that it exceeded the applicable rates as per advocates remuneration scale.

84. The Agriculture and Food Authority (AFA) and Commodities Fund agreed that the disputed amount of Ksh. 2,464,420.00 be removed from the loan and transferred back to AFA. Commodities Fund Financial statements for period ended 30th June 2018 had been amended to remove disputed legal fees from loans and the figure transferred to AFA.
85. The Committee further received submission from the Managing Director West Kenya Sugar Company Limited regarding the outstanding loan balances and the disputed legal fees.

SUBMISSION BY MR. TEJVEER RAI, MANAGING DIRECTOR WEST KENYA SUGAR COMPANY LIMITED

86. Mr. Tejveer Rai, Managing Director of West Kenya Sugar Company Limited appeared before the Committee on 1st October, 2019. He was accompanied by Mr. Jaswat S. Rai, West Kenya Sugar Company Limited before the Committee on 1st October, 2019.
87. Mr. Tejveer Rai submitted that West Kenya Sugar Company Limited had cleared the loan balances of Ksh. 49, 0009,133.04 relating to the query, and submitted a copy of bank transfers on the same dated 30th September, 2019 for amounts of Ksh. 29,015,682.70 and Ksh. 20,000,000.00 received at National Bank of Kenya Limited, account No. 01023061389300 under account name Commodities Fund.
88. The Committee also received submission from the Managing Director, Kibos Sugar & Allied Company Industries regarding outstanding Loans owed by the Company

SUBMISSION BY MR. S.S CHATTHE, THE MANAGING DIRECTOR, KIBOS SUGAR & ALLIED COMPANY INDUSTRIES

89. Mr. S.S Chatthe, the Managing Director, Kibos Sugar & Allied Company Industries accompanied by Mr. Francis Wasuna, Advocate appeared before the Committee on 1st October, 2019 to give information regarding a loan of Ksh.133,972,375.00 advanced to Kibos Sugar & Allied Industries on 16th June, 2014 towards cane development.
90. Mr. S.S Chatthe submitted that-
- a) The Company was advanced loan amounting to Ksh. 133,972,375.00 on 16th May 2014 by the defunct Kenya Sugar Board;

- b) The Loan was secured by a charge on property L.R No. NANDI/KIBISEM/452 and L.R No. NANDI/KIBISEM/718, being Kibos Sugar & Allied Company Industries property in favour of Kenya Sugar Board;
- c) Kibos Sugar & Allied Company Industries had paid Ksh. 114,069,064.00 to Agriculture and Food Authority as Sugar Development Levy and expected that this amount be used to offset the outstanding loan balance;
- d) Commodities Fund had demanded repayment of the total loan of Ksh. 133,972,375.00 advanced to the company, plus accrued interest; and
- e) Kibos Sugar & Allied Company Industries had objected to the demand letters from Commodities Fund and filed a court case on 27th September, 2019 in the High Court at Kisumu (Constitution and Human Rights Division) Petition N0. 19 of 2019.

Committee Observations

The Committee observed that –

- (i) West Kenya Sugar Company Limited had cleared the loan balances of Ksh. 49,0009,133.04 relating to the query as per a copy of bank transfers dated 30th September, 2019 for Ksh. 29,015,682.70 and Ksh. 20,000,000.00 received at National Bank of Kenya Limited, account No. 01023061389300 under account name Commodities Fund.
- (ii) West Kenya Sugar Company Limited had cleared the loan balances on 30th September, 2019 a day before the Managing Directors appeared before the Committee;
- (iii) The accounting officer, Commodities Fund had not submitted the updated documents on loan repayment made on 30th September, 2019 to the office of the Auditor General for verification;
- (iv) The audit query remains pending verification of documents tabled before the Committee by the Auditor General. These included Bank Statements, Bank certificate and the Fund's ledgers.
- (v) Commodities Fund financial statements for the period ended 30th June, 2018 had been amended to remove disputed legal fees from loans and the figure transferred to Agriculture and Food Authority books of accounts as confirmed by the Auditor General; and

(vi) the matter between Kibos Sugar & Allied Company Industries and Commodities fund was active in court of law as per the court documents dated 27th September, 2019 tabled before the Committee.

Committee Recommendations

91. The Committee having considered the audit query recommends-
- (i) **That, the accounting officer takes appropriate measures to resolve the outstanding audit issue in accordance with Section 68 (2) (I) of the Public Finance Management Act, 2012; and**
 - (ii) **The Auditor General ensures that the audit issues are reflected in the financial statements of Agriculture and Food Authority in the subsequent year.**

3.2.3 AUDIT QUERY NO. 3- RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS

3.2.3.1 The statement of financial position as at 30th June, 2017 reflects under, current assets a net receivable from non- exchange transactions balance of Ksh. 46,280,000. Despite the Fund having full provision for the long outstanding debts of Ksh. 34,753,000, evidence of efforts made by the management of the Fund to recover, these long outstanding debts has not been provided for audit review.

Management Response

92. Accounting officer submitted that the Fund was owed Ksh. 34,753,000 as at 30th June 2017 by seven coffee intermediaries one of which had collapsed. The loans were advanced in the formative days of the defunct Coffee Development Fund when loans were being disbursed through intermediaries. The full list of intermediaries owing the funds are as follows:

Meru Central Farmers Sacco	736,614.00
Meru North Farmers Sacco	9,859.00
Michimikuru Rural Sacco	8,094,756.00
Mugama Farmers Co-op. Union	22,382,967.17
Nandi Farmers Sacco	1,528,400.00
Universal (Masaku) Traders Sacco	1,455,812.86
Cheskaki	544,690.00
	34,753,099.03

93. Cheskaki had committed to pay Ksh. 544,690 within a month and that efforts were underway to recover the rest of the funds through legal means. Demand letter was done to Mugama Farmers' Co-operative Union while for collapsed Saccos such Michimikuru and Nandi Farmers Sacco, the Fund may seek approval to write off the debts. The remaining three Saccos had counter claims for commissions which had not been settled arising from loan collections.

Committee Observations

94. The Committee observed that –

- (i) Some intermediaries which included Michimikuru, Mugama and Nandi Farmers Saccos had collapsed and money advanced to them may never be recovered;
- (ii) The Fund to continue pursuing the recovery of the loans to the others Saccos; and
- (iii) The matter remains unresolved.

Committee Recommendations

95. **The Committee having considered the audit query recommends-**

- (i) **That, the Accounting Officer with the approval of Cabinet Secretary National Treasury, consider writing off the loans advanced to the collapsed Saccos in accordance to Section 69 of the Public Finance Management Act, 2012;**
- (ii) **That, the Board of Trustees, Commodities Fund continue pursuing recovery of the loans owed by the Saccos; and**
- (iii) **The accounting officer takes appropriate measures to resolve the outstanding audit issue in accordance with Section 68 (2) (1) of the Public Finance Management Act, 2012.**

3.2.3.2 Further, disclosed under, note 15 to the financial statements is an amount of Ksh. 40,000,000 in respect of other debtors-Ministry of Agriculture, Livestock and Fisheries requested the Fund's Management to remit this amount to support Chemelil and Coffee Sub Sector Implementation Committee. However, the terms of disbursement are not clear, and no supporting information has been provided for the same. Consequently, it has not been possible to ascertain whether the amount was a loan to Chemelil Sugar Company and or the Coffee Implementation Committee. Under the circumstances, the recoverability of the

receivables from non-exchange transactions balance of Ksh. 46,280,000 as at 30th June 2017 cannot be confirmed.

Management Response

96. The accounting officer submitted that the Fund is owed Ksh. 40,000,000 by the Ministry of Agriculture, Livestock and Irrigation. The funds were requested on two different dates vide letter Ref. MOA/SDA/SC/40A dated 18th January 2017 and Letter Ref. MOALF/CORP/11/23/2 dated 9th May, 2017. The first request was meant to facilitate the Coffee Sub-Sector Task Force commence its work with a promise to refund the entire amounts when the National Treasury releases funds earmarked for task force. The second disbursement was meant to bail out Chemelil Sugar Company that at the time was in financial crises. The parent Ministry had promised to reimburse the funds to Commodities funds when it receives its allocation from the National Treasury.

97. She further submitted that the Fund did not have any direct lending arrangement with either the Coffee Subsector Task Force or Chemelil Sugar Company over the debts but was a matter between the Fund and the parent Ministry. The Fund had in the last two years sought reimbursement of the two debts from the parent Ministry without success. Enclosed are the demand letters written to the ministry. The two debts remain unsettled and the Ministry has not indicated when it will settle the amount.

Committee Observations

98. The Committee observed that –

- (i) The amount under query ought to have been loaned by Commodities Fund and not through the Ministry of Agriculture, Livestock, Fisheries and Irrigation; and
- (ii) Commodities Fund ought to have entered an agreement with the Ministry specifying on how the amount disbursed were to be repaid; and
- (iii) The query remains unresolved.

Committee Recommendations

The Committee recommends having considered the audit query recommends-

- (i) THAT, the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation ensures that of Kshs. 40,000,000 owed to Commodities Fund is refunded in the current financial year being 2019/2020; and**
- (ii) THAT, The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation ensures that the Ministry refrains from seeking funds from agencies under them.**

3.2.4 AUDIT QUERY NO. 4- TRADE AND OTHER PAYABLES FROM EXCHANGE TRANSACTIONS (CREDITORS AND ACCRUALS)

99. The statement of financial positions as at 30th June 2017 reflects under current liabilities a balance of Ksh. 66,007,000 for trade and other payables from exchange transactions. As disclosed in note 19 to the financial statements, the balance further includes Ksh. 48,760,000 for the third party payables, comprising of among others an amount of Ksh. 43,000,000, which represents cash receipts from Sugar Companies for the repayment of loans said to have been advanced by Agriculture and Food Authority (AFA). The Crops Act, 2013 does not give the Agriculture and Food Authority the power to advance loans and, without details of the loan balances, it is not clear how the Fund would account for the amount received from the Sugar Companies.

Management Response

100. The accounting officer submitted that the Fund was holding Ksh. 43,000,000 as at 30th June 2017 being receipts from Sugar Companies in respect of loans advanced by Agriculture and Food Authority (AFA) in 2015/2016 and 2016/17. The Fund was unable to apply funds in reducing borrowers loans due to lack of official hand over. Following the hand over process, the Fund has finally adopted the loans amounting Ksh. 895million in its books. The total receipts to the tune of Ksh. 43,000,000 in respect of the said loans have been applied to reduce the loan balances of the sugar companies which paid the money.

This was made possible after the loans were adopted by the Fund in-line with the hand over report.

Committee Observations

101. The Committee observed that the Fund had Ksh. 43,000,000, which represents cash receipts from Sugar Companies for the repayment of loans advanced by Agriculture and Food Authority and could not apply funds in reducing borrowers loans due to lack of official hand over.

Committee Recommendations

102. **The Committee having considered the audit query recommends-**

- (i) That, the Cabinet Secretary for Agriculture, livestock and Fisheries to ensure the handover process on sharing of Assets and Liabilities between the AFA and the Commodities Fund is fast-tracked; and**
- (ii) That, the accounting officer, Commodities Fund to take appropriate measures to resolve the outstanding audit issues in accordance with Section 68 (2) (I) of the Public Finance Management Act, 2012.**

3.2.5 AUDIT QUERY NO. 5- UNDISCLOSED MATERIAL UNCERTAINTY

103. **The statement of financial performance reflects a deficit of Ksh. 1,801,041,000 for the year ended. The statement of financial position also reflects an accumulated deficit of Ksh. 4,060,997,000 as at 30th June 2017 (2016-accumulated deficit of Ksh. 2,330,631,000). The operating deficit and the upward trend in accumulated deficit are indications of a material condition that may cast significant doubts on Fund's ability to sustain its services. However, this material uncertainty has not been disclosed by the management in the statement of Trustees responsibilities or in the notes to the financial statements.**

Management Response

104. The accounting officer submitted that the Fund had accumulated performance deficit to a tune of Ksh. 4,060,997,000 as at 30th June 2017. The deficit arises from figures in the last three years as illustrated follows:

Year	Amount. (Ksh)
2016/2017	(1,730,366,000)
2015/2016	41,598,000
2014/2015	(2,672,122,000)
Prior to 2014	299,893,000
Total	4,060,997,000

105. She further submitted that the deficit was occasioned by huge provisions on non-performing loans charged on loans adopted from the former Sugar Development Fund. At the point of adopting the loans, provisions for non-performing loans were grossly understated a fact pointed by the auditors in 2014/15 audit. Their observations led management to develop new provisions policy that resulted to enhanced provision to fully cover non-performing loans. Provisions made in the last three years are as follows:

Year	Amount (Ksh)
2016/2017	328,763,000
2015/2016	538,533,000
2014/2015	3,107,561,000
Total	3,974,857,000

106. From the above tabulation, it is clear that provisions for non-performing debts were Ksh. 3,974,857,000 out of the reported accumulated deficit of Ksh. 4,060,997,000. Commodities Fund has already taken the Sugar Development Fund loan portfolio that is not performing.

107. The Managing Trustee also submitted that the trend of poor performance may continue till such a point when privatization of public owned sugar companies is done and write off of non-performing loans totaling to Ksh. 4,357,326,000 approved by the Cabinet is implemented. The Fund had disclosed this material uncertainty in the financial statements for the period ended 30th June 2018.

Committee Observations

108. The Committee observed that-

- (i) Commodities Fund had adjusted provisions on non-performing when it inherited the loan book from Agriculture and Food Authority, which were previously understated by Agriculture and Food Authority in their books.

- (ii) The adjustment on non-performing loans was necessitated by the challenges facing the Sugar Sector which paused a risk in loan repayment; and
- (iii) There existed no criteria to determine performing and non-performing loans.

Committee Recommendations

109. The Committee considered the audit query recommends that-

- (i) **The accounting officer ensures that the securities provided against the loans can be discharged in case of failure by the borrower to repay the loan granted; and**
- (ii) **The accounting officer report non-performing loans whose likelihood of recovery is low to be under contingent liability.**

3.2.6 AUDIT QUERY NO. 6- THE FUND'S BOARD OF TRUSTEES

110. **The Crops Act No.13 of 2013, which created the Fund, did not spell out clearly the mandate of the Fund's Board of Trustees as well as its powers and responsibilities. Consequently, the Fund's Board of Trustees ability to work independently and effectively in absence of clear laws on its mandate, powers and responsibilities is doubtful. During the year under review, the Fund's Board of Trustees operated without a substantive chairman contrary to Section 6(4) of the State Corporations Act, Cap 446 of laws of Kenya. This omission apparently impacted negatively on governance of the Fund.**

Management Response

111. The accounting officer submitted that despite that fact that specific mandate of the Board was not spelt out in the Act, the void was clearly filled through the Mwongozo Code of Conduct shared by the State Corporations unit. The Code of Conduct has spelt out the roles and mandates of Boards including the Conduct of meetings and the composition in the absence of specific qualified personnel.

112. She also submitted that the lack of a substantive Chairman addressed in the same Mwongozo Code of Conduct which allows for sessional chair to take charge during each

sitting of the Board. The Chairman of the Board of Trustee was appointed and Gazetted in December 2018.

Committee Observations

113. The Committee observed that-

- (i) The Board of Trustees, Commodities Fund had proposed amendments to the Crops Act 2013 to address the challenges of its mandate and provide for the functions of the Board of Trustees; and
- (ii) The query remains unresolved until the proposed amendments which are currently before the National Assembly are considered.

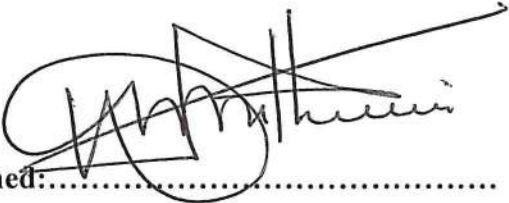
Committee Recommendations

114. **The Committee recommends that the Cabinet Secretary in charge of Agriculture, Livestock and Fisheries ensures that necessary legislation is in place to enable the Commodities Fund discharges its mandate legally.**

4.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

The Committee having considered the evidence submitted on the reports of the Auditor General for Commodities Fund for the financial years 2015/16 and 2016/17 makes the following general recommendations arising from the findings and observations

- (i) **THAT, the Committee Cabinet Secretary in charge of Agriculture, Livestock and Fisheries ensures that necessary legislation is in place to enable the Commodities Fund discharges its mandate legally;**
- (ii) **THAT, the Board of Trustees, Commodities Fund ensures that securities provided against the loans can be discharged in case of failure by the borrower to repay the loan granted;**
- (iii) **THAT, the Hand-Over Report dated 1st March 2019 sharing assets and liabilities between Agriculture and Food Authority and Commodities Fund be provided to the Auditor General for verification in the subsequent audit review;**
- (iv) **THAT, the National Treasury considers re-introducing the levies on coffee, tea and sugar to support the Fund to be able to discharge its mandate efficiently; and**
- (v) **THAT, the National Assembly allocates seed capital to the Fund to enable it revolve and finance its operations.**

Signed: 

Date: 17/10/2019.

HON. KATHURI MURUNGI, M.P.
CHAIRPERSON, SPECIAL FUNDS ACCOUNTS COMMITTEE

MINUTES OF THE 35TH SITTING OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 1ST OCTOBER, 2019 IN COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS AT 9:30 A.M.

PRESENT

1. Hon. Kathuri Murungi, M.P. - Chairperson
2. Hon. Dennitah Ghati, HSC, M.P
3. Hon. Shakeel Shabbir Ahmed, M.P
4. Hon. Erastus Kivasu Nzioka, M.P.
5. Hon. Marwa Kitayama Maisori, M.P.
6. Hon. Irene Kasalu, M.P
7. Hon. Geoffrey Omuse, M.P.
8. Hon. James Kamau Wamacukuru, M.P.
9. Hon. Mwambu Mabongah, M.P.
10. Hon. Justus Kizito Mugali, M.P.
11. Hon. Esther Passaris, M.P
12. Hon. Jared Okelo,MP

APOLOGIES

1. Hon. William Kamuren Chepkut, M.P. - **Vice Chairperson**
2. Hon. Alfred Agoi Masadia, M.P
3. Hon. Rehema Jaldesa, M.P.
4. Hon. Mark Lomunokol, M.P
5. Hon. Mohamed Ali Mohamed M.P
6. Hon. Mohamed Ali Lokiru, M.P.
7. Hon. Abdi Koropu Tepo, M.P.

COMMITTEE SECRETARIAT

1. Ms. Lucy Kimathi - Principal Clerk Assistant II
2. Helen Ekaelli - Second Clerk Assistant
3. Ms. Clare Kidombo - Research Officer I
4. Ms. Deborah Mupusi - Media Officer I
5. Ms. Naserian Kaare - Searjant-at- Arms
6. Ms. Fatuma Abdi - Audio-Recording Officer

OFFICE OF THE AUDITOR GENERAL

1. Mr. Francis Kabui - Manager – Audit
2. Mr. Peter Lugerah - Manager – Auditor
3. Sharon Wangari - Manager-Audit

THE NATIONAL TREASURY

1. Mr. Geoffrey Mwitari - Ass. Acc. General

COMMODITIES FUND

1. Hon. Mwanicha Okioma- Chairman, Board of Trustees
2. Mr. Huka Duba- Trustee
3. Mr. Silas Nyaga- Accountant
4. Ms. Roseline Wambora-Credit Manager

WEST KENYA SUGAR COMPANY LIMITED

1. Mr. Jaswat S. Rai- Chairman
2. Mr. Tejveer Rai- Managing Director

KIBOS SUGAR COMPANY

1. Mr. S.S Chatthe- Managing Director
2. Mr. Francis Wasuna- Advocate

MIN.NO./NA./SFAC/2019/192 - PRELIMINARIES

The Chairperson called the meeting to order at 9.40 a.m. with a word of prayer. The following agenda of the meeting was adopted as circulated having proposed and seconded by Hon. Geoffrey Omuse, M.P. and Hon. Mwambu Mabongah, M.P. respectively.

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters Arising
5. Managing Director
- 6. Meeting with Managing Director, West Sugar Company regarding Loans disbursed to the company by Commodities Fund**
- 7. Meeting with Managing Director, Kibos Sugar & Allied Industries regarding Loans disbursed to the company by Commodities Fund**
- 8. Meeting With Prof. Hamadi Boga , PS, State Department for Crop Development & Agricultural Research regarding the handover process between AFA and Commodities Fund**
- 9. Meeting with Dr. Richard Lesiyampe, former PS, State Department of Agriculture regarding Kshs. 20 million disbursed to support Chemelil Sugar Company.**
10. Any Other Business
11. Adjournment.

MIN.NO./NA./SFAC/2019/189 - CONFIRMATION OF MINUTES

The matter was deferred to the next meeting

**MIN.NO./NA/SFAC/2019/190- MEETING WITH MANAGING
DIRECTOR WEST KENYA SUGAR COMPANY LIMITED REGARDING
LOANS DISBURSED TO THE COMPANY BY COMMODITIES FUND**

The Chairman informed the Committee that the objective of the meeting was get further information regarding an amount of Ksh. 260, 888,075 in respect to an outstanding loan due from West Sugar Company included Ksh. 2,464,420.00 relating to legal fees, which is disputable.

This amount was amongst the audit queries contained in the reports of the Auditor-General on financial statements for Commodities Fund for the financial years 2015/2016 and 2016/2017, which the Committee had been examining.

Mr. Tejveer Rai, Managing Director West Kenya Sugar Company Limited appeared before the Committee on 1st October, 2019. He was accompanied by Mr. Jaswat S. Rai, West Kenya Sugar Company Limited before the Committee on 1st October, 2019.

Mr. Tejveer Rai submitted that West Kenya Sugar Company Limited had cleared the loan balances of Ksh. 49, 0009,133.04 relating to the query, and submitted a copy of bank transfers on the same dated 30th September, 2019 for amounts of Ksh. 29,015,682.70 and Ksh. 20,000,000.00 received at National Bank of Kenya Limited, account No. 01023061389300 under account name Commodities Fund.

However, the Auditor General indicated that Commodities Fund had not submitted the following documents for verification, hence the audit query remains outstanding pending verification of the same documents

- i. Bank Statements to ascertain that payment had been done
- ii. Bank Certificate to allow access their account and
- iii. The Fund's ledger

Commodities Fund acknowledged that they had received the full amount on 30th September, 2019 and would update their records accordingly and liaise with the office of the Auditor General for verification of the bank transfer documents as requested by the auditor general.

Committee observations

1. The Loans were cleared on 30th September, 2019 a day before the Managing Directors appeared before the Committee;
2. The accounting officer, Commodities Fund had not submitted the updated documents on loan repayment made on 30th September, 2019 to the office of the Auditor General for verification; and
3. The audit query remains.

**MIN.NO./NA/SFAC/2019/191- MEETING WITH MANAGING
DIRECTOR KIBOS SUGAR & ALLIED COMPANY INDUSTRIES**

The Chairman informed the Committee that the objective of the meeting was get further information regarding a loan amounting to Ksh. 133,972,375.00 advanced to Kibos Sugar & Allied Industries on 16th June, 2014 towards cane development is amongst loans relating to “*Loans and Advances from Exchange Transactions*” relating to the reports of the auditor general as informed by the Managing Trustees during the submission made to the Committee.

Mr. S.S Chatthe, the Managing Director, Kibos Sugar & Allied Company Industries accompanied by Mr. Francis Wasuna, Advocate appeared before the Committee on 1st October, 2019.

1. The Company was advanced loan amounting to Ksh. 133,972,375.00 on 16th May 2014 by the defunct Kenya Sugar Board;
2. Commodities Fund had demanded repayment of this amount together with accrued interest;
3. The Loan was secured by a charge on property L.R No. NANDI/KIBISEM/452 and L.R No. NANDI/KIBISEM/718, being Kibos Sugar & Allied Company Industries property in favour of Kenya Sugar Board;
4. Ksh. 114,069,064.00 paid by Kibos Sugar & Allied Company Industries to Agriculture and Food Authority as Sugar Development Levy be used to offset the outstanding loan balance;
5. Kibos Sugar & Allied Company Industries had objected demand letters from Commodities Fund and filed a court case on 27th September, 2019 in the High Court at Kisumu (Constitution and Human Rights Division) Petition NO. 19 of 2019.

Committee observations

The issue between Kibos Sugar & Allied Company Industries and Commodities fund was before a court of law, hence sub judice.

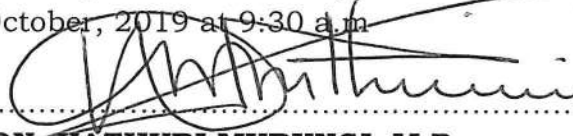
**MIN.NO./NA/SFAC/2019/193- MEETING WITH THE PS, STATE
DEPARTMENT FOR CROP DEVELOPMENT & AGRICULTURAL
RESEARCH REGARDING THE HANDOVER PROCESS BETWEEN AFA
AND COMMODITIES FUND**

The Chairperson informed the Committee that the Principal Secretary had failed to appear before the Committee as invited.

The secretariat informed the Committee that the letter inviting the Principal Secretary had been delivered to their offices, and that no feedback had been received. The Committee will make a determination on the matter.

MIN.NO./NA./SFAC/2019/194 - ADJOURNMENT/DATE OF NEXT MEETING

The meeting was adjourned at 1.40 p.m. and the next meeting will be held on notice 3rd October, 2019 at 9:30 a.m.

SIGNED.....

HON. KATHURI MURUNGI, M.P

(Chairperson)

DATE.....17/10/2019

MINUTES OF THE SITTING OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE REPORT WRITING RETREAT ON AUDITED FINANCIAL STATEMENTS OF COMMODITIES FUND FOR THE YEAR ENDED 30TH JUNE, 2016 AND YEAR ENDED 30TH JUNE 2017 IN MOMBASA COUNTY ON THURSDAY, 29TH AUGUST, 2019 AT 9.30 A.M.

PRESENT

1. Hon. Kathuri Murungi, M.P. - **Chairperson**
2. Hon. William Kamuren Chepkut, M.P. - **Vice Chairperson**
3. Hon. Alfred Agoi Masadia, M.P.
4. Hon. Geoffrey Omuse, M.P.
5. Hon. Esther Passaris, OGW, M.P.
6. Hon. Mohamed Ali Mohamed M.P.
7. Hon. James Kamau Wamacukuru, M.P.
8. Hon. Dennitah Ghati, HSC, M.P.

APOLOGIES

1. Hon. Shakeel Shabbir Ahmed, CBS, M.P.
2. Hon. Marwa Kitayama Maisori, M.P.
3. Hon. Erastus Kivasu Nzioka, M.P.
4. Hon. Dr. Irene Kasalu, MP
5. Hon. Jared Okelo, M.P.
6. Hon. Justus Kizito Mugali, M.P.
7. Hon. Irene Kasalu, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Mark Lomunokol, M.P.
11. Hon. Rehema Jaldesa, M.P.
12. Hon. Abdi Koropu Tepo, M.P.

COMMITTEE SECRETARIAT

1. Ms. Hellen Ekadeli - Second Clerk Assistant
2. Ms. Clarah Kimeli - Senior Legal Counsel
3. Mr. Robert Ngetich - Fiscal Analyst
4. Ms. Kaare Naserian - Serjeant-at-Arms
5. Mr. James Muriuki - Parliament Security Officer
6. Ms. Fatuma Abdi - Audio-Recording Officer

7. Mr. Meshack Mutali - Office Attendant

IN-ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

1. Mr. Francis Kabui - Manager – Audit
2. Mr. Stephen M. Taiku - Manager – Audit
3. Mr. Peter Lugerah - Manager - Audit

NATIONAL TREASURY

1. Mr. Geoffrey Mwitari - Asst. Accountant

MIN.NO./NA./SFAC/2019/017 - PRELIMINARIES

The meeting was called to order at 10.00 a.m. with a word of prayer from the Chairperson. The agenda of the meeting was as circulated:

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters Arising
5. Consideration of the draft report on audited financial statements on Commodities Fund for year ended 30th June, 2016 and year ended 30th June, 2017.
7. Any Other Business
8. Adjournment.

MIN.NO./NA./SFAC/2019/018 - CONFIRMATION OF MINUTES

There were no minutes to be confirmed and therefore no matters arising.

MIN.NO./NA./SFAC/2019/019 - CONSIDERATION OF THE DRAFT REPORT ON AUDITED FINANCIAL STATEMENTS ON COMMODITIES FUND FOR YEAR ENDED 30TH JUNE, 2016.

1. LOANS AND ADVANCES FROM EXCHANGE TRANSACTIONS

The statement of financial position as at 30 June 2016 reflects loans and advances totaling Kshs. 8,418,075,000, as disclosed under Note 17(ii) to the financial statements. This balance, however, includes non-performing loans totaling Kshs. 5,565,961,068 advanced to various companies. As previously reported, some of these companies are under receivership with an accrued

interest of Kshs. 1,227,735,409. Although full provisions on these long outstanding debts whose recovery remains doubtful has been made, no evidence has been provided for verification showing the actions being taken to ensure recovery of the outstanding loans and accrued interest.

Further, the loan balance of Kshs. 8,418,075,000 also includes an amount of Kshs. 1,915,615,011 advanced to five sugar companies in 2014/15 including one under receivership. Although it has been explained that the loans were processed and disbursed by the Agriculture and Food Authority (AFA) Sugar Directorate, evidence of the board's Minutes approving the loans has not been presented for audit verification. The loan balance of Kshs. 8,418,075,000 further includes Kshs. 260,888,075 in respect of an outstanding loan due from West Kenya Sugar Company, which in turn includes Kshs. 2,464,420 relating to legal fees in dispute. From the foregoing, loans and advances from exchange transactions balance of Kshs. 8,418,075,000 as at 30 June 2016 could not be confirmed as fairly stated.

Committee Observations

- (i) The Fund had made efforts to institute measures to ensure more loans were recovered. This included requests to the Ministry of Agriculture, Livestock and Fisheries for inclusion of sugar loan debt repayment by Government owned sugar mills in their Performance Contracts vide letter of Ref. No. CF/MOA/VOL. 1/1 dated 5th September 2017;
- (ii) Chances of full recovery of outstanding loans was low given the challenges facing the Sugar Sector in Kenya, where some companies are under receivership;
- (iii) Most Loans constituted of arrears owned to farmers and cost incurred towards factory rehabilitation;
- (iv) The Fund had made demands to various companies for loan repayments and issued a 30 day pre-listing notification dated 10th April, 2018 to all its customers of its intention to submit credit information pursuant to regulation 25 (1) of the Credit Reference Bureau Regulations, 2013 to enhance debt repayment;
- (v) The Fund had been granted approval by the Central Bank of Kenya to be a third party source of credit information to the bureau as per the

Credit reference Bureau Regulations 2013 vide communication dated 21st May 2018;

- (vi) The Fund made a follow-up with Agriculture and Food Authority (AFA) to provide the required Board minutes to the Auditors. The minutes were later provided. The disputed legal fee that was included in west Kenya Sugar Company loans has been removed and transferred back to AFA;
- (vii) The Fund was considering seeking authorization from the parent Ministry to write-off doubtful loans, especially those which have remained outstanding for over 10 years; and
- (viii) The Fund's financial performance is weak based on the low recovery of advanced loans making it non-revolving.

Committee Recommendations

- (i) The Board of Trustees ensures that outstanding loans are recovered and that the Fund is self-revolving;
- (ii) The Board of Trustees Fund ensures proper repayment plans are put in place for any loan advanced and that proper securities are placed by borrowers to guarantee the loans;
- (iii) The Board in consultation with the Parent Ministry and approval by the Cabinet Secretary National Treasury, consider writing off loans advanced to Public Mills and Out growers that were inherited by Commodities Fund based on their low recoverability in accordance to Section 69(2) of the Public Finance Management Act, 2012; and
- (iv) The National Assembly to allocate seed capital to the Fund established by law to enable them revolve and finance their operations.

2. CURRENT RECEIVABLES FROM EXCHANGE TRANSACTIONS

The current receivables from exchange transactions balance of Kshs. 24,208,000 reflected in the statement of financial position as at 30 June 2016, excludes as in the previous year, an amount of Kshs. 146, 717,000 due from the defunct Sugar Development Fund in relation to expenses incurred by the Fund on behalf of various institutions some of which are under receivership, prepayments and deposits of Kshs. 100,000 and imprests of Kshs. 1,349,000 from former employees. The balance of Kshs. 24,208,000 is therefore understated by the excluded amounts.

Committee Recommendations

- (i) The Ministry responsible for Agriculture to ensure that the overlap of functions between AFA and Commodities Fund is addressed through legislation; and
- (ii) The accounting officer to take appropriate measures to resolve the outstanding audit issue in accordance with Section 68 (2) (1) of the Public Finance Management Act, 2012.

In addition, the Committee resolved to:

- a) *Invite the Managing Director, Kibos Sugar & Allied Industries to apprise it on the efforts that the company had made to clear the loan balances and accrued interest which currently stands at Ksh. 171,741,940.37 based on its failure to honour loan repayment; and*
- b) *Invite the Principal Secretary, State Department for Crop Development & Agricultural Research to appraise the Committee on the hand over process between AFA and Commodities Fund.*
- c) *Invite Dr. Richard L. Lesiyampe, former Principal Secretary, State Department for Crop Development & Agricultural Research to respond on matters in respect of Ksh. 20million disbursed to Chemill Sugar Company.*

3. RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS

The receivables from non-exchange transactions balance of Kshs. 42,057,000 reflected in the statement of financial position as at 30 June 2016, and as previously reported excludes Kshs. 1,837,694,000 due from the defunct Sugar Development Fund. Under the circumstance, the accuracy and completeness of the receivables from non-exchange transactions figure of Kshs. 42,057,000 as at 30 June 2016 cannot be confirmed.

Committee Observations

- (i) The amount of Kshs.1,837,694,000 due from the defunct Sugar Development Fund which is subject to the audit query had been excluded from the financial statements of Commodities Fund having been taken over by AFA as indicated in the hand over report;
- (ii) There is overlap of mandate between AFA and Commodities Fund under the current law where Section 33 of the Crops Act, 2013 provides that proceeds of any levy imposed shall form part of the general funds and property of the Agriculture and Food Authority and may be used by the

Authority in the furtherance or exercise of any function or power of the Authority;

- (iii) The Agriculture and Food Authority continued to advance loans despite the fact that this is sole mandate of Commodities Fund, hence there exist conflict in mandates of the two institutions under the current Act; and
- (iv) The loans under the query are reflected under Agriculture and Food Authority audited financial statements in the subsequent years as confirmed by the Auditor-General;

Committee Recommendations

- (i) The Cabinet Secretary for Agriculture, livestock and Fisheries to ensure the handover process on sharing of Assets and Liabilities between the AFA and the Commodities Fund is fast-tracked; and
- (ii) The accounting officers for AFA and Commodities Fund to take appropriate measures to resolve the outstanding audit issues in accordance with Section 68 (2) (1) of the Public Finance Management Act, 2012.

MIN.NO./NA./SFAC/2019/020 - ADJOURNMENT/DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 1.00 p.m.

SIGNED.....

for 
HON. KATHURI MURUNGI, M.P
(Chairperson)

DATE.....

17/9/2019

MINUTES OF THE SITTING OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE REPORT WRITING RETREAT ON AUDITED FINANCIAL STATEMENTS OF COMMODITIES FUND FOR YEAR ENDED 30TH JUNE 2017 IN MOMBASA COUNTY ON FRIDAY, 30TH AUGUST, 2019 AT 9.30 A.M.

PRESENT

- | | | |
|---------------------------------------|---|-------------------------|
| 1. Hon. Kathuri Murungi, M.P. | - | Chairperson |
| 2. Hon. William Kamuren Chepkut, M.P. | - | Vice Chairperson |
| 3. Hon. Alfred Agoi Masadia, M.P | | |
| 4. Hon. Geoffrey Omuse, M.P. | | |
| 5. Hon. Esther Passaris, OGW, M.P. | | |
| 6. Hon. Mohamed Ali Mohamed M.P | | |
| 7. Hon. James Kamau Wamacukuru, M.P. | | |
| 8. Hon. Dennitah Ghati, HSC, M.P | | |

APOLOGIES

1. Hon. Shakeel Shabbir Ahmed, CBS, M.P
2. Hon. Marwa Kitayama Maisori, M.P.
3. Hon. Erastus Kivasu Nzioka, M.P.
4. Hon. Dr. Irene Kasalu, MP
5. Hon. Jared Okelo, M.P.
6. Hon. Justus Kizito Mugali, M.P.
7. Hon. Irene Kasalu, M.P
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Mark Lomunokol, M.P
11. Hon. Rehema Jaldesa, M.P.
12. Hon. Abdi Koropu Tepo, M.P.

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|-----------------------------|
| 1. Ms. Hellen Ekadeli | - | Second Clerk Assistant |
| 2. Ms. Clarah Kimeli | - | Senior Legal Counsel |
| 3. Mr. Robert Ngetich | - | Fiscal Analyst |
| 4. Ms. Kaare Naserian | - | Serjeant-at-Arms |
| 5. Mr. James Muriuki | - | Parliament Security Officer |
| 6. Ms. Fatuma Abdi | - | Audio-Recording Officer |
| 7. Mr. Meshack Mutali | - | Office Attendant |

IN-ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

- | | | |
|-------------------------|---|-----------------|
| 1. Mr. Francis Kabui | - | Manager – Audit |
| 2. Mr. Stephen M. Taiku | - | Manager – Audit |
| 3. Mr. Peter Lugerah | - | Manager - Audit |

NATIONAL TREASURY

1. Mr. Geoffrey Mwitari - Asst. Accountant

MIN.NO./NA./SFAC/2019/025 - PRELIMINARIES

The meeting was called to order at 10.00 a.m. with a word of prayer from the Chairperson. The agenda of the meeting was as circulated:

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters Arising
5. Consideration of the draft report on audited financial statements on Commodities Fund for year ended 30th June, 2017.
7. Any Other Business
8. Adjournment.

MIN.NO./NA./SFAC/2019/026 - CONFIRMATION OF MINUTES

There were no minutes to be confirmed and therefore no matters arising.

MIN.NO./NA/SFAC/2019/027 - CONSIDERATION OF THE DRAFT REPORT ON AUDITED FINANCIAL STATEMENTS ON COMMODITIES FUND FOR YEAR ENDED 30TH JUNE, 2017.

1. TRANSFER OF ASSETS AND LIABILITIES FROM DEFUNCT SUGAR DEVELOPMENT FUND

Commodities Fund was constituted by merging the Sugar Development Fund and Coffee Development Fund after enactment of Crops Act No.13 of 2013. The Initial investments of Commodities Fund were expected to be inherited and derived from the two defunct funds. However, it has been observed that, while an amount of Kshs. 1,178,153,000 was contributed by the defunct Coffee Development Fund, an amount of Kshs. 4,052,300,000 that was to be contributed by the Sugar Development Fund was instead taken over by the Sugar Directorate under Agriculture and Food Authority (AFA).

Whereas the assets of the former Coffee Development Fund were automatically taken over by the new formed Commodities Fund, the same did not happen with the assets and liabilities held by the former Sugar Development Fund. There exists no official hand over report or any record to show how the assets and liabilities of the Sugar Development Fund were shared between Agriculture and Food Authority (AFA) and Commodities Fund. Consequently the completeness and accuracy of the total net assets and liabilities of Kshs. 10,276,416,000 of the Fund as reflected in the statement of financial position as at 30th June 2017 cannot be confirmed.

Committee Observations

- (i) As at the time of audit review, there was no handing over report by AFA to Commodities Fund as contained in the audit report and therefore it was not possible to ascertain the assets and liabilities transferred to Commodities Fund;
- (ii) Although the management has indicated the Commodities Fund was handed over Assets of Ksh. 14,982,616,000.00 which comprised of Long-term loans and interest on loans whilst Agriculture and Food Authority took over Assets amounting to Ksh. 6,362,020,000, in the handing over report dated 1st March 2019 which is yet to be verified by the auditor general;
- (iii) Assets retained by AFA included short term deposits of Ksh. 4,053,033,000.00 and the Authority continued receiving loan repayment amounts and levies even after creation of Commodities Fund, hence the amount retained is higher than the figure indicated in the hand over report dated 1st March 2019; and
- (iv) Upon enactment of Crops Act No.13 of 2013, the Assets and Liabilities of the defunct Sugar Development Fund and Coffee Development Fund ought to have been fully transferred to Commodities Fund.

Committee Recommendation

The Cabinet Secretary, Ministry of Agriculture, Livestock, and Fisheries ensures that the Hand Over of Assets and Liabilities to Commodities Fund from Agriculture and Food Authority is completed in a lawful manner within three months of adoption of this report by the House.

2. LOANS AND ADVANCES FROM EXCHANGE TRANSACTIONS

(a) As previously reported, the statement of financial position as at 30 June 2017 reflects under non-current assets loans and advances totaling to Kshs. 7,246,862,000, and as disclosed in the financial statements. This balance is net of Kshs. 7,796,306,000 in respect of provisions for non-performing loans advanced to various companies some of which are under receivership with accrued interest of Kshs. 2,534,150,000. Although full provision has been made, on these long outstanding debts whose recovery remains doubtful, no evidence has been provided for verification showing the actions being taken to ensure recovery of the outstanding loans and accrued interest.

Committee Observations

The Committee observed that –

- (i) Commodities Fund had inherited huge amounts on outstanding loans inherited from the defunct Sugar Directorate;
- (ii) The Fund had instituted key measures geared towards enhancing recovery of loans;

- (iii) The parent Ministry had declined approval of a proposal by the Fund to include sugar loan debt repayment by government owned sugar mills as part of key performance indicators in the company's Performance Contracts for the period 2017/2018;
- (iv) Some of the companies which owed the loans are under receivership while others are facing liquidity challenges; and
- (v) The audit query was carried over from audited financial statements of the Fund for the year ended June, 2016 and remains unresolved as reported by the Auditor-General.

Committee Recommendations

- (i) The Fund to continue pursuing the outstanding loans to ensure funds are recovered and that the Fund is self-revolving;
- (ii) The Board of Trustees Fund ensures proper repayment plans are put in place for any loan advanced and that proper securities are placed by borrowers to guarantee the loans;
- (iii) The Board in consultation with the Parent Ministry and approval by the Cabinet Secretary National Treasury, consider writing off loans advanced to Public Mills and Out growers that were inherited by Commodities Fund based on their low recoverability in accordance to Section 69 of the Public Finance Management Act, 2012;
- (iv) The National Assembly to allocate seed capital to the Fund established by law to enable them revolve and finance their operations; and
- (v) The National Government to intervene and support the performance of the public sugar factories.

(b) The loans and advances balance of Kshs. 7,246,862,000 includes amount of Kshs. 1,915,615,011 advanced to five sugar companies in 2014/15 including one under receivership. Although management explained that the loans were processed and disbursed by the Agriculture and Food Authority (AFA) Sugar Directorate, the management did not produce evidence of guarantors and loan security during the audit to confirm the loans are secure.

Committee Observations

- (i) The loans under the audit query were advanced by Agriculture and Food Authority and transferred to Commodities Fund during the hand over process of Assets and Liabilities of the two Institutions;
- (ii) Some securities that were used to advance the loans are non-financial in nature and cannot be used as a charge against the loans. These included Farmers Arrears Loans Agreement and Debentures;
- (iii) Loans advanced as farmers arrears do not qualify as loans under the mandate of Commodities Fund hence their recoverability is low; and

- (iv) The query remains unresolved since the loans have not been recovered and were given without sufficient security.

Committee Recommendations

- (i) That the then Cabinet Secretary and the Interim-Director General be investigated for any improper conduct, or negligence on failure to secure public funds;
- (ii) The Board of Trustees Fund ensures proper repayment plans are put in place for any loan advanced and that proper securities are placed by borrowers to guarantee the loans;
- (iii) The Board in consultation with the Parent Ministry and approval by the Cabinet Secretary National Treasury, consider writing off loans advanced to Public Mills and Out growers that were inherited by Commodities Fund based on their low recoverability in accordance to Section 69 of the Public Finance Management Act, 2012;
- (iv) The Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation ensures that the Hand Over of Assets and Liabilities to Commodities Fund from Agriculture and Food Authority is completed in a lawful manner within three months of adoption of this report by the House; and
- (v) The Ethics and Anti-Corruption Commission to investigate all loans disbursed by AFFA after the Commodities Fund was established and whose documentation is unavailable for any fraudulent or corrupt conduct, or negligence and where found culpable be held liable in accordance to Section 202 of the Public Finance Management Act, No.18 of 2012, and Article 226(5) of the Constitution.

c) The loans and advances balance of Kshs. 7,246,862,000 further includes Kshs. 260,888,075 in respect of an outstanding loan due from West Kenya Sugar Company, which in turn includes Kshs. 2,464,420 relating to legal fees in dispute. From the foregoing, the loans and advances from exchange transactions balance of Kshs. 7,246,862,000 as at 30th June, 2017 cannot be confirmed as fairly stated.

Committee Observations

- (i) Commodities Fund financial statements for the period ended 30th June, 2018 had been amended to remove disputed legal fees from loans and the figure transferred to Agriculture and Food Authority books of accounts as confirmed by the Auditor-General; and
- (ii) The balance Kshs. 258,423,655 in respect of an outstanding loan due from West Kenya Sugar Company has not been addressed by the Fund and therefore remains unresolved.

Committee Recommendations

- (i) The accounting officer to take appropriate measures to resolve the outstanding audit issue in accordance with Section 68 (2) (l) of the Public Finance Management Act, 2012.
- (ii) The Auditor-General ensures that the audit issues are reflected in the financial statements of Agriculture and Food Authority in the subsequent year.

3. RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS

(a) The statement of financial position as at 30th June 2017 reflects under, current assets a net receivable from non- exchange transactions balance of Kshs. 46,280,000. Despite the Fund having full provision for the long outstanding debts of Kshs. 34,753,000, evidence of efforts made by the management of the Fund to recover, these long outstanding debts has not been provided for audit review.

Committee Observations

- (i) Some intermediaries which included Michimikuru, Mugama and Nandi Farmers Saccos had collapsed and money advanced to them may never be recovered;
- (ii) The Fund to continue pursuing the recovery of the loans to the others Saccos; and
- (iii) The matter remains unresolved.

Committee Recommendations

- (i) The Accounting Officer with the approval of Cabinet Secretary National Treasury, consider writing off the loans advanced to the collapsed Saccos in accordance to Section 69 of the Public Finance Management Act, 2012;
- (ii) The Fund to continue pursuing the recovery of the loans to the others Saccos; and
- (iii) The accounting officer to take appropriate measures to resolve the outstanding audit issue in accordance with Section 68 (2) (l) of the Public Finance Management Act, 2012.

(b) Further, disclosed under, note 15 to the financial statements is an amount of Kshs. 40,000,000 in respect of other debtors-Ministry of Agriculture, Livestock and Fisheries requested the Fund's Management to remit this amount to support Chemelil and Coffee Sub Sector Implementation Committee. However, the terms of disbursement are not clear, and no supporting information has been provided for the same. Consequently, it has not been possible to ascertain whether the amount was a loan to Chemelil Sugar Company and or the Coffee Implementation Committee. Under the circumstances, the recoverability of the receivables from non-exchange

transactions balance of Kshs. 46,280,000 as at 30th June 2017 cannot be confirmed.

Committee Observations

- (i) The amount under query ought to have been loaned by Commodities Fund and not through the Ministry of Ministry of Agriculture, Livestock and Fisheries;
- (ii) Commodities Fund ought to have entered an agreement with the Ministry specifying on how the amount disbursed were to be repaid; and
- (iii) The query remains unresolved.

Committee Recommendations

- (i) The Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries ensures that of Kshs. 40,000,000 owed to Commodities Fund is refunded in the current financial year being 2019/2020; and
- (ii) The Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries ensures that the Ministry refrains from seeking funds from agencies under them.

MIN.NO./NA./SFAC/2019/028 - ADJOURNMENT/DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 1.00 p.m.

SIGNED.....


HON. KATHURI MURUNGI, M.P
(Chairperson)

DATE.....

17/9/2019

MINUTES OF THE SITTING OF THE SPECIAL FUNDS ACCOUNTS COMMITTEE REPORT WRITING RETREAT ON AUDITED FINANCIAL STATEMENTS OF COMMODITIES FUND FOR YEAR ENDED 30TH JUNE 2017 IN MOMBASA COUNTY ON FRIDAY, 30TH AUGUST, 2019 AT 2.00 P.M.

PRESENT

- | | | |
|---------------------------------------|---|-------------------------|
| 1. Hon. Kathuri Murungi, M.P. | - | Chairperson |
| 2. Hon. William Kamuren Chepkut, M.P. | - | Vice Chairperson |
| 3. Hon. Alfred Agoi Masadia, M.P. | | |
| 4. Hon. Geoffrey Omuse, M.P. | | |
| 5. Hon. Esther Passaris, OGW, M.P. | | |
| 6. Hon. Mohamed Ali Mohamed M.P. | | |
| 7. Hon. James Kamau Wamacukuru, M.P. | | |
| 8. Hon. Dennitah Ghati, HSC, M.P. | | |

APOLOGIES

1. Hon. Shakeel Shabbir Ahmed, CBS, M.P.
2. Hon. Marwa Kitayama Maisori, M.P.
3. Hon. Erastus Kivasu Nzioka, M.P.
4. Hon. Dr. Irene Kasalu, MP
5. Hon. Jared Okelo, M.P.
6. Hon. Justus Kizito Mugali, M.P.
7. Hon. Irene Kasalu, M.P.
8. Hon. Mwambu Mabongah, M.P.
9. Hon. Mohamed Ali Lokiru, M.P.
10. Hon. Mark Lomunokol, M.P.
11. Hon. Rehema Jaldesa, M.P.
12. Hon. Abdi Koropu Tepo, M.P.

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|-----------------------------|
| 1. Ms. Hellen Ekadeli | - | Second Clerk Assistant |
| 2. Ms. Clarah Kimeli | - | Senior Legal Counsel |
| 3. Mr. Robert Ngetich | - | Fiscal Analyst |
| 4. Ms. Kaare Naserian | - | Serjeant-at-Arms |
| 5. Mr. James Muriuki | - | Parliament Security Officer |
| 6. Ms. Fatuma Abdi | - | Audio-Recording Officer |
| 7. Mr. Meshack Mutali | - | Office Attendant |

IN-ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

- | | | |
|-------------------------|---|-----------------|
| 1. Mr. Francis Kabui | - | Manager – Audit |
| 2. Mr. Stephen M. Taiku | - | Manager – Audit |
| 3. Mr. Peter Lugerah | - | Manager - Audit |

NATIONAL TREASURY

- | | | |
|-------------------------|---|------------------|
| 1. Mr. Geoffrey Mwitari | - | Asst. Accountant |
|-------------------------|---|------------------|

MIN.NO./NA./SFAC/2019/029 - PRELIMINARIES

The meeting was called to order at 2.30 p.m. with a word of prayer from the Chairperson. The agenda of the meeting was as circulated:

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters Arising
5. Consideration of the draft report on audited financial statements on Commodities Fund for year ended 30th June, 2017.
7. Any Other Business
8. Adjournment.

MIN.NO./NA./SFAC/2019/028 - CONFIRMATION OF MINUTES

There were no minutes to be confirmed and therefore no matters arising.

MIN.NO./NA./SFAC/2019/029 - CONSIDERATION OF THE DRAFT REPORT ON AUDITED FINANCIAL STATEMENTS ON COMMODITIES FUND FOR YEAR ENDED 30TH JUNE, 2017.

4. TRADE AND OTHER PAYABLES FROM EXCHANGE TRANSACTIONS (CREDITORS AND ACCRUALS)

The statement of financial positions as at 30th June 2017 reflects under current liabilities a balance of Kshs. 66,007,000 for trade and other payables from exchange transactions. As disclosed in note 19 to the financial statements, the balance further includes Kshs. 48,760,000 for the third party payables, comprising of among others an amount of Kshs. 43,000,000, which represents cash receipts from Sugar Companies for the repayment of loans said to have been advanced by Agriculture and Food Authority (AFA). The Crops Act, 2013 does not give the Agriculture and Food Authority the power to advance loans and, without details of the loan balances, it is not clear how the Fund would account for the amount received from the Sugar Companies.

Committee Observation

- (i) The Committee observed that the Fund had Kshs. 43,000,000, which represents cash receipts from Sugar Companies for the repayment of loans advanced by Agriculture and Food Authority and could not apply funds in reducing borrowers loans due to lack of official hand over.

Committee Recommendations

- (i) The Cabinet Secretary for Agriculture, livestock and Fisheries to ensure the handover process on sharing of Assets and Liabilities between the AFA and the Commodities Fund is fast-tracked; and
- (ii) The accounting officers for AFA and Commodities Fund to take appropriate measures to resolve the outstanding audit issues in

Through letter dated 22nd January 1996 Arkel International Incorporation released the following to Nzoia Sugar Co. Ltd:

- All machinery and equipment described in Schedule I, in accordance with Clause 5 of the Settlement Agreement between Arkel International Inc. and Nzoia Sugar Co
- In accordance with Clause 8, represents and warrants that all the machinery and equipment released to Nzoia pursuant to Clause 5 hereof meets technical specifications provided for by the Contract as amended by the Amendment 1 of the contract dated 14th December 1991.

b) Audit Inspection of Nzoia Sugar Company

The project was troubled, with delays and cost overruns. The project was interrupted after some equipment delivery and laying of foundation for the expansion. It was also reported that some plant and machinery were never delivered and some were not installed.

Following the recommendations of the Sixth Report of the Public Investment Committee, the Government decided to appoint an Audit Inspection Team composed of various professionals including Engineers, lawyers, etc to verify what was and what was not provided for vis-à-vis the total amount of money paid to Arkel International Inc. for Phase I and II expansion of Nzoia Sugar Company.

The Team was also to carry out investigations to establish the technical competence of Arkel International Inc. as an engineering company capable of implementing the job it tendered for with a view to finding out whether Arkel International Inc. misinterpreted themselves thereby fraudulently winning the tender. In addition, the Team was to investigate the various activities of the company with a view to establishing any criminal action or fraudulent activities in the financial management of the company and prosecuting those involved in such actions and activities.

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c) Payment by Treasury

During the 24th Meeting of the SDF Management Committee held on 12th March 1997, the Committee noted that a letter had been done to Treasury on the Non-performance of Government's obligation under the Arkel agreement. In response to a letter ref: KSA/C/2A dated 1st April 1997 from the then Kenya Sugar Authority (KSA), the Ministry of Finance through letter ref. Z.Z. 1.3/10 dated 4th May 1997 gave a commitment to repay the loan as follows.

- Kshs. 30 million as provided for in the draft estimates for 1997/98 under the Development vote
- Balance of the US \$ 5.0 Million to be repaid over a period of two years

The Ministry of Finance paid the Kshs. 30 million on 15th July 1998. No other loan repayments have been received and the current loan balance stands at 262,816,823.35.

d) Legal

The SDF Management Committee at a meeting held on 26th July 1996 passed a resolution to have its interest in the Machinery/Equipment for Phase 11 expansion Project (Arkel) worth \$ 5 million (Kshs, 292,816,823.35) secured. At its 20th Meeting under Min SDF/57/96, the SDF Management Committee resolved that a suitable instrument be registered by the Authority to secure the \$ 5 million advanced to Nzoia Sugar Company. Against a fee note No. 1047 dated 5th September 1996, a cheque of Kshs. 4,832,177.30 vide voucher dated 3rd October 1996 was processed in favour of Wetangula and Company Advocates to facilitate the registration of a legal debenture.

The loan is secured through a debenture dated 8th October 1996.

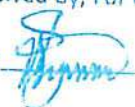
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e) **Way Forward**

AFA will be scheduling a meeting with Nzoia Sugar Management to get other details including the current status of the project and will thereafter prepare a detailed report on the Nzoia/Arkel project.

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APPENDIX 3

KENYA SUGAR BOARD/AGRICULTURE FINANCE CORPORATION
AGENCY LENDING AGREEMENT

AFC are yet to submit the status report on the AFC/AFCB Agency Agreement. AFA are following up on the matter. Once this report is received it will be submitted to yourselves. AFA undertakes to, within a period of six months, submit the final report once verification and authentication has been undertaken.

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SCHEDULE OF LOAN AND LEGAL FEES FILES**LOAN FILES**

	AGRICULTURAL FINANCE CORPORATION
1	AFC LENDING TO LARGE SCALE FARMERS
2	AFC LENDING TO INDIVIDUAL FARMERS
3	AFC CORRESPONDENCES
4	AFC - MIGORI
5	AFC
6	CREDIT LENDING TO LARGE SCALE
7	LENDING TO LARGE SCALE FARMERS AFC
8	AFC CORRESPONDENCE ON THE CREDIT MANAGEMENT AGENCY AGREEMENT
	BUSIA OUTGROWERS
1	BUSIA OUTGROWERS COMPANY (BOCO) KSHS. 44,800,000
2	BUSIA OUTGROWERS CO. LTD MACHINERY LOAN (CT) 44.8M
3	BUSIA OUTGROWERS COMPANYS CANE DEVELOPMENT 76M GENERAL FILE
4	BUSIA OUTGROWERS SUGAR COMPANY KSHS 58,007,113 ADD LOANS 1,630,000 FOR CANE HAULAGE FLEET
	BUSIA SUGAR COMPANY
	BUSIA SUGAR CO.
2	BUSIA SUGAR CO. APPLICATION OF 20.4 MILLION LOAN (CANE DEVELOPMENT)
3	BUSIA SUGAR CO. GENERAL
4	BUSIA SUGAR CO. LOAN APPLICATION FORM/CORRESPONDENCE 40 MILLION
5	BUSIA SUGAR COMPANY LOAN APPLICATION KSH 52.4 MILLION
6	BUSIA SUGAR CO. CANE DEVELOPMENT (200M)
7	BUSIA SUGAR CO. GENERAL FILE
8	BUSIA SUGAR COMPANY CANE DEVELOPMENT LOAN KSH 20.4M
	BUTALI SUGAR COMPANY
1	BUTALI SUGAR COMPANY LIMITED KSHS. 81,770,000
2	BUTALI SUGAR COMPANY LIMITED KSHS. 105 MILLION CANE DEVELOPMENT
3	BUTALI SUGAR COMPANY KSHS. 331,190,000
	CHEMELIL OUTGROWERS
1	CHEMELIL OUTGROWERS COMPANY

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2	CHEMELIL OUTGROWERS CANE DEVELOPMENT KSHS. 832M-105M
3	CHEMELIL OUTGROWERS COMPANY
4	CHEMELIL OUTGROWERS COMPANY
	CHEMELIL SUGAR COMPANY
1	CHEMELIL SUGAR COMPANY TURBO ALI KSKS 120M
2	CHEMELIL SUGAR CO. LTD - 500M 300M - FACTORY REHABILITATION 200M - CANE DEVELOPMENT
3	CHEMELIL SUGAR COMPANY FARMERS ARREARS - KSHS: 230M APPROVED - 192M
4	CHEMELIL SUGAR COMPANY APPLICATION FOR LOAN OF 409M FOR FACTORY REHABILITATION AND FARMERS ARREARS
5	CHEMELIL SUGAR COMPANY 3MW TURBO ALTERNATOR KSHS.152M
	KIBOS & ALLIED
1	KIBOS SUGAR & ALLIED INDUSTRIES LIMITED
2	KIBOS SUGAR & ALLIED INDUSTRIES CANE DEVELOPMENT KSHS 1,094,944,000)
	KISUMU SUGAR BELT
1	KISUMU SUGAR BELT CO OPERATIVE UNION LIMITED
2	KISUMU SUGAR BELT
	LUBAO JAGGERY
1	LUBAO JAGGERY FACTORY LIMITED CANE DEVELOPMENT LOAN KSH 127.5M/138.4M
	MIWANI SUGAR COMPANY
1	MIWANI SUGAR COMPANY GENERAL FILE
2	MIWANI SUGAR COMPANY (UNDER RECEIVERSHIP)
3	MIWANI SUGAR COMPANY
4	MIWANI SUGAR COMPANY SDF LOANS
5	MIWANI SUGAR COMPANY LOANS APPLICATION FARMERS ARREAS
6	MIWANI SUGAR COMPANY (100M)00C
7	MIWANI SUGAR COMPANY LOAN FOR SALARY ARREARS
	MUHORONI MULTIPURPOSE COOPERATIVE UNION
1	MUHORONI MULTIPURPOSE CO-OPERATIVE UNION LTD S.D.F LOAN
2	MUHORONI MULTIPURPOSE CO-OPERATIVE UNION LTD
3	MUHORONI MULTIPURPOSE CO-OPERATIVE UNION LTD
4	MUHORONI MULTIPURPOSE CO-OPERATIVE UNION LTD (MMCU) LOAN

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	SUMMARY
5	MUHORONI MULTIPORPOSE CO-OPERATIVE UNION LTD
6	MUHORONI MULTIEURPOSE CO-OPERATIVE UNION LTD LOAN APPLICATION
	MUHORONI OUTGROWERS
1	MUHORONI SUGAR OUTGROWERS COMPANY LIMITED KSHS.38,805,000
2	MUHORONI OUTGROWERS
3	MUHORONI OUTGROWERS CO. LTD LOAN APPLICATION OF KSH 103,480,000 FOR CANE DEVELOPMENT OPENED
4	MUHORONI SUGARCANE OUTGROWERS CO. LTD CANE TRANSPORT FLEET LOAN APPLICATION
5	MUHORONI SUGARCANE OUTGROWERS CO. LTD APPLICATION FOR CONSTRUCTION OF BRIDGE & CULVERTS IN THE MUHORONI ZONE KSHS 409.5
	MUHORONI SUGAR FACTORY
1	MUHORONI SUGAR COMPANY OUT OF CROP (OOC) ANNUAL MAINTENANCE & FACTORY REHAB KSHS. 412.5M
2	MONITORING REPORT ON THE KSHS.212,000,000/MUSCO
3	MUHORONI SUGAR COMPANY
4	MUHORONI SUGAR COMPANY LTD GENERAL FILE
5	MUHORONI SUGAR COMPANY 200M APPROVED 170M FACTORY REHAB
6	MUHORONI SUGAR CO.
7	MUHORONI SUGAR CO. 220M FARMERS ARREARS: APPROVED KSHS 144,347,316
8	MUHORONI SUGAR SDF LOANS
9	MUSCO 100.4M
10	MUHORONI SUGAR CO. FACTORY REHABILITATION KSHS 115M
11	MUHORONI SUGAR COMPANY(IN RECIEVERSHIP) FARMERS ARREARS
12	MUHORONI SUGAR CO.(IN RECIEVERSHIP) LOAN APPLICATION OF 100M FOR CAPITAL EXPENDITURE DURING MAY/JUNE 2011 OOC
13	MUHORONI SUGAR CO. LTD LOAN APPLICATION ARREARS FARMERS
14	MUHORONI SUGAR CO. LTD (IN RECEIVERSHIP) LOAN APPLICATION FOR

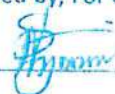
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	PAYMENT OF SALARY & WAGES ARREARS
15	MUHORONI SUGAR CO. LTD KSHS 412.5M LOAN PAYMENTS
16	MUHORONI SUGAR COMPANY
17	MUHORONI SUGAR COMPANY (IN RECEIVERSHIP)
18	MUHORONI SUGAR CO. LTD LOANS APPLICATION KSHS. 11,995,000 FOR PURCHASE OF GENERATOR SET 100 KVA
19	MUHORONI SUGAR COMPANY LTD GENERAL FILE
20	MUHORONI 1997 OOC MANITENANCE 237, 126, 676
21	MUHORONI SUGAR CO. LOAN APPLICATION OF 60M FOR CANE DEVELOPMENT
	MUMIAS OUTGROWERS
1	MUMIAS OUTGROWERS COMPANY LTD
2	MUMIAS OUTGROWERS COMPANY (1998) LTD APPLICATION FOR KSH 150M FARMER ADVANCE SCHEME LOAN
3	MUMIAS OUTGROWERS COMPANY LIMITED 150M PLUS 20M
4	MUMIAS OUTGROWERS COMPANY LTD-150M PLUS 20M
5	MUMIAS OUTGROWERS COMPANY LIMITED 150M PLUS 20M VOL 1
6	MUMIAS OUTGROWERS COMPANY LTD 150M PLUS 20M VOL 2
7	MUMIAS OUTGROWERS COMPANY LTD
	MUMIAS SUGAR COMPANY
1	MUMIAS SUGAR COMPANY LIMITED FACTORY REFURBISHMENT 255 MILLION
2	MUMIAS SUGAR COMPANY LIMITED MACHINERY LOAN KSH.600M
3	MUMIAS SUGAR COMPANY LIMITED KSH.2.5 BILLION CANE DEVELOPMENT APPROVED-79 MILLION
4	MUMIAS SUGAR COMPANY LIMITED FACTORY REHABILITATION 300M
5	MUMIAS SUGAR COMPANY LIMITED ROAD INFRASTRUCTURE KSH.94M (150M)
6	MUMIAS SUGAR COMPANY LIMITED CANE DEVELOPMENT(FARMERS ADVANCE SCHEME)
7	MUMIAS SUGAR COMPANY LTD CANE DEVELOPMENT (150M)
8	MUMIAS SUGAR CO LTD FARMERS ADVANCE SCHEME-CANE DEVELOPMENT-70M
9	MUMIAS SUGAR CO.LTD 150M LOAN APPLICATION
10	MUMIAS SUGAR COMPANY LTD FACTORY REHABILITATION LOAN(2016) KSH 600M

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11	MUMIAS OUTGROWERS COMPANY LTD 80M
	NANDI ESCARPMENT
1	NEOC C.DEV 92,350,000
2	NANDI ESCARPMENT OUTGROWERS CANE DEVELOPMENT LOAN OF 32,854,632
3	NANDI ESCARPMENT OUTGROWERS COMPANY LIMITED
	NANDI SUGARBELT
1	NANDI SUGAR BELT COOPERATIVE UNION
	NZOIA OUTGROWERS
1	NZOIA OUTGROWERS COMPANY FERTILIZER LOAN KSHS. 69,056,200 (42.7M)
2	NZOIA OUTGROWERS CO. LOAN OF KSHS. 30M TO PURCHASE FERTILIZERS (LOAN APPROVED DURING 44 TH MEETING HELD ON 25 TH MAY, 2000))
3	NZOIA OUTGROWERS CO. LTD 75M APPROVED AMOUNT (30M)
4	NZOIA OUTGROWERS COMPANY GENERAL FILE
5	NZOIA OUTGROWERS CO. LTD (NOCO) CORRESPONDENCE
6	NZOIA OUTGROWERS CO. LTD CANE DEVELOPMENT
7	NZOIA OUTGROWERS CO. LTD FERTILIZER LOAN KSHS SDF LOANS
8	NZOIA OUTGROWERS CO. LTD FERTILIZER LOAN KSHS 69,056,200
9	NZOIA OUTGROWERS CO. LTD GENERAL
10	NOCO SDF FERTILIZER RECOVERIES
11	NZOIA OUTGROWERS CO. LTD (TRACTORS)
12	NZOIA OUTGROWERS CO. LTD PAYMENTS TO HYDERY (P) LTD
13	NZOIA OUTGROWERS CO. LIMITED GENERAL
	NZOIA SUGAR COMPANY
1	NZOIA - LOAN APPLICATION FOR FARMERS ARREARS KSHS 300M
2	NZOIA SUGAR CO. LTD KSHS 146,594,700
3	NZOIA SUGAR KSHS 600M CANE DEVELOPMENT
4	NZOIA SUGAR CO. FACTORY REHAB JANUARY MAINTENANCE KSHS 500M
5	NZOIA SUGAR CO. LTD GENERAL FILE
6	NZOIA SUGAR CO. LOANS & 1996 O.O.C PART II
7	NZOIA SUGAR CO. LOANS & 1996 O.O.C PART II
8	NZOIA SUGAR COMPANY SDF LOANS
9	NZOIA SUGAR CO. LTD FARMERS ARREARS LOANS 387 MILLION
10	NZOIA SUGAR CO. LTD LOAN APPLICATION FOR KSHS 50M FACTORY REHAB
11	NZOIA SUGAR CO. LTD FACTORY IMPROVEMENT KSHS 400M
12	LOANS - NZOIA

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LEGAL FEES FILES

	FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
1	BUSIA SUGAR COMPANY LTD (KAPLONG CO. LIMITED)	MOHAMMED & KINYAMUI	PROVIDED	PROVIDED	PROVIDED
2	BUSIA OUTGROWERS LIMITED	AKUKU & OCHILO AYACKO (KSHS. 175,415)	PROVIDED	PROVIDED	NOT PROVIDED
		AKUKU & OCHILO AYACKO (KSHS. 1,812,069.80)	PROVIDED	PROVIDED	PROVIDED
		HAYANGA & CO. (KSHS. 94,780)	PROVIDED	PROVIDED	NOT PROVIDED
		HAYANGA & CO. (KSHS. 127,910)	PROVIDED	PROVIDED	NOT PROVIDED
3	MUHORONI SUGAR COMPANY LIMITED	OKONG'O OMOGENI (KSHS.399,000)	PROVIDED	PROVIDED	PROVIDED
		HAYANGA & CO. (KSHS. 94,050)	PROVIDED	PROVIDED	PROVIDED
		HAYANGA & CO. (KSHS. 2,126,588.65)	PROVIDED	PROVIDED	NOT PROVIDED
		HAYANGA & CO.	PROVIDED	PROVIDED	NOT PROVIDED
		HAYANGA & CO.	PROVIDED	PROVIDED	PROVIDED

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FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
	(KSHS. 3,817,250)			
	HAYANGA & CO. (KSHS. 4,280,146)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 6,682,144.00)	PROVIDED	PROVIDED	NOT PROVIDED
	KASAMANI & CO. (KSHS. 2,842,186.90)	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 10,038,036)	NOT PROVIDED	PROVIDED	NOT PROVIDED
	HAYANGA & CO. (KSHS. 4,280,146)			
	OKONG'O OMOGENI & CO. (KSHS. 171,000)			
	HAYANGA & CO.			
4	MUHORONI OUTGROWERS			
	HAYANGA & CO. (KSHS. 289,967.30)	PROVIDED	PROVIDED	NOT PROVIDED
	HAYANGA & CO. (KSHS.	PROVIDED	PROVIDED	PROVIDED

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	FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
		MOHAMMED & KINYANJUI CO. (KSHS. 190,000)			
		MOHAMMED & KINYANJUI CO. (KSHS. 212,000)			
		NJOROGE REGERU & CO. (KSHS. 706,500)			
7	NZOIA SUGAR COMPANY	KAPTEN & CO. (KSHS. 540,900)	PROVIDED	PROVIDED	PROVIDED
		WETANGULA & CO. (KSHS. 4,832,177.30)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 10,038,036)	PROVIDED	PROVIDED	NOT PROVIDED
8	NZOIA OUTGROWERS	MIDIKIRA & CO. (KSHS. 39,556.10)	PROVIDED	PROVIDED	PROVIDED
		WETANGULA & CO. (KSHS. 1,843,410)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 1,843,410)	PROVIDED	PROVIDED	PROVIDED
		WETANGULA & CO. (KSHS. 1,843,410)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 2,832,662)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 1,532,210)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA &	PROVIDED	PROVIDED	NOT PROVIDED

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	FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROG OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
		MOHAMMED & KINYANJUI CO. (KSHS. 190,000)			
		MOHAMMED & KINYANJUI CO. (KSHS. 212,000)			
		NJOROGE REGERU & CO. (KSHS. 706,500)			
7	NZOIA SUGAR COMPANY	KAPTEN & CO. (KSHS. 540,900)	PROVIDED	PROVIDED	PROVIDED
		WETANGULA & CO. (KSHS. 4,832,177.30)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 10,038,036)	PROVIDED	PROVIDED	NOT PROVIDED
8	NZOIA OUTGROWERS	MIDIKIRA & CO. (KSHS. 39,556.10)	PROVIDED	PROVIDED	PROVIDED
		WETANGULA & CO. (KSHS. 1,843,410)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 1,843,410)	PROVIDED	PROVIDED	PROVIDED
		WETANGULA & CO. (KSHS. 1,843,410)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 2,832,662)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA & CO. (KSHS. 1,532,210)	PROVIDED	PROVIDED	NOT PROVIDED
		WETANGULA &	PROVIDED	PROVIDED	NOT PROVIDED

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	FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
		CO. (KSHS. 10,038,036) WETANGUI A & CO. (KSHS. 10,038,036) WETANGULA & CO. (KSHS. 1,532,210)	PROVIDED	PROVIDED	NOT PROVIDED
9	SOIN SUGAR	HAYANGA & CO. (KSHS. 1,769,600) HAYANGA & CO. (KSHS. 348,982) WETANGULA & CO. (KSHS. 4,391,425)	PROVIDED PROVIDED PROVIDED	PROVIDED PROVIDED PROVIDED	PROVIDED NOT PROVIDED NOT PROVIDED
10	SOIN OUTGROWERS	OLIMA AKUKU & OCHILO AYACKO (KSHS. 880,033) OLIMA AKUKU & OCHILO AYACKO (KSHS. 210,375)	PROVIDED PROVIDED	PROVIDED PROVIDED	NOT PROVIDED NOT PROVIDED
11	CHEMELIL OUTGROWERS	OLIMA AKUKU & OCHILO AYACKO (KSHS. 800,540) HAYANGA & CO.	PROVIDED PROVIDED	PROVIDED PROVIDED	NOT PROVIDED PROVIDED

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FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
	R.K. SONIA	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 6,682,144.00)	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 1,172,500)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 1,532,210)	PROVIDED	PROVIDED	NOT PROVIDED
	OLAGO OLUOCH & CO. (KSHS. 15,864)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 7,280,755.30)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 3,562,055.00)	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 8,942,842.80)			
	WETANGULA & CO. (KSHS. 57.740)			
	WETANGULA & CO. (KSHS.			

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FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
	R.K. SOMA	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 6,682,144.00)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 1,172,500)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 1,532,210)	PROVIDED	PROVIDED	NOT PROVIDED
	OLAGO OLUOCH & CO. (KSHS. 15,864)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 7,280,755.30)	PROVIDED	PROVIDED	NOT PROVIDED
	WETANGULA & CO. (KSHS. 3,562,055.00)	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 8,942,842.80)			
	WETANGULA & CO. (KSHS. 57,740)			
	WETANGULA & CO. (KSHS.			

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FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
	KANYANGI & CO. (KSHS. 53,260)	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 1,852,410)	PROVIDED	PROVIDED	NOT PROVIDED
	KALYA & CO. (KSHS. 44,912.50)	PROVIDED	PROVIDED	PROVIDED
	HAYANGA & CO. (KSHS. 1,317,500)	PROVIDED	PROVIDED	PROVIDED
	KANYANGI & CO. (KSHS. 110,925)	PROVIDED	PROVIDED	PROVIDED
	KIPLAGAT & CO.			
	OLEL. ONYANGO, INGUTIA & CO. (KSHS. 39,719.80)			
	OLEL. ONYANGO, INGUTIA & CO. (KSHS. 66,500)			
17 BUTALI SUGAR	KEMBOI & CO. (KSHS. 212,662)	PROVIDED	PROVIDED	NOT PROVIDED
	KEMBOI & CO. (KSHS. 204,741.35)	PROVIDED	PROVIDED	PROVIDED
	KEMBOI & CO. (KSHS. 199,172.4)	PROVIDED	PROVIDED	NOT PROVIDED
	KEMBOI & CO.	PROVIDED	PROVIDED	PROVIDED

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FILE TITLE	ADVOCATES FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
	KANYANGI & CO. (KSHS 53,260)	PROVIDED	PROVIDED	PROVIDED
	WETANGULA & CO. (KSHS. 1,852,410)	PROVIDED	PROVIDED	NOT PROVIDED
	KALYA & CO. (KSHS. 44,912.50)	PROVIDED	PROVIDED	PROVIDED
	HAYANGA & CO. (KSHS. 1,317,500)	PROVIDED	PROVIDED	PROVIDED
	KANYANGI & CO. (KSHS. 110,925)	PROVIDED	PROVIDED	PROVIDED
	KIPLAGAT & CO.			
	OLEL, ONYANGO, INGUTIA & CO. (KSHS. 39,719.80)			
17 BUTALI SUGAR	OLEL, ONYANGO, INGUTIA & CO. (KSHS. 66,500)			
	KEMBOI & CO. (KSHS. 212,662)	PROVIDED	PROVIDED	NOT PROVIDED
	KEMBOI & CO. (KSHS. 204,741.35)	PROVIDED	PROVIDED	PROVIDED
	KEMBOI & CO. (KSHS. 199,172.4)	PROVIDED	PROVIDED	NOT PROVIDED
	KEMBOI & CO.	PROVIDED	PROVIDED	PROVIDED

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	FILE TITLE	ADVOCATE'S FIRM	LEGAL FEES/PROOF OF PAYMENT	PAYMENT VOUCHER	INSTRUCTIONS TO LAWYERS
		(KSHS. 221,700)			
		MAGARE & CO. (KSHS. 28,025);	PROVIDED	PROVIDED	PROVIDED
		STAUSSE & ASHUNA (KSHS. 346,771.95)	PROVIDED	PROVIDED	PROVIDED
		STAUSSE & ASHUNA (KSHS. 60,949)	PROVIDED	PROVIDED	PROVIDED
21	NANDI ESCARPMENT OUTGROWER	KIPKORIR, TITOO, & KIHARA (KSHS. 7,757,093.05)	PROVIDED PROVIDED	PROVIDED PROVIDED	PROVIDED PROVIDED
		KIPKORIR, TITOO, & KIHARA (KSHS. 1,125,019.50)	PROVIDED	PROVIDED	PROVIDED

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