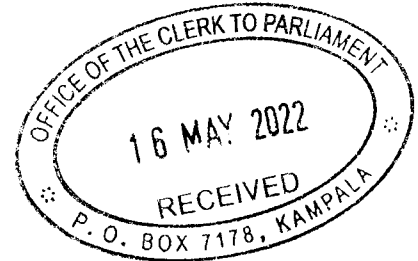
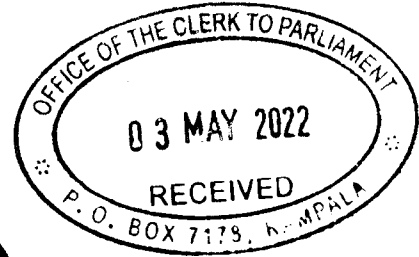




PARLIAMENT OF UGANDA



Report of the Sectoral Committee on Tourism, Trade
and Industry on the Investigation of the alleged
unfair terms in the MoU between Government of
Uganda and Uganda Vinci Coffee Company Limited

Parliament Buildings

Kampala

29th April 2022

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#Murembe
#FRL
#HSA
#Paul
#Eric
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TABLE OF CONTENTS

LIST OF ACRONYMS	ii
1.0 INTRODUCTION	1
2.0 BACKGROUND	1
3.0 Rationale for the committee investigation	2
4.0 Terms of Reference	3
5.0 Methodology	4
5.1 Meeting with stakeholders	4
5.2 Desk Research	5
6.0 COMMITTEE FINDINGS, OBSERVATIONS AND ANALYSIS	6
6.1 Brief History of Uganda's coffee sector	6
6.1.1 Performance of Uganda's coffee sector	7
6.1.2 Registered coffee processors in the country and value addition	10
6.1.3 Previous Government interventions and investments in the coffee value chain	12
6.1.4 Previous Efforts in establishing soluble Coffee plants in Uganda;	13
6.1.5 Analysis of the Agreement between the Government of Uganda and Uganda Vinci Coffee Company Limited.....	14
6.1.6 Background to this Agreement	14
6.1.7 Analysis of the Terms of the Agreement	16
6.1.7.1 Ownership of Uganda Vinci Coffee Company Limited.....	16
6.1.7.2 Scope of the project	17
6.1.7.3 failure to sign the Agreement	18
6.1.7.4 Ambiguity as to the commercial operation of the plant and conflict with Lease Agreement.....	19
6.1.7.5 MOU is not sincere on the quantity of premium grades	23
6.1.7.6 Capacity of the UVCCL to deliver on the project:.....	25
6.1.7.7 Land allocated to UVCCL:	29
6.1.7.8 Project support:	30
7.0 FINDINGS OF THE COMMITTEE	51
8.0 RECOMMENDATIONS	54

UCDA	Uganda Coffee Development Authority
TT&I	Tourism Trade and Industry
URA	Uganda Revenue Authority
MFPEd	Ministry of Finance, Planning and Economic Development
PFMA	Public Finance Management Act, 2015
LTD	Limited
PPP	Public Private Partnership
PPDA	Public Procurement and Disposal of Public assets
MOU	Memorandum of Understanding
GOU	Government of Uganda
UVCCCL	Uganda Vinci Coffee Company Ltd
UIA	Uganda Investments Authority
AG	Attorney General

GOU Government of Uganda

UVCCL Uganda Vinci Coffee Company Ltd

UIA Uganda Investments Authority

AG Attorney General

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ii | Page

1.0 INTRODUCTION

The Committee on Tourism, Trade and Industry has the honour to present its report on the investigations pertaining to the Government of Uganda and Vinci Coffee Uganda Limited Memorandum of Understanding that was signed on 10th February 2022. In a bid to respond to the speaker's directive of 12th April 2022, the committee undertook an oversight fact-finding activity on the 25th, 26th and 27th April and has agreed to report the following:

2.0 BACKGROUND

Uganda is the leading coffee exporter in Africa, and the second-largest coffee producer in Africa, exporting over 6.5 million bags (60Kg bags)¹ between April 2021 and March 2022. Uganda is able to attain this production through the efforts of over 1.7million coffee farm household² producers that are part of the value chain offering employment to over 5 million households³ engaged in related activities.

Coffee export holds a strategic position as Uganda's leading foreign exchange earner in the past 20years contributing to approximately 20% of foreign exchange earnings.

Despite the economic importance of coffee to the economy of Uganda, it still has several challenges that negatively influence the coffee value chain (CVC). These challenges are either procedural (administrative), quality and standards, or trade policy issues. Uganda has a vision of reaching a production of 20 million bags by 2025 up from the current 6.5 million bags exported; however, there are options for directing efforts to best agricultural practices to at-least attain 9

¹ UCDA 2022 report

² ICO. Country Coffee Profile: Uganda. Nairobi, Kenya: International Coffee Organisation (ICO); Uganda Coffee Development Authority (UCDA), 2019

³ Verter N, Bamwesigye D, Darkwah S. Analysis of Coffee Production and Exports in Uganda. International Conference on Applied Business Research 1 vvd Madrid 2015: 1083-90

million bags by the same year. There are also several other challenges like skills development, trading dynamics and access to markets still affect the CVC.

3.0 Rationale for the committee investigation

The Sectoral Committee on Tourism, Trade and Industry derives its mandate from Article 90 of the Constitution of the Republic of Uganda⁴, and accordingly, Rules 156⁵, 159⁶, 187⁷ and 189⁸ of the Rules of Procedure of Parliament. These provisions enjoin the Committee with the authority and power to, among others, research, investigate and carry out oversight functions with respect to the Ministries, Departments and Agencies (MDAs) under its purview.

On the 12th April, 2022, Hon. Dr. Abed Bwanika, MP, Kimaanya-Kabonera Division in Masaka City raised a matter of national importance pertaining to the agreement between the Government of Uganda and Uganda Vinci Coffee Company Limited, herein after referred to as the “Company”.

Hon. Dr. Abed Bwanika was concerned that the provisions of the Agreement-

⁴ **Article 90(1)** provides that Parliament shall appoint committees necessary for the efficient discharge of its functions. In **90(2)**, Parliament shall, by its rules of procedure, prescribe the powers, composition and functions of its committees.

⁵ **Rules 156(1) & (2)** reiterate the above constitutional provisions.

⁶ As all other committees, its general functions, according to **rule 159** include: assessing and evaluating activities of Government and other bodies (in **para. (c)**); carrying out relevant research in the committee’s respective field (in **para. (d)**); and reporting to Parliament on its functions (in **para. (e)**).

⁷ **Rule 187(1)** provides for the existence of Sectoral Committees of the House, and in **sub-rule (2)(b)**, there shall be a Sectoral Committee on the Tourism, Trade and Industry sector.

⁸ Specifically, as a Sectoral committee, **rule 189** charges it with functions that include: to examine and comment on policy matters affecting the Ministry of Trade, Industry and Cooperatives and the Ministry of Tourism, Wildlife and Antiquities (in **para. (a)**); to initiate or **evaluate action programmes of the said ministries and their sectors and to make appropriate** recommendations on them (in **para. (b)**); to monitor the performance of Ministries, Departments and Agencies (MDAs) (in **para. (e)**); to monitor Government compliance with approved plans and programmes (in **para. (f)**); and to monitor the progress on implementation of the Sustainable Development Goals (SDGs) made by the tourism, trade and industry sector (in **para. (g)**)

- (a) would alienate the people of Uganda that are involved in coffee production and will give monopoly of purchase and export of coffee from Uganda to one company called Uganda Vinci Coffee Company Limited;
- (b) has provisions, which exempt Uganda Vinci Coffee Company Limited from paying all the taxes in Uganda, including Income Tax, Pay As You Earn, Excise Duty and contributing to the National Social Security Fund.
- (c) has provisions that seek to subsidize Uganda Vinci Coffee Company Limited, giving them a special tariff in electricity; and
- (d) has provisions obligating Government to provide infrastructure yet, Uganda Vinci Coffee Company Limited is going to pay zero tax to the Government of Uganda;
- (e) violates the laws of the Republic of Uganda, including the Constitution of the Republic of Uganda, the Coffee Act, the laws and policies in regard to liberalization of the economy;
- (f) seek to render the people of Uganda, who survive on coffee production and trade, out of the economy, out of business and they are going to be rendered slaves in their own country.

In response, the Rt. Hon. Speaker referred the matter to the Committee on Trade, Tourism and Industry to study the agreement and make analysis.

4.0 Terms of Reference

In executing its mandate, the committee was guided by the following Terms of References:

- To carry out a cost benefit analysis of the agreement
- To examine the criteria for extension of the tax exemptions granted under the agreement

5.0 Methodology

The committee employed the following methods of work;

5.1 Meeting with stakeholders

The committee held meetings and received a number of verbal testimonies from key witnesses, several of whom presented written briefs. Witnesses included leaders and officials from the following institutions:

- The petitioners:
 - Hon Bwanika Abed
 - Hon Namugga Goreth
 - Hon Lumu Richard
 - Hon Joyce Bagala Ntwatwa
 - Hon Katabazi Francis Katongole
- Ministry of Finance Planning and Economic Development
- Office of the Attorney General
- Uganda Coffee Development Authority(UCDA)
- Public Procurement and Disposal Unit
- Uganda Law Society
- Uganda Vinci Coffee Company Limited
- Uganda Coffee Federation
- Esco Uganda
- Uganda Quality Coffee Traders Association
- UGACOF
- Buganda Cultural and Development Foundation (BUCADEF)
- Ankole Coffee Producers Cooperative Union (ACPCU)
- Kawacom Uganda Ltd
- Olam Coffee Uganda Limited
- Funzo Coffee
- Uganda Large Scale Farmers Association

- Bugisu Coffee Cooperative Union
- Rwenzori Sustainable Trade Center Ltd
- Uganda Coffee Farmers Alliance

5.2 Desk Research

The committee carried out desk research in order to back up some of the findings with facts and also obtain statistics in regards to the coffee sector such as the performance of Uganda's coffee industry.

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5 | Page

6.0 COMMITTEE FINDINGS, OBSERVATIONS AND ANALYSIS

6.1 Brief History of Uganda's coffee sector

In the 1980s, the Ugandan coffee industry experienced only marginal gains compared to the worldwide boom in coffee demand and the rising prices that followed. Uganda was a member of the International Coffee Organization, a group of coffee-producing countries that set coffee prices and quotas for its members in an attempt to regulate coffee production in a fair and consistent way.

When coffee prices soared, prices and quotas were increased, but Uganda's quota increase was restricted to Arabica coffee. Uganda's coffee production was almost entirely Robusta at that time, and its capacity to produce Arabica was limited. As a result, Uganda coffee producers couldn't take advantage of the increased quota and didn't benefit as much as other countries who were better equipped to meet their quota.

From the mid-1990 to the early 2000's, coffee went from generating almost 80% of Uganda's export revenues to less than 20%⁹. This performance was attributed to the economic restructuring and credit agreements at the time that privatized Uganda's coffee market and instituted logistics requirements that impeded its long-running cooperative unions from buying and selling coffee.

The first phase of structural adjustment began in 1981 under President Milton Obote, who, in exchange for debt relief following the global oil crisis, ceded control of the coffee sector to the World Bank, the IMF, and USAID, which began setting prices and managing capital investments in crops, machines, and transportation. This first round of structural adjustments did little to mitigate Uganda's foreign debt which continued to grow through the 1980s.

⁹ When Coffee Collapsed: An Economic History of HIV in Uganda:
<https://doi.org/10.1080/01459740.2021.1961249>

Uganda then began a second round of adjustments in 1990 under the “Washington Consensus,” where President Yoweri Museveni entered into the World Bank’s Agricultural Sector Adjustment Credit program by repealing the Coffee Marketing Act of 1969, which had guaranteed the cooperative unions’ monopoly over the coffee trade.

The “liberalization” of Uganda’s coffee industry brought multinational private buyers with cash into the market for buying coffee from farmers, weakening the monopoly held by the cooperative unions, which had previously bought and sold coffee at fixed prices and often on credit from farmers. In 1994, Uganda was ranked 5th biggest producer of coffee in the world. By the end of 2020, Uganda was among the top 10 biggest producers of coffee in the world which accounted for over 87% of the world coffee production.

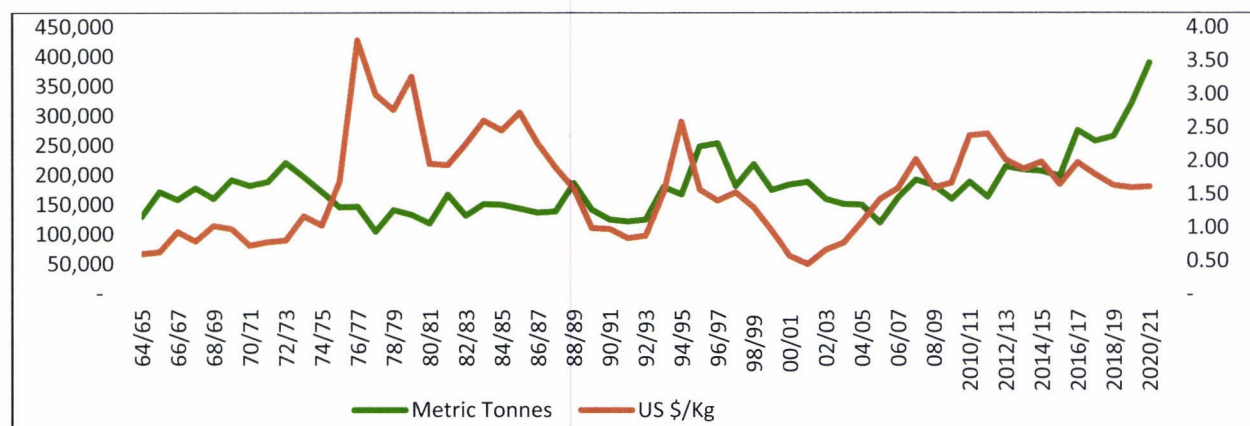
The committee observes that the structural adjustments that Government of Uganda undertook between 1981 and 1990 led to the liberalization of Uganda’s coffee industry. However, the agreement re-introduces monopoly into the Coffee industry which is against the principle of Liberalization.

6.1.1 Performance of Uganda’s coffee sector

Data from the Uganda Coffee Development Authority (UCDA) shows that farmers exported 6.49 million (60kg) bags of coffee for the 2020/21 season compared to 5.36 million (60kg) bags in the 2019/2020 season. **(See figure 1 below)**

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Figure1: Uganda's coffee exports and prices in US\$ per Kg between 1964 and 2021



Source: Authors computation from data obtained from UCDA

In March 2022, a total of 478,023 (60kg) bags of coffee valued at US\$ 80.99 million were exported at an average weighted price of US\$ 2.82 /kilo, 14 cents higher than US\$ 2.68 /kilo in February 2022 and US\$1.26 higher than US\$ 1.56/kilo in March 2021. This was a decrease of 16% in quantity and an increase of 51% in value compared to the same month last year¹⁰.

During the same period of March, Italy maintained the highest market share of 32.39% compared with 38.02% in the month of February 2022. It was followed by Sudan 24.98%, Germany 12.30%, Belgium 5.69% and United States of America 4.55%. Coffee exports to Africa amounted to 143,231 bags, a market share of 30% compared to 94,647 bags (21%) the previous month. Coffee exports to Africa amounted to 143,231 bags, a market share of 30% compared to 94,647 bags (21%) the previous month. African countries included Algeria, Sudan, Morocco, Egypt, South Africa, South Sudan, Somalia and Kenya. Europe remained the main destination for Uganda's coffees with a 57% imports share in march 2022, lower than 62% in February 2022.

¹⁰ Uganda Coffee Development Authority monthly report – March 2022

Farm gate prices during the month of March 2022 ranged from Sh.2,500-3,200/= per kilo of Kiboko (Robusta dry cherries); Shs. 6,300-6,800/= for Fair Average Quality(FAQ); Sh. 10,000- 11,000/= for Arabica parchment; and Sh.9,000-10,000/= per kilo for Drugar from Kasese. Robusta Kiboko averaged UGX 2,750/= per kilo; FAQ UGX 6,550/= per kilo, Arabica parchment UGX 10,500/= per kilo and Drugar UGX 9,500/= per kilo.

Table 1 below shows the top 20 export companies in the month of March 2022.

Table1: Top 20 Coffee Exporters and their Market Shares: March 2022

March Rank	EXPORTING COMPANY	Robusta (bags)	Arabica (bags)	Total	% Share
1	Ugacof (U) Ltd	103,571	5,120	108,691	22.74
2	Kawacom (U) Ltd	43,535	20,452	63,987	13.39
3	Ideal Quality Commodities Ltd	40,983	6,240	47,223	9.88
4	Olam Uganda Ltd	17,252	24,416	41,668	8.72
5	Kyagalanyi Coffee Ltd	24,078	16,742	40,820	8.54
6	Touton Uganda Limited	22,920	12,825	35,745	7.48
7	Export Trading Company (U) Ltd	27,310		27,310	5.71
8	Louis Dreyfus Company (U) Ltd	21,864	640	22,504	4.71
9	Besmark Coffee Company Limited	3,074	13,620	16,694	3.49
10	Kampala Domestic Store Ltd	11,750		11,750	2.46
11	Tata Uganda Limited	5,780		5,780	1.21
12	Ibero (U) Ltd	5,148	564	5,712	1.19
13	Great Lakes Coffee Company Ltd	2,406	2,276	4,682	0.98
14	Kaweri Coffee Plantation	4,330		4,330	0.91
15	Grainpulse Ltd	700	3,280	3,980	0.83
16	The Edge Trading (U) Ltd	1,640	2,060	3,700	0.77
17	Bakhsons Trading Co. (U) Ltd	2,722	640	3,362	0.7
18	JKCC General Supplies Ltd	2,720	334	3,054	0.64
19	Nakana Coffee Factory Ltd	3,024		3,024	0.63
20	Bakwanye Trading Co. Ltd		2,880	2,880	0.6

Source: Uganda Coffee Development Authority

Ugacof (U) Ltd had the highest market share of 22.74%. It was followed by Kawacom (U) Ltd 13.39%, Ideal Quality Commodities Ltd 9.88%, Olam Uganda Limited 8.72%, Kyagalanyi Coffee Ltd 8.54%, Touton Uganda Limited 7.48%, Export Trading Company (U) Ltd 5.71%, Louis Dreyfus Company (U) Ltd 4.71%, Besmark Coffee Company Limited 3.49% and Kampala Domestic Store Ltd 2.46%. The top 10 exporters held a market share of 87% in March 2022 higher than 79% in the previous month of February 2022. There were changes in

positions compared to the previous month reflecting competition at the exporter level. Out of the 44 exporters that performed, 16 exported Robusta Coffee only while 12 exported Arabica coffee only.

From figure 1 above, the committee observes that coffee exports have been growing over the years. Also table 1 shows high level of competitiveness amongst the players in the coffee market with a total annual export capacity of 6.5 million and therefore, the committee therefore rules out any possible intentions of increasing exports through this agreement.

6.1.2 Registered coffee processors in the country and value addition

Value addition involves taking any product from one level to the next. For farmers, value-added has a particular importance in that it offers a strategy for transforming an unprofitable enterprise into a profitable one. For example, a coffee farmer who simply grows and harvests his or her coffee cherry, and then sells it “as is” to a local processor, usually sells at a price below the cost of production.

The committee was informed that Uganda currently has 47 licensed coffee roasters and incubatees licensed by UCDA for the Year 2021/22 spread across the different regions of the country.

Furthermore, the committee observes that the bigger challenge we have as a country is that much of the coffee that is produced locally is exported. Only 5% of the coffee produced in Uganda is consumed locally. If we had high local consumption, the fluctuation of coffee prices at the international market would not affect us much.

The Committee also observed that the already existing 47 local processors are in the business of adding value; namely, roasted coffee beans, roasted and ground coffee, instant spray dried coffee as proposed by Vinci Coffee Company in clause

3 of the agreement, specifically 3.1.2. This is being done without similar incentives as those proposed in the UVCCL agreement.

Table 2: List of licensed coffee roasters and incubatees for coffee year 2021-2022

LICENSED COFFEE ROASTERS AND INCUBATEES FOR COFFEE YEAR 2021-2022				
Certificate Number	NAME	Category	Location	District
1418	SUMO AFRI COFFEE U LIMITED	E	BUGOLOBI, NAKAWA	KAMPALA
1420	EBBY'S PASTRIES AND CAFÉ	E	KABANYOLO, GAYAZA	WAKISO
1433	JAVA HOUSE AFRICA U LIMITED	E	NAKAWA	KAMPALA
1439	MATALE HILL BROTHERS LIMITED	E	MUKONO DIVISION, MUKONO MUNICIPALITY	MUKONO
1075	COFFEE QUALITY ASSURANCE C.Q.A	E	KYAMBOGO, NAKAWA DIVISION	KAMPALA
1701	KASAYI COMMODITIES LIMITED	E	SONDE, GOMA	MUKONO
1703	DISMOO LINKAGES COMPANY LTD	E	LUBAGA	KAMPALA
1704	BAKHSONS TRADING CO. U LIMITED	E	NAMANVE, MUKONO MUNICIPALITY	MUKONO
1706	MBALE ARABICA COFFEE ROASTERS LTD	E	NTAWO, MUKONO	MUKONO
1737	VALUE QUALITY CONSULTANTS LIMITED	E	GOMA	MUKONO
1738	SHANA GENITAL SOLUTIONS LIMITED	E	KASUBI.1., KASUBI TOWN COUNCIL	KAMPALA
1739	SASA COFFEE TRADING CO.[U] LTD	E	BUBIRABI, MBALE MUNICIPALITY	MBALE
1213	RIZVAN HOLDINGS LIMITED	E	CENTRAL	KAMPALA
1238	GREAT HABIB WORLD COFFEE LTD	E	CENTRAL	KAMPALA
1241	MUKKAI ITERNATIONAL LIMITED	E	BAJJO, SEETA	MUKONO
1273	TASTY KAAWA LIMITED	E	KAVULE, NAKAWA	KAMPALA
1280	LUMEN LOGISTICS	E	KAMWOKYA 1, KAMPALA CENTRAL DIVISION	KAMPALA
1281	XAG COFFEE EXPORTERS UGANDA LTD	E	NAKASERO, KAMPALA CENTRAL DIVISION	KAMPALA
1293	LUMEN LOGISTICS[U] LIMITED	E	BUGOLOBI, NAKAWA	KAMPALA
1294	QUALITY NATURAL PRODUCTS LIMITED	E	NAKAWA	KAMPALA
1295	NUCAFE LIMITED	E	NAMANVE, KIWANGA	MUKONO
1304	CARICO CAFÉ CONNOISSEUR LIMITED	E	MUYENGA A, MAKINDYE	KAMPALA
1331	CHARIOTS COFFEES AND BARISTAS ACADEMY SMC LTD	E	KATAZA, NAKAWA DIVISION	KAMPALA
1332	STAR CAFÉ LIMITED	E	LUZIRA, NAKAWA DIVISION	KAMPALA
1333	MBUGA KYAMAGERO COFFEE ROASTERS AND PARKERS LTD	E	KABANYORO, GAYAZA	WAKISO
1335	TITAN ROASTERS LIMITED	E	KIGO, MAKINDYE SSABAGABO	KAMPALA
1336	MAGZ COFFEE	E	MUNYONYO, MAKINDYE-SOUTH	KAMPALA
1337	MAJESTIC POINT (U) LTD	E	GAYAZA, KYADONDO-EAST	KAMPALA

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1340	DICANA COFFEE LIMITED	E	SEETA, GOMA	MUKONO
1361	KIM COFFEE ROASTERS UGANDA	E	KOLOLO 1, KAMPALA CENTRAL DIVISION	KAMPALA
1374	MWISHO TRADE AND COMMODITY SERVICES	E	KISWA, BUGOLOBI NAKAWA	KAMPALA
1397	DANTE COMMODITIES LIMITED	E	SHIMON.A., NAKASERO1	KAMPALA
1398	GREAT LAKES COFFEE COMPANY LIMITED	E	NTINDA IND.AREA, NAKAWA	KAMPALA
1401	JADA COFFEE LIMITED	E	KAMWOKYA 11, NTINDA	KAMPALA
1403	LA'MARC [U] LIMITED	E	MYANZI	KASANDA
1405	PRIME TRACE AND AGRO AGENCY LIMITED	E	WANALE BOROUGH, MBALE MUNICIPALITY	MBALE
1410	MIREMBE COFFEE INVESTMENTS [MR. HANNINGTON TAMALE MUGERWA	E	BUNAMWAYA, NFUFU MAKINDYE-SSABAGABO	KAMPALA
1424	BREW PLUS COFFEE LTD	E	KCCA FLATS, CENTRAL	KAMPALA
1432	DANTE COMMODITIES LIMITED	E	BUSIMBI DIVISION, MITYANA MUNICIPALITY	KAMPALA
1435	BANTA AFRICAN COFFEE LTD	E	NAKAWA DIVISION	KAMPALA
1436	BENSU GENERAL AGENCY STORE	E	BUWAMA, JALAMBA	MPIGI
376	MASHA QUALITY HOLDINGS (U)LTD	E	KAMOWO, BINYINY PARISH, BINYINY SUB COUNTY	KNEEN
377	EZY PRODUCE LINK LTD	E	KALE CELL, BULAGO CELL, NORTHERN BOROUGH	MBALE
458	KIKOBERO COFFEE COPMANY LTD	E	KIKOBERO, KIKOBERO B PARISH, MASIRA S/C	BULAMBULI
461	MACHERI COFFEES (U) LTD	E	MASERE, NAKIWONDWE WARD, BUDADIRI T/C	SIRONKO
1694	KASHARI CENTRE FOR VALUE ADDITION LTD ROASTERY	E	KAMUSHOKO, BUBAARE, KASHARI, MBARARA	MBARARA
705	ELGONIA INDUSTRIES LTD	E	WATER VILLAGE, EAST DIVISION	TORORO
1283	BUKONZO JOINT COOPERATIVE UNION	E	KYARUMBA, NYAMWAMBA	KASESE

Source: Uganda Coffee Development Authority

6.1.3 Previous Government interventions and investments in the coffee value chain

Government interventions through Operation Wealth Creation, Coffee Development Authority have continued to supply coffee farming inputs which are geared towards increasing volumes of coffee production than value addition hence the private sector has taken the lead in coffee value chain. Government through Uganda Development Corporation (UDC) in conjunction with UCDA have conducted two feasibility studies to partner with private sector (Soluble coffee in Wakiso and a Turkish company) to increase export of processed coffee to all Gulf Corporation Countries and other countries. However, there hasn't

been any specific, dedicated budget available for coffee value addition interventions.

The committee observes that insignificant amount of funds have been invested in coffee value chain as follows; FY 2021/22 Rural Industrial Development Project under the Ministry of Trade was able to secure five coffee hullers each at Shs.70million and limited numbers of Roaster and Grinder, which are of low capacity

6.1.4 Previous Efforts in establishing soluble Coffee plants in Uganda;

A number of feasibility studies have been carried out by private sector to invest in soluble Coffee plant in Uganda since 2006. While feasibility studies have recommended that the Proposed business are feasible, actual implementation has not taken place and none of them has commenced

Companies that carried out feasibility studies to establish soluble coffee in Uganda

S/N	Company	Year
1	Eurocafe S.A of Spain	1994
2	UNIDO & TANICA	1999
3	TATA Coffee	2007
4	CCL Product India Limited	2008
5	Uganda Vinci Coffee Company Ltd	2014
6	Delecto Foods PVT Ltd (India)	2017

Source: Uganda Coffee Development Authority

After continued failure to takeoff by the various companies listed above, UCDA engaged Deloitte to undertake feasibility study which would consolidate the findings of all past studies with a view to assess viability of Instant coffee plant in Uganda.

The study concluded that; at the existing prices of 2004/05, prices of Uganda Green Coffee and soluble coffee, the plant was viable. However, the main problem was establishing a Market outlet. The Identification of a strategic investment and export market partner was the most crucial factor for success.

The committee observed that most of these feasibility studies remained on paper. Various reasons were given for not taking off such as lack of Government guarantee for funds to be borrowed for example in the case of Coffee Marketing Board and SEDA S.A, where US\$8.8 million was required to kick start the project.

6.1.5 Analysis of the Agreement between the Government of Uganda and Uganda Vinci Coffee Company Limited

6.1.6 Background to this Agreement

On 29th April, 2015, Government of Uganda, through the Ministry responsible for Finance, Planning and Economic Development executed a Project Implementation Agreement (herein after referred to as the "Agreement") between the Government of Uganda and Uganda Vinci Coffee Company Limited. In this Agreement, Government, was represented by Mr. Keith Muhakanizi, the then PSST while Ms. Enrica Pinetti signed on behalf of Uganda Vinci Coffee Company Limited (UVCCL).

The Agreement was to facilitate the company's ventures of processing Ugandan coffee into roasted and instant coffee for local and international markets.

The Agreement was for the construction and operation of an integrated 60,000-metric tonne per year coffee processing facilities at Kampala Industrial and Business Park, Namanve (KIBP).

The project was to be implemented in phases, the first phase being 27,000-tonne capacity and ancillary activities necessary for the implementation of the financing, construction, operation, coffee procurement and processing activities.

such as roasting, grinding and instant coffee processing from green beans to roasted/instant coffee. The Agreement obligated the UVCCCL to produce, from green coffee beans, roasted coffee, roasted and ground coffee, instant spray dried coffee, coffee capsules and any other related or complementary product;

On 21st December, 2015, Government and UVCCCL executed an addendum (Addendum No. 1) to the Project Implementation Agreement dated 29th April, 2015 wherein UVCCCL was granted a number of tax exemptions in addition to those that had been granted under the Project Implementation Agreement of 29th April, 2015.

On 17th October, 2017, Government and UVCCCL executed another addendum (Addendum No. 2) to the Project Implementation Agreement dated 29th April, 2015 wherein Government amended the obligations of UVCCCL, empowering VCCL to buy and clean green coffee beans and export the excess green beans, upon satisfaction of the installed capacity of the coffee processing facility. The Addendum further granted UVCCCL priority to the supply of Coffee before licensing coffee export in order to ensure adequate supply to the company.

On 10th day of February, 2022, Government of Uganda, through the Ministry responsible for Finance, Planning and Economic Development executed an agreement (herein after referred to as the "Agreement") between the Government of Uganda and Uganda Vinci Coffee Company Limited. The Government was represented by Hon. Minister, Matia Kasaija and witnessed by Mr. Ramathan Ggoobi, the PSST. On the other hand, Ms. Enrica Pinetti signed as a witness and no one signed on behalf of Uganda Vinci Coffee Company Limited (UVCCCL). The Company Secretary, a one Matovu Moses also signed as a witness on behalf of UVCCCL.

This agreement was an amendment and restatement agreement in respect to a project Implementation Agreement dated 29th April, 2015 Addendum No.1

Matovu
Enrica
Pinetti
Matia Kasaija
Ramathan Ggoobi
Matovu Moses
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Page

thereof dated 21st December, 2015 and Addendum No.2 thereto dated 17th October, 2017.

This Agreement incorporated and replaced all the provisions that had been contained in to the Project Implementation Agreement of 2015 and Addendum No.1 and Addendum No.2 to the Project Implementation Agreement of 2015, in relation to the project.

6.1.7 Analysis of the Terms of the Agreement

6.1.7.1 Ownership of Uganda Vinci Coffee Company Limited

Uganda Vinci Coffee Company Limited is a Company organised under the laws of Uganda, incorporated on 9th January, 2014. The Company had an initial share capital of USD 10 Million divided into 1000 ordinary shares of USD 10,000 each.

According to the Articles and Memorandum of Association of the Company, the Company was incorporated to, among others, purchase, sell, import, export, distribute, supply and trade in all types of coffee and the relevant by-products, all types of agricultural products and the relevant by-products.

The shareholders of Uganda Vinci Coffee Company Limited are:-

- | | | |
|-----------------------------------|---|------------|
| 1. Mr. Hisham Ahmed Sultan Ismail | - | 10 share |
| 2. Mr. Ahmed Ahmed Sultan Ismail | - | 10 shares |
| 3. Mr. Ibrahim Elias Salloum | - | 10 shares |
| 4. Mr. Hadi Elias Salloum | - | 10 shares |
| 5. Hawk Limited | - | 960 shares |

The directors of Uganda Vinci Coffee Company Limited are: -

1. Ms. Erica Maria Aristidina Pinetti, the Managing Director;
2. Mr. Hisham Ahmed Sultan Ismail
3. Mr. Ahmed Ahmed Sultan Ismail
4. Mr. Ibrahim Elias Salloum

5. Mr. Hadi Elias Salloum.

All the above persons are citizens of Italy and the United Kingdom.

The postal address of Uganda Vinci Coffee Company Limited is plot 41, Nakasero Road, Kampala, P. O. BOX 9566.

6.1.7.2 Scope of the project

According to the Agreement, UVCCL presented itself to Government that it has capacity to undertake the establishment and operation of a Coffee Business, including the development of a coffee processing facility at Kampala Industrial and Business Park, Namanve and at such other place the Company determines.

Clause 3 of the Agreement required UVCCL to design, finance, construct and operate an integrated 60,000-tonne per year coffee processing facility at Kampala Industrial and Business Park, Namanve.

The project was to be implemented in phases, the first phase being 27,000-tonne capacity and ancillary activities necessary for the implementation of the financing, construction, operation, coffee procurement and processing activities such as roasting, grinding and instant coffee processing from green beans to roasted/instant coffee.

Clause 3.1.2 to 3.1.4 of the Agreement obligated UVCCL to-

- (a) produce, from green coffee beans, roasted coffee, roasted and ground coffee, instant spray dried coffee, coffee capsules and any other related or complementary product;
- (b) buy and clean green coffee beans; and
- (c) export the excess green beans upon satisfaction of the installed capacity of the coffee processing facility.

Clause 3.2 to 3.2.5 of the Agreement further indicates that prior to executing the Agreement; UVCCL Company had taken steps to implement the project, and completed the following-

- (a) carrying out a feasibility study and market survey;
- (b) identifying internationally recognised coffee roasting and preparation experts;
- (c) architectural and engineering design of the plant;
- (d) obtained an investment licence from Uganda Investment Authority;
- (e) obtained land from Uganda Investment Authority in the Kampala Business and Industrial Park, Namanve and the land allocated to UVCCL by Uganda Investment Authority vested with UVCCL which was empowered to use the same as it deems necessary

Clause 3.3 of the Agreement obligated UVCCL to, upon commencement of the commercial operation, to create 246 jobs for employees and labourers.

The Committee has examined the above provisions and makes the following observations-

6.1.7.3 failure to sign the Agreement

The Agreement signed on 10th February, 2022 between Government and UVCCL reveal that whereas Government was represented by the Minister of Finance, Planning and Economic Development and witnessed by the PSST, who signed to bind Government, the agreement was not signed by UVCCL. The representative from UVCCL Ms. Enrica Pinetti signed as a witness and no one signed on behalf of Uganda Vinci Coffee Company Limited (UVCCL). The Committee notes that under the article and memorandum of association of UVCCL, it is only a director, a secretary or a person appointed by the board who has the right to authenticate any document affecting the company. This means that if this Agreement was to bind UVCCL, it had to be signed by the director, secretary or any other person authorized by the Board.

The Committee also notes that for a document to bind UVCCL it must bear a seal of UVCCL which seal is supposed to be affixed in the presence of a director, secretary or a person authorized by the Board.

The failure to sign the agreement by UVCCL brings into doubt the legality of the agreement since a party to the agreement did not append its signature to the Agreement. It is a known legal principle that a person who does not append a signature on a document is not bound by that document.

Where a party does not sign the agreement, then that party is deemed to have had no intention of being bound by the undertakings in the agreement. The Committee notes that the intention of a party to be bound contractually is one of the major elements of a binding agreement. Section 10 (1) of the contract Act defines a contract as an agreement made with the free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

The Committee is therefore of the considered opinion that the agreement between Uganda and UVCCL, having not been signed and sealed by Ms. Pinetti can be challenged as not binding on UVCCL unless where Government can lead evidence to show that UVCCL conducted itself in a manner that led it to believe that the agreement was binding on it as was held *in Reveille Independent LLC v Anotech International (UK) Limited (2016)*. However this might not be possible in the circumstance of this case since UVCCL has not undertaken any activity under the Agreement, making the job of Government relying on the conduct of UVCCL very tedious.

6.1.7.4 Ambiguity as to the commercial operation of the plant and conflict with Lease Agreement

The Agreement contains provisions that are ambiguous and are incapable of exact interpretation.

Clause 5 of the Agreement provides that the Agreement came into force on the effective date. Although this is not defined in the Agreement, it is taken to be the date on which the Agreement was executed being the 10th day of February, 2022.

Clause 5.2 on the other hand makes provision for the duration of the agreement and it requires that the term of the Agreement shall be the period from the effective date until the date falling 10 years from the actual commercial operation of the Project, unless the agreement is extended or terminated earlier.

The Agreement defines actual operation of the Project to mean the production and export of the Coffee products envisaged under clause 3 of the Agreement and will be deemed to have commenced on the day when the factory is commissioned.

Clause 6 of the Agreement also provides, that the construction of the Factory at the project site shall commence within 12 months from the effective date.

The Committee has analyzed the above provisions and it is of the considered opinion that it is not clear how long the Agreement will run.

The Committee observes that whereas the effectiveness date is known and clause 5.2 purports to suggest that the Agreement will run for ten years from the actual commercial of operation of the Project, the date on which the plant will be operational cannot be ascertained.

The Committee also observes that whereas Government's obligation start running from the effective date, the obligations of the Company start running from a date to be determined by the Company, when they commission the Plant.

The Committee further observes that whereas the Company is allowed to start constructing the factory within 1 year of the effective date, there are no timelines provided for the Company to finish this plant within a particular time, neither are there guarantees or penalties for none delivery of the intended plant and other obligations on the company.

This means that the Company can take as long as it wants to construct the Plant, while at the same time enjoying the benefits granted to it under the Agreement, without Government ever getting any benefit from the Plant.

It is also not clear as to whether the Plant will be deemed to be operational when it is operating at the initial operating capacity of 27,000 metric tonnes or at the full installed capacity of 60,000 metric tonnes. This uncertainty means that the Agreement could run for more than ten years since the determinants of when the operation of the Plant is to be deemed to have commenced, are not determined and are left to the Company to determine.

The Committee observed further that this agreement has no termination clause. The Committee is concerned that even where a force majeure event occurs as required in clause 7, the agreement cannot be terminated in its terms but can merely be modified. This seems to have been deliberate attempt to frustrate any possibility of terminating the agreement by either party.

The Committee is further concerned about the provisions of clause 5.3 on continuation of rights under the agreement.

Clause 5.3.1 vests the factory and all the assets in the Company during the substance of the agreement and even during its termination. This provision reverses the principle of leases which provides that any property established on land reverts to the owner of the land upon termination or expiry of the lease agreement. This therefore means that Government has no reversionary interest in the land leased to the Company and cannot therefore take it back.

In other words, Government cannot take back the assets/property on the land upon termination or expiry of the agreement. The Company is only allowed to take away the machines according to the lease agreement which was signed on 31st August, 2018 between Uganda Investment Authority and Uganda Vinci Coffee Company Limited. This creates a contradiction between the lease agreement signed between UIA (who are the official custodians of the land) and UVCCL and the Agreement signed between Ministry of Finance, Planning and Economic Development and UVCCL which is not in the interest of the Government of Uganda.

In the same vein, the Committee is concerned about **clause 5.3.2** which continues the agreement, consents granted under the agreement as well as the rights due to the Company in this agreement even where the agreement is terminated. The concern of the Committee is due to the fact that termination in itself will not end the agreement, while at the same time termination of the agreement is redundant and has no legal effect. However, the committee observes that whereas the agreement has no termination clause, it can still be terminated if it is against the laws of Uganda therefore revoking the continuing rights in clause 5.3.1 of the agreement.

This means that even if this Agreement is terminated, the benefits under the agreement are maintained to the company as if the agreement was not terminated. This will allow the company to continue operating as if no termination was made and continue enjoying the rights under the Agreement and utilizing the consents as if the same had never been terminated.

The Committee is therefore, is of the considered opinion that the provisions of the agreement, specifically clauses 5.2, 5.3, the lack of a specific termination clause and performance guarantee in the agreement makes the impugned provisions fall within the **doctrine of unconscionable bargain**.

The doctrine of unconscionable bargain is well established at common law and is deemed as an unfair provision or clause identified in a contract that could deem the entire contract invalid. An unconscionable contract is one that is so one-sided that it is unfair to one party that no reasonable person would enter into.

The doctrine was established in in **Fry v Lane (1888) 40 Ch D 312**, where it was held that

“where a purchase is made from a poor and ignorant person at a considerable undervalue, the vendor having had no independent advice, the court has an equitable jurisdiction to set the contract aside”.

In summary therefore, clauses 5.3.1, 5.3.2 and 5.3.6 are unfair, unreasonable, unethical, unwarranted, morphological and ambiguous; thus cannot be allowed to stand under any reasonable circumstances in a democratic society.

6.1.7.5 MOU is not sincere on the quantity of premium grades

According to the MOU, UVCCL's coffee supply requirement for the start of the project is estimated to be 27,000 metric tonnes and 60,000 metrics tonnes at full capacity. The committee was informed by Uganda Coffee Private Sector that the conversion rate of Green coffee to soluble coffee is 3:1 and this means that UVCCL requires about 180,000 metric tonnes of green coffee.

The committee however observes that Uganda’s average annual export for the past 5 years is about 5.2 million bags which is equivalent to about 309,000 metric tonnes. ***This implies that UVCCL at full capacity will take 58.2% (180,000 metric tonnes) of Uganda’s coffee production.*** The committee notes that the stated reason for UVCCL’s desire to “ring-fence” is to ensure uninterrupted supply of high quality soluble beans.

The Committee further observes that since coffee is not constantly available in equal volumes throughout the year, different seasons and weather patterns; clause 4.2.2 which gives the company priority supply would possibly imply that no other person would be able to access volumes for export in the first half of the coffee year.

The committee also observes that the project description states the production of “instant Spray Dried Coffee”. The committee was informed that in soluble coffee processing, there are two methods;

Spray Drying:

In spray-drying the coffee extract is sprayed into a stream of hot air at the top of a tall cylindrical tower. As the droplets fall, they dry, becoming a fine powder by the time they reach the bottom. The powder may then be texturised into granules.

of "Instant Spray Dried Coffee". The committee was informed that in soluble coffee processing, there are two methods;

Spray Drying:

In spray-drying the coffee extract is sprayed into a stream of hot air at the top of a tall cylindrical tower. As the droplets fall, they dry, becoming a fine powder by the time they reach the bottom. The powder may then be texturised into granules

to facilitate dosage and dissolution. Spray-drying on the other hand exhibits certain possibilities of losing some aromatic compounds, due high temperature operations. Spray-drying is the most commonly used and cheaper drying process. The shelf life of the coffee produced under spray-drying is between 4 to 8 months maximum.

Freeze-drying: Freeze-drying is energy-intensive and expensive due to application of low temperature and pressure; the coffee extract is frozen to about - 40°C and cut into granules. The frozen granules are then dried at low temperature and under vacuum. The quality of the aroma and flavour are protected by the very low temperature and gentle drying conditions. Freeze drying maintains the original flavor and has the best aroma recovery. This coffee processed under this method has a shelf life of between 2 and 20 years.

The committee observes in clause 3.1.2 of the agreement, UVCCL intends to apply the spray-drying method which produces a low value and grade end product since it cannot preserve the aroma and flavor and has a shorter shelf life.

The committee was informed that it does not make economic sense for UVCCL or any company to purchase coffee, specifically, screen 18 and above at premium price as indicated in clause 4.2.2 of the agreement and use a cheaper method of processing which not only downgrades the value but also causes the coffee to lose certain aromatic compounds due to the high temperature operation; thus making operational losses.

The Committee observes that the spray-drying method can only make economic sense if it is used to process low grade coffee beans as opposed to the screen 18 and thus finds no merit in UVCCL ring-fencing premium quality coffee beans (clause 4.2.1) using spray-drying method. By implication, UVCCL is **hoodwinking** Government with a hidden agenda of exporting unlimited volumes

Kayaba-

of the premium coffee green beans as stated in clause 3.1.4 without officially adding value as the company purports to do.

The committee in its considered opinion does not think it does not make scientific sense for an investor to buy at premium price screen 18 and above and use the cheapest and least preferred method in making instant soluble coffee. This means that if UVCCL uses the spray drying method, when the coffee is exported, it will fetch a much lower price from the international market and hence losses are prone to be made.

6.1.7.6 Capacity of the UVCCL to deliver on the project:

The Committee observes that whereas UVCCL had indicated, prior to executing the Project Implementation Agreement in 2015 that it had capacity to deliver on the project and had been granted all the necessary factors for it to start constructing the factory, UVCCL has failed to commence construction of the factory as had been envisaged by Government.

The Committee was informed that whereas Government had spent colossal sums of money to grade, fence, backfill the land allocated to UVCCL at a tune of 7 billion and had relocated the power lines over the proposed factory site, UVCCL had not commenced nor undertaken any activity as envisaged in the agreement.

See figures below



Vinci Coffee Site back filled and levelled

Kagaba.



Iron-sheet hoarding around the site with temporary shelter for guard

The Committee observed that UVCCL could not prove its capacity to deliver on the project and withheld vital information from the Committee relating to the feasibility Study it had allegedly undertaken as well as the architectural and engineering designs of the plant to enable the Committee assess its readiness to deliver on the project as had been agreed upon in the Agreement. UVCCL did not adduce any evidence or information to show that it had participated in the coffee value chain, in Uganda or elsewhere, thereby casting doubt on the ability of UVCCL to deliver on the project.

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Further, the Committee observes in 3.2 of the agreement that it was understood by both parties that the Company had undertaken feasibility studies and market survey. However, during the Committee's interaction with the Minister of Finance, Planning and Economic Development, who is in this case the party representing Government of Uganda confessed to have never seen a copy or content of the feasibility study and market survey; yet they signed an agreement that purported to have knowledge of the said documents.

Pursuant of Rule 208 of our Rules of Procedure, the Committee further made an effort to secure a copy of the said feasibility study and market survey from the Vinci Coffee Company Secretary; who deliberately declined to avail the documents to the Committee.

It is therefore, a considered opinion of the committee that the feasibility study and market survey for UVCCL **do not exist.**

The Committee was informed that UVCCL did not pay for the land allocated to it by Uganda Investment Authority (UIA) and UIA had instead waived payment of the premium of USD 80,000 per acre equivalent to US\$ 2million by UVCCL.

The Committee was further informed that UVCCL had sought and obtained authorization from UIA to mortgage the land that had been allocated to it to finance its activities on 3rd Aug 2018, although, at the time of this report, the committee had no way of establishing whether the land had not been already mortgaged because both parties failed to provide the committee with the land title.

The committee observes that whereas Ms. Enrica Pinetti requested for a mortgage approval on 30th August 2018 and was granted approval on 3 September 2018. This approval was irregular because it should have been done by the board of UIA but unfortunately the evidence submitted by UIA indicates that this approval was done using three (3) emails between Ramadhan Bukoma (rbukoma@gmail.com) and Ajer Basil (abasil@ugandainvest.go.ug).

The Committee was guided by Uganda Coffee Development Authority that the cost required to construct and operate a 60,000-tonne coffee processing factory, to undertake the activities as those envisaged by UVCCL, was about USD 440 Million.

The committee also observed that at the time this agreement was executed in February 2022, UVCCL did not possess a valid investment license since the one that had been issued to it in 2014 expired in 2019 without being renewed. This means that UVCCL was not eligible to receive the tax incentives and other benefits granted to investors in Uganda.

The committee also notes that whereas UVCCL was required in the lease agreement to pay USD10 as rent per annum, no evidence was adduced to the committee that UVCCL has ever complied with its rent obligations. Furthermore, the committee did not receive any evidence proving that UVCCL has met its obligations in paying the **annual park service charge** ever since the lease agreement was signed (**equivalent to 0.5% of the premium**). The failure of UVCCL to meet its obligations under the lease agreement throws further doubt on its capacity and commitment to finance the project.

The Committee observes that whereas UVCCL has share capital of USD 10 Million, the money required to construct such a factory envisaged in the agreement is estimated by UCDA to cost about USD 440M in the first year alone. The committee is convinced that UVCCL given its limited share capital cannot be in position to borrow a sum which is 44 times the value of the company.

The Committee was therefore not convinced that UVCCL had capacity to deliver on the project and that explains why it has not commenced construction or operation of the coffee factory since the first Agreement was signed.

6.1.7.7 Land allocated to UVCCL:

Clause 3.2.5 of the Agreement obligates Government to avail land to UVCCL in Namanve Industrial Park. The provision recognizes that UIA had, in 2018 granted a lease of 49 years to UVCCL over land located in Namanve Industrial Park for purposes of constructing a factory. The provision further vests the land in UVCCL and UVCCL is empowered to utilize the same as it wishes.

The Committee notes that on 4th June, 2014, UIA allocated 25 acres of land in Namanve Industrial Park to UVCCL and executed a lease agreement for the same.

This lease was for an initial period of 5 years but extendable to 49 years upon fulfillment of the conditions provided in the lease. The lease obligated the Company to utilize the land allocated to it for the establishment of a Coffee Processing Plant. The Lease had also provided that it will only be extended for the full 49 years upon satisfaction of the Uganda Investment Authority that there is established on the demised land developments which are ready for occupancy.

According to a letter dated 03rd August, 2018, addressed to the then PSST, Mr. Muhakanizi, the UVCCL requested for an extension of the lease to the full 49 years citing that the area allocated to it was swampy and required a lot of works to be done which included the redesign of the intended plant. The letter also notes that it is only after revising the lease agreement that UVCCL can prepare a bankable proposal to its financiers.

Following the request from the Company, the Minister responsible for finance, Hon. Matia Kasaija, by a letter dated 10th August, 2018, advised the Ag. Executive Director, UIA to study the request from UVCCL and facilitate UVCCL in line with UIA's mandate.

Following that letter, a new lease was executed on the 31st August, 2018 between UIA and UVCCL for 49 years. The Lease agreement also waived the payment of

[Handwritten signatures and initials are present throughout the page, including 'PSST', 'Hon. Matia Kasaija', 'Ag. Executive Director, UIA', 'UVCCL', and various other names and initials.]

premium of 80,000 USD per acre totaling to USD 2 million for 25 acres that was payable for the lease hold.

This lease also obligated the Company in the first 5 years, to utilize the land allocated to it for the establishment of a Coffee Processing Plant. The Lease also required that that it will only be extended for the full 49 years upon satisfaction of the Uganda Investment Authority that there is established on the demised land developments which are ready for occupancy.

The Committee was informed that since UVCCL was granted a lease, it has not undertaken any activity on the land. The Committee was also further informed that all the activities carried out on the land were carried out by Government.

The Committee observes that UVCCL was not eligible to benefit from the 49-year lease extension since it had not complied with the building covenants under the initial Lease agreement. This means that the lease was irregularly extended.

The Committee further observes that the UVCCL has not, even after the extension of the lease to a full 49-year, done any construction works on the site to-date.

6.1.7.8 Project support:

The Agreement makes provision for various support to be availed to UVCCL by Government. These are examined below for their legality and appropriateness.

i) Tax Support

Clause 4 of the Agreement makes provision for a number of benefits to be enjoyed by UVCCL. The Agreement obligates Government to provide the following to the support packages to UVCCL-

(a) Free land at Kampala Industry and Business Park, Namanve;

(b) Under clause 4.1, Tax neutral operation and tax exemptions in the form of

- (i) Import duties on any form of machinery, motor vehicles or any other material for use in the project;
- (ii) Excise duty on all locally produced goods and financial instruments;
- (iii) corporate income tax of any form except for expatriates for 10 years;
- (iv) Stamp duty;
- (v) VAT on domestic purchase of goods and services and imported goods and services;
- (vi) withholding Tax on imported goods and services;
- (vii) NSSF contributions;
- (viii) all employee related impositions such as Pay As You Earn (PAYE), work permits fees/charges; and
- (ix) local service Tax.

Under clause 4.1.2, the Government is to meet the tax obligations of the Company where no tax exemption is allowed under the law or where the exemption is inadequate to provide to the Company with comprehensive relief from taxes or other impositions.

Under clause 4.1.4 of the Agreement, Government is to stabilize the tax attaching to the Company and further required that any new taxes introduced by Government which affects the economic benefits of the company shall be notified to the Government which shall take steps to amend the Agreement to restore the economic benefits of the Company, including reimbursing the Company the costs that may have been incurred by the Company as a result of change in the law.

Under clause 4.2, Government is to undertake reasonable measures to give priority of supply of coffee to the Company before registering any contract or acknowledging arrangement for the export of coffee beans so that the company will have ample supply of coffee to sustain its operation;

Clause 4.3 obligates Government to use its endeavors to put in place measures which protect local coffee processors;

Clause 4.4 obligates Government to guarantee constant power supply to the Company and ensure that electricity supply to the Company is not disconnected for as long as it has paid its share of tariff to the electricity supplier.

The Committee interacted with the Ministry of Finance, Attorney General, and Solicitor General who opined that all the tax incentives granted to UVCCL are provided for under various tax laws and are therefore lawful. However, various other stakeholders, including Uganda Law Society, opined that the incentives are irregular and illegal since they contravene various laws applicable in Uganda.

The Committee has examined the project support prescribed in the Agreement in light of the views received on the matter and is of the considered opinion that some of the provisions of the Agreement conflict with provisions of the Constitution of the Republic of Uganda, 1995, the Income Tax Act Cap 340, the Value Added Tax Act Cap 349, the Excise Duty Act, 2014, the Stamp Duty Act, the National Social Security Fund Act Cap 222, The National Coffee Act, 2021, the Local Government Act Cap 249 and the Public Finance Management Act, 2015.

Article 2 of the Constitution declares the Constitution to be the supreme law of the Uganda and provides that the constitution as having binding force in Uganda.

On the other hand, Article 79 of the Constitution relates to the functions of Parliament and directs that Parliament shall have the power to make laws on

any matter for the peace, order, development and good governance of Uganda. Clause 2 of Article 79 specifically bars any person or body other than Parliament to have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

Furthermore, Article 152 (1) and (2) of the Constitution provides that no tax shall be imposed except under the authority of an Act of Parliament and further requires that where a law enacted under clause (1) of article 152 (1) confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority shall report to Parliament periodically on the exercise of those powers, as shall be determined by law.

The committee observes that the exemptions granted under Clauses 4.1.1 to 4.1.3 have the effect of shielding UVCCL from paying taxes prescribed by Parliament, while exercising functions under article 79 and 152 of the Constitution. This act of shielding the application of various tax laws on the activities of UVCCL has the effect of fettering the discretion of Parliament to impose taxes as well as overriding the statutory requirements of paying taxes by individuals and entities as Parliament has prescribed by law.

It should be noted that whereas the Constitution recognizes that Parliament may allow a person or authority to vary a tax it has imposed under article 152 (2) of the Constitution, this power can only be exercised by a person upon whom Parliament has specifically granted such power under the specific tax law.

By inference therefore, a person who imposes or varies a tax without the authority of Parliament does so unconstitutionally, illegally and irregularly and such an act infringes upon and renders redundant the performance of the functions of Parliament to impose taxes as guaranteed under article 152 (1) of the Constitution.

Furthermore, clause 4.1.3 has rendered redundant and amended, by infection, the provisions of various laws imposing taxes on the activities of UVCCL. For instance;

- (1) **paragraph (a)** which exempts the payment of income tax by UVCCCL for a period of 10 years contravenes sections 4 (1) and 7(1) of the Income Tax Act. These sections of the Income Tax Act impose a tax on a person who or entity which earns income in any year of Income. The provision also infectiously amends section 21 to include an exemption of the income of UVCCCL without the authority of Parliament.

The Committee observes that whereas the Minister responsible for Finance indicated that the tax exemption was granted under the Income Tax Act, the Committee disagrees because these exceptions could not be accessed by UVCCL since such exceptions are only accessed where a taxable person earns income in a year of income which entitles such a person to an exemption. The Committee is aware that UVCCL has not commenced any activity neither has it earned any income to warrant the grant of exemptions under the Income Tax Act.

Furthermore, the Agreement which granted exemptions to UVCCL was signed in 2015, and yet the provision under the Income Tax Act which grants exemptions on the income of a person or entity processing agricultural produce was introduced in 2020, five years after the Agreement was executed. This means that the exemption could not be accessed by UVCCL at the time because it did not form part of exemption regime under the Act;

More so, section 21 (af) of the Income Tax Act which the AG pointed out as the basis for granting the exemption to UVCCL does not apply to UVCCL since the provision requires the recipient of the exemption to poses and

have invested capital of USD 10 million and UVCCL has not yet invested the requisite funds.

In that regard therefore, the Committee finds that the grant of the tax waiver to UVCCL under the Income Tax Act was irregular and illegal since the provision of the law under which the waiver was granted did not apply to UVCCL at the time of grant.

- (2) **paragraph (c)** infringes on sections 4 and 5 of the Value Added Tax Act since it freezes the application of such provisions on UVCCL without the authorization of Parliament.

The Committee notes that whereas the Minister did not respond to the legality of the waiver under the relevant law, the AG asserted that Government will meet the tax liability of UVCCL under section 40A of the Tax Procedures Code Act.

The Committee observes that whereas Government is empowered to meet the tax obligations under section 40A of the Tax Procedures Code Act, the section impugned by the Minister does not apply in the circumstance. Section 40A is reproduced below-

"40A. Tax due and payable by Government

(1) The Minister shall pay any tax due and payable by Government, arising from a commitment made by Government to pay tax on behalf of a person or owing from Government as counterpart funding for aid funded projects.

(2) Notwithstanding subsection (1), all unpaid taxes by Government as at 30th June, 2019 are written off.

(3) The Minister shall publish in the Gazette, a list of all taxes waived under subsection (2)."

Whereas the Tax Procedure Code Act does not define what amounts to a "commitment", section 3 of the Public Finance Management Act define a commitment as follows-

"commitment" in reference to a vote, means entering into a contract or other binding arrangement which creates a future expense or liability;"

The creation of a commitment is governed by section 23 of the Public Finance Management Act which requires as follows-

"23. Multi-year expenditure commitments

(1) A vote shall not enter into a contract, transaction, or agreement that binds the Government to a financial commitment for more than one financial year or which results in a contingent liability, except where the financial commitment or contingent liability is authorized by Parliament.

(2) Parliament may, in the annual budget, authorise a vote to make a multiyear

expenditure commitment, and where Parliament authorizes, the annual budget shall indicate the commitment approved for the financial year and the approved multiyear commitments.

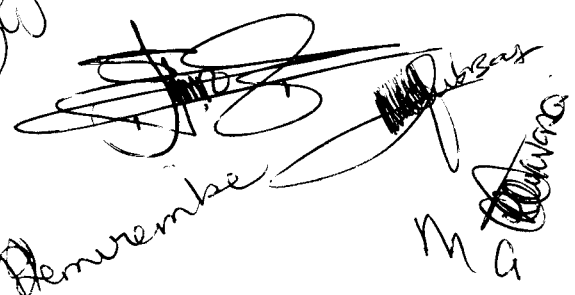
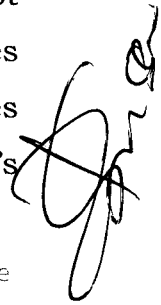
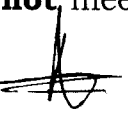
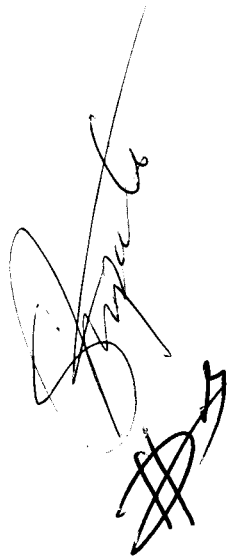
(3) For avoidance of doubt, subsection (2) shall only apply where the multiyear commitment is consistent with the objectives of the Charter for Fiscal Responsibility and the Budget Framework Paper.

(4) The Minister shall for every financial year submit to Parliament a report on the performance of the multiyear commitments made."

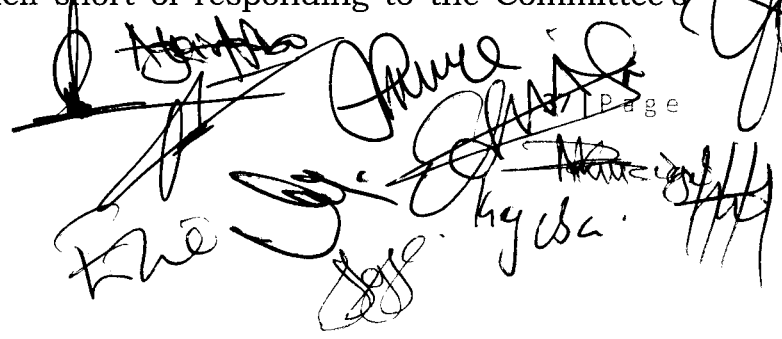
This provision bars the entering into commitments, by votes, without authorization of Parliament.

This provision, read together with section 40A, would require Government to only meet commitments which have been approved by Parliament. Since the commitments in the agreement between Uganda and UVCCL were not approved by Parliament, then Government **cannot and should not** meet those commitments.

Secondly, the Committee observes that the matter in issue was not about who was supposed to meet the tax obligations of UVCCL, but relates to the legality of the award of the tax exemptions. The Committee notes that the Minister's response fell short of responding to the Committee's



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Page 1

quest in understanding how this tax was waived and the authority under which it was waived.

The Committee notes further that the VAT Act does not grant any person, not even the Minister, the right to waive a tax. In that regard therefore, the Minister acted irregularly and illegally in granting the VAT exemptions to UVCCL.

(3) **paragraph (e)** exempting the payment of social security contributions, local service tax, work permit fees and charges is contrary to the specific provisions of section 7 of the National Social Security Fund Act Cap 222, sections 54 and 59 of the Uganda Citizenship and Immigration Control Act Cap 66 and section 80 of the Local Government Act Cap 243. It should be noted that-

(a) section 7 (1) and (2) of the NSSF Act currently requires every employer, irrespective of the number of employees, to register with the Fund as a contributing employer and to make regular contributions for his or her employees in accordance with this Act and regulations made under the NSSF Act;

(b) Section 54 of the Uganda Citizenship and Immigration Control Act imposes an obligation on a foreigner who intends to work in Uganda to obtain an entry permit and an offence is created in section 59 of the same Act against such a person if he or she gets employed in Uganda without an entry permit.

(c) Section 80 of the Local Government Act empowers a local Government to charge, levy and collect a local service tax to be levied on all persons in gainful employment or who are practising any profession or on business persons and commercial farmers producing on a large scale. Whereas the Local Service Tax is

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imposed on an employee, it is collected by the employer and remitted to the respective local governments.

The Committee is concerned that clause 4.1.3 (e), specifically the exemption on the payment of social security contributions, local service tax, work permit fees and charges not only contravene the provisions of the above laws and articles 79 and 152 of the Constitution, it also amounts to amending the provisions of the above laws by agreement, a matter that courts have found in various decisions to be irregular, illegal and of no legal effect.

The Committee is further concerned that the amendment will also remove a safety net for employees of the project provided under the NSSF Act since the Agreement does not provide who shall meet their contributions. The provision will also deny the relevant local government income arising from local service Tax, a matter that will affect service delivery in the concerned local government.

The Committee, for the reasons advanced in paragraph (2) above, rejects the opinion of the Minister on the waiver granted to UVCCL over the payment of social security contributions, local service tax and work permit fees since the matter does not relate to the payment of tax. The Committee is of the considered view that the Minister was not granted, by the relevant laws, the right to waive any of the provisions of the above law, in the manner prescribed in the Agreement.

The Committee observes that the limitation, determination and variation of tax obligations by agreement has been litigated upon in a number of cases, including in the case of **K.M. Enterprises and Others v Uganda Revenue Authority HCCS No. 599 of 2001**, where K.M Enterprises Ltd entered into a memorandum

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of understanding with URA pertaining to payment of certain taxes. It was observed by Court that-

"...exercise of statutory powers and duties cannot be fettered or overridden by agreement, estoppels, lapse of time, mistake and such other circumstances..." To hold otherwise would be to suggest that an agreement between the parties can amend an Act of Parliament, and thus change what parliament ordained by allowing the defendant's servants to choose to act, or operate outside or contrary to the provisions of the law, willy-nilly. And that cannot be. (Emphasis mine).

The import of the above finding of court is that private agreements, with or without Government cannot amend the specific provisions of an Act of Parliament or change what Parliament has prescribed by law. By inference, in executing this Agreement, the Minister responsible for Finance usurped the power granted to Parliament under Article 152 (1) and exercised powers not granted to him under the tax laws to enter into an agreement substituting the statutory scheme for levying, collection and the payment of the taxes due to Government, by agreement.

The Committee takes cognizance of the holding of court in the decision of K.M. Enterprises and Others v Uganda Revenue Authority where Court held that

"Neither officials of the defendant (URA) nor tax payers like the plaintiffs' or their combined agreement can substitute the statutory scheme for levying, collection and the payment of the taxes due by agreement between themselves without complying with the law in the first place, which determines what tax is to be levied, collected and paid. To determine the actual tax liability of the plaintiffs' recourse must be made to relevant law,

and not to a compact (AGREEMENT) between the parties. An agreement between the parties such as the one in question cannot settle tax liability, even if it purports to do so. I would accordingly hold that the memorandum of settlement of tax liability dated 10th April 2001 did not and could not settle the tax dispute between the parties. Neither would it entitle the plaintiffs to a refund of VAT, a matter that is regulated by statute."

By inference therefore, clauses 4.1 to 4.1.3 of the Agreement cannot settle tax liability between Government and UVCCCL, even if it purports to do so and these provisions are therefore illegal, unlawful and of no legal consequence since the imposition, collection and payment of tax is a statutory matter and not a matter of agreement or conjecture.

Furthermore, the Committee observes that Clause 4.1.4 of the Agreement also infringes on the exercise of the functions of Parliament in article 79 and article 152 of the Constitution and is therefore, illegal, unconstitutional and unlawful.

The Committee observes that clause 4.1.4 obligates Government to stabilize the tax attaching to the Company and further required that any new taxes introduced by Government which affect the economic benefits of the company shall be notified to the Government which shall take steps to amend the Agreement to restore the economic benefits of UVCCCL, including reimbursing the Company the costs that may have been incurred by the Company as a result of change in the law.

The Committee finds that clause 4.1.4 has the effect of barring Parliament from exercising its mandate in article 79 and 152 to impose taxes on UVCCCL and where Parliament does so, such taxes do not apply to the UVCCCL and the tax obligations are to be met by Government.

This makes the Agreement supreme to any enactment in Uganda and fetters the exercise of the statutory duties of Parliament under article 152 (1) of the Constitution.

The Committee is fortified in its reasoning by the decision of the **High Court of Uganda in Civil Appeal No 14 of 2011 Heritage Oil and Gas Limited versus Uganda Revenue Authority** wherein Court examined a stabilisation clause which provided as follows-

"If following the effective date, there is any change, or series of changes, in the laws or regulations of Uganda which materially reduces the economic benefits derived or to be derived by Licensee hereunder, Licensee may notify the Government accordingly and thereafter the Parties shall meet to negotiate in good faith and agree upon the necessary modifications to this agreement to restore Licensee to substantially the same overall economic position as prevailed hereunder prior to such change (s). In the event that the Parties are unable to agree that Licensee's economic benefits have been materially affected and /or unable to agree on the modifications required to restore to Licensee the same economic positions as prevailed prior to such change within ninety (90) days of the receipt of the notice referred to hereinabove, then either Party may refer the matter for determination pursuant to paragraph 26.1"

Lady Justice Helen Obura held

"That Article 152 (1) of the Constitution of Uganda provides that no tax shall be imposed except under the authority of an Act of Parliament. The Income Tax Act and other tax statutes specify the taxes payable and the URA is mandated to collect those taxes. That mandate of the URA to collect

tax in accordance with the laws of Uganda cannot be fettered or overridden by an agreement.(emphasis mine)

The Committee is therefore of the considered opinion that Government, in prescribing clause 4.1.4 in the Agreement, ought to have been alive to the fact that tax matters in Uganda are statutory and not contractual as guided by the above court decisions and should not have included such a provision in the Agreement well knowing that such a provision was declared illegal and of no legal effect in the cases mentioned above. This makes clause 4.1.4 of the Agreement irregular, unconstitutional and illegal.

The Committee is aware that over the years, Government has provided numerous incentives to various eligible investors. These incentives, in form of tax holidays and exemptions are prescribed by law, under the specific law applicable to the tax being exempted and not in agreements as is the case in this matter.

Indeed, whereas the Minister adduced evidence before the Committee indicating that Government has granted numerous tax incentives to investors, both local and international, these have not been prescribed by agreement as is currently proposed by this Agreement, but are instead prescribed by relevant Acts of Parliament. This makes such incentives applicable to all persons in Uganda who fit the description of the recipient of the incentive as prescribed by law.

Therefore, the Committee finds clauses 4.1 to 4.1.3 (a) to (f) of the Agreement to contravene-

- (a) Articles 2, 79 and 152 of the Constitution of Uganda;
- (b) sections 4 (1), 7(1), 19 and 21 of the Income Tax Act Cap 340;
- (c) sections 4 and 5 of the Value Added Tax Act Cap 349;
- (d) Section 4 (1) of the Excise Duty Act, 2014,
- (e) section 7 of the National Social Security Fund Act Cap 222,
- (f) sections 54 and 59 of the Uganda Citizenship and Immigration Control Act Cap 66; and

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(g) Section 80 of the Local Government Act Cap 243.

ii) Coffee Supply

Clause 4.2 of the Agreement makes provision for coffee supply and obligates Government, in clause 4.2.1, to take all reasonable measures to give priority of supply of coffee to the Company before registering any contract or acknowledging any arrangement for the export of coffee beans, including screen 18 and above, so that the company will have ample supply of coffee to sustain its operations.

Furthermore, clause 4.2.2 of the agreement further requires the company to pay for priority supply of superior quality coffee beans at a premium price to be determined by the company but, in any case, not lower than the price approved by the relevant Authority for a particular consignment or the prevailing international price for each grade of coffee, whichever is lower.

The above provisions essentially-

- (a) grants priority to UVCCL to purchase super quality coffee beans before Government can register any contract or acknowledging any arrangement for the export of coffee beans;
- (b) allows UVCCL to determine the price it pays for coffee beans, being the lower of the price approved by the relevant Authority for a particular consignment or the prevailing international price for each grade of coffee;

The Committee has examined clause 4.2.1 and notes that the provision creates a monopoly in favor of UVCCL in the purchase of super quality beans in Uganda.

Whereas the word monopoly is not defined in Uganda, monopoly was defined in the case of the State v. Duluth Board of Trade, 107 Minn. 506, to consist in the ownership or control of so large a part of the market- supply or output of a given

commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices.

Based on the above definition, the committee expressly finds that the agreement creates a monopoly where;

- i. Giving priority supply of premium quality coffee to the Company (4.2.1)
- ii. Limiting licensing of coffee exporters until the company meets its demand which is unlimited; and
- iii. Granting the company powers to determine prices of coffee.

The Committee observes that clause 4.2 creates a monopoly in favor of UVCCL to the purchase of superior quality coffee beans from Uganda by restricting Government from registering any contract or acknowledging any arrangement for the export of coffee beans.

The Committee observes that this means that no export of super quality coffee beans shall be allowed by Government until the quantity required by UVCCL is attained.

Further still, a monopoly is created in favor of UVCCL since it controls the prices it pays for the coffee beans supplied to it.

The Committee notes that the supply of premium quality coffee beans (Screen 18 and above) in Uganda is limited since such coffee beans constitute between 3-6% of the total coffee production in Uganda. The Committee was informed that out of the total production of 390, 000 tonnes of coffee, about 23,400 tonnes are of the super quality beans which are restricted by the Agreement. The supply of these high quality beans is much sought after since they fetch more money internationally and domestically.

Therefore, restricting access to such beans to UVCCL alone will amount to a restraint of trade and would therefore contravene article 40 (2) of the

Constitution since it will bar all other persons in Uganda, except UVCCL, from accessing and trading in such beans.

Article 40 (2) of the Constitution guarantees a person's right to practice his or her profession and to carry on any lawful occupation, trade or business. By the command of article 40 (2) of the Constitution, a person in Uganda is free, without restriction, to carry out any lawful occupation, trade or business.

The Committee observes that this matter has been litigated upon in the case of **Spedag Interfreight Uganda Ltd and 3 others Vs Ag Constitution Petition No 85 of 2011** wherein the decision of Government to enter into an agreement with Great Lakes Ports Ltd granting it monopoly rights to the company in respect of clearing, forwarding and handling of all goods imported into and exported out of Uganda through the port of Mombasa. Court found that Government does not have the power to enter into a contract that limits the enjoyment of fundamental rights under article 40 (2) of the Constitution.

The Committee was informed that the livelihoods of farmers and all persons engaged in the coffee value chain are likely to be affected by the agreement owing to the fact that the coffee requirements of the agreement represent approximately 15% of the total coffee production in Uganda and 100% of the premium coffee beans

The Committee was informed that allocating 100% of premium quality coffee produced in the country will mean that other players will not be able to access that category of coffees thereby affecting the economic activities and live-hoods of various persons participating in the coffee value chain.

The Committee is concerned that the current exporters of coffee beans who have long term agreements with various international organisations are likely to be affected by the agreement since they will not be able to access premium coffee to be supplied in fulfillment of their contractual obligations. This will adversely affect the returns from coffee and expose the players to untold suffering losses,

The committee also observes that this monopoly is a threat to the already existing 47 licensed processors of coffee with possibilities of causing unemployment, loss of tax and in the worst long term scenario, shut down of operations.

Section 5 (2) (e) of the EAC Competition Act in its strongest terms prohibits any person from barring competitors from access to the market or from access to an association or arrangement which is essential for competition.

Article 8A of the Constitution deals with National Interest and it requires that Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy. One of the principles enshrined in the national objectives and directive principles of state policy is objective X which enjoins the State to take all necessary steps to involve the people in the formulation and implementation of development plans and programs which affect them.

is deprived of his or her property, the state must

This means the farmer has the right to determine how and to whom he or she sells his or her coffee to. The Agreement therefore interferes with the exclusive rights granted to farmers over their coffee by article 26 of the Constitution by pledging the coffee to a single entity without the consent of farmers. The farmer's proprietary rights have been affected by the Agreement, irreversibly.

Apart from the legal challenges identified above, the Committee is also concerned that clause 4.2.1 infringes and reverses the National Coffee Policy, 2013.

The Committee notes that in 2013 Government formulated the National Coffee Policy as the guiding instrument of the coffee subsector. The aim of this policy is to lay a strong foundation for long-term competitiveness that is socially, environmentally and economically sustainable and also ensure that Uganda coffee flourishes throughout the world.

The implementation of the National Coffee Policy is guided by six principles, namely-

- (a) Coffee production, processing, marketing shall be undertaken by the private sector as individual farmers, farmer organizations and business companies.
- (b) The sub sector shall operate under a liberalized market environment within the framework of a regulatory body. (emphasis mine)
- (c) Coffee development services will be provided to all farmers with special emphasis on women and youth. Through farmer organizations, small holder farmers shall be empowered to participate at all stages of the coffee value chain.
- (d) Small holder farmers shall, through farmer organizations, participate at all stages of the coffee value chain.
- (e) Service delivery shall be guided by the needs of all actors in the value chain.

(f) Value addition shall be pursued at all stages of the coffee value chain.

The Agreement infringes and reverses the National Coffee Policy, specifically the principle that coffee production, processing, marketing shall be undertaken by the private sector as individual farmers, farmer organizations and business companies since it has now transferred the purchase of high quality beans to be exclusively provided by a single company.

Furthermore, the creation of a monopoly has infringed upon the principle that the coffee sub sector shall operate under a liberalized market environment within the framework of a regulatory body.

Connected to the above, clauses 4.2.1 and 3.1.4 have reversed the government policy which favors value addition to coffee by allowing the export of raw coffee beans. The Committee notes that the 3rd National Development Plan NDPIII focuses on agro industrialization and value addition and Government has taken a deliberate strategy to add value to Coffee. Therefore, allowing UVCCL to export raw Coffee beans is a policy reversal in light of the fact that Government should be looking at establishing more soluble coffee plants to supplement the plant to be established by UVCCL rather than allowing UVCCL to export raw coffee beans.

Clause 4.2.2 of the Agreement also poses some challenges since it infringes the price determination mechanisms established in the National Coffee Act. Clause 4.2.2 not only allows the UVCCL to determine the price of coffee beans, but also allows UVCCL to pay a price, whichever is lower, between the price approved by the relevant Authority for a particular consignment or the prevailing international price for each grade of coffee.

This provision will not only exploit farmers by being paid a lower price than the one they can obtain from selling their coffee beans elsewhere, but also contravenes the specific provisions of the section 5 (g) of the National Coffee Act, which provides, as one of the functions of the Coffee Development Authority, the

obligation to prescribe quality control standards for the sale and marketing of coffee, issue **indicative prices** at which coffee may be traded and protect coffee farmers from exploitation and unfair trade practices.

The Committee also notes that the National Coffee Act prescribes two types of price determination, being the indicative issued by the National Coffee Development Authority and a price determined through auction under section 35.

The Committee observes that allowing UVCCL to determine the price for coffee beans not only contravenes the above sections of the National Coffee Act but also amends, by inference, the price determination mechanisms prescribed by law.

The Committee also observes that whereas farmers are being promised premium prices, the agreement is silent on the method of supply of coffee beans to the factory. This therefore, this opens a window for possible contracted brokers by UVCCL since the factory will need constant supply from different regions of the country. Thus reducing the margin on the farm gate price.

The Committee is concerned that designating UVCCL as a price determinant will distort coffee prices in Uganda by disregarding the forces of demand and supply, both locally and internationally, in determining coffee prices.

7.0 FINDINGS OF THE COMMITTEE

From the above analysis, the Committee establishes the following findings about the Agreement between the Government of Uganda and Uganda Vinci Coffee Company Limited-

(a) the Agreement is unconstitutional, illegal, void and unenforceable at law since it violates various provisions of the laws of Uganda, including Articles 2, 79 and 152 of the Constitution of Uganda, sections 4 (1), 7(1), 19 and 21 of the Income Tax Act Cap 340, sections 4 and 5 of the Value Added Tax Act Cap 349, Section 4 (1) of the Excise Duty Act, 2014, section 7 of the National Social Security Fund Act Cap 222, sections 54 and 59 of the Uganda Citizenship and Immigration Control Act Cap 66; and section 80 of the Local Government Act Cap 243;

(b) The Tax waivers and impositions granted under the Agreement-

(i) Are unjustified since the UVCCL did not qualify for such waivers under sections 19 and 21 of the Income Tax Act Cap 340 and generally, under the Value Added Tax Act Cap 349 and the Excise Duty Act, 2014;

(ii) Were illegally, unlawfully and irregularly granted by the Minister responsible for Finance since the relevant provisions of the Income Tax Act Cap 340, the Value Added Tax Act Cap 349, the Excise Duty Act, 2014, the National Social Security Fund Act Cap 222, the Uganda Citizenship and Immigration Control Act Cap 66 and the Local Government Act Cap 243 do not empower the Minister to, by agreement, restrict, waive or limit the application of such taxes or impositions;

(c) The stakeholders in the coffee value chain, including farmers and Uganda Coffee Development Authority were not consulted, thereby contravening

article 8A of the Constitution and the national objectives and directive principles of state policy;

(d) Uganda Vinci Coffee Company Limited has failed to commence the project since 04th June, 2014 when it was allocated the 25 acres of land, thereby casting doubt on its ability to deliver on the project.

(e) Uganda Vinci Coffee Company Limited is not in possession of a valid investment license since investment license issued to it in 2014 expired, without being renewed in 2019 and therefore the agreement between Government and Uganda Vinci Coffee Company Limited was irregularly executed in clause 3.2.4;

(f) **The Minister responsible for Finance, Hon. Matia Kasaija** exceeded his mandate when he executed Project Implementation Agreement dated 29th April, 2015 and addenda No.1 and NO. 2 and the amendment and restatement agreement dated 10th February, 2022 containing provisions that granted tax waivers and waivers to various impositions to Uganda Vinci Coffee Company Limited without lawful authority;

(g) **The Attorney General, Hon. Kiryowa Kiwanuka** failed to carry out an appropriate legal due diligence in exercise of his statutory functions under article 119 (4) (b) of the Constitution to draw, peruse through and approve the agreement between Government of Uganda and Uganda Vinci Coffee Company Limited in spite of the agreement containing provisions that infringed the Constitution and various other laws;

(h) The Board of Uganda Investment Authority wrongly exercised its discretion under the Investment Code Act Cap 92 when It-

(i) failed to carry out due diligence as to the suitability of Uganda Vinci Coffee Company Limited, as an investor;

(ii) granted a lease extension to Uganda Vinci Coffee Company Limited in spite Uganda Vinci Coffee Company Limited having failed to comply with the initial lease conditions;

- (i) **Mr. Ajer Basil, the then Acting Executive Director** of Uganda Investment Authority exceeded his mandate when he, without authorisation of the Board of Uganda Investment Authority and complying with guidelines governing the mortgaging of land allocated to investors, authorized Uganda Vinci Coffee Company Limited to mortgage the 25 acres allocated to by Uganda Investment Authority.

8.0 RECOMMENDATIONS

The Committee makes the following recommendations-

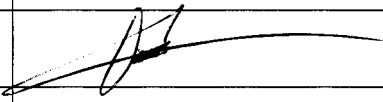
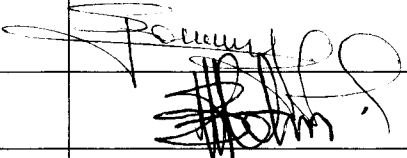
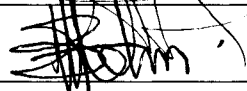
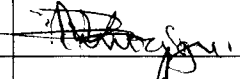

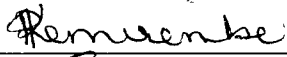

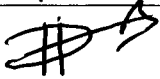


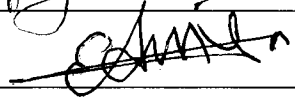
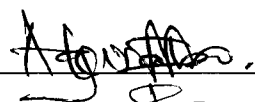

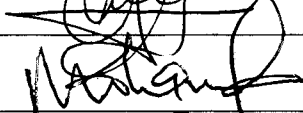

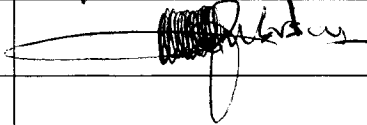
1. That in light of the violations of the various laws as highlighted above, specifically Articles 2, 79 and 152 of the Constitution of Uganda, sections 4 (1), 7(1), 19 and 21 of the Income Tax Act Cap 340, sections 4 and 5 of the Value Added Tax Act Cap 349, Section 4 (1) of the Excise Duty Act, 2014, section 7 of the National Social Security Fund Act Cap 222, sections 54 and 59 of the Uganda Citizenship and Immigration Control Act Cap 66; and section 80 of the Local Government Act Cap 243, the Agreement executed between Government of Uganda and Uganda Vinci Coffee Company Limited is unconstitutional, illegal, **void, ab initio** and unenforceable at law. The Government is directed to terminate this Agreement and report to Parliament, within 6 months from the date of adoption of this report;
2. Upon termination, Government should regularize its relationship with Uganda Vinci Coffee Company Limited through proper due diligence, due process and proper stakeholder consultation before any further business can proceed. Thus initiating fresh negotiations.

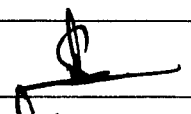
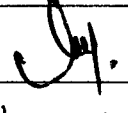

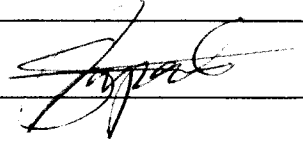
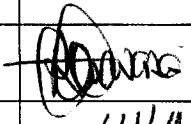
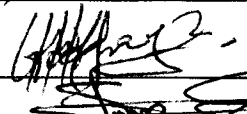
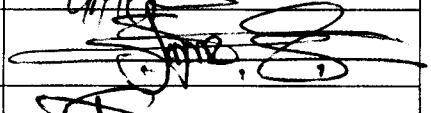
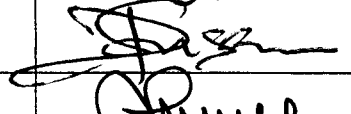
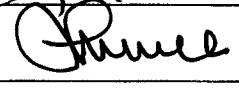
3. Government should consider extending appropriate incentives to the already existing 47 local companies that are doing value addition.
4. Government should fast track the capitalization of UDC to enable the Corporation to invest in soluble coffee plants.
5. There is urgent need for a Competition Law to promote vigorous competition and prevent anti-competitive business practices.
6. The officials who committed Government to such illegalities should be penalized as a deterrent mechanism to stop similar occurrences in future.

I beg to submit

55 | Page

**COMMITTEE ON TOURISM TRADE AND INDUSTRY REPORT ON THE
INVESTIGATION OF THE ALLEGED UNFAIR AGREEMENT BETWEEN
GOVERNMENT AND VINCI COFFEE COMPANY LIMITED**

No	NAME	SIGNATURE
1.	Hon. Mwine Mpaka Rwamirama	
2.	Hon. Lamwaka Catherine	
3.	Hon. Mbwatekamwa Gaffa	
4.	Hon. Mugole Mauku David	
5.	Hon. Michael Timuzigu Kamugisha	
6.	Hon. Afidra Olema Ronald	
7.	Hon. Kemirembe Kyaka Pauline	
8.	Hon. Aleper Margret Achilla	
9.	Hon. Amooti Bright Tom	
10.	Hon. Awor Betty Engola	
11.	Hon. Harriet Businge Mugenyi	
12.	Hon. Edakasi Alfred Elalu	
13.	Hon. Nayebale Sylvia	
14.	Hon. Agnes Kirabo	
15.	Hon. Koyekyenga Olive	
16.	Hon. Osoru Mourine	
17.	Hon. Ssentayi Muhammad	
18.	Hon. Gaffabusa Richard Muhumuza	
19.	Hon. Wanyama Michael	

20.	Hon. Ssimbwa Fred	
21.	Hon. Kalwanga David Lukyamuzi	
22.	Hon. Kayemba Geoffrey Ssolo	Kayemba -
23.	Hon. Ogwal Cecilia Atim	
24.	Hon. Isabirye David Ag 	
25.	Hon. Okello Geoffrey Charles	
26.	Hon. Koluo Joseph Andrew	
27.	Hon. Atukwasa Rita Bwahika	
28.	Hon. Were Godfrey Odero	
29.	Hon. Mushemeza Elijah Dickens	
30.	Hon. Amero Susan	
31.	Hon. Francis Mwijukye	
32.	Hon. Katoto Muhammad	