

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 11th December, 2001

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-

The Annual Report and Accounts of the Kenya Institute of Administration for the year ended June 30th, 2000, and the certificate thereon by the Auditor-General (Corporations).

*(By the Minister of State, Office of the President (Mr. J. Nyagah))*

### ORAL ANSWERS TO QUESTIONS

*Question No.503*

#### NSSF CONTRIBUTIONS FOR MS. WANJIRU

**Eng. Muriuki** asked the Minister of State, Office of the President:-

(a) whether he is aware that Ms. Catherine Wanjiru Kamau, Personal File No.79017985, ID. No.0690196/63, who was an employee of the Ministry, left through voluntary early retirement in 1995; and,

(b) how much money was remitted to NSSF for the period she worked.

**The Minister of State, Office of the President** (Mr. J. Nyagah): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware.

(b) The amount paid was Kshs22,246. That was the amount that was remitted.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, this lady, Catherine Wanjiru Kamau, who comes from Ol Kalou, retired in 1995. After she retired, she wanted to know how much money is due to her from the NSSF. The records were showing zero; that, there was no money available. She went to the Commissioner's office, where she used to work, and she was sent to the NSSF

office to seek clarification. From the NSSF, she was sent to Harambee House to check on her case. From 1995 to 2001, she has made over ten trips to Harambee House and the NSSF office. First, it is good that the Minister said that Kshs22,246 is due to her, but why does it require the intervention of the Member of Parliament for the Ministry to know that this amount is due to her? This is because, until February, this year, records were still showing zero, and I have those records here. Secondly, who will compensate Ms. Catherine Wanjiru Kamau for all those trips that she has been making to Nairobi since 1995; three of those trips which required spending nights in Nairobi?

**Mr. J. Nyagah:** Mr. Deputy Speaker, Sir, I have a schedule from the NSSF, a certificate dated 11th and 12th, confirming how much is paid over the period. I will be very happy to give it to the hon. Member, if it would help him facilitate for Ms. Catherine Kamau to be paid. If there is any problem, we would be very happy to assist.

In terms of payment; in bureaucracy, these things do happen, and I am very sorry for her. I am not in a position to pay for her trips and stay in Nairobi.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I do not know whether the Minister is in charge of NSSF as such,

or whether it is the Ministry of Labour and Human Resource Development. But be that as it may, does it mean that these Ministers - this Government - are not aware of the great suffering our people are going through in trying to get their retirement terminal benefits from the NSSF and other employment organisations? Are they saying that they are not aware of it? What can be done to reduce the suffering? As the hon. Member said, such issues need not be raised here, so that the payments can be made. It should be a matter of course. What is the Minister going to do - if this docket falls under him - in order to make sure that this becomes a problem of the past? I know that he can do it.

**Mr. J. Nyagah:** Mr. Deputy Speaker, Sir, I think the reason we were given was that she used to [Mr. J. Nyagah]

work within the Office of the President's structure. That was my understanding of why we answered this Question, but we will be talking to the NSSF and to my colleague in the Ministry of Labour and Human Resource Development in order to try and speed up payments to retirees. It is not fair for retirees to suffer for over ten years.

I will take it up with my colleague, Mr. Ngutu, who is in charge of the NSSF.

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, last week, there was a similar Question, and there have been so many Questions of this nature. For example, somebody works for over 36 years and it takes about ten years for him or her to receive his or her contributions from the NSSF. We are now in the year 2001 and not in 1995. The Minister has not even indicated as to when this lady will be paid her money. When is she going to be paid her money because you have not indicated whether she will be paid or not?

**Mr. J. Nyagah:** Mr. Deputy Speaker, Sir, my reply was: If we, indeed, as the Office of the President, did remit the funds to the NSSF, and I wish to confirm that we did pay--- I will go further on to say that in case of any complication or any problems, my office will be very willing to assist so that the lady is paid quickly. That is why I had to lay on the Table the certificate from the NSSF as a way of assisting her to be paid quickly.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, considering the number of cases involving NSSF claims dragging on for over three years, could the Minister, in the same vein, consider persuading or ordering the NSSF to set up a fund where all this amount of money can be paid into, together with the interest?

For example, this lady could be paid her principal amount together with interest from that fund. All these monies outstanding from the NSSF will be put into a common pool, from where claimants can be paid their principal amounts with interest.

**Mr. J. Nyagah:** Mr. Deputy Speaker, Sir, as I stated, I will speak to my colleague, Mr. Ngutu, so that he can try and follow up this particular item, although it might require extra taxation in order to be able to meet this kind of requirement. But I will pass the request to my colleague, who is squarely responsible for this particular side of business.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, is the Minister saying that it requires extra taxation? This is construed as a fund. Why would it require extra taxation when they are contributions from workers?

**Mr. J. Nyagah:** Mr. Deputy Speaker, Sir, I am not an expert in NSSF matters. So, let me not pretend that I do understand how it works. I think the safe answer is that I will take it to the appropriate Minister, and I shall explain to him the concerns of the House.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, it is good that the Minister has the schedule with him. Could he kindly table it, so that I can take it to Ms. Wanjiru? I have with me here another certificate for Ms. Wanjiru from the National Social Security Fund (NSSF), dated February, 2001, showing that she has not contributed anything to the Fund. So, could the Minister say whether Ms. Wanjiru's interest will be payable to her? Certainly, the Government has found the Kshs22,246 that was meant to be contributed to the NSSF for her. So, could he also find the accrued interest of this amount over the years, wherever it is?

**Mr. J. Nyagah:** Mr. Deputy Speaker, Sir, I beg to table this schedule, which I believe will be very helpful to Ms. Wanjiru. I have just said that I am not an expert on matters to do with the NSSF. To be on the safe side, I plead that this aspect be addressed by the Minister for Labour and the NSSF, because they know the rules of the NSSF; I do not know them.

*Question No. 765*

REPLACEMENT OF BOMET TELEPHONE EXCHANGE

**Mr. Kimeto** asked the Minister for Transport and Communications:-

(a) whether he is aware that the telephone exchange at Bomet is outdated, and that it needs to be replaced with a modern one; and,

(b) when Bomet, Trans Mara and Buret will get boosters to enable people communicate with mobile telephones.

**The Assistant Minister for Transport and Communications** (Mr. Keah): Mr. Deputy Speaker, Sir, I am panting because some women have harassed me outside the gate to Parliament Buildings. I had to run for dear life, and in order to be here on time to answer this Question. So, before I answer this Question, may I ask the Chair to protect Members of Parliament from the ladies out there?

**Hon. Members:** Aah!

**Mr. Mwenje:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Order! The Assistant Minister is answering a Question. Could you proceed, Mr. Keah?

**The Assistant Minister for Transport and Communications** (Mr. Keah): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the telephone

**[The Assistant Minister for Transport and Communications]**

exchange at Bomet is outdated, and that it needs to be replaced with a modern one. I am, however, aware that Bomet subscribers have experienced problems arising from occasional failure of the 60-channel analogue-radio bearer that connects the 300 lines of Bomet switch to the Kericho Switching Centre. In order to address this problem, Telkom Kenya Limited has already made arrangements to purchase a small capacity digital radio system, which we plan to deliver and connect between February and March, 2002.

(b) The people of Bomet, Trans Mara and Buret will be able to communicate with mobile telephones when M/s Safaricom Limited rolls out its plan to cover these particular areas during the second half of 2002.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, last week, this Question was deferred following a request by the Assistant Minister, so that the Minister could come here in person and answer it. So, I am wondering whether Mr. Keah is still an Assistant Minister or the full Minister in charge of this docket. What we were told last time was that the Minister himself would come here in person to answer this Question. So, is Mr. Keah now the Minister? Secondly---

**Mr. Deputy Speaker:** Order! Order! Mr. Kimeto, look at the Standing Orders to see the definition of a Minister for the purpose of the business of this House.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, let me continue. I brought this Question here because when you dial any number in Bomet, it goes on for a whole day without being answered. It has been very difficult to make calls to Bomet and Sotik. I went there and talked to Telkom Kenya personnel, who told me: "The equipment in use is outdated. It takes long to catch up with the rest of the world." So, could M/s Safaricom Limited extend its cellphone service to the following areas: In Trans Mara District, Obasi and Olosayeni in Sinonin area; Karia in Logarian Division, and Osubuko in Sirar Division. In Bomet area, could I request that mobile phone services be extended to---

**Mr. Deputy Speaker:** Order! Order! Mr. Kimeto, you are making a statement instead of asking a question.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, I am requesting the Assistant Minister to also ensure that mobile telephone services are extended to the following areas: Chamanel and Longisha in Bomet Constituency; Sigor and Chepalungu in Chepalungu Constituency, and in Mutorokwa, Tharakwa, Ndanai Divisions and Iaganage? Could mobile telephone services be provided to those areas?

**Mr. Deputy Speaker:** Order! Order! Mr. Kimeto, if you wanted the Assistant Minister take action in such a wide area, why did you bring the matter here? You should have written him a letter. When you come here, we expect you to ask him questions, and not to give a lecture on the geography of your constituency.

**Mr. Keah:** Mr. Deputy Speaker, Sir, thank you for protecting me. May I, first of all, inform the House that telecommunication is within my docket even as an Assistant Minister, notwithstanding the fact that the Standing Orders include Assistant Ministers in its definition of Ministers.

**Mr. Deputy Speaker:** Mr. Assistant Minister, hon. Members know you very well. If you proceed in that manner, you will only be encouraging hon. Members to raise frivolous matters instead of addressing the Question.

**Mr. Keah:** Mr. Deputy Speaker, Sir, I thank you for your guidance. I have stated very clearly that Bomet, Trans Mara, Buret, and other town centres within these areas will be covered by M/s Safaricom Limited mobile telephone network in the second half of 2002. Regarding Bomet Telephone Exchange, I said that we have ordered new equipment, which will be installed between February and March, 2002. I have given that undertaking before this House; it is an undertaking which has been given to me by Telkom Kenya Limited.

**Mr. Otula:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that the people of Bomet and other

districts will be served by M/s Safaricom Limited. Will the services be provided to the people free of charge? If not, how are they going to use the cellphone services if they cannot afford to subscribe to them?

**Mr. Keah:** Mr. Deputy Speaker, Sir, we know very well that there is nothing for free.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, the Assistant Minister has talked about M/s Safaricom Limited, which is a mobile telephone provider. This Question is about upgrading a telephone exchange, so that people can make telephone calls from public booths without problems. Be that as it may, my question is that this Question has come before the House for the second time, and we are asking the Assistant Minister whether the Government has any policy of enabling Kenyans countrywide to access each other easily through telephone. Is there any policy to ensure that all telephone exchanges in the country are working?

**Mr. Keah:** Mr. Deputy Speaker, Sir, the Government not only has such a policy, but also a programme to that effect. That is why I said that in the second half of 2002, Bomet, Trans Mara and Buret will be covered; and, that between February and March, 2002, we will have a digital radio station in that area. When we presented before this House the policy regarding the telecommunications sector and its subsequent privatisation, we explained these issues; we also went ahead and presented a complete programme, which we intend to implement.

**Mr. Gitonga:** Mr. Deputy Speaker, Sir, I sympathise with the Assistant Minister for having been harassed by women. This same Assistant Minister promised me that he would instal some digital exchange in Kagwi about four years ago and to date, nothing has happened. How can we be assured that this digital exchange will be installed in Buret District by March/April next year?

**Mr. Keah:** Mr. Deputy Speaker, Sir, I would like to take up, on behalf of the Ministry, the issue of Kagwi because I am not the one who promised to instal digital exchange there. But I would like to follow it up and give a thorough answer on it. This is a fair comment. But as far as I am concerned, I have been assured by the company that deals with this that it will instal digital exchanges in Buret and Bomet Districts. Who am I not to believe it? I believe that Telkom Kenya will do what it promised this House to do. If it does not do so, I will be the first person to take up the issue with the management of Telkom Kenya.

Therefore, Mr. Deputy Speaker, Sir, I would like to get the necessary information about Kagwi, which I will look into and report back to the House.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, Trans Mara and Bomet Districts are densely populated, while in Trans Mara people are located away from one another. When will the Assistant Minister instal digital exchanges near the people? How many miles will they be from one digital exchange to the other?

**Mr. Keah:** Mr. Deputy Speaker, Sir, I can only answer the question in relation to Bomet District. I said that a digital exchange will be installed in there in March/April, 2002. It is not possible for me to answer as to when digital exchanges will be installed in the rest of the country.

*Question No. 738*

PROVISION OF PUBLIC PAYPHONES  
IN KISUMU

**Mr. Sungu** asked the Minister for Transport and Communications:-

(a) why there are no public payphones at the following centres, which are considered part of Kisumu Town:

- (i) Ragumo Chief's Camp;
- (ii) Angola Market, Mahenya Sub-location;
- (iii) Chiga Market;
- (iv) Rweya Chief's Camp;
- (v) Wath - Orego Market;
- (vi) Gita Chief's camp; and,
- (vii) Soweto Market, Got Nyabondo Sub-location.

(b) when this service will be provided at each of the aforementioned locations.

**The Assistant Minister for Transport and Communications** (Mr. Keah): Mr. Deputy Speaker, Sir, I beg to reply.

(a) There are no public payphones at the mentioned centres, which are considered part of Kisumu Town, because the centres have no telecommunications network to serve them from Kisumu Telephone Exchange at this

point in time.

(b) There are plans, and they are in the projection, to instal a wireless local loop radio-based network system, which will have a capacity to instal payphones in these centres in the 2002/2003 financial year.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, perhaps the Chair is aware that Kisumu will soon be upgraded to a city and Ragumo, Angola, Chiga Rweya, Wath Oregu, Gita, Soweto and other outlying areas need emergency services, such as medical and fire services.

Mr. Deputy Speaker, Sir, would the Assistant Minister undertake to provide these services to these areas for the betterment of the proposed City of Kisumu? He should ensure that is done in this financial year rather than within the next financial year because the general election is coming and we might not be elected if our people will not have had these facilities.

**Mr. Keah:** Mr. Deputy Speaker, Sir, we do not provide these services for the purpose of elections. But I would like to confirm that this has been budgeted for, to be undertaken in the financial year 2002/2003.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, there is a lot of insecurity in Lake Victoria, and there are islands there which do not have telephone services. The Assistant Minister has talked about a facility called wireless local loop radio-based network system, could he consider putting up this network, particularly on the islands which border Uganda, where there is a lot of insecurity?

Mr. Deputy Speaker, Sir, I would also like to know what criteria the Assistant Minister uses in prioritising areas for this facility, which is very suitable for all rural areas.

**Mr. Keah:** Mr. Deputy Speaker, Sir, I have no answers to the hon. Member's question on islands at this point in time, but that can be looked into to find out where these islands fall within the programme. But in terms of policy and how we prioritise areas, there are usually surveys that are conducted in every area to gauge the demand, and

on the basis of that ascertained demand, supply is projected accordingly.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, the Assistant Minister stated sometime back that mobile telephone providers also fall under his docket. I would like to request him to, at least, ensure that these companies instal mobile telephone booths in these areas. This is because these areas are in the proposed city. The mobile telephone providers have stated that they want to instal the same service in Nairobi. So, would the Assistant Minister influence these companies to do the same for the proposed Kisumu City?

**Mr. Keah:** Mr. Deputy Speaker, Sir, I have heard the request and I would only ask the hon. Member to put it in a written form so that I can also take it up with the appropriate authority.

*Question No.698*

COMPLETION OF TITIE WATER  
PROJECT

**Mr. Muya** asked the Minister for Water Development:-

- (a) whether he is aware that Titie Water Project intended to serve Tetu and Thegenge Locations and parts of Karundu Location is an old project which has never been completed;
- (b) what plans he has for the completion of this project.

**The Assistant Minister for Environment and Natural Resources** (Mr. Nooru): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware of the delay in the completion of the project.

(b) Since the commencement of the project in 1987, my Ministry has contributed Kshs3.4 million, and the community, in the spirit of cost-sharing, has contributed Kshs1.15 million in cash and labour. At the moment, my Ministry has no immediate plan of completing this project due to financial constraints.

**Mr. Muya:** Mr. Deputy Speaker, Sir, the Assistant Minister has talked about now when there is no money in the Ministry, yet it is 15 years since the project started. My calculation, based on the rate of the Ministry's and the community's contributions, shows that the project might take 50 years to be completed. I would like the Assistant Minister to tell us how much money the Government and the community were supposed to have contributed at the inception of the project. As we speak, there are people who do not have even pipes in the area, and there is a Harambee to be conducted this Friday towards that water project. How much money will the Government contribute during the Harambee?

**Mr. Nooru:** Mr. Deputy Speaker, Sir, there was no agreement between my Ministry and the community as to what percentage of the cost the community should contribute. However, at its inception in 1987, the project was supposed to cost Kshs15.6 million. So far, the Ministry has raised Kshs3.4 million and we have completed only 20 per cent of the project.

At the moment, we are trying to negotiate with the community so that we can hand over the project to it

so that it can solicit for funds from other donors in order to complete the remaining part of the project.

**Mr. Muya:** Mr. Deputy Speaker, Sir, on 23rd November, 2001, the other Assistant Minister for Environment and Natural Resources toured Tetu Constituency and Nyeri Municipality and showed concern about the people there because they are not getting water. Water streams intakes have been fenced off by the Kenya Wildlife Service (KWS), so that it is very difficult to access the intakes when pipes are damaged by wildlife. What assistance can the Assistant Minister give so that whenever pipes are damaged, our people will be able to access the intakes for repair?

**Mr. Nooru:** Mr. Deputy Speaker, Sir, in future, water projects will obviously be run by the management committees of the relevant communities, and the Ministry will only give backing of the technical aspect to the communities. But as far as the conflict between the KWS and the community is concerned, we will intervene and ensure that the community has access to repair any damaged pipes.

*Question No.805*

REHABILITATION OF KAHUTI WATER SUPPLY

**Mr. Michuki** asked the Minister for Water Development when he will fulfil the undertaking he gave to the House on 30th April, 1998, in reply to Question No.002, with regard to the rehabilitation of Kahuti Water Supply Phases I, II and III.

**The Assistant Minister for Environment and Natural Resources** (Mr. Kofa): Mr. Deputy Speaker, Sir, I beg to reply.

The rehabilitation contract for Kahuti Water Supply will be implemented under the Four Towns Pilot Management Project, funded by Agency France'e de' Development, which was awarded on 22nd June, 2001 to M/s Sogea Construction Company. Instructions to commence the work was issued on the 31st October, 2001.

**Mr. Michuki:** Mr. Deputy Speaker, Sir, from the answer given by the Assistant Minister, it is clear to the Chair that it is now six months since the contract was awarded. Although the contractor was authorized to proceed with the project on 31st October, 2001, there is no sign of that contractor being on site. Could the Assistant Minister tell us exactly when the contractor will start this project?

**Mr. Kofa:** Mr. Deputy Speaker, Sir, as I said, instructions for the commencement of this work was given on 31st October, 2001; that is, two months ago. But in case of any problem, my office promised to take up the issue and let Mr. Michuki know the progress immediately.

**Mr. Mwakiringo:** Mr. Deputy Speaker, Sir, the Chair has heard how shallow the Assistant Minister's response was. He has not told the House whether the contract given was for Phases I, II or III, and he has also not told us how much the award was, and how long the project is going to take. We need to know all those details.

**Mr. Kofa:** Mr. Deputy Speaker, Sir, my answer is shallow because I was not asked to give such details. Now that the hon. Member wants to know such details, I would like to tell him that this project was awarded Kshs40 million for Phase I. With regard to Phase II, the award was Kshs83 million and the project is going to take about two years to be completed since the date of commencement.

**Mr. Michuki:** Mr. Deputy Speaker, Sir, I think there is something which is not clear from the Assistant Minister's reply. As the records of this Parliament would show, I started asking Questions about this project in 1993. I then raised the same issue in 1998, when it was said that the contract would begin on 30th April, the following year. What I am trying to get at is this: Could the Assistant Minister be specific, because on two occasions, he has said that the project was going to start? Although he confirmed about the award of the contract, could he be precise as to when the contractor is going to be on site. This is because we want to watch and see whether this is going to be done at the local level, or it will be a repetition of what happened in 1993 and 1998?

**Mr. Kofa:** Mr. Deputy Speaker, Sir, as far as the Ministry is concerned, the contractor is supposed to have been on site two months ago. As I said, if there is a problem, we shall investigate and let Mr. Michuki know the position immediately.

**Mr. Michuki:** Mr. Deputy Speaker, Sir, it is now six months since 22nd June, 2001, when the contract was awarded. A person is looking for a job which he is given and he takes six months without being seen on site. Would the Assistant Minister not agree that there is something wrong in this contract and that he should go straight into this issue; either he gets the contractor to start the project, or seeks some other alternative methods of solving this problem? Which is which?

**Mr. Kofa:** Mr. Deputy Speaker, Sir, if there is anything wrong with this contract, the office will correct it

immediately.

*Question No.747*

DAMAGE OF ROAD BY FLOODS IN NDARAGWA

**Mr. Thirikwa** asked the Minister for Roads and Public Works:

- (a) whether he is aware that the unusually heavy rains in mid-September left all the roads in Ndaragwa Division totally impassable;
- (b) whether he is further aware that Road D388 from Mairo Inya to Kaheho, the only road which farmers can use to access the markets of their produce, was completely destroyed during the heavy rains; and,
- (c) what he is doing to correct the situation.

**The Assistant Minister for Roads and Public Works** (Eng. Rotich): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that unusual heavy rains which fell in mid-September rendered the roads in Ndaragwa Division impassable

(b) I am further aware that the Road D388, from Mairo Inya to Kaheho, was destroyed during the said heavy rains.

(c) The Ministry has already disbursed Kshs2 million to carry out routine maintenance activities on the said road.

**Mr. Thirikwa:** Mr. Deputy Speaker, Sir, this road is approximately 30 kilometres long and it is a lifeline of the people of Ndaragwa Division. It is the most important road in Ndaragwa Division. Is the Assistant Minister satisfied that after these very unusual rains, the Kshs2 million meant for the maintenance of the roads can be enough to repair the roads which were completely damaged by heavy rains in Ndaragwa Division?

**Eng. Rotich:** Mr. Deputy Speaker, Sir, it is true that the road is 30 kilometres long and Kshs2 million is for maintaining this particular road. The amount of Kshs2 million will be spent as follows: Heavy grading will take Kshs1,050,000, while spot improvement will take Kshs655,000, and culverting will take Kshs 180,000. As the Chair is aware, this road falls under category D, which is under the District Roads Committee (DRC). It is not under the Department of Roads of the Ministry of Roads and Public Works.

**Mr. Thirikwa:** Whether the road is under category D or whatever category, it is within the Republic of Kenya, and I think the Government has a responsibility to maintain the road. Having known the problems of the people of Ndaragwa and the condition of the roads in Ndaragwa Division, could the Assistant Minister consider:

- (i) Re-classifying that road to class C, so that we can be funded directly from Kenya Roads Board (KRB)?
- (ii) Secondly, could he now consider providing some extra funding on top of the Kshs2 million, so that we can be able to maintain that road because Kshs2 million cannot maintain a road of 30 kilometres?

**Eng. Rotich:** Mr. Deputy Speaker, Sir, the first question about re-classification of that road is not possible at the moment because the criteria we use for classifying roads will make this road unqualified to fall under category C as of now. But there is a study going on to change the criteria used in classifying roads, so that classification is based on the usage of the road rather than where the road goes. At the moment, the criteria used to classify roads is on the basis of where it is going rather than what it is being used for.

At the moment we are taking the estimates of the length of road and the total cost of its rehabilitation. We are not sure where the money will come from, but we want to determine the cost of rehabilitation first, and then, maybe, we can look for money. However, we do not have the money to rehabilitate the road at the moment, although we do not know how much it will cost the Government to rehabilitate the road. We are now trying work out get the actual cost of rehabilitating the road.

*Question No.307*

PAYMENT OF COURT AWARD TO MR. OBONDO

**Dr. Oburu** asked the Attorney-General:-

- (a) whether he is aware that although Mr. Charles Ouma Obondo was awarded payment of his dues by the High Court of Kenya, vide Civil Case No.360 of 1995 against the Government of

Kenya, no payment has been effected to date; and,

(c) what steps he is taking to ensure speedy payment of Mr. Obondo's dues.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I am in a bit of difficulty over this Question because only the case number is quoted. It does not state in which court, town or city. If the hon. Member can give us those particulars of exactly which High Court or Senior Resident Magistrate's court, and in which town, we will answer the Question accordingly.

**Dr. Oburu:** On a point of order, Mr. Deputy Speaker, Sir. The Question reads: "by the High Court of Kenya----"

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, is it Kisumu, Nairobi, Mombasa, Nyeri, or Embu High Court? We do not know which High Court awarded Mr. Obondo.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, this is a case of Kisumu High Court. With that information, will the Attorney-General now answer the Question?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, if it is Kisumu High Court, then I will need a bit of time to get to Kisumu, get the file and be able to answer the Question. I am glad the hon. Member has clarified it is Kisumu High Court.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, my good friend, the Attorney-General, knows that there are less than ten High Court registries in Kenya. The year is known; it is 1995. It is not very difficult to look into the ten registries for 1995 and see the case of Mr. Obondo. Are you satisfied that the Attorney-General is not deliberately refusing to answer this Question?

**Mr. Deputy Speaker:** Well, it looks like both the hon. Questioner and the Attorney-General have not done a very good job.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I want to help the hon. Member.

**Mr. Deputy Speaker:** How do you want to help him, and yet, Dr. Oburu has given all the parameters that the Attorney-General requires to answer this Question satisfactory?

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, this is not a Question by Private Notice; it is an ordinary Question for oral answers. If the Attorney-General was genuine and he honestly wanted to help Mr. Obondo, he could have traced the hon. Member to know which High Court determined the case. Where was he all that time?

**Mr. Deputy Speaker:** Order! Mr. Ndicho, you are not helping Dr. Oburu at all.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, normally, when the Question is not clear, my office gets in touch with the Clerk's Office and asks hon. Members what happened.

**Hon. Members:** And what happened to this Question?

**The Attorney-General** (Mr. Wako): And that happened!

**Mr. Deputy Speaker:** I will defer this Question to Thursday.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, you know tomorrow is a national holiday and we normally sit up to 5.00 pm.

**Mr. Deputy Speaker:** Since you have the answer minus the court---

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I do not have the answer. To get to Kisumu, get a file there and extract the answer is time-consuming.

**Mr. Deputy Speaker:** Order! Mr. Attorney-General, we are not living in stone age. You can get the answer drafted, faxed or e-mailed to you or sent to you by courier.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, one may get that kind of answer, but there are supplementary questions we may not be able to answer. That is why the file has to be brought here. At this age, the private sector may be aware of e-mail and so on. We, in Government, have yet to get into the e-mail stage. We do things manually.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, I think your ruling is fair. The Attorney-General can access Kisumu High Court from here. He can get this information even by telephone. Therefore, I beg that this Question be answered on Thursday afternoon.

**Mr. Deputy Speaker:** Very well. The Question is deferred to Thursday afternoon.

*(Question deferred)*

*Question No.685*



**Mr. Kihoro** asked the Attorney-General:-

- (a) which organisations or societies are banned in Kenya today and what are the respective reasons for the ban on each; and,  
 (b) whether he could lift the ban where there is no good reason to continue the ban.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The following organisations or societies are banned in Kenya under Section 1(1)(ii) of the Societies Act.

- |   |  |
|---|--|
| 1. Kikuyu Central Association (1938), also known as the Kikuyu Central Association. |  |
| 2. The Ukamba Members' Association.   |  |
| 3. The Taita Hills Association.   |  |
| 4. Dini ya Yesu Kristo.   |  |
| 5. Kipsigis Central Association, Dini ya Mbojo or Dinit Ap Mboyet.                  |  |
| 6. Bataka Party of Uganda, or the Bataka Party.                                     |  |
| 7. Uganda African Farmers Association.  |  |
| 8. MAU MAU.   |  |
| 9. Kikuyu Karing'a Education Association.   |  |
| 10. Kikuyu Independent Schools Association.   |  |
| 11. Kenya African Union.  |  |
| 12. Dini ya Mariamu   |  |
| 13. Dini ya Mumbo.  |  |
| 14. Yomut.  |  |
| 15. The Gikuyu Land Association.  |  |
| 16. Kiama kia Muingi or Kia Hathara.  |  |
| 17. Kenya Land Freedom Army.  |  |
| 18. Kenya Land Freedom Party.   |  |
| 19. Kenya Parliament.   |  |
| 20. Rift Valley Government.   |  |
| 21. Rift Valley Province Parliament.  |  |
| 22. Thirikari.  |  |
| 23. Kiama kia Itu.  |  |
| 24. Mbutu cia Ita.  |  |
| 25. Njamba cia Ita.   |  |
| 26. Kia Mbara.  |  |
| 27. Kiama kia Hunyu.  |  |
| 28. Mutangiri.  |  |
| 29. Kiama kia Ndundu.   |  |
| 30. Land Freedom Army.  |  |
| 31. Dini ya Musambwa.   |  |
| 32. The Kenya War Council.  |  |
| 33. The Ex-Freedom Fighters Union.  |  |
| 34. The Sabina Church.  |  |
| 35. The Kenya Master Aid Society.   |  |
| 36. The Mwangi and Maina Social Club (Kenya).                                       |  |
| 37. The Waliioleta Uhuru Union.   |  |
| 38. Mahoya ma Jevova Church.  |  |
| 39. Kenya Peoples Union and all its branches and sub-branches.                      |  |

The reason given for the ban for societies Nos.1 to 29 on the list, was that they were dangerous to the good governance of the colony; and for societies Nos.30 to 39 was that they were dangerous to the good Government of the Republic of Kenya.

(b) The Attorney-General has no legal power to lift the ban.

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, let me thank the Attorney-General for a very comprehensive answer about the 39 groups that are banned in this country. Out of that number, 29 of them were banned during the colonial period. I thought the Attorney-General would be very embarrassed to be seen defending their ban. The other ten were banned after we became independent. Could the Attorney-General consider lifting the ban in this time and age, when we have got the multi-party system of Government? Among the groups that he has

mentioned, he should explain why he even banned The Kenya Parliament! Why has he banned all those groups?

**Mr. Wako:** Mr. Deputy Speaker, Sir, could he give me time to look for the reasons why The Kenya Parliament was banned and when? I have got the information here. The Kenya Parliament is number 19. The Kenya Parliament was banned by Legal Notice No.464 of 1961, which banned The Kenya Land Freedom Army, Rift Valley Parliament and the Rift Valley Province Parliament. They were banned on 2nd August, 1961, by the Secretary to the Council of Ministers, a Mr. R.E. Luwicks(?), by the command of the Governor in the Council of Ministers. So, those were the reasons why The Kenya Parliament was banned. Of course, it was banned at a time when Parliament was not even in existence.

Mr. Deputy Speaker, Sir, obviously, a number of those associations were involved in the freedom struggle. I would like to take this opportunity to pay tribute to all those who contributed by their lives and other means to enable us to attain our Independence, so that we are now here today in the National Assembly, discussing the affairs of State. So, we pay tribute to them. But, as I said earlier, I have no legal power to lift the ban. A number of years have also passed down the drain. As we pay tribute to them, a number of years have passed. Some, I believe, like the Kenya African Union (KAU), became the Kenya African National Union (KANU). So, a lot has developed since that time, and it requires looking at each of those associations individually, whenever we shall find a way of dealing with the situation. But as of now, there is *lacuna* in that the Attorney-General has no power to lift the ban.

**Mr. Sambu:** Mr. Deputy Speaker, Sir, it is embarrassing that after 38 years of Independence, we still do not want to recognise those who fought for our Independence, by maintaining in our statutes that it was dangerous to the good government of the colony! Be that as it may, is the Registrar of Societies over and above the Attorney-General, or is he operating under the Attorney-General? If the Registrar of Societies is operating under the Attorney-General, why does the Attorney-General say that he has no legal powers to lift the ban?

**Mr. Wako:** Mr. Deputy Speaker, Sir, first of all, let me say that in a very paradoxical sense, the reasons given by the colonial government were correct, in that those organisations were dangerous to the colonial government. In fact, they were so dangerous that they succeeded in obtaining our Independence! That is the way I look at that issue. That, really, to me, is a fact of history. They succeeded in being dangerous to the colonial government and we congratulate them for that.

Mr. Deputy Speaker, Sir, at the moment, we do not have powers. Maybe, the only thing that can happen is by individuals applying and then they can be considered. But that will not serve any useful purpose. This is a matter that can be addressed by the nation as a whole, maybe, through the constitutional review process, to see how we can deal with this very peculiar situation. That is because history is there and it happened. We cannot alter history. But then, how do we ensure that they are given due recognition and honour for the good work that they did at that time? That is a question for the whole nation to look at and examine.

**Mr. Sambu:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to avoid answering the question as to who is superior? Is it the Attorney-General or the Registrar of Societies?

**Mr. Wako:** Mr. Deputy Speaker, Sir, that question is not relevant because neither the Attorney-General nor the Registrar of Societies has the power to lift the ban. But as to who is superior, I think the Questioner knows who is more senior!

*(Laughter)*

**Mr. Kibicho:** Mr. Deputy Speaker, Sir, the Attorney-General has rightly paid tribute to some of those organisations because they brought Independence. Most of them were offsprings of the MAU MAU, and KANU is an offspring of KAU. Could the Attorney-General consider bringing a law in this House, so that we could invalidate and remove the ban, so that we can restore patriotism to Kenyans? The way it is now, that ban makes Kenyans not to be patriotic. They see no reason why they should ever fight for this country!

**Mr. Wako:** Mr. Deputy Speaker, Sir, I think the issue of recognition of those who fought for our Independence, individuals and persons, has to be considered. If the society thinks that it is necessary to bring a law, then, obviously, a law will be brought.

**Mr. Wamae:** Mr. Deputy Speaker, Sir, the Attorney-General has accepted that some of those associations or organisations were involved in fighting for freedom, and that is why they were

dangerous to the colonial government. Could the Attorney-General consider uplifting the ban on the MAU MAU, particularly, if the people who were involved in the MAU MAU movement could apply to him that they want to become a legal entity again? You know that they are the people who fought for our Independence!

**Mr. Wako:** Mr. Deputy Speaker, Sir, that particular issue may not be as academic as the hon. Member may think because I believe there are groups of people who are already issuing statements in the name of MAU MAU Ex-Freedom Fighters and so on. They have applied for registration. So, it is a matter that is under consideration. But one has to find out who is genuine and who is not. All those issues have to be taken into account.

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, the answer given by the Attorney-General is not adequate in respect of the reasons as to why those organisations were banned. I did ask him a question on the respective reasons for the ban on each one of those organisations. That answer has not been provided, especially on all those historic movements which brought Independence to our country. So, I am seeking the Chair's guidance as to whether you are satisfied with the answer that has been given, and whether the Attorney-General should not go and do more research, so that he can come with respective reasons as to why each one of them was banned, including The Kenya Parliament.

**Mr. Deputy Speaker:** But the Attorney-General did indicate to you the legal notices used to ban the various groups or societies.

**Mr. Kihoro:** But, Mr. Deputy Speaker, Sir, I think it is the respective reasons that I wanted to get. For example, if he has banned the Kikuyu Central Association today, and there has been a revision of the Societies Act-- That was done in 1998. Why did he uphold the ban in 1998? I have been looking at the Societies Act and the law was revised in 1998 and the ban was upheld. So, I am asking him: What reason did he have in 1998 to uphold the ban that was put in 1939 to the Kikuyu Central Association? What reasons did he have? So, the Attorney-General should do more homework and come with the respective reasons!

**Mr. Wako:** Mr. Deputy Speaker, Sir, I believe that I have answered the Question. I have, in answer to part (a) of the Question, mentioned the number of the societies banned. On the same note, I have given reasons as to why societies numbers 1 to 29 were banned. I have also given the reasons as to why societies numbers 30 to 39 were banned. The requisite Legal Notices were published. I now lay on the Table the Legal Notices which gave the reasons for banning each and every society.

*(Mr. Wako laid the document on the Table)*

*Question No. 748*

MONEY PAID FOR SUITS AGAINST  
THE GOVERNMENT

**Mr. Imanyara** asked the Attorney-General:-

- (a) how much money the Government has paid out as compensation arising out of suits filed against it in the following years: 1998, 1999, 2000 and 2001; and,
- (b) what action the Government has taken against the officers responsible for actions leading to the filing of the suits.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I have had some informal consultations with the hon. Member of Parliament, who is also my learned friend. I have got an answer here, which is not detailed in the manner in which the Question was asked. This has come about because my officers are very busy putting down the various cases year by year. This is done manually, and that is why it is taking a lot of time. We have not computerised our operations yet. So, I plead with the House to give me more time so that I can provide a more detailed answer. I think the hon. Member has kindly agreed to my request. I beg the indulgence of the Chair that this Question be deferred to Thursday afternoon.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I have no problem with that. But I do hope that he will also bring the Constitutional Amendment Bill to entrench the Constitutional Review Process in the Constitution on Thursday.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I did not follow what he said.

*(Question deferred)*

**QUESTIONS BY PRIVATE NOTICE**

NAMES OF CONSTITUENCY AIDS  
CONTROL COMMITTEES

**Mr. Musila:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the

following Question by Private Notice.

(a) Could the Minister table the names of Constituency AIDS Control Committees which have been formed, throughout the country?

(b) How much money was allocated to each of the committees since they were formed and how much of the allocated money has so far been paid to the committees?

(c) Could the Minister give the number of bicycles or any other means of transport that have been issued to each committee?

**The Assistant Minister, Office of the President** (Mr. Gumo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The list of Constituency AIDS Control Committees formed and the amount of money so far issued out to them is herein attached.

*(Mr. Gumo laid the document  
on the Table)*

(b) The attached list also shows the amount of money awarded to each of the Constituency AIDS Control Committee.

(c) The National AIDS Control Council is not in a position to provide any means of transport to Constituency AIDS Control Committees. The committees are expected to utilise the operational funds they have been allocated for purposes of transport.

**Mr. Musila:** Mr. Deputy Speaker, Sir, what shall I say? This is the fifth time we are getting the same answer from the Government! On Thursday last week, the Chair did direct that - and I am glad because you were in the Chair - the list for bicycles and radios be brought to the House this afternoon. That is what this House is keenly waiting to receive from the Assistant Minister. Therefore, we now seek your guidance on this matter because it appears as if there is no intention on the part of the Government to give us a satisfactory answer on this Question.

**Mr. Gumo:** Mr. Deputy Speaker, Sir, I have a list of bicycles here with me, for women, and men in all the provinces. Nyanza Province received 60 bicycles for men and 46 bicycles for women; Coast Province received 22 bicycles for men and 24 bicycles for women; Western Province received 22 bicycles for men and 24 bicycles for women; Rift Valley Province received 23 bicycles for men and 24 bicycles for women; Eastern Province received 22 bicycles for men and 24 bicycles for women; Central Province received 22 bicycles for men and 24 bicycles for women; North Eastern Province received 22 bicycles for men and 24 bicycles for women and Kisii received 23 bicycles for men and 20 bicycles for women.

**Dr. Kulundu:** But Kisii is in Nyanza Province?

**Mr. Gumo:** Well, Kisii was also given some bicycles. Although it is in Nyanza Province, they might have made a special request which was acceded to!

**Mr. Deputy Speaker:** Order, Mr. Gumo! Do not argue with hon. Members of Parliament across the Floor of the House!

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, you notice that part (c) of the Question is very categorical. It is not asking about provinces. It is asking about Constituency AIDS Committees. Could the Assistant Minister tell us how many bicycles were given by the National AIDS Control Council to Luo Nyanza? What happened to the 65 bicycles that were meant to be given to the various committees in Luo Nyanza?

**Mr. Gumo:** Mr. Deputy Speaker, Sir, Kisii is also in Nyanza. The list is as I have given and those are the bicycles that were given to Nyanza Province. If they want some more bicycles, we can look into that.

**Mr. Werah:** Mr. Deputy Speaker, Sir, is the Assistant Minister aware that all the bicycles which were given to the Constituency AIDS Control Committees in North Eastern Province have been sold?

**Mr. Gumo:** Mr. Deputy Speaker, Sir, I am not aware.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, each constituency has a committee. My understanding is that the bicycles were sent to each of those committees. So, when the Assistant Minister talks about Kisii--- First of all, we have this problem of Nyanza. We really do not want to be referred to as Luo Nyanza or Kisii Nyanza. We want to be referred to as Nyanza Province. If you want to clarify certain issues, please, do so without any prejudice. There are three districts in Kisii; there is Kisii District, Nyamira District and Gucha District. Where did those bicycles go to?

**Mr. Gumo:** Mr. Deputy Speaker, Sir, the hon. Member comes from Kisii and he is in a better position to find out where those bicycles went to.

**Mr. Deputy Speaker:** Order, Mr. Gumo! Even if the bicycles were delivered to hon. Anyona's home, you are still duty-bound to answer the question which has just been put to you. Could you tell us, perhaps, where those

bicycles went to in Kisii?

**Mr. Gumo:** Mr. Deputy Speaker, Sir, those bicycles were delivered to the AIDS Control Committees in Kisii.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, the Assistant Minister is taking this House through a circus. Part (c) of the Question requires that he gives the number of bicycles given to each Constituency AIDS Control Committee. But he has gone around it. Let me prompt him. Could he tell us how many bicycles went to Nyaribari Masaba Constituency AIDS Control Committee?

**Mr. Gumo:** Mr. Deputy Speaker, Sir, Nyaribari Masaba Constituency is within Kisii. As far as I know, some bicycles must have gone to Nyaribari Chache and others went to the other constituencies.

**Mr. Nyachae:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister needs to correct the position. The Question is very clear. We have AIDS committees in each constituency. We want the breakdown of how many bicycles each committee has been given. Two, we will then see how many bicycles each district got. Let us not talk about Nyanza, or Kisii. When he talks about Kisii, we do not know which one he is talking about because the old Kisii District has been split into three. Currently, the old Central Nyanza and South Nyanza consists of several districts. Nyanza Province has got so many districts. Could the Assistant Minister avoid misleading this House? Nyaribari Chache, which I represent and it has an AIDS Committee, has not received one single bicycle. So, he should not mislead the House.

**Mr. Deputy Speaker:** Order! Order, hon. Members! This Question has been on the Order Paper for the third time and we are not making any progress and yet, it is so important that we get to know what has gone to our constituencies. I am going to defer this Question, again, to Thursday. It does not matter how long it will take us. We must get to the root of this issue. The Question is deferred.

**Mr. Musila:** On a point of order, Mr. Deputy Speaker, Sir. I do respect your ruling and will abide by it. But in view of the period remaining before the end of this Session, could it be in order for us to request that a comprehensive reply be prepared so that we can get--

**Mr. Deputy Speaker:** That is what I expect on Thursday. At that time, we will not defer that Question or do some fancy foot-work.

**Mr. Musila:** Or wait for another Minister!

*(Laughter)*

**Mr. Achola:** On a point of order, Mr. Deputy Speaker, Sir. While I accept the ruling that you have just made, but for five times, we have had this useless answer being brought here. How sure are we that the answer that will be brought on Thursday will not equally be useless?

**Mr. Deputy Speaker:** Then there is never any point of asking the Chair to make any ruling. I expect a comprehensive reply on Thursday afternoon.

*(Question deferred)*

Next Question, Mr. Mutahi!

#### ACTION AGAINST ICHARAMA PRIMARY HEADMASTER

**Mr. Mutahi:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that the Headmaster of Icharama Primary School, Mr. George Wainana, forcibly ejected Ms. Jane Wangui Maina, a KCPE candidate, from the examination room and school compound, barring her from sitting for her Mathematics Paper?

(b) What urgent action has the Minister taken against the headmaster since this action took place on 13th November, 2001?.

**The Assistant Minister for Education, Science and Technology (Mr. Awori):** Mr. Deputy Speaker, Sir, first of all, the way the answer has been prepared is not very clear. However, I beg to reply.

(a) The young girl in question was never forcibly ejected from the examination room. The headmaster tried to persuade her not to sit for the examination and barred her from sitting the examination. But he did not forcibly eject her from the examination room. The headmaster has no right to stop a candidate who has been registered to sit for examination. Under the circumstances, the Deputy Provincial Director of Education did allow the girl to do the paper.

(b) The headmaster has been demoted because of the action he took.

**Mr. Mutahi:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House why the headmaster

had to wait until the examination day to bar this young girl from sitting for her examination?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I think the headmaster was acting in good faith, but he did the wrong thing. This girl attended school like a truant. She did not attend classes regularly during the first term. In the second term, the girl attended school for four days and then vanished. She did not attend classes in the whole of the third term. The first time she was seen in school was on the day of examinations and because the headmaster did not want the results of this girl to influence the mean score of his students, he decided to bar her from sitting for the examinations.

**Mr. Mutahi:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why this girl was not attending classes regularly as it ought to be? Why did she not attend classes sometime in the second term and third terms?

**Mr. Awori:** Mr. Deputy Speaker, Sir, that is a very difficult question for me to answer. It is even more difficult for the headmaster. The girl happens to come from a single parent and she always left home pretending to go to school. The mother, being illiterate, did not know that her daughter was not attending school. That is all there is. Nobody knew that she was not attending class.

**Mr. Deputy Speaker:** Next Question, Mr. Anyona!

#### CONVERSION OF SCHOOL LAND TO CHIEF'S CAMP

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that the ex-chief for North Kitutu Location converted land parcel No. Bonyamondo 1-501 in Kitutu Masaba, Nyamira District, into a chief's camp without the authority, consent or knowledge of the community who had donated the land for the construction of Eronge Nursery School?

(b) Could the Minister confirm that the land is the rightful property of the community and school?

(c) Could he also urgently restore the ownership of the land and issue title deed to Eronge Nursery School?

**The Minister for Lands and Settlement (Mr. Ngala):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the ex-chief for North Kitutu Location converted Land Parcel No. Bonyamondo 1-501 in Kitutu Masaba in Nyamira District into a chief's camp without authority, consent or knowledge of the community who had donated the land for the construction of Eronge Nursery School.

(b) The land is held in trust by the Nyamira County Council on behalf of the community and the school.

(c) According to the records held at the Land Registry, Nyamira, the land is still reserved in favour of the school. The school should apply for the title deed through the county council. The issue of restoring the land into the name of the school, therefore, does not arise.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, very fortunately, you were here when this Question was hijacked by the Office of the President, and the then Minister, Maj. Madoka, attempted to answer it. He did say that the land was properly acquired by the Provincial Administration. He also said that the land was given by Gusii County Council and that it was the property of the Government. When I challenged him, he said he was going to bring some proof. But I insisted that the Question should be re-directed to the Ministry of Lands and Settlement. You have heard the answer by the Minister, and it is vastly different from the one we got. I would like to congratulate the Minister for having brought out the facts as they are on record. I have a letter dated 22nd January, 1999, in which Nyamira County Council confirmed that this land was set aside for the development of Eronge Nursery School, and asked them to apply for a title deed. On 5th February---

**Mr. Deputy Speaker:** Ask your question!

**Mr. Anyona:** Yes, I am coming to it.

**Mr. Deputy Speaker:** No! No! I am going to call another Question!

**Mr. Anyona:** Mr. Deputy Speaker, Sir, in view of the answer I got, I want to put the record straight. On 2nd February, 1999, the Ministry of Lands and Settlement issued a title deed in favour of Eronge Nursery School and the pupils were being further harassed. On 4th April, the Ministry then said that it was wrong to harass the school occupants over the land. In view of that and the answer that the Minister has given, could he now make sure that the Provincial Administration moves out of Eronge Nursery School? It is now two years since the Administration Policemen forcibly removed the children from that school and they have now put up a structure there. Could the Minister ensure that the Provincial Administration moves out and the children are back in the school by January? In fact the Ministry had promised to send a nursery school teacher there. Could he now do that? Thank you, for that answer and I wish to table these letters.

*(Mr. Anyona laid the documents on the Table)*

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I will follow up what the hon. Member has said because the records indicate that this land belongs to the community on behalf of the school. I will ensure that we stick to whatever has been done.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the matter is straightforward except for the fact that the chief and the Provincial Administration, on the basis of the claim that was made here last week, evicted those children two years ago. They were scattered and are not there now. The Provincial Administration proposed to put up a structure from people's money. Since the Minister has given us a correct record, could he ensure, because of collective responsibility, that the community can resume the nursery school in the new year, and tell the Provincial Administration to keep off? I want a definite categorical answer, just as he was categorical in giving us the facts.

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I think it would also be of interest to the House to know that we have information to the effect that there was a meeting where the District Commissioner and the committee of elders discussed and agreed that the land he is talking about was to be apportioned into sections. We have this on record. If the hon. Member has any doubts, I would like him to get back to the leaders and the DC because they had a meeting where they agreed to apportion the land. Although the records we have concerning this plot are still intact, we got this information. It is not confirmed whether the meeting changed the situation, but they held that meeting.

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to start giving rather conflicting and contradictory statements to this House? In answer to the earlier question by Mr. Anyona, he had said he would follow up the issue and see that the children go back to school because the land belongs to the school. He is now talking about a meeting held by the DC and is, therefore, not being categorical. Is he being fair to this House?

**Mr. Deputy Speaker:** No, I do not think the Minister is in order. In any event, the House does not go by rumours. What the Minister heard from a meeting held by the DC and some elders is a rumour. He has told us the records indicate that this plot of land belongs to the school. We want him to make sure that, come January, the children of Eronge will go back to that school.

Mr. Minister, can you give that assurance?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I gave that additional explanation so as to create that awareness about the records we have. The records are there and we will make sure that we stick to them.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the records that the Minister is talking about may be in regard to this: In the last Parliament, I brought this Question and Mr. Awori answered it. He claimed that the land belonged to them. When I asked him to produce the evidence, he said he would do that, but he never did. When that Question came back to the House again, the DC tried to cover up the issue by suggesting that they apportion the land. How can you apportion a piece of land measuring 0.6 acres? In any case, there is a title deed now in place.

**Mr. Deputy Speaker:** Since the title deed is in place, as far as we are concerned, there is a commitment on the part of the Government that the school will resume in January.

Next Question!

#### GRABBING OF GOVERNMENT LAND IN KERUGOYA

**Mr. Keriri:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that Government Land Inoi/Kaitheri 665, which houses the Ministry of Roads and Public Works Workshop was transferred from the Government on 9th August, 2001, to private individuals?

(b) Is he further aware that on the same day the title deed was issued to two individuals and that on 22nd August, 2001, the title deed was closed on sub-division of this piece of land into nine plots?

(c) On whose authority was this Government land, on which there are new Government buildings, transferred to private individuals?

(d) Could the Minister nullify all the transactions carried out between 9th and 22nd August, 2001, and issue a certificate to the Ministry of Roads and Public Works?

**The Minister for Lands and Settlement (Mr. Ngala):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Government land Inoi/Kaitheri/665 was transferred from the Government to private individuals on 9th August, 2001.

(b) I am also aware that the title deed to the plot was issued on the same day; that is, on 9th August, 2001, to two individuals, namely; David Kariuki Shem and James Waweru Gachibiri. On 22nd August, 2001, the

title deed was closed after sub-division of the plot into nine portions.

(c) The authority to transfer this land was granted by the Kirinyaga DC, vide his letter, reference No.B26/Vol.2/9(4), of 25th June, 2001. However, there are no Government buildings on this site except an old, dilapidated and incomplete workshop which has never been used since its construction.

(d) I have no powers to cancel the transactions that led to the issuance of the title deed. Cancellation can only be done if authorised by a court order.

**Mr. Keriri:** Mr. Deputy Speaker, Sir, the Minister is definitely misleading the House. He is talking about a dilapidated workshop. I pass through that area every morning, and I noticed that he sent his own officers to inspect that building. The building is a workshop which has been under construction, and it was part of the project that was Baricho-Kerugoya Road and there are Government houses there. The Minister has been misled by the officers who went there. Be that as it may, under the Lands Act, what authority did the Kirinyaga DC have to transfer Government land to an individual?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I want to believe that the DC, who is the chairman of plot allocations, has the powers to transfer Government property.

**Ms. Karua:** Mr. Deputy Speaker, Sir, the Minister is surprising in that he has talked like a layman and yet he is the Minister for Lands and Settlement. The chairman of a plot allocation committee is not the full council. In Kirinyaga, we scrapped the plot allocation committee because it is illegal. Only a full council can grant allocation of a plot. We have documents here from the PS, Ministry of Lands, the Ministry of Local Government and also from the Ministry of Roads and Public Works. Both letters are condemning the allocation as illegal.

Mr. Deputy speaker, Sir, the Minister may wish to clarify to us how many Governments are there because these are two arms of Government. If Mr. Deputy Speaker may permit me, I wish to read this paragraph from the letter from the Ministry of Roads and Public Works dated 8th October, this year.

It states:-

"Parcel No.665 has now been grabbed and the title deed issued from your office is in complete disregard of Government interests".

They go on to condemn it as illegal and to demand its cancellation. I table that document.

*(Ms. Karua laid the document on the Table)*

Mr. Deputy Speaker, Sir, the other letter is dated 4th October, 2000 from the Ministry of Local Government, which states:-

"The allocation of Plot No.665 is irregular and has no support of this Ministry".

It says also that it was obtained through fraud and it is asking not only for its nullification, but for ensuring that disciplinary action is taken against those officers responsible. I table that document also.

*(Ms. Karua laid the document on the Table)*

Mr. Deputy Speaker, Sir, these letters are addressed to the Minister's office. Are there several Governments, and under what law can a District Commissioner issue Government land without a full resolution of the council?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I take the suggestions made by the hon. Member. As has been said, my officer was on the ground about three to four days ago. We had sent him there to go and get the proper position on the ground. I want to believe what has been prepared for me to be the true position. This is because we sent him specifically on the ground to go and bring the information. Now, I believe that the information that I have is correct. However, as a result of that, I think the Ministry has now, through the Kirinyaga District Land Registry, directed that restrictions be placed on the register against all the nine plots as a precautionary measure. So, I think we will follow this matter up and see the best way to resolve it. After this, I will go and talk to my officers and ask them: "The reply seems to be unsatisfactory. Could you go back and check it more properly?"

**Mr. Keriri:** Mr. Deputy Speaker, Sir, the Minister is trying to avoid this issue. He is trying to be kind. However, he is saying he has placed restrictions. First of all, he has not stated the truth that the District Commissioner has no authority and, therefore, it was illegal and irregular. Now, the District Commissioner did not have a committee. The Minister says that he will have to go to court to reverse this situation if it has got to be reversed. Who then in the Government, through the Ministry of Lands and Settlement, does exactly that to protect Government land which has got Government buildings and workshops? Could the Minister, in fact, on behalf of the Government, go to court, if necessary, to get these titles cancelled because they are illegal?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I agree with what the hon. Member has said. We have discovered an anomaly here. However, the process of undoing certain things within the land machinery and legal system takes time. Therefore, we are going to get into the doings of how we can change the situation but it takes a bit of



time. That is why I have said that according to the law right now, all we know is that once the document or the title has been issued, there is very little that I, as the Minister, can do because it is a legal situation; it is a legal document!

**Mr. Michuki:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead this House about the authority of a District Commissioner with regard to Government properties? We know and he knows also that under the law, all properties of the Government are vested in the Permanent Secretary, Treasury. Is it in order that he should hide behind there when he could ascertain the situation? Why has he failed to ascertain the situation? Is it in order that he should ignore the legal position?

**Mr. Deputy Speaker:** He is not in order but you are certainly not in order either!

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I was saying that my perception of this particular Question is that something is wrong. This is because I have been given the information by an officer we sent on the ground to go and check and bring to us the proper information. Now, the information seems to be in conflict with what the hon. Members are raising. That is why I am saying that somehow there is some kind of precaution that has been taken and we need to follow it up, to find out how it can be corrected. Now, I was saying earlier on that---

**Mr. Deputy Speaker:** Order, Mr. Minister! We are going round in circles. What that Member wants, is what I believe this House wants and that is to get to the truth of this matter. How long is it going to take you to establish that?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, it should not take a long time because all we need is to send back the officer to go and get the variation or alternatively send another officer to get the information. So, within two to three days, we can be able to get the information but, maybe, the House will have adjourned. It does not take long to establish whether there is an old dilapidated house on this plot because the officer has brought the information that there is an old dilapidated house on it, and the hon. Member is talking of a workshop.

**Mr. Deputy Speaker:** I think the hon. Members are talking about more than just an old dilapidated house. They are talking about the granting of Government land by a District Commissioner in Kirinyaga and, indeed, for that matter, District Commissioners anywhere and everywhere. Is that allowed by law?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, that is what I said. There is a problem. There is an anomaly in this situation. That is what we have discovered, that the District Commissioner has granted a Government property. Now, that is what I say is wrong and illegal and we want to find out all these details and then be able to correct the situation.

**Mr. Keriri:** Mr. Deputy Speaker, Sir, I take the point by the Minister that he is going to carry out proper checking because he has now agreed that the issue of granting title deeds for this land was illegal and irregular. Now, is he going to take disciplinary action against the Land Registrar who took illegal and irregular orders from the District Commissioner and issued two title deeds, sub-divided the plots into nine units, and then issued other titles? Are you going to take action against that Land Registrar in Kirinyaga?

**Mr. Ngala:** Mr. Deputy Speaker, Sir, I will take the necessary action.

**Mr. Deputy Speaker:** Next Question, Mr. Shakombo!

#### GOVERNMENT POSITION ON LIKONI SQUATTERS

**Mr. Shakombo:** Mr. Deputy Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

(a) Is the Attorney-General satisfied with the judgment delivered on 8th November, 2001 by Justice Hayanga against 10,000 squatters in HCCC No.40 of 2000, in favour of one Evanson Jidraph Kamau vs the Attorney-General and others?

(b) What is the Government position regarding the squatters in Likoni?

(c) Why does the Government allow one person to own a total of 940 acres in Mombasa Mainland South at the expense of 10,000 Kenyans who have been inhabitants in the area for over 100 years?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, it is a Question by Private Notice and, therefore, I will give an oral answer.

(a) The Attorney-General is not satisfied with the judgment delivered on 8th November, 2001, by Justice Hayanga against 10,000 squatters in HCCC No.40 of 2000 in favour of one, Evanson Kamau vs the Attorney-General and others. The Attorney-General has already filed a notice of appeal and applied for certified copies of the proceedings and judgements, and when available, the appeal will be filed. Consequently, this matter is *sub judice*.

**Mr. Shakombo:** Mr. Deputy Speaker, Sir, I thank the Attorney-General for the answer that he has given

to us, but under normal circumstances, the call of duty for any judge demands that he or she stays in his or her duty station for not more than three years. Justice Hayanga has been in Mombasa for seven years. This is his seventh year, and we are getting worried because he is "too close and friendly" to prominent businessmen, including Mr. Waitike. Could---

**Mr. Sungu:** On a point of order, Mr. Deputy Speaker, Sir. The Attorney-General has just stated that the matter is *sub judice*. Therefore, would it be in order to say that it should not be discussed any further in the House?

**Mr. Deputy Speaker:** The matter before the court is not Justice Hayanga; the matter before the court is HCCC No.40 of 2000.

**Mr. Sungu:** Mr. Deputy Speaker, Sir, let---

**Mr. Deputy Speaker:** Order, Mr. Sungu! If you want to raise the issue of discussing the conduct of Justice Hayanga, that is a different matter.

**Mr. Wako:** Mr. Deputy Speaker, Sir, the issue of Justice Hayanga does not arise out of the Question. For one to discuss a judge in the House, he or she requires to move a substantive Motion.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, the matter is *sub judice*, and the Attorney-General has issued a notice of appeal in order to safeguard the interests of the over 10,000 Kenyans who face eviction as a result of this judgement. Would the Attorney-General also consider now applying for a stay of that judgement, and pursuant to the Court of Appeal Rules, to protect the interests of these Kenyans who are likely to be evicted?

**Mr. Wako:** Mr. Deputy Speaker, Sir, the 10,000 persons were represented by an advocate who is worth his salt. I believe that he has already appealed for a stay of execution.

**Mr. Ndwiga:** Mr. Deputy Speaker, Sir, I am just wondering - looking at part (c) of the Question - whether this gentleman has a title deed to this land? Under what circumstances did he get this land?

**Mr. Wako:** Mr. Deputy Speaker, Sir, all these issues are before the court, and the matter is *sub judice*.

**Mr. Muite:** Mr. Deputy Speaker, Sir, while I have got a lot of sympathies with the 10,000 Kenyans, may I, first of all, declare my interest in that, Mr. Kamau comes from my constituency. I would like to appeal to the Chair to prevail upon the Attorney-General, that whatever action he takes, he will ensure that he balances the interests of land owners against the interests of the squatters as well. Could he assure the House that he would get that balance right?

**Mr. Wako:** Mr. Deputy Speaker, Sir, the Attorney-General's interest is to ensure that the law in any given circumstances is applied and that justice prevails.

**Mr. Shakombo:** Mr. Deputy Speaker, Sir, again, when my colleague came up with the sanctity of the title deed, we are not objecting to that one. But they should also realise that at that particular time, when that land was issued, those people were there. So, you cannot just ignore those people because of the sanctity of the title deed. The Government has the responsibility to look after its people. It is not supposed to create the squatters. Furthermore---

**Mr. Deputy Speaker:** Ask your question!

**Mr. Shakombo:** Mr. Deputy Speaker, Sir, the Attorney-General has told us that they have taken appropriate action and they are going to appeal against that decision. I was in attendance throughout the hearing of this case and the State Counsel in Mombasa, unfortunately, appeared to favour the sanctity of the title deed and not the 10,000 people. What measure is the Attorney-General going to take to ensure that we are going to get a State Counsel in Mombasa who is going to be impartial?

**Mr. Wako:** Mr. Deputy Speaker, Sir, I have every confidence in my professional officers. They are doing a very good job under very difficult circumstances because they are few, and the cases are many. But I can assure you that the appeal will be heard and all reasons will be advanced and the court will decide in the matter. Mr. Deputy Speaker, Sir, they are underpaid; also, the Attorney-General is underpaid.

**Mr. Deputy Speaker:** That is the end of the Question Time!

## MINISTERIAL STATEMENTS

### OPERATIONAL COSTS OF NINE FACTORIES

**The Assistant Minister for Agriculture and Rural Development (Col. Kiluta):** Mr. Deputy Speaker, Sir, last week, on a Question raised by Mr. Anyona, I undertook to provide details on the operations costs of the nine factories, and I hereby lay on the Table the detailed breakdown of the operational costs.

*(Col. Kiluta laid the list on the Table)*

**Mr. Anyona:** Mr. Deputy Speaker, Sir, in view of the fact that I have not had a look at this breakdown, could I be allowed to raise some questions on Thursday?

**Mr. Deputy Speaker:** You are allowed to do so.

#### DETAILS ON KASARANI-NJIRU ROAD PROJECT

**The Assistant Minister for Roads and Public Works** (Eng. Rotich): Mr. Deputy Speaker, Sir, last week, there was a request by the Member for Kasarani for a Ministerial Statement regarding Kasarani-Njiru Road. The Kasarani-Njiru Road Project, D-400, is located in Kasarani Division. It is D-400 Road and the road condition was originally constructed to bitumen standards. But currently, the road is in very bad shape. The original scope of works proposed by the Ministry was to improve the road to gravel standards with a view of ensuring better passage by traffic.

The advertisement for the tender for the pre-qualification contractors for the gravelling of the road was placed in the local dailies in December, 2000. When the pre-qualifications responses were received by the Ministerial Tender Committee from interested parties, the Ministry's Materials Department advised the committee that, if the road was originally tarmacked, it would, therefore, be inappropriate to gravel it. The results scope of works realised that the Road-D Urban--- It was advisable to reinstate the road to its original condition of tarmac as opposed to gravelling it. The Ministry is, therefore, making the necessary arrangements to procure the new scope of works geared towards the tarmacking of the road.

In view of the intended change of scope of work, it has been decided that the detailed symmetric design be carried out in order to achieve a well-engineered status of the road. To this end, the Ministry's design branch has been instructed to commence necessary designs as soon as possible, with a view to producing the required documents for tender.

Mr. Deputy Speaker, Sir, in the meantime, a new advertisement for the tender pre-qualifications for contractors for the bitumenisation of the road is scheduled to be placed in the local dailies within the next week. To ensure completion of the procurement process, the following timetable has been agreed on: advertisement for pre-qualification for December, 2001; completion of the qualification, evaluation, January, 2000/2001; detailed design and documentation, February, 2002; invitation to tender, March, 2002; completion of tender evaluation, April, 2002; award of tender May, 2002, and commencement of work June, 2002. The project [The Assistant Minister for Roads and Public Works] implementation is scheduled to be completed within six months from the beginning of the next financial year.

**Mr. Muchiri:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Muchiri, would you like to raise an issue with the Assistant Minister?

**Mr. Muchiri:** I have only one point, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Yes?

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, this issue has been coming before this House since 1998. Every time the Question was raised, the Minister would say that the construction of the road would start soon. So, I hope that, this time round, the Assistant is serious that the construction of that road will start in June, 2002. Meanwhile, now that he admits that the road is currently impassable, what is he going to do enable the citizens of that area to utilize it?

**The Assistant Minister for Roads and Public Works** (Eng. Rotich): Mr. Deputy Speaker, Sir, there may not be much we can do until June, 2002. What we may do is grade the road. But, at the moment, there is not much that we can do.

#### POINTS OF ORDER

##### PROMISES BY MINISTERS TO ISSUE MINISTERIAL STATEMENT

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. I understand that the House may go into

recess sometime this week. There are several Ministerial Statements, or responses, some Ministers are supposed to have issued or made, but which they have not. In one case, the Minister for Local Government was supposed to come back to the House and clarify issues regarding water levies in the Nairobi City Council. Also, there was a Question where the Minister was supposed to bring names of the persons who were compensated over the Kisii sewerage plant, and where nothing happened. In another case, Mr. Chanzu was required to bring some information about a certain lady.

**Mr. Deputy Speaker:** Mr. Anyona, you have made your point. As I informed the House the other day, I have already directed the Clerk of the National Assembly to prepare a list of all the Ministers who have made promises to issue Ministerial Statements, or answer Questions, but have failed to do so, and equally, hon. Members who have put in Questions but have not turned up in the House to ask them. I have directed the Clerk of the National Assembly that, that list must be on my desk, or in my hands in the Chair, on Thursday, at 2.30 p.m., because we intend to take action. So, the Chair is still seized of that issue.

#### ENTRENCHMENT OF CKRC INTO THE CONSTITUTION

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. You are also aware that people countrywide are wondering what is going to happen to the Constitution of Kenya review process that is already on-going in the country, in view of the fact that the Bill to entrench the process into the Constitution has not been brought to this House for debate and enactment into law. So, I would like either the Attorney-General or the Leader of Government Business to issue a Ministerial Statement and tell us the Government's position with regard to entrenchment into the Constitution of the review process. The Bill has already been published but there is no indication whatsoever that it will be debated before the House goes into recess. There is a real danger that the whole process will be scuttled if somebody goes to and asks the court to declare the Constitution of Kenya Review Commission (CKRC) unconstitutional. Even the CKRC has expressed misgivings to that effect. So, would I be in order to request for an urgent Ministerial Statement with regard to the Government's position on the review process that is currently going on in the country?

**Mr. Deputy Speaker:** You are perfectly in order. I hope that your request will be transmitted to the Attorney-General, so that he can come here on Thursday and issue the Ministerial Statement.

#### KILLING OF PEOPLE IN LIBOI

**Mr. Shidiye:** On a point of order, Mr. Deputy Speaker, Sir. It appears that some Ministers are not taking this House seriously. Seven of my constituents were murdered in cold blood in Liboi. I raised the issue in this House and requested for a Ministerial Statement from the Minister of State, Office of the President, in charge of internal security. This is the third time I am standing here to pursue the matter, but it appears that the Minister is still not ready to issue the Ministerial Statement.

**Mr. Deputy Speaker:** But, Mr. Shidiye, that has been covered by what I said regarding Ministerial Statements which have not been issued.

**Mr. Shidiye:** Mr. Deputy Speaker, Sir, that is not good enough for my case. Mine is about people who have been killed--

**Mr. Deputy Speaker:** Order! Order! You are now asking me to make a ruling in respect of a matter I have already made a ruling on. So, really, let us save time. I have already stated that all issues outstanding with Ministries, yours included, will be the subject of discussion here on Thursday afternoon.

**Mr. Shidiye:** Mr. Deputy Speaker, Sir, I am talking about people who are being killed and have no recourse. We had been invaded; that is the point I am trying to raise. Really, the matter involves the lives of my people. We are not talking about ordinary Ministerial Statements.

**Dr. Deputy Speaker:** Order! Order! Mr. Shidiye, do not suddenly make yourself appear as if you are more concerned about the lives of Kenyans than the Chair. Even if I were to agree with you 100 per cent, what can I do now? The Minister is not even here.

You know, you are really blowing hot air, but you and I are on the same side. So, there is nothing I can do, much as I agree with you, until and unless the Minister is here. I have indicated that I want all the Ministers with outstanding issues to be here on Thursday, to answer.

The last one, Mr. Kathangu.

**Mr. Kathangu:** On a point of order, Mr. Deputy Speaker, Sir. Now that you concede that it is in order for the Attorney-General to issue a Ministerial Statement on the Government's position regarding the entrenchment of the CKRC into the Constitution, would it be in order for this House to debate the issue under Standing Order No.23?

**Mr. Deputy Speaker:** Mr. Kathangu, I am quite sure that you have got some very good intention. However, the Standing Order you have referred to deals with the adjournment of the House. If you want to discuss the entrenchment of the CKRC into the Constitution, that must be by way of either a substantive Motion or a Bill. So, I do not think you have any escape route here.

**Mr. Kathangu:** Mr. Deputy Speaker, Sir, I was not trying to seek debate of the matter under Standing Order No.23; all that I was seeking was your kind guidance and advice on whether it would not be more befitting for this House to debate the issue fully instead of only having a Ministerial Statement, and we can do this on Thursday.

**Mr. Deputy Speaker:** No, we cannot. Mr. Kathangu, read the Standing Orders well. More importantly, try to understand it. You cannot discuss a substantive matter under that Standing Order because, in any event, at the end of it, you will end up with no resolution. I understood Mr. Imanyara to want a resolution. In what form? In the form of a Bill to entrench the CKRC into the Constitution. We cannot do it under that Standing Order.

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. The Bill that was intended to entrench the review process into the Constitution was, indeed, published, and I believe that it matured a long time ago. So, really, the long and short of it all is that, if need be, the House should sit for another week so that the Government can bring the Bill here and have it debated and passed, because we have all agreed on that.

**Mr. Deputy Speaker:** Well, somebody is going to provoke the Government into doing that. Let us proceed to the next Order!

#### COMMITTEE OF THE WHOLE HOUSE

*(Order for the Committee Read)*

*(Mr. Deputy Speaker left the Chair)*

#### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Imanyara) took the Chair]*

#### THE SUGAR BILL

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, we are now in the Committee of the whole House. Before us are the Sugar Bill and the Copyright Bill. Before we start, I would like to inform you that we have a Supplementary Order Paper, containing further proposed amendments. Please, take note of that.

Hon. Members, we shall start with the Sugar Bill.

#### *Clause 2*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended -

- (a) in the definition of "outgrower institutions" by inserting the word "institution" immediately before the word "registered"; and,
- (b) in the definition of "zone" by deleting the word "approximately" and substituting therefor "up to a maximum of".

*(Question of the amendment proposed)*

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I would like to support this amendment, particularly part "b", where a zone was supposed to be an area within 40 kilometres' radius. **[Dr. Omamo]**

This would have been confusing. As it is now amended, it will cover all the cases. So, I support the amendment.

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is another proposed amendment on page 755 of the Order Paper, by Mr. Ochilo-Ayacko.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I will move the amendment on behalf of Mr. Ochilo-Ayacko.

**The Temporary Deputy Chairman** (Mr. Imanyara): Do you have permission from Mr. Ochilo-Ayacko?

**Mr. Achola:** Yes, I have permission from Mr. Ochilo-Ayacko and from Mr. Speaker.

**The Temporary Deputy Chairman** (Mr. Imanyara): Go ahead.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended in the definition of "outgrower institution" by deleting the word "or" appearing on the second line and replacing it with a comma, and further deleting the semi-colon appearing after the word "Act" appearing in the third line and inserting the following words-

"Trade Unions Act and/or any other organisation registered under any other law".

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Minister, the effect will be that the hon. Member has deleted all the words after the word "other law", so that the words "that the annual general meeting may approve" are removed.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Chairman, Sir, are we looking at the same statute or a different one?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, we are looking at page 1292 of the statute, the very last line.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Chairman, Sir, it reads:

"Outgrower institution means an outgrower institution registered under the Companies Act or the Co-operative Societies Act".

**The Temporary Deputy Chairman** (Mr. Imanyara): So, you want us to add the words "Trade Unions Act and/or any other organisations registered under any other law" after the words "Co-operative Societies Act"?

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Chairman, Sir, have you proposed the question?

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Chairman, Sir, I stand to oppose the proposed amendment. Unfortunately, it seems as if I have to repeat the argument I put here last week with regard to the Coffee Bill. Whereas the House, as the ultimate lawmaker, has every right at any stage before the final passage of the Bill, in accordance with the procedures, to bring necessary amendments to the draft Bill, it is important that we bear always in our minds that, indeed, we have a grave responsibility. This Bill went through a long process of consultation and I am not sure that, given the several meetings I had with the Departmental Committee on Agriculture, Lands and Natural Resources, this is not the kind of amendment which has been thought out on impulse. We are dealing with the Sugar Bill and once we start bringing in simple amendments such as "Trade Unions and/or any other organisation registered under any other law", I am not sure that the full import and implication of such a sweeping change has been really considered and weighed by those who have proposed it. They have not certainly advanced it and I wish that they withdraw it.

I beg to oppose the amendment.

**Mr. Obwocha:** Mr. Temporary Deputy Chairman, Sir, surely, the Minister has not explained why he has rejected this amendment. He has said that something was agreed in consultations earlier. I think the import of this amendment is to give power to the annual general meeting, which is the supreme body. The Minister should look at the amendment and explain to the House properly why he is opposing it.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I think the Minister has actually misunderstood us. We are trying to open up the outgrower institution, so that it is not a monopoly of all the co-operative societies and companies. In my home area, where SONY Sugar Company is situated, we have a trade union representing sugar-cane growers, which is registered and actually operating. Now, if you leave this law as it is today, it will mean that, that trade union will not be covered by the law, and yet it actually represents farmers who are very important in this particular respect. So, we would want trade unions to be included in the definition of "outgrower institution". They represent sugar-cane growers and there is completely nothing wrong with that. I know that as a sugar-cane farmer.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, further to what my colleague has said, it is important to note that in this country we are going for liberalisation. Certain outgrower companies have become very notorious for having various kinds of disputes and controversies, and they are not serving farmers adequately. Therefore, farmers must be given a chance to belong to an organisation that they want, that they voted for, and one that will represent their interests effectively.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, the hon. Members have laboured to explain what they see as the rationale behind this. I am afraid and scared by the prospects of abuse under such a sweeping provision. When you say "under the Trade Unions Act", obviously, there are registered trade unions. An outgrower institution, which we are seeking to define, is an institution of outgrowers and not of, for example, workers of outgrowers *per se*, who are registered under the Trade Unions Act. When you say "or any other organisation registered under any other law", it could be the Non-governmental Organisations Act, the statute regulating the registration of churches and so on, that the annual general meeting of outgrowers or sugar-cane growers have approved.

I think we are actually setting out to license any kind of imaginable group. We should always bear in mind our society. In our society, people want to be litigant; they want to get a window through which to enter into laws under which they were not provided for. I do not think there is anything clearly lacking in terms of protection for the interest of outgrowers - for people who want us to put in this simple amendment - to give an opportunity to any kind of imaginable organisations, such as NGOs and churches, which could remotely claim to have an interest in the sugar growing areas, and a stake in the sugar industry, and want to be considered as an outgrower institution for this purpose.

Therefore, I beg to oppose the amendment.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, I think the point that Mr. Achola has said is important because we know that in the Sugar Belt, there are organisations which are registered under the Trade Unions Act and will not be covered by this clause. These are organisations which include both farmers as outgrowers, and as employees or workers. This is because the production of sugar-cane involves both the outgrowers and their workers. There are organisations in the sugar belt which includes the two groups. So, I think, at least, the Minister should consider very seriously including the Trade Unions Act in this clause. I do not know what Mr. Achola would concede to, but if the Minister is very much opposed to any other organisation or any other law, at least, the Trade Unions Act should be included in this clause. I think that is very important. So, I would request the Minister and Mr. Achola to compromise and say: "Registered under Companies Act, the Co-operative Societies Act, as well as the Trade Unions Act."

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, yes, I am prepared for that. In fact, originally that is what we had put. We have stopped at the Trade Unions Act. If the Minister is not happy with the other piece of amendment, he can stop it there.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted, put and agreed to)*

**Mr. Sambu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I have a further amendment to Clause 2. The proposed amendment is on the Order Paper!

**The Temporary Deputy Chairman (Mr. Imanyara):** On which page, Mr. Sambu?

**Mr. Sambu:** On page 753, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Mr. Imanyara):** Yes, you are quite right. Yes, there is a further amendment.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
 THAT, Clause 2 be amended by inserting the following new definition in proper alphabetical order-  
 "Fund" means the Sugar Development Fund established by Section 18A.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 2 as amended agreed to)*

*Clause 3*

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, you have an amendment to [**The Temporary Deputy Chairman**]  
 Clause 3 on page 778, on the Supplementary Order Paper.

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir, I stand on a point order under Standing Order 106(2), which provides that:

"No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification thereof shall have been given to the Clerk before the commencement of the sitting at which that part of the Bill is considered in Committee:"

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Godana, notification was given and the Speaker did approve it and that is being indicated by the Clerk.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, if you would allow me, I am much obliged to respect the ruling of the Chair and the advice of the Clerk, but I think it is important that I bring this before the House. Without blowing my trumpet, let me say that we were instrumental in drafting Standing Orders and I chaired the Committee, and we had no doubt in our minds that the purpose of calling for that kind of prior notice was meant to give the Clerk enough time to communicate that notice to the Member who moved the Bill, so that he can prepare. As it is now, the Supplementary Order Paper with these amendments was served on Members of this House when we were already sitting here, but not before the sitting! I think in the future, we have to avoid this kind of situation because it amounts to an ambush. I do not think it is healthy for a proper legislation to be carried out through this House in such a manner. I think we will need, of course, the Clerk's and the Speaker's advice, in order to come back and make a ruling on this issue.

**The Temporary Deputy Chairman** (Mr. Imanyara): Well, as I have indicated, I have been informed by the Clerk that the Speaker did approve the amendment and notification was given, and it does appear on the Order Paper. But we have taken note of what you have said that the Order Paper may have ambushed you. That is something which will be communicated to the Speaker.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:  
 THAT, Clause 3 be amended by adding a new sub-clause 3(A) to read: "the headquarters of the Board shall be in Kisumu".

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, you want to add a new sub-clause 3(A)---

**An hon. Member:** Which Order Paper are you referring to?

**The Temporary Deputy Chairman** (Mr. Imanyara): It is on the Supplementary Order Paper, page 778. The amendment reads as follows:

"The headquarters of the Board shall be in Kisumu."

I am giving the Minister an opportunity to look at the Supplementary Order Paper because, as he said, it was given to him when he was in the House.

*(Question of the amendment proposed)*



**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment for very good reasons. One, the meaning of the headquarters is that it must be in a place where it can liaise with Government agencies on matters which affect farmers. As much as I appreciate what my colleagues are trying to do, it may even increase the cost of those directors and the administration section if the headquarters are located either in Kisumu or elsewhere. So, it is very imperative that we are close to where the Government is in order to harmonise consultations and enhance, at least, interaction between the Government and this particular Board.

Secondly, Mr. Temporary Deputy Chairman, Sir, the hon. Member is not very convincing as to why he wants the KSA headquarters in Kisumu. Over 60 per cent of sugar-cane in this country is grown in Mumias sugar-cane zones. If we were to make a decision as to where the KSA headquarters should be established, then it is the people around Mumias sugar-cane zones to decide. As a compromise, let us not shift the headquarters of the KSA from Nairobi to any other place.

**Mr. Nguire:** Mr. Temporary Deputy Chairman, Sir, I would like to support the amendment by hon. Achola because we always want to bring services closer to the people. The sugar belt is in Nyanza region. So, it is imperative that we have the KSA headquarters near sugar-cane farmers. I believe fellows who will be in Kisumu headquarters will be consulting on a monthly basis with the Government officers. So, we want to have this particular headquarters in Kisumu so that our people can access to this important facility. We want this headquarters near sugar-cane farmers.

Mr. Temporary Deputy Chairman, Sir, I remember very well before Independence, the Kenya Cereals Board headquarters was in Kisumu. I do not know why it was moved to Nairobi. Today, we transport our maize all the way to Nairobi. So, what we are trying to do in this amendment is to bring services closer to our people.

Mr. Temporary Deputy Chairman, Sir, with those few words, I beg to support.

**Mr. O.K. Mwangi:** Mr. Temporary Deputy Chairman, Sir, my interest is in this Bill. We are here to make law and the law cannot be "ethnicised" for this purpose. In which case, the headquarters of KSA should not be in Kisumu just because a lot of sugar-cane is grown around Kisumu. This will presuppose that there cannot be sugar-cane grown in Wajir District or Coast Province. In Coast Province, for example, there was Ramisi Sugar Factory. It is unfortunate that it has closed down. With all due respect to hon. Achola, headquarters of many bodies in this country are located in Nairobi. Therefore, anything that is of national importance should be in Nairobi because the Government sits here.

Therefore, I beg to oppose the proposed amendment.

**Mr. Shitanda:** Mr. Temporary Deputy Chairman, Sir, while we are looking at the issue of the headquarters, I think we should try to look beyond the KSA Board as just representing farmers. There are other aspects which KSA will carry out. In this Bill, there are amendments which propose that KSA will also be responsible for marketing and importation of sugar in the event of a shortage. So, as much as we want to take services closer to the people, we should also look at those peripheral aspects of the whole body. In any case, if we want to take services closer to the people, then Kisumu is not the ideal place for the KSA headquarters. This is because Kisumu accounts for only 30 per cent of the total sugar production as opposed to 70 per cent from Western Province. So, I oppose the amendment.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, let us try to be "bigger" than in this issue of headquarters and look at Kenya as a whole. As the hon. Member for Kisumu Town East Constituency, I would be very much happy if this particular headquarters was located in Kisumu Town. However, I oppose this amendment for various reasons. The headquarters of KSA is already established in Nairobi. It cost quite a handsome amount of money to build it. Therefore, to build another headquarters will be quite costly. Therefore, let us look at issues fairly. As the hon. Member for Kisumu Town East Constituency, I do not mind if it was to be built in Kisumu Town, but for heaven's sake, let us leave it where it is.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I am thoroughly surprised by what these hon. Members have said.

**An hon. Member:** Withdraw your amendment!

**Mr. Achola:** I am not going to withdraw this amendment because there was a point in proposing it. Kisumu is central to other areas of Western Kenya where sugar-cane is grown. South Nyanza is 107 kilometres from Kisumu. That is why I have not suggested that we put the headquarters in Mumias or Kakamega. I thought Kisumu was central enough. The fact that the KSA headquarters was built in Uthiru through corrupt practices should not stop us from doing what is correct.

I would also like to give examples of the establishment of various universities in this country. When Moi University College was upgraded to university status, it had its own charter. Two weeks ago, we changed the law because there are many more other universities. The fact that in future we might have another sugar-cane growing area, probably in the Coast Province, should not stop us from operating and we will not be violating our Constitution. So, I still believe that we should have the KSA headquarters in Kisumu.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, I just want to

register that I am opposed to the proposed amendment. I thank hon. Members who have opposed it. They had good reasons for doing so.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Temporary Deputy Chairman, Sir. In as much as I respect the Minister's opposition to this amendment, the reasons advanced here are not valid. If we are thinking of East African integration, we know that a lot of sugar is grown in Kakira and Jinja zones. That is a big sugarbelt. We are also thinking of integrating with Sudan, which is another sugar-cane growing area. If we are going to think of communication and so on, the proposal by hon. Achola is very valid. The arguments advanced here are not valid at all. The Kenya Ports Authority (KPA) headquarters is in Mombasa.

**The Temporary Deputy Chairman (Mr. Imanyara):** Prof. Anyang'-Nyong'o, you know you stood on a point of order to stop me from putting the Question. What is your point of order? You are now debating.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, my point of order that, are you satisfied that the arguments being advanced are valid? They are not valid at all.

**The Temporary Deputy Chairman (Mr. Imanyara):** Well, we will find out now when I put the Question.

*(Question, that the words to be inserted  
be inserted, put and negatived)*

*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Deputy Chairman (Mr. Imanyara):** Hon. Members, if you have given notice, please, do stand up when your notice is read put. On this clause, Mr. Kajwang has proposed an amendment.

**The Minister for Agriculture (Dr. Godana):** If an hon. Member who has given notice of an amendment is not here, I do not think it is within the right of any other Member to stand up and move it on his behalf.

**The Temporary Deputy Chairman (Mr. Imanyara):** Hon. Members are aware of that. I have just pointed out that if a Member has given notice and he is not here, nobody else will move the amendment on his behalf. I will now put the Question.

*(Clause 4 agreed to)*

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Temporary Deputy Chairman.

**The Temporary Deputy Chairman (Mr. Imanyara):** Prof. Anyang'-Nyong'o, I have just pointed out to the Minister a few moments ago that anybody standing on behalf of another person must have given notification to the Speaker through the Clerk. That has happened in respect to the proposal by hon. Kajwang.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Temporary Deputy Chairman, Sir. In as much as I respect the law and the Standing Orders, an hon. Member has proposed an amendment here. It is upon the Minister for Agriculture to look at the use and value of the amendment to his Ministry. As far as I see, this amendment is making a very valid point regarding Clause 4, which will be useful to the Ministry. Should it just be left to drop because of some Standing Orders there? Could the Minister tell us what else the Ministry is going to do---

**The Temporary Deputy Chairman (Mr. Imanyara):** Professor, surely, unless you point out to me the Standing Order which says that if the hon. Member is not there--- Unless he has authorised another person to do it on his behalf---

**Prof. Anyang'-Nyong'o:** I agree with you! I am not arguing with you! I was just seeking a statement from the Minister. Does the Minister think that what the hon. Member was trying to do here is not going to be part of the amendment! Will it be somehow---

**The Temporary Deputy Chairman (Mr. Imanyara):** He cannot do that before I propose the Question. There is no Question proposed.

*Clause 5*

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I beg your indulgence because

that aspect of the sugar industry is very important! In fact, the Kibos Sugar Research Station is located just 200 yards from my home. When that aspect is ignored, the sugar industry is not going to be complete! I would like to appeal to the Minister not to just oppose the amendment for the sake of opposing or adhering to the Standing Orders. Those are technicalities which we can look into!

**The Temporary Deputy Chairman** (Mr. Imanyara): Sorry, but we are on Clause 5, and I have received a notification from Mr. Sambu! Now, your point of order is in relation to what?

**Mr. Sungu:** Clause 4?

**The Temporary Deputy Chairman** (Mr. Imanyara): Clause 4 is over! We crossed and passed the bridge a long time ago! The proposed amendment is on page 753.

**Mr. Achola:** Are we still on Clause 4?

**The Temporary Deputy Chairman** (Mr. Imanyara): We even voted on Clause 4! We took a vote and we are now on Clause 5!

Proceed, Mr. Sambu!

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended in subclause (1) by deleting the word "four" appearing in paragraph (b) and substituting therefor, the word "seven".

Mr. Temporary Deputy Chairman, Sir, those who submitted their views to the Committee on Agriculture, Lands and Natural Resources wanted the representation of the farmers to be increased. That is why we are moving an amendment to increase the representation from four to seven.

*(Question of the amendment proposed)*

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, the matter of the representation of farmers at the Board meetings is important. It is one way of helping the farmers' voice to be heard in the sugar industry. It is another way of empowering the farmers by making sure that they are represented effectively. Raising the membership of the growers from four to seven would meet that requirement.

With those few remarks, I beg to support.

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I support the proposed amendment. I think we are only being consistent with the Bill that was passed last week, where farmers were properly represented. Here too, it is a sub-sector whose major stakeholders are the farmers. Previously, I have heard arguments presented by the Minister that coffee is different from sugar-cane because it remains the property of the farmer up to the point of sale. But may I also re-assure him that a similar approach can be applied to sugar cane up to the point of sale. It is a known fact that it takes about 9 metric tonnes of raw cane to produce one tonne of refined sugar. So, in that respect, if we are going to apply the logic which the Minister applied in respect of coffee, it can also be applied. Similarly, what is practised in respect of sugar cane can also apply in coffee. So, that particular argument used by the Minister in order to disqualify the increased membership of the farmers does not hold water and, therefore, I support that the representation be increased.

**The Minister for Agriculture** (Dr. Godana): Thank you very much, Mr. Temporary Deputy Chairman, Sir. I stand to oppose the proposed amendment.

**Hon. Members:** You are opposing everything!

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I do not oppose everything! You know how much I concede. Had some of these Members - of course they have every right to raise these issues - actually made use of the open-ended committee system, they would have understood the rationale as to why we left out some of these things. I repeat for the record that the sugar industry is different from the coffee industry. You cannot draw an analogy with coffee. As we said, in the case of coffee, it belongs to the farmer until it is sold. In the case of sugar cane, the farmer does not produce sugar. The farmer produces sugar cane. Sugar has to be produced by the miller. Therefore, you cannot give inordinate power to the grower vis-a-vis the miller. Indeed, I can foresee some kind of conflict between the millers because I do know that Members are also proposing to correspondingly increase the number of representatives of the growers on the Board to seven, and reduce even further the number of representatives of millers to one! I have seen one proposal like that. I would want to plead with Members that the fact of the matter is: In the statutes, we have given five slots to growers and three slots to the millers. They are clearly in the majority. The two are the most important stakeholders vis-a-vis the Government. Therefore, I want to plead that Members should not seek to have overwhelming dominance of one of those three principal stakeholders; an overall majority of one of those three principal stakeholders on the Board. It will not be healthy for the Board or the industry.

With those few remarks, I beg to oppose.

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I wish to support the proposed amendment of increasing the farmers' representatives on the Board. In fact, I do not want to anticipate debate, but it is a given fact that we, from the sugar cane growing areas of this country, would like farmers to own more than 51 per cent of all the sugar companies. So, by increasing farmers' representatives to seven, and having a non-executive chairman who will also be elected by the farmers, we will have eight out of 15 members on the Board, which, in my opinion, will be commensurate with 51 per cent shareholding that we demand for farmers.

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I would like the Minister to try and be sincere for the first time on the Floor of this House! That is because the Committee on Agriculture, Lands and Natural Resources has done a lot of work with the Minister. We respect the Minister. Our idea is to supplement the effort made by the Minister. We have gone through the Bill and one of the commitments that we are doing with the Ministry of Agriculture is to revive the agricultural sector which has been dead for a long time. We want to put life and incentives to the farmers to own what they plant, like we have done all through. We have got several other products.

Mr. Temporary Deputy Chairman, Sir, we went through the Bill and agreed that the only way to incite and get the farmer to be more committed is for him to feel that he has got more control over his product. I would want the Minister to withdraw what he is trying to insinuate, and let us quickly cover the Bill. I support my Chairman, that the number must be increased to seven.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I would like to remind the Minister that one of the Government's policies is to liberalise. He has already said that they want to liberalise the sugar industry. One of the reasons why sugar cane farming is collapsing is the fact that farmers are not represented properly in the decision-making organs of the industry. That is why we are suggesting that farmers should be given a larger proportion than any other stakeholder in this particular respect. I, therefore, support the proposed amendment.

**Mr. Ndwiga:** Mr. Temporary Deputy Chairman, Sir, there is a recommendation by the Committee on Agriculture, Lands and Natural Resources as contained in the amendment by hon. Sambu, who is the Chairman of that Committee. Since this amendment has been brought by a Committee of this House, this House cannot, therefore, go against its own Committee! We did promise the Minister for Agriculture when he came to the Committee that if we did not agree on this matter, we were going to bring it to the House. We are now appealing to the House to support its Committee.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, for record purposes, I have to state this very clearly, once again. I want to correct an incorrect picture which was given here. The Bill as it is, does not propose a Board of 15 members. I do not know [**The Minister for Agriculture**] where Dr. Kulundu got that information from. The Bill proposes a Board consisting of four representatives elected by growers; three representatives elected by millers and three representatives from the Government. In other words, the two principal stakeholders from outside the Government, the growers and the millers - and it takes those two to make sugar - have a majority of seven, out of a Board of ten members.

Mr. Temporary Deputy Chairman, Sir, if we are going to go with this proposal to give an overwhelming majority of seven out of ten to the growers only, we are actually going to cripple that industry, because there will be conflict with the millers and I can foresee, the millers walking in the opposite direction, and we will come back to this House before a year elapses with further amendments.

With those remarks, I oppose the amendment.

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Question, that the word to be inserted in  
place thereof be inserted, put and agreed to)*

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5(1)(a) be amended by deleting all the words after the word "Chairman" and inserting the following:-

"elected by the Board from among the grower representatives in the Board and appointed by the

Minister."

Mr. Temporary Deputy Chairman, Sir, this is in connection with the non-executive chairman of the Board. It would be better, as a move to make sure that the industry belongs to the farmers, to have a strong voice in the Board from the growers' side.

Mr. Temporary Deputy Chairman, Sir, we should have a strong non-executive chairman elected by the Board from among the grower representatives. After electing him, the Board will recommend him to the Minister for appointment. This is one way of moving the sugar industry forward.

With those remarks, I beg to move.

*(Question of the amendment proposed)*

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I strongly support the amendment by Dr. Omamo. The job of the Minister is just to gazette the appointment of the chairman. We want to remove the loyalty of this organisation from being directed to the Government. We want the chairman to be responsible to the growers but not the Minister.

With these few remarks, I support the amendment.

**Mr. Donde:** Mr. Temporary Deputy Chairman, Sir, I think this country is in a mess because most chairmen who are elected into these positions have no knowledge of the industry. So, this is going to be the first time we are going to have a chairman who is elected into a sector which he is familiar with. I think this should be the practice in all sectors of our economy if we want to succeed.

With those remarks, I support the amendment.

**Dr. Ochuodho:** Mr. Temporary Deputy Chairman, Sir, experience in the past has shown that such positions had been used to reward politically-correct individuals. By allowing this amendment, that is going to be history.

With those remarks, I support the amendment.

**Mr. Khamasi:** Mr. Temporary Deputy Chairman, Sir, I support the proposed amendment.

*(Dr. Godana stood up in his place)*

I do not know what is itching the Minister! I do not see the reason why he wants to appoint the chairman of the Board. The problems we have had, even in factories like Nzoia Sugar Company, have had to do with political patronage, where the Executive appoints the chief executives or chairmen of those Boards. Therefore, it is necessary that if the Government wants to liberalise, let it not dilly-dally over this matter. It should liberalise and give the farmers an opportunity to run their institutions.

With those remarks, I beg to support the amendment.

**The Minister for Agriculture (Dr. Godana):** I think some Members have not read the Bill although they are holding it. The Minister conceded, when he brought the Draft Bill to the House, that the powers of deciding who becomes the chairman shall rest, first and foremost, with the Board. The Minister has no desire to usurp those powers. It is there in black and white. Clause 5(1)(a), which they are seeking to amend says:-

"A non-executive chairman appointed by the Minister on recommendation of the members."

The proposed amendment does not change anything. It only adds to say: "He shall be from the growers". Why should hon. Members want to restrict further the freedom of the Board to look for the most competent person from amongst its membership by saying say: "You, who may have been elected by the millers, but who is both a grower and a miller?" We are trying to regulate into finer details parent legislation. I do not think this is healthy. Taking into account the amendment that we passed earlier on, against my good advice, we are going to have a Board on which farmers have the absolute majority and where the chairman is also a farmer. If this happens, there is no point of others sitting on that Board in any capacity. That is really the message you are giving. I think that will lead to anarchy. We will end up coming back to this House before too long.

With those few remarks, I beg to oppose.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, while I support the proposed amendment, I wish to say that one of the most important industries - agriculture - is being represented very ably by a pastoralist. So, maybe, that is the example the Minister has in mind that the chairman does not have to be a grower.

But I support the amendment.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, Mr. Muite needs to learn elementary agriculture. It includes pastoralism.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, I support the proposed amendment. But I was wondering why the Minister feels that if the growers are a majority in the Board and if the chairman comes from among the growers, that will promote anarchy. Is there something anarchic about sugar-cane growers or growers, for that matter? I think the reason the Minister is giving for opposing this amendment is rather curious. There will be no anarchy. It is the growers themselves who are interested, first and foremost, in sugar growing. They are very interested in the proper running of the sugar industry. So, this fear that the Minister is bringing about anarchy is ill-placed.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 5 as amended agreed to)*

*(Clauses 6, 7, 8 and 9 agreed to)*

*Clause 10*

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10(2) be amended by inserting a full stop after the word "capacity" and deleting all the words following.

Mr. Temporary Deputy Chairman, Sir, this amendment is meant to open up this particular clause to enable those who are qualified to be chief executives not to be only holders of degrees in Agriculture and have restricted experience in agriculture. Management requires talent that can be possessed by people with basic qualifications, but need not necessarily be those who have credentials that have agricultural bias.

With those few remarks, I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): The Minister wants to concede. So, let me allow him.

**The Minister for Agriculture** (Dr. Godana): Well, I think the position that is being referred to is purely managerial and not managerial in farming as such. This is the post of chief executive officer of the Board. So, I think there is sense in that there is no point of restricting that managerial experience for the last five years to an agricultural organisation.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 10 as amended agreed to)*

*(Clauses 11, 12 and 13 agreed to)*

*Clause 14*

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 14(1) be amended by deleting the full stop after the word "purpose" and adding the following:-

"provided that a jaggery miller processing cane less than 14 tons per day shall not

require a licence."

Mr. Temporary Deputy Chairman, Sir, we have small-scale farmers in the countryside where they use oxen-driven jaggeries and we do not want to subject them to licensing. That is why we have put that limitation. I think it is something that small-scale farmers will be happy about.

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I stand to oppose the proposed amendment. A jaggery, especially one producing more than a ton of sugar per day, is a factory. It should be licensed. I think if we say that small-scale farmers should not be licensed, we will not be encouraging order and Government management of the sector. Indeed, we will be encouraging a lot of criminal activities, including poaching, stealing of sugar-cane and the making of sugar-cane for purposes of manufacturing illegal hazardous substances like *chang'aa*.

I stand to oppose and I beg the hon. Member to withdraw this proposed amendment.

**Prof. Anyang'-Nyong'o**: Mr. Temporary Deputy Chairman, Sir, the reason advanced by Mr. Achola was that, it is unnecessary bureaucracy for the Government to subject the small informal industries producing less than 14 tonnes of cane, not sugar. If the Government really feels that they need licensing, the Minister should tell us what purpose it serves. Is it a question of standards or ensuring that improper jaggery is produced or not? Since colonial times, people have been producing jaggery in my village without any licence and there was no problem. I do not know whether it is standard procedure. Let the Minister make it very clear that a licence is needed, even if you are producing an ounce of sugar because of those reasons. The reasons he advanced here do not put aside what Mr. Achola has said.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, it should be obvious that standards---

**The Temporary Deputy Chairman** (Mr. Imanyara): I would like you to answer a few more questions. So, let me give Mr. Khamasi an opportunity to ask his question.

**Mr. Khamasi**: Mr. Temporary Deputy Chairman, Sir, I think we have got to be very careful about the proposed amendment by Mr. Achola. We would be encouraging a lot of problems in the industry if we do not license even jaggery producers. We should have a situation where there is control; otherwise, we will have a lot of them coming up. We should license them and ensure that they produce less than 15 tonnes of sugar-cane per day. Who is there to regulate and ensure that they produce only 15 tonnes of sugar-cane everyday? If we allow them to operate without a licence, it will be tantamount to allowing everybody who is interested in producing sugar. In fact, I wonder how taxation will be carried out because if you are in business, you have got to pay tax. How will we control that issue? I want to oppose this amendment and I still stick to the opinion that jaggery owners must be licensed.

**The Minister for Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, I think it is important to see the licensing in terms of what it is intended to achieve. I believe that the intention is, first of all, to account for sugar. There must be a way of knowing who is producing what and who is doing what. Above all, we also need to have standards. We are now moving into a world economy where standards matter most, and where the health of our people is of paramount importance. In our enthusiasm to please the electorate to elect us in 1997, we decided to remove licensing of *chang'aa* and so on, and the consequences have been devastating. Everybody knows how much damage this *chang'aa* which is not licensed has done. On the same token, it is important that we license the smaller units, purely for maintenance of standards and accountability, so that we know exactly how much sugar is being produced and crushed for statistical purposes.

**Mr. Munyao**: Mr. Temporary Deputy Chairman, Sir, for the first time, I will oppose my neighbour and good friend because the Committee discussed this issue very much. We must be consistent because you will find that at times, we protect the farmer while at other times, we end up bringing confusion into the whole sector. I would like to beseech the Mover of this amendment to withdraw it because of his credibility in this House and his friendship with the farmers because it is not a very good amendment.

**Mr. Donde**: Mr. Temporary Deputy Chairman, Sir, I would also like to concur with the previous speakers. For purpose of record-keeping, statistics and so on, we ought to know what is happening in the industry. If we have so many dotted jaggeries and nobody knows what they are doing, it will be difficult. There are a lot of jaggeries dotted all over my constituency. I know that it will be difficult for the Government to take statistics to plan for the industry. I think we should support the fact that however small the business is, it must be licensed.

**Dr. Anangwe**: Mr. Temporary Deputy Chairman, Sir, I understand the concerns of Mr. Achola. His concern is that this small-scale informal sector and the particular jaggery owners may not meet the requirements

of undergoing registration. This board will be dominated by the farmers and whatever decisions they make will be in light of their own interests. Given that they have the leeway to decide whether or not the fees should be high or low, all jaggeries should be licensed. These jaggeries are a nuisance in my constituency because they are fond of poaching. If we were to open it up so that they can now operate, they could create a lot of problems. Right now, they are very cautious and as a consequence, farmers are not diverting the cane which they have already contracted to the Mumias Sugar Company.

Therefore, I beg to oppose.

**Mr. Achola:** It is very surprising the sort of argument that has been offered by various hon. Members, particularly those claiming that these jaggeries are just meant for *chang'aa*. Unfortunately, even if you license the sale of *chang'aa*, it will still be produced. So, that is not the solution. I will withdraw this amendment, but I want to explain my original thought.

**An hon. Member:** Just withdraw it!

**Mr. Achola:** No, you cannot dictate to me to withdraw; you can defeat me. It does not make sense for someone who is producing sugar-cane on just less than an acre in Migori to come to Nairobi just to get a licence.

**Hon. Members:** No, he can get it in Migori!

**Mr. Achola:** If that is the feeling of hon. Members, including those who come from the sugar-cane growing areas, I withdraw the amendment for the benefit of everyone.

**The Temporary Deputy Chairman (Mr. Imanyara):** Have you formally withdrawn the amendment?

**Mr. Achola:** I have done so, unwillingly.

**The Temporary Deputy Chairman (Mr. Imanyara):** No, I want to get it clearly. Have you withdrawn that amendment, Mr. Achola?

**Mr. Achola:** I withdraw the amendment.

*(Amendment withdrawn)*

*(Clause 14 agreed to)*

*Clause 15*

**The Temporary Deputy Chairman (Mr. Imanyara):** Mr. Sambu, I think you have a proposed amendment.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 15 be amended in subclause 1 by inserting the following new proviso at the end thereof-

"Provided that the issuance of a licence to an applicant under this section shall not be withheld without reasonable cause".

Mr. Temporary Deputy Chairman, Sir, licensing falls under part 3 in the Bill and it starts from Clauses 14 and 15. The Committee is proposing this proviso so as to allay fears that were expressed when we discussed Clause 14 on the licensing of jaggeries. I would like to propose that the House does accept this amendment.

*(Question of the amendment proposed)*

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, for reasons very well explained by our able chairman, I need not talk further.

I support the amendment.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, in the interests of our solidarity in the House, I concede.

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 15 as amended agreed to)*

**Mr. Sambu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. On Clause 18---



**The Temporary Deputy Chairman** (Mr. Imanyara): That is a new clause you are referring to. Are you referring to page 753?

**Mr. Sambu:** Yes, Mr. Temporary Deputy Chairman, Sir. Will the new clause come at the end?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes. It is not yet time for that clause.

*(Clauses 16, 17, 18, 19,  
20, 21, 22, and 23 agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, I think there is an amendment received from hon. Otieno-Kajwang, but he is not here. It is on page 774. So, the amendment is dropped.

*(Clauses 24 and 25 agreed to)*

*Clause 26*

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 26 be amended by inserting the following words at the end of subclause (1) -  
"and such imports shall be controlled by the Board".

Mr. Temporary Deputy Chairman, Sir, we, [**Mr. Sambu**] in the Committee, after hearing the views of the stakeholders, felt that it was important to have a Board control the imports. In Kenya, the amount of sugar produced, consumed and the deficit is known. However, we have been experiencing excessive sugar imports into the country, thus affecting the sale of our local sugar, and yet it does not lower the cost of the sugar to the consumers. So, this is why the Departmental Committee came to this conclusion that this amendment should be proposed to Clause 26, to have the Board control the importation of sugar by inserting the words "and such imports shall be controlled by the Board".

I beg to move.

*(Question of the amendment proposed)*

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I stand to support my Chairman on the Committee on Agriculture, Lands and Natural Resources, and I would urge the Minister who has been sitting with us all the time to support the proposed amendment. Although he took over very late, after we had deliberated on all these things, he should have consulted his predecessor, with whom we had gone through this. We have heard the farmers talk and know their problems. We also know where the problem is.

In this House, we know that the problem of sugar importation is there because the left hand does not know what the right hand does. The Minister has probably been controlling the imports of sugar, but at one time we found out that some type of sugar was even being licensed by the Treasury. Therefore, the Minister and another element do not know. Let us put the responsibility to one body, and that is the Board which we are creating. For that reason, I would urge the Minister, who this country trusts seriously that he is going to revive the industry, to actually concede to the proposed amendment so that we conclude this Bill before 6.30 p.m.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, it is true that of the many problems that have bothered the sugar industry, sugar importation has been very high up in the list. Importation of sugar has bothered this country so much that sometimes it leads to confusion and embarrassment even in this House. This is because people whisper in the corridors that some of the hon. Members in this House take part in importing sugar illegally. Leave alone that; other people, and not only hon. Members, also do the same. However, bags of sugar do not leave Mauritius or Sudan, in particular, coming to Kenya selling along the River Nile till they get to Uganda and then to Kenya. A Kenyan makes an order. We would like control so that when a Kenyan makes an order, that sugar that comes into the country helps us instead of destroying us. This particular clause should be amended and I support the proposed amendment because if we have one body keeping its eye open and knowing who is importing how much; how much is coming into the country; how much does Mumias and Muhoroni have at this moment, *et cetera*, we have a hope. Without it, there is no hope.

I support the amendment.

**Mr. Ndwiga:** Mr. Temporary Deputy Chairman, Sir, I believe the Minister has no problem with this proposed amendment. First and foremost, he is very well represented in the Board. The Ministry of Agriculture

and Treasury are both represented. So, I cannot see any reason why the Minister would want to oppose this proposed amendment. In our deliberations in the Committee with all the stakeholders who talked to us, one area which was most contentious was this one that the new Board must be the one that licenses sugar importation. It should be the one that has the statistics of the stocks. So, it can only be this Board which would give import licences because it would know how much deficit there is and, therefore, it will not allow sugar to be flooded into the market when we have stocks.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I stand to oppose the proposed amendment. I have been conceding a lot this afternoon and when the Minister says he is opposed, I think, for once, these hon. Members should listen to hear the good reason behind it.

Mr. Temporary Deputy Chairman, Sir, the first thing is that the responsibility which this Parliament, through the law, gave as far as it were distributed across the spectrum of Government; the responsibility to regulate imports does not belong to bodies such as this. It belongs to the Treasury.

Secondly, if we adopt this amendment for what it is worth, and I say that because it is supposed to be subject to interpretations, we will definitely get conflict of interests. We are, in effect, saying that the Board, on which the majority representation is of farmers who are cane growers, of which the chairman must, by law, be a farmer or a cane grower, will be the one which will also control and regulate inflow of sugar into the country.

*(Laughter)*

I am really shocked to understand that hon. Members would wish to tread such a path, which will definitely lead to chaos.

I stand to oppose the amendment.

*(Question, that the words to be inserted  
be inserted, put and agreed to)  
(Clause 26 as amended agreed to)*

*(Clauses 27, 28, 29, 30 and 31 agreed to)*

*New Clause*

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, a new clause be inserted immediately after Clause 18 as follows -

Sugar Development Fund	18A(1) There is established a Development Fund which shall	Fund to be known as the Sugar be administered by the Board.
	2) The Fund shall consist of -	
	(a) the Sugar Development Levy;	
	(b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;	
	(c) any monies provided by Parliament for the purposes of the Fund;	
	(d) monies from any other source approved by the Board.	

If the House adopts this amendment, for the first time, the Sugar Board will have a fund which will be directly beneficial to the growers. It will be controlled by the Board which has a majority of growers and it will be of direct benefits to the growers, millers and research on sugar. I would urge this House to support this amendment proposed by the Departmental Committee and adopt this new clause.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**Mr. Nderitu:** Mr. Temporary Deputy Chairman, Sir, first and foremost, this country, since

Independence, has been experiencing a downward-trend as far as sugar farmers are concerned. Sugar in this country which is grown from the cuttings of the sugar-cane grown by very many farmers has not been benefitting them at all. According to this clause, it gives the sugar authority and the farmers control over the levy, which they never used to have all along. That is why today these growers toil day in, day out; they are suffering and, majority of them, even after working for one year, can never show the proceeds.

**Mr. Ndwiga:** Mr. Temporary Deputy Chairman, Sir, in the Departmental Committee, we deliberated on this issue and the Minister does see the sense of having this Fund but his hands are tied elsewhere. We are asking this House to help untie the Minister's hands.

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is he in order to say that my hands are tied elsewhere? Where? My hands are here and free!

*(Laughter)*

**Mr. Ndwiga:** Mr. Temporary Deputy Chairman, Sir, the Minister does see the sense of having this Fund, but he has another problem which is not his. We are asking this House to help to assist the Minister because it is the ultimate authority, which will pass this Fund. The Minister would oppose it, but at least, in his conscience he knows that we need this Fund. Part of the problem which we have had in the sugar sector is access to affordable financing of the sector. The establishment of this Fund will assist to boost development of sugar-cane.

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I support the new clause. I think it should be just a general policy of the Ministry to be creating funds for all crops, including livestock, for that matter, in the sense that the Government---

**The Temporary Deputy Chairman** (Mr. Imanyara): Did you say "crops including livestock?"

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, crops as well as livestock. With the Government withdrawing from direct involvement in the agricultural sector, we are leaving farmers to the vagaries of the market and the world over you need some intervening and mediating instruments to be able to insulate the farmers from such disturbances. Funds of this nature will be very handy. It would, in fact, help the Government to realise its objectives. Therefore, it is very necessary that we support it.

I, therefore, support it.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, if you look at page 1314 of the Bill, part two, that is the Schedule, the roles of the institutions in the industry, you will realise that the role of the Kenya Sugar Board is, first, to co-ordinate the activities of the various organisations concerned with the industry, both in the private and public sector, and then see which is very important and review, on a regular basis, the economic and financial performance as well as the problems and prospects of the industry. By creating this particular clause, of making sure that the Fund is administered by the Board, you will make the Board fulfil function 3(c) in the Second Schedule. You cannot have this Fund established without giving legal basis for it to be administered as the Board.

I support the amendment.

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I would like to remind the Minister that, for the first time, he will go into the Guinness Book of records because I know that this Fund will be established and he will take the credit. This is because we are talking about poverty eradication and we are trying to see how best we can facilitate the farmer to farm well, like we have done with coffee and any other crop. I would like the Minister to quickly concede over this amendment and look for any other crop which might come in future and know that the enabling factor is the funding aspect because they cannot---

**The Temporary Deputy Chairman** (Mr. Imanyara): That is enough! Yes, Dr. Omamo.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, other things being equal, and I know that they are not always equal, but let us agree that other things being equal, if there was this Fund, Miwani and Muhoroni sugar factories would not have gone to the dogs. Today, thousands of hectares of fallow land in the Nandi Escarpment and Nyando sugar belt would not be there. This Fund is coming at the right time. In fact, it would have been better if it came earlier, but better late than never.

I support the amendment.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, for the record, once again, I stand to oppose this amendment. I will try to persuade hon. Members, if they will be willing, to open up their minds and reason. I am a bit surprised. It looks like hon. Members, are all of a sudden, behaving like people who have just arrived from outer space, from planet Mars, oblivious to what has been happening here. The very first paragraph of the fund to be created says that it shall consist of the Sugar Development Levy. I would

have thought that, particularly the hon. Members who represent sugar-cane growers, cognisant of what has happened with the so-called funds collected through levies in the past, from Kshs8 billion to Kshs9 billion, would be most averse to creating additional burdens on farmers through unnecessary reductions. What they are doing in effect is not helping their farmers. I have no doubt that this will be just an additional burden on farmers because it will be increasing excuses for all kinds of deductions without any guarantee that, that Board, like other boards and co-operative societies which have been composed of farmers in their particular areas, with their own management committees, would not end up using these resources for the purpose of personal diversions and elites dipping their fingers into it. I think this is a very bad trend.

I stand to oppose the amendment.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, before you put the Question, may I, as the Chairman of the Departmental Committee on Agriculture, Lands and Natural Resources, put it on record that it is wrong for the Minister to impute improper motive on the House. The levy has always been there, but it has been administered by the Kenya Sugar Authority (KSA). But what has happened? Some Kshs300 million that was set aside for Muhoroni Sugar Factory by the KSA never reached the factory. You will find evidence to that effect in the Public Investments Committee Report for the 1997/98 financial year. So, we should, for once, have this Fund controlled by the Board. Let the farmer control the funds which he puts into this Fund.

Mr. Temporary Deputy Chairman, Sir, with those few remarks, I urge you to put the Question.

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added  
to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, on page 754 of the Order Paper, there is another proposed new clause by Mr. Sambu.

*New Clause*

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, a new clause be inserted immediately after Clause 28 as follows-

28A. Notwithstanding any other provision of this Act, or any other written law to the contrary, growers shall be entitled to-

- (a) at least 51 per cent shareholding of all privatised sugar factories; and,
- (b) at least 51 per cent of representation in the milling company boards.

After listening to the views of the stakeholders, the Committee felt that, just as is the case in other agricultural sub-sectors, the ownership of sugar mills should be reserved for the farmer. Following the amendment of the Tea Act, all the tea factories are now owned and controlled by tea growers in their respective areas. So, in this case, the Committee agreed with the stakeholders on a similar position. We also discussed this stand with the Minister.

Mr. Temporary Deputy Chairman, Sir, I request the House to support the Committee and adopt this new clause.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read  
a Second Time, proposed)*

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I support the Members of the Departmental Committee on Agriculture, Lands and Natural Resources who, in their own wisdom, recommended the inclusion of this new clause in the Bill. This is a very simple issue. All that we are asking for is a Government guarantee for

those farmers who cannot raise the amount required to buy the shareholding in these factories. That way, they will be able to manage their own factories. That is the only way through which Kenya will progress and find for herself a place in the Guinness Book of records.

With those few remarks, I beg to ask the Minister to concede this proposed amendment.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I think the Departmental Committee on Agriculture, Lands and Natural Resources should be congratulated for thinking of these very crucial issues, which were not covered in the original Bill. The purpose of making law is to protect the under-privileged and the poor in society. Definitely, our farmers are under-privileged, poor and, therefore, disadvantaged. It is, therefore, necessary to guarantee their protection by adopting this amendment.

I beg to support.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, one of the problems we have in this country is that we have been privatising our economic entities without a proper law. As much as some of us have tried to propose that we put in place a privatisation law, the Government has not moved fast enough to facilitate that. In Ethiopia, for example, the Government gives its citizens at least 5 per cent of the capital required to acquire shares in a privatised firm. If one happens to get a loan from the Government, he is given up to 20 years to repay that loan. I think this is the spirit in which this amendment has been proposed. So, the Government should not advance the excuse that the farmers cannot raise the necessary capital. This kind of an amendment will then force the Government to look for some venture capital to give to indigenous Kenyans to use for buying shares in privatised firms.

I support the proposed amendment.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, I rise to oppose the proposed amendment. I fully share the spirit behind the argument that Kenyan farmers should be facilitated to go beyond just owning the land and farming the cane and be allowed to have a stake in the industries being privatised.

Mr. Temporary Deputy Chairman, Sir, I also fully share the view that, indeed, we need to have a clear law to set guidelines for privatisation. Indeed, the Government fully recognises the importance of having such guidelines. That is why, for instance, in the recent privatisation of Mumias Sugar Factory, we set aside a block of shares for farmers, who are the outgrowers of Mumias Sugar Factory. We are happy that, that has gone on well. Even where they have not been able to seize all the shares which were offered to them, they are still available to them for purchase on a future date. I think we are facilitating that. To set the example in the case of sugar for the others, as that is what this proposed amendment will do, of saying 51 per cent of all shareholding of all privatised sugar factories must be reserved for growers is dangerous and should not be promoted by this House.

*(Loud consultations)*

Mr. Temporary Deputy Chairman, Sir, if these hon. Members have guts, they should listen to me, especially Mr. Kajwang, who has been absent the whole afternoon even after giving notice to move some amendments to the Bill. He is now heckling me!

*(Messrs. Nderitu and Kajwang stood up  
in their places)*

**The Temporary Deputy Chairman (Mr. Imanyara):** What is it, Mr. Nderitu?

**Mr. Nderitu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Since when did Mr. Kajwang become a heckler? Could the Minister clarify that allegation?

**The Temporary Deputy Chairman (Mr. Imanyara):** Mr. Kajwang, what is your point of order?

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, the Minister is fond of using the word "dangerous" every time he advances an argument against a proposed amendment. According to him, it is even dangerous for sugar-cane farmers to own and manage sugar-cane mills and oversee the marketing of their sugar. That is why I asked him: "Dangerous to whom?", and that is not heckling!

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, privatised factories, as they exist today, are collective investments of the entire Kenyan population. Is it a policy that people want to adopt, which was a result of collective investment of the entire Kenyan population? Now that it will be privatised, should it be reserved for only those people within a particular geographical area? That is not an advisable policy.

I beg to oppose it.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I do not know how to persuade the Minister, but he said that he has a free hand. If he has a free hand, then let him grab what I am about to say. It is true that when you look at factories such as Mumias, Nzoia, Chemelil, Muhoroni and SONY, they are, for all practical purposes,

Government owned. When we talk about privatisation and suggest that it should be 51 per cent equity to the farmers, we are not suggesting that farmers should be given these factories free of charge. It is not for free. Farmers will buy shares in these factories and we are suggesting that they should be given time to buy them. Up to now, farmers of Mumias Sugar Factory have been given the green light to buy 30 per cent of its ownership. With this Bill, we would now expect that Mumias Sugar Factory will have 21 per cent more shares to be bought by farmers.

When the time comes for Chemelil Sugar Factory to be privatised, we want to have sufficient time to buy 51 per cent of its shares. There is no question of robbing Kenyans. We do not want to rob a Kenyan to pay a Kenyan. No! I hope the Minister's free hand has grabbed that point.

**Mr. Ndwiga:** Mr. Temporary Deputy Chairman, Sir, I really do not understand why, again, the Minister has suggested that sugar-cane farmers should not own, at least, 51 per cent of the shares of the factories. In fact, if it was possible, we would want them to own the factories 100 per cent.

In the case of other crops, such as tea, tea farmers own 100 per cent of those factories. In fact, we are suggesting that, when the Cotton Bill is brought to the House, we should provide that farmers in cotton growing areas own the now Government owned ginneries, if not 100 per cent, at least 51 per cent. That is what motivates farmers because the factory belongs to them and they share the losses and profits by such factories.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, before I request you to put the question, I still want to give the Minister an historical perspective of the danger which he has talked about; the danger of private factories. I want to inform the Minister that the defunct Ramisi Sugar Factory was a wholly privately-owned factory. Indians went for some big loans guaranteed by the Government and then they ran down the factory. What happened to Miwani Sugar Factory? The Ndojas(?) were there. It was not Mr. Somaia. Mr. Somaia came later. The factory was 100 per cent owned by the Ndojas(?). What did they do? They took money from the Agricultural Finance Corporation (AFC), transferred all of it elsewhere, then messed up the factory and gave it to Mr. Somaia. Mr. Somaia came and controlled Miwani Sugar Factory. The result is what we are seeing. In Muhoroni Sugar Factory, the mehtas were the majority shareholders. What did they do? If farmers had been controlling the factory, all that mess would not have occurred.

Mr. Temporary Deputy Chairman, Sir I beg that you put the question.

*(Question, that new Clause be read a  
Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added to the  
Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): We have also received notice from Mr. Kajwang to move an amendment. This is on page 775 of the Order Paper.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I am sorry, I was not here when the other amendments were read out.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Kajwang, where it is written "new part", please read "new clause". There is a mistake there.

#### *New Clause*

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, there was a Subclause 5 under Clause 29 on the Tribunal. This is on the same page. Have you passed that one?

**The Temporary Deputy Chairman** (Mr. Imanyara): I am afraid, you missed that one because you were not here when it was called out.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, the new clause shown on the Order Paper as Part IIA is seeking the establishment, powers and functions of Zonal Committees. The draft Bill does not provide for Zonal Committees. We thought that these zones are very important in areas of production.

There should be committees representing the farmers' interests and also the factories and any other interested party at that level, so that if a dispute arises at that level, the interests of farmers can be distilled and

then channelled to the higher bodies.

Mr. Temporary Deputy Chairman, Sir, so, we were suggesting that Zonal Committees be established and that six representatives, elected by growers, especially facilitated by Kenya Sugar-cane Growers Association (KESGA), be members of that committee, six millers' representatives be members and there be a representative of the Kenya sugar millers.

Mr. Temporary Deputy Chairman, Sir, the objects are set out on page 776 of the Order Paper. Without reading too much of it, because hon. Members have read it, they provide a forum for regular consultations between farmers, millers and the Kenya Sugar Board. I think hon. Members are already familiar with the purpose for which we are seeking to introduce the Zonal Committees.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Kajwang, you have got to move the amendment as it is on the Order Paper.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 13 -  
Clause 13A - establishment, powers and functions of Zonal Committees.

- (1) There is established committees to be known as "Factory Zonal Committees" in each of the factories.
- (2) The Zonal Committees shall consist of -
  - (a) six grower representatives elected by growers through the facilitation of KESGA;
  - (b) six representatives elected by millers; and,
- (b) a representative of the Kenya sugar millers.
- (3) The object and purposes for which the Factory Zonal Committees are established to;
  - (a) provide a forum for regular consultations between farmers, millers and the Kenya Sugar Board;
  - (b) discuss all matters affecting the sugar industry in the zone.
  - (c) review and monitor operations of the factory.
  - (d) discuss and develop benchmarks for costs of production, farm inputs and transport;
  - (e) resolve conflicts between parties in the industry;
  - (f) refer disputes which it cannot solve to the Sugar Arbitration Tribunal; and,
  - (g) subject to the provisions of this Act, do all things that will promote good management in the sugar industry at the zonal level.
- (4) The Zonal Committee shall meet at least once in every month and the quorum in such meetings shall be eight.
- (5) Save as provided in this Clause, the provisions providing for the conduct of the business of the KSB, shall apply *Mutatis Mutandis* to the conduct of the business of the Zonal Committees.
- (6)(a) Notwithstanding any other provisions of this Act, the Zonal Committees shall be provided with relevant information upon request by all parties in the sugar industry".

The last part is intended to benefit the Zonal Committees with any information which may be held by the research institutions, the headquarters and any other body which serves the sugar industry, so that their decisions may be meaningful and informed.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I stand to seek some clarification. The way my friend, Mr. Kajwang, has put this amendment, it appears as if it will be an extra burden on the farmer. Our main concern, even in our Committee, was to see to it that the farmer gets more money. Will this extra layer not be an additional cost to the farmer and, therefore, reduce what he will take home? Therefore, of Mr. Kajwang's six children, four will go to school and two will not because of this particular amendment. I would like to suggest to Mr. Kajwang, whom I would not like to oppose, to withdraw this amendment because it is not in the interest of the farmer, particularly at this time when we want the farmer to take more money home.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, before the Minister opposes, like he always does,

I would just want to say that we are not creating this body so that we pay the committee members any money.

**The Minister for Agriculture** (Dr. Godana): You will definitely do it!

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, these are things which are necessary for the people in the zone. They should have a forum in which they can solve their own problems. Nobody is even providing that they be paid a coin. In fact, they are representatives of the farmers at that level, who will be meeting only once a month to discuss problems that befall them in that zone, just like there are tea and coffee zonal areas, where people discuss problems of that zone. If you deprive them of this opportunity, then it seems the headquarters will be too far away to find out what problems could be in those zones, without having a mechanism of providing that information. So, we are not creating any layer which would cost any more money; we are merely providing a forum through which the farmers can discuss their problems at that level.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I just want to air my views and leave the matter there. If they want to do it, they can do it!

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order! Let us hear from Prof. Anyang'-Nyong'o.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, in the spirit which Mr. Kajwang has been speaking, these zonal committees have actually been proposed by sugar-cane growers themselves. If, indeed, it is true that it is not going to cost any money, and the growers themselves want it, then it is incumbent upon the Minister to prove to the House that, indeed, farmers are going to pay something for these committees. But, I do realise that these committees are for conflict resolution. Disputes between the farmers and the millers need not reach the tribunal, if the zonal committees can settle them. For small things like the time when the factory is going to be maintained, the zonal committee needs to make written agreements with the factories to extend the month during which the factory is going to be closed before hand, so that they can organise their members. At the moment, what stands in the place of zonal committees, are the sugar co-operative societies. But the sugar co-operative societies cover a very big area. The zones are much smaller for the purposes that Mr. Kajwang has stated. So, I think, if it is understood that no money is being expended, farmers are not going to pay much money for these committees, then the function of these zonal committees should be looked at very carefully by the Ministry.

With those remarks, I support.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I would like to suggest just one aspect. We must also note that, each of these zones has got its own unique problems which are unique to that area. The farmers in that area may wish to have a forum for discussing their problems within that particular unit before it goes to the headquarters. It is also like devolution of power to the people who should have that power; the growers themselves.

Thank you.

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I would still seek further clarification from my good friend, Mr. Kajwang. This is because for the last 2001 years, we have only got one person who has sacrificed himself, and that is Jesus Christ, and nobody else! As long as you put these things in writing and because of consistence---

**The Minister for Agriculture** (Dr. Godana): It could be costly!

**Mr. Munyao:** This is because we have been financing the other committees, we cannot change it here and say this one will offer free service. Otherwise, there will be inconsistency. I only feel that, if that is the case, and if it is a voluntary thing, let neither it not be interfered with. Let it be there and let the Minister nor the Government know about it, because it will add a burden to the farmer. I only beseech Mr. Kajwang to see the reasons we are giving for that because these people will be a burden to the farmer later, and I feel that we should not let the farmer shoulder the burden.

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I have read in this Bill how they have defined a zone. It is an area within 40 kilometres of the factory. I am also looking at a situation like where I come from, in the Mumias Sugar Zone, where we have an outgrower organisation. Indeed, although we do provide for the zonal directors to the outgrower organisations, in practice, it just seems that there is a gap in terms of representation. The zonal director may not be enough to handle all the problems of a zone. A zone may constitute about 10,000 farmers and you can elect one director to represent that particular zone in the outgrower organisation.

So, there may be need for a lower level hierarchal organisation to be able to serve what the outgrower organisation may be doing in that area. So, from Mumias Sugar Zone's point of view, there may be merits and, indeed, it would really complement the effort of the outgrower organisation.

Therefore, I beg to support.



**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, let me thank Mr. Munyao very much. Of course, Mr. Munyao does not come from a sugar-cane growing area, but he is wise enough to see the problems that hon. Members from sugar-cane growing areas seem not to see. We are all in this society, and we should know ourselves, and for one, be honest with ourselves. Not even hon. Members want to give free services. There is no question of you expecting members of the zonal committees to travel a minimum of 100 kilometres in a day, to attend a meeting, and be expected to give free services. It is better for you to know what you are doing before you do it. If you insert this new Clause 13A, you are definitely imposing a new financial burden on the sugar-cane growers. If that is what you intend to do, go ahead and do it, but I am opposed to it!

Thank you.

*(Question, that the new clause be read  
a Second Time, put and negatived)*

*New Clause*

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 6 -

Kenya Sugar Foundation 6A(1) There is established Research a research Kenya Sugar Foundation, institution to be known as Kenya Sugar Foundation, which shall be funded and administered by the Board.

There has been a Kenya Sugar Research Organisation, which is a private company which is quite independent from any other organisation. It does conduct research and looks for money like any other research foundation from donors and everywhere. But we were thinking that one of the biggest jobs of the Board would be to improve the production of sugar-cane. You cannot improve the production of sugar-cane unless you also indulge in research. So, we found that, in the Bill, there is reference to the Kenya Sugar Research Foundation. But they are saying that it is an independent company altogether.

We have learned that the Sugar Levy has been used to sometimes to give certain monies to the Kenya Sugar Research Foundation to carry out research. But is completely outside the ambit of the Board. So, we were thinking that we create a research foundation within the Board so that one of the critical jobs of the Board would be to carry out research and then part of the Sugar Levy would be used for this purpose, so that we do not have a Foundation which is far removed from the industry, consequently, not helping very much. So, we think that there should be established a research institution to be known as the Kenya Sugar Research Foundation, which shall be funded and administered by the Board.

(2) The Foundation shall carry out research in all matters relating to the sugar industry, including quality and variety of sugar-cane production, distribution and consumption.

(3) The Foundation shall collect and collate all statistics relating to the industry and disseminate the same to the public for the consumption of those interested in the development of the sugar industry.

*(Question of the new clause proposed)*

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I thank the Mover, hon. Kajwang, for this well-thought and far-sighted amendment. There is a lot which needs to be done if we have to compete wisely and improve the quality of sugar in this country. The Departmental Committee on Agriculture, Lands and Natural Resources travelled to Natal in South Africa. This is a small province in South Africa. We were impressed because South African Government gets over 2.4 billion Rands from sugar grown in that province. That is equivalent to Kshs240 billion. There is nothing that can do well without financial support from the Government.

I, therefore, plead with the Minister to support this amendment.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I would be a dead man if I did not support this new clause as proposed by hon. Kajwang because the National Sugar Research Station is just 200 metres from my home. The research aspect in the sugar industry is so important that we cannot ignore it. The research station is responsible for research on various varieties of cane. It has got all the necessary aspects to encourage and make sure that the quality and quantity of sugar-cane production is increased.

Therefore, I whole heartedly support this new clause.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, you know when there is good sense, I support. But when there is no good sense, I do not support. I stand to oppose the proposed amendment.

For the benefit of those hon. Members who may have forgotten, we are very much committed to research. I made this very clear in my contribution to the Second Reading of the Bill. The Kenya Sugar Research Foundation, which this proposed amendment seeks to establish, is already established and in existence by Articles of Association under the Companies Act. It is a company limited by Government guarantee. What we are trying to do is tautologous. We are trying to create a child when the child is already there. Secondly, if you go to paragraphs 2 and 3, I have no quarrel in essence with contents of those paragraphs. But the way my learned friend, hon. Kajwang, put it, it will not be very healthy to have the Kenya Research Foundation as a child of the Board. That is why it is proper that we leave it to that autonomous structure or setting where the Research Foundation is under the Companies Act, limited by Government guarantee and independent of the Board. If we are going to make the Board a regulatory board decide or, at least, pretend to have powers over the Research Foundation, then you will have killed the research baby before even it is out of the womb.

I beg the hon. Member to withdraw the proposal.

**Mr. Sangu:** Mr. Temporary Deputy Chairman, Sir, this is very close to my heart. The research station stands on my father's land. If we leave it as a company it could well one day turn into something else. The cotton and sugar research stations were previously under KARI. There is a lot of confusion. Sugar-cane belong to sugar-cane farmers. Therefore, let the research station be managed by the Board. It is important to know the difference. As it is now, there has been an argument of turning that station into a university college. We will be left without anything to look after sugar-cane in terms of research.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I am not very sure that we need really to do what hon. Kajwang is trying to do. When you look at the roles of the station, in paragraph 4 on page 1315 of the Bill, the Kenya Sugar Research Foundation is included there with a lot of details of what its functions ought to be. Probably the only area where I might agree with Kajwang is that this organisation ought to belong to the Board where farmers are. If that is what he is saying, then we need to change this section. So, I am not quite convinced that we have to change it that at the moment.

**Mr. Kajwang:** I think hon. Achola is right. If you look at page 1314, the Kenya Sugar Research Foundation is defined. But it is incorporated under the Companies Act and the objects are set out there. In the next amendment, which I will propose, I will amend that provision to say that the Kenya Sugar Research Foundation, which we are referring to, is the one which we have created under Section 6(a). So, that there is no conflict whatsoever. What we are trying to do actually, which hon. Achola agrees with me, want the Research Foundation to belong to the Board, so that the Board can fund and manage it. It is the Board which needs this research. It is the Board which needs to know how much money it needs to put in the research to get the best quality variety. If you leave research to another company which is run somewhere by some other people---

We know what is happening. There is a lot of money which has been paid from levy to go to this research foundation which never reaches there. The money is squandered in-between. What we are trying to say is that the Board should take care of this institution and know where the money goes, so that the variety produced is improved. In any event, what is the job of the Board? The Board is to improve the quality of sugar-cane. How will it improve the quality of sugar-cane without research? Let us make the research foundation a baby of the Board.

**The Temporary Deputy Chairman** (Mr. Imanyara): May I point out that your amendment will contravene our Standing Order No. 106 because it is already provided for. Standing Order No.106(3) says:

"No amendment shall be moved which is inconsistent with any part of the Bill already agreed or any decision already made by the Committee, and the Chairman may, at any time during the discussion of a proposed amendment, withdraw it from the consideration of the Committee if, in his opinion, the discussion has shown that the amendment contravenes the provisions of this paragraph."

Mr. Kajwang, by your own admission, you are saying that hon. Achola is correct. So, I would not allow that proposed amendment. In that view, Mr. Kajwang, will you withdraw the entire amendment?

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I quite get the gist of your ruling. Is that what I am trying to amend---

**The Temporary Deputy Chairman** (Mr. Imanyara): You agree with hon. Achola that there is provision in the Schedule and then you are proposing to amend. That is what I understood you to say. So, I am pointing out that, if you do so, then you will be in contravention of that Standing Order. So, we can proceed on the basis of your new clause as it is and vote on it. But if you look at Part II on page 1314, as pointed out by hon. Achola, then there would be inconsistency.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, in view of your ruling, then I withdraw it.

*(New clause withdrawn)*

*First Schedule*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the First Schedule be amended in paragraph 1 of the First Schedule, by deleting subparagraph (b) (iv).

The subparagraph says one reason for vacation office of the Board is that the person has become a Member of the National Assembly or a Local Authority. We do not think there is anything inconsistent with the membership of the Board and membership of Parliament or a local authority.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is another amendment on page 754 by Mr. Sambu. Mr. Sambu, your proposed amendment is identical to that of the Minister. It is exactly the same as that of the Minister.

**Mr. Sambu:** It is true, Mr. Temporary Deputy Chairman, Sir.

*(First Schedule as amended agreed to)*

*Second Schedule*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Second Schedule of the Bill be amended -

(a) in paragraph 3, by deleting the word "companies" appearing in subparagraph (b) and substituting therefor the word "institutions";

(b) in paragraph 8 by deleting the words "comprising committee" appearing in subparagraph (1).

(c) in paragraph 8 by inserting the word "which" immediately after the word "prices" appearing in subparagraph (2).

(d) in paragraph 8,

by deleting subparagraph (3) and substituting therefor the following new paragraph -

"(3) The following formula shall be adopted in payment for sugar-cane based on sucrose content -

$$\frac{\text{Price of sugar-cane} \times \text{Pol \%}}{\text{cane} \times \text{KR} \times \text{Farmers' Share} \times \text{Monthly average net}} = \text{price of sugar}$$

$$1 + E \%$$

plus % of value of by-products, where KR

= Expected Mill Extraction x Expected Boiling House Recovery and E % = Extraneous matter % cane.

(e) in paragraph 9, by inserting the words "a miller shall" immediately after the word "agreed" appearing in subparagraph (1).

(f) in paragraph 9(1) by inserting the words "for such change becomes apparent" at the end of subparagraph (c);

(g) in paragraph 9 by deleting the words "for such change becomes apparent" appearing in subparagraph (2).

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us move on to page 754. We have received notification of another proposed amendment from Mr. Sambu.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule be amended -

- (a) in paragraph 3, by deleting the words "and centralisation" appearing in subparagraph (j).
- (b) in paragraph 7(2) -
  - (i) by deleting the word "five" appearing in subparagraph (b) and substituting therefor the word "seven";
  - (ii) by deleting the words "three months" appearing in subparagraph (d) and substituting therefor the words "one month".

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us move on to page 756. There is an amendment from Mr. Achola.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule be amended by adding a new subparagraph to be numbered "(n)" at the end of Paragraph 3 to read as follows -

- (n) ensure that the millers and outgrower institutions look into the welfare of their members and infrastructural development of the regions where they are situated.

The reasons for this addition is to ensure that the Board will coordinate all the other stakeholders, like the millers and the outgrower institutions, to ensure that the areas where sugar-cane is grown benefit from that activity. That is what we are saying.

*(Question of the amendment proposed)*

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I rise in support of the new amendment. The reason for the amendment is that when the Sugar Development Levy was created, the original intention was for the provision of infrastructure in areas around the factories, so that the cane could be transported to the factories with ease. I am afraid that, that has not been so, even though we have had that levy. Therefore, if this amendment is included, it will ensure that infrastructure relating to sugar growing areas is taken care of.

With those few remarks, I beg to support.

**Mr. Ngure:** Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment for the very reasons that most of the industries, and particularly the sugar industry, apart from the roads infrastructure, does not seem to benefit the people who reside along the sugar-cane growing areas and factories. We are looking at this in such a way that if a sugar factory is situated in an area, there should be spill-over effects---

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Ngure, I understand the Minister is supporting. So, you can be brief!

**Mr. Ngure:** He is supporting for the first time?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes!

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, the hon. Member must have just come in!

*(Question, that the words to be added be added, put and agreed to)*

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I think I have another amendment to part (3).

**The Temporary Deputy Chairman** (Mr. Imanyara): That is on page 755. Is that so? Mr. Achola, you have an amendment on page 755.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule be amended in Part 3, Paragraph 8(2) by adding the word "and" after "prices", and by deleting the words "sucrose content" and substituting therefor "weight of sugar-cane"; and by deleting Paragraph 8 subparagraphs (3), (4) and (5).

The reason that we want that done is that the formula which has been proposed by the Minister is so complex that it will never be implemented in the field. Most of the Members here, who come from the sugar-cane growing areas, do believe that the old system of paying farmers on the basis of the weight of sugar-cane should remain as the best way of doing it at the moment.

Mr. Temporary Deputy Chairman, Sir, I would like to make a slight amendment to the one that I have just read. At the end of the word "sugar-cane", I would like to suggest that we add the following words "and it is not just---

**The Temporary Deputy Chairman** (Mr. Imanyara): Unless there is a typographical error, I do not have it here, Mr. Achola! You have not even submitted it to us!

**Mr. Achola:** I would like to make an additional amendment to that amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): I see it now, but let us clear with the first one first, and then move to that one. You are referring to page 788?

**Mr. Achola:** Yes. You have the amendment there on the Second Schedule.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, but we have one on page 755.

**Mr. Achola:** Now, the other one is an amendment to the amendment, for which I do not need to have given you a notice!

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us finish the amendment on page 755 first. On that, make it clear as to what you have because you have only talked about the first part. You have not talked about the---

**Mr. Achola:** Okay! I will finish with what I wanted to say on the first part. We do not want sugar-cane to be charged on the basis of sucrose content, because we think that, that is not implementable on the ground. It should remain being charged on weight only. I realise that, that did not encourage the idea of farmers' good husbandry. But looking at what type of farmers we have, I think we should still continue charging on the basis of the weight.

**The Temporary Deputy Chairman** (Mr. Imanyara): There are two amendments in one here. In the Second Schedule, you are proposing that part 3, Paragraph 8(2) be deleted, and also that Paragraph 8 subsections (3), (4) and (5) be deleted.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, if the first part of the amendment goes through, then the rest of the paragraphs will be rendered irrelevant!

**The Temporary Deputy Chairman** (Mr. Imanyara): Then, you should move your amendment!

**Mr. Achola:** With those remarks, I beg to move.

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. I think the amendment he is proposing is completely out of order. A while ago, I did propose amendments to the Second Schedule and they were adopted by this House. If you look at Paragraph (3), it states as follows:-

"The following formulae shall be adopted in payment for sugar-cane based on sucrose content---

This amendment was adopted and we cannot come back at this stage and undo what we did.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, We need to get this clearly. We did amend the Second Schedule, and what you are amending is what has already been removed!

**Mr. Achola:** No! No! It has not been removed. What the Minister removed is part (a) only.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I am afraid, the hon. Member must have been asleep!

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, if you refer to page 752, you will see that all those amendments are contained in the Minister's amendments to the Second Schedule. All of them are there! I would like to draw your attention to the provisions of Standing Order No.106(3). The provisions of this Standing Order bar you from moving amendments to amended clauses. I am afraid, we shall not allow that amendment.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I am sorry, I am not with you!

**The Temporary Deputy Chairman** (Mr. Imanyara): If you looked at the amendments proposed by the Minister and passed by the House, they contain all the---

**Mr. Achola:** Although he moved his amendments, I can move other amendments to remove his! What is

wrong with that?

**The Temporary Deputy Chairman** (Mr. Imanyara): No, you cannot do that! You will be barred by the provisions of Standing Order No.106 (3).

**Mr. Achola:** How about if you had "seen" me first before the Minister? What could have happened?

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, I am telling you that it is completely inconsistent with Standing Order No.106(3).

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I think hon. Achola has a valid point. Supposing you had "seen" him before the Minister?

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, Dr. Kulundu! I "saw" all those who stood up to be "seen." I have been pointing out to hon. Members that, as soon as we discuss the amendments as they appear in the Order Paper, they have to stand up and move their proposals.

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I also stood up because I had an amendment to Paragraph 8(2). We discussed that amendment before discussing the amendments to Paragraph (6).

**Mr. Temporary Deputy Chairman** (Mr. Imanyara): But that is on Paragraph 8(2), Dr. Kulundu!

**Dr. Kulundu:** Paragraph 8(2) is similar to what hon. Achola is saying!

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Kulundu, we have already adopted the Minister's amendments which had all those provisions which you seek to amend. That amendment has already been overtaken by events! Look at what we approved on the Second Schedule. Just look at it!

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I know that we went through a process where certain decisions were made without us being conscious. I can readily tell the House that the issue as to whether or not to pay farmers on the basis of sucrose content is a fundamental one and it is going to cause a crisis. It may have passed but we need to be guided by the Chair so that this particular issue is addressed squarely. If we need to revisit it, then you should tell us how to do it. Our contention is that the current mode of payment should continue on the basis of weight.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Minister, did you amend Paragraph 8(2)?

**The Minister for Agriculture** (Dr. Godana): Yes, I did!

**The Temporary Deputy Chairman** (Mr. Imanyara): So, Mr. Achola, you should have brought that amendment to the attention of the House at the time we were debating the Minister's amendment. That was the time we would have rejected or allowed the proposed amendment. I cannot allow it now!

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, when the Chair reached this amendment it knew, of course, that hon. Achola and hon. Dr. Kulundu had something to say about this paragraph. The attention of the House should have been drawn to the fact that we were either dealing with sucrose content or the points raised by hon. Dr. Kulundu and hon. Achola. We would have given it some thought. It is going to look like the cheque issue that we dealt with last week. It is going to make us go back to the Committee Stage once again. We have to throw this matter out! We cannot subject ourselves to this sucrose thing! In fact, our technology has not reached there.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, all that I am pointing out is that the Second Schedule was read and it has sucrose content in (d)(3). The issues you are now bringing up have already been dealt with and adopted by the House.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I have been here all along but I have not heard the Minister deal with Part (3) of the Second Schedule. The Minister knows that this is a very crucial issue. As a matter of fact, he should explain those percentages. This formula is so important. If he did explain, I do not know but I want to assure the Chair that we were definitely not asleep.

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, hon. Members! You are at liberty to seek recommitment if you wish. But the rules provide that you cannot--- It is all in the Second Schedule. Let Dr. Omamo finish.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, we need your guidance on how this particular point is going to be resolved. In the Order Paper, we have got areas which go against this point, but they were not raised. We would like to know under what Standing Order we can go back and deal with them.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, we have proceeded according to our rules as set out in the Standing Orders and as contained in the consistent practice of this House. Where two or more amendments are proposed on a particular section, the practice of the House has been that, the Mover of the Bill has the first priority. That is how this House proceeds always. That is why, in the Committee Stage of a Bill, it is the Minister or the Private Member, if it is a Private Member's Bill, who first goes through his proposed amendments. Thereafter, we deal with Private Member's amendments.

Secondly, Mr. Temporary Deputy Chairman, Sir, this amendment is on the Order Paper and every

Member is deemed to have it in his possession and knowledge. The amendments which I went through and on which Mr. Achola proposed his amendment much later, because the Supplementary Order Paper came in later were---

**The Temporary Deputy Chairman** (Mr. Imanyara): But let us get it clear, Mr. Minister! I would like to be completely certain also, because in your Second Schedule, Paragraph 8(c), you amended the word "which" immediately after the word "prices" appearing in subparagraph (2). If you read that subparagraph, it does not have anything to do with sucrose content. If there was an amendment that does not touch on prices, I think Dr. Kulundu and Mr. Achola would be at liberty to move their amendments.

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. If, indeed, the content of the amendment that I proposed which was adopted by the House was as limited, as you say, in terms of what is marked---

**The Temporary Deputy Chairman** (Mr. Imanyara): I just want to be clear!

**The Minister for Agriculture** (Dr. Godana): I have quite understood you. What you did, strictly in accordance with the rules, was to propose the amendment. I then stood up to move that the amendment as set out in the Order Paper be accepted. You then proposed a question and put the question, and the Members voted unanimously in favour of that amendment. In fact, there was no dissenting voice. It is clear that hon. Members who have the Order Paper in their hands were not looking at it and were asleep when we were voting. Now, they want to go back against the express provision of Standing Order No.106. It is not acceptable.

*(Mr. Ngure stood up in his place)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order, Mr. Ngure!

Mr. Minister, if you also look at what we have passed, I have just looked at it again, you amended only certain words and not the whole Schedule as far as it is. Let us see if Mr. Achola's proposed amendment goes by your amendment, then I will be quite happy to overrule him. But if it is not, I will just allow him to move it.

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. At some stage, Mr. Achola will be entitled to say, but mine is not caught by his amendment. That is before we adopted the clause as amended. After that he cannot come back to say his amendment is separate from mine. We adopted the amendment and the clause as amended.

**Mr. Murathe**: On a point of order, Mr. Temporary Deputy Chairman, Sir. It is important that we be very systematic. The Minister was amending the Second Schedule as per his proposals. He dealt with part "a", but he never touched parts "b", "c", "d" and "e". I want your guidance. I thought he was supposed to do it clause by clause in which case he would have arrived at part "b" in Paragraph 8. At Paragraph 8, there was another amendment. At the bottom of page 752 is where the Minister has brought the formula of the sucrose content. The effect of Mr. Achola's amendment is about weight. The Minister wanted to adopt the whole Schedule in total without going through it step by step.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order! I am now in the picture and I will make my considered ruling; that we are still on the Second Schedule, Mr. Minister! Even what Dr. Kulundu proposed to amend is the Second Schedule.

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. There is no rule which requires that, where a Mover has proposed an amendment, he will go through every word and comma. Indeed, it is standard practice in this House that where there is no dispute, all that the Mover proposes and all the Questions that you put is that the clause be amended as proposed. Indeed, when I tried to move through the paragraphs one by one, you told me that it is all clear. Therefore, I had to move that---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order, Mr. Minister! I agree with you.

**The Minister for Agriculture** (Dr. Godana): I am afraid you cannot undo what you did!

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order! Mr. Minister, we have not disposed of Second Schedule and if Mr. Achola and Dr. Kulundu can point out to me that their proposed amendments are not covered in your parts "a", "b", "c", "d" and "e", they will be perfectly entitled to move their amendments.

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. If you look at Standing Order No.106 very clearly, in particular Paragraph (3) hereof regarding the formula for calculating the price [**The Minister for Agriculture**] of sugar; it is so central. The whole bit of the proposed amendment by Mr. Achola is to erase the amendment which we decided on here. The Standing Order clearly prohibits that: You cannot undo what you have done!

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Order! I agree, Mr. Minister, but what we did is not affected by Mr. Achola's proposed amendment, because we are still on the Second Schedule. Mr. Achola has proposed that Part 3, Paragraph 8(2) be amended by adding the word "and" after "prices", and deleting the

words "sucrose content" and substituting therefor "weight of sugarcane" and by deleting Paragraph 8 subparagraphs (3), (4) and (5). Mr. Achola is quite in order except that his second part is identical to Dr. Kulundu's. So, we can deal with his part one of the Second Schedule.

**Mr. Achola:** That is fine. So, we will cover that part which is similar to Dr. Kulundu's.

**The Minister for Agriculture (Dr. Godana):** On a point of order, Mr. Temporary Deputy Chairman, Sir. I am standing under Standing Order No.106(3) which reads as follows:-

"No amendment shall be moved which is inconsistent with any part of the Bill already agreed or any decision already made by the Committee, and the Chairman may at any time during the discussion of a proposed amendment, withdraw it from the consideration of the Committee if in his opinion the discussion has shown that the amendment contravenes the provisions of this paragraph."

Clearly, the amendment being proposed by Mr. Achola is directly in contravention of the amendment which was proposed here and adopted.

*(Mr. Ngure stood up in his place)*

**The Temporary Deputy Chairman (Mr. Imanyara):** Order, Mr. Ngure!

Mr. Minister, that can only be done if the Chairman agrees with you. I have looked at the Standing Order---

**The Minister for Agriculture (Dr. Godana):** It is not at the discretion of the Chair!

**The Temporary Deputy Chairman (Mr. Imanyara):** Order! Order! I have looked at your amendment and I cannot see that what the House allowed is in any way covered by the first part of Mr. Achola's proposed amendment. If you show it to me, I will be very happy to uphold the ruling, but it is not. Mr. Achola wants Paragraph 8(2) to be amended by adding the word "and" after "prices" and deleting the words "sucrose content" and substituting therefor "weight of sugar-cane". His second part is exactly as the one sought by Dr. Kulundu. If you show me that it is covered by the amendment that was carried, then I will uphold the ruling.

**The Minister for Agriculture (Dr. Godana):** Mr. Temporary Deputy Chairman, Sir, at the bottom of page 752, it says:-

"(3) The formula shall be adopted in payment for sugar-cane based on "sucrose content" and then it gives the formula.

Mr. Achola is proposing that we delete the words "sucrose content" and replace therefor with the words "weight of sugar-cane".

Before we brought this Bill, as the law is today, the payment is on the basis of weight of sugar-cane. Very deliberately and consciously as I argued before this House, we are now moving to a better system so as to ensure and uphold quality to encourage farmers to produce quality sugar-cane on the basis of sucrose content. We passed an amendment in this House to the effect that sugar cane payment shall be based on sucrose content. Mr. Achola now says that we should erase the words "sucrose content" and substitute them with the word "weight". It is so central and diametrically opposed to what we agreed on here this afternoon.

**The Temporary Deputy Chairman (Mr. Imanyara):** You are referring to 8 (3) while Mr. Achola is referring to 8(2). Could you go back to 8(2)?

**The Minister for Agriculture (Dr. Godana):** Let us face it, Mr. Temporary Deputy Chairman, Sir. The Standing Order says "which is inconsistent with". You have to read 2 and 3 together. Both of them are emphasising the central reference standard to the sucrose content. The hon. Member says we should substitute sucrose content with weight.

**Mr. Ngure:** On a point of information, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Mr. Imanyara):** I think I have heard enough arguments on this.

**An hon. Member:** Maybe, you can adjourn the House!

**The Temporary Deputy Chairman (Mr. Imanyara):** No, I will not adjourn!

**Mr. Ngure:** I stand to seek your guidance Mr. Temporary Deputy Chairman, Sir. The Order Paper shows proposed amendments from the Minister and hon. Members of this House. The Minister is holding those amendments and yet they affect his Ministry directly. Why is he hoodwinking people, by assuming that the amendments are not there? He cannot say that hon. Members should have known since they had the Order Paper. Equally, the Minister had the Order Paper and, since these amendments affect his Ministry, he should take into consideration, every proposed amendment.

**The Temporary Deputy Chairman (Mr. Imanyara):** I will make a ruling. I will let the House declare its will by allowing Mr. Achola to move the amendment. I will then propose the Question and you can debate on the amendment because I have looked at the Second Schedule that the House passed and it is not covered.

Mr. Achola, you can move your amendment!



**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir. I respect the Chair and I will be guided by the Chair. In that regard, I would like to seek the guidance of the Chair. If, on a matter that we have already decided in the affirmative---

**The Temporary Deputy Chairman** (Mr. Imanyara): I think you are making a mistake here. I am looking very carefully at what we have decided and what is proposed by Mr. Achola. We have not decided on that. That is my ruling.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I am just seeking your guidance. Please, listen to me! If you give Mr. Achola the right to go ahead and propose an amendment on the same subject which we decided--- We have already adopted the clause as amended. Will we adopt, again, something which is the direct opposite, which will override our previous amendment? Is it his amendment or mine which is carried?

**The Temporary Deputy Chairman** (Mr. Imanyara): No, it is not affected at all. Mr. Achola, you can move your amendment.

**Mr. Achola:** Thank you, Mr. Temporary Deputy Chairman, Sir.

I beg to move---

**Mr. Murathe:** On a point of order, Mr. Temporary Deputy Chairman, Sir. This is a very serious matter!

**Hon. Members:** Ah!

**The Temporary Deputy Chairman** (Mr. Imanyara): You are out of order! You are overruled!

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir.

**Mr. Murathe:** Mine is a very serious matter!

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Mr. Murathe you are overruled for the third time!

Proceed, Mr. Achola!

**The Minister for Agriculture** (Dr. Godana): On a point of order, Mr. Temporary Deputy Chairman, Sir.

**Hon. Member:** Which point of order is this?

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! There will not be three of you on your feet!

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I do not want to contribute. It is a point of order!

**Mr. Murathe:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): I have seen Mr. Murathe on a point of order. He is the one I am dealing with and I have said I overruled you. Let me hear your point of order.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I believe we are all here to ensure that we follow the rules of the House. I am even surprised that you have overruled an hon. Member before hearing him. You cannot overrule a point of order before it has been raised.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, Dr. Godana! You will not guide me or speak on behalf of Mr. Murathe. If you have your own point of order then I will hear you, but you will not tell me what to do! You cannot tell me that I am overruling another hon. Member when you are not raising your point of order!

Continue, Mr. Achola.

**Mr. Achola:** Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to move:-

THAT, Part 3 of the Second Schedule, Paragraph 8(2) be amended by adding the word "and" after the word "prices", and deleting the words "sucrose content" and substituting therefor the words "weight of sugar-cane".

**The Temporary Deputy Chairman** (Mr. Imanyara): Paragraph 8(2) as you propose to amend reads as follows:-

"The main objective of the Committee shall be to review sugar cane prices which shall be determined on the basis of the sucrose content."

That was adopted; that is how it reads now. So, what do you propose to do?

**Mr. Achola:** I am proposing that it should read exactly the same, but at the end we should add the words "weight of sugar- cane".

**The Temporary Deputy Chairman** (Mr. Imanyara): But sucrose content and weight---

**Mr. Achola:** "Sucrose content" should be deleted!

**The Temporary Deputy Chairman** (Mr. Imanyara): Just read it out the way you want it amended.

**Mr. Achola:** I have already read it out, Mr. Temporary Deputy Chairman, Sir. You should delete the words "sucrose content" and substitute therefor the words "weight of sugar-cane".

**The Minister for Agriculture** (Dr. Godana): He is supposed to read out the whole proposed amendment so that we know what he means.

**Mr. Achola:** Let me just read out Paragraph 8(2) as stated on page 1319 of the Bill.

"The main objective of the Committee shall be to review sugar-cane prices which shall be determined on the basis of weight of sugar cane."

That is how it should read and not "the basis of sucrose content".

**The Temporary Deputy Chairman** (Mr. Imanyara): It is identical to yours, Dr. Kulundu.

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I want to concur with my good friend, Mr. Achola. I beg to propose, on the Second Schedule of the Bill---

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Kulundu, since it is identical, why do I not deal with this one and then, if it is passed, you can withdraw yours?

**Dr. Kulundu:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): I will hear you now, Mr. Murathe.

**Mr. Murathe:** Mr. Temporary Deputy Chairman, Sir, therefore, that amendment is in total contradiction with (d)(3) of the same Second Schedule, which you are purporting that we had already passed.

**The Temporary Deputy Chairman** (Mr. Imanyara): Where is it?

**Mr. Murathe:** It is on page 752. It states: "in Paragraph 8, by deleting subparagraph 3 and substituting therefor the following new paragraph 3 which now gives the formula for determining the price." What the hon. Member is proposing is in total contradiction with this paragraph which we had already passed, unless you rule that we had not passed it.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, you are right. Mr. Achola, if you want to go back to this, you will have to go on recommittal because, as Mr. Murathe said, that will be the effect.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, we have not finished. We oppose it in 8(2). Even his amendment of the word "and", where we delete "and" and insert "which", that is what we passed as amended by him. However, my memory follows and is not asserting that bit of it.

**The Temporary Deputy Chairman** (Mr. Imanyara): No, it does because once yours goes through, it contradicts what we adopted under Paragraph 3, a whole paragraph on the examination of sucrose content. Mr. Achola, you can seek to recommit but we cannot because what you are doing will contradict the entire Subschedule B(3), that is the one that has been added because it is the formula for determining sucrose content. Unfortunately, I have to refuse that, under Standing Order No.106(3), and ask you to recommit, if you wish to go back on this, because you had already passed it on the Schedule. So, both you and Dr. Kulundu can come on recommittal, if you wish, because that is the effect as hon. Murathe points it. Now, looking at it carefully on that side, I do agree. So, we go to the next Order.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, but on that amendment we still have Sections 3, 4 and 8.

**The Temporary Deputy Chairman** (Mr. Imanyara): Which, again, as you can see on the Schedule 3, is completely replaced by the Minister's amendments.

**Mr. Achola:** No, but the Minister did not read the other ones! Why are you being so---

**The Temporary Deputy Chairman** (Mr. Imanyara): So, you are perfectly entitled to seek recommittal since it is within your right. So, next Order!

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I wish to move my proposed amendments to paragraph 6(a) which was not included in the Minister's---

**The Temporary Deputy Chairman** (Mr. Imanyara): On what page?

**Dr. Kulundu:** On page 773.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Kulundu, parts (c) and (d) are definitely affected by the Minister's amendments as you can see---

**Dr. Kulundu:** No, Mr. Temporary Deputy Chairman, Sir, I am talking about Paragraph 6.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, you can move Paragraph 6.

**Dr. Kulundu:** So, can I proceed?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, that you can. You will be entitled to do so because he is only attempting to amend Paragraph 6(a).

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, it is on page 773 and in the Bill it is on page 1317.

**The Temporary Deputy Chairman** (Mr. Imanyara): And, Dr. Omamo, if you check that, you will see it is also covered in your proposed amendments.

**Dr. Kulundu:** Yes, Mr. Temporary Deputy Chairman, Sir. Dr. Omamo has almost a similar amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, let us get this clear. Dr. Omamo, do you see that it is identical?

**Dr. Omamo:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, could Dr. Kulundu deal with it?

**Dr. Omamo:** Yes, Mr. Temporary Deputy Chairman, Sir.

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule to the Bill be amended in Paragraph 6 (a) by inserting the words "harvest, weigh at the farm gate, transport", and immediately before the word "mill", insert the following words "mill the sugar-cane supplied from the grower's field and so forth and so on".

Mr. Temporary Deputy Chairman, this amendment is supposed to empower sugar-cane farmers who to date---

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us get clear what you want to do so that we get this right. You are amending Paragraph 6(a). Currently, it reads as follows:-

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, currently, paragraph 6(a) reads as follows:-  
"The role of the miller is to mill the sugar-cane supplied it from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement".

Mr. Temporary Deputy Chairman, Sir, now my amendment reads as follows:-

"The role of the miller is to -

(a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the grower's fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement."

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, first I will stand on a point of order before I contribute. I will need, for the avoidance of doubt, that the hon. Dr. Kulundu states that he has thereby dropped his proposed amendments to Paragraph 6(b), (c) and (d) thereunder because on the Order Paper---

**The Temporary Deputy Chairman** (Mr. Imanyara): I overruled (c) and (d)

**The Minister for Agriculture** (Dr. Godana): You overruled (c) and (d) of Dr. Kulundu's amendments. Is that right?

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes!

**The Minister for Agriculture** (Dr. Godana): I just wanted this to go on record.

Mr. Temporary Deputy Chairman, Sir, I stand to oppose the proposed amendment. I want to make this very clear. I am concerned about the welfare of sugar-cane farmers. We are concerned, as a Government, to ensure that the sugar-cane farmers come out of the predicament of the suffering that they have gone through. That is the whole bit of the reform process in the sugar sector. That is the whole purpose of this Bill. That is why we have designed the rules and where we disagree with hon. Members, it is not because we have a different interest or mission. No! But it is because, having examined this Bill very meticulously, we believe some of those proposals which they are making will not, as much as they are intended to help the farmers, be actually helpful to the farmers.

Mr. Temporary Deputy Chairman, Sir, it is incumbent on us as a country and as Members, and I want to appeal to Members from those sugar-cane growing areas, to try to balance the interest of growers and that of the millers. You have to put them on a scale. If you tip them too much onto one side, you may force a walk-out from the other side. Now, we are trying to encourage contract farming, for example, where the nucleus estates or the factory, will sign a contract with the farmer early enough, indicating what price they will pay, how they will harvest and what-have-you.

Mr. Temporary Deputy Chairman, Sir, if you build this into the law, you are getting it out of the ambit of the contract and where particular factories feel particular farmers, because of the land size and distance within the zone and so on, may not be profitable, actually you may be ending up squeezing the small-scale farmer.

Mr. Temporary Deputy Chairman, Sir, so, I wish the Member withdraws and leaves this, after all, under the Bill. On the main provisions of the Bill which we have agreed upon, it is clear that the Schedule will be

amended from time to time on the recommendations of the Board on which they have now majority farmer representation. Let us for once trust the wisdom of that Board and the Minister who will just be gazetting what the Board has recommended than fix it in the law here.

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, I wish to vehemently oppose the Minister. Even to date, sugar-cane farmers are mere slaves of millers and they are charged for harvesting cane, any cane spilled on the way and transporting cane from the farms to the miller. It is not asking for too much to ask millers to take some of this cost off the farmers's shoulders. So, this amendment is, in fact, the most important amendment that is going to benefit sugar-cane farmers. I wish to ask my colleague, the hon. Minister for Agriculture to, at least, for once, take the welfare of farmers into consideration.

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I stand to support the amendment and let me deal with the concerns of the Minister because he has said that he has the interest of the farmer at heart. He has his understanding on how to enhance the interest of the farmer. We are all also from the farming zones, that is the sugar belt area. We are also farmers. So, when we are saying these things, it is a double role.

As hon. Dr. Kulundu has rightly said, much of the burden of cane production and transportation falls on the shoulders of the farmer. There is no formula anywhere where the farmer and the miller are sharing. Whereas, on the one hand, the factory is scooping out lots of profits, on the other hand, the farmer is getting debits and this is raising a lot of political tension, particularly for us from the sugar belt area. I know the hon. Minister has said that if we create this kind of thing, some farmers, that is smallholder, will be left out. However, what he should know is that when the factory goes to harvest, it goes for block. A block constitutes many parcels together and they cannot simply just go and harvest three acres. They have to go and harvest a block which is supposed to have a minimum of 14 acres. So, many farmers will have to be brought into that particular method to constitute a block. If you go alone and there are no other farmers and you have a smaller parcel of land, they will always reject. It is true as of now, the miller is not suffering in terms of these kinds of costs which are passed on to the farmer and I am sure by passing this particular amendment, we will have really enhanced what the Minister is saying - enhancing the welfare of the farmer.

Therefore, I support the amendment.

**The Minister for Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, it is very necessary to see the roles as clearly as they are. This is because a miller is there to mill, to pay the correct price and to market his or her own milled products. The farmer is there to farm in his or her own farm, to harvest his or her crop and sell his or her milled crop in the market.

If hon. Members want the miller to harvest at the farm, weigh at the gate and transport it, the grower has no responsibility on his or her own, other than to grow and wait. What incentive is there, even for the miller, if he or she is required to go and just do the job of the farmer?

I am a farmer, myself, and I would have loved to have seen this type of thing. Then, if that happens, one would sleep. When you have produced your own crop, you look after it. The husbandry begins at the farm, where you look after your crops, prepare it, guard it, harvest it, store it and then transport it straight to whoever is buying. It is at that point that the responsibility of the farmer ends and all he or she has to do is to ask for his or her money. It is now said that the miller would harvest, weigh and transport his or her produce. Therefore, we are creating another problem, where the harvested sugar-cane can be stolen on the way, because it can be raided on the way. Who will be the sufferer? The miller will be the sufferer. He or she is not going to have any incentive whatsoever. It is necessary to make the farmer feel that he or she is farming and is taking care of his or her own crops until he or she gets it to the market. Otherwise, this is the kind of business which I do not think is business at all; the way the amendment proposes.

With these few remarks, I beg to oppose.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I think we should persuade the Minister and my friend, Mr. Biwott, to benefit from hon. Members who know the problems on the ground.

*(Applause)*

Sugar-cane farming is a heavy duty operation. It is heavy duty in ploughing, harrowing, furrowing, cultivation and harvesting. All these are heavy duties. Transport is also a heavy duty. The farmer has been losing a lot of money because the transporter and the miller who collect the cane are careless. There is a lot of spillage on the ground, and that is why to help the farmer gain from his or her sweat, this amendment should be supported. We would like the cane to be weighed at the farm gate so that if there is any spillage, it is not the farmer's mistake. That is the important point to remember.

Regarding the other point about the arrangement; of who is going to cut it, that can be done. Regarding the functions of the miller, if you go to other countries, this is done by the company. We are talking about what we know on the ground.

I support the amendment.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, just for the avoidance of doubt, I have already gone on record that I support the amendment. Hon. Biwott has also explained eloquently why it is not advisable for this amendment to sail through. In any case, after that somewhat controversial debate here, we adopted the principle on sucrose content. I wonder what is the point in bringing the aspect of weighing at farmgate. What value will it have now since payment will not be dependent on weight? It will be decided on the basis of sucrose content.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose.

**Mr. Ngiro:** Mr. Temporary Deputy Chairman, Sir, even the sucrose content can be lost through spillage!

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, as I said, parts (b), (c) and (d) are affected by the Minister's amendment. Dr. Omamo declared that his amendment has also been covered by Dr. Kulundu's proposal. So, that one is also out.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, what is remaining is part (d).

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, have we dealt with your proposed amendment on page 778 of the Supplementary Order Paper before we go to Mr. Kajwang's amendment? Mr. Achola has given notice of his intention to propose an amendment to the Second Schedule.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, paragraph (2) be amended in the definition of "Cane farming Contract" by deleting the semi colon after the word "institution" and inserting the words "or miller".

Mr. Temporary Deputy Chairman, Sir, we know that the farmer can also have an agreement direct with the millers, and this is supposed to be provided for in the law we are making.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Achola, before you sit down, could you just make it clear to me? The Second Schedule has eight paragraphs. You are referring to Paragraph 2, which only relates to cane farming contract. Is that right?

**Mr. Achola:** That is right.

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I accede to the proposed amendment.

*(Question, that the word to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Omamo, has your proposed amendment to the Second Schedule, which also appears on page 778 of the Supplementary Order Paper, been dealt with?

**Dr. Omamo:** No, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): Could you proceed and move it?

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 7(2)(b) be amended by deleting the word "five" and inserting therefor the word "seven".

THAT, section 7(2)(d) be amended by deleting the word "three" and inserting therefor the word "one".

Mr. Temporary Deputy Chairman, Sir, Section 7(2)(b) is about cane fires, and I am recommending seven

days instead of the five days provided for. According to this Bill, sugar-cane, which has not yet caught fire, can easily be still millable within ten days after the fire. In the past, when sugar-cane, that was 30 to 36 months old caught fire, it was burnt really badly. But this will not be the case in future. So, five days is on the lower side and seven days, to me, is favourable. Mr. Temporary Deputy Chairman, Sir, in the past a lot of sugar-cane, which was not very old, was salvaged after ten days. But I am recommending seven days.

**Mr. Temporary Deputy Chairman** (Mr. Imanyara): And on part (b) you have suggested that the period be reduced from three months to one month?

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, on part (b), I have suggested that when cane has caught fire and is harvested, the payment should not be held for three months. It should only be held for one month because the farmer will already have suffered a lot. Holding the payment for three months would be too much because the farmer would need that money to cultivate and help the upcoming crop to grow.

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I stand to oppose the proposed amendment. I am really saddened by the propensity of the hon. Members from the sugar-cane growing areas to actually work against the interest of the sugar-cane farmers. It is in the interests of the sugar-cane farmer to have his cane processed in the shortest possible time. This is because, once sugar-cane has been burnt and cut down, fermentation begins. That can only be *prejudicial*, not to the miller, but to the sugar-cane farmer in terms of the sucrose content which will be extracted, and even in terms of weight, even if we were to adopt that. So, it is better that we discourage delay by putting a limit of five days. The two extra days will be a cost. I want to go on record as saying that this will be a cost to the farmer. Those extra two days will cause a loss to the farmer. If we are encouraging farmers to have the freedom of waiting for seven days instead of fighting to get their sugar-cane processed within five days, so be it!

Secondly, we are also trying to discourage sugar-cane burning. Many hon. Members from the sugar-cane growing areas have told me - in fact, I wondered in the Committee what was the issue - that a lot of burning is, sometimes done by your enemies, or people who want to jump the queue in terms of harvest. So, if we will tell the farmer that he can burn the sugar-cane and he will be paid within 30 days, we will not also manage to discourage sugar-cane burning. So, I beseech hon. Members; they might be motivated by a desire to serve the best interests of farmers, but they are actually doing a disservice to them. I plead with them to withdraw the amendment.

I beg to oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Sambu, your proposed amendments on page 754 in "(b)(i) and (ii), appear to be identical to that of Dr. Omamo. I am referring to the proposed amendments to the Second Schedule parts "a" and "b". If you look at parts "a" and "b", you will see that they are identical to Dr. Omamo's amendments.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, Dr. Omamo's amendments are specific to the---

**The Temporary Deputy Chairman** (Mr. Imanyara): No, Paragraph 7(2), part "b" states that:-

(i) by deleting the word "five" appearing in subparagraph (b) and substituting therefor the word "seven"; and,

(ii) by deleting the words "three months" appearing in sub-paragraph (d) and substituting therefor the words "one month".

So, if you want to withdraw that bit. I will allow you to do so here now, so that we can deal with the two amendments together.

Would I take it that you have withdrawn that bit?

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, but you have already proposed the question of the amendment!.

**The Temporary Deputy Chairman** (Mr. Imanyara): That would leave only part "a" of that amendment.

**Mr. Sambu:** It is okay!

*(Proposed amendment to part "b" of  
the Second Schedule withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Do you understand me, Mr. Sambu?

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, this part has nothing to do with the sucrose content!

**An hon. Member:** You are lost!

**The Temporary Deputy Chairman** (Mr. Imanyara): I think you are completely lost now. I did point out that those amendments in part "b" are identical to Dr. Omamo's proposed amendments. So, we should treat them as withdrawn to that extent.

So, let us hear from Dr. Anangwe.

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment. We have heard the argument presented by the Minister. But what I would like to assure him is that, it is not the wish of the farmers that the sugar-cane is burnt. Secondly, it is also the wish of the farmer that this sugar-cane is harvested as soon as possible because the farmers stand to lose, if it stays in the farm longer. If we say that the burnt sugar-cane should be harvested and delivered within five days, the miller will wait for five days and say: "The law says, it is five days". In practice, if there is some dilly-dallying at the factory, the farmer may harvest the sugar-cane after the fourth or the fifth day. But we want really to protect the interest of the farmer by making the period even longer. We would have said a month, but we do not want to be unrealistic. That is why we are just adding two more days on top of the five days that the Minister had proposed. I am sure the two days will not make a fundamental difference.

I beg to support.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment proposed by Dr. Omamo, and wish to add that the Minister is sort of misleading himself on part "b", where he says that payment for burnt sugar-cane shall be made within "three months" and he wants to reduce that to "one month". This one goes in line with the fresh sugar-cane that has been delivered to the factory. The fact that we are asking for one month, does not mean that we want to jump the queue. If sugar-cane is burnt eight months before the time it is due for delivery, you have to wait for those eight months - that is what the clause says - and then, if it is due to be harvested eight months later, you wait for another one month only, but not for three months to be paid. That is what we are asking for. It should not be three months because you have already been punished by waiting for eight months after the period when the sugar-cane ought to have been harvested.

I beg to support.

**The Temporary Deputy Chairman** (Mr. Imanyara): Before I put the question, I would like to inform hon. Members that, as they noticed, the proposed amendment is identical to the proposed amendment on pay 754 by Mr. Sambu in paragraph (b)(i) and (ii). So, that is the reason why, Mr. Sambu's proposed amendment was withdrawn.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): I just want to clear that one of Mr. Sambu because it is only one paragraph that is left.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, earlier on, we had disposed of this Second Schedule although I had proposed this amendment.

Nonetheless, I beg to move:

THAT, the Second Schedule be amended -

(a) in paragraph 3, by deleting the words "and centralization" appearing in subparagraph (J).

**Mr. Kajwang:** That one, we have done it!

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I have no strong objection to it. We can concede it. In that case, the paragraph will read as follows: "Facilitate long-term master plan for rehabilitation and nationalisation."

**The Temporary Deputy Chairman** (Mr. Imanyara): That makes sense.

*(Question, that the words to be left out be left out, put and agreed to)*

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, if you look at the Bill on page 1318 paragraph 6(d) says: "Pay for sugar-cane within the specified period or otherwise pay interest at market rate plus a penalty on late payment."

**The Temporary Deputy Chairman** (Mr. Imanyara): Sorry, Mr. Kajwang! I just want to get it correct that we are on the same page. Are we on the same page 777 on the Second Schedule?

**Mr. Kajwang:** Yes, Mr. Temporary Deputy Chairman, Sir. I am actually trying to delete "d" and substitute it with another "d" because fixing words would have made it a bit untidy. What I am saying is that if you look at that provision, there is no specified period. I suppose the specified period will be put in the contract. If it is put in the contract, usually the miller is stronger than the farmer. So, we want to specify the specified period. The penalty on the late payment should also be specified. It is just left "penalty" without specifying the amount. We want to fix that penalty.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Kajwang, you are referring to page 1318 or 1314?

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, it is page 1318 "d" after "c". That is what I am trying to delete and I want to replace it with another "d".

**The Temporary Deputy Chairman** (Mr. Imanyara): Did we deal with paragraph "a"?

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I withdrew that one because you had already made a ruling on that.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, paragraph "a" is already withdrawn. So, we are in Paragraph 6 "d"?

**Mr. Kajwang:** Yes. What I am trying to say is that we specify the period within which money should be paid to the farmer. We should also specify the penalty to be paid for late payment. So, the new paragraph "d" will read as follows:

"We pay the sugar-cane farmer within 30 days of accepting delivery or otherwise pay interest on the sum due at market rate plus a penalty of 3 per cent per month on late payment."

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Kajwang, just look at the last bit before you move.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, at the bottom, that is now (b)(2), we are creating a new paragraph after (h). What we are targeting is the following: There are certain services which are given to the farmers like ploughing, seed-cane and some little money for fertilisers and so on. Usually, there is interest charged on the money. But, sometimes, after 24 months, when the sugar-cane is supposed to be harvested, there is interest still accruing on the cost of those services. When your cane is 48 months old, you will still be paying more interest and yet, it is not your fault that your sugar cane was not harvested in time. So, what we are trying to suggest is that we stop the charges on interest immediately after 24 months. I think that is all we are asking.

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, while it would have to be for the record, I do not frankly understand what is wrong with Members! I think some of them are out of their senses! I am frankly---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! There is no Member who is out of his senses here!

**The Minister for Agriculture** (Dr. Godana): Thank you, Mr. Temporary Deputy Chairman, Sir. I withdraw that! But on a more serious note, hon. Members are very determined to secure the interests of farmers, whom they represent, to the point of ignoring the other players. But this same afternoon, these same hon. Members were ready to take the protection and securing of the interest of farmers, to the point of saying that they own a minimum of 51 per cent shareholding. So, in effect, the growers will be the owners of the cane and the principal owners of the mills.

Now, Mr. Kajwang says that the millers should pay for sugar-cane within 30 days of accepting delivery or, otherwise, pay interest on the sum due at market rates. I suppose that when he says "market rates", it is the prevailing bank rates. Then, he says they should pay a penalty of 3 per cent per month on late payments. The same growers, whom they want to be the millers, have to penalise themselves. That is really what it means. I do not get this---

**Mr. Kajwang:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I wish the Minister read



the Bill! That is because he thinks that it is us who are crazy, but sometimes, it is him who is not quite clear. If you read the Bill, it actually says that you will pay for the cane within a specified period. So, it even suggests a time frame. It is within the Bill. Then, the same Bill says that there will be a penalty, only that it does not say what that penalty will be! So, we are merely putting a clarification that the specified period will be 30 days, and the penalty will be 3 per centum. So, how are we crazy?

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, we did that as drafters before we knew they were going to come up with the provision on 51 per cent. Be that as it may, we moved to the second part, that is under (ii), to stop any charges of interest on services provided to growers by the millers or outgrower institutions on the 24th month after planting. Let us face it! This is a free enterprise system and the era of liberalisation. A service has a cost and a price and we are now, as a Parliament, saying: "You will give the service, but you will not charge a price."

For the record, I would like to say that I am opposed to that!

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, the Minister knows exactly what happens in other countries very well. I have no doubt in my mind. The Minister also wants to support the farmers to come up. The sugar industry will now be owned by farmers. Farmers might even find one month to be too long! They might even bring it down. There are countries which pay within seven days! That is possible and they will ensure that there will be no pilferage of monies as it is happening now. The farmers will be controlling their money. I see no problem with that. I think the Minister ought to concede and agree that the farmers should be paid within the stipulated time. After one year, the farmers might bring down the period because that is interest!

**Mr. Donde:** Mr. Temporary Deputy Chairman, Sir, I think the Minister did not understand what hon. Kajwang said. He is trying to help the Minister. In fact, it is the Minister who specified the time limit and the requisite penalties. Rather than leave the miller who will have a stronger position in the agreement to dictate to the farmer, we are just putting those specifics for the sake of both the miller, and the farmer. By so doing, then whoever is stronger than the other in the agreement cannot oppress the other. It is a fact that the Government put these terms in the Bill, but not the specifics. So, we want to put those specifics so that whoever is stronger in the contract does not oppress the other party.

**Dr. Anangwe:** Mr. Temporary Deputy Chairman, Sir, the purpose of this amendment is not to punish the miller. We are only enhancing accountability and mutual obligation. Under the current arrangement, if the farmer fails to do what he is required to do, he pays a penalty. But if the miller fails in his obligation, there is no penalty on his side. The idea here is not even to extract this extra money from the miller. We are only enhancing his responsibility. We would prefer that he pays within 30 days and we would also prefer that sugar cane due for harvesting is harvested within 24 months. We do require that kind of obligation from the miller.

Mr. Temporary Deputy Chairman, Sir, what has been missing in the past is the sense of responsibility on the part of the miller towards the farmer. In the process, the farmer has suffered. We have no other choice but to ensure that there is mutual obligation on the part of the miller. That is why these particular provisions have been put in this amendment.

With those remarks, I support the amendment.

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I would like to support the amendment. I want to inform the Minister that currently, in the SONY Zone, we have actually implemented that provision, so that the grower is not charged interest after 24 months. After 24 months have elapsed, it will not be the grower's mistake that the cane has not been harvested. In fact, that has been reduced in the Sugar Bill to 20 months for plant cane and 16 months for ratoon. So, even what hon. Kajwang is trying to do here is very generous. In fact, it is something which is already being done and the Minister should accept it.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Second Schedule as amended agreed to)*

*(Third Schedule agreed to)*

*(Title agreed to)*

*Clause 1*

**Mr. Achola:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 1 be amended by deleting all the words from the word "such" appearing in the second line and substituting therefor the following:-  
"not later than 1st April, 2002".  
I beg to move.

*(Question of the amendment proposed)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment.

We are, again, trying to legislate on the dates when Bills come into force when we know it depends on the day of Presidential Assent. I think this is not very healthy. I would want to plead with the hon. Member to withdraw the proposed amendment.

I beg to oppose.

**Mr. Sambu:** Mr. Temporary Deputy Chairman, Sir, farmers, millers and sugar consumers have been waiting for the day when this Bill would be transformed into an Act of Parliament. I think the hon. Member who has moved the amendment was very generous in proposing that it should come into force by 1st April 2002. We have four months between now and that time, to put these committees in place. Why should the Minister be opposed to this? I think the Minister should concede and accept the proposed amendment. Thank you.

**Dr. Kulundu:** Mr. Temporary Deputy Chairman, Sir, we have had a very nasty experience in this House, especially with the Industrial Property Bill which we were rushed into passing in June, but to date, it has not been given a commencement date much as it would have helped Kenyans to access anti-HIV/AIDS drugs. It is dangerous to leave this thing open-ended and for the Minister to seek a commencement date. I think the Government has breached that trust and it is just about time Parliament put a commencement date on some of these legislations.

**Dr. Anangwe:** I support this amendment because, coming from the sugar belt area, when I go home for recess, the key question will be: When is this Bill being implemented? I want some assurance that I can give a definite answer. The second reason why we have to fill in a commencement date is because we have done very many amendments which some other stakeholders outside may not be happy with. The option they have is to put pressure on the Minister not to even provide for the commencement date. I am aware of many Bills that have been passed and, just because some civil servants somewhere did not like what was passed in the House, they made sure that those Bills are not transformed into Acts of Parliament.

Mr. Temporary Deputy Chairman, Sir, the problem may not be the Minister, it may be the civil servants themselves who could withhold even further action and particularly if tomorrow we have a new Minister for Agriculture. It can stay on the shelves for a long time. We need to fill in the commencement date.

With those few remarks, I beg to support.

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I, personally, believe this Bill should come into force before 1st April. I have no hidden agenda nor do I think there will be anybody with a hidden agenda to delay the process. This is a Parliament and we should be serious. The Bill cannot come into force as a Bill. The Bill comes into force as an Act of Parliament. It does not become an Act of Parliament unless the President assents to it. The Presidential Assent is regulated by the Constitution. That Constitution has not picked a specific date. If, for some reason, the President feels he will have to wait--- I am just asking Members to be a little more reasonable. What will be the effect of us saying by that date?

**Mr. Kathangu:** Asante sana, Bw. Naibu Mwenyekiti wa Muda. Mkulima wa Kenya, awe ni wa miwa au kahawa ama mkulima mwingine yeyote yule, ni mkulima ambaye hana tofauti yeyote na mwingine. Juzi tulipitisha Mswada hapa kuhusu kahawa na tukasema kwamba lazima kuwe na sheria kabla ama tarehe 1 Aprili. Ninaona kwamba hakuna tofauti. Ningalitaka kuona kwamba wakulima wa miwa na kahawa wanafaidika kutoka sheria hizo mbili kabla ya siku hiyo.

Kwa hayo machache, ninaunga mkono.

**Dr. Omamo:** Mr. Temporary Deputy Chairman, Sir, I would really like to assure the Minister that suggesting a date of commencement is not unreasonable. If it is a question of getting the President's agreement, the Minister knows that the President is a sugar-cane farmer. Therefore he knows all the problems facing

sugar-cane farmers. The only other matter which I thought would have been a hindrance is that we would like this to be effective on 1st April. In some countries, 1st April is "Fools Day" but in Kenya, it is not a public holiday. So, we are home and dry. There is no problem here.

I beg to support.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

*(Clause 1 as amended agreed to)*

### MOTION

#### EXTENSION OF SITTING HOURS

**The Minister for Transport and Communications** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I wish to propose that we extend the sitting to 9.00 o'clock, in view of the fact that we have one additional Bill at Committee Stage. This will facilitate completion of both Bills. It would be fairly reasonable. It is not controversial and I think the proposed amendments appearing on the Order Paper are very few.

*(Question proposed)*

*(Question put and agreed to)*

*(Resumption of Debate on Sugar Bill)*

**The Minister for Agriculture** (Dr. Godana): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of the Sugar Bill, and its approval thereof with amendments.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, at this point I want to raise a Motion under Standing Order No.132 that a certain portion of Schedule 2 which is---

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Kajwang I think you are raising that Motion a bit early.

*Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): We will now move on to the Copyright Bill.

#### THE COPYRIGHT BILL

##### Clause 2

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 2 be amended -

(a) by deleting the definition of "authenticating device" and replacing it with the following new definition -

"authentication device" means any legal device that is used as proof that works or copies thereof are legitimate;

(b) in the definitions of "author" and computer programme" respectively by deleting the words "programme" and "programmer" whenever they occur and substituting therefor the words "program" and "programmer" respectively;

- (c) in the definition of "literary work" -
- (i) in sub-paragraph (f) by deleting the words "but excluding written laws or judicial decisions";
- (ii) in sub-paragraph (h) by deleting the word "programmes" and substituting therefor the word "programs";(iii) by inserting the following proviso immediately after sub-paragraph (i) -
- "but does not include a written law or judicial decision.";
- (d) by deleting the definition of "banderole";
- (e) by deleting the definition of "broadcasting" and replacing it with the following new definition -
- "broadcast" means the transmission, by wire or wireless means, of sounds or images or both or the representations thereof, in such a manner as to cause such images or sounds to be received by the public and includes transmission by satellite;
- (f) by deleting the definition of "communication to the public" and replacing it with the following new definition -
- "communication to the public" means -
- (a) a live performance; or
- (b) a transmission to the public, other than a broadcast, of the images or sounds or both, of a work, performance or sound recording.
- (g) in the definition of the word "fixation", by inserting the words "or images" immediately after the word 'sounds';
- (h) by deleting the definition of "infringing copy" and substituting therefor the following new definition -
- "infringing copy" means -
- (a) a copy, the manufacture of which constitutes an infringement of any rights protected by this Act; or
- (b) where imported, a copy the manufacture of which would have constituted an infringement of such rights if manufactured in Kenya by the importer;
- (i) by deleting the definition of "minister" and replacing it with the following new definition -
- "Minister" means the Minister for the time being responsible for matters relating to copyright and related rights;
- (j) by deleting the definition of "reproduction" and replacing it with the following new definition -
- "reproduction" means the making of one or more copies of a work in any material form and includes any permanent or temporary storage of such work in electronic or any other form;
- (k) by inserting the following new definition in proper alphabetical sequence -electronicrights management information" means any information by right-holders which identifies the work or recording;
- "infringement " means any act which violates a right protected by this Act; "technical measure" means any device, product or component incorporated into a work that the infringement of any copyright or related right.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clauses 3, 4 and 5 agreed to)*

*Clause 5*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
 THAT, Clause 5 be amended -  
 (a) by deleting paragraph (e);  
 (b) by inserting the following new paragraphs immediately after paragraph (d) -  
 (e) enlighten and inform the public on matters relating to copyright and related rights;  
 (f) maintain an effective data bank on authors and their works; and  
 (g) administer all matters of copyright and related rights in Kenya as provided for under this Act and to deal with ancillary matters connected with its functions under this Act.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 5 as amended agreed to)*

*Clause 6*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
 THAT, Clause 6 be amended -  
 (a) by deleting the word "representing" wherever it occurs and substituting therefor the words "nominated by";  
 (b) in paragraph (h) by inserting the words "or his representative" at the end thereof;  
 (c) by inserting the following new paragraphs immediately after paragraph (g) -  
 (h) one member nominated by registered associations of producers of sound recordings;  
 (i) one member nominated by registered associations of broadcasting stations.

*(Question of the amendment proposed)*

**Mr. Orengo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
 THAT, Clause 6 be amended by inserting the following paragraph immediately after paragraph (n).  
 (P) "one member representing audio-visual works distributors or sellers".

Mr. Temporary Deputy Chairman, Sir, I have had a word with the Attorney-General and we agreed to the amendment so that instead of deleting (P), the same reads as "one nominated by producers and distributors of audio-visual works".

Mr. Temporary Deputy Chairman, Sir, the reason for this amendment is that the distributors and sellers of audio-visual works are major stakeholders in the business and we thought that each should have a representation in the Board which will make the Board truly representative.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I do agree with the amendments as proposed.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 6 as amended agreed to)*

*(Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 agreed to)*

*Clause 23*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 23 be amended in subclause (1) by  
inserting the word "ordinarily" immediately after the words "domiciled or".

*(Question of the amendment proposed)*

*(Question, that the word to be inserted  
be inserted, put and agreed to)*

*(Clause 23 as amended agreed to)*

*(Clauses 24 and 25 agreed to)  
Clause 26*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 26 be amended -

(a) in sub-clause (i) -

(i) by inserting the word "rental" immediately after the word "sale";

(ii) by deleting paragraph (g);

(b) by deleting

subclause (3) and replacing it with the following new sub-clause -

(c) by inserting the

following new subclauses immediately after subclause (3) -

(4) Notwithstanding the provisions of Sub-section (3), a person who is in lawful possession of a computer program may do any of the following acts without the authorisation of the right holder whereby copies are necessary for the use of the computer program in accordance with its intended purpose -

(a) to make copies of the program to the extent necessary to correct errors; or,

(b) to make a back-up copy; or,

(c) for the purpose of testing a program to determine its suitability for the person's use;

or

(e) for any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program.

(5) The authorisation of the right holder of the program shall not be required to decompile the program, convert the program into a version expressed in different programming language, code, notation for the purpose of obtaining information needed to enable the program to operate with other programs.

(6) Any copies made pursuant to this section shall be used only for the purpose for which it was made and shall be destroyed when the person's possession of the computer program ceases to be lawful.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 26 as amended agreed to)*

*(Clauses 27 and 28 agreed to)*

*Clause 29*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 29 be amended by deleting the words "in places" where an admission fee is charged" appearing immediately before the word "public".

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 29 as amended agreed to)*

*Clause 30*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 30 be amended-  
(a) in subclause (1), by inserting the following new paragraph immediately after paragraph (d) -

(e) rent for commercial purposes to the public, the original and copies of their fixed performances.

(b) by inserting the following new sub-clause immediately after sub-clause (4) -

(4A) The performer shall, during his lifetime, as regards live performances or performances fixed in phonograms, have the right, independently of his economic rights, to -

(a) be identified as the performer of his performances and to object to any distortion, mutilation, or other modification of his performances that would be prejudicial to his reputation; and

(b) to seek relief in connection with any distortion, mutilation or other modification of, any other derogatory action in relation to his work, where such work would be or is prejudicial to his honour or reputation.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 30 as amended agreed to)*

*(Clauses 31 and 32 agreed to)*

*Clause 33*

**Mr. Orengo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
(i) THAT, Clause 33(3) be amended by inserting the following words immediately after the words "as the case may be":-  
"and the written assignment of copyright shall be accompanied by a letter of verification from the Board in the event of an assignment of copyright works from outside Kenya."  
However, again, I had a discussion today with the Attorney-General and we made one or two changes so that the proposed amendment should read as follows:-  
"and the written assignment of copyright shall be accompanied by a letter of verification from

the Government's authority or agency concerned with the administration of copyright, in the event of an assignment or copyright works from outside Kenya."

Regarding the proposal by the Attorney-General, I wish to delete from the word "Government" to the word "copyright" so that the full text should now read as follows:-

"and the written assignment of copyright shall be accompanied by a letter of verification from the Board in the event of an assignment of copyright works from outside Kenya."

This is to ensure that nobody tells the public that they have a copyright without the necessary verification, especially when that copyright emanates from outside Kenya.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Orengo, why do you not also move the second amendment?

**Mr. Orengo:** Mr. Temporary Deputy Chairman, Sir, in respect of the second proposed amendment to Clause 33 subclause (10), I have had a discussion with the Attorney-General and I am convinced that proposed amendment is "partyless." So, I am withdrawing it. I am only moving the first amendment.

*(Proposed second amendment withdrawn)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I agree with the proposed amendment by Mr. Orengo.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 33 as amended agreed to)*

*(Clause 34 agreed to)*

*Clause 35*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 35 be amended-

(a) by inserting the following new subclause immediately after subclause (2) -

(2A) Copyright and related rights shall be infringed by a person who -

(a) circumvents any effective technical measure designed to protect works;

(b) manufactures or distributes devices which are primarily designed or produced for the purpose of circumventing technical measures designed to protect works protected under this Act; or

(c) removes or alters any electronic rights management information; or

(d) distributes, imports, broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the rightholder.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 35 as amended agreed to)*

*Clause 36*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, clause 36 be amended -

(a) in subclause (1) -

(i) by inserting the words "or producer" immediately after the word "manufacturer;"

(ii) by deleting the words "and a publisher of literary works."

(b) by deleting subclause (3) and replacing it with the following new paragraph -

(3) A manufacturer or producer of sound recordings or audio-visual works shall purchase such authentication device from the Kenya Revenue Authority as may be required to cover the number



of copyright works he intends to sell or distribute;  
(c) in subclause (5) by inserting the words "that require an authentication device" immediately after the words "works;"

(d) in subclause (6) by inserting the words "that require an authentication device" immediately after the word "work."

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 36 as amended agreed to)*

*(Clause 37 agreed to)*

*Clause 38*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 38 be amended in subclause (3) by deleting the word "three" and substituting therefor the word "two".

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 38 as amended agreed to)*

*(Clauses 39, 40, 41 and 42 agreed to)*

*Clause 43*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, the Bill be amended by deleting Clause 43 and replacing it with the following new clause-

43.(1) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for the purposes of cases arising under this Act.

(2) The Board shall be deemed to be a public authority for the purposes of Section 171(4) of the Criminal Procedure Code.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 43 as amended agreed to)*

*Clauses 44 and 45 agreed to)*

*Clause 46*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 46 be amended-

(a) in subclause (4)-

- (i) by inserting the word "collecting" immediately before the word "society";
- (ii) by deleting the words "negotiating the" appearing in paragraph (d)-
- (a) in subclause (5) by inserting the word "collecting" immediately before the word "society";
- (b) by deleting subclauses (9), (10) and (11); and,
- (c) by re-numbering subclause (12) as subclause (9).

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to inserted in  
place thereof be inserted, put and agreed to)*

*(Clause 46 as amended agreed to)*

*(Clauses 47 and 48 agreed to)*

*Clause 49*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 49 be amended in Paragraph (c) by deleting the word "universal".

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out,  
put and agreed to)*

*(Clause 49 as amended agreed to)*

*(Clauses 50, 51 and 52 agreed to)*

*Schedule*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Schedule to the Bill be amended in paragraph 2(b) by inserting the words "on the recommendation of the Board" appearing immediately after the word "Minister".

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Schedule as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Copyright Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

### REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

#### THE SUGAR BILL

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Sugar Bill and approved the same with amendments.

**Mr. Kajwang:** On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order under Standing Order No.130(2), which states:-

"Save as otherwise provided by these Standing Orders, every report shall be made without question put, and may, by Motion, be agreed or disagreed by the House or recommitted to the Committee, or postponed for further consideration".

I move that the Bill whose report has just been made by the Temporary Deputy Chairman of the Committee be recommitted in respect of one part, namely, the Second Schedule 8(2), (3), (4) and (5). This is because, after debating this Schedule and when the Question was put, hon. Members were rather confused, because there were two other hon. Members who had similar amendments to propose to this Schedule. But their attention was not drawn to this particular matter. That the vote was taken surprised these hon. Members and deprived the Committee of the time to discuss the intended amendments. So, in short, hon. Members are urging that we be allowed to recommit the Second Schedule 8(2), (3), (4) and (5) to the Committee, so that we may debate it again and come up with a new resolution.

**Mr. Deputy Speaker:** Order! Hon. Kajwang, Standing Order No.132 does not provide as you have alleged. So, I overrule your argument!

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, it was not Standing Order No.132, but Standing Order No.130(2).

**Mr. Achola:** On a point of order, Mr. Deputy Speaker, Sir!

**Mr. Kajwang:** I am on a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** If I understood you correctly, you are referring to Standing Order 130(2)?

**Mr. Kajwang:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** And you are using it to recommit the Bill to the Committee of the whole of the House?

**Mr. Kajwang:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** I am afraid, you have it wrong!

**Mr. Kajwang:** Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Sorry! Proceed, Mr. Minister!

**The Minister for Agriculture** (Dr. Godana): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Attorney-General** (Mr. Wako) seconded.

*(Question proposed)*

**Mr. Achola:** On a point of order, Mr. Deputy Speaker, Sir, I want to raise an issue which we had discussed with the Minister for Agriculture. It was agreed that we were going to recommit this section of the Bill to the Committee of the whole House again. Now, we cannot accept the Bill like this!

**Mr. Deputy Speaker:** Order! Order! The Chair is not going to be persuaded by what you agreed on out there! The Minister you are referring to is the one presenting the Report! So, really, I cannot take you seriously that the Minister did agree with you beyond what is contained in the Report.

**Mr. Achola:** On a point of order, Mr. Deputy Speaker, Sir,

**Mr. Deputy Speaker:** Sorry!

**The Minister for Agriculture (Dr. Godana):** On a point of order, Mr. Deputy Speaker, Sir. The Chair had proposed the Question.

**Mr. Achola:** Although the Question has been proposed, I have an issue here which I want to raise.

**Mr. Deputy Speaker:** Order! Order, hon. Members! Mr. Achola, do not involve the Chair in your wrangles that you had during the Committee Stage. The Chair had proposed the question and the Minister did, in fact, make a Report and there is nothing I can do at this stage.

*(Question put and agreed to)*

*(Several hon. Members stood up in their places)*

**Hon. Members:** Division! Division!

**The Minister for Agriculture (Dr. Godana):** They are hardly ten!

Mr. Deputy Speaker, Sir, I beg to move that The Sugar Bill be now read the Third Time.

**The Attorney-General (Mr. Wako)** seconded.

*(Question proposed)*

**Mr. Murathe:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Murathe, you can speak now. I have already proposed the question.

**Mr. Murathe:** Mr. Deputy Speaker, Sir, I do not want to speak on the Bill. I am raising on a point of order under Standing Order 109(2), to seek the Chair's guidance. In fact, Standing Order 109 (2) reads as follows:

"The Question on any Motion moved under paragraph (1) of this Standing Order shall be put forthwith, no amendment, adjournment or debate being allowed, unless any Member desires to delete or amend any provision containing in a Bill, or to introduce any new provision therein, in which case, he may propose any amendments to add, at the end of the Motion, the words "subject to the recommitment of the Bill [in respect of some specified part or of some proposed new clause or new schedule] to the a Committee of the whole House", and if that Motion is agreed with such an amendment, the Bill shall stand to be recommitted. The House shall either forthwith or upon a day named by the Member in charge of the Bill resolve itself into Committee to consider the matters so recommitted."

**Mr. Deputy Speaker:** Order! Mr. Murathe, you stood on a point of order under Standing Order 130 which is not applicable.

**Mr. Murathe:** Mr. Deputy Speaker, Sir, this is the correct one!

**Mr. Deputy Speaker:** Order! When the Chair has already put the Question, you cannot go back to it to invoke the correct Standing Order!

**Mr. Murathe:** What about the issue of quorum?

**Mr. Deputy Speaker:** That is simple!

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

THE COPYRIGHT BILL

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Copyright Bill and approved the same with amendments.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with Committee in the said Report.

**The Minister for Transport and Communications** (Mr. Mudavadi) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that The Copyright Bill be now read a Third Time.

**The Minister for Energy** (Mr. Raila) seconded.

*(Question proposed)*

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I want to thank hon. Members for passing The Copyright Bill which is very important. Unfortunately, we are passing it when one of the most famous musicians that Kenya has ever produced, Mr. Daudi Kabaka, has passed away. In fact, there is a fund-raising for him this evening. Had this Bill been there in time, he would not have died a pauper. Better late than never. I am glad we have passed this Bill unanimously.

**The Minister for Energy** (Mr. Raila): Mr. Deputy Speaker, Sir, I want to echo the sentiments of the Attorney-General that, indeed, this Copyright Bill was overdue. Its absence impoverished so many of our people who died poor because of piracy. The enactment of this Bill has now put the piracy on notice. We want to see serious implementation of this Bill, so that it can promote creation and innovation works of art.

Mr. Deputy Speaker, Sir, equally, I thank hon. Members for passing this Bill.

**Mr. Ngure:** Mr. Deputy Speaker, Sir, I rise to commend the Attorney-General for bringing The Copyright Bill. As rightly said by hon. Raila, if The Copyright Bill was there, our legendary Acholi Gutu(?) would not have died a poor man after producing recognised records.

Mr. Deputy Speaker, Sir, I remember because of lack of the Copyright Bill he had even to pay to be recorded and those who were recording him were making huge profits from his production.

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

**Mr. Deputy Speaker:** Next Order!

**BILL**

*Second Reading*

THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL

**QUORUM**

**Mr. Kathangu:** On a point of order, Mr. Deputy Speaker, Sir. Is there a quorum in the House?

**Mr. Deputy Speaker:** No, we do not have a quorum. Ring the Division Bell.

*(The Division Bell was rung)*

#### **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Thursday, 13th December, at 2.30 p.m.

The House rose at 8.55 p.m